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BY

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ABBREVIATIONS EXPLAINED.

Reports.

All. or A.	Indian Law Reports, Allahabad Series.
A. L. J.	Allahabad Law Journal.
1922 All. or 1922 A.	All-India Reporter, Allahabad.
B. R. or B. D.	Decision of the Board of Revenue, Mad. (N. R. K. Tatachariar).
Bom. or B.	Indian Law Reports, Bombay Series.
Bom. L. R.	Bombay Law Reporter.
1922 Bom.	All-India Reporter, Bombay.
Bur. L. T.	Burma Law Times.
Bur. L. J.	Burma Law Journal.
Cal. or C.	Indian Law Reports, Calcutta Series.
C. L. J.	Calcutta Law Journal.
C. W. N.	Calcutta Weekly Notes.
1922 Cal.	All-India Reporter, Calcutta.
Cr. L. J.	Criminal Law Journal.
I. A.	Law Reports, Indian Appeals.
I. C.	Indian Cases.
Lah. or L.	Indian Law Reports, Lahore Series.
1922 Lah.	All-India Reporter, Lahore.
Lah. L. J. or L. L. J.	Lahore Law Journal.
L. B. R.	Lower Burma Rulings.
L. R. (P. C.)	The Law Reporter, Privy Council Section.
L. R. (A.)	" Allahabad Section.
L. R. (O.)	" Oudh Section.
Mad. or M.	Indian Law Reports, Madras Series.
M. L. J.	Madras Law Journal.
M. L. T.	Madras Law Times.
L. W.	Madras Law Weekly.
M. W. N.	Madras Weekly Notes.
1922 Mad.	All-India Reporter, Madras.
Mys. L J.	Mysore Law Journal.
N. L. J.	Nagpur Law Journal.
N. L. R.	Nagpur Law Reports.
1922 Nag.	All-India Reporter, Nagpur.
O. & A. L. R.	Oudh and Agra Law Reporter.
O. C.	Oudh Cases.
1922 Oudh	All-India Reporter, Oudh.
O. L. J.	Oudh Law Journal.
P. R.	Punjab Record.
P. L. R.	Punjab Law Reporter.
P. W. R.	Punjab Weekly Reporter.
Pat. or P.	Indian Law Reports, Patna Series.
1922 Pat. or 1922 P. H. C. C.	Patna Supplement to C. W. N.
1922 P.	All-India Reporter, Patna.
1922 P. C.	All-India Reporter, Privy Council Section.
Pat. L. R.	Patna Law Reporter.
Pat. L. J.	Patna Law Journal.
Pat. L. W.	Patna Law Weekly.
R. or Rang.	Indian Law Reports, Rangoon Series.
S. L. R.	Sind Law Reporter.
1922 S.	All-India Reporter, Sind.
U. B. R.	Upper Burma Rulings.
U. P. L. R.	U. P. Law Reporter.
1922 U. B.	All-India Reporter, Upper Burma.
1922 R.	All-India Reporter, Rangoon.

Other Abbreviations.

Appl.	Applied.	Expl.	Explained.
Appr.	Approved.	Foll.	Followed.
Dist.	Distinguished.	F. B.	Full Bench.
Disc.	Discussed.	P. C.	Privy Council
Diss.	Dissented from.	Ref.	Referred to.

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SUPPLEMENT.

HINDU LAW.

HINDU LAW—*Gift—Construction—Absolute estate—Malik.*

Semble: Words in a deed executed by a senior Thakur to a junior member that "you and your *vansa varas* are *malikhs, mukhtiyars, dhanis*" of a village, confer an absolute estate on the donee. (*Mr. Ameer Ali.*) PRATAB SINGH SHEVSINGH *v.* AGAR SINGH RAISINGJI. 17 A. L.J. 522 : 21 Bom. L. R. 496 : 1 U. P. L. R (P.C.) 39 : (1919) M. W. N. 813 : 10 L. W. 339 : 24 C. W. N. 57 : 50 I. C. 457 (P. C.) : 36 M. L, J. 511.

[On Appeal from 28 I. C. 529 : 17 Bom L.R. 273.]

———*Impartible estate — Acquisitions—Succession to—Hindu and Mahomedan Laws—Distinction— Non-talukdar's property — Oudh Estates Act (I of 1869), Ss. 8 and 10.*

Unless there be a custom by which self-acquired properties in a Mitakshara family become part of the ancestral estate or unless it be shown that the acquirer intended to incorporate such acquisitions with the impartible estate of which he is the holder, they descend by the ordinary law of inheritance The onus of proving a custom *dehors* the general rule would lie on the person averting it. 40 I. A. 120 Ref. The Mahomedan Law however makes no distinction between ancestral and self-acquired property, and recognises no principle of differentiation in the matter of lineal and collateral succession. If therefore a custom of impartibility governs the succession to the ancestral estate, the presumption is that it attaches also to the personal acquisitions of the last owner left by him on his death. and it is for the person who asserts that these properties follow a line of devolution different from that of the estate to establish it. Where the name of the predecessor of a talukdar (a Mahomedan) was entered in the list 2 prepared under S. 8 of the Oudh Estates Act and the talukdar acquired properties subsequently, the non-talukdari property is presumably subject to the custom of devolution to a single heir This is so even if the talukdari estate is held under a primogeniture sanad. (*Mr Ameer Ali,*) MURTAZA HUSAIN KHAN *v.* MUHAMMAD YASIN ALI KHAN.

38 All. 552 : 20 M. L. T. 362 : 14 A. L. J. 1083 : 18 Bom. L. R. 884 : (1916) 2 M. W. N. 555 : 25 Cr. L. J. 1 : 19 O. C. 290 : 1 Pat. L. W. 122 : 21 C. W. N. 410 : 4 O. L. J. 8 : 4 L. W. 538 : 43 I. A. 269 : 36 I. C. 299 (P.C.) : 31 M. L J. 804 : [On Appeal from 16 O. C. 290 : 22 I. C. 577].

———*Impartible estate—Maintenance—Right to—Junior members—Customary right—Proof of unnecessary' if judicially recognised.*

An impartible Zamindari is the creature of custom. It is of its essence that no co-parcenary in it exists. Apart therefore, from custom and relationship to the holder the junior members of the family have no right to maintenance out of it. 10 All. 272, 22 Mad 383 Rel. A custom entitling the sons of the holder to maintenance has so often been judicially recognised that it is not necessary to prove it in each case. 24 Mad. 147, Ref. There is no invariable custom by which any member of the family beyond the first generation from the last holder can claim maintenance as of right 5 Cal. 259. Appr. (*Lord Dunedin.*) GANGADHAR RAMA RAO *v.* RAJA OF PITTAPUR.

41 Mad 778 : 24 M. L. T. 276 : 16 A. L. J.833 : 28 C. L. J. 428 : 5 Pat. L. W. 267 : 20 Bom. L. R. 1056 : 23 C, W, N. 173: (1918) M. W. N. 922 : 45 I. A. 148 : 47 I. C. 354 (P. C.) : 35 M. L. J. 392. [On Appeal from 39 Mad. 396 : 28 M. L. J, 624 : 29 I. C. 356 : (1915) M. W. N. 369.]

LANDLORD & TENANT

———*Minority and guardianship —Testamentary guardian—Joint family.*

The sole adult member of a Mitakshara coparcenary whether a father or manager, has no power to appoint a testamentary guardian for the co-parcenary properties of the minor co-parceners 13 M. I. A. 209 ; 25 All 407 (P. C.). Dist. ; 38 Bom 94 Dist. ; 21 I. C 848 ; 29 I. C. 475 : 40 Mad. 672 Foll. (*Ayling, Coutts-Trotter and Seshagiri Aiyar, JJ.*) CHIDAMBARA PILLAI *v.* RANGASAMY NAICKER. 41 Mad. 561 : 23 M. L. T. 266 : (1918) M. W. N. 265 : 7 L. W. 454 : 45 I. C. 905. (F. B.)

[Also 21 I. C. 848 (Mad): 29 I. C. 475 (Mad); 40 Mad 672 : 34 I. C. 766. 39 M. L. J. 381].

———*Succession—Exclusion from—Disqualification—Personal.*

Disqualification for succession under the Hindu law is purely personal and the rights of the issue of a disqualified person not affected. (*Lord Dunedin.*) GANGDHAR RAM RAO *v.* RAJA OF PITHAPUR.

41 Mad 778 : 35 M L J. 392 :24 M. L. T. 276 : 16 A. L. J. 833 : 28 C. L. J. 428 : 5 Pat. L . W. 267 : 20 Bom. L. R. 1056: 23 C. W. N. 173 (1918) M. W. N. 292 : 45 I. A. 148 : 47. I C. 354 : (P.C.) [On appeal from 39 Mad. 396 : (1915) M. W. N. 369 : 29. I. C. 356 : 28 M. L. J. 624,]

LANDLORD & TENANT—*Covenant for renewal —Provision for to be express—Implied from past renewals.*

Prima facie a lease for a term does not import any right to a renewal of it, On the contrary it *prima facie* implies that the lessee's right to the permises demised ends with the term. The past renewals of the lease by the lessor at the termination of each term, are acts of grace the repetition of which could not *per se* create a legal rigt to its continuance. (*Lord Atkinson.*) SECRETARY OF STATE *v.* RAJ BAI BAI. 39 Bom. 625 : 42 I. A, 229 : 19 C. W. N. 1087 : 13 A. L. J. 953 : (1915) M.W.N 563 : 18 M. L. T. 179 : 2 L. W, 731 : 17 Bom. L. R. 780 : 23 C. L. J 1 ; 30 I. C, 303 (P.C) : 29 M. L. J. 242.

[Reversing 13 Bom., L. R. 609 : 11 I C. 948.]

THE CIVIL DIGEST

(1911—1923.)

Vol. III.

EARNEST MONEY.

See (1) CONTRACT ACT, S. 73.
(2) DAMAGES.
(3) T. P. ACT, Ss. 54 AND 55.

EASEMENTS ACT (V OF 1882).

———*—Scope of.*

Easements Act is a complete Code and only in places where it is not in force, the Courts rely upon English sources for the law of easements and upon justice, equity and good conscience. (*Chatterjee and Richardson, JJ.*) SITAL CHANDRA *v.* ALLEN. 34 I.C. 460= 20 C.W.N. 1188.

———*—Scope—Limitation Act—Application.*

The Limitation Act is remedial and gives a right where there is no other right at all but it does not exclude or interfere with other titles and modes of enjoyment. 5 M. 253 ; 5 M. 226 ; 6 C. 812 ; 35 C. 851 ; 14 B. 222 ; 10 C. 214 ; 8 C. 956 ; 7 C. 432, Fol. (*Sadasiva Aiyar and Bakewell, JJ.*) MUTHU GOUNDEN *v.* ANANTHA GOUNDEN. 29 M.L.J 686= 18 M.L.T. 476=2 L.W. 1107= 31 I.C. 528=(1916) 1 M.W.N. 113.

———*—S. 2—Mirasi village—Right of Govt. to regulate water.*

Where a part of the source of irrigation for a ryotwari village is a Govt. tank, *Mirasdars* who have from time immemorial cultivated their wet lands with the tank water have a preferential right to irrigate from the tank over assignees of waste land from the Govt. (*Wallis, C.J, and Seshagiri Iyer, J.*) SECY. OF STATE FOR INDIA *v.* SRIRANGACHARIAR. 31 I.C. 784.

———*—S. 2—Right of Government*—Ryotwari *proprietor.*

A *ryotwari* proprietor can claim a supply of water for irrigation of his lands from a Govt. channel. But it is for the Govt. to distribute water in any way it thinks fit. (*Abdur Rahim and Napier, JJ.*) MAHANKALI LAKSHMIAH *v.* KARNAM NARAYANAPPA. 24 M.L.J. 425= (1918) M.W.N. 276=45 I.C. 80= 23 M.L.T. 387.

———*—S. 2—Ryotwari land—Right of Govt. to regulate water.*

EASEMENTS ACT (V of 1882), S. 4.

No one has any right to interfere with the Govt.'s exercise of its general power of distributing and limiting the supply of water for irrigation in ryotwari villages. But if the Govt. claims up water and prevents it from going to plff.'s land there is a right of suit. (*Ayling and Hannay, JJ.*) SIVASAILAM IYER *v.* RAMKRISHNA AIYAR. 26 I.C. 18= (1914) M.W.N. 788.

———*—S. 2—Irrigation—Control of Govt. over.*

The construction and control of works and sources of irrigation is the special function and duty of the Govt. in India. 1 I.A. 364 ; 28 M. 539, Ref. (*Benson, C.J. and Bakewell, J.*) PAPALA NARAYANASWAMI NAIDU *v.* PENSALANI KANNIAPPA NAIDU. (1912) M.W.N. 496=14 I.C. 261= 24 M.L.J. 36.

———*S. 3 — Effect of—Limitation Act, Ss. 26 and 27—Central Provinces.*

S. 3 of the Easements Act repeals, so far as the Central Provinces are concerned Ss. 26 and 27 of the Limitation Act and the definition of easement contained in that Act. (*Mittra, A.J.C.*) SITARAM *v.* PETIA. 43 I.C. 962= 14 N.L.R. 85.

———*—Ss. 4, 52—Permissive user—No question of easement arises—Bar to acquisition of right.*

Where in a suit for a declaration of a right of easement and for demolition of a certain building erected by defendant so as to infringe the right it was found that the user of the defendant's land by the plaintiffs for the purposes of procession as alleged by them was with the permission of the defendant. *Held* that no question of easement could arise, as the user of the defendant's land was permissive. (*Banerji and Gokul Prasad, JJ.*) PANNA LAL *v.* BOHRA PANNA LAL. 21 A.L.J 486= L.R. 4 A. 274=1924 All 50.

———*—Ss. 4 and 38—Injunction—Easement—Branches over hanging—Tree growing partly on plff.'s and partly on deft.'s land.*

A person has no right to cut off the overhanging branches and the penetrating roots of a tree belonging to his neighbour when the

EASEMENTS ACT (V of 1882), S. 4.

tree is growing partly on his land and partly on his neighbour's land for many years past. (*Macleod*, C.J. *and Heaton*, J.) SOMESHVAR JETALAL *v.* CHUNI LAL NAGESHWAR.
22 Bom. L.R. 730=37 I.C. 544=44 B. 703.

——Ss. 4 and 43—*Right to projection.*

The definition of easement in the Act applies to a projection of eaves in a dry country as well to a country having abundant rainfall, the purpose of the eaves being only to discharge rain water. If a right to project eaves over a particular height has been acquired, the height can be raised so as not to throw increased burden on the servient tenement. (*Scott*, C.J. *and Beaman*, J.) MULIA BHANA *v.* SUN DAR DANA. **38 Bom. 1=21 I.C. 352= 15 Bom. L.R. 876.**

——S. 4—*Eaves—Overhanging.*

The possession of a *pankh* or eaves over hanging another's land is an easement and not an occupation of his property. (*Scott*, C.J. *and Chandavarkar*, J.) CHHOTA LAL *v* MANI LAL.
37 Bom. 491=20 I.C. 246= 15 Bom. L.R. 551.

——S. 4—*Right to bury in another's land is not an easement.*

The right to bury in another's land does not fall within the general definition of "Easement." It cannot be deemed a right imposed for the beneficial enjoyment of land. The law does not recognize also an easement by prescription created by the mere fact that dead bodies are placed in graves on the land of another and permitted to remain there for the prescriptive term. The Court will not create a new species of easement if the easement claimed constitutes a nuisance. But where the owner of the land has acquiesced in the burial of dead bodies, a Court of justice may prevent the desecration of the graves. (*Moorkerjee and Panton*, JJ.) GOPAL KRISHNA *v.* ABDUL. **66 I.C. 640=34 C.L.J. 319.**

——S. 4—*Right of way not appurtenant to a dominant tenement is not easement.*

Private rights of way if not appurtenant to a dominant tenement, like public rights of way, are not easements. They are rights in gross and can be enforced as such. (*Newbould and Buckland*, JJ.) BALAI CHAND PAL *v.* PANCHU GOPAL SEAL. **59 I.C. 319.**

——Ss. 4 and 50—*Servient tenement—Reciprocal — Easement — Right of servient owner to insist on continuance of easement.*

It is not possible to acquire a reciprocal easement for the benefit of the servient tenement by the exercise of an easement by the dominant owner. The existence of an easement is only for the benefit of the dominant owner and the servient owner has no right to insist on its continuance or to claim damages on its abandonment. (*Mookerjee and Beachcroft*, JJ.) BINAL CHANDRA CHAKRAVARTY *v.* CHANDRAKANTA CHAKRAVARTI.
22 I.C. 614=19 C.L.J. 45.

EASEMENTS ACT (V of 1882), S. 7.

——Ss. 4 and 7—*Right to gather fruits falling on neighbour's land is not an easement.*

A right to go on to a neighbour's land to gather the fruits that fall there from a portion of a tree alleged to belong to the plff. is not an easement within the meaning of S. 4 of the Easements Act. Such a right cannot be acquired by prescription. (1895) A.C. 1, Foll. (*Coutts Trotter and Ramesam*, JJ.) SARANGAPANI AIYANGAR *v.* SADAGOPA NAIDU.
43 M.L.J. 152=16 L.W. 98= (1922) M.W.N. 421=31 M.L.T. 78 (H.C.)= 1922 Mad. 398.

——Ss. 4 and 18—*Easement—Artificial structures—Drying clothes, etc.—User as of right.*

Easements can be acquired over artificial structures such as flat masonry, or roofs of shops. These are lands within the meaning of S. 4. A general right of easement to use a roof as a place for setting or drying clothes or for other purposes can be acquired under the Act. User may be either by the dominant owner or by his tenants beyond the statutory period. User without permission is user as of right. (*Lindsay*, J.C.) GANESH PRASAD *v.* KHUDA BAKSH. **45 I.C. 585= 21 O.C. 76.**

——S. 4—*Natural right and right of easement distinguished.*

The right incident to the ownership of land, in the nature of easement but not a right of easement as such, is called a natural right and is distinct from the right of easement. Where one is claimed, the other does not arise. (*Das* J.) MOHENDRA NATH GHOSE *v.* NABIN CHANDRA GHOSE. **57 I.C. 504.**

——S. 4.

The right to hunt in a jungle and to appropriate the game is a right known in English Law as a right to *profit apprendre* in gross. (*Mullick and Jwala Prasad*, JJ.) MAHARAJ BAHADUR SINGH *v* GANDAURI SINGH.
2 P.L.J. 323=39 I.C. 868= 2 P.L.W. 282.

——S. 7—*Natural stream — Diversion—Right to protect one's property—Extent of.*

No one has power, for the safety of his own property, to direct or interfere with a natural stream running in a natural outlet, and if he does so he will be liable in damages to any one who is injured by his act. The right of a person to protect his land from extraordinary floods extends to the doing of anything which is reasonably necessary to save his property. But he cannot actively adopt such a course as might direct the mischief from his own land to the land of another person. (*Lindsay and Kanhaiya Lal*, JJ.) MOHAMMAD SAMI ULLLH *v.* MUKUND LAL. **19 A.L.J. 736= 3 U.P.L.R. (All.) 131=63 I.C. 980= 43 A. 688.**

EASEMENTS ACT (V of 1882), S. 7.

———S. 7—*Right to discharge rain water from high land over low land—Natural right.*

Where the rain water falling on plff.'s land which is on a higher level, flows across deft.'s land which is on a lower level, the plff.'s right is a natural right (*exjure natural*), not acquired by prescription and cannot be interfered with by the deft. 1 Mad. 335; 29 Mad. 539 Ref. (*Banerji* J.) AMBICA SARAN SINGH *v.* DEBI SINGH. 24 I.C. 91=12 A.L.J. 685.

———Ss. 7 and 18—*Natural right—Right to light and air—Privacy—Easement by implication—Partition.*

There is no easement for the free access of privacy. Every one may build upon or otherwise utilise his own land regardless of the fact that his doing so involves an interference with the light which would otherwise reach the land and building of another person. On the other hand, every man may open any number of windows looking over his neighbour's land, for the interference with a neighbour's privacy or with his prospect does not by itself, give the latter a cause of action, in the absence of other circumstances. If windows are opened, the neighbour may, by building on his own land obstruct the light which would otherwise reach them. Whether a grant of an easement arises by implication on a conveyance of land depends on the intent of the parties, which must clearly appear; in order to determine the intent the Court will take into consideration the circumstances attending the transaction, the particular situation of the parties and the state of the thing granted. This principle holds only where there is no express contract relating to the matter for, where there is a valid express agreement fairly made the law does not indulge in presumptions and the rights of the parties will be upheld according to the terms of such agreement; in such circumstances, no question arises as to grant of easement by implication. Where the owner of an entire tract of land or of two or more adjoining parcels employ a part thereof so that one derives from the other a benefit or an advantage of a continuous and apparent nature, and sells the one in favour of which such continuous and apparent quasi-easement exists, the easement being necessary to the reasonable enjoyment of the property granted, will pass to the grantee by implication. *Ewart* v. *Cochrane*, (1861) 4 Mac. H L. 117; *Wheelden* v. *Burrows*, 12 Ch. D. 31; *Bayley* v. *G.W. Ry. & Co.*, 26 Ch. D. 434; *Brown* v. *Alabaster*, 37 Ch. D. 490; *Watt* v. *Kelson*, 6 Ch. A. 166; *Swan* v. *Cotton*, (1916) 2 Ch. 459, Rel. The same principle has been applied to partition of joint properties. On a severance of tenements by a partition of joint property, and in the absence of a contrary intention, expressed or necessarily implied, all such easements as are apparent continuous and necessary for enjoying any of the undivided shares when the partition was effected, pass to the co-parceners to whom such shares are respectively allotted in severalty. 14 C. 797; 26 C. 516; 6 B.H.C.R. 181; 14 B. 452; 28 M. 495. (*Mookerjee and Chotzner*, JJ.) SAROJINI DEBI *v.* KRISHNA LAL HALDAR. 36 C.L.J. 406= 1923 Cal. 256.

EASEMENTS ACT (V of 1882), S. 7.

———S. 7—*Water rights — Natural rights —Interference.*

Every person has a right to do anything on his own land with regard to the diversion, storage or the uses of water in any way he chooses provided that he does not allow or cause that water to go upon his neighbour's land so as to affect it in some other way than the way in which it had been affected before. A person has no right to obstruct the water of a stream except to the extent to which he has had prescriptive use. (*Richardson and Walmsley*, JJ.) ERALIJOOL TEA CO., LTD. *v.* NAGENDRO NATH. 41 I.C. 47.

———S. 7—*Latrine on another's land—Enjoyment for a long time.*

An easement right to keep a latrine on another man's land is unknown to law and cannot be acquired by prescription. The act of the plff. was in the nature of a trespass and he might contend for a title by adverse possession but such a plea would not now be allowed. (*Mookerjee and Richardson*, JJ.) HERALAL ROY *v.* LOKENATH SHAHA. 29 I C. 868= 19 C W.N. 864.

———S. 7—*Flow of water—Definite channel—Absence of.*

The fact that the water, discharged from a dominant tenement flows over the servient tenement without a definite channel, cannot prevent the acquisition of an easement. 8 C. W.N. 244, Overruled. (*Jenkins, Harrington, Stephen, Mookerjee and Holmwood*, JJ.) MUNSHI MISSER *v.* BHIMRAJMAN. 40 Cal. 468=17 C L.J. 388= 18 I C. 824=17 C.W.N. 306 (F.B.).

———S. 7—*Riparian rights can be acquired by easement.*

Obiter:—Even the rights of the riparian owners may be acquired by easement. (*Shadi Lal. C. J. and Le-Rossignol*, J.) BALI RAM *v.* BELA SINGH. 1923 Lah. 591.

———Ss. 7 and 18—*Natural stream—Meaning of—Rights of riparan owners—Prescription.*

Where the water of a river during its course is largely increased in volume by percolation cannot be said to be a stream with channel. 1897 A. C. 129, Foll. Where the plffs. have been using the water for more than 20 years but not as of right they cannot be said to acquire by prescription a right to the use of such water. (*Martineau*, J.) NAGINA SINGH *v.* MALHI. 64 I.C. 158=3 Lah. L.J. 556.

———S. 7—*Owner—Meaning of.*

Owner does not necessarily mean absolute owner. It also includes limited owners such as lessees or persons having derivative interest

EASEMENTS ACT (V of 1882), S. 7.

in the property. (*Abdur Rahim and Phillips*, JJ.) VAINYANKANDI *v* THAYITHOTTATHIL. 42 Mad. 567=37 M.L.J 28=(1919) M.W.N. 305=26 M.L.T. 48=50 I.C. 291=10 L.W. 87.

——— —Ss. 7, 11 (1) and 22—*Natural right—Water brought on land for cultivation—Right to discharge on land of lower proprietor—Easement—Injunction.*

Per *Sadasiva Iyer*, J.—The term, "natural right of drainage" strictly so called covers only the right to allow rain water falling on land of a naturally higher level to drain off by surface flow along whatever lines the water could find its way on the neighbouring land. The right to drain off water brought according to the custom and usages of the country along irrigation channels upon the land may also be said to be a natural right. Per *Phillips*, J.—An owner of land can have no natural right to pass the water, which has come upon his land artificially to his adjoining land. Where the upper field is watered by an irrigation source, a right to pass such water away from the field cannot be a natural right but only a prescriptive or customary right. Under S. 22 of the Easements Act the easements must be exercised in the way least onerous to the servient owner and must at his request be confined to a determinate part of the servient heritage. (*Sadasiva Aiyar and Phillips*, JJ.) DORAISAMI MUTHIRIYAN *v.* MUTTACHI. 23 M.L.T. 210=44 I.C. 500=(1918) M.W.N. 167.

——— —Ss. 7 and 1—*Riparian rights—Irrigation—Rights of* mittadar *to dam channel—Right of lower owners.*

Each upper owner in a system of connected tanks in different *mittas* or villages supplied with water by or through a permanent or artificial channel, is entitled in the flood season, to fill his tank, which is of sufficient storage capacity for the *Ayakat* and he must subject to this, allow the water to flow freely on the lower tank till the last of them is supplied. Whatever may be the means adopted to let out the surplus, the owner of the tank, in such cases, cannot increase the storage capacity of his tank beyond the capacity at the beginning which, in many cases can only be proved by the customary flow of water. (*Abdur Rohim and Srinivasa Iyengar*, JJ.) SECRETARY OF STATE *v.* PALANIYAPPA PILLAI. 22 M L T. 345=(1917) M.W.N. 571=41 I.C. 24=6 L.W. 572.

——— —Ss. 7 and 35—*Natural stream.*

An occupier of abutting lands cannot be restrained in his exercise of his natural rights, simply because he becomes a lessee of other lands not abutting. Where the water of a stream has been used for irrigating only abutting lands, the owner of abutting lands cannot be restrained from using more than a reasonable quantity by another to whom no material diminution in supply is caused. The actual and not a mere threatened use of the water

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flowing through a natural stream to irrigate lands other than those abutting on the stream gives a right to sue. An occupier of Zemindari lands is an "owner" within the meaning of ill. (*j*) to the section. (*Tyabji and Spencer*, JJ.) GOPICHETTI NARAYANASWAMI NAIDU *v.* MADALA VENKANNA. 24 I.C. 688=(1914) M.W.N. 481.

——— —S. 7—*Right to drain water—Natural right.*

The lower proprietor owes a natural servitude without claim to compensation to the higher, in respect of water naturally flowing upon it; but the higher land owner cannot exceed his natural right by sending water not going there naturally. Short of this the upper owner may interfere with the flow of water. (*Sankaran Nair and Oldfield*, JJ). SANKARAPPA NAICKAR *v.* PARI NAICKER. 38 Mad. 149=(1913) M.W.N. 640=21 I.C. 62=25 M L J. 276.

——— —S. 7—*Riparian owner—Right to irrigate lands—Extent of.*

A riparian proprietor is entitled to use the water of the stream for irrigating his lands without causing injury to the other riparian proprietors. Erecting a dam across the bed of the river is a common method of using the water of a stream by a riparian proprietor. A riparian proprietor should not take more water than he was taking before but can use the water to raise wet crop in lands in which it was customary to raise only dry crops. (*Sankaran Nair and Abdur Rahim*, JJ.) SECRETARY OF STATE *v.* AMBALAVANA PANDARA SANNADHI. 18 I C. 294=37 Mad. 369 (Note.)

——— —S. 7—*Natural right—Right to fishery—Defendant on ownership of soil or right to occupation.*

The ownership of free natural elements, such as air and water, and of all wild animals living therein is obtained by occupancy or appropriation. It is a right incidental to the ownership of the land upon which the air or the water lies, just as much as is the right to make the silt deposited by rivers or the lava thrown up by a volcano or the rain or snow falling from the sky. (*Mullick and Ross*, JJ.) HENRY HILL CO. *v.* SHEORAJ RAI. 3 P.L T 53=64 I.C. 348=1922 P. 9.

——— —S. 7—*Easement—Benefit of, exists only for dominant tenement—No right of servient owner to insist on continuance by dominant owner.*

An easement exists for the benefit of the dominant tenement alone and the servient owner cannot insist on its continuance by the dominant owner or claim damages for abandonment. If however water running through an artificial channel on a neighbour's land has all along been flowing to the plaintiff's land it is open to the plaintiff to insist on its continuance

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on the footing of a lost grant or old arrangement. (*Bucknill*, J.) FUDU SAHU *v* SARBAN. 63 I C. 85.

———S. 7 (b), Illus. (1)—*Water—Right—Surface owater—Right of owner of higher land to discharge surface water over adjacent lower land—Inability of the owner of servient tenement to discharge same owing to rise of bed of adjacent streams by silting.*

The owner of higher land is entitled to discharge surface water over adjacent lower land. Where owing to the silting up of a stream into which the water thus discharged ultimately flowed, the level of the bed of the stream became higher than the adjacent lower land to the inconvenience thereof. *Held*, that dominant owners were still entitled to exercise their rights. (*Walmsley and Greaves*, JJ.) KASISWAR MUKHERJEE *v.* ANNODHA PRASAD PATRA. 51 I.C. 863=22 C.W.N. 666.

———S. 7 (b)—*Flow of water—Adjacent lands—Right of owner to prevent—Easement—Injunction.*

Every one is entitled, in the absence of controlling rights of easement or servitude regarding his premises, to protect his premises against the flow of water from adjacent lands or houses. 29 M. 539; 7 M.L.T. 164 Rel. (*Robertson*, J.) JAI RAM *v.* KHAN BAHADUR. 248 P.L.R. 1912=16 I.C 797= 259 P.W.R. 1912.

———S. 7 (b)—*Natural right—Trees—Damage caused by shade—No liability.*

A plaintiff cannot claim damages for injury caused to the crops on his land by the shade caused by trees standing on his neighbour's land. It cannot be said that every owner of a field has the right to have the sun's rays fall on it from every possible direction. There cannot be such a right, for if it were allowed the use and enjoyment of the adjoining fields by their owners would be very largely restricted. (*Kotwal*. A.J.C.) GUMAN SINGH *v* UM RAO SINGH. 19 N.L.R. 191=1924 Nag 69.

———S. 7 (b), Illus. (h), (l)—*Right to drain water on lower lands.*

Where through his own fault flood water accumulates on a man's land, his neighbour is entitled to put up bunds to protect his land. The former cannot claim a right of natural drainage and restrain the latter from putting up the bund. (*Duckworth*, J.) MOKSODALI *v.* MA HLI. 1 Rang. 427=1924 Rang. 86.

———S. 7, Illus. (c)—*Lands adjoining each other on different levels.*

Where plffs. land is on a level higher than the defts. adjoining land, it is not open to the defts. to build a bund so as to obstruct the flow of the water naturally flowing thereto. The defts. must allow the water to pass on through their land and then dispose of it in the way they think best. The question is not one of

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easement but of a right ancillary to property. (*Stephens and Mulick*, JJ.) RAMADHIN SINGH *v.* JADUNANDAN SINGH. 27 I.C. 268= 19 C.W.N. 95.

———S. 7, Illus. (g)—*Riparian rights—Extent of.*

Having regard to the necessities of a tropical agricultural country like India, Indian Courts should be liberal in recognising irrigation rights as natural rights of as strong a character as any other, provided the lower riparian owners are not injured and the equality and the wide participation of the benefits of the natural stream are not interfered with. In India a riparian owner must be confined to the land which is on the bank of the stream or which extends from that bank to a reasonable depth inland. A depth of more than half a furlong would usually be unreasonable. The right of a riparian owner is not restricted to lifting up of water from a natural stream and carrying it at once to the land but extends to the temporary storage of water in wells before carrying it on to the irrigated lands. (*Sadasiva Aiyar and Phillips*, JJ.) EMANI LAKSHMINARASU *v.* SECRETARY OF STATE. 34 M.L J 223= 7 L.W. 1=43 I.C. 113=23 M.L.T. 235.

———S. 7, Illus. (g)—*Surface water—Right to collect and use—Right to let water on lower land—Rights of servient owner.*

Every land-owner has a natural right to collect and retain upon his own land the surface water not flowing in a defined channel and put it to such use as he may desire. He may also allow it to flow away in the usual course of nature upon the lower lands of his neighbour and cannot be bound to prevent it from so doing. He cannot do this, however by an artificial discharge upon his neighbour's land unless he has acquired an easement which his neighbour is bound to submit to. If he should acquire such an easement the owner of the servient tenement acquires no reciprocal rights as against the owner of the dominant tenement with regard to the flow of surface water, that is, water not passing through a defined channel. The owner of the servient tenement cannot compel the owner of the dominant tenement to continue the exercise of his right even where the right has been exercised uninterruptedly for over 20 years, and even if its exercise should be beneficial to the servient tenement. *Arkright* v. *Gill*, (1839) M. & W. 208; *Don* v. *Shrewsry Ry. Co.*, L.R. 6 Q B. 578; 2 C. L. R. 141, Rel. (*Miller*, O.J. *and Mullick*, J.) MT. SABBAN *v.* PHUDO SAHU. 4 Pat. L.T. 81=2 P. 110=(1923) Pat. 306= 4 U.P L.R. (P.) 106=1923 P. 65.

———S. 7, Illus. (h), (l) and (j)—*Riparian owners—Flow of water through natural channel—Obstruction by silt—Riparian owner not bound to clear up—Contributory negligence.*

If from natural causes, a river or channel passing through A's land silts up with result that more water is thrown into another river or channel running through B's land and B

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blocks up the river or channel on his land so as to throw the water back on to and flood A's land, A cannot be held to have contributed to the result. An owner of land through which a river or other natural channel flows is not bound to clean it though he is bound within certain limits as between himself and other riparian owners not to do anything which will obstruct the flow of water or materially interfere with their rights. (*Karamat Husain and Chamier*, JJ.) BALDEO SINGH *v.* JUGAL KISHORE. **33 All. 619=10 I C 564=8 A.L.J. 640.**

——S. 7, Illus. (h) and (i)—*Distinction between.*

In the former the water must flow in a natural stream, in the latter their course must be regulated even though there is no defined channel. The one deals with the developments of a stream, the other with the beginnings. Where a stream, having a continuous flow at the beginning subsequently diverts itself, it is a natural stream and the owner of the land below cannot put a dam across it to the damage and injury of upper owners because it will be an infringement of a natural right, as declared in S. 7, ill. (*h*). (*Wallis, Offg.*, C. J. *and Seshagiri Aiyar*, J.) GOPALA KRISHNA YACHENDRULLA VARU *v.* SECRETARY OF STATE. **16 M L.T. 597=2 L.W. 45=26 I.C. 800=28 M.L.J. 98.**

——S. 7, Illus. (h)—*Natural rights—River obstruction by dam.*

No riparian owner is entitled to obstruct a public river. (*Kanhaiya Lal*, A.J.C.) JAGAN NATH *v.* CHANDRIKA PRASAD.
21 Cr. L.J. 55=54 I.C. 407=6 O.L J. 616.

——S. 7, Illus. (h)—*Right to obstruct free flow of water from higher land.*

Where there is a competition between the rights of the owner of land on a higher level to allow water to pass in its natural flow without obstruction and the rights of the owner of the lower land to use it as he eases the latter's right must give way to the former especially where its free use would obstruct the passage of water and would cause damage to the *abadi*. In such a case the owner of the lower land cannot erect a bund to obstruct the flow of water. (*Daniels*, A.J.C.) KANHAIYA LAL *v.* MUNNA.
32 I.C. 128.

——S. 7, Illus. (h) and (j)—*Riparian owner—Rights of—Erection of dam across a river, when actionable—Rights of riparian owners, relative not exclusive—Injunction.*

Riparian owner has a right to the usufruct of the river or stream which passes though his land. This is not an absolute or exclusive right to the flow of the water but subject to the similar right of all the proprietors of the banks on each side to the reasonable enjoyment of the same. A riparian owner has a right to use and consume the water for irrigating the land abutting a natural stream provided that he would not thereby cause a material injury to other like owners. (*Chamier*, J.C.) SHEO NARAIN SINGH *v.* CHANDRABHAL.
10 I.C. 181.

——S. 7, Illus. (h)—*Use of water for irrigating or manufacture—Extraordinary user, what is.*

The right of a riparian owner to use the water of a stream either for irrigation or manufacture is an extraordinary use of water and is subject to the condition that the use of the water by other proprietor should not be affected. (*Miller*, C.J. *and Adami*, J.) MAHABIR SAHU *v.* RAM SARAN SAHU. **31 I.C. 249.**

——S. 7, Illus. (h)—*Irrigation—User—Prescription.*

Riparian owners have a natural right to use the water of a natural streamlet for irrigation so long as that use is reasonable. It is not rightful to a higher riparian owner to use the water for irrigation in such a way as to interfere with an easement acquired by prescription by a lower riparian owner. (*Imam*, J.) MAHABIR SAHU *v.* RAM SARAN SAHU.
41 I.C. 19.

——S. 7, Illus. (j)—*Riparian owners—Extent of right.*

A riparian proprietor, can only take for the purpose of irrigation so much water as is necessary without materially diminishing what is allowed to descend. The quantity of water that can be abstracted and used without infringing that essential condition must in all cases be a question of circumstances, depending mainly upon the size of the stream and the proportion which the water bears to entire value. (*Mullick and Jwala Prasad*, JJ.) HARI SINGH *v.* KANCHAN MAHTO. **52 I.C. 276=20 Cr. L.J. 612.**

——S. 7, Illus. (j)—*Riparian right—Artificial stream connected with natural stream—Grant of right—One riparian proprietor to another riparian proprietor—Right to divert water outside tenement.*

Riparian proprietors can permanently divert water for agricultural purposes and irrigation. The question is whether the use was reasonable having regard to the custom of the adjoining country. Where there is no sufficient water for all to use freely, each riparian proprietor should take only his proportionate share determined by the number of such owners and the area for which water is supplied by each. The right of a riparian owner to irrigate is not a right to easement properly so called. The statement in 28 Mad. 236 that the owner of a tenement adjoining a natural stream has no right to divert water to be placed outside the tenement goes too far. Where a riparian owner has made a diversion for the irrigation of his own tenement, the surplus water which would otherwise be wasted may be taken in a channel by another riparian owner to irrigate his land. The policy of the law should be to encourage and protect all beneficial use of the

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water. Where a riparian proprietor had by reason of long user since 1884, the right to divert water in the natural stream for filling his reservoir for irrigating his lands and had granted a portion of his right to this water to B another riparian proprietor and where B's right was obstructed in 1911. *Held*, that a suit instituted in 1915 was not barred by limitation. The obstruction whether the stream had continuous flow or not, is a continuing wrong within S. 23, Lim. Act. The incidents of a natural stream would also apply to an artificial water course supplied with water from a natural stream and the riparian proprietors of the artificial course would have the same rights as if the water course was a natural stream. (*Chapman and Jwala Prasad*, JJ.) MAHANTHA KRISHNA DAYAL GIR *v.* MT. BHAWANI KOER. 3 Pat L.W. 8= 43 I.C. 235=3 Pat. L.J. 51.

——S. 8—*Easement—Lost grant.*

Where the *zemindar* has been using the water of a channel for irrigating his lands from the time of the permanent settlement, the Court may presume from the long possession and enjoyment a right to use the water free of charge. Though an actual grant of an easement is not discovered or proved, it will be presumed. (*Lord Shaw*). SECRETARY OF STATE *v.* MAHARAJA OF BOBILI.
46 I.A. 302=(1919) M.W.N. 775= 37 M.L.J 724=18 A.L.J. 1=11 L.W. 205= 2 U.P.L.R. (P.C.) 38=54 I.C. 184= 24 C.W.N. 445=21 M.L.T. 1= 22 Bom. L.R. 438 (P.C.)

——S. 8—*Lost grant—Presumption from long user—Way of necessity—Inconvenience.*

Where it is found that the plaintiffs have used a path-way, without interruption, peaceafully, publicly and as of right, it may be presumed that the user had a lawful origin although the circumstances relating to the origin of this user may not be known. It may be presumed in such a case that the origin is traceable to a lost grant. As regards easement of necessity the general rule is that there cannot be such an easement in respect of a right of way, if there is an alternative route or way. But where the alternative route is extremely inconvenient, there may exist an easement of necessity in respect of a more convenient path-way. (*C. C. Ghose and B. B. Ghose*, JJ.) KALI PADA BOSE *v.* FANI BHUSAN ROY. 1924 Cal. 863.

——S. 8—*Acquisition of—Finding as to.*

The mere finding that a parnala is old is no finding in law that easement has been established with respect thereto. (*Wilberforce*, J.) AHMED BAKHSH *v.* PALI. 66 I.C. 922= 3 Lah. L.J. 68.

——S. 8—*Public cannot acquire by prescription—Dedication.*

The public as such cannot acquire the ownership of immoveable property or an easement on such property by prescription. But the user by the public may be evidence of a dedication. A dedication to be valid must be to the public at large and not to any section of it. (*Oldfield and Ramesam*, JJ.) USSAM KASIM SAIT *v.* SECY. OF STATE. 44 M.L.J 638= (1923) M.W.N. 315=17 L.W. 610= 47 Mad. 116=1923 Mad. 824.

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——S. 8—*Easement—Payment of consideration for.*

An easement right can be conferred by the owner of the servient tenement for cash consideration and whether it takes the shape of a sum paid in cash once for all or paid from time to time, cannot make any difference in the legal nature of the right conferred on the owner of the dominant tenement. (*Sadasiva Aiyar and Hannay*, JJ.) CHENGALVALA *v.* MADAPATI.
(1913) M.W.N. 37=27 I.C. 920=2 L.W. 27.

——S. 8—*Easement—Long user—Right of way.*

Uninterrupted enjoyment to raise a presumption of right, must have been acquiesced in, by the owner of the servient tenement where from continued user the Court is asked to presume a grant of a right of way. Knowledge of such user on the part of the servient owner is an essential condition to the acquisition of an easement. 10 Cal. 214 Rel. (*Drake-Brockman*, J.C.) RAMCHANDRA RAO *v.* VENKATRAO. 54 I.C. 936.

——S. 8—*Easement—Lost grant.*

The presumption of lost grant is allowed only when the enjoyment of easement cannot be otherwise accounted for. (*Walmsley and Newbould*, JJ.) BANWARI BULLAR ROY *v.* RASH BEHARY ROY. 30 I.C. 933.

——S. 8—*Creation of easement.*

A right of way can be created by a verbal agreement. (*Maung Kin*, J.) GUM SONE *v.* CASSIN DALLA. 9 Bur. L.T. 222= 34 I.C. 95=9 L.B.R. 24.

——S. 11—*Acquisition of easement right by tenant—Grant—User—Right to take water.*

Although a tenant cannot acquire a prescriptive right of easement in land belonging to his lessor he may claim a right of easement based on immemorial user, as there is no reason why an owner of land should not grant any privilege he pleases to his tenant. Where the enjoyment of a right to take water from the landlord's tank was continued uninterrupted for a long series of years, such enjoyment should be attributed to a legal origin and the Court should presume a grant of an agreement. A tenant can establish his right to irrigate his field from his landlord's tank by proof of open and continuous user from time immemorial. 29 C. 868; 38 M.L.J. 29; 6 C. 394; 4 C. 633; 30 C. 281 Rel. If the user of the easement had actually commenced before the property over which it was claimed passed into the possession of the lessee, the mere fact of the intervention

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of such tenancy should not be sufficient to defeat the right acquired by the lapse of time unless, indeed, it is further shown that the landlord, up to the time he granted the lease was in ignorance that any such right was claimed. (*Mookerjee and Chotzner, JJ.*) TINKARI PATHAK *v.* RAMGOPAL PATHAK. **36 C L J. 161 = 50 C. 336 = 1923 C. 8.**

——S. 12—*Tenant's enjoyment as of right enures to landlord's benefit.*

Tenants in the dominant tenement enjoying an easement as of right, acquire it for the landlord. (*Chatterjee, J.*) MADAN MOHAN *v.* SASHI BHUSAN, **31 I C. 549 = 19 C.W.N. 1211.**

——S 12—*Landlord and tenant—Right to irrigate from landlord's tank—Acquisition of.*

A tenant can acquire by prescription the right to irrigate his field from the landlord's tank by open and continuous user. 4 C. 633; 30 C. 781, Rel. (*Holmwood and Chapman, JJ.*) BABUJAN *v.* RAMADDI SHEIKH. **18 I.C. 887.**

——S. 12—*Tenant having permanent interest in the land—Prescription on other lands of lessor.*

A tenant of land having a permanent tenancy cannot acquire an easement by prescription in other lands of his lessor. 29 Cal. 303, Foll. (*Spencer and Krishnan, JJ.*) BASAVENAGUDI NARAYANA KAMITY *v* LINGAPPA SHETTY. **38 M L J. 28 = 26 M L.T. 439 = 54 I.C. 943 = 11 L.W. 34.**

——S. 13—*Easement of necessity—Meaning.*

Easement of necessity is an easement without which property cannot be used at all, and not one merely necessary to its reasonable enjoyment. *Held*, that on a partition of common property, the deft. could not claim an easement of necessity in respect of the well allotted to one sharer. (*Richards, C.J. and Banerjee, J.*) GADDAR *v.* KALLA. **17 A L J. 672 = 50 I.C. 646 1 U.P.L.R. (H.C.) 55.**

——S. 13—*Easement of necessity—Acquisition.*

No right of way by easement can be acquired by a person who builds an *osara* on another man's land even though with his acquiescence and in spite of a decree of Court establishing that the *osara* had been built with the consent of the owner. (*Banerji, J.*) ARTHUR BARBER *v.* BADRI NARAIN RAI. **9 I.C. 813.**

——S. 13—*Easement of necessity.*

Easement of necessity means an easement absolutely necessary for the use of the dominant tenement and not merely one necessary for the more convenient enjoyment. (*Knox and Karamat Husain, JJ.*) SUKHDEI BIBI *v.* KIDARNATH. **33 All. 437 = 9 I C. 628 = 8 A.L.J. 280.**

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——Ss. 13 and 47—*Easement of necessity—Easement—Extinguishment of—Right to take water from another's well—Dominant owner rebuilding well with permission—Fresh grant.*

The defts. had ancient right of easement to take water from a well in the plff.'s land; but that easement became extinguished by non-user for a period more than twenty years. The defts. later on repaired the well at their own expense with the permission of the plff. in order to irrigate their land and began to use the water for the purpose The plff. sued to restrain the defts. from using the water. *Held*, that the easement was not one of necessity, but an ordinary easement liable to be extinguished by non-user for more than twenty years under S. 47. The plff. practically granted a fresh easement to the defts. (*Shah and Hayward, JJ.*) ANANTA MURARAO *v* GANNU VITHU SURULKAR. **22 Bom L.R. 415 = 57 I.C. 143 = 43 Bom. 80.**

——S. 13—*Severance of tenement—Transference of a portion—Easement of necessity.*

Where the owner of two tenements or of one tenement divided into two parts, transfers one part he puts an end by contract to the relation which he had himself created between the land sold and the land retained. He discharges the land so sold from any burden imposed upon it during his joint occupation; the condition of such land is thenceforth determined by the contract of alienation and not by the previous user of the former common owner during his common ownership. The question arises whether the defts. have easement of necessity because, where a man disposed of part of his land and those parts afford an accommodation will, upon severance, ripen into an easement, if it be such as to be absolutely necessary for the enjoyment of the part retained and the accommodation be such that it is capable of constituting the subject-matter of an easement. Where an owner grants part of his land and retains other part himself, although the grantee may be in a more favourable position than the grantor so far as the grantee may claim that "all easements of necessity" without which no enjoyment at all would be possible should be raised be implication in favour of the part retained. (*Mookerjee and Panton, JJ.*) TUSTEE MONDAL *v.* KENARAM MONDAL. **65 I.C. 22 = 34 C.L J. 518.**

——S. 13—*Extent and nature of an easement of necessity.*

An easement of necessity is one which the law creates according to the doctrine of implied grant in a particular case. It is one without which the dominant tenement cannot be used at all. A right of way of necessity ceases if the dominant owner can approach the place through his own land. (*Mukerji, A.C.J. and Fletcher, J.*) ABHOYA CHANDRA GHOSH *v.* RAI KUMAR GHOSH. **60 I.C. 804.**

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———S. 13—*Easement of necessity—Partition—Presumed grant.*

As a right of easement of necessity arising out of a severance by partition arises from a presumed grant, no grant can be presumed where the rights of parties have been definitely settled in a partition suit. (*Newbould*, J.) SIBNATH SAHA v. MOHESH CHANDRA SAHA. 59 I C. 89.

———S. 13—*Easement — Right of way—Long enjoyment—Severance of tenement.*

Where the owner of one of two tenements originally held by a common owner, claims a right of way over the other tenement, *held*, that having regard to the enjoyment of the right of way for twenty years, there was a grant of the right of way to the plff. at the time of the severance of the tenements (*Fletcher and Walmsley*, JJ.) AUGRAHIT NAPIT v NABNATANNESSA BIBI. 49 I C. 798=29 C L.J. 51

———S. 13—*Right of way—Grant implied on severance in cases of continuous easement.*

Where two tenements had at one time belonged to the same person the Court can presume an implied grant from facts proved notwithstanding that the right claimed was a right of way along a path which was formed into a road though neither paved nor metalled and which appeared to have been permanently attached to and for the use of the dominant tenement. Assuming that the path came into existence after the severance, the fact that for about sixty years since, the tenant in possession of the dominant tenement had been using the path was sufficient to justify the Court in inferring that user had its origin in a grant not as a matter of legal presumption but as an inference of fact. On a severance of property a grant by the owner of one of the several portions to the owner of the other can be presumed. (*Jenkins*, C.J, *and Chatterjee*, J.) THAKUR MADAN MOHAN CHAKRABARTY v. SASHI BHUSHAN MUKHERJI. 31 I.C. 549= 19 C.W.N. 1211.

———S. 13—*Easement of necessity—Use of way.*

The fact that it is absolutely necessary for a person to use a way does not constitute an easement of necessity. (*Holmwood and Chapman*, JJ.) RAM GOPAL SEN v. ABHOYA CHARAN GHOSH. 26 I.C. 485.

———S. 13—*Easement of necessity—Nature.*

An easement of necessity is an easement not merely necessary for the reasonable enjoyment of the dominant tenement, but one without which that tenement cannot be used at all. There is ordinarily no reservation by implication of easement in favour of the grantor except in the case of an easement of necessity. (*Mookerjee and Holmwood*, JJ.) CROWDY v. REILLY. 17 I.C. 966=16 C.L.J. 417.

———S. 13—*Discharge of water through drainage in common Courtyard—Partition of.*

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Plff. and deft. owned a common courtyard. Before partition of the courtyard, plff. had the right to pass his water through the drainage which existed in the yard. *Held*, that the onus lay on the deft. to show that the right which plff. possessed prior to the partition had been extinguished by some agreement or rule of law. The mere fact that plff. had acquired another tenement through which he could pass his water did not deprive the easement in question of the character of an easement of necessity. (*Shadi Lal*, J.) BUTA SINGH v. LALLA. 53 I.C. 584=101 P.R. 1919.

———Ss. 13 and 42—*Easement of necessity—Meaning of—Extinction of easement.*

Easement of necessity is one without which the tenement cannot be used at all and not merely one which is necessary for its more convenient enjoyment. An easement which ceases to be beneficial to the dominant owner might become extinguished. 33 All. 461, Ref. (*Broadway*, J.) JAI KISHEN DAS v. DIN MUHAMMAD. 50 I C. 756.

———S. 13—*Severance of tenements.*

Where two houses situated on opposite sides of a land were connected by a bridge which had been destroyed and which plff. wanted to rebuild but the deft. objected and the Municipality also refused permission, the re-building of the bridge could not be allowed as the houses had passed to different persons. (*Kensington*, J.) MANOHAR LAL v. DHANPAT RAI. 9 P.L.R. 1911=9 I.C. 402=51 P.W.R. 1911.

———S. 13—*Easement of necessity—When can be claimed.*

A person cannot claim a right of way on the ground of convenience if he has other means of access available. An easement of necessity is an easement without which the property sold could not be used at all, and not one merely necessary for the more convenient enjoyment of the property. An easement of necessity contemplates that there must be an absolute necessity, not removeable by any thing, which the dominant owner can be reasonably expected to do before the law will compel an adjacent proprietor to submit to so detrimental a right as an easement on his land imposed against his will. 15 A. 270; 33 A. 467; 19 B. 79; 28 M. 495, referred to. (*Kanhaiya Lal*, J C.) KUNJ BEHARI v. BHUTA. 9 O. & A L.R 381= 1928 Oudh 260.

———S. 13 (e) and (f)—*Right of easement after partition.*

Clauses (*e*) and (*f*) of section 13 must not be confused. Under cl. (*e*) plaintiff has to prove that the easement claimed was necessary for the enjoyment of the property allotted to him by partition. Under cl. (f) he has to prove that the easement was apparent, continuous and necessary for enjoying his share as it was enjoyed when the partition took effect and that no different intention was expressed or necessarily implied in the partition. There is no right of

EASEMENTS ACT (V of 1882), S. 13.

easement after partition on the mere ground that the easement is necessary for enjoying the share as it was enjoyed. (*Ashworth*, A.J.C.) BRIJ MOHAN LAL *v.* CHANDRIKA SINGH.
25 O.C. 251 = 1923 Oudh 57.

———**Ss. 13 and 28**—*Easement of necessity—What is.*

An easement of necessity arises only when the property cannot be used at all without the easement and not merely when it is necessary for reasonable enjoyment. (*Jwala Prasad*, J.) DAROGA LAL *v.* DEVI LAL.
48 I.C. 670.

———**S. 13**—*Easement of necessity—When can arise.*

an easement of necessity cannot arise in any other way than on severance of tenements. (*Saunders*, J.C.) MAUNG SHWE *v.* MA THET.
46 I.C. 327 = (1918) 3 U B.R. 65.

———**S. 13 (a)**—*Easement of necessity—Adjoining house owners — Right to go to neighbour's land to repair wall.*

A house owner in order to repair his wall on his neighbour's side of the premises can go to the other side of the wall on the land of his neighbour. The right is analogous to a necessary easement. But the easement does not extend to going over the neighbour's roof for that purpose. A person is also entitled to enter his neighbour's house or land to protect his eaves which project over the neighbour's house. 15 M. 256, Ref. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) BHAGAVATULA SUBRAMANYA SASTRI *v.* BHAGAVATULA LAKSHMINARASIMHAM.
16 I C. 893.

———**S. 13 (b)**—*Easement of necessity—Existence of vents—Continuous and non-continuous—Distinction.*

The existence of vents through which adjoining lands were being irrigated is evidence of an apparent, continuous and necessary easement which passes to the transferee under S. 13 (*b*) of the Easements Act. An act done for the proper enjoyment of an easement such as closing the vents after irrigation or in the course of the enjoyment of an easement which is continuous would not render the easement a non-continuous easement. (*Devadoss and Coleridge*, JJ.) MORLA GANGULU *v.* THATA JAGANNATTAM.
45 M.L.J. 724 = 1924 M. 108.

———**S. 13 (3) (d)**—*Easement of necessity—Doors—Drains.*

Defendants closed, by staking bricks, 3 doors appertaining to a house and stopped the flow of water through a drain which had existed for a number of years. The keeping open of the doors was found not absolutely essential for the enjoyment of the premises or for getting sufficient light and air. *Held*, that the plffs. could not sue in respect of the doors but as regards the drain, since there was no other drain in the plff.'s house and no outlet for flow of water from the kitchen, the defts. could not obstruct it. (*Banerjee and Rafique*, JJ.) BISHAMBHAR NATH *v.* JAGANNATH PRASAD.
29 I C. 695.

EASEMENTS ACT (V of 1882), S. 15—Burden of Proof.

———**S. 15**—*See also* LIMITATION ACT, S. 26.

———**S. 15.**

BURDEN OF PROOF.
DEFENCES.
EASEMENT AGAINST GOVERNMENT.
ENJOYMENT.
MODE OF ENJOYMENT.
NATURE OF OBSTRUCTION.
NATURE OF RIGHT.
PART ACQUISITION.
RIGHT OF WAY.
WHAT RIGHT CAN BE ACQUIRED.
WHO CAN ACQUIRE.

Burden of Proof.

———**S. 15**—*Burden of proof—Easement—Acquisition—Onus.*

The onus of proving that a right of way has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right without interruption and for 20 years, lies upon the person asserting the right. (*Knox*, J.) GANGA SAHAI *v.* SHIB CHARAN.
25 I.C. 499.

———**S. 15**—*Burden of proof—Right of way—Abandonment—New way.*

S. 15 (1) renders it impossible to acquire a statutory prescriptive title to an easement unless and until the claim thereto has been contested in a suit. So where a right of way though a particular passage which has been used for over 20 years is abandoned and another passage has been adopted for about 17 years prior to the institution of the suit no right of way is established because the old passage had not been used within two years next before the institution of the suit and the new passage had not been used for 20 years S. 15 (1) applies both to continuous and discontinuous easements. (*Chamier*, J.) SULTAN AHMAD *v.* WALLIULLAH.
17 I.C. 22 = 10 A.L.J. 227.

———**S. 15**—*Burden of proof—Right to dam Channel—Prescription.*

A right to dam a channel against the will of the owner of the adjacent land can only be a right by user or prescription and it is incumbent on the plaintiff if he claims any particular right, to prove that he is entitled to it. The question in each case must be, what is the exact nature of the right which is shown by the evidence to have been acquired by the party? (*Phillips and Devadoss*, JJ.) HOTA VEERABHADRAYYA *v.* VENKATAKRISHNA RAO.
(1923) M.W.N. 454 = 18 L.W. 404 = 1923 Mad. 675.

———**S. 15**—*Burden of proof—Government—Claim against—Limitation.*

The words 'belongs to the Govt.' in S. 15 refer not to the time of the suit but to the duration

EASEMENTS ACT (V of 1882), S. 15—Burden of Proof.

of enjoyment. When after 40 year's enjoyment against the Govt., the latter transfers the land to a private person, the easement in order to become absolute must be enjoyed as against the transferee for a further period of 20 years. The period of 20 years must be computed from the time when the transfer was made to a private person. (*Ayling and Phillips, JJ.*) SRINIVASA UPADYA *v.* RANGAMMA BHATTA.
41 Mad. 622=48 I.C. 98=34 M.L.J. 896.

———S. 15—*Burden of proof—Acquisition by prescriptions.*

Where it is a question of acquisitions of an easement by prescription, the burden lies entirely on the plff. to prove 20 years' enjoyment, and not mere possession for 12 years and then say the onus is shifted on to the deft. (*Sadasiva Aiyar and Moore, JJ.*) RANGAPPA NAICKER *v.* APPALA RAJA. 33 I.C. 503.

———S. 15—*Burden of proof—Suit against Govt.*

If the plff. proves 30 years' possession, the Govt. must prove that he had no possession within 60 years. (*Benson and Sundara Aiyar, JJ.*) ALAGASINGA BATTAR *v.* TALUQ BOARD, RAJAHMUNDRY. 16 I.C. 626=12 M.L.T. 169.

Defences.

———S. 15—*Defences.*

When a right has begun to run under S. 15 and the servient holder sues to put an end to it, the deft., cannot plead in bar of it art. 32 of Lim. Act. When the deft. has a right of support, from the plff.'s wall abutting on the deft.'s property, for a roof of his adjoining house, it is an encroachment of that right if the deft. raises his wall and erects upon it another thatch resting on the plff.'s wall. The limit of a party's right of support must be determined by his actual enjoyment up to the date of the encroachment complained of by the opposite party. (*Walsh, J.*) JADDU RAM *v.* KANHAIA RAM. 33 I.C. 90.

———S. 15—*Defence—Obstruction—Light and air—Remedy—By injunction—Cities and villages—No difference—Defences that are not open.*

If a man's ancient lights be interrupted it is no answer to say that he can provide other sources of lights for himself by making changes in his own tenement; nor that deft. is willing to provide fresh light for him in another way. Where a party causes injury to another he cannot object to appropriate relief being granted to his opponent on the ground that he would suffer serious injury by being compelled to undo mischief. There is no difference in the application of the law as regards interference with ancient lights to builders in cities and elsewhere. (*Benson and Sundara Aiyar, JJ.*) MUTHUKRISHNA AIYAR *v.* SOMALINGA MUNI. 36 Mad. 11=21 M.L.J. 742=10 M.L.T. 121=11 I.C. 612=(1911) 2 M.W.N. 69.

EASEMENTS ACT (V of 1882), S. 15—Enjoyment.

Easement against Government.

———S. 15—*Easement against Government.*

A plff. claiming a right of easement against Govt. must prove sixty years peaceful and uninterrupted user and the rule of law that the burden of proof is shifted on to Govt. if the plff. proves possession for a sufficient number of years is not applicable if the plff. fails to prove the completion of even the prescriptive period necessary against a private individual. Case law discussed. 19 M. 165; 33 M. 1; 33 M. 173; 33 M. 362; Dist. (*Oldfield and Tyabji, JJ.*) NAGARAJA PILLAI *v.* SECRETARY OF STATE. 26 I.C. 723=39 Mad. 304.

Enjoyment.

———S. 15—*Enjoyment—Right by prescription—Irrigation—Interruption.*

The enjoyment necessary to qualify for a right of easement is something different from actual user. In order to establish a right to an easement, the enjoyment of it must continue for twenty years; but in the case of discontinuous easements, this does not mean that the actual user is to continue for the whole period of twenty years. On the contrary, there may be days and weeks and months, during which the right may not be exercised at all and yet during all those days and weeks and months, the person claiming the right may have been in full enjoyment of it when necessary: 30 C. 1077, Foll. Where the water of the plaintiffs' well was always used for irrigating the defendant's lands and there was user by the defendant whenever it was necessary for a period of more than twenty years, the right to irrigate from the well would be deemed to have been substantially enjoyed for the requisite period. (*Kanhaiya Lal, J.*) SRI RAM *v.* MANI RAM.
21 A.L.J. 869=L.R. 6 A. 24=1924 All. 97.

———S. 15—*Enjoyment—20 years—How reckoned.*

To establish a right under S. 15, twenty years of uninterrupted user must be shown. (*Richards and Tudball, JJ.*) KEDAR NATH *v.* SOHAN LAL. 25 I.C. 405=12 A.L.J. 693.

———S. 15—*Enjoyment—Two years next before suit—Right of way—Period of user.*

The period of user must be twenty years or more ending within two years before the institution of the suit wherein the claims to which such period relates is contested. (*Richards, C.J. and Banerjee, J.*) MUHAMMAD MAROOF *v.* SULTAN AHMED. 24 I.C. 126=12 A.L.J. 415.

———S. 15—*Enjoyment—Immemorial user—Evidence.*

No minimum limit of time can be laid down to justify an inference of immemorial user. The question whether such an user is established depends on the circumstances of each case. In the particular case a user of thirty years was considered sufficient to justify such

EASEMENTS ACT (V of 1882), S 16—Enjoyment.

an inference. (*Shah and Crump*, JJ.) RAMBHAI DABHAI *v.* VALLUBHAI JHAVERBHAI.
46 Bom. 1027=62 I C. 65=23 Bom. L.R. 422.

———**S. 15**—*Enjoyment—Peaceable.*

Peaceable enjoyment means one without interruption or opposition by the servient owner, sufficient to defeat the enjoyment. The obstruction must find expression in something done on the servient tenement itself. Mere protest does not amount to such obstruction. (*Scott*, C J., *and Hayward*, J) BAI KURAVAHAI *v.* JAMSEDJI RUSTUMJI DARUVALA.
49 I.C. 963=21 Bom. L.R. 709.

———**S. 15** — *Enjoyment — Waste land—Acquisition of right over.*

The mere fact that the land is waste does not necessarily show that no right can be acquired over such land. If that were so, the right of user over almost every pathway in the mofussil would be lost, inasmuch as almost every pathway lies over waste land. 18 C.W.N. 735, Ref. In determining the question whether an user of way over waste land was as of right or not, the Court would have to consider the character of the land, the relation between the parties and the circumstances under which the user took place. 8 C.W.N. 359, Ref. (*Chatterjee and Panton*, JJ) MAHOMED NURAL HAQ *v.* BAKSU MANDAL. **65 I C. 509**

———**S. 15** — *Enjoyment for 20 years peacefully and openly—Lim. Act, S. 26.*

If an easement has been enjoyed for the statutory period peaceably and openly as of right without interruption the right becomes absolute under S. 26, Lim. Act. (*Mullick and Walmsley*, JJ.) GIRISH CHUNDER CHOWDHURY *v.* KUNJU BEHARI KOWAR.
26 I C. 781.

———**S. 15**—*Enjoyment—Long user—Presumption of lawful origin.*

A long and uninterrupted user for a long series of years leads to the inference that the user had been as of right and that the right had a lawful origin. (*Wallis*, C.J. *and Phillips*, J) SWAMINATHA MUDALI *v* VELU MUDALI.
20 M.L.T. 544=(1916) 2 M.W.N. 192=35 I C 749=4 L.W. 128.

———**S. 15**—*Enjoyment—Two years next before suit—Prescriptive right—Creation.*

A prescriptive right can be acquired only if the enjoyment of the easement ended "before the beginning of the three years next" before the suit was instituted. Enjoyment for twenty years under the prior Lim. Acts before the Easements Act of 1882, came into force, will not be enough, as it would not be enjoyment for two years next before the suit was instituted within S. 15. 29 M.L.J. 685, Foll. (*Sadasiva Aiyar and Moore*, JJ) RANGAPPA NAIKER *v.* APPALA RAJA. **33 I.C. 603.**

———**S. 15** — *Enjoyment — Peaceable — Statutory title how acquired.*

Per *Sadasiva Iyer*, J.—A dominant owner, who has neither been obliged to resort to physical force to exercise his right of easement at any time nor has been prevented by use of force by servient owner from exercising such right at any time within 20 years expiring within two years before suit is enjoying peaceably notwithstanding oral disputes regarding it. Per *Bakewell*, J.—The adverb 'peaceably' indicates the manner in which dominant owner must conduct himself in his use of the servient tenement, *i.e.*, the person claiming a right of easement must not have deprived the servient owner of that right by use of force or secretly. It is unnecessary to go into the questions of lost grant, acquiescence and so on, on the servient owner's part when the question of acquisition of statutory prescriptive right to easement under the Easements Act is considered. A statutory prescriptive title to an easement is impossible to be acquired under S. 15 unless and until the claim thereto has been contested in a regular suit. 10 A. L J. 227; 6 C. 394 (P.C.). Foll. (*Sadasiva Aiyar and Bakewell*, JJ.) MUTHU GOUNDAN *v* ANANTHA GOUNDAN.
29 M.L.J. 685=18 M.L T. 476=2 L.W. 1107=31 I.C. 528=(1916) 1 M.W.N. 113.

EASEMENTS ACT (V of 1882), S. 15—Enjoyment.

———**S. 15**—*Enjoyment—For less than prescriptive period—Interference—Injunction.*

Enjoyment for less than the prescriptive period entitles the persons enjoying, to an injunction against a trespasser. Plffs. had been taking water with the permission of the Govt. to a tank along a channel which mostly ran through Govt. *Poromboke* lands, but had for some years prior to suit not used this channel. On a suit being brought for declaration of their right against the defts. trespassers, *Held*, that the non-user by the plff. did not disentitle them to the relief as the deft. had no right either by grant or by prescription. The plff. were entitled to a decree restraining the defts. from interfering with the plffs. in their enjoyment of the channel and of the water flowing in it. (*Seshagiri Iyer and Napier*, JJ.) ANANDA DESIKACHARIAR *v*, VISWANATHA MUDALI. **30 I.C. 989=18 M.L.T. 515.**

———**S. 15**—*Enjoyment—'As an easement.'*

The words 'as an easement' do not mean that the enjoyment should be in the assertion of claim of an easement. Illus. (*b*) shows that the words were used in order to show that unity of title or possession makes the possession useless to create a right of easement. Assertion of full ownership which however negatived by the evidence may suffice to establish an easement provided that the user was for the beneficial enjoyment of another land. (*Sundara Iyer and Sadasiva Iyer*, JJ.) KONDA REDDI *v.* RAMASWAMY REDDI. **38 Mad. 1=17 I.C. 112=6 L.W. 564.**

———**S. 15**—*Enjoyment—Acquiescence—If source of easement.*

Mere acquiescence does not create an easement. Unless the acquiescence amounts to an implied contract granting the easement any omission to object to the enjoyment, will not

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give the dominant owner any right except in case of enjoyment for over the prescriptive period. (*Sundara Aiyar and Sadasiva Aiyar, JJ.*) BHAGAVATULA SUBRAMANYA SASTRI v. BHAGAVATULA LAKSHMINARASIMHAM 16 I.C. 893.

———S. 15—*Enjoyment—Two years before suit—Easement of necessity.*

When two houses originally owned by one and the same person have back yards opening into a lane which separates them, in the absence of evidence as to when the gates were opened the presumption is that they were so opened before severance and that the enjoyment of a right of way for over twenty years peaceably and as of right ending within two years before suit created a prescriptive right. (*Wallis and Munro, JJ.*) CHINNAMMAL v. DEVANASAMMAL. 9 M L.T. 274= 9 I.C. 764=(1911) 1 M.W.N. 274.

———S. 15, Expl. (1)—*Enjoyment—User of way.*

Where in the absence of a license or agreement the defts. were found to have been using a way over plff 's land openly, peaceably and as of right for over the statutory period, *held*, the defts. had acquired an easement in respect of that right. (*Benson and Krishnaswami Iyer, JJ.*) RANGASWAMI PILLAI v. KONDIA PILLAI. 9 I.C. 640=9 M.L.T. 350.

———S. 15—*Enjoyment—Grant—Long user—Presumption.*

Continuous and peaceable user of an easement of light and air for more than twenty years may give rise to a presumption that it existed with the consent of the owner of the servient heritage. 6 C. 394, Referred to. (*Hallifax, A.J.C.*) SONBA v. DATTATRAYA. 6 N.L.J. 89= 1923 Nag. 192.

———S. 15—*Enjoyment—Light and air—"As of right"—Road or path—Open user—Presumption.*

As easement of light and air need not be proved to have been enjoyed as of right, but under S. 15 of the Act, it is enough, if there is enjoyment without interruption for more than 20 years. An open user of a road or path, without interruption, for a long time, not under permission or sufferance, is *prima facie* evidence of enjoyment as of right. (*Macnair, J.C.*) HARI v. MAHADEO. 61 I.C. 869.

———S. 15 (5)—*Enjoyment.*

Under S. 15 (5) plaintiff has to show a period of 20 years continuing up to some point within two years before the institution of the suit. The fifth paragraph of S. 15 of the Easements Act seems to render it impossible to acquire statutory prescriptive title to an easement, unless and until the claim thereto has been contested in a suit. (*Simpson, A.J.C.*) BASDEO-SINGH v BHAGWAT PRASAD. 1923 Oudh 29.

———S. 15—*Lateral support—Right to.*

The right to the lateral support to a wall, from a neighbour's land, is acquired only by

EASEMENTS ACT (V of 1882), S. 15—Nature of Obstruction.

prescription. (*Ayling and Coutts-Trotter, JJ.*) *In re* ATHI AIYAR. 68 I.C 831= 14 L.W. 728.

Mode of Enjoyment.

———S. 15—*Mode of enjoyment—Grant—Lost grant—Presumption—Right to fishery.*

No presumption of a lost grant can be made in the case of the right of fishery where the use of the fishery was in harmony with the right of the public to fish by stakes which is acknowledged method of public fishing on the West Coast of India. Possession of the *dar* (space between two fishing stakes) for over sixty years does not perfect into an easement by way of prescriptive right since under the Easements Act claim to the soil under the fishery has to be made for a prescriptive right. (*Marten, J.*) LAKSHMAN v. RAMJI. 28 Bom. L.R. 939.

———S. 15—*Mode of enjoyment—Easement right of way—Proof.*

A plff. is entitled to have his right of way declared if he establishes the terminiz to and from which the way runs. And the right would be enjoyed in the way the servient owners point out as the tract. If no tract is pointed out the plff. can enjoy the nearest route. (*Fletcher and Shamsul Huda, JJ.*) LAKHI KANTA v. RAJ CHANDRA. 45 I.C 374= 22 C.W.N. 922.

———S. 15—*Mode of enjoyment—User—Legality.*

No use of property which would be legal if due to a proper motive, would become illegal, if prompted by an improper or even a malicious motive. The extent of a right acquired by prescription is measured by the extent of the use and enjoyment thereof during the prescriptive period. (*Mookerjee and Beachcroft, JJ.*) JIBANANDA CHAKRABATI v. KALIDAS MALLIK. 42 Cal. 154=20 C.L.J 97= 26 I.C. 218=18 C.W.N. 1296.

———S. 15—*Mode of enjoyment—Right to use of water—Nature of user.*

It is not necessary to prove annual or continuous user, but only substantial enjoyment whenever the occasion required. The mere fact that the openings made were different in different years does not make the user indefinite when the channels through which the water was taken were the same. The fact that the owner of the subject tenement paid a certain sum for the repair of the embankment for his own benefit does not make the user permissive. (*Caspersz and Chatterjee, JJ.*) GHASI RAM v. ASIRBAD. 15 C.W.N. 259=9 I.C.69= 12 C.L.J. 670.

Nature of Obstruction.

———S. 15, Expln. 2—*Nature of obstruction—Dominant tenement destroyed by fire during the period of acquisition—Re-construction of the house—Effect of.*

The plaintiff built his house in 1897, in one of the walls of which he opened several windows

EASEMENTS ACT (V of 1882), S. 15—Nature of Obstruction.

while he was enjoying light and air through those windows the house was burnt down by fire in May 1905; but it was re-constructed immediately afterwards. In 1918 the defendants commenced to build, on their own land so as to block up the windows in the plaintiff's house. The plaintiff having sued to restrain defendants from obstructing the light and air through his windows, the defendants contended that the plaintiff had not acquired the easement for the prescriptive period, as there was an interruption in his enjoyment during the time the house was destroyed by fire. *Held*, overruling the contention, that the plaintiff had acquired the right of easement for his windows by prescription. Where the owner of a building, who is in the course of acquiring a right of easement by prescription, has his house burnt down, but begins immediately to re-build his house and places the windows exactly in the same position as the old ones, he can be regarded as enjoying the access and use of light and air continuously, and he will be entitled to protection after twenty years from the first building. If, however, there is any delay in re-building, then that might be evidence of an intention not to resume the user. (*Macleod* C.J. *and Shah*, J.) RATANLAL BHOLARAM *v.* GULAMHUSEN ABDUL ALI. **46 Bom. 448 = 24 Bom. L R. 83 = 1922 Bom. 8.**

———**S. 15**—*Nature of obstruction—Right to light and air—Right of action.*

To constitute an actionable obstruction there must be substantial privation of light enough to render the occupation uncomfortable according to the ordinary notions of mankind. (*White*, C. J. *and Sankaran Nair*, J.) RAMANJULU NAIDU *v.* APPARAJI AMMAL. **(1911) 1 M.W.N. 251 = 9 M L T 383 = 9 I.C. 417 = 21 M L J. 313.**

———**S. 15**—*Nature of obstruction—Right of way—Uninterrupted enjoyment—Onus.*

Knowledge of the fact of enjoyment on the part of servient owner is essential to the acquisition of an easement where the Court is asked to presume a grant. Active obstruction on the part of such owner would negative any such presumption. To negative submission to an interruption the party interrupted need not have brought a suit. The question whether there has been submission to, or acquiescence, in an obstruction, is a question of fact the burden of negativing submission being on the party alleging that he did not submit. (*Drake Brockman*, J.C.) RAMA CHANDRA RAO *v.* VENKAT RAO. **34 I C. 936 = 16 N.L R. 76.**

———**S. 15**—*Nature of obstruction—Actionable obstruction of lights—Nature of.*

It is not enough, for supporting an action for obstruction of light that there has been a diminution of light from what it was before. The decrease in light should constitute a nuisance and make the house uncomfortable according to the ordinary standards of humanity; and in the case of business premises, the

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plff. should be materially hindered from carrying on his business as before. (*Maung Kin*, J.) BALTHAZAR & SONS *v.* M.A. PATAIL. **49 I.C. 488 = 11 Bur. L.T. 109.**

Nature of Right.

———**S 15**—*Nature of right—Acquisition of easement—Projecting eaves—Extent of the burden*

All that a deft. whose eaves project over plff's land can acquire after 20 years is an easement imposing the burden on the servient tenement of having that projection over it. Even if he acquired the right to project his roof over the plff.'s land and to discharge rain-water over the plff.'s land, he could not acquire a title to the plaintiff's land. His rights would be in the nature of an easement, which he could only acquire either by grant or by prescription. (*Macleod*, C.J. *and Covajee*, J.) KASHIBHAI KALIDAS *v.* VALLABHAI. **46 Bom 827 = 24 Bom. L.R. 305 = 1922 Bom. 83.**

———**Ss. 15 and 16**—*Nature of right—Easement—Limited prescription.*

A prescriptive right to light and air cannot be acquired as an easement for limited period, *e.g*, when the servant heritage is in the occupancy of a tenant. (Per *Phillips*, J.) To impose an easement is to create an easement by voluntary act of the owner of a lease or any other person authorised to transfer an interest in the servient heritage. The word does not necessarily mean imposition by some act such as grant, but includes imposition by omission to prevent acquisition by prescription. (*Abdur Rahim and Phillips*, JJ.) VANIYANKANDI *v.* THAYITHOTTATHIL, **42 Mad. 567 = 37 M.L.J. 28 = (1919) M W.N. 305 = 26 M.L.T. 48 = 50 I.C. 291 = 10 L.W. 87.**

———**S. 15**—*Nature of right—English Prescription Act—Distinction.*

Per *Phillips*, J.—The law relating to the acquisition of rights of easements under the Easements Act appears to be the same as under the English Prescription Act. (*Wallis*, C.J. *and Phillips*, J.) SWAMINATHA MUDALI *v.* VELU MUDALI. **20 M L T. 344 = (1916) 2 M.W.N. 192 = 35 I C 749 = 4 L.W. 128.**

———**S. 15**—*Nature of right—Possessory right—Easement.*

Easements are not capable in an exact sense of being possessed. The enjoyment which may in time ripen into an easement is not possession and gives no possessory right before the expiry of twenty years. (*Miller and Sadasiva Aiyar*, JJ.) NARASAPPAYYA *v.* GANAPATHY ROW. **29 I.C. 285 = 38 Mad. 280.**

———**Ss. 15 and 18**—*Nature of right—Customary land—Prescriptive rights, difference between.*

A customary right differs from a prescriptive right in the sense that no fixed period for its

EASEMENTS ACT (V of 1882), S. 15—Part Acquisition.

enjoyment is necessary. 20 M. 389 and 9 B, L.R. 454 and 459, Rel. A prescriptive right or easement is a right existing in a particular individual while a customary right belongs to no particular individual but attaches to a locality and is capable of being enjoyed by all, who, for the time being, own land in the locality. 18 M. 320, Rel. (*Kanhaiyalal*, A.J.C.) JAI JAI RAM *v.* SANWAL SINGH.
20 I.C. 467.

Part Acquisition.

———S. 15—*Part acquisition—Right of way—Acquisition in part by grant and in part by prescription.*

A right of way over one part may be acquired by grant and over another, by prescription. (*Teunon and Huda* JJ.) KALACHAND MUKAPADHYA *v.* JOBINDRA NATH CHAKRABATHY.
57 I.C. 852.

Right of Way.

———S. 15—*Right of way — Right of passage for sweeper—Acquisition of.*

Where a sweeper uses the lane on the land of another openly and as of right for 20 years, the right of passage has been acquired as an easement. (*Macleod*, C.J. *and Shah*, J.) YOSEF DAVID VARULEKAR *v.* MOSES SOLOMON TALKAR. 24 Bom. L.R. 298=1922 Bom. 79.

———S. 15—*Right of way — Prescription—Proof of claim.*

It is not the law that because there is no regular or defined pathway over the waste land of the defendants which is said to be the servient tenement, no right of easement can be acquired by the dominant owners. If the plaintiffs claiming the right of way by prescription stop the two termini of the pathway their suit ought to fail on the ground that the pathway passed over a piece of waste land in different tracks. 22 C. W. N. 1022, referred to. (*Ghose*, J.) HARIDAS GHOSE MRIDHA *v.* GOURI CHARAN GHOSE. 1924 Cal. 359.

———S. 15—*Right of way—User as of right.*

In deciding whether the user of a right of way is as of right or not, the Court should consider the character of the ground, the space for which the right is claimed, the relations between the parties and the circumstances attending the user. (*Piggott and Rampini*, JJ.) MESER MULLICK *v.* HAJIZUDDI MULLICK.
9 I.C. 966=13 C.L.J. 316.

———Ss. 15 and 26—*Right of way for scavengers through dwelling house — Mode of acquisition.*

S. 15 of the Easements Act does not exclude or interfere with other titles and modes of acquiring easements. In the case of long enjoyment of a right claimed, a legal origin should be presumed when there has been a long continued assertion of such a right if such a legal origin were possible. Where user is proved

EASEMENTS ACT (V of 1882), S. 15—What rights can be acquired.

the presumption is that it is of right till the contrary is proved. There is no presumption of a licensee. Where for a period of over 30 years the plaintiff's privy had been cleaned by scavengers passing through the defendant's house. *Held*, the user must be presumed to have been as of right and that the plff. had acquired a right of way through the deft's house for the scavengers to pass into the plaintiff's privy. 6 C. 394; 4 L.W. 128, foll.; 8 C.W.N. 359, dist.; (1891) A.C. 228; 7 A.C. 693, Ref. (*Kumaraswami Sastri and Devadoss*, JJ.) KUNJAMMAL *v.* RATHNAM PILLAI. 46 Mad. 633=42 M.L.J. 417=(1923) M.W.N. 143=31 M.L.T. 180 (H.C.)=15 L.W. 266=1922 Mad. 5.

———S. 15—*Right of way—Interruption to right of way—Limitation.*

A suit to establish a right of way must be brought within two years of the interruption, otherwise his enjoyment for 20 years will be of no avail. (*Abdu Rahim and Olofield*, JJ.) NACHIPARAYAN *v.* NARAYANA GOUNDAN.
39 M.L.J. 674=60 I.C. 171=12 L.W. 718.

What rights can be acquired.

———S. 15—*What rights can be acquired—Grazing right through the jungle of another village.*

The right to drive cattle to the grazing ground through the jungle of another village is not a right which can be acquired as an easement though enjoyed for any amount of time. (*Rafique and Piggott*, JJ.) LAL BAHADUR *v.* RAMESHVAR DAYAL.
43 All. 345=60 I.C. 990=19 A.L.J. 126.

———Ss. 15 and 17 (c)—*What right can be acquired—Agricultural lands—Right to receive rain water through higher lands.*

Considering the position of the lands and the conditions of agriculture in that part of the country it must be held that where the plaintiff had been enjoying the water by means of channels through which water passed to a tank, for a certain number of years no prescriptive right was acquired to receive the water through the channels unobstructed so as to entitle the plaintiff to seek the removal of these obstructions caused by the defendants. Per *Macleod*, C.J.—Although it is quite possible that the owner of one piece of land might acquire the right to drain his water on to the land of another, it would be more natural in hilly districts, such as the one in which the suit lands are situate, for the owner of the lower land to acquire a right to receive water which either falls on or flows into the higher land. It is only in such a way that cultivation in such districts can proceed and the owner of the land in the lower level can acquire such a right against the owner of the land on higher level. (*Macleod*, C.J. *and Shah*, J.) BASWANTAPPA *v.* BHIMAPPA. 23 Bom. L.R. 1004=46 Bom. 115=1922 Bom. 378.

EASEMENTS ACT (V of 1882), S. 15—What rights can be acquired.

———S 15—*What rights can be acquired —Latrines—Scavenging—Right to access.*

A prescriptive right is acquired, if plff.'s privies are cleaned by *mehtars* passing over the land of the deft. for twenty years and to the knowledge of and without obstruction by deft. (*Chatterjee*, J.) DAKSHINA RANJAN DUTT *v.* FAKIR CHANDRA SEN. **30 I.C. 34.**

———S. 15—*What right can be acquired—Right to discharge water on land of defendant through channel across public road—Prescriptive easement.*

A prescriptive right of easement to discharge surplus water on the deft.'s land through a channel across the public road cannot be acquired. (*Mookerjee and Beachcroft*, JJ.) KHULDI RAM NANDI *v.* SURENDRA NATH SAMANTA. **19 C L.J. 42=21 I C. 887= 18 C W.N. 378.**

———S 15—*What rights can be acquired—Fishery— Private rights— How acquired—Prescription.*

Private rights of fishing in public waters may be acquired either by a grant from the crown or by the prescription from which a grant may be presumed. *Quære.*—Whether exclusive rights can be acquired in a tidal or navigable river by proof of mere enjoyment in the manner provided by S. 2 of the Lim. Act. A person to acquire the right of fishery, by prescription must show that he had an uninterrupted enjoyment of it openly, publicly and peacefully for over the statutory period; but where such an enjoyment was in exercise of a common right which he shared with others, he should show that his user was in assertion of a higher right than the general right, in himself and for his exclusive benefit. (*Coxe and Teunon*, JJ.) ABHOY CHARAN *v.* DWARKA NATH MALO. **39 Cal 53= 11 I.C. 180=15 C.W.N. 972.**

———S. 15—*What rights can be acquired—Right to ferry.*

Right to ferry though not an easement is in the nature of an easement and may be acquired by user. 16 C. 608, Foll. (*Coxe*, J.) ABDUL KOYRAT *v.* HEM CHANDRA ROY. **9 I.C. 846.**

———Ss. 15 and 12—*What rights can be acquired—Water of Govt. channel—Ryotwari proprietor — Possessory right — Incorporeal rights.*

No easement or presumptive right can be acquired by a ryotwari landholder in water in a Govt. channel irrigating the lands. No person can claim possessory rights in a channel and ask for injunction against a threatened interference with such rights. There can be no possessory rights in connection with incorporeal rights. In a suit for declaration of the plff's. rights to irrigate his lands with the water of a Govt. channel as against a rival proprietor, the Govt. is a necessary party. (*Abdur Rahim and Napier*, JJ.) MAHAN-KALI LAKSHMAN *v.* KARNAM NARAYANAPPA. **(1918) M.W.N 276=23 M.L.T 337= 45 I.C. 80=34 M.L.J. 425.**

EASEMENTS ACT (V of 1882), S. 15—Who can acquire

———S. 15—*What rights can be acquired—Right to dam up a stream—Acquisition of.*

A prescriptive right to dam up a stream is acquired by the continued exercise of the right for twenty-five or thirty years. (*Sankaran Nair and Sadasiva Aiyar*, JJ.) MUKKASA NAIR VEETIL *v.* SECY. OF STATE **15 M L.T. 247=1 L.W. 307= 26 M.L J. 385=24 I C. 547= (1914) M.W.N. 521.**

———S. 15—*What rights can be acquired —Minerals—Grant—Right to minerals.*

Per *Spencer*, J.—In the case of *shrotriem* grant the right of Govt. over the minerals is not lost by limitation. (*Sadasiva Aiyar and Spencer*, JJ.) SECY. OF STATE FOR INDIA *v.* SRINIVAS CHARIAR. **23 I C. 144= 18 M L.T. 277.**

———S. 15—*What rights can be acquired —Fishing—Prescription—Implied grant.*

Under S. 15 of the Easements Act, a right of fishing cannot be acquired by prescription but from uninterrupted user such a grant may be presumed. The Easements Act does not exclude or interfere with the other titles or modes of acquiring easements. (*Mitta*, A.J. C.) SITARAM *v.* PETIA. **43 I.C. 962= 14 N.L.R. 35.**

———S. 15—*What rights can be acquired—Easement—Right to a ferry.*

The right to establish and maintain a ferry over the property of another is a right of easement for which twenty years' use is necessary under S 28 of the Lim. Act. (*Das and Adami*, JJ.) PARDIP SINGH *v.* SECY. OF STATE. **6 P.L.J. 600=1 P.L T. 395= 1920 Pat. 297=57 I.C. 516= 2 U.P.L.R. (P.) 181.**

Who can acquire.

———S. 15—*Who can acquire—Right how extinguished.*

A claim of higher right of ownership does not prevent another person from acquiring a right of easement, if he can show that he converts certain rights of enjoyment over the land in question for the benefit of another land of his own. A right once established by immemorial user, is not extinguished by non-user or interruption for more than two years. (*Mookerjee*, A.C.J. *and Fletcher*, J.) SURENDRA NATH *v.* GIRDHARI SINGH. **62 I.C. 638.**

———S. 15—*Who can acquire—Landlord and tenant.*

A right of way cannot be acquired by a tenant over the lands of the landlord within his tenancy except by grant under S. 26 of the

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Easements Act. 31 I.C. 549, Ref. to. The mere grant of leave and license of a right of way by the landlord to his tenant, will not invest the latter with a right of way enforceable in suit. (*Chatterjee and Richardson, JJ.*) SITAL CHANDRA CHAUDHURY v. ALLEN, J. DELANNEY. 34 I.C. 450=20 C.W.N. 1158.

———S. 15—*Who can acquire—Whether joint tenants can acquire easements by prescription against each other.*

A prescriptive right cannot be acquired by one tenant against another tenant of the same landlord. *Quære*:—Whether one permanent tenure holder can acquire an easement against another permanent tenure holder under the same landlord.? (*Chatterjee, J.*) MADAN MOHAN v. SASHI BHUSHAN. 31 I.C. 549= 19 C.W.N. 1211.

———S. 15—*Who can acquire—Landlord and tenant—Easement by prescription.*

A tenant in a zamindari cannot acquire the right to irrigate his land *held* by him as a tenant, with water from the tank belonging to the Zamindar. (*Sadasiva Iyer and Spencer, JJ.*) BAYYA SAHU v. KRISHNA CHANDRA GAJAPATHI. 56 I.C. 698=11 L.W. 600.

———S. 15—*Who can acquire—Joint user.*

The joint user of the water from a tank for the joint cultivation of a plot does not affect the nature of the right of easement which is a right over the servient heritage acquired by virtue of the joint ownership of the plot. The right prescribed for, is not a right to irrigate jointly but a right as part owners of a dominant heritage. 8 C.W N. 359, Dist. (*Wallis, C.J. and Phillips, J.*) SWAMINATHA MUDALI v. VELU MUDALI. 20 M.L.T. 544=(1916) 2 M.W N 192= 35 I.C. 749=4 L.W. 128.

———S. 15—*Who can acquire—Successive holders—Prescription—Acquisition on right.*

The essential requisite of prescription is that it should be acquired against specific individuals: prescription against one person cannot be tacked to that acquired against others, 24 M. 219, Dist. 10 I.C. 110; 14 A. 156; 23 A. 448, Foll. Where there are successive *stanom* holders, each is independent of the other and they do not claim through each other and a suit by a particular claimant for possession of the *stanom* is not barred by limitation if brought within the limitation period the period being reckoned from the date on which his rights arose. (*Ayling and Seshagiri Aiyar, JJ.*) PATINKAR KURU v. RAMAN VARMA. 24 I.C. 519= 28 M.L.J. 669.

———S. 15—*Who can acquire—Caste—If can acquire right of way.*

A caste is a corporation with civil rights and can acquire by user, title to a right of way, even if the user be only of a few members of the caste provided it is exercised on behalf of and for the caste. (*Sankaran Nair and Ayling, JJ.*) SUPPEN ACHARY v. VANNIA KONAR. 24 I.C. 467=2 M.L.J. 110.

EASEMENTS ACT (V of 1882), S. 17.

———S. 16—*Acquisition of easement—Proof.*

The mere finding that a *parnala* is old is not sufficient to prove that an easement has been established with respect thereto. (*Wilberforce, J.*) AHMED BAKSH v. MUSSAMMAT PALI. 66 I.C. 922=8 Lah. L.J. 68.

———S. 17—*Surplus water—Defined channel—Acquisition—Grant—Presumption—English and Indian Law.*

A person acquires a right of easement of water of artificial channels or derived from artificial tank or pools. 7 M. 530, Foll. The water of a tank fed by rain water as well as surface water from neighbouring lands flowed in a defined channel from the defts.'s land through the land of the plff. who was not the owner of the tank. The defts. had been using and enjoying the said water for a sufficient length of time and as a matter of right. *Held*, that he must be deemed to have acquired a right of easement with respect to the same, notwithstanding the fact that the water was what might be called surplus water. In the circumstance of the case, a grant of the said right might be presumed. (*Abdur Rahim and Bakewell, JJ.*) BODDULURU NAGAYYA v. BACHU CHENCHU RAMAYYA. 33 M.L.J. 674=45 I.C. 625= (1917) M.W.N. 868.

———Ss 17 (c) and 15—*Right to receive rain water through higher lands.*

Considering the position of the lands and the conditions of agriculture in that part of the country it must be held that where the plaintiff had been enjoying the water by means of channels through which water passed to a tank, for a certain number of years no prescriptive right was acquired to receive the water through the channels unobstructed so as to entitle the plaintiff to seek the removal of these obstructions caused by the defendants. Per *Macleod*, C. J.—Although it is quite possible that the owner of one piece of land might acquire the right to drain his water on to the land of another, it would be more natural in hilly districts, such as the one in which the suit lands are situate, for the owner of the lower land to acquire a right to receive water which either falls on or flows into the higher land, it is only in such a way that cultivation in such districts can proceed and the owner of the land in the lower level can acquire such a right against the owner of the land on a higher level. (*Macleod, C. J. and Shah, J.*) BASWANTAPPA v. BHIMAPPA. 23 Bom L.R. 1004=46 Bom. 115= 1922 Bom. 378.

———S. 17 (c)—*Right to take water through another's land.*

The right to take water from a river running through an undefined channel over the neighbouring lands is not one coming under S. 17 (c) of the Act, but is a right which though perhaps could not be acquired by prescription as an easement, could be inferred from long user. A

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presumption of lost grant can be made if the usage is long and uninterrupted if it could form the subject of grant. *(Beaman and Marten, JJ.)* JANARDAN GANKESH KHADILKAR *v.* RAVJI BHIKAJI KONDKAR. **42 Bom. 288 = 45 I.C. 448 = 20 Bom. L.R. 398.**

———S. 17 (c)—*Right to water flowing in undefin d channels—Prescription.*

A right to the use of water flowing in undefined channels cannot be acquired by prescription. *(Martineau, J.)* NAGINA SINGH *v.* MALHI. **64 I.C. 153 = 3 Lah. L J. 555.**

———S. 18—*Customary easement—Right of way—Zemindars have no right to close.*

A customary easement is not limited to easements of a kind which could not be recognised at all apart from official customs. Any kind of easement recoginsed by the custom of a province will fall within the term. Thus the Zemindars in U. P. cannot arbitrarily close a right of way used by occupancy tenants for more than 30 years. *(Daniels, J.)* KARAN SINGH *v.* DAL CHAND. **1924 All. 159.**

———S. 18—*Right of burial—Customary right—In the nature of an easement.*

A customary right of burial can exist, apart from provisions of Indian Easements Act; hence where it is found that a certain family used a grave as a burial ground customarily it was held not an easement but a customary right in the nature of an easement. 23 B. 666; 17 A. 87, Foll. *(Piggott, J.)* MATHURA PRASAD *v.* KARIM BAKSH. **31 I C. 803 = 13 A.L J. 1094.**

———S. 18—*Privacy—Intervention of a space*—Purdah.

If a right of privacy is established, the intervention of a space between two houses cannot affect the right of privacy. If in fact that right has been invaded by the new constructions complained, the injured party has a good cause of action to maintain the suit. 6 Bom. H.C.R. 143, Appr. The *Purdah* system is generally observed by both Hindus and Mahomedans in the United Provinces except by the lowest classes. *(Rafique, J.)* JAMIL-UD-DIN *v.* ABDUL MAJEED. **28 I.C. 674 = 13 A.L.J. 361.**

———S. 18—*Right to cut sugar-cane and boil justice.*

The right to cut sugarcane, to extract, boil and concentrate the juice on a piece of land in the *abadi* is in the nature of a customary easement referred to in S. 18 and can be acquired by a tenant against the landlord. *(Sunder Lal J.)* RAJAB ALI *v.* RAJJOO KHAN. **26 I.C. 122 = 12 A.L.J. 963.**

———S 18—*Right of privacy—Houses standing on opposite sides of lane.*

Whether the houses in question are on the same side of a street or on the opposite side, a right of privacy exists and this right needs more protection when the person who invades it, is opposite to the person whose right of

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privacy is invaded and there is invasion of the right of privacy if a person constructs a room in the upper storey of his house overlooking another person's house. *(Knox, J.)* ENAYAT HUSSAIN *v.* BILKIS FATMA. **24 I C. 683.**

———S. 18—*Right to prayers — Mahomedan Law.*

By custom, a Mahomedan cannot acquire any right to say prayers on the land of another, except with the other's permission, express or implied. *(Karamat Hussain, J.)* NIADAR *v.* TIKA. **9 I.C. 45.**

———S. 18—*Privacy—Custom in Gujarat, invasion of.*

In the province of Gujarat there is a customary usage which makes an invasion of the privacy an actionable wrong, and a man may not open new doors or windows in his house or make any new apertures or enlarge old ones in a way which will enable him to overlook those portions of his neighbour's premises which are ordinarily secluded from observation. *(Macleod, C. J. and Heaton, J.)* MANEKLAL MOTILAL *v.* MOGANLAL NAROTAMDAS. **55 I C. 949 = 22 Bom. L. R. 226.**

———S. 18—*Customary easement — Overhanging trees.*

A custom to allow the neighbour's trees to overhang one's house and premises, is neither definite nor reasonable. Whether the right to retain trees overhanging another's land is customary easement. *(Shaw and Kemp. JJ.)* JOSHI *v.* OKA. **43 Bom. 164 = 47 I C 629 = 20 Bom. L.R. 826.**

———S. 18—*Customary right — Right of way—Local custom—Prescription—Lost grant.*

A customary right is not an easement in the legal sense of that term. Customary rights have their origin in grant or prescription, but it is not necessary that in every case there should be evidence from which a lost grant may be presumed. Nor is it necessary that the custom should be traced back for the whole time necessary to make it immemorial. *(Richardson and Suhrawardy, JJ.)* ALI MAHOMED *v.* SHEIKH KATU. **36 C.L J. 280 = 1923 Cal. 200.**

———Ss. 18, 15—*Right by custom—Right by prescription—Distinction between.*

What may suffice to establish a customary easement may be wholly insufficient to establish an easement by prescription and *vice versa*. The two rights are different although the result may be the same. Consequently where a claim of easement is based on a prescriptive title it is not open to the appellate Court to treat the case as one based on custom. *(Broadway and Abdul Qadir, JJ.)* SITARAM *v.* GHANNO. **1924 Lah. 275.**

———S. 18—*Privacy—Custom—Injunction.*

A plff. is entitled to an injunction restraining the deft. his neighbour from opening such windows and ventilators as would infringe the

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plff.'s right of privacy which he is entitled to by custom (*Scott-Smith*, J.) LAJJA RAM v. FAQIRA. 74 P.L.R. 1916=29 I.C. 184=251 P.W.R. 1915.

———S. 18—*Customary right and easement—Distinction between.*

Per *Odgers*, J.—The distinction between a customary right and customary easement is seen in 20 Mad. 389. No fixed period is laid down by law as necessary to establish the former. (*Ayling and Odgers*, JJ.) TALUK BOARD, DINDIGUL v. VENKATRAMA AIYAR. 46 Mad. 866=45 M.L.J. 333=18 L.W. 366=33 M.L.T. (H C) 40=1924 Mad. 197.

———S. 18—*Water—Right to — Obstruct and direct channel—Extent of.*

A person who is entitled to put up a dam of turf and loose stones, is not necessarily entitled to substitute a tighter and stronger dam. The question in each case is the exact nature of the right which is shown by the evidence to have been acquired. (*Benson and Sundara Aiyar*, JJ.) BHAKTAVATSALA AMMAL v. SECRETARY OF STATE FOR INDIA. 9 I.C. 686=9 M.L.T. 375.

———S. 18—*Grazing right.*

A right to graze cattle in a jungle area of the village can be the subject of a customary right. 31 C. 503 (P.C.), Ref. (*Kanhaiya Lal*, A.J.C.) JAI JAI RAM v. SANWAL SINGH. 20 I.C. 467.

———S. 18—*Privacy—Extent of the right.*

A plff. cannot ask the deft. to close his windows on the ground of the invasion of his right of privacy when it is proved that the said windows do not look out upon the plff.'s house but upon certain plots of land acquired by him less than twenty years. (*Piggott*, J.C.) MUHAMMAD SHABBIR v. MUHAMMAD JAWAD. 16 I.C. 270.

———S. 18—*Customary easement—Power to take earth for repairs of house.*

A custom by which earth is taken from a piece of waste land to repair houses in a village after inundations is not unreasonable. On the contrary, it seems to be an eminently reasonable custom that the people of the village should take earth from a ditch which serves no other purpose, in order to repair their houses. It was not shown that it was destructive of the subject-matter. (*Ross*, J.) BABU BIKOO MAHTON v. NARAYAN SAHU. 1924 P. 303.

———S. 18—*Custom of privacy—Larkhanacity—Sind.*

Held on the evidence that there was a custom of privacy with respect to the roofs of houses in the city of Larkhana in Sindh. (*Fawcett*, J.C. *and Kemp*, A.J.C.) SHAH MAHOMED v. RAMJAN. 66 I.C. 333.

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———S. 19—*Garden—Right of management and ownership reserved — Succession — How regulated.*

A garden, over which an easement to enjoy it as a park, is created in favour of a community but the ownership and management of which is reserved to the owner descends in succession in the ordinary way, subject to the charge upon it. (*Kincaid and Raymond*, A.J.Cs.) LAKHAMBAI v. DEVIBAI. 59 I C. 673=14 S.L.R. 182.

———Ss. 22 and 23—*Easement for a particular purpose—Conversion.*

Easement confined to a particular purpose ought not to be extended to any other. A backdoor of a house which was occasionally used by the sweepers or the ladies of the house cannot be converted into a main entrance to be used by males. (*Rafique*, J.) JAMNA PERSHAD v. GOPINATH. 19 I.C. 984.

———S. 22—*Right of way—Deviation from, not permissible except with consent of dominant owner.*

The general rule is that a right of way once defined cannot be altered and the dominant owner is entitled to exert his strict rights unless he can be induced to consent to a deviation. S. 22 of the Easements Act does not deal with the question whether the servient owner, when once the right of way has been defined, can substitute a new way and recourse must therefore be had to the common law. (*Macleod*, C.J. *and Coyajee*, J.) DHUNDIRAJ BALAKRISHNA PHALNIKAR v. RAMCHANDAR GANGADHAR KALE. 24 Bom. L.R. 437=1922 Bom. 407.

———S. 22—*Right of way—Exercise of right.*

The owner of a private right of way is entitled to enter the way at one and the same place only, and not at any other. (*Mookerjee and Beachcroft*, JJ.) JIBANANDA CHAKRABARTI v. KALIDAS MULLIK. 42 Cal 164=20 C.L.J. 97=26 I.C. 213=18 C.W.N. 1296.

———S. 22—*Extension of easement right—If allowed.*

Under S. 22 of the Easements Act the dominant owner must exercise his right in the mode which is least onerous to the servient tenement and cannot impose any additional burden on it. Where the easement right is only to use a roof as an open space, the holder cannot build over that portion. (*Abdul Qadir*, J.) HANS RAJ v MALAWA MAL. 1924 Lah. 887.

———S. 23—*Tiled roof — Pukka roof—Additional burden.*

Deft. who had a right to discharge water from his thatched roof to the plff's. roof pulled down his house and built a three storied house with spouts, to discharge water on the plff.'s land. *Held*, that the burden on the plff.'s land was increased within the section. (*Tudball*, J.) DAMODAR DAS v. TILAK CHAND 80 I.C. 941=13 A.L.J. 791.

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———S. 23—*Blocking of water channel—Power of Court to make new outlet.*

Where the deft. locked a water channel of the plff. by building a wall, the Court directed the opening of another channel through the deft.'s land without demolishing the wall. (*Banerji*, J.) BISHUNATH SHUKUL *v.* GANESH DATT. 29 I.C. 1002=13 A.L.J. 637.

———S. 23 — *Easement — Alteration — Increase of burden.*

No man can impose a new or increased restriction or burden on his neighbour by his own act and for this reason an owner of an easement cannot, by altering his dominant tenement, increase his right. The extension of the projection of a cornice beyond its original breadth and the consequent increase in the flow of rain water on the land of the servient owner are both an addition to the burden of the servient owner. (*Mookerjee*, O.J. *and Fletcher*, J.) SURESH CHANDRA BISWAS *v* JOGENDRA NATH SEN. 24 C.W.N. 896=58 I.C. 851= 32 C.L.J. 27.

———S. 23—*Reconstruction of house—* Roshandans—*Blocking of.*

Re-construction of a house by the dominant owner involving a change in the situation of the *roshandans* does not mean a fresh easement requiring a fresh period of twenty years for its acquisition. Hence the dominant owner is entitled to a mandatory injunction for demolishing the wall constructed by the servient owner so as not to obstruct the *roshandans*. 26 B. 374, Dist. (*Chevis*, J.) DHARAM DAS *v.* PIYARE LAL. 45 I.C. 985=98 P.W.R. 1918.

———S. 23—*Easement — Extension of— Increase of flood through drain.*

A person is not entitled to enlarge his right of easement by increasing the volume of water flowing through a drain through which he was entitled to discharge only the rain water and the ordinary waste water. (*Le Rossignol*, J.) RURA *v.* GAUDA RAM. 102 P.L.R. 1917= 42 I.C. 284=88 P.W.R. 1917.

———S. 23— *Right of way — Occasional deviations—Restricted right.*

Where the plff.'s right of way is proved over a defined track, occasional deviation therefrom does not affect his right. The prohibition of the user of the track during a particular season does not negative the claim of a general right of way, but is presumptive proof of a restricted right. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) ETHAMUKKALA KONDA REDDY *v.* SUBBA RAO. 18 I.C. 85.

———S. 23—*Easement—Alteration of mode of enjoyment—Rain water—Right to discharge.*

The owner of the dominant tenement may raise the height of the eaves so long as he does not know an increased burden of the servient tenement, but the projection of the new roof should not exceed that of the old though at an increased height. If the dominant owner exceeds the right, injunction and not damages is the proper remedy. (*Fawcett*, A.J.C.) AYOOB ISMAIL *v.* NARBEAHMAD SULEMAN. 28 I.C. 169.

EASEMENTS ACT (V of 1882), S. 24.

———S. 24—*Dominant owner—Right to do acts to secure enjoyment.*

By the Civil Law the owner of a dominant tenement has a right to do whatever is requisite to secure to himself the fullest enjoyment of his servitude, so long as he does not impose any additional burden upon his servient heritage. (*Knox*, J.) LALA BALBIR SINGH *v.* AMAR SINGH. 39 I.C. 690 (2).

———S. 24—*Accessory right—Right to discharge rain water.*

The accessory rights mentioned in S. 24 of the Act are not intended to deprive the servient owner of his rights of property unless such a result is absolutely essential. Where a plff. having a right to discharge rain water from eaves on defts'. land sued for an injunction restraining him from making any use of his land which would prevent plff. from going upon it for all purposes of repairing the wall of his house supporting the eaves, etc. *Held*, that the plff. could well repair the wall and the eaves from the inside and could not be granted an injunction. (*Beaman and Heaton*, JJ.) HIMAT LAL MAGANLAL SHAH *v.* BHIKABAI AMRITLAL SHAH. 42 Bom. 529=46 I.C. 422= 20 Bom. L.R. 403.

———S. 24—*Rights of dominant and liabilities of servient owner.*

The dominant owner has a right to do everything requisite to secure to himself the fullest advantage of his servitude but thereby he should not impose any additional burden on the servient tenement. (*Broadway*, J.) NAGHIA *v.* EDHAM. 39 I.C. 892=18 P.W.R. 1917.

———S. 24 — *Adjoining house-owners— Right to go to neighbour's land to repair wall —Eaves.*

Where the repair of the wall is reasonably necessary for its enjoyment, the right to go to the neighbour's side of the premises to repair the wall is a necessary easement. The right does not allow going over the deft.'s roof. A person can also enter his neighbour's house or land to protect his eaves which project over the neighbour's house. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) BHAGAVATULA SUBRAMANYA SASTRI *v.* BHAGAVATULA LAKSHMINARASIMHAM. 16 I.C. 893.

———S. 24, Illus. (d)—*Easement—Public way—Dedication.*

Public rights of way are not easement but arise from a dedication to the public evidenced by a deed or implied from custom and user. There can be no right of easement in favour of an indeterminate body of persons. Where the owner of lands renders a way impassable, persons having a right to use the way may

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deviate from it and pass over adjoining land of the owner,provided the deviation is reasonable. (*Batten*, A.J.C.) LAXMAN *v* TUKIA.
44 I.C. 868=14 N.L R. 78.

———S. 27—*Under-ground water-flowing in defined channel—Interference with—Injunction.*

Where water flowing underground in a defined subterranean channel which forms the source of supply for the plaintiff's springs, is abstracted by the defendants by cutting off a channel on their own land very near the springs. *Held*, that the plaintiff having acquired a right of easement to the supply of water through the subterranean channel, could restrain by injunction any attempt to divert the under-ground channel or diminish his water supply. (*Pratt and Fawcett*, JJ.) BABAJI RAMLING *v.* APPA VITHAVJI.
25 Bom. L R. 789=47 B. 809=
1923 Bom. 305.

———S. 28—*Right of way for carts does not include right of way for sweepers—Intention of parties.*

A right of way of one kind, *e g.*, for persons, cattle and carts, etc., does not include a right of way of another kind, *e.g.*, for sweepers removing nightsoil, in the absence of evidence as to the probable intention of parties, and the purpose for which the right was imposed or acquired. (*Macleod*, C J. *and Heaton*, J.) CHINTAMANI HARGOVAN *v.* RATANJI BHIMBHAI.
69 I.C. 426=
22 Bom. L.R. 1131.

———S. 28—*Larger right includes smaller right.*

Where an easement is claimed over another's property the servient tenement should not be saddled with a heavier burden than what the plaintiff has succeeded in proving. But when a particular mode of user is not heavier than the mode of user proved, the plaintiff may be allowed to use it in that particular way, *e.g.*, the user of a way for horses may include the right to lead smaller animals as well but not larger animals or loads. The user of a path for the passage of men, carts and palanquins, may also entitle the dominant owner to take cattle, processions and corpses along the path as the latter user does not add to the burden on the servient tenement. (*Suhrawardy and Cuming*, JJ.) RAM KUMAR MAZUMDAR *v.* MOHIN CHANDRA DUTTA. 66 I.C. 579.

———S. 28—*Pasturage right—Extent.*

If the grazing area is larger than that required by the persons, a proprietor may use the excess for his own purposes. The persons having grazing rights cannot prevent him from developing any excess area and using it to its best purposes. 81 C. 508 P.C.; 86 P.R. 1911, Ref. (*Wilberforce*, J.) KARTAR SINGH *v.* BALLA.
67 I.C. 806=2 Lah. L.J. 44.

EASEMENTS ACT (V of 1882), S. 30.

———S. 28—*Exclusive fishery rights, if includes occupancy right.*

Exclusive fishery rights do not give occupancy right but lease of a holding, part of which is underwater, will give to acquisition of occupancy right in the whole. (*Mullick and Ross*, JJ.) MESSRS. HENRY HILL & CO. *v.* SHEORAJ RAI. 3 P.L.T. 83=1922 P. 9.

———S. 28 (b)—45° *rule—Light—Extent of.*

As regard an easement of light, there is no rule defining the measure of the dominant owner's right or requiring an angle of 45° through which the rays of the sun are to be received. To sustain an action, there must be a substantial privation of light enough to render the occupation of the house uncomfortable according to ordinary notions. (*Walsh*, J.) MT. CHANDAN KUNWAR *v.* NARAIN.
1923 All. 552.

———S. 28 (c)—*Easement of light—Actionable interference—Nuisance.*

The owner or occupier of a dominant tenement in respect of which an easement of light has been acquired by prescription is entitled, not to the full amount of light enjoyed during the prescriptive period, but only to so much of it as will suffice for the ordinary purpose of habitancy or busine s according to the ordinary notions of mankind. There is no infringement of the right unless the obstruction amounts to a nuisance. *Jolly v. Kene*, (1907) A.C. 1, has established that the law as formulated by *Lord Davey* in *Colls v. Home and Colonial Stores* is the law meant to be laid down by that decision. (*Lord Moulton.*) PETER CHARLES EARNEST PAUL *v.* WILLIAM ROBINSON, 42 Cal. 46=18 C.W.N. 933=
27 M.L J. 117=1 L.W. 561=16 M L T 204=
(1914) M.W.N. 631=12 A.L.J. 1166=
24 I.C. 300=16 Bom. L.R. 803=
20 C.L.J. 363=41 I A. 180 (P.C.).

———Ss. 29, 43—*Dominant owner cannot increase burden.*

The height of the roof in the dominant tenement which had an easement of letting down rain water on another's roof, was raised from 7 feet to 21 feet and instead of allowing the dripping of water along the eaves, it was poured down through pipes, *held*, that burden on the servient tenement is increased thereby and therefore the easement is extinguished. (*Adami*, J.) KESHARISAHAY SINGH *v.* NIT NARAYAN SINGH. 58 I.C. 957.

———S. 30—*Partition—Right of way.*

If two houses were common and a certain right of way belonged to the parties, the passage being common then, under the Easements Act, it must be presumed, in the absence of any express agreement between the parties, that at partition, the passage was received for common enjoyment. (*Chandavarkar and Batchelor*, JJ.) NATHUBAI *v.* BAI HANS GAVRI. 36 Bom. 379=16 I.C. 818=
14 Bom. L.R. 418.

EASEMENTS ACT (V of 1882), S. 30.

———S. 30—*Division of dominant heritage —Right to easements become annexed to each share.*

When a dominant heritage is divided between two or more persons the easement becomes annexed to each of the shares, provided that such annexation is consistent with the terms of the instrument under which the division was made. (*Phillips and Devadoss, JJ.*) HOTA VEERABHADRAYYA *v.* VENKATAKRISHNA RAO. (1928) M.W.N. 454= 18 L.W. 404=1928 Mad. 674.

———S. 30—*Right of way—Conveyance of parcels by same grantor.*

Where the same grantor conveys in the course of one transaction portions of his property, to several grantees, each grantee is presumed in law to take his portion subject to such rights as a right of way as are created in favour of the other grantees. "Appurtenances" when used in a conveyance include a right of way. (*White*, C.J. *and Tyabji*, J.) PENUKONDA VENKIAH *v.* SANKA KRISHNA MOORTHY. 38 Mad. 141=(1913) M.W.N. 317= 13 M.L.T. 313=19 I.C. 80=24 M.L.J. 552.

———S. 33—*Diversion of water.*

Where the plff. has a right to pass his rain and sewage water across the deft.'s land to the public drain, the diversion of the old route taken by the water in former days and passing it by another route does not constitute an obstruction to the exercise of plff.'s right. (*Tudball*, J.) LAKSHMI NARAIN *v.* RAM SARUP. 30 I.C. 508=31 A.L.J. 821.

———Ss. 33 and 35—*Disturbance of easement—Remedy— Damages — Interference by law.*

Where an easement has been disturbed, plff. is entitled to an injunction rather than damages. He is not entitled to an injunction except in such cases where he would be entitled to recover damages under Chapter IX of the Act. S. 33 allows compensation to be recovered provided that the disturbance has actually caused a substantial damage to the plff. as explained in that section. *De minimus Non-Curat lex.*—The law does not concern itself with a disturbance which is trivial or immaterial. Where the plff. comes into Court at once, when the disturbance is threatened and the deft. completes his structures pending the suit, he does so at his own peril. (*Tudball and Rafique, JJ.*) GAJADHAR *v.* KISHORI LAL. 28 I.C. 962=18 A.L.J. 385.

———S. 33—*Suit for compensation—Parties.*

It cannot be disputed that, as a general rule where a person claims a right of easement on a servient tenement all the owners of the servient tenement ought to be made parties, as any decree in the absence of a necessary party declaring a right of easement would be infructuous. But there are cases which may well be taken as exception to the general rule, such as where any of the co-sharers took no part in obstructing the plaintiff's right. (*Ghose, J.*) AMRITANATH BISWAS *v.* JOGENDRA CHANDRA BHATTACHARJEE. 1924 Cal. 869.

EASEMENTS ACT (V of 1882), S. 35.

———S. 33—*Light and air—Obstruction—Test of interference.*

The test of interference of the right to light and air is whether the obstruction amounts to a nuisance. (*Chatterjee and Teunon, JJ.*) BANAMALI RAOJ *v.* MUKUND LAL GHOSE. 28 I.C. 959.

———S. 33—*Actionable wrong—Obstruction by servient owner—No remedy against—If no obstruction to the original quantity of light.*

There is no actionable wrong unless there is a material interference with the physical comfort of the plff. or other substantial damage. 33 M. 327 and *Coll's case* (1904) A.C. 179, Foll. If, in spite of an obstruction being created by the servient owner, the same quantity of light still penetrates the ancient windows of a dominant owner the latter has no remedy in equity. (*Pratt, J.C. and Crouch, A.J.C.*) PREMJI LADHA *v.* VISRAM ANNUL. 33 I.C. 615=9 S.L.R. 101.

———S. 35—*Light — Infringement — What amounts to—Nuisance.*

The owner of dominant tenement is entitled to so much light through his ancient windows as is required for ordinary purposes of inhabitancy or business and there is no infringement of the easement if the act complained of is not a nuisance. (*Lord Moulton.*) PETER CHARLES EARNEST PAUL *v.* WILLIAM ROBINSON. 42 Cal. 46=18 C.W.N. 933= 41 I.A. 180=27 M.L.J. 117=1 L.W. 561= 16 M.L.T. 204=(1914) M.W.N. 631= 12 A.L.J. 1166=16 Bom. L.R. 803= 24 I.C. 300=20 C.L.J. 363 (P.C.).

———S. 35—*Form of—Injunction.*

The decree issuing injunction about obstruction to light and air should be given in general terms. (*Das, J.*) JAGANARAYAN DUBEY *v.* BIDAHAT DUBEY. 25 Bom. L.R. 239= 1923 Bom. 196.

———S. 35—*Right of easement—Extent of light and air.*

It is only substantial privation of light enough to make the occupation of the house uncomfortable, according to the ordinary notions of mankind which gives rise to an actionable claim. In the case of business it is necessary that the plff. should be prevented from carrying on his business as beneficially as before. The fact that light received has become less, gives no right. The dominant owner acquires by prescription so much light as is sufficient for the ordinary purposes of inhabitancy or business according to the ordinary notions of mankind with reference to the locality and surroundings concerned and the amount received during the period of prescription is immaterial. Where the raising of a compound wall makes the habitation of a

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neighbour's room uncomfortable, so much of wall as produces this effect will be removed. (*Chatterjee and Panton*, JJ.) HIRALAL DUTTA *v.* MOHANDRA NATH BANERJI. 57 I C. 706.

——S. 35—*Restriction of right—Right of way.*

It is only the inconvenience to the public that justifies restriction of right of way. (*Broadway*, J.) FATEH MAHOMED *v.* MUSSAMAT AMIR DEVI. 2 Lah. L.J. 499.

——S. 35—*Easement—Windows—Right to open—Raising of proof.*

The right to open and shut windows and shutters into adjoining land can be acquired as an easement. The owner of such an easement is entitled to restrain the servient owner by an injunction from interfering with his rights of easement by erecting a wall or a building close to the boundaries. The Court could issue a mandatory injunction directing deft. to lower the roof of his house so as to enable plff. to shut and open the window freely. (*Wallis*, C. J. *and Phillips*, J.) RANGA ROW *v.* RAMTHI LAKAMMA. 45 I C. 435=7 L.W. 332.

——S. 35—*Light and air—Damages.*

When by the closing of certain ventilators in a house a thorough draft for the house and effective ventilation is not allowed, the injury is so serious that the house will be substantially useless. In India the right of air is more important than the right to light; damages will be awarded when the injury is not detrimental to the existence and use of the property. (*Pratt*, J.C. *and Crouch*, A.J.C.) JADOMAL *v.* JESOMAL. 19 I.C. 813=6 S.L R. 255.

——S. 38—*Extinction by release.*

An agreement to build a common wall with holes indicating permission to end the rafters of the next storey which may be constructed, does not imply consent to close ventilators by building such next storey. (*Martineau*, J.) NANDU SHAH *v.* SANT RAM. 1923 Lah. 249.

——S. 38—*Continuous easement—Cesser of enjoyment.*

Permanent alteration in the dominant heritage must be such "as to show that the dominant owner intended to cease to enjoy" the easement in future, and unless such an intention is established the dominant owner cannot be disentitled to the easement on the ground of non-user. (*Sadasiva Iyer and Napier*, JJ.) VELLA CHAMI CHETTY *v.* MUTHU CHETTY. 25 I C. 383.

——S. 38—*Easement of light and air—Agreement by one of co-owners.*

An agreement by one of several co-owners of a dominant tenement to effect a release of an easement is not effectual against the other co-owners. (*Pratt*, J C. *and Crouch*, A.J.C.) MOLUMAL *v.* JAVHERMAL. 19 I C. 908=6 S.L.R. 265.

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——S. 48—*Additional burden—Extinguishment of easement—Alteration of structure.*

Where an additional burden alleged to have been imposed on the servient tenement could be reduced without difficulty to its original limit by the construction or alteration of a structure, the easement is not extinguished. (*Mears*, C.J. *and Banerji*, J.) RAMESHWAR DAYAL *v.* MAHARAJ CHARAN. 44 A. 343=20 A.L J. 202=1922 All. 28.

——Ss. 43, 47—*Change in dominant heritage—Demolition of wall.*

An easement of light and air for windows is not extinguished on demolition of a wall which is re-built without delay may constitute evidence of abandonment. (*Macleod*, C.J. *and Shah*, J.) RATANLAL BHOLARAM *v.* GULAMHUSAN ABDULALLI. 24 Bom L R. 83=46 B. 448=1922 Bom. 3.

——S. 48—*Increase in burden—Onus of proof—Second appeal.*

The owner of an easement is precluded from increasing his right on the alteration of his dominant tenement. In a case, where by change of height, eaves discharge water with increased force, it is held that an additional burden is put upon the plff.'s land; in order to disprove the fact of additional burden on the servient tenement and obtain an easement over it, the owner of the dominant tenement has the onus of proof and has no right to produce expert evidence for the first time in second appeal. (*Mookerjee*, A C J. *and Fletcher*, J.) SURESH CHANDRA *v.* JOGENDRA NATH. 32 C.L.J. 27=38 I.C. 854=24 C.W.N. 896.

——S. 43—*Right to drop water from eaves.*

An owner of the dominant tenement had a right to drop water from his eaves at a distance of seven feet height. He increased the height three times and allowed water to drop through pipes. *Held* that his easement was extinguished by the increase in burden. (*Adami*, J.) KESHARI SAHAY SINGH *v.* HIT NARAYANA SINGH. 38 I.C. 967.

——S. 46—*Extinguishment — Merger — Landlord and tenant—Purchase of holding by landlord—Tenant continuing in possession at enhanced rent—Effect of.*

The unity of the dominant and servient estates in the same person extinguishes the easement appurtenant to the dominant estate for no person can have an easement in land which he himself owns. But unity of title of the two estates will not extinguish an easement, unless the ownership of the two estates be co-extensive equal in validity, quality and other circumstances of right. If there has been unity of possession merely and not unity of seisin for estates in fee simple an easement which has been thereby suspended will revive on severance of the union but if there has been unity of seisin for estates in fee simple and not unity of possession merely, all easements are absolutely

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extinguished and will not revive, unless they are recreated on severance of the former dominant and servient estates. Where though there was an execution sale of the tenancy and a purchase by the landlord, the tenant continued in occupation in the undisturbed enjoyment of the right of irrigation and the only visible result of the sale was that the rent was substantially enhanced. *Held*, that the right of irrigation from the landlord's tank possessed by the tenant was not extinguished but momentarily suspended and revived. (*Mookerjee and Chotzner*, JJ.) TINKARI PATHAK *v* RAM GOPAL PATHAK.
50 Cal. 356 = 36 C L J. 161 = 1923 Cal. 8.

———Ss. 47 and 13—*Easement of necessity — Easement — Extinguishment of—Right to take water from another's well — Dominant owner rebuilding well with permission—Fresh grant.*

The defts. had ancient right of easement to take water from a well in the plff.'s land ; but that easement became extinguished by non-user for a period more than twenty years. The defts. later on repaired the well at their own expense with the permission of the plff. in order to irrigate their land and began to use the water for the purpose. The plff. sued to restrain the defts. from using the water : *Held*, that the easement was not one of necessity, but an ordinary easement liable to be extinguished by non-user for more than twenty years under S. 47. The plff. practically granted a fresh easement to the defts. (*Shah and Hayward*, JJ.) ANANTA MURARAO *v.* GANNU VITHU SURULKAR. 46 Bom. 80 = 57 I.C. 148 = 22 Bom. L.R. 415.

——— S. 47 — *Non-user by agreement—Effect.*

An easement is not extinguished where its user is suspended in pursuance of a contract between the dominant and the servient owners. A person who purchases the servient tenement in an execution sale with knowledge of the easement is bound thereby. (*Shadi Lal*, J.) FATEH CHAND *v.* PARASRAM.
56 P.W.R. 1918 = 45 I.C. 618 = 34 P.L.R. 1918.

———S. 47—*Right of Govt. to claim watercess for water flowing though* Pattah *land—Classification of bed as* poramboke, *if necessary —Right to easement as against Government.*

Water flowing continuously through a rill, *Kuttai* and another water-course may form a natural stream in which easement rights may be acquired as against Government. Once the existence of an easement is proved as against Govt., the Govt. must show under S. 47 that it interrupted that easement more than twenty years ago or that the plff. rendered its use impossible. Mere failure on plff.'s part to repair the breach is not enough. If the Govt. wished to claim right to water flowing through *pattah* land they can do it only when classifying the bed separately as *poramboke* ; otherwise the *ryot* can retain as his property. (*Wallis*, C.J. *and Ayling*, J.) KALIANNA MUDALI *v.* THE SECRETARY OF STATE. 31 I.C. 982.

EASEMENTS ACT (V of 1882), S. 50.

———S. 47—*Easement—Light and air—Abandonment—Non-user.*

Whether a prescriptive right to light and air is lost through abandonment, depends on the intention of the parties to be gathered from the circumstances and the interval of non-user. It is not necessary for the building to enjoy the light, that it should be identical with that which acquired the right, either in structure or the purposes for which it is to be used. 30 Cal. 503; 3 C.W.N. 28, Rel. (*Manuk*, J.) MEWASAO *v.* NASIRUDDIN. 49 I.C. 782.

———Ss. 49 and 51—*Possession as lessee of land—Union of dominant and servient tenement.*

The possession of land claimed to be subject to an easement for more than twenty years by the dominant owner as demisee operates as a union of the dominant and servient tenement in the claimant. The easement is suspended during this time. If the suspension continues for twenty years, the easement is destroyed. The right to an easement cannot be held to have been enjoyed separately during the period of the lease. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) KANDANATH *v.* CHEMBOLI VALIA VEETIL. 16 I.C. 378 = (1913) M.W.N. 95.

———S 50—*Discharge of water over servient tenement—Whether servient owner can insist on.*

The owner of a servient tenement over which the dominant owner had acquired a right to discharge his water, cannot insist that the water should be continued to be so discharged. (*Chitty and Walmsley*, JJ.) BALLAVE *v.* BEPIN BEHARI. 46 I.C. 24.

———S. 50—*Servient owner if can compel dominant owner to continue to enjoy the easement.*

An easement exists only for the benefit of the dominant tenement and a servient owner gets no right to insist on its continuance or to sue for damages on its abandonment. 2 C.L.R. 141, Rel. (*Mookerjee and Beachcroft*, JJ.) ALTAFUDDIN *v.* ASOKHADEN. 17 C.W.N. 1066 = 20 I.C. 315 = 18 C.L.J. 131.

———Ss. 50 and 22—*Scope.*

Every land-owner has a natural right to collect and retain upon his own land the surface water not flowing in a defined channel and put it to such use as he may desire. He may also allow it to flow away in the usual course or nature upon the lower lands of his neighbour and cannot be bound to prevent it from so doing. He cannot do this, however, by an artificial discharge upon his neighbour's land unless he has acquired such an easement which his neighbour is bound to submit to. If he should acquire such an easement, the owner of the servient tenement acquires no reciprocal rights as against the owner of the dominant tenement with regard to the flow of

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surface water, that is, water not passing through a defined channel. The owner of the servient tenement cannot compel the owner of the dominant tenement to continue the exercise of his right even where that right has been exercised uninterruptedly for over 20 years and even if its exercise should be beneficial to the servient tenement. Before the right to the use of water can be the subject of an easement by prescription or grant it must be water flowing through a defined and permanent channel. The essential features from which a grant or arrangement whereby the right claimed may be presumed to rest in some legal origin are that there should be a permanent channel, artificial or otherwise, or indeed a defined channel of any sort conducting the overflow of water and that the overflow should be controlled or directed in any particular course. 6 I. A. 33, Foll. (*Dawson Miller*, C.J. *and Mullick*, J.) MT. SARBAN *v.* PHUDO SAHU. 4 P L T 81 = 2 P. 110 = (1922) Pat. 308 = 1923 P. 65.

———S. 51—*Dominant tenement rebuilt—Additional burden—Whether can be imposed.*

When a dominant tenement is rebuilt, the dominant owner has no right to impose a greater burden on the servient tenement than the prescriptive quantity of the right enjoyed. Blocking up an old window and building another of the same dimensions in another place is an imposition of a burden on the servient tenement which was not existing till then. But the right of the dominant owner under the common law to free access of light and air through an ancient window is not lost by shifting the window backwards or forwards (*Pratt*, J C. *and Crouch*, A.J.C.) PREMJI LADHA *v.* VISRAM ANNUL. 33 I.C. 615 = 9 S.L R. 101.

———S. 52—*Licensee—Rights of.*

A licensee is a person without any title and has no interest in the land. (*Tudball and Walsh*, JJ.) BASUDEO RAI *v.* DWARAKA RAM. 38 All. 178 = 32 I C. 346 = 14 A L.J. 137.

——— Ss. 52 and 60—*License—Weighman in a market—Allowed to continue as such in a new market—Exclusion privileges.*

A weighman in an old market, allowed by Govt. to continue the same calling in the new market, does not acquire any exclusive privilege and is only a licensee. (*Richards*, C.J. *and Banerji*, J.) SECRETARY OF STATE *v.* KANHAIYALAL. 23 I.C. 922 = 12 A.L.J. 447.

———S. 59—*License — Enjoyment for a long time—No adverse possession.*

A licensee cannot by enjoying the license for any length of time acquire rights adverse to that of the licensor. Where certain tenants of a Zamindar built thatched sheds on waste lands with his permission but these sheds were not appurtenant to their holdings, the tenants did not acquire a right adverse to the Zemindar and the latter could revoke the license at his pleasure. (*Mears*, C. J *and Gokul, Prasad*, JJ.) BHOJ RAJ *v.* HARDEVA. 44 A 726 = 20 A.L.J. 608 = 1923 All. 140 (1).

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——— Ss 59 and 60—*Transferee of licensor—Right of—Revocation.*

The transferee of a licensor cannot revoke a license, when the licensee has effected a work of permanent character and incurred expenses. (*Chamier and Piggott*, JJ.) RAS BEHARI LAL *v.* AKHAI KUNWAR. 37 All. 91 = 26 I.C. 445 = 13 A.L.J. 1.

———S. 60 — *License when revocable — Licensee not liable to ejectment on denying Licensor's title.*

A licensee in possession does not, like the tenant, by denying title of the grantor of the license forfeit the license and become liable to ejectment. 15 A.L.J.R. 592, Ref. (*Stuart*, J.) MT. DURGA *v.* BABU RAM. 1923 All. 403.

———S. 60 — *License — Revocation of—Coupled with grant.*

Where a license coupled with a transfer of property is granted, the transferee of the licensor is not entitled to revoke such license. The law on the subject is the same after the passing of the Act V of 1882. 16 C. 619, Ref. (*Knox*, J.) PARTAB SINGH *v.* DHUM SINGH. 30 I.C. 551 = 13 A L.J. 886.

———S. 60—*Licensor and licensee—Obligation of licensor — License coupled with interest.*

The grantor of a license is under an obligation to place the licensee in a position to enjoy the license. An appropriation of the land licensed to any use inconsistent with the enjoyment of the license works a revocation and the licensee may maintain an action for damages against the licensor for breach of contract in unlawfully revoking it. A license to catch elephants for consideration is not revocable for it is a license coupled with an interest. Where there is a grant of an exclusive right to catch elephants within a specified area for a specified period it does not follow as a matter of course that the grantee would be entitled to exclusive occupation of the entire territory during that time. (*Mookerjee and Chotzner*, JJ.) KINGSLEY *v.* THE SECRETARY OF STATE FOR INDIA. 36 C L J. 271 = 1923 Cal. 49.

———Ss. 60 and 63—*Building license—Effects of revocation.*

A licensee permitted to build a house and reside therein is entitled to be indemnified if evicted by the licensor's successor. A bare license may be revoked at the grantor's will and on reasonable notice, but a license coupled with grant is irrevocable. A license, allowing structures to be built, cannot be revoked unless the licensee is compensated. (*Mookerjee and Beachcroft*, JJ.) MOTI LAL ROY *v.* KULU MANDAL. 19 I.C. 853 = 19 C.L.J. 321.

EASEMENTS ACT (V of 1882), S. 60.

———S. 60—*License—Breach of contract—Revocation—Damages*

A licensee is entitled to damages for breach of any contract or for an improper revocation of his license in a proper case; the Court will allow revocation only on payment of the expenses incurred by the licensee. (*Spencer and Krishnan JJ.*) ZAMINDAR OF BODOKIMIDI *v.* SEESIL KUMAR LAHIRI. **49 I.C. 811 = (1918) M.W.N. 772.**

———S. 60—*License—Death of licensor—Revocation.*

Under the Easements Act a license is of a personal character not merely as regards the grantee, but also as regards the grantor. It ceases the moment the property passes to another from the grantor whether by inheritance or otherwise. The heirs of the licensor may treat the licensee as a trespasser and eject him without notice of revocation. (*Kotval, A.J.C.*) KARELAL *v.* BADRIPRASAD **18 N.L.R. 76 = 1922 Nag. 162.**

———S. 60—*License with void grant—When revocable.*

A license coupled with a void grant is revocable save (1) when the licensee entered into occupation and paid rent and (2) when the licensee acting on the license has executed a work of permanent character, and incurred expense in so doing. (1852) 21 Ch. D 9; (1901) 2 Ch. 598 and 8 A. 60, Ref. to. A licensee is in its nature revocable but a license coupled with a grant is irrevocable. 34 I.C. 471, Ref.; 16 Cal. 640. (*Stanyon, A.J.C.*) NARSINGDAS *v.* RATAN LAL. **34 I.C. 471 = 12 N.L.R. 76.**

———S. 60—*Execution of permanent works by licensee on land of licensor—No right to revoke license.*

Where plff. allowed deft. to execute on plff.'s land an irrigation scheme of considerable expense and permanent benefit to a very large number of villages, *held*, that the agreement created a license which could not be revoked at the instance of the plff. (*Jwala Prasad and Imam, JJ.*) THE SECY. OF STATE *v.* HIRA NAND JHA. **47 I.C. 166.**

——— S. 60 (b)—*Revocation of license.*

A license cannot be revoked during licensee's lifetime when the licensee has made permanent improvements (*Mitra, A.J.C.*) MADHUSUDAN DAS *v.* BISSUJI. **48 I.C. 723.**

———Ss. 63 and 64—*License for building house—Infringement of terms.*

In the absence of anything showing the restriction as to the method of building by a licensee, of a land set for building purposes, there is no warrant to hold that the license was granted to build in a particular manner. (*Tudball and Kanhaiya Lal, JJ.*) GHOREY *v.* SHIBLAL. **18 A.L.J. 781 = 38 I.C. 410 = 2 U.P.L.R. (All.) 266.**

ECCLESIASTICAL LAW.

———S. 69—*Eviction—Notice to quit.*

A suit for ejectment of a licensee is maintainable without notice to quit even though the licensee has erected huts on the land. (*Richardson and Walmsley, JJ.*) GOBINDA CHANDRA GHOSE *v.* NANDADULAL SUT. **27 C.L.J. 523 = 45 I.C. 317.**

EASTERN BENGAL TENANCY ACT (VIII OF 1885).

———S. 22 (2)—*Bengal Tenancy Act, sch. III, art. 3—Limitation.*

Where S. 22 (2) of the Eastern Bengal Tenancy Act applies, the special rule of two years limitation in sch. III. art. 3 of the Bengal Tenancy Act does not apply. (*Woodroffe and Mullick, JJ.*) INUTULLAH DAFTRY *v.* MOISON ALI. **23 I.C. 415.**

———S. 147 A—*Rent suit — Compromise decree—Additional land given and new rent settled—Non-compliance with section—Objection in execution cannot be raised.*

In a suit for rent, a decree was made on compromise and the tenant took some additional land and a rent was fixed for the area formerly held by him together with the added area. When execution was sought objection was taken on the ground of non-compliance with S. 147-A of the Eastern Bengal and Assam Tenancy Act. *Held*, the objection raised as to the validity of the decree could not be raised in execution proceedings. 17 C.W.N. 496. Dist. (*Chatterjee and Newbould, JJ.*) HEM CH. CHOUDHURY *v.* CHANDRA MOHAN NAMODAS. **60 I.C. 204 = 24 C.W.N. 1070.**

———S. 170 (4) — *Non-transferable occupancy holding—Purchaser—Execution sale—Rights of landlord.*

The section does not debar the landlord when he has himself purchased the holding at a sale in execution of a decree of arrears of rent due thereon, from challenging the right of the purchaser, not recognised by him, to make the deposit on the ground that as against him such purchasar has acquired no title and therefore cannot apply under O. 21, r. 89, C.P.C. (*Chatterjee and Greaves, JJ.*) ABDUL RAHMAN SARKAR *v* PROMA BIHARI DUTT. **22 C.L.J. 108 = 28 I.C. 182 = 20 C.W.N. 40.**

EAST INDIA COMPANY.

See (1) GOVT. OF INDIA ACT.
(2) SECRETARY OF STATE.
(3) TORT.

EAVES.

See EASEMENT.

ECCLESIASTICAL LAW.

——— *Established church—Ordinary Courts of law—Roman Catholic Church—Voluntary association—Rules of Branch association different from parent body—Custom—Proof of.*

The Church of England is an established church and is therefore subject to the ordinary

ECCLESIASTICAL LAW.

Courts of law in matters temporal as well as matters of doctrine. The Roman Catholic Church is not an established Church but a voluntary association and any member who joins that church will be bound by any rules which it has framed for its internal discipline and management. If a branch of voluntary association has adopted rules which materially differ from those of the parent body, the members of that association will not be members of the parent body but will be an independent organisation with their own rules. The Canon Law recognises no distinction between the spiritual and temporal powers of the Papacy and the Episcopate, and a member of any church which is part and parcel of the Universal Catholic Church would be bound by the Canon Law. If a church while adopting in the main the doctrine of the Catholic Church has yet framed rules different from the rules of the Catholic Church in matters of discipline and management, those rules must be proved in the same way in which a custom would have to be proved in a Court of Law. Questions of custom though they may, in the end, become questions of law are at the outset necessarily questions of fact. (*Ayling and Coutts-Trotter*, JJ.) GASPARI LOUIS *v.* REV. FR. O P. GONSALVES. 38 M.L J. 407 = (1918) M.W.N. 842 = 47 I.C. 941 = 8 L W. 208.

———*Congregation—Right of — Pollution of church—Powers of Bishop.*

According to English law, customary rights have all features in common *viz.*, that however large the community enjoying them and however frequent the exercise of the right, they never amount to a continuous and complete deprivation of the owner of the soil of his natural right of user and further the custom has always arisen in the close and has no other origin The congregation has no power to select what canons to follow and what to disregard or to adopt rules for the conduct of ceremonial observances at variance to the canons of the church so long as they profess allegiance to the same. 1 Moo. P.C. 411 (N.S.); 7 A.C. 484, Expl. A Bishop, with absolute right of control over his flock cannot contract himself out of his rights prospectively so as to prevent his successors from exercising the same authority. The sentiment of pollution in a Christian church indulged in by so called caste Christians is not such spiritual or temporal injury as can be recognised as a legal injury giving rise to a Civil cause of action. (*Sadasiva Iyer and Napier*, JJ.) KATHALAI MICHAEL PILLAI *v.* J.M. BARTHE, 39 Mad. 1056 = 19 M L T. 249 = 30 M L.J. 423 = 3 L W 348 = 34 I.C. 587 = (1916) 1 M.W.N. 307.

EDUCATION, EXPENSES OF.

See HINDU LAW—JOINT FAMILY.

EJECTMENT.

See also LIM. ACT, ARTS, 142 AND 144.

EJECTMENT—Burden of Proof.

BURDEN OF PROOF.
CO-SHARERS.
DECREE, FORM AND EFFECT.
DEFENCE.
ENDOWMENTS.
JOINDER OF PARTIES.
JUS TERTII.
NOTICE.
PLEA OF POSSESSION.
PROOF OF TITLE.
TENANTS.
TRESPASSERS.
MISCELLANEOUS.

Burden of Proof.

———*Burden of proof—Cr. P.C., S. 145—Survey proceedings.*

Where plaintiff failed in Cr. P.C. S. 145 proceedings to prove possession and also in survey proceedings. *Held*, the onus thus lay heavily on the plaintiffs to show that the defendant was not in possession of the properties by virtue of the title he alleged in the previous proceedings (*Mr Ameer Ali*). (RAJA INDRAJIT PRATAP BAHADUR SAHI *v.* AMAR SINGH. 45 M.L J. 878 = 18 M.W.N. 728 = 25 B L R. 1259 = 4 P L.T. 447 = 1 Pat. L R. 345 = 21 A.L.J. 864 = 2 Pat. 676 = 50 I.A. 183 = 33 M.L.T. 233 = L R. 4 A (P.C) 123 = 8 L.R. P.C. 8 = 28 C W.N. 277 = 1923 P C. 128.

———*Burden of proof—Title—Proof of—Essential.*

In a suit in ejectment the Court is not concerned with the title of deft. unless plff. proves his own title. In a suit for recovery of temple and its properties as *mahant*, the plff. must prove his appointment. (*Sir John Edge*). LAHAR PURI *v* PURAN NATH. 37 All. 298 = 42 I.A. 116 = 19 C.W.N. 718 = 21 C.L J 499 = 17 Bom. L R. 475 = 18 M L T. 39 = 29 M.L.J. 75 = 2 L W. 689 = 29 I.C. 734 = (1915) M.W.N. 626 (P.C.).

———*Burden of proof—Title—Strict proof.*

In an ejectment suit plff. must strictly prove his title. (*Mr. Ameer Ali*). RAMCHANDRA MARTAND WAIKAR *v.* VINAYAK VENKATESH KOTHEKAR. 43 Cal. 884 = 43 I.A. 290 = 27 M.L.J 333 = 18 C W N. 1184 = 1 L W. 831 = 16 M.L.T. 447 = (1914) M.W.N. 833 = 10 N.L.R. 112 = 16 Bom. L R 868 = 13 A L J. 1281 = 26 I.C. 290 = 20 C.L.J. 573 (P.C.).

———*Burden of proof—Title of plaintiff—Strict proof of—Essential—Defect in title appearing on the records—Duty of Court to take note of.*

A plff. in an action of ejectment must recover by the strength of his own title and not of the weakness of his adversary. A plff. suing to recover possession on a title derived from an agreement with the owners must prove his present right to possession under the agreement. Any other right or interest that he

EJECTMENT—Burden of Proof.

may have in the subject-matter of the suit is irrelevant. Where the object in the plff.'s title appears on the face of the documents on which the plff.'s case rests, the Court would dismiss the suit in ejectment, although the point had not been fully raised in the Court appealed from. (*Lord Atkinson*) BASANT SINGH *v.* MAHABIR PERSHAD.

35 All. 273=40 I A. 86=16 O.C. 136=25 M.L J. 301=14 M.L.T. 64=17 C W N. 669= (1913) M.W.N 481=11 A.L J. 469=17 C.L J, 866=19 I C, 340=16 Bom. L R. 526 (P.C.)

[An appeal from 12 I.C. 347=14 O.C. 299.]

——*Burden of proof—Suit for ejectment—Necessary proof.*

Where the plffs. who are raiyats allege termination of tenancy of their under-raiyats by notice, they must not only prove that they are landlords and the defts. their tenants, but also the status, *viz.*, that they are raiyats and the defts. their under-raiyats whose tenancy can be and is terminated by notice. (*Ashutosh Mookerji*, A.C.J. *and Fletcher*, J.) ABHOY CHARAN DATTA *v.* FUTTARI DASI.

57 I.C. 833.

——*Burden of proof — Title — Proof of, essential.*

Failing to prove his title, plff. could not recover the property even though the defts. were in possession without title. (*Chatterjee and Duval*, JJ.) AITI KOCHUNI *v* AIDEW KOCHUNI **34 I C. 698=24 C W.N. 173.**

——*Burden of proof—Title—Proof of—Shifting of onus.*

Where the plff. sues for ejectment on establishment of his title the onus is primarily on him to prove his title. But when he makes out a *prima facie* case for establishment of his title and deft. seeks to contradict his case by establishing title of his own, it is for deft. to prove the title he sets up, whether it be *Lakheraj* or any other kind of title. (*Newbould*, J.) DURGA CHARAN BISWAS *v.* KAILASH CHANDRA DAS. **34 I.C. 645.**

——*Burden of proof—Plff.'s duty.*

The purchaser of an estate, at revenue sale cannot by suit oust the deft. from lands which though not included in the estate claimed by them, are equally outside the estate purchased, on the principle that the plff. suing in ejectment must prove his own title. (*Mookerjee and Roe*, JJ.) BAIKUNTHA NATH RAI *v.* BASANTA KUMARI DASI. **34 I.C. 946=28 C.L.J. 151.**

——*Burden of proof—Title—Proof of onus on plff.*

In a suit in ejectment plff. has to recover on the strength of his own title and cannot rely on the weakness of the deft.'s title. (*Mookerjee and Chapman*, JJ.) NOGENDRA MOHAN RAY *v.* PYARI MOHAN SAHA. **43 Cal. 103=20 C.W.N. 319=20 I.C. 420=21 C.L J. 605.**

EJECTMENT—Burden of Proof.

——*Burden of proof—Title—Proof of, by plaintiff, essential.*

In a suit in ejectment the plff. must succeed on the strength of his own title. (*Ghosh and Pratt*, JJ.) MOHAMED FAIZ CHOWDHURY *v.* KASHI NATH. **27 I.C. 13=20 C.L.J. 310.**

——*Burden of proof — Title—Proof of—Onus.*

In a suit for ejectment, the plff. must prove his title and possession within the statutory period. The burden of proof may, however, be shifted to the other side if he starts with a presumption in his favour. (*Carnduff and Chapman*, JJ.) GOPAL MONI *v.* KALI CHARAN. **16 I.C. 17.**

——*Burden of proof—Title—Plff. must establish title.*

In a suit for possession the plff. must establish a title superior to that of the defts. by proof of the most unimpeachable character. (*Shah Din*, C.J. *and Le Rossignol*, JJ.) SAFA CHAND *v.* LAJWANTI **42 I.C. 103=180 P.W.R. 1917.**

——*Burden of proof—Trespasser.*

A plff. must prove his own title before ousting trespasser even though the latter has no title. (*Chevis*, J.) PREM SINGH *v* MOKAND SINGH. **30 P.W.R. 1912=13 I.C 62=22 P L.R. 1912.**

——*Burden of proof—Shifting of onus.*

In an ejectment suit, the burden is on the plff. to prove his title, which if *prima facie* proved the onus shifts on the deft. to discredit the title-deed. 2 C. L. R. 48; 8 Cal. 759, Dist. (*Sankaran Nair and Ayling*, JJ.) SUKIRA NAINER *v.* VIRASWAMI PILLAI. **23 I.C. 815.**

——*Burden of proof.*

In an ejectment suit by an *inamdar* the burden of proving the title is on him. (*Bashyam Aiyangar and Moore*, JJ.) VENKATA SUBBARAYA *v.* DARAPPAREDDI. **9 I.C 566=9 M.L.T. 213.**

——*Burden of proof.*

In a suit to recover possession on the ground of dispossession, the burden of proving possession within twelve years from the commencement of the suit is on the plff. He must succeed on his own title and must not rely on the defect in title of his adversary. (*Drake Brockman*, J. C.) CHAMPAT *v.* LAXMI NARAYAN. **48 I C. 70.**

——*Burden of proof—Title and possession.*

Where the action is in ejectment it is incumbent upon the plaintiffs not only to prove their title but also they have been in possession within twelve years of the date of the suit. (*Das and Kulwant Sahay*, JJ.) BABU CHATRAPAT PRATAP BAHADUR SAHI *v.* C. G. LEES. **1 P.L.R. 322=4 P L.T. 487=1923 P. 558.**

EJECTMENT—Burden of Proof.

———*Burden of proof—Title—Possession—Proof of—Presumption.*

It is only in cases where there is no evidence of the plaintiff as to dispossession or, what amounts to the same thing, where the evidence is valueless, that the plaintiff fails to make out his case by merely proving that he had an antecedent title and possession. If from the evidence given by both sides the Court has a difficulty to come to a definite conclusion or if the Court considers that evidence is not altogether satisfactory, in such circumstances, the Court can give weight to the probabilities of the case or to any presumption which might properly arise from the fact that the plaintiff had previously been in possession and had title (*Miller*, C.J. *and Mullick*, J.) TIAN SAHU *v.* MULCHAND SAHU. 2 P 1= 3 P.L T. 460=1922 P. 432.

———*Burden of proof—Onus on defendant to prove better title.*

Where a person in possession of a property is dispossessed by another the onus is on the latter to show that he had better title than the former. 2 P.L.J. 61, Ref. (*Jwala Prasad*, A.C. J. *and Das*, J.) AWADH BIHARI DIKSHIT *v.* JITU SAHU. 64 I.C. 243.

———*Burden of proof—Plff. to rely on the strength of his own title.*

It is the strength of his own title, and not the weakness of the deft.'s title, that should support the plff. in a suit for ejectment. (*Jwala Prasad*, J.) GHASITA SINGH *v.* BHAGMANI KOER. 37 I.C. 924.

———*Burden of proof—Title—Proof.*

If a person suing in ejectment wants to succeed, he must strictly prove his title (*Chamier*, C.J. *and Jwala Prasad*, J.) ADIT NARAYAN SINGH *v.* KAHABIR PRASAD TEWARI 1 P.L.J. 324=(1917) Pat. 12= 38 I.C. 687=2 P.L.W. 317.

———*Burden of proof—Deft.'s title not lost by waiver of rights by a third party.*

In a suit for ejectment plff. must prove his own title. No title can be acquired against the deft., by a waiver of rights by a third party not binding on that party, the more so, when such waiver is, to the knowledge of the Court, false. (*Roe and Jwala Prasad*, JJ.) DURGA BAI *v.* SOBBA SINGH. 35 I.C. 627.

———*Burden of proof—Proof of title—Onus on plaintiff.*

A person not in possession ought to show a better title to the property from which he seeks to eject the person in possession. (*Ormond*, J.) MAUNG PO JIN *v.* MG NI. 29 I.C. 866=8 Bur. L.T. 72.

Co-sharer.

———*Co-sharer—Agreement to finance litigation—No present interest in property—No right to sue in ejectment.*

EJECTMENT—Co-sharer.

A plff. suing to recover possession on a title derived from an agreement with the owners must prove his present right to possession under the agreement. The agreement in question provided that the respt. was to be a co-sharer with two plffs., that he would finance the litigation by them and that in the event of success he would be entitled to the proprietary possession of the share stipulated. *Held*, that the agreement conferred on the respt. no present right in the property in suit and that he could not join in bringing or continue a suit in ejectment in respect thereof. 32 I.A. 113. Dist. (*Lord Atkinson*). BASANT SINGH *v.* MAHABIR PERSHAD. 33 All 273=40 I.A. 86= 16 O.C. 186=25 M L J 301=14 M.L.T. 64= 17 C.W.N 669=(1913) M W N. 481= 11 A L.J. 469=17 C L J. 866= 19 I.C. 340=18 Bom L.R. 525 (P.C.).

[On appeal from 12 I.C. 347=14 O.C. 299.]

———*Co-sharer—Trespasser on land.*

One of the co-sharers can sue to eject a trespasser from the joint land. (1901) A.W.N. 96, Foll. (*Lindsay and Kanhaiya Lal*, JJ.) SRI THAKUJI *v.* HIRA LAL. 44 All. 634= 20 A.L.J. 609=L.R. 3 A. 381=1922 All. 408.

———*Co-sharers—Suit by one of several persons jointly interested.*

One of several persons jointly interested is entitled to sue a trespasser where the removal of the trespasser is necessary for the enjoyment by the plff. of his rights. (*Chamier*, J.) ROHAN SINGH *v.* ASHANI BEGAM. 17 I.C 469= 10 A.L.J. 518.

———*Co-sharers—Right of one sharer to sue—Joint possession.*

A person entitled to an undivided half-share of a piece of land cannot sue to eject any body from the whole of it. But he can sue for recovery of joint possession of the eight annas share and to enforce his right by a partition if he was not satisfied with the delivery of possession of an undivided half-share. (*Coxe and Chatterjee*, JJ.) GAJADHAR AHIR *v.* BHIKARI LAL. 27 I.C. 228=18 C.W.N. 1011.

———*Co sharers — Co-sharers landlord whether can eject tenant.*

A co-sharer landlord cannot by himself sue to eject a tenant but he can so sue to eject a trespasser. (*Coxe*, J.) GANODANNESSA BIBI *v.* MAKSEDDANNESSA BIBI. 11 I.C. 84.

———*Co-sharers—Right of suit—Co-owner in possession.*

An ejectment suit by one co-owner in whose sole name the lease was granted and by whom exclusive title was set up on the basis of the lease, is not maintainable although if he had not questioned the title of the other co-owners he might have been considered as holding on his own behalf as well as of the others. The consent of the others given in second appeal would not matter. (*Chatterjee*, J.) BROJONATH *v.* UDAY CHANDRA. 9 I.C. 487.

EJECTMENT—Co-sharers.

———*Co-sharer.*

The question whether a co-sharer occupying a portion of the joint land without denying the joint character thereof should be allowed to retain it until partition in the case of *abadi* land when that land has been reduced to a minimum area barely sufficient for the common purposes of the village was raised but was not decided. The highest Court of appeal may allow the amendment of the plaint. (*Shadi Lal*, C.J. *and Leslie Jones*, J.) MANJI ASHAQ ALI *v.* GHULAM MAHOMED.
3 Lah. L.J. 75.

———*Co-sharers—Co-heirs—Suit by some only—Relief.*

Where some only out of several heirs of a deceased proprietor bring a suit for possession of the property left by him they can recover their shares of the estate and not the whole estate. (*Shah Din*, C.J. *and Le-Rossignol*, J.) BHARI *v.* KHANNU. **44 I.C. 162=7 P.R 1918.**

Decree, form and effect.

———*Decree, form and effect—Decree for redemption.*

In a suit for ejectment the Privy Council passed a decree for redemption of the mortgages to which the property was held to be subject on terms as to costs with a view to the shortening of litigation. (*Lord Shaw*). RICHARD ROSS SKINNER *v.* KUNWAR NAUNIHAL SINGH.
35 All. 211=40 I.A. 105=25 M.L.J. 111=(1918) M.W.N. 500=13 M.L.T. 488=11 A.L.J. 494=17 C.L.J. 555=15 Bom L.R. 502=19 I.C. 267=17 C.W.N. 853 (P.C.).

———*Decree, form and effect—Failure to prove exclusive title by co-owner—Joint possession, if could be decreed.*

A decree for joint possession of joint property can be given where plaintiffs alleged but failed to prove exclusive title to certain fraction of the joint estate and where the defendants asserted their exclusive title but it was found that they have no such exclusive title. (*Shadi Lal*, C.J. *and Leslie Jones*, J.) MANJI ASHAQ ALI *v.* GHULAM MAHOMED. **3 L.L.J. 75.**

———*Decree, form and effect.*

In an ejectment suit the decision of the Rev. Court that the plff. is an under-proprietor simply means that he has made out a *prima facie* claim to under-proprietary rights and it is no bar by the deft. to a suit in the Civil Court for a declaration that plff. is not an under-proprietor. (*Holms*, S.M.) KRISHNA PAL SINGH *v.* RAM DULARI. **34 I.C. 763=3 O.L.J 234.**

———*Decree, form and effect— Suit for possession.*

In a suit for ejectment from and possession of a house, the decree should be for possession of the whole and not a part. (*Kincaid*, J.C. *and Kennedy*, A.J.C.) HUSSAN LAL MUHAMMAD *v.* BACHAL AJI NATH. **62 I.C. 860=15 S.L.R. 79.**

EJECTMENT—Joinder of Parties.

Defence.

———*Defence—Notice — Rent— Entry — Wrong.*

When there has been no enhancement of rent in fact, but simply by a clerical error the rent is shown as enhanced in the partition papers, the tenant cannot avail of the wrong entry and set up a fresh statutory period from the time of the partition, though in the notice of ejectment served on him the amount of rent entered in the partition papers is put down. (*Campbell*, J.M.) ACHAIBIR SINGH *v* DALIP SINGH. **33 I.C. 234=2 O.L.J. 717.**

———*Defence—Plea of permanent tenancy—Court, whether bound to enquire.*

In a suit in ejectment, where the deft. sets up a plea of permanent tenancy the Court is bound to enquire into its truth and record a finding thereon. (*Maung Kin*, J.) MA SHWE YAT AUNG *v.* MAUNG DALI.
9 Bur. L.T. 152=33 I.C. 888=9 L.B.R. 27.

———*Defence—Grounds.*

A purchaser under an unregistered sale of immoveable property let into possession by the vendor, cannot plead his possession as a defence to a suit in ejectment by one having legal title to recover. 29 Mad. 336, Foll. (*Maung Kin*, J.) MAUNGBO *v.* MAUNG TUN BYU. **33 I.C. 121.**

Endowments.

———*Endowments—Tenants on—Equitable relief.*

In a suit for ejectment, the defts. building shops on wakf property are entitled to the value of the buildings when *Mutawalli* allowed them to remain for a long time. (*Chevis and Leslie Jones*, JJ.) FAZI ILAHI *v* ZAFAR ALI.
32 I.C. 558=86 P.W.R. 1916.

———*Endowments—Title—Invalid alienation.*

An alienee, who does not obtain any valid rights under the alienation (i.e.) transfer of *debutter* property cannot maintain a suit for possession. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) KOOLAPPA ROWTHER *v* APPU ASARI. **17 I.C. 736.**

———*Endowment—Ejectment suit—Proof.*

The plff. in an ejectment suit for recovery of property alleged to have been appropriated by way of endowment for the upkeep of endowed property must make out as strong a case as one who wishes to set aside alienation of endowed property. (*Lindsay*, J.C. *and Stuart*, A.J.C.) ABDUL SHAFUR *v.* SHIAM SUNDAR DAS. **17 I.C. 303=16 O.C. 76.**

Joinder of Parties.

———*Joinder of parties—Suit—Parties.*

In a suit for ejectment all the parties in actual possession whom it is desired to eject, should

EJECTMENT—Joinder of Parties.

be made defts. (*Richardson and Beachcroft*, JJ.) SATISH CHANDRA SARKAR *v.* BROJO GOPAL DUTTA. 46 I.C. 104=22 C.W.N. 807.

———*Joinder of parties—Necessary parties.*

In an ejectment suit the transferee of the tenancy right and tenants holding as transferee's sub-tenants are necessary parties. (*Holmwood and Imam*, JJ.) MEAH UZIR ALI SARDAR *v.* SAYAI BEHAR. 43 Cal 939= 32 I.C. 791=20 C.W.N. 547.

———*Joinder of parties—Person in receipt of rents and profits.*

All persons who are actually in physical possession of the property should be made defendants to a suit for ejectment. It is neither necessary nor proper to join any person who is merely in receipt of the rents and profits of the land. (*Ross*, J.) BABU POONIT SINGH *v.* KAMAL SINGH. 72 I.C. 1038.

———*Joinder of parties — Non-joinder of person under whom defendant holds—Effect.*

A decree for possession can be given in an ejectment suit against the person in juridical possession, even if for some reason or other, the plaintiff does not implead or claim any relief against the party who has put the defendant in actual possession of the land. (*Das and Adami*, JJ.) BHAGWATI KUER *v.* JAGDAM SAHAY. 3 P.L.T. 429=6 P L J. 604= 1922 P. 352.

Jus tertii.

———*Jus tertii—Co-sharer in possession of whole.*

Plea of jus tertii cannot be set up by a trespasser against a lessee from one who obtained title to the property by adverse possession. (*Fletcher and Smither*, JJ.) BASI RUDDI SHEIKH *v.* MOBARAK MUNSHI. 40 I.C. 157.

———*Jus tertii—Plea of.*

A person claiming as an heir to the last male owner is entitled in a suit by Crown for ejectment on the ground of escheat to plead jus tertii. 12 M.I.A. 448, Rel. (*Wallis*, C.J. *and Seshagiri Aiyar*, J.) SECRETARY OF STATE *v.* SUBRAYA KARANTHA. 18 M L T. 505= 2 L.W. 1175=31 I C. 590= (1915) M.W.N. 982.

———*Jus tertii — Trespass by stranger—Possession—Title.*

As against a trespasser possession is title if it was obtained peacefully and jus tertii could not be set up. *Quære.*—Whether if plff.'s possession was forcible, he could recover possession against deft. (*Sadasiva Iyer and Napier*, JJ.) NALLAGONDAPEDDA *v.* ASUPALLEE BUDDA REDDY. 2 L W. 912=18 M L.T. 343= 31 I.C. 55=(1915) M.W.N. 815.

———*Jus tertii—Title—Plaintiff must prove.*

A plaintiff seeking to oust a trespasser in possession must prove his own title and cannot rely upon the defendant's failure to plead jus tertii. (*White*, C.J., *and Sankaran Nair*, J.) KANAKAMMAL *v* ANANTHAMATHI AMMAL. 23 I C. 901=37 Mad. 293.

———*Jus tertii—Joint trespassers.*

A deft. who is sued as trespasser can rely upon the title of his co-deft. if both are alleged to have been acting in concert, even though his own derivative title is not proved. (*Mitra*, A.J.C.) BHAO SINGH *v.* MAHIPAT. 47 I C. 550.

———*Jus tertii—Third party disclaiming interest.*

Where the plff. sues to eject the deft. and the deft. sets up the title of a third person, the mere fact that third person disclaims his right is no ground for decreeing plff.'s suit in the absence of proof of his title. (*Lindsay*, J C.) TILAKRAM *v.* SEETARAM. 30 I C. 503= 2 O.L.J. 388.

Notice.

———*Notice—Validity—Waiver.*

In cases not governed by B.T. Act or T.P. Act, a notice to quit must be reasonable and need not terminate the tenancy at the end of the year and the final Court of facts is to determine these points. Mere acceptance of rent due for a period prior to the notice does not amount to a waiver. (*N.R. Chatterji and Newbould*, JJ.) RATNESWAR DAS *v.* SREE KAMAL DEB ADHIKAR GOSWAMI. 58 I.C. 191=33 C.L.J. 299.

———*Notice—When invalid.*

A notice in ejectment is bad wherein the plots of land specified do not completely cover the area specified. (*Holms and Campbell*, JJ.) SURAJ BALI *v.* MANAGER OF NANPARA ESTATE. 33 I.C. 168=2 O.L.J. 712.

Plea of Possession.

———*Plea of possession and title—Title—Strict proof of, essential—Confused boundaries.*

In 1903 plffs. sued to eject defts. from certain lands as being part of their *mouzah*. Both parties claimed under leases granted by the Zemindar dated 1894 and 1898 respectively. The locality except as a beel was already unknown at the time of the *Takbust* survey in 1856, and the very name disappeared in 1880. The High Court in decreeing the plff.'s suit determined its area not by any positive finding of its boundaries but by conjecturing the boundaries of deft.'s land, the defts. being the parties in possession. *Held*, reversing the High Court's judgment that the plffs. must fail. (*Lord Phillimore*). GOPALCHANDRA CHAUDHARI *v.* RAJANI KANTA GHOSE. 47 Cal. 418= 24 C.W.N. 353 (P.C.).

———*Plea of possession—Plff.'s title.*

The person who is in possession of the trust property, can successfully defend his possession against heirs of the settler whose rights

EJECTMENT—Plea of Possession.

under resulting trust are barred by limitation. (*Scott*, C. J. *and Chandavarkar*, J.) MAHOMED IBRAHIM *v.* ABDUL LATIF.
37 Bom. 447=17 I.C. 689=
14 Bom. L.R. 987.

———*Plea of possession or title—Title—Strict proof necessary.*

In an action in ejectment where the plff. has proved his alleged title, the Court shall not refuse him relief on a ground not only not urged by the deft. but wholly inconsistent with the defence taken by him in his written statement. (*Mookerjee and Beachcroft*, JJ.) ISHAN CHANDRA DHUPI *v.* NISHI CHANDRA DUPI. 22 C.W.N. 853=41 I.C. 378=
29 C.L.J. 1.

———*Plea of possession—Title—Strict proof essential.*

A person in possession can resist a suit for ejectment against all but the true owner, though his possession is that of a trespasser. He can resist the suit on the ground that the assignment to the plaintiff is a sham transaction. 15 Bom. 1, Rel. upon; 36 B. 37, Expl. (*Ayling and Hannay*, JJ.) RAJAMMAL *v.* MAHADEVA YOGI. 1 L.W. 777=
(1914) M.W.N. 717=23 I.C. 667=
27 M.L.J. 445.

———*Plea of possession—Possessory title—Government—Possession prior to suit—Presumption of title.*

Plff. was entitled to the same presumption of title against Govt. as against any one else created by previous possession, and notwithstanding the levy of penal assessment, the Govt. must prove antecedent possession in Govt. or displace the presumption of title arising from plff.'s possession. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) KAMBHAMPALY VENKATASUBBIAH *v.* SECRETARY OF STATE.
16 I.C. 589=(1912) M.W.N. 881.

———*Plea of possession—Possessory title—Decree on.*

Where it appears that plff. in possession had been dispossessed by deft. and at the date of suit deft. had not acquired a title by prescription and neither party is found to have a good title, plff. as the prior possessor, has a right to recover possession from the deft. who cannot show a better title. 26 M. 514; 10 Bom. L.R. 571; 29 A. 52; (1907) A.C. 73, Rel.; 26 C. 579, Dis. (*Sundara Aiyar and Ayling*, JJ.) KALYANAM BASAVAYYA *v.* ALAKAM MALLAPPA.
18 I.C. 613.

———*Plea of possession—Possessory title—Good against all but the true owner.*

In a suit for ejectment the plff.'s possessory title, in the absence of a better title proved by the deft. holds good against all the world, except the true owner. 26 M. 514; 29 A. 52; Perry *v.* Cissold, 1907, A.C. 73, Ref. (*Sundara Iyer and Ayling*, JJ.) ADI NARAYANA IYER *v.* K. KRISHNAN. (1913) M.W.N. 707=
18 I.C. 97=12 M.L.T. 183.

EJECTMENT—Proof of Title.

———*Plea of possession—Plaintiff or defendant title not proved—Defendant in possession.*

No suit can lie where it is found that neither plff. nor deft. had title and plff. was not in possession at the date of suit and for some years prior thereto, to give him a title by prescription. (*Sundara Aiyar and Phillips*, JJ.) VENKATACHELLA *v.* CHINNA GOUNDEN.
10 M.L.T. 432=12 I.C. 583=
(1911) 2 M.W.N. 460.

———*Plea of possession—Possession within 12 years—Proof of.*

In a suit for possession upon a dispossession, the plff. is bound to establish a subsisting title, (*i.e.*, within 12 years immediately preceding the commencement of the suit. 25 M.L.J. 95 (P.C.). Foll. (*Drake Brockman*, J.C.) KEROJI KUNHI *v.* EKOJI KUNHI *v.* AKAJI KUNHI. 54 I.C. 131.

———*Plea of possession.*

Where in a suit for ejectment the title to the property is admittedly in a third party and the plff's. claim is based only on long possession, the plff. must prove that the deft. is a trespasser. (*Mullick*, J.) CENTRAL KAREND COAL COY., LTD. *v.* KARTIK RIWANI. 34 I.C. 616=
1 P.L.J. 47.

———*Plea of possession—Payment of Govt. revenue.*

In a suit for possession by one trespasser on Government land against another, the one who has paid Government revenue on the land is preferred. Assessment to government revenue converts the trespasser's possession into a legal one. (*Maung Kin*, J.) TUM AUNG *v.* MA HTEE. 36 I.C. 935=12 Bur. L.T. 263.

Proof of Title.

———*Proof of title—Possession—Suit for—Registered conveyances for over fifty years.*

In a suit for possession the plff. based his title on a grant from Govt. but he could not produce it. He however produced registered conveyances, mortgages and leases and other title-deeds. As none of these were impugned, it was held that a clear title to property was proved. (*Lord Moulton*). JOHN KING *v.* CHAIRMAN OF MUNICIPAL COMMISSIONERS OF HOWRAH. 18 C.W.N. 898=
27 M.L.J. 20=26 I.C. 949=
20 C.L.J. 407 (P.C.).

———*Proof of title—Possessory suit.*

A suit based on title could not succeed on the ground of possessory title in case plaintiff failed to prove his real title. (*Gokul Prasad*, J.) WALI MUHAMMAD *v.* ANTOO KOERI.
1923 All. 117.

———*Proof of title—Onus on plaintiff—Weakness of defendant's title.*

Where plff. sues to recover possession of land on declaration of his title, he must prove his title. If he fails to do so, the mere failure of

EJECTMENT—Proof of Title.

the defendant to establish his title does not help plaintiff. (*Greaves and Panton, JJ.*) ABDUL AZIZ *v.* AMIR ALI. **1923 Cal. 166.**

———*Proof of title.*

An ejectment suit brought by the purchasers at a revenue sale was resisted, as the defts. held the lands in dispute as holders of tenures from before the permanent settlement. Four deeds were relied upon; the latter two deeds covered portions of land and the right created was of a part—proprietor and not of a subordinate tenure holder. The two later deeds overlapped the earlier deeds covering the *mudafats* while the later deeds covered these and two more. The suit was declared for joint possession of a share of a disputed land. (*Jenkins, C.J. and Mookerjee, J.*) SARODA KUMAR ROY *v.* JAGABANDHU SAHA. **22 I.C. 247 = 18 C.L.J. 332.**

———*Proof of title.*

The title existing on the date of the suit must be the basis for the plff.'s success. (*Chatterjee, J.*) CHATERDHARI LAL *v.* BIRANCHI LAL. **9 I.C. 248.**

———*Proof of title—Plaintiff to prove title.*

In a suit in ejectment or declaration and injunction, plaintiff can succeed only on the strength of his own title and not on the weakness of a defendant's title. (*Abdul Raoof and Harrison, JJ.*) MT. DURGA DEVI *v.* MT. SHIB DEVI. **4 Lah. L.J. 173 = 1922 Lah. 83.**

———*Proof of title—Title—Strict Proof—Heirship.*

A person claiming possession of the property of a deceased Mahomedan as a distant kindred must establish by evidence that all persons having a prior or better title than him have been exhausted, or do not exist. (*Mullick and Atkinson, JJ.*) SHEIKH MIRZA *v.* ABDUL GANI. **42 I.C. 338 = 4 P.L.W. 130.**

Tenants.

———*Tenants—Proof of—Plea of tenancy not proved.*

In a suit for ejectment based on title a person alleged to be a tenant denied the plaintiff's title. At the trial the plaintiff proved his title but was unable to prove the tenancy alleged by him. *Held* that the plaintiff was nevertheless entitled to a decree for ejectment. (*Gokul Prasad, J.*) LACHMAN DAS *v.* MULCHAND. **1923 All. 511.**

———*Tenants—Failure to comply with terms of lease—Relief against forfeiture—T.P. Act. S. 114.*

In a suit for ejectment on the ground that the terms of the lease had not been acted upon, the defendant pleaded that the standard rent fixed had been paid duly to the Rent Controller and all terms of the lease complied with in terms of the standard rent. *Held*, the proper rent was the one fixed by the Controller and as all terms of the lease had been complied with, though in terms of the standardised rent, the lease was subsisting. Even if there was a forfeiture, it could be relieved against under S. 114, T. P. Act. The operation of the section, is not in any way affected by the provisions of the Rent Act. (*Greaves, J.*) AHINDRA NATH CHATTERJEE *v.* TWISS. **49 Cal. 150 = 1922 Cal. 394.**

EJECTMENT—Trespassers.

———*Tenants—Suit by—Tenant-in-common.*

A tenant-in-common can sue in the Madras Presidency for his share only when the property is forfeited by the lessee. 38 M. 445, Fol. (*Seshagiri Aiyar and Kumaraswami Sastri, JJ.*) AHMED SAHIB *v.* MAGNESITE SYNDICATE, LTD. **32 I.C. 512 = 39 M. 1049.**

———*Tenants—Suit by landlord.*

A landlord can proceed in ejectment against one who has been recorded long as sole rent-paying tenant, in revenue records, regardless of any co-heirs' claim. (*Holms, S. M.*) TRIBUWAN DAT *v.* MUHAMMAD ABDUL HASAN KHAN. **33 I.C. 264 = 2 O.L.J. 746.**

Trespassers.

———*Trespasser—Right of landlord to sue.*

It is open to a landlord, where his title is in jeopardy from the aggression of a neighbouring zemindar and where his title may be damaged by a denial of his rights over the land, to bring a suit for the purpose of being put into possession of the land as against them. 10 C. 1076, foll. (*Mookerjee and Chotzner, JJ.*) RAJ KUMAR MANDAL *v.* ALI MIA. **37 C.L.J. 94 = 1923 Cal. 192.**

———*Trespasser—Lessor's right.*

A trespasser in actual possession for twenty years of land let out on lease by the owner can be ejected unless he has taken a *bona fide* settlement from a third person, whom he believed in fact to be the landlord. (*Fletcher and Smither, JJ.*) HAJRA SARDARA *v.* KUNJA BEHARI NAG. **25 C.L.J. 636 = 40 I.C. 271 = 21 C.W.N. 1001.**

———*Trespasser—Landlord and tenant—Suit for trespass.*

A tenant, in possession of land is the proper plff. to sue for trespass on it. (*Sanderson, C.J., Woodroffe and Mookerjee, JJ.*) RAMCHANDRA SILL *v.* RAMANMANI DASI. **36 I.C. 890 = 20 C.W.N. 773.**

———*Trespasser—Co-sharer landlords.*

The rule that all sharers (of the landlord right in the land) should unite in a suit to determine a lease is not applicable to a suit to eject a trespasser. 7 C. 414, Ref. (*Sanderson, C.J. and Mookerjee, J.*) DWARKANATH ROY *v.* MATHURA NATH ROY. **24 C.L.J. 40 = 36 I.C. 888 = 21 C.W.N. 117.**

EJECTMENT—Trespassers.

——*Trespasser—Suit for declaration of title and for possession—Title proved—Position of defendant.*

Where in a suit for a declaration of title and for recovery of possession from the deft. the title of the plff. is proved, the deft. must be deemed a trespasser in occupation of the land and is liable to be ejected at the instance of the plff. (*Mookerjee and Beachcroft*, JJ.) SHASHI BHUSHAN MANDAL *v.* RAM SEBAK MANDAL.
24 I.C. 181.

——*Trespasser*—Raiyat *inducted by trespasser—Rights of.*

A *raiyat* inducted by a trespasser in good faith has full rights and is an exception to the general rule that no one can confer a better title upon another than he himself has, but the exception will not extend where there is no good faith on the part of both. (*Carnduff*, J.) RAJENDRA NARAIN SAHA *v.* ASHUTOSH SANYAL. **18 I.C. 194.**

——*Trespasser—Compensation—No duty to pay.*

Where a person trespasses on the land of another and spends considerable money in effecting improvements on that land, he is not entitled to compensation from the true owner when the latter seeks to eject him. (*Chevis and Harrison*, JJ.) WAZIRI MAL *v.* GANGA RAM.
69 I.C. 873.

——*Trespasser.*

Where the defts. acted on their own behalf only in suing a trespasser for possession their adverse possession begins from the date of their possession as against their co-sharers. (*Le-Rossignol*, J.) ZULPHI *v.* ASGHAR.
3 Lah. L.J. 441.

——*Trespasser—Person having possessory title can sue.*

A person having a possessory title to immoveable property or a transferee from such persons can maintain a suit to eject a trespasser. (*Schwabe*, C.J. *and Wallace*, J.) PARTHASARATHY AIYAR *v.* SUBBARAYA GRAMANY.
45 M L.J. 175 = 17 L.W. 763 = (1923) M.W.N. 552 = 1924 Mad. 67.

——*Trespassers—Possessory title—Right to eject defendant—Joint possession.*

It is open to a plaintiff who was in possession but was dispossessed by the deft. to sue for recovery of possession on the strength of his possessory title. If the defendant shows an equal right or title with the plaintiff, the latter will be entitled to be put in joint possession with the former. If the plff. has a better right than the deft. the latter must surrender possession. 26 M. 514; (1921) M.W.N. 243, Rel. (*Kumaraswami Sastri and Devadoss*, JJ.) KAJI AMIR SAHIB *v.* KAJIR MAHOMED OLI AHMAD SAHIB. **15 L.W. 430 = 66 I.C. 287 = (1922) M.W.N. 439.**

EJECTMENT—Trespassers.

——*Trespasser—Suit by lessee—Title—Voidable transaction.*

A permanent lease of a trust property in excess of the trustee's powers is not void but only voidable and the lessee may use the lease for the ejectment of the trespasser from the land. 40 Mad. 212; 36 Cal. 1003; and 40 M. 709, ref. (*Spencer and Seshagiri Iyer*, JJ.) KADIR MASTHAN ROWTHER *v.* SEGAMMAL.
43 Mad. 433 = 38 M.L.J. 198 = (1920) M.W.N. 185 = 11 L.W. 197 = 55 I.C. 655 = 27 M.L.T. 286.

——*Trespasser—True owner—Right of.*

A true owner cannot at all times enter his own premises and use force and violence to eject a trespasser; such an act though not tortuous, may yet give rise to criminal liability, if attended with force or violence. (*Ayling and Oldfield*, JJ.) MARGAM AIYAR *v.* S. J. MERCER. **15 Cr. L.J. 225 = 23 I.C. 177 = (1914) M.W.N. 125.**

——*Trespasser—Right of landlord to sue in ejectment.*

It is open to a landlord to sue to eject a trespasser even though the tenancy subsists. 11 N.L.R. 124; 18 N.L.R. 82, referred. (*Batten*, J. C.) DEBURAM *v.* PAHLAD PRASAD.
1923 Nag. 79.

——*Trespasser—Right of landlord to sue.*

A landlord can bring a suit in respect of his tenancy against a trespasser. His right to sue in ejectment is not abandoned. (*Prideaux*, A.J.C.) ALLIBHAI *v.* SHAN RAO.
1922 Nag. 216.

——*Trespasser—Rent Court.*

A trespasser can be ejected through the rent Court. (*Holms*, S. M.) RAM LAL *v.* ABUL HASAN KHAN. **46 I.C. 543 = 5 O.L.J. 196.**

——*Trespasser—Admission to tenancy.*

Receipt of rent, for periods subsequent to the death of a tenant, from a man who is not an heir but takes possession of the holding of the deceased tenant, amounts to his admission to tenancy, and a fresh statutory period begins from the time he takes possession of the holding. (*Holmes*, S. M. *and Campbell*, J. M.) JAGMOHAN UPADHYA *v.* KAMTA SRIROMAN PRASAD SINGH. **83 I.C. 247 = 2 O.L.J. 730.**

——*Trespasser—License suit by.*

An ejectment suit can be instituted by a licensee against a trespasser. (*Stuart*, J.C.) SITARAM *v.* JAGAN NATH. **17 I.C. 469 = 15 O.C. 317.**

——*Trespasser liable to ejectment—By tenant in possession in spite of landlord's support.*

A mere trespasser, in spite of the landlord's support, is liable to ejectment by the tenant, against whom he cannot retain possession. (*Chamier*, C. J. *and Sharfuddin*, J). KARTIC REWANI *v.* THE CENTRAL KARKEND COAL CO., LTD. **37 I.C. 1004 = 1 P.L.J. 480.**

EJECTMENT—Miscellaneous.

———*Trespasser—Right to sue—Person entitled to possession.*

The owner, or person in possession alone can sue for trespass; the beneficiary of a public charity, cannot sue without joining the trustees as parties. (*Young*, J.) COWASJI *v.* BELLA. **50 I C. 809=11 Bur. L.T. 249.**

Miscellaneous.

———*Suit by heir of person in possession.*

A heir of a person in possession is entitled to bring a suit for possession against one who has no better title. (*Chamier*, J.) SROHAN SINGH *v.* AHSANI BEGAM. **17 I C. 469=10 A.L.J. 518.**

———*Suit—Burden of proof—Title of plaintiff.*

In an ejectment suit, the plff. can succeed only on the strength of his own title. He cannot be allowed to abandon his own case and adopt that of the deft. and on that footing claim relief. (*Batchelor and Roe*, JJ.) BALMUKUND KESARDAS *v.* BHAGWANDAS KESARDAS. **19 I.C. 401=16 Bom. L.R. 209.**

———*Nature of tenancy—Duty of Court.*

In an ejectment suit, the Court must come to a finding as to the nature of tenancy and also whether the tenancy so found has been put an end to, on the date of suit. (*Sadasiva Aiyar and Napier*, JJ.) ITTINAN *v.* GOVINDAN NAMBUDRI. **62 I.C. 390=13 L.W. 397.**

EJUSDEM GENERIS.

☞ *See* INTERPRETATION OF STATUES.

ELECTION.

See also (1) SUCCESSION ACT, Ss. 167—177.
(2) T. P. ACT, S. 35.
(3) WILL.

———*Petitions need not be verified—Who can challenge.*

An election petition need not be verified as in the case of plaints unless the particular Act under which the petition is put in specifically requires it. It is only a person who has actually contested an election and who claims to have been validly elected or a body of electors who can challenge the validity of an election. (*Mears*, C.J. *and Piggott*, J.) SURAJ NARAIN *v* JANG BAHADUR. **45 A. 687=1924 All. 132.**

———*Intentional misdescription in or removal of voter's name from, voter's list.*

The Municipal Board itself is liable for intentional misdescription of name of duly qualified person from list of candidates or for malicious removal of name from the list. (*Walsh and Stuart*, JJ.) MUNICIPAL BOARD, AGRA *v.* ASHABARI LAL. **46 A. 202=20 A.L.J. 1=1923 All. 1 (2).**

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———*Temple committee—Meeting—Notice of—Want of quorum—Adjourned meeting.*

With very limited exceptions where a special meeting of a committee or any other body has to be specially convened for a particular purpose every member of that body ought to have notice of and a summons to the meeting. The election, being by a definite body on a day of which, till summons, the electors had no notice, they were all entitled to be specially summoned, and if there was any omission to summon any of them, unless they all happened to be present, or unless those not summoned were beyond summoning distance, as for instance, abroad—there could not be a good electrol assembly. A meeting of a temple committee for the election of trustees for a temple was adjourned for want of quorum and no notice of the adjourned meeting was given to the other members of the committee. On the adjourned date the election was held. *Held*, that the election was invalid for want of notice of the meeting to the members of the committee. (*Marten and Fawcett*, JJ.) NILKANTH DEVRAO *v* MURARI GOVIND. **26 Bom. L R. 315=1923 Bom. 272.**

———*Temple trustees—English law non-applicability—Voters' lists.*

The common law of England relating to Parliamentary elections should not be applied to regulate the election of temple trustees in India, though the principles which underlie that law may be invoked if they appear to the Court to be in conformity with the rules of justice, equity and good conscience. The fact that persons whose names were not in the list of voters participated in the election did not invalidate the election in the absence of anything to show that the right depended on an entry in the voters' list. (*Mookerjee and Chotzner*, JJ.) RAGHUNATH SARMA *v.* JIBAN CHANDRA SARMA. **27 C.W.N. 312=50 Cal. 202=1923 Cal. 457.**

———*Number of votes recorded exceeding maximum—Election void.*

The rule that when the number of votes recorded exceeds the maximum that can be given at an election must be void, is perfectly sound, especially when there are no rules to meet such a contingency. Where the voting paper is void on the face of it, no evidence should be allowed to vary the recorded voting paper. (*Sanderson*, C. J. *and John Woodroffe and Mukerji*, JJ.) NAGENDRANATH *v.* J. VAS. **60 I C. 547=32 C.L J. 124.**

———*Validity of—Infringement of rules.*

Where rules have been framed for the conduct of elections, they may be either mandatory or directory. An infringement of the former class of rules avoids the election. Where an infringement of a directory rule is proved, the burden rests upon those who maintain the validity of an election notwithstanding the infraction of the rule, to show that the result

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was not affected by the infringement. A provision as to the time of opening and closing the polls is considered directory. (*Mookerjee and Panton*, JJ.) SHYAM CHAND *v.* DACCA MUNICIPALITY. **30 C.L.J. 270 = 53 I.C. 741 = 24 C.W.N. 189.**

———*Supreme Council—Voting by members of local council before taking oath of allegiance —Effect.*

The omission, by a member of a local council, to take the oath of allegiance does not make him incompetent to vote for the election of members to the Imperial Legislative Council. (*Fletcher*, J.) BHUPENDRA NATH BASU. *v.* RANAJI SINGH. **20 I.C. 676 = 41 Cal. 384.**

———*Election agent, can be proposer—Punjab Government Notification No. 9 of 31—7—1920, Regulations 7 and 11—Punjab Electoral Rules, Rr. 5 (4), 31, 34 (2) (a) and 42 (1) (c)—Amendment of petition—Nomination paper delivered before day fixed is not invalid.*

The election agent of a candidate can be his proposer or seconder and *vice versa*. The Election Commissioners can allow further or better particulars to be furnished subsequent to the petition provided no new substantive charge is introduced and that the respondent is not taken by surprise. Where the returned candidate is declared duly elected on a single nomination paper and the validity of the election is questioned on the ground that it was delivered to the Returning Officer before the time fixed, the Commissioners have power to decide the point irrespective of the fact whether the point was raised before the Returning Officer, Regn. 7 of Punjab Notification, No. 9, dated 31—7—1920 is ambiguous but as it is a disabling provision it must not be strictly construed against the nominee. The Regulation does not mean that a nomination paper delivered to the Returning Officer *before* the day fixed is invalid when the question of the falsity of the return of expenses comes before the Commissioners, they have power to decide the same. (*Kennaway, Abdul Quadir and Dalip Singh, Coms.*) AMIN KHAN *v.* SIKANDAR HAYAT **61 I.C. 744.**

———*Corrupt practice — Particulars—Amendment of Petition—Candidate and Agent —Punjab Electoral Rules, R. 31.*

An election petition alleging corrupt practices on the part of the candidate cannot be summarily rejected for want of fuller particulars. An opportunity should be allowed for further and better particulars to be given. The object of furnishing such particulars is to avoid surprise to the respondent and from that point of view they are necessary in the interests of justice. A candidate is responsible for the acts of those who, to his knowledge, for the purpose of promoting his elections, canvass for him. (*Kennaway, Abdul Quadir, Dalip Singh, Coms.*) DAURAN KHAN *v.* MUHABBAT KHAN. **61 I.C. 357.**

ELECTION.

———*Candidate and agent—Punjab Electoral Rules, R. 42 (1) (b).*

The relationship of candidate and agent is much wider than that of principal and agent and such relationship is to be inferred from facts. Where several voters were fed on the polling day by persons intimately connected with a candidate and acting on his behalf, the inference is clear that they are fed to induce them to vote for the candidate. (*Kennaway, Abdul Qadir and Dalip Singh*, J. Cs.) RAJMAL *v.* LAJPAT RAI. **61 I.C. 353.**

———*Form of petition—Amendment—Corrupt practice particulars to be given.*

The particulars of any corrupt practice alleged must be given in the election petition. The English Law in this respect has not been followed. The rules in India do not prescribe any form in which an election petition is to be drafted and a d aft in the form given at page 415 of Halsbury's Laws of England, Vol. XII, or in the form given for a plaint in the C.P. Code, Election Commissioners can allow amendment of an election petition where it is sought to bring home a corrupt practice to any one it is the action of that person which must be primarily looked to. A spiritual leader can canvass for a candidate provided he holds out no threat or inducement. Indian courts should administer the Indian Election Law and not the English Common Law. (*Kennaway, Abdul Quadir, and Dalip Singh, Coms.*) BARKAT ALI *v.* MUHARRAM ALI. **61 I.C. 337.**

———*Bribery and Personation—Irregularities—Electing officer empowered to decide objection — Decision, questioned in a Civil Court.*

At an election of a temple trustee, the agent of the successful candidate abetted the false personation of a dead voter. There was no proof that the candidate authorised or ratified the agent's act but the inclusion of his vote did not affect the result of the election: *Held*, that the false personation did not invalidate the election, though the vote included ought to be rejected. (Per *Sadasiva Aiyar*, J.) The Common Law of England relating to Parliamentary elections cannot govern the election of a temple trustee. The fact that certain voters were carried to the voting booth at the expense of a candidate does not vitiate the election. (Per *Napier*, J.) Personation by itself does not invalidate the election. The number of votes given by personation should be struck off. An election is not void because the agent of a candidate had been guilty of one or two cases of bribery. (Per *Sadasiva Aiyar*, J., *Napier* J, *contra*) Where the electing officers were given the power to decide the objections as to personation and to allow or to disallow the votes at their discretion. *Held*, that the decision given by the electing officers honestly on the objections raised cannot be questioned by any proceedings in Court. (*Sadasiva Aiyar and Napier*, JJ.) RAMANJULU *v.* PARTHASARATHY. **17 M.L.T. 331 = 28 I.C. 612 = (1915) M.W.N. 290 = 2 L.W. 388.**

ELECTION OF REMEDIES.

———*Conversion — Creditor's petition in insolvency based on—Effect of adjudication—Maintainability of suit to recover article pledged.*

A person who had lent a ring to another presented an insolvency petition to have that other adjudged insolvent, and proved in insolvency a debt based on the value of the ring. The ring had been pledged to a third party a few days after the petition was put in. The plaintiff failed to get anything for his debt in the insolvency proceedings, and then brought a suit against the pledgee for return of of the ring or its value. *Held*, in treating the value of the ring as a liquidated debt for purposes of the insolvency proceedings, plff. had already elected to abandon all rights to the ring and as such the action cannot lie. Moreover the pledgee had obtained a good title on the principle of estoppel feeding the title. (*Schwabe*, C.J., *Oldfield and Ramesam*, JJ.) SINNAN CHETTY *v.* ALAGIRI AIYAR.

45 M.L.J. 516=46 Mad. 852=18 L.W. 545=(1924) M.W N. 6 (F.B.)

ELECTRICITY ACT (IX OF 1910).

———**Ss. 14 and 19**—*Operator—Damages—Damage caused by another company.*

An operator cannot claim damages for acts of his own or done on his behalf and at his expense by the owner. Where a gas company was cut off from reasonable access to its own property by acts done in the exercise of its powers by the Electric Supply Company and those acts caused damage, detriment and inconvenience, *held*, that the damage claimed to have been suffered could be compensated under S. 19 that S. 14 did not apply and the gas company could not be deprived of its remedies. (*Darvar and Beaman*, JJ.) BOMBAY GAS COMPANY *v* BOMBAY ELECTRIC SUPPLY AND TRAMWAY COMPANY. **16 Bom, L R. 964=26 I.C. 892=39 Bom. 124.**

———**S. 24, Sch, Cl. VI (1910).**

A fuse or cut out is necessary in service line and is kept under the licensee's seal. The license must bear the charge of the service line whether the consumer has paid the initial expenditure or not. The licensee can discontinue the supply of energy if the consumer's installation is defective. In case of any alleged defect, the licensee can refer the matter to an electric inspector and he is to decide the matter. If energy is supplied to the consumer knowing that the installation is defective, the consumer will not pay for a new fuse or cut out if the old melts on account of defective installation. (*Scott-Smith* J.) THE LAHORE ELECTRIC SUPPLY CO. *v.* DURGA DAS.

79 P W.R. 1918=85 P R. 1918=45 I.C. 171=77 P.L.R. 1918.

———**S. 39**—*Theft of electricity—Avoiding metre.*

The use of the word 'mains' for the words 'any electric supply-line through which energy is supplied by the licensees' in S. 39 in a notice issued by the Municipal Engineer to a person accused of theft of energy under S. 39, would operate as an admission against the Municipality and would be a good defence to a criminal charge under S. 379, I.P.C. for theft. Where the word "mains" is qualified by such words as "outside, your metre" the accused gets full notice that he must not take current except through the metre. The word "dishonesty" is a legal expression having the same sense as that in which it is used in the Penal Code. (*Holmwood and Chapman*, JJ.) CARL FORSTMAN *v.* H. T. S. FORREST.

27 I.C. 591.

———Sch. Cl. 6 (2) (c—*Seals of cut out not in good order—Discontinuance of electric supply.*

It was found as a fact that a part of the electric apparatus on the appellant's premises, namely the seals of the cut-out were not in good order and condition. As a result of this defect there had been a leakage of energy, whether by theft of the current or otherwise. *Held*, that such a state of things must certainly be deemed to be likely to affect injuriously the use of energy by the licensee or by other persons," and accordingly, the Electric Supply Company were entitled, upon discovering this condition of things to discontinue the electric supply. (*Scott Smith and Fforde*, JJ.) KAROBI MAL *v.* THE E. T. AND LIGHTING CO. LTD.

4 Lah. 182=1924 Lah. 142.

EMBLEMENTS.

See T. P. ACT, S. 108.

EMERGENCY LEGISLATION CONTINUANCE ACT (I OF 1918).

———*Power of Governor-General in Council.*

The Governor General in Council is not precluded by S. 23 of the Indian Councils Act, 1861 from passing an Act like the Emergency Legislation Continuance Act (I of 1915) embodying provisions of Ordinance 3 and 5 of 1914. The High Court has no jurisdiction to question orders made under the above Act. (*Chaudhuri J.*) *In re* JEWA NATHOO. **44 Cal. 459=20 C.W.N. 1327=37 I.C. 48=16 Cr. L.J. 64.**

ENCROACHMENT.

See (1) ADVERSE POSSESSION.
(2) ACQUIESCENCE.
(3) LANDLORD AND TENANT.

ENDORSE.

See NEG. INST. ACT.

ENCUMBRANCE.

See (1) BENGAL PATNI REGULATION.
(2) B.T. ACT, S. 159.
(3) MAD. EST. LAND ACT.

ENCUMBRANCE.

———Execution sale subject to.

See (1) C. P. CODE, O. 21. Rr. 62, 66.
(2) EVIDENCE ACT, S. 115.

ENFRANCHISEMENT.

See GRANT-INAM.

ENGLISH BANKRUPTCY ACT (1883).

———46 and 47 Vict., C. 52, S. 118—*Letter of request—Jurisdiction—Indian Courts.*

To invest an Indian Court with the jurisdiction under S. 118, to act in aid, and be auxiliary to the High Court in England, a request from the English Court asking the Indian Court to act in aid, is necessary. Such letter of request must be sent to the other Court. The order of the English Court presented by the Trustee in Bankruptcy is not sufficient to give jurisdiction to the Indian Court. (*Harrington, J.*) *In re*, KING AND CO.. 12 I.C. 14 = 38 Cal. 542.

ENGLISH EXTRADITION ACT.

———*Records of German Courts—Evidence Act, if exhaustive.*

Per *Woodroffe, J.*—The Evidence Act is not exhaustive. Therefore the records of the German Court authenticated in the manner prescribed by Ss. 14 and 15 of the Act, are admissible in evidence. (*Woodroffe, Mookerjee and Chitty, JJ.*) *In re*, RUDOLPH STALLMAN. 39 Cal. 164 = 15 C.W.N. 1053 = 14 C.L.J. 375 = 12 I.C. 273 = 12 Cr.L.J. 505.

ENGLISH LAW.

See also PRATICE-PRECEDENTS.

———*Applicability of—Landlord and Tenant—English Law—Adoption of.*

In the case of an alleged forfeiture by denial of the landlord's title, where the case is not governed by S. 111 of the T.P. Act, the English law is applicable as a rule of justice, equity and good conscience. (*Lord Phillimore*). MAHARAJA OF JEYPORE *v.* RUKMINI PATTAMAHADEVI. 42 Mad. 589 = 36 M.L.J. 543 = 7 A.L.J. 552 = 29 C.L.J. 528 = 21 Bom. L.R 655 = (1919) M.W.N 271 = 23 C.W.N. 889 = 26 M.L.T. 16 = 50 I.C. 631 = 10 L.W. 381 (P.C.).

———*Analogies from—Applicability of.*

The analogies from the English Law are not applicable if the language of the Indian Statute is clear. Assignment by way of charge of a chose in action must be in writing. (*Lord Moulton*). MULRAJ KHATAN *v.* VISHWANATH. 37 B. 198 = 40 I.A. 24 = (1912) M.W.N. 1247 = 12 M.L.T. 652 = 11 A.L.J. 7 = 24 M.L.J. 60 = 17 C.W.N. 209 = 15 Bom. L.R. 9 = 17 I.C. 627 = 17 C.L.J. 162 (P.C.).

ENGLISH RULES OF CONSTRUCTION.

See DEEDS—CONSTRUCTION.

EQUITY.

ENHANCEMENT—Of Rent.

See (1) B. T. ACT, Ss. 50—52.
(2) LANDLORD AND TENANT.
(3) MADRAS EST. LAND ACT, S. 26.

EPIDEMIC DISEASES ACT (III of 1897).

———S. 3—*Powers of local Govt.—Delegation.*

Under S. 3 the prosecution has not to prove that the accused's disobedience was likely to cause damage and where the accused plead not guilty, the prosecution has to prove the legality of the order. Under the Act, the Local Government can give power to take measures but it cannot empower them to delegate those powers to others and hence the Collector has no power to delegate his own power. The power to take measures under the Act which may be granted by the local Govt to any person is different from the orders or regulations which have to be observed by the public in respect of these measures. Rule 104 of the regulations under the Act is *ultra vires*, of the local Government. (*Sadasiva Aiyar, J.*) NAGAPPA *v.* EMPEROR. 38 Mad 602 = 21 I.C. 668 = (1913) M.W.N. 928.

EQUITABLE ASSIGNMENT.

See (1) ASSIGNMENT.
(2) T. P. ACT, Ss. 130—137.

EQUITABLE ESTATE.

See TRUSTS ACT.

EQUITABLE MORTGAGE.

See TRANSFER OF PROPERTY ACT, S. 59.

EQUITABLE SET OFF.

See C. P. CODE, O. 8, R. 6.

EQUITY.

———*Creditor making fraudulent admission to defeat creditors cannot seek the aid of the law.*

A creditor who as a result of a fraudulent conspiracy makes a fraudulent admission of payment in order to defeat other creditors is not entitled to seek the aid of the law in attempting to recover the amount in respect of which he made the admission. (*Ryves and Stuart, JJ.*) MUHAMMAD SHAFI *v.* NANHE. 63 I.C. 921 = 19 A.L.J. 454.

———*Voidable transaction.*

A person avoiding a voidable transaction must return the benefit derived thereunder. (*Mookerjee and Carnduff, JJ.*) CHARU CHANDRA PALL *v.* KALIDASS. 10 I.C. 269 = 13 C.L.J. 447.

———*Courts in India.*

It is only where no definite law is laid down for guidance, that courts in India should decide

EQUITY.

according to justice, equity and good conscience. Equity follows the law, means that it is governed by rules of law as to the legal estates and acts in analogy with legal rules in regard to equitable estates when an analogy exists. It can never be used to defeat a law. (*Drake-Brockman*, J.C., *Stanyon and Mitra*, A.J.Cs.) SALU BAI *v.* BJAT KHAN.
42 I.C. 200=13 N.L.R. 130 (F.B.).

———*Grantor derogating from his grant—Applicability to B.T. Act.*

The equitable principle that a person cannot derogate from his own grant does not apply to the case of a surrender by a *raiyat* after he has sold a portion of the non-transferable holding to another. The B.T. Act governing the case restricts powers of surrender only to certain specified instances. The equities are all in favour of the landlord, because the transfer from the *Raiyat* must have known the precarious title he was purchasing. (*Miller*, C.J., *Mullick*, *Jwala Prasad*, *Foster and Macpherson*, JJ.) MT SHEORAJI KUER *v* DHANI MIAN. 4 P.L.T. 531=1 P.L.R. 402=3 P. 1=1923 Pat. 305=1924 P. 1 (F.B.).

———*Principles of—Absence of statutory provisions—English rules.*

Where no specific statutory directions are given, judges are bound to act according to justice, equity and good conscience and there is a large preponderance of judicial opinion in favour of the view that the principles applicable in such circumstances should be identical with the corresponding relevant rules of the common law of England. 24 C.W.N. 992 Ref. to. (*Das and Adami*, JJ.) JAGAT MOHAN NATH SAHI DEO *v.* KALIPADA GHOSH. 1 Pat. 371=(1922) Pat 86=3 Pat. L.T. 276=68 I.C. 861=1922 P. 104.

EQUITY OF REDEMPTION.

See T.P. ACT, SS. 60 AND 91.

ESCHEAT.

See (1) LANDLORD AND TENANT.
(2) CROWN.

ESTATES PARTITION ACT (V. (B.C.) OF 1897).

See under BENGAL ESTATES PARTITION ACT.

ESTOPPEL.

See (1) EVIDENCE ACT, Ss. 115, 116.
(2) T. P. ACT, Ss. 43, 54.
(3) PART-PERFORMANCE.

———*Execution—Objection—Declaration of judgment debtor's interest—Jurisdiction to sell—Bundelkhand Land Alienation Act.*

The decree-holder having suffered resistance in execution, obtained a declaratory decree that the property belonged to the judgment-debtor. The latter then objected that it could not be sold under the Bundelkhand Land Alienation Act. *Held*, he was not estopped from raising it. (*Sulaiman*, J.) SATDHAR *v.* RAM CHANDRA.
21 A.L.J. 917=L.R. 4 All. 607 (Civ.)=46 All. 153=1924 All. 261.

———*Landlord and tenant—Standing by—What amounts to—Execution of buildings.*

In order that a tenant may avail himself of a plea of acquiescence or estoppel against his landlord, he must show that in erecting buildings of a permanent nature, he acted in the *bona fide* belief he had a permanent right to the land and that the landlord knowing he was acting in that belief stood by and allowed him to be in possession. (*Ghose and Panton*, JJ.) SYED ALI KAZEMINI *v.* MANIK CHANDRA PRAMANIK. 27 C.W.N. 969=1924 Cal. 156.

———*Criminal trial — Non-payment of license-fee of Municipality — Failure to appeal to Standing Committee—Effect.*

Failure to appeal to standing committee in non-payment of license-fee of Municipality works as estoppel. (*Krishnan*, J.) *In re.* A. E. SMITH, 45 M.L.J. 731=1924 Mad. 389.

———*Nature of—When not allowed.*

Estoppel is an equitable relief and where it is operated by cheating another of his rightful claims, it will not be effective to help to him to deprive another of his rights. *Ayling and Odgers*, JJ.) KUMANU KOTAYYA *v.* PEDDI VEERAYYA. (1923 M.W.N. 679=1924 Mad. 177.

———*Party to fraud or wrong doing—Debarred from setting up his own wrong.*

Party to fraud or wrong doing is debarred from setting up his own wrong. (*Schwabe*, C.J. and *Coutts-Trotter*, J.) PARTHASARATHY REDDY *v.* KANDASAWMI REDDY.
32 M.L.T. 349 (H.C.)=1923 M. 711.

———*Feeding of title—Doctrine of.*

Doctrine of estoppel applies to feeding of title. (*Schwabe*, C.J., *Oldfield and Ramesam*, JJ.) SIMAN CHETTY *v.* ALAGIRI AIYAR.
45 M.L.J. 586.

EVICTION.

See EJECTMENT.

EVIDENCE.

ADMISSIBILITY.
APPRECIATION OF.
CIRCUMSTANTIAL EVIDENCE.
CO-DEFENDANTS.
CRIMINAL TRIAL.
DOCUMENTS.
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EVIDENCE—Admissibility.

EXCLUSION OF.
HANDWRITING.
HEARSAY.
HOROSCOPE.
OPINIONS.
PEDIGREE.
PERSONAL KNOWLEDGE.
PHOTOGRAPH.
RECEIPT, VALUE OF.
RECITALS.
SHIPPING.
SUSPICION.
THUMB IMPRESSION.
TRIAL.
VALUE OF.

See also (1) C. P. CODE, O. 18.
(2) EVIDENCE ACT.

Admissibility.

——*Admissibility—Effect of—Evidence in the whole case.*

Evidence properly admitted for one purpose must be admissible for all purposes in the cause. (*Lord Macnaghten.*) BANK OF BOMBAY *v.* NAND LAL. **37 Bom. 122=40 I.A. 1=13 M.L.T. 646=(1913) M.W.N. 29=15 Bom. L.R. 1=24 M.L.J. 176=17 C.L.J. 145=17 I.C. 663=17 C.W.N. 358. (P.C.)**
[O.A. from 12 Bom. L.R. 316=6 I.C. 457]
See also 11 Bom. L.R. 926=4 I.C. 652.]

——*Admissibility—Redemption suit—Validity of mortgage-deed—Previous pre-emption suit—Judgment—How far—Conclusive.*

Judgment in a previous pre-emption suit wherein the mortgage-deed, the mortgage in which was sought to be redeemed, was found to be sham and fictitious, is admissible in the redemption suit but not conclusive. (*Lindsay and Kanhaiya Lal, JJ.*) CHHIDDU *v.* SESRAJ. **21 A.L.J. 798=1924 All. 295.**

——*Admissibility — Report of chemical examiner—Not tendered in the trial Court—Appellate Court sending for it and not recording grounds under S. 428, Cr. P.C.*

Where the report of a chemical examiner was not tendered in the trial and the appellate Court sent for it and perused it without recording reasons as under S. 428, Cr. P.C., *held* the procedure was wrong. (*Sulaiman, J.*) WALI MUHAMMAD *v.* EMPEROR. **21 A.L.J. 869=9 O. & A.L.R. 994=1924 All. 198.**

——*Admissibility—Omission to object—Irrelevant evidence.*

Omission to object to the reception of evidence does not make irrelevant evidence relevant and the objection can be taken on second appeal. (*Macleod, C. J. and Heaton, J.*) NARHARI *v.* AMBABAI BALAKRISHNA. **44 Bom. 192=55 I.C. 316=22 Bom. L.R. 57.**

——*Admissibility — Objection to—Document not proved—Admission without objection—Effect of.*

EVIDENCE—Admissibility.

A document can be treated as duly admitted where its admission in evidence without being proved is not objected to by the party affected by it. (*Scott, C. J. and Chandavarkar, J.*) SHRINIVAS *v.* BALWANT VENKATESH. 37 Bom. 518=20 I.C. 162=16 Bom. L.R. 533.

——*Admissibility — Judgment of probate Court, prior deposition of witness.*

A judgment of the probate Court cannot be admitted in evidence in a proceeding under S.193 of the Indian Penal Code for perjury committed in the testamentary suit. Former statement of witness can be used in certain circumstances to contradict or corroborate them but it is evidence upon which much reliance cannot be placed. (*Ghose and Cuming, JJ.*) OATES *v.* EMPEROR. **38 C.L.J. 163=25 Cr. L.J. 177=1924 Cal. 104.**

——*Admissibility—Proceedings inter partes—Order of settlement authorities if admissible in evidence.*

An order of the settlement authorities which has been pronounced in proceedings which are *inter partes* can be received in evidence. It is not conclusive but a presumption attaches to the order finally published under the Bengal Tenancy Act. (*Mookerjee and Cholzner, JJ.*) BHAIRAL CHANDRA DUTTA *v.* KALI KUMAR DUTT. **37 C.L.J. 491=1923 Cal. 606.**

——*Admissibility—Batwara papers—Writs of attachment—Weight—Distinction between—Absence of entry in a document—Relevancy of.*

Writs of attachment issued in 1792 and 1797 and prepared when the Collector took possession of a Zemindari for non-payment of revenue and Batwara papers are admissible in evidence to show the non-existence of tenures. The absence of entry in a document in which one would expect an entry is relevant, though the weight due to such fact is one to be determined in the light of the general evidence in the case. 45 C. 878, Rel. The question whether a document is admissible in evidence as a public document is distinct from the question whether the contents are binding on persons not parties to it. (*Mookerjee and Cholzner, JJ.*) TARA KUMAR GHOSE *v.* KUMAR ARUN CHANDRA. **1923 Cal. 261.**

——*Admissibility—Power of Court to refer to documentary evidence not exhibited—Opportunity to parties.*

No Court has a right to look at any document or any papers other than those on the record unless he gives to the parties to the suit an opportunity of being heard and making their submissions with regard to what is contained in documents outside the record to which the Judge desires to refer. (*Greaves and Panton, JJ.*) ALTAP ALI CHOUDHURY *v.* SRIMATI JARINA BIBI. **1923 Cal. 194.**

——*Admissibility—Objection to—Ground of objection not raised in the court below—Effect of.*

Where a piece of evidence not proved in the proper manner has been admitted without

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objection the opposite party cannot challenge it at a later stage. But the principle on which unobjected evidence, is admitted, does not apply where evidence has been received without objection, in direct contravention of an imperative provision of law. 8 C.W. 101, Rel. (*Suhrawardy and Cuming*, JJ.) SUDHANYA KUMAR SINGH v. GOWR CHANDRA PAL.
35 C.L.J. 473=27 C.W.N. 134=1922 Cal. 160.

———*Admissibility—Hand sketches.*

Hand sketches, drawn up by the parties on the basis of information derivable from quinquennial papers and Hakikat Chanhaddi papers are reliable evidence (*Mookerjee and Buckland*, JJ.) SECY. OF STATE FOR INDIA v. WAZED ALI. 65 I.C. 866=34 C.L.J. 141.

——*Admissibility—Objection to mode of proof.*

An objection as to the mode of proof not taken in the Courts below cannot be taken for the first time in second appeal (*Chatterjea and Pearson*, JJ.) ALI MAHOMMAD KHAN v. MAHA RAJ BEPARI. 64 I.C. 266=36 C.L.J. 186.

———*Admissibility—Document not inter partes.*

Documents between strangers to suit containing reference to the lands in suit as the boundaries of lands dealt with in those documents are not admissible as evidence in the suit. (*Chatterjea and Suhrawardy*, JJ.) SARAJ KUMAR ACHERJI v. UMED ALI.
25 C.W.N. 1022=63 I.C. 954=35 C.L.J. 19.

———*Admissibility—Objection to, not raised—Effect—Batwara maps and Chittas.*

Where *Batwara* maps and chittas prepared under the Bengal Estates Partition Act, though not admissible in evidence under S. 35 of the Act were admitted in the trial court without objection, no objection can be raised in second appeal as to their admissibility. (*Teunon and Newbould*, JJ.) MATIWOR RASUK v. DHANU MOLLA. 69 I.C. 963.

———*Admissibility — Objection to—When taken—Appeal.*

An erroneous omission to object to evidence which is irrelevant and consequently inadmissible under any circumstances, does not make it admissible. But the Court will not entertain for the first time in appeal an objection that a document which *per se* is not admissible in evidence has been improperly admitted in evidence. (*Mookerjee and Beachcroft*, JJ.) ANBARTHI v. LUTFEATE. 45 Cal. 159=21 C.W.N. 926=41 I.C. 116=25 C.L.J. 619.

———*Admissibility — Objection — Not raised, not permitted in appeal.*

Documentary evidence relevant to the case and admitted without objection in the first Court cannot be objected to in appeal on the ground that it is not admissible for the purposes

for which it has been used. (*Woodroffe and Mookerjee*, JJ.) PRASANNA DEB RAIKAT v. MAHANANDA DAS. 40 I.C. 553.

———*Admissibility—Objection.*

Evidence which is irrelevant under any circumstances whatsoever must be distinguished from evidence which is admissible if certain conditions were fulfilled. (1 C.W.N. 830=19 A. 76 Rel.) In the latter case objection should be taken at the earliest possible stage before the court of first instance and if such objection is not taken the appellate court will not entertain it. (*Mookerjee and Carnduff*, JJ.) BASIR GAZI v. GRIJI NATH. 9 I.C. 211=13 C.L.J. 18.

———*Admissibility—Consent of parties.*

Statements which are not admissible in evidence cannot be rendered admissible by consent of parties. (*Martineau and Zafar Ali*, JJ.) SUNDER SINGH v. SHAM SINGH.
1923 Lah. 630.

———*Admissibility—Account books—Items entered by Munim before whom money was not paid.*

The noting of the items in an account book kept regularly by *Munim* in whose presence the money was not paid is no evidence. (*Martineau*, J.) FIRM OF GOKUL MAL RAM CHAND v. FIRM OF NATHMAL. 1923 Lah 431 (1).

———*Admissibility, evidence of.*

Where the objection as to inadmissibility of the deed was taken in the first court in the written statement but was afterwards dropped and was not put in issue and it was not taken in the grounds of appeal to the lower appellate court. *Held*, no reason for remanding the case for an enquiry into the actual value of the property covered by the deed, was clearly made out. (*Broadway and Campbell*, JJ.) BASESHAR NATH v. MEHR CHAND. 1923 Lah. 21.

———*Admissibility — Appeal — Document admitted without objection effect of—First Court.*

It is too late in appeal to object to the admissibility in evidence of a document which had been admitted without objection in the First Court. (*Broadway and Martineau*, JJ.) RAM CHAND v. BANK OF UPPER INDIA LTD. DELHI. 3 L. 59=25 P.W.R. 1922=5 L.L.J. 358=1922 L. 281.

———*Admissibility — Theft — Police file and thanedar's statement.*

In order to prove an alleged theft of an account book in a Civil Court from the plaintiff's house the police file and a Copy of the statement made by the Thanedar in other case are inadmissible. (*Wilberforce*, J.) BARU v. SUKHA SINGH. 69 I.C. 1008=4 L.L.J. 418.

———*Admissibility—Entries in Purohits books.*

Entries in the books of a purohit as to the relationship of the pilgrims are admissible in evidence. (*Broadway and Moti Sagar*, JJ.) PARTAP SINGH v. KIRPA SINGH.
30 P.L.R. 1923.

EVIDENCE—Admissibility.

———*Admissibility—No objection taken in the Court of first instance—If can be raised for the first time in appeal.*

Evidence admitted by the trial Court should not be excluded by the appellate Court if no objection has been raised by the opposite party at the time of its admission in the Trial Court. (*Abdul Raoof and Abdul Quadir*, JJ.) CHANNI BIBI *v.* AHMAD KHAN. **69 I.C. 331**

———*Admissibility — Duty of Judge to decide.*

When at a trial, admissibility of evidence is objected to, it is the duty of the trial judge to decide at once whether it is admissible. If he holds it inadmissible the document should not find a place on the record and assessors or jurors should be warned not to rely on it. (*Chevis and Jones*, JJ.) KAPUR SINGH *v.* EMPEROR. **20 Cr. L J. 305 = 50 I C. 481 = 98 P.L.R. 1918.**

———*Admissibility—Objection to—When to be taken.*

Where the trial Court had ordered a commissioner to inspect and report on books in the presence of the parties and their Counsel, which was done and the Counsel of one party after inspection furnished the Commissioner with a set of questions none of which suggested that the books were irregular, or unreliable. *Held* that the books must be taken to have been adequately proved. (*Chevis and Le-Rossignal*, JJ.) INDRA NARAIN *v.* NANAK CHAND. **58 P.R. 1917 = 58 P.R. 1916 = 32 I C. 454 = 74 P W.R. 1916.**

———*Admissibility—Objection to.*

A party who did not object to the admissibility of secondary evidence of a registered will even in his appeal memo cannot be allowed to urge it. (*Scott-Smith and Shadi Lal*, J.) HARDEO RAM *v.* PARBATI. **31 I.C. 600 = 184 P.W R. 1915.**

———*Admissibility—Entry in the account book of co-accused.*

In the case of several accused persons, an entry in the account book of one that he paid rent on behalf of another, is no evidence against that other. (*Krishnan*, J.) *In re* SAMACHARI. **45 M.L.J 728 = 18 L.W. 743 = 33 M L T 182 (H.C.) = 1924 Mad. 350.**

———*Admissibility—Objections to—Consent of parties—Waiver.*

Parties if so minded may ordinarily agree that evidence shall be taken in a particular way. That is not a matter which can be said to affect the jurisdiction of the court. It is merely that parties allow certain materials to be used as evidence which apart from their consent cannot be so used; 43 M. 609; 38 M. 160, Foll. If a party to a suit consents to the recitals in prior judgment being taken as proof of a will, he cannot object to their admissibility on appeal. (*Spencer and Devadoss*, JJ.) GOPU NATARAJA CHETTY *v.* RAJAMMAL. **43 M.L.J. 448 = 16 L.W. 122 = (1922) M.W.N. 464 = 31 M.L.T. 125 (H C) = 1922 Mad. 394.**

EVIDENCE—Admissibility.

———*Admissibility — Objection — Appellate Court—When can question.*

An appellate Court cannot reject a copy of the document exhibited in the Court below with the consent of both the parties, at any rate without giving the parties an opportunity of producing the original. (*Seshagiri Aiyar and Napier*, JJ.) KAMULAMMAL AVERGAL *v.* ATHIKARI SANGARI SUBBA PILLAI. **48 I.C. 615 = 35 M.L J. 11.**

———*Admissibility—Objection—Waiver.*

The omission by a party to prevent irrelevant evidence from being admitted will not in the absence of a deliberate consent to waive objections, cure the defect. 19 A. 76, Foll. *Oldfield and Krishnan*, JJ.) CHINNA MEENA ROWTHER *v.* KUMARA CHAKKARAVARTHI IYENGAR. **36 I.C. 906.**

———*Admissibility—Mode of proof—Appellate Court.*

When the lower Court has given a finding that the document is legally proved the appellate Court should sparingly interfere with the finding when no objection was taken at the hearing. (*Abdur Rahim and Ayling*, JJ.) MANCHU KONDA APPADA *v.* ATCHI APPALASWAMY. **32 I.C. 760.**

———*Admissibility—Objection—On appeal—Procedure.*

Where on objection by a party, certain documents were excluded in appeal as being inadmissible and no application was made by the other party for other evidence as regards its admissibility *held*, that the procedure of the lower Court was not illegal. (*Ayling and Tyabji*, JJ.) PERUMA GOUNDAN *v* RAMA GOUNDAN. **28 I.C. 378 = 28 M.L J 115.**

———*Admissibility.*

It does not follow a document is invalid, merely because it may not be admissible in evidence. (*Pridaux*, A.J.C.) RAJE UDAJIRAM *v.* RAJESHWAR. **1923 Nag. 109.**

———*Admissibility—Document—Not acted upon.*

A document is obviously inadmissible, if it is not given effect to and the object for which it was executed, namely, the proposed compromise in a suit, fell through, as then the document has not the force of a decree. (*Jwala Prasad and Adami*, JJ.) SITA RAM TEWARI *v.* GAYA PRASAD. **1923 P. 37.**

———*Admissibility—Objection to—Waiver—Objection on appeal.*

The question of the mode of proof is a question of procedure and is capable of being waived by a party. Where the question of the admissibility of a document was not raised before the Court below by the defendants, the appellate

EVIDENCE—Admissibility.

Court would take it they waived their objection to the mode of proof adopted by the plaintiff. It is not open to the defendants on appeal to raise the question of the proper proof of these documents. (*Das and Adami, JJ.*) MT. BIBI KANIZ ZAINAB *v.* SYED MOBARAK HOSSAIN. 72 I.C. 748.

———*Admissibility—Batwara Khashra.*

A Batwara Khashra is admissible in evidence. 38 I.C. 431, Foll. (*Coutts and Das, JJ.*) BABU TRILOKE PRASAD SINGH *v.* LAL UMANAND LAL. 1922 P. 447.

———*Admissibility—Dying declaration made to Sub-Inspector.*

A statement made to a Sub-Inspector of Police just before death is not evidence. (*Coutts and Ross, JJ.*) LACHMI LAL *v.* EMPEROR. 3 P. L.T. 398 = 23 Cr. L J. 218 = (1922) Pat. 159 = 1922 P. 40.

———*Admissibility—Objection on appeal.*

Where a documents is admitted without proof but without objection in the trial Court, no objection to its admissibility on the ground of want of formal proof can be taken in appeal. (*Miller, C. J. and Mullick, J.*) CHARITTAR RAI *v.* KAILASH BEHARI. 4 P. L W. 213 = (1918) Pat. 145 = 44 I C. 422 = 3 P.L.J. 306.

———*Admissibility—Objection to—For the first time on appeal.*

If a document is once admitted in the lower Court without objection, no party can take objection to its being referred to by the Court. 11 B. 320; 34 C. 1059 M.P.C., Ref. (*Pratt, J.C., and Boyad, A. J. C.*) FIRM OF TRIKAMJI JIWANDAS & CO. *v.* TRUSTEES OF PORT TRUST, KARACHI. 36 I.C. 96 = 10 S.L.R. 4.

Appreciation of.

———*Appreciation of—Portion of evidence false.*

It is not safe to assume that a case must be false if some of the evidence in support of it appears to be ambiguous or is clearly untrue. There is on some occasions a tendency amongst litigants to back up a good case by false or exaggerated evidence. (*Sir John Edge*). BANKIM BIHARI MAITI *v.* SRIMATI MATANGINI DASI. 24 C.W.N. 626 (P.C.).

———*Appreciation of—Conflict between oral and documentary evidence.*

Where some of the verbal evidence was untrustworthy whilst the documents record a state of affairs which was often hard to reconcile with probabilities. *Held*, that unless the facts evidenced by documentary and oral testimony were so much at variance with known conditions, as to be incapable of reasonable explanation it was to those facts and those facts alone that the Court must trust to reach a safe conclusion upon the matter in controversy. (*Lord Buckmaster.*) IRSHED ALI *v.* MUSSMMAT KARIMAN. 28 C.L.J 173 = 20 Bom. L R. 790 = 24 M.L T. 86 = (1918) M.W.N. 394 = 21 O.C. 86 = 5 O.L J. 197 = 46 I C 217 = 22 C.W.N. 530 (P.C.).

———*Appreciation of—Appellate tribunal—Knowledge of life and business—Use of.*

An appellate tribunal may bring their knowledge of life and business to bear even in cases where in the lower Court contemporary communications and course of business are used, and it can say that evidence given about them at the trial cannot be true. (*Lord Summer*). BRITISH SOUTH AFRICA COMPANY *v.* LENNON LINE. 34 I.C, 273 (P.C.).

———*Appreciation of—Trial judge.*

In a matter of appreciation of evidence and the credibility of witnesses the opinion of the trial Judge should not be lightly disturbed on appeal. 39 B 386 = 42 I.A. 119. (*Sir George Farwell.*) BOMBAY COTTON MANUFACTURING CO. *v.* MOTILAL 39 Bom. 386 = 19 C.W.N. 617 = 17 M.L T. 408 = 28 M L.J. 533 = 21 C.L J. 528 = 17 Bom. L R 455 = 2 L.W. 521 = (1915) M.W.N 788 = 29 I.C. 229 = 42 I A. 110. (P C). [*Also* 43 Cal. 707 = 33 I C. 583 = 28 C.L.J. 306 = 48 I.C. 561 = 39 All. 426. 39 I.C. 666 = 27 I.C. 276 = 20 C.L.J 50 (P.C.).]

———*Appreciation of—Discrepancies in.*

Discrepancies in the statements of witnesses on material points should not be lightly passed over, as the value of their testimony is seriously affected by them. (*Mr. Ameer Ali*). BIRJ LAL *v.* INDRA KUNWAR. 36 All .187 = 26 M L.J. 442 = 18 C.W N. 649 = 12 A L J. 495 = 19 C.L J. 469 = (1914) M.W N. 405 = 15 M.L.T. 395 = 16 Bom. L.R 352 = 23 I.C. 715 = 1 L.W. 794 (P.C.).

———*Appreciation of—Conflicting findings—Genuineness of signature—Broad probabilities.*

Where the parties to a suit are at issue on a vital question, such as the genuineness of deft's. signature to the document sued on, the safe principles to consider which story fits in with the admitted circumstances and resulting probabilities. The Privy Council upheld the finding of the Chief Court as to the genuineness of the signature, in reversal of the decision of the first Court. (*Mr. Ameer Ali.*) G.W. DAVIS *v.* MAUNG SHWE GO. 38 Cal. 805 = 15 C.W.N. 934 = 13 Bom L.R. 704 = (1911) 2 M.W.N. 79 = 14 C.L.J 250 = 4 Bur. L.T 229 = 8 A.L.J. 1198 = 10 M L.T. 455 = 21 M L.J. 1127 = 11 I C. 801 = 38 I.A. 165 (P.C.).

———*Appreciation of — Opinion of trial Judge—Question of fact.*

EVIDENCE—Appreciation of.

In a dispute of facts, great weight, naturally attaches to the finding of the trial Judge. (*Lord Robson*). DURGA KUNWAR *v.* MATHURA KUNWAR. **15 C.W N. 717 = 10 I.C. 963 = 10 M.L T. 216 (P.C.).**

———*Appreciation of—Identification—Mistake as to—Evidence if untrustworthy.*

The fact that a witness makes mistakes in identification is no reason for discrediting his evidence in other matters. (*Walsh*, J.) KHETAL *v.* EMPEROR. **45 A. 300 = 21 A.L.J. 143 = 24 Cr. L J. 526 = 1923 A. 352**

———*Appreciation of—Indian witnesses—Statements as to time.*

In India where references to time are generally mere approximations there is a large margin of honest error. (*Batchelor and Rao*, JJ.) EBRAHIMIJI *v.* EMPEROR. **15 Bom. L R. 237 = 19 I.C. 328 = 14 Cr. L J. 232.**

———*Appreciation of—Improbability.*

A theory of improbability in order to prevail against positive evidence must be clear and cogent; it must be such as to justify the rejection of the positive evidence as concocted and unreliable. 39 Bom. 388; 22 Cal, 519 ref. (*Mookerjee and Fletcher*, JJ.) SURENDRA KRISHNA MONDAL *v* RANEE DASI. **24 C W.N. 860 = 33 C.L.J. 34 = 59 I.C. 814 = 47 C. 1043.**

———*Appreciation of—Presumption against misconduct to be considered.*

Presumption against misconduct is among the probabilities to be taken into account in estimating the value of evidence and where the character and position of the person is above reproach this probability becomes stronger. The mere fact that this or that thing in a complete transaction is improbable does not count for much as against clear and distinct evidence of reliable witness. (*Jenkins*, C J. *and Woodroffee*, J.) GOPEOSWAR DUTT *v.* BISSESSUR DUTT. **39 Cal. 241 = 13 I C. 577 = 16 C W.N. 265.**

———*Appreciation of—Conjectures.*

The mere fact that the promissory note is stamped with a King Edward stamp does not prove that the note was executed in 1911 and not in 1915, in the absence of any evidence that there were no King Edward stamps in existence in 1915. (*Moti Sagar*, J.) MT. CHANDO *v.* SIBI RAM. **1923 Lah. 607.**

———*Appreciation of—Witness—Reliability.*

Where a witness keeps quiet for many days after the occurrence and comes forward after the police had made a discovery he is not reliable. (*Shadi Lal*, C.J. *and Zafar Ali*, J.) RULLIA RAM *v.* EMPEROR. **5 Lah. L. J. 325 = 1923 Lah. 488 (2).**

———*Appreciation of—Reliability of witness—Accused* Brahmins.

EVIDENCE—Appreciation of.

Where the only ground which the lower Court has given for disbelieving them was that the accused were *Brahmins*, and that the deceased was a woman and that the witnesses did not consider the death of a mere woman—of any importance compared with the lives of *Brahmins* who were accused of her murder. *Held* the mere fact that (the accused are) *Brahmins* is not a sufficient reason for rejecting the evidence of witnesses who are *prima facie* reliable. (*Scott-Smith and Moti Sagar*, JJ.) SHEO RAM *v.* EMPEROR. **25 Cr. L.J. 45 = 1923 Lah. 436.**

———*Appreciation.*

Without deliberatly intending to tell a lie human beings are pronely to believe what they wish, to confound what they believe with what they heard and to ascribe to memory what is merely the result of imagination. (*Daniels and Lyle*, A.J.Cs.) ANJUMAN UNNISA *v.* ASHIQ ALI. **8 O.L.J. 439 = 3 U.P.L.R. (J. C.). 65 = 1922 Oudh. 178.**

———*Appreciation of—Oral and documentary evidence.*

The evidence of respectable persons with special means of knowledge owing to relationship to the parties of the matters they depose to, should not be viewed with suspicion especially in cases where only oral evidence will ordinarily be available. (*Baillie and Tweedy*, J. Cs.) GAYAPRASAD PANDE *v.* ABBAS BANDI BIBI. **25 I.C. 660 = 7 O.L.J. 388.**

———*Appreciation of—Parties interested in the result of the suit.*

It is a good working rule not to act upon the evidence of persons who are vitally interested in the result of the case unless that evidence receives corroboration from surrounding circumstances, (*Das and Adami*, JJ.) MUSSAMMAT CHANDRAMA KUER *v.* RAMGAYAN. **1922 P. 111.**

———*Appreciation of—Witness unbelievable in essential particulars.*

Where a party comes into a Court with a story, which cannot be believed in its essential details, it is impossible to rely on a part of the story for the purpose of convicting the accused. (*Mullick and Thornhill*, JJ.) PHATLI SINGH *v.* EMPEROR. **5 P.L.W. 157 = 19 Cr. L.J. 877 = 47 I.C. 73 = 1918 Pat. 288.**

———*Appreciation of—Falsity in portions—Credibility of the rest of the evidence.*

The maxim *falsus in uno falsus in omnibus* is a maxim of ancient origin which is not now implicitly followed by Courts in the appreciation of evidence. It is the duty of the Court to sift the evidence and separate the truth from the falsehood if it can. (*Maung Kin*, J.) MAUNG PO GYAW *v.* MAUNG BO. **1 Bur. L.J. 218 = 1923 Rang. 30.**

EVIDENCE—Circumstantial Evidence.

Circumstantial Evidence.

——— *Circumstantial Evidence—Affirmative proposition — Conflicting evidence—Necessary for establishing the proposition.*

The fact that witnesses contradicting an affirmative proposition, are not reliable is not sufficient to establish the proposition. The proposition that a person consented to a compromise is an affirmative proposition and if it is asserted by some witnesses and denied by others, it would be perfectly legitimate to take into consideration the circumstantial evidence with a view to show that the evidence of the first class of witnesses was true and that the other class was false. (*Lord Atkinson.*) SARAT KUMARI DASI *v.* AMULLYADHAN KUNDU. 32 M.L.T. 137= 17 L.W. 481=27 C.W.N. 629= 28 B.L.R. 548=37 C.L.J. 501= (1923) M.W.N. 392=1923 P.C. 13.

———*Circumstantial evidence—Value of.*

Where there is a break in the chain of the circumstantial evidence every piece of the evidence making up the charge must be on record or else the appellate Court may find it difficult to see how the particular conclusion has been arrived at, and consequently miscarriage of justice may result. In capital cases it is better that every fact be strictly proved on record, than extracting admissions from counsel. (*Knox and Walsh*, JJ.) SHEO NARAYAN SINGH *v.* EMPEROR. 21 Cr. L.J. 777=58 I.C. 457= 2 U.P.L.R. (All.) 128.

———*Circumstantial evidence.*

Proof of intention or knowledge such as are mentioned in S. 373 of the Penal Code must be almost entirely a matter of inference from circumstances. (*Walmsley and Suhrawardy*, JJ.) KHETRAMANI DASI *v.* EMPEROR. 38 C.L.J. 431=24 Cr. L.J. 104= 1922 C. 339.

———*Circumstantial evidence—Nature of.*

Circumstantial evidence must be exhaustive and negative the possibility of guilt of any other person or must leave no room for doubt as to the complicity of the accused. (*Holmwood and Sharfuddin*, JJ.) CHIRAJFUDDIN *v.* EMPEROR. 18 Cr. L.J. 293=23 I.C. 501= 18 C.W.N. 1144.

———*Circumstantial evidence—Value of.*

In order to justify an inference of guilt from circumstantial evidence the incriminating facts must be incompatible with the innocence of the accused and incapable of explanation upon any reasonable hypothesis than that of his guilt. 8 C. W. N. 279, Rel. (*Scott-Smith and Shadi Lal*, JJ.) SALEH *v.* EMPEROR. 40 P.W.R. 1917 (Cr.)=42 I.C. 139= 18 Cr. L.J. 897=66 P.L.R. 1917.

———*Circumstantial evidence—Value of—Murder Case—Benefit of doubt.*

In a murder case where there is no direct evidence but only circumstantial evidence the jury must first decide what portions of the circumstantial evidence have been established and then see whether they constitute sufficient proof and if they have doubts, they must let the prisoner have the benefit of doubt. (*Johnstone*, C.J.) EMPEROR *v.* BROANING. 18 Cr. L.J. 482=38 I.C. 322= 17 P.R. (Cr.) 1917.

———*Circumstantial evidence — Conviction —Rules for guidance.*

Circumstantial evidence in order to justify a conviction must be exhaustive and must exclude the possibility of guilt of any other person or must point conclusively to the complicity of the accused. But 'exhaustive' does not mean that every incident short of the criminal act must be proved by positive evidence, and the "possibility" must not be treated as signifying "physical possibility" but so high a degree of probability that a prudent man considering all the facts and realising that the life or liberty of the accused person depends upon the decision, feels that the accused committed the crime. (*Johnstone*, C.J. *and Broadway*, J.) THAKARDAS *v.* EMPEROR. 18 Cr. L.J. 875= 38 I.C. 759=32 P.R. (Cr.) 1916.

———*Circumstantial evidence — Criminal trial.*

Conviction should be resorted to only after the reasonable exclusion of every conceivable hypothesis of innocence. (*Kensington and Rattigan*, JJ.) LACHMAN SINGH *v.* EMPEROR. 7 P.L.R. 1911=9 I.C. 400= 12 Cr. L.J. 69=11 P.W.R. 1911 (Cr.).

———*Circumstantial evidence—Probative force of.*

Circumstantial evidence must like any other evidence be tested and weighed and must prevail or not by its own inherent proving force. (*Ayling and Kumaraswamy Sastri*, JJ.) MUNIANDI *v.* EMPEROR 16 M.L.T. 585= 1 L.W. 1007=26 I.C. 382= 16 Cr.L.J. 38=(1916) M.W.N. 34.

———*Circumstantial evidence— Settlement of accounts—Payment of part and pro-note for balance—Pro-note invalid for want of stamp—Payment of part is evidence of agreement.* (*Seshagiri Aiyar*, J.) SAMINATHA PATHAN *v.* RATHAKRISHNA PATHAN. 23 I.C. 85= 16 M.L.T. 243.

———*Circumstantial evidence — Criminal trial.*

To justify an inference of guilt from circumstantial evidence the inculpatory facts must be incompatible and the innocence of the accused must be incapable of explanation upon any reasonable hypothesis other than that of his guilt. (*Jwala Prasad and Sultan Ahmad*, JJ). RAGHUNANDAN KOERI *v.* EMPEROR. 59 I.C. 856=22 Cr. L.J. 154=1 P.L.T. 684.

———*Circumstantial evidence—Nature of.*

Circumstantial evidence is evidence of circumstances as opposed to what is called direct evidence (*Fox*, C.J.) EMPEROR *v.* ALI CASSIM HARIFF. 10 I.C. 929=12 Cr. L.J. 329= 4 Bur. L.T. 97.

Co-defendants.

———*Co-defendants.*

When both defts. controvert plaintiff's claim the evidence of one deft. cannot operate against the co-deft. as the latter had no opportunity to cross-examine the former. (*Stuart*, J.C, *and Kendal*, A J C.) RAM DIN v. KAYESTH PATHSHALA, ALLAHABAD. **25 I C. 823 = 1 O L J. 447.**

Criminal Trial.

———*Criminal trial—Character evidence.*

Evidence as to character of the accused is generally inadmissible against him. (*Richardson and Beachcroft* JJ.) RAGHU NATH LAL *v.* EMPEROR. **19 Cr. L J. 776 = 46 I.C. 696 = 22 C W.N. 434.**

——— *Criminal trial—Accomplice—Duty to examine.*

If a witness can on reasonable grounds be regarded an accomplice the prosecution need not produce and examine him. (*Teunon and Shamsul Huda* JJ.) AGHREF ALI *v.* EMPEROR. **19 Cr. L.J. 81 = 43 I.C. 241 = 21 C.W.N. 1152.**

———*Criminal trial—Accused's statement.*

An accused's statement if to be relied upon, must be taken as a whole and nothing can be read into it which is not found within the four walls of the statement. (*Holmwood and Sharfuddin*, JJ.) PIKA BEWA *v.* EMPEROR. **15 C.L J. 512 = 13 Cr. L J. 195 = 14 I.C. 195 = 16 C.W.N. 1058.**

———*Criminal trial—Trackers—Value of.*

It is unsafe to rely completely on the evidence of trackers as to the correspondence of tracks. (*Scott-Smith and Shadi Lal*, JJ.) SALEH *v.* EMPEROR. **65 P.L.R. 1917 = 42 I.C 129 = 18 Cr. L.J. 897 = 40 P.W.R. 1917 (Cr.).**

——— *Criminal trial—Statements made in the course of trial only and not in Police investigation.*

Statements made in the course of trial only while they were not made in Police investigation are not to be believed. (*Jones*, J.) BALA SINGH *v.* EMPEROR. **54 P L.R. 1916 = 17 Cr. L J. 284 = 34 I.C. 1004 = 47 P.W.R. Cr. 1916.**

———*Criminal trial—Identification.*

Sometimes the identification of the particular accused by witnesses to whom they are strangers is useful. (*Johnstone*, C J. *and Scott-Smith*, J.) NIKA *v.* EMPEROR. **17 Cr. L.J. 156 = 33 I.C 636 = 19 P W R. 1916 Cr.**

———*Criminal trial—First report—Omission—Track evidence, value of.*

Where the first report makes no mention of the offender and the complainant when questioned named nobody as his assailant the complainant's subsequent statement that he had identified the accused at the time of attack

cannot be relied upon. The track evidence of a flimsy nature could not be believed without sufficient corroboration. (*Le-Rossignol*, J.) RONKI *v.* EMPEROR. **10 P.W.R. (Cr.) 1915 = 27 I.C. 848 = 16 Cr. L J. 222 = 91 P.L.R. 1915.**

———*Criminal trial—Penal Code, S. 34.*

To justify the application of S. 34 evidence of some distinct act by the accused, which can be regarded as part of the criminal act in question must be required. (*Oldfield and Ramesam*, JJ.) **17 L.W. 21 = 1923 Mad. 187 (2).**

———*Criminal trial—Deposition of witnesses taken in a previous trial—Admissibility—Conviction.*

The accused and his father were placed together on trial but after the trial proceeded for sometime, it was decided to hold two separate trials and the judge then began the trial of the accused and exhibited the evidence already given at the joint trial. Then that judge ceased to hold office and his successors decided to hold trial *de novo* but exhibited the depositions of witnesses in the previous trial without examining them *de novo*. *Held*, that in doing so there was an irregularity in the procedure which would vitiate the proceedings and that the consent of the accused would not cure such irregularity. 12 C.W.N. 140, Foll. In such a case the appellate court has not plenary discretion to decide whether the accused has been prejudiced by the irregularity. 39 M. 449, Ref. (*Oldfield and Ramesam*, JJ.) *In re* KOTTAMMAL K. UMMAR HAJEE **46 Mad. 117 = 23 Cr. L J. 743 = 16 L.W 637 = 43 M.L J 639 = 1923 Mad. 32.**

———*Criminal trial—Witness tendered.*

Where a witness was examined before the committing Magistrate and was simply tendered for cross-examination in the Sessions Court and the evidence before the Committing Magistrate was marked as exhibit in the Sessions Court, such procedure is illegal. (*Ayling and Tyabji*, JJ.) KOTTAI GADU, *In re*. **30 I.C. 439 = 16 Cr. L J. 615 = 1916 M W N 544**

———*Criminal trial—Statements of accused in police custody.*

Per *Sankaran Nair*, J.—Statements of accused in police custody are notoriously untrustworthy. (*Sankaran Nair, Sadasiva Aiyar and Bakwell*, JJ.) *In re* VAITHINATHA PILLAI. **18 Cr. L.J. 466 = 20 I C. 721 = (1913) M W.N. 825.**

———*Criminal trial—Depositions before committing Magistrate—Admissibility.*

Depositions before the committing Magistrate may on appeal be looked into by the High Court, where the cross-examination in the Sessions Court is not full. (*Ayling and Spencer*, JJ.) *In re* KITTA VALLYAM. **12 Cr L J 503 = 12 I.C. 223 = 10 M.L.T. 82.**

———*Criminal trial.*

In criminal cases, it is the weight of the evidence and not the number of the witnesses,

EVIDENCE—Criminal Trial.

which the Court has, and ought to consider. (*Daniels*, J C.) GURDIN *v.* EMPEROR.
22 Cr. L J. 647 = 63 I.C. 407 = 24 O.C. 225.

——*Criminal trial—Defence witnesses—Credibility of—Duty of Court to prevent insinuations as to defence witnesses being related to accused.*

The evidence of persons produced in defence is not to be discredited merely because some of them are fellow castemen of the accused. General insinuations by the police regarding the relation of the defence witnesses to the accused but not to be allowed to be introduced in the evidence when the fact does not appear on the record and no question with reference thereto are put to the witnesses in the cross-examination. (*Kanhaiya Lal*, J.C.) RAMESHWAR TEWARI *v.* EMPEROR. 53 I C. 156 = 20 Cr. L J. 748.

——*Criminal trial—First report—Admissibility of, without proof.*

Any statement made by a complainant in his first report is not admissible in evidence without proof and cannot be used against the accused in his trial. When it is proved that the accused made a statement soon after the commission of the offence incriminating himself the reasonable inference is that it was a true representation of actual facts in the absence of rebutting evidence. (*Lindsay*, J.C.) DAL *v.* EMPEROR. 16 Cr. L J. 62 = 26 I C 654 = 1 O.L.J. 687.

——*Criminal trial—Quantum or value of evidence.*

The fouler the crime, the clearer and plainer the proof ought to be, though it cannot be laid down as a proposition of law that the quantum or value of evidence must be proportionate to the enormity of the crime or the consequences which may follow from convictions. (*Jwala Prasad and Sultan Ahmad*, JJ.) RAGHUNANDAN KOERI *v.* EMPEROR. 22 Cr. L.J. 154 = 59 I.C 858 = 1 P.L.T. 684.

Documents.

——*Documents—Medical certificate.*

Where neither the Commissioner nor the medical man have been examined as a witness, the statements in the report by the Commissioner to the Court and in the certificate given by the Kabiraj are not admissible in evidence. (*Mookerjee and Buckland*, JJ.) BIBI JINJIRA KHATUN *v.* FAKIRULLA 67 I.C. 77 = 34 C.L.J. 444

——*Documents—Certificate—Mode of proof.*

A certificate is inadmissible in lieu of evidence of the writer himself. (*Carnduff and Richardson*, JJ.) PITES *v.* MAHOMED IDOO MIDH. 22 I.C. 654 = 19 C.W N. 1148.

——*Documents—Admissions in invalid document—Effect.*

Even if a document may not be valid for the purposes for which it was intended, it may be used as evidence of an admission by the person executing it when its execution has been admitted or proved. (*Miller*, C.J. *and Adami*, J.) GRANT *v.* EKLAL JHA. 3 P L T, 386 = 1922 P. 171.

Duty of Court.

——*Duty of Court—Proof of fact—Personal testimony alone, if sufficient.*

Simply because a Judge's own testimony is the only evidence on a point he must not say publicly that there is none in the country for proving that point. (*Walsh and Ryves*, JJ.) CHANDER SEN *v.* MAN MOHAN LAL.
L.R. 3 A. 17.

Exclusion of.

——*Exclusion of—Competence of witness—Objection—When to be raised.*

The proper time to object to the competence of a witness is when he is tendered for examination. But this does not mean objection cannot be raised during the course of the defence argument. (*Mears*, C.J. *and Piggott*, J.) EMPEROR *v.* HAR PRASAD BHARGAVA.
45 A. 226 = 21 A L J, 42 = L.R. 4 A. 19 (Cr.) = 1923 All. 91.

——*Exclusion of—Duty of Court to admit all relevant evidence—Effect of omission.*

Held, that the Court below was not justified in refusing to exhibit the account books, which if regularly kept would be most material evidence in favour of the plff. and in refusing to examine more than four of his witnesses and that there should be a retrial of the case. (*Fletcher and Walmsley*, JJ.) LAL MOHAN SAHA *v.* TAZIMADDIN. 49 I.C. 756.

——*Exclusion of—Power of Court—Refusal to examine witness.*

Any particular answer given by a witness, may after it is given, be ruled out as irrelevant but no Court can say beforehand that all the evidence not yet taken is going to be irrelevant and the Court's belief that the evidence is biased is not a valid ground for refusing to record it. (*Batten*, J.C. *and Hallifax*, A.J.C.) BHAGCHAND *v.* MUSAJI. 1923 Nag. 58.

Handwriting.

——*Handwriting—Comparison of.*

It is not safe for a Court to base its conclusion on a mere comparison of handwriting. (*Sanderson*, C.J. *and Mookerjee*, J.) NANDU LAL MALIK *v.* PANCHANAN MOOKERJEE.
45 Cal 60 = 21 C W N. 1076 = 42 I.C. 484 = 26 C.L J. 187.

——*Handwriting—Similarity—Test.*

Similarity of handwriting affords some assistance in determining whether the evidence adduced to connect a certain person with the

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forgery can be believed but the test is not at all a safe or certain test, 2 A.L.J. 444; 5 I.C. 355; 6 A.L.J. 184, Foll. (*Kanhaiya Lal*, A.J.C.) ABBAS QULI KHAN *v.* EMPEROR.
15 Cr. L.J. 643 = 25 I.C. 843 = 17 O.C. 276.

Hearsay.

———*Hearsay — Objection to admissibility of.*

The evil consequence of the admission of hearsay evidence is not merely that it prolongs litigation and increases its cost, but that it may unconsciously be regarded by judicial minds as corroboration of some piece of evidence legally admissible, and thereby obtain for the latter quite undue weight and significance. (*Lord Atkinson*), ATKIA BEGAM *v.* MUHAMMAD IBRAHIM. **6 L.W. 26 = 21 C.W.N. 345 = (1917) M.W.N. 261 = 36 I.C. 20 = 10 Bur. L.T. 79 (P.C.).**

———*Hearsay—Question—Whether land is rent free—Admissibility.*

On the question was whether a certain land was held rent free for 50 years, hearsay evidence is admissible and sufficient to show that it was. (*Baillie*, S.M.) RUDRA PARTAB SAHI *v.* RAM BARAN PATHAK. **24 I C 790 = 1 O.L.J. 248.**

Horoscope.

———*Horoscope—Admissibility of.*

A Horoscope is admissible in evidence to show date of birth and parentage. It is corroborative or rebutting evidence of the person who had prepared it. (*Stuart and Kanhaiya Lal*, A.J.CS.) HAR BAHADUR LAL *v.* CHAND RAJ BAHADUR. **5 O.L.J. 655 = 43 I.C. 400 = 21 O.C. 298.**

Opinions.

——*Opinions—Report of officers.*

The report of a Tahsildar or Naib Tahsildar being the result of the investigation made by him is only an expression of his opinion in the matter and cannot be the sole basis of a decision in regard to a question of title. (*Banerji*, J.) KUBER SAITHWAR RAM TAHAL UPADHIA *v.* GUPTAI SAITHWOOR.
35 I C. 237.

——*Opinions*— Panchayat —*Guilt of accused.*

The opinion of a *punchayat* as to the guilt of suspects when the latter decline to prove their innocence in the manner laid down by the *punchayat* is not a relevant fact. (*Shah Din*, J.) BEJA *v.* EMPEROR.
18 P.R. (Cr.) 1915 = 16 Cr. L J. 38 = 26 I.C. 625 = 223 P.L.R. 1915.

——*Opinion—Witness—Value of.*

The opinion of a witness is not entitled to any attention. (*Stuart*, J.C. *and Kendall*, A.J.C.) RAM DIN *v.* KAYESTH PATHSHALA, ALLAHABAD. **25 I.C. 823 = 1 O.L.J. 557.**

EVIDENCE—Recitals.

Pedigree.

———*Pedigree—Proof of—Value of.*

In social conditions where people have not yet learnt to place exclusive reliance on written and printed records and where family pride, family rights encourage the maintenance of a body of oral family history, memory unaided by permanent materials is often a very sufficient medium of record and oral communication often preserves the record with singular uniformity. A pedigree does not therefore lose its value in proportion to its remoteness from the present time at least so far as names and kinship was concerned. (*Lord Sumner*). MEWA SINGH *v.* BASANT SINGH.
9 L.W. 416 = 24 M.L.T. 429 = 28 C.L.J. 53 = 1 P.W.R. 1919 = 21 Bom. L.R. 232 = 43 I.C. 540 = 28 P.L.R. 1919 (P.C.).

——*Pedigree—Proof of.*

Pedigree is not admissible unless person preparing it proves that he had special means of knowledge. (*Lyle*, A.J.C.) BHIMA SINGH *v.* MT. SUNDAR. **9 O.L.J. 186 = 1922 Oudh 218.**

Personal knowledge.

———*Personal knowledge — Judge — If relevant.*

A Judge is justified in using his knowledge of the character of the parties to a suit gained from several litigations in his Court to discredit their evidence. (*Rigg*, J.) SAN HA BAW *v.* MI KHOROW NISSA. **9 L.B.R. 160 = 45 I.C. 734 = 11 Bur. L.T. 98.**

Photograph.

———*Photograph—Father and son, if admissible.*

Where the question of legitimacy arises, the resemblance of the son with the putative father is evidence and so the photographs of both are admissible in evidence. (*Mookerjee and Carnduff*, J.) IMAMBANDI *v.* MATASUDDI.
13 I.C. 678 = 15 C.L.J. 621.
[On appeal, 47 I.C. 513 = 45 Cal. 878.]

Receipt, value of.

———*Receipt—Value of.*

Where a receipt is wanting in details and no reliable evidence is forthcoming as to the actual amount paid, *held* it was of very little value even though there was evidence that a substantial sum had actually been paid. (*Rattigan and Scott-smith*, JJ.) MUHAMMAD KHAN *v.* LALLA KISHORE CHAND.
33 P.L.R. 1918

Recitals.

———*Recitals — Evidence only against parties.*

The recitals in a deed are strictly speaking evidence only against the parties to the deed

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and those claiming through them. (*Lord Parker*). SHRINIVASADAD BANSI *v.* KEHERBAI. 41 Bom 300=21 M L T 236= 32 M L J 175 19 Bom L R. 151= (1917) M.W.N 258=21 C W.N 558= 25 C.L.J. 311=39 I C 627= 44 I.A. 36 (P C.).

——*Recitals — Admissibility of, against strangers.*

Under ordinary circumstances and apart from statute recitals in deeds can only be evidence as between the parties to the conveyance and those claiming under them. Recitals of necessity in a deed of alienation by a Hindu widow are of little weight as against reversioners. (*Lord Chancellor*). NANDLAL *v.* JAYAT KISHORE ACHARYYA. 44 Cal 186= 20 M.L.T. 335=31 M L.J. 563= (1916 2 M.W.N 336=4 L W 458= 18 Bom. L.R. 868=14 A L.J 1103= 24 C.L.J. 487=1 Pat. L W. 1= 21 C W.N. 225=10 Bur L.T 177= 36 I.C. 420=43 I.A. 249 (P.C.).

——*Recitals—Evidentiary value.*

Recitals are not by themselves evidence of necessity as against third parties impeaching the sale. (*Mr. Ameer Ali.*) BRIJ LAL *v.* INDRAKUNWAR. 36 All. 187= (1914) M.W N. 405=19 C L J. 419= 16 Bom. L.R. 352=18 C.W.N. 649= 1 L.W. 794=12 A.L J. 495= 23 I.C. 718=15 M.L.T. 395 (P.C.).

——*Recitals—Deed.*

Recitals in a deed as to necessity are not evidence against the co-parcener to defeat whom, the deed was executed. (*Lyle*, J.) TIRBENI PRASAD *v.* RAMNARAYAN. 20 I.C. 951=11 A.L J. 718.

——*Recitals—Evidentiary value of.*

The recital of consideration in a deed and the admission of consideration before the registering officer, are evidence against the persons claiming through the executant of the deed. (*Chamier*, J.) IBRAHIM *v.* RAMNARAIN. 16 I C. 483=10 A.L.J. 87.

——*Recitals—Necessity.*

The recital in a mortgage-deed of an antecedent debt is not of much weight by itself. (*Richards*, C.J. *and Banerjee*, J.) BADRI DAS *v.* RAM RIKH. 13 I.C. 142.

——*Recitals— Pleadings — Substance of, reproduced in judgment.*

The substance of the pleadings narrated in the judgments may furnish evidence of the allegations made by the parties on that occasion. 9 C. 586 ; 8 C.L J. 521 ; 15 M. 19 ; 15 M. 378 ; 18 M. 78 Rel. (*Mookerjee and Cuming*, JJ.) KAILAS CHANDRA NAG *v.* BIJOY CHANDRA NAG. 36 C.L.J. 434=1923 Cal. 18.

EVIDENCE—Recitals.

——*Recitals—Deeds not inter partes.*

Recitals of boundaries of other lands in documents between third parties are not admissible in evidence. (*N R. Chatterjee and Suhrawardy*, JJ.) SOROJ KUMAR *v.* UMED ALI. 35 C.L.J. 19=1922 Cal. 251.

——*Recitals.*

The recitals in a will are not admissible in evidence to prove the truth of the facts mentioned in the will but they can be looked at for the purpose of seeing whether it is consistent with the assertions made by the testatrix during her lifetime. (*Ghose*, J.) PROMOTHO NATH MULLICK *v.* PRODUMNO KUMAR MULLICK. 69 I.C. 900=26 C.W.N. 772.

——*Recitals in judgment—As to age not binding when parties different.*

The statements of the plff.'s age in a decree to which the defts, or their predecessors were no parties, are not conclusive and binding against them. (*Teunon and Newbould*, JJ.) NILARATAN MITRA *v.* ABDUL GAFUR. 59 I.C. 3=32 C.L.J. 75.

——*Recitals—Value of.*

A recital in a document is not evidence as against a stranger to it. 6 Cal. 268, Rel. 12 M. I.A. 292; 12 W.R. (P.C.) 6 ; 23 Cal. 950, Dist. (*Mookerjee and Carnduff*, JJ.) RAHIM JAN *v.* IMAM BIBI. 15 I.C. 698=17 C.L J. 178.

——*Recitals—Third person.*

Recitals in a deed are not relevant evidence against a person who is not a party to the deed. But the parties to the deed may be presumed to have allowed the recitals to be embodied in the deed without objection. (*Kensington and Shahdin*, JJ.) MAHIDITTA MAL *v.* MRS. NICHOLSON. 133 P.W.R. 1913= 19 I.C. 770=224 P.L.R. 1913.

——*Recitals — Release deed by major member.*

If a major member of a family executes a release deed alleging that certain debts exist, the deed is evidence of the existence of such debt. (*Wallis*, C.J. *and Seshagiri Aiyar*, J.) ABDUL HUSSAIN ROWTHAN *v.* IBRAHIM ROWTHAR. 19 M.L.T. 346=39 I C. 243= 8 L.W. 379.

——*Recitals—Effect.*

A man that takes a deed is not ordinarily bound by the statements contained therein. (*Wallis, Offg.* C.J., *Seshagiri Aiyar and Kumaraswami Sastri*, JJ.) NACHIAPPA GOUNDEN *v.* RANGASAMI GOUNDEN. 17 M.L.T. 87=2 L.W. 69=28 M L.J. 1= 26 I.C. 757=(1916) M.W.N 68 (F B).

[On appeal see 50 I C. 498= 42 Mad. 533 (P.C.).]

EVIDENCE—Recitals.

———*Recitals—Necessity—Weight of.*

Recitals in a document do not of themselves afford sufficient proof of legal necessity but in the case of old transaction, the Court should treat such recitals with more indulgence than in the case of new ones. 36 A. 187 Foll. (*Ayling and Sadasiva Aiyar*, JJ.) KANTHU *v.* DASA UPADHYA. **26 I.C. 376.**

———*Recitals—Evidence of necessity.*

Recitals in deeds as to necessity is some evidence that the facts recited were present to the minds of the parties to the transaction but they are not sufficient to prove the necessity in question. 5 C. 363, Rel. on; 12 W.R.P.C. 47 Ref. to. (*Tyabji and Spencer*, JJ.) KRISHNA RAO *v.* AYYASAMI PADAYACHI.
(1914) M.W.N. 490 = 24 I.C. 426 = 27 M.L.J. 138.

———*Recitals in a document—Value of.*

The recitals may be taken as evidence but they cannot shift the onus of proof. (*Ayling and Tyabji*, JJ.) KONERI SHOLAGAN *v.* KUMARAPPUDAYAN. **21 I C. 566 = (1913) M.W.N. 924**

———*Recitals—Receipt of consideration.*

The receipt of consideration for a document, may be proved by the recital in the bond to that effect. (*Kanhaiya Lal.* A.J.C.) LACHMAN PRASAD *v.* HARDEO BAKSH.
37 I.C. 31 = 3 O.L.J. 373.

———*Recitals.*

The facts recited in a deed are not sufficiently proved by the recitals alone. (*Chamier and Evans*, J.C.) SHEO NARAYAN SINGH *v.* MAHABIR PRASAD. **9 I.C. 86.**

Shipping.

———*Shipping—Total loss.*

The circumstances attending the wreck of a vessel, the abandonment of the same by its officers and crew and the subsequent sale of the goods show that there has been a total loss of goods. That a cargo has been so damaged by the perils of the sea as to render an immediate sale necessary and the sale has taken place, sufficiently constitutes total loss. (*Davar*, J.) KANJI DWARAKADAS *v.* HARIDAS PURUSHOTAM. **36 Bom. 484 = 12 I C 837 = 13 Bom. L.R. 1211.**

Suspicion.

———*Suspicion—Sufficiency.*

Where one A, the plaintiff gave evidence that he was the legitimate son of one M but the defendants adduced evidence that he was the son of another man also named M and the High Court decreed in favour of the defendant on the ground that the defendant's case was quite possible and laid stress on the fact that A was supported in money by co-plaintiff, in whose favour A had executed a sale deed of a part of the property. *Held* that the decision was unsound. (*Sir John Edge*). MAHOMED ABDUL AZIZ *v* MIR TASDDUQ HUSSAIN.
21 C.W.N. 873 = (1917) M W N. 529 = 42 I C. 3 = 7 L W. 66 (P.C.).

EVIDENCE—Thumb impression.

———*Suspicion—Not a ground for decision.*

The Court's decision must be based not upon suspicion but upon legal grounds established by legal testimony. (*Sir Lawrence Jenkins.*) SONA KUMARI BIBI *v.* BIJOY SINGH.
44 Cal .662 = 1 P.L W 425 = 5 L W. 711 = 32 M L J. 425 - 21 C W N. 585 = 21 M.L T 344 15 A L J. 382 = 25 C L J 508 = 19 Bom L R 424 = (1917) M.W.N. 473 = 40 I C. 242 = 44 I.A. 472 (P.C.).

———*Suspicion—Judicial decision.*

Suspicion though a ground for scrutiny of evidence, cannot be made the foundation of a judicial decision. (*Ameer Ali.*) MOHAMMAD MEHDI HASAN KHAN *v.* MANDIR DAS.
34 All. 511 = 39 I A. 68 = 12 M.L T 392 = 15 O C 278 = 14 Bom. L.R. 1073 = 10 A.L.J. 373 = 17 C W N 49 = 16 C.L J 629 = (1912) M.W.N. 1052 = 17 I C 396 = 23 M.L.J 741 (P.C.).

———*Suspicion—Not a ground for judicial decision.*

A Court should not rest its decision merely on suspicion unsupported by legal testimony. 25 C.W.N. 409. (*Mookerjee and Chotzner*, JJ.) PROMODE KUMAR ROY *v.* KALI MOHAN SAHA. **27 C.W N. 305 = 36 C.L.J. 396 = 1923 Cal. 228.**

———*Suspicion—Not a ground for decision.*

Though there may be ground for suspicion, though the conduct of the parties may engender doubt, the Court's decision must rest not upon suspicion but upon legal grounds established by legal testimony. 44 Cal. 662 Foll. (*Mookerjee and Buckland*, JJ.) KRISHNA *v.* NAGENDRABALA. **25 C.W.N. 942 = 66 I.C. 694 = 34 C.L.J. 333.**

———*Suspicion—Not a ground for decision.*

The decision of the Court should rest upon legal grounds established by legal testimony. 44 Cal. 662; 25 C.L.J. 508 and 23 C.W.N. 321 Ref. (*Mookerjee and Buckland*, JJ.) BEPIN KRISHNA RAY *v.* JOGESHWAR RAY.
26 C.W.N. 36 = 66 I.C. 345 = 34 C.L J. 256.

Thumb impression.

———*Thumb impression—Similarity of.*

Similarity of the thumb impression taken at the time of presentation, if corroborated by other evidence in the case, is sufficient for conviction but by itself is not so. (*Spencer and Seshagiri Aiyar*) *In re* SINGRI BHIMA.
27 I.C. 900 = 16 Cr. L.J. 228.

EVIDENCE—Trial.

Trial.

———*Trial—Cogent grounds to alter conclusion.*

Held, cogent grounds would be needed to alter the conclusion drawn by the trial Court from the oral evidence which the appellant gave in spite of the fact that he spoke Greek and that it seemed doubtful whether the interpreter thoroughly understood Greek while the Court did not at any rate profess to understand that language. (*Lord Sumner*). SOCRATES ATYCHIDES v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL 18 L W. 664 = 25 Bom. L.R. 116 = (1923) M W.N. 846 = 1922 P.C. 371.

———*Trial—Incidents in — Statement of Judge.*

Per *Mookerjee*, J.—The statement of the presiding Judge as to what actually took place before him is conclusive. 21 C.L.J. 377, Rel. (*Sanderson*, C.J., *Mookerjee*, *Fletcher*, *Teunon and Chaudhuri*. JJ.) FATEH CHAND v. EMPEROR. 21 C W.N. 33 = 44 Cal. 477 = 38 I.C. 945 = 18 Cr. L.J 383 = 24 C.L.J. 400 (F.B.).

Value of.

———*Value of—Agreement about dower.*

The materiality of evidence regarding social position and customary dower, if an agreement about dower is clearly proved, is not obvious, but, it affords some test of the reliability of the witnesses of the party alleging agreement if the conclusion on the agreement was unfavourable to her. In the case of agreement entered into 37 years back, the oral evidence of the agreement, must be clear and convincing in order to establish a claim against the estate of the man who is said to have been a party to it. (*Lord Salvesen*). MT. HAFIZAN BIBI v. MT. SUBA BIBI. 44 M L.J. 714 = 37 C L.J. 461 = 27 C.W.N. 864 = 18 L.W. 670 = L.R. 4 A. (P.C.) 95 = 1923 P.C. 29 (P.C.).

———*Value of—Decree in favour of co-sharer—Partition between co-sharers and opponent.*

Where there was a decree in favour of a co-sharer against Government followed by a partition in accordance with the decree between the co-sharers and Government. *Held*, the decree being followed by partition is relevant and is an important piece of evidence. (*Lord Phillimore.*) (KUMAR) NARESH NARAYAN ROY v. SECRETARY OF STATE FOR INDIA. 45 M L J. 444 = 50 Cal 445 = (1923) M.W.N 511 = 50 I A 121 = 32 M.L.T. (P.C.) 162 = L.R. 4 (P.C) 50 = 28 C.W.N. 453 = 1923 P.C. 1 (P.C.).

———*Value of—Will—Proof of—Attesting witnesses — Duty of propounder to call—Similarity in handwriting.*

In case of doubt or dispute, justice requires that the best evidence procurable if the signature should be furnished. An attempt to support the signature by anything that falls short of the necessary standard which though not fatal is of serious defect. (*Lord Buckmaster*). RAM GOPAL LAL v. AIPNA KUNWAR. 44 All. 425 = 49 I.A. 413 = 31 M.L.T. 277 = 1922 P.C. 366 (P.C.).

EVIDENCE—Value of.

———*Value of—Thakbast Map and Khasra.*

The entries in Thakbast map and Khasra made by an Amin before and for the preparation of survey have no evidential value. (*Amir Ali*). JAGDEO NARAIN SINGH v. BALDEO SINGH. 8 P.L.T. 605 = 16 C.L J 499 = 49 I.A. 399 = 32 M.L T. 1 = 2 P. 38 = 45 M.L.J. 460 = 1922 P.C. 272 (P.C.).

———*Value of—Witnesses, Discrepanciesin.*

Discrepancies in the statements of witnesses, on material point if passed over somewhat lightly, affect the value of their testimony and obviously such an effect is undesirable. (*Amir Ali.*) LALA BRIJ LAL v. INDRA KUNWARA. 26 M.L.J. 442 = 18 C W.N. 619 = 12 A L.J. 495 = 36 A. 187 = 19 C L.J. 480 = (1914) M.W.N 405 = 15 M.L.T. 395 = 16 Bom. L.R. 352 = 23 I C 715 = 1 L.W 794 (P.C.).

———*Value of—Torture resorted to, to extract the evidence.*

Evidence obtained by torturing the deponent has no value. (*Walsh*, J.) GOKUL SINGH v. EMPEROR. 35 I.C. 527 = 17 Cr. L.J. 351.

———*Value of—Relevancy.*

A Kabuliat executed by the plaintiff's tenure-holder in favour of superior landlord was used as evidence in the case against the defendants. *Held* whatever might be the effect of the kabuliyat as regards the relation of the plaintiffs to their own landlord it cannot have the effect of affecting the defendant's state in any way which existed before the date of the Kabuliat. (*Walmsley and Ghose*, JJ.) BHAJAN SHEIKH v. BALAI SARKAR. 1923 Cal. 375.

———*Value of—Maps — Thak and Survey maps—Admissibility in evidence.*

Thak and survey maps are not conclusive as to whether lands which formed part of the bed of the river were included in the permanent settlement of 1793. It is not permissible for a Court to act on the assumption that in 1793 a state of things existed different from what appeared from any evidence before the Court. 2 C. 91, Rel. (*Mukerjee and Cuming*, JJ.) SECRETARY OF STATE FOR INDIA v. UPENDRA NARAIN ROY. 36 C.L J. 336 = 1923 Cal. 247.

———*Value of—Judgment.*

The production of judgment in a previous case merely established the fact that there has been a judgment but it does not prove the correctness of the previous decision. (*Mookerjee and Cuming*, JJ.) BAIDYA NATH DUTT v. ALEE JAN BIBI. 36 C.L.J. 9 = 1923 Cal. 240.

EVIDENCE—Value of.

———*Value of — Thumb-impression — Forgery.*

A Court should exercise great caution in arriving at a conclusion by a comparison of thumb-impressions. The positive evidence of witnesses who were undoubtedly present and eye-witnesses to the transaction should not be lightly brushed aside. 1 C.W.N. 339, Ref. (*Mookerjee and Cuming*, JJ.) BAIDYA NATH DUTT *v.* ALEE JAN BIBI. **36 C L J. 9 = 1923 Cal. 240.**

———*Value of—Negative.*

Very little weight can be attached to the evidence of a negative character. (*Mookerjee and Carnduff*, JJ.) IMAMBANDI *v.* MATASUDDI. **13 I.C. 678 = 15 O.L.J 621.**

———*Value of—English and Vernacular—Record of depositions.*

In cases where evidence is given by a witness in his own language, the vernacular record is always treated as more reliable and entitled to greater weight but this maxim could not always be safely applied in cases where a Magistrate who is taking down the evidence simultaneously in English understands the language as well as his reader. (*Abdul Qadir*, J.) SADHU SINGH *v.* THE CROWN. **24 Cr L.J 625 = 1923 Lah. 167.**

———*Value of—Measurement and plan.*

Where in a deed there is variation in measurement and plans the plans are to be preferred to measurement. (*Beavan Pelman*, J.) JOHRI *v.* JOWAHRA. **58 I C 67 = 91 P.L R 1919.**

———*Value of—Finger prints—Duty of Court.*

There is nothing in the so-called science of finger prints or the qualification of an expert in it which prevents the Court from applying its own eyes and mind to the evidence and verifying the results submitted to it by experts. If the finger prints are clear enough to sustain an argument there is no reason why an argument by way of deduction should not be as sure foundation for a conclusion and it may be a better one than any based on direct evidence. (*Olofield and Ramesam*, JJ.) PUBLIC PROSECUTOR *v.* VIRANNA. **(1922) M.W.N 642 = 16 L.W. 663 = 23 Cr L J 634 = 31 M L.T. 427 = 1923 Mad. 178.**

———*Value of—Deposition.*

A few (say two) casual and somewhat ambiguous phrases in a deposition cannot destroy the very clear effect of the whole deposition. (*Batten*, J.C. *and Halifax*, A.J.C.) MT. KUSHIBAI *v.* MANRAKHAN. **1923 Nag. 265.**

———*Value of—Evidence of party—Question of onus.*

The weight to be attached to the evidence of a party is not governed by any such extraneous consideration as that of the burden of proof but depends entirely on the intrinsic evidence. (*Kotwal*, A.J.C.) GOVARDHANDAS *v* HARLAL RAMSUKH. **1923 Nag. 62.**

EVIDENCE—Value of.

———*Value of—Oral evidence—Registered document.*

A defence based on oral evidence to frustrate a registered instrument should be always looked on with suspicion. (*Mitra*, A J.C.) VITHU JAIRAM *v.* AKARAM. **42 I.C. 372.**

———*Value of—Succession of judgments.*

A succession of judgments is valuable evidence. (*Ahsworth and Simpson*, A.J.Cs.) THAKUR RUDRA PRATAP SINGH *v.* THAKUR NIRMAN PRASAD SINGH. **9 O L J 552 = 1923 Oudh 61.**

———*Value of—Statement of person as to his own age.*

Though a man cannot give direct evidence of his own age his statements on the subject are not to be dismissed as of no value. (*Kanhaiya Lal* J.C. *and Daniels*, A.J.C.) KANHAIYA LAL *v.* MOHCMMAD MAHMUD ALAM. **63 I C. 525 = 8 O.L.J. 324.**

———*Value of—Reliability of witnesses.*

The mere fact that witnesses are relatives and interested in the suit is no ground to disbelieve them if the point can only be established by their testimony. (*Lindsay*, J.C.) GHANSHYAMDAS *v.* HARDEI. **32 I.C. 380 = 2 O.L J. 562.**

———*Value of—Cross-examination of opposite party's witnesses.*

A party is entitled to have taken into consideration the statements of the opposite party's witnesses in cross-examination. (*Lindsay*, J.C. *and Rafique*, J.) MUHAMMAD HUSSAIN *v.* LALJI SINGH. **25 I.C. 648 = 1 O L.J. 366.**

———*Value of—Thak maps—Revenue register—Possession.*

Thak maps are good evidence of possession at the time they were made, but they are no evidence of title acquired by prescription or adverse possession. The object of the *Thackbust* survey, which preceded the Revenue Survey, was to ascertain the position of the boundaries and area of estates and villages and it was no part of the duty of the Revenue Officers conducting the *Thakbust* operations to record the prescriptive rights. (*Das and Kulwant Sahay*, JJ.) CHATTRAPAT PRATAP BAHADUR SAHI *v.* G. LEE. **4 P.L T. 487 = 1 P.L.R. 322 = 1923 P. 558.**

———*Value of—Child witness—Credibility.*

The mere fact that the evidence of the only eye-witness of a crime is that of a child of 6 years of age is not a ground for not relying on it, especially when the evidence is given without hesitation and without the slightest suggestion of tutoring and there is corroboration of the evidence and of the child's subsequent conduct immediately afterwards. (*Miller*, C.J. *and Adami*, J.) FATU SANTAL *v.* EMPEROR. **2 P.L T. 288 = 61 I.C. 705 = 22 Cr. L.J. 417 = 6 P.L.J. 147.**

THE INDIAN EVIDENCE ACT

(ACT I OF 1872)

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EVIDENCE ACT (1 of 1872), S. 2.

———S 2—*Extradition Act.*

Per *Woodroffe, J.*—The Evidence Act is not exhaustive. The records of the German Court authenticated in the manner prescribed by Ss. 14 and 15 of the English Extradition Act, are admissible in evidence. (*Woodroffe, Mookerjee and Chitty, JJ*). RUDOLPH STALLMAN, *In re.* 39 Cal. 164=13 C W.N. 1033=12 I.C. 273=13 Cr.L.J. 505=14 C.L.J. 375.

———S 2—*Scope of the Act—Not exhaustive—English law.*

The provisions of the Evidence Act are not exhaustive of the rules of evidence and the Courts can invoke the aid of the principles of jurisprudence or of English law as supplementing and explaining the rules of evidence given in the Act. (*Spencer and Seshagiri Aiyar, JJ.*) ANNAVI MUTHIRAYAN *v.* EMPEROR.
39 Mad. 449=28 M L.J. 329=(1915) M.W N 223=28 I.C. 5 8=16 Cr.L J. 295=17 M L.T. 214.

———S. 2 (1)—*Muhammadan Law—Presumption of death under—If available.*

The presumption under the Muhammadan Law of inheritance that a person missing, must be presumed to have died on the date of disappearance cannot be availed of by reason of cl. (1), S. 2 of the Evidence Act. (*Lindsay and Kanhaiya Lal, JJ.*) MAIRAJ *v.* ABDUL. 63 I.C. 286=19 A L J. 713.

———S. 3—*Evidence—Admission of—Effect.*

Admission of evidence for one purpose in a suit is evidence for all purposes in the case. (*Lord Macnaghten*) BANK OF BOMBAY *v.* NAND LAL THACKERSEYDAS 37 Bom 122=40 I.A 1=12 M L.T. 646=(1913) M.W.N. 29=18 Bom L R 1=24 M L J. 176=17 C.L J. 146=17 I.C. 663=17 C.W.N. 353 (P.C.).

EVIDENCE ACT (1 of 1872), S. 3.

———S. 3—*'Proved'.*

The Act, which adopting the requirements of the prudent man as an appropriate concrete standard by which to measure proof, is at the same time expressed in terms or conditions of probability and in probability so that where forgery comes in question on a civil suit, the presumption against misconduct is not without its due weight as a circumstance, though the standard of proof to the exclusion of all reasonable doubt required in a criminal case may not be applicable. (*Mookerjee and Buckland, JJ.*) PRASANAN MAYI *v.* BAIKUNTANATH. 34 C.L.J. 384=66 I.C. 782=25 C.W N. 779.

———S. 3—*Proof—Impossibility to come to any conclusion—An order of law.*

A Dist. Judge in appeal held that in all probability the tenant deft. had paid an enhanced rent but he declined to draw the inference that this rent was paid at the enhanced rate contracted for by the tenants as in his opinion it was absolutely impossible to determine what sum was paid; the finding involves an error of law as the test of proof applied is one no embodied in S. 3 of the Evidence Act. (*Mookerjee and Chatterjee, JJ.*) GANESH DUTT SINGH *v.* LACHMI NARAIN SINGH.
34 I.C. 783=23 C.L J. 209.

———S. 3—"*Proved*" *and* "*Disproved*"—*Explained.*

The test of whether a fact in issue was proved or disproved is whether a prudent man after considering the matters before him deemed it proved or not, and the Courts can never be bound by any rule but by their judicial discretion. The same rule of evidence applies both to Civil and Criminal trials. (*Woodroffe, Coxe and Chatterjee, JJ.*) D. WESTON *v.* PEARY MOHUN. 40 Cal 898=28 I.C. 25=18 C.W.N. 185.

EVIDENCE ACT (I of 1872), S. 3.

———S. 3—*'Proved'—Objection that more evidence might have been adduced.*

Where there is sufficient evidence of a fact it is no objection to proof of it that more evidence might have been adduced. Demonstrations or a conclusion at all points logical, cannot be expected nor can a decree of certainty be expected of which the matter in question is not reasonably capable. (*Jenkins*, C J. *and Woodroffe*, J.) GOPESSUAR DUTT *v.* BISSESSUR DUTT.
39 Cal 245=13 I C. 577=16 C.W N. 265.

———S. 3—*Misrepresentation of fact.*

A misrepresentation as to the intention of a person (on stating the purpose for which the consent is asked) is a misrepresentation of 'fact' within the meaning of the section. (*Johnstone*, C.J. *and Scott-Smith*, J.) EMPEROR *v.* SOMA.
18 Cr. L.J. 18=36 I C 850=
17 P R. Cr. 1916.

———S. 3—*Magistrate—Whether Court.*

The Cr. P. Code contains no definition of "Court" but according to S. 3 of the Evidence Act the word "Court" includes all Magistrates. *Quære*: Whether the definition of "Court" can be held to apply to the Cr. P. Code? (*Chevis and Broadway*, JJ.) ABDUL AZIZ *v.* EMPEROR. 17 Cr L J 491=
36 I.C. 171=34 P.R.Cr. 1916.

———S 3—*Documents—Evidence.*

Documents which are neither produced, not proved, nor admitted in evidence in a case before the Court, should not be taken into consideration in its judgment though they may have been produced in another case between the same parties. (*Shah Din and Scott-Smith* JJ.) BIBI PUTLI *v.* JAWALA DEVI.
7 P L.R. 1912=16 I C 488=
126 P.W.R. 1912.

———S. 3—*Court—Bengal Land Registration Act* VII *of* 1876—*Deputy Collector holding enquiry—If a Court.*

A Deputy Collector holding an enquiry under the Bengal Land Registration Act for the purpose of registering the names of rival claimants is a Court within S. 3 of the Evidence Act and the enquiry held by him is a judicial enquiry. (*Jwala Prasad and Coutts*, JJ.) RAMA SINGH *v.* HARAKHD HARI SINGH. 47 I.C. 710.

———S. 3—*Fact in issue if can be proved by one not called as a witness.*

A fact in issue cannot be held to be proved by secondary evidence of statements made by a person who is not called as a witness and who is held by the Magistrate to be a liar. (*Pratt*, J.C. *and Crouch*, A.J C.) BAKSHATI *v.* EMPEROR. 13 Cr L J. 28=13 I.C. 220=
5 S L.R. 136.

———S. 4—*Conclusive proof—Declaration under Land Acquisition Act.*

A declaration under S. 6 (3), Land Acquisition Act, may be conclusive as to the land being needed for a public purpose but it does not debar a Court from inquiring into the validity of the steps which led up to that declaration. (*Greaves*, J.) MANIK CHAND *v.* CORPORATION OF CALCUTTA.
66 I.C. 600=48 Cal. 916.

EVIDENCE ACT (I of 1872), S. 6.

———S. 4—*Scheme suit—Burden of proof.*

A Court is not bound to decide in a scheme suit, whether the alienations of the trust property were binding on the institution. Where a person sets up that a temple is a public one, the burden lies on him to prove it. (*Ayling and Srinivasa Iyengar*, JJ.) SUBRAMANIA AIYAR *v.* VENKATACHALA VADHYAR.
(1916) 2 M W.N. 351=37 I C 688=
4 L.W. 444.

———S 5—*Relevancy of evidence—Court's powers—Extent of.*

In determining the relevancy or otherwise of any evidence the Court cannot consider matters beyond the purview of Evidence Act. (*Piggott*, J.) HEARSY *v.* MRS EVA FORSTER.
15 Cr. L J. 429=24 I C. 165=
12 A L.J 285.

———S. 5—*Relevant evidence—Case must be decided on.*

In the trial for the murder of a particular person, the case against the accused under trial, should be determined on evidence which is relevant and admissible under the Act and on the strength of evidence which the Court may consider necessary to record and appreciate with reference to two entirely different murders committed by the accused. (*Shah and Crump*, JJ.) GANGARAM *v.* IMPERATOR. 22 Bom L R 1274=
62 I.C. 545=22 Cr. L J 529.

———Ss. 5 and 167—*Court's duty to exclude irrelevant evidence.*

It is the duty of the Court to exclude an irrelevant document from evidence even if no objection is taken to its admissibility by the parties. Omission to object would not render it admissible. (*Miller*, C.J. *and Mullick*, J.) SUNDRA KUER *v* RAM KAIR CHOWBEY
8 Pat. L J. 410=1921 Pat. 17=
57 I.C. 561=1 P L T. 702.

———S. 6—*Statement made to police.*

Statement of a person, differing from a written report handed over by the same person but written by another, cannot be admissible against person writing the report. (*Lindsay*, J.) JALPA PRASAD *v* EMPEROR.
20 Cr. L.J, 311=50 I C. 487=
17 A L J. 760.

———Ss. 6 and 8—Res gestae—*Report by woman raped—Statements to neighbours.*

A woman, on being questioned by a relative of her husband, told him that the accused had raped her and asked him to report the matter to her father-in-law and subsequently made the same statement to her father-in-law. It was held that the statements were inadmissible under S. 6 but admissible as a complaint under S. 8 of the Evidence Act. (*Maritneau*, J.) RAMAN *v.* EMPEROR. 4 Lah. L.J. 491.

EVIDENCE ACT (I of 1872), S. 6.

——S 6—*Hearsay evidence—Statement by bystander—Admissibility.*

A statement by a person alleged to be the eye-witness of a murder made to persons who came to the scene of occurrence after the murderer has left the place, cannot be proved against the accused for the purpose of showing that their names were mentioned as murderers. In order to make the statement of a bystander admissible it must have been made as contemplated by S. 6 and illustration (*a*) to S. 6 at the time the transaction took place or so shortly before or after as to form part of the transaction. The statement would be irrelevant if made after the transaction is complete. The admissibility depends on the continuity of the transaction. (*Chevis and Shadi Lal, JJ.*) JOWALASAHAI *v* EMPEROR.
34 P.R. Cr. 1914 = 27 I.C. 664 = 16 Cr. L J. 184 = 226 P.L.R. 1915.

——S. 6—*Statement by testator before registring officer—Admissibility of.*

Statements made by a testator at the registration of the will are admissible in evidence. (*Abdur Rahim and Seshagiri Aiyar, JJ.*) MUTHU KRISHNA NAICKEN *v.* RAMACHANDRA NAIKEN. 47 I.C. 611 = 37 M.L J. 489.

——S. 6—*Rape—Statement by complainant after occurrense.*

In a case of rape, a statement made by the complainant immediately after the occurrence to another woman is admissible, not as evidence of the truth of the charge alleged, but as corroborating the credibility of the complaint and of the evidence of the consistency of her conduct. (*Maung Kin, J.*) NGA SAN PU *v.* EMPEROR. 43 I.C. 443 = 19 Cr. L.J. 165.

——S. 8—*Motive—What is.*

In a trial for the murder of a particular person, the prosecution should not show, that on two previous occasions the accused under trial had committed murders but had falsely charged and got convicted some others as murderers. The fact that the previous murders have been committed by the accused does not constitute a motive or preparation under S. 8. Per *Crump, J.*—A motive is that which moves a man to do a particular act. Whether the belief which produces the state of mind is true or false, the motive remains the same and the truth or falsity of the belief is not really in question. (*Shah and Crump, JJ.*) GANGARAM *v.* IMPERATOR. 22 Cr. L.J. 729 = 62 I C. 545 = 22 Bom. L.R. 1214

——Ss. 8, 25 and 26—*Statement to Police officer and complainant in his presence—Admissibility of—Corroboration.*

The evidence of Police officer and the complainant as to the pointing out of the various places by the accused was a confession of his guilt made while he was in the custody of the Police officer and inadmissible under Ss. 25 and 26 of the Evidence Act. The evidence could not be treated as evidence of conduct, apart from the accompanying statement under S. 8 of the Act. The statement made by the Police officer to the complainant in the presence of the accused that he (the accused) was going to show the various places connected with the theft, was not admissible under S. 8, Expln. 2 because the conduct apart from accompanying statement, was not shown to be relevant and under the circumstances such a statement could not be said to affect the conduct of the accused. (*Heaton and Shah, JJ.*) HERA GOBER *v.* EMPEROR. 20 Cr. L J. 681 = 52 I.C. 601 = 21 Bom. L.R 724.

——S. 8—*Conduct of parties—Intention.*

The conduct of the parties after the transaction is important in ascertaining the intention of the parties as to when the property should pass. 7 P.R. 1897 and 68 P.R. 1900, Ref. (*Johnstone and Chevis, JJ.*) BHAGAN *v.* ALLAHA DITTA. 27 P.L R. 1911 = 41 P.W.R 1911 = 9 I C. 847 = 55 P R. 1911.

——Ss. 8 and 21—*Statements after long time.*

Evidence regarding the statements made by a person, when they did not accompany any conduct on his part nor made at a time when a document was executed as to the circumstances of execution of document is not relevant under S. 3 or S. 21, Evidence Act. (*Benson and Sundara Aiyar JJ.*) NARSAMMA HEGADTHI *v.* BILLA KESU PUJARI. 31 I.C. 543 = 25 M.L.J. 637.

——S. 8—Res gestae—*Admissibility of.*

Statements accompanying conduct, and explaining such conduct, are relevant. (*Mitra, A.J.C.*) TUKARAM *v.* ARJUNA. 45 I.C. 904.

——S. 8—*Offence under S. 147, I.P.C.—Subsequent conduct.*

Where the evidence against a person charged with an offence under S. 147, I.P.C., is open to doubt, his conduct, sometime after the occurrence cannot be taken to be evidence under S. 8 of the Evidence Act and cannot be used against him in the case. (*Adami, J.*) ENAYET KARIM *v* EMPEROR. 54 I.C. 775.

—— Ss. 8 and 27—*Accused pointing out spot to Police officer—Conduct.*

If the accused accompanies a Police officer and shows the spot where the stolen property is concealed it amounts to conduct, proof of which is admissible under S. 8. (*Saunders, A.J.C.*) EMPEROR *v.* NOJA AUNG BA.
17 Cr. L J. 402 = 35 I.C. 962 = (1916) 2 U.B.R. 114.

——S 8, Expl. 2—*Informer's statement—When admissible—Inference from circumstances.*

An informer's statement to the police that he purchased opium from the accused is not admissible unless it was made in the presence of the accused but the finding of marked coins on

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the accused and opium on the informer are circumstances in this case from which it may be inferred that the accused sold the opium. (*Twomey*, J.) AH SEIN *v.* EMPEROR
12 Cr. L J. 479 = 12 I C 87 = 4 Bur. L.T 222

———S. 9—*Absconding of accused—Inference.*

If after the commission of a crime, a person whose name is mentioned as a participator in the crime absconds, his conduct implies that he is concerned in the crime. Anything therefore which tends to explain his conduct and furnishes motive other than a guilty conscience is relevant under S. 9. (*Shah and Crump*, JJ.) GANGARAM *v.* IMPERATOR. **22 Cr. L.J. 529 = 62 I.C. 545 = 21 Bom. L.R. 1274**

———Ss. 9, 11, 14, 15—*Letters Patent, cls.* 25, 26.

In a trial an evidence of design motive and intention in a theft occurred subsequently under the circumstances, similar to those that were at the time of the offence in the trial, was admitted by a Judge, to which due objection was taken. *Held*, the piece of evidence was inadmissible under Ss. 9, 11, 14 and 15 of Evidence Act and as cls. 25, 26 of the Letters Patent did not authorise the Court hearing the reference to direct a new trial, a final disposal by the Judge after rejecting improperly admitted evidence was asked. (*Sanderson*, C.J.) EMPEROR *v.* PANCHU DAS. **47 Cal. 671 = 24 C W.N. 501 = 58 I C. 929 = 21 Cr. L J. 849 = 31 C L.J. 402 (F. B.)**

———Ss. 9, 11 and 34—*Omission of entry of payment in account book.*

The absence of an entry of payment in an account book is a relevant fact under Ss. 9 and 11 of the Evidence Act. (*Mookerjee and Beachcroft*, JJ.) GANGARAM AGARWALA *v.* LACHIRAM KISHEN DYAL. **28 I C 705 = 19 C.W.N. 611.**

———Ss. 9, 11—*Statement by lessor in lease—If evidence against third parties.*

A statement by the grantor of a lease regarding the ownership of certain property situate on the boundary of the land demised can be used as evidenae against persons not parties to the lease transaction. 12 I. C. 149, Foll ; 6 C. 268 ; 17 A. 428, Dist. The absence of recitals in a document may also be used in evidence against a person not a party to a document. (*Mookerjee and Carnduff*, JJ.) IMRIT CHAMER *v.* SRIDHAR PANDEY. **17 C.W N 108 = 13 I.C. 120 = 15 C L J. 7.**

———Ss. 9, 11, 21—*Scope of, not controlled by the Cr. P. Code.*

Ss. 9 and 11 read along with S. 21 of the Evidence Act amply justify a Court in admitting into evidence all previous statements made by the accused which have a bearing on the question of his guilt and whether the previous statement is made to a Police officer or to an

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officer or to a third party is immaterial if the statement is relevant to the fact in issue. These sections are not controlled by the Cr. P. Code. (*Mullick and Thornhill*, JJ.) MADAN GURU *v.* EMPEROR. **24 Cr L J 723 = 73 I.C. 965 = 4 P L.T. 384.**

———Ss. 9 (c), 14 and 54—*Evidence of previous crime—Admissibility.*

Evidence of collateral offence cannot be received as substantive evidence of the offence on trial ; but evidence may be given to prove the elements mentioned in S. 14 of the Evidence Act such as intention, etc. (*Mookerjee and Beachcroft*, JJ.) BAHARUDDIN MANDAL *v.* EMPEROR. **15 Cr. L.J. 43 = 22 I C. 187 = 18 C L J 578.**

———S. 10—*Forgery—Letter written by a third party to a stranger — Admissibility against accused—Proof of conspiracy.*

The accused was tried on a charge of forgery of a will and the prosecution tendered in evidence a letter which purported that it is written by a person who had no hand in the forgery to his brother. The writer of the letter not being examined still the letter was admitted in evidence. *Held*, that the letter was not admissible in evidence in the absence of proof that its writer was a party to a conspiracy to forge the will. (*Scott*, C.J. *and Shah*, J.) EMPEROR *v.* KESHAV NARAYAN.
25 Bom. L.R. 248.

———Ss. 10 and 54—*Conspiracy — Gambling and cocaine cases prior to conspiracy charged—Admissibility of.*

Evidence showing that some of the accused ran cocaine and gambling dens, before existence of the conspiracy charged, was held admissible, the prosecution case being that some of the accused were a first thrown together by frequenting or running such dens and that they continued to meet such places for the purposes of the conspiracy charged. The evidence of an Excise Inspector of raids on the dens was admissible as leading up to the admissions made to him. (*Teunon and Cuming*, JJ.) SITAL SINGH *v.* EMPEROR.
46 Cal. 710 = 54 I.C. 53 = 21 Cr L J. 5 = 30 C.L.J. 255.

———S. 10—*Conspiracy—Proof of.*

Possession of seditious literature by one member is evidence against the others for finding out the object of the association, even where such possession was obtained or such essays written before the association was formed or before other members joined the association. (*Sanderson*, C.J. *and Batchelor*, J.) MONINDRA MOHAN *v.* EMPEROR. **43 Cal 215 = 28 C L.J 25 = 46 I C. 152 = 19 Cr. L J. 696 = 23 C W.N. 193.**

———S. 10—*Signature in note books.*

Note books of *Jamakharch*, wherein the accused has signed his name, are admissible to

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prove abetment of conspiracy. (*Holmwood and Mullik*, JJ.) SUPERINTENDENT AND REMEMBRANCER OF LEGAL AFFAIRS, BENGAL *v.* MAN MOHAN ROY. 17 Cr. L.J. 4 9 = 35 I.C. 999 = 20 C.W.N. 232.

——S. 10—*Conspiracy—Evidence of.*

Whenever evidence is sought to be let in under S. 10, the accused is entitled to insist on strict compliance with its provisions namely proof of reasonable ground for belief that the persons named have conspired together. On a charge of conspiracy, particular facts are proved to show that one or more of the accused took part in it, after general evidence of the existence of conspiracy is first given. (*Mookerjee and Richardson*, JJ.) AMRITALALA *v.* EMPEROR. 42 Cal 957 = 19 C W.N 676 = 16 Cr.L J. 497 = 29 I C. 5 3 = 21 C.L.J. 331.

——S. 10—*Scope of English and Indian Law.*

S. 10 of the Evidence Act is wider than the English law. As soon as it is shown with regard to an individual conspirator, that he was in privy with the combination and its objects and adopted the acts already performed, he as a conspirator becomes bound by the antecedent and the consequent acts of his fellow conspirators. There is a considerable inconsistency between S. 10 of the Evidence Act and the illustration thereto. It is not necessary to establish by direct evidence that the accused persons did enter into an agreement to commit an offence to attract the operation of S. 10 of the Evidence Act, against the accused. The finding of closed covers relating the conspiracy in possession of one of the conspirators is relevant against the other under S. 10. (*Johnstone and Rattigan*, JJ.) BALMOKAND *v.* CROWN 246 P.L R. 1915 = 17 P.R. Cr. 1915 = 28 I.C. 738 = 16 Cr. L J. 354 = 11 P.W.R. Cr. 1915.

——Ss. 11, 14 and 15—*Facts disclosing similar transaction, admissibility.*

Where the accused were charged with having cheated the complainants by receiving the money for them under the pretext that they were the agents of a rich lady anxious to lend money at low rates and that they would get for the complainants a loan from her at an extremely low rate of interest evidence to the effect that at or about the same time they were making precisely the same representation to third persons is admissible under Ss. 11 and 14 to corroborate the story of the prosecution and to prove the intention of the accused. (*Piggott and Walsh*, JJ.) EMPEROR *v.* YAKUB ALI. 39 All. 273 = 39 I C 613 = 18 Cr. L.J. 529 = 15 A L.J. 241.

——Ss. 11, 32 and 33—*Statements of deceased persons—Admissibility—Evidence.*

If a statement of a relevant fact made by a deceased person is inadmissible under Ss. 32 and 33, it will not be admissible under S. 11.

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S. 11 must be read subject to other sections of the Evidence Act. (*Richards*, C.J. *and Banerji*, J.) BELA RANI *v.* MAHABIR SINGH. 34 All. 341 = 14 I.C. 116 = 9 A.L.J. 351.

——Ss 11 and 41—*Judgment—Recitals—Admissibility of—Family custom.*

Though the recitals in a judgment cannot be used as evidence, still the judgment is evidence as a relevant fact in issue or as a transaction. Evidence adduced to prove the custom prevailing in connected families may be admissible to prove the custom in the family in question in a suit. 29 C. 343, Ref. to. (*Mookerjee and Cuming*, JJ.) SARADA PRASANNA ROY *v.* UMA KANTA HAZARI. 50 Cal 370 = 37 C L J. 233 = 1923 Cal. 485.

——Ss. 11, 13 and 32 (3)—*Recital of boundaries—Admissibility in evidence.*

Recitals of boundaries in documents between third parties are not admissible in evidence under Ss. 11 and 13 of the Evidence Act but they might be admitted under S. 32 (3) when they are the statements made by persons of that character described in the opening words of that section; that is to say, persons who are dead or who cannot be found or for other reasons there stated cannot be examined as witnesses. 35 C.L.J. 19; 14 C L.J. 467; 15 C.L.J. 7, Ref. (*Newbould*, J.) ABDUL RAHIM KAZI *v.* JONABALI SIKDAR. 1923 Cal. 299.

——S. 11—*Recitals in documents.*

Where a document has been admitted in evidence as evidence of a transaction the parties are often apt to refer to the recitals therein as relevant evidence, but the recitals are not evidence especially if they are mere assertions by a person who is alive and who might have been brought before the Court as a witness. (*Mookerjee and Chotzner*, JJ.) NIHAR BEWA *v.* KADER BAKSH. 1923 Cal. 290.

——Ss. 11 and 13—*Landlord and tenant—Evidence of relationship*—Ex parte *decrees.*

Ex parte decrees for rent obtained by a landlord against the heirs of a tenant and satisfied by the latter are evidence of the existence of the tenancy at the date of those decrees. (*Greaves and Panton*, JJ.) ANUKUL CHANDRA DHAR *v.* KAMALA KANTA ROY. 1923 Cal. 270.

——S. 11—*Statement of wounded person on the day of occurrence.*

Accused was charged with having caused grievous hurt to one of his wives and having killed another. The wounded woman on the day of the occurrence, on her arrival in Hospital made a statement to a Magistrate to the effect that it was the accused who had attacked herself and her co-wife. *Held*, S. 11 of the Evidence Act does not justify the admission of the contents of the statements. (*Walmsley and Huda*, JJ.) EMPEROR *v.* ABDUL SHEIKH. 21 Cr L.J. 188 = 54 I.C. 887 = 23 C.W.N. 933.

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———Ss. 11 and 13—*Recitals in deeds—Admissibility of.*

A recital in a *kabuliyat* by a tenant that his landlord is in possession of a piece of land may not be sufficient evidence of the latter's possession unless the executant of the *kabuliyat* is examined in Court. (*Teunon and Newbould*, JJ.) RAKHAL CHANDRA GHOSE *v.* MOHENDRA NARAIN SEN. 51 I.C. 797.

———S. 11—*Letter written by accused—Admissibility in evidence—Conditions.*

A letter written by the accused where it is self-condemnatory is *prima facie* evidence against him and is admissible in evidence; that the letter should have been signed by the accused is not necessary; it is enough if it can be traced to the writer; its admissibility is not affected by the fact that it was intercepted or surreptitiously detained and opened. (*Mookerjee and Beachcroft*, JJ.) BOOTH *v* EMPEROR. 41 Cal 545 = 18 C.L.J. 567 = 22 I.C. 179 = 15 Cr. L.J. 35 = 18 C.W.N. 886.

———S. 11—*Terms of grant—Evidence as to other grants by same person.*

Where the question is as to the terms of a grant made by A to B, whether it may be subject to a condition or not, evidence of other grants by A to others with the condition is inadmissible. Even if admissible its weight is small. (*Jenkins*, C.J., *Harrington and Mookerjee*, JJ.) BHAGWAT BUKSH ROY *v.* SHEO PERSHAD SAHU. 18 C.L.J. 277 = 21 I.C. 481 = 18 C.W.N. 297.

———S. 11 and 13—*Nature of contract with some tenants, if evidence of nature of contract with others.*

The fact that A made a contract of tenancy with B on certain terms in respect of certain lands is no evidence of the nature of the contract of tenancy made by A with C in respect of different lands, except perhaps where all the lands are subject to the same custom or tenure. (*Mookerjee and Beachcroft*, JJ.) KAMLESHWARI PERSHAD SINGH *v.* KAMANI SINGH. 17 C.W.N. 1159 = 20 I.C. 171 = 19 C.L.J. 348.

———S. 11—*Entry in hospital register, Admissibility of.*

An entry made in a register of in-door patients in hospital is admissible in evidence to prove that the person mentioned in the entry was in the hospital on a certain date. (*Chevis*, J.) AMOLAK RAM *v* EMPEROR. 56 P.L.R. 1918 = 43 I.C. 429 = 19 Cr. L.J. 141 = 13 P.W.R. Cr. 1918.

———Ss 11 and 32—*Ownership of stolen property—Statement of deceased.*

Statement of a person regarding the ownership of property alleged to be stolen as to what the deceased had said to him is inadmissible either under S. 11 or under S. 32, 34 A. 341, Foll. (*Oldfield and Seshagiri Iyer*, JJ.) DORAISWAMI IYER, *In re*. 30 I.C. 464 = 16 Cr. L.J. 640.

EVIDENCE ACT (I of 1872), S. 11.

———S. 11—*Title—Proof of—Assertion by one party—Sketch.*

A sketch prepared by one of the parties at a time when the Government proposed to acquire those lands before there was any controvesy, is strong cogent evidence to prove ownership because it dates back to a period when this dispute had not arisen. (*Wallis*, C.J. *and Tyabji*, J). MANJERI KARNAMULPAD *v.* KOZHAIKOTE KIZHAKKE. 29 I.C. 729.

———S. 11—*Document not* inter partes—*Admissibility.*

Document not *inter partes* which are admissible under S. 11, must relate to the existence of facts which make any fact relevant to the decision of the case, highly probable or improbable. (*Sadasiva Aiyar and Tyabji*, JJ.) VISVANATHA ROW *v.* CHINNAKOLANDAI NAINAR. 22 I.C. 369 = 1 L.W. 197.

———S. 11—*Highly probable—Scope of.*

The words 'highly probable' in S. 11 are of great importance inasmuch as the section makes only those facts admissible, which, assuming that they are admitted in evidence will be of great weight in bringing the Court to a conclusion one way or other regarding the facts in question. (*White and Tyabji*, JJ.) MESSRS. LOVELOCK AND LEWES *v.* THE MALABAR TIMBER AND SAW MILLS, LD. 18 I.C. 997 = 13 M.L.T. 282.

———S. 11—*Relevancy of judgment—Civil suit.*

A judgment in a Civil suit is relevant under S. 11. (*Benson*, O.C.J., *Sankaran Nair and Sundara Iyer*, JJ.) MUNI REDDI *v* VENKATA ROW. 37 Mad. 2 8 = 23 M.L.J. 447 = (1912) M.W.N. 1029 = 17 I.C. 544 = 13 Cr. L.J. 800 = 12 M.L.T. 615.

———Ss 11, 13 and 32 2)—*Deed—Recitals as to boundaries — Admissibility of — Persons parties to deed living.*

Documents between strangers containing recitals as to the boundaries and indirectly suggesting the ownership of the property in dispute are not admissible under S. 11 or 13 but are admissible under S. 32 (2) of that Act. 5 C.L.J. 55; 14 C.L.J. 167; (1910) M.W.N. 664; 19 C.W.N. 468, Ref. (*Prideaux*, A.J.C.) TRIMBAK *v.* GANESH. 1923 Nag. 22.

———S. 11—*Police report—Value of.*

Where the lessee sets up forcible re-entry by the lessor, the fact that a report complaining of the use of force or criminal intimidation was made to the police soon after the occurrence, is a relevant fact under S. 11 of the Evidence Act and admissible in evidence. (*Lindsay*, J.C. *and Kanhaiya Lal*, A.J.C.) HABIB ULLAH SHAH *v.* BAKHT BALI SINGH. 30 I.C. 292 = 2 O.L.J. 299.

———Ss. 11 (2), 21 (8) and 32 5—*Issue as to date of death of A—Document by A's son reciting A's death relevant.*

Where the question to be decided was as to when A died, a mortgage executed by his son in

EVIDENCE ACT (I of 1872), S. 11:

which the father is described as dead is admissible. (*Mukerjee and Rankin, JJ.*) SAYERUDDIN AKONDA *v.* SAMIRUDDIN AKONDA. 1923 Cal. 378.

———**Ss. 11 (b) and 13**—*Recitals in documents.*

Documents not *inter partes*, containing recitals as to a fact in issue are admissible under S. 11 (*b*) or S. 13 of the Act. 5 C.L.J. 55, Foll. 19 I.C. 615, Not Foll). (*Shadi Lal and Wilberforce, JJ.*) FARZAND ALI *v.* ZAFAR ALI. 46 I.C. 119 = 132 P.W.R. 1918.

———**S. 13.**

ACTS AND CONDUCT.
DOCUMENTS.
INSTANCES OF CUSTOM.
JUDGMENTS.
MAPS.
WRITTEN STATEMENTS.

Acts and Conduct.

———**S. 13**—*Acts and conduct—Transaction between two persons—Rights of third person—Whether transaction admissible against third.*

A private transaction between persons, having no power to bind the person sought to be affected, is no evidence against him under S. 13. 5 C.L.J. 55, Diss. from (*H. Stephen and Mullick, JJ.*) ABDUL ALI *v.* SYED REAJAN ALI. 21 I.C. 618 = 19 C.W.N. 468.

———**S. 13 (a)**—*Acts and conduct—Right to well—Transactions by party—Evidence of title.*

The ownership in a well may vest in different persons though it might stand on property belonging to one of them. Transactions by a party, dealing with the property to which he lays a claim are important evidence of his title; and sometimes, they constitute the only evidence of title available. (*Sundara Aiyar and Sadasiva Aiyar, JJ.*) RAMA IYENGAR *v.* KASINIVENDA IYENGAR. 16 I.C. 746 = 23 M.L.J. 327.

———**Ss. 13 and 50**—*Acts and conduct—Mutation application—Legitimacy.*

When the question is whether a certain person is a legitimately born son, application for mutation with regard to revenue-paying properties would be admissible under Ss. 13 and 50, Evidence Act, as assertions of his right as a legitimate son. So also a judgment relating to a transaction in which he set up a claim as legitimate son would be relevant under S. 13. (*Simpson, J.C. and Dalal, A.J.C.*) GALSTAUN *v.* MIRZA ABID HUSSAIN. 10 O.L.J. 263 = 9 O. & A.L.R. 282 = 1924 Oudh 19.

Documents.

———**Ss. 13 and 32 (b)**—*Documents—Sale-deed—Thirty years old showing ownership of adjoining land.*

A sale-deed more than 30 years old in regard to a certain plot of land is admissible in

EVIDENCE ACT (I of 1872), S. 13—Documents.

evidence under Ss. 13 and 32 (*b*) of the Act, when a question of title to that land is in dispute. (*Chamier, J.*) NATWAR *v.* ALKHU. 18 I.C. 752 = 11 A.L.J. 139.

———**S. 13**—*Documents—Recitals in.*

Where a document has been admitted in evidence as evidence of a transaction the parties are often apt to refer to the recitals therein as relevant evidence, but the recitals are not evidence, especially if they are mere assertions by a person who is alive and who might have been brought before the Court as a witness. (*Mookerjee and Chotzner, JJ.*) NEHAR BEWA *v.* KADOR BAKSH. 68 I.C. 282.

———**S. 13**—*Documents—Sale-deeds—Assertion of right.*

To prove his vendor's title and exclusive possession of a garden, plff. produced certain documents dealing with the garden in question by way of partition. *Held*, that the documents were title deeds and contained an assertion of title to and possession of the property in dispute on behalf of the predecessor in title of the plff. against the deft. and should not have been excluded from consideration on the question of possession. (*N. R. Chatterjee, J.*) SREEMATI NITYA KALI DUTT *v.* SARAT CHANDRA BOSE. 51 I.C. 866.

———**S. 13**—*Documents*—Chittas, *Private—Admissibility of.*

Semble: Private *Chittas* however old are not admissible in evidence under S. 13. (*Fletcher and Newbould, JJ.*) NAFAR JOARDAR *v.* PRATIMA SUNDARI DASSYA. 41 I.C. 726.

———**Ss. 13 (a) and 32 (7)**—*Documents—Will—Unprivileged wills—Inadmissible.*

Wills not admitted to probate are not admissible in evidence under Ss. 13 (*a*) and 32 (7) except on proof by an attesting witness that they are in accordance with S. 50 of the Indian Succession Act. (*Fletcher and Teunon, JJ.*) MOHESWAR PANDA *v.* SUNDAR NARAIN. 33 I.C. 342 = 22 C.L.J. 551.

———**S. 13**—*Documents*—Kobala *admitting right of easement.*

A *Kobala* admitting the plff.'s right to an easement is relevant and admissible under S. 13 of the Act. (*Mullick and Walmsley, JJ.*) GIRISH CHANDRA *v.* KUNJA BEHARI KOWAR. 26 I.C. 781.

———**S. 13**—*Documents containing assertions of right—Whether evidence.*

Documents containing assertions of right of a tenure holder to hold a certain rental, are admissible under S. 13. (*Woodroffe and Mullick, JJ.*) DINAMANI CHAUDHURANI *v.* JAGAT CHANDRA BHATTA CHARJEE. 23 I.C. 773.

———**S. 13**—*Documents—Admission in Road Cess return—Evidence.*

An entry in a Road Cess return in which a former proprietor of an estate admitted the

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EVIDENCE ACT (I of 1872), S. 13—Documents.

existence of a Lakhiraj, although not binding on the auction-purchaser of the estate at a Revenue sale, is admissible under S. 13. (*Chapman and Mullick*, JJ.) MANMOHINI DASSI *v.* ADVAITA MAITI. 19 I.C. 548.

———**Ss. 13 and 32 (7)** — *Documents — Assertion of title in mortgage-deed — Relevancy and admissibility.*

A mortgage-deed containing an assertion of title as owner by the mortgagor is relevant under S. 13 as evidence of the title asserted. Where the mortgagor is dead the recitals in the deed as to how he got title are also evidence under S. 32, cl. (7) as statement relating to a transaction mentioned in S. 13. (*Sadasiva Iyer and Spencer*, JJ.) NALLASIVA MUDALIAR *v.* RAVAN BIBI. 14 L W. 327 = 70 I.C. 389 = (1921) M.W.N 560.

———**Ss. 13 and 35** —*Documents containing assertion of right.*

A document containing an assertion o certain rights though not a public document under S. 35 is admissible under S. 13. (*Wallis. Offg.* C.J. *and Seshagiri Aiyar*, J.) AMBALAVANA PANDARASANNADHI AVERGAL *v.* MINAKSHI SUNDARESWARA DEVASTANAM. (1918) M.W N. 76 = 28 M.L.J. 217 = 26 I.C. 811 = 17 M.L.T. 271.

———**Ss. 13 and 32** — *Documents — Sale deeds—Transaction—Meaning of.*

The words 'transaction,' means a business or dealing carried on or transacted between two or more persons. Where certain properties were claimed as the property of a particular family, and (1) sale-deeds by widow asserting their husband's title to the properties, (2) written statements filed by them in certain suits and (3) recitals in sale-deed between third persons describing the properties as belonging to a particular family, were put in evidence, *held* per *Ayling*, J., that the documents mentioned in (1) were admissible as transactions within S. 13 (*a*) and that those mentioned in (2) and (3) are not admissible either under S. 13 (*a*) as a transaction or under S. 32 as an admission against interest. Per *Seshagiri Iyer*, J.—That all of them were inadmissible. 6 C. 171 P.C., Ref. (1910) M.W.N. 668, Foll. 23 B. 69, Diss. (*Ayling and Seshagiri Aiyar*, JJ.) SARIPATHI VENKATARAYAGOPALA RAJU *v.* FOTA NARASAYYA. 26 I.C 747 = (1914) M.W.N. 779.

———**S. 13 (b)**—*Documents—Entries in*—Ikrari-i-malikhan-e-deh—*Dictated by landlord alone—How far admissible.*

Entries in *Ikrari malikhan-e-deh* recording a village custom as stated by the landlord are in the absence of fraud or error binding on persons affected thereby even though the entries were not prepared in the presence of or attested by such persons and they are admissible in

EVIDENCE ACT (I of 1872), S. 13—Instances of custom.

evidence to prove custom. (*Lindsay*, J.C.) SNAI PERSHAD *v.* BALAK RAM. 23 I.C. 962 = 1 O L.J. 78.

———**S. 13**—*Documents—Not* inter-partes—*Admission of plaintiff's rights—Admissibility.*

In a suit in which the question was whether a certain land was the *man* land of the plaintiff or the *joti* of the defendant an *ekrarnama* addressed by a stranger to the plaintiff's ancestor describing the law as *man* is admissible under S. 13 of the Evidence Act as it is both a transaction in which the right was claimed and an instance in which the right was exercised. Case-law referred to. (*Coutts and Ross*, JJ.) SABRAN SHEIKH *v* ODOY MAHTO. (1923) Pat 125 = 1 P. 876 = 3 P.L.T. 792 = 1922 P. 588.

Instances of Custom.

———**S. 13 (a)**—*Instances of custom—Pending suit—Custom—Omission to plead.*

The fact that a custom was not pleaded in litigations between members of the community where it might have been pleaded, is relevant evidence, and the question of its relevancy is not affected by the circumstances that some of those suits were still pending in Courts at the time of the trial. (*Sanderson*, C J., *Woodroffe and Mookerjee*, JJ.) MARIAM BIBEE *v.* SHAIKH MAHOMED IBRAHIM. 48 I C. 561 = 28 C.L.J. 306.

———**S. 13**—*Instances of custom—Pre-emption in case of neighbouring* Mohallas.

The evidence of custom of pre-emption in the neighbourhood of a *Mohalla* may indicate the existence of the custom of pre-emption in that *Mohalla*. Unconnected instances are by no means worthless evidence of the existence of a right to pre-empt. (*Reid*, C.J) MUHAMMAD HUSSAIN *v.* GHULAM MUHAMMAD. 78 P.R. 1911 = 138 P L R. 1911 = 10 I.C. 240 = 241 P.W.R 1911.

———**S. 13**—*Instances of custom—Rights not enforced—Effect.*

The mere fact that rights, recognised by Courts, were not exercised for some years does not lead to inference of abandonment nor does it affect the rights themselves. (*Oldfield and Spencer*, JJ.) SUNDARAM IYER *v* THEETHARAPPA MUDALIAR. 40 I.C. 159.

———**S. 13**—*Instances of custom—Family custom—Proof of instances.*

The most cogent evidence of a custom is not the expression of opinion as to its existence but instances where the alleged custom has been acted upon and by proof, afforded by judicial or revenue records, or private accounts and receipts, that the custom has been enforced. (*Drake-Brockman and Prideaux*, A. J. Cs.) MUSSAMMAT ZUNKARI *v.* BUDHMAL. 67 I.C. 252.

EVIDENCE ACT (I of 1872), S. 13—Judgments—Criminal Court.

Judgments.

CRIMINAL COURT.
EXECUTION PROCEEDINGS.
INTER PARTES.
NOT INTER PARTES.
PREVIOUS JUDGMENTS.
REMARKS.
REVENUE COURT.
MISCELLANEOUS.

Judgments—Criminal Court.

———Ss. 13, 35 and 61—*Judgments—Criminal Court—Statements of claims in proceedings under—Cr.P.C., S. 145—Statements of claims in possessory orders inadmissible in proof of title.*

Recitals of the claims of parties in possessory orders under S. 145, Cr. P.C., are inadmissible to prove title under S. 13 of Evidence Act or otherwise. They come neither under S. 63 not being oral accounts by a witness of the contents of a document, nor under S. 35 as entries in public records. 29 C. 187, Rel. to; 9 C. 586, Dist.; 15 M. 378 Disapproved. (*Chatterjee and Newbould, JJ.*) RAM SUNDAR GOPE SIKDAR *v.* HARIBALA DHUBI. 37 I.C. 911.

Judgments—Execution Proceedings.

———S. 13—*Judgments—Execution proceedings.*

In a suit for declaration of title to immoveable property records of execution proceedings by the plaintiff respecting the same property (as against tenant, etc.) are admissible under S. 13 of the Evidence Act. (*Maclean, C.J. and Banerji, J.*) JOGESH CHUNDER *v.* ROHIN KUMAR ROY CHOWDHURY. 35 I.C. 215 = 21 C.L.J. 65.

Judgments—Inter Partes.

———S. 13—*Judgments*—Inter partes—*Effect of—Admissibility in evidence.*

A judgment in a prior suit relating to a different *Jama* but between the same parties is admissible in evidence, whether or not it constitutes *res judicata*. (*Suhrawardy and Cuming, JJ.*) SASIMUKHI CHOWDHURANI *v.* SARASWATI SENGUPTA. 56 I.C. 522

———S. 13—*Judgments*—Inter partes—*Proceedings under S. 145, Cr. P. C., whether relevant.*

The facts of a previous proceeding under S. 145, Cr.P.C., and the order passed thereon are relevant in a suit between the same parties for recovery of possession of land on declaration of title but the reasons for the order are not relevant. (*Fletcher and Newbould, JJ.*) BARODA PROSAD ROY CHOWDHURY *v.* MANMATH NATH MITRA. 41 I.C. 456.

———S. 13—*Judgments*—Inter partes—*Tenant, decree against.*

Under S. 13 a decree (obtained by plff.'s predecessor or a stranger) showing that deft.'s

EVIDENCE ACT (I of 1872), S 13—Judgments—Not inter partes.

tenants had a holding in the estate on a certain rental is admissible for showing that the defts. held a holding in that estate on that rental. (*Fletcher and Smither, JJ.*) BYOMKESH CHAKRABARTHY *v.* JAGDISSWARA ROY. 40 I C. 442 = 22 C.W.N. 304.

Judgments—Not Inter Partes.

———S. 13—*Judgments—Not* inter partes.

Judgments not *inter parties* are admissible in evidence to prove assertion of title. (*Chatterjee and Panton, JJ.*) MOHAQ ALI *v.* MAFIZUDDIN SARKAR 63 I.C. 699.

———Ss. 13 and 41—*Judgments—Not* inter partes—*Findings in—Inadmissible in evidence.*

Findings arrived at in a judgment in a prior suit not *inter parties* should not be used against a person in a subsequent suit. (*Chatterjee and Panton, JJ.*) SATISH CHANDRA MUKERJEE *v.* JOYRAM ROY. 65 I.C. 525.

———S. 13—*Judgments—Not* inter partes—*Assertion of rights—Evidence—Admissibility.*

A judgment not *inter parties*, but which relates to the subject-matter of a suit and evidences the assertion of a right in controversy is admissible under S. 13 of the Evidence Act. (*Buckland and Cuming, JJ.*) PARBATI MAJHI *v.* DIGPATI MAJHI. 64 I.C. 465.

———Ss. 13 (a), 32 (1) and 43—*Judgments—Not* inter partes—*Recitals if evidence—Will—Statement by deceased testator as to title.*

Plffs. sued to recover possession of certain lands as *nisker brahmottor* and relied for their title on a recital of *brahmottor* title in their father's will and a recital in a judgment in a claim case, which was not *inter parties*. *Held*, that the recital in the will was not admissible under S. 32 (1) read with S. 13 (*a*) and that the recital in the judgment not *inter parties* was also not admissible. 23 C.L.J. 583, Rel. (*Chatterjee and Newbould, JJ.*) SATINDRA KUMAR CHAUDHURY *v.* KRISHNA KUMARI CHAUDHURANI. 36 I.C. 882.

———S. 13—*Judgments—Not* inter partes—*When can be used as evidence—Use of recitals in judgment.*

A judgment not *inter parties* may be used in evidence in certain circumstances as a fact in issue, or as a relevant fact, or possibly as a transaction, but the recitals in the judgment cannot be used as evidence in a litigation between the parties. (*Mookerjee and Roe, JJ.*) BASI NATH *v.* JAGOT KISHORE ACHARJEE. 20 C.W.N. 643 = 33 I.C. 298 = 23 C L.J. 583.

———Ss. 13 and 19—*Judgments—Not* inter partes—*Admissibility in evidence for proving admission of deft.*

Proper method of proving admission is by producing copy of deft.'s deposition or by examining witness who had heard the evidence given in the former trial. A judgment in a prior suit not *inter parties* is inadmissible as

EVIDENCE ACT (I of 1872), S. 13—Judgments —Not inter partes.

evidence of an admission. (*Richardson and Mullick*, JJ.) DEBENDRA NATH HALDAR *v.* BISESHWAR HALDAR. 20 C.W.N. 648 = 30 I.C. 821 = 22 C.L.J. 270.

——S. 13—*Judgments—Not* inter partes.

Judgments not *inter partes* are admissible as evidence of usage as instances where the right was claimed, denied, or recognised. 13 M. 361; 24 B. 591, Foll. (*Oldfield and Spencer*, JJ.) SUNDARAM IYER *v.* THEETHARAPPA MUDALIAR. 40 I.C. 159.

——S. 13—*Judgments—Not* inter partes—*Admissibility in evidence.*

Where the issue is as to the title and ownership of certain property a judgment in a pre-emption suit obtained by the deft. against a third person on the strength of a deed of gift alleged to be the source of the defendant's title is admissible in evidence as an instance in which defendant's right under the gift was asserted and enforced. (*Daniels and Lyle*, A.J.Cs.) ANJUMAN-UN-NISA *v.* ASHIQ ALI. 8 O.L.J. 439 = 3 U.P.L.R. (J.C.) 65 = 1922 Oudh. 178.

——S. 13—*Judgments—Not* inter partes—*Admissibility of.*

A judgment not *inter partes* in a previous suit is admissible in a subsequent suit to prove the fact that the judgment was passed. It is therefore necessarily evidence of the following further facts; who the parties to the dispute were; what the land in dispute was; and who was declared entitled thereto. To this extent and no more the judgment is admissible against even third parties. 22 C. 523; 29 C. 187, Ref. (*Wazir Hasan*, A.J.C.) GHULAM SARWAR KHAN *v.* MAHOMED ALI KHAN. 8 O.L.J. 609 = 1922 Oudh 98.

——S. 13—*Judgments—Not* inter partes.

The question was whether the appellant was a legitimate daughter of one K and R. A decree was passed in a suit between R and another by which R got only a small maintenance. *Held*, that the decree was admissible under S. 13 of Evidence Act. (*Piggott*, A.J.C.) PARBATI *v.* KAHARAJ SINGH. 10 I.C. 188

——S. 13—*Judgments—Not* inter partes.

Under S. 13 judgments not between the parties to the suit pronounced by a Court of competent jurisdiction containing a declaration that the right in dispute has been asserted and recognised in a Court of law, are admissible in evidence. 12 C.W.N. 739, Foll. (*Chapman and Atkinson*, JJ.) MUHAMMAD EHIA *v.* GANGA DAYAL OJHA. 40 I.C. 838.

Judgments—Previous Judgments.

——Ss. 13 and 11—*Judgments—Previous judgment contesting the right of* granthi—*Findings regarding the nature of property.*

Where in a suit contesting the right of the *granthi* of the *Darbar Sahib* (golden temple at Amritsar), to alienate a certain shop. It was

EVIDENCE ACT (I of 1872), S. 13—Judgments —Revenue Court.

held that the properties were *waqf* and attached to the *granthi* and could not be alienated by the *granthi*. The judgment only proves that at that time also the right of the *granthi* to alienate certain property was called in question. The finding of the Court that the property was *waqf* and was attached to the *granthi* is not relevant in a subsequent suit by the successor to the office challenging the alienation by his predecessor-in-title. (*Scott-Smith and A. Racof*, JJ.) INDAR SINGH *v.* FATEH SINGH. 59 I.C. 734 = 1 Lah. 540.

——S. 13—*Judgments — Previous judgments.*

Per *Wallis*, C. J.—The fact that the ancestor failed in a contested suit to prove the relationship of his line with the deceased fifty years ago when such an issue was much more susceptible of proof, is evidence against the existence of the right under S. 13. 30 M. 510; 31 B. 143, Foll. (*Wallis*, C. J. *and Seshagiri Iyer*, J.) THE SECY. OF STATE *v.* SUBBAYA KARANTHA. 18 M.L.T. 504 = (1915) M.W.N. 962 = 31 I.C. 590 = 2 L.W. 1175.

——S. 13 — *Judgments—Previous judgments.*

Judgments which are neither *res judicata* nor judgments *in rem*, are not admissible as showing that a particular right was asserted or denied. (*Stuart and Kanhaiya Lal*, A.J.Cs.) MAHAMMAD ALI KHAN *v.* GHAZANFAR ALI-KHAN 60 I.C. 147 = 7 O.L.J. 474.

Judgments—Remarks.

——S. 13—*Judgments — Remarks—Relevancy of—Judgment relating to land—Extrinsic evidence.*

A judgment is relevant under S. 13 only as an instance of assertion of a right. The remarks therein cannot be treated as evidence, they being mere opinions of one who is not cross-examined. A judgment describing land by metes and bounds is of no value unless explained by extrinsic evidence. (*Phillips*, J.) KANDAMMAL *v.* MUMAR RAJA. 10 M.L.T. 330 = 12 I.C. 423 = (1911) 2 M.W.N. 337.

Judgments—Revenue Court.

——S. 13—*Judgments—Revenue Court—Strong evidence.*

The decision of a higher Revenue authority on the question of tenant's status, though not *res judicata* in a Civil Court carries great weight. It is not open to the Civil Court to ignore the finding of an appellate Revenue authority and accept that of a Subordinate Revenue officer, though the former was wrong and the latter right. (*Kensington and Shah Din*, JJ.) ABDULLAH KHAN *v.* GHULAM JAN. 155 P.W.R. 1912 = 16 I.C. 886 = 156 P.L.R. 1913.

EVIDENCE ACT (I of 1872), S. 13—Judgments—Revenue Court.

———S. 13—*Judgments—Revenue Court—Rent decree—Evidentiary value.*

A rent decree is to some extent evidence under S. 13 of the Evidence Act as to the landlord having recognised the holding as being in the possession of the tenant sued. It is not conclusive against third parties and does not stand on the same footing as the delivery of possession given by a Civil Court or a decree awarding possession by a Civil Court. 57 I.C. 95 ; 59 I.C. 929, Ref. (*Jwala Prasad*, J.) NAND KISHORE SAO *v.* BIKAN SINGH. 3 P.L.T. 570=23 Cr. L.J. 200= 1922 P. 357.

———S. 13—*Judgments—Revenue Court—Decisions under Ss. 103 and 106 of the B. T. Act—Admissibility.*

A decision in a case under S. 103 and a judgment in a case under S. 107, B. T. Act, regarding certain other tenants in the same village are relevant under S. 13 of the Evidence Act. (*Mullick and Sultan Ahmed*, JJ.) MAHA RANI JANKI KOER *v.* SAUDAGAR RAM. 1 P.L.T. 221=56 I.C. 417= (1920) Pat. 177.

Judgments—Miscellaneous.

———S. 13—*Judgments—Proceedings in suit—Suit for possession—Relevant.*

Where the defts. in a suit for possession allege a prior lease granted to them by the plff.'s lessors, the proceedings of a suit for rent by such lessor together with maps, etc., are relevant, though defts. were no parties to that suit. (*Teunon and Choudhuri*, JJ.) MADAN CHANDRA PAL *v.* KITIRAM BISWAS. 34 I.C. 163=23 C.L.J. 578.

———S. 13 (b)—*Judgments—Decision as to minority.*

A judgment holding a person to be a minor is inadmissible under S. 13 (*b*). (*Coutts-Trotter and Srinivasa Aiyengar*, JJ.) VENKATA RANGAPPA *v.* SUBRAYA GOUNDAN. 33 I.C. 142.

Maps.

———S. 13—*Map prepared by private party before suit.*

A map prepared by a private party long before the filing of a suit for declaration of title is not admissible in evidence under S. 13 of the Evidence Act, unless it is proved that it was a transaction by which a right was recognised or asserted. (*Sanderson*, C. J. *and Panton*, J.) SHASHI BHUSAN DHAR *v.* NAWAB OF MURSHIDABAD. 49 I.C. 951.

———Ss. 13 and 26—*Maps*—Thak *map—Entries if evidence against both proprietors and tenants.*

The entries in *thak* map and its explanatory field book, are evidence under S. 13, both

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against proprietors as well as tenants. (*Coxe and Chatterjee*, JJ.) DOWLAT RAI *v.* KHUB LAL SINGH. 22 I.C. 645.

———Ss. 13 and 83—*Maps—Map of* Khas Mehal *lands—Admissibility.*

A map prepared under the directions of the Govt. as landlord, of *khas mehal* lands is admissible under S. 13 though not as a public record under S. 83. (*Jenkins*, C. J. *and Chatterjee*, J.) UPENDRA NATH *v.* CHAIRMAN OF THE CALCUTTA CORPORATION 13 I.C. 332=16 C.W.N. 116.

———S. 13—*Maps—Batwara Khasra map—Admissibility of.*

A Batwara Khasra map prepared in pursuance of a partition under the partition of Estate Act (VIII of 1876), by the Collector, was a document of title and admissible in evidence under the section. (*Atkinson*, J.) AJODHYA PRASAD SINGH *v.* KAMAL NARAIN SINGH. 38 I.C. 491.

Written Statements.

———S. 13—*Written statements.*

The written statement of a Hindu widow in answer to a suit for partition against herself and other members of her husband's family as to how she treated a particular piece of property claimed as partible is relevant under S. 13. (*Trotter and Moore*, JJ.) RANGASWAMI PILLAI *v.* VAIDILINGA MUDALIAR. 33 I.C. 446.

———Ss. 14 and 15—*Licensed clerk—Acts and conduct.*

Where a licensed clerk was charged with cheating by collecting 2 annas more than due, from each licensee, evidence of action with others is not admissible under S. 14 or 15 of Evidence Act. (*Tudball*, J.) EMPEROR *v.* ABDUL WAHAD, 34 All 93=8 A.L.J. 1269= 12 I.C. 987=13 Cr. L.J. 611.

———Ss. 14 and 54—*Evidence of previous offences.*

In a case where the accused are tried for being members of a gang of dacoits and simple theft or bad livelihood in which the order for giving security is based on evidence merely that the accused habitually commits theft (as opposed to dacoity and possibly robbery) it is not evidence indicating an intention to commit the particular crime of which the accused is charged. It at most merely indicates a disposition to commit crimes of a similar class. It is doubtful whether dacoity may not be put in a higher class than theft. (*Fawcett*, J.) EMPEROR *v.* HAJI SHER MUHOMED. 25 Bom. L.R. 214=24 Cr. L.J. 867 and 870=1923 Bom. 55 and 71.

———Ss. 14, 15—*Defamation—Suit for—Defence of truth.*

In a suit on libel, evidence of instances of plaintiff's acts more or less resembling the particular act of misconduct imputed to him in the libellous statement is inadmissible unless

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those acts were parts of the habitual and intentional and not accidental conduct of the plaintiff. (*Scott*, C.J. *and Chandavarkar*, J.) NADIRSHAW HORMUSJI *v* PIROJSHAW RATANJI. **19 I.C. 98=15 Bom. L.R. 130.**

———Ss. 14 and 15—*Evidence of association and joint action—Admissibility of—Murder and robbery.*

On a charge against two persons of murder and conspiracy to rob the victim and for abetment of the offences, the prosecution adduced evidence of their association in connection with other charges of theft in the town, that they used to go about together, under different names, the one taking the other as his durwan and introducing himself as a rich landlord to several rich women who subsequently lost ornaments and cash which were gradually recovered. *Held* that the evidence was improperly admitted. (Per *Mookerjee*, J.) S. 15, Evidence Act is not applicable as there was no question of the act being accidental or intentional or forming part of a series of similar transactions. S. 14 of the Act did not also apply as the defence was a complete denial and no question of the character contemplated in S. 14 did or could possibly arise. (*Sanderson* C.J., *Mookerjee*, *Fletcher*, *Chaudhuri and Walmsley*, JJ.) EMPEROR *v.* PANCHU DAS. **47 Cal. 671=24 C.W.N. 601=58 I.C. 929=21 Cr. L.J. 349=31,C L J. 402 (F.B.)**

———Ss. 14 and 15—*Previous acts—Suits—Facts relating to similar circumstances—Admissibility.*

In a prosecution under S. 209, I.P.C., evidence relating to other suits by the accused against other persons, may be admissible under Ss. 14 and 15 of the Evidence Act, to show the *animus* of the accused, and a systematic course of fraud and to rebut the plea of good faith or mistake. But evidence relating to similar suits by other persons is not admissible, unless those suits form part of the same transaction or the result of a conspiracy between them. (*Richardson and Beachcroft*, JJ.) RAGHU NATH LAL *v.* EMPEROR. **17 Cr. L.J. 776=46 I.C. 696=22 C.W.N. 494.**

———Ss. 14 and 15—*Previous forgeries.*

Series of similar acts involving forgery is evidence of intention but not forgery itself. (*Holmwood and Mullick*, JJ.) KRISHNA GOVIND PAL *v.* EMPEROR. **43 Cal. 783=17 Cr. L.J. 130=33 I.C. 306=20 C.W.N. 262.**

———Ss. 14 and 15—*Previous offences—Evidence of other dacoities, if admissible.*

In a charge of dacoity, evidence of other dacoities committed by the accused is inadmissible either under S. 14 or S. 15 of the Evidence Act. (*Sundara Aiyar and Spencer*, JJ.) MANDI GHASI *v.* EMPEROR. **13 Cr. L J. 125=13 I.C. 781=(1912) M.W.N. 49.**

———Ss. 14 and 15—*Murder by poison—Evidence of other acts.*

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In a case of murder by administering sweetmeats, the fact that the accused offered sweetmeats to boys and thus poisoned one of them is not evidence under S. 14, Evidence Act, but it would be relevant under S. 15 to show that the administration was intentional and not accidental. (*Batten*, J.C. *and Hallifax*, A.J C.) KASHIRAM *v.* EMPEROR. **6 N.L J. 144=24 Cr. L J. 566=1923 Nag. 248.**

———Ss. 14 and 15—*Relation of S. 14 and S. 15—Opinions of Judges.*

S. 15 is subject to S. 14 as regards evidence of knowledge and intention. Evidence of the opinions of the other Judges on other documents written or attested by the accused in proceedings to which he is not a party is not admissible to prove his intention or knowledge, in his trial for giving false evidence in respect of an alleged forged document. (*Stanyon*, A.J.C.) GUNWANT *v.* EMPEROR. **38 I C. 723=18 Cr. L J. 339=13 N.L.R. 35.**

———S. 14, Illus. (a) and (b)—*Counterfeit coins and instruments found in the house of accused in two districts—Trial in one district—Evidence is admissible.*

In a trial of a person under Ss. 235 and 243 of the Penal Code for being in possession of counterfeit coins and instruments and materials for counterfeiting in his house in the district where he is tried, evidence of such possession in his house in another district is admissible under S. 14, Illus. (*a*) and (*b*) of the Evidence Act. (*Miller*, C. J. *and Adami*, J.) MISIRI GOSAIN *v.* EMPEROR. **22 Cr. L J. 407=61 I.C. 647=3 U.P.L R. (P.) 50.**

———S. 14, Illus. (a)—*Theft—Stolen cattle—Possession of.*

In Sind, possession of stolen cattle three or four months after theft is sufficient to raise presumption of guilt under the section; but the accused may set up title by lawful origin to rebut the presumption. (*Hayward*, J.C. *and Crouch*, A.J.C.) EMPEROR *v.* SUMAR JURIO. **18 Cr. L.J. 411=38 I.C. 971=10 S.L R. 167.**

———S. 15—*Scope of—Accidental or intentional.*

Per *Walsh*, J.:—S. 15 of the Evidence Act is applicable to all cases where the question is whether an untruthful statement is "accidental or intentional or made with particular knowledge or intention." (*Piggott and Walsh*, JJ.) EMPEROR *v.* YAKUB ALI. **39 All. 273=39 I.C. 673=18 Cr. L.J. 529=15 A.L.J. 241.**

———S. 15—*Subsequent occurrences.*

S. 15 covers both previous and subsequent similar occurrences. (*Richardson and Beachcroft*, JJ.) RAGHU NATH LAL *v.* EMPEROR. **19 Cr. L.J. 776=46 I.C. 696=22 C.W.N. 494.**

———S. 15—*Evidence of similar acts—Conspiracy.*

Evidence of similar facts may be received to prove a party's knowledge of the nature of the

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main fact or transaction of his intent with respect thereto. To admit evidence under this head, the other acts must be of the same specific kind as the one in question and not of a different character. The acts tendered must also have been proximate in point of time to that in question. (*Mookerjee and Richardson, JJ.*) AMRITLAL HAZRA *v.* EMPEROR.
19 C.W.N. 676 = 42 Cal. 957 = 29 I.C. 513 = 16 Cr. L J. 497 = 21 C.L J 331.

——S 15—*Intention—Series of acts.*

Where *Dhatura* poison was administered by accused to A and B both of whom died from the effects thereof, and on the following day the accused administered the same poison to D., who also died, the acts against A. and B. are relevant to a case of murder of D. as forming incidents in a series of similar transactions occurring about the same time and tending to show system and intention. (*Reid, C. J. and Rattigan J.*) LALA *v.* EMPEROR. 12 Cr. L J 125 = 9 I.C. 731 = 32 P.L R. 1911.

——Ss. 15 and 14—*Facts showing intention.*

S. 15 must be read subject to S. 14 so far as evidence of knowledge and intention is concerned. (*Stanyon, A J.C.*) GUNWANT *v.* EMPEROR. 18 Cr. L J. 339 = 38 I.C. 723 = 13 N L.R. 35.

——S 15—*Motive or preparation—Dacoity—Previous armed raids.*

Where the accused who were charged under S. 399, I.P.C., plead that their presence in company and armed at a spot was accidental and innocent, it is open to the prosecution to rebut this theory, and to produce evidence that in the same locality raids have taken place in which one of the gang had been concerned. In the case of actual dacoity the prosecution is bound to prove the accused's commission of all the acts which constitute the offence. S. 15 of the Evidence Act admits the production of any evidence which would determine the construction to be placed upon acts which in themselves might or might not be the preparation for dacoity and evidence that one or more members of the gang had been concerned in previous and similar offences committed at the same place is admissible in evidence for the purpose. (*Pipon. J.*) KHWAJA HASSAN *v.* EMPEROR. 71 I.C. 360 = 24 Cr. L.J. 136

——S. 16—*Refusal of letter posted.*

A person refusing a letter posted to his address is affected with notice of its contents. (*Pratt and Fawcett, JJ.*) LOUIS DREYFUS & CO. *v.* CHIMANDAS VISHINDAS & CO.
50 I C 194 = 12 S.L.R. 142

——Ss. 17 and 21—*Statement in a will not relevant.*

A statement in a will suggesting an inference as to a fact in issue, cannot be proved by or on behalf of the person who made it or his representative-in-interest. Even where two executors, who were members of the family, acted upon the will, still the statement cannot be treated as an admission by the members of the family that the statement in the will is true. (*Sir Lawrence Jenkins*). NALAM PATTABHIRAM RAO *v.* MANDAVILLI NARAYANAMOORTY.
26 C.W N 273 = L.R. 3 P.C. 29 = 15 L.W 404 = 1922 P.C. 102 (P.C).

——Ss. 17 and 23—*Admissions—Relevancy of.*

Relevancy of admissions must be determined with reference to Evidence Act. (*Lord Moulton*). SREEMUTHY MANOKARIM DEBI *v.* HIRAPADA MITTER. 24 I C. 311 = 18 C.W.N. 718 (P C).

——S. 17—*Erroneous admission not binding.*

An erroneous admission does not bind the person making such admission. (*Banerji and Gokul Prasad, JJ.*) MANGRU RAI *v.* SHIVANAND LAL. 1923 All. 575

——S. 17—*Admission by one of two brothers.*

The admission of the plaintiff's claim by one of two brothers does not bind the other. (*Tudball, J.*) MUSSAMMAT MAINA *v.* MADHO PRASAD. 24 I C. 105.

——S. 17—*Admission by a predecessor in interest—Admissibility in evidence.*

A person made a gift of life interest to the plaintiff and while he had still a reversionary interest, he wrote a book containing a statement about the measure prevalent in the village. In a suit by the plaintiff after the reversionary interest had devolved on them, while deciding the question of measurement, involved in the suit, the Court held that the statement in the book was binding on the plaintiff. *Held*, that the statement was admissible in evidence against the plaintiff inasmuch as it was an admission of his predecessor in interest. (*Chatterjea and Suhrawardy, JJ.*) TARAMONI CHANDHURANI *v.* CHARN CHANDRA CHADUHURI. 64 I C. 334.

——S. 17—*Deposition in former suit can be used as admission.*

The deposition of a witness in a former suit is admissible as an admission in a subsequent suit in which such witness is a defendant and may be relied upon by the Court as a piece of evidence. (*N.R. Chatterjea and Pearson, JJ.*) ALI MAHAMMAD KHAN *v.* MAHARAJ BEHARI.
64 I.C. 266 = 36 C.L J. 186.

——Ss. 17 to 21—*Admission of party as to joint possession, can be given in evidence against others.*

An admisson by one party may be given in evidence against another, against whom the admission is sought to be used, when that person has a joint interest with the party making the admission in the thing to which the admission relates. (*Newbould and Ghose, JJ.*) NAGENDRA NATH GHOSE *v.* LAWRENCE JUTE COMPANY. 61 I C. 544 = 25 C.W.N. 89.

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——S. 17—*Admissions in prior proceedings.*

In a criminal trial of an insolvent, his admissions in other proceedings in insolvency are relevant if admissible under Ss. 18 to 31. (*Woodroffe and Walmsley*, JJ). PERRY *v.* OFFICIAL ASSIGNEE OF CALCUTTA.
37 Cal. 254 = 31 C.L.J. 209 = 56 I.C. 778 = 22 Cr. L J. 522 = 24 C.W N. 425.

——Ss. 17 and 44—*Admissibility of evidence and admissions*

Where the plaintiff sues upon a title and adduces some evidence of it, he can avail himself of the defendant's admissions and need not positively prove his title *Mulki* papers containing statements made by plaintiff's predecessor when there was no dispute against his own interest, are admissible. (*Holmwood and Chatterjee*, JJ). KALI SANKAR SAHAI *v.* PRATAP UDAI NATH SAHI DEO.
15 I.C. 691 = 16 C.W.N. 683.

——S. 17—*Admissions—When binding.*

An admisson made without knowledge of the circumstances is not binding. (*Woodroffe and Carnduff*, JJ.) SIBU SANT *v.* NETAN CHARAN DAS. **9 I.C. 806 = 15 C.L J. 114.**

——Ss. 17 and 32—*First information report by accused—Admissibility.*

Though a first information report is valuable corroborative evidence it cannot support a conviction, when the maker of the report himself is an accused person and cannot therefore be examined as a witness. But where such a report contains an admission not amounting to a confession, the admission is admissible in evidence against the accused. (*Shadi Lal*, C.J. *and Abdul Qadir*, J.) KAKU *v.* EMPEROR. **63 I C. 822 = 22 Cr. L.J. 694.**

——S. 17—*Admission—Effect of.*

A fact admitted by a party to be true must be taken to be established until the contrary is proved. (*Pelman*, J.) VIRSING *v.* HARNAM SINGH. **56 I.C. 191 = 1 Lah. 137.**

——S. 17—*Admission of adoption.*

Admission by widow of her adopting her daughter's son is of little value. (*Johnstone*, C J.) ARJAN SINGH *v.* DARBARA SINGH.
193 P.L.R. 1915 = 32 I C. 312 = 140 P.W.R. 1915.

——Ss. 17 and 21—*Admission by a party—Whether binds stranger.*

A recital of payment of consideration in a mortgage document is an admission by the mortgagor within the meaning of Ss. 17 and 21 and may be proved not only as against the person who makes it, but also his representative in interest. (*Ayling and Tyabji*, JJ.) GADIAN CHETTI *v.* VEERAPPA CHETTY.
26 I.C. 899 = 28 M.L.J. 92.

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——S. 17—*Admissions under inducement.*

If the maker of the admissions contradicts before and retracts afterwards alleging that he had been induced to make them, they do not justify the passing of a decree on the basis of those admissions. (*White*, C.J. *and Spencer*, J.) ARUMUGAM CHETTY *v.* VELLAICHAMI THEVAN. **37 Mad. 38 = 21 M.L J. 1077 = 10 M L.T. 885 = 12 I.C. 568 = (1911) 2 M.W.N. 461.**

——S. 17—*Admissions under a mistake or imperfect knowledge—Value of.*

Statements made by a party at a previous proceeding without any definite knowledge of his rights and liabilities do not operate as an estoppel. Where the previous proceedings were compromised at an early stage without any decision of Court, the party can show in a subsequent suit that the statement previously made was untrue. (*Dhobley*, A.J.C.) MAHOMED YUSUF *v.* PIR MAHOMED.
1922 Nag. 67.

——S. 17—*Admission—Effect.*

Admission though not conclusive, shifts the burden of proof. (*Skinner*. A.J.C.) SAKHA RAM *v.* SHRI RAM.
10 I.C. 700 = 7 N.L.R. 23.

——S 17—*Admissions—Evidentiary value of.*

What a party to a litigation has admitted to be true may be presumed to be true and until he rebuts it, the Court will take it as established. 29 A. 184, Ref. (*Wazir Hasan*, A.J.C.) GHULAM SARWAR KHAN *v* MAHOMED ALI KHAN. **8 O.L.J 603 = 1922 Oudh 98.**

——S, 17—*Admissions—Evidentiary value of.*

Admissions are always evidence against the party who makes them but they are evidence which varies very much in value according to the circumstances and a Court is quite at liberty to reject them if it is satisfied from other circumstances that they were untrue. (*Daniels*, J.C.) GOKUL PRASAD *v* KAILASH NATH. **4 U.P.L R. (O. C.) 19 = 8 O.L J. 596 = 1922 Oudh 55.**

——Ss. 17 and 35—*Road cess returns are admissible to prove relation of landlord and tenant.*

Road cess returns signed by landlords are admissible against him to prove the relation of landlord and tenant. (*Adami*, J.) SADHU SARAN *v.* AMBIKA LAL. **68 I.C. 676.**

——S. 17—*Admission—Statements in deed.*

Statements in a mortgage deed as to the interest of the father and son (the executants) are, as against a subsequent purchaser from the son, simple admissions which could be rebutted by evidence. (*Ormond and Parlett*, JJ.) MAHOMED IBRAHIM SAIB KHATEEB *v.* MAUNG BA GYAW. **25 I.C. 462 = 7 Bur. L.T. 69.**

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——S. 17 — *Admissions in pleadings—Effect.*

In a suit to recover possession if sale to the deft. is admitted by plff. himself the latter need not prove the sale. (*Twomey*, J.) MAUNG PYA *v.* MAUNG O. ZA. 9 I.C. 770 = 4 Bur. L.T. 40.

——S. 18.

ADMISSION BY PLEADER.
PERSONS JOINTLY INTERESTED.
MISCELLANEOUS.

Admission by Pleader.

——S. 18—*Admission by pleader.*

An admission by a pleader based on an erroneous construction of an enactment amounts to a mistake of law and does not bind his client. (*Coxe*, J.) KRISHNA PROSAD *v.* UDIT NARAYAN SINGH. 9 I.C. 621.

——S. 18—*Admission by pleader.*

Statement made by a party or pleader on a certain point in a previous case is admissible to prove or disprove the point in a subsequent case. (*Kanhaiya Lal, and Kendall*, A.J.Cs.) SURAJ BAKSH *v.* CHHAB KUAR. 28 I.C. 98 = 1 O.L.J. 532.

——S 18—*Admission by pleader.*

A party is not bound by the statement or admission made by his *Muktear* unless it is shown to have been made within the scope of the authority conferred by the Mukhtearnamah. (*Jwala Prasad and Adami*, JJ.) SITA RAM TEWARI *v.* GAYA PRASAD. 1923 P. 37.

Persons jointly Interested.

——S. 18—*Persons jointly interested—Admission by one of two defendants no evidence against others.*

An admission by a defendant in his written statement is no evidence against his co-defendants. (*Richards*, C.J. *and Banerjee*, J.) PURAN MAL *v.* TARIF. 30 I.C. 2 = 13 A.L.J. 1089.

——S. 18 — *Persons jointly interested—Admission of co-party.*

An admission of one of the persons jointly interested in the subject of the suit is admissible against himself and the others, if the admission is about the subject-matter of the suit and is made by him in his character of a person jointly interested with the party against whom the evidence is given. *Blenkinsopp* v. *Blenkinsopp*, (1846) 78 P.R. 216, Rel. The admission of one co-plaintiff or co-defendant is not admissible against another simply because of his position as a co-party in the suit but because of some privity of title or of obligation which justifies the use of the admission of one against the other. (*Mookerjee and Beachcroft*, JJ.) AMBAR ALI *v.* LUTFE ALI. 45 Cal. 159 = 21 C.W.N. 996 = 41 I.C. 116 = 25 C.L.J. 619.

EVIDENCE ACT (I of 1872), S. 18—Miscellaneous.

——S. 18—*Persons jointly interested—Co-defendants—Admission by one.*

An admission by one defendant will not bind another. (*Coxe and Chatterjee*, JJ.) HEYAT BAKHSH *v.* LACHMINIA. 22 I.C. 916.

——S. 18—*Person jointly interested—Co-defendants—Admission by some when binding on others.*

Where there are several defendants jointly interested in a particular matter, an admission by some of them is relevant against all the defendants. 44 C. 130 ; 45 C. 159, Ref. (*Le-Rossignol and Martineau*, JJ.) BHIKKA MAL *v.* PURAN MAL. 1923 L. 123.

——S. 18—*Persons jointly interested—Admissions of.*

Admissions of one of several persons jointly interested in the subject-matter of a suit are receivable against him and his fellows whether they jointly sue or are sued, if they relate to the subject-matter in dispute. (*Mitra*, A.J.C.) DILESHWAR RAM BRAHMAN *v.* NOHAR SINGH. 48 I.C. 193.

Miscellaneous.

——S. 18—*Admissions—Pleadings.*

Where an admission is made subject to conditions it must be accepted *in toto* or not at all. There is no right to reject the condition and take the remainder. 39 B. 389 = 42 I.A. 103. (*Lord Dunedin.*) MOTABHOY MULLA *v.* MULSI HARIDAS. 39 Bom. 399 = 17 M.L.T. 402 = 28 M.L.J. 589 = 19 C.W.N. 713 = 13 A.L.J. 529 = 21 C.L.J. 507 = 17 Bom. L.R. 460 = 2 L.W. 524 = (1915) M.W.N. 522 = 29 I.C. 223 = 42 I.A. 103 (P.C.).

——Ss. 18 and 19—*Admission—Parties and privies.*

The admission of the receipt of consideration in a mortgage-deed is admissible in evidence against a purchaser by private treaty. 35 All. 194, referred to. (*Rafiqus*, J.) GAYA PRASAD *v.* CHOTTOO. 26 I.C. 68 = 12 A.L.J. 941.

——S. 18—*Admission by joint owner.*

Admission by a joint owner is admissible against the co-owner only if made after the joint ownership came into existence. Identity in legal interest is absolutely necessary. (*Mookerjee and Beachcroft* JJ.) AMBAR ALI *v.* LUTFE ALI 45 Cal. 159 = 21 C.W.N. 996 = 41 I.C. 116 = 25 C.L.J. 619.

——S. 18—*Admission—When relevant.*

An admission to be relevant, it should be shown that the person who made it had an interest at the time of making it within S. 18. A kabuliyat being an act of ownership may be admissible as evidence of title. (*Jenkins*, C.J. *and Mookerjee*, J.) JOGESHWAR GORAIN *v.* AKHOY GHOSE. 22 I.C. 714 = 19 Cr. L.J. 1.

EVIDENCE ACT (1 of 1872), S. 18—Miscellaneous.

———S. 18—*Statement in document between third parties—Not parties to the suit.*

A deed made between persons not parties to a suit and containing a statement as regards the property in suit is not evidence in the suit unless the maker is called to depose on oath. (*Harrington and Newbould*, JJ.) CHERAGH ALI PRODHANIA *v.* MOHEVI MOHAN BARDHAN. 19 I.C. 615.

———S 18—*Admission in a previous suit by a party not party to present suit is inadmissible.*

An admission in a previous suit in favour of plff. pre-emptor by another pre-emptor not party to present suit is not admissible in a suit between plff. and the present vendees. (*Campbell*, J.) AHMAD KHAN *v.* JAWAHAR SINGH. 1923 Lah. 16.

———S. 18—*Admissions before* Panchayat.

Evidence as to admissions and promises made by alleged thieves before a *Punchayat* is admissible without proof of the actual words used. (*Shah Din*, J.) BEJA *v.* EMPEROR. 13 P.R. 1914 Cr. = 16 Cr. L.J. 88 = 26 I.C. 625 = 223 P.L.R. 1916.

———S. 18 — *Creditor's admission after transfer of debt—Value of.*

An admission by a creditor after transfer of his debt as to the receipt of money by the creditor before transfer, is not binding on the transferee. (*Chevis*, J.) CHANDA SINGH *v.* WASAWA SINGH. 108 P.W.R 1914 = 25 I.C. 144 = 202 P.L.R. 1914.

———S. 18—*Admissions to be taken as a whole.*

Where a suit is based upon a lost document, the loss of which however the plaintiff, was unable to prove, he cannot succeed on the mere admission by the defendant of execution of the same when it is followed by a plea of payment duly endorsed thereon. (*Johnstone*, J.) ATRA *v.* CHAJU. 12 I.C. 246 = 49 P.W.R. 1911.

———S. 18—*Oral—Effect.*

An admission in a written agreement of the execution required registration but was not registered. It was obtained from a woman by misrepresentation. No value can be attached to it as evidence of such execution. (*Robertson*, J.) TOLAK NATH *v.* JAGNATH. 240 P.L.R. 1911 = 12 I.C. 51 = 117 P.W.R. 1911.

———S. 18—*Customary easement—Gramanatham—Rights in—If can be acquired by user on the part of villagers.*

Rights in gramanatham are customary easement and can be acquired by user on the part of the villagers. (*Ayling and Odgers*, JJ.) TALUK BOARD, DINDIGUL *v.* VENKATARAMA AIYAR. 45 M.L.J. 333 = 1924 Mad. 197.

EVIDENCE ACT (I of 1872), S. 18—Miscellaneous.

———S. 18—*Admissions—Mistake.*

A plaintiff is is not absolved from proving that an affidavit sworn to by him previously, was made under the circumstances mentioned therein, even though there is no explanation on the deft.'s side for the plff. having made such statements, if they are false. (*Wallis*, C. J. *and Seshagiri Iyer*, J.) RAMANATHAN CHETTY *v.* MURUGAPPA CHETTY. (1916) 1 M.W.N. 208 = 33 I.C. 969 = 3 L.W. 210.

———S. 18—*Admissions—Ignorance of legal rights—Effect of.*

An admission by the deft. in favour of plff. in ignorance of his legal rights will not be binding upon him if the plff. as a matter of fact has no legal claim. (*Collins*, C. J. *and Parker*, J.) ALLAREDDI SUBBAMMA *v.* NALLAPAREDDI. 11 M.L.T. 124 = (1912) M.W.N. 178 = 13 I.C. 870 = 22 M.L.J. 260.

———S. 18—*Admission by predecessor-in-title.*

Statements made by persons from whom the parties to a suit have derived their interest are admissible as admissions only when the admissions are of a date prior to the date of their deriving interest. Statements made by persons in possession of property and qualifying or affecting their title thereto are receivable against the party claiming through them by title subsequent to the admission. (*Simpson* J.C. *and Dalal*, A.J.C.) GALSTAUN *v.* MIRZA ABID HUSSAIN 10 O.L.J. 263 = 9 O. & A.L.R. 282 = 1924 Oudh 19.

———S. 18—*Admissions—Value of—Compromise falling through.*

Parties are often willing to make admissions for the purpose of effecting a compromise to which it would be unfair to hold them if the compromise falls through. (*Daniels and Lyle*, A.J.C.) KUAR NAGESHAR SAHAI *v.* SHIAM BAHADUR. 9 O.L.J. 262 = 1922 Oudh 231.

———S 18—*Admission—Effect.*

Admissions against interest might be decisive against the person making them; but such admissions may be ignored where there are circumstances calculated to discount them. Evidence of statements made by a deceased testator or executant concerning the fact of execution or otherwise of the documents in dispute and also the state of mind of the executant and other circumstances attending the execution are admissible in evidence under the head of admissions. (*Piggott* J.C. *and Lindsay*, A.J.C.) MIR SYED HUSSAN *v.* TAIYABA BEGAM. 26 I.C. 547 = 1 O.L.J. 591.

———S. 18—*Suggestion is no admission.*

Where a so-called admission is merely a suggestion made in the course of a negotiation

EVIDENCE ACT (I of 1872), S. 18—Miscellaneou .

and is not even unconditional it is no admission at all. (*Coutts and Das, JJ*) RAMPATI RAUT *v.* MAHANTH HANUMAN SARAN.
1 P.L.R. 235 = (1923) Pat. 142 = 1923 P. 303

——S. 18—*Admission must be taken as a whole.*

It is a well-established principle of law that if a plaintiff wishes to rest his case solely on the admission of a defendant with regard to a particular transaction he must accept the admission as to that transaction as a whole. It is not open to him to pick out such part of the admission as may be favourable to himself and to neglect the rest. The plaintiffs sued to redeem a mortgage. The defendant admitted the mortgage but pleaded that the mortgage amount was more than that alleged by the plaintiffs. *Held* that no burden lay on the defendants to prove the amount. (*Brown*, A.J.C.) MY SHWE MYIN *v.* MA NAING.
4 U.B.R. 114 = 1 Bur. L J. 248 = 1923 Rang. 24.

——S. 18—*Admissions—Statement as to subject-matter of suit after cessation of interest.*

Statements made by a person regarding the subject-matter of a suit after his interest in it has ceased, cannot be used as admissions under S. 18. (*Maung Kin*, J.) MA SHWE YAT AUNGH *v.* MAUNG DA LI. 9 Bur. L.T 152 = 33 I C. 888 = 9 L.B R. 27.

——S. 19—*Admissions—Recitals—Parties and privies.*

The recital of the consideration in a deed and the admission as to receipt of the consideration made before the registering officer, are evidence against the persons who claimed through the executant of the deed. (*Chamier*, J.) IBRAHIM *v.* RAMNARAIN. 16 I.C. 483 = 10 A.L.J. 87.

——S. 19—*Admission—When amounts to estoppel—Evidence.*

The express or implied admissions of a party to a suit are strong evidence against him. But he may prove them to be untrue unless another person has been induced by them to alter his condition. 29 A. 184 P.C.; 29 A. 519 P.C., Rel. (*Batchelor and Rao*, JJ.) BALMUKUND KESURDAS *v.* BHAGWANDAS KESURDAS, 19 I.C. 401 = 15 Bom. L.R. 209.

——S. 19—*Admissions by successor-in-interest when bound by admissions of predecessor.*

An admission made by a person having a reversionary interest in the property at the time is evidence against another person claiming the reversionary interest under a title derived from the former. (*N.R. Chatterjea and Suhrawardy*, JJ.) SREEMUTY TARAMONI CHAUDHURANI *v.* CHARU CHANDRA CHAUDHURI. 64 I C. 334.

——S. 19—*Guardian's admissions—Court of Wards—Minor.*

EVIDENCE ACT (I of 1872), S. 19.

Guardians of a person of an infant, are not competent to bind the ward by an admission as to his proprietary rights. An admission by a Court of Wards, cannot bind or prejudice the infant proprietor. (*Mookerji and Beachcroft*, JJ.) BANWARILAL SINGH *v* DWARKNATH MISSIR. 52 I.C. 825 = 29 C L J. 577.

—— S 19—*Admissions—Mere possession of document.*

For a document to amount to an admission it is not necessary that it should have been written by the person against whom it is sought to be used. Mere possession of the document does not, by itself, count for much. It is sufficient if it be proved that the document has been in his possession and that his conduct in reference to it, is such as to create an inference that he was aware of its contents or admitted its accuracy. (*Casperss and Sharfuddin*, JJ.) LALIT CHANDRA *v.* EMPEROR.
13 Cr. L J. 431 = 15 I.C. 65 = 39 Cal. 119.

——S. 19—*Admissions—Value of.*

An admission by a party to the suit on solemn affirmation is very strong evidence against him so as to shift the burden of disproving the facts admitted on to his shoulders. 29 C. 187 P.C., Fol. (*Scott-Smith and Broadway*, JJ.) LAL SHAH *v* HIRA LAL.
106 P.R. 1917 = 41 I C. 163 = 119 P.W.R. 1917.

——S. 19—*Statements as to right.*

The statements of a person who is in the best position to know all about his property ought not to be lightly set side on the mere ground that they were made with fraudulent purpose. If his legal representative alleges the statement to be incorrect, the burden of proving that this is so, lies on him. (*Reid*, C.J. *and Robertson*, J.) RAJA RAM *v.* FATTEH CHANDA. 187 P.L.R. 1912 = 17 I C. 216 = 248 P.W.R. 1912.

——S. 19—*Admission, in adoption—Deed of adoption—Burden of proof.*

The admission of an adoption in an adoption deed is an admission both of the fact as well as of the validity of the adoption and the burden of proving the contrary is on the person making such admission. (*Sadasiva Aiyar and Spencer*, JJ.) SOORATHA SINGHA *v.* JANAKA SINGA. 43 Mad. 867 = 12 L.W. 245 = 59 I.C. 585 = (1920, M.W.N. 528.

——S. 19—*Admissions—Value of.*

Courts should not lightly ignore admissions made by parties to the proceedings. (*Seshagiri Aiyar and Bakewell*, JJ.) KUNNATH MADAMPIL KUNJUNNI *v.* MANNARGHAT RAMANUNNI. 35 M L.J. 219 = 48 I.C. 925 = (1918) M.W.N. 666.

——S. 19—*Admissions—Value of—Existence of mortgage.*

Where the issue is whether there was a subsisting mortgage between the parties, any admission showing that a mortgage existed is

EVIDENCE ACT (I of 1872), S. 19.

relevant. But if a specific mortgage is alleged, an admission of same mortgage is not relevant. 18 M. 462 ; 8 B. 543 ; 27 B. 271, Ref. (*Ayling and Tyabji, JJ.*) KONERI SHOLAGAN *v.* KUMARAPPUDAYAN. 21 I.C. 566 = (1913) M.W.N. 924.

——Ss 19, 21—*Admission—Statement of third person.*

An admission by one co-mortgagee of receipt of the whole debt is evidence against the others under S. 19 of the Act ; and the admission of a third person against his own interest, where it affects his position or liability, when that position or liability has to be proved against a party to the suit is relevant against that party. 25 M.L.J. 51, foll. An admission of receipt of sums of money is in most cases an admission against his interest. Admissions in pleadings are relevant under S. 19 or 32 (3) of the Act and in the absence of the other evidence such word should be marked as exhibits in the case and there referred to as evidence in the judgment of the Court. (Per *Tyabji*, J.) The statements referred to in S. 19 become admissible only if they satisfy S 17 as regards their nature, and S. 21, or the following sections as regards their relevancy. (*Sadasiva Aiyar and Tyabji*, JJ.) APPAVU CHETTIAR *v.* MANJAPPA GOUNDAN. 14 M.L.T. 117 = 20 I.C. 792 = 25 M.L.J. 329.

——S. 19—*Admission by principal debtor if evidence against surety—Weight.*

An admission made by the agent (principal debtor) against his surety is admissible in evidence against the surety though the weight to be attached to it will depend upon the circumstances of each case. The admission need not have been made when the agency continued. It is sufficient if it is made while the liability continues. (*Sundara Ayiar and Sadasiva Aiyar*, JJ.) PARAMESWARA PATTAR *v.* VIYATHAN SREEDEVI.
(1918) M.W.N. 596 = 20 I.C. 657 = 25 M.L.J. 51.

——Ss. 19 and 20—*Admission by landlord if binding on tenant.*

An admission made by landlord is not binding on his tenant A compromise entered into between the proprietors of certain land and others, whereby the parties to the compromise become joint proprietors of the land, has no binding effect upon the tenants of the land. (*Das*, J.) PURAN PANDE *v.* DHANPAT TEWARI. 52 I.C. 789.

——S. 19—*Admission — Compromise beyond scope of suit.*

A compromise affecting property not the subject of the suit is nevertheless admissible in evidence in a subsequent suit as an admission by one of the parties. (*Chamier*, C.J. *and Sharfuddin*, J.) MAHADEO URAON *v.* ETWARIA. 43 I.C. 775 = (1917) Pat. 181.

EVIDENCE ACT (I of 1872), S. 21—Representatives.

——S. 19—*Proof of relationship.*

It is settled law that a relationship such as partnership landlord and tenant and so forth may be proved apart from the documents which embody the terms of that relationship. The fact of a partition cannot be proved by oral evidence when the partition has been embodied in a document which is incapable of legal proof in any other way. (*Duckworth and Pratt*, JJ.) MG PO LUN *v.* MA E MAI.
1 Bur. L.J. 111 = 1923 Rang. 57.

——S 21.

REPRESENTATIVES.
MISCELLANEOUS.

Representatives.

——S 21—*Representatives — Father and son—Parent not authorised to make admission—Son not deriving any interest from parent—Admission, whether can be used against son.*

The relevancy of an admission must be determined by reference to the terms of the Evidence Act. The father's admission in a previous suit cannot bind a son in a subsequent suit if the latter does not derive his interest in the subject-matter of the subsequent suit from the former. Nor can the father be regarded as having been expressly or impliedly authorised by the son to make the admission. In a suit by reversioners for recovery of property they, in no way, claim through their parents nor could their parents be regarded as authoried to make the admissions. Therefore admissions by parents in former suits are irrelevant and inadmissible. (*Lord Moulton*) SREEMUTHY MANORARAIN DEBI *v.* HARIPADA MITTER.
24 I.C. 311 = 18 C.W.N. 718 (P.C.).

——S 21—*Representative—Admission by one of two brothers whether binding on the other.*

An admission by one of two brothers is not binding on the other. (*Tudball*, J.) MUSAMMAT MAINA *v.* MADHO PRASAD. 24 I.C. 105.

——S. 21—*Representative—Consideration recited — Admissibility in evidence against representatives.*

A recital as to the passing of consideration of a mortgage-deed is admissible in evidence against the mortgagor's transferee under S. 21, Evidence Act. (*Ryves and Piggott*, JJ.) NARAIN SINGH *v.* BHIKKA RAM. 21 I.C. 841.

——S. 21—*Representatives — Mortgage—Admission of passing of consideration—Admissibility in evidence against purchaser.*

An admission in a mortgage-deed and before the registering officer by the mortgagor as to the passing of consideration can be admitted in evidence against the auction-purchaser of the equity of redemption. 22 C. 909; 34 A. 194, Foll.; 17 A. 428, Not Foll. (*H. Griffin and Chamier*, JJ.) BAKSHI RAM *v.* LILADHAR.
35 All. 353 = 21 I.C. 619 = 11 A.L.J. 371.

EVIDENCE ACT (I of 1872), S. 21—Representatives.

———Ss. 21 and 18—*Representative — Admission by mortgagor—Transferee.*

Under S. 21, a recital by the mortgagor in the mortgage-deed that he received the consideration is admissible in evidence against the transferees of the equity of redemption from the mortgagor. A finding based on such recital is a finding of fact and conclusive in second appeal. 10 A.L.J. 390; 35 A. 194, Foll. (*Stanley, C.J. and Banerjee, J.*) NAWAL KUNWAR *v.* BAKHTAWER SINGH. 17 I.C. 644= 10 A.L.J. 390.

———S. 21—*Representatives — Insolvent, admission of, is not evidence against Official Receiver.*

The admission of an insolvent, after the act of insolvency, may be admissible against himself but cannot furnish evidence against another insolvent or the Official Assignee. Even an omission to object to its admissibility does not render it legal evidence. (*Mookerjee and Buckland, JJ.*) LUCHIRAM *v.* RADHA CHARAN. 66 I C. 15=34 C.L.J. 107.

———S. 21 (2)—*Representatives—Admission by agent—Inadmissible.*

The principal cannot prove his title to property by his agent's admission in his favour. (*Scott-Smith and Martineau, JJ.*) MAULA BAKSH *v.* JAFAR ALI KHAN. 4 Lah. L.J. 437.

———S. 21—*Representatives—Co-defendants—Admissions if admissible against other defendants.*

A 2nd defendant's plea was not made evidence at the trial by examining her or otherwise, it cannot be considered except with reference to the determination of the extent if any, recoverable from her. *A fortiori* it cannot be considered against the defendants in the other suits, 20 I.C. 792, F. (*Oldfield and Tyabji, JJ.*) SESHAGIR AIYANGAR *v.* SADACHI. 29 I.C. 924.

———S. 21—*Representatives—Hindu reversioners—Admissions made by one when binding on others.*

A statement made by one reversioner is not admissible against another reversioner since the latter does not derive his interest through the former. 22 A. 38; 28 M. 57, Rel. (*Drake Brockman, J.C.*) GULAB THAKUR *v.* FADALI. 68 I.C. 566.

———S. 21—*Representatives—Admissions—Parties and privies—Auction-purchaser.*

The recital in a mortgage-deed and the admissions made by mortgagor while registering the document as regards the payment of consideration can be admitted in evidence against a subsequent auction-purchaser of the mortgaged property. 6 C. 268; 17 All. 428; 25 All. 159, Rel. (*Piggott, A.J.C.*) SAYED ZAHID ALI *v.* BUDHSEN. 21 I.C. 554.

———S. 21—*Representatives—Admission of executant how far binds his representative.*

EVIDENCE ACT (I of 1872), S 21—Miscellaneous.

Where the execution of a mortgage-deed and receipt of consideration is admitted by its executants, their admission is evidence against the mortgagors and their representatives in interest under S. 21, Evidence Act. The burden of proving that the consideration was not as that stated in the deed is on the executants and their representatives in interest. 7 W R. 441, F. (*Chamier, C.J. and Sharfuddin, J.*) PADM. KUMAR *v.* MANHU SINGH. 39 I.C. 635= 1 P.L.W. 413.

Miscellaneous.

———S. 21—*Admissions of parties not to be lightly ignored.*

The admissions of parties are binding on them and Courts should not lightly go behind them. (*Arthur Wilson*). DAMODAR NARAYAN *v.* DALGLIESH. 38 Cal. 432=38 I.A. 65= 15 C.W N. 345=9 M L.T. 364= 8 A.L J. 441=13 C L J. 512= 13 Bom. L.R. 396=9 I.C. 913= (1911) 2 M.W.N. 182 (P.C.).

———S. 21—*Admissions— Context — Evidence against person admitting.*

A party cannot disconnect a so-called admission of his adversary from the context in which it appears and use a part of it in his favour. (*Griffin and Chamier, JJ.*) SRI RAM *v.* RAM LAL. 18 I.C. 878= 11 A L.J. 285.

———Ss. 21 and 32 (3)—*Debtor and creditor.*

Entries by a creditor in the *Samadaskat* book of his debtor mentioning the fact of the debt and the deposit of the title-deeds come under S. 21 (3). Admissions in the favour of the creditor are not excluded, if admissible under S. 32. (*Beaman, J*) JETHIBAI *v.* PUTLIBAI. 17 I.C. 722=14 Bom. L.R. 1020.

———S. 21—*Deposition of insolvent under S. 36 of the Pres. Towns Ins. Act—Admissibility.*

The deposition of an insolvent examined under S. 36 of the Act and, reduced to writing is admissible as evidence against him in a criminal charge. (1896) 2 Q. B. 260; 19 Ch. D. 580, Ref. (*Rankin, J.*) *In re*, JOSEPH PERRY. 21 Cr. L.J. 78=54 I.C. 478= 46 Cal. 996.

———S. 21— *Admissions* — Solenamah—*Statements in.*

An admission by a party to a suit in the written statement and *Solenamah* by which the suit is compromised, does not lose its evidentiary value on the *Solenamah* being set aside at the instance of other parties. (*Fletcher and Shamsul Huda, JJ.*) NEAMAT-UN-NISSA BIBI *v.* GOLAM PARREHATION KAZI. 22 C.W.N. 512=45 I.C. 601= 27 C.L.J. 502.

EVIDENCE ACT (I of 1872), S. 21—Miscellaneous.

———Ss. 21 and 31—*Admission of title and the binding effect thereof on party admitting.*

A mere admission has not the effect of creating title though in the event of the title existing, it would have bound the party so admitting. (*Chatterjee and Newbould, JJ.*) HARI MOHAN PAL *v.* KAILASH CHANDRA DHUR. 37 I.C. 983.

———Ss 21 (1) and 32—*Statement in sale certificate—Purchase of holding in execution of merely money decree against tenant by landlord—Admissibility.*

Where the holding of tenants was purchased by the landlord in execution of a money decree against them, a statement in the sale certificate as to the extent of their holding is a statement against interest, when they held land in excess of it, and hence admissible in evidence in favour of the landlord, 31 C. 380, Dist. (*Mookerjee and Beacheroft, JJ.*) MADKI BISWAS *v.* JAGALINDIA NATH. 24 I.C. 283.

———S. 21—*Statement as to rent payable—Admissibility of.*

A recital in a writ of attachment is not admissible in evidence in favour of the maker of the statement and as against persons who claim under an independent title. 31 C. 390, Foll. (*Mookerjee and Carnduff, JJ.*) MOHURUDDIN KHAN *v.* SUMERA GIRI. 15 I.C. 840

———S. 21—*Admissions—Value of.*

What a party admits to be true may reasonably be presumed to be so and until the presumption is rebutted, the fact admitted must be taken to be established. 29 All. 184, P.C. (*Pelman, J.*) GIR SINGH *v.* HEBNAM SINGH. 55 I.C. 191=1 Lah. 187.

———S. 21—*Admission—Pedigree.*

The admission of the correctness of a pedigree table by a person will be very strong evidence against him, though he will not be estopped from proving its incorrectness. (*Robertson and Chevis, JJ.*) CHAMBELA *v.* KUNDAN. 6 P.W.R. 1913=18 I.C. 611=142 P.L.R. 1913

———S. 21—*Admission—Evidentiary value of.*

An admission by a party is of much value as evidence against him, and may, if unexplained be even decisive. (*Wallis, C. J. and Ayling, J.*) SANKARACHARYA SWAMIGAL *v.* MANALI SARAVANA MUDALIAR. 51 I.C. 876.

———S. 21 (1) and S. 32 (5)—*Statement as to date of birth, when admissible.*

Statements as to the date of birth of a person contained in his deposition and in affidavits filed by him are admissible in evidence under S. 21 (1) read with S. 32 (5) if made by a person having special means of knowledge whether personal or hearsay. (*Wallis, C.J. and Seshagiri Aiyar, J.*) RAMANATHAN CHETTY *v.* MURUGAPPA CHETTY. (1916) M.W.N. 208=33 I.C. 969=3 L.W. 210.

EVIDENCE ACT (I of 1872), S. 22.

———S. 21—*Admissions — Statements by postman in departmental enquiry—Admissibility.*

Oral and documentary evidence as to the statements of a postman in a departmental enquiry are inadmissible in evidence in his absence. (*Ayling, J.*) *In re* KUPPILI PRAKASA ROW. 26 I.C. 307=16 Cr. L J 3.

———S. 21—*Admissions in criminal proceedings.*

Admissions by the accused made before the beginning of the proceedings alone can be proved under S. 21, as in a civil suit. (*Benson, Sundara Iyer and Phillips, JJ.*) G. JERMIAH *v.* F.S. VAS 36 Mad. 457=10 M L T. 506=(1911) 2 M.W.N. 576=12 I.C. 961=12 Cr. L.J. 585=22 M.L J. 73.

———S 21—*Admissions — Evidence—Title—Ownership of land.*

A plaintiff is not entitled to a declaration of proprietary right in the face of an admission by the plaintiff's predecessors that they had only *kan* and *kumki* rights though the plaintiff may have evidence showing enjoyment not ordinarily referable to the admitted rights. (*Krishnaswami Iyer and Ayling, JJ.*) CHERA SHANKARANARAYANAPPAYA *v.* SECRETARY OF STATE. (1911) 1, M.W.N. 91=9 I.C. 329=9 M.L.T. 218.

———S. 21— *Admissions — Voluntary — Effect of.*

Where in cross-examination a witness admits that a statement previously made by him is false he ought to be asked in re-examination why he made a statement which was false. The mere fact that the witness acknowledges the previous statement to be false is no justification for rejecting such previous statement, if on other grounds the Court is able to reach the conclusion that statement is in substance true. (*Lindsay, J.C. and Stuart, A J.C.*) SUSHIL CHANDRA LAHIRI *v.* EMPEROR. 20 Cr. L.J. 465=51 I C. 449=6 O L J. 210.

———S. 22—*Recital in bond—If admissible against representative of executant.*

An admission of receipt of consideration in a bond is evidence against the representative in interest of the executant of the bond. (*Griffin and Chamier, JJ.*) BEHARI LAL *v.* MAKHDUM BAKHSI. 35 All. 194=18 I.C 744=11 A.L J. 221.

———S 22—*Admission in maker's interest.*

A party cannot use in his favour an admission by his predecessor made in own

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interest. (*Jenkins and Mookerjee*, JJ.) BEJOY CHAND MOHATAP *v* KALI PADA CHATTERJEE. 17 C W N 1018=20 I.C. 78= 18 Cr. L.J. 347=41 Cal. 57.

———S. 23—*Admission before arbitrators—Value of.*

An admission before an arbitrator is admissible in evidence although it is for the Court to attach whatever weight it thinks proper to it. S. 23 of the Evidence Act does not apply to such admission. (*Coutts and Das*, JJ.) PUNJAB SINGH *v.* RAMAITAR SINGH. 4 P.L.J. 676= 52 I C. 348=(1920) Pat. 52.

———S. 24.

CONFESSION, ACCEPTANCE IN PART.
CONFESSION, EVIDENTIARY VALUE.
CONFESSION IN POLICE CUSTODY.
CONFESSION, WHAT IS.
INDUCEMENT.
PERSON IN AUTHORITY.
RETRACTED CONFESSION.
MISCELLANEOUS.

Confession, acceptance in part.

———Ss. 24 and 29—*Confession—Acceptance in part if may be accepted or rejected in part.*

A confession is an evidence for the prisoner as well as against him and must be taken altogether. But it is only where no other evidence is forthcoming that this can be pressed to the extent of requiring that no part be accepted as true without accepting the whole. 26 W.R. 15 Cr. and 25 W.R. 23, Or , Foll. If other evidence incompatible with a part of the confession is on record, it may be relied on in preference to that part. (*Drake-Brockman*, J.C. *and Prideaux*, A.J.C.) HASNU *v.* EMPEROR. 53 I.C. 145=20 Cr, L.J. 757.

———S. 24—*Confession—Acceptance in part—Confession—If must be accepted or rejected in entirety.*

Although a confession must be taken as a whole and considered along with the admitted facts of the case, the Court is at liberty to disregard any statement in the confession which it disbelieves. (*Drake-Brockman*, J C.) KAMODA *v.* EMPEROR. 46 I C. 705=19 Cr. L J. 785.

———Ss 24, 25 and 26—*Confession, acceptance in part—Entire confession to be excluded.*

A Judge should decide the question of admissibility of confession first and then exclude it from the record if inadmissible and keep its terms from the assessors Inadmissible confession would be inadmissible wholly. (*Parlett*, J.) NGA BA *v.* EMPEROR. 38 I C 767= 18 Cr. L.J. 388.

Confession, evidentiary value.

———Ss. 24 and 25—*Confession—Evidentiary value—English law—Statement by accused—When admissible.*

Under the English Criminal Law, no statement by an accused is admissible in evidence against him unless it is shown by the prosecution to have been a voluntary statement, in the sense that it has not been obtained from him either by fear of prejudice or hope of advantage exercised or held out by a person in authority. The fact that a statement was made by an accused person under circumstances of hope, fear, or otherwise, strictly speaking, goes only to minimise its weight The rule by which, is excluded evidence of statements made by a prisoner, when he has been induced to make them, by hope held out or fear inspired by a person in authority, is a rule of policy. (*Lord Sumner*). IBRAHIM *v.* EMPEROR. 18 C W N. 705=15 Cr. L J. 323= 23 I.C. 678=1 L.W. 989 (P.C.)

EVIDENCE ACT (I of 1872), S. 24—Confession in police custody.

———S. 24—*Confession—Evidentiary value—Corroboration.*

The law does not require that the confession of an accused person should be corroborated before it can be acted upon. It is for the Court to decide whether it believes a confession or not. (*Stuart and Wallach*, JJ.) EMPEROR *v.* DHANI. 52 I C. 881=20 Cr. L J. 721.

———S. 24—*Confession—Evidentiary value—Admissibility.*

A confession is admissible only when it is voluntary and made without any pressure. (*Griffin and Chamier*, JJ.) EMPEROR *v.* GULABU. 35 All. 260=14 Cr. L.J. 211= 19 I.C. 307=11 A.L J. 286.

———Ss. 24 and 28—*Confession—Evidentiary value—Voluntary—Evidence of Magistrate.*

Where the Magistrate in whose presence a confession was made is called as a witness and swears that the statement was made before him freely and willingly and not in the presence of a policeman, the confession is voluntary and reliable. (*Rattigan*, C.J. *and Martineau*, J.) DAULAT RAM *v.* EMPEROR. 2 Lah. L J. 553.

Confession in Police Custody.

See also S. 26.

———S. 24—*Confession in police custody—Presence of the police—Accessory after fact.*

The evidence was that the accused was kept in charge of a Head Constable and was being questioned by the Sub Inspector and that after being in that condition for 3 or 4 hours under the continued questioning to which he was subjected, he finally broke down and made a confession to the Magistrate at midnight. *Held*, that the confession was inadmissible under S. 24 of Evidence Act as it was not voluntary. A self-exculpatory statement by an accessory after the fact is inadmissible in evidence. (*Huda and Rankin*, JJ.) EMPEROR *v.* PRAMATHA NATH BAGCHI. 30 Cr. L.J. 503= 55 I.C. 282=21 C.L.J.256.

EVIDENCE ACT (I of 1872), S. 24—Confession in Police Custody.

——S. 24—*Confession in police custody—Inadmissibility of.*

When a confession was made after police custody for several days and protracted consultation between the accused and the investigating officers, and was subsequently retracted the confession is inadmissible. (*Richardson and Huda*, JJ.) MOBABAK ALI *v.* EMPEROR. 20 Cr. L J. 833=53 I.C. 929= 23 C.W.N. 886.

——S. 24—*Confession in police custody—Admission—False defence.*

Any statement made to the Police to the effect that an article produced by suspected men really belonged to the deceased does not amount to a confession but to an admission because the defence is not always stated during police enquiry. (*Chevis and Abdul Qadar*, JJ.) SHUA DIN *v.* EMPEROR. 5 Lal. L.J. 128.

——S. 24—*Confession in police custody—Retracted—Corroboration.*

A confession by an accused person made after he has been for a considerable time in police custody and subsequently retracted ought not to be acted on without corroboration. (*Coutts and Adami*, JJ.) RUSNA TELLI *v.* EMPEROR. 54 I.C. 881.

——Ss. 24, 25, 26, and 27—*Confession in police custody and statements, by one accused against another.*

Statements made to police, while in custody are not admissible evidence, though those statements may be incriminating. A statement made by the accused against another, and a confirming statement made by another accused, when questioned by Police before the Headman are excluded by the above sections of the Act; and S. 24 does not admit as legal evidence an incriminating statement to Headman at the latter's suggestion to speak the truth, lest witnesses for the other side may let it out when called. (*Coxe*, C. J.) ZETA *v.* EMPEROR. 18 Cr. L.J. 106=37 I.C. 314= 10 Bur. L T. 270.

Confession, what is.

——S. 24—*Confession—What is—Accused on trial—Evidence of identification.*

A confession made voluntarily in the sense that it was made spontaneously and without any inducement is admissible in evidence under S. 24 of the Evidence Act. Since an accused person cannot give evidence while on his trial secondary evidence of identification by him is inadmissible. (*Walsh*, J.) KHETAL *v.* EMPEROR. 45 A. 300=21 A.L.J. 143= 24 Cr. L J. 526=1923 A 352.

——S. 24—*Confession, what is—Cr. P. C., Ss.* 164 *and* 339 (2).

Any statement by a person which would suggest an inference as to his guilt may be a confession within S. 24 of the Act. Where a confession recorded under S. 164 of the Cr. P. C., was procured by a Police Officer by the offer of an inducement, it is inadmissible under S. 24 of the Evidence Act. Per *Shah*, J.—S. 24 will apply even if the person confessing was not accused person at the time of confession. It is sufficient if he ultimately becomes an accused person with reference to the charge in respect of which he is said to have confessed. Though a statement of an approver may be given in evidence against him under S. 339 (2) of the Cr. P.C., it cannot be said that the operation of S. 24 is altogether excluded. If it is shown that some influence was proceeding from some authority, simultaneously with the legal tender of pardon, which would invite the application of S. 24 of the Evidence Act, then the confessional part of the statement would be inadmissable by virtue of the section. Per *Heaton*, A.C.J.—(*Hayward*, J. Semble) :—A statement falling within S. 339 (2) of the Code is beyond the operation of S. 24 of the Evidence Act. (*Heaton*, A.C.J., *Shah and Hayward*, JJ.) EMPEROR *v.* CUNNA. 22 Cr. L.J. 68=59 I.C. 324= 22 Bom. L.R. 1247.

EVIDENCE ACT (I of 1872), S. 24—Inducement.

Inducement.

——Ss. 24 and 30—*Inducement of pardon—Admissibility against co-accused.*

In three cases, each of them involving a large number of alleged dacoities, the accused were tried together for participation in three separate dacoities, committed at different times, and at different places, but round about the same season and round about the same neighbourhood. One of the accused was informed by the Magistrate that if he made a voluntary confession which was found to be full and true, his prayer for being made an approver would receive due consideration and eventually he made an elaborate statement amounting to a confession under S. 164, Cr. P. Code. He was subsequently tried and convicted and his confession was used not only against himself but against the other accused. *Held* that the confession was inadmissible under S. 24 of the Evidence Act and as it formed the main reason for the conviction of the other accused, their conviction could not stand. (*Walsh and Kanhaiya Lal*, JJ.) TARA *v.* EMPEROR. 45 A. 633=21 A.L.J. 585= 24 Cr. L.J. 785=1924 All. 72.

——S. 24—*Inducement—Accused confession that the confession is under inducement.*

Where the accused whose confession is being recorded informs the Magistrate that he is making the confession under inducement, the confession is not admissible, and cannot be allowed to go to the Jury. Whether there was inducement or not is immaterial. (*Maclsod*, C.J. *and Shah*, J.) DINANATH SUNDRAJI *v.* EMPEROR. 45 Bom. 1086= 60 I.C. 1006=22 Cr. L.J. 318= 22 Bom. L.R. 388.

EVIDENCE ACT (I of 1872), S. 24—Inducement.

——S. 24—*Inducement—Confession suspected to be obtained by—Burden of showing that it was truly made on prosecution.*

If in the circumstances of a case it appears to the Court that there is reason to suspect that the confession was obtained by inducement so as to bring it under the provisions of S. 24, the prosecution must show that the confession was freely made. Otherwise it cannot be admitted in evidence. (*Newbould and Suhrawardy*, JJ.) ASHOTO DUTT *v.* EMPEROR.
68 I.C. 413.

——S. 24—*Inducement—Threat to put the woman to trouble and offer of pardon.*

A statement to a Magistrate by an accused, through fear caused by a threat that his females would be troubled, is inadmissible and a statement under the belief that the accused would be offered a free pardon is also inadmissible. (*Walmsley and Huda*, JJ.) EMPEROR *v.* ANANT KUMAR BANERJI.
22 Cr. L J. 225 = 60 I.C. 417 = 32 C.L.J. 204.

——S. 24—*Inducement, threat, etc.*

K as a witness made a statement implicating himself, in the trial of one V. He was then made a co-accused. It was found that the statement was made under circumstances mentioned in S. 24 of the Act. *Held*, that the statement was irrelevant against him. (*Reid*, C.J. *and Johnstone*, JJ.) EMPEROR *v.* UMADA. 9 P.R. 1911 Cr. = 166 P.L.R. 1911 = 10 I.C. 340 = 12 Cr. L.J. 267 = 22 P.W.R. 1911 Cr.

Person In Authority.

——S. 24—"*Person in authority.*"

The test as to whether a person is a person in authority, is whether that individual had authority to interfere with the matter and had any concern or interest in it sufficient to give him that authority. Police Patel in a village is such a person. 9 B.H.C. 358 at 369 Foll. (*Batchelor and Hayward*, JJ.) FAKIRA APPAYA *v.* EMPEROR. 40 Bom. 220 = 17 Cr. L.J. 133 = 33 I C. 309 = 17 Bom. L.R. 1039.

——S. 24—*Person in authority.*

A collecting panchayat and an assistant panchayat who have taken part in holding the enquiry into the circumstances under which the offence has been committed constitute "person in authority" within the meaning of S. 24 of the Evidence Act. Where in answer to a question to the accused whether he would be saved from the consequence of his act if he confessed, the assistant panchayat gave him an assurance that he would be let off if he disclosed everything and the confession by the accused was made as a result of such assurance the confession is inadmissible in evidence. The accused in this case made a confession to the assistant panchayat before his arrest, on first January, 1922. The accused was thereupon kept in custody till the next day when the police formally arrested him and sent him before a Magistrate. The Magistrate recorded his confession on the 4th of January. *Held*, that the improper influence of the assistant panchayat continued up to the time when the confession was made and it was consequently inadmissible in evidence. (*Sanderson*, C.J. *and Panton*, J.) EMPEROR *v.* GANESH CHANDRA GODAR. 50 C. 127 = 24 Cr. L.J. 760 = 1923 Cal. 458.

EVIDENCE ACT (I of 1872), S. 24—Person in authority.

——S. 24—*Person in authority—Meaning of—Prosecutor—Doubtful circumstances—Onus on prosecution.*

The words "person in authority" in S. 24 include the prosecutor. If in the circumstances of a case it appears to the Court that there is reason to suspect that the confession was obtained by inducement, it is for the prosecution to show that the confession was freely made; otherwise it would not be admissible in evidence against the accused. (*Newbould and Suhrawardy*, JJ.) ASHUTOSH DUTT *v.* EMPEROR. 68 I C. 413 = 26 C.W.N. 84.

——S. 24—*Person in authority—Confession to excise superintendent—Admissibility of.*

A confession made by an accused to the Superintendent of excise in a trial for illicit possession of opium is admissible, provided no inducement, threat or promise, was held out to the accused for making the confession. (*Chitty and Smither*, JJ.) ROKUN ALI *v.* EMPEROR.
19 Cr. L.J. 524 = 48 I.C. 284 = 22 C.W.N. 451.

——S. 24—*Person in authority—President of Panchayat if—Confession.*

The president of a panchayat which was to consider a case is a person in authority within S. 24, and confession made to him is not therefore admissible in law. (*Chitty and Walmsley*, JJ.) EMPEROR *v.* AUSHI BIBI.
23 C.L.J. 477 = 33 I.C. 828 = 17 Cr. L J. 188 = 20 C.W.N. 812.

——S. 24—*Person in authority—Lambardar—Confession induced by threats—Admissibility.*

A Lambardar is a "person in authority" and a confession which is the result of threats used by him is inadmissible under S. 24. (*Scott-Smith and Abdul Raoof*, JJ.) MUHAMMADAR *v.* CROWN.
4 Lah. L J. 235 = 1922 Lah. 263.

——Ss. 24 and 28—*Person in authority—Confession to Zaildar.*

A confession made by a suspected person regarding his guilt (murder case) on an inducement of the Zaildar that his own (Zaildar's) brother had put off in a murder case on making a clean breast of the matter, is inadmissible, as the zaildar, was a leading man holding responsible post. (*Johnstone*, C.J. *and Chevis*, J.) KARAN SINGH *v.* EMPEROR.
32 P.W.R. 1916 Cr. = 16 Cr. L.J. 226 = 26 P.R. 1916, Cr. = 34 I.C. 642 = 168 P.L.R. 1916.

EVIDENCE ACT (I of 1872), S 24—Person in Authority.

———S. 24—*Person in authority—Lambardar*—Zaildar.

A *Zaildar* or Lambardar is an officer who is to help the police in their investigation. A confession made to such an officer, who promised the release of the accused, is not admissible in evidence for it is a promise made by a person in authority. (*Reid*, C J. *and Rattigan*, J.) KUTAB ALI *v.* EMPEROR. **14 P R. 1911 Cr. = 12 I.C. 973 = 12 Cr. L.J. 597 = 42 P.W.R. 1911 Cr.**

———S. 24—*Person in authority*—Zaildar

Admissions made to a *Zaildar must be left out* when the *Zaildar* told the accused before their statements were recorded that they would get some benefit from Govt. if they spoke the truth. (*Kensington and Shahdin*, JJ.) MUTSADDI *v.* EMPEROR. **221 P L.R. 1911 = 12 I.C 642 = 12 Cr. L J. 555 = 37 P.W.R. (Cr.) 1911.**

———S. 24—*Person in authority—Confession to panchayatdars—Admissibility.*

(Panchayatdars do not come under the definition of "persons in authority" in S. 24 of Evidence Act and hence confession made to them are admissible. (*Krishnan and Wallace*, JJ.) MULIMAYANDI THEVAN *In re.* **45 M.L.J. 845 = 18 L.W. 886 = 1924 Mad. 230.**

———Ss. 24, 25 and 26—*Person in authority—Statement leading to direct inference of guilt—Military officer assisting in police investigation—Statements made at police search and before arrest—"Custody."*

To constitute a 'confession' under the Evidence Act, it is not necessary that the person confessing should make a full and explicit admission of his guilt so clean as to leave no other hypothesis tenable. It is enough if they lead to an inference of guilt. The words "accused person" in Ss. 24 to 26 include any person who subsequently becomes accused. provided that at the time of making the statement, criminal proceedings were in prospect. The expression "person in authority" has a wider meaning than the actual prosecutor and the test is, has the person any authority to interfere in the matter and any concern or interest in it, sufficient to give him authority, 8 B.H.C.R. 358; 8 Bom, L.R 507; 26 I.C. 161, Ref. (*Ayling and Phillips*, JJ) SMITH *v.* EMPEROR. **43 I C. 606 = 19 Cr. L.J. 189.**

———S. 24—*Person in authority—Thugee.*

A confession made to a Thugee by an accused who had been sent for by the former after being told that he would not be punished if he was not a party to the offence is irrelevant and inadmissible in evidence as the Thugee is a person in authority within the meaning of S. 24 of the Act and what the Thugee told him was an inducement to make a statement. Other answers and questions based on the inadmissible statement are also inadmissible. (*Fox*, C.J. *and Parlett*, J.) NGA KYA THIN *v.* EMPEROR. **15 Cr. L J. 681 = 8 Bur. L.T 39 = 26 I.C. 129 = 8 L.B.R. 94.**

———Ss. 24, 25 and 28—"*Person in authority*" *explained.*

S. 24 refers only to a person in actual authority, the test being the possession of some power or control over the accused with reference to his case. Neither a co-villager, nor a Zamindar is a person in authority unless the Zamindar is directed by the police to investigate. (*Hayward*, J.C. *and Fawcett*, A.J.C.) LAUNG *v.* EMPEROR **18 Cr. L J. 58 = 37 I.C. 42 = 10 S.L.R. 140.**

———S. 24—*Person in authority—Zamindars.*

A confession to certain Zamindars sent for that purpose by the police who held out an inducement to the accused, that they would save him, is inadmissible under S. 24, because they were investigating the offence just like policemen and must be considered to be persons in authority who procured the confession by their inducement and promise. (*Hayward*, J.C. *and Leggatt*, A.J.C.) IMPERATOR *v.* DABUD. **12 Cr. L.J. 119 = 9 I.C. 718 = 4 S L R. 209.**

Retracted Confession.

———S. 24—*Retracted confession — Proper time—Duty of Court.*

Where the confession of guilt was retracted, the proper time to take into consideration such a confession, comes after the Court is in possession of the entire prosecution evidence and can estimate what the effect of that evidence would be, considered apart from any statement which the accused person or persons may from time to time have made. (*Piggot and Walsh*, JJ). SUKHNIA *v.* EMPEROR. **20 A.L J. 669 = 24 Cr. L.J. 609 = 1922 All. 266.**

———Ss. 24 and 30—*Retracted confession—Statement by a convict implicating another—Admissibility.*

A convicted prisoner undergoing a term of imprisonment made a statement before a Magistrate implicating the petitioner in the offence for which he had been convicted. But when he was examined as a witness he denied the implication of the petitioner. *Held*, the statement was not admissible in evidence. (*Tudball*, J.) NOOR BIJJI KHAN *v.* EMPEROR. **18 A.L.J 87 = 54 I.C. 893 = 2 U.P.L.R. (H.C.) 37.**

———S. 24—*Retracted confession.*

Per *Shah*, J.—A retracted confession carries much less weight than one which has been adhered to. Per *Crump*, J.—A confession is after all an evidence in so far as it bears upon the crime into which the Court is at the time enquiring and circumstances corroborating the

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confession in material points are themselves equally immaterial. (*Shah and Crump, JJ.*) GANGARAM *v.* IMPERATOR. 22 Cr. L.J. 529 = 62 I.C. 545 = 22 Bom. L.R. 1275.

———S. 24—*Retracted confession—Confession—Value of, as evidence.*

It cannot be laid down as an inflexible rule that a confession made by a prisoner cannot be accepted as evidence of his guilt without independent corroboration evidence. The weight to be given to such a confession must depend on the circumstances under which the confession was originally given and the circumstances under which it was retracted including the reasons given by the prisoner for its retraction. It is unsafe for a Court to rely on and act on a confession which has been retracted unless after a consideration of the whole of the evidence in the case, the Court is in a position to come to the unhesitating conclusion that the confession is true, that is to say, usually unless the confession is corroborated by credible independent evidence. A retracted confession should carry practically no weight as against a person other than its maker. (*Newbould and Pearson, JJ.*) EMPEROR *v.* BISESWAR DEY.
24 Cr. L.J. 145 = 26 C.W.N. 1010 = 1923 Cal. 217.

———S. 24—*Retracted confession.*

Even a retracted confession is admissible in evidence but the jury must be allowed to decide what value should be attached to it. (*Newbould and Suhrawardy, JJ.*) ABDUL SALIM *v.* EMPEROR. 49 Cal. 878 = 26 C.W.N. 680 = 35 C.L.J. 279 = 23 Cr. L.J. 657 = 1922 Cal. 107.

———S. 24—*Retracted confession — Conviction.*

It is very unsafe to convict an accused person upon a retracted confession unless the confession is confirmed by other evidence. (*Banerjee, J.*) HAR PRASAD *v.* EMPEROR.
36 I.C. 133 = 17 Cr. L.J. 453.

———S. 24—*Retracted confession — Corroboration.*

A confessing prisoner should not be convicted upon a retracted confession unless it is corroborated in material particulars. Where it is a question of using a confession against a co-accused and the Court is not prepared to accept the confession *per se* as sufficient, the corroboration ought to be of the kind that not only confirms the general story of the crime but also unmistakably connects the co-accused with the crime. (*Scott-Smith and Shadi Lal, JJ.*) EMPEROR *v.* MUSSAMMAT JAWAI.
19 P.W.R. (Cr.) 1918 = 44 I.C. 179 = 19 Cr. L.J. 275 = 70 P.L.R. 1918.

———Ss. 24 and 26—*Retracted confession.*

When a retracted confession is the sole evidence against an accused, it can be of but little value especially remembering the competition for a pardon which sometimes occurs where a number of persons are suspected of an offence and some have already confessed or are believed to have confessed. (*Johnstone, C.J. and Chevis, J.*) KARAM SINGH *v.* EMPEROR.
32 P.W.R. 1916 Cr. = 17 Cr. L.J. 226 = 126 P.R. 1915 Cr. = 34 I.C. 642 = 163 P.L.R. 1916.

———S. 24—*Retracted confession — Statement made under grant of pardon—Where admissible—Conviction based on.*

A Court should not convict a person upon a statement made by him but subsequently retracted owing to a promise of pardon, in the absence of corroboration in material particulars unless the peculiar circumstances of making the confession or the reasons of retraction show the genuineness of the confession in spite of its revocation. (*Ratligan and Scott-Smith JJ.*) KHUSHI *v.* EMPEROR. 16 Cr. L.J. 815 = 31 I.C. 831 = 6 P.W.R. 1916 (Cr.).

———S. 24—*Retracted confession—Value of—Discovery of clothing — Statements under S. 288, Cr. P. Code—Value of.*

A confession made by an accused before the committing Magistrate which he retracts both before and after commitment, is of no value as evidence against him. A conviction cannot be founded upon statements of witnesses under S. 288, Cr. P. Code, when they came forward after the accused confessed and gave only circumstantial evidence insufficient to connect the accused with the commission of the crime. (*Shah Din and Scott-Smith, JJ.*) GHANWARA *v.* EMPEROR. 16 Cr. L.J. 612 = 30 I.C. 436 = 15 P.W.R. 1915 (Cr.).

———S. 24—*Retracted confession—Value of—Against co-accused.*

It is not illegal to convict on the uncorroborated confession of the accused provided the Court is satisfied that it was voluntary and free, and it is immaterial from the point of view of pure legality that the confession has been retracted. It is however not safe in general to convict on an uncorroborated confession from the point of view of common experience and prudence, and when it is a question of a confession against a co-accused, the corroboration must not only confirm the general story of the crime but must clearly connect the co-accused with it. (*Johnstone and Scott-Smith, JJ.*) JAWAN *v.* EMPEROR.
261 P.L.R. 1914 = 30 P.R. 1914, Cr. = 25 I.C. 634 = 15 Cr. L.J. 626 = 50 P.W.R. 1914, Cr.

———S. 24—*Retracted confession — Proof of.*

Where the accused takes back the confession before the committing Magistrate and at the Sessions trial, it is not admissible unless the

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Court is satisfied of its truth and voluntary character. (*Krishnan and Wallace, JJ.*) BASIREDDI NARIAPPA *v.* EMPEROR.
43 M.L.J. 613=18 L.W. 606=33 M.L.T. H.C. 17=33 M.L.T. (H.C.) 156=(1923) M.W.N. 697=25 Cr. L.J. 210=1924 M. 391.

———S. 24—*Retracted confession—Value of—Corroboration, if necessary.*

There is no rule of law requiring a retracted confession to be supported by corroborative evidence in material particulars. The use to be made of such a confession is more a matter of prudence than of law. 13 C.P.L.R. 107, Foll. (*Drake-Brockman, J.C.*) BHADDU *v.* EMPEROR. **46 I.C. 1005=19 Cr. L.J. 861.**

———Ss. 24 and 27—*Retracted confession—Inducement or pressure—Information given by accused to Police Officer on threat, admissibility of—Confession retracted disagreeing with other evidence in case.*

On account of the fact that a Police Officer got by means of threat an information from a prisoner which would incriminate the latter, the information is not admissible in evidence. An accused's confession subsequently retracted and not squaring with the other evidence in the case cannot be pressed as strong evidence against him. (*Lindsay, J.C. and Kanhaiya Lal, A.J.C.*) EMPEROR *v.* TILAK.
17 Cr. L.J. 33=32 I.C. 321=2 O.L.J. 468.

———S. 24—*Retracted confession—Evidentiary value.*

Even in the case of a retracted confession if the Court is satisfied that it was made voluntarily and it is true, it must act in that belief so far as that accused is concerned, in absence of evidence as to coercion by the police. (*Adami and Das, JJ.*) BIHARI ADARKI *v.* EMPEROR. **60 I.C. 789=22 Cr. L.J. 293.**

———S. 24—*Retracted confession.*

A retracted confession uncorroborated in material points by other reliable evidence, is of no value. Conviction on it would be bad. (*Jwala Prasad, J.*) RAGHU BHUMIJI *v.* EMPEROR. **5 P.L.J. 430=53 I.C. 49=21 Cr. L.J. 705=1 P.L.T. 241.**

———S. 24 — *Retracted confession — Uncorrobarated—Conviction.*

A conviction which has for its foundation an uncorroborated confession is not bad, if the surrounding circumstances point to the confession being voluntarily given by the confessor, and there is no evidence of coercion either by the Police or any other person. The voluntary character of the confession would not be lost by the fact that the confession was retracted before the committing Magistrate. (*Mullick and Atkinson, JJ.*) SHEO PRASAD KOERI *v.* EMPEROR. **52 I.C. 80=20 Cr. L.J. 562.**

EVIDENCE ACT (I of 1872), S. 25—"Police Officer," Meaning.

Miscellaneous.

———S. 24—*Evidence obtained by torture—Effect of.*

Evidence obtained by inflicting punishment in order to extract evidence from the deponent has no value and it defeats its own ends. A conduct of this kind on the part of the police-officers stands the charge of severe condemnation. (*Walsh, J.*) GOKUL SINGH *v.* EMPEROR. **35 I.C. 527 (All.)=17 Cr. L.J. 351.**

———S. 24—*Burden of proving inducement—Confession—Retraction of—Ill-treatment and inducement—Onus.*

Where an accused when retracting a confession alleged ill-treatment and inducement by the police to extract the confession, the onus is on him to prove such ill-treatment and inducement. (*Chitty and Smither, JJ.*) EMPEROR *v.* KABILI KATONI. **19 Cr. L.J. 959=47 I.C. 811=22 C.W.N. 809.**

———S. 24—"*Appears*"—*Meaning of.*

It is not possible for a Court to say that the making of the confession "appears" to it to have been caused by any inducement, threat, or promise except upon evidence which is before the Court. The inference may be suggested by the confession itself, or by the evidence of the prosecution, or by the evidence adduced by the accused person, or by surrounding circumstances which the Court is always bound to take into consideration: but the conclusion cannot be reached on surmise or conjecture. (*Das and Adami, JJ.*) EMPEROR *v.* DEWANKAHAR. **4 P.L.T. 186=24 Cr. L.J. 497=1923 P. 13.**

———Ss. 24 and 27—*Confession of accused, relevancy of.*

Statements by an accused which are inadmissible under S. 24 cannot be made admissible by S. 27 unless the person giving information was accused of an offence and was in the custody of the police officer. (*Saunders, A.J.C.*) EMPEROR *v.* NGA AUNG BA.
17 Cr. L.J. 402=35 I.C. 962=(1916) II U.B.R. 114.

———S. 25.

"POLICE OFFICER," MEANING.
MISCELLANEOUS.

"Police Officer" Meaning.

———Ss. 25 and 30—*Police officer, meaning—Excise Officers—Self-exculpatory statements—Retracted statement—Value of.*

Statements made to Excise Officers could not be rejected under S. 26 of the Evidence Act as the Excise Officers are not police officers. Even a retracted confession is admissible against the co-accused though its weight is small. To determine whether the statements were confessions, the whole of the statements must be taken into consideration and the statements in

EVIDENCE ACT (I of 1872), S. 25—"Police officer," Meaning.

question being self-exculpatory were inadmissible against the appellant. (*Sanderson*, C.J. *and Beachcroft*, J.) AU FOONG CHINAMAN *v.* EMPEROR. 43 Cal. 411=23 C.W.N. 834= 48 I.C. 504=20 Cr. L J, 24=28 C.L J. 105.

———S. 25—*Police Officer—Meaning.*

Quaere.—Whether Excise Officers who have large powers of search, arrest and detention are to be regarded as police officers within the meaning of S. 25 of the Evidence Act. (*Teunon and Choudhury*, JJ.) MUHAMMAD IBRAHIM *v.* EMPEROR. 18 Cr L J 609= 39 I.C. 977=21 C W.N 695.

———S. 25—*Police Officer—Meaning—Confession to Excise Inspector—Admissibility.*

Statement by an accused to the Excise Inspector that the opium found in his house was his, though in the nature of a confession was admissible in evidence, the Excise Inspector not being a Police Officer. (*Shah Din and Chevis*, JJ.) EMPEROR *v.* WAZIR SINGH. 3 P.R. 1918, Cr.=19 Cr. L.J. 261= 41 I.C. 588=133 P.L.R. 1918.

———S. 25—*Police Officer, meaning of—Village officer in Punjab—Confession.*

In the Punjab, village chowkidar is not a "Police Officer" or a person in authority within S. 25 of the Evidence Act A confession made by an accused person to a chowkidar is consequently admissible. (*Chevis and Leslie-Jones*, JJ.) KHUDA BAKSH *v.* EMPEROR. 19 Cr. L.J 53=43 I.C. 86= 42 P.R. 1917 (Cr).

———Ss. 25 and 26—*Police Officer, meaning—Confession to foreign Police—Admissibility.*

A confession made to a foreign Police Officer cannot be admitted in evidence according to Ss. 25 and 26 of the Evidence Act, 22 B. 235. Foll. (*Benson and Abdur Rahim*, JJ.) PUBLIC PROSECUTOR *v.* VEERARAGHAVA PILLAI. 18 Cr. L.J. 528=15 I.C. 800=11 M.L.T. 467.

———S. 25—*Police Officer, meaning—Village kotwal.*

The Police Officer in S. 25 does not include the village watchman or kotwal in Central Provinces. (*Hallifax*, A.J C.) BHAGVATADIN *v.* EMPEROR. 37 I.C. 88=21 Cr. L.J. 568.

———Ss. 25 and 27—*Police Officer, meaning—Native states, Police Officer of—Confession—Discovery of fact in pursuance includes discovery of offender.*

The expression "Police Officer" in S. 25 of the Evidence Act is used in its usual and more comprehensive meaning, and includes Police officers of the Native States as those of British India. A confession made to a Police officer in H.H. Nizam's Dominions is not therefore, admissible in evidence. 22 Bom. 235 Foll. The discovery of a person who is afterwards proved to be a decoit is not the discovery of a fact within S. 27. The test of admissibility

EVIDENCE ACT (I of 1872), S. 25—Miscellaneous.

under S. 27 of an information received from an accused person in the custody of a Police Officer is whether the fact as discovered was a direct, natural and necessary consequence of the information so received. (*Mitra, Offg.*, A J.C.) SALAM *v.* EMPEROR. 19 Cr. L J. 79= 43 I.C. 111=14 N.L R. 192.

———S. 25—*Police officer, meaning—Village chaukidars whether Police officers.*

Village chaukidars must be treated as Police officers within the meaning of S. 25 of the Evidence Act. (*Lindsay*, J.C.) DAL *v.* EMPEROR. 16 Cr. L.J. 62=26 I C. 654= 1 O.L.J. 687.

———Ss. 25 and 26—*Police officer—Member of Frontier constabulary is a meaning of Police officer.*

For the purpose of Ss. 25 and 26 of the Evidence Act a member of the Frontier Constabulary is a Police officer and confession made to him while the accused was in his custody and not in the presence of a Magistrate is inadmissible. The term Police officer in this respect must be construed not in any strict technical sense but according to its most comprehensive and popular meaning. The mere fact that the powers of the Police officers have not been actually conferred on certain members of the Frontier Constabulary does not make them any the less Police officers. (*Pipon*, J.C.) KHWAJA HASSAN *v.* EMPEROR. 71 I.C. 260=24 Cr. L J. 196.

Miscellaneous.

———Ss. 25, 27 and 30—*Co-accused—Statement by one to Police officer that stolen property is with the other—Admissibility.*

A statement made by an accused to a Police officer, if it does not amount to a confession may nevertheless be used against him—If it amounts to a confession it must be excluded from evidence altogether under S 25 of the Evidence Act, but in either case it can only be used against the person making it—A statement by one accused can only be used against a co-accused if the provisions of S. 30 are applicable. Where in a case of dacoity against three persons, one of them mentioned to the Sub-Inspector that stolen property would be found in the house of the others, but on search nothing suspicious was found and then he pointed out a *dhupatta* worn by one of the co-accused as part of the dacoity, *held*, the statement did not amount to a confession and was inadmissible against the co-accused. (*Ryves*, J.) RAMHIT *v.* EMPEROR. 20 A.L J 178=L.R 3 A. 50= 23 Cr, L J. 193=1922 All. 25.

———Ss. 25 and 27—*Statement to police—Discovery—Admissibility of document.*

The accused charged with the death of his wife presented himself at a Police Station and made a report, a record of which was entered

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in the Police register. A Police officer proceeded to the house of the accused and discovered in a room a corpse of a woman. *Held*, that under S. 27 of the Evidence Act the Police officer was entitled to prove that the accused came to him at the time and place stated and said "I have killed my wife; her corpse is lying in my house," and in consequence of this statement the woman's corpse was discovered as indicated, but thereafter the defence were entitled to require the production of the whole record and to insist upon the proof of it. (*Piggott and Walsh*, JJ.) SURENDRANATH MUKERJEE *v.* EMPEROR. **19 Cr. L.J. 935 = 47 I.C. 659 = 16 A.L.J. 478.**

——Ss. 25, 26—Panchnamas—*Admissibility—Record of accused's conduct—Statement in consequence of which nothing was discovered.*

Courts should exclude from the record *Panchnamas* which contain statements by an accused person which are clearly inadmissible or which are of doubtful admissibility. (*Chandavarkar and Heaton*, JJ.) EMPEROR *v.* RANCHHOD GOKAL. **12 Cr. L.J. 429 = 11 I.C. 613 = 13 Bom. L.R. 499.**

——S. 25—*Statements to Police officers—The evidence of Police officers as to statements made to them by certain persons is inadmissible.*

Statements made to the investigating Police officer by a relative of a person whose property was stolen, can however be used to contradict or corroborate the statement made by him in the Court of the Magistrate. (*Teunon and Ghose*, JJ.) ASHUTOSH *v.* EMPEROR. **66 I.C. 513 = 34 C.L.J. 53.**

——S. 25—*Information given by accused himself.*

The accused gave the first information about the murder on the morning following the murder, and after stating the narrative prior to the night of occurrence, confessed his crime. *Held*, that the first information was not entirely admissible, by virtue of S. 25, yet it was admissible, when proved, as regards the events prior to the night of occurrence. (*Teunon and Ghose*, JJ.) SUPERINTENDENT AND LEGAL REMEMBRANCER OF LEGAL AFFAIRS, BENGAL *v.* LALIT MOHAN SINGHA ROY. **22 Cr. L.J. 512 = 62 I.C. 578 = 25 C.W.N. 788.**

——S. 25—*Admissions and confessions.*

S. 25 excludes only confessions and not every statement made to the police by the accused. There is a distinction between admissions and confessions. The test as to the admissibility of statements made to the police is to ascertain the purpose for which they are used by the prosecution. Such statements are admissible if they are relied on. (*Woodroffe and Mookerjee*, JJ.) EMPEROR *v.* KANGAL MALI. **15 Cr. L.J. 713 = 26 I.C. 161 = 41 Cal 601.**

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——Ss. 25 and 26—*Statement by accused in presence of excise officers—Admissibility.*

A statement by an accused arrested on a charge of unlawful possession of opium to excise officers, the police servants remaining in a room in another part of the house, is still a statement made while in Police custody and therefore inadmissible. (*Teunon and Choudhury*, JJ.) MUHAMMAD IBRAHIM *v.* EMPEROR. **18 Cr. L.J. 609 = 39 I.C. 977 = 21 C.W.N. 694.**

——S. 25—*Repetition of previous statement before Police officer—Scope.*

An incriminating statement was made to a witness in the absence of the police and subsequently repeated before him and the Police officer: *Held*, the confession is undoubtedly admissible but the weight to be given to it is a matter for consideration. (*Broadway*, J.) WADHAWA SINGH *v.* EMPEROR. **1923 Lah. 389 (2).**

——S. 25—*Confession to police can be used to contradict judicial confession.*

All that S. 25 lays down is that a confession to the police shall not be used as against a person making it. It does not lay down that such a confession shall be inadmissible for all purposes. The confession to the police may be used for the purpose of arriving at a conclusion as to whether a subsequent judicial confession should be believed or not. (*Scott-Smith and Zafar Ali*, JJ.) GULAB *v.* EMPEROR. **1923 Lah. 315.**

——S. 25—*Report of confession before police.*

A report made to police amounting to a confession is not admissible in evidence against the person who makes it. (*Scott-Smith and Brodway*, JJ.) SIKANDAR *v.* EMPEROR. **20 Cr. L.J. 83 = 48 I.C. 883 = 36 P.R. 1918, Cr.**

——Ss. 25, 17, 19 and 21—*Admissibility of confession to police in Civil suit.*

Admissions of guilt by one of the defts. in a suit, to a Police officer though not receiveable in evidence in a criminal trial, may be proved in Civil proceedings under Ss. 17, 18 and 21. (*Rattigan and Leslie Jones*, JJ.) BISHEN DAS *v.* RAM LABHAYA. **103 P.W.R. 1915 = 32 I.C. 18 = 187 P.W.R. 1915.**

——Ss. 25, 26—*Confession of accused while in custody of jailor—Admissibility.*

A confession of the accused while in the custody of the jailor and a police officer does not fall under S. 26 or S. 25 and so is admissible in evidence. 20 Bom. 795, Foll. (*Kensington*, C.J. *and Shah Din*, J.) NADIR *v.* EMPEROR. **214 P.L.R. 1914 = 24 I.C. 568 = 15 Cr. L.J. 480 = 8 P.R. 1914 Cr.**

——S. 25—*Confession in presence of Police—Admissibility of.*

If an accused person makes a confession to a private person in presence of the police it

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cannot be admitted in evidence against him. (*Rattigan, J.*) CHAMAN *v.* EMPEROR.
320 P.L.R. 1913 = 21 I.C. 468 = 14 Cr. L.J. 596 = 37 P.W.R. 1913 Cr.

——— S. 25—*Statements against accused—Admissibility.*

A confession or statement which is inadmissible against the person making it, is inadmissible against a person implicated by it. Previous statements of an approver to the police are inadmissible against the accused under S. 25 of the Act. Per *Miller and Abdur Rahim, JJ.*—The confession that is excluded by S. 25 is only the confession of a person charged with the offence. (*Benson, Wallis, Miller and Sundara Aiyar, JJ.*) MUTHURUMARASWAMI PILLAI *v.* EMPEROR.
35 Mad. 397 = 13 Cr. L.J. 353 = (1912) M.W.N. 949 = 14 I.C. 896 = 12 M.L.T. 1 (F.B.).

———S. 25 — *Statement of approver to Police—Admissibility.*

The statements of approver to a Police Inspector being really confessions, are inadmissible against the accused under S. 25 of the Evidence Act. (*White, C.J. and Sankaran Nair and Ayling, JJ.*) EMPEROR *v.* NILAKANTA.
38 Mad. 247 = (1913) M.W.N. 207 = 13 Cr. L.J. 305 = 22 M.L.J. 490 = 14 I.C. 849 = 11 M.L.T. 1 Spp. (S.B.).

——— S. 25—*Admissibility of.*

Confession made to police officer is admissible to prove the ownership of property regarding which he is charged. (*Drake Brockman, J.C.*) GANPAT *v.* BANI. 56 I.C. 62 = 21 Cr. L.J. 414.

———S. 25—*Information by accused to Police Officer—Admission by accused of his guilt before Sub-Inspector—Admissibility.*

An admission made by the accused of his guilt before a Sub-Inspector of Police is not admissible in evidence. (*Lindsay, J.C. and Stuart, A.J.C.*) MALIK HUSAIN *v.* EMPEROR.
16 Cr. L.J. 474 = 24 I.C. 562 = 1 O.L.J. 163.

———S. 25—*Confession—Meaning — Statement suggesting inference of guilt—Whether a confession.*

The word confession in S. 25 is not restricted to actual admissions of guilt but includes inculpatory statements from which inferences of guilt can reasonably be drawn or which suggest the guilt of the person making the statement. (*Fox, C.J. and Ormond, J.*) PAN GANG *v.* EMPEROR. 42 I.C. 1002 = 19 Cr. L.J. 42.

———S. 25—*Admission before Police—Relevancy.*

An admission made by the accused to the Police is inadmissible against him under S. 25. (*Twomey, J.*) NGA THA KU. *v.* EMPEROR.
17 Cr. L.J. 51 = 36 I.C. 480 = 10 Bur. L.T. 121.

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——— Ss. 25 and 30—*Confession to Police—Admission by a person before he was accused of an offence—Admissibility.*

Accused was convicted on the evidence of two excise Sub-Inspectors who stated that he offered them Rs. 10 per ball of opium as a bribe to let him land from a steamer unmolested. *Held* that the alleged offer by the accused amounted to an admission that he had a large quantity of contraband opium in his possession and being an admission of an offence under the Opium Act, was therefore a confession and was thus inadmissible under S. 25 of the Evidence Act. The test, which has to be applied in deciding whether S. 25, Evidence Act, applies, is the position of the person at the time when it is proposed to prove the admission and not his position at the time when he is alleged to have made it. A confession therefore made to a police officer by a person when he is not accused of any offence is inadmissible in evidence against him when he is accused of an offence. A confession made by an accused person to a police officer might be admissible in favour of a co-accused but not against him. (*Twomey, J.*) SAN PAW AUNG *v.* EMPEROR.
13 Cr. L.J. 465 = 15 I.C. 305 = 5 Bur. L.T. 92.

——— S. 25—*Scope.*

S. 25 only provides that a confession made to a police officer shall not be proved against the accused. Such confession is admissible in evidence on behalf of another co-accused, (*Parlett, J.*) EBRAHIM *v.* EMPEROR.
12 Cr. L.J. 79 = 9 I.C. 449 = 4 Bur. L.T. 9.

———Ss. 25 and 26—*Confession by way of explanation.*

A statement made by an accused person to a police officer by way of an explanation in order to exculpate himself is admissible in evidence. (*Pratt, J.C. and Hayward, A.J.C.*) EMPEROR *v.* AKHTIAR. 14 Cr. L.J. 252 = 19 I.C. 508 = 6 S.L.R. 143.

———Ss. 26 and 30—*Confession—Admissibility.*

Where the circumstances of the case compel a tribunal to act only upon a confession, and to reject all other evidence, the confession must be used *Literatim et Verbatim*, and due effect must be given to every statement in it whether in favour of the accused or against him. (*Walsh and Stuart, JJ.*) JAGDEO *v.* EMPEROR. 18 Cr. L.J. 356 = 38 I.C. 740 = 15 A.L.J. 15.

———S. 26—*Confession—Accused in the custody of the Police—Extra Judicial confession.*

The accused who was in the look up of the Magistrate under trial was sent up by the Magistrate to a hospital for treatment with two police men in charge. The latter waited outside in the verandah. During his examination inside the dispensary by the doctor, the accused made a confession within the hearing

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of the doctor. *Held*, that it was excluded by S. 26 as the accused was in police custody up to his arrival at the hospital and remained in that custody. 20 Bom. 795, Dist. Police Officers referred to in S. 26 need not be investigating police officers. (*Batchelor and Shah, JJ.*) EMPEROR *v.* MALLAN GOWDA. **42 Bom. 1 = 18 Cr. L.J. 981 = 42 I.C. 537 = 19 Bom. L.R. 683.**

———S. 26— *Police patil—Confession—Inadmissible.*

A confession to Police Patel would clearly be invalid. (*Batchelor and Hayward, JJ.*) EMPEROR *v.* RAMA DHAN POWAR. **16 Cr. L J. 740 = 31 I.C. 340 = 17 Bom. L.R. 898.**

———S. 26—*Confession before police—Not to be allowed to go in evidence.*

A police officer when giving evidence has been improperly allowed to state that an admission of guilt was made by the accused. (*Holmwood and Chatterjee, JJ.*) PAIMULLAH *v.* EMPEROR. **13 Cr. L.J. 127 = 13 I.C. 783 = 16 C.W.N. 238.**

———S. 26—*Confession—Oral—Admissibility.*

A confession to be admissible in evidence need not be recorded. It may be oral. It is a relevant fact and may be proved by the Magistrate to whom the oral confession was made. (*Scott Smith and Shadi Lal, JJ.*) FEROZ *v.* EMPEROR. **19 Cr. L.J. 651 = 45 I.C. 843 = 11 P.R. 1918 Cr.**

———Ss. 26, 27 and 30—*Statement made in police custody and before Magistrate—Admissibility—Co accused—Record of statement.*

Any incriminating statement made in writing by accused while in police custody whether amounting to confession or not, is not admissible either against him or against a person jointly tried with him, unless such statement has led to the discovery of any fact mentioned in S. 27 of the Evidence Act. Any deposition recorded by a Magistrate on solemn affirmation can be admitted only against the deponent and not against a co-accused and record of the statement made by Magistrate in a case he subsequently commits to the Sessions, must be in the form laid down in S. 464, Cr. P. Code and any defect in it can be cured by actual evidence of the Magistrate. A confession of an accused is not admissible against co-accused under S. 30 of Evidence Act if the former is convicted on his plea of guilty. 5 C. 954; 5 A. 253, Ref. A plea of guilty can be allowed to be withdrawn if the accused was at the time of making it, enfeebled by illness and was undefended. (*Reid, C.J. and Rattigan, J.*) CROWN *v.* SHULDAM. **222 P L R. 1915 = 28 I.C. 145 = 16 Cr. L J. 257 = 44 P.W.R. 1914 Cr.**

———S. 26—*Confession while in police custody.*

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A confession while in police custody is of little value. (*Johnstone and Beadon, JJ.*) FATIMA *v.* EMPEROR. **10 P.R. 1914 Cr. = 25 I.C. 525 = 15 Cr. L.J. 613 = 261 P.L R. 1914.**

———S. 26—*Confession by accused—Admissibility of evidence of proof.*

Evidence to prove a confession made while an accused person is in police custody is inadmissible. A confession, though made in the presence of a Magistrate is of very little value when the accused is not aware of his presence. A confession made in the presence of a Magistrate though on leave, is nevertheless relevant and admissible. (*Reid, C.J. and Rattigan, J.*) FAIZULLAH *v.* EMPEROR. **38 P.L.R. 1914 = 22 I.C. 150 = 15 Cr. L J. 6 = 8 P.W.R. 1914 Cr.**

———Ss 26 and 27—*Statement of accused while in custody of police.*

A statement of the accused while in custody of the police as to the commission of the crime is inadmissible but a statement by him as to the stolen property being found in a certain place, is admissible. 31 M. 127, Foll. (*Sadasiva Aiyar, J.*) MANJUNATHAYA *v.* EMPEROR. **15 Cr. L.J. 533 = 24 I.C. 845 = 26 M.L.J. 352.**

———Ss. 26, 74 and 80—*Magistrate includes one in Native State.*

The word Magistrate in S. 26 of the Evidence Act includes Magistrate, in Native State and a confession made before such a Magistrate is admissible in evidence certainly under S. 74 as against the person by whom they were made. (*Hallifax and Macnair, A.J.Cs.*) GOVIND; *v.* EMPEROR. **23 Cr. L.J. 673 = 69 I.C. 257 = 17 N.L.R. 113.**

———S. 26—*Confession made to a person in the presence of a police officer—Admissibility of.*

An accused's confession to some person other than a police officer is admissible in evidence. (*Lindsay, J.C.*) DAL *v.* EMPEROR. **16 Cr. L.J. 62 = 26 I.C. 654 = 1 O L J. 687.**

———S. 27—*Confession to police—Use of.*

In a criminal trial when direct evidence is supplied against the accused then comes the lawful utility of a confession to the police. The defence, under these circumstances, can examine, for instance, an approver's story. It is according to S. 27 of the Evidence Act information that points out and leads to the discovery. (*Walsh, J.*) SUBEDAR *v.* EMPEROR. **L.R. 4 A. 210 (Cr.) = 1924 All. 207.**

———S. 27—*Information not leading to discovery.*

Statements leading immediately to the discovery of property are properly admissible. Other statements connected with the one thus made and immediately, but not necessarily or directly connected with the fact discovered are not admissible. 11 B. H. C.R. 242, Rel. A person accused under S. 323, I.P.C. pointed

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out during the police investigation a *Dhatura* tree and said that he had taken the fruit of it. The statement was inadmissible. (*Knox*, J.) EMPEROR *v.* PANCHU. 17 Cr. L J. 8 = 32 I.C. 136 = 13 A.L J. 1077.

——S. 27—*Information not leading to discovery.*

Where the finding of a corpse was due not to anything that the accused had said but to his conduct in pointing out that place, a record of the accused's conduct is admissible in evidence. But statements of the accused in consequence of which nothing was discovered should not be admitted in evidence. (*Chandavarkar and Heaton*, JJ.) EMPEROR *v.* RANCHHOD GOKAL. 12 Cr. L.J. 429 = 11 I C. 613 = 13 Bom. L.R. 499.

——S. 27—*Discovery, meaning of.*

The discovery referred to in S. 27 means discovery to or by Police officers and facts already known to persons other than police officers may be said to be discovered in consequence of information received. (*Teunon and Ghose*, JJ.) SUPERINTENDENT AND LEGAL REMEMBRANCER OF LEGAL AFFAIRS, BENGAL *v* LALIT MOHAN SINGH ROY. 22 Cr. L.J. 562 = 62 I.C. 578 = 25 C.W.N. 788.

——Ss. 27 and 26, 25 and 24—*Discovery in pursuance of confession— Police officer—Admissibility of statement.*

When a confession as a whole is excluded whether by reason of S. 26 or 25 or 24, so much of the information, given by the person making the confession when the accused was in custody, as distinctly relates to a relevant act thereby discovered, becomes admissible. When the accused himself produced the articles said to be discovered, so much of the information as set the police in motion and led to the discovery is admissible. Per *Huda*, J.—Under S. 27 only so much of the information, whether amounting to a confession or not, as relates distinctly to the fact thereby discovered may be proved. Even if a single statement contains more information than what is contemplated in S. 24, the statement is not to go in as a whole nor is it to go in as a statement at all, but what is admissible is the particular information given by the statement which led to the discovery. S. 27 of the Evidence Act, qualifies not only Ss. 25 and 26 but also S. 24, all three of which lay down general rules excluding confessions and the same broad grounds underlies all the three. (*Teunon and Huda*, JJ.) AMIRUDDIN *v.* EMPEROR. 45 Cal. 557 = 22 C W N. 213 = 44 I.C. 321 = 19 Cr. L.J. 305 = 27 C.L.J. 148.

——S. 27—*Scope.*

If the recoveries were made in consequence of information supplied by the accused, the statements made by them are admissible under S. 27 of the Indian Evidence Act. (*Moti Sagar*, J). ALI AHMED *v.* EMPEROR. 1923 Lah. 434.

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——S. 27—*Information by accused—Discovery—Arms Act, S. 20.*

Petitioner was neither accused nor in custody when he gave information which led to the discovery of a rifle. One of the prosecution witnesses deposed that the petitioner said where the rifle had been buried, the other deposed that he said "I buried it." *Held*, in the absence of any other evidence of possession by the petitioner, it cannot be presumed that because he knew where the rifle was, he had concealed it himself. (*Campbell*, J.) KHUDA BAKHSH *v.* EMPEROR. 1923 Lah. 238 (2).

——S. 27—*Confession after discovery of property not admissible.*

Where property had been dug out by some of the accused and subsequently another suspected person is made to point out the same place, his evidence does not come within S. 27 of the Evidence Act. Once property has been discovered in consequence of information received from a suspected person it cannot be rediscovered in consequence of information received from another suspected person. It is only the information that was given by the first person and which led to the actual discovery which may be proved under the terms of the section. (*Scott-Smith*, J.) BUDHA *v.* EMPEROR. 9 P.L R. 1922 = 23 Cr. L.J. 22 = 1922 Lah. 315.

——S. 27—*Confession—Statement as to burial of dead body.*

On a trial for murder, a witness stated that the accused offered to point out the place where the dead body was and on being questioned as to who had buried the body he said that he (accused) had done so. *Held*, that the accused's statement that he buried the body was not admissible in evidence. 14 S. 260; 24 P.W.R. 1916; 50 P.W R. 1915 Cr., Dist. (*Scott-Smith and Wilberforce*, JJ.) EMPEROR *v.* TUREZI, 55 I.C. 685 = 21 Cr. L.J 349.

——S. 27—*Information given by accused—Discovery.*

Where there is immediate connection between discovery and statement made to a police officer, the latter is admissible in evidence. (*Chevis and Leslie Jones*, JJ.) KAPUR SINGH *v.* EMPEROR. 20 Cr. L.J. 305 = 50 I.C. 481 = 98 P.L.R. 1918.

——S. 27—*Admissions—Admissibility in evidence under S. 27.*

It is legitimate to record evidence that an accused person said "I will point out certain property" if such statement leads to a discovery; but it is not legitimate to record as an evidence that an accused said "I will point out certain property which I obtained as my share of the booty in the dacoity." (*Leslie Jones*, J.) GURDIT SINGH *v* EMPEROR. 82 P.L.R. 1918 = 9 P.W R 1918 Cr. = 44 I.C. 961 = 19 C L.J. 439.

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——— S. 27—*Information leading to discovery—Hiding place not his own.*

Though a person points out a place not his own where stolen property is concealed, the Court should not conclude that the person had received or retained it. (17 A. 576; 20 P.R. 1905 Cr., R.) The mere knowledge of the place of concealment does not show that the person having such knowledge actually received the stolen articles or participated in the act of concealment. (*Chevis and Shadi Lal*, JJ.) EMPEROR *v.* BUTA SINGH 18 Cr. L.J 490 = 39 I.C. 330 = 1 P.R. 1917 Cr.

——— S 27—*First information.*

Where two or more persons are alleged to have given certain information to the police which led to the arrest of the accused, it is only the information given first which is admissible under S. 27 of the Evidence Act. 6 All. 509, Foll. (*Leslie Jones*, J.) RAM SINGH *v.* EMPEROR. 7 P.R. 1916 (Cr) = 34 I.C. 993 = 17 Cr. L.J 273 = 35 P.W.R. 1916 (Cr).

——— S 27—*Discovery as a result of a statement of the accused—Statement, admissibility of.*

A statement is admissible in evidence under S. 27 when as a consequence of it, there is a discovery incriminating the person making the statement. (*Scott Smith and Shadi Lal*, JJ.) ISHER SINGH *v.* EMPEROR 72 P.L.R. 1916 = 24 P.W.R. 1916 Cr = 17 Cr. L J 183 = 33 I.C. 823 = 50 P.W.R. 1915 Cr.

——— S. 27 — *Confession — Information received from accused—How far relevant.*

Where an accused made a statement to the police that he would point out the spot where he had committed the murder and thereafter he conducted the police to the spot where earth was found saturated with blood, *held*, that so much of the Police Sub-Inspector's evidence as related to the alleged confession by the accused that he committed the murder, was not admissible in evidence. (*Kensington*, C.J. *and Rattigan*, J.) TARA SINGH *v.* EMPEROR. 16 Cr. L.J. 545 = 11 P.R. 1915 Cr. = 29 I.C. 817 = 61 P.W.R. 1915 Cr.

——— S. 27—*Joint discovery—Track evidence.*

Track evidence is of no value if the comparison is made 8 or 9 days after the affairs. Where more than one accused person in custody of the police point out this or produce that jointly, such an evidence of joint discovery is not sufficient for a conviction. 3 I.C. 622, Foll. (*Johnstone*, J.) PATHANA *v.* EMPEROR. 9 P.W.R. 1914 Cr. = 24 I.C. 587 = 15 Cr. L J. 499 = 63 P L.R. 1914.

——— S. 27 — *Incriminating statement — Production of articles—Police custody.*

Where there is practically no evidence at all against an accused except an incriminating statement under S. 27, the latter should be viewed with great caution and suspicion. The statement of an accused that he buried the weapon in a certain place is relevant but not the part of the statement that it was the weapon with which he had committed the crime. If the accused produced the article himself, the fact that he produced it at a particular place may be proved, but the accompanying statement that he buried it there is inadmissible. The statement of the accused that he could point out a spot and that blood-stains would be found there is admissible but not that it was at that spot that he committed the crime. (*Reid and Rattigan*, JJ.) SANTA SINGH *v.* EMPEROR. 14 Cr. L J. 190 = 15 P.W.R. 1913 Cr = 19 I.C. 190 = 171 P.L R. 1913.

——— S. 27—*Applicability—Place already discovered.*

When a material fact has already been discovered, the accused's statement while in police custody relating thereto, is not admissible under S. 27. (*Williams*, J.) MANNA *v.* EMPEROR. 12 Cr. L.J. 35 = 9 I.C. 232 = 3 P.W.R. 1911 Cr.

——— S. 27—*Statement of accused—Extent to which relevant.*

A statement made by an accused may be proved under S. 27 of the Act, so far as it relates to any material facts discovered in consequence, even though the police were present when the statement was made. (*Spencer*, J.) NAINAMALAI KONAN, *In re*. 28 Cr. L.J. 697 = 69 I C. 377 = 14 L.W. 418.

——— Ss. 27, 30 and 114—*Information by accused—Retracted confession—Corroboration.*

To bring an information by accused under S. 27, the information must have had the direct effect of leading to the discovery of the stolen property. Unless a confession is corroborated in material particulars and by independent testimony, it should not be the basis of a conviction. (*Seshagiri Iyer and Moore*, JJ.) RAMASWAMI BOYAN *v.* EMPEROR. 21 Cr. L.J. 73 = 54 I.C. 479 = 11 L.W. 8.

——— Ss. 27 and 30—*Confession—Duty of prosecution to adduce independent evidence—Trial for murder.*

Per *Lyle*, A.J.C.—Although criminals do at times confess for no apparent reason, they generally do so in some vague hope of escaping from the penalty of their crime when they know or believe there is evidence. Per *Ashworth*, A.J.C.—When an accused person has pointed out the whereabouts of the body of a man who has undoubtedly been murdered and has made a confession which not only is uncontradicted by any of the facts proved in the case but indeed receives corroboration in respect of many points then the confession should be held to be true as implicating the person making it, unless he can make out a story to the contrary. It is not necessary that the confession of an accused should receive direct corroboration as to the

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fact that the accused was concerned in the offence. It is sufficient that there is such corroboration of the confession as to indicate that the accused had such knowledge of the circumstances of the offence as would suggest his taking part in it. (*Kanhaiya Lal*, J.C., *Lyle and Ashworth*, A.J Cs.) HIGA *v.* EMPEROR.
4 U.P.L R. (O.C) 50=9 O.L J. 190=23 Cr. L.J. 481=1922 Oudh 262.

——S. 27—*Confession not leading to discovery of anything.*

When a person accused of murder offered to show to the police the scene of the murder and the place where the deceased's things lie concealed, both of which had already been disclosed by an accomplice. *Held*, that the conduct of the accused in this respect was inadmissible in evidence against him. (*Fox*, C.J. *and Ormond*, J.) PAN GANG *v.* EMPEROR,
42 I.C. 1002=19 Cr. L.J. 42.

——S. 27—*Confession—Inducement from person in authority.*

A confession which appears to have been caused by some inducement from some person in authority is inadmissible in evidence. (*Parlett*, J.) SHWE HMON *v.* EMPEROR.
14 Cr. L.J. 417=20 I.C. 401=6 Bur. L.T. 109.

—— S. 27—*Information given by accused leading to discovery—Statement of co-accused—Admissibility of—Police* mashirnamah.

Information by two persons which leads to the discovery of a fact is relevant and so much of the statement of each which relates to the fact discovered is admissible against both; statements of co-accused after the discovery are irrelevant. 24 W.R. Cr. 36, Ref. After one accused has made a discovery the other should not be asked to do the same. 2 Bom. L.R. 1089, Ref. Police *mashirnamahs* are always very important as a contemporaneous record of events occurring in the investigation and they should generally be exhibited with the exception of irrelevant parts. (*Pratt*, J.C. *and Crouch*, A.J.C.) SULEMAN *v.* EMPEROR.
17 Cr. L J. 508=34 I.C. 674=10 S.L.R. 7.

——S. 27—*Statement after discovery—Pointing out property—Value of.*

A statement by accused not leading to discovery of property but made after discovery and production of the property is irrelevant. The production or the pointing out may indicate that the accused was in possession or that he had innocent knowledge that the articles had been left there by some one else. (*Pratt*, J.C. *and Hayward*, A.J.C.) EMPEROR *v.* PHOTO.
18 Cr.L.J. 519=16 I.C. 801=5 S.L.R. 257.

——S. 27—*Applicability.*

S. 27 is a proviso to Ss. 24, 25 and 26. 31 A. 592, Foll. Statement made to the police is admissible though the accused himself makes the discovery about which the statement is made. Confession to person in authority who holds out inducements to confess is not admissible

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even so far as it relates to the discovery of articles if the accused was not in police custody. (*Hayward*, J.C. *and Legatt*, A.J.C.) IMPERATOR *v.* DABUD.
12 Cr. L J. 119=9 I.C. 718=4 S.L.R. 209.

——S. 28—*Confession made while in immediate vicinity of police.*

A confession by an accused in police detention as a suspect made in the immediate vicinity of the police, to a Zaildar could not be proved unless made to a Magistrate though the accused may not have been handicapped, as, to all intents and purposes he was in police custody. (*Johnstone*, C.J. *and Chevis*, J.) KARAM SINGH *v.* EMPEROR.
32 P.W.R. 1916 Cr.=17 Cr. L.J. 226=163 P.L.R. 1916=34 I.C. 642=26 P.R. 1916 Cr.

——S. 28—*Confession to Magistrate soon after inducement by person in authority.*

Confessions to the Magistrate made soon after inducements held out by certain Zamindars sent by the police, are inadmissible as there is nothing to show that the impression caused by the inducement held out by the Zamindars had been removed so as to make the confession admissible under S. 28. (*Hayward*, J.C. *and Leggatt*, A.J.C.) IMPERATOR *v.* DABUD.
12 Cr. L J. 119=9 I.C. 718=4 S.L.R. 209.

——S. 30.

CONFESSION—ADMISSIBILITY.
CONFESSION—CORROBORATION.
CONFESSION—EVIDENTIARY VALUE.
JOINT TRIAL—MEANING OF.
PLEA OF GUILTY.
RETRACTED CONFESSION.
SELF-EXCULPATORY STATEMENT.

Confession, Admissibility.

——S. 30—*Confession — Admissibility — Co-accused—Admissibility of confession—Mode of proof.*

Where an accused person after he is arrested makes a confession implicating the other accused and the confession is sought to be used against them, it is incumbent on the prosecution to disclose the name of the officer who made the arrest and produce him or any other person who could speak to the circumstances under which the confession was made so as to enable the defence to ascertain by cross-examination what inducements were offered to the accused to make it and what generally were the circumstances that attended the confession. (*Lord Atkinson*). VAITHINATHA PILLAI *v.* EMPEROR.
36 M 501=17 C.W.N. 1110=14 M.L.T. 263=25 M.L.J. 518=11 A.L.J. 881=16 C L J. 365=(1913) M.W.N. 806=14 Cr.L J. 577=15 Bom. L.R. 910=21 I.C. 869=40 I.A. 193 (P.C.).

——S. 30—*Confession — Admissibility—Co-accused.*

In a criminal trial it is the duty of the prosecution to prove all relevant facts essential to

EVIDENCE ACT (I of 1872), S. 30—Confession —Admissibility.

establish the guilt of an accused person. A statement made under S. 364, Cr. P. C., by a thief in his own defence is not admissible against another person charged with being the receiver of stolen property. The expression "proving a confession" is inapplicable to the questions and answers under S. 364, Cr. P. Code. (*Walsh*, J.) MAHADEO PRASAD *v.* EMPEROR. **46 A. 323 = 21 A L.J. 179 = L.R 4 A 57 (Cr.) = 1928 All. 322.**

——S. 30—*Confession—Admissbility.*

Statements made by one accused against co-accused are admissible if the requirement of S. 30 of Evidence Act are fulfilled. (*Ryves*, J.) RAMHIT *v.* EMPEROR. **20 A L J 178 = 23 Cr. L.J. 193 = 1922 A. 24.**

——S. 30—*Confession—Admissibility—Joint trial.*

During the joint trial of several persons, one of them made a statement confessing his guilt and implicating some of the other accused. *Held*, that the confessing accused was tried jointly with the other accused and the confession could be considered along with other evidence against all the accused. (*Chamier and Piggott*, JJ.) EMPEROR *v.* DIP NARAIN. **13 A.L.J. 337 = 28 I C 663 = 16 Cr. L.J. 327 = 37 All. 247.**

——S. 30 — *Confession — Admissibility against co-accused in proceedings under S. 110 of the Cr. P. Code.*

The confession of an accused in a dacoity case is not admissible in evidence against a co-accused in that case in a proceeding under S. 110 of the Cr. P. Code (*Sanderson*, C.J. *and Mookerjee*, J.) MAFIZUDDIN KHAN *v.* EMPEROR. **28 C.W.N. 239 = 61 I.C. 793 = 22 Cr. L.J. 441 = 33 C.L J. 70.**

——S. 30—*Confession — Admissibility—Statement of accused after arrest—Not amounting to confession.*

The statement of an accused made after arrest and not amounting to a confession is not admissible in evidence against a co-accused either under S. 10 or S 33, but only against himself. The admission does not however affect the conviction when no stress was laid on such statement by the lower Courts. 38 Cal. 169. Foll. (*Teunon and Cuming*, JJ.) SITAL SINGH *v.* EMPEROR. **46 Cal 710 = 21 Cr.L J. 5 = 54 I.C. 53 = 30 C.L.J 255.**

——Ss. 30 and 24 — *Confession—Admissibility.*

A confession to be admissible in evidence under S. 30 must be relevant under S. 24 of the Evidence Act. K as a witness in N's trial made a statement implicating himself and V.K. was then added as a co-accused. It was held that K's statement was relevant under S. 30 as it was a confession made by a co-accused, K. being a co-accused when his statement was

EVIDENCE ACT (I of 1872), S. 30—Confession —Admissibility.

used. (*Reid*, C.J. *and Johnstone*, J.) EMPEROR *v.* UMDA. **9 P.R 1911 Cr. = 22 P.W.R. 1911 Cr = 10 I C 340 = 12 Cr. L.J. 267 = 168 P.L.R. 1911.**

——S. 30—*Confession— Admissibility — Trial of a number of accused before the Magistrate—Plea of guilty by some after implicating all—Joint trial—Admissibility of confession by accused pleading guilty.*

Where in a trial of several persons when the prosecution evidence was concluded and the accused were asked to enter upon their defence, two of the accused pleaded guilty and in doing so impleaded the others and all of them were tried together, the statement of the two can be admissible for convicting the others. (*Ayling*, J.) *In re* VEMPALLI BALI REDDY. **14 M.L.T. 453 = 22 I C 157 = 15 Cr. L.J. 13 = 38 Mad 302.**

——S. 30—*Confession—Admissibility.*

A statement of an accused must amount to a confession before it can be considered against his co-accused under S. 30 of the Act. (*White*, C.J , *Sankaran Nair and Ayling*, JJ.) EMPEROR *v.* NILKANTA. **(1912) M.W.N 207 = 35 Mad. 247 = 13 Cr. L J. 305 = 22 M.L.J. 490 = 14 I.C. 849 = 11 M.L.T. 1 (Supp.) (S B.).**

——S 30 — *Confession— Admissibility—Co-accused.*

S. 30 of the Evidence Act does not say that the confession referred to therein is relevant but only says that the Court may take it into consideration against the co-accused. The Court might take into consideration such confession with or supplementary to relevant facts which may form the basis of a judgment. 38 C. 559, Ref. As a matter of judicial prudence a confession implicating others must be regarded with suspicion. (*Hallifax, Prideaux and Kotwal*. A.J.Cs) SAPKU *v.* EMPEROR. **23 Cr. L J. 129 = 1922 Nag. 146.**

——S. 30—*Confession — Admissibility—Confession made before Magistrate in Native State—If can be used against co-accused.*

Confessions recorded in the manner provided by the Cr. P. Code, even though made to Magistrates outside British India, if proved against the persons who made them, may be taken into consideration against others who are being tried jointly for the same offence. (*Hallifax and Macnair*, A.J.Cs.) GOVINDA *v* EMPEROR. **23 Cr. L.J. 673 = 69 I C. 257 = 17 N.L.R. 113.**

——S. 30—*Confession—Admissibility—Co-accused.*

It is not the law that unless a confessing prisoner implicates himself as fully as his co-accused, the statement will not be admissible, the principle being there is no guarantee that the maker of the confession is speaking the truth. All that is required is that the confession shall substantially implicate its maker in regard to

EVIDENCE ACT (I of 1872), S. 30—Confession—Admissibility.

the crime with which he and his co-accused are charged. It is not necessary that there should be an admission of actual guilt. The admission may establish constructive guilt. S. 30 of the Evidence Act applies to confessions made to the residents of the same village as the accused. *Mullick and Becknil*, JJ.) SUKA RAUT *v.* EMPEROR. 75 I.C. 705 = 4 P.L.T. 505.

———S. 30 — *Confession—Admissibility—Meaning of co-accused.*

Where a co-accused made a statement in gaol to the S.D.O. that he was being tortured to make confession and subsequently made confession implicating himself and the other accused and pardon under S. 357 was tendered and the case against him withdrawn under S. 495, Cr. P. Code *Held*, he is not a co-accused though examined as a prosecution witness. (*Jwala Prasad*, J.) SHEOBHAJARIN *v.* KING-EMPEROR. 2 P.L.T. 125.

Confession—Corroboration.

———S. 30—*Confession — Corroboration—Necessity.*

Per *Scott*, C.J. *and Heaton*, J.—The rule is that a man is not to be convicted solely on the confessions of co-accused and it follows that he must not be convicted on such confessions together with evidence of the ordinary kind which is trivial or unimportant. Where however there is, apart from the confessions, a body of evidence and circumstances enough to support a conviction, if the evidence is accepted as free from untruth or exaggeration or serious mistake or distortion, the Court can take the confessions into consideration and consider together the evidence, the circumstances and the confessions. The material should not be divided into parts. Where the confession of a co-accused is corroborated, it matters not whether on proving the case at the trial, the confession precedes the other evidence or *vice versa*. There is no rule as to what would constitute sufficient independent corroboration in a particular case. The evidence which is supposed to afford independent corroboration must be in itself reliable ; otherwise it will not be independent corroboration. The value of the confessions of an accused, against a co-accused when those confessions are retracted at the trial, is very low. (*Scott*, C.J., *Heaton and Shah*, JJ.) EMPEROR *v.* SABIT KHAN.
48 Bom 739 = 20 Cr. L.J 457 = 51 I.C. 651 = 21 Bom. L.R. 448.

———S. 30—*Confession — Corroboration—Co-accused—Weight due to.*

The confession of a co-accused can be taken into consideration but the Court requires corroboration before acting upon such a confession. Where the corroboration consisted of statements of witnesses which though giving rise to suspicion, were consistent with the innocence of the accused. *Held*, that the corroboration fell far

EVIDENCE ACT (I of 1872), S. 30—Confession—Evidentiary value.

short of what is required to support a conviction. (*Fletcher and Beachcroft*, JJ.) EMPEROR *v.* BABUR ALI. 42 Cal. 789 = 19 C.W.N. 584 = 16 Cr. L.J. 321 = 28 I.C. 657 = 21 C.L.J. 492.

———Ss. 30, 114, Illus. (b) and 133—*Confession—Corroboration.*

On a proper consideration of S. 114, illus. (*b*) where there are more than one accused person there must be corroboration against each of them showing his connection with the offence, if the accomplice's evidence is to be acted upon. (*Johnstone*, C.J. *and Smith*, J.) NIKKA *v.* EMPEROR. 17 Cr. L.J. 156 = 33 I.C. 636 = 19 P.W.R. 1916 Cr.

——S. 30—*Confessions by co-accused—Corroboration—Conviction corroboration necessary.*

A conviction based entirely on statements contained in confessions of co-accused persons, is not sustainable. (*Ormond* J.) NGA PO KYA *v.* EMPEROR. 12 Cr. L.J. 463 = 11 I.C. 1001 = 4 Bur. L.T. 189.

Confession—Evidentiary value.

———S. 30—*Confession—Evidentiary value—Probative value of a co-accused's evidence.*

The true effect of S. 30 is that the Court can only treat a confession as lending assurance to other evidence against a co-accused. A conviction on the confession of a co-accused alone would be bad in law. A retracted confession should not be relied upon. (*Jenkins*, C.J., *Brett and Chatterjee*, JJ.) EMPEROR *v.* NONI GOPAL. 38 Cal. 869 = 12 Cr. L.J. 385 = 10 I.C. 582 = 15 C.W.N. 593.

———S. 30—*Confession—Evidentiary value—Test of admissibility.*

Whether the confession of an accused can be used against his co-accused should be determined on seeing whether the accused can be convicted on that confession of the crime with which he and the co-accused were charged. (*Shadi Lal*, C.J. *and Wilberforce*, J.) CHUNNI LAL *v.* EMPEROR. 60 I.C. 660 = 22 Cr. L.J. 260.

——S. 30—*Confession—Evidentiary value—Value of.*

The confession of a co-accused must be corroborated by independent evidence in some material circumstances so as to justify a conviction. (*Shadi Lal*, C.J. *and Leslie-Jones*, J.) KEHR SINGH *v.* EMPEROR. 22 Cr. L.J. 161 = 59 I.C. 913 = 11 P.W.R. 1921 Cr.

——S. 30—*Confession—Evidentiary value—Weight due to.*

The confession of an accused should not carry the same weight as the evidence of the same person if he were examined as a witness. The Court must, after the most careful consideration, decide whether the degree of proof prescribed

EVIDENCE ACT (I of 1872), S. 30 – Joint trial, meaning of.

by S. 3 of the Evidence Act has been reached or not. (*Saunders*, A J.C.) EMPEROR *v.* NGA PO THA. **14 Cr. L.J 566 = 21 I.C. 166 = (1913) 1 U.B.R. 170.**

Joint trial, meaning of.

——— **S. 30** – *Joint trial, meaning of – Proceedings under S. 117, Cr. P. Code.*

Persons against whom proceedings are being jointly taken under S. 117, Cr. P. Code, in one and the same enquiry are not on their joint trial for the same offence within S. 30 of the Evidence Act. (*Piggott*, J.) SARJU *v.* EMPEROR. **41 All 231 = 17 A L J. 147 = 20 Cr. L J. 206 = 49 I.C. 654 = 1 U.P.L R. (H.C.) 89**

——— **S. 30** – *Joint trial, meaning of – Confession of co-accused – Admissibility – Proceedings under S. 110, Cr. P. Code.*

A confession by an accused implicating himself and two others in a charge of dacoity is inadmissible against the others in a proceeding under S. 110 of the Cr. P. Code. (*Teunon and Newbould*, JJ.) AMIRULLA PRAMANIK *v.* EMPEROR. **20 Cr. L.J. 201 = 49 I C. 649 = 22 C.W.N. 408.**

——— **S. 30** – *Joint trial, meaning of – Trial once joint but separated later on.*

Where two accused were originally charged together but were later on tried separately, a statement by one cannot be used against the other. (*Krishnan*, J.) *In re* RAMUDU AIYAR. **44 M.L.J. 243 = 17 L.W. 370 = 32 M L.T. (H. C.) 318 = 24 Cr. L J. 426 = 1923 Mad. 365.**

——— **S. 30** – *Joint trial, meaning of – Confession of co accused – If can be used against the other – Retraction – Effect.*

Where one of two persons, were jointly tried for the offence of murder made a confession, which implicated himself only of the offence of grievous hurt. *Held*, Per *Oldfield and Odgers*, JJ. (*Ramesam*, J., dissenting) that it could be used as a confession under S. 30 of the Indian Evidence Act, as against the other accused. (*Oldfield*, *Ramesam*, *and Odgers*, JJ.) *In re* MANICKA PADAYACHI. **25 Cr. L J. 385 = 72 I.C. 447 = 14 L.W. 474.**

——— **S. 30** – *Joint trial meaning of – Guilty – Refused to examine witnesses.*

Where one of the accused pleaded guilty and was examined at the end of the prosecution case, and declined to call any witnesses, the trial was a joint trial, so that his confession could be taken into consideration against the other accused. (*Saunders*, A.J.C.) EMPEROR *v.* NGA PO THA. **14 Cr. L J. 566 = 21 I C. 166 = U.B.R. 1 (1913) 170.**

——— **S. 30** – *Joint trial, meaning of – Confession by persons jointly tried for the same offence – Penal Code, S. 457.*

A conviction under S. 457, I.P.C., based on the confession of a co-accused who was being tried along with the prisoner under S. 411, I.P.C., is unsound and must be set aside. (*Eales*, J.C.) NGA PO TOK *v.* EMPEROR. **14 Cr. L J. 376 = 20 I C. 136 = U.B.R. 1 (1912) 158.**

Plea of Guilty.

——— **S. 30** – *Plea of guilty – Co-accused pleading guilty – If plea can be used against the other accused.*

The plea of guilty of one co-accused who is removed from the dock while the other alone is tried, cannot be taken into consideration against that other. (*Carnduff*, J.) EMPEROR *v.* KERMAT SIRDAR. **38 Cal. 446 = 12 Cr. L.J. 479 = 12 I.C. 87 = 16 C.W.N. 49.**

——— **S. 30** – *Plea of guilty.*

A confession made by accused pleading guilty is not admissible in evidence against the other accused. (*Johnstone and Shah Din*, JJ.) KANHAIYA *v.* EMPEROR. **54 P.W.R. (Cr.) 1911 = 12 Cr. L.J. 605 = 12 I.C. 981 = 15 P.R. (Cr.) 1911.**

——— **S 30** – *Plea of guilty – Conviction when stolen property not found in possession.*

Where an accused was convicted of theft by house-breaking not because any stolen property was found in his house but because a single witness said he saw him near complainant's house about the time the offence was committed and because his co-accused stated that he was the culprit and that he the co-accused had been given the stolen property by him. *Held*, that the conviction could not be sustained. (*Saunders*, A.J.C.) NGA PO HAN *v.* EMPEROR. **14 Cr. L.J. 570 = 21 I.C. 170 (1) = 1 U B.R. 169.**

Retracted Confession.

——— **Ss. 30 and 114** – *Retracted confession – Confession by co-accused – Value of retracted confession.*

The confession referred to in S. 30 cannot be restricted to an unretracted confession and there is nothing to prevent a Court from convicting after considering the confession but the rules of practice of the High Courts in India are to be observed when exercising the discretion. A conviction founded solely on the confessions of co-accused cannot be sustained. S. 114 of the Evidence Act applies to the testimony of an accomplice on oath but not to a confession and a Judge sitting with assessors ought never to convict solely on confession but where sitting with jury he could either ask the accused to withdraw the confession or direct them to acquit unless corroborated in material particulars by independent evidence. (*Macleod*, *Beaton and Shah*, JJ.) GANGAPPA *v.* EMPEROR. **38 Bom. 156 = 14 Cr. L.J. 625 = 21 I.C. 673 = 15 Bom. L.R. 975.**

EVIDENCE ACT (I of 1872), S. 30—Retracted Confession.

———S. 30—*Retracted confession—Evidentiary value of.*

Where a confession made by an accused person is subsequently retracted by him and he does not implicate himself in the murder though he stated he was one of the conspirators. *Held*, the confession could not be taken into account against the co-accused for the person making the confession did not intend to implicate himself though he actually did so. As against the person making the confession it was certainly admissible in evidence. (*Shadi Lal*, C.J. and *Harrison*, J.) HAYAT v. EMPEROR.
4 Lah. L.J. 41=23 Cr. L J. 561=
1923 Lah. 119.

———S. 30—*Retracted confession—Murder—Conviction.*

It is unsafe to base the conviction for murder on the retracted confession of an accused unless it is corroborated by trustworthy evidence in all material particulars. (*Scott-Smith* and *Shadi Lal*, JJ.) SHER KHAN v. EMPEROR.
2 P.W.R. 1917, Cr.=75 P L.R. 1917=
18 Cr. L J. 719=41 I.C. 155.

———S. 30—*Retracted confession—Corroboration.*

As against a co-accused a confession which has been retracted at the first opportunity should not be relied upon, if it is not corroborated by independent testimony. (*Johnstone*, C.J. and *Chevis*, J.) KARAM SINGH v. EMPEROR. 32 P.W.R. 1916 Cr.=17 Cr. L.J. 226=
26 P.R. 1916 Cr.=34 I.C. 642=
153 P.L.R. 1916.

———S. 30—*Retracted confession—Co-accused—Evidence against.*

Where in a charge of murder, one of the two accused makes a confession implicating the other accused also but retracts it later on, independent evidence should be forthcoming in regard to each accused implicated. Where there is no real corroboration of the retracted confession, the accused are entitled to the benefit of the doubt and must be acquitted. (*Shah Din and Le-Rossignol*, JJ.) NUR MAHOMED v. EMPEROR. 22 P.W.R. 1916 Cr.=
29 I.C. 101=16 Cr. L.J. 469=
163 P.L.R. 1915.

———S. 30—*Retracted confession—Value of—Corroboration, necessity of.*

A retracted confession of a co-accused is admissible under S. 30 of the Evidence Act and can be taken into consideration against him, but it is a well-established principle of law that the confession of a co-accused cannot be regarded as sufficient to support a conviction unless corroborated in material particulars by other evidence. (*Chevis and Shadi Lal*, JJ.) MUHAMMAD v. EMPEROR. 5 P.L R. 1916=
16 Cr. L.J. 157=27 I C. 221=
3 P.W.R. 1915 (Cr.).

EVIDENCE ACT (I of 1872), S. 30—Self-exculpatory Statement.

———Ss. 30 and 24—*Retracted confession.*

Extra judicial confession by boys cajoled or frightened but retracted before the committing Magistrate, does not prove a case against persons jointly accused with the boys. (*Reid*, C.J. and *Rattigan*, J.) KUTAB ALI v. EMPEROR.
42 P.W.R 1911 (Cr.)=12 Cr. L.J. 397=
12 I.C. 973=14 P.R. 1911 (Cr.).

———S. 30—*Retracted confession of a co-accused.*

A retracted confession of a co-accused under S. 30 should not be considered as supplying sufficient evidence for the conviction of the other co-accused. (*Johnstone and Shah Din*, JJ.) ATAYA v. EMPEROR. 5 P.R. 1911 Cr.=
27 P.W.R 1911 Cr.=12 Cr. L.J. 276=
10 I.C. 857=91 P.L.R. 1911.

———S. 30—*Retracted confession.*

Held, per *Curiam*.—A retracted confession requires strong corroboration, in all material particulars. Per *Oldfield and Ramesam*, JJ.—Where a retracted confession is not corroborated in a material particular, *viz*, the connection of the other accused with the cause of the death, that other accused must be acquitted. (*Oldfield*, *Ramesam and Odgers*, JJ.) *In re* MANIKKA PADAYACHI. 24 Cr. L J. 385=
72 I.C. 497=14 L.W. 474.

———Ss. 30 and 114 (b)—*Retracted confession of co accused—Conviction.*

The weight to be given to a retracted confession depends upon the circumstances under which it is made and on the intrinsic value of the confession. The confession of a co-accused is not the same thing as the testimony of an accomplice. It may be taken into consideration as lending support to other evidence. But in the absence of other evidence, conviction based upon it is improper. (*Rigo*, J.C.) NGA SAN NYEBN v. EMPEROR. 3 U.B.R. (1917) 3=
18 Cr. L.J. 774=41 I.C. 150=
11 Bur. L.T. 140.

———Ss. 30, 114 and 133—*Retracted confession of accomplice—Value of.*

There is nothing in law to prevent the conviction of a man on the uncorroborated and retracted confession of a co-accused, if it be believed against him. (*Hartnoll and Young*, JJ.) NGA TUN E. v. EMPEROR.
14 Cr. L.J. 179=19 I.C. 179=6 Bur. L.T. 47.

Self-exculpatory Statement.

———S. 30—*Self-exculpatory statement—Admissibility.*

The self-exculpatory statement of the wife, to the effect, that the white substance was administered on the assurance by her paramour that it would bring about good feeling, did not amount to a confession and could not be used against the paramour as criminal conspiracy was not proved. (*Mookerjee and Beachcroft*, JJ.) KUSIR BABAND SHABEBAR MA v. EMPEROR. 14 Cr. L J 586=
21 I.C. 378=16 Cr. L.J. 590.

EVIDENCE ACT (I of 1872), S. 30—Self-exculpatory Statement.

——— S. 30—*Self-exculpatory only in respect of robbery.*

A confession by each of co-accused implicating self and co-accused as regards robbery but throwing entire burden for murder on the other is admissible as regards former and but inadmissible as regards the latter. (*Scott-Smith and Harrison, JJ.*) MIAN KHAN *v.* EMPEROR. 1923 Lah. 293.

——— S. 30—*Self-exculpatory statement.*

Where the evidence on a charge of murder consists of a confession by one accused against another, the accused excepting himself, and the evidence of an approver to the effect that he saw the deceased alive with the accused just before the murder, neither the confession nor the corroboration should be acted upon. (*Benson and Wallis, JJ.*) MOORE VENKATA *v.* IRAGAKKAGIRI NAGI REDDI. 12 Cr. L.J 562=12 I.C. 650=(1911) 2 M.W.N. 373.

——— S. 30—*Self-exculpatory Confession—Statements by accused—Admissibility against maker co-accused.*

A statement by an accused person which suggests an inference of guilt may amount to a confession though the person making the statement may directly repudiate his participation in the crime. Such a statement may be taken into consideration against the person making the statement, but it may be unsafe to use it against a co-accused. Where, it appears that the person making the statement was, at all events, an accessory present at the commission of the crime, the statement can be used against the co-accused, if sufficient corroboration is forthcoming. (*Kanhaiya Lal, J.C. and Ashworth, A.J.C.*) JASOD *v.* EMPEROR. 20 Cr. L.J 787=53 I.C. 691=6 O L J. 426

———S. 30—*Self-exculpatory — Confession of co accused—Retracted confession — Corroboration.*

A retracted confession of a co-accused, which is not self-implicating in the same degree as it implicates the co-accused is not safe to rely upon, in the absence of material corroboration. (*Rce and Ali Imam, JJ.*) UPENDRA NATH *v.* EMPEROR. 19 Cr. L J. 826=46 I.C. 842=(1918) Pat. 175.

———S. 31—*Admission—Evidentiary value.*

In 1903 the plaintiff's predecessors-in-title made an admission in a case brought by them against their step-mother to the effect that a door existed at A in the court-yard now in dispute and that it had been opened by the father of the present defendant. *Held* that this admission alone was not sufficient to prove that the door was opened by defendant's father at any time prior to 1903. (*Moti Sagar, J.*) HIRA NAND *v.* AHMAD YAR. 1923 Lah. 608 (1).

———S. 31—*Admission—Illiterate people—Not binding.*

EVIDENCE ACT (I of 1872), S. 32—Date of Birth.

Where an illiterate person called another his adopted son but did not intend him to be his heir, the statement does not bind him. (*Johnstone, C.J.*) ARJAN SINGH *v.* DARBARA SINGH. 193 P L.R. 1915=32 I.C. 312=140 P.W.R. 1915.

———S. 31—*Admissions—Weight due to.*

Express admissions of a party to a suit or admissions implied from his conduct are strong evidence against him but he can prove he was mistaken or that they were false. 29 A. 184, Rel. (*Wazir Hasan, A. J. C.*) SHEO DAYAL *v.* LALTA PRASAD. 23 O C. 184=38 I.C. 608=7 O L J. 365.

———S. 32.

BHAT'S REGISTER.
DATE OF BIRTH.
DYING DECLARATION.
FACTS IN ISSUE.
FAMILY AFFAIRS.
HOROSCOPE.
INCONVENIENCE.
ORDINARY COURSE OF BUSINESS.
PANDA'S REGISTRAR.
PEDIGREE.
PROOF OF AGE.
RECITALS.
RELATIONSHIP.
SPECIAL MEANS OF KNOWLEDGE.
STATEMENTS AGAINST INTEREST.
WITNESS DYING DURING SUIT.
MISCELLANEOUS.

Bhat's Register.

———S. 32—*Bhat's Register—Gir Gossains.*

The Bhats are heralds interested in keeping family record which is evidence under S. 32 if it comes from proper custody. (*Richardson and Huda, JJ.*) KARTICK CHANDRA *v.* GOSSAIN PROTAP CHANDRA. 66 I.C. 894=25 C.W N. 908.

———Ss. 32, 64 and 65—*Bhat's Register—Genealogy—Copies of—Bhat's books.*

Copies of entries of genealogies in Bhat's books are not admissible in evidence where the originals are in existence but not produced. The originals are admissible under S. 32 (2) and (5) of the Evidence Act, as it is a recognised duty and pursuit of a *bhat* to keep a genealogy of families where he officiates. (*Kotwal and Findlay, A.J.Cs.*) HAZARI LAL *v.* HAR GOVIND. 48 I.C. 873.

Date of Birth.

———S. 32, Sub-Ss. (5 and 6), III. (1)—*Date of birth—Family book—Entry of birth of child—Admissibility.*

In support of his plea of minority, the deft. tendered in evidence at the trial an entry recording the date of the deft's. birth made by his deceased father in a book in which he made similar entries with regard to the other members of the family. *Held*, that under

EVIDENCE ACT (I of 1872), S. 32—Date of Birth.

S. 32 (5) of the Evidence Act and ill. (1) to the section the entry was admissible in evidence. 20 Cal. 758 ; 24 Cal. 265 ; 25 Mad. 183 ; Ref.; 19 Q. B. 818, Dist. Illustrations appended to a statute are of great value in interpreting the meaning of the section. (*Lord Shaw.*) MAHUMED SYEDOL ARIFFIN *v.* YEOH GOI GARK. 21 C W.N. 257=(1917) M.W.N. 162= 19 Bom. L.R. 157=43 I A. 256= 39 I.C. 401=(1916, 2 A C. 575= 86 L J.P C. 15=115 L T. 564= 32 T.L.R. 678 (P.C).

———S. 32 (5)—*Date of birth—Statement as to date of birth by aunt—Admissibility.*

A statement in a guardianship petition made by a person's aunt that he was born on a certain day and that she was his aunt is admissible in evidence as it relates to the existence of relationship. 20 C. 758, 25 M. 183, Foll. (*Coxe and Beachcroft, JJ.*) MONINDRA MOHAN ROY *v.* RAM KRISHNA. 21 C.L J. 621=28 I.C. 895. [Overruling 20 C L J. 302=27 I.C. 30= 19 C W.N. 616]

———S. 32 (5)—*Date of birth—Admissibility.*

Statements made by deceased persons are admissible to prove date of birth. 20 C. 758 ; 24 C. 265; 25 M. 183 Foll. (*Ayling and Seshagiri Aiyar, JJ.*) PATINHARKURU *v.* RAMAN VARMA. 24 I.C. 819=28 M.L.J. 669.

Dying declaration.

———S. 32—*Dying declaration—Signs made in answer to question—Verbal statement.*

Where a Magistrate went to record the dying declaration of a woman and although she could not speak she in answer to questions put to her pointed out the accused as the assailant; *Held*, that the questions and answers taken together might properly be regarded as verbal statement made by a person as to the cause of her death within the meaning of S. 32, Evidence Act and were therefore admissible in evidence. (*Newbould and Ghose, JJ.*) EMPEROR *v.* SADHU CHURN DASS. 49 Cal. 600= 22 C W.N. 414=1922 Cal. 409.

———S. 32—*Dying declaration—Proof by a witness present.*

A dying declaration was recorded in the presence of a witness, read over to the deceased in the presence of the witness and admitted by the deceased to be correct. If the witness, who heard that statement swears that the written statement correctly reproduces the words used by the deceased, that is sufficient to prove that the deceased did use the words contained in that statement. 86 Cal. 659, Foll. (*Newbould and Suhrawardy, JJ.*) EMPEROR *v.* BADARAM DAS. 49 Cal. 388=24 Cr. L J. 221= 1922 Cal. 382 (2).

EVIDENCE ACT (I of 1872), S. 32—Dying declaration.

———S. 32 (1)—*Dying declaration—What is—Statements prior to occurrence causing death—Admissibility.*

Dying declarations are statements made by a dying person as to the injuries which culminated in his death or the circumstances under which the injuries were inflicted. Statements made by a deceased long prior to the occurrence resulting in death are not dying declarations and not admissible under the Evidence Act. (*Broadway and Fforde, JJ.*) AUTAR SINGH *v.* EMPEROR. 4 Lah. 451=1924 Lah. 253.

———S. 32—*Dying declaration—Mode of proof.*

The rules laid down by Taylor, J. in (6 C.W. N. 72) should be followed in recording and proving dying declarations:—"Witnesses should not be allowed to prove a dying declaration as it is a substantial piece of evidence in the case. The relevant fact to be proved is the statement made and that statement is not the document made by the Magistrate. The only way of proving a dying declaration is by the evidence of some witness who heard it made, the witness being at liberty to refresh his memory by referring to the note made by him and read over by him at or about the time the statement is made". (*Abdul Kadir, J.*) KUNJ LAL *v.* EMPEROR. 23 Cr. L.J. 417= 67 I.C. 577=4 U.P.L.R. (Lah.) 88.

———S. 32 (1)—*Dying declaration—Transaction resulting in death—Suicide owing to ill-treatment by accused, charged, under Penal Code, S. 330.*

The accused were charged under S. 330, I.P. C., with having for the purpose of extorting a confession, caused hurt to one R , who committed suicide owing to the ill-treatment. *Held*, that ill-treatment was the cause though not the direct cause of the suicide and although the accused were not legally responsible for the suicide, the whole affair, ill-treatment, and subsequent suicide, being one transaction the statement of the deceased was admissible under S. 32 (1) of the Evidence Act. (*Shah Din and Chevis, JJ.*) THE CROWN *v.* FAIZ. 20 P.R. 1916 (Cr.)=42 P.W.R. 1916 (Cr.)= 35 I.C. 998=17 Cr.L J. 438=47 P.L.R. 1917.

———S. 32 (1)—*Dying declaration—Proof of.*

A dying declaration recorded by a Magistrate is not evidence unless proved by the statement of the Magistrate though he is himself the committing Magistrate in the case. A Court cannot go beyond the rule that every statement placed on the record must be properly proved. Dying declarations are not covered by the provisions of Chap. 41 of the Cr. P. C. (*Reid and Kensington, JJ.*) GHAZI *v.* EMPEROR. 14 Cr. L.J. 181= 18 I.C. 883=239 P.L.R. 1912.

EVIDENCE ACT (I of 1872), S. 32—Dying declaration.

———S. 32 —*Dying declaration—Admissibility of—Cr. P. C. Chap. 41—Proof of.*

A dying declaration recorded by a Magistrate should be proved before it can be accepted as evidence and the fact that the Magistrate was the Committing Magistrate in the case is not unreasonable in itself but is legally insufficient, makes no difference. Dying declarations are not covered by Ch. 41 of the Cr. P.C. to enable them to be admitted without proof. (*Reid*, C.J. *and Kensington*, J.) GHAZI *v.* EMPEROR.
17 P R. 1911 Cr. = 13 Cr. L.J. 225 = 14 I.C. 417 = 48 P.W.R. 1911 Cr.

———S. 32 (1)— *Dying declaration—Admisibility of.*

Evidence Act makes dying declarations relevant facts as written statements of deceased or written records of verbal statements which a deceased makes and which becomes substantive evidence of the cause of deceased's death. An oral statement of the deceased about the cause of his death may be proved by any who heard it as well as by the person who recorded it. Under S. 321 it is not necessary that the magistrate recording the confession should be called and be asked to refresh his memory by referring to statements of witness under S. 159 of Evidence Act. 8 C. 211; 6 C.W.N. 72 dessented from. (*Spencer and Phillips*, JJ). *In re* KARUPPAN SAMBAN.
31 I C. 389 = 16 Cr. L.J 789.

———Ss. 32, 33 —*Dying declaration—When admissible.*

The dying declaration being the most important piece of evidence must be as exact and full as possible. Where the record of the said declaration spoken to by the witnesses is apparently less than what they said, a retrial must be held The propr legal mode of proving verbal statements of a deceased is to elicit it from the person who heard him make it. The witness can refresh his memory from the record of the statements returned by himself or by another in his presence; otherwise it is not relevant. If it is a deposition in the presence of the accused it would be relevant. A deceased's written statement signed by him after having been satisfied of its accuracy is admissible under S. 32 as his statement in writing. Such a statement would not debar a witness from proving that the deceased said, independently of the writing. It would be desirable to record, what the witness can reproduce from his memory without reference to the writing. (*Abdur Rahim and Sadasiva Aiyar*, JJ). PUBLIC PROSECUTOR *v.* BALA NAGI REDDI.
11 M.L.T. 214 = 22 M.L.J. 453 = 15 I C. 308 = 13 Cr. L.J. 468 = (1912) M.W.N. 405.

———S. 32—*Dying declarations—Evidentiary value.*

A dying declaration made after receiving extreme unction should generally be believed to be true and acted upon. (*Benson and Wallis*, JJ) PATTAM *v.* EMPEROR.
12 Cr. L.J 528 = 12 I.C. 296 = (1911) 2 M.W.N. 188.

———S. 32 (1)—*Dying declaration—Deponent not signing—Whether statement admissible in evidence—How proved.*

A dying declaration reduced to writing but not signed by the deponent, is not admissible in evidence, but must be proved by the oral testimony of the person who heard it. Notes of Police officer relating to a dying declaration are not admissible in evidence, unless signed by the deponent, but in testifying to it, he can refer to them to refresh his memory. (*Hallifax*, A J.C.) BHAGWAN *v* EMPEROR.
15 Cr. L J. 243 = 23 I C. 195 = 10 N.L R. 19.

———S. 32 —*Dying declaration—Gestures of wounded person—Admissibility—Interpretation.*

Where a person whose throat had been cut as a result of which death ensued later, made certain gestures in reply to questions put by the police. *Held*, the gestures were admissible in evidence, 7 All. 385 Foll. The interpretation of the gesture is for the court alone and the opinion of witnesses as to their meaning is not evidence. (*Coutts and Ross*, JJ.) CHANDRIKA RAM KAHAR *v.* EMPEROR.
1 P. 401 = (1923) Pat 26 = 3 P.L T. 771 = 24 Cr. L J 129 = 1 P.L R Cr. 77 = 1922 P. 535.

———S. 32 —*Dying declaration when admissible—Requisite for admitting entries in evidence under the section.*

Unless the death of the person making the entries in an account book is proved, S. 32 of the Act does not admit such entries in evidence. (*Roe and Jwala Prasad*. JJ.) SEW PRASAD *v.* RADHA MOHAN SAHAY.
37 I.C. 877.

———S, 32—*Dying declaration—When not admissible.*

A statement by a dying person not about the circumstance of his death, but about a dacoity that was taking place at the time of his death is not admissible under S. 32 (1) in a trial for the dacoity. Nor can those statements be admissible under S. 32 (3) unless they would have exposed him to criminal prosecution. (*Hartnoll*, C.J.) NGA TE *v* EMPEROR.
14 Cr. L.J. 610 = 6 Bur. L.T 183 = 20 I.C. 990 = 7 L.B.R. 33.

———Ss. 32, 33—*Dying declaration—Proof of.*

A statement of a deceased person recorded in the absence of the accused is not admissible under S. 33 of the Evidence Act. Nor is it admissible under S. 32 (1) unless it is proved by the magistrate who recorded it or by some one who heard it made. (*Hartnoll and Young*, JJ.) NGA PO *v.* EMPEROR.
14 Cr. L J. 396 = 20 I.C. 220 = 6 Bur. L T. 68.

EVIDENCE ACT (I of 1872), S 32—Facts in issue

Facts in issue.

——S. 32—*Facts in issue, when relevant.*

Facts in issue are relevant facts within S. 32 and statements made by deceased persons about facts in issue are admissible under this section. 15 Bom. 565 Dist., 27 M. 228 Ref. (*Abdur Rahim and Phillips*, JJ.) RAGHUBHUHAM *v.* VIDIAVARADHI. 34 I.C. 875.

Family affairs.

——S. 32 (8)—*Family affairs—Mode of succession—Admissibility.*

A document containing a statement of a deceased person as to the mode of succession in a particular family is admissible. 25 M. 183 Foll. (*Ayling and Seshagiri Aiyar*, JJ.) PATINHAR KARU *v.* RAMAN VARMA 24 I.C. 519=28 M L.J, 669.

——S. 32—*Family affairs.*

A statement in a will of a deceased co-parcener that he and his brothers were living separately is not admissible under S. 32 of the Evidence Act. (*Leggat*, A.J.C.) GOKUL DAS *v.* CHANDI BAI. 10 I.C. 967=5 S.L.R. 225.

Horoscope.

——S. 32 (5)—*Horoscope—Evidence of per drawing up.*

A statement about the date of the son's birth by a father at the time of preparing a horoscope is admissible in evidence under S. 32 cl. (5) of the Evidence Act as it was the date of the commencement of a relationship. (*Abdur Rahim and Spencer*, JJ.) ANNAMALAI *v.* ANNAMALAI CHETTI. 32 I.C. 456= 10 L.W. 67.

——S. 32 (5)—*Horoscope—Admissibility of evidence.*

A horoscope is receivable in evidence under S. 32 (5) but the party making it must have had special means of knowledge. (*Wallis*, C.J. *and Seshagiri Aiyar*, J.) RAMANATHAN CHETTY *v.* MURUGAPPA CHETTY. 3 L.W. 210=33 I.C. 969= (1916) 1 M.W.N. 208.

——Ss. 32, 159 and 160 — *Horoscope—Evidence, of age—Date of birth—Proof of horoscope.*

Under Ss. 159 and 160 of the Evidence Act a horoscope can be used to prove the date of birth stated in it if the person, who wrote it or who read it soon after it was written, is examined as a witness. S. 32 of the Evidence Act does not make relevant the statements of date obtained in a document like a deed of adoption or initiation of a chela. (*Halifax*, A.J.C.) SHANKERGIR *v.* CHINNUJI. 6 N.L.J. 1=1923 Nag. 165.

——S. 3=(5) and 6)—*Horoscope — Statements in.*

EVIDENCE ACT (I of 1872), S. 32—Ordinary course of business.

Statements as to age made by deceased persons *e g.*, in horoscopes in the circumstances mentioned in S. 32 of the Evidence Act, are admissible in evidence. A horoscope prepared by a deceased person is admissible in evidence to prove age. (*Miller* C.J. *and Mullick*, J.) AMAR DAYAL SINGH *v.* HER PERSHAD SAHU. 5 P L J. 605=58 I C. 72= 1 P.L.T. 511.

Inconvenience.

——S. 32—*Inconvenience.*

The inconvenience and expense to be taken into account must be with respect to individual witnesses and not arising merely from the number of witnesses which a party wishes to call. (*Abdur Rahim and Phillips*, JJ.) RAGHUBHUSAN *v.* VIDYYAVARDHI. 34 I.C. 875.

Ordinary Course of Business.

——Ss. 32 (2) and 34—*Ordinary course of business—Talab baki papers—Admissibility.*

Talab Baki papers are not sufficient evidence to charge any person with liability under S. 34. Such papers may be evidence under S. 32, Cl. (2); but before they can be admitted, a landlord must show that the person making the statement is dead and the entries are made by him in the ordinary course of business. (*Chatterjee and Duval*, JJ.) UMED ALI *v.* KHAJEE HABIBULLA. 47 Cal. 266=56 I.C 38= 31 C.L.J. 68.

——S. 32 (2)—*Ordinary course of business—Papers kept in ordinary course of business.*

There is nothing in S. 32 (2) which requires any formal proof that certain settlement papers were kept as a fact in the ordinary course of business. Care should be taken not to confuse S. 32 (2) with S. 34. (*Holmwood and Mullick*, JJ.) BAID NATH SAHAY *v.* NANKU MAHTON. 29 I.C. 219.

——Ss. 32 (2) and 33—*Ordinary course of business—Endorsement of a postal peon — Admissibility of.*

An endorsement on the cover of a letter by a postal peon is at best a record of a statement of the peon and must be proved by calling him as a witness unless the statement becomes admissible under S. 32 (2) or S. 33. Such an endorsement is not admissible even as a statement made by a public officer in the discharge of his duty. (*Mookerjee and Walmsley*, JJ.) GOBINDA CHANDRA SAHA *v.* DWARAKA NATH PATTA. 20 C L J 455= 26 I.C. 962=19 C.W N. 489.

——Ss. 32 (2) and 34—*Ordinary course of business* - Jamabandi—*Entries made 70 years ago—Presumption.*

The entries in *Jamabandi* papers began in 1838 and ended in 1872: *Held*, that with regard to the bulk of these entries the presumption

EVIDENCE ACT (I of 1872), S. 32—Ordinary course of business.

was that the persons who made them could not be called and the Court may treat the papers as evidence under S. 32 (2). Entries may be admitted as evidence either under S. 32 or under S. 34. Under S. 32, there is no necessity for corroboration. 28 B. 294, Foll. (*Harrington and Casperz, JJ.*) DUKHA MANDAL *v.* GRANT. **16 I.C. 467 = 16 C L J. 24.**

———S. 32—*Ordinary course of business—Statements not made in the usual course of business.*

S. 32 (2), Evidence Act does not include statements of deceased not made in the usual course of business. (*Sadasiva Iyer and Phillips, JJ.*) KOLANGORATH RAMAN *v.* KANNOTH. **2 L W. 941 = 31 I.C. 184 = (1916) M.W.N. 793.**

———Ss. 32, 34—*Ordinary course of business—Entries in account books in course of business—Corroboration.*

Entries made in books of account kept in the regular course of business are admissible under S. 34 only when there is other evidence to corroborate them; but under S. 32 (2) they may be admissible without such corroboration when the person who made the entries cannot be found. (*White, C.J. and Tyabji, JJ.*) RAMASAWMI NAICK *v.* RAMACHANDRAN CHETTY. **(1914) M.W.N. 250 = 22 I.C. 627 = 1 L W. 186.**

———S. 32—*Ordinary course of business—Statement of writer.*

Where direct evidence of the handwriting or mark of a person is not available indirect evidence may be given and the endorsement of the deceased scribe that the mark was that of the executant is admissible under S. 32 (2) of the Evidence Act. (*Mittra, O.A.J.C.*) MT. LAHINI *v.* BALA. **18 N L R. 85 = 1922 Nag. 227.**

———S. 32—*Ordinary course of business—Statement made in gossip—Admissibility.*

Statement by a person made in ordinary course of gossip and not in ordinary course of business is not admissible under S. 32 (2) of Evidence Act. (*Mittra, A.J.C.*) AJODHI *v.* EMPEROR. **21 Cr. L.J. 436 = 56 I.C. 582 = 16 N.L.R. 30.**

———S. 32 (2)—*Ordinary course of business—Statement by deceased scribe as to marks of executant.*

A bond was executed by three persons who were all dead. They were illiterate and their signatures were indicated by marks (*nishani*). The scribe and the attesting witnesses had also died. The whole of the bond including the marks was proved to be in the handwriting of the deceased scribe by the evidence of his father, a bond writer. *Held*, direct evidence found in the body of the bond itself that the marks were those of the executant by the written statement therein of the scribe is relevant under S. 32 (2) it having been made by him in the ordinary course of business as a bond writer. (*Hallifax, A.J.C.*) HARIA *v.* MANAKCHAND. **27 I.C. 866 = 11 N.L.R. 9.**

———Ss. 32 (2)—*Ordinary course of business—Chowkidar's diary—Entry made by third person—Admissibility in evidence.*

Where entries relating to the deaths of the inhabitants of a place had been made in the diary of a deceased chowkidar not by the chowkidar himself but by some other person, the entries are inadmissible in evidence unless it is proved that it was the duty of that person in the ordinary course of business to make the entries. (*Das and Adami, JJ.*) MUSSAMMAT CHANDRAMA KUER *v.* RAMGAYAN. **1922 P. 111.**

———Ss. 32, Cl. (2) and 34—*Ordinary course of business—Zemindari papers—Admissibility of—Independent evidence.*

Although Zemindari papers cannot be admitted under S. 34 of the Evidence Act as corroborative evidence without independent evidence of the fact of collection at certain rates, they can be used as independent evidence if they are relevant under S. 32, Cl. (2) of that Act. (*Dawson Miller, C J. and Mullick, J.*) CHARITTER RAI *v.* KAILASH BEHARI. **4 P. L W. 213 = 1918 Pat 145 = 41 I.C. 423 = 3 P. L J. 306.**

———S. 32—*Ordinary course of business—Entries through named persons in account book kept by deceased servant.*

When a deceased servant kept his master's accounts in the course of business, and entries of payments through named persons are made therein, such entries are, under S. 32 of the Act, admissible in proof of payments only if those named persons are called on to prove the actual payment. (*Roe and Jwala Prasad, JJ.*) SEW PRASAD *v.* RADHA MOHAN SAHAY. **87 I.C. 877.**

———S. 32 (2)—*Ordinary course of business—Revenue surveyor's report—Probative value.*

A Revenue Surveyor's reports though admissible in evidence under S. 32 (2) have very little probative value when they are not signed by the transferors and are not supported by evidence of persons who purport to sign them as witnesses. (*Twomey, J.*) MG PO NYEIN *v.* MAUNG MY. **27 I.C. 777 = 8 Bur. L.T. 85.**

———S. 32—*Ordinary course of business—Scope and meaning of.*

The words "in the ordinary course of business" indicate the regular routine of business usually followed and adhered to, on all occasions by the person whose declaration is sought to be introduced; but it has no reference to business of other stray character. 23 B. 63, Foll. (*Parlett, J.*) ABDULLA *v.* MA E KIN. **11 I.C. 854 = 4 Bur. L.T. 185.**

EVIDENCE ACT (I of 1872), S. 32—Panda's Register.

Panda's Register.

———S. 32 (6)—Panda's *register—Family relationship in panda's book—Admissibility—Secondary evidence.*

Entries in *panda's* register or note-books can be admitted as evidence upon a question of family pedigree but they should be received with caution and should be severely scrutinised to guard against fabrication. 30 A. 510 (P. C.), Ref. (*Chamier and Piggott*, JJ.) THE COLLECTOR OF FARUKHABAD *v.* GAJRAJ SINGH. 15 I.C. 625.

———Ss. 32 (4) and 35—*Pandas register—Entries in books of Hardwar Priests—When admissible as evidence.*

Entries in books of Hardwar priests, if made *ante litem motam* would be of great weight in establishing a pedigree table. (*Johnstone and Shadilal*, JJ.) RAM SINGH *v.* DAULAT SINGH. 171 P.L.R. 1914=23 I.C. 550=97 P.W.R. 1914.

Pedigree.

———S. 32 (6)—*Pedigree—Proof of—Person making the statements not known.*

A document ancient and genuine purporting to be a family pedigree was produced in evidence in a mutation case by J who stated he had received it from his grand-father. No objection was taken to its admission though its genuineness was not admitted. It was not proved who had prepared the pedigree. *Held*, that under the circumstances it was not necessary to show who had made the statements mentioned in the pedigree and that it was admissible in evidence under S. 32, cl. 6 of the Evidence Act. Objection to the admissibility of evidence taken at a late stage in litigation is not to be encouraged. The proper time to object is at the trial when the evidence is tendered. (*Richards*, C.J. *and Rafique*, J.) JAGANGIR *v.* SHEO RAJ SINGH. 37 All. 600=30 I.C. 505=13 A.L.J. 817.

———S. 32, cls. (2) and (6)—*Pedigree—Proof of—Books of family chronicler.*

Where a family pedigree was sought to be proved by books kept by a family chronicler, *Held*, (1) under S. 32 (2) they would be admissible as books kept in the ordinary course of business by a professional man or a person whose business it was to keep such a book; (2) it would also be admissible under S. 32 (6) which enables a family pedigree to be admitted in evidence so long as the members of the family depend on a particular person to keep a record of family events. (*Macleod*, C.J. *and Shah*, J.) MOHANSINGH UMED RAMOL *v.* DALPATSINGH KANBAJI. 46 Bom. 753=24 Bom. L.R. 289=1952 Bom. 51.

———S. 32 (6)—*Pedigree book.*

A book of pedigree is relevant under cl. 6, S. 32 though it may not have been shown that all the writers of pedigree had special means of knowledge and though the book may not be in the possession of a member of family concerned. (*Drake-Brockman*, A. J. C.) LAHANU *v.* MOTIRAM. 63 I.C. 963=4 N.L.J. 33.

EVIDENCE ACT (I of 1872), S. 32—Pedigree.

———S. 32 (5)—*Pedigree filed in Court—Proof of—Knowledge of relationship.*

Unless it is shown that the person who files a pedigree in Court had special means of knowing relationship between the parties, the pedigree cannot be received in evidence and it cannot be accepted as evidence that he had that knowledge. Proof of special source of knowledge is a pre-requisite to the admission of the document in evidence and until the document is received in evidence no presumption can be made from the statements contained in it. (*Lyle*, A.J.C.) BHIMA SINGH *v.* MT. SUNDER. 9 O.L.J. 186=4 U.P.L.R. (O.C.) 79=26 O.C. 109=1922 Oudh 218.

———S. 32—*Pedigree—Succession—Claim based on a pedigree table—Proof.*

To support a claim upon a pedigree table, it must be proved that those higher in the degree of relationship than the claimant are extinct. (*Wazir Hasan*, A. J. C.) JASODHA *v.* MURALIDHAR. 61 I.C. 144=24 O.C. 1.

———S. 32 (6)—*Pedigree filed by general agent of deceased person—Admissibility.*

A pedigree filed by a general agent in a suit to which the deceased was a party can be presumed to have been filed under his instructions, and such pedigree if other conditions be satisfied would be admissible in evidence in a subsequent litigation. (*Kanhaiya Lal*, J. C.) BALBHADDAR SINGH *v.* SRI PAL SINGH. 48 I.C. 308=21 O.C. 251.

———S. 32 (5)—*Pedigree with doubtful circumstances not to be admitted.*

When at the time of the village settlement some papers were put in, one of which was a pedigree and at the end of it some names found in the pedigree also appeared and it was doubtful whether the attached names were intended to show the correctness of all the papers or only of the last of such papers. *Held*, the pedigree could not be admitted in evidence. 25 I.C. 823, Dist. (*Stuart*, J.C.) KASHI SINGH *v.* RAM NARAIN. 3 O.L.J. 560=37 I.C. 138=19 O.C. 321.

———S. 32 (6)—*Pedigrees filed in settlement Courts—Admissibility.*

Pedigrees filed in the Settlement Courts are only admissible under the provisions of S. 32, cl. (5) and in order to make them admissible as the statements of deceased persons relating to family connections, it must be shown that the persons making the statement had some special means of knowledge with regard to the relationship deposed to, which knowledge can be presumed in the case of members of the family or closely related to the family. (*Lindsay*, J.C.) SURAJ BALI *v.* TILOK CHAND. 36 I.C. 66=3 O.L.J. 327.

EVIDENCE ACT (I of 1872), S. 32—Pedigree.

———S. 32 (5)—*Pedigree—Proof of.*

A pedigree though not prepared by a member of the family or an official bound to record it, and not signed by any family member but which were adopted by members of the family is admissible under S. 32 (5) of the Act. (*Stuart*, J.C. *and Kendall*, A.J.C.) RAM DIN v. KAYESTH PATHSHALA, ALLAHABAD.
25 I C 8 3=1 O.L J. 447.

———Ss. 32 (6) and 50—*Pedigree from settlement record—Admissibility.*

Where the pedigree is extracted from a settlement record it is presumed to be genuine under S. 90 of the Evidence Act and it is admissible in evidence under S. 50 and not under S. 32 (6) of the Act. (*Piggott*, J.C. *and Lindsay*, A.J.C.) BHABUTI SINGH v. KHETAL SINGH. 21 I.C. 274.

———Ss. 32, Cl. (5) and (6) *and* 90—*Pedigree filed in Settlement Record—Admissibility.*

A pedigree filed in settlement record must, before it is admitted in evidence, be proved to have been made by a person having knowledge of it before the question in dispute has been raised, though a presumption may be made in its favour under S. 90 of the Act because it is more than 30 years old and is produced from proper custody. 30 A. 510, Ref. (*Piggott*, J.C.) MATHURA PRASAD SINGH v. BHULAN SINGH.
14 I.C. 339=15 O.C. 361.

———S. 32 (5)—*Pedigree—Proof of special means of knowledge.*

The pedigree produced in one Court is admissible in evidence in another Civil Court upon proof that the person making the statement contained in the pedigree was dead and that he had special means of knowledge. (*Evans*, A. J.C.) KASHI SINGH v. BALRAJ SINGH.
10 I.C. 199.

———S. 32 (5)—Pedigree—*Admissibility.*

Before a pedigree is admitted in evidence, it must be shown they were made by a person who has special means of knowledge of the relationship. Where it purports to be based on an old genealogical tree which no longer exists, the person who was responsible for the old document must be indicated. (*Das and Macpherson*, JJ.) JHOBALI RAI v. SAKHI RAI.
(1923) Pat. 266=1923 P. 585.

Proof of age.

———S. 32 (5)—*Proof of age—Birth-day books—Admissibility of—Husband's evidence as to wife's age—Affidavit—Admissibility of.*

Where the evidence shows of a practice of making entries of dates of birth in books kept for the purpose of obtaining the opinion of astrologers, the Birth-day books are admissible in evidence to prove the dates of birth if the parol evidence concerning them is accepted. A husband's statement as to his wife's age, though hearsay, is admissible for what it was worth; and an affidavit in which he had sworn

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to the same date previously before the controversy is admissible in evidence. (*Sir Arthur Channell.*) CHUAH HOOI GNOH NEOH v. KHAW SIM BEE. 31 I C 637=19 C.W.N. 787 (P.C.).

———Ss. 32 (5) and 11—*Proof of age—Statement by a deceased person as to date of birth—Admissibility.*

A statement of a deceased person made in a guardianship application concerning the date of birth of the minor is not admissible in evidence to prove the age of the minor in a subsequent suit as the statement cannot be regarded as one relating to the existence of any relationship by blood, marriage or adoption. Nor can it be covered by S. 11 of the Act. (*Coxe and Beachcroft*, JJ.) RAM KRISHNA SADHUKHAN v. MUNINDRA MOHAN RAY.
27 I.C. 30=20 C.L.J. 302.

———Ss. 32 (5) and (6)—*Proof of age—Recital in a will—Admission—Register whether admissible.*

The recital in a will about the age of another person when that recital is not merely incidental is admissible in evidence as to the age of that person at that time. (*White*, C.J. *and Tyabji*, J.) KRISHNAMACHARIAR v. VEERAVELLI KRISHNAMACHARIAR. 38 Mad. 166=13 M.L.T. 385=(1913) M W N 385=19 I.C. 482=24 M.L.J. 517.

———S. 32—*Proof of age—Special means of knowledge.*

Statement by a person before a public officer as to his son's age is admissible in evidence under S. 32 of the Evidence Act. (25 M. 183; 20 C. 768, Foll. (*Benson and Abdur Rahim*, JJ.) BAPPA RAJU v. KONDU RAJA. 9 I.C. 324=9 M.L T. 220.

Recitals.

———S. 32—*Recitals in will—Statement of dead person—Statement in will showing sum due by a third person.*

Statements in the will made by the deceased that he had spent a particular sum in effecting the repairs of the house was not a statement made against his pecuniary or proprietary interest and it could not be held that the memo of expenses made by the deceased was made in the ordinary course of the business. Both the statements were held inadmissible. (*Macleod*, C.J. *and Heaton*, J.) NARHARI v. BALKRISHNA. 44 Bom. 192=55 I C. 316=22 Bom. L.R. 57.

———Ss. 32 (5) and 155—*Recitals in guardianship petition—When admissible in evidence.*

A recital as to the date of birth in a guardianship application is not by itself admissible in evidence but if the person who made the statement is dead, or cannot be found or had special means of knowledge, it will be admissible—If he is examined as a witness his credit can be

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impeached by producing the same. (*Mookerjee and Rankin, JJ.*) PROHLAD CHANDRA CHOWDHURY *v* RAMSARAN CHOWDHURY.
38 C.L.J. 213 = 1924 Cal. 420.

——S. 32 (3)—*Recitals—Deed not inter partes—Recitals of boundaries—Admissibility in evidence.*

Recitals as to boundaries in documents of third parties are admissible only under S. 32 (3) if the persons making them are dead or cannot be found or the like. (*Newbould, J.*) ABDUL RAHIM KHAZI *v.* JONAB ALI SIKDAR.
1923 C. 299.

——Ss. 32 (7) and (13)—*Recitals in will.*

Wills not admitted to probate are not admissible in evidence under Ss. 13 (*a*) and S. 32 (7) except on proof by an attesting witness that they are in accordance with S. 50 of the Ind. Suc. Act. (*Fletcher and Teunon, JJ.*) MOHESHWAR PANDA *v.* SUNDAR NARAIN.
33 I C. 342 = 22 C.L.J. 551.

——S. 32 (2)—*Recitals in document.*

As Ss. 65 and 91 make it clear that when a written grant is lost, secondary evidence can be given of it only as defined by law, a translation of *parwana* or grant forming the enclosure and the report of a public officer is not admissible as secondary evidence of the contents of the grant under any of the Ss. 65, 32 (2) or 35. (*Sadasiva Iyer and Moore, JJ.*) AMBALAVANA PANDARASANNADHI *v.* KUPPACHI AMMAL. 35 I C. 201 = 4 L W. 331.

——S. 32 (7)—*Recitals in documents—Statement by deceased mortgagor in mortgage deed—Admissibility.*

Statements in mortgage deeds which are admissible in evidence under S. 32, cl. 7 read with S. 13 of the Evidence Act are rightly treated as reliable, and can be acted on if corroborated by other oral evidence in the case. Recitals in deeds, when the executant is deceased are admissible under S. 32 (7). (*Sadasiva Aiyar and Napier, JJ.*) VISALAKSHIAMMAL *v.* DORASINGA PILLAI.
29 I C. 974.

——Ss. 32 (a), 11 and 13—*Recitals—Documents between third parties.*

Recitals of boundaries of lands in documents between third parties are admissible in evidence. (*Prideaux, A.J.C.*) TRIMBAK *v* GANESH.
1928 Nag. 22.

——S. 32—*Recitals in document.*

If the conditions of this section are fulfilled a recital in a document not *inter partes* is admissible in evidence. (*Das, J.*) RAM SARUP KAMKAR *v.* BHAGWAT PROSAD.
57 I.C. 194 = 2 U P.L R. (P.) 156.

——S. 32—*Recitals in documents—Third persons.*

A statement of boundaries in document of title is admissible against third parties if the third parties are dead or outside the jurisdiction

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of the Court. 19 C.W.N. 469, Dist. (1914) M. W.N. 779; 16 C.W.N. 252; 17 C.W.N. 108; 11 A.L J. 139 Foll.; 23 B. 63, Not appr. (*Roy and Jwala Prasad, JJ.*) LALU SINGH *v.* SAHDEO SINGH.
36 I.C. 610.

Relationship.

——S. 32 (5)—*Relationship — Admission by female member of family as to the status of heir—Improvements—Compensation — Assessment.*

Where the status of B as a daughter's son of A is in question, an admission of such relationship by another wife of A, is of great weight in favour of B. (*Lord Shaw*). KIDAR NATH *v.* MATHUMAL. 15 Bom L R 461 = (1913 M.W.N. 403 = 13 M L.T 434 = 127 P.L.R. 1913 = 77 P R. 1913 = 40 C. 555 = 25 M L J. 176 = 18 I.C. 946 = 17 C.W.N 797 (P.C.).

——S. 32 (5.—*Relationship—Proof of—When admissible.*

A statement by a deceased plaintiff as to his relationship with certain persons contained in a plaint filed before the existence of any dispute concerning that relationship is admissible under S. 32 (5) in a subsequent suit in which that relationship is in dispute. Every member of a family has a "special means of knowledge," within the meaning of this section of being able to state who are his near relations. *Richards, C.J. and Banerjee, J.*) MANULA DAD KHAN *v.* ABDUL SATTAR
15 A.L J 349 = 39 I C. 666 = 39 A. 426.

——S. 32 (5)—*Relationship—Adoption—* Mohant and Chela.

The relationship between a *Mohant* and a *Chela* is a relationship by adoption and a statement by a *mohant* that he has one *chela* is a statement relating to the existence of a relationship. A statement as to the time of commencement of relationship is so indissolubly associated with the existence itself of the relationship that it may be rightly regarded as a statement relating to the existence of that relationship under cl. 5, S. 32 of the Evidence Act. 25 M. 189; 24 I.C. 519 Ref. (*Mookerjee and Bachcroft, JJ.*) ACHYUTANANDA DAS *v* JAGANNATH DAS
21 C.L J. 96 = 27 I.C. 739 = 20 C W.N. 122.

——Ss 32 (5 and 50—*Relationship—Evidence of—Joint ownership of an open plot of land—Oral evidence of persons with no means of knowledge.*

The mere fact of joint ownership of an open plot of land by a number of persons in the same locality has a very remote bearing on their relationship *inter se*; and the oral evidence of persons with no means of knowing the alleged relationship and interested in the success of the suit has little value in proving title to property. (*Johnstone and Shadi Lal, JJ.*) RAM SINGH *v.* DAULAT SINGH.
171 P.L.R. 1915 = 28 I C. 550 = 97 P.W.R. 1914.

EVIDENCE ACT (I of 1872), S. 32—Relationship.

——S. 32, Illus. k)—*Relationship.*

Relationship which may be proved by the statement of a deceased person, may be the relationship of the person making the statement. Thus recitals in sale deed and mortgages by the adopted son and in his will in which he described himself as adopted son, were admissible under S. 32 (5) and (6) of the Act. (*Wallis*, J.) MULLANJI VENKATARANGIAH CHETTY *v.* VENKATA SUBBAMMAL. **13 M L T. 515 = 19 I C. 740 = 25 M L.J. 373.**

——S. 32 (3), 5)—*Relationship—Adoption—Consent of* Sapinda—*Admission of receipt of consideration.*

A statement by a deceased *Sapinda* admitting the receipt of consideration for consenting to an adoption is within S. 32 (3) and is admissible in evidence. Such a statement is also within S. 32 (5) as it relates to the existence of the relationship by adoption. It is immaterial for its admissibility that the time of making it the status of adoption had not been created or that it was not made *Ante Litem Mortam* (*White and Phillips*, JJ.) DHANAKOTI AMMAL *v.* BALASUNDARA MUDALIAR. **18 I C. 989 = 36 Mad. 19.**

——S. 32 (5)—*Relationship—Statement as to relationship—Admissibility—Statement as to adoption.*

A statement by a deceased person that he was adopted when he was four years old into another family is admissible under S. 32 (5) of the Evidence Act to prove its relationship. (*Drake Brockman*, J.C.) GOLAB THAKUR *v.* FADALI. **68 I.C. 566.**

——Ss. 32 and 33—*Relationship—Statements of deceased witnesses—Legitimacy—Mutation proceedings.*

Where in mutation proceedings before a Revenue officer authorised to record statements of witnesses on oath, certain statements relating to the legitimacy of a particular person are made, such statements are admissible in a suit in the Civil Court by a party to the mutation case. But those statements are not admissible if the subsequent suit in the civil Court is between persons not parties to the mutation proceedings. (*Daniels*, J.C. *and Dalal*, A.J.C.) MUMTAZ UN-NISSA BEGAM *v* WAZIR ALI. **65 I C. 308 = 8 O.L.J. 569.**

——S. 32 5)—*Relationship—Statements of relatives and servants.*

The statements made by the deceased relatives, servants and dependants of a family are admissible under S. 32 (5) of the Evidence Act, equally with the statements of the members of the family if they had special means to know things requisite to make their statements admissible. (*Kanhaiya Lal*, A.J.C.) BALBHADDAR SINGH *v.* SHRIPAL SINGH. **48 I.C. 308 = 21 O C. 251.**

——S. 32 (5)—*Relationship — Hearsay evidence—Fosterage—Admissibility.*

EVIDENCE ACT (I of 1872), S. 32—Statements against interest.

Hearsay evidence is inadmissible to prove connection by fosterage. (*Lindsay*, J.C. *and Kanhaiya Lal*, A.J.C.) SURAIYA QUDR *v.* QUDSIA BEGAM. **24 I.C. 613 = 1 O.L.J. 281.**

Special means of knowledge.

——S. 32—*Special means of knowledge—Relationship.*

A statement by a Muzumdar that the estate should be handed over to a certain person by name A as the sole wife of Zamindar is admissible under S. 32, as made by a person having special means of knowledge. (*Wallis*, C.J. *and Burn*, J.) KRISHNA THEVAR *v.* RAMASAMI PANDIA. (1917) **M.W.N. 201 = 38 M L.J. 277 = 39 I.C. 263 = 40 Mad. 871.**

——Ss 32 (5), 21 (1)—*Special means of knowledge—Statement as to date of birth, when admissible.*

Statements as to the date of birth of a person contained in his deposition and in affidavits filed by him are admissible in evidence under S. 21 (1) read with S. 32 (5) if made by a person having special means of knowledge whether personal or hearsay. (*Wallis*, C.J. *and Seshagiri Aiyar*, J.) RAMANATHAN CHETTY *v.* MURUGAPPA CHETTY. (1916) **M.W N. 208 = 33 I C. 969 = 3 L.W. 210**

——S. 32, (5)—*Special means of knowledge—What is.*

It is not necessary that the special means of knowledge of a witness should be of a particular character in order to make his statement admissible. It is for the Court to decide whether the witness had such special means or not. (*Oldfield and Tyabji*, JJ.) RAMKRISHNA AIYAR *v.* CHINNA VENGAMMAL. **26 I.C. 110.**

Statements against interest.

——S. 32 (3)—*Statements against interest—Admissibility.*

A statement made by the manager of a joint Hindu family, since deceased, that he bought properties out of his own earnings as a provision for the son-in-law and in his name, is admissible in evidence against the surviving members of the family who claim that the property was acquired *benami* for the joint family. (*Lord Buckmaster.*) SURAJ NARAIN *v.* RATAN LAL. **40 All. 159 = 21 C.W N 1065 = 20 O C. 211 = 2 P.L W. 160 = 33 M.L J. 180 = 15 A L.J. 684 = 19 Bom. L R. 737 = 22 M.L.T. 121 = 26 C L J 267 = 6 L.W. 509 = (1917) M.W.N. 477 = 4 O L J. 763 = 40 I C. 988 = 44 I.A. 201 (P.C.).**

——S. 32 (3)—*Statements against interest—Documents not* inter partes *— Boundary dispute.*

Recitals in documents not *inter partes* are ordinarly irrelevant unless the statements in the documents can be brought within S. 32 of

EVIDENCE ACT (I of 1872), S. 32—Statement against interest.

the Evidence Act. Statements in documents not *inter partes* limiting the interest of the executants by declaring the boundaries of certain land fall within S. 32, cl. (3) and are, therefore, admissible in evidence. (*Newbould*, J.) REAJADDI SARKAR *v.* GANGA CHARAN. 33 I.C. 863.

———S. 32 (3)—*Statements against interest—Recital in document—Admissibility.*

A recital in a deed of sale, that the land conveyed is limited by certain boundaries is an admission that his proprietary interest does not extend over any land outside the boundaries mentioned, and as such is admissible under S. 32 (3). (*Mookerjee and Beacheroft*, JJ.) AMBAR ALI *v.* LUTFE ALI. 21 C.W.N. 996 = 25 C.L.J. 619 = 41 I.C. 116 = 46 Cal. 189.

———Ss. 32 (3) and 18—*Statement against interest.*

The statement of the vendor in a sale-deed as to the ownership of a land included as a boundary of the landlord is relevant under S. 32 (3) as a statement against interest and his evidence against the vendee and strangers. But such a statement cannot be proved against the vendee as an admission under S. 18. (*Chatterjee and Newbould*, JJ.) KANGALI MOLLA *v.* BENI MADHAB BISWAS. 34 I.C. 534.

———S. 32 (3)—*Statements against interest—Cess Act, S. 95—Road-cess return filed by Hindu widow—Admissibility in evidence in favour of reversioner.*

A Road-cess Return filed by a Hindu widow while she was in possession of the estate, is admissible in evidence under S. 32 (3) in favour of the reversioner and S. 95 of the Cess Act does not bar its admissibility. (*Mookerjee and Beacheroft*, JJ.) LACHMI PROSAD CHOWDHURY *v.* JAG MOHANLAL CHAUBEY. 22 I.C. 594 = 18 C.L.J. 633.

———Ss. 32 (3), (2), 11 and 12—*Statements against interest.*

A vendor describing in a conveyance that the land is limited to certain boundaries makes a statement against his proprietary interest as it admits that the land does not extend over any land outside the boundaries mentioned and is admissible under S. 32, cl. (3). It does not fall under Ss. 11 or 12 or 32, cl 2. (*Mookerjee and Carnduff*, JJ.) ABDULLA *v.* KUNJA BEHARI. 16 C.W.N. 252 = 12 I.C. 149 = 14 C.L.J. 467.

———S. 32 (3) and (7)—*Statements against interest by donor at the time of registration of his will.*

Statements made by the testator at the registration of the will and in judicial proceedings relating to the property comprised in the bequest to a charity are admissible under Ss. 6 and 32 of the Evidence Act to prove a general

EVIDENCE ACT (I of 1872), S. 32—Miscellaneous.

charitable intention on the part of the testator. (*Abdur Rahim and Seshagiri Aiyar*, JJ.) MUTHUKRISHNA NAICKEN *v.* RAMACHANDRA NAICKEN. 47 I.C. 611 = 37 M.L.J. 489.

———S 32, (3)—*Statements against interest—Conditions of admissibility.*

Under S. 32, the criterion of admissibility of statements against interest made by deceased persons are (1) the deceased must have had personal knowledge of the facts he was stating; (2) the facts stated should have been to the immediate prejudice of the deceased; (3) the statement must have been to the knowledge of the deceased, contrary to his interest; and (4) the interest must be either pecuniary or proprietary. (*Wallis*, C.J. *and Seshgiri Iyer*, J.) RAMANATHAN CHETTY *v.* MURUGAPPA CHETTY. (1916) 1 M.W.N. 208 = 33 I.C. 969 = 3 L.W. 210.

———S, 32, Cl, (3)—*Statement against interest—Admissibility.*

A statement made by a person against his own interest is admissible in evidence under S. 32, cl. (3) of the Evidence Act. (*Sankaran Nair and Ayling*, JJ.) MANDANA MAHALAKSHMAMMA *v.* MANDANA SORAPPA. 11 I.C. 380 = (1911) 1 M.W.N. 868.

———S. 32 (3)—*Statements against interest—Statement not against pecuniary interest.*

A statement by a plaintiff as a witness that her father told her that he had mortgaged the land in suit to the defendant is inadmissible under S. 32. (*Saunders*, A.J.C.) MI NGA MA *v.* NGA TALOK PYU. 29 I.C. 607 = (1915) II U.B.R. 56.

———S. 32 (3)—*Statements against interest—Declaration against title.*

Declarations made by persons in disparagement of title to land, if made whilst in actual possession, are admissible in evidence under S. 32 (3) of the Evidence Act. (*Fawcett and Raymond*, J.Cs.) RAMDAS *v.* AJUDHIADAS. 63 I.C. 686 = 14 S.L.R. 187.

Witness dying during suit.

———S. 32—*Witness dying during trial after examination.*

Where a witness in a suit has been fully examined and cross-examined, S. 32 has no application and if the witness happens to die before the completion of the suit, it is not open to either party to apply for the admission of a statement made by him in a previous suit. (*Chapman and Atkinson*, JJ.) SHAHDEO NARAIN DAS *v.* KUSUM KUMARI. 46 I.C. 929.

Miscellaneous.

———S. 32—*Defamation—Libel—Statement of the deceased.*

The statement of a deceased person, even if true is insufficient to prove the truth of a libel as it lacks the test of cross-examination. A libellous statement of a deceased whose truth

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would have been a complete defence is inadmissible as evidence under this section. (*Scott*, C.J. *and Chandavarkar*, J.) NADIRSAW HORMUSJI SUKHIA *v.* PIROJSAW RATANJI RATNAGAR. 19 I C. 98 = 15 Bom. L R. 130.

——Ss. 32 (5) and 49—*Custom—Proof of.*

When direct evidence of instances of a custom is not available, persons having special means of knowledge are permitted to testify to it either by their knowledge of the practice of the community or their hearsay information from persons having such special means of knowledge under Ss. 32 (5) and 49 of the Evidence Act. (*Stuart and Kanhaiyalal*, A.J.Cs.) IKABAL NARAYAN *v* RAJENDRA NARAIN. 21 O.C. 276 = 48 I.C 767 = 5 O.L.J. 701.

——S. 32 (2) and (5)—*Legitimacy—Proof of.*

The appellant's legitimacy being in question the person who challenged it was entitled to prove the fact that the appellant's deceased mother made a statement on a certain occasion that she was a concubine of the appellant's father and not his wife under S. 32 (2) and (4) (5). (*Piggot*, J.) PARBATI *v.* MAHARAJ SINGH. 10 I.C. 188.

——S. 32—*Independent evidence — Appeal—Objection to admissibility.*

Where the document can be brought under S. 32 of the Evidence Act by proof of the death of the person who prepared it or other facts contemplated by that section, it can be used not only as corroborative but as independent evidence. (*Miller*, C.J. *and Mullick*, J.) CHARITTER RAI *v.* KAILASH BEHARI. 4 P.L.W. 213 = 1918 Pat. 145 = 44 I.C 422 = 3 P.L.J. 303.

——S 33—*Deposition in criminal case—Not to be admitted in civil litigation.*

The record of an admission made in the course of evidence given before a Magistrate by the agent for a party, is not admissible in a subsequent litigation when the deponent is alive and available for examination. (*Lord Shaw.*) RAM PARKASH DAS *v.* ANAND DAS. 43 Cal. 707 = 20 C W N 802 = 14 A.L J 621 = (1916) M.W.N. 406 = 31 M L J 1 = 18 Bom. L R 495 = 3 L.W. 556 = 24 C L J 116 = 20 M L T. 267 = 33 I.C. 533 = 43 I A. 73 (P.C.).

——Ss. 33 and 145—*Legal testimony—Deposition in prior suit when admissible—Use of, to contradict.*

In the absence of proof of the circumstances specified in S. 33 of the Evidence Act, the importing in bulk in a Civil suit of depositions of witnesses recorded in a criminal trial is a serious irregularity. The depositions could not be used to support the evidence the witnesses gave in Civil suit. Nor could they be used to contradict the witnesses without giving them an opportunity to tender their explanation or to clear up the particular points of ambiguity. (*Lord Shaw.*) BAL GANGADHAR TILAK *v.* SRINIVAS PANDIT. 39 Bom. 441 = 13 A.L J 570 = 19 C.W.N. 729 = 17 Bom. L R 527 = 23 C.L J. 1 = 29 M L J. 85 = 18 M.L.T. 1 = (1915) M W N. 484 = 2 L.W. 611 = 29 I.C. 639 = 42 I.A. 135 (P.C.).

EVIDENCE ACT (I of 1872), S. 33.

——S. 33—*Subsequent proceeding—Statement in Civil suit—Admissibility of in criminal case between same parties.*

The deposition of the plaintiff in a prior suit is admissible in the prosecution of the defendant for forgery if the plaintiff is dead at the time of the criminal trial. (*Piggott*, J.) DEBI SINGH *v.* EMPEROR. 52 I.C. 385 = 20 Cr. L J. 625.

——Ss. 33 and 70—*Prior depositions—Ex parte decree.*

A witness was produced who stated that he was the sole surviving attesting witness and he swore that the mortgagor had executed the deed. A decree was passed *ex parte* in favour of the plff. Subsequently the *ex parte* decree was set aside at the instance of the mortgagor's widow. When the *ex parte* decree was set aside the surviving attesting witness too had died. A witness was produced to prove the attesting witness's handwriting. This he failed to prove. Both the Courts below dismissed the suit on the ground that the bond had not been proved. *Held*, that the deposition of the attesting witness was not admissible as there was no opportunity for his cross-examination, and that the registration endorsement was no proof of the admission of the executant as required by S. 70 of the Evidence Act. (*Richards*, C.J. *and Piggott*, J.) RAJ MANGAL MISSER *v.* MATHURA DUBAIN. 38 All. 1 = 30 I.C. 576 = 13 A L J. 881.

——Ss. 33 and 32 (3)—*Statement by co-accused—Death of maker of the statement—Admissibility in evidence.*

On a trial for forgery one of the accused having made a statement before the enquiring Magistrate and died before the trial commenced, the statement was admitted by the Sessions Judge under S. 32, cl. (1) of the Evidence Act. *Held*, that the statement was inadmissible since its maker had already rendered himself liable to criminal prosecution at the time it was made. (*Scott*, C.J. *and Shah*, J.) EMPEROR *v.* KESHAV NARAYAN. 25 Bom. L R. 248.

——S. 33, Proviso 2—*Proceedings under S. 476, Cr. P. Code.*

As the person against whom proceedings have been instituted under S. 476 of the Cr. P. Code, has no right to cross-examine witnesses during that inquiry, the evidence of witness in that enquiry, who is not forthcoming at the trial started on the result of such inquiry, is not admissible under S. 33. (*Batchelor and Shah*, JJ.) BAKIRSHAHEB AMIR SAHEB *v.* EMPEROR. 17 Cr. L.J. 259 = 34 I.C. 269 = 18 Bom. L.R. 285.

EVIDENCE ACT (I of 1872), S. 33.

———S 33—"*Material witness if possible should be produced before Court.*"

The deposition of a material witness, which was relied upon by the Judge in his summing up to the jury, who resided within the jurisdiction and could be procured without unreasonable expense and delay is not to be admitted under S. 33 as justice requires that such a witness should be examined in the presence of the accused. S. 33 must be very strictly construed. (*Beaman and Macleod, JJ.*) LAXMAN TOTARAM *v.* EMPEROR.
16 Cr. L J. 754=31 I C 384=
17 Bom. L.R. 590.

———S. 33—*Evidence—Persons not parties to proceedings—Inadmissibility.*

A Court has no jurisdiction to decide a matter on evidence recorded in another proceeding to which the applicant was not a party. (*Holmwood and Mullick, JJ.*) KRISTO KUMAR DAS *v.* GIRISH CHENDRA PODDAR.
27 I.C. 704.

———S 33—*Cannot be found.*

A mere statement of a police officer that a witness is a man of another district and cannot be found is not a sufficient ground for the reception of evidence under S 33. (*Woodroffe and Mookerji, JJ.*) EMPEROR *v.* KANGAL.
16 Cr. L.J. 713=28 I.C. 161=41 C. 611.

———S. 33—*Deposition in registration inquiry—If and when admissible.*

Where witnesses examined and cross-examined on solemn affirmation in a registration enquiry under S. 74 of the Registration Act, are dead, their depositions will be admissible in evidence under S. 33 of the Evidence Act in a subsequent suit. (*Sharfuddin and Richardson, JJ.*) JEKALI SHEIKH *v.* TAIBANESSA BIBI. 20 I.C. 631=18 C.W.N. 605.

———S. 33—*Approver—Cross-examination—Sessions trial.*

At a Sessions enquiry an approver was examined in chief but the accused were not asked to, then and there, to cross-examine him and did not in fact cross-examine and he died before trial in the Court of Sessions. *Held*, that it was doubtful whether his evidence was admissible under S 33 and that in any case its value was small. (*Holmwood and Imam. JJ.*) IBRAHIM *v.* EMPEROR, 14 Cr. L J 70=
18 I.C. 408=17 C.W.N. 280.

———S. 33—*Depositions of witnesses.*

Deposition of witnesses in previous proceedings between the parties can be admitted in their entirety provided the requirements of S. 33 of the Act are fulfilled. (*Mookerjee and Carnduff, JJ.*) IMAM BANDI *v.* MATA SUDAI.
18 I.C. 678=15 C L J 621.

———S. 33—*Deposition in prior case—Witnesses dead.*

Quære.—Whether depositions of witnesses, who are dead, in an old case bearing on a question of custom can be given in evidence in a later case? (*Abdul Raoof and Campbell, JJ.*) RAM NARAIN *v.* MT. HAR NARINJAN KUAR.
4 Lah. 297=1924 Lah. 116.

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———S. 33—*Statement of living person in previous judicial proceeding—Admissibility*

A conviction based on the statements of living witnesses on a prior trial is unsustainable. (*Broadway, J.*) MAHOMED KHAN *v.* MUSSAMMAT FATTAN. 18 P L R. 1919.

———Ss. 33 and 165—*Depositions of witnesses in prior suit—Admissibility by consent.*

If the parties to a suit agree, the evidence given in a previous judicial proceeding between them is admissible even in a case in which the conditions prescribed by S. 33 of the Act do not exist. (*Wallis, C.J., Coutts Trotter and Krishnan, JJ.*) JAINAB BIBI SAHEB *v.* HYDERALLY SAHEB. 38 M L J 532=
23 M.L.T. 28=(1920) M W N 380=
12 L W 64 56 I C 937=
43 Mad. 609 (F B.).

———S. 33—*Enquiry before Sub-Registrar—Deposition of witnesses—Admissibility of.*

The deposition of witnesses (since deceased) made at an enquiry held by a Sub-Registrar under S. 41, cl. (2) of the Registration Act regarding the genuineness of a will are admissible in evidence in a subsequent suit between the same parties raising a question as to the genuineness of the will, provided the witnesses are dead and the parties had an opportunity of cross-examining them at the enquiry before the Sub-Registrar. The "first proceeding" referred to in S. 33 of the Evidence Act need not be a judicial proceeding. (*Wallis, C J. and Seshagiri Aiyar, JJ.*) LANKA LAKSHMANNA *v.* LANKA VARDHANAMMA. 42 M. 103=
33 M L.J. 657=(1918) M W N. 918=
49 I.C. 633=9 L.W. 98.

———Ss. 33 and 165—*Evidence before Sub-Registrar—Admissibility by consent.*

Evidence recorded in prior proceedings cannot be treated as such in subsequent judicial proceedings by consent of parties unless the case falls under S. 33. A judgment based on such evidence is void. (38 M 160, Diss. from. (*Ayling and Seshagiri Iyer, JJ.*) PONNUSAWMI PILLAI *v.* SINGARAM PILLAI.
41 M. 731=31 M.L.J. 525=46 I C. 849=
(1918) M W N 768.
[Overruled by 56 I.C. 957=43 Mad. 609.]

———S. 33—*Interrogatories—Answers.*

Answers to interrogations may be admitted under S. 33 of the Evidence Act where cross interrogatories have been administered to the person making the interrogatories as such interrogatories satisfy the requirement that the opposite parties have the "right and opportunity to cross-examine." (*Ayling and Seshagiri Aiyar, JJ.*) NARAYANA BHARATIGAL *v.* ITTULI AMMA. 39 I.C. 893.

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——S. 33—*Evidence taken before a person was added as party to suit—Objection to admissibility, if can be taken in second appeal.*

A defendant was newly added during the course of a trial by direction of Court. He raised no objection to the evidence taken at a previous stage of the proceedings going on record nor desired that it should be reheard; his interests however were fully represented by another defendant and he was fully cognisant of the steps taken by the former to prove their common case. On appeal by both of them jointly against the judgment of the trial Court and the objection as to the admissibility of the evidence against the new defendant, *held*, that the objection should be disallowed and that S. 33 of the Evidence Act did not apply. (*Napier and Srinivasa Iyengar*, JJ.) RANGASWAMY NAIDU *v* SUNDARARAJULU NAIDU.
35 I.C. 52 = 31 M.L.J. 472.

——S. 33—*Deposition in prior suit—When admissible.*

Depositions of deceased witness in a prior litigation are admissible under S. 33 only where not only the questions in issue are substantially the same in the two proceedings but the proceedings have been between the same parties or their representatives in interest. 28 M.L.J. 669, Dist. (*Abdur Rahim and Phillips*, JJ.) RAM BHUSHAN *v.* VIDYAVARDI. 34 I.C. 875.

——Ss. 33 and 58—*Duty of Court while admitting statement of absent witness—Statement of public prosecutor—Consent of accused.*

Under S. 33 of the Act it is the duty of the Court to satisfy itself that the presence of the witness cannot be obtained without an amount of delay or expense which it considers unreasonable before the statement of the witness in a previous judicial proceeding can be admitted. The mere statement of the public prosecutor to the effect is not sufficient. There must be independent evidence, 2 A. 646; 3 M. 48; 41 C. 601; 5 C. 958, Foll. *Prima facie* the consent of the accused or his counsel is presumptive evidence of the absence of prejudice. (*Spencer and Seshagiri Iyer*, JJ.) ANNAVI MUTHURIYAN *v.* EMPEROR. 28 M L J. 329 = 17 M.L.T. 214 = (1915) M W.N. 229 = 16 Cr.L J. 294 = 28 I.C. 518 = 39 M. 449.

——S. 33—*Former depositor—Suit not between the same parties.*

Evidence recorded in one suit can, by consent of party to another suit, be rendered admissible as evidence in another suit although the former suit was not between the same parties. (*Oldfield and Tyabji*, JJ.) KRISHNA REDDY *v.* SUNDARA REDDY.
26 I.C. 381 = (1914) M.W.N. 931.

——S. 33, Proviso 1—*Representative—Meaning—Deposition in previous litigation—When admissible.*

Where the interests are identical and the object of the litigator is to advance a common claim, depositions in a previous proceedings are admissible in a subsequent one, even against

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persons not parties to the previous suit. "Representatives in interest means persons having the same interest in the subject-matter of the suit. It includes all persons whose rights are litigated *bona fide* by a person virtually on behalf of a class though they themselves are not co-nominees on the record. 23 W.R. 42; 91 Eng. Rep. 1387. (*Pyke v. Crouch*), Foll. (*Ayling and Seshagiri Iyer*, JJ.) PATINNHARKURU *v.* RAMAN VARMA.
24 I.C. 519 = 28 M.L J. 669.

——S. 33—*Conditions in section must be complied with before admissibility.*

The evidence of a witness recorded in one case, cannot be admitted as evidence in another case unless the requirements of the S. 33 are complied with. (*Kanhiyalal*, J C.) DWARKA SINGH *v.* EMPEROR. 25 O C. 142 = 24 Cr. L J. 823 = 1923 Oudh. 234.

——S. 33—*Conditions before admitting evidence.*

Per *May-Oung*, J.—The power given by S. 33, Evidence Act, requires to be exercised with great care and the Court must insist on strict proof before holding that the requisite conditions have been satisfied. The Court must also in the judgment or preferably in a separate order, record the reasons for doing so Per *Lentaigne*, J.—It is a far preferable and safer precaution that the Court should record its reasons for holding that the necessary conditions of S. 33 have been complied with, before such deposition is admitted into evidence. The section pre-supposes a consideration of the grounds prior to the admission of the evidence and if the reasons too are recorded prior to the admission, the order would constitute a more convincing proof of the considered adequacy of the grounds than a passage in the judgment subsequently written which may easily assume the appearance of a subsequent statement of excuses for a previous ill-considered action. (*May Oung and Lentaigne*, JJ.) NGA NYO *v.* EMPEROR. 1 Rang. 512 = 76 I C. 817 = 2 Bur. L J. 205.

——S. 33—*Subsequent proceedings—Criminal trial—Admissibility of evidence in prior trial.*

Evidence taken in trial for dacoity is not admissible in a trial under the Arms Act. (*Twomey*, J.) NGA THA KU *v.* EMPEROR.
17 Cr. L.J. 512 = 36 I C 480 = 10 Bur. L.T. 121.

——S. 33—*Representative, who is.*

A purchaser of equity of redemption is a representative in interest of the mortgagor for the purpose of S.33. (*Hartnoll and Ormond*, JJ.) MA SHWE LA *v.* MY KYIN. 26 I.C. 111 = 8 Bur. L.T. 101

——S. 34—*Books of account—Entries in—Value of.*

Books of account are important pieces of evidence and if an entry therein is proved to have been made in the ordinary course of

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business it is material corroboration of the statement of witnesses. (*Fletcher and Walmsley*, JJ.) LAL MOHAN SAHA *v.* TAZIMADDIN. 49 I.C. 756

———S 34—*Thak map—Entry — Sixty years old—If admissible.*

An entry in thak map made about 60 years ago is admissible in evidence. (*Rampini*, A.C.J. *and Ryves*, J.) TARAKISHORI CHAOUDHARI *v.* NABIN CHANDRA KARMOKAR. 30 I.C. 63 = 21 C.L.J. 637.

———Ss. 34, 9 and 11—*Absence of—Entry in account book—Relevancy of.*

The absence of an entry in a book of accounts is a relevant fact under Ss. 9 and 11 of the Act, and not under S. 34 to prove the alleged payment, but the weight to be given to such absence depends upon the circumstances of each case. (*Mookerjee and Beachcroft*, JJ.) GANGARAM AGARWALA *v.* LACHURAM KISANDAYAL. 28 I.C. 705 = 19 C.W.N. 611.

———S. 34—*Entries in books of account—Value of—How to be proved.*

Where reliance is placed upon books of account it has to be proved that they were regularly kept in the course of business and the entries themselves have to be proved and mere assertions that this or that page was written by a particular writer will not suffice. (*Mookerji and Carnduff*, JJ.) IMANBANDI *v.* MATASUDDI. 13 I.C. 678 = 15 C.L.J. 621.

———S. 34—*Entries—Evidence of past transaction.*

In a suit for the recovery of Rs. 53-12 on the allegations that the defendants had irrigated their fields from the plaintiff's well and were liable to pay at the rate of Rs. 4 per bigha according to an agreement arrived at between the parties. *Held* that the *bahi* entries in plaintiff's *bahi* showing that the defendants had been paying the water rate in previous years at the rate demanded by the plaintiffs taken along with the oral evidence produced sufficiently prove the plaintiffs' claim. (*Moti Sagar*, J.) PRABBHU DIYAL *v.* RAM CHANDER. 1923 Lah. 595 1).

———S. 34—*Mere production, not sufficient*

Mere production of books of accounts without proof is not sufficient to charge a defendant with liability although it may have been shown that they had been regularly kept in the course of business. 18 I.C. 679 and 22 I.C. 403, Fol. (*Abdul Raoof and Harrison*, JJ.) ABDUL HAQ *v.* THE FIRM SHIVJI RAMKHEM CHAND. 1922 Lah. 338.

———Ss. 34 and 32 (2)—*Account book entries—Corroboration.*

Entries in account books which are relevant only under S. 34 are alone insufficient to charge a person with liability without evidence in corroboration of the entries. Where the entries are, however relevant under S. 32 (2) they do not require, corroboration. (*Shadi Lal*, C.J.) RANI *v.* THE FIRM BAHADUR MAL BHUTI MAL. 63 I.C. 946.

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———S. 34—*Admissibility of entries in the face of admission of liabilities by defendant—Not material.*

The admissibility or otherwise of the entries does not avail when the defendant admits the debt contracted, to which the entry refers. (*Shah Din and Rossignol*, JJ.) FAZE AHMED *v.* JIWAN MAL. 31 I.C. 800 = 158 P.W.R. 1915.

———S. 34—*Entry in account books—Value of.*

A mere entry in an account book without something more is insufficient to charge a person with liability. (*Johnstone and Shadi Lal*, JJ.) ABDUL ALI *v.* PURAN MAL. 82 P.R. 1914 = 25 I.C. 860 = 277 P.L.R. 1914.

———Ss. 34 and 114—*Books of accounts tampered with—Presumption.*

When it is found that the account books have been tampered with deliberately, the owners of the books will be very strongly presumed to have fabricated the accounts. (*Rattigan and Beadon*, JJ.) POKHAR DAS *v.* UTTAM CHAND. 43 P.W.R. 1914 = 22 I.C. 530 = 77 P.L.R. 1915.

———S. 34—*Entry in book of account—Evidence necessary of proof—Nature of.*

As far as possible it is necessary that independent and trustworthy evidence should be let in, in support of entries in books of accounts. A mere statement of the plaintiff is not sufficient for the purpose. (*Rattigan and Beadon*, JJ.) GANGARAM *v.* KAKARAM. 47 P.L.R. 1914 = 22 I.C. 403 = 53 P.W.R. 1914.

———S. 34—*Entries in books of account—Corroboration.*

S. 34 of the Evidence Act only lays down that a plff. cannot obtain a decree by merely proving the existence of certain entries in his book of accounts even though these books are shown to be kept in the regular course of business. He will have to show further by some independent evidence that the entries represent real and honest transactions and that the moneys were paid in accordance with those entries. No particular forms or kind of evidence in addition to the entries is required. Any relevant facts which can be treated as evidence within the meaning of the Evidence Act would be sufficient corroboration of the evidence furnished in the books of accounts, if true. (*Abdur Rahim and Oldfield*, JJ.) M. S. YESUVADIYAN *v.* SUBBA NAICKER. 52 I.C. 705.

———S. 34—*Account book entry in value of—Presumption—Proof.*

It is not the necessary or ordinary effect of a credit entry in an account book in favour of a person that the sum so entered thereby is transferred to him; all that it implies is that he is entitled to the amount from the person in whose

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account the entry occurs. How the former became so entitled has to be proved *aliunde*, the ordinary presumption being that such amount had been paid in by the person to whom it is credited. (*Abdur Rahim*, O.C.J. *and Seshagiri Aiyar*, J.) SABJAN SAHIB *v.* ABDUL AZEEZ SAHIB. **42 I.C. 684.**

——S. 34—*Entries in account books—Admissibility—Objection to.*

Objection to admissibility on the ground that entries were not proved to have been kept in the regular course of business, ought to be taken at the time of the trial where entries in certain books of account are proved to be in the handwriting of a deceased person. (*Abdur Rahim and Phillips*, JJ.) *In re* MADU CHIMNAGI REDDI. **32 I C. 665 = 17 Cr. L J. 73.**

——S. 34—*Books of account—Admissibility—Conditions of.*

An entry to be admissible under S. 34 of the Evidence Act must be in a book of account regularly kept in the course of business which if not admitted must be formally proved. A collection of sheets of paper bound together with the intention that it should be permanent is a " book " but a book containing entries of items of which no account is made at any time is not a book of account. For purposes of admissibility Cash Books, Ledgers, and Day Books are equal though they may differ in the weight to be given to each. (*Stanyon*, A. J. C.) MUKUNDRAM *v.* DAYARAM. **23 I C. 898 = 10 N.L.R. 44.**

——S. 34—*Accounts*—Lekha Bahi—*Entries in—Evidentiary value of.*

In the absence of corroborative evidence no reliance can be placed on the entries of oral loans appearing in a *Lekha bahi*. The account itself is not one kept in the ordinary course of business from day to day. (*Stuart and Kanhaiya Lal*, A.J.Cs.) LAL BAHADUR *v.* ZALIM SINGH. **27 I.C. 881 = 2 O,L J. 1.**

——S. 34—*Account books not written from day to day—Admissibility.*

Where accounts are originally written in wrong slips of paper and after an interval are entered in regular books, the latter cannot be rejected in evidence on the mere ground that the entries in them were not made regularly from day to day. (*Chamier*, J. C.) MANGLI PRASAD *v.* MANDIR DAS. **11 I.C. 95.**

——S. 34—*Copy of account book—Admissibility of.*

An account book, though a copy of another account book, will be admissible in evidence if it is itself copied and kept in the ordinary course of business. 27 C. 118 ; 4 B, 576, Foll. (*Maung Kin*, J.) MAUNG SIL KON *v.* MA TU YA. **42 I.C. 117.**

——S. 34—*Books "regularly kept in the course of business"—Meaning of.*

In order that books may be regularly kept in the course of business they must be kept in accordance with a uniform practice in the current routine of business of the person to whom they belong. The particular method of keeping the books may affect their value as evidence. (*Pratt*, J.C. *and Crouch*, A. J. C.) RAMCHANDRA *v.* EMPEROR. **14 Cr. L J. 262 = 19 I C. 534 = 6 S.L.R. 195.**

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See also EVIDENCE ACT, S. 74.

——S. 35—Wajib-ul-arz—*Khewat register—Entries in—Evidentiary value of.*

Entries in the Khewat register of a village and the *wajib-ul-arz* are evidence of facts stated therein and their importance may vary with circumstances. They are not by themselves conclusive evidence of the facts recorded. It may turn out that they are in accordance with the general bulk of the evidence in the case; they may supply gaps in it; and they may in short, form a not unimportant part of the testimony in case. They should not however be given any greater weight. (*Lord Shaw.*) NAGESHAR *v.* GANESHA. **42 All. 368 = 7 O.L J. 48 = 2 U P.L R. (P C.) 37 = M.L J. 521 = 23 O.C. 1 = 18 A.L.J. 532 = 22 Bom L.R. 596 = 56 I C 306 = 28 M.L.T. 5. (P.C.)**

[On appeal from 36 I.C. 780 = 3 O.L.J. 484.]

——S 35—*Inam Register—Entries in—Value of—Tenure of land.*

The preparation of the Inam Register (1864) was a great Act of state and the result of elaborate inquiries and though the statements as to the character of tenure set forth in the Register cannot displace actual and authentic evidence in individual cases, they are in the absence of such evidence, very important. (*Lord Shaw.*) ARUNACHALAM CHETTI *v.* VENKATACHALAPATI GURUSWAMIGAL. **43 Mad. 253 = 24 C W.N. 249 = 37 M L J. 460 = 26 M L T. 479 = (1919) M.W.N. 850 = 10 L W. 642 = 17 A.L.J. 1057 = 46 I A 204 = 53 I.C. 788 = 22 Bom. L.R. 457 (P C.)**

[Reversing 33 I.C. 216 = (1915) M.W N 650.]

——S. 35—*Register of Minhaidari Villages.*

A register of Minhaidari villages being an official document, in the absence of anything to show that any particular part of it was in excess of the official duty by reason of which it came into existence and that in consequence that part being not admissible, is admissible in evidence under S. 35 of the Evidence Act. (*Lord Parker*). RAI KISHORE DEO BAHADUR *v.* BENI MAHTO. **22 C.W N 439 = (1918) M.W.N. 305 = 23 M L T. 382 = 20 Bom L R 712 = 28 C L J. 1 = 47 I.C. 1 = 12 Bur. L.T 88 (P.C.),**

——S. 35—*Govt. Records—Dispute as to ownership of land.*

The plffs. claimed a large tract of land formerly under the river Ganges as forming part of the permanently-settled Zemindari.

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Three sets of documents were relied on, *viz.*, firstly, a plan of survey conducted by Major Rennel between the years 1764 and 1773; secondly the bakikhat chowhuddibandi (boundary) papers which were returns submitted to the Government in a Government form in pursuance of Govt. request for the year 1799 and made by the owners of the zemindari and sent in to the Government; thirdly the Govt. Survey map made in 1859. *Held*, that they were all admissible in evidence as they were in the custody and the possession of the Government, by whom they were carefully kept and certainly regarded as documents of great importance, that as between the zemindars and Govt. they must be accepted as *prima facie* accurate and that the evidence established the plff.'s claim except that the bed of the river was the property of the Government. (*Lord Buckmaster*). HARADAS ACHARYA CHAUDHURI *v.* THE SECRETARY OF STATE FOR INDIA. 26 C.L.J. 590 = (1918) M.W.N. 28 = 43 I.C. 361 = 22 M.L.T. 488 = 20 Bom. L.R. 49 (P.C.).

——S. 35—Riwaj-i-am — *Entries in—Value of.*

The *Riwaj-i-am* of a district is a public record prepared by a public officer in discharge of his duties and under Government rules and is clearly admissible to prove the facts stated therein. The *Riwaj-i-am*, though subject to rebuttal is strong evidence of the custom recited. (*Mr. Ameer Ali*). BEG *v.* ALLAH DITTA. 44 Cal. 749 = 12 P.W.R. 1917 = 21 M.L.T. 310 = 32 M.L.J. 515 = 19 Bom. L.R. 388 = 45 P.R. 1917 = 18 A.L.J. 525 = 21 C.W.N. 842 = 26 C.L.J. 175 = 38 I.C. 364 = 44 I.A. 69 (P.C.). [Reversing 48 P.R. 1909 = 122 P.L.R. 1909 = 2 I.C. 79 = 72 P.W.R. 1909.]

——S. 35—*Mahalwar register.*

Copies of entries in *Mahalwar* Register kept under S. 4 of Act VII of 1876 can be admitted in evidence but mere signature of the Supdt. of Survey on a corner does not make the document one kept by him. (*Lord Shaw*). MUTSADDI MAIN *v.* MAHOMED IDRIS. 34 I.C. 283 = 19 C.W.N. 764 (P.C.).

——S. 35—Thakbast *proceedings—Proceedings before revenue officers—Value of.*

Though decisions in proceedings before the court of the *Thakbast* Deputy Collector and those under Reg XI of 1819 do not estop the parties to the same extent as those in regular proceedings in courts of law, such determinations are obviously of high authority and when acquiesced in by all the parties interested for a length of time and made the basis of important transactions, should not be disturbed unless upon the clearest proof that they are erroneous. (*Lord Atkinson.*) SURJA KANTA ACHARJYA *v.* SARAT CHANDRA ROY CHOWDHURI. 18 C.W.N. 1281 = 16 M.L.T. 290 = 27 M.L.J. 365 = 1 L.W. 807 = (1915) M.W.N. 757 = 16 Bom. L.R. 925 = 25 I.C. 809 = 20 C.L.J. 563 (P.C.).

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——S. 35—*Death and birth register—Entries in—Admissibility of.*

An entry in the register of birth and deaths kept by a village chaukidar is not admissible under S. 35 after the chaukidar's death when it has not been proved to have been made by the chaukidar himself. (*Lindsay and Gokul Prasad, JJ.*) SHEO BALAK *v.* GAYA PRASAD. 20 A.L.J. 601 = L.R. 3 A. 468 = 1922 All. 510 (1).

——S. 35—*Entries in Khewat.*

Entries in Khewat as to certain persons (defts.) being in possession of certain land as mortgagees which have been attested by those persons amount to an admission by those persons that they are in possession as mortgagees. (*Walsh, J.*). PAKARIA *v.* RANJUTA. 34 I.C. 165.

——S. 35—*Report of Municipal overseer—Admissibility of, in evidence.*

The report of a Municipal overseer as to when the construction of *Chajja* took place is inadmissible in evidence. (*Banerjee, J.*) RAMNATH *v.* MUNICIPAL BOARD OF MUTTRA. 16 Cr. L.J. 78 = 26 I.C. 670 = 12 A.L.J. 740.

——S. 35—*Report by an official of a Native State admissible as evidence.*

In the case of the appointment of a *Mahant* of a temple in a Native State, the report of the Kotwal of the State in regard to the history of the mahantship of the temple is a public record and as such admissible in evidence. (*Richards, C.J. and Banerjee, J.*) BALDEO DAS *v.* GOBIND DAS. 36 All. 161 = 28 I.C. 18 = 12 A.L.J. 179.

——S. 35—*Municipal register—Entries in—Proof of time of death.*

To prove time of death of a person, entries in the municipal register are inadmissible if not in the handwriting of the witness producing it and when he cannot say who wrote or checked the entries or left the register. 10 I.C. 713, referred to. (*Rivers and Lyle, JJ.*) JIWAN BAKSH *v.* KHAN BAHADUR KHAN. 19 I.C. 528.

——S. 35—*Settlement records—Entries in.*

There is a presumption until the contrary is proved that the entries in a settlement record are correct. (*Rafique and Piggott, JJ.*) HABIBULLAH KHAN *v.* LALTA PRASAD 34 All. 612 = 17 I.C. 95 = 10 A.L.J. 190.

——S. 35—*Patwari papers—Presumption as to correctness.*

There may be a presumption that what is entered in the patwari's papers is correct but that presumption can be rebutted by evidence called in defence. (*Tudball, J.*) KINO JATI *v.* BIRJ NANDAN LAL. 10 I.C. 280.

——S. 35—*Registering officer's endorsement—Value of.*

The registering officer's endorsement on a registered document is evidence, though not

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conclusive, of the truth of the facts set forth therein. (*Beaman and Hayward*, JJ,) ANAND BAI BHASKAR NILKANTH *v.* NARAIN DHONDE DEV TATTOO. 27 I.C. 478= 17 Bom. L.R. 49.

——S. 35 —*Land records—Entry—Effect of.*

The fact that a man's name appears in the Revenue records is not conclusive evidence either of the title or possession. (*Scott*, C.J. *and Rao*, J.) KASHIRAM *v.* RAJARAM. 35 Bom. 487=12 I.C. 356= 13 Bom. L.R. 879.

——S. 35 —*Partition papers—Value of.*

Much weight cannot be attached to a partition paper in the absence of detailed information as to the history of the document, when it was prepared, by whom, in whose presence, and for what purpose. (*Mookerjee and Chotzner*, JJ.) TARA KUMAR GHOSE *v.* KUMAR ARUN CHANDRA SINGH. 1923 Cal, 261.

—— S. 35—*Certificate of guardianship—Age of minor—Dispute as to—Recital as to date of birth.*

A certificate of guardianship is neither a book nor a register nor a record kept by an officer in accordance with any law but is a certificate as it professes to be, of which there is only one record and which is not a public record or register of any kind but is a document issued to a particular person, giving to that particular person and only to him, a kind of particular authority. On these grounds the certificate could not be regarded as evidence of minority under S. 35 of the Evidence Act. 17 C. 849 ; 18 A. 478, referred to. Orders for the appointment and discharge of a guardian could not be received in evidence to prove the date of the birth of the defendant from the recitals contained therein. (*Mookerjee and Chotzner*, JJ.) HARA KUMAR DE *v.* JOGENDRA KRISHNA ROY. 71 I.C. 336= 38 C.L.J. 186.

——S. 35 — *Quinquennial papers — Admissibility of.*

Quinquennial papers prepared by Revenue Authorities under Regn. XLVIII of 1793 are admissible in evidence. (*Mookerjee and Buckland*, JJ.) SECY. OF STATE FOR INDIA *v.* WAZEDALI. 65 I.C. 866=34 C.L J. 141.

——S. 35—*Survey maps—Thak maps—Presumption—Rebuttal.*

There is a *prima facie* presumption in favour of the accuracy of thak and survey maps and it is for the party who impugns their accuracy to prove his case. Such a map be shown to be incorrect by the admission of parties or adjudication by a Court or by evidence intrinsic or extrinsic to the map in question. (*Woodroffe and Cuming*, JJ.) TARAMONI CHAUDHURANI *v.* GOPAL DAS CHAUDHURY. 65 I.C. 182.

——S. 35—*Survey Khatian—Road cess returns—Evidentiary value of.*

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A cadastral survey Katian must be taken to be correct unless there is evidence to the contrary. Road cess returns filed by a landlord are no evidence against the tenants. (*Chaudhuri and Cuming*, JJ.) MAHAMAD GURAN CHOUKIDAR *v.* BASARAT ALI. 55 I.C. 645.

——S. 35 —*Settlement Khatian—Entries in.*

Entries in the Settlement Khatian afford *prima facie* evidence by the truth of the statements. (*Mookerjee and Carnduff*, JJ.) AZMAT *v.* BISHEN PRAKUR. 52 I C. 650= 29 C.L.J. 607.

——S. 35—*Chittas—Bengal Estates Partition Act—Admissibility in evidence against landlord.*

The map and chitta prepared by the partition Amin under the provisions of S. 54 of the Bengal Estates Partition Act and proved to have been accurately prepared or to have been accepted and acted upon by the landlord can independently of S. 35 of the Evidence Act be admitted in evidence against the landlord for the purpose of proving what lands were held by what tenants. (*Teunon and Cuming*, JJ.) DINANATH CHANDA *v.* NAWABALI. 49 I.C. 985.

——S. 35—*Pergannh register—Konungo Register—Thak Map and statement—Admissibility of.*

The Perganah and Konungo Registers are not punctually kept and are not admissible in evidence to prove an omission of an entry therein as to *lekheraj*. The konungo account and the General and Mauzawar Registers being intended to facilitate the collection of the Government dues, there was no authority to enter therein *lekheraj* not the subject-matter of resumption proceedings. The Thak officers not being empowered to measure and record lekherajas of less than 50 bighas in area, the omission of lekherajas in the Thak statement is not of any probative value. (*Mookerjee and Walmsley*, JJ.) BIPRA DAS PAL CHOWDHURY *v.* MANORAMA DEBI. 45 Cal. 574= 47 I.C. 49=22 C.W.N. 396.

——S. 35 —*Partition proceedings— Regulation XIX of 1814.*

Certified copies of the papers in the Collectorate which *prima facie* appear to be the record of a partition made in a proceeding under Regulation XIX of 1814 between the predecessor of the parties to a suit are good and admissible in evidence apart from S. 35 of the Evidence Act. (*Richardson and Walmsley*, JJ.) KHETRA NATH MANDAL *v.* MAHOMED ALLA RAKHA. 45 I.C. 921=23 C.W.N. 48.

—— S 35—*Draft record-of-rights—Entry in.*

An entry in a draft record-of-rights that a certain tank is known by a certain name is not

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admissible in evidence. (*Mookerjee and Beachcroft, JJ.*) AMBAR ALI *v.* LUTFE ALI. 45 Cal. 159=21 C.W.N. 996=41 I C 116=25 C.L.J. 619.

——S. 35—*District Gazetteer—Duties of Choukidars.*

The Bengal Dist. Gazetteer may be referred to by the Court for the purpose of seeing whether the duties of Simanadars are the same as the duties of Chaukidars (mentioned in Sch. I of Act VI of 1870 B.C.)(*Jenkins, C.J. and Holmwood, J.*) LALU DOME *v.* BEJOYCHAND. 43 Cal. 227=33 I.C. 553=20 C.W.N. 404.

——Ss. 35 and 13—*Chittas—Assessment proceedings—When admissible.*

Proceedings taken for assessment of rent upon rent free lands, the petition originating the proceedings, reports of the Collector and orders of the Board of Revenue, altogether furnish a valuable evidence as to the recognition by the Govt. of the right of the plff.'s predecessors in title to hold the land rent-free. Chittas prepared by Govt. for explaining and as part of proceedings taken for assessment of rent upon lands said to be improperly held rent-free are admiseible in evidence when coupled with resumption proceedings. An entry in a public register kept for the public benefit under the sanction of official duty is relevant under S. 35 whether the clerk making the entry had personal knowledge or not or whether the register was a copy of a previous register which had become untidy. (*Chatterjee and Chopman, JJ.*) WILLIAM GRAHAM *v.* PHANINDRA NATH MITTER. 31 I.C. 41=19 C.W.N. 1038.

——S. 35—*Postal endorsements—Proof.*

An endoresement on the cover of a letter by a postal peon is at best a record of a statement of the peon and must be proved by calling him as a witness unless the statement becomes admissible under S. 32 (2) or S. 33. Such an endorsement is not admissible even as a statement made by a public officer in the discharge of his duty. (*Mookerjee and Walmsley, JJ.*) GOBINDA CHANDRA SAHA *v.* DWARAKA NATH PATTA. 20 C.L.J. 455=26 I C. 962=19 C.W.N. 489.

——S 35—*Hunter's Statistical Survey—Private rights.*

Reference cannot be legitimately made to statements in Hunter's statistical account of Bengal for establishing private rights. (*Jenkins, C J., Harrington and Mookerjee, JJ.*) AHMADI BEGUM *v.* MAHASY TARAKANAT GHOSE. 17 C.W.N. 1173=21 I C. 233=18 C L.J. 399

——S. 35—"*Butwara Khasra*"—*Bengal Estates Partition Act (VIII B.C. of 1876).*

A "Butwara Khasra" prepared under Act VIII of 1876 is not a record within S. 35 of the Evidence Act and cannot be relied upon for rebutting the presumption raised by the

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"Record of Rights". (*Jenkins, C J. and Chatterjee, J.*) NANDALAL PATHAK *v.* CHANURPAT DAS. 17 C L.J. 462=16 I C 143=17 C W.N 779.

——S 35—*Revenue papers—Admissibility.*

In order that rent collection papers produced by an officer of the landlord who deposed that they were in his custody, may be admissible. Evidence must be let in as to who wrote the papers and who collected the rents. 10 C.L.R. 545, Foll. 22 W.R. 549, Diss (*Mookerjee and Beachcroft, JJ.*). AKTOWLI *v.* TARAK NATH GHOSH. 16 C.L.J. 328=17 I.C 266=17 C.W.N. 774.

——S. 35—*Settlement records.*

The Settlement Records prepared under Reg. VII of 1882 are relevant under S. 35. (*Chatterjee and Teunon, JJ.*) RAGHUNANDAN *v.* BIBHUTI. 12 I.C. 147=39 Cal. 304.

——S. 35—*School Register, value of.*

Certain entries from a school register at Bikaner which were not proved, are not sufficient to show that the defendant was actually at Bikaner at the time of the entries. (*Moti Sagar, J.*) MT. CHANDO *v.* SRI RAM. 1923 Lah. 607.

——S. 35—*Letter of Govt. of India.*

A letter of the Govt. of India in which Anaesthesine is included in the list of recognised preparations of cocaine cannot be admitted in evidence since it is a well known fact that Anaesthesine is not a product of cocaine. (*Scott-Smith and Le-Rossignol, JJ.*) BISHANDASS *v.* EMPEROR. 18 Cr. L.J. 934=42 I C 166=32 P.W.R. 1917 (Cr.).

——S. 35—*Settlement records—Entry—Value of.*

An entry, in a previous settlement, if changed by another in a latter settlement without there being any reason or record for such a change, makes the latter entry unauthorised without any evidentiary value. (*Johnstone and Shah Din, JJ.*) BUDHA KHAN *v.* MOHAMMAD. 31 I C 287=133 P.W R. 1915.

——S. 35—*Settlement Records and Jamabandis—Correctness of.*

In the absence of satisfactory evidence to the contrary, entries in the Settlement Records and the annual *jamabandis* must be accepted as correct. (*Shadi Lal, J.*). MILKHI MAL *v.* GULAB SINGH. 79 P W.R. 1915=29 I C. 893=164 P.L.R. 1915.

——S. 35—*Report of Tahsildar—When evidence.*

The report of the Tahsildar when acting as a commissary to the Court is reliable evidence. (*Le Rossignol, J.*) GIRDHARI LAL *v.* ABDUL RAHIMAN. 39 P L R. 1915=28 I.C. 87=226 P.W.R. 1915.

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——— Ss. 35 and 74—*Revenue Records and* Jamabandis—*Entries in—Value of.*

Where Revenue Records and *Jamabandis* were in favour of the deft.'s and plff.'s predecessor in title, agreed to the mutation in deft.'s name. *Held*, that title having passed to the defts. plff.'s possession was only permissive and in the capacity of co-sharers could not ripen into ownership. (*Johnstone and Shadi Lal, JJ.*) THIRAJ *v* KASIM.
48 P.W.R. 1915=26 I.C. 481=
124 P.L.R. 1915.

——— S. 35—*Revenue Records—Entry in—Proof of title.*

The proceedings of a Revenue Court demarcating the boundaries of villages are not the only tests of title to any land in dispute included in the village. (*Shah Din*, J.) AMAR SINGH *v.* BHOLA. 26 I C. 341=
240 P.L.R. 1914.

——— S. 35—*Settlement—Records of recent settlements—Evidentiary value.*

The records of the recent settlements can be relied on more than those of the old ones. (*Johnstone and Chevis*, JJ.) ANWAR ALI *v.* RAM SARUP. 180 P.L R. 1914=
24 I.C. 903=81 P.W.R. 1914.

———S. 35—*Register of deaths — Chaukidar's Death and Birth Registers, entries in—Value of.*

Entries in Chaukidar's Death and Birth Registers are valuable evidence of the facts mentioned therein. (*Rattigan and Beadon*, JJ.) UTTAM DAS *v.* CHANAN DAS. 61 P.R. 1913=
283 P.L R. 1913=20 I C. 462=
200 P.W.R. 1913.

——— S. 35—*Mutation Register—Entries in—Evidence.*

Where a gift of land is followed by possession as well as mutation of names in the Revenue Registers, there can be no doubt as to the factum of the gift. (*Chevis*, J.) HYAAT *v.* RAMZAN. 149 P.W.R. 1912=16 I.C. 889=
159 P.L R. 1912.

——— S. 35—*Report made by Tahsildar to Collector in land acquisition case is admissible.*

A report made after local enquiry by a Tahsildar under the orders of the Collector in a land acquisition case is admissible in evidence under S. 35 of the Evidence Act. (*Krishnan and Ramesam*, JJ.) RATHNAM ASARI *v.* SECRETARY OF STATE FOR INDIA.
44 M.L.J. 132=17 L.W. 415=
32 M L T. (H. C.) 279=1923 Mad. 332.

——— Ss. 35, 40 and 44—*Recitals of relevant act in a judgment not* inter partes—*not admissible.*

A recital in a judgment not *inter partes* of a relevant fact is not admissible in evidence under S. 35 of the Evidence Act. The cases on the subject reviewed and discussed. *Quære.*—

EVIDENCE ACT (I of 1872), S 35.

Whether secondary evidence of admissions of parties to a suit or their predecessors in title can be given by reference to extracts from judgment when the admissions are relevant and the originals contained in the admissions are not forthcoming. (*Coutts Trotter and Kumaraswami Sastri*, JJ.) TRIPURANA SEETHAPATI RAO DORA *v.* ROKKAM VENKANNA DORA. 45 Mad 332=
42 M.L J. 324=15 L W. 316=
30 M.L.T. 160=(1922) M.W N. 147=
1922 Mad. 71.

——— Ss. 35 and 48—*Statement of public servant—Recital in public record.*

A recital in public record as to a statement made by a public servant with reference to a particular statement of the grant by the Government may be admitted, under S. 35 of the Evidence Act as proving that the public servant made the statement that he is stated to have made, if the fact that he made such a statement is a relevant fact. But such a recital would not be admissible under S. 48 where a specific right claimed by a particular individual and not a general right is in question. (*Wallis*, C.J. *and Ayling*, J.) SANKARACHARYA SWAMIGAL *v.* MANALI SARAVANA MUDALIAR.
51 I.C. 876.

———S 35—*Registration — Administration of execution by some of the executants.*

Where a document contemplates that four persons should execute it, but only two of them executed it and present it for registration, the document if registered is binding as between them. (*Ayling and Seshagiri Iyer*, JJ.) NATESA IYER *v.* SUBRAMANIA IYER.
23 M.L.T. 307=45 I.C. 535=
(1918) M.W.N. 703.

——— S. 35—*Registers of Deaths and Births—Entries in village Registers—Admissibility.*

When birth and death registers are kept by a Village Official under the directions of the Board of Revenue as agents of Government an entry therein is admissible in evidence under the section. It is not necessary that the public servant should be compellable by legislative enactment to discharge such a duty. 7 W.R. 726, Foll. Entry in such a register is proof of the actual date of death. (*Coutts-Trotter and Seshagiri Iyer*, JJ.) DEVARAPALLI RAMALINGA REDDI *v.* SRIGIRIRAJU KOTAYYA.
41 Mad. 26=22 M L.J 17=33 M L J 60=
(1917) M.W.N. 553=41 I C. 286=
6 L W. 246.

———S 35—*Letter in register of official correspondence—Copy of.*

Under S. 35 copies of letters made in registers of official correspondence kept for reference and record are admissible. (*Wallis*, C J. *and Burn*, J.) KRISHNA THEVAR *v.* RAMASAMI PANDIA. 40 Mad. 871=
(1917) M.W.N. 201=39 I.C. 263=
33 M.L.J. 277.

EVIDENCE ACT (I of 1872), S. 35.

———S 35—*Parwana or grant, transaction of.*

As Ss. 65 and 91 make it clear that when a written grant is lost secondary evidence can be given of it only as defined by law, a translation of parwana or grant forming the enclosure to the report of a public officer is not admissible as secondary evidence of the contents of the grant under any of the Ss. 63, 32 (2) or 35. (*Sadasiva Iyer and Moore*, JJ.) AMBALAVANA PANDARASANNADHI *v.* KUPPACHI AMMAL.
35 I.C. 201=4 L.W. 331.

———S. 35—*Medical certificate—Proof of age.*

An age certificate given by a medical man to a private patient is not public record under S. 35. (*Coutts-Trotter and Srinivasa Iyengar*, JJ.) VENKATA RANGAPPA NAICKEN *v.* SUBBARAYA GOUNDAN. 33 I.C. 142.

———S. 35—*Survey Records, admissibility of.*

Entries of the extents of survey fields made in survey registers are admissible under S. 35 to prove an encroachment though insufficient to prove title to the extent encroached upon. 10 I.C. 652; 33 M. 173; 33 M. 362, Dist. (*Ayling and Tyabji*, JJ.) KALAYI NARAYANA JOGITHAYA *v.* SECRETARY OF STATE.
29 I.C. 154=2 L.W. 413.

——S 35—*Collector's certificate—Value of.*

A certificate issued by the Collector in respect of immoveable property in Madras is only evidence of revenue registry and does not afford any title or security as to ownership. (*White and Oldfield*, JJ.) KUPPAMMAL *v.* GATTIPALLI GOPAUL CHETTY.
27 I.C. 14=1 L.W. 649.

———S. 35—*Report by Tahsildar to Collector—Public Record—Admissibility.*

A report by a Tahsildar to the Collector to the effect that a village Munsif reports that certain charities had not commenced, is inadmissible to prove the fact that the charities had not commenced on a particular date because though a single document may be a public Record under S. 35 of the Act, every statement made by a public servant is not admissible to prove the fact to which it relates. 11 M.L.J. 315; 21 B. 695; 31 A. 457; 1 I A. 209 Dist. 7 M.L.J. 117, Relied upon. (*White*, C.J.) MALLIKARJUNA DUGGET *v* SECRETARY OF STATE. 14 I.C. 401=35 Mad. 21.

———S 35—*Report of process-server.*

Report of a process-server is admissible in evidence to prove the facts reported by him. (*Sundara Iyer and Phillips*, JJ.) ABDUL KHADAR *v.* AJIGAR AHAMAD.
35 Mad 670=22 M.L.J 95=
10 M.L.T 413=12 I C. 679=
(1911) 2 M.W.N. 434.

———S 35—*Administration report.*

An entry of a ward's age in an administration report of Court of Wards is evidence under

EVIDENCE ACT (I of 1872), S. 35.

S. 35 of the Evidence Act. (*Wallis and Krishnaswami Aiyar*, JJ.) ARI CHETTIAR *v.* RAMA REDDIAR. 9 I C. 567=9 M.L T. 214.

———S. 35—*Record of admission made before a court is relevant.*

The statement of a Court that a person admitted the claim of another person in a case pending before it is relevant under S. 35 of the Evidence Act as the statement forms part of the record. (*Ashworth and Simpson*, A.J.C.) THAKUR RUDRA PRATAP NARAIN SINGH *v.* THAKUR NIRMAN PRASAD SINGH.
1923 Oudh 61.

———Ss. 35 and 14—*Confession—Record of, by Magistrate—Voluntary nature of confession.*

Though a magistrate has recorded a certificate at the foot of a confession, it is not conclusive and facts which may lead the court to think that the confession was not voluntary can be proved. (*Kanhaiya Lal and Daniels*, A.J.Cs.) NAR SINGH *v.* EMPEROR
25 O.C. 229=1923 Oudh 302.

———S. 35—Khewat, *entry in*—Prima facie *evidence of title—Rebuttal.*

An entry in the *Khewat* is *prima facie* evidence of title but it might be rebutted by showing that there is no likelihood of there being any and that the mutation obtained was retained. (*Simpson*, A. J. C.) GHULAM MUHAMMAD *v.* SABIT ALI. 1922 Oudh 140.

———S. 35—*Register of deaths and births—Chaukidar's register—Entries in.*

An entry made in a chaukidar's register of births and deaths is not admissible in evidence if it neither purports nor is proved to be signed by the station writer, the register not being one directed to be kept by any law. (*Ashworth*, A.J.C.) MUHAMMAD JAFAR *v.* EMPEROR.
22 O.C. 280=34 I.C 166=21 Cr. L J 22=
6 O.L J. 577.

———S 35—*Endorsement by public servant—Presumption.*

An endorsement on an official record signed by a public servant in the performance of his duties should, in the absence of any evidence to throw doubts upon it, be presumed to be correct. (*Daniels and Lyle*, A.J.Cs.) KESARI KUMAR *v.* RAM RANI. 33 I.C. 723=
6 O.L.J. 431.

———S. 35—*District Gazetteer, if evidence.*

A passage in District Gazetteer describing the lineage of one of the leading families of the district cannot supply the want of a pedigree showing the family and the members of it. (*Lyle and Ashworth*, A.J.Cs.) BALMUKUND *v.* BISHWA NATH SINGH. 32 I C. 351=
6 O.L.J. 337.

——S. 35—*Register of deaths — Police Regulations.*

The register of deaths maintained under Para 367 of the Police regulations is an official register and entries are made in it by a public servant in the discharge of his official duty and

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are admissible under S. 35. (*Daniels*, A.J.C.) ZAIBUNNISSA *v.* HASARATUNNISSA.
1 U.P.L.R. (J.C.) 1=52 I. C. 162=22 O.C. 124.

——S. 35—*Revenue papers—Entries in—Value of.*

Where a person is entered in the revenue papers as an under-proprietor but it appears from other evidence that he does not hold such a status, the entry in the revenue papers is of no avail to him for the purpose of establishing his title as an under-proprietor. (*Lindsay*, J.C.) RAM RUP SINGH *v.* DEBI PERSHAD SINGH.
47 I.C. 754=5 O.L.J. 513.

——S. 35—*Revenue papers—Entries in—Value of.*

Old entries in revenue papers as to the plots held by ordinary tenants and as to the rate of rent payable by them are not by themselves evidence as to the fixing of rent by a competent authority or by action of parties nor do they raise a presumption to that effect. (*Stuart*, J.C.) SARAB JIT SINGH *v.* RAMPUR MATHRA ESTATE. 37 I.C. 27=3 O.L.J. 468.

——S. 35—*Chaukidar's birth and death register.*

A Chaukidar's register of births and deaths is not a public document. No importance can be attached to it in view of S. 35. (*Kanhaiya Lal and Kendall*, A.J.Cs.) BISHESHAR DAYAL *v.* HIRA LAL. 19 O.C. 221=36 I.C. 941=4 O.L.J. 49.

——S. 35—*Revenue register—Entries in—Value of.*

An entry made in a revenue register without any explanation as to how it originated or was brought into existence is, if it is inconsistent with other established facts, not entitled to any weight. A partition officer of the Revenue Court cannot convert private property into *wakf*, by giving it a particular designation. His proceedings are not conclusive as between a party to the partition and strangers. (*Lindsay*, J.C. *and Kanhaiya Lal*, A.J.C.) PARAMESHRI DAS *v.* GIRDARI LAL. 30 I.C. 249=2 O.L.J. 259.

——Ss. 35 and 112—*Entry in Khewat—If relevant to prove legitimacy—Defts. not parties to it.*

An entry in a Khewat founded on a mutation proceeding showing the plffs. to be the reputed sons of a certain person is relevant in proving their legitimacy though the defts. were not parties to such proceeding. (*Lindsay*, J.C.) APARBAL SINGH *v.* NARPAT SINGH.
23 I.C. 972=1 O.L.J. 89.

——S. 35—*Register of deaths.*

An entry of deaths and births in a register which was not kept up by a Public authority or by a public servant is not admissible under S. 35. (*Chamier*, J.C.) SAMPAT *v.* GOWRI SHANKAR. 10 I.C. 713=14 O.C. 68.

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——S. 35—*Survey map—Boundaries shown therein after compromise of parties—Conclusive.*

Where the parties consent to be bound to regard the boundary line as laid by the survey authorities as conclusive, they cannot afterwards question the correctness of the same. (*Das and Adami*, JJ.) BABU RAGHUNATH *v.* MAHARAJA SIR RAMASHWAR. 1922 P. 87.

——Ss. 35, 13—Batwara Khasra *is not a record.*

A *batwara khasra* is not a record within the meaning of S. 35 and an entry made therein the name of a tenant in possession is not admissible in evidence under S. 35 of the Evidence Act, but under S. 13 it can be put in to show the history of the plot in question before the creation of the tenancy. (*Adami*, J.) SADHU SARAN *v.* AMBIKA LAL. 63 I.C. 676.

——S. 35—Hissawari *is not admissible.*

A *hissawari* prepared in consequence of a demand by the Collector under S. 30, Bengal Land Registration Act, is not admissible under S. 35 of the Evidence Act as it is not a public or other official book, register or record. (*Chamier*, C.J. *and Sharfuddin*, J.) TANHA SINGH *v.* BANDHU SINGH. 53 I.C. 8=(1919, Pat. 323.

——S. 35—*Entry in Government register—Value of.*

An entry in a Government register that a certain person is paying revenue under a settlement does not necessarily imply that he has an independent title by virtue of the settlement where he got that property as the heir of a certain person. (*Coutts and Sultan Ahmad*, JJ.) MAHARAJAH KESHO PRASAD SINGH *v.* BABU SHIVA SARAN DAYAL. 1 P.L.T. 602.

——Ss. 35 and 165—*Confidential enquiry—Ex parte proceedings.*

A suit was dismissed by the Judge relying upon a confidential inquiry by an assistant settlement officer at the time of Revised Settlement for ascertaining to whom the holding belonged. *Held*, that the judgment could not be maintained as the proceeding of the confidential inquiry contained an opinion on an *ex parte* investigation inadmissible in evidence under S. 35 and that the Judge must record a finding on the evidence adduced before him. In deciding a suit for possession of a holding the Court must record a finding on the evidence adduced before it but cannot base its judgment on matters not properly admissible in evidence. (*Das*, J.) BALDEO SINGH *v.* SHEORAJ KUERI.
56 I.C. 807=2 U.P.L.R. (P.) 135.

——S. 35—*Report by Court peon in execution proceedings.*

The peon's return in execution proceedings being an official record made by a public servant in the discharge of his official duty, is admissible in evidence. (*Miller*, C.J. *and Jwala Prasad*, J.) HERAMBA NATH BANDOPADHYA *v.* SURENDRA NATH MITRA. 53 I.C. 20=(1919) Pat. 465.

EVIDENCE ACT (I of 1872), S. 35.

———S. 35—"Faid Rewaj Bhaoli"—*Admissibility in evidence.*

Whether or not the "*Faid Rewaj Bhaoli*" is a part of the Record-of-Rights to which a presumption of correctness is attached under S. 103 (*b*) of the Bengal Tenancy Act, it is admissible under S. 35 of the Evidence Act being a public record prepared by the revenue officers as part of the record-of-rights. (*Chamier and Sharfuddin*, JJ.) SHEO PRASAD SINGH *v.* LAL BABU. 39 I.C. 605=1 P.L.W. 617.

———S. 35—*Entry by settlement officer as to custom—Admissibility.*

In making an entry of village customs in the village note the settlement officer is acting as a public servant in the discharge of his official duty and as such the entry is admissible in evidence. (*Chapman and Roe*, JJ.) MANI RAM SINGH *v.* AKHO AHIR. 1 P L W. 544= 39 I.C. 222=(1918) Pat. 36.

———S. 35—*Butwara papers—Admissibility.*

Butwara papers can be admitted in evidence against parties to the Butwara proceedings in order to rebut the presumption raised by record-of-rights. 17 C.W.N. 779, Dist. (*Jwala Prasad*, J.) SRI ANS DAS *v.* JUGAT PAT LAL 38 I C. 205.

———S. 35—*Settlement records*—Jarad Rewaj Bhaoli.

A Jarad Rewaj Bhaoli prepared by a Settlement Officer in discharge of his official duty is admissible under the section. (*Chamier*, C.J. *and Sharfuddin*, J.) TULSI MAHTON *v.* JHANDOO PONDEY. 1 P.L.W 238= 38 I C. 176=2 P.L J. 187.

———S. 35—*Butwara papers—Third parties.*

In the butwara proceedings, the evidence of the Butwara papers is altogether inadmissible against those that are no parties to the proceedings. (*Jwala Prasad*, J.) RUDRA NARAIN SINGH *v.* RAMESHWAR. 37 I C. 829.

———S. 35—*Butwara papers.*

In a suit for enhancement of rent Butwara papers are not evidence against the tenants. (*Chamier*, C.J. *and Sharfuddin*, J.) SAJIWAN MAHTO *v.* GULAB CHAND LAL. 35 I C 678= 1 P L J 409.

———S. 35—*Revenue registers—Extracts from—Admissibility.*

For the purpose of proving the existence of a mortgage extracts from Revenue registers Nos. 1 and 5 and a map showing the party in possession as mortgagees and the claimant as mortgagor, though relevant but are not sufficient by themselves. (*May Oung and Duckworth*, JJ.) KO PO MAUNG *v.* MA MEIN GALE. 1 R. 562= 1924 R. 135

———S 35—*Revenue Register No. VII, entry in—Relevancy of presumption.*

Under S. 35 of the Evidence Act the entry in Revenue Register No. VII is a relevant fact.

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Although such entry in the register recording the alienation does not prove the alienation or the ownership of alienor at the time it was made, yet it does create a presumption that a report on the alienation in the terms recorded was made by the parties to the alienation. (*Pratt*, J.) MAUNG HLAING *v.* MAUNG CHIT SU. 1 R. 135=1923 Rang. 196.

———S. 35—*Assessment rolls—Entries in—Relevancy of.*

Entries in assessment rolls are relevant evidence. (*Duckworth and Pratt*. JJ.) MG. PO LUN *v.* MA E MAI. 1923 Rang. 57.

———Ss. 35 and 65—*Entry in—Register of previous conviction—Admissibility of.*

An entry in a register of previous convictions, where the conviction is relevant, is admissible under S. 35 and can be proved by a certified copy under S. 65 of the Act and upon it the accused might be asked if he admitted the conviction. (*Parlett*. J.) MAUNG THA ZAN *v.* EMPEROR. 42 I.C. 923=19 Cr. L.J. 11.

———S. 35—*Revenue Records—Admissibility of.*

The facts which it is the duty of the Revenue-officer to record, are admissible in evidence under S. 35 of the Act. (*Pratt*, J.C. *and Boyd*, A.J.C.) BIBI SAHIB JADI *v.* MIR MUHAMMAD. 32 I.C. 548=9 S L.R. 113.

———S. 36—*Commissioner's Report—Documents referred to in a statement—Documents not produced—Admissibility of the statement.*

Where a certain map was referred to in the report of the Commissioner but the map was not produced, their Lordships of the Privy Council received the report of the Commissioner as admissible inasmuch as no objection was taken to the report and the Commissioner himself was neither examined nor cross-examined. (*Lord Phillimore*). KUMAR NARESH NARAYAN ROY *v.* SECRETARY OF STATE FOR INDIA. 45 M.L J 444= 50 Cal. 446=(1923) M W.N. 511= 50 I A. 121=33 M L T. (P.C) 161= L.R. 4 (P.C.) 50=24 C W N. 453= 1923 P.C. 1.

———S. 36—Thak *map—Entries in, value of.*

A decree which was awarded to the plff. Zamindar in an action in ejectment and which rested on an entry in the remarks column to the *thakbast* map made during the survey proceedings on an *ex parte* statement of the Zamindar's agent which was immediately contradicted by the defts., could not be sustained. (*Mr. Ameer Ali*.) JAGADINDRA NATH *v.* HEMANTA KUMARI DEBI. 15 C W N. 887= (1911) 2 M.W.N. 101=10 M L.T. 157= 13 Bom. L.R. 806=14 C L.J. 319= 11 I.C. 512=8 A.L J. 1176 (P.C.).

———Ss. 36 and 83—*Maps and plans prepared under authority of Government—Admissibility—Standing by, when amounts to*

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abandonment of one's rights—Government and private owner, difference between.

Maps and plans and statement prepared under the authority of Govt. for a public purpose must be presumed to be accurate under S. 83 and that the statements contained in them are relevant facts under Ss. 35 and 36 of the said Act. When such documents prepared in 1871 show that a certain piece of land belonged to Govt., the onus is on the person who sets up acquisition of title to it to prove it. (*Griffin and Chamier*, JJ.) RAMACHANDAR *v.* ALI MUHAMMAD. **35 All. 197 = 18 I.C. 797 = 11 A L.J. 233.**

——— S. 36 —*Thak or survey maps—Value in evidence.*

The maps are not evidence, strong enough to shift the burden of proof, nor do they raise a strong presumption that the state of things as shown in the maps did actually exist at the time of settlement. The question is one of fact and must be determined on the facts and circumstances of each case. (*Mookerjee and Walmsley*, JJ.) PRAFULLA NATH TAGORE *v.* SECY. OF STATE FOR INDIA. **24 C.W.N. 639 = 57 I.C. 29 = 31 C L J. 320**

———S. 36—Butwara *map at partition proceedings—Admissibility against tenants.*

A *Butwara* map prepared in a partition proceedings between the proprietors of an estate is not admissible against tenants of the estate, if it was prepared after their tenancy was created. But where a commissioner is appointed to make an enquiry with reference to the map and no objection is taken to its admissibility, it is admissible. (*Beachcroft*, J.) BANAMALI PAL *v.* SATISH CHANDRA DUTT. **56 I.C. 138.**

———S. 36—Thak *maps—Survey maps—Admissibility and respective value.*

The rights of property as between two parties cannot be affected by a map drawn for a different purpose not relevant to the subject of the dispute between them. Although the survey officers have at their disposal means of more accurate measurement than the Thak officers, yet no hard and fast rule can be laid down that a survey map is more reliable than a *Thak* map. The true principle is that the map which more clearly agrees with the local land-marks is the one that should be followed. (*Mookerjee and Walmsley*, JJ.) AMRITA SUNDARI *v.* SHERAJUDDIN AHMED. **23 I.C. 156 = 19 C W.N. 565.**

——— S. 36—Thak *and Survey maps—Entries in—Presumption—Rebuttal.*

The presumption of genuineness of *Thak* and Survey maps furnishing valuable evidence of possession and title at the time they were made, is rebuttable. (*Mookerjee and Beachcroft*, JJ.) MOHENDRANATH BISWAS *v.* SHAMSUNNISSA KHATUN. **21 C.L.J. 157 = 27 I.C. 954 = 19 C.W.N. 1280.**

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——— S. 36—Thakbust *map—Value of Thak map.*

In a suit for possession between a proprietor based on a *Thakbust* Map, the Thak Map is unquestionably a correct record of the boundary of a village and estates and where it is relaid with substantial accuracy, it proves plff.'s title. (*Carnduff and Chapman*, JJ.) ASHRAF ALI *v.* MUHAMMAD ALI. **24 I.C. 618.**

———Ss. 36 and 35—Kanungo's *map—Value of.*

In an enquiry before the Collector, where the question arose whether the property was of the owners of certain *Mouzah* or whether it was land which formed part of no settled estate and to which the Govt. was entitled, a map prepared by a *Kanungo* was used. *Held*, that the map did not fall within S. 35 or S 36 of the Evidence Act and was inadmissible. (*Woodroffe and Coxe*, JJ.) TARINI CHARAN SARKAR *v.* FAKARANNISSA CHOWDHURANI. **15 I.C. 459.**

———S. 36—Thak *and Survey maps—Evidentiary value of—State of things at Permanent Settlement.*

An entry in a *Thakbust* map is sufficient evidence to entitle a Court to hold that the disputed lands were really included in the estate at the time of the Permanent Settlement. 15 C.W.N. 706, Foll. 5 C. 212, Expl. 7 C.W.N. 849; 16 C. 18, Rel. (*Carnduff and Chapman*, JJ.) FAZLAR RAHIM *v.* NABENDRA KISHORE ROY. **15 I.C. 841 = 17 C W.N. 151.**

———S. 36—Thak *and Survey maps—Presumption—Existence of state at time of.*

It cannot be presumed as a matter of fact that the state of things described in the *thak* and survey maps existed at the time of Permanent Settlement. (*Mookerjee and Carnduff*, JJ.) SECRETARY OF STATE FOR INDIA *v.* KALIKA PRASAD MOOKERJEE. **14 I.C. 609 = 15 C.L J. 281.**

———S. 36—Thakbust *map—Presumption of correctness.*

Entries in a *thakbust* map are not sufficient for enabling the Court of fact to hold that lands under dispute were really included in an estate at the time of the Permanent Settlement. They may be good evidence as to what the boundary of a particular plot was at the time of the Permanent Settlement. No general rule can be laid down as to the weight to be assigned to a survey map as a piece of evidence. It is the good evidence of possession according to the boundary demarcated thereon and may be taken to have been admitted by those concerned and in each case it must be decided upon the circumstances if it raises a reasonable presumption of title. Revenue survey maps are not decisive and may be shown to be wrong. (*Jwala Prasad and Ross*, JJ.) RAMNANDAN SAHAY *v.* JAIGOVIND PANDEY. **2 P. 839 = 1924 P. 218.**

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———S. 36—Kistwari *maps—Evidentiary value of.*

Kistwari maps (survey maps) are under S. 36 of the Evidence Act, evidence between the parties *quantum valet*. They are primarily evidence of possession, but evidence of possession is always evidence of title. (*Doss and Bucknill*, JJ.) CHAUDHURY NAZIRUL HAQ *v.* ABDUL WAHAB KHAN. 3 P.L.T 140= 1922 P. 58.

———S. 36—*Survey map — Evidentiary value of.*

Maps and surveys in India for revenue purposes are official documents prepared by competent persons and with such publicity and notice to persons interested as to be admissible as valuable evidence of the state of things at the time they were made. Such a map, unless shown to be wrong, may be received in evidence as correct when made. (*Das and Adami*, JJ.) BIBI WAKILAN *v.* DEO NANDAN. 6 P.L.J. 681=59 I C 298= 2 P.L T. 81.

———S. 37—'*Matter of public history*'.

The question of title between the trustee of a mosque and a private person, cannot be deemed to be a matter of public history within S. 37, Indian Evidence Act. (*Shadi Lal and Wilberforce*, JJ.) FARZAND ALI *v.* ZAFAR ALI. 46 I.C. 119=132 P.W.R. 1918.

———S. 38—*Ceylon Insolvency Ordinances can be looked into.*

S. 38 of the Evidence Act allows the reference to the Ceylon Insolvency Ordinances for the purpose of deciding questions of the deft.'s liability under the Ceylon Law. (*Miller and Sadasiva Iyer*, JJ.) DEIVANAYAGAM PILLAI *v.* MUTHUKUMARASWAMI PILLAI. 14 I C. 560.

———S. 40—*Judgment—Recitals.*

Where a judgment is admitted in evidence to prove that there was litigation which terminated in a certain way, all the recitals in the judgment are not part of the evidence. (*Mookerjee and Rankin*, JJ.) ABDUL LATIF KAZI *v.* ABDUL HUQ KAZI. 23 C W N. 62= 1924 Cal. 523.

———Ss. 40, 41 and 42—*Lunacy proceedings.*

When the question is whether proceedings in lunacy held under the Lunacy Act are admissible in evidence in a subsequent suit to show the lunacy of the deft. at a particular time. *Held*, that the orders and reports made under the Act by the Judge before whom the lunacy proceedings were held were admissible. (*Greaves*, J.) SRIMATHI PADMABATI DASSI *v.* BONOMALI SEAL. 56 I.C. 566= 24 C.W.N. 378.

———S. 40—*Findings of Criminal Court.*

Findings of a Criminal Court though irrelevant in a Civil Court yet the Criminal Proceedings may be referred, to test the evidence adduced in the Civil suit. (*Kensington and Chevis*, JJ.) HARIA *v.* BASANTH KAUR 8 P L.R. 1912 Sup.)=16 I C. 491= 128 P.W.R. 1912=117 P.R. 1912.

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———S. 41—*Probate Court—Decision of—Binding nature.*

The decision of a Probate Court as to the genuineness of a will and position of the widow as executor is binding in proceedings in Courts exercising other than testamentary jurisdiction. (*Lawrence Jenkins.*) SHEOPARSAN SINGH *v.* RAMNANDAN PRASHAD SINGH. 43 Cal 694=43 I.A. 91=14 A L J. 466= 20 C.W.N. 738=18 Bom. L.R. 397= C.L.J. 621=(1916) 1 M.W N. 419= 20 M.L.T. 1=3 L.W. 844=33 I C. 914= 31 M L J. 77 (P.C.

[On appeal from 6 I C. 301=11 C L.J. 623.]

———S. 41—*Decision in Insolvency Court—Conclusive proof of title.*

A decision of Insolvency Court is conclusive proof of title against all the world. (*Piggott and Walsh*, JJ.) SITARAM *v.* JHUJHAR SINGH. 33 I.C. 798=16 A L J. 661.

———S. 41—*Will—Probate Court's decision on certain issues—Whether Dt. Court could re-try in a subsequent suit.*

The decision of a probate Court in regard to a will and on the contentions, is conclusive and it is not open to a Dt. Court in a subsequent suit to re-try those issues. (*Scott*, C J. *and Heaton*, J.) BRENDON *v.* SHRIMATI SUNDERABAI. 38 Bom. 272= 23 I.C. 221=16 Bom. L.R. 164.

———S. 41—*Probate judgment — Binding on all persons.*

A judgment of a Probate Court is a judgment *in rem* and is not subject to collateral attack. While it remains in force it is conclusive not only on the person who are parties to the judgment but upon all persons and all Courts. (*Mookerjee and Panton*, JJ.) RANI HEMANGINI DEBI *v* SARAT SUNDARI DEBYA. 66 I.C. 882=34 C.L.J. 467.

———S. 41—*Grant of letters—Hindu widow—Revocation—Civil Court.*

Where a Hindu widow has been granted letters of administration and she alienates her husband's property, the remedy of the reversioner is to apply to the Probate Court for revocation. A Civil Court has no jurisdiction to declare the grant of letters null and void in a suit by the reversioner to declare the alienation invalid. (*Chaudhuri and Cuming*, JJ.) ANNADA CHARAN *v.* ATUL CHANDRA MALIK. 23 C.W.N. 1045=54 I.C. 197= 31 C L.J. 8.

———S. 41—*Judgment* in rem *is conclusive against all persons and all Courts,*

A judgment *in rem* like the decision of Probate Court is not subject to collateral attack. It is conclusive on the parties to the

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proceedings as well as to all Courts. (*Mookerji and Panton, JJ.*) HEMANGINI DEBI *v.* SARAT SUNDARI. 50 I C. 882=31 C.L J. 467.

———S. 41—*Exhaustive nature of section.*

The section is exhaustive as to judgments *in rem*. (*Reid*, C J. *and Johnstone*, J.) RAHMAT ALI KHAN *v.* BABU JUHRA. 14 P R. 1912= 167 P.L R. 1912=14 I.C. 486= 96 P.W.R. 1912.

———S. 41—*Last clause — Insolvency — Estoppel against creditor—If arises.*

Estoppel against an opposing creditor arises even if an Insolvency Court fails to make any declaration under the last para of S. 41, of the Evidence Act. (*Reid*, C.J. *and Rattigan*, J.) RAMNARAIN *v* DURGADAT. 55 P.R. 1912= 13 I.C 568=242 P.W R. 1912.

———S. 41—*Decision as to the minority.*

A judgment holding a person to be a minor is inadmissible under S. 13 (*b*). (*Coutts-Trotter and Srinivasa Aiyangar*, JJ.) VENKATA RANGAPPA NAICKAN *v.* SUBBARAYA GOUNDAN. 33 I C. 142.

———S. 41—*Judgment of Insolvency Court if bars subsequent suit.*

When the Insolvency Court finds that the transfers by the debtor are not fraudulent, the decision bars the suit of the creditor for declaration that the transfers are fraudulent and void. (*Hallifax*, A.J.C.) NARAYAN *v.* HARDATTA RAI. 57 I.C. 612.

———S. 41—*Decision of Probate Court.*

A judgment of a Probate Court is conclusive proof that the person to whom Letters of Administration or Probate have been granted, has been invested with the powers and the responsibilities of the deceased and nothing more. But a question of status decided in those proceedings can be contested again in a regular suit. (*McColl*, J.C.) MI NGWE ZAN *v.* MI SHWE TAIK. 10 I.C. 987=(1910) 1 U.B.R. 61.

———Ss. 42 and 43—*Question of liability—Decision of a Civil Court.*

Where a person is charged with criminal breach of trust as regards certain items and the question of Civil liability about the same items has been determined by a competent Civil Court, the judgment of that Court would be the best evidence of the civil rights of the parties and hence a relevant fact. (*Heaton and Shah*, JJ.) *In re* MARKUR.

41 Bom. 1=17 Cr. L J. 163= 33 I.C 683=18 Bom. L.R. 185

———Ss. 42 and 43—*Remarks without a finding not admissible.*

Remarks made incidentally about another plot which was not then in suit are not admissible in a later suit. (*Campbell*, J.) BANWARI LAL *v.* SHEO CHAND. 1923 Lah. 384.

———S. 43—*Judgment not* inter partes—*Admissibility.*

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A mortgagee in possession of a share in a village leased the property. The original mortgagor executed simple mortgage to the lessee with the covenant that the first mortgage was to be paid off which was accordingly done. Nevertheless the lessee's name continued to be recorded as lessee; on the strength of which entry, he brought a suit for profits against the *Lambardar*. The *Lambardar* brought a suit to declare that the lessee was not entitled to profits, the mortgage having been redeemed. The lessee contended that by an arrangement between him and the mortgagor he was left in possession of the property as lessee for the period of the original lease and that he had been made to account to the mortgagor in a suit between them on the simple mortgage for the very year for which he had obtained a decree for profits against the *Lambardar* and produced the judgment between himself and the mortgagor to prove the allegation. *Held*, the judgment was admissible (*Chamier and Piggott*, JJ.) MUHAMMAD AHMAD SAID KHAN *v.* MASTI-UL LAH KHAN. 28 I.C. 387=13 A L.J. 317.

———S. 43—*Judgments otherwise relevant.*

Judgments not *inter partes* are admissible in evidence for the purpose of showing that the title of a deft. was set up by third party and that the suit was decreed. (*Chatterjea and Panton*, JJ.) MOHAR ALI SARKAR *v.* MAFIZUDIN SARKAR. 65 I.C. 699.

———S 43—*Statement of a right as to title in a will—Recital in judgment not* inter partes *not evidence.*

In a suit for possession of lands as *brahmotter*, recital of the title in a will of plff.'s father and a recital in a judgment not *inter partes* cannot be admitted. (*Chatterjee and Newbould*, JJ.) SATINDRA KUMAR *v.* KRISHNA KUMARI. 36 I.C. 882.

———S. 43—*Judgment not* inter partes—*Recitals in.*

A judgment not *inter partes* may be used in evidence in certain circumstances as a fact in issue, or as a relevant fact, or possibly as a transaction, but the recitals in the judgment cannot be used as evidence in the litigation between the parties. The law attributing unerring verity to the substantive as opposed to the judicial portions of the record, every judgment is conclusive evidence, for or against all persons, whether parties, privies or strangers, of its own existence, date and legal effect, as distinguished from the accuracy or truth of the decision rendered. (*Mookerjee and Roe*, JJ.) BASI NATH PAL *v.* JAGAT KISHORE ACHARJEE. 20 C.W.N. 643=35 I.C. 298= 23 C.L J. 583.

———S. 43—*Order of Criminal Court under S. 145, Cr. P.C.—When admissible.*

The finding in an order of a Criminal Court under S. 145 is not admissible though the order itself is admissible to show the parties in dispute, the land in dispute, and the parties

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entitled to possession.) *Jenkins*, C.J., *Mookerjee and Richardson*, JJ.) MOHUNT KRISHEN DAYAL GIR *v.* IRSHAD ALI KHAN.
31 I.C. 863=22 C.L.J. 533.

———S. 43—*Decision of Criminal Court—If admissible in Civil Court.*

The finding of a Criminal Court on the question of possession is admissible in evidence in a Civil proceedings taken for recovery of possession of the same land, to show what order had been made, who the parties to the dispute were, what the land in dispute was and who was held entitled to possession. (*Mookerjee and Beacheroft*, JJ.) KRISHNA NATH CHKKRAVARTHI *v.* MAHOMED WAFIZ.
31 C.W.N. 93=31 I.C. 789=
23 C.L.J 563.

———S. 43—*Judgment — Admissibility to prove admission*

A judgment in a previous suit not *inter partes* is not admissible as evidence of an admission said to have been made by one of the parties in the course of that suit. The judgment is no better than any other hearsay evidence of the admission. The proper mode of proving an admission made by a party in a previous suit is by producing a certified copy of the party's written statement, or if the admission was made orally by producing a copy of his deposition or by putting in the witness-box some one who actually heard what was said by him. (*Richardson and Mullick*, JJ.) DEBENDRA NATA HALDAR *v.* BISESHWAR HALDAR.
20 C.W.N. 648=20 I.C. 821=22 C.L.J. 270.

———S. 43—*Previous judgment contesting the right of granthi—Findings regarding the nature of the property.*

Where in a suit contesting the right of the *granthi* of the darbar Sahib (golden temple at Amritsar), to alienate certain shop, it was held that the properties were *waqf* and attached to the *granthi* and could not be alienated by the *granthi*, the judgment only proves that at that time also the right of the *granthi* to alienate certain property was called in question. The finding of the Court that the property was *waqf* and was attached to the *granthi* is not relevant in a subsequent suit by the successor to the office challenging the alienation by his predecessor-in-title. (*Scott-Smith and A. Raoof*, JJ.) INDAR SINGH *v* FATEH SINGH.
59 I.C. 734=1 Lah. 340.

———Ss. 43 and 11—*Finding as to adoption in a suit—Admissibility in another suit.*

Findings of fact in one case about *factum* or validity of adoption are not evidence in another suit against persons who were not parties to the case in which the findings were given. (*Johnstone*, J.) ARJAN SINGH *v.* DARBARA SINGH. 193 P.L.R. 1915=32 I.C. 312=
140 P.W.R. 1915.

———S. 43—*Depositions in criminal case.*

Neither judgments nor depositions in criminal cases are admissible in Civil proceedings,

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(*Rattigan and Jones*, JJ.) BISHENDAS *v.* RAM LABHAYA. 106 P.R. 1915=32 I.C. 18.
157 P.W.R. 1915.

———S. 43—*Judgment in a criminal case—Value.*

A judgment in a criminal trial is by itself evidence only of the conviction and not of any other matter. (*Stuart*, J.C.) MUHAMDI BEGAM *v.* DURGA PRASAD. 40 I.C. 432=
4 O.L.J. 299.

———S. 43—*Judgment not* inter partes *not relevant.*

Where a Civil Court has decided about the truth and validity of an adoption, the judgment of the Civil Court is not admissible in a subsequent suit between third parties in proof of the adoption. The judgment is neither a judgment *in rem* nor does it constitute *res judicata*. (*Miller*, C.J. *and Mullick*, J.) GURU MAHADEO ASRAM PRASAD SAHI *v.* JAGATRAJ KUER.
71 I.C. 929.

———S. 44 — *Competent Court — Want of jurisdiction.*

To avoid a prior judgment on the ground of fraud or want of jurisdiction, the fraud must have been "practised on the Courts" and a total want of jurisdiction is required. Mere irregularity in the exercise of jurisdiction is not enough. (*Lord Shaw*) RAJWANT PRASAD PANDE *v.* RAM RATAN GIR. 37 All. 485=
42 I.A. 171=13 A.L.J. 937=29 M.L.J. 165=
2 L.W. 671=18 M.L.T. 173=
17 Bom L.R. 754=20 C.W.N. 35=
(1915) M.W.N. 736=30 I.C. 849=
23 C.L.J 65 (P.C).

———S. 44—*Probate—Party applying for revocation—Barred in subsequent suit.*

Where a party's application for revocation of probate on the ground of fraud or collusion has been dismissed by the Dt. Court, the party will be barred by the decision in a subsequent suit of the executor to recover the estate. (*Scott*, C.J, *and Batchelor*, J.) KISHOREBHAI REVADAS *v.* RANCHODIA. 38 Bom, 427=
23 I.C. 31=16 Bom L.R. 459.

———S. 44—*Fraudulent decree can be proved to be such.*

Under S. 44 when a decree which has been obtained by fraud is sought to be used against a person, he is entitled to show the true nature of the decree, notwithstanding the fact that he has not previously taken steps for cancellation of the decree. But he cannot be permitted to challenge the decree unless he sets out specifically the circumstances which constituted the alleged fraud on him and on the Court. (*Mookerjee and Chotzner*, JJ.) PULIN BEHARI DEY *v.* SATYA CHARAN.
38 C.L.J. 367=1923 Cal. 79.

———S. 44—*Grant of letters—Fraud or collusion alleged—Procedure.*

It cannot be said that the Court, other than the Court granting administration,

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cannot, in cases of fraud or collusion, deal with the question of fraud or collusion. The better course however is to stay the suit and to allow the party alleging fraud or collusion to apply to the proper Court for revocation of the grant of letters. (*Walmsley and Greaves*, JJ.) RAKSHAB MANDAL *v.* TARANGINI DEVI. 62 I.C 448=26 C.W.N. 207.

——— S. 44—*Previous decree—Fraud.*

In a suit to set aside an *ex parte* decree on the ground of fraud plff. is entitled to show that a certain High Court decree to which he was no party was obtained by fraud or collusion under S. 44 of the Evidence Act, without suing to set aside that decree. (*Chatterjee and Newbould*, JJ.) ASWINI KUMAR SAMADDAR *v.* BENAMALI CHAKRAVARTI. 40 I C 607= 21 C.W.N. 594

——— S. 44—*Consent decree.*

The plff. being no party to the consent decree can attack it in his suit and need not have it set aside. (*Holmwood and Imam*, JJ.) ABDUL HAKUM GAZI *v.* PANCHI DASI. 32 I.C. 849.

——— S. 44—*Decree obtained by fraud—Rights of party to plead in defence.*

A party can rely on fraud, even though he has not brought a suit to set aside the decree alleged to have been obtained by fraud. (*Jenkins*, C.J. *and N R. Chatterjea*, J.) KURARAM DATTA *v.* BANOMALI PATRA. 29 I.C. 833.

——— S. 44—*Fraud—Defence—Onus.*

In a suit for rent against defts. as Mokarrandar of certain lands in the village where the defts. raises the plea that an entry in the record of rights that he is a patnidar, operates as *res judicata*, it is highly obligatory on them to prove that such entry operates as *res judicata*, and the plff. may in such cases raise the objection that the entry was obtained by fraud. (*Mookerjee and Beachcroft*, JJ.) MOZAFFAR ALI *v.* KALI PRASAD SAHA 19 C.L.J. 29= 22 I C. 789=18 C.W.N. 271.

——— S. 44—*Fraud—Application under S. 47, C.P.C.—Evidence, admissibility of.*

It is open to an applicant seeking to set aside an execution sale to show by evidence that it was brought by the fraud, collusion, etc. (*Brett and Sharfuddin*, JJ.) RAMDHANI SHA *v.* TOPI BIBI. 21 I.C. 938=18 C L J. 261.

——— S 44—*Competent Court—Compromise decree—Not objected to—Effect—Bengal Tenancy Act, Ss. 29 and 147-A—Irregularity and nullity.*

In a suit against three brothers, a decree was passed against them on a compromise by one of them without the knowledge of the others, who however, raised no objection to it. *Held*, that they will be bound by the decree unless it could be shown to have been obtained by fraud. Under S. 147. B.T. Act a Court is not 'competent' within S. 44, Indian Evidence Act to pass a decree on a compromise which is illegal and ineffective the contract being in contravention of S. 29 of the B.T. Act. (*Coxe and Chatterjee*, JJ.) (SURJUG SARAN LAL *v.* DUKHIT MAHTO. 18 I.C. 809=17 C W.N. 496.

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——— S. 44—*Fraud—Person affected by—Right of suit.*

A person affected by fraud can impeach it and sue to set aside the results. (*Caspersz and Sharfuddin*, JJ.) JAGADHAR GHOSE *v.* MIDNAPUR ZAMINDARI COY. 17 I C. 126= 16 C.L.J. 141.

——— S. 44—*Admissibility of a decree for rent obtained by one co-sharer in a suit by another co-sharer.*

Where the tenant holds on one contract of tenancy and each co-sharer claims to receive proportionate rent from him a decree obtained by one co-sharer is admissible in a suit for rent by another co-sharer to prove the rate of rent. (*Mookerjee and Carnduff*, JJ.) RAM DAHU ROY *v.* DHANWANTON KOER. 15 I.C. 624= 17 C.W.N. 1016.

——— S. 44—*Fraud—Plea in defence—Suit for possession.*

A plea of fraud can be taken at any time in defence though the person pleading has not sought to set aside the transaction; lapse of time will not affect the plea under certain circumstances. (*N. R Chatterjea*, J.) KALI KUMAR VIDYARATNA *v.* KASHI CHANDRA MITRA. 11 I C. 882.

——— S 44—*Gross negligence is on the same footing as fraud.*

Gross negligence on the part of the next friend or guardian-*ad litem* of a minor party to a suit stands on the same footing as fraud or collusion and it is open to a defendant to impeach a prior judgment on the ground of gross negligence of his then guardian, 27 C. 11; 16 I.C. 543, Ref. Where the plea of gross negligence as avoiding a prior judgment was not taken specifically and in distinct language but the issues framed by the Court were wide enough to cover such a plea, and the parties adduced evidence on it, it is not open to the Court thereafter to refuse to consider the plea. (*Oldfield and Venkatasubba Rao*, JJ.) KARRI BAPANNA *v.* SUNKARI YERRAMMA. 33 M.L T. 46 (H C. =18 L.W. 49= (1923) M.W N. 452=1923 Mad 718.

——— S. 44—*Fraud — Compromise decree—Defence of fraud—Omission to sue.*

Under S. 44 of the Evidence Act a party to a compromise decree can prove that his consent to it was obtained by misrepresentation and fraud without bringing a fresh suit to set it aside, 12 C. 166; 27 C. 11, Rel. (*Ayling and Tyabji*, JJ.) BOMMAREDDI POLIREDDI *v.* BOMMAREDDI BAPIREDDI. 30 I.C. 639.

——— S. 44—*Suit in ejectment—Title based on Court-sale—Proof of fraud in such sale.*

In an ejectment suit, were plff. relies on his title as purchaser in a Court-auction the defts.

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may adduce proof of fraud in such sale. (*Sankaran Nair and Bakewell, JJ.*) GNANIAR RAOTHER *v.* KRISHNA AIYER. 1 L.W. 208 = 23 I.C. 1.

——S. 44—*C.P.Code. S.* 11—*Avoidance of the plea on the ground of fraud.*

The principle of *res judicata* in S. 11 of the C.P. Code is subject to S. 44, Evidence Act, under which the principle does not apply where the prior decree is obtained by fraud. (*Stuart, J.C.*) RADHA KISHAN *v.* WAJIB ALI KHAN. 3 O L.J. 501 = 26 I C. 746 = 19 O C. 335.

——S 45—*Handwriting expert—Value of report—Sanction to prosecute.*

The report of the Government expert, who never came into the witness-box and whose report is not supported even by an affidavit is inadmissible in evidence and should not form the basis of the order directing the prosecution on a charge of forgery. A sanction, based on a piece of evidence that can in no circumstances be called legal evidence and especially when there is positive legal evidence against it is illegal. (*Rafique, J.*) PIARY LAL *v.* KIDARNATH. 21 A L J. 399 = 24 Cr. L J. 900 = 4 L.R. All (Cr.) 97 = 1923 All. 601.

——S. 43—*Thumb-impression— Decision on—Property.*

Where, in a suit on a promissory note the Appellate Court being unable to believe the evidence on either side, decided the case on the report of the Thumb-impression Bureau to whom it sent the document, the procedure was held to be unwarranted by law. (*Rafique, J.*) CHHAJU *v.* AYUB AHMAD. 28 I.C. 132.

——S. 45—*Medical examination and report—Report when admissible.*

Where in a criminal case the prosecution tenders in evidence a certificate granted by the Professor of Anatomy in a Medical College as regards the bones submitted to him for examination, the certificate by itself is not admissible in evidence. It must be proved by the person who gave it as a witness in the case. (*Martineau and Crump, JJ.*) EMPEROR *v.* AHILYA MANAJI. 24 Bom. L R. 803 = 47 B. 71 = 1923 Bom. 183.

——Ss. 45 and 46—*Expert evidence—Technical works—When can be used to contradict.*

Technical works cannot be used to refute an expert witness's opinion unless the passages to be used are put in cross-examination to the witness for him to explain them if he can, 23 C. 1. P C., Ref. to. (*Woodroffe Chitty and Smither, JJ.*) GRANDE VENKATA *v.* CORPORATION OF CALCUTTA. 22 C.W.N. 7 5 = 28 C.L.J. 32 = 46 I.C. 593 = 19 Cr. L.J. 753.

——S. 45, III. (c)—*Comparison of handwriting—Expert's evidence.*

The writing with which the comparison is made must be clearly proved to be that of the person alleged, 22 W. R. 272, Rel. on. A

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comparison of handwriting is to be used with great care and caution and especially in a criminal case when a large quantity of apparently different handwriting is under comparison. Where there is no comparison by the expert in open Court before the accused with documents proved or admitted to be in his handwriting the evidence of the expert is inadmissible. (*Holmwood and Sharfuddin, JJ.*) SURESH CHANDRA SANYAL *v* EMPEROR. 39 Cal. 606 = 13 Cr. L J. 289 = 14 I.C. 753 = 16 C.W.N. 812.

——S. 45—*Expert opinion—How to be given.*

An expert opinion can better be given by the expert hearing the evidence as to which he is asked an opinion than to give it on a copy of the deposition. (*Jenkins, C.J. and Woodroffe, J.*) GOPESSUAI DUTT *v.* BISSESSUR DUTT. 37 Cal. 215 = 13 I.C. 517 = 16 C.W.N. 265.

——S. 45—*Admissibility of the opinion of an expert.*

The opinion of Government expert for handwriting who is not called as a witness and is subjected to cross-examination is not admissible in evidence. (*Chitty and Chatterjee, JJ.*) PADAMA PRIYA DEBIA *v.* DHARMA DAS. 10 I.C. 965 = 15 C.W.N, 728.

——S. 45—*Experts—Value of evidence of.*

The evidence of an expert, however skilled he may be, is ordinarily a matter of mere opinion. However impartial he may wish to be he is likely to be unconsciously prejudiced in favour of the side which calls him. Besides, an expert is often called by one side simply and solely because it has been ascertained that he holds views favourable to its interests. (*Shadi Lal, C J. and Leslie-Jones, J.*) HARI SINGH *v.* LACHHMI DEVI. 12 P.L.R. 1921 = 59 I C. 920 = 10 P.W.R. 1921.

——S. 45 — *Expert medical opinion—Post mortem—If relevant.*

Expert Medical opinion of a Surgeon who conducted *postmortem* examination is relevant. (*Ried, C.J.*) MEHR IYABI *v.* EMPEROR. 12 Cr. L.J 455 = 12 I.C. 93 = 28 P.W R. (Cr.) 1911.

——S. 45—*Finger prints—Value of—Duty of Court.*

There is nothing in the so-called science of finger prints or the qualification of an expert in it which prevents the Court from applying its own eyes and mind to the evidence and verifying the results submitted to it by experts. The argument in finger print cases rests on a simple deduction from a number of observations of the similarties and differences between the finger prints in question, 27 I.C. 900, Ref. (*Oldfield and Ramesam, JJ.*) PUBLIC PROSECUTOR *v.* VIRAMMAL. (1922) M.W.N. 642 = 16 L.W. 668 = 33 Cr.L.J. 694 = 31 M.L.T. 427 (H.C.) = 1923 M. 178.

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——— —S. 45—*Handwriting expert — Reception of evidence—Practice.*

To admit the evidence of a handwriting expert, it is not necessary that the handwriting should be actually compared in Court. It is enough if the documents admittedly in the accused's handwriting, are shown to him in open Court and he expresses his opinions thereon, 16 C W.N. 812, Ref. (*Spencer and Phillips*, JJ.) *In re* SITHAVH NAIK.
30 I.C. 751=16 Cr. L.J. 703.

———Ss. 45 and 46—*Opinion of experts—Value of.*

The effect of medical testimony is to render other evidence as to the age of the person medically probable or improbable. (*Kanhaiya Lal*, A. J. C.) SHRIPAL SINGH *v* JAGDESH NARAYAN. 7 O L J 219=
66 I.C. 313=2 U.P.L.R. (J. C.) 77.

———S. 45—*Handwriting expert—Opinion.*

Experts differ in their opinion. When the admitted facts lead to one conclusion and to one conclusion only, it would be unsafe to rely on the testimony of the handwriting expert. (*Das and Adami*, JJ.) SHEOTAHAL SINGH *v.* ARJUN DAS. (1920) Pat. 155=
56 I.C. 879=1 P.L.T. 136.

——— S. 45—*Expert evidence—Cross-examination—Opinion.*

If a finger print expert has not been cross-examined for the purpose of impeaching impression submitted for his consideration and as to the test to which he had put a particular finger print, the weight to be attached to such witness's evidence cannot be diminished by applying to it considerations to which the witness's attention was never directed. (*Mullick and Atkinson*, JJ.) SARWAR KHAN *v.* EMPEROR. 55 I.C. 273=21 Cr. L.J. 257.

———S. 45 *Trade mark, limitation of—Expert opinion whether admissible.*

Expert opinion as to whether goods of a particular firm bearing particular trademarks alleged to be imitation would be likely to deceive the ultimate purchasers to buy imitation goods in place of genuine ones, is not a question of art or science and so not admissible, and therefore the Court itself must decide whether the marks complained of, are likely to deceive the public. (*Crouch*, A. J. C.) MACDONALD AND CO *v.* HOLLAND AND MOSS
41 I.C. 539=10 S L.R. 175.

———Ss. 47 and 73—*Handwriting—Proof—Modes of.*

The ordinary methods of proving handwriting are by calling as a witness a person who wrote the document or saw it written or who is qualified to express an opinion as to the handwriting under S. 47; it may be also done by a comparison of handwriting under S. 73 of the Act and by the admission of the persons against whom the document is tendered. (*Mookerjee and Buckland*, JJ.) SAROJINI DASI *v.* HARI DAS GHOSH, 26 C.W.N. 113=34 C L J 373=
49 C. 235=1922 C. 12.

——— S. 47—*Handwriting — Evidence of persons acquainted.*

The evidence of persons acquainted with the handwriting of a person by whom the document is supposed to be written is admissible, though they are not experts. (*Kensington*, C. J. *and Shadi Lal*, J.) *In the matter of* BAICHANDA SINGH. 18 P R. 1915=
12 P.W.R. (Cr.) 1915=28 I C 722=
16 Cr. L.J. 338.

———S. 47—*Handwriting — Evidence of persons acquainted with.*

The evidence of persons acquainted with the handwriting of a person by whom the document is supposed to be written is admissible though they are not experts. (*Shah Din*, J.) JALAL-UD-DIN *v* EMPEROR.
147 P L R. 1912=13 Cr. L.J. 563=
15 I.C. 979=18 P.W.R. (Cr.) 1912.

———Ss. 47, 73—*Expert evidence—Value of—What must be proved.*

In a case of forgery the only chief evidence being an expert's examination of the forged document as compared with the other documents alleged to be in the handwriting of the accused, the other documents must be strictly proved to be in his handwriting. A mere statement therefore by a witness that it is the handwriting of the accused is no evidence if he is not able to say how long ago they were written. In arriving at a conclusion of the authorship of the forged document the expert should show marked peculiarities in this handwriting of the accused which are reproduced in the forged document and when the writing has no such peculiarities, the comparison is of no consequence and cannot be relied on. Also the fact that the disputed samples are put separately from the standard ones for the examination lessens its usefulness. A conviction cannot be based on an expert's comparison, if it is not supported by corroborative evidence. (*Sundara Aiyar and Spencer*, JJ.) *In re* BEAS SUB VENKATA ROW. 36 Mad 159=
(1912) M.W.N. 125=11 M L T 93=
22 M L.J. 270=14 I C. 418=
13 Cr. L.J. 226.

———Ss. 47 and 48—*Medical evidence—Condition and state of health of testator.*

Where the general condition and state of the health of a person is in issue, isolated extracts from medical works ought not to be preferred to evidence of a medical man, who should be examined with reference to the symptoms deposed to by the witnesses, and to whom the extracts might be put. (*Kanhaiya Lal and Daniels*, A.J.Cs.) SHEO BAHADUR SINGH *v.* BENI BAHADUR SINGH. 51 I C. 419=
6 O.L.J. 178.

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———S. 47—*Handwriting—Comparison of—Weight due to—Resemblance of signature—Denial of signature—Onus.*

Although it is true that under the Evidence Act comparison of handwriting is legitimate enough and the view of persons competent to express opinions mey be in many cases of considerable value, the opinions of those who have not carefully studied the art of caligraphy is not as a rule of very great utility. Indeed so uncertain and inexact is the science of the study of caligraphy that it has been for some years past the tendency to regard evidence even of experts as of some what inconclusive character. The mere fact that there is a resemblance between the signature alleged to be false and a signature admitted to be genuine does not carry great weight. If a signature is denied the onus of proving it is on the party relying on its genuineness. (*Bucknill*, J.) BATAHU JHA *v.* PARMESHWAR RAI. 64 I.C. 234.

——— S. 48—*Opinion of the Bar—Admissibility.*

Quaere.—Whether the opinion of the Bar as to the adoption of special customs of a Hindu family by sects of Mahomedans is admissible under S. 48 of the Act. (*Beaman*, J.) ADVOCATE GENERAL *v.* JIMBABAI 41 Bom. 181 = 31 I.C. 106 = 17 Bom. L.R. 799.

———S. 49—*Usages of body of men.*

The words "usages of any body of men" in S. 49 do not cover inferences or conclusions that may be drawn on the basis of past experience. (*Shah Din*, J.) BEJA *v.* EMPEROR. 13 P.R. 1914 Cr. = 16 Cr. L.J. 33 = 26 I.C. 626 = 223 P.L.R. 1915.

———S. 49—*Opinion evidence—Validity.*

Opinions of the members of Malabar Tarwad about the status of the family do not affect the real status of the family. (*Benson and Sundara Aiyar*, JJ.) MANU *v.* MUNDA. 9 I.C. 849 = (1911) 1 M.W.N. 281.

——— S. 50—*Legitimacy—Opinions of relations and members of the family.*

On a question of legitimacy, the opinions of relations and members of the family are entitled to weight. (*Lord Atkinson*) SADIK HUSSAIN KHAN *v.* HASHIM ALI KHAN. 38 All. 627 = 31 M.L.J. 617 = 14 A.L.J. 1243 = 19 C.C. 192 = 18 Bom. L.R. 1037 = 21 C.W.N. 130 = (1916) 2 M.W.N. 171 = 21 M.L.T. 40 = 1 Pat. L.W. 127 = 4 O.L.J. 22 = 36 I.C. 104 = 25 C.L.J. 363 = 6 L.W. 578 = 10 Bur. L.T. 140 = 43 I.A. 212 (P.C.).

[On appeal from 18 I.C. 882 = 14 C.C. 816.]

——— S. 50—*Legitimacy—Recognition of marriage by all relations, etc.—Presumption of.*

Where a man and a woman, were proved to have been recognised by all persons concerned, as man and wife, so described in important documents and their daughters were respectably married as would be natural in the case of legitimate children, *held*, that these facts, following upon a ceremony of marriage which undoubtedly took place, though its validity attacked, afforded an extremely strong presumption in favour of the validity of the marriage and legitimacy of its offspring. The like presumption applies to the question whether the formal requisites of a valid marriage ceremony were satisfied. (*Sir Arthur Wilson*) MOUJI LAL *v.* CHANDRABATI KUMARI. 38 Cal. 700 = 15 C.W.N. 790 = (1911) 2 M.W.N. 91 = 13 Bom. L.R. 534 = 14 C.L.J. 72 = 10 M.L.T. 53 = 11 I.C. 502 = 21 M.L.J. 938 (P.C.)

———S. 50—*Instances of conduct*

In questions of relationship, recital or omission of the names of certain persons during ceremonies and the observance of pollution, are instances of conduct within the meaning of S. 50 so as to make them admissible in evidence. (*Oldfield and Tyabji*, JJ.) RAMKRISHNA IYER *v.* CHINA VENGAMMAL. 26 I.C. 110.

——— S. 50—*Proof of marriage.*

S. 50 requires direct proof of marriage in cases under S. 498, I.P.C., and conviction based upon opinion evidence is illegal. (*Mitra*, A.J.C.) SYED MUNIR *v.* EMPEROR. 18 Cr. L.J. 1016 = 42 I.C. 760 = 14 N.L.R. 28.

———S. 50—*Pedigree filed by ancestors in prior litigation—Admissibility.*

Where the statement of a pedigree by predecessor-in-interest of the parties was filed in the prior suit but no final decision was given thereon, it could yet be allowed in evidence in a subsequent suit as the statement of their predecessor-in-interest as to the existence of the relationship. (*Piggott*, J.C. *and Lindsay*, A.J.C.) BHABULI SINGH *v.* KHETAL SINGH. 21 I.C. 274.

——— Ss. 52, 53 and 54, Cr. P.C. (Act V of 1898), S. 110—*Reputation—List of—Crimes committed—If admissible.*

In a proceeding under S. 110, a list of crimes which a Police officer has suspected the accused to have committed, is inadmissible to establish the reputation of the accused. (*Tuaball*, J.) BABU PRASHAD *v.* EMPEROR. 18 I.C. 102 = 13 Cr. L.J. 9.

———Ss. 54 and 163—*Previous conviction—Accused found guilty.*

Where a previous conviction is relevant with reference to the question of the applicability of S. 562 of the Cr. P.C. and also on the question of punishment, it may be taken into consideration in giving punishment after the accused is found guilty. (*Heaton and Shah*, JJ.) ISMAIL ALI CHAI *v.* EMPEROR. 39 Bom. 376 = 16 Cr. L.J. 83 = 26 I.C. 695 = 16 Bom. L.R. 934.

———S. 54—*Deposition of a witness in prosecution under S. 107, Cr. P.C.*

Statement by a prosecution witness in a prosecution for a riot that he had brought a.

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case under S. 107, Cr. P.C., against some of the accused who had been bound down, is admissible not for proving the bad character of the accused but as part of the *res gesta*, the events which had transpired before and which led up to the riot with which the accused were charged. (*Chitty and Richardson*, JJ.) SAMARUDDIN *v.* EMPEROR, **13 Cr. L.J. 521 = 17 I C. 566 = 40 Cal. 367.**

——S. 54—*Past history of accused if relevant.*

The past history of a gang of dacoits would be significant only if an offence under S. 400 of the Penal Code has been made out. (*Caspersz and Sharfuddin*, JJ.) KEDAR SUNDAR *v.* EMPEROR. **13 Cr. L.J. 39 = 13 I.C. 279 = 16 C.W.N. 69.**

——S. 54—*Evidence of bad character.*

The fact that an accused is of bad character or is reputed to be a thief or a habitual thief or belonged to a gang of thieves is no evidence against him for a charge under S. 401 of the O.P.C. (*Shah Din*, J.) BEJA *v.* EMPEROR. **13 P.R. 1914 Cr. = 16 Cr. L J 33 = 26 I.C. 625 = 223 P L.R. 1915.**

—— S 54—*Evidence of previous conviction —Not to be given.*

During the trial of the accused for a substantive offence, the evidence about the previous conviction should not be recorded. Such evidence is forbidden by S. 54 unless the accused offers evidence of good character. (*Jwala Prasad and Sultan Ahamed*, JJ.) TEKA AHIS *v.* EMPEROR. **22 Cr. L J. 219 = 60 I.C. 331 = 5 P.L.J. 706.**

——S. 55—*Character, evidsnce of, in civil cases.*

In civil cases the fact that the character of any person is such as to affect the amount of damages which he ought to receive is relevant, but evidence can be given only of general character and not of particular acts by which character is shown. (*Maung Kin*, J.) CHRISTENSEN *v.* CASTOR. **41 I.C. 696**

—— Ss. 53 and 57—*Personal knowledge of Judge—Judge confused to decide because of the personal knowledge.*

A Judge should not import into a case his own knowledge of particular facts, 26 W.R. 55; 7 W.R. 27, Rel. If the presiding officer of a Court feels considerably embarassed when he is called upon to try a disputed question of fact of which he has personal knowledge he should decline to hear the matter. (*Mookerjee and Beachcroft*, JJ.) LAKSHMI NARAIN KHANNA *v.* GURU DATTA MEHRA. **16 I.C. 859.**

——S. 56—*Judicial notice — Notorious facts.*

Judges are entitled to take judicial notice of the notorious facts of the social life of any class in the community without requiring actual

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positive evidence. (*Miller and Sundara Aiyar*, JJ.) PUBLIC PROSECUTOR *v* KANNAMMAL. **13 M.L T. 131 = 24 M L J. 211 = 14 Cr. L J 33 = 18 I C 257 = (1913) M.W.N. 207.**

——S. 56—*Judicial notice—Matters within the personal knowledge of Judge.*

Per *Sundara Iyer*, J.—A Judge is not entitled to rely on specific facts not proved by evidence in the case but known to him otherwise. But he may use his general knowledge and experience in determining the credibility of the evidence adduced before him, 38. C. 153, Expl. and Dist. Per *Sadasva Iyer*. J.—A Judge may use even his personal knowledge of concrete private facts, provided he mentions the knowledge to the parties and they do not object to his deciding the case and he must be allowed to use his knowledge of public, historical or scientific facts in coming to a conclusion. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) MULPURA LAKSHMAYA *v* VARADARAJA APPAROW. **36 Mad 168 = 23 M L.J. 624 = (1912) M.W.N. 1193 = 17 I C 353 = 12 M L.T 561.**

——S 57—*Land Revenue Report—Admissibility—Judicial notice.*

A Court is not entitled to take judicial notice of Land Revenue Reports and they are inadmissible unless formally proved. (*Coxe and Walmsley*, JJ.) BOODHAN GOPE *v.* SAIRA. **27 I.C. 470 = 20 C L J. 516.**

——S. 57—*Matter of public notoriety—Train service.*

The Court cannot take, as matter of public notoriety, the running time of trains and the number of trains within a given time and other facts involved in such an inquiry. (*Mookerjee and Walmsley*, JJ.) GOBIND CHANDRA SAHA *v.* DWARKA NATH PATTA. **20 C L J 455 = 26 I.C. 962 = 19 C.W.N. 489.**

——S. 57—*Signature of judicial or exeeutive officer.*

The Court can take judicial notice of signature of judicial or executive officer. (*Ayling*, J.) *In re*, CHOLANCHERI AYAMMMAD. **44 M L J. 557 = 17 L W. 615 = 32 M L T. 300 = (1923) = M.W N. 290 = 24 Cr. L J 403 = 1923 M. 600.**

——S. 57—*Books on custom* — Bhutala Pandya's Code.

Bhutala Pandya's Code has not often been proved to be genuine and authoritative and so the Court might not take judicial notice of its contents. (*White*, C.J. *and Tyabji*, J.) SECY. OF STATE *v.* SANTARAYA SHETTY. **25 M L J 411 = 14 M L.T 348 = 21 I.C. 432 = (1914) M W.N. 333.**

——S. 57—*Matter of history—Admissibility of letters.*

Letters of the Jesuit fathers, though admissible strictly to prove the facts of history,

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could not be used to prove where certain missionaries lived or when they died. (*Benson and Sundara Iyer*, JJ.) AMBALAM PAKEYJA UDAYAN *v.* BATH 36 Mad. 418 = 13 I.C. 539 = (1912) M.W.N 152 = 24 M.L.J. 650.

——S. 57 (1)—*Judicial notice — Paper Currency Act.*

The Courts should take judicial notice of the provisions of a statute *e.g.*, Paper Currency Act, though the objection is not raised by the parties. (*Shaw*. J.C.) HIDAYAT ALI BEG *v.* NGA KYAING. 24 I.C 721 = (1914) II U.B.R. 13.

——S. 57 (7)—*Magistrate in Native State.*

A "Magistrate" in a Native State does not come within S. 57 (7). (*Heaton and Shah*, JJ.) EMPEROR *v.* DHANKA AMRA. 15 Cr.L.J. 433 = 24 I.C. 169 = 16 Bom. L R. 261.

——S. 58—*Admission by some of the executants—Effect of.*

An admission of the executant's signature by one of his sons in a suit on a mortgage relieves plff. of any further responsibility of proving the mortgage-deed so far as that deft. is concerned. (*Beaman and Heaton*, JJ.) LAKHICHAND CHATRABHUJ MARWADI *v.* LALCHAND GANPAT PATIL. 42 Bom. 352 = 45 I.C. 555 = 20 Bom. L.R. 254.

——S. 58—*Copy admitted without objection in lower Court.*

A certified copy of a written statement was put in the lower Court in the presence of plaintiff's counsel and without objection by him. *Held*, he cannot be permitted in the High Court to object that only the original could have been received as proof. (*Martineau and Campbell*, JJ.) THE FIRM OF DURGA DAT JAGAN NATH OF DELHI *v.* THE FIRM OF RAM PARTAB SUKH DAYAL OF DELHI. 1923 Lah. 138.

——Ss. 58, 68—*Mortgage—Attestation—Proof of admission of execution.*

Even where execution of a mortgage is admitted it is open to the Court to require proof of valid attestation, 35 Mad. 607, Rel. (*Abdur Rahim and Oldfield*. JJ.) MUNNAPPA CHETTIAR *v* VELLACHAMI MENNADI. (1918, M.W.N. 853 = 25 M L T. 19 = 49 I.C. 278 = 9 L W 8.

——Ss. 58 and 92, cl. (4)—*Registered mortgage—Subsequent oral agreement to take less—Admissions of parties.*

A subsequent oral agreement to take less than is due under a registered mortgage is admissible in evidence if the oral agreement is admitted is the pleadings of the parties. No question of the admissibility of evidence, oral or documentary arises if proof is dispensed with under S. 58 of the Evidence Act or

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under the provisions of the C.P.C. consequent on the admissions of the parties (*Wallis, C.J., Oldfield and Seshagiri Aiyar*, JJ.) MALLPPA *v.* MATTAM NAGA CHETTY. 42 Mad. 41 = 8 L.W 532 = (1918) M.W.N. 719 = 35 M.L.J. 555 = 48 I.C. 158 = 24 M.L.T. 400.

——S. 58—*Document itself inadmissible.*

Admissions of parties regarding the execution or contents of the documents themselves inadmissible in evidence, should not be acted upon when the liability is denied for such defects. (*Sadasiva Iyer and Phillips*, JJ.) SEETAMMA *v* KRISHNASWAMI ROW. (1916) 2 M.W N. 88 = 31 M L J. 240 = 35 I.C. 18 = 20 M L T. 44.

——S. 58—*Proof of fact admitted—Power of Court to call for.*

Courts can call for proof even of facts admitted under S. 58 and there may be cases where the failure to call for proof may be so improper as to make the High Court interfere even in a second appeal. (*Sadasiva Aiyar and Tybaji*, JJ.) APPAVA CHETTIAR *v.* MANJAPPA GOUNDAN 14 M.L.T. 117 = 20 I.C. 752 = 25 M.L.J. 329.

——Ss. 58 and 70—*Admission of execution—Proof of attestation.*

Under S. 70 of the Evidence Act, the admission of execution of a mortgage document is sufficient proof as against the executant himself, but there is no authority for the proposition that the document is for that reason binding upon the other defendants who were not parties to it. As against the latter the document must be proved according to law unless S. 58 of the Evidence Act applies to the case and relieves the plaintiffs from the burden of proving attestation in respect of any of the defendants who have admitted the fact of the attestation. (*Mullick and Ross*, JJ.) ARJUN SAHU *v.* KELAI RATH. 2 P. 317 = 1923 P. 486.

——Ss. 58, 63, 65—*Copy of document—Admission without objection — Secondary evidence—Powers of appellate Court.*

When a document has been admitted in the Court of first instance without any objection, the appellate Court is not entitled to allow any objection to be taken to its admissibility at the appellate stage ; and if the document admitted is a copy, it is not open to the appellate Court to consider whether the provisions as to secondary evidence have been complied with. (*Coutts and Das*, JJ.) RAMLOCHAN MISRA *v.* PANDIT HARINATH. 3 P.L T. 397 = 1922 P. 565.

——Ss 58, 91 and 92—*Partition admitted—Unregistered deeds—If admissible.*

Where the fact of a prior partition having taken place is admitted by both parties, the same need not be proved and the instrument though not registered is admissible for a collateral purpose. (*Heald and Le-taigne*, JJ.) MAUNG PO KIN *v.* MAUNG SHWE BYA. 1 Rang 403 = 1918 Rang. 155.

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——Ss. 58 and 68—*Unregistered and unattested mortgage—Admission of—Subsequent purchaser.*

A purchaser of certain lands who admitted the existence of a prior mortgage on the lands could not get the lands without paying the mortgage money even though the mortgage was unregistered. An admission made by a party when examined as a witness comes within the purview of S. 58, Evidence Act. (*Mc Coll*, A.J.C.) NGA TUN LU *v.* NGA SHWE CHIN. 29 I.C. 698 = 8 Bur. L.T. 18.

——S. 58—*Mortgage before the Transfer of Property Act*, 1882—*Admission—Proof.*

Where a mortgage, executed before the Transfer of Property Act, came into force, is admitted to have been executed, proof thereof will be dispensed with under S. 58 of the Evidence Act, even though it was effected by an unregistered instrument for more than Rs. 100. *Quaere.*—Would the defect of want of jurisdiction be cured by such admissions after the Transfer of Property Act came into force? (*Twomey*, J.) MA SHIR HYPE *v.* MAUNG SENU. 20 I C 666 = 6 Bur. L T. 131.

——Ss. 53 and 68—*Admission of execution of document—Production of document if necessary—Validity of same, if can be questioned.*

Where the execution of a mortgage-deed is admitted, production of the same is dispensed with; in such a case, the Court can take no account of the validity or informality of the document, i.e., attestation by one witness. (*Twomey*, J.) MAUN KAN *v.* MAUNG MYAT THAING. 11 I.C. 850 = 4 Bur. L.R. 182.

——S. 58—*Admitted document—Proof not necessary—Effect where insufficiently stamped.*

No proof is necessary of a document which has been admitted by other side; the fact that such a document is not properly stamped is not a ground for dismissal of a suit based upon it. (*Twomey*, J.) RAHIMATOLLA *v.* M. MURRY. 11 I C. 810 = 4 Bur. L.T. 171.

——S. 59—*Oral evidence—Document not ambiguous.*

Evidence of the conduct of the parties is not admissible to prove the intention when the document is not ambiguous, (1911) A.C. 487 Foll (*Abdur Rahim and Sundara Iyer*, JJ.) PRESIDENT TALUK BOARD, PEDDAPUR *v.* CHILAKAMANI. 12 I C 146 = (1911) 2 M.W.N 238.

——S. 63—*Document not in existence.*

Secondary evidence of a document which has not been proved to have been written by the accused or even existed, cannot be admitted. A copy of a newspaper publishing a defamatory letter cannot be used as secondary evidence to prove a letter which has not been found or even proved to have existed. (*Richards*, J.) RAMLAL BALARAM *v.* EMPEROR. 12 Cr. L J. 259 = 10 I C. 832 = 8 A.L.J. 302.

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——S 63—*Exhaustive of kinds of secondary evidence—Translation of document in judgment not inter partes not admissible.*

S. 63 of the Evidence Act is exhaustive of the kinds of secondary evidence admissible under the Act. Where the terms of a document were sought to be proved by a judgment containing a translation thereof in a suit which was not between the same parties or their representatives in interest. *Held* neither the translation of the document nor the statement in the judgment was secondary evidence of the contents of the document, 26 I.C. 618; 4 L.W. 331; 42 M.L.J. 324, Ref. (*Spencer and Deva Doss*, JJ.) JAGANNATHA NAIDU *v* SECRETARY OF STATE FOR INDIA. 43 M L J. 87 = 16 L.W 11 = 31 M.L.T 46 H C) = (1922) M.W.N. 432 = 1922 Mad. 334.

——Ss. 63, 32 (2), 35, 65 and 91—*Lost grant—Secondary evidence.*

As Ss. 65 and 91 make it clear that when a written grant is lost secondary evidence can be given of it only as defined by law, a translation of *parwana* or grant forming the enclosure to the report of a public officer is not admissible as secondary evidence of the contents of the grant under any of the Ss. 63, 32 (2) or 35. (*Sadasiva Iyer and Moore*, JJ.) AMBALAVANA PANDARASANNADHI *v.* KUPPACHI AMMAL. 38 I.C. 201 = 4 L W. 331.

——Ss. 63 and 65—*Secondary evidence—Public document—Copy not available.*

Where a certified copy of a lost public document is not available other secondary evidence of its contents is admissible. 5 Cal. 58; 6 M. 80, Foll. A register of orders issued by the Collector in charge of a Zemindari kept in the ordinary course of business may be taken to be an accurate copy of the orders issued and may be admitted as secondary evidence of such orders (*Wallis*, C. J. *and Hannay*, J.) KRISHNARAO *v.* MUTHUNGI BUCHI 28 I.C 808.

——S. 63, 65 and 66—*Secondary evidence—Admissions—Destruction of or absence of original—Suit upon mortgage document—Forgery—Decree on—Admission.*

Where a party sues to redeem a mortgage putting forward a certain document as embodying the transaction and that document is found to be a forgery, a decree cannot be given to him on the basis of the written admissions of the deft as to the contents of the mortgage. No question of secondary evidence arises, without proof of the existence and due execution of the original. Per *Spencer and Tyabji*, JJ.)—S. 63 of the Evidence Act does not exhaust the kinds of secondary evidence that may be adduced. Per *Tyabji*, J.—Having regard to Ss. 65 and 66 of the Evidence Act written admissions of the contents of documents are inadmissible without proof of the original having been destroyed or being otherwise not available for production. (Per *Sadasiva Iyer*, J.) When the plff. puts forward a forged document as primary evidence, it cannot

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be held that defts. are put upon notice that they would be required to produce the counterpart of the genuine document. (*Spencer, Tyabji and Sadasiva Iyer*, JJ.) KALLIANIAMMA *v.* NARAYANA NAMBIAR. 28 M L J. 266 = 17 M.L.T. 170 = 28 I.C. 63 = (1915) M.W.N. 105.

———S. 63—*Translation of grant contained in official letter—Whether public record — Admissibility of.*

The translation of a grant contained in a letter from one official to another, does not come within the provision of S. 63 and so cannot be admitted as secondary evidence. 26 M. L.J. 99, Ref. (*Kumaraswami Sastri*, J.) AMBALAVANA PANDARA SANNADHI *v.* KUPPACHI JANAKI. 26 I.C. 618.

———S. 63—*Statement in previous suit referring to document—Secondary evidence.*

A statement by a party or his authorised agent in a previous suit referring to a document which was against his interest is secondary evidence of that document. (*Ashworth*, A.J.C.) RATIPAL SINGH *v.* UDAI BHAN PARTAB SINGH. 33 I.C. 667 = 6 O.L.J. 508.

———Ss. 63 and 65—*Objection as to admissibility of copy not open in second appeal.*

When a copy is admitted in trial Court without objection, objections as to admissibility of the copy shall not be allowed in appeal. (*Coutts and Das*, JJ.) RAM LOCHAN MISRA *v.* HARI NATH MISRA. 3 P.L.T. 397 = 1 P. 606 = 1922 P. 565.

———S. 63, Illus. (c)—*Copy of a copy—Inadmissible.*

A copy of a copy is inadmissible in evidence. When a document is inadmissible in evidence, no question of its construction arises and the party relying upon it must fail. (*Coutts*, J.) ABDUL GHANI *v.* SYED MD. RAZA. 1 P.L.T. 47 = 54 I.C. 941 = 2 U.P.L.R. (P.) 68.

———S. 63 (5)—"*Seen*"—*Meaning of—Illiterate witness.*

As regards the letting in of secondary evidence the word "see" in S. 63 (5) includes also "read over" in the case of a witness who is illiterate and as such cannot himself read it. If it is read over to him it will satisfy the requirements of the section. (*Walsh*, J.) PUDAI SINGH *v.* BRIJ MANGAL. 1923 All 612.

———S. 63 (5)—*Oral evidence of contents of document.*

Under S. 63, sub-S. (5) of the Evidence Act only a witness who has seen the document and who could have read the document in its original state is entitled to give oral evidence of it. (*Daniels*, J.) RAMJI DAS *v.* MIHIN LAL. 1923 All 441.

———S. 63 (5)—'*Person who has seen*'—*Illiterate attestor.*

Where in order to prove a mortgage the only witness called was an illiterate person, he

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cannot be deemed to be one who has seen the execution of the mortgage within S. 63 (5) of the Evidence Act. 12 A.L.J. 239, Foll. (*Gokul Prasad*, J.) JANAKI *v.* RAM KISHORE. 1922 All. 232.

———S. 63 (5)—"*Seen*—" *Meaning of—Statement of an illiterate witness as to contents.*

An oral account of the contents of a document given by an illiterate person, who merely saw without understanding the contents thereof, is not sufficient evidence. "Seen" in S. 63 (5) of the Evidence Act means more than the mere sight of the document. The person must have read the contents of the document. (*Tudball*, J.) GHURE *v.* CHATRAPAL. 23 I.C. 11 = 12 A.L.J. 289.

———S. 63 (5)—*Mortgage-deed—Secondary evidence—Admissions of party in prior suit.*

The admission made by the mortgagee in a Court in a previous case about the existence and contents of the mortgage-deed is good secondary evidence within S. 63 (5) and sufficiently proves the execution of the deed. (*Lindsay*, J.C.) BAHADUR SINGH *v.* MADHO SINGH. 36 I.C. 696 = 3 O.L.J. 379.

———S. 64—*Mortgage deed—Copy of—If sufficient evidence.*

A copy of mortgage-deed is not sufficient to prove mortgage. (*Tudball*, J.) MAHTA PERSAD MISSER *v.* GAJADHAR LOHAR. 23 I.C. 864.

———Ss. 65 and 135, Illus. (b)—*Loss of document, proof of—Secondary evidence of a lost document, admissibility of.*

Held, that ordinarily if the witness in whose custody a deed should be deposed to its loss, unless there is a motive suggested for his being untruthful, his evidence should be accepted as sufficient to let in secondary evidence of the deed. (*Lord Phillimore*) MUNSHI EHTISHAM ALI *v.* JAMNA PRASAD. 48 I.A. 365 = 64 I.C. 299 = 24 O.C. 272 (P.C.).

———S. 65—*Secondary evidence—Written statement, acknowledgment in—Plaint or decree if admissible as.*

Where an acknowledgment in the written statement in a previous suit is relied on, the statement itself or a certified copy thereof must be proved and neither the plaint nor the decree can be admitted as secondary evidence of the same. (*Piggott and Walsh*, JJ.) HARIMURAT *v.* RAMHIT, 63 I.C. 490 = 3 U.P.L.R. (All.) 179.

———S. 65—*Certified copy—Original produced in an old suit—Reliability.*

Where the plaintiff sued for a declaration that certain survey numbers were kept joint at a partition between the ancestors of the parties, relying upon a certified copy of a partition-deed passed between the parties, and the copy which was produced showed that the original document was produced in Court in a previous suit. *Held*, the Court could rely on the certified copy as showing the terms of the

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partition there being no reason to doubt, owing to the lapse of time, that the certified copy retained on the file of the previous suit was a correct copy of the original. (*Macleod, C.J. and Shah, J.*) CHUDASAMA KHODUBA *v.* TAKHTASANG. **46 B. 32=1922 Bom. 177.**

——S. 65—*Unstamped document—Secondary evidence not admissible.*

Secondary evidence cannot be given of a lost document which has not been properly stamped as such a document becomes admissible only when the Collector has charged the duty and penalty thereon and written an endorsement on the document submitted to him. (*Macleod, C.J. and Shah, J.*) HIRALAL *v.* SHANKAR. **45 Bom. 1170 = 62 I.C. 637=23 Bom. L.R. 506**

——S. 65—*Absence of original not explained—Secondary evidence.*

A party to a suit had in possession an unregistered deed of sale of property less than Rs. 100, but he did not produce it before the Court nor could he give a satisfactory account of it. *Held*, that secondary evidence of the contents was not admissible. (*Teunon and Newbould, JJ.*) DOMAI BARA *v.* KEREO KOLITA. **62 I.C. 444.**

——S. 65—*Objection to secondary evidence.*

If no objection is taken to the admission of secondary evidence of a document by means of oral evidence, such evidence could not be discarded in appeal though the secondary evidence should have been only a certified copy. (*Sanderson, C.J. and Mookerjee, J.*) HASMAT ULLAH *v.* HARI MOHAN SARMA. **34 I.C. 942.**

——S. 65—*Evidence — Gift— Secondary evidence.*

A petition presented to a Collector by a donor admitting a gift is secondary evidence of a very strong kind of the gift. (*Fletcher and Richardson, JJ.*) BASIRUDDIN AHMED *v.* HIMMAT ALI MANDAL. **25 I.C. 852.**

——S. 65—*Entry in settlement—Original or certified copy are the only kinds permissible.*

An entry in a public document such as a settlement record can be proved only by the original or by a certified copy. A finding on a statement which is not admissible to prove the entries can be contested in second appeal. (*Martineau, J.*). RAM *v.* MALIK GHANASHIAM DAS. **1923 Lah. 150 (1).**

——S. 65—*Secondary evidence — When admissible—Discretion of trial Court.*

Secondary evidence of a document may be given when the party offering that evidence cannot, for any reason not arising from his own default, or neglect to produce the original in reasonable time. The question of allowing secondary evidence depends upon the discretion of the Court and where it has been decided by the Judge of First Instance his conclusion should not be overruled except in a clear case

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of miscarriage of justice. Production of secondary evidence does not dispense with proof of the execution of the original document. (*Sir Shadi Lal, C.J. and Fforde, J.*) CHUHA MAL *v.* RAHIM BAKSH. **71 I.C 563.**

——S 65—*Loss of original not proved—Secondary evidence—Effect.*

In a suit based on a promissory note, secondary evidence of its existence and contents cannot be let in when the original itself has not been proved to be lost. (*Broadway and Campbell, JJ.*) RAM SARAN DAS *v.* TULSI RAM **1922 Lah. 417.**

——S. 65—*Unstamped bond — Certified copy not admissible.*

Copy of an unstamped bond on the loss of the bond, is inadmissible in evidence. (*Shadi Lal, C. J. and Harrison, J.*) MUHAMMAD AYUB *v.* RAHIM BAKSH. **3 L 282= 1922 Lah. 401.**

——S 65—*Suit on lost bahi—Loss of bahi how proved—Police report.*

Strict proof of a lost bahi must be given and the police file of an alleged theft from plff.'s house and the statement of the thanadar made in another case are inadmissible to prove the loss of bahi. (*Wilberforce, J.*) BARU *v.* SUKA SINGH. **4 Lah. L.J. 418.**

——S 65—*Secondary evidence—Lost bahi—Police report.*

Where a suit is based on a lost bahi strict proof of the loss must be given and a Police Sub-Inspector's report is not a sufficient proof of such loss. (*Wilberforce, J.*) ASA RAM *v.* SUKHA SINGH. **4 Lah. L J. 416.**

——S. 65—*Document in possession but not produced—Account books—Plaintiff in possession of them.*

In a suit for accounts it was proved that the books of account were in possession of plff. Plff. could not adduce secondary evidence of the account books as their loss was not proved. (*Shadi Lal and Dundas, JJ.*) THAKARDAS *v.* GOVARDHAN. **56 I.C. 940.**

——S. 65—*Unstamped document—Contents—Proof—Suit for value or return of goods delivered.*

A claim for the value or return of goods delivered cannot be proved by an unstamped agreement between the parties. (*Coutts-Trotter and Seshagiri Iyer, JJ.*) CHAMI *v.* ANA PATTAR. **33 I.C. 661.**

——S 65—*Objection to secondary evidence—Objection when to be taken.*

Objection to admission of secondary evidence must be taken at the time, the other party produces it for admission and not at a late stage. (*Tyabji and Phillips, JJ.*) UPPARA HANUMANTHA *v.* PEDDAPALLE SAMACHARLU. **33 I.C. 188=(19.6) 1 M.W.N. 9.**

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———S. 65—*Document in possession but not produced, but found inadmissible in previous suit—Secondary evidence.*

Secondary evidence of a document which is not produced but which in a previous suit was found to be inadmissible as being not registered, cannot be given. (*Sankaran Nair and Oldfield*, JJ.) NATARAJA SARMA *v.* RAMABHADRA NAIDU GARU. 28 I.C. 863.

———S. 65—*Unstamped document—Secondary evidence of—Whether admissible.*

Secondary evidence is not admissible to prove the contents of an unstamped document. (*Sundara Aiyar*, J.) SWAMINATHA PILLAI *v.* SUNDARA RAJA PILLAI. 12 I.C 127= (1911) 2 M.W.N. 166.

———S. 65—*Suit on mortgage—Non-production of original — Secondary evidence not admissible.*

Where no reasons are shown for the non-production of the original of a mortgage, a suit on a copy of the document is bound to fail. (*Batten*, J.C.) BHAIRON SINGH *v.* HINDU SINGH. 1922 Nag. 119.

——S. 65—*Document lost—Proof of.*

Where the explanation for the non production of a document is that it is lost, the regular course to adopt is to prove the loss before tendering secondary evdience, but the omission to do so is an irregularity within S. 99 of the C.P. Code. (*Drake-Brockman*, J.C.) SUBAT SINGH *v.* RANI. 59 I.C. 461.

———S. 65—*Unstamped document.*

If the unstamped original of an instrument is lost, oral evidence to prove its contents is inadmissible. (*Mitra*, A.J.C.) PENTAYA *v.* KISHORE. 56 I C. 249=16 N.L R. 68.

———Ss. 63, 65 and 32—Bhat's *Register—Genealogy—Copies of*—Bhat's *books.*

Copies of entries of genealogies in *Bhat's* books are not admissible in evidence where the originals are in existence but not produced. The originals are admissible under S. 32 (2) and (5) of the Evidence Act as it is a recognised duty and pursuit of a *bhat* to keep a genealogy of families where he officiates. (*Kotwal and Findlay*, A.J.Cs.) HAZARI LAL *v.* HAR GOVIND. 48 I.C. 375.

——S. 65—*Plaint—Nature of evidence, to prove.*

Direct evidence is necessary to prove a plaint which is a private document and without such evidence a copy of the plaint is inadmissible. (*Lindsay and Daniels*, A.J. Cs.). AHMAD KHAN *v.* HURMUZI KHANAM. 61 I.C. 177= 3 O.L J. 27.

———S. 65—*Mortgage—Redemption suit—Secondary evidence.*

Where in a suit for redemption the mortgagors relied only upon the secondary evidence

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of the mortgage in the shape of certain documents mentioning or admitting the mortgage, *held* that they could not succeed. (*Stuart*, A.J.C.) NIAMET KHAN *v.* DEPUTY COMMISSIONER, KHORI. 25 I.C 816=1 O.L.J. 142.

——S. 65—*Oral evidence of persons who heard judgment pronounced are not admissible in evidence.*

What is required is an oral account of the contents of the judgment or decree by some one who had read the one or the other. (*Mccoll*, A.J.C.) MAUNG CHIT *v.* MAUNG THA KU AND ONE. 4 U.B.R. 135= 1923 Rang. 113.

——S. 65—*Secondary evidence—What is—Mortgage document.*

Secondary evidence of a document is evidence of its contents, and oral evidence as to the terms of a mortgage which have been reduced to writing is not evidence of the contents of the document. U.B.R. (1907-1909) II, p. 13, Foll. (*Saunders*, J.C.) MAUNG PO DIN *v.* MAUNG PO NYEIN. 66 I C. 380= (1921) 4 U.B.R. 80.

———S. 65 (a)—*Non production of document by defendant—Plaintiff entitled to give secondary evidence.*

The uncontradicted testimony of the plff.'s fruitless search for an original document, coupled with non-production of the document by the deft. in possession of it with knowledge that he will be required to produce it, enables the plff. under S. 65 (*a*) of the Act to give secondary evidence of the contents of the document. (*Walsh*, J.) MUHAMAD KAMIL *v.* HABIBULLAH. 17 I C. 794.

———Ss. 65 (a) and 66—*Secondary evidence—Court's discretion.*

Per *Walsh*, J.—Ss. 65 and 66 must be read together and the adverse party must be presumed to be under the impression that he would be required to produce the original so as to dispense with the necessity of a notice to produce, unless the original is shown or appears to be in the possession of the person against whom the presumption is drawn. Where secondary evidence is admitted of a very old document, Court's discretion in the matter should not ordinarily be disturbed. (*Walsh and Sunder Lal*, JJ.) MANGRA *v.* BEDI RAM. 35 I C. 328.

——S. 65 (a)—*Document in possession but not produced by person having proper custody—Registration copy and admission by witness, if sufficient proof.*

Where a power-of-attorney was not produced by a person having proper custody thereof, the production of a Registration copy of it and admission by a witness that the power was executed is sufficient proof of it. (*Knox*, C J. *and Griffin*, J.) GOPAL RAI *v.* SARWI BEGAM. 15 I.C. 243.

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——S 65 (a) and (f)—*Non-production of document—Mortgage-deed—Secondary evidence—Registration Act, S. 57 (5).*

Plff. failed to obtain the original mortgage-deed in possession of the deft. and therefore produced a certified copy. One of the three witnesses was dead and the remaining two on seeing the copy, could not remember whether they had attested the deed. One of the two witnesses said that the executants mentioned in the copy executed a mortgage at or about the time mentioned in the copy. Plff. examined another person who proved a note in the papers of plff. about payment of interest due on the deed. *Held*, that the copy was admissible in evidence under S. 65 (a) and (f) of the Evidence Act read with S. 57 (5) of the Registration Act. (*Kanhaiya Lal and Kendall*, A.J.Cs.) SALEHA BIBI *v.* OUDH COMMERCIAL BANK, LTD.
35 I.C. 613=3 O.L.J. 482.

——S. 65 (a)—*Award, copy of—Original with Ruling Chief.*

If the award is intended to have effect in British India, it cannot be held to have no effect because it was executed in a Native State. If the original award is in the possession of a Ruling Chief, who is not subject to the process of Court, a copy of the original is admissible as secondary evidence. (*Chamier*, C. J. *and Sharfuddin*, J.) BHAJ KISHORE NATH *v.* MUSST. PARSAN KOER. **2 P.L.W. 156=42 I.C. 617=1917 Pat. 241.**

——Ss. 65 (a) and 66—*Redemption suit—Oral evidence to prove mortgage-deed, if admissible.*

Oral evidence under Ss. 65 and 66 taken together, is admissible to prove a mortgage-deed in redemption suit where the deed is in the possession of the mortgagee and is not forthcoming. (*Parlett*, J.) MI AMIN NISSA *v.* MI SURA BI. **31 I.C. 892=9 Bur. L.T. 52.**

——Ss. 65 (a) and 66—*Notice.*

The lower appellate Court admitted oral evidence of a previous promissory note for which the promissory note in suit, was executed on the ground that the original note was destroyed. The facts on the record showed that the old note was returned to the debtor when the new one was executed. Secondary evidence of the contents of the previous note would be admissible only if notice to produce were first served on the defts. The secondary evidence of the previous note was not admissible, as no notice was served. (*Twomey*, J.) MAUNG SAN HLA *v.* SUBRAMANIAM CHETTY.
12 I.C. 861=4 Bur. L.T. 144.

——S. 65 (b)—*Secondary evidence—Loss of original—Proof of—Registration copy—Alternative pleas.*

When the original document is not proved to have been lost, no secondary evidence thereof (including a registration copy) is admissible. The statement of a witness that he heard of the loss from the plff.'s predecessor in title many years ago, is admissible in evidence. The defts. being strangers to the deed can put the plff. to proof of the loss and alternatively to plead discharge. (*Griffin and Chamier*, JJ.) SRI RAM *v.* RAM LAL. **16 I.C. 878=11 A.L.J. 255.**

——S. 65 (b)—*Non-production of document—Admission as to sale in vendee's favour.*

A person to whom property has been sold by a registered deed cannot, when that deed is not produced, lead any evidence of the sale to prove his title without laying a foundation for the admission of secondary evidence with respect to it. An admission by a vendor as to sale of immoveable property in favour of vendee is not admissible as secondary evidence in the absence of conditions mentioned in cl. (*b*) of S. 65 of the Evidence Act. (*Sharfuddin and Coxe*, JJ.) SAFAR ALI *v.* MOHESH LAL.
34 I.C. 956=23 C.L.J. 122.

——S. 65 (b)—*Scope of—Document as secondary evidence.*

A document cannot be treated as secondary evidence under S. 65 (*b*) of the Act, unless it has been made by the person against whom it is proved or by his representative-in-interest. (*Piggott*, J.C. *and Lindsay*, A.J.C.) GAJARAJ SINGH *v.* MAHOMED BAKER ALI KHAN.
20 I.C. 62

——Ss. 65 (c), 76 and 79—*Secondary evidence—Compromise petition—Presumption of stamp.*

Where the original of a compromise petition filed in Court has been destroyed and a duly stamped copy issued by the Court is produced as secondary evidence, the original must be presumed to have been duly stamped. Moreover the compromise petition is admissible as the evidence of an oral mortgage recited therein, although the petition is not stamped as a mortgage. (*Mr. Ameer Ali.*) AHMED RAZA *v.* ABID HUSSAIN.
18 Bom. L.R. 904=14 A.L.J. 1099=20 M.L.T. 447=24 C.L.J. 504=(1916) 2 M.W.N. 548=21 C.W.N. 265=5 L.W. 153=1 P.L.W. 90=39 I.C. 11=43 I.A. 264=38 All. 494 (P.C.).

——S. 65 (c)—*Will in possession of the opposite party.*

Where the will was either lost or stolen or was in the possession of the opponent, the Registration office copy is admissible in evidence. (*Mr. Ameer Ali.*) PADMAN *v.* HANUMANTA.
19 C.W.N. 929=13 A.L.J. 801=17 Bom. L.R. 609=2 L.W. 648=(1915) M.W.N. 500=22 C.L.J. 172=110 P.W.R. 1915=29 M.L.J. 307=18 M.L.T. 54=93 P.R. 1915=29 I.C. 807=11 P.L.R. 1916 (P.C.).

——S. 65 (c)—*Secondary evidence.*

Strict proof of the loss of the document is necessary before allowing secondary evidence. (*Richards*, C.J. *and Rafique*, J.) JASPAT RAI *v.* DEVI DAYAL. **32 I.C. 399.**

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———S. 65 (c)—*Execution of deed admitted but denied subsequently—Secondary evidence.*

Subsequent denial of execution alters the effect of the original pleading and the plff. cannot succeed on the secondary evidence without proving the loss of original (*Rafique*, J.) MUHAMMAD ALTAF ALI KHAN *v.* HAMIDUDDIN. **21 I.C. 81=11 A.L.J. 731.**

———S. 65 (c)—*Suit on a copy of mortgage-bond—Part payment pleaded.*

Where the execution of a mortgage-bond is admitted but discharge is pleaded, a suit on a copy of the mortgage-bond is maintainable without proving the loss of the original. (*Rafique*, J.) MULLU *v.* DEOKARAN. **20 I.C. 955=11 A.L.J 734.**

———S. 65 (c) — *Objection to secondary evidence—Objection on appeal.*

Secondary evidence of a document should not be rejected on appeal merely on the contention that the loss of the original has not been satisfactorily proved. 19 C. 439 ; 19 I.A. 79, Foll. (*Chamier and Piggott*, JJ.) THE COLLECTOR OF FARUKWABAD *v.* GAJARAJ SINGH. **15 I C. 625.**

———S. 65 (c)—*Kabuliyat—Original not found—Secondary evidence.*

Where after search an original kabuliyat is not found, its copy is admissible in evidence. (*Greaves and Panton*, JJ.) JIBAN KALI MUKHERJI *v.* MANIMALA DASI. **49 I.C. 1006.**

———S. 65 (c)—*Document called for but not produced—Court bound to receive secondary evidence.*

All reasonable steps to produce the documents evidencing their title as patnidars having been taken, the defts. were entitled to prove the contents of the lease by secondary evidence and the Court below were held to have erred in rejecting such evidence. (*Fletcher and Walmsley*, JJ.) ATAL BEHARY KEORA *v.* LAL MOHAN SINGHA ROY. **49 I.C. 507.**

———S. 65 (c)—*Recitals in document—Lost grant—Translation—Copy of.*

As Ss. 65 and 91 make it clear that when a written grant is lost, secondary evidence can be given of it only as defined by law, a translation of *parwana* or grant forming the enclosure to the report of public officer, is not admissible as secondary evidence of the contents of the grant under any of the Ss. 65, 32 (2) or 35. (*Sadasiva Iyer and Moore*, JJ.) AMBALAVANA PANDARASANNADHI *v.* KUPPACHI AMMAL. **35 I.C. 201=4 L.W. 331.**

———S. 65 (c)—*Requirements of the section.*

Under S. 65 (c) of the Evidence Act, the question is not so much, whether the exact mode and time of loss of the original is proved but whether the secondary evidence, is offered owing to the inability to produce the original for reasons other than the default, or neglect of the party offering it. (*Spencer and Tyabji*, JJ.) MANAVIKRAMAN *v.* NILAMBUR THACHARAKAVIL. **31 I.C. 579.**

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———Ss. 65 (c) and 90—*Presumption if applies to certified copy—Secondary evidence—Original not found.*

Secondary evidence is admissible to prove the contents of a document the original of which is not possible to be produced with all due diligence and the Court is entitled to raise a presumption under S. 90 regarding the same on the production of a certified copy. (*Lindsay*, J.C.) RAJ BAHADUR LAL *v.* BINDESHRI. **46 I.C. 344=5 O.L.J. 219.**

———S. 65 (c)—*Loss of document—Secondary evidence—Court of first instance.*

The question whether or not sufficient proof of search for and loss of original document has been given to lay the foundation for the admission of secondary evidence, is a point to be decided by the Judge of first instance. (*Maung Kin*, J.) MA PAIK *v.* MA NIVA PAUK. **34 I.C. 153=9 Bur. L.T. 174.**

———S. 65 (c)—*Destruction or loss of document—Secondary evidence of mortgage—Burden of proof.*

When the terms of a transaction have been reduced to writing, oral accounts of it are excluded entirely. But when oral evidence has to be depended upon, as for instance, when the document has been destroyed by fire, or lost in some other way, the testimony of a person who has actually read the document at some time or other is to be preferred to that of a witness who was simply present at the time when the transaction was entered into but who has not read the document. (*Mc Coll*, A.J C.) NGA KYIN YA *v.* MI TOK. **14 I.C 818= 5 Bur. L.T. 52.**

——— Ss. 65 (e) and 74—*Secondary evidence—Returns in the custody of Registrar of Joint Stock Companies, if admissible.*

Secondary evidence of returns filed with the Registrar of Joint Stock Companies is admissible as such returns constitute the public records of private documents within S 74 (2) of the Evidence Act. (*Sanderson*, C.J., *Chitty*, *Woodroffe*, *Fletcher and Mookerjee*, JJ.) *In the matter of* AMRITA BAZAR PATRIKA. **45 Cal. 169=21 C.W.N. 1161= 19 Cr. L.J. 530=45 I.C. 338= 26 C.L.J. 459 (F.B.).**

———Ss. 65 (e), 66 and 74—*Letter of Admn. with copy of will annexed, if public document—Certified copy—No steps taken to call for production of original.*

The certified copy of an order of the Probate Court to the effect that, the Letters of Admn. granted to the person named, with a copy of the will annexed, of the deceased testator, is admissible, the latter being a public document within S. 74 of the Evidence Act. Where it appeared that the original letters were in the

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possession of the parties interested in opposing the plff.'s claim but the plffs. did not take steps to call upon them, to produce them. *Held*, that there being no question of the genuineness of the document, these steps should have been waived by the Court and the document admitted in evidence under S. 66. (*Mookerjee and Roe*, JJ.) HARIRAM DAS *v.* HEM NATH SARMA. 30 I.C. 690 = 19 C.W.N. 1068.

——S. 65 (e)—*Secondary evidence.*

When a public document is destroyed or lost, any secondary evidence is admissible. (*Chatterjee and Beachcroft*, JJ.) ANAND KUMAR *v.* SECRETARY OF STATE. 43 Cal 873 = 32 I.C. 774 = 20 C.W.N. 576.

——S. 65 (e)—*Document in possession but not produced — Acknowledgment in plaint—Plaint not produced—Proof by production of judgment in suit.*

Where an acknowledgment is contained in a plaint but the plaint is not produced the same can be proved by means of a certified copy of a judgment in the suit. (*Shah Din*, J.) HARI CHAND *v.* PHIRAYA RAM. 82 P.W.R. 1911 = 11 I.C. 377 = 180 P.L.R. 1911.

——S. 65 (f)—*Registration office copy of sale-deed—When admissible.*

A registration office copy of a sale-deed is inadmissible in evidence under S. 65 (*f*) of the Evidence Act to prove the contents of the original sale-deed. But such a copy will be admissible in evidence if a case is made out for reception of secondary evidence. (*Chamier*, J.) MUNNAN *v.* NAJMUN. 11 I.C. 50.

——S. 65 (g)—*Evidence as to result of record—Duty of Court.*

A Kanungo is not required to give oral evidence of the contents of a document such as the record of a *muafi* enquiry which ought to be examined in the original by the Court itself. S. 65, cl. (*g*) does not authorise such a course. (*Maynard*, F.C.) GILAND SHAH *v.* MUSSAMMAT HASAN. 2 Lah. L.J. 714.

——S. 66—*Secondary evidence—Mortgage deed—Notice to produce.*

In a redemption suit plffs. alleged in the plaint that the original mortgage-deed was with the defts. and asked the Court to have the deed summoned from defts. The defts. denied in their statement the existence of the alleged deed. *Held*, that the plffs. could give secondary evidence of the deed and that under the circumstances of the case the Court might in the exercise of the discretion given by S. 66, dispense with the issue of a notice to produce (*Lindsay*, J.C.) BAHADUR SINGH *v.* MADHO SINGH. 26 I.C. 695 = 8 O.L.J. 879.

——S. 67—*Proof of document.*

The execution of a document should ordinarily be proved (where the executant denies that he wrote it) by calling some one who saw him write or who knows his handwriting or by a comparison of his signature with his signature on other documents written by him. (*Chatterjee and Panton*, JJ.) DHAR AND COMPANY *v.* SIB NARAYAN SINGH. 59 I.C. 188.

EVIDENCE ACT (I of 1872), S. 68—Admission of Execution.

——S. 67—*Mode of proof not prescribed.*

S. 67 does not require any particular kind of proof to establish execution of a document. (*Mitra*, O.A.J.C.) Mt. LAHINI *v.* BALA. 18 N.L.R. 85 = 1922 Nag. 227.

——S. 67—*Document which needs no attestation.*

Where a document is admissible without attestation, some evidence of its execution by the executant should be given, *e.g.*, he signed it or made his thumb impression or any other mark. (*Lindsay* J.C.) BANKE LAL *v.* SWAMI DAYAL. 7 O.L.J. 207 = 2 U.P.L.R. (J.C.) 81 = 56 I.C. 32 = 23 O.C. 72.

——S. 67—*Execution of document—Proof—Registration endorsement—Value of.*

The registration endorsement is no conclusive proof of the fact of execution of a document and the Court must be satisfied that the mark or signature denoting execution was actually fixed to the document by the person professing to have executed it. (*Lindsay* J.C.) JAGANNATH *v.* DHIRAJA. 46 I.C. 279 = 5 O.L.J. 191.

——S. 68.

See also (1) ATTESTATION.
(2) T.P. ACT, Ss. 58 AND 123.
ADMISSION OF EXECUTION.
ATTESTATION BY SCRIBE.
ATTESTATION, EXECUTION BY PARDANASHIN LADY.
"ATTESTATION," MEANING OF.
ATTESTATION, PROOF OF.
DEATH OF ATTESTING WITNESSES.
MISCELLANEOUS.

Admission of Execution.

——Ss. 68 and 70—*Admission of execution—Denial of proper attestation—Procedure.*

Where a mortgagor admits having signed the mortgage sought to be enforced but couples it with a denial of the presence of the attestors at the time of signing the mortgagee must prove the execution of the mortgage by calling at least one attesting witness to prove the attestation. The admission, qualified as it was, did not entitle the mortgagee to the benefit of S. 70 of the Evidence Act. No admission of execution is effectual under S. 70 of the Evidence Act unless it amounts to an acknowledgment of the formal validity of the instrument. The execution of a document means something more than the mere signing by the party. It includes delivery and signing in the presence of witnesses where witnesses are necessary. Where the admission of execution is unqualified it may well be an admission of due execution or a waiver of proof of due execution within the

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meaning of S. 70 of the Evidence Act. (*Richardson and Suhrawardy, JJ.*) ARJUN CHANDRA BHADRA *v.* KAILAS CHANDRA DAS. 27 C. W N 161 = 36 C.L J. 378 = 1923 C. 149.

——— Ss. 68 and 70—*Admission of execution.*

Proof of execution of a document required to be attested by calling one attesting witness under S. 68 of the Evidence Act is not required under S. 70 where the execution of the document is admitted by the executant. (*Chatterjee and Panton, JJ.*) PAPAN KHAN *v* BADAL SARDAR. 66 I C. 906 = 34 C.L.J. 498.

——— Ss. 68 and 70—*Admission of execution by a party.*

Where a document is required by law to be attested, the admission, by a party to it, of its execution dispenses with the necessity of proving its execution as against him, but as against persons other than the party making the admission, the document is inadmissible in evidence until it has been proved by attesting witnesses in the manner prescribed by S. 68 of the Act. (*Newbould, J. contra.*) 7 C.W.N. 384, Dist. (*Woodroffe, Chatterjee and Newbould, JJ.*) SATISH CHANDRA MITRA *v* JOGENDRA NATH. 44 Cal 743 = 20 C.W.N. 1041 = 34 I C. 863 = 24 C L J 173.

——— Ss. 68 and 71—*Admission of execution.*

The existence of an admission of an execution in the registration endorsement, does not relieve the party propounding the document from compliance with S. 68 of the Evidence Act. But the endorsement is the best available evidence of execution and is admissible under S. 71 of the Evidence Act. Whether such an endorsement by itself is sufficient subject to the provisions of S. 68 to prove execution is a question of fact to be determined on the merits of each case. 9 Bom. L R. 401; 33 Cal, 537, Foll.; 17 Cal. 208, Not Foll. (*Stanyon, A.J.C.*) MT. SABJA *v.* MUBALIDAR. 42 I C 715 = 13 N.L.R. 197.

——— S 68—*Admission of execution—Proof of attestation - Effect of.*

It is open to a party to waive formal proof of a document even when it is required to be proved in a certain way. But although proof of the document may be waived, this does not affect the validity or legal character of the document as a gift or mortgage. (*Miller, C.J. and Mullick, J.*) BAIJNATH SINGH *v.* MT. BIRAJ KUER. 2 P 51 = 4 P L.T. 239 = 1922 P. 514.

——— Ss 63 and 70—*Admission of execution—Minor parties—Admission by adults—Effect of.*

A mortgage was executed by the manager of a joint Hindu family on his own behalf and on behalf of a minor. The admission of execution by the manager does not relieve the mortgagee of the necessity of calling an attesting witness o prove execution as against the minor and although the minor would be liable to discharge

EVIDENCE ACT (I of 1872), S. 68—Attestation—Execution by Pardanashin Lady.

the debt incurred for a family necessity, yet in the absence of proof of execution as against him, the debt would not create a lien on the property. Per *Atkinson, J.*—Where a party to an attested document admits its execution a third party is not bound by such admission. 20 C.W N. 1044, Foll. An admission under S. 70 of the Evidence Act, is admissible in evidence even though not made in the course of legal proceedings pending before a Court but antecedent to the institution of legal proceedings. 17 Cal. 198 and 38 All. 1, Not Foll.; 44 C. 345, Foll. (*Roe and Atkinson, JJ.*) NAGESHWAR PRASAD *v.* BACHU SINGH. 53 I C. 79 = 4 P.L J. 511.

——— S 68—*Admission of execution—Proof of attestation—If necessary.*

Admission of execution in the written statement is sufficient to dispense with proof of attestation as required by S. 68 of the Evidence Act. (*Jwala Prasad, J.*) RAM GULAM RAUT *v.* HARJAN MEHRA. 42 I.C 91 = 3 P.L.W. 269.

Attestation by Scribe.

——— S. 68—*Attestation by scribe.*

Ordinarily a scribe or writer of the document is not intended to be and is not, an attesting witness. An attesting witness is one who has seen the deed executed and signs it as a witness. 39 B. 61; 33 B. 44; 35 M. 607 P C., Ref. (*Macleod, C.J. and Heaton J.*) DALICHAND SHIVRAM MARWADI *v* LOTU SAKHARAM. 44 Bom. 405 = 58 I C. 616 = 22 Bom. L.R. 186.

——— S. 68—*Attestation by scribe.*

An attesting witness to a document is a witness in whose presence the document is executed. A scribe by reason of his having signed the name of the executant on the document on his behalf is not a competent attesting witness. (*Chatterjee and Panton, JJ.*) PAPANKHAN *v.* BADAL SARDAR. 66 I C 906 = 34 C.L J. 498.

——— S. 68—*Attestation by scribe.*

A person who is present and witnesses the execution of deed and whose name is there on the deed, is a competent witness to prove the execution though he is described as merely a writer. (*Newbould and Panton, JJ.*) JAGANNATH KHAN *v.* BAJRANG DAS. 62 I.C. 17 = 48 Cal. 61.

Attestation—Execution by Pardhanashin Lady.

——— S. 68—*Attestation—Execution by pardanashin lady.*

Especially in the case of a pardanashin lady executing a mortgage-deed the attesting witnesses need not actually see the executant sign or make mark. If it is shown that a pardanashin lady admitted that she was the executant and the deed was taken behind the *Parda* for her signature and after it was signed by her, the

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signatures of the attesting witnesses who saw her touch the pen were then made there is sufficient proof of attestation. (*Kotwal*, A.J.C.) KASI DANBI *v.* GANGU LAL. 56 I.C 247.

——S. 68—*Attestation — Execution by Pardanashin lady.*

Where the witness did not see the executant a pardanashin lady, but saw her signing the deed behind the pardha and where the other witnesses knew her by voice, *held* the deed is properly attested. (*Das and Adami*, JJ). RADHA KISHAN *v.* JAG SAHU. 60 I C. 173 = 3 U.P.L.R. (Pat) 14.

"Attestation," meaning of.

——S. 68—*Attestation, meaning of.*

An attestor must have seen the executant sign the document. Mere ackowledgment by executant before attestor is insufficient. (*Sir John Edge*). PADRATH HALVAI *v.* RAM NARAIN UPADHIA. 37 All. 474 = 42 I.A 163 = 13 A.L.J 809 = 19 C.W.N 991 = 17 Bom. L R 617 = 18 M.L T. 85 = 2 L W. 639 = 29 M.L J. 159 = 22 C L J. 163 = 30 I.C. 356 = (1915) M.W.N. 709 (P.C.).

———S. 68—*Attestation, meaning of.*

Attestation means the witnessing of actual execution of document and not of mere acknowledgment of execution by executant. The attestor must have seen the executant sign the document. Mere ackoowledgment by executant before attestor is insufficient. (*Mr. Ameer Ali*). SHAMU PATTER *v.* ABDUL KADIR ROWTHEN. 35 Mad. 607 = 39 I.A. 218 = 16 C W.N 1009 = 23 M L J. 321 = 12 M.L T. 339 = (1912) M.W N 935 = 10 A.L J. 259 = 14 Bom L R 1034 = 16 I C. 250 = 16 C.L J 596 (P.C.).

[Affirming 31 Mad. 215 = 18 M.L.T. 219.

———S. 68—*Attestation, meaning of.*

If the witnesses attesting a deed never saw the executant actually signing the deed but merely heard her acknowledge the execution, it cannot be regarded as duly attested. (*Lyle*, J.) SUBHEDA KOERI *v.* RAGHU RAM. 21 I C. 83 = 11 A L.J. 757.

———S. 68—'*Attestation*', '*Execution*,' *meaning of.*

The term 'attested' signifies the acts of witnesses who see the execution. The term '*executed*' signifies the acts required of the person who makes the deed either himself or through a representation. Obviously the same person cannot have both the capacities. (*Mookerjee and Buckland*, JJ.) SRISTIDHAR GHOSH *v.* RAKSHAKALLY DASI. 63 I.C. 507.

———S. 68—*Attestation, meaning of—Illiterate executant—Scribe writing executant's name—Scribe not an attesting witness.*

Where document was executed by an illiterate man and the scribe wrote his name as having scribed the deed and also as the actual writer of the executant's signature but did not sign as an attesting witness, it was held that he was not an attesting witness. 8 I.C. 1119, Foll. (*Batten*, A.J.C.) SAROOPCHAND *v.* TULARAM. 13 I.C. 902 = 8 N.L.R. 17.

Attestation—Proof of.

———S. 68—*Attestation—Proof of.*

Deposition of a witness that one of the executants had himself written the document and after the executants had signed, the names of the two attesting witnesses were written with their permission by the executant who had written the document, is sufficient to prove that the document had been duly executed and attested where the attesting witnesses are dead or deny or are illiterate and do not remember the attestation. (*Tudball and Rafique*, JJ.) JAYBEHARI LAL *v.* SAHU PERSHADI LAL. 19 I.C. 789 = 11 A.L J. 400.

———S. 68—*Attestation—Proof of—Attesting witnesses dead—Identification of their signature.*

Where the executants of a document are marksmen and the attesting witnesses are dead, presumptive or other evidence of execution is not admissible if the provisions of the section for proving the attestation of one witness and the signature of the executant are not complied with. A deed with marks of executants and signature of attestor is not proved by merely identifying the handwriting of the latter. (*Griffin and Chamier* JJ.) GOVARDHAN DAS *v.* HORI LAL. 35 All. 364 = 19 I C. 121 = 11 A L.J. 379.

———S. 68—*Attestation—Proof of—Attesting witnesses—Examination—Presumption.*

In the absence or death of witnesses *prima facie*, the presumption is that the testator signed in the joint presence of the two persons and that they subscribed in his presence. Where there was the affirmative testimony of one attesting witness that he was present, saw the execution and became an attesting witness, the testimony of another witness that at the request of the mortgagor, he became an attesting witness, and the further fact that, on the same day, when the document was later on presented for registration, this second witness identified the executant, who in his presence, admitted execution before the registering officer, and at that time the signature of these witnesses appeared as those of attesting witnesses on the face of the document presented for registration. *Held*, in these circumstances, the Court legitimately drew the inference that the requirements of the law were fulfilled. (*Mookerjee and Rankin*, JJ.) BENOY BHUSHAN ROY *v.* DHIRENDRA NATH DEY. 74 I C. 178 = 38 C.L J. 114.

———Ss. 68 and 70—*Attestation—Proof of—Collateral purpose.*

S. 68 of the Evidence Act is imperative and does not on the face of it admit of any relaxa-

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tion except in the cases provided in Ss. 69, 70 and 71 of the same Act. This rule is also applicable whether the document required by law to be attested is sued on or is tendered in evidence for a collateral purpose. (*Suhrawardy and Cuming*, JJ.) SUDHANYA KUMAR SINGHA *v.* GOUR CHANDRA PAL.
35 C.L.J. 473=27 C.W.N. 184=
1922 Cal. 160.

——S. 68—*Attestation, proof of — Oral evidence.*

Where an attestor denies having witnessed the execution of a document, it is open to the parties to let in other oral evidence to show that the attestor did as a matter of fact see the execution and was an attesting witness. (*N. R. Chatterjee and Panton*, JJ.) SREEMUTY SASHIMUKHI DASI *v.* MON MOHINI DASI.
67 I.C. 87.

——Ss. 68 and 70—*Attestation, proof of—Admission by executant—Proof as against third parties.*

Admission of execution of an attested document by the executant or by a person representing his interest is sufficient proof of its execution against the person making such admission. As against the other parties the document must be proved in accordance with S. 68 of the Evidence Act. (*N. R. Chatterjee and Richardson*, JJ.) NIBARAN CHANDRA SEN *v.* NAGENDRA CHENDRA SEN.
45 I.C. 984=22 C.W.N. 444.

——S. 68—*Attestation, proof of—Mortgage—Attesting witnesses.*

To prove due execution of a mortgage it is sufficient if one of the attesting witnesses proves its execution as also attestation by himself and some of the other attesting witnesses who are dead. Under S. 68 of the Evidence Act it is not necessary to call two attesting witnesses to prove execution. (*Mookerjee and Beachcroft*, JJ.) TULSI MAHATO *v.* CHETHREE LAL ROY.
16 I.C. 879=18 C.L.J. 43.

——S. 68—*Attestation, proof of—Mortgage.*

To prove a mortgage, one of the attestors if alive, must be called and execution must be proved and it must also be proved that the execution was in the presence of two attesting witnesses. If all the witnesses are dead, the law would be satisfied by any evidence showing execution in the presence of two attesting witnesses. (*Abdur Rahim and Seshagiri Aiyar*, JJ.) NAMBERUMAL CHETTY *v.* RAGHAVA CHARIAR. 71 I.C. 390 (2)=
14 L.W. 668.

——Ss. 68 and 71—*Attestation, proof of—Applicability to charges.*

The special provisions of the Transfer of Property Act relating to the attestation of mortgages and of the Evidence Act relating to the method of proof of mortgages have no

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application to charges. (*Wallis*, C.J. *and Oldfield*, J.) RAMASAMI *v.* KUPPUSAMI.
14 L.W. 99=66 I.C. 364 (2)=
(1922) M.W.N. 472.

——S. 68—*Attestation, proof of—Evidence of one of the attesting witnesses.*

To prove the creation of a valid charge by a mortgage deed the evidence of one of the attesting witnesses, is sufficient to prove the execution of the mortgage; but this proof may be rebutted by the proof on the other side that the other witness or witnesses did not really see its execution. (*Sadasiva Aiyar and Spencer*, JJ.) VENKATA REDDI *v.* MUTHU PAMBULU NAIK. 60 I.C. 554=
39 M.L.J. 463.

——Ss. 68 and 69 — *Attestation, proof of.*

It is not necessary that two attesting witnesses should be called when two are alive nor that even assuming that only one need be called he should at least be made to prove that another attesting witness besides himself saw the execution. 39 A. 109; 39 A. 241, Foll. (*Sadasiva Iyer and Spencer*, JJ.) VENKATA REDDI *v.* MUTHU PAMBULU NAIK.
(1920) M.W.N. 612=58 I.C. 801=
28 M.L.T. 213.

——S. 68—*Attestation, proof of—One of the two witnesses not called, no presumption against mortgagee.*

The production of one attesting witness satisfies the requirements of S. 68 of the Evidence Act, and from a mere failure to do more than is required of the mortgagee and to produce both the witnesses even if he knows where the other is, it cannot be inferred that the mortgagee is intentionally keeping back the other and that therefore his evidence would damage the plaintiff's case. (*Batten*, J.C. *and Hallifax*, A.J.C.) LACHHMINARAYAN *v.* MOULVI ZAHIRUL SAID ALVI.
1923 Nag 322.

——Ss. 68 and 90—*Attestation, proof of—Document required to be attested—Signature—Ancient document—Presumption—Rebuttal.*

Mere proof or admission of the genuineness of the signature of the executant of a document does not dispense with the proof of its proper attestation if the document is one required by law to be attested. The facts that a document is more than thirty years old and is registered and the genuineness of the signature of its executant on it, is admitted, may go to raise a presumption as to the genuineness. But such a presumption does not exclude the right of the person against whom the document is set up to rebut that presumption by showing that it was not properly attested and was, therefore, inoperative. (*Stuart and Kanhaiya Lal*, A.J.Cs.) NARAIN SINGH *v.* DEPUTY COMMISSIONER OF PARTABGARH. 55 I.C. 501=
7 O.L.J. 22.

EVIDENCE ACT (I of 1872), S. 68—Attestation, Proof of.

———S. 68—*Attestation, proof of.*

The fate of a document is not necessarily at the mercy of attestors and the Court can hold attestation proved though the attestors repudiate their signature or say they attested in the absence of the executant. (*Stuart and Kanhaiya Lal*, A J.Cs.) MAHARAJ LAL BIHARI *v* ANJUMAN-UN-NISA. 48 I C 838= 5 O L J 667.

———Ss. 68 and 71—*Attestation, proof of—Document.*

If a mortgagor does not execute the mortgage deed in the presence of attesting witnesses, proper attestation as required by S. 59 of the T.P. Act cannot be presumed. In such a case the evidence of some other person cannot prove the due attestation required by law under S. 71, Evidence Act. 35 M. 607, Ref. (*Lindsay*, J.C *and Kanhaiya Lal*, A.J.C.) MAHDEO PRASAD *v.* GAJRAJ SINGH. 34 I C. 897= 3 O L J. 164.

———S. 68—*Attestation, proof of—Search for witness how made.*

The enquiry for an attesting witness must be strict, diligent, honest, and satisfactory. It should be made at the residence of the witness and of the relatives who may have information Where, an attesting witness is out of the jurisdiction of the Court, however, the document can be proved by other evidence. (*Maung Kin and Rigg*, JJ.) ASOOMEAH *v.* V.S R M. CHETTY. 61 I C 637= 13 Bur. L T. 114.

Death of Attesting Witness.

———S. 68—*Death of attesting witnesses.*

Where all the attesting witnesses to a mortgage-deed are dead and the signature of one of the attesting witnesses is proved to be in the handwriting of the witness and the signature of the mortgagor is proved to be his, the mortgage-deed is sufficiently proved in the absence of contrary evidence. 15 A.L.J. 167, Foll. (*Richards*, C.J. *and Piggott*, J.) SHIB DAYAL *v.* SHEO GULAM. 39 All. 241=38 I C 694= 16 A.L.J. 164.

———Ss. 68 and 69—*Death of attesting witnesses.*

When the attestation of the witnesses is proved to be in their handwriting in cases the attesting witnesses are dead, and the signature of the executant of the mortgage-deed is in his handwriting, a presumption of the due execution of the deed arises, which the other side must rebut. (*Richards*, C.J. *and Rafique*, J.) UTTAM SINGH *v.* HUKAM SINGH.
39 All. 112=38 I C. 681=16 A.L J. 167.

———S. 68—*Death of attesting witnesses.*

The names of two out of the four attesting witnesses to a mortgage, were written by the scribe who also signed the document himself. *Held*, that it being necessary to prove the deed of mortgage after the death of all the attesting witnesses and the scribe, it was sufficient to prove the handwriting of the scribe. 20 A. 532 Ref. (*Piggott and Rafique*, JJ.) KRISHNA JEWA TEWARI *v.* BISHANATH KALWAR.
34 All 616=16 I C. 392=10 A L J. 217.

EVIDENCE ACT (I of 1872), S. 68—Miscellaneous.

———S. 68—*Death of attesting witness Mortgage document—Proof.*

Where in a suit on a mortgage document, two out of the three attesting witnesses were dead and the plff. proved the signature and an attestation of one of the dead attestors, and called as a witness the living attestor who gave clear evidence of attestation in chief examination but in cross-examination being got at by the defendant went back upon what he said. *Held*, that the document was duly proved. *Obiter.*—To prove a mortgage document it is not enough to call one attesting witness to speak to the execution of the document only by the executants. It must also be proved that the document was attested, by a second witness. (*Wallis*, C J. *and Krishnan*, J.) GANGAYYA *v.* SUBHAMMA. 14 L W, 344= (1921) M.W.N. 747=69 I.C. 284= 4 M L J 303.

———S. 68—*Death of attesting witnesses—Failure of mortgagor to produce—Execution of mortgage.*

The attesting witnesses of a mortgage deed were dead. It was proved that the mortgagor had executed it and that it had been returned to him when a sale-deed was executed. But he failed to produce it though called upon. In the above circumstances the execution of the mortgage-deed was established in view of S. 89 irrespective of the provisions of S. 58. (*Lindsay*, J C.) JANG BAHADUR SINGH *v* CHANDRAJ SINGH. 41 I.C. 171=4 O.L.J. 365.

Miscellaneous.

———S. 63—*Mortgage—Attestor called out but not examined—Document admissible independently—Collateral purpose.*

When the provisions of S. 68, Evidence Act are not complied with, a document cannot be used as evidence at all as a document either requiring attestation or in fact attested; but this does not prevent it from being used in evidence as something else or for any other purpose. S 68 is subject to the limitation, *viz.*, that if the document were tendered in some other proceeding for the purpose of proving the handwriting of the scribe, it could not be objected to upon the ground that no attesting witness being called to prove it, it could not be used in evidence at all. The word "called", in S. 68 means tendered for the purpose of giving evidence. (*Piggott and Walsh*, JJ.) MOTI CHAND *v.* LALTA PRASAD.
44 I C. 596=16 A.L J. 121.

———Ss. 68 and 69—*Object of sections.*

If the provisions of the sections as to proof of document which by law has required to be attested were complied with, the document must be considered proved, in the absence of

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evidence to the contrary. The law does not require that some witness must prove that document was signed in the presence of witnesses. (*Richards, C J. and Banerjee J.*) RAM DEI *v.* MUNNA LAL 39 All. 103 = 38 I.C. 175 = 14 A.L.J. 1041.

———S. 68—*Mahomedan law — Deed of gift.*

A deed of gift by a Mahomedan can be admitted in evidence though it does not satisfy S. 68. (*Richards, C.J. and Rafique, J.*) KARAM ILAHI *v.* SHARFUDDIN 38 All 212 = 35 I C. 14 = 14 A.L J. 119.

———Ss. 68 and 72—*Mortgage — Invalid attestation—Personal liability.*

An invalid attestation of a mortgage though it prevents the deed from being enforced as a mortgage, does not render it inadmissible in evidence as a simple bond. (*Benerjee, J.*) MATHRA PERSHAD *v.* CHEDDI LAL. 23 I C 303 = 13 A.L J. 553.

———Ss. 68 and 71—*Attestor denying execution.*

A document can be proved by other evidence if the only living attesting witness who is illiterate, denies its execution. (*Richards, C.J. and Banerji, J.*) BADRI PRASAD *v.* CAMBIR KANWAR. 26 I.C 503.

———S. 68—*Attestor alive but unable to testify.*

S. 68 requires at least one attesting witness to be called to prove the execution of a document even though he may not be able to prove the document or may have forgotten everything about it or may deny its execution altogether. In order to prove a document to have been signed by a witness or to have been in his handwriting, it should be shown to him and he should be questioned directly upon that point. A marksman is an attesting witness within the meaning of S 59 of the Transfer of Property Act and S. 68 of the Evidence Act. (*Sundar Lal, J.*) CHIRANJI LAL *v.* POORNA. 26 I.C 81 = 12 A L.J. 1115.

———S. 68—*Scribe, evidence of—Proof—Document—Attesting witness.*

The evidence of the scribe of a mortgage deed who signed the deed in the usual way without attesting it as a witness, is not sufficient to prove the deed. An attesting witness is a witness who has seen the deed executed and has subscribed it as a witness. (*Griffin and Chamier, JJ.*) BADRI PRASAD *v.* ABDUL KARIM. 38 All. 251 = 19 I.C. 451 = 11 A L J. 260.

———S. 68—*'Attesting witness,' meaning of.*

'Attesting witness' in S 68 of the Evidence Act means the same thing as 'attesting witness' in T.P. Act, S. 59, when the question is as to the proof of a mortgage. (*Newbould and Panton, JJ.*) JAGANNATH KHAN *v.* RAJRANG DAS. 52 I.C. 97 = 48 Cal. 81.

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———S. 68—*Attesting witnesses—Necessity for calling all.*

Although, where an instrument requiring attestation is subscribed by several witnesses, it is generally sufficient to call only one of them. In the case of wills, however, it is desirable that all capable of being called, should be examined to remove all suspicion of fraud. (*Mookerjee, C.J. and Fletcher, J.*) SURENDRA KRISHNA MONDAL *v.* RANI DASI. 47 Cal. 1043 = 33 C.L J. 31 = 9 I.C. 814 = 24 C.W.N. 860.

———S. 68—*Proof of Execution.*

Where the handwriting of the witnesses in a will was identified, held this does not prove execution by the testator. (*Broadway and Campbell, JJ.*) KAHAN CHAND *v.* MT. JAWANDI. 1923 Lah. 174.

———S. 68—*T. P, Act (IV of 1882) S 59—Civil Procedure Code (V of 1908), O. 8, R. 5.*

A document creating charge on immoveable property and attested by two witnesses can be proved under S. 68 of the Evidence Act by one attesting witness only, if alive; but the proof can be rebutted by an opponent if he succeeded in proving that the other, though dead, did not really see its execution. S. 59 of the T. P. Act dealing with the validity of a document cannot be interpreted to provide the mode of proof of execution in derogation of the requirements of the Evidence Act. An appellate Court must call for clearer proof of attestation of a document if required as per discretion left to it under S. 58 proviso of Evidence Act and R. 5 of O. 8, of the C.P. Code; and should not decide without such proof that the document has not been proved when the plff. does not examine all the attesting witnesses. (*Sadasiva Iyer and Spencer, JJ.*) VENKATA REDDI *v.* MUTHU PANDULU. (1920 M W.N 812 = 58 I.C. 801 = 28 M L.T. 213.

———Ss. 63 and 71—*Attestation—Validity of—When does not arise.*

Ss. 63 and 71 of the Evidence Act deal with the manner in which execution may be proved by witnesses and have no bearing on the question whether the attestation was according to law. If a document on the face of it purports to have been attested by attesting witnesses, and it is not denied that they were attesting witnesses, the question of valid attestation does not arise or if it be considered to arise, the maxim "*Omnia praesumuntur rite esse acta*" comes in. (*Batten, A.J.C.*). BALKISHORE *v.* NARAINSHA. 42 I C. 299 = 13 N.L.R. 121.

———Ss. 68 and 90—*Execution of deed—Direct evidence available — Presumption under S. 90 cannot be invoked.*

Where direct evidence of the execution o a deed is available and would satisfy the requirements of S. 68 of the Evidence Act,

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the presumption under S 90 cannot be invoked. (*Wazir Khan*, A.J.C.) RAGHUBAR SINGH *v.* SANWAL SINGH. **8 O.L.J. 23 = 61 I.C. 128 = 3 U.P.L.R. (J.C.) 9.**

———S. 68—*Attestor not admitting his co-attestor to have signed the deed.*

It is enough if one attesting witness proves execution and attestation, after seeing executant sign, though he does not say whether he saw the other attesting witnesses sign it. (*Daniels*, A.J.C.) KASHEO *v.* SITLU. **39 I.C. 274 = 4 O.L.J. 65.**

———S. 68—*Evidence of—Attesting witnesses.*

It is not necessary under S. 68 to examine the attesting witnesses as a sale-deed is not a document which requires attestation. (*Evans*, A.J.C.) GOPAL *v.* BISHUNNATH. **10 I.C. 64.**

———S. 68—*Attesting witnesses not called—Effect of—Attestation by mortgagor.*

S. 68 of the Act is imperative and a document is not admissible in evidence, unless proved by attesting witness, so long as one is alive and subject to the process of the Court and the fact that when he is called, he will be hostile is no excuse. A mortgagor is not bound by the recitals in a mortgage bond merely because he has attested it. (*Coutts and Macpherson*, JJ.) DHIRA SINGH *v.* MOTILAL. **63 I.C. 266 = 2 P.L.T. 614.**

———S. 68—*Attestor alive but apprehended to be hostile.*

So long as there is a witness and subject to the process of the Court, no document which is required by law to be attested shall be used in evidence until one such witness has been called. The fact that when called, he will prove hostile, does not absolve the plff. from doing his duty. The section is imperative. (*Roe and Jwala Prasad*, JJ.) TULASINGH *v.* GOPALSINGH **1 P.L.J. 369 = 38 I.C. 601 = 2 P.L.W. 333.**

———S 69—*Document "legally proved"—Appellate Court, whether should interfere.*

When a Court of First Instance comes to a finding as to a document having been "legally proved", an Appellate Court should be very slow to interfere with the finding especially when no objection has been taken to its admissibility at the time of hearing. (*Abdur Rahim and Ayling*, JJ.) MANCHUKONDA APPADU *v.* ATCHI APPALASWAMI. **32 I.C. 760.**

———S. 69—*Signature—Proof of.*

The section requires proof of the signature of the executant. This may be proved indirectly by a contemporaneous admission of the execution made by the executant or by other relevant facts such as his subsequent conduct just as well as by the evidence of a witness who directly swears to his signature. An admission recorded by a Sub-Registrar in his registration

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endorsement can be accepted in evidence. (*Kendall and Daniels*, A.J.Cs.) AJUDHIYA PRASAD *v.* JAGANNATH BAKHSH SINGH. **38 I.C. 605 = 20 O.C. 18.**

———S. 69—*Document not enforceable as a mortgage—Collateral purpose.*

A document though not enforceable as mortgage may be used for a collateral purpose unconnected with the mortgage, *viz.*, to prove the ratification of leases. 9 C. 520; 26 C. 78; 32 M. 410, Ref. (*Stuart and Kanhaiya Lal*, A.J.Cs.) HUSSAIN ALI MIZA *v.* MUHAMMAD AZIM KHAN. **31 I.C. 728 = 18 O.C. 168.**

———Ss. 69, 67 and 68—*Proof of mortgage-deed—Attesting witnesses, absence of, not accounted for—Procedure.*

Proof of execution of a mortgage-deed can be had only from the attesting witnesses; and until the absence of such witnesses has been satisfactorily accounted for, evidence could not be admitted to prove their signatures, and through that, the deed. (*Chamier*, J.C. *and Lindsay*, A.J.C.) SWAMIDIN SINGH *v.* KANIZ FATIMA. **11 I.C. 225.**

———S. 70—*Admission of execution—No formal proof necessary.*

Where the execution of documents is admitted in the pleadings no formal proof by calling attesting witnesses is necessary. (*Walsh and Wallace*, JJ.) ASHARFI LAL *v.* NANHI. **44 A. 127 = 19 A.L.J. 835 = 1922 All. 153.**

———S. 70—*Admission of execution—Statement before registering officer—Proof of execution and attestation—Suit on mortgage.*

The admission referred to in S. 70 of the Evidence Act is an admission in the course of the suit itself, for example made in the pleadings or by a party himself in his examination. The certificate endorsed by a Registering Officer upon a document which requires registration is evidence that all the provisions of the Registration Act have been duly performed, and is no evidence of admission, of execution made by the executant. (*Richards*, C.J. *and Piggott*, J.) RAJ MANGAL MISAR *v.* MATHURA DUBAIN. **38 All. 1 = 30 I.C. 516 = 13 A.L.J. 881.**

———S. 70—*Admission by one out of three executants—Insufficient.*

An admission in a later deed by one out of three parties to a document, is insufficient to prove execution. (*Griffin and Chamier*, JJ.) GOBARDHAN DAS *v.* HORI LAL. **35 All. 364 = 19 I.C. 121 = 11 A.L.J. 379.**

———Ss 70 and 69—*Admission in pleadings—Execution if includes attestation.*

A mortgage could not be held to be invalid for absence of proof of attestation where there is nothing in the pleadings to show that the plaintiff was put to the proof of attestation. 44 B. 405, Ref. The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as

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against him, though it be document required by law to be attested. Per *Crump*, J.—The word "execution" in S. 70 of the Evidence Act means that the party by affixing his signature or mark has signified his assent to the contents of the document, and if a party admits that he has done this, he admits execution. The admission of execution cannot be taken to mean admission not only of the signature or mark in token of assent by him, but also that all the legal formalities connected with the document have been complied with. There is no reason for holding that where a party admits execution within the meaning of S. 70 he must necessarily be taken to admit that the document has been attested as required by S. 59 of the T.P. Act. (*Shah*, A.C.J. *and Crump*, J.) JAGANATH NARSINGDAS *v.* RAVJI TULSIRAM. 24 Bom. L.R. 1296=47 B. 187= 1293 Bom. 90.

——S. 70—*Admission of mortgage—Proof of attestation—Legal representatives.*

Section 70 provides that the admission of a party to an attested document, of its execution, by himself, shall be sufficient proof of its execution as against him, though it be a document required by law to be attested. The section speaks of an admission by a party to an attested document of its execution by himself; that is, of its execution by the party concerned. An admission by the representative of a party to an attested document of its execution by the party cannot be treated as an admission of the party to an attested document of its execution by himself. Where a person admitted execution of the mortgage but specifically denied that the bond had been duly attested as required by law, in such circumstances it is incumbent upon the party who relies upon the mortgage instrument, to establish that the document was attested as required by law. (*Mookerjee and Rankin*, JJ.) BENOY BHUSHAN ROY *v.* DHIRENDRA NATH DEY. 74 I.C. 178=38 C.L.J. 114.

——S. 70—*Admission of execution—Effect.*

Per *Woodroffe and Chatterjee*, JJ.—Per *Newbould*, J., *contra*.—S. 70 must be read as a proviso to S. 68. S. 68 must be read subject to the provision of the subsequent sections; where an executant admits execution of an attested document, the document is admissible as against persons other than the executant without proof by an attestor but such admission will not prove the document as against other persons. (*Woodroffe, Chatterjee and Newbould*, JJ.) SATISH CHANDRA MITTRA *v.* JOGENDRA NATH. 45 Cal. 355=20 C.W.N. 1044= 34 I.C. 862=24 C.L.J. 175.

——S. 70—*Admission of execution—Effect against co-executants—Attestation.*

Where there are two executants in a mortgage-deed, attestation may be according to law in respect of one of them but not in respect of the other. Where execution is admitted and due attestation not denied the question of attestation does not arise, if it does arise, the

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maxim *omnia praesumuntur rite esse acta* comes in, unless there is evidence that attestation is not according to law. 42 I.C. 299, Foll. (*Batten*, A. J. C.) DHANNA LAL *v.* SHAMBU. 47 I.C. 9.

——Ss. 70 and 71—*Admission of execution, what is—What interest passes.*

The admission referred to in S. 70, Evidence Act, is an admission made in the course of the proceedings in which the document is produced. (*Stanyon*, A.J.C.) SARJA *v.* MURALIDHAR. 42 I.C. 715=13 N.L.R. 197.

——S. 70—"*Admission of execution*", *meaning of.*

Admission in S. 70 of the Act related only to the admissions of the parties in the course of the trial of a suit. An admission of execution before a registering officer at the time of registration does not come within the purview of the section. 27 C. 190, Foll.; 1 C.W.N. ccxxii, not Foll. (*Drake Brockman*, J. C.) BUDDA *v.* SARWAN. 11 I.C. 689= 7 N.L.R. 85.

——S. 70—*Admission of execution, what is.*

The admission referred to in S. 70 only refers to admissions made in the course of the trial. Any admission which can be availed of under S. 70 is only against the party himself. If a party has to prove a document he must prove its execution in all cases, i.e., that it was signed by the executant irrespective of the question as to whether it requires to be attested or not. (*Lindsay*, J.C.) HARI LAL *v.* THAKUR BHAGWAN BAKHSH. 34 I.C. 281=19 O.C. 23.

——S. 70—*Document required by law to be attested—Admission of execution—Proof of attestation.*

Admission by a party of execution of a document is sufficient proof, even though law requires it to be attested. If the admission of the executant has not the effect of dispensing with proof of attestation, S. 70 would be superfluous as recourse may be had to the general provisions of the Act relating to admissions, if the admission of execution is to be used only in the sense of an admission of signing only. The executant's admission may be made prior to the institution of legal proceedings. (*Duckworth*, J.) AUNG RHI *v.* MA AUNG KRWA PRU. 1 Rang. 357= 1924 Rang. 189.

——S. 71—*Attestation denied—What is to be proved.*

Where an attestor denies attestation and the other attestors are dead, what is required under S. 71, Evidence Act is only proof of execution and not execution in the presence of the attesting witnesses. (*Ryves and Daniels*, JJ.) LALTA PRASAD *v.* DARSHAN SINGH. 1924 All. 189.

——S. 71—*Attestors dead or proving hostile—Proof of document.*

If the attestors of a document are dead or prove hostile S. 71 requires evidence to prove

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the execution of the document, it is not necessary to prove execution in the presence of attesting witnesses. (*Ryves and Daniels, JJ.*) PALESHWARI PRASAD *v.* SHANKAR DAYAL.
74 I.C. 969.

———S. 71—*Mortgage — Execution—Recital of receipt of consideration—Auction-purchaser.*

The execution of the mortgage having been proved in the manner provided by S. 71 of the Evidence Act and on the face of it the bond appearing to have been executed in the presence of more than one person, the mortgage was good. The acknowledgment of the receipt of consideration in the bond was binding on the auction-purchaser. (*Richards, C J. and Banerji, J.*) NARAIN DAS *v* DILAWAR. 41 All. 230=
82 I.C. 830=17 A L J. 141.

———S. 71—*Execution of a document—Attestation.*

Execution and attestation of document may be proved by other evidence when the attesting witnesses are hostile and say that they signed a blank paper. (*Newbould and Panton, JJ.*) DINABANDHU PATRA *v.* SANATAN DANDAPAT.
48 I.C. 624.

———S. 71—*Mortgage—Proof of execution.*

Where in a mortgage suit it was found that one of the attestors was dead and the other either denied or did not recollect the execution of the document, the execution of the same can be proved by other evidence. (*Das and Adami, JJ.*) LAKSHMAN SAHU *v.* GOKHUL MAHARANA. 1 P. 154=1922 P. 415.

———S. 73—'*Purports*'—*Handwriting—Comparison—Anonymous document.*

The word 'purports' in S. 73 of the Evidence Act means alleged. It is not necessary that the writing which is in dispute must itself in terms express or indicate that it was written by the person to whom it is attributed. When an anonymous writing is produced and ascribed by the prosecution to a particular person then the case for the prosecution is, that having regard to the admitted documents and the comparison between them and the disputed writing, the prosecution alleges that the disputed document purports to have been written or made by the accused. An anonymous writing ascribed to a particular person may therefore be compared under S. 73 of the Evidence Act. 37 C. 467, Diss. (*Chandavarkar and Batchelor, JJ.*) EMPEROR *v.* GANPAT BALKRISHNA.
13 Cr. L J. 505=15 I.C. 649=
14 Bom. L R. 310.

——— Ss. 73 and 47—*Handwriting—Proof—Comparison—Value.*

The ordinary methods of proving handwriting are (1) by calling as a witness a person who wrote the document or saw it written or who is qualified to express an opinion under S. 47; (2) by a comparison of handwriting as provided by S. 73; and (3) by the admission of the person against whom the document is

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tendered. A comparison of handwriting is at all times, as a mode of proof, hazardous and inconclusive and ought to be used with very great caution. (*Mookerjee and Buckland, JJ.*) SAROJINI DASSI *v.* HARI DAS.
26 C.W.N. 113=34 C.L J 573=
49 Cal. 235=1922 C. 12.

———S 73—*Signature—Comparison of,*

S. 73 of the Evidence Act is not limited to such documents only as are signed or contain some intrinsic statements of the identity of the writer. Any document alleged by a party to be in the handwriting of a particular person may, for purpose of proof be compared with other writing or signature admitted or proved to the satisfaction of the Court to have been made or written by that person. 37 C. 467, Diss; 14 Bom. L.R. 310, Appr. (*Ayling and Krishnan, JJ.*) VEERARAGHAVA AIYANGAR *v* SOURI AIYANGAR. 35 M L J. 608=
(1918) M.W.N. 715=24 M.L T. 447=
48 I.C. 68=8 L.W. 625.

———S. 73—*Inadmissible document—Relevancy and admissibility by comparison—Expert evidence, if necessary.*

Documents, not admissible in evidence otherwise, but signatures on which are admittedly the exetutants, become admissible under S. 73 even for the sole purpose of ascertaining by the Court itself by comparison, the genuineness of signatures on disputed documents without the aid of an expert. (*White, C J. and Tyabji, J.*) RAMASWAMI NAICK *v.* RAMCHANDRAN CHETTY. (1914) M.W.N. 240=22 I.C 627=
1 L.W. 136.

———S. 73—*Comparison of signatures—Adjudication based solely on such proof—Error in law—Second appeal.*

If a signature to a document is denied by the executant, a comparison of signatures is one of the admissible modes of proving handwriting and although in absence of other evidence such proof would be regarded as hazardous and inconclusive, it cannot be regarded as an error in law to base the conclusion on such proof alone and a Court of second appeal is not entitled to set aside a finding based on such comparison. 37 C. 467, Ref.; 10 C. 1017, Dist. (*Sundara Iyer, J.*) PASUPALETTI VENKAMMA *v.* SHAIK HAMED.
14 I C. 741=11 M L T. 425.

———S. 73—*Finger impression—Power of Court to direct accused to give—Admissibility.*

A Court has power to direct an accused person to make a finger impression and the same is admissible in evidence. So also is the evidence of an expert concerning the finger impression. (*Young, O.C.J., Heald and May Oung, JJ.*) EMPEROR *v.* NGA TUN HLAING.
1 Rang 759=2 Bur. L J 270=1924 Rang. 115.

———S. 73—*Proceedings under S. 476, Cr. P. Code—Accused asked to make a thumb-impression.*

Proceedings in inquiries under S. 476, Cr. P.C., being judicial proceedings and the person

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against whom they are directed being in the position of an accused person, to examine such a person as a witness in the course of such proceedings, is *ultra vires* except that he can only be examined under S. 342, Cr. P.C., but he cannot properly be asked questions merely to elicit a statement as a foundation for ordering his prosecution nor can he be compelled to make any thumb impressions under S. 73 of the Evidence Act. 5 I.C. 62; 2 Weir 598, Ref. (*Parlett*, J.) MAUNG PO NYUN v. MATU KURPEN CHETTY. 17 Cr. L J. 316 = 35 I.C. 492 = 10 Bur. L T 32.

——S. 74—Dakhalnama—*Admissibility of.*

A *dakhalnama* is a public document and its copy is admissible without proof. (*Knox*, J.) SATNARAIN DUBE v. NARAIN BARGAH. 30 I.C. 810 = 18 A.L.J. 935.

——S. 74—Dakhalnama—*Public document.*

A copy of a *dakhalnama* admissible in evidence without requiring any proof as a *dakhalnama* is a public document. (*Rafique*, J.) MUHAMMAD NASIR v. RAM KARAN SINGH. 25 I.C. 529.

——S. 74—*Police station—Death Register.*

The death register kept at a *thana* is a public document within S. 74 of the Act and a certified copy thereof is admissible in evidence. 41 M. 26, Appr. (*Teunon and Richardson*, JJ.) TAMIZ UDDIN v. TAJU. 46 Cal. 152 = 46 I.C. 237 = 22 C.W.N. 822.

——S. 74—Chittas — *Evidentiary value depends upon the purpose for which they were prepared.*

Chittas, prepared for a public purpose such as the distribution of revenue on the shares, or assessment and settlement of revenue on the share belonging to the Govt., or public documents while if they are prepared to ascertain Govt.'s share in the lands without prejudice to the rights of *bahali* shares they are private. Probative value of *chittas* depends on evidence in different cases. (*Chatterjea and Mullick*, JJ.) NABENDRA KISHORE ROY v. RAHIMA BANU. 31 I.C. 695 = 19 C.W.N. 1018.

——Ss. 74 and 77—*Khasra papers — Nethersole settlement—Certified copy produced at a later stage.*

The Khasra of Nethersole settlement in Sambulpore Dt. is a public record and a certified copy of it may be accepted though filed at a late stage. (*Teunon and Mullick*, JJ.) BHUBAN SAHU v. LAL SUNDAR JHANKAR. 21 I.C. 604.

——S. 74—*Cr. P.C., S. 107—Notice under —Whether a public document—When admissible as evidence.*

A notice under S. 107 of the Cr. P.C. is a public document under S. 74 of the Evidence Act, but is not admissible as evidence without proof that the parties mentioned in it are the parties concerned in question at issue. (*Holmwood and Sharfuddin*, JJ.) SHEIK AMJAD v. LACHAMI KANTA JHA. 23 I.C. 523 = 18 C W N. 654.

——S. 74—Teiskhana *Register.*

A *teiskhana* register prepared under the rules framed by the Board of Revenue under Reg. XII of 1817 is a Register kept for the information of the Collector but is not a public document. (*Mookerjee and Carnduff*, JJ.) CHALHO SINGH v. JHARO SINGH. 18 I C 61 = 39 Cal. 995.

——S. 74 — *Registers from Collectorate fixing areas and assessment.*

Registers which give details as to the areas of different villages and Govt. revenue chargeable thereon at the time of the settlement and which are produced from the collectorate, are public documents. (*Mookerjee and Carnduff*, JJ.) LAL MOHAN THAKUR v. NANDA LAL. 15 C.L J. 191 = 14 I C. 461 = 16 C.W.N. 320.

——S. 74—*Map prepared by Collector for private use.*

A map prepared by a Collector for his private use in his private capacity is not a public document. (*Mookerjee and Teunon*, JJ.) PRIYA NATH v. MAHENDRA KUMAR. 14 C.L.J. 578 = 10 I.C. 873 = 16 C.W.N. 317.

——S. 74—Chittas *prepared during partition of Taluq, admissibility of.*

Chitta prepared for the purpose of distributing the public revenue on a partition of an estate are public documents and admissible as evidence of the state of affairs then existing. (*Casperse and Doss*, JJ.) NOBENDRA KISHORE ROY v. DURGA CHARAN 10 I.C. 287 = 15 C.W.N. 515.

——Ss. 74 and 35—*Report by a village* nikha khwan *regarding objection to entry whether public document—Secondary evidence.*

A report by a village *Nikha Khawan* to the *Mohavir* in the central office informing him of the objection to an entry of marriage in the village register by the former husband of woman is not a public document within S. 74 of the Evidence Act and no secondary evidence of its contents can be given under S. 65 of the Act. (*Agnew*, J.) FAZAL AHMAD v EMPEROR. 139 P.L.R 1914 = 23 I C. 696 = 15 Cr. L.J. 315 = 1 P.R. (Cr.) 1915.

——S. 74—*Public document—Record of— Confession made before a Magistrate outside British India.*

Confession made before a Magistrate outside British India is admissible under S. 74 of the Evidence Act. (*Hallifax and Macnair*, J.Cs. GOVINDA v. EMPEROR. 23 Cr. L J. 673 = 69 I.C. 257 = 17 N.L.R. 113.

——Ss. 74 and 35—*Chaukidar's register.*

A Chaukidar's register of births and deaths is not a public document. No importance can

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be attached to it in view of S. 65. (*Kanhaiya Lal and Kendall*, A.J.Cs.) BISHESHRA DAYAL *v.* HIRA LAL. 19 O.C. 221=36 I C. 941= 4 O.L J. 49.

——— S. 74—*Pedigree signed by Patwari, Lambaraar and Settlement officers and filed in* 1871.

A pedigree filed before the settlement Court in 1871 signed by the Patwaris and two lambardars, now dead, appearing in the pedigree itself and by the settlement officer himself, must under the circumstances be accepted as a public document. (*Piggott*, J.C.) SARJU *v.* RAM HARAKH. 18 I.C. 250.

———S. 74 — *Registers under the Land Registration Act are public documents.*

Registers proposed and kept under Land Registration Acts are public documents and admissible in evidence. (*Jwala Prasad and Ross*, JJ.) RAMNANDEN SAHAY *v.* JAIGOVIND PANDEY. 2 P. 839=1924 P. 213.

——— S. 74—Parcha *slip.*

A *parcha* slip granted in the course of survey proceedings is not a public document. (*Mullick and Thornhill*, JJ.) RAMBHAGWAN *v.* EMPEROR. 47 I.C. 82=19 Cr. L.J. 886.

——— Ss. 74 (1) (iii) and 65 (e)—*Probate of will, copy of, if a public document—Secondary evidence, if admissible.*

A copy of the probate of a will with the necessary endorsement of the Court granting it is a public document within the meaning of S. 74 (1) (iii) which may be proved by secondary evidence under S. 65 (*e*). (*Pratt*, J.C.) *In the matter of* ADIJA. 11 I.C. 261.

——— Ss. 78 and 79—*Sanction of Local Government for prosecution in respect of offence—Proof of sanction.*

Sanction signed on behalf of the Chief Secretary does not convey that the Local Government has ordered or authorised the prosecution. In such a case the order must be proved according to the provisions of S. 78 of the Evidence Act. (*Walmsley and Suhrawardy*, J.) MUHAMMAD OZIULLAH *v.* BENI MADHAB CHOWDHARY. 36 C L.J. 180=24 Cr. L.J. 111= 26 C.W.N. 878=1922 Cal. 298.

——— S. 78—*Proceedings of Municipality—Printed books.*

Printed proceedings themselves would not be sufficient legal proof unless they answer the description of a printed book purporting to be published under the authority of the committee as required by S. 78 of the Evidence Act. (*Fletcher and Beachcroft*, JJ.) THE CORPORATION OF CALCUTTA *v.* PROMOTHO NATH MULLICK. 30 I.C. 643=16 Cr. L.J. 659.

——— S. 78 (5)—*Proceedings of Municipality is public record.*

Under sub-S. 5 of S. 78 of the Evidence Act, proceedings of a municipal body in British

EVIDENCE ACT (I of 1872), S. 80.

India may be proved by a copy of such proceeding certified by the keeper thereof. (*Mookerjee and Chotzner*, JJ.) AKSHAY KUMAR CHAND *v.* THE COMMISSIONER OF BOGRA MUNICIPALITY. 37 C.L J. 589=1923 Cal. 675.

——— S. 79—*Certificate of registration—Presumption of genuineness.*

The registering officer's evidence is not necessary to prove the certificate of registration the genuineness of which is to be presumed under S. 79 of Evidence Act. (*Martineau*, J.) MUHAMMAD HASSAN *v.* SOHARA. 71 I.C. 805.

———S. 80—*Dying declarations.*

The presumption under S. 80, Evidence Act, that the circumstances under which a document appears to be taken are true, applies to a dying declaration to which a certificate is appended by the Magistrate who recorded it, that it was read over to him and declared to be correct. (*Batchelor and Hayward*, JJ.) JIVRAM DANKARJI *v.* EMPEROR. 17 Bom. L.R. 881=16 Cr. L.J. 761= 31 I.C. 361=40 Bom. 97.

——— S. 80—*Record by a Magistrate in Native State—Admissibility.*

The statement of an accused person recorded by a Magistrate in a Native State is inadmissible, unless the Magistrate himself deposes to it in person. (*Heaton and Shah*, JJ.) EMPEROR *v.* DHANKA AMRA. 15 Cr. L.J. 433= 24 I.C. 169=16 Bom. L.R. 261.

——— S. 80—*C.P.C., O. 18, R. 5—Reading of deposition by witness.*

Presumption under S. 80 of the Evidence Act can be raised, if the deposition is read over by the witness himself in Court, for that is substantial compliance with O. 18, R. 5, C.P.C. The absence of a certificate by the Judge at the foot of the deposition of its having been read over, etc., does not deprive it of the presumption under S. 80. (*Richardson and Shamsul Huda*, JJ.) RAMCHENDRA DAS *v.* EMPEROR. 46 Cal. 895=23 C.W.N. 661= 20 Cr. L.J. 324=50 I.C. 660= 29 C.L.J. 513.

——— S. 80—*Confession made before a Magistrate in a Native State—Admissibility.*

Confession made before a Magistrate outside British India is admissible under S. 80 of the Evidence Act. (*Hallifax and Macnair*, JJ.) GOVINDA *v.* EMPEROR. 69 I.C. 257= 23 Cr. L.J. 673=17 N.L.R. 118.

——— S. 80—*Old deposition—Absence of signature of presiding officer.*

Though there is no oral evidence to identify the deponent of a deposition made 60 years ago, it is not a sufficient reason to render S. 80 inapplicable, and though there is no signature of the presiding officer over it, the presumption that the copy is a true copy may safely be drawn. (*Daniels*, A.J.C.) SARABJIT *v.* MATA DIN. 60 I.C. 437=7 O.L J. 342.

EVIDENCE ACT (I of 1872), S. 80.

———S. 80—*Recital of statement in a judgment.*

The prosecution must prove conclusively that the statement made by the accused was necessarily a false statement, before a conviction can be sustained under S. 193, I.P.C. The recital in a judgment of a statement made by the witness is not the same thing as a record of the deposition of the witness. Nor can such recital be accepted as evidence under S. 80 of the Evidence Act and it, therefore, cannot form the basis of a prosecution under S. 193, I.P.C. (*Jwala Prasad*, J.) NIRGHIN MAHTON v. EMPEROR. 56 I.C. 660= 21 Cr. L.J. 500.

———Ss. 80 and 114—*Confession duly made.*

Under S. 80 confession by any prisoner or by any accused taken in accordance with law and purporting to be signed by the examining Magistrate shall be presumed to be so made. The officer who recorded the confession may be examined as a witness. (*Sharfuddin and Atkinson*, JJ.) GUJA MAGHI v. EMPEROR. 18 Cr. L.J. 448=36 I.C. 1005=2 P.L.J. 80.

———S. 80—*Deposition not read over—Admissibility.*

A statement not read over to or corrected by the witness in accordance with law is not admissible against the person making the same. (*Shaw*, J.C.) NGA SAN MEGIN v. EMPEROR. 18 Cr. L.J. 869= 15 I.C. 985=1 U.B.R. (1912) 123.

———S. 81—*Presumption of genuineness—What includes.*

Presumption of genuineness of a document does not include the presumption that the document was printed or published by the particular person by whom it purports to have been published. (*Benson, Sundara Iyer and Phillips*, JJ.) C. JEREMIAH v. F. S. VAS. 36 Mad. 457=22 M.L.J. 73= (1911) 2 M.W.N. 576=12 I.C. 961= 12 Cr. L.J. 588=10 M.L.T. 506.

———S. 81—*Certified copy of document—Whether admissible.*

A certified copy of a document *Fard hissa Kashi baghat* drawn up at the First Regular Settlement is admissible in evidence, an extract from a Wajib-ul-arz may be taken as evidence of custom. (*Lindsay*, J.C.) LACHMAN v. SATROHAN SINGH. 38 I.C. 67=19 O.C. 363.

———S. 83—Thak *and Surveymaps—Value of.*

There is no inflexible rule that a survey map must have preference over a *thak* map and it is not incumbent on Court to follow either the one or the other. Where the *thak* proceedings and the decision of a dispute took place in the presence of the predecessors of the parties to the suit, the thak map is valuable evidence in a suit between the successors. 35 Cal. 621, Foll. (*Mookerjee and Panton*, JJ.) H. H. MAHARAJAH OF COOCH BEHAR v. RAJA MAHENDRA RANJAN. 66 I.C. 923=34 C.L.J. 466.

EVIDENCE ACT (I of 1872), S. 83.

———S. 83—*Rennell's map—Presumption of accuracy.*

Where Rennell's map is referred to as evidence there is a presumption of its accuracy under S. 83 of the Act in respect of such matters as to which it is admissible in evidence. (*Woodroffe and Cuming*, JJ.) SECY. OF STATE v. ANANDA MOHAN ROY. 66 I.C. 287=34 C.L.J. 205.

———S. 83—Thak *and survey maps—Value of.*

Thak and survey maps are valuable evidence of the state of things at the time they were made but they do not raise any presumption in law that they show the state of things at the time of the permanent settlement. (*Mookerjee and Buckland*, JJ.) SECY. OF STATE FOR INDIA v. WAZED ALI. 65 I.C. 866= 34 C.L.J. 141.

———S. 83—Thak *map—Presumption as to accuracy.*

Thak maps are always considered by Courts as good evidence and although the value of the *thak* map depends upon its accuracy, a *thak* map is not always inaccurate. Only substantial and not mathematical accuracy, can be expected from these ancient maps. (*N. R. Chatterjee and Roe*, JJ.) KRISHNA KALYANA DASI v. BRAUNFIELD. 36 I.C. 184= 20 C.W.N. 1028.

———S. 83—*Documents of public nature—Meaning.*

The words "documents of a public nature" mean "public documents" and not "documents prepared by officers of Government". (*Chatterjee and Mullick*, JJ.) NABENDRA KISHORE ROY v. RAHIMA BANU. 31 I.C. 696= 19 C.W.N. 1013.

———S. 83—*Map prepared by Govt. for private purposes.*

A map prepared by private arrangement with Govt. servant for the settlement of the silted bed of a river raises no presumption under the section. (*Holmwood and Chapman*, JJ.) RAHIM-UD-DIN MUNSHI v. BHABANGANA DEBYA. 19 I.C. 872.

———S. 83—*Private map—Identity of land—Boundaries—Identification.*

S. 83 of the Evidence Act does not refer to the question of the admissibility of a private map. t must depend upon the relevancy of the map in relation to the question in controversy. A private map may be relevant as against the party by whom it was prepared or his predecessor as an admission or it may be used as evidence, possibly even against a stranger on questions of public or general interest if it was made by a deceased person of

EVIDENCE ACT (I of 1872), S. 83,

competent knowledge. (*Mookerjee and Beachcroft, JJ.*) SHIB CHARAN DEY *v.* NIL KANTHA MAHATA. 16 I.C. 747=17 C.L.J. 642.

———S. 83—*Maps and Surveys—Value as evidence.*

Maps and Surveys made for revenue purposes are official documents prepared by competent persons and with sufficient publicity and notice to persons interested. They are valuable evidence of the state of things at the time of their preparation though they are not conclusive and may be shown to be wrong. (*Benson and Sundara Aiyar, JJ.*) MURTHI SANKARAN *v.* MANAVIKRAMAN. (1911) 1 M W N 213= 10 I.C. 653=9 M.L.T. 415.

———S. 83—*Survey maps—Value of.*

Survey maps are official documents prepared by competent persons and with such publicity and notice to persons interested as to be admissible and valuable evidence as to the state of things at the time they were prepared. They are not conclusive and may be shown to be wrong but in the absence of evidence to the contrary, they may be judicially received in evidence as correct when made. 30 Cal. 291, Foll. (*Rigg, J.*) MAUNG THIN *v.* MA ZI ZAN. 44 I.C. 247.

———S. 83—*Revenue map — Entry in — Value of, improving title.*

An entry in a Revenue Map is not sufficient to establish title to immoveable property. (*Twomey, J.*) AUNG HLA *v.* TON GYI. 8 L.B.R. 264=36 I.C. 432=9 Bur. L.T. 242.

———S. 85—*Registered power-of-attorney—Registration Act, S. 60.*

A registered power-of-attorney is admissible in evidence to prove agency under S. 85 of the Evidence Act. (*Kanhaiya Lal, A.J.C.*) HABIB-UN-NISSA *v.* MUSHARAF ALI. 33 I.C. 661= 18 O.C. 373.

———S. 87—*Revenue maps—Accuracy of—Presumption—Rebuttable.*

The Courts have always given great weight to the accuracy of survey maps. They are not conclusive, but in the absence of evidence to the contrary they will be presumed to be accurate. Where the maps are proved to have been based on insufficient material, the weight due them is not much. (*Lord Dunedin*) SECY. OF STATE *v.* RADHA KISHORE MANIKKYA BAHADUR. 44 Cal. 328=(1917) M.W.N 25= 14 A.L.J. 1203=18 Bom. L.R 1027= 21 C.W.N. 291=6 L.W. 870= 28 C.L.J. 425=38 I.C. 379= 43 I.A. 303 (P.C.).

———S. 87—*Custom—Evidence of—Books.*

Per *Mookerjee*, J.—Reference may legitimately be made to the work of Mr. Crokes on Castes and Tribes of the North-Western Provinces and Oudh, as an authoritative statement of customs prevalent among the Eraki sect of

EVIDENCE ACT (I of 1872), S. 90—Ancient Wills.

Mahomedans. (*Sanderson, C.J., Woodroffe and Mookerjee, JJ.*) MARIAM BIBEE *v.* SHAIKH MAHOMED IBRAHIM. 48 I.C. 861= 28 C.L.J. 305.

———S. 88—*Telegram—Proof that it emanated from Govt.*

The sanction of Local Govt. to prosecute a person for an offence under S. 124-A of the Penal Code, communicated by telegram must be proved to have emanated from the Govt. The Court is forbidden by the express provisions of S. 88 of the Evidence Act to make any presumption as to the person who sent the telegram. (*Wallis, C. J., Ayling and Sadasiva Aiyar, JJ.*) VARADARAJULU NAIDU *v.* EMPEROR. 42 Mad 883=37 M.L.J. 80= 21 I.C. 343=20 Cr. L.J. 455= (1919) M.W.N. 669.

———S. 90.

ANCIENT WILLS.
APPELLATE COURT'S INTERFERENCE.
CERTIFIED COPY OF ANCIENT DOCUMENTS.
COMPUTATION OF THIRTY YEARS.
COPY OF ANCIENT DOCUMENT.
DISCRETION.
DOCUMENT, MEANING OF.
NATURE OF PRESUMPTION UNDER.
PROOF OF CUSTODY.
PROOF OF GENUINENESS.

Ancient wills.

———S. 90—*Ancient wills—Whether presumption arises.*

The presumption of genuineness of ancient document does not apply to wills in a Probate Court. (*Chatterjee and Mullick, JJ.*) SHIYAM LAL *v.* RAMESWARI BASU. 33 I.C. 278= 23 C.L.J. 83.

———S. 90—*Ancient wills—Will thirty years old—Presumption under S. 90 when can't be drawn.*

If the circumstances found, raise grave suspicions as to the genuineness of a will, no presumption under S. 90 of the Act could be drawn. (*Johnstone, C. J. and Chevis, J.*) GUJAR SINGH *v.* MEHAR SINGH. 97 P.W.R. 1916=34 I.C. 168= 37 P.L.R. 1917.

———S. 90—*Ancient wills—Execution suspicious—Deliberate delay.*

A will purported to be executed in 1887 was brought to light for the first time in 1907 when it was produced in a Court of Law. In 1910 an application for probate in respect of it was made but it was ultimately withdrawn. At that time only one of the attesting witnesses was said to have been alive. Yet no further attempt was made to bring the will into Court till some ten years later when even that witness was dead. There was no reasonable explanation about the delay after 1910 in making the application for probate. There was no evidence

EVIDENCE ACT (I of 1872), S. 90—Ancient Wills.

as to the custody of the will before 1907, *held*, that the applicant cannot get the benefit of S. 90, Evidence Act. (*Prideaux and Kotwal*, A.J.Cs.) CHANNULAL v. MT. PUNA.
1923 Nag. 169.

——S. 90—*Ancient wills—Registration of will—Presumption of genuineness.*

The will in dispute having been duly registered and the document being over thirty years old, it must, under S 90 of the Evidence Act, be presumed that it was genuine document, and the fact that it was registered, raised the presumption that the testator was of sound mind at the time of the execution of the will. (*Kanhaiya Lal*, J.C., *and Daniels*, A. J. C.) BABU BADRI PRASAD SINGH v. ANNAPURNA KUAR. 52 I C. 837=6 O.L.J. 311.

Appellate Court's Interference.

——S. 90—*Appellate Court's interference—Appellate Court's conclusion—Second appeal.*

A finding of fact that a deed is admissible, arrived at by the Appellate Court without sufficient grounds being shown, is subject to second appeal, if it has prejudiced the trial of the appeal. (*Piggott and Kanhaiya Lal*, JJ.) LOKMAN DAS v. GANGA SAHAI. 60 I.C. 95.

——S 90—*Appellate Court's interference—Ancient document—Custody—Interference in appeal with discretion of lower Court.*

The question of custody of a document under S, 90 of the Evidence Act is one to be decided upon circumstances of each case and the Appellate Court will be slow to interfere with the discretion of the lower Court in the matter, (*Woodroffe and Mullick*, JJ.) DINAMANI CHAUDHURANI v. JAGAT CHANDRA BHATTACHARJEE. 23 I.C. 775.

——S. 90—*Appellate Court's interference.*

The presumption under S. 90 is one in which the Court has to exercise its discretion with the due care and once it has been exercised, an appellate Court will be very slow to interfere. (*Chevis*, J.) MUHAMMAD USMAN v RAHIM BAKHSH. 44 I C. 559=67 P.W.R. 1918.

——S. 90—*Appellate Court's interference.*

Though in the first Court the presumption under S. 90 of the Evidence Act regarding the genuineness of a document is drawn and the document is filed, an Appellate Court is not bound to draw such a presumption. (*Sundara Aiyar and Spencer*, JJ.) RAMIAH v. VEERAPPUDIAN. 37 Mad 535=11 M L T 69=22 M L J 217=14 I C 894=(1912) M W N 117 and 530.

Certified Copy of Ancient Documents.

——Ss. 90 and 65—*Certified copy of ancient documents—Presumption — Non-production of original—Presumption, applicability of.*

The presumption allowed by S. 90 of the Evidence Act applies to the certified copy of

EVIDENCE ACT (I of 1872), S. 90—Copy of Ancient Documents.

the mortgage-deed. The original deed being presumably in the possession of the defts., the plffs. were entitled to give secondary evidence of the contents without notice to the defendants inasmuch as they must have known that they would be required to produce it in the suit for redemption. (*Rafiqua and Walsh*, JJ.) DWARKA SINGH v RAMANAND UPADHYA.
41 All. 592=17 A L J 711=51 I C. 275=1 U.P L.R. (H C.) 81.

——S 90—*Certified copy of ancient document—Copy of a document—Presumption.*

A certified copy of receipt more than thirty years old, is inadmissible in evidence in the absence of any indication of the record from which it was obtained. No presumption can be made in favour of a copy of a document under S. 90 of the Evidence Act. (*Drake Brockman*, J.C.) NATHURAM v. JAGANNATH.
55 I.C. 426=16 N.L.R. 105.

Computation of thirty years.

——S 90—*Computation of thirty years—Presumption.*

There is no presumption as to the genuineness of a document not thirty years old when produced, but thirty years old when the evidence was gone into. (*Banerjee*, J.) CHIRAUNJI LAL v. KALLO. 28 I C. 512=12 A.L.J. 507.

——S. 90—*Computation of thirty years.*

The period of 30 years mentioned in S. 90, Evidence Act, is to be reckoned from the date when its genuineness is put in controversy and not from the date when it was exhibited in Court. (*Martineau and Zafar Ali*, JJ.) LADHA SINGH v. MT. HUKAM DEVI
75 I C. 57=4 Lah. 232.

——S. 90—*Computation of thirty years.*

The period of thirty years under S. 90 must be reckoned as from the date on which the genuineness or otherwise of the document becomes the subject of proof and not from the date of suit. (*Broadway* J.) HARI RAM v. MUTSADDI. 42 I.C. 80=156 P W.R. 1917.

——S. 90—*Computation of thirty years—Time of hearing.*

Under S. 90 of the Evidence Act the Court can presume the genuineness of a document thirty years old not on the date of the suit or on the date of its production but on the date when arguments were heard. (*Stuart*, J C.) MAHADEO PRASAD v. MUSAMMAT NASIBAN.
54 I.C. 368=6 O L.J. 615.

Copy of Ancient Documents.

——S. 90—*Copies of ancient documents.*

S. 90 of the Act applies to copies of ancient documents also. (*Woodroffe and Wilmsley*, JJ.) KHAGESWAR SARMA v SOMESWAR.
63 I.C. 518=33 C.L.J. 362.

EVIDENCE ACT (I of 1872), S. 90—Copy of Ancient Documents.

——S. 90—*Copies of ancient document—Presumption if applicable.*

The presumption mentioned in S 90 of the Evidence Act is applicable to the copy produced which was more than thirty years old. 34 Cal. 1059, Foll. (*Mookerjee and Beachcroft*, JJ.) BANWARI LAL *v.* DWARKANATH MISSIR. **52 I C. 825=29 C.L.J. 577.**

——S. 90—*Copy of ancient document—Presumption if applicable to.*

Where there is no evidence at all as to the making of a private copy of a document more than 30 years old, proof would be necessary that it was compared with the original before it would be admitted in evidence. (*Phillips and Devadoss*, JJ.) HOTA VEERABADRAYYA *v.* VENKATAKRISHNA RAO **(1923) M W.N. 484=18 L W. 404=1923 Mad. 674.**

——S. 90—*Copies of ancient documents—Presumption as to.*

The presumption as to genuineness of documents more than 30 years old also applies to copies coming from proper custody. (*Spencer and Devadoss*, JJ.) JAKKAM REDDI SESHA DRI REDDI *v.* PICHI REDDI. **32 M L T. (H C.) 89=16 L W 839=1923 Mad. 163.**

——S. 90—*Copies of ancient document.*

The presumption under S. 90 of the Evidence Act applies to copies of ancient documents, if it is proved that the copy is a true copy. *Schwabe*, C.J., *Oldfield and Coutts-Trotter*, JJ.) SUBRAMANYA SOMAYAJULU *v.* SEETHAYYA. **16 L.W. 462=(1922) M.W.N. 614=31 M.L.T. 347 (H C.)=46 M. 92=1923 Mad 1.**

——S. 90—*Copy of ancient document—"Presumption in case of copies thirty years old."*

Under S. 90, a copy thirty years old, is presumed by the Court to be in the handwriting of the person in whose handwriting it purports to be. (*Spencer and Tyabji*, JJ.) MANAVIKRAMAN *v.* NILAMBUR THACHARAKAVIL. **81 I.C. 579.**

——S. 90—*Copies of ancient documents.*

The presumption as to ancient documents contained in S. 90 of the Evidence Act applies not only to original documents but also to copies thereof. 22 All. 294, Foll. (*Spencer and Seshagiri Aiyar*, JJ.) NANU NAIR *v.* KANTAN ASHTA MOORTHI. **29 M L J 772=29 I.C. 386=2 L.W. 509.**

——S. 90—*Copy of ancient document.*

The presumption as to the genuineness of an ancient document can be drawn where the original has been lost but its copy has been produced. (*Subramania Iyer and Benson*, JJ.) PONNAMBALATH PARAPRAVAR *v.* KAROTH SANKARA NAIR. **12 I.C. 453=21 M.L.J. 981.**

EVIDENCE ACT (I of 1872), S. 90—Discretion.

——S. 90—*Copies of ancient documents not produced before Court.*

No presumption can be made under S. 90, Evidence Act, in favour of any document which is itself produced before the Court invited to make the presumption. The production of a copy is insufficient. 5 Cal. 886; 22 All. 294; 93 P.R. 1910; 21 M L.J. 981, Diss. The rule of presumption embodied in S. 90, is one to be applied with exceeding caution in India. 18 W.R. 485; 6 Cal. 208; 11 Cal. 539; 9 C L.R. 429; 11 Bom. 89, Appr. (*Stanyan*, A.J.C.) SHRIPUJA *v.* KANHAYALAL. **83 I C. 947=15 N.L.R. 192.**

——S. 90—*Copies of ancient documents.*

A Court can accept a copy in evidence and apply the presumption under S. 90 to it. (*Piggott*, J.C.) SABJU *v.* RAM HARAKH. **18 I C. 250.**

Discretion.

——S. 90—*Discretion—Presumption—Genuineness—Practice.*

In practice a Court does not ordinarily decide whether it will make the presumption under S. 90 of the Evidence Act or not, until all the evidence in the case is before it. The mere fact that the Court allows evidence to be given about the proof of a deed, does not debar it from making the presumption under S. 90. (*Chamier*, J.) IBRAHIM *v.* RAM NARAIN. **16 I.C. 483=10 A.L.J. 87.**

——S. 90—*Discretion—Presumption—Caution.*

Before a Court can presume a document to be genuine under S. 90 of the Act it should be satisfied *aliunde* that there is a good ground for accepting it as a true document. (*Rattigan and Scott-Smith*, JJ.) JESA LAL *v.* GANGA DEVI. **81 P.R. 1913=321 P.L.R. 1913=20 I C. 863=211 P.W.R. 1913.**

——S. 90—*Discretion—Documents thirty years old—Admissibility—Care and caution.*

Considerable care and caution should be exercised in accepting documents, more than 30 years old. Acceptance of genuineness of the document by the parties many years ago is a matter in its favour. (*Rattigan and Scott-Smith*, JJ.) GHULAN NABI *v.* ALLAHDIN. **241 P L.R. 1913=19 I.C 964=143 and 204 P.W.R. 1913.**

——S. 90—*Discretion—Presumption as to ancient documents.*

The discretion of the lower Courts in the matter of raising the presumption under S. 90 must be interfered with by the High Court in second appeal unless the reasons given by the lower Courts are *prima facie* unsound. (*Sadasiva Iyer and Spencer*, J.) VAITHINATHASAMI *v.* NATESA. **41 M L J 310=14 L.W. 416=69 I C. 289=(1921) M.W.N. 780.**

EVIDENCE ACT (I of 1872), S. 90—Discretion.

———S. 90 — *Discretion*— Shankalpnama, *presumption as to*

The presumption as to genuineness of a document under S. 90 of the Act is within the discretion of the Trial Court and Courts should be very careful to raise any such presumption in favour of deeds of *Shankalap* produced for the first time during the trial. (*Lindsay*, J.C.) HAR PRASAD *v.* BIKRAM MOJIT.
61 I.C. 939=8 O.L.J 131.

———S 90 — *Discretion — Presumption— Proof unsatisfactory.*

It is open to a party to rely on the presumption under S. 90 of the Evidence Act and also on proof; and the Court may presume a deed to be genuine even though it is not satisfied with the evidence tendered to prove its execution. (*Stuart*, J.C.) DWARKA *v.* MAKKA.
6 O.L.J 20=49 I C. 419=
1 U.P.L.R. (J.C) 28.

———S. 90—*Discretion—Ancient document —Presumption—Discretion of Court.*

S. 90 does not lay down any rule whether or not in the circumstances the Court will make the presumption contemplated. Where the original is not proved to be lost or to have been missing or to be in the custody of any person who declined to produce it, no presumption regarding such original can be raised. (*Kanhaiya Lal and Kendall*, A.J.C.) TIKA *v.* MAHABIR PRASAD. 36 I.C. 629=19 O C. 92.

———S. 90—*Discretion — Presumption of genuineness—When not to be drawn.*

No presumption could be raised under S. 90 of the Act where the history of the document shows that it was attacked as a forgery many years before. (*Piggott*, J.C. *and Lindsay*, A.J.C.) GAJRAJ SINGH *v.* MUHAMMAD BAKER ALI KHAN. 20 I.C. 62.

Document, meaning of.

———S. 90—*Document, meaning of.*

A statement of the existence of a mortgage contained in a settlement report thirty years old and purporting to have been signed by the mortgagor and coming from proper custody, is not an acknowledgment and no presumption can arise as to its execution as the mortgagor did not execute or attest the report supposing the report is a document within the meaning of S. 90 (*Richards*. C.J. *and Banerjee*, J.) GOKUL SINGH *v.* SAHEB SINGH.
38 I.C. 162=15 A.L.J. 121.

———S. 90—*Document, meaning of—Sale deed — Genuineness — Evidence to prove, if necessary.*

A sale-deed more than 30 years old is presumed to be genuine under S. 90 and no evidence to prove its genuineness need be given. (*Sundar Lal*, J.) GULAB *v.* MUHAMMAD ISMAIL. 38 I.C. 898.

EVIDENCE ACT (I of 1872), S. 90—Nature of Presumption under.

———S. 90—*Document, meaning of—Ancient document—Presumption.*

The presumption arising under S. 90 of the Evidence Act can be applied when the signature of an illiterate person executing a deed has been made by another on his behalf. (*Newbould*, J.) SHED AHAMED *v.* IBRAHIM.
52 I C. 814.

———S. 90— *Documents, meaning of — Ancient document.*

S. 90. does not apply to old papers which are neither signed nor sealed nor purport to be in the handwriting of any particular person. (*Chitty and Beachcroft*, JJ.) JANENDRA MOHAN CHOUDHURY *v.* GOPAL CHANDRA HAR. 40 I.C. 430.

———S. 90—*Documents, meaning of—Thak maps—Presumption—Map prepared by Collector in private capacity.*

S. 90 does not establish the accuracy of a map. (*Mookerjee and Teunon*, JJ.) PRIYA NATH *v.* MAHENDRA NATH KUMAR.
16 C.W.N. 317=10 I.C 376=
14 C.L.J. 678.

———Ss. 90 and 114—*Documents, meaning of—Unsigned accounts.*

Neither S. 90 nor S. 114 enables the Court to presume that unsigned accounts more than a century old, which do not purport to be in handwriting of any particular person or persons, were written by authorised accountants. (*Sadasiva Aiyar and Napier*, JJ.) NAINA PILLAI *v.* RAMANATHAN CHETTIAR.
41 I.C. 768=33 M.L.J. 81.

———S. 90— *Document, meaning of — Pedigree extracted from settlement record— Presumption.*

A pedigree extracted from the settlement record and signed by same persons named in the pedigree being more than 30 years old and coming from the proper custody, can be presumed to be genuine under S. 90 of the Evidence Act. (*Piggott*, J. C *and Lindsay*, A.J.C.) BHABUTI SINGH *v.* KHETAL SINGH.
21 I.C. 274.

———S 90—*Document, meaning of—Author unknown—Document inadmissible.*

Where a party producing a document more than 30 years old cannot show and the document itself does not purport to show who prepared or signed it, the mere fact of the document being more than 30 years old does not make it admissible without proof under S. 90 of the Evidence Act. (*Miller*, C J *and Mullick*, J.) CHARITTAR RAI *v.* KAILASH BIHARI. 3 Pat. L.J 305=4 P L.W. 213=
44 I.C. 422=(1918) Pat. 155.

Nature of Presumption under.

———S. 90—*Nature of presumption— Scribe signing for the executants.*

EVIDENCE ACT (I of 1872), S. 90—Nature of Presumption under.

Although in the case of sale deeds more than 50 years old the presumption of law was that they were executed by the persons who purported to execute them, there was no presumption that the scribe who signed these documents for the executants had authority from the executants to do it. 15 A.L.J 121 and 60 I.C. 90 Foll. (*Gokul Prasad*, J.) HAJI SHAIKH BOODHA *v.* SUKHRAM SINGH. **1923 All. 420 (2).**

———S. 90—*Nature of presumption—Document more than 30 years old—Proof of execution—Authority to sign—T.P. Act, S. 59.*

Though a mortgage purporting to be more than 30 years old was not executed by the mortgagors at all but by the scribe on behalf of the executants, the Court could presume, under S. 90 of the Evidence Act that the signature was in the handwriting of the scribe and was executed by him but not that he had authority from the mortgagors to sign their names upon the document. The document was not admissible in evidence without such proof. (*Tudball*, J.) SHEO NANDAN AHIR *v.* RAM LAGAN SINGH. **30 I.C. 903=13 A.L.J. 921.**

———S. 90—*Nature of presumption under—Kabja receipt—40 years old.*

From Kabja receipts, the Court is entitled to presume that the person named therein as purchaser had obtained possession through the Court. When that document was over 40 years old, although it is possible that physical possession of the land may not have been given to the purchaser, there is no reason why the Court should presume that no possession was given. (*Macleod*, C.J. *and Crump*, J.) PANDURANG WASUDEV *v.* BASAPPA BIN SHIDDAPPA. **1923 Bom. 364.**

———S. 90—*Nature of presumption under—Old document—Conduct of parties.*

Assuming that a document, which is produced apparently from proper custody, was executed, still if there are circumstances which show that it was not acted upon as one would have expected a document of that nature to be acted upon, the presumption as to the title created by such document falls down. (*Macleod*, C.J. *and Crump*, J.) MAHADEO RAMCHANDRA PATKAR *v.* RAGHOJI JIJYAJI. **1923 Bom. 293.**

———S. 90—*Nature of presumption.*

The presumption that arises under S. 90 of the Evidence Act only is applicable to the genuineness of old documents coming from proper custody; it does not further go to the extent of holding that the documents were in fact executed by persons possessed of the requisite authority. (*Mookerjee and Rankin*, JJ.) TARAKESWAR PAL *v.* SRISH CHANDRA GHOSH MANDAL. **27 C.W.N. 964=1924 Cal. 286.**

EVIDENCE ACT (I of 1872), S. 90—Nature of Presumption under.

———S. 90—*Nature of presumption under—Presumption does not extend to authority of executant.*

The presumption under S. 90 of the Evidence Act, only exonerates the plaintiff from calling executant for the purpose of proving that he signed the document for the principal. He must prove that executant had authority from the principal to sign his name. (*Walmsley and B.B. Ghose*, JJ.) RAMANI KANT RAY *v.* BHIMNANDAN SINGH. **50 Cal. 526=1924 Cal. 82.**

———S. 90—*Nature of presumption under—Scope of.*

The authority of the person making a grant, the genuineness whereof is presumed by the Court under S. 90, is not proved by that section. (*Mookerjee and Roe*, JJ.) BASI NATH PAL *v.* JAGAT KISHORE ACHARJEE. **20 C.W.N. 643=35 I.C. 298=23 C.L.J. 383.**

———S. 90—*Nature of presumption under—Ancient document—What it proves.*

S. 90 establishes simply that an ancient document was executed by the person whose signature it purports to bear, but it cannot prove the authority of the executants to bind the landlord. 3 C. 557; 6 C. 209. Rel. on. (*Mookerjee and Carnduff*, JJ.) MOHORAM SHEIKH CHAPRASI *v.* TELAMUDDIN KHAN. **18 C.L.J. 220=18 I.C. 606=16 C.W.N. 567.**

———S. 90—*Nature of presumption under—Document 30 years old—Consideration.*

The passing of consideration for a document which is more 30 years old and which was never questioned up to the time of the suit, should be taken to be proved even in the absence of evidence as strong as is required in recent transactions. (*Sadasiva Aiyar and Spencer*, JJ). JAGANA SANYA SIAT *v.* MYCHERLA PEDA ATCHAUNNA. **15 L.W. 289=70 I.C. 759=42 M.L.J. 339.**

———Ss. 90 and 114—*Nature of presumption under—Not to be lightly interferred with in appeal.*

The presumptions drawn by the Court of first instance especially when it concerns the admissibility of a document under S. 90 of the Evidence Act should not be lightly treated by the Court of appeal. (*Spencer and Tyabji*, JJ.) MANAVIKIRAMAN *v.* NILAMBUR TACHABKAVIL. **31 I.C. 879.**

———S. 90—*Nature of presumption under—Ancient document — Presumption— Question of law or fact.*

Per *Sankaran Nair*, J.—The presumption as to genuineness of a document 30 years old under S. 90 is one of fact and the High Court cannot interfere in second appeal with a finding

EVIDENCE ACT (I of 1872), S. 90—Nature of Presumption under.

given on it by the Lower Court. Per *Tyabji*, J.—The presumption is one of law and the High Court can see if the finding is correct. 26 A. 581 ; 17 C.W.N. 108, Foll. (*Sankaran Nair and Tyabji, JJ.*) PARANKUSA ZATINDRA MAHADESIKASWAMI *v.* SUBRAMANIA PILLAI.
26 I.C. 117.

———S. 90—*Nature of presumption under—Authority to sign.*

The presumption under S. 90 of the Evidence Act will not be justified in favour of the authority of a person to sign for an illiterate executant. (*Wazir Hasan*, A.J.C.) RAGHUBAR SINGH *v.* SANWAL SINGH.
8 O L.J. 28=61 I C. 126=
3 U.P.L.R. (J.C.) 9.

Proof of Custody.

———S 90—*Proof of custody.*

If a party cannot explain properly how he came to possess a document, the custody of the document is not clearly proved. (*Chatterjee and Greaves*, JJ.) MANMATHA NATH *v.* ANATH BANDHU PAL. 50 I.C. 222=
28 C.W.N. 201.

Proof of Genuineness.

——S. 90—*Proof of genuineness — No signature but a line only.*

Where in a document thirty years old there was, in place of signature only a line, no presumption can be drawn that the scribe executed it for the executant and the deed is not admissible, though the deed was referred to in another deed equally inadmissible. (*Piggott and Kanhaiya Lal*, JJ.) LOKMAN DAS *v.* GANGA SAHAI. 60 I.C. 96.

———S. 90—*Proof of genuineness.*

No proof of genuineness is required for a document thirty years old. (*Sundar Lal*, J.) GULAB *v.* MUHAMMAD ISMAIL. 38 I C. 598.

———S. 90—*Proof of genuineness—Presumption as to old documents — Discretion of Court.*

Under S. 90 a Court has got a discretion to use the general presumption as to the genuineness of a document more than thirty years old and produced from proper custody. But it can call for proof of the execution thereof if there is evidence to doubt its genuineness. 26 A. 581 at p. 586, Rel. Where a Lower Appellate Court does not give reasons for its views as to the applicability of the presumption under S. 90 of the Evidence Act, the High Court will interfere in second appeal. 11 C. 599, Rel. (*Mookerjee and Carnduff*, JJ.) IMARIT CHAMAR *v.* SRIDHAR PANDAY.
15 C.L.J. 7=13 I.C. 130=17 C.W.N. 108.

———S. 90—*Proof of genuineness.*

The presumption in favour of due attestation documents thirty years old is liable to be rebutted by the party against whom it is proved

EVIDENCE ACT (I of 1872), S. 91—Confession.

and on their successful rebuttal fairness requires that an opportunity should be given to the party producing it of proving fully the deaths of all attesting witnesses. (*Stuart*, J.C. and *Kanhaiya Lal*, A.J.C.) NARAIN SINGH *v.* DEPUTY COMMISSIONER OF PARTABGARH.
65 I.C. 896=7 O.L.J. 93.

———S 91.

ADMISSION.
COMPROMISE.
CONFESSION.
CONTRACT.
DECREE OF COURT.
DEPOSITION OF WITNESS.
INTENTION OF PARTIES.
LEASE.
LICENSE.
LOST DOCUMENT.
MORTGAGE.
ORAL EVIDENCE.
PARTITION.
POLICE DIARY.
POWER OF ATTORNEY.
PROMISSORY NOTE.
RECEIPT.
RECITALS.
REGISTRATION ENDORSEMENT.
SALE.
TRANSFER OF PROPERTY.

Admission.

———S. 91—*Admission—Effect of—Document inadmissible.*

In a suit for possession of properties the defence was that plff. had waived his rights by an agreement by which he gave up all his rights in the estate on condition that deft. paid Rs. 1,000 to the gowshala. *Held*, that the document was inadmissible in evidence for want of registration though the plff admitted execution of the document. The document was not admissible even in so far as it related to moveable property. (*Shadi Lal and Broadway*, JJ.) BISHESHAR LAL *v.* BHURI.
66 I.C. 595.

Compromise.

———S. 91—*Compromise of suit—C.P.C., O. 23, r. 3—Oral evidence.*

Where the compromise is reduced to writing under O. 23, R. 3 no extraneous evidence, oral or documentary regarding the terms of the compromise is admissible. (*Mitra*, A.J.C.) HUKUM CHAND *v.* RADHA KISHU.
29 I.C. 838=11 N.L.R. 110.

Confession.

———S. 91—*Confession — Statement of accused at departmental enquiry—Proof.*

The statements made by an accused at a departmentel enquiry were not matters required by law to be reduced to the form of a document and consequently S. 91, I.E.A. has no application. Confessions made at such enquiries are

EVIDENCE ACT (I of 1872), S. 91—Contract.

reliable as well as legally admissible. (*Piggott, J.*) HAIDAR RAZA *v.* EMPEROR.
36 All. 222=18 Cr. L J 369=
25 I C 321=12 A.L J 306.

Contract.

——Ss. 91 and 92—*Contract in writing—Oral evidence to show agency—If admissible.*

Where a person has signed a written contract, he cannot let in oral evidence to show that he contracted only as an agent. (*Pratt, J.*) EBRAHIMBHOY *v.* HASSAN
43 Bom. 1242=68 I.C. 482=
23 Bom. L.R. 767.

——S. 91—*Contract—Suit on document—Secondary evidence not admissible—Effect.*

The language of S. 91 of the Evidence Act is clear and definite and wherever the terms of the contract are reduced to writing and that writing is, for any reason, inadmissible in evidence the promisee must lose his remedy, if independently of the document, he has no complete cause of action. (*Broadway and Campbell, JJ.*) RAM SARAN DAS *v.* TULSI RAM. 1922 Lah. 417.

——S. 91—*Contract— Writing inadmissible.*

Where the terms of a contract are reduced to writing, and the writing is inadmissible the promisee must lose his remedy. (*Le Rossignol and Wilberforce, JJ.*) GURUDASS MAL SINGH *v.* ISHAR DAS. 3 Lah L.J. 157=
60 I.C. 107=3 U.P.L.R. (Lah.) 8.

——S 91—*Contract—To sell—Oral evidence.*

S. 91 is applicable to a written agreement to sell, and excludes oral evidence of such an agreement as well as of what took place at the time of the agreement, to prove the agreement. (*Macnair, A.J.C.*) VYANKATESH *v.* GANESH.
61 I C. 896.

——S. 91—*Contracts.*

Where an agreement to allow defendant to withdraw up to a certain amount was arrived at some days prior to the execution of a document which was executed not as a record of the contract but as a collateral security. *Held*, S 91 does not operate as a bar to the admission of the oral evidence which is on the record. (*Fawcett, J.C. and Kemp, A.J C.*) LOKUMAL TARACHAND *v.* THE SIND BANK.
57 I.C. 394=13 S.L.R. 180.

Decree of Court.

——Ss. 91 and 92—*Decree of Court—Any matter required by law to be reduced to the form of a document.*

Any matter required etc., in S. 91 does not cover the case of a decree; so oral evidence may be admissible of an alleged oral agreement varying the terms of a decree. (*Mookerjee and Beachcroft, JJ.*) DEBENDRA NARAYAN SINHA *v.* SOUNDARA MOHAN SINHA. 24 I.C. 391.

EVIDENCE ACT (I of 1872), S. 91—Lease.

Deposition of Witness.

——S. 91—*Deposition of witness—Other evidence inadmissible.*

The record by Court of a deposition is the only evidence admissible of the statements alleged to have been made by the witness and if it is not shown to have been read out to the witness he can't be convicted of perjury. (*Sadasiva Iyer and Napier, JJ.*) *In re*, NALLURI CHENCHIA. 42 Mad. 561=
20 Cr. L J 379=50 I.C. 987=
36 M.L.J. 296=9 L W. 819=
(1919) M.W.N. 183=25 M L.T. 356.

——S. 91—*Deposition of witness — Not read out or explained to witness—Admissibility.*

Even if S. 91 of the Evidence Act be construed so as to apply to the deposition of a witness, it merely excludes oral evidence of its contents and does not make the document itself inadmissible nor prevent its being otherwise proved. 45 C. 325, Ref.; 42 M. 561, Diss. (*Daniels, A J.C.*) MT. FEROZA JAN *v* MIRZA AMIR ALI. 9 O L J. 893=
9 O. & A.L.R. 103=24 Cr L J. 781=
1923 Oudh 119

——Ss 91 and 80—*Deposition of witness—Evidence* aliunde—*Inadmissible.*

Where a deposition is not taken in accordance with S. 360, Cr. P. C, it is inadmissible in evidence and other evidence is shut out by S. 91 of the Evidence Act. (*Maung Kin, J.*) KADIR PAKIRI *v.* EMPEROR.
18 Cr. L J. 966=42 I C. 376=
11 Bur. L.T. 202.

Intention of parties.

——S. 91—*Intention of parties—Extrinsic evidence.*

Under S. 91 no extrinsic evidence can be let in as to the sense in which the words used in a document were understood by the parties. A document shall in cases of doubtful construction be construed strictly against the grantor. The words "up to" or "until" a certain day in a contract may be construed as exclusive or inclusive of the day to which they are applied. (*Greaves, J.*) METROPOLITAN ENGINEERING WORKS *v.* WALTER ENGR. DELIVERER.
45 Cal. 481=45 I.C. 305=22 C.W N. 416.

——S. 91—*Intention of parties—Sale—Mortgage.*

No oral evidence is admissible to prove that a registered deed which purports to be a sale is really a mortgage. (*Maung Kin, J.*) MA PAIK *v.* MA NAVAI PAUK. 34 I C 153=
9 Bur. L T. 174.

Lease.

——S. 91—*Lease — Inadmissible under B T. Act.*

Oral evidence cannot be given of the terms of a sub-lease in excess of the period sanctioned by S. 85, Bengal Tenancy Act, though it is

EVIDENCE ACT (I of 1872), S. 91—Lease.

registered, for it is inadmissible in evidence. (*Fletcher and Richardson, JJ.*) GONESH MOUDOL *v.* THANDA NAMASUNDARAM.
38 I.C. 489=24 C.L.J. 539.

———S 91—*Lease — Inadmissible — Oral evidence—Registration Act, S. 49.*

Oral evidence to prove the rate of rent is admissible, when the tenant's *Kabuliat* becomes inadmissible for want of registration. (*Jenkins, C.J. and Mookerjee, J.*) AMIR ALI *v.* AYKUP ALI KHAN. 41 Cal. 347=
25 I.C. 609=19 C.L.J. 428.

———S. 91—*Lease—Oral evidence.*

Where a written rental agreement is inadmissible in evidence, oral evidence, thoub not admissible to prove the terms of the tenancy or period of the lease is still admissible to prove that the relationship of landlord and tenant exists between the parties. (*Sadasiva Aiyar and Hanny, JJ.*) CHAVALI SUBBANNA *v.* TELLURU VENKATARAYUDU.
27 I.C. 804=28 M.L.J. 361.

———S. 91—*Lease — Unregistered — Admissibility to prove relationship of landlord and tenant.*

Where an unregistered lease is inadmissible in proof, of a lease there is nothing to prevent the evidence of witnesses who speak to the existence of the relationship of landlord and tenant between the parties being admitted. A tenancy can be proved without the lease if there be any, 41 C. 347, Foll. (*Prideaux, A.J.C.*) NAGO *v.* TUKARAM. 42 I.C. 843.

———S. 91—*Lease — Unregistered — Oral evidence.*

No oral evidence can be given to prove the terms of a lease contained in an inadmissible document. (*Mitra, A.J.C.*) RAJARAMJI *v* GANESH. 42 I.C. 629.

———S 91—*Lease—Admission of other evidence to prove tenancy.*

Where a tenant as a defence to a suit in ejectment by the landlord sets up a permanent tenancy but does not produce the settlement and bandobast papers, the onus is on the tenant to prove the permanent character of the lease and in view of S. 91 of the Evidence Act, no evidence other than the Settlement papers was admissible to prove the character and terms of the lease. (*Miller, C. J and Mullick, J.*) BUDHAN TELI *v.* MADANMOHAN LAL
3 P.L.T. 485=1923 P. 111.

License.

———S. 91—*License—Parol evidence.*

The grant of a mere license need not be in writing and may be proved by parol evidence. (*Stanyon, A.J.C.*) NARASINGADAS *v.* RATAN LAL. 34 I.C. 471=13 N.L.R. 75.

EVIDENCE ACT (I of 1672), S. 91—Oral Evidence.

Lost Document.

———S. 91—*Lost document—No proof of loss—Admission by deft. of execution but plea of payment—Payment endorsed on document—Plff. whether can succeed.*

Where a suit is based upon a lost document the loss of which however the plff. is unable to prove, he cannot succeed on the mere admission by the deft. of execution of the same when it is followed by a plea of payment duly endorsed thereon. (*Johnstone, J.*) ATRA *v.* CHAJU. 12 I.C. 216=49 P.W.R. 1911.

Mortgage.

———S. 91—*Mortgage.*

Where a mortgage by deposit of title-deeds was followed by a writing accompanying deposit unregistered—*held*, that secondary evidence was inadmissible and that the mortgage was unenforceable. (*Macleod and Coyajee, JJ.*) CHUNNILAL SOMESHWER BHATT *v.* VITHAL DAS KARSANDAS. 24 Bom. L.R. 502=
1922 Bom. 440.

———Ss. 91 and 92—*Mortgage — Agreement to exonerate one of several mortgagors from personal liability.*

An agreement by which one of several mortgagors procures a release of his own personal liability is admissible in evidence though not endorsed on the back of the mortgage-bond according to its recitals. (*Fletcher and Newbould, JJ.*) JADAR CHANDRA BHATTACHARJEE *v* MAFIJUDDI. 42 I.C. 615.

———S. 91 — *Mortgage — Admissions — Unregistered mortgage—Admission at mutation—Proof of, if can be given.*

An unregistered mortgage, inadmissible in evidence for want of registration, cannot under S. 91 of the Act be proved by an admission at mutation proceedings inasmuch as the section excludes all evidence in proof of the contract except the document itself, 3 N.W.P.H.C.R. 153; 9 M. 142; 99 P.R. 1901, Dist. (*Rattigan and Beadon, JJ.*) GUJIBI W/O GOKUL CHAND *v.* SAMANDAR KHAN. 20 I.C. 280=
27 P.L.R. 1913.

———S. 91—*Mortgage—Other evidence inadmissible.*

Where the plff. relies upon a mortgage-deed produced by her but not proved she is precluded by S. 91 from giving other evidence of the terms of the transaction. (*Saunders, A.J.C.*) MI NGE MA *v.* NGA TALOK PYO.
29 I.C. 607=(1915) 11 U.B.R. 56.

Oral Evidence.

———S. 91—*Oral evidence.*

The rule with regard to writings is that oral of it cannot be substituted for the written evidence of a contract which the parties have put into writing. And the reason is that the writing was tacitly considered by the parties themselves as the only repositary and the appropriate

EVIDENCE ACT (I of 1872), S. 91—Oral Evidence.

evidence of their agreement. (*Lord Carson*). SUBRAMANIAN *v.* M L R M. LUT CHMAN.
30 Cal 338=38 C L J. 41=
44 M.L J 603=8 L W 446=
(1923) M W N 762=28 C.W N 1=
1 Rang 66=50 I A. 77=2 Bur L J 25=
32 M.L T. 184=25 Bom. L.R. 582=
1923 P.C. 50 (P C).

——— **Ss. 91 and 92**—*Oral evidence—Admissibility.*

There is no legal objection to the admissibility of oral evidence which is admitted as a natural consequence of the admission of a documentary evidence. (*Jenkins*, C.J. *and Aushtosh Mookerjee*, J.) SHAIKH NURA *v.* BAIKUNTHA NATH RAY. **30 I C 398=**
21 C.L.J. 595.

———**S. 91**—*Oral evidence of compulsorily registrable but unregistered deed.*

The recitals of a lease are as follows:—"So long as Tajuddin occupies the shop the rent shall not be raised nor lowered nor shall I eject him but in case of his refusal to pay the rent I shall have to turn him out. Accordingly this kirayanama is written for record in case of me." *Held*, it was not a mere memorandum but was the agreement itself entered orally and then reduced to writing and being a lease not limited to a year was inadmissible in evidence if it were not registered and oral evidence could not be adduced thereof. (*Chevis*, A C.J.) KARIM BAKSH *v.* NATHA SINGH.
3 Lah. L.J. 14.

———**S. 91**—*Oral evidence—Unregistered lease—Inadmissible.*

An unregistered lease is inadmissible in evidence in proof of the tenancy and its existence precludes the parties from giving other oral evidence of its terms. Nor could it be relied upon to support a claim for Specific performance. (*Hallifax*, A.J.C.) CHAGAN LAL *v.* KASHI RAM. **1923 Nag. 76**

———**S. 91**—*Oral evidence—Deed not produced.*

Where it was contended that the plaintiff, not having produced a certain Bainukasha deed, was not entitled to adduce evidence of the transaction and therefore failed to establish his title:—*Held*, all that S. 91 provides is that when the terms of a contract or of a grant or any other disposition of property, have been reduced to the form of a document, no evidence shall be given in proof of the terms of such a contract, grant or disposition of property except the document itself. This however refers only to the method of proof of the terms of contract, grant or disposition of property. It does not exclude other proof of the transaction itself and this being so, the Courts are entitled to consider the other evidence adduced in proof of the Bainukasha transaction. (*Coutts and Ross*, JJ.) MT. MAKHDUMAN *v.* SAYED ALTAF HUSSAIN.
1922 P. 282.

EVIDENCE ACT (I of 1872), S. 91—Partition.

Partition.

———**S. 91**—*Partition — Unregistered — Admissibility of.*

The fact of a partition as distinguished from its terms, may be proved by evidence without even the deed of partition itself. Per *Beaman*, J.—A fact, which does not necessarily constitute a term in any real sense, of a contract, grant or other disposition of property may be proved, although the writing in which the terms of the grant or other disposition of property are embodied, cannot be proved for want of registration. (*Scott*, C. J. *and Beaman*, J.) CHOTTALAL ADIT RAM TRAVADI *v.* BAI MAHAKORE. **41 Bom. 466=**
40 I.C. 83=19 Bom. L.R. 322.

———**S. 91**—*Partition—Proof of fact of.*

S. 91 excludes any evidence other than the inadmissible document of the terms of the disposition of property made by the parties on the occasion to which the document relates but oral evidence is admissible to prove the fact of the separation, 41 Bom. 466. Foll. (*Campbell*, J.) TARSINGH DAS *v.* UTTAM CHAND.
1923 Lah. 392.

———**S. 91**—*Partition—Oral evidence.*

A partition may be proved by oral evidence though the partition-deed cannot be proved for want of registration. (*Abdul Raoof*, J.) BISHAN DAS *v.* RAM SINGH. **61 I.C. 399=**
3 U.P.L.R. (Lah.) 43.

———**S. 91**—*Partition—Secondary evidence—Loss of award effecting partition—Admissibility of oral evidence.*

Where an award effecting partition is lost, there is nothing in S. 91 of Indian Evidence Act to prevent one of the parties from proving *aliunde* that a partition did take place but no secondary evidence of the details of such partition can be given. (*Rattigan and Scott-Smith*, JJ.) SUKH DIAL *v.* MANI RAM.
29 P.R. 1915=27 I.C. 489=29 P.L.R. 1916.

———**S. 91**—*Partition—Absence of registration—Oral evidence—Part performance—Effect.*

Although a document of partition is inadmissible in evidence for want of registration and no oral evidence can be let in to prove the partition, yet if the arrangement has been acted upon and there is part performance by the party seeking relief and he could maintain a suit for specific performance, proof of the arrangement can be allowed. (*Das and Macpherson*, JJ.) NAND LAL MAHTON *v.* DHANUKDHARI MAHTON. **4 Pat. L.T. 657=**
2 P.L.R. (Civ.) 87=1924 P. 245.

———**S 91**—*Partition—Unregistered deed—Oral evidence—Scope of section.*

A partition can be effected orally, but if the parties put into writing but do not register it even though the properties are worth more than Rs. 100, it is wholly inoperative. S. 91 of the Evidence Act precludes oral evidence being

EVIDENCE ACT (I of 1872), S 91—Police Diary.

given in such a case. It is true that relationship such as partnership, landlord and tenant, etc., may be proved apart from documents embodying such relationship, but not so the facts and terms of a partition deed. (*Duckworth and Pratt, JJ.*) MG. PO. LUN *v.* MA E MAI 1923 Rang. 57.

Police Diary.

———S. 91—*Police diary—Entries in—Oral evidence.*

S. 91 has no application to matters entered in a special diary under S. 172 of the Cr.P.C. Oral evidence is admissible to prove statements made to the Police by witnesses who heard them made, 19 A. 390, Expl. (*Parlett, J.*) NOOR MAHOMED *v.* EMPEROR. 18 Cr. L J. 1022=42 I C. 766= 11 Bur. L.T. 138.

Power-of-attorney.

———— Ss. 91 and 92—*Power-of-attorney—Right of third party to adduce other evidence of the power.*

There is no legal rule that the only evidence of an agent's authority admissible in evidence is a written power-of-attorney. The fact can be established by evidence *aliunde*, and, so far as third parties are concerned more so because the agent was appointed under a written document executed by the principal. (*Reid, C.J. and Rattigan, J.*) NANAKCHAND *v.* MUHAMMAD AFZAL. 33 P.R 1913=11 P.L R. 1913= 16 I.C. 980=27 P.W.R. 1912.

Promissory Note.

————S. 91—*Promissory note—Pre-existing debt—Suit on original consideration.*

If a creditor has a cause of action for the recovery of money for which his debtor has executed a promissory note, separate from and independent of the note he can recover upon such cause in case the note for any reason as for want of being properly stamped cannot be put in evidence, 34 A. 158, Foll. (*Ryves and Daniels, JJ.*) KASHI PRASAD *v* PANNA LAL. L.R. 4 A. 377=1923 All. 529 (2).

———S 91—*Promissory note—Unstamped—Suit on original consideration.*

Where a hundi is unstamped and therefore inadmissible in evidence, a decree may be given, on the original consideration if it is admitted in the pleadings and if the claim on the original consideration is in time. (*Chatterjea and Newbould, JJ.*) GOBINDA KUMAR *v.* RAM CHANDRA. 31 I C. 945=29 C.L J. 508.

————S. 91—*Promissory note—Claim for interest under inadmissibile pronote—Damages in lieu of interest.*

Where a pro-note is in admissible in evidence oral evidence is not admissible under S. 91 of the Act to prove the terms of the contract for payment of interest and therefore the claim for interest under the document cannot be maintained but the Court may allow damages in lieu of interest. (*Mookerjee and Beachcroft, JJ.*) RAM BAHADUR *v.* DASURU RAM. 19 I C. 840=17 C.L.J. 399.

EVIDENCE ACT (I of 1872), S. 91—Receipt.

————S. 91—*Promissory note—Hundi insufficiently stamped—Inadmissible in evidence—Rights of creator.*

In a suit for recovery of money advanced on the security of a Hundi it was found that the Hundi was signed shortly after the money was actually paid. The Hundi was insufficiently stamped and therefore inadmissible under S. 35 of the Stamp Act. The plff claimed to recover the money advanced irrespective of the Hundi. *Held*, that the loan was made on the security of the Hundi though the Hundi was actually executed later on, and the plff. had no cause of action independently of the Hundi. The Hundi was inadmissible in evidence under S. 35 of Stamp Act. S. 91 of the Evidence Act was a bar to the reception of secondary evidence and the plff.'s suit was therefore unsustainable. 61 P.R. 1888; 42 P.R. 1895; 66 P.R. 1906, Foll.; 16 I C. 83, Dis. (*Chevis and Harrison, JJ.*) CHANDA SINGH *v.* THE AMRITSAR BANKING COMPANY. 2 Lah. 330=1922 Lah. 307.

————S 91—*Promissory note—Unstamped—Inadmissible—Suit on original consideration.*

Where a promissory note is inadmissible in evidence for want of stamp a decree could not be given on the consideration as there was no independent obligation to pay apart from the note. 10 M. 94; 17 M.L.J. 126, Foll. (*Sadasiva Iyer and Spencer, JJ.*) MUTHU SASTRIGAL *v.* VISVANTHA PANDARA SUNNADHI. 38 Mad. 660=14 M.L.T. 520= (1914) M.W.N. 58=21 I.C. 864= 26 M L.J. 19.

————S 91—*Promissory note — Inadmissible in evidence—Original consideration.*

(Per *Curiam Pratt, J., dissentiente*).—Where money is lent and a promissory note is given therefor the creditor can sue for the money due as on the original contract of loan if the promissory note cannot be proved. (*Twomey, C.J., Ormond Maung Kin and Pratt, JJ.*) MAUNG KYI *v.* MA MA GALE. 12 Bur. L.T. 127=34 I C. 84= 10 L.B.R. 56 (F.B.).

Receipt.

————S. 91—*Receipt—If payment can be proved by other evidence.*

Where a receipt granted for payment made is lost the party relying on the payments need not prove the loss of receipt but may prove payments by other evidence. (*Karamat Hussain and Chamier, JJ.*) MUHAMMAD HUSSAIN *v.* AMIR HAIDAR. 18 I.C. 150.

————Ss. 91 and 92—*Receipt—Unstamped—Proof of pagment by other evidence.*

The mere existence of an unstamped receipt which is inadmissible in evidence does not

EVIDENCE ACT (I of 1872), S. 91—Recitals.

prevent other evidence being given to prove discharge by payment. (*Hallifax*, A J C.) RAM PRASAD *v.* NATHU RAM. 1923 Nag 32.

Recitals.

——S. 91—*Explanation 3—Recitals in document—Relationship—Oral evidence—Document defining relationship—Gift.*

The fact of the existence of a particular legal relationship may be established by oral evidence though the terms which govern the relationship may be expressed in writing. Though a deed of gift executed by a Mahomedan is inadmissible in evidence for want of registration oral evidence is admissible to show that there has been a valid gift under Mahomedan Law. (*Lindsay*, J.C.) ALI BAKHSH *v.* GHUSAI. 18 O C. 122=28 I.C. 180=2 O.L J 97.

Registration endorsement.

——Ss. 91 and 92—*Registration indoresement.*

A statement recorded by the Sub-Registration Officer on the back of the document cannot be taken as a part of the document and cannot be admitted in evidence under Ss. 91 and 92 of the Evidence Act. (*Chamier*, J.C.) MUNI *v.* SHIAM BEHARI. 10 I.C. 718=14 O.C. 80

Sale.

——S. 91—*Sale—Sale-deed not produced—Oral evidence.*

The purchaser of a land under a registered sale-deed must prove his title by producing the sale-deed or lay the foundation for the reception of secondary evidence. No oral evidence of the sale is admissible under S. 92. (*Sharfuddin and Coxe*, JJ.) SAFAR ALI *v* MOHESH LAL CHOWDHURY. 54 I C 936=28 C L.J 122.

——S. 91—*Sale-deed—Non-registration—Suit for specific performance—Inadmissibility of document.*

Where the sale-deed is not registered, the vendee cannot rely upon it as evidence even in a suit for sp. performance. (*Chevis and Abdul Raoof*, JJ.) MUSSAMMAT PARMESWARI DEVI *v.* AUTAR SINGH. 4 U.P L.R (L) 59.

——S. 91—*Sale—Unregistered sale for less than Rs* 100—*Delivery of possession.*

Plff. can rely upon oral sale accompanied by delivery of possession in a case where a sale-deed was executed but not registered as the consideration was less than Rs. 100. (*Kanhaiya Lal*, A J.C.) SHEO DAYAL *v.* RAJA MAHOMED ABDUL HASAN KHAN. 38 I.C. 671=20 O.C. 88.

Transfer of Property.

——S. 91—*Transfer of property—Oral evidence.*

Where a disposition of property is not required by law to be in writing and no question arises as to the terms of such a disposition. Oral evidence is admissible to prove the existence of such a disposition. (*Kanhaiya Lal*, A J C.) SHEO DAYAL *v.* MUHAMMAD ABUL HASSAN KHAN. 38 I C 671=20 O.C. 88.

EVIDENCE ACT (I of 1872), S. 92—Ambiguity.

——S 92.

AMBIGUITY.
ARBITRATION.
COMPROMISE.
CONNECTED DOCUMENT.
CONSIDERATION.
CONTEMPORANEOUS DOCUMENT.
CONTRACT
DECREE OF COURT.
DESCRIPTION OF HOUSE.
DHARPUTNI LEASE.
DISCHARGE.
DOCUMENT SILENT AS TO INTEREST.
EVIDENCE OF CONDUCT.
EXHAUSTIVE.
FRAUD
ILLEGALITY OF CONSIDERATION.
IMPLIED CONTRACT.
INTENTION OF PARTIES.
INTEREST.
INTERPRETATION OF DOCUMENTS.
KABULIYAT.
LANDLORD AND TENANT.
LEASE
MISTAKE.
MORTGAGE.
NEGOTIATIONS.
ORAL AGREEMENT.
PAROL AGREEMENT.
PLAIN DOCUMENT.
PROMISSORY NOTE.
RECITALS.
RELINQUISHMENT.
SALE
SCOPE.
TERMS OF THE CONTRACT.
THIRD PARTIES.
TRADE USAGE.
USAGE.
VARIATION OF TERMS.

Ambiguity.

——S 92—*Ambiguity—Agreement of sale—Facts leading up to sale—Extrinsic evidence.*

Where there are conflicting statements as to the circumstances leading up to the execution of an agreement to sell, and there is difficulty in reconciling the different statements regarding the property sold extrinsic evidence is admissible to explain the facts. (*Mr. Ameer Ali.*) HUSSONALLY SULLLEMANJI *v* TRIBHUVANDAS MANGALDAS. (1920) M W N. 726=3 U.P.L.R. (P C) 1=61 I.C. 361=28 C W.N. 383 (P C.).

——S. 92, proviso (6)—*Ambiguity—Evidence of conduct of parties—Admission.*

Where a deed of transfer is ambiguous as to the nature of interest in the property it purports to convey, extrinsic evidence (including evidence as to the course of dealing with

EVIDENCE ACT (I of 1872), S. 92—Ambiguity.

the property) may be taken into consideration in construing the deed. If there is careless admission as to the nature of certain property both sides can give evidence as to the person who made the admission with the incidents of the property when he made the statement. (*Chatterjee and Panton, JJ.*) DINABANDHU NANDI CHOUDHURY *v.* MANNULAL PARIK. 52 I C. 443.

——S. 92 (2)—*Ambiguity—Oral evidence—Admissibility of.*

A mortgage-bond contained the following stipulation for interest. 'I have borrowed from you Rs. 800.....I shall pay.....for the aforesaid sum every year.....calculating interest at ten *kalams* of paddy every year'. On a question arising as to whether ten *kalams* were the interest on Rs. 100 or all the 800 rupees. *Held*, that the document was silent as to the basis on which calculation was to be made and therefore oral evidence was admissible under proviso 2 of S. 92 of the Evidence Act, to show what the parties really intended. (*Oldfield and Seshagiri Aiyar, JJ.*) MUTHUSAWMI AIYAR *v.* VARADA VYROYAN.
(1920, M.W.N. 289=11 L W. 352=
56 I.C 476=21 M.L.T. 309.

——S. 92(6)—*Ambiguity—Explanation.*

In a suit upon a promissory note executed by the defendant in favour of the plaintiff bank, it appeared that the bank used to fix a period for payment and that the defendant in his application for the loan in a printed form added 'six months' period, the officer of the bank accepted the application. *Held*, that the application form, and endorsement thereon were admissible for fixing the date of payment and that the suit was governed by Art. 69 or 80 of the Limitation Act, the starting point of limitation being six months after the date of the note. (*Seshagiri Aiyar and Moore, JJ.*) PONNUSWAMI CHETTY *v.* THE VELLORE COMMERCIAL BANK, LTD. 38 M L J. 70=
27 M.L.T. 81=(1920) M W N 75=
56 I.C. 381=11 L.W. 28.

Arbitration.

——S. 92, proviso (2) — *Arbitration—Oral agreement—Decision of majority is to be binding—Proof of.*

An agreement in writing to refer certain disputes to the arbitrators was made and the award of the arbitrators was stated to be binding on the parties to the reference. *Held*, that evidence of an oral agreement to the effect that the parties agreed to be bound by the decision of a majority of the arbitrators was inadmissible under S. 92, proviso (2) of the Evidence Act. (*Kanhaiya Lal, A.J.C.*) GUR BAKSH SINGH *v.* CHUTTA SINGH.
47 I.C. 980=8 O.L.J. 471.

Compromise.

——S. 92, proviso (2)—*Compromise decree—Part of agreement not entered in compromise deed.*

Where a part of the agreement between the parties is not entered in the compromise deed, the case is not covered by S. 92, proviso 2 of the Evidence Act and the parties could not adduce oral evidence of the same. (*Richards, C.J. and Banerji, J.*) ABDUL HAMID *v.* ABDUL MAJID. 21 I.C. 308=11 A.L.J. 770.

——S. 92—*Compromise—Addition of terms—Written agreement—Oral evidence.*

Where the agreement of compromise by which the plaintiff withdrew a criminal case did not refer to an agreement which the plaintiff was putting forward. *Held*, that plaintiff was adding a new term to the agreement which settled the terms of the compromise which he could not do under S. 92. (*Scott, C.J. and Beaman, J.*) JAGJIVAN MULJI *v.* MATHJI JAGESHWAR. 32 I C. 938=
18 Bom. L.R. 90.

——S. 92—*Compromise—Additional evidence if legally admissible.*

An order of Court adjourning a case and incidentally making a note as to the fact of an agreemant made out of Court between the parties as a ground of adjournment is not a record of the terms of the compromise; and additional evidence to add to the terms of the compromise is admissible. S. 92 does not bar oral evidence in such a case. (*White, C.J. and Sankaran Nair, J.*) SAMBANDA MUDALIAR *v.* CHINNASAWMI SAH. 29 I.C. 860.

——S. 92—*Compromise—Oral evidence—Independent agreement.*

Where a litigation is compromised by the parties by means of a written agreement 'of all matters in dispute' it is not open to the parties to tender oral evidence of separate agreement as not having been included in the compromise though concerning a matter dealt with by it. (*Benson and Sankaran Nair, JJ.*) RAJARAM RAO *v.* TULJARAM RAO. 17 I.C. 43.

——S. 92 — *Compromise — Evidence of adjustment.*

S. 92 of the Evidence Act does not bar the oral evidence to prove an agreement by way of adjustment of a decree as the R. 2 of O. 21, C.P. Code, contemplates the taking of evedence to prove the adjustment. (*Mitra, O.J.C. and Hallifax, A.J.C.*) RANGLAL *v.* CHUNNILAL.
50 I.C. 316=16 N.L.R 204.

——S 92—*Compromise—Decree recorded as satisfied—Oral evidence of contract—C.P. Code, O. 21, R. 2.*

The fact that the liabilities under the decree form the consideration for a compromise, did not prevent that compromise from being a new and independent contract which might form the basis of a suit which might be proved by oral evidence and such evidence would not amount to 'contradicting, varying, adding to or subtraction from' the terms of the decree. (*Mitra, A.J.C.*) RATANLAL *v.* ANWAR KHAN.
52 I.C. 527.

EVIDENCE ACT (I of 1872), S. 92—Connected Document.

Connected document.

———S. 92—*Connected documents — Single transaction.*

Whether two documents executed at an interval of two days by the same parties evidence a single transaction or two separate independent transactions, should be decided only on a perusal and construction of both and by contemporaneous surrounding circumstances but no oral evidence of intention is admissible. (*Sadasiva Aiyar and Spencer*, JJ.) PALANIAPPAN *v.* SUBBARAYA GOUNDAN.
14 M.L.T. 579=(1914 M.W.N 222=23 I.C. 4=1 L.W. 80.

Consideration.

———S. 92 — *Consideration—Sale-deed—Evidence that no consideration was intended to pass.*

Evidence is admissible to show that consideration for a deed of sale was not intended to pass and that it was a deed of gift. (*Lord Macnaghten.*) HANIFUNNISSA *v.* FAIRUNNISSA.
33 All. 340=15 C.W.N. 511=8 A.L.J. 373=13 C.L.J. 510=13 Bom. L.R. 391=10 M.L.T. 28=(1911) 2 M.W.N. 370=11 I.C. 398=21 M.L.J. 1126 (P.C.). [On appeal from 27 All. 612.]

———S. 92—*Proviso 3 — Consideration — Plea of, want of.*

It is open to a person who admits the execution of a promissory-note to plead want of consideration therefor. (*Ryves*, J.) LALLU MAL *v.* REOTI RAM.
45 A. 679=21 A.L.J. 669=9 O. & A.L.R. 674=1924 A. 70.

———S. 92—*Consideration—Proof that the consideration was less than that recited in the deed.*

Evidence to show that the price for a sale of property is less than the amount recited in the sale-dead is inadmissible. 38 M. 514, followed. (*Walsh*, J.) LALA SINGH *v.* BASDEO.
1923 A. 429 (2).

———S. 92—Proviso (1)—*Consideration—Vendee's right to prove consideration was less than shown in deed.*

If one party proves that the consideration shown in the sale-deed did not pass, the case is within proviso 1 of the section; the other party can give oral evidence to prove the real consideration. 33 A. 340 (P.C.), Foll.; 12 M.I.A. 157; 11 Cal. 486; 3 Bom. 159; 18 A. 168; 15 C.W.N. 159; 9 I.C. 161; (1907) A.W.N. 181; Dist. (*Banerji and Chamier*, JJ.) CHUNNI BIBI *v.* BASANTI BIBI.
36 All. 537=24 I.C. 661=12 A.L.J. 969.

———S. 92— *Consideration —Sale-deed — Variation of terms.*

Though want of consideration or failure of consideration or difference in the kind of consideration may be proved evidence to vary the

EVIDENCE ACT (I of 1872), S. 92—Consideration.

amount of consideration in a registered sale-deed is inadmissible. If such a course were permissible the protection intended by the Legislature to be afforded by the adoption of the rule embodied in S. 92 of the Evidence Act would be completely nullified. (*Mookerjee and Chatterjee*, JJ.) ANNADA CHARAN SIL *v.* HARGOBINDA SIL.
27 C.W.N. 496=37 C.L.J. 552=1923 Cal. 570.

———S. 92, Proviso (1)—*Consideration—Recital—Evidence to the contrary.*

Either party to a document may show that there was in fact no consideration for a document though consideration was recited therein or that the consideration was different from what was stated in the deed, 3 Bom. 159, foll. (*Mookerjee and Buckland*, JJ.) KRISHNA *v.* NAGENDRABALA
26 C.W.N. 942=66 I.C. 694=34 C.L.J. 333.

———S. 92— *Consideration — Promissory note—Recital as to consideration—Proof of payment of a different kind, whether admissible.*

Under S. 92 the parties to an instrument can show that the special consideration mentioned in the document did not really pass between them, 21 I.C. 458, Dist.; 32 A. 113; 11 I.C. 398 (P.C.); 24 I.C. 661, Foll. (*Seshagiri Aiyar*, J.) NABA REDDIAR *v.* DORAISWAMI REDDI. **(1916) M.W.N. 474=31 M.L.J. 95=35 I.C. 201=3 L.W. 589.**

———S. 92—*Consideration — Endorsement on promissory note—Presumption—Oral evidence, whether admissible to prove contract between parties.*

As between an endorser and an endorsee of a promissory note the endorsement is presumed to be for the consideration recited, but that presumption will not make it 'a contract in writing' within S. 92, so as to exclude oral evidence to prove what the consideration for the endorsement really was. (*Phillips*, J.) AYYADORI AIYAR *v.* SIVARAMA PATTAR KARIKAR. **32 I.C. 233.**

———S. 92, proviso (5)—*Consideration—Portion not paid—Letter undertaking to give credit for interest—Admissibility.*

At the time of execution of an usufructuary mortgage-deed, a portion of the consideration was unpaid and the mortgagee passed an unregistered letter undertaking to give credit for interest on the sum if unpaid within ten days. *Held*, in a suit for redemption that the letter being unregistered was not admissible in evidence as it modified the terms of the mortgage-deed; but that a separate suit might lie for the amount due under the letter. (*Sankaran Nair and Spencer*, JJ.) ALLAMSETTI APPALA SURYANARAYANA *v.* PEELEEKHANA VENKATASIVA RAO PANTULU
28 I.C. 186=2 L.W. 224.

———S. 92, provisos (2) and (3)—*Consideration for sale—Variation of.*

Where a sale-deed stated Rs. 35,000 as consideration, evidence of an oral contract fixing

EVIDENCE ACT (I of 1872), S. 92—Consideration.

the consideration at Rs. 35,000 and the discharge of a mortgage for Rs. 1,000 is not admissible under proviso 2 or 3 of S. 92 of the Evidence Act. (*Ayling and Tyabji, JJ.*) RAMAKRISHNA AIYAR *v.* ADITYAM AIYER.
(1913) M.W.N. 880=21 I C 463=16 M.L T. 385.

———S. 92—*Consideration—Term of the contract—Variance of,*

If a sale-deed recites as consideration a cash price of Rs. 35,000, evidence of an oral agreement that the consideration was really Rs. 36,000 cannot be let in, as the amount of sale price is a term of the contract and evidene cannot be admitted to vary it. (*Ayling and Tyabji, JJ.*) ADITYAM AIYAR *v.* RAMAKRISHNA AIYAR. 38 Mad. 514=(1913) M W N 847=14 M L.T. 382=21 I.C. 488=25 M.L.J. 602.

———S 92—*Consideration—Non-payment—Oral evidence,*

In the case of a deed of sale vendors may prove want of consideration and oral evidence is admissible under S. 92 though contradictory to a written document. (*Prideaux, A. J. C.*) MOTIRAM *v.* RADABAI. 65 I.C. 53.

———S. 92—*Consideration—Failure of—Admissibility of evidence.*

In a redemption suit defendant should be allowed to bring evidence to show that the mortgage was fictitious. (*Lindsay, J. C.*) SAHEB BAKSH SINGH *v.* MOHAMMAD ALI.
58 I.C. 116=7 O L.J. 389.

——— S. 92—*Consideration—Evidence that consideration was advanced by person other than payee, whether admissible.*

Evidence to show that consideration for a pro-note was advanced by some persons other than the payee is inadmissible under S. 92 of Evidence Act. (*Pratt, J.C.*) MAUNG SAW *v.* INGRASWAMI. 56 I.C. 269=(1919) 3 U B R. 200.

———S. 92—*Consideration—Oral evidence to vary recitals.*

Oral evidence is admissible to prove that a higher price was paid for a sale than is evidenced by a sale-deed itself. (*Mc Coll, A.J.C.*) MI SHAW MYIN *v.* MI SHEVE THIN
15 I.C. 919=(1912) 1.U.B.R. 126.

Contemporaneous Document.

———S 92—*Contemporaneous documents—Admissibility.*

If a contract is based on two documents, executed contemporaneously, the defendant in a suit on one of them is entitled to show the contemporaneous execution of the other. A sued B on a pro-note payable on demand. B pleaded a contemporoneous agreement of its payment by instalments. *Held*, he could give evidence of the existence of the contemporaneous agreement. (*Parlett, J.*) NAGARDAS *v.* MOSES S. AROKEE. 12 I.C 896=3 Bur. L T. 136.

EVIDENCE ACT (I of 1872), S. 92—Contract.

Contract.

———S. 92 (2)—*Contract—Evidence of collateral warranty is admissible.*

Where the plaintiff purchaser of a motor car alleged in his plaint that there was an express warranty that the car was a new car and in perfect working order but there was no such warranty in the written agreement. *Held*, that evidence of such a express collateral warranty would be admissible, under S. 92, proviso (2). (*Pratt, J.*) HURBUT JOHN AMIES *v* JAL P. VIRJI. 25 Bom L.R. 778=1924 Bom. 41.

———S. 92, provisos (3) and (4)—*Contract—Registered contract.*

Oral evidence of modifications of a registered contract by an unregistered writing is inadmissible. (*Ried, C.J.*) SHER MUHAMMAD *v.* NIKKA MAL. 17 I.C. 862=21 P.L.R. 1913.

———Ss. 92, 93 and 97—*Contract for sale—Evidence to prove identity of vendees.*

Where a vendor agrees to sell land to several named persons and in drawing up the agreement of sale the name of one person is mentioned and without naming the rest the word "others" is used, there is nothing in the Evidence Act to prevent evidence from being let in as to the persons in whose favour the conveyance is to be executed. (*Kumaraswami Sastri and Deva Doss, JJ.*) VEDA MURTHI MUDALIAR *v.* JWALAPURAM RAGHVACHARLU. 42 M L J 475=16 L.W. 311=(1922) M.W.N. 185.
30 M L.T. 177 (H.C)=1922 Mad. 100.

———S. 92, proviso (4)—*Contract—Rescission of contract.*

Where a lease was given by plaintiff to defendants on a low rent as defendant promised to procure a loan for plaintiff and an agreement was executed as part of the contract by which the defendant agreed to cancel the lease deed on failure to procure the loan. *Held*, that it was outside the operation of S. 92, Evidence Act, whether it be regarded as itself the contract or as evidence of an oral agreement to the same effect. (*Coutts-Trotter and Srinivasa Aiyangar, JJ.*) (JAGANNADHA RAJU *v.* RADHAKRISHNIAH. 30 M.L J. 302=32 I C. 941=(1916) 1 M.W.N. 129.

———S 92—*Contract in writing—Suit on promissory note — Collateral agreement of time.*

An agreement in writing postponing the time for payment is a valid and enforceable agreement and time runs from the expiry of the agreement. (*Wallis, C.J., Abdur Rahim, Seshagiri Aiyar, Sadasiva Aiyar and Napier, JJ.*) A T S.A. ANNAMALAI CHETTY *v.* S.V. VELAYUDU NADAR AND SUNDARA NADAR.
39 Mad. 129=3 L.W 38=19 M L T. 62=30 M L J. 51=32 I.C. 869=(1916) M.W.N. 93 (F.B.).

EVIDENCE ACT (I of 1872), S. 92—Contract.

———S. 92, proviso (2)—*Contract—Scope of.*

Where the plaintiff's evidence proved that the written agreement about supply of consignments by defendant was incomplete and that there was a supplementary oral agreement. *Held*, it would not be inconsistent with the terms of the document that there should have been an agreement that the consignments should be sent when the plaintiff ordered or requested that they should be sent and that the defendant was not bound to despatch consignments without definite orders. (*Batten*, J.C.) SETH LAXMICHAND v. SHAIKH SHAHABUDDIN. **1923 Nag 46.**

———S. 92, proviso (6)—*Contract reduced to writing—Relation to existing facts—Pro-note and memorandum—Agreement not to sue till defendant succeeded in an action—Extrinsic evidence, admissibility of.*

Where a contract is reduced to a document it must be construed on a consideration of the document itself, with only such extrinsic evidence as would show the relation of the written language to existing facts, 22 A. 149 (P.C.), Foll. Defendant executed a pro-note to plaintiff for amount received as expenses of an appeal to which he was a party respondent; simultaneously with the pro-note, defendant gave a note to the plaintiff stating that the pro-note was executed in consideration of plaintiff's for bearing to sue on it till the appeal was decided. It was admitted that all parties had great hopes of defendant's success in the appeal and it was understood that plaintiff was to be repaid out of the amount that defendant's opponent had deposited in Court as security for costs of the appeal. *Held*, that construing the documents under the said circumstance, plaintiff's liability did not depend on the result of the appeal. (*Fox*, C.J. *and Twomey*, J.) EBRAHIM GULAM ARIFF *v.* A.K.A M. CHETTY FIRM. **36 I.C. 897.**

Decree of Court.

———S. 92—*Decree of Court—Oral agreement in discharge of—Evidence if admissible.*

Per *Walsh*, J—Evidence of an oral agreement substituting a new executory contract in lieu of, a decree is inadmissible. (*Piggott and Walsh*, JJ.) LACHMI DAS *v.* BABAKALI KAMLI WALA RAM NATH. **44 A. 258=20 A.L.J. 65=1922 All. 13=L.R. 3 A. 61.**

Description of House.

———S. 92, proviso (6)—*Description of house and site—Oral evidence.*

A sale-deed purported to convey an upstair house standing on a certain site, which was also described and conveyed. The vendor had no upstair house on that site but had one on the opposite side of the same street. *Held*, that parol evidence was admissible to show that the house intended to be conveyed was the latter upstair house. (*Benson and Miller*, JJ.) ANNATHURI AYER *v.* RAMANUJA CHARIAR. **22 M.L.J. 411=15 I.C. 223=(1912) M.W.N. 402.**

EVIDENCE ACT (I of 1872), S. 92—Discharge.

Dharputni Lease.

———S. 92 (4)—*Dharputni lease—Rent reduced by subsequent letter—Payment for years—Effect of.*

Where after the execution of the Dharputni lease which fixed a certain amount as rent the landlord reduced the rent payable by the lessee by a subsequent letter and the lessee paid at the reduced rate for more than 30 years. *Held*, that the landlord's transferee could not claim at the high rate. (*Chitty and Chatterjee*, JJ.) RAJ KUMAR SARKAR *v.* RAJANI KANTA CHAKRAVARTI. **13 I.C. 449.**

Discharge.

———S. 92—*Discharge—Variation of terms—Subsequent oral agreement — Usufructuary mortgage.*

An agreement between a mortgagor and the usufructuary mortgagee that a property not mortgaged shall be given possession to the mortgagee and that the profits should be applied towards the principal, is admissible in evidence. (*Griffin*, J.) BEHARI *v.* SHIB SAHAI. **18 I.C. 324.**

———S. 92, proviso (5)—*Discharge—Registered bond—Agreement to take less in satisfaction.*

A creditor can sue on his original registered bond which cannot be varied by an oral agreement to take part satisfaction, for until it is made and the creditor remits the balance, the original contract remains intact. (*Holmwood and Chapmon*, JJ.) KESHAB LAL SHAHA *v.* HOSSEIN-UD-DIN. **18 I.C. 817.**

———S 92—*Discharge—Oral evidence that payment made in mode different from that mentioned in document, if admissible.*

The only thing laid down by S. 92 is that the terms of the contract may not be varied or substracted from or contradicted and not that no statement of facts in a written statement may be contradicted. 22 C. 370; 9 A. 392, Rel. Therefore oral evidence to prove that certain sums payable as profits to a mortgagor have been paid not in cash as required by the document but in another mode is admissible. (*Mookerjee and Carnduff*, JJ.) RAM AWATWAR *v.* TULSI PRASAD SINGH.
16 C.W.N. 137=11 I.C. 713=14 C.L.J. 507.

———S. 92—*Discharge — Promissory note payable on demand—Oral agreement for a different mode of discharge.*

Where a promissory note is payable on demand, an oral agreement inconsistent with the express terms of contract is inadmissible in evidence. (*Martineau and Abdul Quadir*, JJ.) BHARAT NATIONAL BANK *v.* MOHAN LAL. **62 I.C. 748.**

EVIDENCE ACT (I of 1872), S. 92—Discharge.

———S. 92—*Discharge—Oral—Remission—Registered lease.*

An intimation from the landlord that the reduction hitherto allowed would cease after the date of the letter, discharges the tenant from paying the contract rate for a particular period. No consideration is necessary for this remission and does not contravene S. 92. (*Ayling and Seshagiri Aiyar*, JJ.) MAHARAJA OF BOBBILI *v.* RANGU APPALA NAIDU.
32 I.C. 703=(1916) M.W.N. 149.

———S. 92—*Discharge — Mortgage — Oral sale for what purposes admissible.*

Per *Phillips*, J. (*Spencer*, J. *dissenting*). An oral sale following a mortgage is not an agreement modifying or rescinding the mortgage but is one discharging the mortgage and although it does not effect a legal transfer of the property, yet there is nothing in S. 92, Evidence Act to exclude evidence of the transaction as showing discharge of mortgage-debt and as showing the nature of possession by the mortgagee thereafter as owner. 14 C.L.J. 507; 30 M. 311; 26 M. 195; 27 M. 368, Foll.; 37 M. 423, Dist. (*Spencer and Phillips*, JJ.) THOTA KURA GOVINDU *v.* PEPAKAYALA MALLAIYA. 2 I.C. 678.
[View of Phillips, J. upheld in L.P.A. Vide (1921) M.W.N. 1.]

———S. 92—*Discharge of mortgage—Invalid oral sale.*

Oral evidence is admissible to prove discharge of a mortgage by payment of money or by receipt of profits, but not to prove a discharge by an invalid oral sale of the equity of redemption in a portion of the mortgage property in discharge of the mortgage-debt. (*Miller and Sadasiva Aiyar*, JJ.) ARIYAPUTHIRA *v.* MUTHUKUMARASWAMY. 37 Mad. 423=23 M.L.J. 339=12 M.L.T 425=15 I.C. 348=(1912) M.W.N. 884.

———S. 92—*Discharge — Oral agreement altering mode of payment if acted upon is admissible.*

Where an oral agreement is made which in respect of manner of payment rescinds or modifies a contract, grant or other disposition of property required by law to be in writing and actually written and registered and any payment is made in accordance with such oral agreement, whether in complete or partial satisfaction of the contract, S. 92 does not exclude evidence of that payment but it excludes evidence of the agreement in respect of future payments not in accordance with the terms of the instrument. (*Hallifax*, A.J.C.) SAMBHOO *v.* TIKARAM. 59 I.C. 240.

———S. 92—*Discharge—Mortgage—Subsequent oral agreement to be put in possession in lieu of interest.*

An oral arrangement between the parties to a simple mortgage by which the mortgagee is put in possession in order that he may enjoy the profits apply them towards the satisfaction

EVIDENCE ACT (I of 1872), S. 92—Evidence of Conduct.

of interest due, is perfectly legal, inasmuch as such an arrangement does not vary, contradict or add to the terms of the original deed but only provides for the satisfaction of one of its conditions. (*Stuart*, J.C.) JAGAT PAL SINGH *v.* HARNAM SINGH. 3 O.L.J. 244=34 I.C. 748=19 O.C. 166.

Document silent as to interest.

———Ss. 92, proviso (6) and 93, Ill. (b)—*Document not mentioning rates of interest payable, per month or per year—Oral evidence.*

Where a document provides for a rate of interest but does not state whether the interest at that rate is payable monthly or yearly, the intention of the parties must be gathered from the document itself. Oral evidence inadmissible for that purpose under Ss. 92 and 93 of the Evidence Act. (*Jenkins*, C.J. *and Mookerjee*, J.) PROTAP CHANDRA *v.* MOHAMED ALI.
41 Cal. 352=19 C.L.J. 66=20 I.C. 443=18 C.W.N. 892.

———S. 92, proviso (2)—*Document, construction of — Ambiguity — Intention, oral evidence of, whether admissible.*

Under S. 92 (2) oral evidence of the intention of parties is admissible only where some words in the document render it ambiguous and it seems that parties must have intended something different. (*Oldfield and Seshagiri Aiyar*, JJ.) MUTHUSWAMI AIYAR *v.* VARADA VYROYAN. (1920) M.W.N. 239=11 L.W. 352=56 I.C. 476=27 M.L.T. 309.

———S. 92 (6) — *Document silent as to interest — Rate not specified — Evidence — Admissibility.*

A promissory note contained a recital that interest was to be paid at the rate of 1½ per cent but was silent as to whether the rate of interest aforesaid will be per mensem or per annum. *Held* as the document was ambiguous under cl. 6 of S. 92 of the Evidence Act, no evidence could be given to clear up that ambiguity. (*Jwala Prasad and Ross*, JJ.) SARJU SAH *v.* SUKHI LAL. 4 P.L.T. 577=1924 P. 96.

Evidence of Conduct.

———S. 92—*Evidence of conduct—Conduct of parties to show contract was not intended to be acted upon—If admissible.*

Evidence of acts and conduct of parties to show that certain terms of a contract were never intended to be acted upon from their beginning is not precluded by S. 92 of the Evidence Act. (*Chatterjee and Panton*, JJ.) NARENDRA LAL KHAN *v.* BHOLA NATH.
27 C.W.N. 836=1923 Cal. 417.

———S. 92—*Evidence of conduct—Admissibility.*

Evidence of the acts and conduct of parties to a document is not admissible between them to show that the document is really not what

EVIDENCE ACT (I of 1872), S. 92—Evidence of Conduct.

it purports to be (*J. Walmsley and Ghose, JJ.*) KAMALA KANT *v.* ANANDA CHANDRA. **71 I.C. 1030.**

——S. 92—*Evidence of conduct — Ambiguity.*

Evidence of conduct is admissible for construing a document if it is ambiguous in its terms but not otherwise. (*Mookerjee, A.C.J and Fletcher, J.*) BHABANI NATH ROY *v.* PURNA CHANDRA SARKAR. **25 C W N. 308 = 61 I.C 818 = 33 C L.J. 332.**

——Ss. 92, 91 and 95—*Evidence of conduct — Intention of the parties — Subsequent conduct.*

Subsequent conduct of parties is not admissible to construe a document when its terms are unambiguous. The evidence may be given to explain but not to contradict the doubtful terms of a document. A lease purported to grant a jagiri settlement requiring the lessee to bring the land under cultivation through tenants, together with a certain period of remission during which no rent was to be paid. *Held*, evidence of subsequent conduct of the parties was admissible to make clear the intention and purpose of the tenancy and to determine the status of the tenant. (*Fletcher and Teunon, JJ.*) SECRETARY OF STATE *v.* GOBIND PRASAD BARIK. **39 I C. 934 = 21 C W N. 505.**

——S. 92—*Evidence of conduct—Intention of parties—Mortgage or sale.*

Evidence of conduct is admissible to show that a document which is apparently a mortgage is in reality a deed of sale. 28 C. 256, Foll. (*D. Chatterjee and Newbould, JJ.*) ALI-SHEIKH *v.* IMAM ALI SARKAR. **35 I.C. 102.**

——S. 92—*Evidence of conduct—If admissible—Lease—Lower rent.*

The allegation that since the execution of the *kabuliyat* the tenant paid rent at a lower rate than that stated in the *kabuliyat* can be proved to show that intention of the parties was that the *kabuliyat* was not intended to be acted upon or that there had been a waiver of the terms of the lease. 6 C.W.N. 242, Foll. (*Chatterjee and Newbould, JJ.*) KAILASH CHANDRA SAHA *v* DARBARIA SHEIKH. **32 I.C. 251 = 20 C.W N. 347.**

——S. 92—*Evidence of conduct—Registered lease—Rent.*

Variation of rent reserved by a registered lease must be made by a registered instrument and oral evidence be admitted to prove such variation. An agreement is none the less oral because it is to be inferred from the conduct of the parties. 12 C.L.J. 646, Ref. Oral evidence is admissible to prove any variation of the terms, where leases are not registered. (*Chatterjee and Newbould, JJ.*) MANINDRA CHANDRA NANDI *v* DURGA SUNDARI DASIA. **32 I.C. 185 = 20 C.W.N. 680.**

EVIDENCE ACT (I of 1872), S. 92—Fraud.

——S. 92—*Evidence of conduct.*

In order to prove evidence of contemporaneous oral agreement, oral evidence of subsequent conduct can under no circumstances be admitted. (*Broadway and Harrison, JJ.*) FITZHOLMS *v.* THE BANK OF UPPER INDIA LTD. **4 Lah. 258 = 8 L.L.J 418 = 1923 Lah. 548.**

——S 92—*Evidence of conduct—Variation of contract — Lease — Admissibility of oral evidence.*

No oral evidence varying the contract rate of rent payable by a tenant can be allowed where a *muchilika* (lease) is properly executed. The acceptance of less rent for a long period is conduct and is none the less oral evidence. (*Aylino and Seshagiri Aiyar, JJ.*) MAHARAJA OF BOBBILI *v.* RANGU APPALLA NAIDU. **32 I C. 703 = (1916) M.W.N. 149.**

——S. 92—*Evidence of conduct — Rate of rent.*

Where the agreement of parties is distinct and clear as to rate of rent the subsequent conduct of the parties is inadmissible in evidence to show that some other rate was intended. (*Sadasiva Aiyar and Hannay, JJ.*) SUBARRAYYA AIYAR *v.* KOLANDAVELU MUDALI. **26 I.C. 958.**

——S. 92—*Evidence of conduct—Intention of parties—Sale and mortgage — Extrinsic evidence of acts and conduct.*

Extrinsic evidence as to acts and conduct of parties to a transaction is admissible to show the real nature of a transaction (*e.g.*, to show that a sale-deed was in reality a mortgage) not by what they intended to do, but by what they actually did, or have been doing. 25 Mad. 7, Diss. from 22 A 149 P.C. Expl. (*Kanhaiya Lal, A.J.C.*) ABDUL BASIT *v.* KHIDA BAKSH. **26 I.C. 717 = 1 O L J. 715.**
[This is not law 42 I.C. 642 = 45 C. 320 (P.C.)]

——S. 92—*Evidence of conduct—Document in writing—Evidence inadmissible.*

Evidence of acts and conduct of parties is not admissible to contradict or vary the written terms of an agreement. (*Das, J.*) SUKHAN RAI *v.* CHAKOWRI SINGH. **56 I C. 752 = 2 U.P.L.R. (Pat.) 119.**

Exhaustive.

——S. 92, proviso (1)—*Exhaustive*

The first proviso to S. 92, Evidence Act, does not exhaust all the circumstances which may invalidate a document or entitle a person to a decree. (*Mookerjee and Richardson, JJ.*) NADIR CHAND SAHA *v.* BIRENDRA NATH DUTT CHAUDHURI. **37 I C 126 = 20 C.W.N. 1067.**

Fraud.

——S. 92, proviso (1)—*Fraud—Extrinsic evidence—Sales ex facie absolute—Alleged to be a mortgage—Evidence of a matters antece-*

EVIDENCE ACT (I of 1872), S. 92—Fraud.

dent, admissibility of—Notice of mortgagor's title.

In a suit for possession of properties sold by appellant to the respondents by deeds purporting to be of absolute conveyance, the former tendered evidence to show that to the knowledge of the respondents they were mortgagees only, the mortgagor not being a party to the conveyances and of acts and conduct of the parties to show that they were intended to operate only as transfers of the mortgage interest. *Held*, that S. 92 of the Evidence Act did not exclude evidence in relation to matters antecedent to the sales in question showing that the respondent took with notice of the mortgagor's title; and that the case must be remitted for retrial. S 92 does not prevent proof of a fraudulent dealing with a third person's property or proof notice of real state of the title (*Lord Robson.*) MAUNG KYIN *v.* MASHAVESA. 38 Cal 892= 38 I A. 146=15 C.W.N. 958= 10 M L T. 103=(1911) 2 M.W N. 30= 14 C L J 276=13 Bom L.R. 797= 8 A.L.J. 1184=21 M.L.J. 1105= 12 I.C. 39=4 Bur. L.T. 273 (P.C.).

——S. 92 (1)—*Fraud—Deed of sale—Oral evidence to prove a mortgage.*

If the allegation is that the vendor had been induced to sign the sale-deed by fraud inducing him to believe it to be a mortgage by conditional sale Oral evidence is admissible under Evidence Act, S. 92 (1). (*Batchelor and Rao*, JJ.) SOMANA BASAPPA *v.* GADIGEYA KORNAYA. 35 Bom. 231=9 I.C. 941= 13 Bom. L.R. 113.

——S. 92, proviso (1)—*Fraud—Document obtained by—Oral evidence.*

Where a document is obtained by fraud and comes within proviso 1 to S. 92, of the Act, evidence of a contemporaneous oral agreement contradicting the document is admissible. (*Newbould*, J.) MAHAMAD ARAJ *v.* ABDUL GAFUR. 63 I.C. 368.

——S. 92, proviso (1)—*Fraud—Proof of—Execution of document.*

It is only fraud in connection with the entering into and execution of the document that can be proved by oral evidence, not fraud subsequent to the execution thereof. (*Maung Kin*, J.) MAUNG SHWE HLA *v.* MAUNG CHET. 42 I.C. 113.

——S. 92, proviso (1)—*Fraud—Third parties.*

S. 92 does not prevent proof of fraudulent dealing with a third person's property or proof of notice that the property purporting to be conveyed in fact belonged to a third person. (*Hartnoll and Ormond*, JJ.) MA SHWE LA *v.* MG KYIN. 26 I C. 111=8 Bur. L.T. 105.

Illegality.

——S. 92 (1)—*Illegality of consideration—Failure—Oral evidence.*

EVIDENCE ACT (I of 1872), S. 92—Intention of Parties.

Where it can be shown that the consideration for a debt was losses in gambling, oral evidence could be let in to prove this fact as it amounts to a want or failure of consideration within S. 92 (1). 9 C. 791, Dist. (*Richards*, C.J. *and Piggott*, J.) BAL GOVIND *v.* BHAGGUMAL. 35 All. 558=21 I C. 878= 11 A.L.J. 854.

Implied Contract.

——S. 92, proviso (5)—*Implied contract—Compound interest—Bankers—Overdraft.*

Under a written contract between a banker and a customer, the latter was to be allowed to overdraw his current account and interest was to be charged at a certain rate per annum, and to be calculated on the daily balance due on the overdraft. The course of business adopted by the bank was that at the end of each month interest was added to the balance then due, and the total carried to the debit of the account. The effect of it was that compound interest with monthly rests was charged and such charge appeared on the face of the customer's pass books. The customer was aware of this mode of computation of interest for several years but he raised no objection thereto. *Held*, the customer had impliedly agreed to pay compound interest with monthly rests, and that S. 92 of the Evidence Act was no bar to the proof of such agreement by the banker. (*John Edge.*) HARIDAS *v.* MERCANTILE BANK 44 Bom. 474=27 M.L.T. 253=12 L W. 386= 38 M.L J. 367=(1910) M.W.N. 312= 18 A L.J 359=32 Bom L R 845= 2 U.P.L.R. (P.C.) 78=55 I.C. 522= 47 I.A. 17 (P.C.).

Intention of Parties.

——S. 92—*Intention of parties—Contract in writing—Construction—Extrinsic evidence.*

The rate of payment for work done under a written contract is determined by the terms of the contract. Extrinsic evidence as to the rate of payment allowed for such work to another contractor or to the same contractor, under another contract is irrelevant and inadmissible. (*Lord Parmoor.*) SETH JASWANT RAI *v.* THE SECRETARY OF STATE. 19 M.L T. 103=23 C.L J. 177= (1916) 1 M.W N. 241=3 L W. 257= 33 I.C. 924=18 Bom. L.R 336 (P.C.).

——S. 92—*Intention of parties—Sale or mortgage—Deed apparently a sale-deed—Evidence to show that it was a mortgage admissible.*

Evidence is admissible to show that a sale-deed is not in fact a sale-deed but only a mortgage-deed. S. 92 prohibits only parties. 44 I.A. 236, Foll. (*Macleod*, C.J. *and Crump*, J.) HIRAJI *v* VISHNU. 1923 Bom. 429.

——S. 92—*Intention of parties—Sale-deed. —Oral agreement to prove it to be a mortgage.*

If the vendor had signed the deed knowing it to be sale-deed but at the same time there

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was an oral agreement by the defendant that he would treat it as a mortgage evidence of such oral agreement is inadmissible under S. 92. 12 Bom L.R. 972; 11 Bom L.R 1130; 22 A. 149, Foll. (*Batchelor and Rao, JJ.*) SOMANA BASSAPPA *v.* GADIGAYA KORNAYA.
35 Bom. 231=9 I.C. 941=13 Bom. L.R. 113.

———S. 92—*Intention of parties—Lease—Oral evidence if admissible.*

Where there is a document evidencing a transaction of a lease, oral evidence in the shape of admission relating to the transaction of the lease is not admissible. (*Chapman and Newbould, JJ.*) KARTIK MANDAL *v.* RAMA CHARAN MANDAL. **29 I.C. 502=20 C.W.N. 182.**

———S. 92—*Intention of parties—Contract—Construction of—Oral evidence to vary terms.*

The rights of the parties to a contract must be determined upon the terms of the contract and oral evidence is not admissible to show that the parties intended to enter into a contract different from that in the instrument itself. 12 C.L.J. 649, Foll. (*Mookerjee and Beachcroft, JJ.*) SASI BHUSAN DEY *v.* UMA KANTODEY. **20 C.L.J. 153=25 I.C. 171=19 C.W.N. 1143.**

———S. 92—*Intention of parties—Mortgage or sale—Value of property—Consideration of.*

The Court does not infringe S. 92 of the Evidence Act if in order to determine whether a transaction is a mortgage or sale, it looks to contrast between the value of the property and the consideration that actually passed. (*Jenkins, C.J. and Mookerjee, J.*) ABDUL GAFFUR *v.* SHEIKH JAMAL.
17 C.W.N. 1088=21 I.C. 90=18 C.L.J. 228.

———S. 92—*Intention of parties—Sale or mortgage.*

Oral evidence cannot be given to show that the parties to a sale-deed intended the transaction to be only a mortgage. (*Scott-Smith and Shadi Lal, JJ.*) GHAMAN *v.* KANHIYAMAL. **18 P.W.R. 1915=26 I.C. 426=121 P.L.R. 1915.**

———S. 92—*Intention of parties — Subsequent conduct.*

Evidence of the conduct of the parties subsequent to the execution of the document is admissible to show what the real meaning of the contract was. (*Johnstone and Chevis, JJ.*) BALUKI MAL *v.* C.J. FLOYED.
27 P.R. 1911=10 I.C. 1004=118 P.W.R. 1911=191 P.L.R. 1911.

———Ss. 92, 93, 95, 96 and 97—*Intention of parties—Extrinsic evidence.*

When the language of a document is clear no evidence is admissible to explain the language; when the words are ambiguous and cannot carry any definite meaning, evidence cannot be given to remove the ambiguity or to supply defects. But where the language of a document is capable of being applied to a number of persons or things and the question in which of these persons or things is intended by the expression, evidence may be given to show what was the thing or who was the person intended. Where a Raja made a trust of his ZAMINDARI together with the buildings thereon and the appurtenances thereto, a question arose whether properties purchased by the Raja prior to the execution of the deed were included. It was held that the subsequent conduct of the Raja was admissible to prove the intention. (*Ayling and Seshagiri Aiyar, JJ.*). SUBRAMANI AIYAR *v.* RAJESHWARA SEETHUPATHI. **38 I.C. 627=40 Mad. 1016.**

———S. 92—*Intention of parties—Simultaneous transactions—Mortgage.*

Where the correspondence between mortgagor and mortgagee shows that the transaction was an equitable mortgage oral evidence may be admitted to show that they intended to create equitable mortgage by the deposit of title-deeds and a pro-note. (*Abdur Rahim, O.C.J. and Seshagiri Aiyar, J.*) MUTHIAH CHETTY *v.* KOTHANDARAMASWAMI NAIDU.
31 M.L.J. 347=(1916) 2 M.W.N. 221=35 I.C. 864=4 L.W. 472.

———S. 92—*Intention of parties—Extrinsic evidence.*

A mortgage-deed for an amount found due on setting accounts, recited the conditions of repayment by instalments in kind, on failure of any of which, the mortgagor was bound to return the whole with interest at once. *Held*, Per *Curiam*:—Extrinsic evidence of the parties' intention was inadmissible to construe the document. (*Abdur Rahim and Ayling, JJ.*) SURYADEVARA SEETARAMAYYA *v.* SURYADEVARA KOTTAYYA. **36 I.C. 111.**

———S. 92—*Intention of parties—Will—Proof of testator's intention — Surrounding circumstances.*

Oral evidence to prove the intention of the testator is clearly inadmissible but evidence as to all the surrounding circumstances of the testator and beneficiaries would be admissible. (*Bakewell and Spencer, JJ.*) GADIGERE MULA SUNKI REDDI *v.* VENGAL REDDI.
30 I.C. 391.

———S. 92—*Intention of parties—Mortgage—Document found to be a mortgage but not one in terms—Parol evidence.*

If a document not in terms a mortgage is found to be in reality a mortgage, oral evidence of the intention of the parties is inadmissible under S. 92. 22 A. 149 (P.C.), Foll; 25 M. 7 Ref.; 33 A. 340, Expl, and Dist; 8 Bom. L.R. 764, not Appr. (*Miller and Sundara Aiyar, JJ.*) CHELLA VENKATA REDDY *v.* DEVABAKTUMI. **14 I.C. 65=(1912) M.W.N. 165.**

———S. 92—*Intention of parties—Sale or mortgage.*

Where a document is in the form of an outright sale the executant is precluded from

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showing that it is a mortgage, but he is entitled to show that the consideration has not been paid to him and he is entitled to retain possession until the consideration is paid. (*Twomey and Ormond, JJ.*) HARDUM SINGH v. MG PO HTU. 43 I.C. 931.

———S. 92—*Intention of parties—Sale or mortgage—Evidence as to.*

Oral evidence cannot be let in to show that a document which purports to effect a sale is really a mortgage unless fraud on the part of the party taking benefit under the deed is sought to be proved. (*Maung Kin, J.*) VENKATACHELLAM v. MAUNG TUN E. 43 I.C. 869=12 Bur. L T. 98.

———S. 92—*Intention of parties—Fraud—Oral evidence to prove—Representation of intention on which the deed is silent.*

Where the accused obtained as advance from the complainants representing that he had some boat loads of paddy and also executed a promissory note which however did not contain the representation of the accused. *Held*, that oral evidence was admissible to prove the fraudulent intention of the accused as that is not inconsistent with the written agreement. 8 I.C. 952, Dist. (*Ormond, J.*) NGA PO YON v. MOHR BROTHERS & CO., LTD. 13 Cr. L.J. 80=13 I.C. 388= 4 Bur. L.T. 279=6 L.B.R. 38.

Interest.

———S. 92—*Interest — Mortgage suit—Variation—Adjustment.*

In a mortgage suit, an adjustment can be proved by a defendant but where a rate of interest is fixed in the document, any other arrangement is a variation, which could not be proved under S. 92 of the Evidence Act. (*Newbould and Panton, JJ.*) SAYRAT SAHA v. SADFR SAHA. 61 I.C. 241.

———S. 92, proviso (2)—*Interest—Entry in bahi—Oral agreement to pay interest.*

Evidence relating to an oral agreement entered in bahi to pay interest is admissible. 52 P. R. 1911. (*Bevan Petman, J.*) BHANSINGH v. GOKAL CHANDI. 53 I.C. 137.

———S. 92, proviso (2)—*Interest—Hatchita silent about interest—Oral evidence.*

Oral evidence of the rate of interest is admissible under S. 92 (2) in a claim based on a hatchita or an informal memorandum of a loan, which is silent as to interest. (*D. Chatterjea and Newbould, JJ.*) NABIN CHANDRA NATH v. DEBENDRA MOHUN. 38 I.C. 612.

———S. 92, proviso (2)—*Interest—Promissory note silent as to—Contemporaneous agreement—Admissibility.*

Where a promissory note is silent as to interest S. 92, proviso (2) bars the admission of any evidence to prove the contemporaneous

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oral agreement to pay interest. But where the defendant admits that he agreed to pay a certain rate, effect may be given to such admission. (*Jenkins, C.J. and Woodroffe, J.*) LACHMI CHAND JHOWAR v. HAMENDRA PRASAD GHOSH. 26 I.C. 935= 18 C.W.N. 1260.

———S. 92, proviso (2)—*Interest—Promissory note silent—Contemporaneous oral agreement—Whether provable.*

A contemporaneous oral agreement as to interest is not admissible under S. 92 of the Act in a case where the promissory note is silent as to interest, 29 A. 33 (P.C.), Ref. (*Chitty, J.*) LACHMI CHAND JHOWAR v. HAMENDRA PRASAD GHOSH. 26 I.C. 786=18 C.W N. 1260.

———S. 92, proviso (2)—*Interest—Hundi—Evidence, oral.*

Where a Hundi does not provide for interest, no evidence of any separate oral agreement therefor, could be adduced. 29 A. 33 P.C., Ref. to; 10 I.C. 315, Foll.; 9 C.L.R. 301. Diss.; 12 C.L.R. 163, Not foll. (*Kensington. O.C.J. and Bsadon, J.*) RAM GOPAL v. SITA RAM. 268 P.L.R. 1913= 20 I.C. 319=226 P.W.R. 1913.

———S. 92, proviso (2)—*Interest—Negotiable Instrument.*

When a suit is based on a Negotiable Instrument which is a document of a formal character the existence of a separate oral agreement as to any rate of interest on which the instrument is silent cannot be proved as proviso 2 to S. 92, Evidence Act does not apply to the case. (*Rattigan and Shah Din, JJ.*) KISHORE CHAND v. GURDITTAMAL. 166 P L R. 1911=62 P.R. 1911= 10 I C. 315=162 P.W.R. 1911.

———S. 92, proviso (2)—*Interest—Promissory note silent—Oral agreement to pay interest—Negotiable Instrument Act, S. 80—Effect of.*

When a promissory note makes no mention regarding the payment of interest oral evidence is inadmissible, to prove a contemporaneous oral agreement to pay interest. All that can be awarded to a plaintiff suing on such a promissory note is interest at 6 per cent per annum under S. 80 of the Negotiable Instrument Act. 17 M.L.J. 286; 18 C.W.N. 1260; 1 P.L.J. 71, Foll. (*Findlay, A.J.C.*) YADO v. BEHARILAL. 53 I.C. 242.

———S. 92, proviso (2)—*Interest—Mortgage—Subsequent agreement.*

Proof of a separate arrangement regarding payment of interest contradicting the terms of a mortgage-deed which provided for no interest expressly, is forbidden. 11 C.L.J. 39, 10 I.C. 196; 12 I.C. 396; 6 O.C. 18; 11 O.C. 39 Dist. (*Stuart, J.C.*) MIR MAHOMED HUSSAIN v. MAHOMAD ASGAR. 8 O L.J. 462= 37 I C. 98=19 O.C. 326.

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———S. 92, proviso (2)—*Interest—Hundi silent about rate of interest—Whether oral evidence is admissible regarding interest.*

No evidence is admissible under S. 92 to prove an oral contemporaneous contract as to the rate of interest where the Hundi is silent about it. (*Mullick, J.*) BANWARI LAL *v.* JAGAR NATH PRASAD. **35 I.C. 431 = 1 Pat. L J. 71.**

Interpretation of documents.

———Ss. 92, proviso (6) and 96—*Interpretation of documents—Description by boundary and name—Preference.*

If a document directly describes two sets of circumstances but cannot apply to both, evidence may be given to show to which set it is intended to apply. A description in a conveyance, lease or other document by boundaries overrides its description by name or outturn. (*Saunders, J.C.*) NGE CHO *v* MI SE MI. **10 Bur. L T 245 = 36 I C. 7 = (1916) 2 U.B.R. 110.**

Kabuliyat.

——S. 92, proviso (1)—*Kabuliyat—Proof of—Non-acceptance—Oral evidence.*

Where a kabuliyat executed and registered by a tenant is proved by the tenant in a suit there is nothing in the Evidence Act or the Registration Act to prohibit the landlord from showing that he never assented to or accepted the kabuliyat. (*Fletcher and Huda, JJ.*) HEMANTA KUMAR KAR *v.* BIRENDRANATH ROY CHOWDHURY. **47 I.C. 1003.**

——S. 92, proviso (4)—*Kabuliyat—Stipulation not to be enforced.*

A kabuliyat with a stipulation which the landlord has said is not to be enforced represents no real agreement between the parties and the tenant, cannot be deemed to have given assent to it. (*Mookerjee and Richardson, JJ.*) NADIR CHAND SAHA *v.* BIRENDRA NATH DUTT CHAUDHURI. **37 I.C 126 = 20 C W.N. 1067.**

Landlord and Tenant.

———S. 92 (4)—*Landord and tenant—Creation of tenancy by registered deed—Termination of tenancy—Proof of.*

Even though a tenancy has been created by a registered instrument the termination of the tenancy can be proved otherwise than by a registered instrument. There is no question of varying of modifying the terms of the lease in such a case. (*Teunon and Newbould, JJ.*) AKHOY KUMAR GOUS *v.* EBADATULLA KAZI. **64 I C. 883.**

Lease.

———S. 92, proviso (4)—*Lease—Registered lease—Oral surrender—B. T. Act, S. 86.*

Even when the original lease is a registered one, a raiyat can orally surrender his holding under S. 86 of the B.T. Act if it was not for a fixed period and its possession is given up. 28 Cal. 256; 28 C.L.J. 220, Ref.; 13 C.L.J. 284, Dist. (*Chatterjee and Duval, JJ.*) PORAN MATIA *v.* INDRA SENI. **54 I.C. 782 = 47 Cal. 129.**

EVIDENCE ACT (I of 1872), S. 92—Lease.

——Ss. 92, provisos 4 and 115—*Lease in writing—Oral agreement dispensing with certain conditions.*

An oral agreement dispensing with certain conditions (as to the necessity for a notice of renewal) in a written lease is inadmissible. Such a statement on being assented to by the lessee, amounted to either to modification or recission of the contract of lease within S. 92, proviso 4. The statement did not amount to an estoppel on the part of the lessor, so as to preclude him from denying that the notice provided for by the lease had in fact been given. (*Sanderson, C.J. and Woodroffe, J.*) MARZ D'CRUZ *v* JITENDRA NATH CHATTERJEE. **46 Cal. 1079 = 53 I C. 684 = 29 C.L J. 94.**

———S. 92, proviso (3)—*Lease—Condition precedent—Possession.*

It is open to a Court to admit evidence that an *ijara patta* granted by a landlord to a tenant was intended to be operative only in the event of the lessee being able to obtain possession of the leasehold property, and possession was a condition precedent to the attaching of any obligation upon the tenant to pay rent. (*Richardson and Huda, JJ.*) KAFILUDDIN BISWAS *v.* SABDAR ALI. **51 I C 918 = 29 C.L.J 478.**

———S. 92—*Lease—Commencement of tenancy—Oral agreement to lease—Proof.*

S. 92, Evidence Act is no bar to evidence to show the time of commencement of the tenancy under an oral agreement to grant a lease. (*Mookerjee and Roe, JJ.*) KAILAS-CHANDRA BHAUMICK *v* REJOY KANTA LAHIRI. **50 I C 177 = 22 C W.N. 190.**

———S 92, proviso 4)—*Lease—Registered lease—Suit for rent—Subsequent correspondence varying rate of rent—Ratification—Defence.*

In a suit for rent on foot of a registered lease a plaintiff cannot recover more than what was agreed to be paid under the lease as the terms of that document could not be contradicted or varied by subsequent correspondence which was not registered even though by that correspondence a binding agreement may have been made between the parties for altering the rent payable under the registered sub-lease. (*Fletcher and Newbould, JJ.*) SHIBA PRASAD ROY CHOWDHURY *v.* SAMARENDRA NATH BOSE. **41 I.C. 431.**

———S. 92—*Lease.*

Failure to register a lease compulsorily registerable acts as a bar to the admissibility of evidence. In such cases, oral evidence is totally excluded. (*Broadway and Abdul Qadir, JJ.*) LALA MOTI SAGAR *v.* DHARMA MAL. **1922 Lah. 329.**

EVIDENCE ACT (I of 1872), S. 92—Mistake.

Mistake.

———S. 92—*Mistakes—Description of property—Reference to earlier deed*

Where on a renewal of a mortgage an item of property was misdescribed and there was no property satisfying that description belonging to the mortgagor, reference to the earlier deed of mortgage is permissible to establish the identity of the disputed item. (*Lindsay and Gokul Prasad*, JJ.) ABDUL HAKIM KHAN v. RAM GOPAL. **44 A. 246=20 A L J 53=L.R. 3 A. 81=1922 All, 41.**

———S 92, proviso (1)—*Mistake—Mutual—Registered deed—Admissibility.*

Proviso (1) to S. 92, Evidence Act, admits parol evidence of mutual mistake in a registered mortgage-deed. (*Sadasiva Aiyar and Napier*, JJ.) KOTA CHINA MELLAYYA v KANNE KANTI VEERIAH. **31 I C. 671=3 L W. 661.**

———Ss. 92, proviso (1) and 94—*Mistake in description—Evidence to prove what was actually sold — Rectification under S. 31, Specifi Relief Act.*

Under S. 92, proviso (1) any fact may be proved either by the plaintiff or by the defendant which would entitle him to a decree on the ground of mistake of fact or law. Where there is a misdescription of the property sold the vendee can claim a rectification of the sale-deed under S. 31, Specific Relief Act. The combined effect of S. 92 proviso (1) of the Evidence Act and S. 31, Specific Relief Act, is that the defendant can resist a suit for possession on the ground that what was sold to him was different from what the sale-deed contained. The fact that he is a defendant does not disable him from setting up a plea which could have availed him as plaintiff. (*Seshagiri Aiyar and Napier*, JJ.) RANGASWAMI AIYANGAR v SOWRI AIYANGAR. **39 Mad. 792=29 M.L J 279=(1915, M.W.N. 448=29 I.C. 888=18 M L.T 75**

———S. 92, proviso (1)—*Mistake—Vested interest—Oral evidence—Admissibility.*

To apply S. 92, proviso (1) it must be proved either that the legal requisite of a valid agreement did not exist or that there was no free consent or that the document does not express what was intended to be embodied in it. The proviso does not apply where the document represents what the parties intended to put into writing though it might not be in accordance with what they intended to do. A party cannot be permitted to show that an estate given under a document immediately to the grantee should vest in him only at a future time. A vendor cannot be allowed to show that the sale-deed created rights different from what it purports to create. A donor cannot be allowed to prove that the gift was intended to operate as a will. (*Benson and Sundara Aiyar*, JJ.) MOTAYTAPPAN v. PALANI GOUNDAN. **38 Mad. 226=(1913) M.W.N. 55)=20 I C. 924=26 M.L J. 290.**

EVIDENCE ACT I of 1872), S. 92—Mortgage.

———S 92, proviso (1)—*Mistake as to date—If assignee of mortgage-bond can show that the date is a misdescription.*

The assignee of a mortgage-deed can show that the date mentioned in the assignment bond is a misdescription if there is a mistake as to the date. 9 I.C. 729 Foll. (*Benson and Sundara Aiyar*, JJ.) NATESA PILLAI v. MUNUSAWAMI NAICKEN, **13 I.C. 313.**

Mortgage.

———S. 92, proviso (4) — *Mortgage — Registered usufructuary mortgage-deed—Subsequent unregistered written agreement varying the mode in which rents and profits are to be applied by mortgagee.*

Where there is an express and unambiguous stipulation in a registered mortgage-deed that the profits of the mortgaged property should belong to the mortgagee in lieu of interest, it cannot be varied or contradicted by reference to preliminary negotiations or previous conversations or by evidence of a subsequent unregistered document. Effect must be given to the document as it stands and it is not open to the Court to treat it as merely usufructuary in form but creating a charge in fact. (*Lord Macnaghten.*) ABDULLAHKHAN v. BASHARAT HUSAIN. **35 All 48=40 I.A. 31=17 C.W N 233=13 M L T. 187=(1913) M.W N. 131=17 C.L J. 312=15 Bom. L.R. 432=17 I.C. 737=(P C.)=25 M.L.J. 91.**

———S. 92, proviso (4)—*Mortgage—Oral evidence showing payment of a lesser sum in full satisfaction.*

Oral evidence is inadmissible under S. 92, proviso 4 of the Evidence Act to prove the defendant's case that the plaintiff agreed to receive a lesser sum in full satisfaction of the much greater amount which was due on the mortgages. (*Macleod*, C J. *and Heaton*, J.) JAGANNATH v. SHANKAR. **44 Bom. 55=51 I.C. 689=22 Bom L R. 39**
Also 48 I.C. 158 (F.B.)=42 Mad. 41.

———S 92—*Mortgage—Property mortgaged—Oral evidence as to—Admissibility of.*

Oral evidence is admissible as to negotiations antecedent to execution of the mortgage instrument, showing what was intended to be offered and accepted as security was a certain ancestral share of the mortgagor in the original estate which at the time of the mortgage was part of the separate account. 22 All. 149; 5 Bom. L R. 868, Ref. (*Mookerjee and Buckland*, JJ.) BEPIN KRISHNA RAY v. JOGESHWAR. **26 C W N. 36=66 I.C. 345=34 C L J. 256.**

———S. 92, proviso (2)—*Mortgage—Default in payment—Agreement to take possession.*

S. 92 is no bar to the proof of an agreement between the mortgagor and mortgagee that on the default of the mortgagor to pay the mortgage money on the due date the mortgagee was

EVIDENCE ACT (I of 1872), S. 92—Mortgage.

to take possession of the mortgaged property. (*Mookerjee and Cuming*, JJ.) AFSAR SHAIK *v.* SAURAVA SUNDARI DASI. **40 I.C. 371 = 25 O.L.J. 560.**

———S. 92, proviso (4)—*Mortgage—Subsequent oral agreement—Release of—Mortgagor from liability.*

A subsequent verbal agreement entered into by the mortgagee and mortgagors, the mortgagee agreeing to hold each of the mortgagors liable only for his proportionate share of the mortgage-debt contrary to the joint and several liability contracted under the registered mortgage bond is inadmissible in evidence. The agreement would be admissible only if it is evidenced by another registered instrument. (*Sanderson*, C. J. *and Mookerjee*, J.) KRISHNA CHARAN BARMAN *v.* SANAT KUMARDAS. **44 Cal. 162 = 25 C.L.J. 24 = 34 I.C. 609 = 21 C.W.N. 740.**

———Ss 92, proviso (4) and 58—*Mortgage—Oral agreement to take less than what is due—Proof of admission in pleadings.*

A subsequent agreement by the mortgagee to take less than is due under a registered mortgage is an agreement modifying the terms of written contract and if it has to be proved, oral evidence is inadmissible under proviso (4) to S. 92 of the Evidence Act. Where however such an oral agreement is admitted in the pleadings of the other party, proof of the agreement is dispensed with by S. 58 of the Evidence Act. (*Wallis*, C.J. *Oldfield and Seshagiri Aiyar*, JJ.) MALLAPPA *v.* NAGA CHETTY. **42 Mad. 41 = 35 M L J. 555 = 8 L.W. 522 = 24 M.L.T. 400 = 48 I C. 158 = (1918 M.W.N. 719.**

———S. 92, proviso (4)—*Mortgage—Agreement to take lesser sum—Inadmissible.*

S. 92 (4) precludes evidence of an oral agreement to rescind a registered contract. 32 M. 281; 9 I.C. 340 Ref.; 23 M. 92; 23 B. 348; 30 M. 231, Dist. An agreement whereby a lesser amount was agreed to be taken or a different period was fixed in respect of a registered mortgage would be a variation of the terms and would fall within S. 92. A mortgage registered, cannot be cancelled or rescinded either orally or by an unregistered endorsement on the mortgage-deed reciting that the bond was cancelled and returned as the amount due was paid. 37 C. 589; 19 M. 288, Ref. (*Seshagiri Aiyar and Kumaraswami Sastri*, JJ.) NAMAGIRI LAKSHMI AMMAL *v.* SRINIVASA AIYANGAR. **27 I.C. 269.**

———S. 92, provisos (2) and (4)—*Mortgage by conditional sale—Conversion into usufructuary mortgage—Admissibility of oral evidence.*

Where evidence was adduced to prove that a mortgage by conditional sale was by agreement turned into an usufructuary mortgage, *held*, that the alleged agreement was not in

EVIDENCE ACT (I of 1872), S. 92—Negotiations.

the nature of one contemplated by proviso 2 to S. 92 and hence evidence of such an agreement was inadmissible and also that as the mortgage was registered, no such agreement could be proved except by means of a registered instrument under proviso 4. (*Piggott*, J.C. *and Lindsay*, A J.C.) AJODHYA PRASAD *v.* JAGADISH SINGH. **13 I.C. 813 = 14 O.C. 321.**

———S. 92, proviso (4)—*Mortgage—Unregistered agreement*

A, B, mortgaged certain property to the plaintiffs C the third co-sharer died and his widow mortgaged her one-third share except a certain village to the plaintiffs. It was alleged by C's heirs that there was an arrangement agreed upon afterwards by which the mortgagee was to take the profits of the village B and utilize them to repaymente. *Held*, that the agreement was admissible in evidence and that the S. 92 (4) of the Evidence Act did not apply. (*Sundar Lal*, J.C.) KEDAR SINGH *v.* SAMAR SINGH. **10 I.C. 196.**

———S. 92 (4)—*Mortgage—Oral agreement as to terms of redemption—Admissibility.*

Where the parties enter into a contract, they can substitute anotber in its place and the substituted contract is the one to be looked to, not the one which was first entered into. If the law requires that the substituted contract shall be made only in a certain way and in compliance with certain formalities such as writing and registration then unless it is so made, it cannot take effect and the old contract subsists. (*Maung Kin*, J.) U. KYO *v.* MG. PAN YO. **1923 Rang. 102 (1).**

———S. 92, proviso (4)—*Mortgage — Oral agreement to forego interest—No discharge—Contract Act, S. 63.*

An oral agreement between a mortgagor and a mortgagee whereby the latter agreed to forego interest for three years in consideration of the payment of principal sum in a lump within a certain date is inadmissible in evidence. There being no payment of the principal money, S. 63 of the Contract Act did not apply. (*Twomey*, C J. *and Parlett*, J.) MAUNG SHWE MIN *v.* THE CHETTY FIRM OF A.M. **43 I.C. 913.**

Negotiations.

———S. 92—*Negotiations — Oral evidence regarding what took place at the time of deed.*

Where the plaintiff contended that the two documents which formed the foundation of the suit, formed a completed contract; whilst the defendant vendor urged that it was only a provisional arrangement conditional to the preparation by a vakil of a formal document evidencing the contract, *held*, oral evidence to show what actually took place on the occasion when the parties entered into the agreement relied upon by the plaintiff is

EVIDENCE ACT (I of 1872), S. 92—Negotiations.

irrelevant and inadmissible, (*Mr. Ameer, Ali.*) HARICHAND MANCHARAM *v.* GOVIND LUXMAN GOKHALE. 44 M.L.J 608= 47 Bom. 335=28 C.W.N 73= 50 I.A. 25=17 L.W. 572= 32 M.L T. (P.C) 175= L.R. 4 P.C. 84=37 C L.J. 440= 25 Bom. L.R. 531=1923 P.C. 47 (P.C.)

——S. 92—*Negotiations—Express agreement—Terms not to be varied by evidence of preliminary negotiations.*

Where there is an express and unambiguous stipulation in a mortgage deed that the profits of the mortgaged property should belong to the mortgagee in lieu of interest, it cannot be varied or contradicted by reference to preliminary negotiations or previous conversations. Effect must be given to the document as it stands and it is not open to the Court to treat it as merely usufructuary in form but creating a charge in fact. (*Lord Macnaghten*) ABDULLAHKHAN *v.* BASHARAT HUSSAIN. 35 All. 48=40 I.A. 31=17 C.W.N. 238= 13 M.L.T. 182=(1913) M.W.N. 131= 17 C.L.J. 312=15 Bom. L.R. 432= 17 I.C. 737=25 M L.J. 91 (P.C.).

——S. 92—*Negotiations—Extrinsic evidence—Tenancy—Lease—Existence of—Identification of property.*

Where there is dispute as regards the identity and extent of the land leased, the Court can look at the correspondence that preceded the lease. (*Ratique and Stuart, JJ.*) SITAL PRASAD *v.* BADRI PRASAD. 20 A.L.J. 907= 1923 All. 53.

——S. 92—*Negotiations—Oral evidence as to negotiations antecedent to mortgage—If admissible.*

Oral evidence is admissible as to negotiations antecedent to the execution of the mortgage-deed, to show that what was intended to be offered and accepted as security was a certain ancestral share of a property and not one which has been mentioned in the instrument. (*Mookerjee and Buckland, JJ.*) BEPINKRISHNA *v.* JOGESWAR. 34 C.L.J. 256= 25 C W.N. 36.

——S. 92—*Negotiations—Draft deed prepared before execution of document—Admissibility of.*

Drafts prepared long before executing documents are inadmissible to construe documents which are not ambiguous. (*Benson and Sundara Aiyar, JJ.*) NARASIMHA HEGADTHI *v.* BILLA KESU PUJARI. 31 I.C. 543= 25 M.L J. 637.

Oral Agreement.

——S. 92, proviso (3)—*Oral agreement—Condition precedent.*

A person is not permitted to vary the terms of a written contract by proof of a contemporaneous oral agreement. Under S. 92, proviso 3 a contemporaneous oral agreement to the effect that a written contract was to be of no force at all and that it was to impose no obligation at all, until the happening of a certain event may be proved. It may be shown that the instrument was not meant to operate until the happening of a given condition; but it cannot be shown by parol evidence that the agreement is to be defeated on the happening of a given event. 25 C 401; 42 I.C. 372, Ref. (*Ryves and Gokul Prasad, JJ.*) ALI JAWAD *v.* KULANJAN SINGH. 44 A. 421=20 A.L.J. 247= L.R. 3 A. 205=4 U.P.L.R. (A.) 182= 1922 All. 262.

——S. 92 (3)—*Oral agreement to make payment as condition precedent to enforcement of deed.*

An oral agreement to make a payment as a condition precedent to the enforcement of a registered deed of relinquishment can be proved under S. 92 (3) of the Act. (*Kanhaiya Lal, J.*) BADAL RAM *v.* JHULAI. 63 I.C. 861= 19 A L J. 816.

——S. 92—*Oral agreement—Admissibility.*

If a document is formally drawn up, it would not be open to the parties to adduce in proof of a contemporaneous oral agreement. 18 C.W.N. 1261 and 9 C.L.R. 501, Ref. (*Cuming, J.*) MOTI BISWAS *v.* HARIPADA. 1923 Cal. 402.

——S. 92, provisos (3) and (4)—*Oral agreement—Condition precedent to liability.*

Under provisos 3 and 4 respectively of S. 92 of the Act an oral agreement constituting a condition precedent to the attaching of any obligation under the contract, and a distinct subsequent oral agreement, modifying the written contract, where the latter is not required to be in writing and registered, can be let in and proved. (*Mookerjee and Fletcher, JJ.*) DINA NATH *v.* METHARAM 64 I.C. 735=33 C L.J. 577.

——S. 92 (2) and (4)—*Oral agreement—Share list—Registration.*

An oral agreement is admissible to prove that a deed called "Share-list" was not to be treated as a partition-deed but merely as minutes of agreement and that a fresh formal deed was intended to be executed. But if the deed itself was intended by the parties to be the final partition deed, it is inadmissible in evidence unless it is registered. (*Krishnan and Venkatasubbarao, JJ.*) GUNDAPANENI *v.* KRISTNAYYA. 16 L.W. 784=(1922) M.W N 833= 1923 Mad 160 (1).

——S. 92, proviso (3)—*Oral agreement—Condition precedent to the taking effect of a contract in writing—If admissible.*

Oral evidence is admissible to prove an oral arrangement that a document should take effect only on certain conditions happening. (*Abdur Rahim and Munro, JJ.*) MAHALINGA AIYAR *v.* HYDER SAHEB. 11 I.C. 384= 9 M.L.T. 450.

EVIDENCE ACT (I of 1872), S. 92—Oral Agreement.

———S. 92, proviso (3)—*Oral agreement—Condition preceaent to the attaching of any obligation.*

An attempt to show that the agreement reduced to writing is not what it purported to be but something different, is opposed to S. 92 (3) of the Evidence Act but oral evidence of an agreement constituting a condition precedent to the attaching of an obligation under the instrument could be proved. (*Batten*, J.C.) TATIA *v.* SAWANIA. 6 N L J 21= 1923 Nag. 135.

———S. 92—*Oral agreement.*

The interlineated words and figures in an ekrarnama were written after it had been signed by the defendant. The plaintiff's allegation was that there was an agreement made before the execution of the ekrarnama, which justified the additions to the document which do not alter it in the least but merely explain it. *Held*, the effect on the document would be as if no alteration had been made, and the plaintiff would be entitled to produce oral evidence of the oral agreement 12 C.P.L.R. 33 and 6 N.L.R. 1, Foll; 44 Cal. 154, Foll. (*Hallifax*, A.J.C.) GANGA PRASAD *v.* MOTIRAM. 1922 Nag. 191.

———S. 92, proviso (3)—*Oral agreement—Condition precedent—Proof of—Rate of interest—Evidence as to.*

Proviso 3 to S. 92 of the Evidence Act is intended to embody the rule that when at the time of a written contract being entered into, it is orally agreed between the parties that the written agreement shall not be of any force or validity until some condition precedent has been performed, parol evidence of such oral agreement is admissible to show that the condition has not been formed and consequently that the written contract has not become binding. Until that condition is performed there is in fact no written agreement at all. The proviso cannot help a plff. who wishes to prove a separate oral agreement, as to the rate of interest between him and the plff. when the document provides for interest at a specific rate 20 A L.J. 247, Rel. (*Lyle*, A J.C.) HABIB ALI KHAN *v.* LALA RAM NARAYAN. 9 O L J. 273=4 U P L R. (O C) 69= 1922 Oudh 270.

———S. 92 (4)—*Oral agreement—Satisfaction of mortgage.*

Oral evidence of an agreement that a simple mortgagee under a registered mortgage-deed was to take possession and to collect rents and pay the profits towards reduction of the principal is admissible. (*Sundar Lal*, J.C.) KEDAR SINGH *v.* SUMMER SINGH. 10 I.C. 196.

———S. 92 (4)—*Oral agreement.*

In the mortgage there was a forfeiture clause to the effect that the mortgagor was to be debarred from redeeming the property after the expiration of two years from the date of the mortgage. A year afterwards the mortgagor said, he by a pyatpaing made over the land to the defendants who promised to allow redemption at any time. *Held*, the oral agreement could not be proved. (*Maung Kin*, J.) U. KYO *v.* MG. PAN YO. 1 Bur. L J 193= 1923 Rang. 102 (1).

EVIDENCE ACT (I of 1872), S. 92—Promissory Note.

———S. 92—*Oral agreement—Proof of.*

Dekhan Agriculturists Relief Act, S. 10-A allows oral agreement to be proved. (*Kennedy and Raymond*, JJ.) HAMBIR KHAN *v.* MURIJMAL. 15 S L.R 160=1922 Sind 39.

———S 92—*Oral agreement—Agreement to sell—Oral agreement to vary terms—Admissibility.*

Where the terms of an agreement to sell land are clear and formal and a certain sum of money was to be paid in four months, evidence of an oral agreement cannot be let in to prove that a big portion of the money was to be paid on the day subsequent to the agreement to sell. (*Madgaonkar*, A.J.C.) KHEMCHAND RATANCHAND *v.* DHALOMAL. 67 I C. 19= 15 S L.R. 180.

Parol Agreement.

———S. 92, proviso (4)—*Parol agreement—Assignment of mortgage.*

An oral agreement between a mortgagee and the assignee of his interest whereby the latter was to pay the consideration for the sale to a third person to the credit of the mortgagee is an attempted rescission of a contract required by law to be in writing by a subsequent oral agreement which is forbidden by S 92, proviso (4) and is inadmissible in evidence; nor can a suit be based on it. 30 M 231; 32 M. 281, Foll. (*Abdur Rahim and Ayling*, JJ.) IYETALY SURAYYA *v.* NALAMILLI VENKANNA. 9 I.C. 340=9 M.L.T. 326

Plain Document.

———S 92, proviso (6)—*Plain document—Extrinsic evidence.*

A party cannot alter the nature of a document clearly a sale-deed, after putting the signature, by adding something when it is registered, to make it mean something other than it really appears to be. When a document is clear, perfectly plain and straight-forward, other extrinsic evidence of the relation of the language to the existing facts is unnecessary. S. 92, proviso 6 allows evidence to be put in only to explain the terms of a document then required. (*Macleod*, C.J. *and Crump*, J.) GANPAT RAO APAJI JAGTAP *v.* BAPU TUKARAM. 44 Bom 710= 58 I.C. 574=22 Bom. L.R. 831.

Promissory Note.

———S. 92, proviso (2)—*Promissory note—Contemporaneous oral agreement—Admissibility of—Onus.*

Oral evidence to prove that the defendant's liability on a promissory note executed by him

EVIDENCE ACT (I of 1872), S. 92—Promissory Note.

and payable on demand, should cease by a specified date, is inadmissible under S. 92. But as the defendant's case in evidence was that the promissory note was executed jointly by him and H as recited therein, but that it was orally agreed that the advance to the defendant on the note, was on the arrival of a specified date to be held, as an advance by plaintiff (the payee) to H of a sum of money which plaintiff had separately contracted to advance to H on that date, and that the joint promissory note should be satisfied by a fresh note given by H, evidence of the agreement was admissible under S. 92 (2) of the Evidence Act. (*Lord Dunedin.*) MOTABHOY MULLA *v* MULJI HARIDAS.
39 Bom. 399=17 M L.T 402=28 M L J. 589=
13 A.L.J. 529=19 C W.N 713=21 C L J. 607=
17 Bom. L R. 460=2 L.W 524=
(1916) M.W.N. 532=29 I C. 223=
42 I.A. 103. (P.C.).

——S. 92—*Promissory note— Agreement that money was not to be demanded until settlement of accounts—Admissibility of.*

Where a pro-note is sought to be enforced according to its tenor, it is not open to the defts. to let in evidence an alleged agreement that the pro-note was executed only as security against an apprehended loss and that the accounts had to be looked into at a later date so as to ascertain the rights of the parties before the pro-note could be enforced. (*Lindsay and Stuart*, JJ.) SRI RAM v FIRM OF SOBHA RAM GOPAL RAI.
44 A. 521=20 A L.J. 315=L.R 3 A. 483=
4 U P L.R. (A) 133=1922 All 213.

——S. 92—*Proviso (3) Promissory note passed to safeguard the plaintiff against a probable claim—Evidence is admissible to prove condition precedent.*

In a suit on a pro-note the defence was that the promissory note in suit was passed to secure plff. against any claim that might be made by the prior mortgagees, who had been paid off and from whom the defendant had failed to obtain a re-conveyance and that the note was to be returned when the re-conveyance was executed. *Held*, that the plea was as to the existence of a condition precedent and the same should be allowed to be proved according to S. 92, proviso (3). 45 Bom. 1155, Dist. (*Shah Ag. C.J. and Kemp*, J.) AHMED SAHIB BAPU *v.* UBHAIYA HARSI.
25 Bom. L.R 857=1924 Bom 44.

——S. 92—*Promissory note—Oral evidence of purpose of loan.*

If an advance under the oral contract for sale is secured by a pro-note, the making of the note does not shut out the proof of the terms of the contract. (*Rigg*, J.) BA SHEIN *v.* EMPEROR.
10 L B.R. 366=
13 Bur. L.T. 239=22 Cr. L.J 721=
1922 L B. 10.

Recitals.

——S. 92—*Recitals—Sale-deed—Variation of.*

EVIDENCE ACT (I of 1872), S. 92—Sale.

A vendor is not estopped from showing that the consideration stated to have been received in the deed was not actually received. 22 A. 317 (P.C.); 2 Bom. L R. 553, Ref. to. (*Richards*, C.J. *and Tudball*, J.) PUTHI *v.* NAND KISHORE.
23 I.C. 27.

——S. 92—*Recitals—Necessity for mortgage.*

In a suit for sale on the basis of a mortgage-deed which was executed in lieu of a prior mortgage-deed, not produced in the suit, oral evidence was admissible to prove the circumstances when the mortgage-deed was executed to show that the mortgage was executed for a family necessity. (*Chamier*, J.) RAM JAR SINGH *v.* BHAGALU SINGH.
17 I.C. 669=
10 A L.J. 401.

—— S 92—*Recitals—Variance of.*

It is competent to the real purchaser under a sale-deed to prove the payment of the purchase-money by parol, even though it was expressed otherwise in the kobala. (*Chaudhury and Cuming*, JJ.) KSHETRA NATH ADHIKARI *v.* DURGAPADA MANDAL.
52 I.C. 902.

—— S 92—*Recitals—Partition—Variation of.*

In spite of the apparent tenor of a deed of partition parties may prove either that the partition, was incomplete or that certain properties were reserved for future division. (*Seshagiri Aiyar and Bakewell*, JJ.) DURAISWAMI REDDIAR *v.* RAJA GOPAL REDDIAR.
34 I.C 712=4 L.W. 329.

——S. 92—*Recitals—Oral evidence to vary or contradict.*

S. 92 of the Evidence Act does not exclude evidence of an oral agreement which contradicts, varies, adds to, or subtracts from not the terms of the contract, but some recitals in the contract itself. (*Das*, J.) MUKHI SINGH *v.* KISHUN SINGH.
31 I.C. 320.

Relinquishment.

——S. 92—*Relinquishment—Lease— Oral surrender, evidence of, is admissible.*

Where the lease is by registered instrument, oral evidence as to the surrender is admissible. (*Chatterjee and Newbould*, JJ.) GOPAL CHANDRA *v.* HARENDRA NATH.
63 I.C. 483.

——S. 92, proviso (4)—*Relinquishment—Under-raiyati interest.*

Where an instrument regarding the creation of an under-raiyati interest worth less than Rs. 100 is registered, evidence may be given of an unregistered document to show that the interest was relinquished. (*Teunon and Newbould*, JJ.) SORMAN FAKIR *v.* MOLLA ABDUL AZIZ.
57 I.C. 949.

Sale.

——S. 92, proviso (6)—*Sale-deed—Evidence to show that gift was intended.*

Extrinsic evidence is admissible to show that a deed which is in form a deed of sale

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with a receipt for the consideration was in reality intended to operate as a deed of gift. (*Lord Macnaghten*). HANIFUNNISSA *v.* FAIZUNNISSA. **33 All. 340=15 C.W.N. 521=8 A.L.J. 373=13 C L J. 510=13 Bom L.R. 391=10 M.L T. 23=(1911) 2 M.W.N. 370=11 I.C. 393=21 M.L.J. 1126 (P.C.).**

[On appeal from 27 All. 612.]

———S. 92—*Sale—Oral evidence to vary terms of—Sale or mortgage.*

It is not permissible to a person, who wishes to impeach a written document of sale, to assume there must have been an oral agreement to reconvey and to ask the Court to believe that there must have been a representation made by the obligee to the obligor that the document would never be enforced as a sale-deed but treated as a mortgage. (*Macleod*, C.J. *and Shah*, J.) BAI ADHAR *v.* LALBHAI HIRACHAND. **24 Bom. L R. 239=1922 Bom. 41.**

———S. 92, proviso (4)— *Sale absolute—Conditional sale—Contemporaneous agreement.*

Where the document clearly indicates an absolute sale, no evidence can be admitted of any other contemporaneous unregistered agreement by the vendee in order to state that the sale-deed was in reality a mortgage and was not unconditional or absolute sale. 33 All. 340, Expl. (*Wallis*, C.J. *and Seshagiri Aiyar*, J.) PUTTI SESHA AIYAR *v.* KUPPACHAR. **26 M.L.T. 291=10 L.W. 1=49 I.C. 699=(1919) M.W.N 67.**

———S. 92, proviso (4)—*Sale—Mortgage—Unregistered agreement to reconvey—Whether admissible.*

A written agreement to reconvey immoveable property not being registered though compulsorily registrable can only operate as a contract, and in the absence of fraud, cannot be admitted in evidence to prove that a sale-deed was a mortgage-deed. (*Pratt* J.C. *and Crouch*, A.J.C.) BILAWAL *v.* CHOTHRAM. **19 I.C 729=6 S L.R. 245.**

Scope.

———S. 92—*Scope of—Deed unregistered and unstamped—Oral evidence—Admissibility.*

Where a partition deed entered into between the parties was neither stamped nor registered and the Court refused to admit it in evidence but took oral evidence of the terms of the partition. *Held*, that the parties having reduced their agreement into writing could not be allowed to give oral evidence of the contents of that written document or of the verbal terms agreed upon before the document was executed. 19 Bom. L. R. 466, applied. (*Mears*, C.J. *and Piggott*, J.) JAI RAM DAS *v.* RAJ NARAIN. **20 A.L.J. 777=L. R. 3 A. 533=45 A. 29=1922 All. 493.**

EVIDENCE ACT (I of 1872), S. 92—Terms of the Contracts.

———S. 92—*Scope—Unregistered* amalnamah—*Oral evidence of settlement—Admissibility.*

Where an *amalnamah* is inadmissible in evidence for want of registration, no evidence is admissible on the question as to the persons for whom the settlement was made or as to the extent of their shares settled. (*Chatterjee and Newbould*, JJ.) HEM CHANDRA *v.* SASHI BHUSAN. **63 I.C. 863.**

———S. 92—*Scope—Acknowledgment in writing but unstamped—Parol evidence.*

Parol evidence is admissible to prove a debt, acknowledged in writing by the debtors, when such acknowledgment being unstamped is inadmissible in evidence. (*Le-Rossignol*, J.) TIKHAN RAM *v.* LAL. **1922 Lah. 301 (1).**

———S. 92—*Scope—Partition.*

Where an unregistered deed evidencing a partition cannot be proved, oral evidence of factum of partition and nature of parties' possession is admissible. (*Dhobley*, A.J.C.) LAXMAN BHAT *v* BANABAI. **64 I.C. 906.**

———S. 92, proviso (3)—*Scope.*

The oral agreement contemplated in S. 92, proviso (3) only suspends the operation of the obligation and an oral agreement which is a defeasance would contradict the written agreement and would therefore be inadmissible. 6 Cal. 433, Rel. (*Mittra*, A.J.C.) VITHU JAIRAM *v.* AKARAM. **42 I.C. 372.**

———S. 92—*Scope—"Between the parties," meaning of.*

S. 92 applies to all parties to a document whether the dispute is between the parties on the one side and the other or between the parties on the same side. Parties on one side to a transaction cannot be allowed to show that the transaction though purporting to be a sale was mortgage. (*Pratt and Duckworth*, JJ.) MAUNG TUN GYAW *v.* MAUNG PO THWE. **1922 L.B. 37.**

Terms of the Contracts.

———S. 92—*Terms of the contract—Contractor shown to be agent.*

Where the question is whether a contracting party acts for himself or for his principal, it is not one relating to the terms of the contract and parol evidence is admissible under S. 92 proviso. *Prima facie*, a contract by a person in his own name without more is a contract by him as principal. 5 Cal. 71 Rel. to. (*Wallis*, C. C.J. *and Seshagiri Aiyar*, J.) SOUTH INDIAN INDUSTRIALS *v.* MINDI RAMJOGI. **26 I.C. 822=27 M.L J. 501.**

———S. 92—*Terms of the contract—Parties to document.*

Held, the landlord who gave or executed the receipt in question and the tenants in whose favour the receipts were executed or to whom they were granted and who accepted those

EVIDENCE ACT (I of 1872), S. 92—Third Parties.

receipts were parties therein. Further, the recitals in the receipts as to the period for which the payments were made and accepted do clearly evidence one of the terms of the contract. Contracts of leases are in their very nature founded upon executory consideration inasmuch as the payment of rent on the part of the lessee is to be made in future at the stipulated points of time to the lessor. Therefore the recital in the receipts that the payments were made in discharge of the liability under the executory contract is recital of an essential term of the contract. (*Wazir Hasan*, A.J.C.) KUNWAR BEHARI LAL *v.* KALKA.
1923 Oudh 45.

Third parties.

——S. 92 — *Third parties — Conveyance absolute—Oral evidence to prove a transfer of mortgage was intended—Fraud.*

As between the parties to an absolute conveyance, S. 92 of the Evidence Act precludes the giving of oral evidence to prove that the transaction was intended to be a mortgage only. The English equity doctrine permitting evidence of acts and conduct of the parties to be given in evidence for the purpose of ascertaining the true intention of the parties is not applicable to India in the face of S. 92. 27 I.A. 58 Foll.; 4 B. 594; 9 C. 528; 16 M. 80; 25 C. 603; 28 C. 256; 28 C. 289 Dissappr. 25 M. 7; 30 B. 119 Appr. S. 92, however, applied as between the parties only. Wherever accordingly evidence is tendered as to a transaction with a third party, it is governed not by the section but by the ordinary rules of equity and good conscience. Where therefore a person takes a sale-deed knowing that a third person is the owner of the property and the vendor is only a mortgagee and the intention of the parties is merely to transfer the mortgage, oral evidence is admissible to prove the real nature of the transaction. *Semble.* Even if S. 92 applied to the case, proviso (1), would admit the oral evidence, as it would be a fraud to insist upon a claim to property arising out of such a transaction, the claimant knowing that the true owner had never parted with it. (*Lord Shaw*). MAUNG KYIN *v.* MA SHWE LA. 45 Cal. 320=15 A.L.J. 828=
38 M.L.J 648=3 Pat. L.W. 185=
6 L.W. 777=22 C.W.N. 257=28 M.L.T 38=
27 C.L.J. 175=20 Bom. L.R. 278=
(1918) M.W.N. 300=9 L.B.R. 114=
11 Bur L.T 21=
42 I.C. 652=45 I.A. 236 (P.C.)
[Reversing 26 I.C. 111=
8 Bur. L.T. 104 (P.C.).]

——S. 92—*Third parties—Suit for pre-emption—Vendee if can prove document was not a sale.*

In a suit for pre-emption on the footing on which the defendant had taken a deed of sale from the owner the vendee can give oral evidence to show the document was not a sale. S. 92, Evidence Act, does not apply as the pre-

EVIDENCE ACT (I of 1872), S. 92—Third Parties.

emptor is not a party to the written instrument or the representative of either of the parties to it. (*Linsay and Sulaiman*, JJ.) BHULLAN SINGH *v.* KHUSHI RAM.
21 A.L.J. 932=L.R. 5 A. Civ. 41=
1924 All. 229 (2).

——S. 92—*Third party.*

Whenever evidence is tendered as to a transaction with a third party, it is not governed by S. 92 or by the rule of evidence which it contains, and in such a case accordingly the ordinary rules of evidence of equity and good conscience come into play unhampered by the statutory restrictions. (*Macleod*, C.J. *and Crump*, J.) TALAK CHAND BHERAJI *v.* ATMARAM KESHAV VAIDYA.
25 Bom. L.R. 818=1924 Bom. 58.

——S. 92—*Third parties—Applicability—Sale or mortgage—Oral evidence.*

S. 92 only applies to parties to a document and their privies. In cases of transactions with third parties, the section has no application, and the ordinary rules of equity and good conscience come into play unhampered by any statutory restrictions. 45 C. 920 P.C. Ref. (*Shah and Marten*, JJ.) GANU RAMJI *v.* BHAU BAPUJIPATIL. 42 Bom. 512=
46 I.C. 662=20 Bom. L.R. 684.

—— 92—*Third parties—Evidence admissible.*

The provisions of S. 92 excluding oral evidence do not apply to a case where one of the parties to the suit is not a party to the document about which oral evidence is proposed to be let in. (*Teunon and Newbould*, JJ.) SUKUMARI DEBI *v.* KALIPADA MUKERJEE.
45 I.C. 13.

——S. 92—*Third party—Oral evidence—Proof of oral transaction.*

Where the whole contract is not embodied in writing and when that part of the contract relates to a party not a party to the document, oral evidence to prove that part of the contract is admissible. (*Woodroffe and Carnduff*, JJ.) NATHU KHAN *v.* SEWAK KOERI.
9 I.C. 161=15 C.W.N. 408.

——S 92—*Third parties—Not affected.*

The prohibition in S. 92 of the Act applies only to parties to a deed and not to outsiders. (*Johnstone and Rattigan*, JJ.) MEGHARAM *v.* MAKHAN LAL.
67 P.R. 1912=
126 P.L.R. 1912=13 I.C. 667=
265 P.W.R. 1912.

——Ss. 92 and 99—*Third parties—Sale—Evidence to show that transaction was a mortgage—Admissibility.*

S. 99 of the Evidence Act is an enabling section; S. 92 is a disqualifying section. The word 'varying' in S. 99 of the Evidence Act covers the same ground as the words 'contradicting, varying, adding to or subtracting from' in S. 92 of the Act. S. 99 provides that persons who are not parties to a document, or

EVIDENCE ACT (I of 1872), S. 92—Third Parties.

their representative in interest can adduce oral evidence to show contemporaneous agreement. 45 C. 320 Expl. (*Sadasiva Aiyar and Napier, JJ.*) KRISHNASWAMI AIYAR *v.* MANGALATHAMMAL. **53 I.C. 243.**

———S. 92—*Third parties—Parties on the same side—Admissibility of oral evidence.*

S. 92 of the Evidence Act merely prevents evidence being given to vary the terms of a document in a proceeding between the parties to the document and their representatives. Two persons who are arrayed on the same side such as joint vendees can give evidence to vary the terms of the written instrument in a contest among themselves. (*Mittra, A.J.C.*) RAJIB HUSAIN *v.* ZINGARAJI. **34 I.C. 962.**

———S. 92—*Third parties—Real nature of transaction—Evidence of—Admissibility.*

S. 92 of the Evidence Act is confined to proceedings between the parties to the deed or their representative in interest and has no application to claims by or against third persons. Parties to a transaction which is not really an out and out sale are not estopped in a suit for pre-emption brought by a third party from showing the real nature of transaction even when the document evidencing the transfer stands in the form of a sale-deed. (*Kanhaiya Lal and Daniels, A.J.C.*) BISHU NATH SINGH *v.* BALDEO SINGH. **47 I.C. 191=21 O.C. 165.**

———Ss. 92 and 99—*Third parties—Sale or mortgage—Extrinsic evidence as to show real nature of transaction.*

Extrinsic evidence is admissible to show the real nature of the transaction both as against and in favour of persons not parties to the deed. To get at the real nature of the document, the Court has to look to the surrounding circumstances and subsequent conduct of the parties in addition to the terms of the document. (*Piggott, J.C., and Kanhaiya Lal, A.J.C.*) BALDEO SINGH *v.* PUTTU LAL. **21 I.C. 69.**

———S. 92—*Third parties—Sale or gift—Extrinsic evidence to show real nature of transaction.*

As between persons not parties to a deed, extrinsic evidence is admissible to show that an ostensible sale is really a gift. 28 A. 473; 33 A. 340, Ref. (*Kanhaiya Lal, A.J.C.*) ALLA BAKSH *v.* HAJJIN IMDADI. **21 I.C. 60.**

———Ss. 92 and 99—*Third parties—Exclusion of oral evidence.*

S. 92 applies only to parties to the contract and not to a third party. A pre-emptor can produce oral evidence to prove that an alleged mortgage is in reality a sale. (*Lindsay, J.C. and Rafique, A.J.C.*) MAJIDAR BIBI *v.* FAZAL KARIM. **19 I.C. 679=16 O.C. 9.**

EVIDENCE ACT (I of 1872), S. 92—Usage.

———S. 92—*Third parties—Oral agreement not conformed to in written deed of compromise.*

Where an assignment is in writing, oral evidence to vary or alter its terms is admissible at the instance of third parties who impeach the transaction as fraudulent. (*Pratt, J.C. and Hayward, A.J.C.*) PERUMAL *v.* MUHAMMAD ALI. **17 I.C. 39=6 S.L.R. 107.**

Trade Usage.

———S. 92, proviso (5)—*Trade usage—Contract.*

Evidence of usage of trade applicable to a contract which the parties making it knew, or may be reasonably presumed to have known is admissible for importing terms into the contract respecting which the instrument itself is silent. (*Chaudhuri, J.*) JOY LALL & CO. *v.* MANMOTHANATH MULLICK. **35 I.C. 3=20 C.W.N. 365.**

———S. 92, proviso (5)—*Trade usage—Commercial contracts—Oral evidence.*

The law recognizes the fact that merchants do not write all the terms of their contract but rely upon the knowledge and good faith of one another as to matters so well known that special reference to them would be burdensome and unnecessary and that they accordingly agree on many of the terms of their contract by mere silence. What the terms are must be shown by parol evidence. (*Sanderson, C.J., Woodroffe and Mookerjee, JJ.*) LAKURKA COAL CO., LTD. *v.* JAMNADAS. **33 I.C. 838.**

Usage.

———S. 92—*Usage—Trade usage—Evidence of—When can be let in to vary terms of written contract—Must not render contract insensible, inconsistent or unreasonable.*

Evidence of trade usage can be let in to vary terms of contract when it does not render contract insensible, inconsistent or unreasonable. (*Mookerjee, A.C.J. and Fletcher, J.*) KASIRAM PANIA *v.* HURNUNDROY FULCHAND. **23 C.W.N. 854.**

———S. 92, para. 5—*Usage—Customary incidents of tenure, if proveable to vary express provisions in a written contract.*

Where in *dowl kabuliyat* it was expressly provided that the tenancy is neither heritable nor transferable, no evidence of custom under those heads are admissible under S. 92 of the Act. (*Greaves and Newbould, JJ.*) MAHOMMED AYYUDDIN MIA *v.* PRODYOT KUMAR TAGORE. **48 Cal. 350=61 I.C. 503=23 C.W.N. 13.**

———S. 92, proviso (5)—*Usage—Written contract—Evidence.*

The mere fact that the usage varies the apparent contract is not of itself sufficient to exclude the evidence. The test is, whether the incident if expressed in the written contract would make it insensible or inconsistent or

EVIDENCE ACT (I of 1872), S. 92—Usage,

unreasonable. (*Mookerjee, C.J. and Fletcher, J.*) KASIRAM PANIA *v.* HUKNUNDROY FULCHAND. 58 I.C. 896 = 32 C.L.J. 140.

———S. 92, proviso (5)—*Usage—Interest—Pro-note—Liability.*

Under S. 92 no oral evidence can be given to show that the interest mentioned in a pro-note is not payable and a custom or usage repugnant to or inconsistent with the terms of a pro-note cannot be proved. (*Fox, C.J. and Twomey, J.*) MUTHU ERULAPPA PILLAI *v.* VUNUKU THATHAYYA MAISTRY. 36 I.C 957 = 10 Bur. L T. 242.

Variation of Terms.

———S. 92—*Variation of terms—Oral evidence—Admissibility to prove variation of a registered instrument optionally registrable.*

A mortgage was made by plaintiff to defendant comprising 3 items of property for an advance of Rs. 99 and was registered. In pursuance of this the mortgagee took possession of the first item and another property in lieu of the second item. Plaintiff paid into Court Rs. 99 and claimed redemption of the two items alleging that by an oral agreement the second item in defendant's possession was given him in lieu of second item in the registered deed. Defendant pleaded inadmissibility of extrinsic evidence as regards item 2 and that the claim with regard to this item was barred by limitation. *Held*, (1) that the plaintiff was entitled to lead evidence to prove the two facts, *viz.*, that the defendant's possession of the 2nd item was that of mortgagee and never adverse to him; (2) that his right to possession was terminated by payment of Rs. 99 only tendered. (*Piggott and Walsh, JJ.*) BAIDRAM *v.* TIKA RAM. 39 All. 300 = 39 I C 628 = 15 A.L J. 257.

———S. 92—*Variation of terms—Agreement complete in itself.*

A contract for sale of land was entered into by means of a writing appearing in the books of one of the parties. It was signed by both parties and witnessed. The defendant said that the agreement appearing in the book did not contain the whole of the agreement arrived at between the parties but there was an oral agreement that if anybody else per chance offered more than Rs. 500 to the 1st defendant above the agreed amount before the expiry of the period in the agreement, the agreement with the plaintiff was to be treated as null and void. *Held*, the evidence about the oral agreement was not admissible. It may very well be that a writing may be an imperfect agreement of which a Court cannot decree specific performance, but if on the face of it, it contains all the terms which would entitle it to be considered as a perfect agreement which could be enforced, then undoubtedly no parol evidence could be adduced so as to alter or add to its terms unless they came within one of the provises of S. 92. (*Macleod, C.J. and Crump, J.*) TUKARAM MAHADAPPA *v.* JAGANNATH. 1923 Bom. 236.

EVIDENCE ACT (I of 1872), S. 92—Variation of Terms.

———S. 92—*Variation of terms—Oral agreement postponing payment, if can be proved.*

In a suit on a pro-note payable on demand, the promisor cannot, under S. 92 (3) of the Act lead evidence to prove a contemporaneous oral agreement by the promisee that the latter would not present it until he discharges an incumbrance on certain property. (*Macleod, C J. and Shah, J.*) VISHNU RAMCHANDRA *v.* GANESH KRISHNA. 45 Bom. 1155 = 63 I C. 673 = 23 Bom. L R. 488.

———S. 92, proviso (6)—*Variation of terms, evidence to—Conduct—Sale or mortgage—Intention of parties.*

Where a document is perfectly plain no extrinsic evidence is required to show in what manner the language of the documents related to existing facts. There may be cases where such extrinsic evidence is required and it will therefore be admitted. But it can only be in such cases where the terms of the documents themselves require explanation and then evidence can be led within the restrictions laid down by proviso to S 92 of the Evidence Act. Where a document has stood more than fifty years it is extremely undesirable to allow evidence to be led to show that the document is not what it appears to be on the face of it. (*Macleod, C.J. and Crump, J.*) GANPATHRAO *v.* BAPU TUKARAM. 45 Bom. 710 = 58 I.C. 574 = 22 Bom. L.R. 831.

———S 92—*Variation of terms—Benamidar obligor can't be proved the real obligor or obligee.*

Where there is a written contract, the obligor or the obligee might not give parol evidence to shift his liability or to seek his remedy from a third person even though the facts were within the knowledge of the parties on the ground that the obligor on record was only a benamidar. 31 M. 45, Ref. (*Beaman, J.*) LAXMIBAI *v.* KESHAV ANNAJI. 33 I.C 896 = 18 Bom. L.R. 135.

———S. 92—*Variation of terms—Instalment bond—Oral undertaking to waive provision for payment of whole on default—Inadmissible.*

A subsequent oral undertaking on the part of the creditor to waive his right to enforce the payment of the whole amount on two successive defaults of payments of instalments is a variation of the contract and is therefore inadmissible in evidence under S 92 of the Evidence Act. (*Chitty and Walmsley, JJ.*) HARA KUMAR SAHA *v.* RAM CHANDRA PAL 47 I C. 948.

———S. 92—*Variation of terms—Promissory note—Evidence to show that executant was surety*

In a suit on a promissory note the question whether the defendant-executant of the note, signed it by way of security for others cannot

EVIDENCE ACT (1 of 1872), S. 92—Variation of Terms.

be tried or determined except so far as it affects the question of consideration. (*Chitty and Walmsley*, JJ.) DURGA CHARAN BOSE *v.* LAKHI NARAIN BERA. **47 I C. 917.**

———S. 92—*Variation of terms—Evidence of motive.*

Where a 'Barga Kabuliyat' containing a number of terms had as clause that on failure of crops Rs. 25 per annum is to be paid: *Held*, that under S. 92 no oral evidence could be admitted to show that the clause about payment of Rs. 25 was inserted solely for purposes of registration as it was not so stated on the fact of the instrument itself. (*Mookerjee and Beachcroft*, JJ.) BASIRUDDIN *v.* AFSARANESSA BIBI. **40 I.C. 833=21 C.W.N. 860.**

———S. 92—*Variation of terms—Mortgage—Splitting up of contract.*

Oral evidence to prove an agreement between a mortgagor and mortgagee having the effects of splitting up the contract contained in the registered mortgage-bond is inadmissible. (*Sanderson*, C. J. *and Mookerjee*, J.) KRISHNA CHARAN BARMAN *v.* SAMAT KUMAR DAS. **44 Cal. 162=26 C.L.J. 24= 34 I.C. 609=21 C.W.N. 740.**

———S. 92—*Variation of terms — Sale—Agreement to reconvey.*

Where there is an out and out sale no oral evidence of a contemporaneous oral agreement varying the terms of the sale-deed or importing an agreement to reconvey as part of the same transaction is admissible. 22 I.C. 4; 12 All. 387 (P.C.), Foll. and 22 All. 149 (P.C.) Dist. (*Scott-Smith and Le-Rossignol*, JJ.) MAHOMED MIR *v.* FAIZAL HASSAN. **74 P.R. 1918=47 I.C. 418=163 P.W.R. 1918.**

———S. 92—*Variation in terms—Unconditional promise to pay—Oral agreement to excuse payment in certain contingencies.*

Where in pursuance of a settlement of a dispute relating to a contract of sale, the contract was cancelled and the defendant gave an unconditional promise in writing to pay a certain sum of money to the plff. as unliquidated damages, *held*, in a suit by the plff. against the deft. on the promise to pay that the defendant cannot prove a contemporaneous oral agreement to be excused payment in certain contingencies. (*Sadasiva Iyer and Spencer*, JJ.) SUBBAIYAR *v.* KUPPUSAMI IYER. **41 M.L J. 551= 68 I.C. 758=(1921) M.W.N. 636.**

———S. 92—*Variation of terms—Evidence of surrounding circumstances when admissible.*

Evidence of surrounding circumstances is not admissible for contradicting the terms of a document. Recourse may be had to them only for the purpose of ascertaining and giving effect to the intention of the parties in the document itself. (*Wallis*, C.J. *and Oldfield*, J.) NARASINGEBJI *v.* PANUGANTI PARTHASARATHY. **(1921) M.W.N. 519.**

EVIDENCE ACT (I of 1872), S. 92—Variation of Terms.

———S. 92—*Variation of terms—Gift—Conditions—Introduction of.*

To introduce a condition into a document (a gift deed) that is on the face of it unconditional and absolute is to vary the terms thereof within S. 92. Oral evidence is inadmissible to prove that a gift unconditional in its terms was revocable by the donor if future services were not rendered. (*Spencer and Krishnan*, JJ.) RANGA RAO *v.* KITHPRI AMMAL **42 I.C. 265=(1917) M.W.N. 634.**

———S. 92—*Variation of terms—Oral agreement releasing one of the joint promisors.*

Evidence is inadmissible to prove a contemporaneous oral agreement between the promisee and one joint promisor that the latter is not liable under a promissory note. (*Sadasiva Aiyar and Spencer*, JJ.) SORANALINGA MUDALI *v.* PACHINAICKEN. **38 Mad. 680= 14 M.L.T. 559=(1914) M.W.N. 27= 22 I.C. 1=26 M.L.J. 118.**

———S. 92—*Variation of terms—Negotiable instrument — Signed as principal—Liability as surety—Oral evidence.*

A person signing a pro-note as principal cannot prove by oral evidence that he was only intended to be surety. An unconditional undertaking to pay cannot be varied by an oral agreement under S. 92 of the Evidence Act. (*Benson and Sundara Aiyar*, JJ.) NARASIMHAMOORTHI *v.* RAMASWAMY. **(1913) M.W.N. 336=24 M.L J. 91= 18 I.C. 696=13 M.L.T. 105.**

———Ss. 92 and 115—*Variation of terms—Oral evidence.*

S. 92 of the Evidence Act should not be read subject to S. 115 of the Act. In a suit for possession of property on the basis of a sale-deed defendant pleaded an oral agreement whereby plaintiff had agreed to return the sale-deed to defendant and to relinquish his claim. *Held*, that by S. 92, the defendant was precluded from proving the oral agreement and therefore the plaintiff was not estopped from prosecuting his suit by reason of such agreement. 29 M. 336; 36 C. 920, Ref. (*Benson and Ayling*, JJ.) PICHAMMAL *v.* PONNAMBALA BHATTER. **15 I.C. 326.**

———S. 92—*Variation of terms—Sale—Rescission—Mutual consent — Parol evidence.*

The fact that parties to a sale-deed, duly executed and registered, subsequently rescinded it by mutual consent, cannot be proved by oral evidence under S. 92 of the Evidence Act. 2 B. 547, Ref. (*Sundara Aiyar and Ayling*, JJ.) BIJJUKALLU PAPAKKA *v.* YEDDULA ROSI REDDI. **15 I.C 282.**

———Ss. 92 and 99—*Variation of terms—Sale—Evidence to proof gift.*

A party to what is on the face of it a sale-deed cannot in a suit with a person who is no party to the deed produce evidence to show

EVIDENCE ACT (I of 1872), S. 92—Variation of Terms.

that the deed was really a deed of gift. (*Lyle and Ashworth*, A.J.Cs.) ASHFA HUSSAIN *v.* SYED NAZIR HUSAIN. 6 O.L.J. 553 = 33 I.C. 951 = 22 O.C. 222.

———S. 92—*Variation of terms—Statement of deceased regarding revocation—Oral evidence as to—Admissibility.*

Oral evidence as to statements alleged to have been made by a deceased executant as having the effect of practically cancelling a registered instrument cannot be admitted unless there are anomalous and suspicious circumstances already in existence. (*Piggott*, J.C. and *Lindsay*, A.J.C.) MIR SYED HASAN *v.* TYAB BEGAM. 26 I.C. 547 = 1 O.L.J. 591.

———S. 92—*Variation of terms—Bond in writing—Oral evidence to vary terms—Executant claiming to be surety.*

Where a person has executed a bond as the debtor, he cannot adduce oral evidence to prove that he was merely a guarantor. (*Maung Kin*, J.) MAUNG KYA *v.* PERIA KARUPAN CHETTY. 1 Bur. L.J. 157 = 70 I.C. 872 (1) = 1923 Rang. 15 (2).

———S. 92—*Variation of terms—Promissory note—Joint execution—Oral evidence to prove liability as surety.*

It is not open to one of the executants of a pro-note to adduce oral evidence that he was a surety. (*Young*, J.) VELLIAN CHETTY *v.* WOOMIDI VIRAMMAH. 29 I.C. 760.

———S. 92—*Variation of terms — Hundi payable at sight—Contemporaneous oral agreement.*

A contemporaneous oral agreement that the whole amount of a hundi payable at sight should not be paid but a less amount, does not fall under the proviso to S. 92 of the Evidence Act and is inadmissible in evidence. (*Fawcett*, A.J.C.) FIRM OF KOOVERBHAN SUKHANAND *v.* FIRM OF MADAN DAS SIROOMAL. 49 I.C. 193 = 12 S.L.R. 70.

———S. 92—*Variation of terms—Promissory note—Summary suit—Plea of security.*

In a summary suit on a pro-note under O. XXXVIII, the plea that the contract sued on, was a conditional agreement cannot be allowed as the contract embodied in the note is an unconditional agreement to pay and the object of the pro-note is to show that the particular transaction represented by the note is a separate transaction and the intention is that the remedies relative thereto should be separately pursued. (3 O.C. 627, Foll.) (*Crouch*, A.J.C.) KISHOMAL KIROMAL *v.* VISHINDAS SUKHRAMDAS. 91 I.C. 299.

———S. 92—*Extrinsic evidence—Identification of property.*

Where there is a dispute as regards the identity and extent of the land leased, the Court can look at the correspondence that preceded

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the lease. (*Rafiqus and Stuart*, JJ.) SITAL PRASAD *v.* BADRI PRASAD. 20 A.L.J. 907 = L.R. 3 A. 628 = 1923 All. 53.

———S. 93—*Ambiguity—Evidence of conduct.*

Obiter.—Where a lease is ambiguous, evidence of user under it may be given in order to show the sense in which the parties used the language and their intention in executing the instrument whether the ambiguity is latent or patent. (1919) A.C. 533, 537, Ref. (*Mookerjee and Panton*, JJ.) GURU PRASANNA BHATTACHARYA *v.* MADHUSUDAN CHOWDHURY. 26 C.W.N. 901 = 64 I.C. 824 = 35 C.L.J. 87.

———S. 93—*Sale certificate.*

No evidence can be given to contradict the terms of a sale certificate but evidence may be admitted to interpret its terms when they are ambiguous and stand in need of explanation. (*Mookerjee and Beacheroft*, JJ.) BABHAMDEO SINGH *v.* RAM NARAIN SINGH. 22 I.C. 280 = 19 C.L.J. 182.

———S. 93—*Parol evidence inadmissible when document is ambiguous.*

When the terms of a document are ambiguous on the face of it, parol evidence is not admissible to prove the intention of the executant. (*Shadi Lal and Jones*, JJ.) BARKATRAM *v.* ANANTRAM. 31 I.C. 632 = 155 P.W.R. 1916.

———S. 93—*Bequest for 'Dharmarth'.*

Where the trust is for 'Dharmarth' without specifying the special charity, oral evidence is inadmissible to prove that 'Dharmarth' was intended to mean only the maintenance of Langar. (*Robertson and Rattigan*, JJ.) GURDIT SINGH *v.* SHER SINGH. 63 P.W.R. 1912 = 106 P.L.R. 1912 = 14 I.C. 247 = 78 P.R. 1912.

———S. 93—*Language of document defective—Oral evidence not allowed.*

Where the language of a document is defective, oral evidence is not allowed under S. 93 to supply the defect. (*Wallis*, C.J. and *Oldfield*, J.) NARASINGERJI *v.* PANUGANTI PARTHASARTHY. (1921) M.W.N. 519.

———S. 93—*Ambiguous expression — Evidence admissible to explain it.*

The expression 'moveables' does not include paddy and therefore evidence is admissible to prove that it was left undivided. (*Seshagiri Aiyar and Bakewell*, JJ.) DURAISWAMI *v.* RAJA GOPAL. 34 I.C. 712 = 4 L.W. 329.

———S. 93—*Document not ambiguous.*

Evidence of the conduct of the parties is not admissible to prove the intention when the document is not ambiguous. (1911) A.C. 467, Foll. (*Abdur Rahim and Sundara Aiyar*, JJ.) PRESIDENT, TALUK BOARD, PEDDAPUR *v.* CHILAKAMANI. 12 I.C. 166 = (1911) 2 M.W.N. 226.

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———S. 94—*Misdescription—Extrinsic evidence.*

Oral evidence is admissible to show what properties were really intended to be mortgaged in a case of misdescription or mutual mistake. (*Banerjee and Walsh*, JJ.) MAHABIR PRASAD *v.* MUHAMAD MASHIYUTULLAH. 38 All. 103=32 I.C. 174=14 A.L.J. 15.

———S. 94 – *Admissibility of evidence — Document not solely relied on by plaintiff.*

Where the plaintiff put in a certain document which was quite clear in its terms but the plaintiff himself was no party to it and did not rely upon it exclusively for establishing his title. *Held*, that under the circumstances the plaintiff was not debarred from adducing oral evidence in support of his contention. (*Rattigan, and Scott-Smith*, JJ.) GOPI KISHEN *v.* GOPI KISHEN. 27 P.W.R. 1915= 27 I.C. 701=57 P.L.R. 1915.

———S. 94—*Interpretation of document—Principle—Evidence.*

Where the language used is plain and applies accurately to existing facts, evidence is not admissible for showing that it was not meant to apply to those facts. Where the words used are definite and unambiguous, the Courts must not travel outside the words used to found or confirm speculations, as to the parties to the document having in fact intended other than what they have said. (*Spencer and Coutts-Trotter*, JJ.) VELAPPA *v.* PALANI. 29 I.C. 201=(1915) M.W.N. 325.

———S. 94—*Extrinsic evidence.*

Where the language of a document is clear and applies without difficulty to the facts of the case, no extrinsic evidence can be admitted for the purpose of affecting its interpretation. 22 A. 149, P.C., Expl. (*Lindsay*, J.C.) YAR MAHOMED KHAN *v.* BAQAR KHAN. 40 I.C. 491=4 O.L.J. 318.

———S. 94—*Decree—Ambiguity as to rate of interest.*

Where a compromise decree provides for interest at 2 per cent. but it is ambiguous whether it is monthly or annually, the Court may hear evidence as to the ordinary meaning of those expressions in documents of that nature. (*Walmsley and Greaves*, JJ.) MOHAMED MASER MAHOMED MEA *v.* ZAFUR MAHOMED. 62 I.C. 702.

———Ss. 95, 96 and 97—*Relation to existing facts.*

Extrinsic evidence can be admitted to show how the language of a document is related to existing facts or to facts which existed when the document was written. (*Chatterjee and Richardson*, JJ.) SITAL CHANDRA *v.* ALLEN J. DELANNEY. 34 I.C. 450=20 C.W.N. 1158.

———Ss 95 and 97—*Ambiguity—Extrinsic evidence—Admissibility.*

Where the description of property sold is such that one portion of it applies to the whole

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of the house but the boundaries given below apply only to a portion of the same and both read together do not apply correctly either to the whole house or to a portion of it, a case of latent ambiguity arises. Extrinsic evidence is admissible for the purpose of solving the question whether by the description of the property taken as a whole the intention was to convey the whole house or only a portion of it. (*Wasir Hasan*, A.J.C.) ABDUL GHANI *v.* ASHIQ HUSAIN. 8 O.L.J. 521= 3 U.P.L.R. (J.C.) 93=1922 Oudh 162.

———Ss. 95, 96, 97—*Mortgage—Erroneous description of the property—Rectification of mistake.*

Where a mortgage deed by a mistake described the mortgaged property as bearing Tauzi No. 6607 but it was found that the mortgagor owned Tauzi No. 9907, *held*, that it was open to the mortgagee to prove by evidence what the property actually mortgaged was and that the mortgagor could not claim any exoneration on the ground of misdescription of the property. (*Jwala Prasad and Ross*, JJ.) MT. WAJIBUNNISSA BEGAM *v.* VALMIKI SAHAY. 71 I.C. 589= 1 Pat. L.R. 80.

———S. 95—*Latent ambiguity removeable.*

When a description is partly correct and partly incorrect and the former part is sufficient to identify the subject-matter intended while the latter does not apply to any subject, the erroneous part will be rejected on the maxim that a false description will not hurt when it can exist with the subject itself. (*Raymond and Madgaonkar*, A.J.C.) NARAIN DAS *v.* TEKCHAND. 1923 Sindh 42.

———S. 96—*Latent ambiguity— Admissibility of evidence.*

When an instrument appears on its face to be free from ambiguity, but upon the endeavour being made to apply it to the persons or things indicated, it transpires that the words are equally applicable to two or more persons or to two or more things, this is called a latent ambiguity. In such a case extrinsic evidence is admissible to resolve it. The principle that when an instrument contains an ambiguity, evidence of user under it may be given in order to show the sense in which the parties employed the language used applies to a modern as well as an ancient instrument. (1919) A.C. 533; 1906 A.C. 92; 7 H.L.C. 650, Ref. (*Mookerjee and Chotzner*, JJ.) THE CHAIRMAN, SERAJGUNJ MUNICIPALITY *v.* THE CHITTAGONG COY., LTD. 36 C.L.J 252= 1923 Cal. 32.

———S. 96—*Mortgage—Provision for payment of revenue by mortgagee—Enhancement of revenue—Liability to pay—Admissibility of evidence.*

Where a usufructuary mortgage merely provides for the payment of revenue by the mortgagee without indicating whether it meant the revenue as assessed at the date of

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the deed or as it might be reassessed from time to time, evidence may be given under S. 96 of the Evidence Act of facts to show what was meant. In the absence of a contract to the contrary, the mortgagee will pay the revenue as assessed from time to time. The parties must have foreseen the enhancement of revenue within the period allowed for redemption. Evidence of this nature will, however, be outweighed by an express declaration of the parties even two years after the execution of the mortgage-deed. (*Lyle and Ashworth, A. J. Cs.*) FARZAND ALI *v.* SADIQUE HUSSAIN KHAN. 55 I.C. 264=22 O C. 270.

———Ss. 95 and 96—*Mortgage—Oral evidence—Mistake.*

In a suit for possession on a mortgage, oral evidence to prove how the description in the mortgage-deed is related to existing facts is admissible under Ss. 95 and 96, of the Evidence Act. 11 O.C. 93, Dist. (*Kanhaiya Lal, A.J.C.*) RADHA LAL *v* ANGUE. 21 I.C. 429=16 O.C. 213.

———S 97—*Ambiguity in description of land—Evidence.*

The ambiguity in the description of the land mortgaged, can be removed by other evidence to show what lands were actually covered by the deed. (*Coxe and Chatterjee, JJ.*) RAM CHARAN DAS *v.* ARSAD ALI. 43 I.C. 721.

———S. 98—*Words used in a particular locality.*

Where a deed contains words used in a particular locality in a particular sense, oral evidence is admissible to explain the meaning of those words. (*Rafique and Stuart, JJ.*) CHHIDDU *v.* MESSRS. CABEU & CO. 68 I.C. 138.

———S. 98—*Evidence as to meaning of a word—Extrinsic evidence of usage, if admissible—*(San) *meaning of.*

Extrinsic evidence of usage is admissible to interpret the various words used in documents which present no ambiguity *prima facie*. Evidence may be let in to show that the Bengali term (*San*) does not signify the Bengal year commencing from *Baisakh* but a different period applicable to *Jalkar* tenancies. (*Mookerjee and Panton, JJ.*) RAJA JYOT KUMAR *v* JADU. 64 I.C. 692=34 C.L.J. 160.

———Ss. 101, 102 and 103.

ADMISSION.
ADOPTION.
ADVERSE POSSESSION.
AFFIRMATIVE OF A FACT OR ISSUE.
ALLUVION AND DILUVION.
ANCESTRAL PROPERTY.
APPEAL.
ASSETS.
ASSIGNMENT.
BANKER AND CUSTOMER.

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103—Admission.

BENAMI.
CARRIER.
CONDITION.
CONSIDERATION.
CRIMINAL TRIAL.
COVENANT FOR RENEWAL.
CUSTOM.
DAMAGES.
DATE OF BIRTH.
DECLARATION.
DISCHARGE
DISMISSAL FROM OFFICE.
EJECTMENT.
EXCEPTION TO RULE.
EXECUTION OF DECREE.
EXECUTION OF DOCUMENT.
FRAUD.
GENUINENESS.
GIFT.
GRANT.
HOLDER IN DUE COURSE.
INSANITY.
JURISDICTION.
LAND ACQUISITION.
LEGAL NECESSITY.
LEGITIMACY.
LIMITATION.
MAJORITY.
MALICIOUS PROSECUTION.
MARRIAGE.
MATERIAL ALTERATION.
MINORITY.
MISTAKE.
MORTGAGE.
NEGLIGENCE.
NOTICE.
NOVATION.
OBJECTION TO ONUS.
OFFICIAL RECORDS.
OMISSION TO DISCHARGE ONUS.
ONUS IMMATERIAL'
PARDANASHIN LADY.
PARTITION.
POSSESSION.
PRE-EMPTION.
PRESUMPTION.
RECITALS.
RECORD OF RIGHTS.
SPECIAL AGREEMENT.
SPECIAL PLEA.
TENANCY.
TITLE.
TRANSFERABILITY OF HOLDING.
UNDUE INFLUENCE.
VENDOR AND PURCHASER.
WILL.

Admission.

———Ss. 102 to 105—*Admission before Sub-Registrar as to receipt of conideration—Effect.*

The admission by a mortgagor, before the Sub-Registrar, that full consideration had been received threw the burden on the mortgagor to prove that it did not pass in full. (*Broadway and Wilberforce, JJ.*) GANGA RAM *v.* RULIA. 61 I.C. 901=2 Lah. 249.

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Admission.

——Ss. 101, 102 and 103—*Admission—Thumb marks.*

Affixing of thumb marks to an entry to the effect that the executants admitted their liability for a certain sum of money would throw the burden of proving upon the executants, the circumstances which would free them from the liability. (*Shadi Lal*, J.). GANDA RAM *v.* REHANA. **64 I.C. 91 = 3 Lah. L.J. 417.**

——Ss. 101 and 102—*Admission—Marriage.*

Where defendant stated in a criminal case that the plaintiff was his wife, in a suit by the plaintiff to declare that she was not the wife of the defendant, the burden of proving that the plaintiff was married to him is on the defendant. (*Scott-Smith*, J.) DAULAT *v.* KHAN. **31 P.L.R 1915 = 29 I.C. 194 = 88 P.W.R. 1915.**

——S. 102—*Admission—Trespass—Extent of.*

Where an encroachment by defendant on plaintiff's property is admitted by the defendant, the plaintiff need not prove the extent of the encroachment but is entitled to claim that the encroachment however small shall be removed. (*Hallifax*, A.J.C.) SONBA *v.* DATTATRAYA. **6 N.L.J. 89 = 1923 Nag. 192.**

——S. 101—*Admissions shift onus.*

An admission though not necessarily conclusive is sufficient to shift the burden of proof. (*Skinner*, A J.C.) SAKHA RAM *v.* SHRI RAM. **10 I.C. 700 = 7 N.L.R. 23.**

Adoption.

——Ss. 101, 102—*Adoption.*

In cases of an adoption by immature Hindu widow the onus of knowing that the lady understood the nature of the act and its effect upon her rights is on the person setting up the adoption. **24 Bom. L.R. 726 = 1922 B. 218.**

——S. 101—*Adoption—Onus on person setting up—Old adoption—Evidence of treatment by members of the family.*

Though the onus of proving old adoption is still on the person setting it up, the evidence of treatment as such by members of the family helps a good deal in discharging the onus. (*Mookerjee and Cuming*, JJ.) KAILAS CHANDRA NAG *v.* BIJAY CHANDRA NAG. **36 C.L.J. 434.**

Adverse possession.

——S. 102—*Adverse possession—Burden of proof.*

Where the suit is resisted on the ground of acquisition of title by prescription, the burden of proof is not on the plaintiff but on the defendant to prove his adverse proprietary title. (*Gokul Prasad*, J.) RAGHA MAL *v.* ABDUS SATTAR. **1923 All. 565.**

——S. 102—*Adverse possession—Title by —Onus on person setting up.*

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Affirmative of a fact or issue.

When a person sets up his rights to the property by reason of adverse possession, the onus of establishing such right is on him. 39 Mad 617 P.C. Foll. and 20 All. 182, overruled. (*Walsh and Ryves*, JJ.) JAI CHAND *v.* GIRWAR SINGH. **41 All. 669 = 52 I C. 366 = 17 A.L.J. 814.**

——S. 103—*Adverse possession.*

In cases governed by Art. 144, if the plaintiff has established a clear title, the onus of proving adverse possession is on defendant. (*Mookerjee and Chotzner*, JJ.) KHATUM *v.* TULASI CHARAN DAS. **36 C L J. 473 = 1923 C. 82.**

——S. 101—*Adverse possession — Person alleging must prove.*

Person alleging adverse possession must prove it. (*Mookerjee*, A.C J. *and Fletcher*, J.) BEPIN BEHARI SAHA *v.* CHARU CHANDRA GHOSE. **35 C.L J. 192.**

——S. 102—*Adverse possession—Landlord and tenant—Tenant setting up adverse possession.*

Where a tenant sets up adverse possession against his landlord, and the Revenue Records show him to be a tenant, the onus is on him to show he is not a tenant. The onus is not discharged by the proof that the rent which he paid did not exceed the amount of the revenue and the cesses. (*Martineau*, J.) RAM DAS *v.* CHANDI. **1923 Lah. 38 (1).**

——S 102—*Adverse possession.*

Onus of proving adverse possession lies on the person setting up. **9 O.L.J. 262 = 1922 Oudh. 231.**

——S. 102—*Adverse possession — Joint Hindu family — Partition —Adverse possession.*

In a suit for partition of a property which devolved upon the parties jointly, the onus is on the party alleging exclusive title to it by adverse possession to prove the allegations. (*Lindsay*, J.C.) JAGANNATH *v.* KEDAR. **24 I.C. 633.**

——S. 103—*Adverse possession—Mortgagor and mortgagee.*

The person out of possession must prove the nature of the transaction by which the person in possession obtained that possession. This rule does not apply when the original relation of the parties is that of mortgagor and mortgagee. The party who alleges that the said relation has ceased, must prove it. (*Twomey*, J.) MAUNG CAIT TON *v.* MAUNG AUNG. **17 I.C. 913 = 5 Bur. L.T. 161.**

Affirmative of a fact or issue.

——Ss. 101, 103—*Affirmative of fact or issue—Plea of Wagering Contract.*

Where a defendant pleads that the contract was of the nature of a wager, the onus lies on

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the defendant to prove it. (*Macleod and Shah, JJ.*) RAJMAL RAM NARAIN *v.* BUDAN SAHEB. 24 Bom. L.R. 115=65 I.C. 943= 1922 B. 81.

———Ss. 101, 102—*Affirmation of a fact or issue.*

It was for the land-lord to prove that the agent acted outside the powers given to him. (*Teunon and Newbould, JJ*). AKHOY KUMAR GOUS *v.* ERADATULLA KAZI. 64 I.C. 883.

———Ss. 102 and 103—*Affirmative of issue.*

From first principles, it is clear that the issue must be framed by the party who states the affirmative and not by the party who states negative. (*Carnduff and Chatterjee, JJ*). HARI MONI DEBI *v.* MOLI SHEIKH. 16 I.C. 80=16 C.W.N. 779.

———S. 101—*Affirmative of fact.*

Where a surety-bond was executed on behalf of the managing member of a partnership whereby liability for loss arising in default was on the surety, the loss is to be proved by the other partners. (*Abdul Raoof and Harrison, JJ.*) KASHI RAM *v.* MT. HARO. 4 Lah. L.J. 214=1922 L. 235.

———S. 103—*Affirmative of fact—Limited owner—Compromise decree—Malabar law.*

Where a limited owner like the *karnavan* of a Malabar tarwad compromises a case, the onus is on those claiming under the compromise to show it is fair and binding on the estate. At the same time it is not obligatory on a limited owner to contest a hopeless case. (*Oldfield and Ramesam, JJ.*) SUBRAMANIA PATTER *v.* KIZHKKARA UTHENANTHIL. 16 L.W. 620=31 M.L T. 464= 44 M.L J. 596=1922 M. 819.

———S. 101—*Affirmative of fact—Hindu widow—Descent of property to — Onus of proving.*

The onus of proving that the property descended to a female, in her capacity of Hindu widow, lies upon the person making the allegation. (*Wazir Khan, A.J.C.*) JAGMOHAN SINGH *v.* RAMDAYAL SINGH. 61 I.C. 186= 8 O.L.J. 4.

———S. 102—*Affirmative of a fact—Onus.*

Where a defendant pleads occurrence of a fact, it is for him to prove that occurrence and not for the plaintiff to prove its non-occurrence. (*Lindsay, J.C.*) ALI MUHAMMAD KHAN *v.* BAJJIDI BEGAM. 33 I.C. 816.

Alluvion and Diluvion.

———Ss. 102 and 103—*Alluvion and diluvion—Suit for possession—Onus.*

In a suit to recover possession of a certain land as being a contiguous accretion to the other plots belonging to plaintiff, the latter must establish the nature of accretion. (*Fletcher and Huda, JJ.*) MAHOMED ASHRAF *v.* UMED ALI. 46 I.C. 855.

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103, —Appeal.

Ancestral property.

———S. 103—*Ancestral Property — Self-acquisition.*

In a joint Hindu family where there is a nucleus of ancestral property with the assistance of which subsequent acquisitions have been made, the burden of proving that any particular property is separate, lies on the person who asserts it. (*Lindsay and Daniels, JJ.*) SUKHNANDAN *v.* BRIJNANDAN. 1923 A. 574.

———S. 102—*Ancestral property.*

The *onus probandi* of showing that certain property is ancestral lies on the party asserting it. 12 C.W.N. 1049; 35 C. 1039; 18 M.L.J. 379 Foll. (*Rattigan and Shadi Lal, JJ.*) MOHAMMAD UMAR *v.* NAWAB DIN. 217 P.L.R. 1914=24 I.C. 678= 127 P.W.R. 1914.

Appeal.

———S. 102—*Appeal—Balance of probabilities—Onus on appellant to show judgment appealed against is wrong.*

In appeals the burden of showing that the judgment appealed from is wrong lies upon the appellant. If all he can show is nicely balanced calculations which lead to equal possibilities of the judgment on either the one side or the other being right, he has not succeeded. (*Lord Buckmaster,*) NABAKISHORE MANDAL *v.* UPENDRAKISHORE MANDAL. 20 A.L.J. 23=26 C.W.N. 322= 36 C.L.J. 116=42 M.L.J. 258= (1922) M.W.N. 95=24 Bom. L.R. 346= 16 L.W. 417=L.R. 3 P.C. 77= 30 M.L.T. 234=3 Pat L.T. 311= 1922 P.C. 39.

———S. 102—*Appeal—Onus on appellant of showing that decree appealed is wrong.*

The onus of proving that the judgment and decree appealed against are wrong is on the appellant. (*Woodroffe and Cuming, JJ*) TARAMONI CHAUDHURANI *v.* GOPAL DAS CHAUDHURY. 63 I.C. 182.

———S. 102—*Appeal—Onus on appellant to show judgment is wrong.*

It is incumbent on an appellant to show that the judgment appealed from is wrong but if the decision of the lower Court is purely arbitrary, unsupported by any reasons, the appellate Court can come to its own conclusions. (*Broadway and Martineau, JJ.*) FIRM OF PROBHU DIAL BANWARI LAL OF DELHI *v.* DINA NATH KAPUR. 1922 Lah. 127.

———S. 103—*Appeal—Proof of wrong judgment.*

The appellant must show that the judgment appealed from is wrong. (*Rattigan and Scott-Smith, JJ.*) GHULAM NABI *v.* ALLAH DIN. 241 P.L.R. 1913=19 I.C. 964= 143 and 204 P.W.R. 1913.

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103, —Assets.

Assets.

———S. 102—*Assets—Extent of.*

Where a decree is passed against the legal representative of a deceased person the onus of showing the extent of the assets he received and the application thereof is on the legal representative when the decree-holder proves that he had actually received some assets. 30 M. 454, 2 I.C. 18; 12 I.C. 253; 26 M. 35 Foll. (*Sadasiva Aiyar and Moore*, JJ.) RAJAH OF KALAHASTI *v.* PRAYAG DOSSJEE VARU.
30 M.L.J. 391=35 I.C. 224=
(1916) 2 M.W.N. 92.

Assignments.

———S. 103—*Assignment—Equities—Proof that assignment is free from existing right.*

The onus is on the assignee to prove that the assignment is free from an existing right. (*Spencer, Coutts-Trotter and Napier*, JJ.) VENKATA SUBBIAH CHETTY *v.* SUBBA NAIDU. 18 M.L.T. 533=(1915) M.W.N. 822=
31 I.C. 152=2 L.W. 977.

Banker and Customer.

———S. 102 — *Banker and customer—Deposit of money—Burden of proof.*

The burden of proving that money was paid into the bank is on the constituent and the burden is discharged when it is shown that money was made over to the cashier or some employee of the Bank authorized to receive money and it is not necessary either to allege or prove fraud on the part of the Bank officials. (*Fox*, C.J. *and Parlett*, J.) MANIKJEE PALONJEE *v.* NEDERLANDSCHE HANDEL.
34 I.C. 176.

Benami.

———S. 101—Benami — *Onus on person claiming against tenor of deed.*

In *Benami*, onus is on person claiming against tenor of deed. (*Mookerjee and Rankin*, JJ.) ABDUL LATIF KAZI *v.* ABDUL HUQ KAZI. 28 C.W.N. 62=1924 Cal. 523.

———Ss. 101, 103—*Benami—Onus on party alleging.*

Primarily the party alleging that a person is a *benamidar* is bound to prove it. (*Newbould and Cuming*, JJ.) TUKA MIAH *v.* BABIN CHANDRA MAZUMDAR. 1923 Cal. 292 (2).

———S. 101—*Benami.*

In India, *Benami* transactions are familiar; the *onus* is on a person who sets up that it is sham. (*Mookerjee and Chotzner*, JJ.) PROMODH KUMAR ROY *v.* KALI MOHAN SAHA. 36 C.L.J. 396=27 C.W.N. 805=
1923 Cal. 228.

———S. 103—*Benami.*

The burden of proving that a conveyance standing in the name of one person is *benami* for another lies on the person who so raises

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plea of *benami*. (*Mookerjee and Cuming*, JJ.) JASODA LAL PAL *v.* BALARAM PODDAR.
35 C.L.J. 589=1922 Cal. 488.

———Ss. 102 and 103—Benami—*Consideration—Recital of payment in Kobala—Presumption.*

In a suit for possession on the basis of a sale-deed the vendee has to prove his title where the vendor who is in possession pleads that he is only a *benamidar*. The vendee shows a *prima facie* title by producing and proving his conveyance which contains a recital of the receipt of consideration. In such a case, the *onus* is upon the vendor to show non-payment of consideration. (*Jenkins*, C.J. *and N. Chatterjee*, J.) DURGA CHARAN CHANDRA *v.* KHORDA COY., LTD. 29 I.C. 696=
20 C.W.N. 254.

———S. 103—Benami — *Money paid by another.*

Where property is purchased in the name of another the burden of proving that the purchaser has no beneficial interest in the property and that the purchase is really *benami* lies on the person alleging it. Payment of money by one and purchase in another's name does not establish a *benami* transaction if the payer intended to benefit the ostensible purchaser. (*Kensington*, C.J. *and Shah Din*, J.) MAHIDITTA MAL *v.* MRS. NICHOLSON.
183 P.W.R. 1913=19 I.C. 770=
224 P.L.R. 1913.

———S. 102—Benami—*Nominal sale.*

The burden of proving that a sale is nominal lies primarily on the person alleging it, but where the vendee can produce none of the documents which form the basis of his case and there is no satisfactory evidence as to possession, the burden of proof is thrown on him. (*Wallis*, C.J. *and Phillips*, J.) RAGHNATHA CHARI *v.* ARAVAMUTHU AIYANGAR.
34 I.C. 617.

———Ss. 102 and 103—Benami—*Sham transaction*—Onus—*Sale-deed — Non-delivery of possession.*

In a suit for a declaration that a sale-deed was a nominal transaction the burden of proof is on the plaintiff to prove any circumstances relied on for the purpose of showing that the sale was not real and honest. The question whether possession passed under the sale to the vendee is a material factor though not a decisive circumstance. Even here the *onus* is on the plaintiffs to prove that possession did not pass and not on the defendant to show that possession did pass. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) SAMA LAXMIAH CHETTY *v.* MANIKKA CHETTY. 16 I.C. 749.

———Ss. 101, 103—Benami—Onus *of proof—Sale by husband in favour of wife.*

When a sale-deed executed by a husband in favour of his wife is challenged as a *benami* transaction, the *onus* is upon the person challenging it to prove by evidence that the

EVIDENCE ACT (I of 1872), Ss. 101, 102, 10 —Benami.

apparent state of things is not the real state of things. Mere suspicion does not amount to proof. The mere fact that the husband continued to live in the house or that he had some debts is insufficient. The production of the sale-deed from one's custody is sufficient proof of his title unless and until some evidence is adduced by the other side to disprove it. (*Mullick and Kulwant Sahay*, JJ.) PURAN MAL *v.* MT. DILWA.
4 Pat. L.T. 54=72 I.C. 1003 (2)=1924 P. 33.

———S. 103—Benami.

Where a deed is in the name of a defendant the burden is on the plaintiff to show that it is a *benami* transaction. (*Coutts and Das*, JJ.) RAMPALI RAUT *v.* MAHANTH HANUMAN SARAN. 1 P.L.R. 285=1923 Pat. 142=1923 P. 803.

Carrier.

———S. 103—*Carrier—Railway Risk Note Form B—Loss of goods—Burden of proof.*

If the plaintiffs wish the Court to believe that there was wilful neglect or theft by railway servants, it lies on them to prove the fact. In the absence of proof of wilful neglect or theft by railway servants the administration is to be held free from responsibility in the case of a risk note in Form B. If, however, neglect or theft by railway servants is proved the administration will escape liability for loss, if proof is given of robbery from a running train. (*Scott*, C.J. *and Hayward*, J.) B. B. AND C. I. RAILWAY *v.* RANCHHODLAL.
43 Bom. 769=52 I.C. 516=21 Bom. L.R. 779.

———S. 101—*Carrier — Bill of lading—Shortage—Burden of proof on plaintiff.*

Where a bill of lading expressly states "Weight, contents and value when shipped unknown" the onus of proving shortage to the goods shipped is on the person asserting it. (*Krishnan*, J.) SUBRAMANIYA CHETTY *v.* THE BRITISH INDIAN STEAM NAVIGATION COMPANY. 17 L.W. 803=1923 Mad. 823 (1).

———S. 102—*Carrier.*

Liability under Railways Act for wilful neglect and default on the part of Railway lies on the consignor. (*Jwala Prasad*, J.) G.I.P. RY. COY. *v.* JITAN RAM. 3 P.L.T. 220=1922 P. 17.

———S. 103—*Carrier—Bill of lading—Condition of goods.*

In a suit for damages on the ground of damage done to goods shipped, the bill of lading is *prima facie* evidence that the description of the goods therein with the actual condition of the goods. If the shippers want to escape liability, the onus is on them to show the goods were in a damaged condition when shipped. (*Robinson*, C.J. *and May Oung*, J.) BIBBY BROTHERS *v.* CHARLES COWIE & CO.
1 Rang. 156=1924 Rang. 25

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103—Consideration.

———S. 102—*Carrier—Bailment—Loss of goods*—Onus *on bailees.*

In a suit for damages for loss of goods entrusted to a bailee, the burden of proof lies on him to show that such care as a man of ordinary prudence would have exercised, was taken by him. (*Pratt*, JJ.) MAUNG PO THAIK *v.* MAUNG THA BYAW.
1923 Rang 74 (2).

Condition.

———S. 102—*Condition—Mortgage—Operation of.*

A person, setting up a condition that a registered mortgage-deed should not operate till the whole consideration money is paid, must prove it. (*Mullick and Jwala Prasad*, JJ.) MAKKAN LAL *v.* HANUMAN BAKSH.
1 P.L.W. 250=38 I.C. 877=2 P.L.J. 168.

Consideration.

———Ss. 102 and 103—*Consideration—Execution and registration of bond.*

Mere execution and registration of bond without any other proof is not conclusive to prove that consideration passed between the parties. Oral evidence to explain the purpose of a registered deed purporting to be a bond is admissible. (*Sir John Edge.*) LALU SAHI *v.* RAJBANS BHARTHI. 24 M.L.J. 355=18 M.L.T. 191=15 Bom. L.R. 452=(1913) M.W.N. 136=17 I.C. 842=17 C.L.J. 284 (P.C.).

———S. 101—*Consideration — Promissory Note—Failure of consideration — Defendant when entitled to a decree on plaintiff's evidence.*

Though the onus of proving want of consideration is on defendant he can avail himself of the plaintiff's statements from the witness-box, leading to the inference that no consideration passed. (*Mears*, C.J. *and Banerjee*, J.) KUNWAR MUHAMMAD SHAFI KHAN *v.* KUNWAR MUHAMMAD MOHAZZAM ALI KHAN.
67 I.C. 681=4 U.P.L.R. (A.) 46.

———Ss. 102 and 103—*Consideration—Admission—Onus—Recitals—Presumption.*

The recital of receipt of consideration in a mortgage document is *prima facie* evidence of its having passed not only against the mortgagor but also persons claiming under him subsequent to the date of mortgage. (*Richards*, C.J. *and Tudball*, J.) BABU *v.* SITA RAM.
25 All. 476=25 I.C. 426=12 A.L.J. 606.

———Ss. 102 and 103—*Consideration—Execution admitted by mortgagor but denied by transferee—Onus.*

In a suit on a mortgage against the mortgagor and his transferee the mortgagor admitted execution but denied consideration and the transferee denied both execution and consideration; *held*, that the burden of proving the payment of consideration lay upon the plaintiff. ((*Karamat Husain and Tudball*, JJ.) SALUK SINGH *v.* AJUDHYA PERSHAD.
15 I.C. 121=10 A.L.J. 108.

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103—Consideration.

———S 102—*Consideration—Mortgage.*

The fact that a usufructuary mortgagee took no steps to recover possession of the mortgaged property until the last day of the limitation raises a presumption that he did not consider himself entitled to it; and therefore, the Court below was justified in saying that the burden of proving consideration lies on the mortgagee. (*Stanley*, C.J. *and Banerjee*, J.) BEHARI *v.* RAMCHANDAR. 33 All. 483 = 10 I.C. 927 = 8. L.J. 368.

———Ss. 102, 103—*Consideration—Recitals in bond—Denial of execution found to be false—Inference of consideration.*

In a suit to enforce a bond the defendant denied execution as well as consideration. The Court found that the bond was genuine and from the recital therein drew an inference that the bond was supported by consideration. *Held*, that there was no error of law committed by the lower Court. (*Newbould and Panton*, JJ.) JADU MONDAL *v.* JAGENDRANATH BANERJEE. 1923 C. 319 (1).

———S. 103—*Consideration and good faith.*

Good faith and valuable consideration gives an assignee of document of title right of stoppage in transit but the onus of having good faith and valuable consideration is on the assignee himself. (*Sandersnn*, C.J. *and Richardson*, J.) RASH BEHARI KARURI *v.* NARAIN DAS DORILAL. 27 C.W.N. 231 = 50 C. 399 = 1923 Cal. 182.

———S. 102—*Consideration—Recitals in sale-deed.*

Where a mortgage document was executed by the father of the deft. and contained a recital that the consideration had been received by the executant, the burden lay upon the executant or his representative to prove that the recital was untrue and to satisfy the Court how he became a party to a document which contained an untrue recital of this description. (*Mookerjee and Rankin*, JJ.) BENOY BHUSHAN ROY *v.* DHIRENDRA NATH DEY. 74 I.C. 178 = 38 C.L.J. 114.

——Ss. 102 and 103—*Consideration—Recital in deed—Stranger.*

Where a mortgagor denies consideration for a mortgage duly executed by him and the deed contains a recital that money was paid, the onus is upon the mortgagor to prove the falsity of the recital. If the claim is contested by a stranger who denies execution and consideration, the onus is on the mortgagee to prove his case. 12 M.I.A. 282; 6 Cal. 268, foll. (*Mookerjee and Buckland*, JJ.) KRISHNA *v.* NAGENDRABALA. 25 C.W.N. 942 = 66 I.C. 694 = 34 C.L.J 338.

———S. 102—*Consideration—Recitals.*

Where a registered conveyance of land recites that consideration is fully paid the plaintiff in his suit to recover consideration must prove that the entry in the document is incorrect. (*Teunon and Choudhuri*, JJ.) SHAHED ALI MIA *v.* MUHAMMAD FAZALAR RAHIMAN. 57 I.C. 954.

———S. 102—*Consideration*—Hiba-bil-iwaz—*Payments of consideration.*

The person in whose favour a *Hiba-bil-iwaz* is executed must show that the consideration as described in the instrument was paid. (*Sanderson*, C.J. *and Mookerjee*, J.) SHAIK NAWAB JAM *v.* SAFIUR RAHMAN. 38 I.C. 882 = 25 C.L.J 286.

———S. 102, 103—*Consideration—Want of—Onus on defendants.*

Where in a suit on a promiesory note the defendants admit execution but plead want of consideration, the burden is upon them to substantiate their plea. (*Broadway and Abdul Qadir*, JJ.) MAHOMMAD HUSSAIN *v.* RAM LAL. 5 Lah. L J. 198 = 1924 Lah. 39.

———S. 101—*Consideration — Registered deed—Proof of consideration not received by him.*

Where plaintiff recited and admitted the receipt of a sum in the regietered document the burden of proof to show, that he did not receive it, is on him. (*Le-Rossignol and Harrison*, JJ.) MANGALI *v.* BIDHA LAL. 1923 Lah. 404.

———S. 102—*Consideration—Some defendants not admitting execution.*

Where a document was couched in the following terms: "Undersigned promise to pay to A the sum of Rs. 1,000 payable during the period of one year without interest." *Held*, that the burden of proof was on the executee to prove consideration, where executant admitted only execution while the other members of the family of the executant denied both execution and consideration. 100 P.R. 1915, Dist. (*Abdul Raoof and Moti Sagar*, JJ.) RAGHU NANDAN *v.* BUDHU MAL. 1923 Lah. 316.

———S. 101—*Consideration — Negotiable instrument—Want of consideration—Onus on defendant—Question, one of law.*

Onus lies on deft. to prove total or partial want of consideration where he admits consideration. (*Broadway and Abdul Quadir*, JJ.) GURDIT SINGH *v.* KARAM DAD. 4 Lah. L.J. 199.

———Ss 102, 103—*Consideration—Receipt of—Admissions.*

Where a mortgagor admits before the Sub-registrar that full consideration had been received, the onus of proving that full consideration had not passed is on the person making the admission. 26 I.C. 913. foll. (*Broadway and Wilberforce*, JJ). GANGA RAM *v.* RULIA. 65 I.C. 901 = 2 Lah. 249.

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——S. 101—*Consideration—Deed formally registered.*

Where a document is formally registered and the receipt of consideration is recorded therein, the burden of proving the non-payment of consideration is on the person asserting the non-payment. But in the case of an account book, the onus lies on the person asserting payment. (*Broadway and Abdul Roof*, JJ.) RULIA SINGH *v.* TUNIMAL. 60 I.C. 730.

——S. 102—*Consideration — Promissory note—Admission of execution.*

Where in a suit on a pro-note the defendant admits execution but pleads want of consideration the burden of proof is on him to prove his plea. (*Shadi Lal and Martineau*, JJ.) ANANT RAM *v.* THE BHARAT NATIONAL BANK, LTD. 56 I.C. 638.

——Ss. 102 and 103—*Consideration—Presumption as to receipt of.*

The vendor's admission at the time of registration of his having received consideration throws the onus on him to show that he did not in fact receive it; and the onus is not discharged by mere denial of such receipt. (*Scott-Smith and Shadi Lal*, JJ.) RAHMAT *v.* ZABITA. 37 I.C. 874=29 P.W.R. 1917.

——S. 103—*Consideration—Onus of proof—Mortgage.*

In a suit brought against the heirs of an original debtor for the recovery of moneys advanced on the security of mortgage-deeds the plaintiff must establish that full consideration passed. (*Chevis and Le Rossignol*, JJ.) INDAR NARAIN *v.* NANAK CHAND. 74 P.W R. 1916=32 I.C. 464= 58 P.R. 1917.

——S. 102—*Consideration — Promissory note—Admission of execution.*

If a defendant admits execution of the pronote and pleads absence of consideration the onus is upon the plaintiff, but such onus is shifted to the defendant as in this case he was a man of business with sound knowledge of English who had admitted having received a portion of the consideration and signed a pro note expressly providing that it was 'for value received'. 17 P.R 1888, Dist. (*Shah Din and Le Rossignol*, JJ.) CHIRAG DIN *v.* BHAGWAN DAS. 100 P.R. 1915=31 I.C. 40=169 P.W.R. 1915.

——S. 103—*Consideration—Want of.*

The onus is on executant to prove non-receipt of consideration after he had acknowledged to have received it at the time of registration. (*Johnstone*, C.J. *and Le Rossignol*, J.) JOWALA SINGHA *v.* TULSA RAM. 78 P.R. 1915= 31 I.C. 212=173 P.W.R. 1915.

——S. 103—*Consideration — Burden of proof of non-receipt of full consideration.*

A mortgagor disputing the receipt of a portion of the mortgage money which he admitted to be due by him before Sub-Registrar, has to show that the consideration did not pass in full. (*Rattigan and Scott-Smith*, JJ.) KISHEN CHAND *v.* SOHAN LAL 20 P.L.R. 1918=26 I.C. 913= 245 P.W.R. 1915.

——Ss. 102 and 103—*Consideration—Delay in Suing for possession—Registered sale.*

When, after a very long delay the vendee sues for possession of the property sold to him the onus is on him to show consideration for the sale. 68 P.R. 1900, Fol. (*Kensington*, C.J. *and Beadon*, J.) BHAGWAN DAS *v* RAM BAI. 53 P.R, 1914=236 P.L R. 1914= 25 I.C. 536=152 P.W.R. 1914.

——S. 101—*Consideration—Old mortgage—Presumption.*

The passing of consideration for a mortgage-deed which is more than 30 years old and which was never questioned till the suit thereon was brought, should be taken as proved even though there is no direct strong evidence as it is expected in recent transactions. (*Sadasiva Aiyar and Spencer*, JJ.) JAGANA SANYASIAH *v.* M. P. ATCHANNA NAIDU. 42 M.L J. 339= 70 I.C. 759=15 L.W. 289.

——Ss. 102 and 103—*Consideration—Acknowledgment of receipt of consideration—Effect of.*

More proof of acknowledgment of receipt of consideration does not necessarily shift the burden or must not necessarily be taken as insufficient to shift the burden of proof. (*Ayling and Tyabji*, JJ.) GADIAN CHETTY *v.* VEERAPPA CHETTI. 26 I.C. 899= 28 M.L.J. 92.

——Ss. 102 and 103—*Consideration—Proof—Registration not conclusive—Securities without consideration.*

Where in a suit on a hypothecation bond, the consideration is denied, the mere execution and registration of a bond, without proof that money had passed, without documentary evidence to show what sums were advanced, without production of account books, is not conclusive on the point that consideration passed between the parties. Securities in respect of which there was no consideration could not be made securities for other unconnected expenses defrayed. (*Sir John Edge.*) LALU SAHI *v.* RAJBANS BHARTHI. 13 M.L.T. 191= (1913) M.W.N. 155=24 M.L J. 355= 17 C.L.J. 284=17 I.C. 842= 15 Bom. L.R. 452.

——S. 103—*Consideration—Failure of—Onus.*

Plaintiff brought a suit to set aside a release deed on the ground that there was failure of consideration. Defendant admitted that the consideration mentioned in the deed was false, but contended that there was consideration. *Held*, that it lay on the plaintiff to prove want of consideration. (*Munro and Sankaran Nair*, JJ.) RANIA BIVI *v.* KADIR BATCHA ROWTHER. 10 I.C. 501=9 M.L.T. 480.

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——S. 103—*Consideration — Assignment —Burden of proof.*

The assignee must prove the reality of the consideration in the case of an assignment. (*Krishnaswami Aiyar and Ayling*, JJ.) AYYALAMMAI SARVAIGARAR *v.* NALLASWAMI PILLAI. 10 I.C. 291=9 M.L.T. 407.

——Ss. 102 and 103—*Consideration — Sale-deeds—Rival purchasers.*

In a dispute regarding the title of two rival purchasers of the same property, when the vendor in the first sale-deed admits receipt of consideration, the onus of proof lies on the subsequent purchaser to show that consideration was not paid. The fact that the first purchaser did not get possession for a long time does not prove absence of consideration. (*Batten*, J.C.) MT. KASTUR BAI *v.* BALIKAM. 1923 Nag. 15.

——S. 103—*Consideration — Fiduciary relation—Sale to a person in a position of active confidence.*

In the case of a person in a position of active confidence the onus is on the vendee to prove that the transaction was for consideration and for good faith. 11 M.I.A. 551, Fol. (*Batten*, A.J.C.) SURATSINGH *v.* BALDEO. 17 I.C. 363=8 N.L.R. 160.

——S. 103—*Consideration—Non-receipt of.*

The burden of proof as to the non-receipt of the consideration money for a bond, the execution of which is proved, is on the executant. (*Kanhaiya Lal*, A.J.C.) LACHMAN PRASAD *v.* HARDEO BAKSH. 37 I.C. 31= 3 O.L.J. 473

——S. 103 — *Consideration — Mortgage—Want of* onus,

The *onus* of proving want of consideration lies heavily on the party alleging it. But if it is found that he is a man of weak intellect and hard of hearing who played the part of an irresponsible puppet in the hands of the opposite party, the *onus* is mitigated, and the Court might for its own satisfaction demand proof of consideration from the opposite party. (*Stuart and Kanhaiya Lal*, A.J.Cs.) LAL BAHADUR *v.* ZALIMSINGH. 27 I.C. 581= 2 O.L.J. 1.

——S. 103—*Consideration—Want of—Undue influence.*

Where a defendant admits execution of a deed but pleads failure of consideration and undue influence, the burden of proving these lies on him. (*Lindsay*, A.J.C.) DEBI PRASAD *v.* SHEO NARAIN. 21 I.C. 581.

——S. 103—*Consideration — Assignment.*

Where receipt of consideration before the Registering Officer is admitted in a deed of assignment, the *onus* is on the assignor to prove want of consideration. (*Piggott*, J.C. *and Sabonadiere*, A.J.C.) NAND KISHORE *v.* MANGAL DIN. 21 I.C. 8.

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——Ss. 102 and 103—*Consideration—Purchaser of equity of redemption.*

A purchaser of an equity of redemption cannot be in a better position than the mortgagor himself; so the burden would lie on the purchaser to prove want of consideration. Where in such cases the mortgagor himself has not raised the plea of undue influence or unconscionable bargain, the purchaser who buys the property subject to such a mortgage cannot take those pleas and ask the Court to reduce the interest on such grounds. (*Lindsay*, A.J.C.) RAM KUMAR *v.* DWARAKA PRASAD. 16 I.C. 5=15 O.C. 211.

——S. 102—*Consideration—Portion left in the hands of the mortgagee—Burden of proof.*

If under the terms of a mortgage a portion of the consideration is left with the mortgagee for payment to some creditors, the mortgagee in the first instance has to prove payment. The execution of mortgage and the proceedings at the time of registration involve no admission that the mortgagee had fulfilled his part of the contract. (*Piggott*, J.C.) BHIKAM SINGH *v.* RADHA KUNWAR. 14 I.C. 186.

——Ss. 102 and 103—*Consideration—Want of—Admission in sale-deed.*

Where the execution of a sale-deed is admitted by the defendant, the burden is on him to establish that consideration did not pass. (*Coutts and Das*, JJ.) HARI PRASAD CHOWDHURY *v.* HARIHAR PRASAD CHOWDHURY. (1923) Pat. 20=1923 P. 205.

——Ss. 102 and 103—*Consideration—Sale of land—Title-deeds handed over to vendee—Presumption.*

Mere denial by the vendor of the receipt of the consideration acknowledged in the recitals of deed of sale is not in all cases sufficient to cast upon the vendee the burden of proving the payment of the consideration especially when the vendee has been in possession and enjoyment of the subject-matter and in possession of the title-deeds. (*Ros and Jwala Prasad*, JJ.) RAMPAL RAM *v.* SUBA SINGH. 53 I.C. 83= 4 P.L.J. 517.

——S. 102 — *Consideration — Onus — Recitals.*

If a mortgage-deed expressly mentions the passing of consideration from the mortgagee to the mortgagor, the *onus* of proving the contrary in a suit on the mortgage is on the mortgagor and his representatives in interest. (*Chamier*, C.J. *and Sharfuddin*, J.) PADAM KUMAR *v.* NANHU SINGH. 39 I.C. 635= 1 P.L.W. 413.

——Ss. 102 and 103—*Consideration—Presumption—Evidence Act, S. 114.*

Where it is pleaded that no consideration passed for a mortgage the burden is on the mortgagor to establish it. Where the statement of mortgagor renders it probable that he

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executed the document without consideration, the *onus* is shifted on to the other side, but where the document is in the hands of the mortgagee the presumption is that consideration has passed. (*Rce and Jwala Prasad*, JJ.) EBADUT ALI *v.* MAHAMMAD FAREED.
1917 Pat. 40=35 I.C. 56=3 P.L.W. 226.

———S. 102—*Consideration—Sole-deed executed and registered—Admission of consideration before Registrar—Shifting of* onus.

When a person having executed and delivered a conveyance of his property and also getting it registered the sale deed contains a recital of receipt of consideration, the burden of proving want of consideration for the sale is on the vendor. If the vendor pleads that the sale was *benami* the *onus* would be on him to prove his plea. Where, however, it is found that the vendor was in possession of the property for 18 years after the sale and had enjoyed the rents and profits of the same and exercised rights of ownership over it, the burden of proving consideration is shifted on to the purchaser. 8 A. 461 ; 33 A. 483, Foll. (*Robinson* C.J., *and Maung Kin*, J.) J. H. POWER *v.* DAW SHWE GON. 1 Bur. L.J. 22.

———S. 102 — *Consideration — Fraud —* Prima facie *proof—Shifting of* onus.

Where in a suit to set aside a registered sale-deed on the ground of a fraud practised upon the creditors and want of consideration, the burden of adducing *prima facie* proof is on the plff. but when this is done the *onus* is shifted on to the defts. to prove consideration. (*Robinson*, C.J., *and Duckworth*, J.) MAUNG PO ZU *v.* MAUNG PO KWA. 65 I.C. 322=
11 L.B.R. 89.

Criminal Trial.

———S. 102—*Criminal trial—Proof of guilt—*Onus *on prosecution.*

In criminal cases the *onus* of proving beyond reasonable doubt the guilt of the accused is on the prosecution. (*Sanderson*, C.J. *and Walmsley*, J.) HATHEM MANDAL *v.* EMPEROR.
24 C.W.N. 619=56 I.C. 849=
21 Cr. L.J. 545=31 C.L.J. 310.

——S. 101—*Criminal trial.*

Where the accused gave the deceased a beating the previous day and were seen by various persons on the occasion, it was highly improbable that they would murder the person next day, so to invite suspicion. (*Scott-Smith and Mollsagar*, JJ.) SHEO RAM *v.* EMPEROR.
25 Cr. L.J. 45=1923 Lah. 426.

———S. 101 — *Criminal trial — False information—Burden of proof—Belief in truth of information.*

On a prosecution for an offence under S. 182, I.P.C., the mere fact that the information was shown to be false does not throw the burden of proof on the accused that when he gave the information he believed it to be true. It is incumbent on the prosecution to show that, the only reasonable inference was that he must have known or believed it to be false. (*Simpson*, A.J.C.) GAYA BARHAI *v* EMPEROR.
9 O.L.J. 342=4 U.P.L.R. O.C.) 81=
23 Cr. L.J. 641=1923 Oudh 4

EVIDENCE ACT (I of 1872), S. 101, 102, 103—Custom.

Covenant for renewal.

———S. 103—*Covenant for renewal—Lease for a fixed term.*

The *onus* of proving a right to renewal of a lease for a fixed term is on the lessee. (*Lord Atkinson*). SECRETARY OF STATE *v.* BAI RAJ BAI. 39 Bom. 625=42 I.A. 229=
19 C.W.N. 1087=13 A.L.J. 953=
(1915) M.W.N 563=29 M.L.J. 242=
18 M.L.T. 179=2 L.W. 731=
17 Bom. L.R. 730=30 I.C. 803
23 C.L.J. 1 (P.C.)

Custom.

———S. 103—*Custom—Special custom at variance with personal law.*

In the case of Hindu convert to Mahomedanism the presumption is that they follow the Mahomedan Law and if it is pleaded that notwithstanding the conversion there has been an election to abide by the old law, the onus is on those setting up the plea to substantiate by clear and unambiguous evidence. (*Sir Lawrence Jenkins*). MAHOMED IBRAHIM ROWTHER *v.* SHAIK IBRAHIM ROWTHER. 45 Mad. 208=
30 M.L.T (P.C) 85=15 L.W. 384=
43 M.L.J. 69=(1922) M.W.N. 470=
36 C.L.J. 64=24 Bom. L.R. 945=
L.R. 3 P.C. 149=26 C.W.N. 793=
49 I.A. 119 (P.C.)=1922 P.C. 59.

———S. 101—*Custom—Custom in derogation of Hindu Law and agricultural custom.*

A custom opposed to both Hindu Law and the agricultural custom must be strictly proved and the onus on him, who alleges its existence. (*Abdul Raoof and Campbell*, JJ.) RAM NARAIN *v.* MT. HAR NARINJAN KUAR.
4 Lah. 297=1924 L. 116.

———Ss. 101 and 103 - *Custom at variance with general law—Who to prove.*

The party who sets up a custom different from a general custom takes the burden upon him to prove it. (*Broadway and Abdul Raoof*, JJ.) NANDOO SINGH *v.* BALJIT SINGH.
1924 L. 93.

———S. 102—*Custom—Mahomedan Law—Succession.*

In matters of succession the Mahomedan Qureshis are governed by their personal law and not by the general custom of the Punjab Agriculturists though they claim so. (*Campbell and Abdul Raoof*, JJ.) NUR HASAN *v.* GHULAM ZOHRA. 3 Lah. 275=1922 L. 322.

———S. 103—*Custom—Succession.*

The burden of proving a customary succession of collaterals of 9th degree to the exclusion of daughters lies on the person setting up such

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a plea. Entries in *Riwaj-i-am* are not sufficient to shift the onus. (*Scott-Smith and Quadir*, JJ.) MANOHAR *v.* NANHI. **2 Lah 366.**

———S. 102—*Custom—Onus when shifted on to the opposite party.*

The onus of proof that lies on the person asserting that he is ruled in regard to a particular matter by custom, is shifted on to the opposite party in cases where the person alleging the custom happens to be a member of a tribe to which the ordinary agricultural custom is generally applicable. (*Shadi Lal and Rossignol*, JJ.) TAJ MUHAMMAD *v.* SYAD MUHAMMAD. **94 P W.R. 1916 = 122 P.R. 1916 = 34 I.C. 126 = 48 P.L.R. 1917.**

———S. 102—*Custom—Succession.*

The burden of proving title under the rule of succession of the tribe lies on the person asserting it. (*Shah Din*, J.) IDA *v.* RAHIM BAKSH. **58 P.R. 1911 = 45 P.L.R. 1912 = 12 I.C. 857 = 202 P.W.R. 1911.**

———S. 103—*Custom—Exemption.*

The burden of proving that a general custom is not recognized in a particular locality lies upon the person alleging the same. (*Mittra*, A.J.C.) SITARAM *v.* MAROTI. **57 I.C. 391.**

———S. 103—*Custom—Special custom.*

The burden of proof lies on the person setting up a special custom, which is opposed to the general principles of any law. (*Hayward*, A.J.C.) MAKHI GAZI *v.* MASTAN SHAH. **36 I.C. 951 = 10 S.L.R. 126.**

Damages.

———S. 101—*Damages.*

Where performance accepted after time fixed the acceptance by the plaintiff of a waggon of coal at the time other than that agreed upon prevents him from claiming compensation for any loss occasioned by such failure unless he shows that at the time of such acceptance he gave notice of his intention to claim compensation the burden of proving which was on him. (*Knox*, J.) SAHU MAHADEO PRASHAD *v.* KANHAI LAL. **14 I.C. 129.**

———Ss. 102 and 103—*Damages—Contract.*

In a suit for damages for breach of contract, plaintiff must establish both the contract and its breach. (*Sanderson*, C. J., *Woodroffe and Mookerjee*, JJ.) LAKURKA COAL CO., LTD. *v.* JUMNADASS. **33 I.C. 898.**

———S. 103—*Damages—Contract—Breach.*

Where there is a *prima facie* breach of contract, the party guilty of the breach has to prove that the breach is excusable under any of the exception clauses of the agreement which he relies on. (1913) A.C. 680 at 689 *a*. (*Mookerjee and Beachcroft*, JJ.) KALI KANTA SHAH *v.* ISMAIL. **20 C.L.J. 188 = 27 I.C. 7 = 20 C.W.N. 159.**

EVIDENCE ACT (I of 1872), S. 101, 102, 103—Discharge.

———S. 101—*Damages—Negligence by railway—Loss of goods.*

In a suit by consignor for damages for non-delivery of goods the Railway Company must prove actual loss of goods to come within the exception clause. The burden of proving due diligence lies primarily on the railway and it is only then that the consignor will have to prove the existence of exceptional circumstances excepted in the risk note. (*Dhobley*, A. J. C.) DHANDBHAI *v.* G.I.P. RY. COY. **8 N.L.J. 233.**

Date of birth.

———S. 103—*Date of birth.*

The burden of proving that a person was born on a particular date is on the person who alleges it. (*Wallis*, C. J. *and Seshagiri Aiyar*, J.) RAMANATHAN CHETTY *v.* MURUGAPPA. **3 L.W. 210 = 33 I.C. 969 = (1916) 1 M.W.N. 208.**

Declaration.

———S. 102—*Declaration.*

The onus is on the defendant to plead and prove the adverse possession for the statutory period in a suit for declaration of title based on the defendant's alleged repudiation of it. 39 M. 617, Fol. (*Walsh*, J.) MUHAMED KANAIL *v.* HABIBULLAH. **37 I.C. 794.**

———S. 102—*Declaration — Possesssion—Title.*

Where plaintiff being in possession of property sued for a declaration of title and confirmation of possession, the defendant disturbing the possession must prove a better title in him. *Beachcroft*, J.) MUHAMMAD HASAW *v.* ABDUL HAMID. **50 I.C. 481.**

———S 102—*Declaration—Title—Proof of.*

In a suit for declaration of right to immoveable property the onus is on plaintiff to make out his title to the property. (*Fletcher and Richardson*, JJ.) BASIRUDDIN AHMED *v.* HIMMAT ALI MANDAL. **25 I.C. 852.**

———Ss. 101 and 103—*Declaration—Burden of proof—Right to property.*

Where a person transferred certain occupancy right in unalienated land in Berar putting the transferee in possession, and the transferee sued transferor for a declaration that he should be the registered occupant and the transferor denied the sale and alleged that the occupancy rights only were leased for a term of years, *held*, that the burden of proving that the transfer was a sale and not a lease lay on the transferee. *Batten*, A.J.C.) KASHIBAI *v.* LADURAM. **17 I.C. 889 = 8 N.L.R. 185.**

Discharge.

———Ss. 102 and 114—*Discharge—Shifting of onus—Trial Judge's estimate of testimony, Value of, in doubtful cases.*

In a suit to enforce a mortgage bond the defence was that the debt had been discharged

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Discharge.

by payments endorsed on the bond. The trial court, on review of the evidence held that the endorsements were fictitious and decided in favour of the plaintiff. But the High Court on appeal dismissed the suit. *Held*, that though the initial burden of proof rests on the appellants in such a case as this, both on general grounds and by reason of S. 114 of the Evidence Act, this burden shifts easily as the evidence is developed and much importance could not be attached in this case to the question on whom the initial onus lay. The evidence in this litigation, taken as a whole was of such a character and so full of doubtful statements that it could only be weighed adequately by the Judge who had seen the witnesses and the balance of probabilities was also on the side of the conclusion reached by the trial Judge. (*Viscount Haldane.*) KUNDAN LAL *v.* MUSSAMMAT BEGAM-UN-NISSA.
22 C.W.N. 937 = 47 I.C. 337 = 8 L.W. 233 (P.C.).

——Ss. 103 and 114—*Discharge on lost bond—Suit on—Discharge—Onus on defendant.*

Where in a suit on a lost bond the defendant admitted execution but pleaded payment, *held*, the burden of proving payment was on the defendant. (P.C. *Banerjee and Rafique*, JJ.) JHANDU MAL *v.* KARAN SINGH.
37 All. 426 = 29 I.C. 606 = 13 A.L.J. 561.

——Ss. 102 and 103—*Discharge—Mortgage—Onus.*

In a suit by a mortgagee for recovery of the mortgage-money, the onus of proving a discharge is on the mortgagor. (*Woodroffe and Newbould*, JJ.) INDRA NARAIN SARKAR *v.* BEDESWARI DASSYA. 30 I.C. 32.

——S. 102—*Discharge—Partial discharge —Promissory note.*

A person pleading partial discharge of the amount due under a promissory note must prove the same. (*Abdur Rahim and Ayling*, JJ.) VENNAM PICHAYYA. *v.* GOGINENNI RAMAKRISHNA. 10 I.C. 674 = 9 M.L.T. 314.

——S. 103—*Discharge—Onus on debt.*

Where the defendant admits the execution of the lost bond but pleads payment, the burden lies on him to prove payment. (*Kanihaya Lal*, A.J.C.) JAGANATH *v.* KAMTA SINGH.
32 I.C. 849 = 2 O.L.J. 498.

——S. 103—*Discharge— Payment towards particular debt.*

A person alleging a payment towards a particular debt is bound to prove first the fact of payment and second that it was towards that particular debt. (*Ormond*, J.) MAUNG PE *v.* MAUNG TUN THA. 11 I.C. 811 = 4 Bur. L.T. 172.

Dismissal from office.

——S. 102—*Dismissal from office—Enquiry into conduct of hereditary temple servants.*

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Ejectment.

Where trustees of a temple inflict punishment on its hereditary officers, the onus of proving that notice of the enquiry held by the trustees was given to the persons concerned, and that the procedure was legal, is on the trustee holding the enquiry. (*Oldfield and Sadasiva Aiyar*, JJ.) RANGASWAMI BHATTER *v.* SESHADHRI AIYANGAR. 38 I.C. 205. 4 L.W. 611.

Ejectment.

——S. 102—*Ejectment—Possession—Limitation.*

Where some plots are recorded since long as belonging to the defendant, the onus is on the plaintiff to prove possession within limitation. (*Richards*, C.J. *and Rafique*, J.) SHEOPUJAN *v.* SOHABAI. 38 I.C. 427 = 14 A.L.J. 1056.

——S. 103—*Ejectment—Nature of tenancy.*

Where in a suit by a person as owner of land to eject the defendant, the latter sets up the existence of a tenancy entitling him to retain possession, the burden is upon him to prove the nature of his tenancy and of his rights to remain in possession. (*Newbould and Panton*, JJ.) PROBODH CHANDRA DAS *v.* BIRSINHA BAGANI. 71 I.C. 319.

——S. 102—*Ejectment—Tenancy not transferable except by custom—Onus.*

In a suit for ejectment of the transferee from the tenant of a tenancy not transferable except by custom the onus is on the transferee defendant to prove the right to transfer. (*Chatterjee and Mullick*, JJ.) ANANDA MOHAN SAHA *v.* GOBIN CHANDRA RAY. 33 I.C. 568 = 20 C.W.N. 332.

——S. 101—*Ejectment—Title—Burden of proof.*

The burden of proof in a suit for possession by the owner against a person in possession where the latter denies his title, rests with the plaintiff. But where his title to possession is admitted or proved the burden shifts on to the defendant to prove tenancy entitling him to possession. (*Rampini and Caspersz*, JJ.) MOSERAT HUSSAIN KHAN *v.* BEHARY LAL.
11 I.C. 901 = 14 C.L.J. 175.

——S. 103—*Ejectment—Title—Strict proof.*

Where a plaintiff wished to claim property under a relationship to the last male owner which relationship was disputed by the defendant a near relation of last male owner, it was held, that the onus lies on the plaintiff to prove the relationship. (*Scott-Smith and Shadi Lal*, JJ.) HARDEO RAM *v.* PARABATI. 31 I.C. 600 = 184 P.W.R. 1915.

——S. 103—*Ejectment—Title—Proof of.*

A plaintiff must prove his own title before ousting a trespasser though the latter has no title. (*Chevis*, J.) PREM SINGH *v.* MOKAND SINGH. 80 P.W.R. 1912 = 18 I.C. 62.
92 P.L.R. 1912.

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Ejectment,

———S. 101—*Ejectment—Landlord and tenant—Onus on landlord of proving a right to eject.*

Where a question of ejectment is between landlord and tenant, the onus is on the landlord of proving a right to eject. (*Phillips and Devadoss, JJ.*) SRI RAJA VENKATARANGAPPA APPARAO BAHADUR *v.* MORAMPUDI BAJIRAJU. **45 M.L J. 288=1921 Mad. 93.**

——S. 102—*Ejectment—Proof of title—Plea of adverse possession.*

Where a plaintiff, who does not allege dispossession sues for possession of immoveable property based upon title and the plea of adverse possession is raised by the defendant, the onus of proving his own title rests upon the plaintiff before the defendant can be called upon to prove adverse possession. (*Twomey, J.*) AUNG HLA *v.* TON GYI. **8 L B.R. 265= 85 I C. 432=9 Bur. L T. 242.**

———Ss. 102 and 103—*Ejectment—Title, suit based on—Plea of benami—Onus.*

A plea of benami raised by the defendants does not relieve the plaintiff of the necessity of proving the title on which he sues. (*Pratt, J.C. and Crouch, A.J.C.*) NUR MAHOMED *v.* KESSUMAL. **20 I.C. 528=7 S.L.R. 11.**

Exception to rule.

———S. 103—*Exception to rule—Disqualification to succeed as heir.*

Leprosy to be a ground of exclusion must be of the sanious or ulcerous and not of the unaesthetic type. The presumption of Hindu Law is against disqualification and the burden of proof of disqualifications lies on a person who seeks to exclude another who would be an heir, should no case of exclusion be established. Where it is contended that a person is excluded from inheritance by reason of disease, the strictest proof of the disease as will disqualify him, at the time the succession opened, will be required. (*C.C. Ghose and Panton, JJ.*) SURENDRA NATH DE *v.* ASHUTOSH NANDI. **50 Cal. 605=27 C.W.N 953=1923 Cal. 831.**

———S. 103—*Exception to rule—Agriculturist—Exemption from attachment—C P.C., S. 60 (c).*

The judgment-debtor has to set up and prove that he is an agriculturist within the meaning of S. 60 (*c*), C.P C. (*Fletcher and Walmsley, JJ.*) ASHMATULLAH SIRCAR *v.* PAN MAHAMUD CHOWDHURY. **33 I.C 343= 20 C.W.N. 875.**

———S. 103—*Exception to rule.*

A person pleading a certain exception to a rule is bound to bring himself within it. 15 C. 555 at 557, Rel. (*Carnduff and Chatterjee, JJ.*) HARI MONI DEBI *v.* MOTI SHEIKH. **16 I C. 30=16 C.W.N. 779.**

———S. 102—*Exception to rule.*

A commission agent often enters into transactions on his own account and the onus lies on him to prove that in a particular transaction he acted as an agent and not a principal. (*Martineau, J.*) FIRM OF SHIB LAL RAM LAL *v.* FIRM OF HARI RAM CHHADAMILAL. **1922 Lah. 408.**

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Execution of Document.

———S. 103—*Exception to rule—Succession.*

Correctness of entries in *Riwaj-i-am* is presumed in favour of daughter-in-law and the rebuttal of the presumption is on the son who wants to exclude her. (*Broadway and Martineau, JJ.*) JAGIR SINGH *v.* MST. SANTI. **3 L. 181=1922 Lah. 389.**

Execution of Decree.

———S. 101—*Execution of decree—Onus of proof.*

It is for the decree-holder to clearly establish that the property belongs to his judgment-debtor only and is liable to be sold in execution of the decree. (*Broadway and Moti Sagar, JJ.*) ISHAR DAS *v* FAZAL ILAHI. **1923 Lah 523.**

——S. 103—*Execution of decree.*

The burden of proving that a decree cannot be executed lies on the person alleging it. (*Shahdin and Scott-Smith, JJ.*) FATEH CHAND *v.* MUSSAMAT MENGHI BAI. **103 P. W.R. 1913=181 P.L.R. 1913= 19 I C. 481=103 P.R. 1913.**

———S. 101—*Execution of decree—Proof of fraudulent transfer.*

Where a claim is rejected in execution proceedings and the claimant sues to establish his title the burden of proof upon him is discharged as soon as he establishes that the transfer under which he claims is for good consideration. Then the onus is shifted on to defts. to establish fraudulent intention. (*Coutts and Macpherson, JJ.*) MUSAMMAT BIBI SAIRA *v.* BIBI SALIMAN. **68 I.C 111= 2 P L T. 577.**

Execution of Document.

——S. 103—*Execution of document—Admission of signature—Effect of.*

An admission by the defendant regarding the putting of a signature or a thumb-mark on a document does not amount to an admission of execution so as to shift the burden of proof on the defendant. This is specially so where the defendant pleads that when he signed the document it was blank. (*Rafique and Lindsay, JJ.*) PIRBHU DAYAL *v.* TULA RAM. **20 A.L.J. 672=L R. 3 A. 863= 1922 All. 401 (2).**

——S. 102—*Execution of document—Suit for cancellation.*

In a suit to have a bond cancelled as a forgery the onus is on the defendant to prove execution of the bond, as it is he who substantially asserts the affirmative of the issue. The

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value of the general presumption against misconduct is small where alleged misconduct is the very foundation of the suit. (*Drake-Brockman, J.C.*) MAHADEO *v.* VITHOBA.
18 I.C. 883=9 N.L.R 8.

Fraud.

—— — **Ss. 101 to 103**—*Fraud—Misrepresentation—Burden of proof.*

Held, that the burden is on the deft. who obtained the deed by misrepresentation that the plff. acquired full information of the true state of facts at a time too remote to allow him to maintain the suit. (*Mookerjee and Panton, JJ.*) NIBARAN *v.* NIRUPAMA.
34 C.L J. 553=69 I.C. 476=26 C.W.N 570.

——— **S. 102**—*Fraud—Onus.*

In a suit on a bond where there is no dispute as to consideration, the *onus* is on the defendant to prove his plea of fraud. (*Chevis, J.*) NEKI RAM *v.* KHUSHI RAM. 39 P.L.R. 1919=51 I.C. 579=15 P.W.R. 1919.

——— **S. 102**—*Fraud—Illegality — Compromise—Impeaching validity of.*

Onus probandi lies on the party which impeaches the compromise to prove that it was illegal or void. (*Ayling and Seshagiri Aiyar, JJ.*) KARAKATTITATHI RAYARAPPA *v.* KOYOTAN CHABLE VEETIL. 35 M.L J. 51=24 M L T. 28=45 I.C. 489=6 L W. 156.

——— **S. 102**—*Fraud on registration law.*

Where a party attacks the validity of a registered document on the ground it was not registerable in the place where it was done and proves that there was no such plot as the one in the registration area or that it did not belong to the party, then the onus is on the other party to show there was no fraud on the registration law. (*Daniels, J.C.*) MT. SUBJA *v.* BIJAI BAHADUR SINGH. 26 O.C. 386=78 I.C. 13=9 O. & A.L.R. 107.

——— **S. 101**—*Fraud—Apparent appearance is presumed to be true.*

Where a transaction is openly carried out and is given effect to, the party alleging that the motive was to perpetuate fraud must prove it. (*Daniels and Dalal, A. J. Cs.*) HAFIZUNNISSA *v.* JAWAHIR SINGH. 66 I.C. 24=24 O.C. 374.

——— **S. 103**—*Fraud—Removal of—Effect of—Onus on person guilty of fraud.*

The party guilty of fraud must show that the continuing effects of the fraud have been removed. (*Ross, J.*) MAHABIR RAM *v.* RAM BAHADUR DUBAY. 4 P.L.T. 803=1923 P. 435.

——— **S. 103**—*Fraud—Undue influence—Onus.*

Execution of a document being admitted, the burden of proving that it was executed under fraud or undue influence is on the party pleading it. (*Chapman and Jwala Prasad, JJ.*) RAGHUGIR *v.* RAGHUNATH GIR.
2 P.L.W. 26=41 I.C. 202=2 P.L.J. 393.

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Grant.

Genuineness.

——— **Ss. 102 and 103**—*Genuineness—Deed—Execution—Compulsorily registered.*

In a suit on a document the *onus* lies on plaintiff to prove its genuineness, where the executant denies execution though the mortgage was compulsorily registered. 15 M. 138. Expl. The Registrar's belief in a registration enquiry is of no avail in a civil case. (*Spencer and Krishnan, JJ.*) PALLI KAND KATHAPURATH MAMMAD *v.* MANTANCHERI MAMMAD.
(1917) M.W.N. 789=43 I.C. 28=35 M.L J. 316.

——— **S. 103**—*Genuineness—Consideration—Execution of document by illiterate woman—Admission of execution of another document.*

Where an illiterate woman alleged to have put her mark and thumb-impression on a document for Rs. 3,000 denies to have executed such a document but admits having executed another for Rs. 400 only, the creditor must prove both the genuineness of the deed and the passing of consideration. (*Parlett, J.*) MAUNG BYA *v* MAUNG PO. 11 I.C. 916=4 Bur. L T. 202.

Gift.

——— **Ss. 102 and 103**—*Gift—Onus of proof—Capacity of executant.*

The burden of proving that a deed of voluntary gift executed by an old and infirm woman was executed with full knowledge of its contents and that she did so long willingly and without any pressure or solicitations which might amount to the exercise of undue influence, lies heavily on the donee. (1881) 18 Ch. 668, Rel. Any person of full age and sound mind, who has executed a voluntary deed of gift by which he has deputed himself comes to have the deed set aside, especially a long time afterwards, he must prove some substantial reason why the deed should be set aside. (*Davar, J.*) RAJARAM *v.* KHANDU BALU.
15 I.C. 529=14 Bom. L.R. 340.

——— **S. 103**—*Gift.*

The onus of proving an oral gift lies on the person setting up the plea. The oral income must be satisfactory. (*Das and Adami, JJ.*) RAMESHWAR NARAIN *v.* RIKNATH KOERI.
1923 P. 165.

Grant.

——— **S. 103**—*Grant—Service tenure—Resumption—Zemindar.*

Where the Government claim that lands in a Zemindari are chaukidari chakran lands and therefore irresumable by Zemindar the *onus* is on the Government. (*Lord Parker.*) RAMACHANDRA BHANJI DEO *v.* SECRETARY OF STATE. 43 Cal. 1104=43 I.A. 172=20 M.L.T. 235=21 C.W.N 1245=(1916) 2 M.W.N. 175=4 L W 251=14 A.L.J. 1009=18 Bom. L R. 835=25 C.L.J. 296=37 I.C. 223=31 M.L.J. 745 (P.C.).

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——S. 102—*Grant—Resumption—Burden of proof.*

The burden of proof that land is resumable on account of discontinuance of service lies on him seeking to resume. (*Batchelor*, A.C.J. *and Shah*, J.) BASLINGAPPA *v.* CHANDRAPPAN. 35 I.C. 860=18 Bom. L.R. 695.

——S. 101—*Grant—Authority to give—Donee must show grantor had authority—Shifting of burden in case of long acquiescence.*

In case of authority to give grant donee must show grantor had authority. (*Mookerjee and Rankin*, JJ.) TARAKESWAR PAL *v.* SRISH CHANDRA GHOSH MANDAL. 27 C.W.N. 964=1924 Cal. 236

Holder in due Course.

——S. 103—*Holder in due course—Burden of proof.*

One who holds a bill of exchange which is proved to have been obtained originally for unlawful consideration must prove that he is a holder in due course and therefore in a better position than his transferor. (*Beaman*, J.) DAULAT RAM *v.* NAGINDAS. 19 I.C. 789= 15 Bom. L.R. 338.

Insanity.

——S. 103—*Insanity—Onus of proof.*

The burden of proving that a person was of unsound mind at, and from, a particular date when a document was executed by him and which is sought to be avoided is on the person alleging the lunacy. (*Jenkins*, C.J. *and N. R. Chatterjee*, J.) KASSIM MAMOOJI *v.* K.B. DUTT. 27 I.C. 459=19 C.W.N. 46.

——S. 102—*Insanity—Proof of.*

Where a person is found to be a lunatic (under Act XXXV of 1858) those who assert at any later date, that he is of same mind, must prove that he is so. (*Wallis*, C.J. *and Srinivasa Aiyangar*, J.) AMANCHI SESHAMMA *v.* AMANCHI PADMANABHA RAO. 3 L.W. 290= 33 I.C. 578=19 M.L.T. 243.

——S. 102—*Insanity—Proof.*

A suit was brought on an equitable mortgage against A, B and C but a decree was passed only against A and C, omitting B as being insane. The purchaser in execution of the decree, was subsequently sued on the basis of a mortgage executed by B prior to the suit and the property really belonged to B. The onus of proof shifted from plaintiff to the defendant when he showed the existence of the previous mortgage under which possession was claimed. B was not bound by the decree as he was not a party to it. (*Mccoll*, A.J.C.) NGA LUGYI *v.* PALNIAPPA. 4 Bur. L.T. 242=12 I.C. 199.

Jurisdiction.

——S. 102—*Jurisdiction—Civil Court—* Onus *on person seeking to oust.*

The *onus* is on the defendants to satisfy the Court that a claim made by the plaintiffs is not within the cognizance of a Civil Court. (*Shadi Lal*, C.J. *and Harrison*, J.) RAMJI LAL *v.* MANGAL SINGH. 2 Lah. 302= 28 P.L.R. 1922=1922 Lah. 157.

Land Acquisition.

——S. 103—*Land acquisition—Claimants to compensation—Revenue auction-purchaser and lakhiraj holder.*

Where a question of title to a plot of land arose between claimants to compensation paid by Government after its acquisition under the Land Acquisition Act, one being the purchaser of the estate at a sale for arrears of land revenue, whilst the other was holding it as lakhiraj: *Held*, that the former was in the position of the plaintiff and the burden of proof as stated above was on him. 14 M.I.A. 152, Rel. A Land Acquisition Court can determine a conflict of title between rival claimants. (*Chatterjee and Roe*, JJ.) SM. KRISHNA KALIYANA DASI *v.* BRAUNFIELD. 36 I.C. 184=20 C.W.N. 1028.

Legal Necessity.

——S. 102—*Legal necessity — Religious endowment—Mortgage.*

On a mortgage of endowed property the onus of proof of necessity is on the mortgagee. (*Lord Shaw.*) MURUGESAM PILLAI *v.* GNANA SAMBANDA PANDARA SANNADHI. 40 Mad. 402=21 M.L.T. 288= 32 M.L.J. 369=15 A.L.J. 281= 1 P.L.W. 437=5 L.W. 759= 21 C.W.N. 761=19 Bom. L.R. 456= 25 C.L.J. 589=(1917) M.W.N. 487= 39 I.C. 659=44 I.A. 98. (P.C.)

——S. 102—*Legal necessity—Hindu Law —Alienation.*

The burden of proving necessity for an alienation by a Hindu widow is on the alienee. (*Mr. Amir Ali.*) HARI KISHEN BHAGAT *v.* KASHI PARSHAD SINGH. 42 Cal. 876= 42 I.A. 64=17 M.L.T. 115= 19 C.W.N. 370=18 A.L.J. 223= 2 L.W. 219=21 C.L.J. 225= 28 M.L.J. 365=17 Bom. L.R. 426= 27 I.C. 674=(1915) M.W.N. 511 (P.C.).

——S. 101—*Legal necessity — Alienation by Hindu father—Sale pre-empted—Suit by sons challenging alienation.*

Where legal necessity for a major portion is proved, the sale should be upheld. Where a sale for cash is impeached by sons, the burden of proving necessity is on the creditor or transferee. (*Daniels*, J.) CHNDRIKA SINGH *v.* BHAGWAT SINGH. L.R. 4 All. 545= 1924 A 170

——S. 103—*Legal necessity—Hindu joint family—Alienation by manager—Suit by junior members impeaching sale—Onus of proving necessity on purchaser.*

Where a sale of joint family property by the manager of the family is questioned by junior

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members in a suit the burden of proving that the alienation was valid is upon the purchaser. (*Rafiqus and Stuart, JJ.*) RAMSARUP SINGH v. RAM SARAN SINGH. 20 A.L.J. 985 = 1922 A. 839.

———Ss. 102, 103—*Legal necessity.*

In the case of an alienation by a Hindu widow it is the alienee who has to show necessity. (*Macleod, C.J., Shah, J.*) MOHANSING UMADRAMAH v. DALPATSING HANBAJI. 24 Bom. L.R. 289 = 46 B. 732 = 1922 B 81.

———S. 101—*Legal necessity.*

Proof of necessity for alienation by manager lies upon the alienee. (*Scott-Smith and Fforde, JJ.*) RODHA RAM v. AMAR CHAND. 4 Lah. 208 = 1924 L. 141.

———S. 101—*Legal necessity—Joint family —Decree obtained on father's debt—Binding nature of.*

The burden of proving that a debt is non-existent or illegal is upon the son. He must prove that he is not liable to discharge the pious obligations. (*Abdul Raoof and Moti Sagar, JJ.*) RAM RATAN v. BASANT RAI. 64 I.C. 121 = 2 Lah. 263.

———S. 101—*Legal necessity—Minor.*

In the case of sale by guardian with sanction of Court onus is on minor to prove want of necessity or that the sale is improper. (*Spencer and Ramesam, JJ.*) NALLKA VENKATASWAMI v. RUGAM VIRAMMA. 15 L.W. 373 = 45 M. 529 = 42 M.L.J. 333 = 31 M.L.T. 431 = (1922) M.W.N. 357 = 1922 M. 135.

———Ss. 102 and 103—*Legal necessity.*

Where an alienation by a Hindu widow in accordance with a compromise is challenged by a reversioner, the alienee has to prove that the compromise is binding on the reversioner. (*Schwabe, C.J., Coutts Trotter and Kumaraswami Sastri, JJ*). NALLA TIRUPATI RAJU v. NANDIKOLLA VENKAYYA. 45 M. 804 = 15 L.W. 395 = (1922) M.W.N. 207 = 30 M.L.T. 181 = 42 M.L.J. 392 = 1922 M. 131.

———Ss. 102, 103—*Legal necessity—Joint family.*

The onus is on the plaintiff that the debt was contracted under circumstances which would bind the other members of a family. (*Sundara Aiyar J.*) *In re* SRINIVASA AIYANGAR. 15 I.C. 681 = (1912) M.W.N. 495.

———S. 102—*Legal necessity—Minor—Joint family.*

If a plaintiff seeks to impose on a minor in a joint family any liability as a member of a family partnership he must show how the minor's liability arises. 27 B. 157, Foll. (*Drake Brockman, J.C. and Hindlay, A.J.C.*) PADAMARAJ v. GOPIKISON. 56 I.C. 129.

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Majority.

Legitimacy.

———Ss. 102 and 108—*Legitimacy—Mahomedan Law.*

The person who alleges that abnormal circumstances existed at his birth must prove them. Mohammadan Law does not presume legitimacy of a child born to his mother 14 months after the death of her husband. He must prove that the period of gestation in his case was extraordinarily prolonged. (*Shadi Lal, C.J. and Abdul Qadir, J.*) UMAR HAYAT v. MISRI KHAN. 69 I.C. 491.

———S. 101—*Legitimacy—Connection between man and woman.*

Where a connection between man and woman is permanent, it is presumed to be not adulterous, and the burden of proving, that the connection is adulterous and involves criminal offence, lies on him who raises the contention. (*Sadasiva Aiyar and Napier, JJ.*) PALANI AMMAL v. KUPPUSWAMI GOUNDAN. 62 I.C. 769 = 13 L.W. 511.

———S. 102—*Legitimacy—Presumption as to lawful connection and legitimacy—Rebuttal.*

Where there are circumstances justifying the inference of marriage and legitimacy, the burden is upon those who deny the status of the wife and the son, to produce conclusive evidence to rebut the presumption of lawful connection and legitimacy. (*Lindsay, J.C. and Kanhaiya Lal, A.J.C.*) SURIA QADIR v. QADSIA BEGAM. 24 I.C. 653 = 1 O.L.J. 281.

Limitation.

———S. 103—*Limitation.*

When a plaint is *prima facie*, barred the plaintiff who tries to bring it within limitation by proving an acknowledgment under S. 19, which gives him a fresh period, must give a cogent proof of his allegations. (*Rafiqus and Lindsay, JJ.*) COLLECTOR OF JAUNPUR v. JAMNA PRASAD. 20 A.L.J. 140 = 44 I.A. 360 = 1922 A. 37.

———S. 102—*Limitation—Onus.*

In a suit for redemption the onus of proving that the suit is within limitation lies on the plaintiff. (*Perman, J.*) KHANDU LAL v. FAZUL. 51 I.C 955 = 1 Lah. 21.

———S. 108—*Limitation.*

(Per *Seshagiri Aiyar, J.*)—The burden of proving that a suit is in time is on the plaintiff. (*Wallis, C.J. and Seshagiri Aiyar, J.*) RAMANATHAN CHETTY v. MURUGAPPA CHETTY. (1916) 1 M.W.N. 208 = 33 I.C. 969 = 3 L.W. 210.

Majority.

———S. 103 — *Majority — Decree against person as minor—Suit to set aside on ground of no minority.*

When a decree passed against a minor is sought to be set aside on the ground that he was not a minor, the burden of proving that

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Malicious Prosecution.

he was a major lies on the person making the allegation. (*Mitra, Offg.* A.J.C.) GOKUL SINGH *v.* KANHAIYA LAL. **26 I C. 816 = 10 N L R. 137.**

Malicious Prosecution.

——S. 103—*Malicious prosecution—Innocence—Burden of proof.*

In a suit for malicious prosecution, the plaintiff has to prove his innocence with a view to establish that the prosecution was commenced maliciously and without reasonable and probable cause. (*Mookerjee and Beachcroft*, JJ.) MUCHI OSTA *v.* HORSMULL MARWARI. **19 I.C. 24 = 17 C W N. 434.**

——S. 103—*Malicious prosecution—Reasonable and probable cause.*

In a suit for damages for malicious search the *onus* of proving want of reasonable and probable cause lies on the plaintiff. (*Abdur Rahim, Offg.* C.J. *and Krishnan*, J.) GADGI MARRAPPA *v.* THE FIRM OF VANNAJEE VAJANJEE, **20 M L T 303 = (1916) 2 M.W.N. 280 = 38 I.C 823 = 31 M.L J. 712.**

Marriage.

——S. 102—*Marriage—Maintenance.*

In maintenance proceedings under the Code the *onus* is on the wife to show that she is the wife of the accused. (*Saunders*, J.C.) WAFOON *v.* MA THEIN TIN. **24 I.C. 572 = 15 Cr. L J. 484 = 7 Bur.L.T. 71.**

Material Alteration.

——S 103—*Material alteration*—Onus.

In a suit on a mortgage-bond, the burden of proof lies on the defendant to show how that particular clause was an alteration made subsequent to the execution of the bond without the knowledge of the executant. (*Mookerjee and Beachcroft*, JJ.) ACHYUTANUNDA BHATTACHARYA *v.* RAM NATH BHATTACHARYA. **21 I.C. 79 = 18 C.L.J. 354.**

Minority.

——S. 103—*Minority*—Onus.

The *onus* of proving the minority of the executant of a deed is on the person asserting it. (*Lord Dunedin.*) JAGANNATH PRASHAD SINGH *v* ABDULLAH **45 Cal 909 = 45 I.A 97 = 16 A.L J. 576 = 5 P.L.W. 83 = 1918 M W N 406 = 22 C W.N. 891 = 8 L.W. 163 = 24 M.L.T. 62 = 28 C.L J. 192 = 20 Bom. L R. 851 = 45 I.C. 770 = 33 M L.J. 45 (P.C.).**

——S 103—*Minority — Contract—Admission of majority—Effect of.*

When the validity of a contract is questioned on the ground that the executant is a minor, it is for the plaintiff to establish by *prima facie* evidence that the contract was valid and entered into by a person who was competent to do so. An admission of majority at the time

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Minority

of the execution of the deed is sufficient *prima facie* evidence to establish the majority of the executant. 2 I. C. 839; 13 I. C. 556, Rel. (*Stuart*, J.) BACHCHA LAL *v.* HASAN KHAN. **4 U.P.L.R. (A.) 81 = 1922 All. 240.**

——S. 101—*Minority—Pro note—Suit on.*

Where in a claim on pro-note, the defts. sets up the plea of minority, the *onus* is on him to prove the same. (*Le Rossignol*, J.) HARJI MAL *v.* ABDUL HALIM. **60 I C. 267.**

——Ss. 101, 102 and 103—*Minority—Hindu Law—Joint family—Alienation by adult members—Suit by minors.*

The *onus* of proving that an alienation made by the adult members of a Joint Hindu family, is not binding on the minors, for want of consideration, lies on those minors seeking to set it aside. (*Ayling and Seshagiri Aiyar*, JJ). KRISHNA *v.* MADHAWA. **63 I.C 258.**

——S. 102—*Minority*—Onus *on person setting up.*

The party who comes to the Court and pleads minority must make out his case before the adverse party can be required to rebut it. (*Coutts Trotter and Srinivasa Aiyangar*, JJ.) VENKATA RANGAPPA NAICKEN *v.* SUBBARAYA GOUNDAN. **33 I.C. 142.**

——S. 102 and 103—*Minority*—Onus.

It is for the party setting up infancy in the case of a contract to prove it. 24 M.L.J. 517; 26 B. 109; 8 W.R. 371, Foll. (*Oldfield and Tyabji*, JJ.) JODI BIBI *v.* VIJIAR KHAN SAHEB. **25 I C. 407.**

——S. 102—*Minority.*

A person alleging that another was minor at a particular date must prove it. (*Hallifax*, A.J.C.) BALWANT SINGH *v.* NARAYANA. **58 I.C. 196.**

——S. 101—*Minority.*

The burden of proving minority lies on the person alleging it. (*Stuart and Kanhaiyalal*, A.J.Cs.) RAJA *v.* SANT RAIN DAS. **2 O L.J. 228 = 30 I.C. 193 = 18 O.C. 95.**

——Ss. 102 and 103—*Minority*—Onus *on person pleading.*

Where a person alleges his minority in order to escape liability under a mortgage executed by him the burden lies upon him to prove that he was a minor, at the time the transaction was entered into. (*Daniels and Lyle*, A.J.Cs.) NIAMATTULLAH KHAN *v* GAJ RAJA SINGH. **22 O.C. 162 = 1 U P.L R. (J.C.) 83 = 53 I.C. 136 = 6 O L J 376.**

——Ss. 103 and 103—*Minority*—Onus *of proof.*

When in a suit upon a contract the defendant pleads minority at the time of the contract the *onus* of proving that he was of age is on the person who tries to enforce the contract. (*Lindsay*, J.C. *and Rafique*, J.) MUHAMMAD HUSAIN *v.* LALJI SINGH. **25 I.C. 648 = 1 O.L.J. 366.**

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Mistake.

Mistake.

———S. 103—*Mistake*—Onus *on person.*

The *onus* of proving that a property was included by mistake for another property, in a document is on the person setting up that plea. (*Lord Moulton.*) HARENDRA LAL ROY *v.* HARI DASI DEBI. 41 Cal. 972=1 L.W. 1050= 41 I.A. 110=27 M.L.J. 80= (1914) M W.N. 463=16 M.L.T. 6= 18 C.W.N. 817=19 C.L.J. 484= 16 Bom. L.R. 400=23 I.C. 637= 12 A.L.J. 774 (P.C.).

———Ss. 102 and 103—*Mistake—Recitals*—Onus *of proving incorrectness.*

The *onus* of proving that a document to which a person has affixed his signature does not contain a correct statement of the facts and of the intentions of the parties is on the person making the allegation. (*Roe and Jwala Prasad*, JJ.) MT. RAMDEI *v.* CHANDRABALI BIBI. 44 I.C. 399=4 P. L.W. 237.

Mortgage.

——S. 101—*Mortgage—Execution admitted sham nature of.*

Where the execution of the mortgage document is admitted but it is pleaded it was false and merely a sham. The burden of proof lies on the party who sets it up. (*Lindsay and Kanhaiya Lal*, JJ). CHIDDU *v.* DESRAJ. 21 A.L.J. 793=L.R. 5 A. (Civ.) 55= 1924 All. 284.

———S. 101—*Mortgage—Redemption.*

In a suit for redemption the burden of proving a mortgage is upon the mortgagor. (*Daniels* J.) RAMJI DAS *v.* MIHEIN LAL. 1923 All. 441.

———Ss. 102 and 103—*Mortgage—Redemption—Title to redeem*—Onus.

The plaintiff in a suit for redemption must show a subsisting title. (*Rafique and Piggott*, JJ.) FRANK HAY *v.* RAFIUDDIN. 25 I.C. 953=12 A.L J. 769.

———S. 103—*Mortgage—Redemption suit*—Onus *of proof.*

In a redemption suit, the plaintiff must first prove the mortgage, and if he has given proof thereof, the burden shifts to the defendant to prove that the relationship has ended. (*Banerji and Ryves*, JJ.) GANESH LAL *v.* BASANLI LAL. 20 I.C. 29.

———S. 103—*Mortgage—Ownership of properties included in*—Onus.

In a suit between the mortgagee and a third party the onus of proving that the properties comprised in the mortgage-deed belong to the mortgagor lies upon the mortgagee. (*Beaman and Hayward*, JJ.) ANANDI BAI BHASKAR NILKANTH *v.* NARAIN DHOND DEV TATTOO. 27 I.C. 918=17 Bom. L.R. 59.

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Mortgage.

—— —— Ss. 101, 102—*Mortgage.*

As soon as a mortgage-deed is produced which contained a representation as to the share of another person in the property mortgaged, the burden is no longer on the mortgagees to establish that they did not know the true position but it is shifted on the mortgagors to show the mortgagee's knowledge of the true facts. (*Greaves and Ghisa*, JJ.) SARODA PRASAD *v.* GOSTO BEHARI HAZRA. 27 C.W.N.943= 36 C.L.J. 78=1922 Cal. 542.

———S. 103—*Mortgage—Redemption.*

The burden of proving that a mortgage is irredeemable is on the person who resists redemption. (*Krishnan and Ramesam*, JJ.) RYRU NAMBIAR *v.* KAPPALLI KANARA. 42 M.L J. 350= (1923) M.W.N 76= 16 M.L.W. 930=1922 Mad. 185.

———Ss. 102 and 103—*Mortgage—Redemption*—Onus.

Where both plaintiff and defendant relied only on one mortgage and the only question is whether it is subsisting or not the burden of proof is on the defendant as he must be deemed to be aware of the date of the transaction, 26 A. 313; 1 A. 117; 38 All. 540, Foll. (*Seshagiri Aiyar and Napier*, JJ.) MADHAVANVYDIAR *v.* LAXSHMANA PATTAR. (1918) M.W.N. 139=44 I.C. 447=7 L.W. 285.

———S. 102 — *Mortgage — Usufructuary mortgage after simple mortgage of same property —Mortgagee setting up sale in his favour—No mutation of names.*

The burden of proof in a case where an usufructuary mortgagee coming in after a simple mortgage of the same property in a favour of another sets up a sale in his favour but has not obtained mutation of names is heavily on the person setting up a sale. (*Robinson*, J.) MAUNG SHWE MIN *v.* MAUNG SUN NYUN. 22 I.C. 806.

———S. 102—*Mortgage—Conditional sale*—Onus.

Sale of property together with a subsequent agreement to repurchase within a specified time, may be regarded a kind of mortgage, but the burden of proving that the transaction does amount to a mortgage is on the party asserting. (12 A. 387, Rel. to.) (*Parlett*, J.) MAUNG KYA HNIN *v.* MAUNG KO KYAW. 35 I.C. 336=10 Bur. L.T. 5,

———Ss. 102 and 103—*Mortgage—Suit for redemption—Burden of proof.*

The burden of proof in a suit for redemption where the plaintiff is out of possession is cast heavily upon him, however weak the defence might be. (*Maung Kin*, J.) LA AUNG *v.* MAUNG SO. 31 I.C. 885=9 Bur. L.T. 57.

———Ss. 102 and 103—*Mortgage—Redemption suit.*

In a suit for redemption, the onus is on the plaintiff to prove the initial mortgage. (*Twomey*, J.) MA SHWE HPE *v.* MAUNG SEIN. 20 I.C. 666=6 Bur. L.T. 131.

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Negligence.

Negligence.

——**S. 102**—*Negligence.*

In the event of a derailment resulting in injury to passenger, the onus of disproving negligence lies on the railway. (*Lord Sumner*) EAST INDIA RY. COY., *v.* KIKWOOD.
48 Cal. 757 = 15 L.W. 248 = 1922 P.C. 195.

——**S 102**—*Negligence—Loss in Railway transit—Burden of proof.*

When a *prima facie* case about the wilful negligence of the Railway servants is made out the onus lies on the company to offer a reasonable explanation (*Macleod*, C.J. *and Shah*, J.) CENTRAL INDIA SPINNING & WEAVING COY. *v.* G.I.P. RY. **24 Bom.L.R. 272 = 1922 Bom. 46.**

——**S. 101**—*Negligence--Railway Company —Suit against—Loss of goods consigned under risk note—Plaintiff to prove how loss occurred.*

The plaintiff is to prove how loss occurred in a suit against Railway Company regarding loss of goods consigned under risk note. (*Oldfield and Devadoss* JJ.) NARAYANA AIYAR *v.* S. I. RY. CO. LTD. **18 L.W. 322 = 1924 Mad. 388.**

Notice.

——**S. 101**—*Notice—Contract to sell — Specific performance —Subsequent purchaser without notice—Registration--Burden of proving notice of prior contract to sell.*

Registration by itself is no notice. There must be other circumstances in the case from which the Court could come to the conclusion that the subsequent purchaser had notice of the prior and registered agreement and the burden of proving lies on the person setting up notice. 36 B. 446, Dist. (*Macleod*, C.J. *and Crump*, J.) PEERKHA LALKA *v.* KASHILA MATI.
26 Bom. L.R. 875 = 1923 Bom. 40.

——**S 103** — *Notice — Registered and unregistered instrument—Priority.*

The burden of proving that a person claiming under a subsequent registered document has no priority over another claiming under a prior unregistered document by reason of the former having had notice of the latter's title, is on the party alleging such notice, 25 M. 1, Foll. (*Mookerjee and Beachcroft* JJ.) MAGU BRAHMA *v.* BHOLI DASS. **19 C.L.J. 382 = 20 I.C. 195 = 18 C.W.N. 657.**

——**S. 102**—*Notice.*

Burden of showing that a subsequent contract was *bona fide* and without notice of prior contract for sale is on the person claiming under the subsequent contract. (*Abdul Raoof and Harrison*, JJ.) KANSHI RAM *v.* ISHWAR DAS. **1923 Lah. 108.**

——**S. 103**—*Notice, want of— Contract to sell.*

In case of a suit for specific performance it is the transferee to prove that he was a *bona fide* transferee and had no notice of the contract in the plaintiff's favour. (*Abdul Raoof*, J.) BENDRABAN *v.* BODH RAJ.
69 I.C. 470.

——**S. 102**—*Notice — Plea of purchase without notice of prior agreement—Onus.*

The burden of proving a purchase without notice of a prior mortgage or contract is on the subsequent purchaser and the rule is the same for moveable as well as immoveable property. (*Heald and Lentaigne*, JJ). MAUNG CHITTU *v.* BANSI DHAR BAZAZ. **2 Bur. L.J. 63 = 1923 Rang. 153.**

Novation.

——**Ss. 101, 103**—*Novation —Contract— Variation.*

Where parties to a written contract depart from it and adopt some other line of conduct, the party setting up the substituted verbal contract must show not only what he understood to be the new terms but also that the other party had the same understanding. (*Mookerjee and Fletcher*, JJ.) DINA NATH *v.* ETHARAM. **61 I.C. 786 = 93 C.L.J 577.**

——**S. 102**—*Novation—Plaintiff alleging unconditional attacking over of liability.*

Where A owed a debt to B and B alleged that A's brother C unconditionally took over the liability, but C replied that he only agreed to set off the amount against the price of the bricks which B might purchase from him. *Held*, that the burden of proving unconditional liability was on B. (*Twomey*, J.) MAUNG KAN PE *v.* MAUNG SAN KYI. **11 I.C. 774 = 4 Bur. L.T. 156**

Objection to Onus.

——**S. 103**—*Objection to onus—Waiver.*

Where burden of proof with respect to certain fact lies on the defendant, but the plaintiff without waiting for defendant's evidence takes upon himself to prove it, he cannot subsequently say that the defendant did not discharge his part. (*Karamat Hussain*, J.) SAJAN KUNWAR *v.* JOTI PRASAD. **10 I.C. 223**

——**S. 103**—*Objection to onus—Question of law.*

The question upon which party the onus of proving any particular point lies, is undoubtedly a question of law. (*Scott Smith*, J.) MUSAMMAT NIAMAT BIBI *v.* MAHOMED FAIZ.
65 I.C. 745.

Official Records.

——**S. 102**—*Official records — Bombay Hereditary Officers Act, S. 15.*

Where a whole village is mentioned in a Sanad evidencing a settlement under S. 15, Bombay H. O. Act, 1874, the party alleging that a particular Survey Number of that village is outside the scope of the settlement

EVIDENCE ACT (I of 1872), S. 101, 102, 103—Official Records.

must prove it. (*Shah and Hayward*, JJ.) AMRIT VAMAN *v.* HARI GOVIND.
44 Bom. 257=16 I.C. 411=22 Bom. L.R. 275.

———S. 103—*Official records — Suit for declaration that defendant's name is wrongly entered in the revenue papers by mistake.*

The burden of proving that plaintiff has been in separate exclusive possession and that defendant's name is wrongly entered in the revenue papers lies upon the plaintiff. (*Robertson, J.*) BHOLA *v.* BRIJ LAL.
27 P.W.R. 1912=13 I.C. 260=32 P.L.R. 1912.

Omission to discharge Onus.

———S. 102—*Omission to discharge onus—Effect of.*

Where both parties can produce evidence concerning the existence or non-existence of a particular fact, the party upon whom the burden of proof lies, does not discharge that burden by showing that the other side could equally have proved the contrary. (*Miller*, C.J. *and Mullick*, J.) RAM BILAS SINGH *v.* RAMYAD SINGH. **1 Pat. L.T. 135=5 P.L.J. 622=58 I.C. 303=2 U.P.L.R (Pat) 228.**

Onus Immaterial.

———Ss. 102, 103—*Onus immaterial when evidence is taken.*

When the entire evidence on both sides is once before the Court the debate as to onus is purely academical. 43 M. 567, foll. (*Mr. Ameer Ali.*) SRI CHIDAMBARA SIVAPRAKASA PANDARA SANNADHIGAL *v.* VEERARAMA REDDI.
45 Mad. 586=31 M.L.T. (P.C.) 56=43 M.L.J. 640=16 L.W. 102=(1922) M.W.N. 749=49 I.A. 266=(1922) P.C. 292 (P.C.).

———S. 102—*Onus Immaterial — After evidence gone into.*

Where all the relevant facts are in evidence before the Court and all that remains for decision is what inference should be drawn from them and the controversy passes the stage at which discussion of burden of proof is pertinent. (*Sir Lawrence Jenkins.*) SETURATNAM *v.* VENKATACHALA. **43 Mad. 567=25 C.W.N. 485=(1920) M.W.N. 61=27 M.L.T. 102=11 L.W. 399=38 M.L.J. 476=22 Bom. L.R. 578=18 A.L.J. 707=56 I.C. 117=47 I.A. 76 (P.C.).**

———Ss. 102 and 103—*Onus immaterial—After evidence.*

Where the evidence on record is sufficient to enable a Court to come to a clear conclusion of fact, the burden of proof is immaterial. (*Lord Sumner.*) BASANTA KUMAR ROY *v.* SECRETARY OF STATE.
45 Cal. 886=1 Pat. L.W. 598=32 M.L.J. 505=21 C.W.N. 642=16 A.L.J. 398=25 C.L.J. 487=19 Bom. L.R. 480=(1917) M.W.N. 482=6 L.W. 117=22 M.L.T. 310=40 I.C. 837=45 I.A. 104 (P.C.).

EVIDENCE ACT (I of 1872), S. 101, 102, 103—Onus Immaterial.

———Ss. 102 and 103—*Onus immaterial—After whole evidence gone into.*

Quaere.—Whether any question of onus remains after the parties go into evidence. (*Ameer Ali*) MOHAMMAD MEHDI HASAN KHAN *v.* MANDIR DAS. **34 All. 511=39 I.A. 68=12 M.L.T. 392=15 O.C. 278=15 Bom. L.R. 1078=10 A.L.J. 373=17 I.C. 396=23 M.L.J. 741=17 C.W.N. 49=16 C.L.J. 629=(1912) M.W.N. 1052 (P.C.).**

———S. 101—*Onus immaterial—Party electing to produce evidence first does not lose right to raise the plea of onus.*

If a person under a justifiable impression that the burden of proving a certain fact lies on himself elects to produce his evidence first, he does not thereby lose his right to insist that the burden of proof be laid on the right, *i.e.* opposite party. When the burden of proof is wrongly placed on one party but both parties have given evidence and there is no suggestion that any evidence has been excluded the appellate Court should proceed as if the burden of proof has been cast upon the right party. (*Hussain and Chamier*, JJ.) MUHAMMAD TAHIR *v.* RAGUBAR DAYAL. **11 I.C. 761=8 A.L.J. 738.**

———Ss. 101 and 103—*Onus immaterial.*

Where the entire evidence on both sides is once before the Court, the debate as to onus is purely academical and the controversy has passed the stage at which discussion as to the burden of proof is pertinent. The question that remains for the Court is one of inference from the facts proved. (*Mookerjee and Chotzner*, JJ.) ABINAS CHANDRA DAS *v.* MAJUB ALI CHOWDHURY. **36 C.L.J. 196=17 C.W.N. 328=1922 Cal. 461.**

———Ss. 102 and 103—*Onus immaterial.*

Where both parties adduce evidence in support of their respective cases and the Court on an examination of such evidence shifts the burden of proof from one party to the other the question of onus loses its importance, This must be more so at the appellate stage. (*Suhrawardy and Cuming*, JJ.) SUDHANYA, KUMAR SINGA *v.* GOUR CHANDRA PAL.
47 C.W.N. 134=35 C.L.J. 478=1922 Cal. 160.

———Ss. 102 and 103—*Onus immaterial.*

The question of onus of proof arises only when there is no evidence one way or the other which will enable the Judge to come to a conclusion upon the question of fact to be determined. But where evidence has been adduced by both the parties and the relevant facts are before the Court, the question of onus is immaterial and no importance attaches to the question on whom the initial onus lay. 22 C.W.N. 987; 43 Mad. 567, Rel. (*Mookerjee and Buckland*, JJ.) KRISHNA *v.* NAGENDRABALA. **28 C.W.N. 942=66 I.C. 625=36 C.L.J. 333.**

EVIDENCE ACT (I of 1872), S. 101, 102, 103—Onus Immaterial.

———Ss. 102 and 103—*Onus immaterial—Whole evidence taken.*

The question of burden of proof retains little, if any, importance where there is evidence on both sides. (*Richardson and Beachcroft, JJ*). BASIRUDDIN *v.* MOKIMA BIBI. **44 I C. 918 = 22, C.W.N. 709.**

———Ss. 102 and 103—*Onus immaterial—In face of finding.*

Where the lower appellate Court clearly finds that a document is a forgery, no question of burden of proof based on the fact, that the document was registered under S. 75 of the Registration Act, can arise. (*Cox and Richardson, JJ*) BHADRI NARAIN *v.* KODOSHAH, **28 I.C. 138**

———S. 101—*Onus immaterial.*

The question of onus of proof only arises where there is a question of fact to be determined and there is no evidence one way or the other which will enable the Court to come to a conclusion. Where evidence is adduced by both parties, then the question of the burden of proof becomes immaterial and the Court has to determine on the evidence before it. (*Campbell and Moti Sagar, JJ.*) NIHAL CHAND *v.* GURDITTA MAL. **5 L.L.J. 451 = 1923 Lah. 641.**

———S. 101—*Onus immaterial when evidence adduced.*

Where the defendants led evidence on the issue as to notice they cannot be said to have held back their evidence because of the imposition of the *onus* on the other side, 46 I.C. 659; 29 All. 184, Fol.; 25 I.C. 648, Fol. (*Campbell, J.*) LADHA RAM *v.* JINDA RAM. **1923 Lah. 339.**

———Ss 102, 103—*Onus immaterial—Mistake—Party accepting onus of adducing evidence—Effect of.*

A party accepting the burden of proof as upon him and adducing evidence, cannot in second appeal complain of prejudice on the ground that the burden of proof was wrongly thrown on him. (*Chevis, A.J.C. and Abdul Raoof, J.*) JADU NATH *v.* RAMUN MAL. **4 Lah. L J. 426**

———S. 102—*Onus immaterial — After evidence taken.*

In the absence of an objection by a defendant that the onus was wrongly placed on him by the trial Court, the Appellate Court ought not to have shifted it on to the plaintiff. (*Scott-Smith, J.*) DAULAT *v.* KHAN. **81 P.L R. 1915 = 29 I.C. 194 = 88 P.W.R. 1915.**

———Ss. 102 and 103—*Onus immaterial—Whole evidence on record.*

Where the whole evidence is on record the Court should examine it without reference to onus. (*Ayling and Seshagiri Aiyar, JJ.*) KANKAJAMMAL *v.* SECRETARY OF STATE. **40 Mad. 1108 = 6 L.W. 346 = 31 M.L.J. 237 = 40 I.C. 516 = 21 M.L.T. 411.**

EVIDENCE ACT (I of 1872), S. 101, 102, 103—Onus Immaterial.

———S. 103—*Onus immaterial—All evidence taken.*

When the Court has all the evidence before it the question of burden of proof is not very important. In deciding whether a mortgage is void under S. 36, the Court need not consider the question whether the mortgage is invalid as a mortgage. (*Sadasiva Aiyar and Moore, JJ.*) ANANTARAMA *v.* YUSSUFJI. **31 M.L.J. 133 = 36 I C. 903 = (1916) 2 M.W.N. 236.**

———Ss. 102 and 103—*Onus immaterial—After evidence let in.*

When the whole evidence is before the Court, the question of burden of proof is of very little value. (*Sadasiva Aiyar and Tyabji, JJ.*) RAMASUBBA AIYAR *v.* AVUDAI AMMAL. **25 I C. 123 = (1914) M.W.N. 695.**

———Ss 102 and 103—*Onus immaterial.*

The question of onus is unimportant when the whole of the evidence is before the Court. (*White, C.J. and Tyabji, J*). KRISHNAMA CHARIAR *v.* VEERAVELLI KRISHNAMA CHARIAR. **38 Mad 166 = 13 M L.T. 385 = (1913) M W.N. 355 = 19 I.C. 452 = 24 M L J. 517.**

Also (*Ayling and Tyabji, JJ.*) GADDIAN *v.* VEERAPPE. **26 I.C. 899 = 28 M.L J. 92.**

———Ss. 102, 103—*Onus immaterial.*

Where both sides have given evidence in full and the Court has come to a conclusion on the evidence the question of burden of proof entirely disappears, 48 C. 757, referred to. (*Kotwal, A.J.C.*) GOVERDANDAS *v.* HARLAL RAM SUKH. **1923 Nag. 62.**

———Ss. 102 and 103—*Onus immaterial.*

Where both parties called evidence upon a certain point, no question of burden of proof arises and the Court has simply to decide the point upon the facts what is the nature of the transaction. (*Stuart, A.J.C*) JAG DEI *v.* SOHANLAL. **28 I.C. 360 = 2 O L.J. 140.**

———Ss. 102 and 103—*Onus immaterial.*

The question of onus dwindles into insignificance in second appeal. (*Coutts and Sultan Ahmad, JJ.*) RAM KHELAWAN *v.* RAM NATH. **1 P L.T 640.**

———Ss. 102 and 103—*Onus immaterial—After evidence is gone into.*

The question of onus is only one of evidence and when the evidence has been adduced in the case the Court is entitled to come to any findings. (*Jwala Prasad and Adami, JJ.*) BANAMALI SATPATHI *v.* TALUA RAM HARI. **1 P.L.T. 102 = 55 I.C. 841 = 5 P.L.J. 151.**

———Ss. 102 and 103—*Onus immaterial—After evidence gone into.*

Where a Court has the full evidence of both parties before it, the question of onus hardly arises. (*Coutts and Adami, JJ.*) SUKAN SAO *v.* KARU MARTON, **5 P.L.J. 87 = 54 I.C. 652 = 1 P.L.T. 13.**

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Onus Immaterial.

———Ss. 102 and 103—Onus *immaterial—After evidence is taken.*

The question of *onus* of proof only arises where there is a question of fact to be determined and there is no evidence one way or the other which will enable the Judge to come to a conclusion. In such a case, the Court has to decide whether the burden of proving the fact lies upon the plaintiff or the defendant. Whether in the first instance, the *onus* lies upon the plaintiff or upon the defendant if there is evidence adduced by both the parties then the question of the burden of proof becomes immaterial and the Court has to determine upon the evidence before it. (*Miller* C.J. *and Foster*, JJ.) JHABI SINGH *v.* TOKHARAM MARWARI. 52 I.C. 850 = 1 P.L.T. 57.

———Ss. 102 and 103—Onus *immaterial—Onus in Appellate Court.*

When evidence has been given before the Original Court on both sides, the question of burden of proof is of very little importance in a Court of appeal. (*Chapman and Atkinson*, JJ.) SAHDEO NARAIN DEO *v.* KUSUM KUMARI. 46 I.C. 929.

———S. 102—Onus *immaterial—Evidence let in.*

Where evidence had been let in on both sides and the evidence on one side had been believed no question of the burden of proof arises as the question is one of procedure. (*Chapman*, J.) JANG BAHADUR SINGH *v* RAM SUNDAR SINGH. 38 I.C. 817 = 1 P.L.W. 194.

———S. 103—Onus *immaterial — After evidence let in on both sides.*

There can be no question of burden of proof when the Court has only to determine the case on evidence fully recorded on both sides. (*Chapman*, J.) MAHTAB *v.* SHEOBARAT TELI. 37 I.C. 353.

Pardanashin Lady.

———Ss. 101, 102 and 103.

See also PARDANSHIN LADY.

———S. 103—Purdanashin *lad —Gift by—Binding nature of.*

The *onus* is on a person claiming under a deed of gift executed by a *purdanashin* lady to prove execution and intelligent understanding of the nature of the transaction by the grantor. *Aliter*, where the *purdanashin* is a woman of business like capacity. (*Lord Shaw.*) KALI BAKHSH SINGH *v.* RAM GOPAL SINGH. 36 All. 61 = 41 I.A. 23 = 16 C.C. 378 = 18 C.W.N. 282 = 12 A.L.J. 115 = 15 M.L.T. 180 = 19 C.L.J. 172 = 1 O.L.J. 57 = 25 M.L.J. 121 = (1914) M.W.N. 112 = 21 I.C. 985 = 16 Bom. L.R. 147 (P.C.).

———S. 102—Purdanashin *lady — False recitals.*

Where a *purdanashin* lady sued to set aside a sale-deed executed by her to her agent on the allegation that she signed blank sheets and the recitals were made by the agent. *Held*, that as the document contained her signature she must establish that the recitals contained therein are untrue. (*Mookerjee and Beachcroft*, JJ.) BANSIRAM *v.* BANSI RAM. 35 I.C. 284 = 20 C.W.N. 638.

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Partition.

———S. 101—Purdanashin *ladies—Transaction—Burden of proof—On whom thrown.*

The onus of proof is thrown upon the creditor to prove that the *purdanashin* understood the nature and character of the transaction and that she signed the deed fully understanding it. To determine whether the transaction was voluntary, the whole of the circumstances should be looked into. (*Kanhaiya Lal Kendall*, A.J.C.) SALEHA BIBI *v.* OUDH COMMERCIAL BANK, LTD. 35 I.C. 673 = 3 O.L.J. 482

———S. 103— Purdanashin *lady — Deed executed by—Validity.*

The Court when called upon to deal with a deed executed by a *Purdanashin* lady must satisfy itself first that the deed was actually executed by her or some one authorised on her behalf with full understanding of what she is about to do, secondly, she had full knowledge of the nature and effect of transaction, thirdly, she had independent and disinterested advice in the matter. (*J. Das and Kulwant Sahay*, JJ.) MANSINGH *v.* NAWLAKBHATI. 4 P.L.T. 335 = 2 P. 607 = 1923 P. 492.

———S. 103—Purdanashin *lady—Ex parte decree—Suit to set it aside on the ground of fraud.*

A *purdanashin* lady suing to set aside an *ex parte* decree on the ground of fraud and concealment of facts must prove that the decree was obtained by concealment from the Court of material facts in circumstances which prevented her by fraud from putting the facts before the Court. (*Ree*, J.) PARBATI KOER *v.* LAGANYATH PRASAD. 36 I.C. 896.

Partition.

———S. 102— Partition — *Hindu joint family.*

A disruption of the status of jointness of a Hindu family may take place by agreement without division of the estate by metes and bounds. Even an unambiguous expression of an intention by one member of the family to separate and hold his share separately is sufficient. But the question is one of fact and the *onus* is on the party alleging separation of interest or the intention to separate to establish it affirmatively. (*Mr. Ameer Ali.*) GIRDHAR DAS *v.* SRI KRISHNA DUTT. 18 A.L.J. 545 = 19 M.L.T. 71 = 29 M.L.J. 18 = 23 Bom. L.R. 1348 = 36 I.C. 293 = 12 L.W. 789 (P.C.).

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Partition.

——S. 102—*Partition suit for partition.*

In a suit for partition in a Mitakshara family the party who alleges a previous partition must prove it. (*Fletcher and Richardson, JJ.*) PORMESHWAR DUBEY *v.* GOVIND DUBEY.
43 Cal. 459=38 I.C. 190=20 C.W.N. 25.

Possession.

——S. 103—*Possession.*

In possession suits the plaintiff has to prove that he was in possession and was dispossessed within 12 years of the suit. (*Chatterjee and Panton, JJ.*) RAKDAL CHANDRA GHOSE *v* DURGA DAS. 26 C W.N. 714=1922 Cal. 857.

——S. 103—*Possession—Delivery of possession to auction-purchaser.*

Where the auction-purchaser has obtained delivery of possession through Court, strong evidence is required to show that he was not in possession. (*Miller and Tyabji, JJ.*) GOVINDA DOSS *v.* RAJA VENKATA PERUMAL.
26 I.C. 537=27 M.L.J. 195.

Pre-emption.

——S. 102 — *Pre-emption — Preferential right.*

A person claiming a preferential right of pre-emption over another co-sharer by reason of the relationship must prove it. (*Tudball and Rafique, JJ.*) BHAGWAN DAS *v.* TEJ RAM.
56 I C. 148.

Presumption.

——Ss. 102, 103—*Presumption—Nature of document.*

Where a deed is attacked after a long period of years, the burden of proving that it is not what it purports to be lies heavily on the person attacking it. (*Ryves and Daniels, JJ.*) BISHAMBAR NATH *v.* MUHAMMAD UBAIDULLAH KHAN. 45 A. 581=21 A.L.J. 503=(L.R. 4 A. 433=1923 All. 386.

——S. 103—*Presumption — Joint family —Nature of property.*

Where one finds people living as joint and properties are acquired during this time the presumption is that they were acquired for the benefit of the joint family as a whole. The burden of adducing evidence to rebut the presumption lies on the party who denies the jointness. (*Greaves and Cuming, JJ.*) SHACHI KUMAR *v.* CHANDRA KUMAR SAMADDAR.
38 C.L.J. 348=1923 Cal. 201.

——S 103—*Presumption—Arbitration—Stay of suit.*

Where an application is made for stay of suit pending arbitration, burden of proof lies on the respondent to show reason why a stay should not be granted. (*Schwabe, C.J. and Krishnan, J.*) ANGLO PERSIAN OIL COY. LTD. *v.* PANCHAPAKESA IYER. 45 M.L.J. 651=18 L.W. 752=38 M.L.T. 103 (H.C.)=(1923) M.W.N. 772=47 Mad. 164=1925 Mad. 336.

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Special plea.

—— Ss. 103—*Presumption—Consideration money—Execution of a deed.*

Where the execution of a deed is admitted or proved the natural presumption is that it was executed for consideration and if the executant sets up non-payment of the consideration money, he must prove it. (*Kanhaiyalal, A.J.C.*) NARAIN SINGH *v.* RUSTAM SINGH.
88 I.C. 777=3 O.L.J. 23.

Recitals.

——S. 103—*Recitals—Variance with facts —Onus.*

In a bond executed by defendant the *Onus* is on him to prove that the recital, that the consideration was paid was not in accordance with the facts. (*Woodroffe and Mookerjee, JJ.*) KALI CHARAN BASAK *v.* AMAR CHAND DAS.
41 I C. 44.

Record of Rights.

——S. 101—*Record of rights - Entry in repudiation by both parties—Burden of proof.*

Where the plaintiff repudiates an entry in a Record of Rights, as fraudulently obtained by the defendants and the defendant repudiate it as erroneously made, the Court should not think that the burden lies upon the defendants to rebut an entry upon which the plaintiff did not place reliance. (*Mookerjea and Beachcroft, JJ.*) SOBHAN BAKSH *v.* BIRENDRA KISHORE MANIKYA BAHADUR. 80 I.C. 939 (2)=22 C.L.J. 144.

——S. 102—*Record-of-rights—Entry challenged—Entry in record-of-rights.*

The burden of proof is upon the party alleging that a certain entry in a record-of-rights is incorrect. (*Teunon and Mullick, JJ.*) BHUBAM SAHU *v.* LAL SUNDAR JHANKAR. 23 I.C. 604.

Special Agreement.

——S. 102—*Special agreement—Onus.*

A person setting up an oral agreement admissible under Evidence Act, S. 92, proviso 2, is bound to prove it strictly. (*Lord Dunedin*). MOTABHOY MULLAH *v.* MULJI HARIDAS. 39 Bom 399=17 M.L.T. 402=28 M L J. 589=13 A.L.J. 529=19 C W N. 713=21 C L.J. 507=17 Bom. L.R. 460=2 L.W. 514=(1915) M.W.N 512=29 I C. 723=42 I.A. 103 (P C.).

Special Plea.

——S. 103—*Special plea—Asserting—Title to—Trust property.*

Where a Trustee asserts private ownership in property proved to have been trust property the onus lies on trustee to prove his claim. (*Lord Shaw.*) T.P. SHRINIVASA CHARIAR *v.* C.N. EVALAPPA. 31 M L T. 1=45 M. 565=48 M L.J. 536=16 L W. 247=49 I.A. 287=24 Bom. L.R. 1215=21 A.L.J. 250=27 C.W.N. 317=36 C L J. 525=1922 P.C. 325 (P.C.).

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Special Plea.

———S. 103—*Special plea — Impartibility —Nature of proof.*

There is no presumption of law in favour of impartibility of property amongst the members of the Thattan Caste in Malabar. (*Schwabe*, C.J.) VAZHAYILPARKUM THATTAN . VAZHAYILPARKUM THATTAN RAMAN.
41 M L J. 274=(1923) M.W.N. 173=
46 M. 597=18 L.W. 548=1923 Mad. 452.

———S. 103—*Special plea.*

In a case under Sch. IV, R. 17 of the Madras City Municipal Act the Assessee has to prove income in order to claim benefit of proviso. (*Ayling and Venkatasubba Rao*, JJ.) SUN LIFE ASSURANCE COY. OF CANADA *v.* CORPORATION OF MADRAS. 18 L W. 320=
(1922) M.W N. 155=31 M.L T. 271=
46 M. 10=42 M.L.J. 282=1922 Mad. 85.

———Ss. 102, 103—*Special plea*—Bona fides—*Transfer for value.*

It lies on the person who pleads that he is *bona fide* purchaser for value to make out his case. (*Batten*, J.C.) MT. KASTUR BAI *v.* BALINAM. 1923 Nag. 15.

———Ss. 102 and 103—*Special plea—Burden of proof.*

One of two joint executants of a promissory note desiring to escape liability on the ground of his being only a surety must prove that the payee had knowledge of that fact. (*Hartnoll and Twomey*, JJ.) BANK OF RANGOON, LTD. *v.* SOMASUNDARAM CHETTY. 8 L.B.R 168=
26 I.C. 258=8 Bur. L T.1.

Tenancy.

———S. 103—*Tenancy—Ryotwari land—Pattadar—Tenants under—Permanent tenancy.*

Where the tenants under a pattadar of ryotwari land claim a permanent tenancy the onus is on the tenants to prove this claim. (*Sir Lawrence Jenkins.*) SETURATNAM *v.* VENKATACHALA. 43 Mad. 567=47 I A. 76=
(1920) M W.N. 61=27 M.L.T. 102=
25 C.W.N. 485=11 L.W. 389=
38 M.L.J. 476=22 Bom. L.R. 578=
56 I.C. 117=18 A.L J. 707 (P.C.).
[On appeal from 20 I.C. 874=25 M.L.J. 671.]

———S 102—*Tenancy—Onus.*

If a landlord brings a suit for recovery of possession of land on ground that the land in suit was not included in the tenancy, *Held*, that the onus of proving that the land was included in the tenancy lay on the defendant. (*Walmsley*, J.) NABIN CHANDRA NATH *v.* TIRTHABASI BHOWMIK. 56 I.C. 180.

———Ss. 102 and 103—*Tenancy—Ejectment—Area of land demised.*

Where defendants are the tenants of the plaintiff and the only dispute is whether the disputed lands are within or without the boundaries of that tenancy the onus depends on the relative situation of the land in question

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and the admitted lands of the tenancy held by defendant. (*Mookerjee and Carnduff*, JJ.) AZMAT *v.* BISHUN PRAKAR. 52 I.C. 650=
29 C.L.J. 607.

———Ss. 102 and 103—*Tenancy—Suit for possession of land—Defendant setting up tenancy —Defendant found tenant of some land under plaintiff—Onus.*

Where defendant in a suit for possession of land is found to be the tenant of the plaintiff of some land, and the defendant sets up tenancy, the onus is not thereby cast on the plaintiff to prove that the land he seeks to recover is outside the tenancy of the defendant, but it is on the defendant to prove that it is within his tenancy. (*Mookerjee and Beachcroft*, JJ.) PRATAP CHANDRA *v.* JUDHISTER.
19 C.L.J. 408=28 I.C. 69=19 C.W.N. 148.

———S 103—*Tenancy—Defence of—Onus on defendant to prove his plea.*

Where the plaintiff claims the land in suit and the defendant does not deny plaintiff's title but pleads a subordinate interest under the plaintiff and in derogation of the latter's right to possession, the onus is on the defendant to make good his plea. (*Jenkins*, C.J. and *Mookerjee*, J.) DINANATH DAS *v.* GANESH CHANDRA SAHA. 20 I.C. 155=18 C.L.J. 515.

———S. 102—*Tenancy—Burden of proof.*

Where plaintiff sued for possession of undivided half share of certain land as revenue sale purchaser and the defendant, pleaded its inclusion in a certain *Howla*, the burden of proving its inclusion in a certain *Howla* lies on the defendant. (*Jenkins*, C.J. and *Chatterjee*, J.) ROTNESSUR SEN *v.* KALI KUMAR BIDYA BHUSAN. 18 I.C 701=
16 C.W.N. 693.

———S. 101—*Tenancy — Occupancy right set up—Burden of proof.*

Where a tenant sets up a permanent occupancy right the burden of proving it is primarily on him. But the burden is of a shifting nature and may change as facts are proved. (*Krishnan and Odgers*, JJ.) PONNALAGU KONAN *v.* SINNIAH ODAYAN. 70 I C. 27=
(1921) M.W.N. 719.

———S. 103—*Tenancy —Lease—Burden of proving what lands were demised — Lessee mixing leased lands with his own—Effect.*

A lessor suing to recover possession of land demised by him must prove what lands he demised, but the onus of proof will be shifted to the tenant in cases where the lessee mixes his own lands with those demised to him. 6 M. 263, Rel. (*Benson and Sundara Aiyar*, JJ.) ITTITHAYARI NAMBUDRI *v.* KANVASTRI ITHRI AMMA. 14 I.C. 284.

———S. 103—*Tenancy—Suit for possession—Onus on person suing.*

N sued M and others for recovery of two plots of land on the ground that the lands were held

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under a demise. M pleaded that the lands were held under a Kanom. *Held*, that the onus of proving the title by demise was on N who asserted it and an attestation by M of an instrument affecting the plots did not amount to an admission of N's title by M. (*Benson and Sundara Aiyar*, JJ.) KUVIYIL PARKUM *v.* VARNAKAT ILLATH GANAPATHI.
35 Mad 168 = 21 M L J. 550 = 9 M.L.T 423 = 10 I.C. 424 = (1911) 2 M.W.N. 315.

———S. 101 — *Tenancy — Landlord and tenant—Relationship.*

Where landlord refuses to admit tenancy the tenant must prove that he is a tenant. (*Batten*, J.) ALLAM SINGH *v.* SETH GOPAL SINGH.
1923 Nag. 7.

Title.

———Ss. 102, 103—*Title—Dispute as to boundary line*—Onus *of proof—Waste land.*

On questions of boundary, specially where the dividing line in dispute runs through waste lands which have not been the subject of definite possession, the rule as to the burden of proving the affirmative is not applicable. The litigants are in the position of counter-claimants and both parties are bound to do what they can to aid the Court in ascertaining the true line. But the duty of both parties to aid the Court in ascertaining the true line is in cases where the dividing line in dispute runs through waste lands which have not been the subject of definite possession. This rule is not applicable where the case of both parties is that the land was capable of possession and each party was in actual possession of the land comprised within his tenure. 21 C. 501, Dist; 27 C.L.J. 599, Ref. (*Chatterjee and Panton*, JJ.) RADHA KRISHNA DAS *v.* MATIYAR RAHMAN.
65 I.C. 743.

———S. 103—*Title—Goods—Detention without consideration—Unstamped agreement of sale.*

Where a person has delivered goods (in pursuance of an unstamped agreement) and has got nothing in return for it, though he cannot be allowed to prove his unstamped agreement of sale, yet the *onus* is on the other party to show that he has the right to detain the goods. (*Coutts Trotter and Seshagiri Aiyar*, JJ.) CHAMI *v.* ANNA PATTAR **33 I.C. 661.**

———S. 103—*Title—Suit for declaration of title—Order under S. 145, Cr. P. C.—Presumption.*

A decision in proceedings under S. 145, Cr. P. Code, does not throw the *onus* of proving his title on the loser in those proceedings. The decision in proceedings under S. 145, Cr. P. Code, is not of such a nature as to give rise to a presumption in a Civil Court in favour of the winning party in those proceedings. (*Adami*, J.) MT. JANTRA KOER *v.* ALI JAN DARJI.
1923 P. 401.

EVIDENCE ACT (I of 1872), Ss. 101, 102, 103 —Will.

Transferability of Holding.

———S. 103—*Transferability of holding.*

Where acquiescence and recognition by the landlord of a transfer of a non-transferable occupancy holding is pleaded, the *onus* lies on the party setting up the plea. (*Das and Adami*, JJ.) BHONULAL CHAUDHURI *v.* VINCENT.
1922 P. 59.

Undue Influence.

———S. 103—*Undue influence—Proof of.*

The *onus* is on the person alleging it to show that influence was unduly exercised. Mere proof of fiduciary position is not enough. (*Lord Shaw.*) POOSATHURAI *v.* KANNAPPA.
38 M.L.J. 349 = 18 A.L.J. 341 = 11 L.W. 455 = (1920) M.W.N. 317 = 2 U.P.L.R. (P.C.) 62 = 55 I.C. 447 = 22 Bom. L.R. 583 (P.C.).

———S. 103—*Undue influence*—Onus.

Where there is nothing on the face of the pro-note or on the evidence to indicate that the bargain is unconscionable or to show that the plaintiff was in a position to dominate the will of the defendant the *onus* lay on the defendants to prove undue influence and immorality. (*Kanhaiya Lal*, A.J.C.) GHAZAFFAR HUSSAIN *v.* MAHABIR PRASAD. **17 I.C. 309.**

Vendor and Purchaser.

———S. 103—*Vendor and purchaser—Title of vendor—Proof of.*

A person who derives his title through a purchase must prove that his vendor had a title in the property sold. 28 All. 479, Foll. (*Broadway*, J.) GULAB DEBI *v.* MONJI RAM.
51 I.C. 573 = 38 P.L.R. 1919.

———S. 102—*Vendor and purchaser—Inclusion of land*—Onus.

Where a land is not specially mentioned in a sale-deed and cannot even be said to be mentioned by implication, the burden of proving that that land was sold to a party lies on that party. (*Johnstone*, J.) MUHAMMAD NAWAZ *v.* GHULAM HAIDER. **75 P.L.R. 1915 = 29 I.C. 167 = 250 P.W.R. 1915.**

———Ss. 102 and 103—*Vendor and purchaser—Title—Burden of proof—Possession.*

Where a sale-deed has been executed and registered but it is claimed that the vendor has acquired title by prescription in as much as possession was not given to the purchaser the burden of proving lies on the person asserting these facts. (*Sundara Iyer and Ayling*, JJ.) M. KALLU PAPPAKKA *v.* YEDDULA ROSIREDDI. **15 I.C. 282.**

Will.

———S. 102—*Will legacy—Validity—Consent of heir as to quantum.*

The Mahomedan Law does not allow a testator to leave a legacy to any of his heirs unless the other heirs agree but any single heir may so agree as to bind his own share. The

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burden of proving such consent is on the legatee. (*Lord Phillimore, Ameer Ali, Jenkins and Lord Salvesen.*) A. T. SALAYJEE *v.* FATIMA BIBI. 44 M.L.J. 332 = 25 B.L R. 301 = 37 C.L J 302 = 18 L.W. 44 = (1923) M.W.N. 522 = 1 R. 60 = 2 Bur. L J 1 = 32 M.L.T. 95 = 1922 P C. 391.

——Ss. 102 and 103—*Will—Testamentary capacity.*

The *onus* of proving the testamentary capacity of a testator is on those propounding the will. (*Lord Robson.*) BUR SINGH *v.* UTTAM SINGH. 38 Cal. 355 = 38 I A 18 = 1 P.W.R. 1911 = 15 C W.N 177 = 13 C.L J. 72 = 21 P L R. 1911 = 13 Bom L R. 59 = 9 M.L.T. 115 = (1911) 1 M.W.N. 86 = 8 A.L.J. 123 = 4 Bur. L T. 38 = 21 M L J. 100 = 9 I C. 33 = 21 P.R. 1911 (P.C.).

———S. 101—*Will — Burden of proving disposing mind.*

Burden of proving that testator was of a disposing mind is on propounder of a will where testator excluded an heir by a will executed on his deathbed. (*Battigan, J.*) INDAR NARAIN *v.* ONKAR LAL. 141 P.L.R. 1911 = 10 I.C. 130 = 20 P.R. 1912 = 233 P W R. 1911.

———S. 102—*Will—Proof of—Onus on propounder.*

Whoever puts forward a will as genuine, must prove it and cannot throw on the opposite party the burden of proving the negative. 38 M. 166, Followed. (*Sadasiva Aiyar and Moore, JJ.*) ALAGAPPA IYENGAR *v.* MANGATHI AMMANGAR. 40 Mad 672 = 34 I.C. 766 = 30 M.L J. 504.

——Ss. 102 and 103—*Will—Revocation—Burden of proof—Document revoking a will.*

The burden lies heavily upon persons, setting up a document as having the effect of revoking a previous will, of proving the fact of its execution and of proving that the executant understood the terms and nature of the deed, especially where there are circumstances exciting suspicion in the mind of the Court. 27 C. 521; 32 M. 400. (*Piggott, J.C. and Lindsay, A.J.C.*) MIR SYED HUSSAIN *v.* TAIABA BEGAM. 26 I C. 547 = 1 C.L.J. 591.

——S. 105—*Defamation—Privileged occasion.*

The *onus* of proving privilege in an action for libel is on the person pleading it. (*Mr. Ameer Ali.*) GOVIND DAS *v.* BISHAMBHAR DAS. 39 All. 561 = 15 A L.J. 629 = 33 M.L J. 103 = 2 P.L.W. 125 = 21 C.W.N 1113 = 19 Bom. L R. 707 = 22 M.L T. 181 = 26 C.L.J. 281 = 6 L.W. 496 = (1917) M.W.N. 817 = 40 I.C. 641 = 44 I.A. 192 (P.C.).

——S. 105—*Exemptions — Presumption—Burden of proof.*

EVIDENCE ACT (I of 1872), S. 105.

The law requiries that the *onus* of proving circumstances which give the benefit of the general exceptions in the Penal Code to an accused person lies on him, and in the absence of evidence the presumption is against the accused. But this does not mean that the accused must lead evidence. If it is apparent from the evidence on the record whether produced by the prosecution or the defence, that the general exception would apply, then the presumption is removed and it is open to the Court to consider whether the evidence proves to the satisfaction of the Court that the accused comes within the exception. (*Walsh and Ryves, JJ.*) MT. ANANDI *v* EMPEROR. 45 A. 329 = 24 Cr L J. 225 = 1923 All. 367 (2).

——S. 105—*Defamation — Exemption—Penal Code, Ss.* 499, 500—*Burden of proof.*

In a defamation case, the accused must prove his good faith, public good and truth and legality of his expressions. (*Walsh, J.*) BHAGWAN SINGH *v.* ARJUN DUTT. 2 U P L R. (All) 182 = 57 I.C. 81 = 21 Cr L J. 564 = 18 A.L J. 846.

———S. 105—*Exception—Burden of proof.*

The incidence of the burden of proof means that the person on whom it lies must prove that fact. But the meaning of the expression "proved" as defined in S. 3 of the Evidence Act, is in no way affected by the incidence of the burden of proof. When evidence has been given by the defence to support the defence of an exception, the burden of proof is discharged, if the evidence is believed and the jury have their ordinary duty of deciding a question of fact on the evidence before them. (*Newbould and Suhrawardy, JJ.*) MAHOMED YUNUS *v.* EMPEROR. 50 Cal. 318 = 1923 Cal. 517.

———S. 105—*Lunacy — Exemption from criminal liability—Unsoundness of mind.*

When unsoundness is pleaded as a defence to a criminal charge, the burden of proof rests on the accused. (*Richardson and Shamsul Huda, JJ.*) RAM SUNDAR DAS *v.* EMPEROR. 29 C.L.J. 202 = 20 Cr. L.J. 383 = 50 I C. 991 = 23 C.W.N. 621.

———S. 105—*Gambling—Proof that it is a game of mere skill—Onus on the accused.*

The onus of showing that any offence falls within a general exception to Gambling Act (*i.e.*) that it was game of mere skill is on the accused. (*Holmwood and Sharfuddin, JJ.*) RAM NEWAZ LAL *v.* EMPEROR. 23 I.C. 484 = 15 Cr. L.J. 216.

———S. 105—*Defamation—Exemption.*

The person alleging privilege or exemption to a charge of defamation must prove that he made a statement in good faith to a person who has authority over the person complained against. (*Seshagiri Aiyar, J.*) *In re* KAKUMARA ANJANEYALU. 35 I.C. 813 = 17 Cr. L.J. 381.

EVIDENCE ACT (I of 1872), S. 103.

———S. 103—Onus—*Discharge.*

The question of discharge of an *onus* is not a question of law and where the whole evidence is let in, the question of onus is of little importance. (*Ayling and Tyabji*, JJ.) GADIAN *v.* VEERAPPA. 26 I.C. 889 = 28 M.L.J. 92.

———S 103—*Bailment—Loss—Negligence.*

In a suit against a bailee for loss of goods, though the bailee must call all the witnesses who were on the spot in proof of his having acted without negligence, that does not discharge the plaintiff from establishing from proving negligence on the part of the bailee or his servants. (*Sir Walter Phillimore.*) DWARAKA NATH *v.* THE RIVER S.N. CO., LTD. 20 Bom. L.R 735 = 27 C.L.J. 615 = 8 L.W. 4 = 23 M.L.T. 376 = 46 I.C. 319 = (1918) M.W.N. 435 (P.C.)

———S. 106—*Acknowledgment—Proof of—Onus of mortgagee in possession of deed.*

The plaintiff suing for redemption having pleaded that the mortgage was within time, it was not necessary to plead that the acknowledgments saved the operation of limitation. The mortgagees being in possession of the mortgage-deed the date of the mortgage was within their particular knowledge and not that of the plaintiff and in the circumstances of the case the acknowledgments must be presumed to have been made before the expiration of the sixty years from the date of the mortgage. (*Richards*, C.J. *and Banerji*, J.) KAMALA DEVI *v.* GURDAYAL. 51 I.C. 283 = 17 A.L.J. 230.

———S. 103—*House trespass by night—Intention to annoy.*

Where a person accused of lurking house trespass by night, pleads in defence that he had a specific intention in entering the house, *i.e.*, to carry on a love intrigue in secret and not to intimidate, insult or annoy, the onus of proof is on him. (*Piggott and Walsh*, JJ.) CHOTTE LAL *v.* EMPEROR. 40 All. 221 = 20 Cr. L.J. 119 = 49 I.C. 103 = 16 A.L.J. 153.

———S. 106—*Scope of—Burden of.*

A party who has special means of knowledge of a fact is under the obligation of proving that fact. (*Piggott and Lindsay*, JJ.) KHIAL RAM *v.* TAIKRAM. 38 All. 540 = 16 I.C. 451 = 14 A.L.J. 834.

———S. 106—*Honest intention—Lurking house trespass.*

Where an accused is *prima facie* guilty of lurking house trespass the onus of proving an honest intention is on him as it is within his knowledge. (*Knox*, J.) MULLA *v.* EMPEROR. 37 All. 395 = 16 Cr. L.J. 433 = 29 I.C. 67 = 13 A.L.J. 625

———S. 106—*Date of birth—Father's knowledge.*

Per *Chamier*, J.—Death and birth of a child is not specially within the father's knowledge. It is within any one's who was present at the occurrence. (*Karamat Hussain and Chamier*, JJ.) DALGANJAN SINGH *v.* PARSIDH NARAIN SINGH. 11 I.C. 202.

EVIDENCE ACT (I of 1872), S. 106.

———S. 106—*Executor—Retention of assets—Onus of proof that debts were true and alive.*

In a suit for accounts against the executor, the point in fact raises the question of the extent of the assets received by him when he became executor; the burden of proof on this point will entirely lie on him. (*Mookerjee and Chotzner*, JJ.) PULINBIHARI DEY *v.* SATYACHARAN DEY. 36 C.L.J. 367 = 1923 C. 79.

———S. 106—*Majority—Age of puberty.*

The fact that a Mohamedan girl below the age of 15 years has attained puberty is a fact within her special knowledge and the burden of proving the fact lies on her. (*Newbould and Duval*, JJ.) HELALONNESSA *v.* RAJAB ALI. 53 I.C. 94.

———S. 106—*Criminal trial—Defence.*

The presumption under S. 106 is very weak as compared to the presumption of innocence when the trial is one for murder. If an accused after a case has been proved against him withholds evidence in disproof, inferences unfavourable to him may be drawn. (*Teunon and Shamsul Huda*, JJ.) ASHREF ALI *v.* EMPEROR. 19 Cr. L.J. 81 = 43 I.C. 251 = 21 C.W.N. 1152.

———S. 106—*Carrier—Loss of goods—Negligence.*

The onus of proving absence of the negligence is on the common carrier for the loss or the damage to goods in *prima facie* proof of negligence. (*Mookerjee and Richardson*, JJ.) AKHIL CHANDRA SHAHA *v.* INDIA GENERAL NAVIGATION AND RAILWAY COMPANY, LD. 29 I.C. 260 = 21 C.L.J. 565.

———S. 106—*Landlord and tenant—Defendant (tenant) claiming land as part of his jote.*

Where in a suit for possession by the *Zamindar* the defendant (tenant) admitted the plaintiff's title but claimed the land as part of the *jote*, held the onus lay on the defendant to prove it. (*Stephen and D. Chatterjee.*) SANATAN GOSWAMI GANESH *v.* CHANGA. 18 I.C. 393.

———S. 106—*Landlord and tenant—Burden of proof of patwari's authority.*

It is on the landlord first to prove what powers his patwari had as the matter is peculiarly within his knowledge. (*Mookerjee and Teunon*, JJ.) SUDAMAN *v.* BEHARI MAHTON. 10 I.C. 456 = 15 C.W.N. 953.

———S. 106—*Date of birth—Suit to set aside mortgage by mother—Age of plaintiff.*

In a suit to set aside a mortgage effected by the plaintiff's mother on his behalf during his minority, the onus o proof that he was under 21 when he instituted the suit is on the plaintiff. (*Broadway*, J.) RAM KISHEN *v.* ATMA RAM. 42 I.C. 76 = 148 P.W.R. 1917.

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———S. 106—*Limitation — Exemption — Plaintiff to prove affirmatively, that his age was under 21 for purposes of limitation.*

For purposes of limitation, it is for the plaintiff to establish affirmatively and clearly that he was under 21 years when he filed the suit and proof of a possibility that he might be under that age is not enough. (*Kensington*, C.J. *and Rattigan*, J.) CHARANJIT SINGH *v.* BISHEN SINGH. 167 P.L.R. 1914 = 23 I.C. 462 = 78 P.W.R. 1914.

———S. 103—*Criminal trial—Absence of explanation from accused—Presumption.*

An accused person is always entitled to hold his tongue; but when the only alternative theory to his guilt is a remote possibility, which, if correct, he is in a position to explain, the absence of any explanation must be considered in determining whether the possibility should be disregarded or taken into account. (*Ayling and Phillips*, JJ.) SMITH *v.* EMPEROR. 43 I.C. 605 = 19 Cr.L.J. 189.

———S. 103 — *Vendor and purchaser—Colourable sale.*

Where an ostensible vendee has paid out of his pocket sums towards the amounts due by his vendor and which the vendee has undertaken to pay, the burden of proving that the transaction was intended to be a colourable one lies very heavily on the vendor. 29 I.C. 970, Foll. (*Ayling and Sadasiva Aiyar*, JJ.) VENKATASUBBA SASTRIAL *v.* SUBRAMANIA AIYAR. (1917) M.W.N. 674 = 42 I.C. 827 = 6 L.W. 708.

———S. 103—*Consideration—Contest by stranger.*

When a suit on a mortgage is contested by a stranger, who denies that the bond was executed and also asserts that the mortgage was devoid of consideration, the onus is on the plaintiff to prove his case. 6 C.L.J. 659, Foll; 25 I.C. 426, Ref. to; 35 C. 420; 27 A. 271 P.C.; 26 I.C. 35, Dist. (*Spencer and Kumaraswami Sastri*, JJ.) KUMARAPPAN CHETTIAR *v.* NARAYANAN CHETTIAR. 35 I.C. 455.

———S. 106—*Zamindar—Karnam.*

The Zamindar only appoints Karnams under S. 9 of Regulation XXIX of 1882. The Zamindar is not bound to see that the Karnam keeps a register of the service names for their localization or to keep one himself; in the absence of which, the presumption of special knowledge within the meaning of S. 106 on the part of the Zamindar or his predecessor cannot be raised. (*Sankaran Nair and Oldfield*, JJ.) SECRETARY OF STATE *v.* RAJAH OF PITTAPUR. 24 M.L.J. 530 = 19 I.C. 667 = (1913) M.W.N. 478

———S. 106—*Assets—Proof of.*

Once it is admitted or proved that a person is in possession of the assets of the deceased it is on him to satisfy the Court as to the extent of the assets received by him and to account for them. (*White*, C.J. *and Abdur Rahim*, J.) RANCHODE DAS *v.* KRISHNA DAS. 21 M.L.J. 1096 = 10 M.L.T. 272 = 12 I.C. 253 = (1911) 2 M.W.N. 271.

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———S. 106—*Suit for profits by co-sharer—Amount of profits—Onus.*

In a suit for profits by co-sharers, the burden of proving amount of arrears lies on the lambardar. (*Prideaux*, A.J.C.) SARJE RAO *v.* HARAK CHAND. 6 N.L.J. 234 = 1923 Nag. 287.

———S. 103 — *Landlord and tenant — Repudiation of authority of agent by landlord.*

Where a landlord repudiates the authority of a gumastha to give a receipt which recognises the sub-division of a tenure or holding, the *onus* of proof is on the landlord as the relations between himself and his servant are a matter primarily within his knowledge. (*Miller*, C.J. *and Mullick*, J.) SRIKISHUN PRASAD *v.* MUSAMMAT JEOHASI KUER. 1918 P. 210 = 45 I.C. 294 = 4 P.L.W. 316.

———S. 103—*Scope of—Requisites for the application of the section.*

For the application of S. 106 (as regards burden of proving matters within the special knowledge of a party) there must be something peculiar in the knowledge and the rule of burden of proof makes no distinction between individuals and corporations. 5 W.R. 148, Dist. (*Mullick*, J.) LACHMI NARAIN MARWARI *v.* CHAIRMAN OF THE RANCHI MUNICIPALITY. 37 I.C. 269 = 1 P.L.J. 168.

———S. 106—*T. P. Act — Extension to Burma—Unregistered sale-deed.*

Where vendee is in possession as owner, the burden of proving that the sale took place after the extension of the Act and that it was invalid for want of registration lies on the person disputing the right. (*Ormond*, J.) MAUNG PO MAUNG *v.* MAUNG RAING. 7 Bur. L.T. 86 = 24 I.C. 57 = 7 L.B.R. 262.

———S. 106—*Offence—Import of cocaine.*

The burden of proving facts specially within the knowledge of any person (*i e*), that a parcel of cocaine was believed to be one of toys, is on that person. (*Parlett*, J.) EMPEROR *v.* STELLA. 20 I.C. 600 = 14 Cr. L.J. 440 = 6 Bur. L.T. 129.

———S. 103, (a)—*Intention— Offence under S. 373, I.P.C.*—Onus *on accused.*

When the circumstances go to show that the intention of the lady was to employ the girl as a prostitute as soon as she was physically ready for the purpose, the burden lay upon her of proving that she intended to wait until the age of majority had been reached. (*Walmsley and Suhrawardy*, JJ.) KHETRAMANI *v.* EMPEROR. 35 C.L.J. 451 = 24 Cr. L.J. 104 = 1923 Cal. 539.

———Ss. 107 and 108—*Construction—No presumption of date of death.*

Ss. 107 and 108 only relate to the date when the suit was brought, that is to say, as to whether a man is alive or dead as the case may be

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at the date of the suit, and not at some particular period anterior to the suit. The decisions also establish that there is no presumption as to whether a particular person was dead at any time within the period in the question. (*Marten and Fawcett, JJ.*) RAMACHANDRA SADASIV *v.* KESHO DHONDU. 1923 Bom. 208

———Ss. 107 and 108—*Presumption in law and in fact.*

There is no presumption that a man was alive until the expiration of seven years from the date he was last heard of. Ss. 107 and 108 deal with the procedure to be followed when a question is raised before a Court as to whether a person is alive or dead. The sections do not lay down any presumption as to how long a man was alive or at what time he died. 37 C. 103; 34 A. 36, Ref. Whether a Court would or would not make a presumption that a person last heard of within seven years is alive depends upon the circumstances of each case assuming that a Court may make such presumption. (*Sundara Aiyar and Sadasiva Aiyar, JJ.*) VEERAMMA *v.* CHINNA REDDY.
37 Mad. 440=16 I.C. 43=24 M.L.J. 443.

———S. 107—*Presumption as to time—Not possible.*

S. 107 does not apply when the question is not merely one of death but of death on a particular day, no presumption as to the time of death can be drawn. The party concerned to make out death on a particular date must prove it. 14 M.L.J. 464; 40 B. 239; 46 R.R. 789, Ref. (*Drake-Brockman, J.C.*) PARSOO *v.* MUNNALAL.
39 I.C. 21=13 N.L.R. 16.

———S. 108—*Date of death—Presumption as to.*

What the Court may presume under S. 108 of the Evidence Act is confined to the factum of death. It cannot presume that because a person has not been heard of, he died at any particular moment or in any particular way, or from any particular cause. 34 A. 36, Ref. (*Walsh and Ryves, JJ.*) REKHAB DAS *v.* MT. SHEOBAI. 46 A. 456=21 A.L.J. 393=
L.R. 4 A. 532=1923 All. 495.

———S. 108—*Presumption as to death—Date of death.*

Under S. 108 there is a presumption that a person who is not heard of for seven years is dead, but no presumption arises under that section as to the date of such person's death. (*Lindsay and Kanhaiya Lal, JJ.*) MAIRAJ *v.* ABDUL. 63 I.C. 286=19 A.L.J. 713.

———Ss. 108 and 2—*Muhammadan Law—Time of death—Presumption of death.*

S. 2 of the Evidence Act has abrogated all rules of evidence laid down by the Muhammadan Law and therefore S. 108 will govern the case of a Muhammadan missing for more than seven years. 7 A. 297, Foll. A rule of presumption as to death is a rule of evidence and not of

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succession. A person missing for more than seven years is presumed to be dead but there is no presumption as to the time of his death. (*Griffin and Chamier, JJ.*) YUSUF ALI BEG *v.* AYUB BEG. 18 I.C. 920=11 A.L.J. 855.

———S. 108—*Date of death—Missing person—Presumption, nature of.*

S. 108 of the Evidence Act lays down that a person missing for seven years is dead; there is no presumption therein as to the date of death. (*Richards, C.J., Banerji and Tudball, JJ.*) MAHAMMAD SHERIF *v.* BANDE ALI.
34 All. 36=11 I C 474=8 A.L J, 1052.

———S. 108—*No presumption as to date of death.*

S. 108 of the Evidence Act has no reference whatever to the date of death of a person who has not been heard of for 7 years. The date of death must be proved by the party who is interested in establishing that a person died on or before a particular date. (*Shah, A.J.C. and Crump, J.*) GOPAL BHIMJI AVTE *v.* MANAJI GANUJI. 47 Bom. 451=25 Bom. L.R, 134=
1923 Bom. 163.

———S. 108—*Date of death—Person not heard of for seven years—Presumption of death.*

A man is presumed to be alive until he is dead. A person asserting that a particular man is dead has to prove it. If he could show that a man has not been heard of for seven years then the Court will presume his death. But the earliest date on which the death can be presumed can only be the date when the suit was filed. It cannot have a further retrospective effect. (*Macleod, C.J. and Heaton, J.*) JESHANKAR REVASHANKER *v.* BAI DIVALI.
57 I.C. 525=22 Bom. L.R. 771.

———S. 108—*Onus of affirmative proof—Not discharged by presumption under.*

The onus that lies on a reversioner to show affirmatively that his action is within twelve years of the actual death of the widow, is in no way removed by any presumption under S. 108. (*Scott, C.J. and Shah, J.*). JAYAWANT JIWAN RAO *v.* RAMCHANDRA NARAYAN JOSHI. 40 Bom. 239=33 I.C. 484=
18 Bom. L.R. 14.

———S. 108—*Evidence of relatives—Value of.*

Where the near relatives deposed that they had not heard of the person in question, *Held*, the presumption under S. 108 of Indian Evidence Act should be drawn. (*Broadway and Campbell, JJ.*) KHAN CHAND *v.* MT. JAWANDI. 1923 Lah. 174.

———S. 108—*Death of a person—Presumption as to.*

There is a presumption in favour of continuance of life and it is for the person asserting death to prove it. The death of a person cannot be presumed to have taken place more than 7 years before the date of suit calling the

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question into controversy. 22 Bom. L.R. 771 ; 1 Lah. 554, foll. (*Wilberforce*, J.) MUHAMMAD CHIRAGH *v.* ABDUL HUQ. **64 I C. 468.**

——S. 108.—*Continuance of life — Presumption of.*

The presumption is in favour of continuance of life and the onus of proving the death of a person lies on the party who asserts it. (*Scott-Smith and Leslie Jones*, JJ.) TANI *v.* RIKHI RAM. **114 P.L R 1920=1 Lah 554= 56 I C 742=2 Lah L.J. 481.**

——S. 108—*Date of death—Presumption.*

The presumption under S. 108 is a presumption of the fact of death and not of the date of death. If a person seeks to establish the precise date of death he must do so by actual evidence. (*Shadi Lal*, J.) BASHARAT *v.* NAJIB KHAN. **38 P R. 1918=68 P.W.R. 1918= 45 I.C. 70=123 P.L R. 1918.**

——S. 108—*Presumption as to death—Hindu Law rule of 12 years abrogated.*

In a suit by plaintiffs for the recovery of the properties of one T, as the persons entitled to them as his heirs or nearest reversioners, they alleged that their father K, had not been heard of for nearly 10 years before suit and that they were thus the nearest reversioners. *Held* that the rule of Hindu Law that at least 12 years should elapse before a man unheard of should be treated as dead was inapplicable to the case but that the 7 years' rule under S. 108 of the Evidence Act applied and that as he had not been heard of for 10 years before suit he must be presumed to have died on the date of suit. The rule of Hindu Law referred to is only a rule of evidence and is not applicable after the passing of the Evidence Act. (*Krishnan and Venkatasubba Rao*, JJ.) PONDURI ADEYYA *v.* JALADI BUREYYA. **32 M.L.T. (H C) 6= (1923) M.W.N. 49=43 M.L.J. 725= 16 L.W. 976=1923 Mad. 182.**

——S. 108—*Presumption as to date of death.*

When a person is not heard of for seven years there is a presumption of his death but there is no presumption as to the date of his death. But where the date may be fixed either during or after the seven years indifferently, there is a presumption in favour of death after the lapse of seven years. (*Oldfield and Ramesam*, JJ.) BAL NAIKEN *v.* ACHAMA. **14 L W. 315=41 M.L.J. 295= 69 I C. 835=(1921) M.W.N. 610.**

——S. 108—*Presumption of death—Onus—Presumption that no heirs were left behind.*

It is for the party who wants the Court to presume the death of a person at any particular time to prove it affirmatively by evidence. There is no presumption arising from the death of the individual that he left no heir behind him. (*Seshagiri Aiyar and Bakewell*, JJ.) PONNALOORI ELLAMAN DAYYA *v.* CHILAKAPATHI LAKSHMANAYYA. **6 L.W. 633=38 M.L.J. 295= 52 I.C. 241=(1917) M.W.N. 722.**

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——S. 108—*Date of death—Presumption—Nature of.*

No presumption can be drawn under S. 108 as to the date of death of a person. (*Lindsay*, J.C.) FAQIR BAKSH *v.* DAN BAHADUR SINGH. **21 O.C. 148=46 I.C. 808= 5 O L J. 475.**

——S. 108—*No presumption as to time of death.*

Though a person who has not been heard of for 7 years is presumed to be dead, there is no presumption as to the time of death and if any one seeks to establish the precise period at which such person died, he must do so by actual evidence. (*Das and Bucknill*, JJ.) MAHANT RAMRUP *v.* LAL CHAND MARWARI. **1 P. 475=3 P.L.T. 352=1922 P. 243.**

——S. 109—*Landlord and tenant—Land once held under lease—Presumption of continuance.*

There is a strong presumption that land once shown to be held under a written instrument of lease continues to be held under it, as long as it is occupied by the same tenant and unless the contrary is shown by evidence of a cogent nature, the inference should be in favour of the tenant. (*Farran*, J.) PARAMANANDA JIVANDAS *v.* ARDERHIR FRAMJI. **27 I.C. 512=16 Bom. L.R. 718 (Note).**

——S. 109—*Mortgage—Proof of.*

Where the title of the plaintiff is admitted and the defendants are shown to have come into possession as mortgagees under the plaintiff, Courts will not demand such strict proof of the mortgage sued on, as where the title is denied and possession is not shown to have been under the owners. (*Spencer and Seshagiri Aiyar*, JJ.) NANU NAIR *v.* KANTAN ASHTA MOORTHI. **29 M.L.J 772= 29 I.C. 386=2 L.W. 509.**

——S. 109—*Lessor and lessee—Presumption—Burden of proving relationship.*

When the existence of a relationship of lessor and lessee is proved, its continuance is presumed under S. 109 and the burden of proving the contrary lies upon the person who denies it. (*Sadasiva Aiyar and Bannay*, JJ.) SUBBANNA *v.* VENKATARAYUDU. **27 I C 804=18 M L J. 361.**

——S. 109—*T P. Act, S. 116—Landlord and tenant—Tenancy for a year—Holding over—Presumption.*

Where a tenant continues to work on the holding after expiry of the lease for one year, he must be presumed to have renewed the lease for another year under S 109 of the Evidence Act and S. 116 of the Transfer of Property Act. (*Fox*, C.J. *and Ormond*, J.) VELLATAPPA PILLAI *v.* MAUNG PO HMYIN. **39 I.C. 125.**

——S. 109—*Tenancy.*

In a suit for possession, where the defendant admits tenancy but resists the suit on the ground of subsequent sale in his favour, the

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burden of proving the sale, is shifted on to him to rebut the presumption that he is still a tenant. (*Saunders*, A.J.C.) MI KYEN ME *v.* MI EIN CHON. **38 I.C. 600 = 8 Bur. L.T. 292.**

———S. 110—*Possession—Cantonment area.*

Possession of property in cantonment area is not *prima facie* evidence of title in fee simple. (*Lord Robinson.*) KAIKHUSRU ADERJI *v.* SECRETARY OF STATE FOR INDIA. **36 Bom. 1 = 12 I.C. 117 = 38 I.A. 201 = 15 C.W.N. 909 = 10 M.L.T. 97 = (1911) 2 M.W.N. 28 = 14 C.L.J. 268 = 13 Bom.L.R. 788 = 8 A.L.J. 1219 = 21 M.L.J. 1100 (P.C.).**

———S. 110—*Jungle land — Possession—Title.*

Possession of jungle lands must be presumed to have been all long with the party who has title to them until dispossession within the statutory period. (*Mr, Ameer Ali.*) JAGADINDRA NATH *v.* HEMANTA KUMARI DEBI. **16 C.W.N. 887 = 11 I.C. 542 = (1911) 2 M.W.N. 101 = 10 M.L.T. 157 = 13 Bom.L.R. 806 = 14 C.L.J. 319 = 8 A.L.J. 1176 (P.C.).**

———S. 110—*Converse not true.*

The presumption that plaintiff having the title also has possession, can properly be made, in the case of jungle or waste land where there is no proof or very little proof of acts of ownership having been exercised on either side, or where the evidence as to such act or such ownership is very nearly equal. Though S. 110 of the Evidence Act recognises a presumption that the person in possession also has a good title there is no corresponding section saying that the person with the title should be presumed to be in possession. This presumption is one that can only come under S. 114 of the Evidence Act which allows the Court to presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events &c. (*Marten and Fawcett*, JJ.) KASHI NATH *v.* GANESH. **1923 Bom. 361.**

———S. 110—*Evidence equally balanced—Possession goes with title.*

Where there is strong evidence of possession on the part of A opposed by evidence apparently strong also on the part of his opponent B, in estimating the weight due to the evidence on both sides, the presumption may well be regarded that possession went with title. (*Mookerjee and Cholzner*, JJ.) PROMODE KUMAR ROY *v.* MADAN MOHAN SAHA. **36 C.L.J 396. 27 C.W.N. 305 = 1923 Cal. 228.**

———S. 110—*Suit by benamidar.*

Where in a suit for possession of land in possession of the defendant he claims to be the owner and the plaintiff his benamidar, the plaintiff must prove that defendant is not the owner. (*Chatterjee and Newbould*, JJ.) LAL MAHMUD *v.* AYEJUDDI SHEIKH. **37 I.C. 972.**

EVIDENCE ACT (I of 1872), S. 110.

———-S. 110—*Presumption—Person in possession.*

In a suit for possession when the boundaries are in dispute if the defendant is in actual possession of the land sued for, the burden of proof will be on plaintiff to establish his title. (*Richardson and Walmsley*, JJ.) MANINDRA CHANDRA NANDI *v.* SARABINDU RAI. **27 C.L.J 599 = 45 I.C. 408 = 28 C.W.N. 593.**

———S. 110—*Presumption — Evidence of possession unreliable.*

Where evidence of possession is equally strong on both sides and apparently equally balanced, preference should be given to the evidence on the side of the party with whom title is found. But where the evidence is equally unworthy of reliance on both sides, no presumption can be made. 20 W R. 25, Foll. (*Holmwood and Mullick*, JJ.) LAL SINGH *v.* MIR LATIFF HUSSAIN. **28 I.C. 477 = 21 C.L.J. 480.**

———S. 110—*Suit by Benamidar.*

In a suit for possession by Benamidar plaintiff, he must prove that he is not a Benamidar. (*Mullick*, J.) JAGAT JARA DEBYA *v.* NARENDRA KANTA BANERJEE. **24 I.C. 801.**

———S. 110—*Possession—Waste land.*

Where the land in dispute is waste and covers a very small area, the possession may be presumed to follow the title. (*Mookerjee and Beachcroft*, JJ.) BHAGWAN CHANDRA DEY *v.* DAYAL DARI DAS. **16 I.C. 623.**

———S. 110—*Forest land — Possession—Determining title.*

In the absence of any proof of exercise of ownership it can not be said that the plaintiffs have established their right to lands which are shown to have been claimed by and in possession of the defendants. (*Wallis*, C.J. *and Tyabji*, J.) MANJERI KARNAMUL PAD *v.* KOZHIKOTE KIZHAKKE. **29 I.C. 129.**

———S. 110—*Possession — Presumption of title.*

Lawful possession however short is presumptive evidence of title as owner and of the title to possession. (*Miller and Sadasiva Aiyar*, JJ.) GANAPATHI MUDALI *v.* VENKATALAKSHMINARASAYYA. **23 I.C. 109 = (1914) M.W.N. 728.**

———S. 110—*Custom prohibiting sale.*

Burden of proof lies on the person alleging the custom that vendor has no right to transfer the land. (*Macnair*, A.J.C.) SAHEBRAO *v.* JAIWANT RAO. **58 I.C. 192.**

———S. 110—*Person in possession—Title—Presumption.*

Where nothing else is known, the person in possession is presumed to be the owner. (*Stanyon*, A.J.C.) RAGOBA *v.* PALHOBA. **45 I.C. 217.**

EVIDENCE ACT (I of 1872), S. 110.

——S. 110—*Possession, presumption of.*

When in a suit relating to land, the plaintiff's title and possession within the limitation is challenged, and he establishes his title by a purchase, he is presumed to be in possession up to the time of suit. (*Lindsay*, J.C.) JANKI SARAN *v.* WIDOW OF MAHOMED SADIG.
7 O.L.J. 255=36 I.C. 720=2 U.P.L.R. (J.C.) 106.

——S. 110—*Possession—Following title—Presumption—Trespasser.*

Proof of possession varies with the nature of the property in respect of which possession is questioned. If mere possession in fact is undetermined, possession in law follows the right to possess, in other words possession follows title. No presumption of possession can be raised in favour of a trespasser. (*Lindsay*, J.C.) BRIJRAJ SINGH *v.* GANGA BAKSH SINGH. 2 O.L.J. 316=28 I.C. 858=18 O.C. 43.

——S. 110 — *Presumption — Possession follows title.*

The ordinary presumption is that possession goes with title. That presumption of course does not avail if there is clear evidence to the contrary. Where there is no evidence of possession on either side or where the evidence is unsatisfactory on both sides the presumption will prevail. (*Atkinson and Jwala Prasad*, JJ.) BRIKHAO BHUNJAN NARAIN TEWARI *v.* UPENDRANATH ROY. 4 P.L.J. 463=51 I.C. 801=1919 Pat. 298.

——S. 110—*Burden of proof—Onus.*

Juridical possession is enough to shift the onus of proof on the other side. The section can be relied upon in a suit for ejectment, though the person dispossessed did not bring a suit under S. 9, Specific Relief Act within the time limited by law. (*Mullick and Atkinson*, JJ.) HARADHAN MANDAL MODAK *v.* ISWAR DAS MARWARI. 2 P.L.J. 61=38 I.C. 197=3 P.L.W. 283.

——S. 110—*Person in possession—Ouster.*

Person already in possession of property can be ousted only by a person who can prove a better title in him. (*Mullick and Jwala Prasad*, JJ.) KHAIRUDDIN *v.* SAHDEO NARAIN SINGH. 38 I.C. 483=1 P.L.W. 319.

——S. 110 — *Ownership—Person in possession.*

The burden of proving that a person in possession is not the owner, lies in the person asserting it. (*Twomey*, J.) MA KYIN *v.* RAM PERSHAD. 21 I.C. 333=6 Bur L.T. 185.

——S. 110—*Onus on the party out of possession—Shifting of onus.*

The defendant was sued in ejectment from a house, which had been in his possession for five years without interruption on the ground that he first entered the premises temporarily with the permission of the plaintiff's father; the defendant in reply alleged a sale. *Held*, that the plaintiff must prove permissive occupation and the burden of proof should not be shifted unless the plaintiff had made out a *prima facie* case. (*Twomey*, J.) MI MYIT *v.* U. CHAING. 11 I.C. 777=4 Bur L.T. 159.

EVIDENCE ACT (I of 1872), S. 111.

——S. 110—*Onus of proof.*

A Probate Court granted Probate to A deciding that she was the widow of the deceased. B brought a suit for possession of the property, alleging that she was the adopted daughter of the deceased and that A was nobody. *Held*, that B must prove that A was not a widow of the deceased under S. 110. (*Mc Coll*, J.C.) MI MGWE ZAH *v.* MI SHWE TAIK. 10 I.C. 987=(1910) 1 U B.R. 61;

——S. 110—*Mortgage by conditional sale or sale with covenant to repurchase.*

The burden of proof is on the plaintiff to prove a covenant to repurchase or that the deed is a mortgage by conditional sale. (*Twomey*, J.) MAUNG PYA *v.* MAUNG OZA.
9 I.C. 770=4 Bur. L.T. 40.

——S. 110—*Waste land—Possession, when evidence of title.*

In case of waste lands, the Court would seize upon the slightest evidence of occupation for proof of title, but the occupation or the acts of user must be such as to indicate the intention to hold for oneself, for without such intent there is no possession. (*Pratt*, J.C., *and Crouch*, A.J.C.) SULTAN MUHAMMAD *v.* SECRETARY OF STATE. 29 I.C. 51=3 S.L.R. 321.

——S. 110—*Ownership—Presumption.*

Under the section, possession short of the statutory period which may give a title by prescription, is sufficient to raise a presumption of ownership and shift the burden of proof of title on the other party; when neither side can show title, the possession which attracts the presumption of ownership must be a possession founded on a *prima facie* right. Even if mere wrongful possession is taken to be sufficient to shift the burden of proof, circumstances may show that such wrongful possession was merely that of a licensee and not of an owner. (*Pratt*, J.C. *and Fawcett*, A.J.C.) FAKIR SHAH BALDIN *v.* SECRETARY OF STATE.
19 I.C. 565=6 S.L.R. 210.

——S. 111.

See also—(1) CONTRACT ACT, S. 16.
(2) PARDANASHIN LADY.

——S. 111—*Pardanashin lady—Gift by lady left on mercy of donee—Burden of proof of validity of gift.*

Where a Muslim lady gifted away all her property leaving herself for the future at the mercy of the donee, the burden is on the latter to show that she understood the nature of the transaction. (*Richards*, C.J. *and Banerji*, J.) MAQBUL HUSAIN *v.* GHAFURUNISSA.
36 All. 233=25 I.C. 34=12 A.L.J. 452.

EVIDENCE ACT (I of 1872), S. 111.

———S 111—Pardanashin *lady—Burden of proof—Plea of undue influence to set aside a deed.*

Where the plaintiff is a *Pardanashin* Lady seeking to set aside a document as being wrought from her by undue influence, the burden of proving that undue influence was not exercised is on the defendants. (*Scott-Smith and Broadway*, JJ.) MUHAMMAD IBRAHIM *v.* UMALULLAH JAN.
72 P.W.R. 1917=39 I.C. 798=90 P.R. 1917.

———S 111—*Contract Act, S.* 19—*Registration—Effect of.*

Where a person signs a deed and it is registered, the burden of proving existence of fraud or misrepresentation lies on him. (*Mullick and Jwala Prasad*, JJ.) MAHABIR PRASAD *v.* BIBI NAGIN. **39 I.C. 500=1 P.L.W. 466.**

———S. 111—*Position of active confidence.*

Where the affairs of an inexperienced young man who has just come into possession of the property are being managed by an experienced Muktear, the latter stands in a position of active confidence. (*Batten*, A.J.C.) SURAT SINGH *v.* BALDEO. **17 I.C. 363=8 N.L.R. 150.**

———S. 111—*Contract Act, S.* 16 - *Undue influence.*

Where a transaction entered into under undue influence appears to be unconscionable, the person who is in a position to dominate the will of another, must prove the want of undue influence. (*Kanhaiya Lal and Kendall*, A.J.Cs.) MAHABIR PRASAD SINGH *v.* LALJAGDISH BAHADUR SINGH. **38 I.C. 471=3 O.L.J. 762.**

———S. 112—*Presumption — Parentage—Marriage.*

Where plaintiff claims to recover property as the son of B by his lawfully married wife D and deft, denies that D ever gave birth to a child, and sets up that plff. is the son of one S, the onus of proof is on plaintiff to show that D gave birth to him or to any child before invoking the presumption under S. 112. 25 A. 403, Ref. (*Mears*, C.J. *and Banerji*, J.) RAO NARSINGH RAO *v.* BETI MAHA LAKSHMI BAI.
44 A. 470=20 A.L.J. 274=L.R. 3 A. 235=1923 All. 214.

———S. 112—*Presumption as to legitimacy.*

Where two persons live together as husband and wife, any one alleging that a child born to such persons is illegitimate must prove it. But the onus is shifted by the admission that the woman was the wife of another person and was turned out by him on account of adultery. (*Richards*, C J. *and Banerji*, J.) PANCHAM *v.* HAZARI. **19 I C. 634.**

———S 112—*Legitimacy—Presumption.*

Presumption of legitimacy of a person born in lawful wedlock is conclusive unless rebutted by cogent proof of non-access. 29 I.A. 17=10 I.C. 389, Ref. (*Shadi Lal and Broadway*, JJ.) BHAGAWANT SINGH *v.* NIRANJAN SINGH. **39 I.C. 29=56 P.W.R. 1917.**

EVIDENCE ACT (I of 1872), S. 112.

———S. 112—*Legitimacy.*

When a boy was born about seven months after his father and mother were married and it was not disputed that they had opportunity of access at a time when he could have been begotten by them, *Held*, that the boy was the legitimate son of his parents. (*Rattigan and Scott-Smith*, JJ.) MAHBUB ALI *v.* TAJ KHAN.
26 I.C. 969=255 P.W.R. 1915.

———S. 112—*Illegitimacy, if can be proved from litigation for custody of wife—Conclusive proof of non-access necessary to establish illegitimacy.*

Illegitimacy could not be positively inferred from a mere litigation for custody of wife when the child is born shortly thereafter ; in order to establish the illegitimacy of a person born during the subsistence of a valid marriage between his mother and any man, it should be conclusively shown that the parties to the marriage had no access to each other at any time when he could have been born. (*Rattigan and Beadon*, JJ.) DALIPA *v.* RALA.
49 P.L.R. 1914=22 I.C. 409=137 P.W.R. 1914.

———S. 112—*Presumption of legitimacy.*

It cannot be assumed that in India it is impossible for a man of 70 years of age to beget children. (*Rattigan and Beadon*, JJ.) UTTAM DAS *v.* OHANAN DAS.
51 P.R. 1913=283 P.L.R. 1913=20 I.C. 462=200 P.W.R. 1913.

———S. 112—*Proof of legitimacy—Period of gestation.*

In the absence of inherent impossibility of gestation of 330—333 days, a child born within that period from the last access of a husband is legitimate. So the mere circumstance of a child's birth within that period from the last access of the husband is insufficient to charge the wife of the offence of adultery if there is no other proof to support it. (*Reid*, C.J., *Rattigan and Chevis*, JJ.) **77 P.R. 1911=12 I.C. 946=260 P.W.R. 1911.**

———S. 112—*Legitimacy—Presumption—Prostitute—Coquette girl.*

To rebut the presumption of a child's legitimacy, there must be strong, distinct, satisfactory and conclusive evidence that the husband before or after marriage had not access to his wife. A coquette or a first is not necessarily a prostitute. (*Wallis*, C.J., *Ayling and Sadasiva Aiyar*, JJ.) GUDA WILLIAM *v.* GUDA KARUNAMMA. **29 M L J. 269=29 I.C. 178=17 M.L.T. 357 (F.B.).**

———S. 112—*Date of conception.*

S. 112 refers only to a presumption of legitimacy and has no reference to date of conception. If the son wants to rely on the defence that he was conceived before the date of an alienation by the father he must prove it

EVIDENCE ACT (I of 1872), S. 112.

by clear and satisfactory evidence. (*Wallis, Offg. C.J. and Hannay, J.*) DATLA VENKATASUBBA RAJU GARU *v.* GATTEM VENKATARAYUDU. 27 M.L.J. 560=26 I.C. 61=16 M.L.T. 508.

——S. 112—*Birth 11 months after cessation of marital intercourse.*

If a child is born 11 months after the marital intercourse between the parents had ceased, it is illegitimate. (*White, C.J., Ayling and Oldfield, JJ.*) JOHN HOWE *v.* CHARLOTTE HOWE. 38 Mad. 466=(1913) M.W.N. 983=25 M.L.J. 694=21 I.C. 645=14 M.L.T. 447.

——S. 112—*Proof of non-access—Father disowning son—Onus on father.*

In a suit for partition, B disowned his son A, alleging that A's mother was living apart from him and that he had no access to her. It was proved that there were counter-suits for maintenance and restitution of conjugal rights and that there was a subsequent reconciliation and acknowledgment of legitimacy. *Held*, that the onus of proving non-access lay on the father B. (*Benson and Sundara Aiyar, JJ.*) VENKAYYA *v.* CHIGRUPATI PEDDA NAGANNA. 10 I.C. 389=(1911) 1 M.W.N. 312.

——S. 112—*Legitimacy—Presumption.*

Before a presumption of legitimacy can arise under S. 112 of the Evidence Act, all the facts specified in the section must be proved. (*Ballifax, A.J.C.*) MAROTI *v.* BHAGI. 68 I.C. 455.

——S. 112—*Mahomedan Law—Legitimacy—Presumption.*

A child begotten by *zina* cannot be made legitimate by the subsequent marriage of its parents before its birth, and S. 112 of the Act is inapplicable to Mahomedans. (*Stanyon, A.J.C.*) ZAKIRALI *v.* SOGRABI. 43 I.C. 883=15 N.L.R. 1.

——S. 112—*Legitimacy — Presumption—Rule as to, if supersedes the Muhammadan Law on the subject.*

The rule as to legitimacy contained in S. 112 of the Evidence Act is a rule of procedure and not of substantive law and as such applicable to Muhammadans. (*Daniels, J.*) HAJIRA KHUTAN *v* AMINA KHUTAN. 73 I.C. 983.

——Ss 112 and 114—*Legitimacy—General presumption.*

Where a party admits the paternity of the other party but pleads that he is of illegitimate descent, the legal presumption being in favour of legitimacy, the onus lies on the party alleging illegitimacy to prove it. (*Lindsay, J.C.*) DULAREY SINGH *v.* SURAJ BALI SINGH. 43 I.C. 478=4 O.L.J. 516.

——S. 112—*Birth within 280 days.*

A child born within 280 days of its father's death, the mother not having remarried in the interval, is presumed to be the legitimate child of the deceased and the onus of proving that the deceased had no access to his wife at or about the time when the child could have been begotten, is on the person who alleges it. (*Kanhaiya Lal and Kendall, A.J.Cs.*) JAGJIWAN BAKHSH SINGH *v.* PATRAJ KUAR. 38 I.C. 449=3 O.L.J. 741.

EVIDENCE ACT (I of 1872), S. 114.

——S. 112—*Presumption as to legitimacy and marriage—Burden of proof.*

There is a legal presumption in favour of legitimacy and marriage and the burden of proving illegitimacy is on the person interested in making it out. (*Lindsay, J.C.*) APABHAL SINGH *v.* NARAPAT SINGH. 23 I.C. 972=1 O.L.J. 89.

——S. 112—*Paternity of child — Law applicable.*

Where the question of paternity, is one of evidence only, the case is governed by S. 112 of the Act and not by the personal law of the parties. The presumption of legitimacy created by S. 112 can be rebutted only by proof of non-access leaving no room for doubt. If the husband has had access, the wife's adultery will not justify a finding of illegitimacy. Proof of impotence would be equivalent to proof of non-access. (*Shaw, J.C.*) NGA TUN *v.* Mr. CHON. 16 Cr. L.J. 84=26 I.C. 996=(1914) 11 U.B.R. 23.

——S. 114.

APPLICABILITY.
BUDDHIST LAW.
COMPLIANCE WITH THE LAW.
CONFLICT OF PRESUMPTION.
CONSIDERATION.
CORROBORATION.
COURSE OF NATURAL EVENTS.
CRIMINAL TRIAL.
DATE OF BIRTH.
DATE OF EXECUTION DEED.
DEATH, ORDER OF.
DEPOSIT.
DISCHARGE.
EXECUTION OF WILL, KNOWLEDGE OF CONTENTS.
GRANT.
HANDWRITING.
HUMAN CONDUCT.
KNOWLEDGE OF LAW.
LANDLORD AND TENANT.
LEGITIMACY.
LIQUOR, POSSESSION OF FULL BOTTLES OF WINE.
LOST GRANT, EASEMENT.
MARRIAGE.
NOTICE.
OWNERSHIP OF WILL.
PARTITION.
PERMANENT SETTLEMENT.
PERMANENT TENANCY.
SILENCE.
SCOPE OF.
TRUSTS.
VALUE OF PRESUMPTION.
WILL, PARSIS.

EVIDENCE ACT (I of 1872), S. 114—Applicability.

Applicability.

——S. 114—*Applicability—Price fixed in agreement to sell—Presumption as to quantity of estate.*

The normal presumption that in fixing the property in an agreement of sale, regard was had on both sides to the quantity which both proposed the estate to consist of, yet there may be considerations which may rebut or waken the presumption. (*Mr. Ameer Ali,*) HUSSONALLY SULLEMANJI *v.* TRIBHUVANADAS MANGAL DAS. (1920) M.W.N. 726=25 C.W.N. 385= 61 I.C. 361=3 U.P.L.R. (P.C.) (1) (P.C.)

——S. 114—*Applicability — Ambiguous special covenant—Mortgage.*

Where a deed of further charge provided that there were two bonds by which plots were mortgaged and that as the money due under the deed of further charge, was not paid, those two bonds shall not be redeemed, and where there was nothing to show as to what the bonds referred to in the deed of further charge or that they referred to the bonds in suit, *held*, that it could not be presumed that is referred to the deeds in suit; and that it was for the defendants who were setting up a special covenant, to prove it. (*Daniels*, A.J.C.) BHUP SINGH *v.* LAZIM SINGH. 65 I C. 121 (2)=24 O C. 319.

——S. 114—*Applicability — Cases analogous.*

The principle laid down in the section is of wide application and covers other cases analogous to those given in the illustrations to the section. (*Rafique and Piggott*, A.J.Cs.) RUSTOM SINGH *v.* EMPEROR. 24 I.C. 146= 15 Cr. L J. 410=1 O.L.J. 95.

——S. 114—*Applicability — Property—Undivided — Exclusive possession for a long time.*

There is no presumption that the property left by a person long deceased is part of an undivided estate. It may require much, or very little evidence to sufficiently prove that the property is undivided, but when land has been in exclusive possession of others for a long period, the person asserting that it forms part of an undivided estate, should be required to prove the fact. (*Maung Kin*, J.) MAUNG PO *v.* *v.* MAUNG PO THIN. 33 I.C. 985= 9 Bur. L T. 164.

Buddhist Law.

——S. 114—*Buddhist Law—Adultery.*

A Court may safely presume adultery if a guilty attachment is found to subsist between the parties and that opportunities had occurred when a guilty intercourse might with facility have taken place. (*Maung Kin*, J.) MAUNG PYA GYA *v.* MAUNG PO KA. 33 I.C. 118= 9 Bur. L.T. 74.

EVIDENCE ACT (I of 1872), S. 114—Compliance with the law.

Compliance with the law.

——S. 114—*Compliance with law.*

Under S. 114, ill. (*e*) and (*f*) of the Evidence Act the Court is entitled to presume that the accounts in the Collector's Office are correctly kept. (*Lord Phillimore.*) MAHOMAD SULAIMAN *v.* BIRANDRA CHANDRA. 50 C. 243= 44 M.L J. 383=32 M L.T. 115= 27 C.W.N. 749=37 C.L.J. 531= 1922 (P.C.) 405.

——S. 114—*Compliance with the law.*

In the absence of evidence to the contrary, the presumption is that the law was complied with. 5 I.C. 664, Dist; A.W.N. (1906) 194, Rel. (*Knox*, C.J., *Banerji and Tudball*, JJ.) SARUP LAL *v.* LALA. 39 All. 701=42 I.C 589= 15 A.L.J. 757 (F.B.)

——S 114—*Compliance with law—Regularity of judicial and official acts—Sheristadar of Court signing process by order.*

Where the sheristadar of a Court signed a warrant of attachment of moveable property in execution of a decree and the sheristadar signed "by order" of the Court. *Held*, that the presumption in S. 114, Ill. (*e*) of the Evidence Act applied to the case and that, in the absence of anything to the contrary, it could be presumed that he was the officer to sign the warrant as required by O. 21, R. 24 (2) C.P. Code. (*Newbould and Suhrawardy*, JJ.) GIRDHAR SARKAR *v.* HARISHCHANDRA CHOWDHURY. 37 C.L J. 331=27 C.W.N. 1012= 24 Cr.L J. 534=1923 Cal. 584.

——S. 114—*Compliance with Laws—Judgment silent on point raised in the memo of appeal—Presumption.*

Where an appellate judgment is silent on a point which is specifically mentioned in the grounds of appeal, the inference can be drawn that it was given up. To hold otherwise would be to contravene S. 114, and to presume that the Court failed to do its duty. (*Abdul Raoof and Harrison*, JJ.) ABDUL KARIM *v.* THAKAR RAM JAGGU RAM. 1923 Lah. 124.

——S. 114—*Compliance with Law—Identification parade—Presumption of regularity of.*

The presumption under S. 114 of the Evidence Act is hardly sufficient to satisfy a Court that such precautions have been taken as to render an identification truly valuable. (*Harrison*, J.) KALLU *v.* EMPEROR. 4 Lah. L J. 448=23 Cr. L.J. 449= 4 U.P.L R. (Lah.) 95=1923 Lah 31.

——S. 114—*Compliance with law—Exercise of powers of revision by Board of Revenue—Reasons not given—Presumption of lawful exercise of powers.*

The Court can presume that the Revenue Board has exercised lawful powers in revision. (*Ayling and Odgers*, JJ.) SRINIVASA RAO *v.* RANGASAMY. 18 L.W. 823=1924 Mad. 326.

EVIDENCE ACT (I of 1872), S. 114—Compliance with the law.

———S. 114—*Compliance with Law—Legal title—Possession—Alleging possession as trespasser.*

Where possession can be referred to a lawful origin the presumption is that it was acquired lawfully and the burden of proving the contrary is on the party who alleges it, *e.g*, the burden would be on the party who alleges that he held the property as trespasser where he ought to hold as legatee or heir. (*Daniels and Lyle*, A.J.Cs.) KUAR NAGESHAR SAHAI *v.* SHIAM BAHADUR. 1922 Oudh. 231.

———S. 114 — *Compliance with Law—Official acts—Presumption—Objection to jurisdiction.*

The presumption is that official acts are legally performed and where the jurisdiction of a settlement officer has not been questioned in the trial Court, it must be presumed that he acted regularly and within his jurisdiction. (*Coutts and Ross*, JJ.) BABU BALGOBIND *v.* RAI BEHARI LAL. 1923 Pat. 114 = 3 P.L.T. 617 = 1923 P. 96 (2).

———S. 114—*Compliance with Law—Presumption of accuracy of survey records.*

The presumption in favour of survey records of rights cannot be displaced by Batwara or irrigation maps. (*Jwala Prasad and Adami*, JJ.) SITA RAM TEWARI *v.* GAYA PRASAD. 1923 P. 37.

———S. 114, *Compliance with Law—Official acts done correctly.*

Whereas a Court may presume official acts as *regularly* performed, it cannot presume that they were *correctly* done The identity of persons alleged to have made certain admissions in *butwara* proceedings cannot be presumed but must be proved by the person relying on those admissions. Though *butwara* papers are admissible, the Court has to decide in each case whether it would rebut the presumption of the correctness of the Record-of-Rights. (*Das and Adami*, JJ.) JAGDEO *v.* BULAKI. 1921 Pat. 343 = 63 I.C. 256 = 2 P.L.T. 348.

Conflict of Presumption.

———S. 114—*Conflict of presumptions.*

Where there are two presumptions and both are equally balanced, the Court must prefer that which best accords with facts. (*Scott*, C. J. *and Chandavarkar*, J.) SHRINIVAS *v.* BALWANT VENKATESH. 37 Bom. 513 = 20 I.C. 162 = 16 Bom. L.R. 533.

———S. 114—*Conflict of presumption—Important witness not called—How to be avoided.*

Per *Buckland*, J.—If a party wishes not to have a presumption raised against him by the fact that an important witness had not been called, he should exhaust to the utmost of his power every means to bring that witness before the Court. (*Mookerjee and Buckland*, JJ.) JOGENDRA KRISHNA ROY *v.* KURPAL HARSHI & CO. 49 Cal. 818 = 35 C.L.J. 175. 1922 Mad. 345.

EVIDENCE ACT (I of 1872), Ss. 114—Corroboration.

Consideration.

———S. 114—*Consideration — Presumption—Endowment.*

An endorsement of satisfaction of a mortgage-deed need not necessarily import receipt of consideration, since the English method of procedure by deed, on the principle that a deed imported consideration, has no application in India. (*Scott*, C.J. *and Batchelor*, J.) BAI JAYAGAVARI *v.* PURSHOTAMDAS SUNDER LAL. 44 I.C. 916 = 20 Bom. L.R. 77.

Corroboration.

——— S. 114—*Corroboration—Unnecessary.*

Where the law provides that a presumption arises under certain circumstances, that presumption must arise independently of whether there is any corroboration or no. (*Newbould*, J.) CHANDRA KISHORE HADI *v.* SHEIKH KUDRAT. 52 I.C. 480.

———S. 114—*Corroboration.*

The accused was charged with dacoity. The approver himself at first stated most definitely that he did not recognise the accused as being one of the party concerned in the dacoity. He subsequently retracted from this statement and declared that he did recognize him; but that was only after he had been pressed by the prosecution: *Held*, the statement first made should be accepted. Where the only corroboration was the recovery of certain articles, alleged to be some of the articles stolen and subsequently produced from the house of the accused, his house was searched in his absence and he was given no opportunity of checking the results of the search or giving any explanation as to how the articles came into that house, and there was no evidence as to where the respective ornaments were found, nor was any thing said as to who produced them: *Held* that there was no sufficient corroboration, (*Fforde*, J.) SAUDAGAR SINGH *v.* EMPEROR. 3 L.L.J. 572 = 1923 Lah. 683.

———S. 114—*Corroboration.*

Without material corroboration there should be no conviction, when accused can explain the presence of the articles found with them. (*Broadway*, J.) SULEMAN *v.* EMPEROR. 1923 Lah. 385.

———Ss. 114 and 133 — *Corroboration — Accomplice—Evidence of.*

S. 133 of the Evidence Act contains the rule of law regarding the testimony of accomplices and S. 114, Illn. (*b*) is merely a guide to assist the Court though in a vast majority of cases, prudence requires that there should be coroboration. No hard and fast rule can be laid down to regulate the extent and nature of the corroboration, this being dependant entirely on the circumstances of the case. (*Scott-Smith and Broadway*, JJ.) NARAIN DAS *v.* EMPEROR. 3 Lah. 144 = 4 L.L.J. 91 = 23 Cr. L.J. 818 = 9 P.W.R. (1922) Cr. = 1923 Lah. 1.

EVIDENCE ACT (I of 1872), S. 114—Corroboration.

——S 114—*Corroboration—Accomplice.*

The evidence of the accomplice was held to be sufficiently corroborated by the discovery of blood marks on the person and in the house of the accused as well as his suspicious conduct immediately after the murder. (*Sir Shadi Lal*, C.J. *and Moti Sagar*, J.) GHULAM HUSSAIN *v.* EMPEROR. **4 Lah. L J. 405.**

——S. 114—*Corroboration—Accomplice—Testimony of—Weight due to—Presumption.*

An approver's evidence is in itself tainted evidence though in some cases it may be worthy of belief for various reasons but the uncorroborated statement of an approver taken at the end of the trial is of very little evidentiary value. (*Shadi Lal*, C.J. *and Wilberforce*, J.) SUNDER SINGH *v.* EMPEROR. **66 I.C. 187 = 4 Lah. L.J. 284.**

——S. 114—*Corroboration—Accomplice—Evidence—Several statements implicating same persons.*

In cases where a large number of persons have been arrested by the police and confessions are obtained one after the other, it is likely enough that those confessions should agree. Each man would be likely to name as far as possible those persons who have already been named in the previous confessions. It may, of course, be said that when a man confesses, he does not necessarily know the details of the previous confession made by another accused, but it does not necessarily follow that he should be unable to ascertain what persons have been implicated in the previous confessions, from the subordinate police officers concerned with the investigation of the case. Consequently the fact of any particular person having been named in the confession of more than one of the co-accused is not a sufficiently reliable corroboration of the statement of the approver, (*Chevis*, J.) LALA *v.* EMPEROR **23 Cr. L.J. 158 = 65 I.C. 622 = 3 P.W R. (1922) Cr.**

——S. 114—*Corroboration — Approver's evidence.*

To support a conviction on the statement of an approver especially of one whose initial statement was very long delayed, the statement requires material corroboration connecting each individual accused with the crime committed. (*Harrison*, J.) SARDARA *v.* EMPEROR. **63 I.C. 612 = 22 Cr. L J 676.**

——S. 114—*Corroboration—Bribe giver—What amounts to.*

The merits of the case to decide which in favour of the bride-giver, a Judge accepts the illegal gratification, are a sufficient corroboration of the former who is really an accomplice. (*Ratligan*, C.J.) HARSUK ROY *v.* EMPEROR. **3 P.W.R. Cr. 1919.**

——S. 114—*Corroboration—Testimony of accomplice—English and Indian Law.*

EVIDENCE ACT (I of 1872), S. 114—Course of Natural Events.

The law in this country regarding corroboration of an accomplice's evidence does not differ from the English law. Corroboration need not be required in every detail of the crime, otherwise the testimony of the accomplice would not be essential to the case but would be merely confirmatory of other and independent testimony. The corroboration must be by some evidence other than that of an accomplice and therefore one accomplice's evidence is not corroboration of the testimony of another accomplice. Evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. The nature of the corroboration necessarily varies according to the particular circumstances of the offence charged. It would be dangerous to formulate the kind of evidence which would be regarded as corroborative except to say that corroborative evidence is evidence which shows or tends to show that the story of the accomplice that the accused committed the crime is true, not merely that the crime has been committed, but that it was committed by the accused. Corroborative evidence need not be direct evidence that the accused committed the crime. It is sufficient if it is merely circumstantial evidence of his connection with the crime. (*Kotwal*, A.J.C.) KISHAN RAGHUJI CHARAN *v.* EMPEROR. **23 Cr. L J. 291 = 1922 Nag. 172.**

Course of Natural Events.

——S. 114—*Course of natural events—Continuance of existing state of things.*

Proof of the existence at a particular time of a fact of a continuous nature gives rise to a rebuttable presumption within logical limits that it existed at a subsequent time or has previously existed. The limits of time within which the inference of continuance possesses sufficient probative force to be relevant, must obviously vary with each case—always strongest in the beginning, the inference steadily diminishes in force with the lapse of time at a rate proportionate to the quality of permanence belonging to the fact in question, until it ceases or perhaps is supplanted by a directly opposite inference. To put the matter shortly, it will be inferred that a given set of facts or set of facts whose existence at a particular time is once established in evidence, continues to exist as long as such facts usually exist. The inference of continuance, whether backwards or forwards, whether upwards or downwards, is an inference of fact and may therefore be rebutted. (*Mookerjee and Cuming*, JJ.) SECRETARY OF STATE FOR INDIA *v.* UPENDRA NARAIN ROY. **35 C.L.J. 336 = 1923 Cal. 247.**

——S. 114—*Course of natural events.*

An inference of approbation of a book of an objectionable character by persons having access to the library of an individual or association,

EVIDENCE ACT (I of 1872), S.114—Criminal Trial.

possessing it, is not necessarily justifiable. (*Harrington, Mookerjee and Casperss*, JJ.) PULIN BEHARI *v.* EMPEROR.
18 C.L.J. 517 = 13 Cr. L.J. 609 = 16 I.C. 257 = 16 C.W.N. 1105.

Criminal Trial.

——S. 114—*Criminal trial—Non-production of papers by Crown—Adverse inference.*

Where documents relevant to the case are withheld by the Crown, the Court will be justified in drawing an adverse inference against the Crown. (*Mookerjee and Cuming*, JJ.) SECRETARY OF STATE *v.* UPENDRA NARAIN ROY. 36 C.L J. 336 = 1923 Cal. 247.

——S. 114—*Criminal trial—Non-production of material evidence.*

Where the Crown withholds relevant documents in its possession, the Court will draw an inference adverse to it. 40 M. 402, Ref. (*Mookerjee and Chotzner*, JJ.) RAJA SREENATH ROY *v.* SECRETARY OF STATE FOR INDIA. 50 Cal. 276 = 36 C L.J. 345 = 1923 Cal. 233.

——S. 114—*Criminal trial—Absconding accused—Presumption.*

No presumption as to guilt can be raised from the fact that the accused has absconded. (*Rattigan and Beadon*, JJ.) FATTA *v.* EMPEROR. 31 P.W.R. 1918 = 21 I.C. 478 = 14 Cr. L J. 601 = 314 P.L.R. 19

——S. 114—*Criminal trial—Failure to call all witnesses.*

If the police consider a witness to be a false witness or his evidence is unnecessary, they would be justified in not sending up that witness as a witness for the prosecution and his absence at the trial ought not to be a reason for disbelieving the prosecution witnesses if they are otherwise worthy of credit. It is of course not for the Police or for the prosecutor to champion a particular theory and to suppress the evidence of a reliable witness simply because his testimony is inconsistent with it. If the witnesses called by the prosecution are otherwise worthy of credit, the Court is not entitled to disbelieve them simply because some persons, who could have thrown light upon the case, have not been put before the Court by the prosecution. (*Mullick and Kulwant Sahay*, JJ.) RAMJIT AHIR *v.* EMPEROR. 2 Pat. 309 = 1 P.L.R. 235 (Cr.) = 24 Cr. L.J. 801 = 1923 P. 413.

Date of Birth.

——S. 114—*Date of birth—Knowledge.*

An European may be presumed to know his own birth-day as a matter of course but there is no such presumption in the case of Hindus

EVIDENCE ACT (I of 1872), S. 114—Discharge.

of the *Nattukottai Chetti* class. (*Wallis, C. J. and Seshagiri Aiyar*, J.) RAMANATHAN CHETTY *v.* MURUGAPPA CHETTY.
(1916) 1 M.W.N. 208 = 33 I.C. 959 = 3 L.W. 210.

Date of Execution Deed.

——S. 114—*Date of execution of deed.*

There is a general though not a conclusive presumption that a document was made on the day of the date it bears (*Sir Lawrence Jenkins.*) MINA KUMAR BIBI *v.* BEJOY SINGH. 44 Cal. 662 = 1 P.L.W. 425 = 5 L.W. 711 = 32 M.L.J. 425 = 21 C.W.N. 585 = 21 M.L.T. 344 = 15 A.L.J. 382 = 25 C.L J. 508 = 19 Bom. L.R. 424 = (1917) M W.N. 473 = 40 I.C. 242 = 44 I.A. 172 (P.C.).

——S. 114—*Date of execution.*

There is a presumption that a document was executed on the date it bears. (*Kanhaiya Lal and Lyle*, A.J. Cs.) LALA PURSHOTAM *v.* NAZIR HUSSAIN. 34 I.C. 846 = 6 C.L J. 668.

Death—Order of.

——S. 114—*Death—Order of.*

Where among some relations the evidence on the question who died first is quite evenly balanced, the Court is entitled to say the probabilities are in favour of the younger man surviving the elder. (*Macleod, C.J. and Shah*, J.) KULKARNI *v.* LAKSHMIBAI.
24 Bom. L.R. 838 = 47 B. 37 = 1922 Bom. 347.

——S. 114—*Death—Order of—Presumption.*

The ordinary presumption is that the elder man died first. (*Holmwood and Chapman*, JJ.) GOPALCHANDRA DEB GOSWAMI *v.* PADMAPANI GOSWAMI. 18 I.C. 814.

Deposit.

——S. 114—*Deposit—Loan.*

Where there is a doubt as to whether a transaction amounts to a loan or a deposit the presumption is that it is a deposit and not a loan. (*Abdur Rahim and Seshagiri Aiyar*, JJ.) NARAYANAN CHETTIAR *v.* VELLAYAPPA CHETTIAR. (1916) 1 M.W.N. 206 = 34 I.C. 347 = 19 M.L.T. 237.

Discharge.

——S. 114—*Discharge — Mortgage — Redemption—Proof of.*

The Court is entitled to take into consideration as evidence the fact that on a particular date a particular sum was paid by the mortgagor to the mortgagee and this coupled with the fact that the mortgagor was put into possession of the property and has continued in possession of it, is good evidence upon which the Court might base its finding that the mortgage has been redeemed. (*Ryves*, J.) CHANBEY BASDEO *v.* BEHARILAL. 34 I.C. 117.

EVIDENCE ACT (I of 1872), S. 114—Discharge.

———S. 114—*Discharge—Delay—Presumption—No demand by mortgagee for* 36 *years.*

A long delay in making a demand for the money due under a mortgage coupled with other circumstances may throw the onus on the mortgagee of showing that debt was real and existing at the date of the suit. (*Batten and Stanyon*, A.J.Cs.) MEGHRAJ *v.* MUKUNDARAM. **46 I.C. 806.**

———S. 114 — *Discharge — Presumption—Mortgage bond not sued on for a long time—Discharge.*

Where an unregistered mortgage bond written by plaintiff's servant who was also the vendor of the stamp and attested only by a cousin and partner of the plaintiff, was not sued on for 30 years. *Held*, the onus is heavily on the plaintiff to prove, not only execution and consideration of the bond but that it was still unpaid. (*Stanyon*, A.J.C.) RAM PRASAD *v.* KISHORI LAL. **45 I C. 657.**

———S. 114—*Discharge—Document creating obligation produced by obligor—Onus of proof—Shifting of.*

Under S. 114 (1) of the Evidence Act it is open to the Court to presume that if a document creating an obligation is in the hands of the obligor, the obligation is discharged. But in raising such a presumption, the Court has to take into regard any facts or circumstances indicating that it might have been stolen. The burden shifts as the evidence is developed and when both the parties produce their evidence, the question on whom the initial onus lay ceases to be of much importance. (*Kanhaiya Lal*, J.C.) RAM NATH *v.* RAGGHA SAHI.
25 O.C. 125 = 1922 Oudh 211.

———S. 114—*Discharge—Debt—Absence of demand.*

If a money-lender has allowed a debt to remain outstanding for a very long period without obtaining some document or security for it and without at any time demanding payment, the presumption is that the debt has been paid off. (*Lyle and Ashworth*, A.J.Cs,) NARAIN PRASAD *v* DURGA SINGH.
22 O.C. 385 = 54 I.C. 95 = 6 O.L.J. 585.

Execution of will, knowledge of contents.

———S. 114—*Execution of will—Knowledge of contents.*

Mere execution of a will raises a presumption of knowledge and approval of contents on the part of the maker. (*Rattigan*, J.) INDAR NARAIN *v.* ONKAB LAL. **141 P.L.R. 1911 = 20 P.R. 1912 = 10 I.C. 130 = 233 P.W.R. 1911.**

Grant.

———S. 114 — *Grant — Redemption— Presumption in the case of grant of land.*

Where no evidence that the grant of land for services is on record there the presumption is that it is for past and future services and therefore the land is not resumable. (*Batchelor*, A.C.J. *and Shah*, J.) BALSING APPA *v.* CHANDRAPPA. **35 I.C. 860 = 18 Bom. L.R. 695.**

EVIDENCE ACT (I of 1872), S. 114—Human Conduct.

Handwriting.

———S. 114 — *Handwriting — Will — Improbability of a will entirely written by the testator being forged—Burden of proof.*

There is nothing unnatural in a Hindu, sonless and not in a good state of heath writing a document by which directions are given to a widow to adopt the testator's nephew. It is certainly extremely improbable that a person wishing to put forward a forged will would run the risk of imitating the handwriting of the deceased or get it imitated by some one else when it would be so easy to attack a forged document when it runs over a folio page and purports to have been written by the testator. The plaintiff has to prove the document on which he relies but when once he has gone as far as putting before the Court a *prima facie* case which bears the signs of being genuine, then it is for the defendant to produce reliable grounds for upsetting the plaintiff's case and satisfy the Court that it is not only improbable but impossible. (*Macleod*, C.J. *and Coyajee*, J.) IRABASAPPA *v.* BHADRAWA.
1922 Bom. 296.

———S. 114 — *Handwriting — Document writer, if can be assumed to be able to write in different ways.*

It is not safe to presume that a habitual document writer would be inclined or be able to write in different ways or that he could imitate the handwriting of others. (*Sundara Aiyar and Spencer*, JJ.) *In re* BASRUR VENKATA ROW. **36 Mad. 189 = 11 M.L.T. 93 = 22 M L J. 270 = 14 I.C. 418 = 13 Cr. L.J. 226 = (1912) M W N. 125.**

Human Conduct.

———S. 114—*Human conduct—Non-production of account books.*

From non-production of account books presumption was drawn against the defaulting party. (*Lord Phillimore*). MERLA VENKANNA *v.* MERLA AGASTHIAN.
27 C.W.N. 725 = 32 M.L.T. 86 = 1923 P.C. 31 (P.C.).

———S. 114—*Human conduct — Account books not produced—Effect of—Delay.*

Where plaintiffs who were said to be doing money-lending and pawn-broking business, sued on a pro-note for Rs. 21, 925: *Held* it is inconceivable that they could have carried on money-lending and pawn-broking business without keeping any account books. If they kept account books, they would have been produced if they contained any entries which would support the case of the plaintiffs in any way. If they kept no books of account, their business as money-lenders and pawn-brokers must have been of the very smallest description

VIDENCE ACT (1 of 1872), . 114—Human conduct.

and carried on practically without capital. Where a promissory note was alleged to be forged and suits were brought on the last day of limitation: *Held*, if the promissory note had been signed by the defendant, the plaintiff was entitled to delay bringing the suit, until the last day of limitation; but where the plaintiffs had notice that the defendant repudiated their claim, such a repudiation, if made to claim by a respectable and honest money-lender would have resulted in a suit being brought at once. (*Sir John Edge*). DATA RAM JANI *v.* MT. BASANT KUNWAR. 1922 P.C. 378.

———S. 114—*Human conduct — Possession of stolen articles—Presumption.*

If the possession of a stolen article is proved the Court may determine that the person in possession soon after the theft is either guilty of theft or of receiving the goods knowing them to be stolen, unless he can give reasons for his possession. (*Sulaiman*, J.) BHAROS *v.* EMPEROR. 21 A.L.J. 896 = L.R. 4 A. 265 (Cr.) = 1924 All. 192.

———S. 114—*Human conduct--Stolen article —Possession 40 days later—Inference.*

The fact that some 40 days, after a dacoity one of the stolen articles was found in the possession of a person, would not lead to the necessary inference that he took part in the dacoity. (*Ryves*, J.) RAMHIT *v.* EMPEROR. L.R. 3 A. 50 = 20 A.L.J. 178 = 23 Cr. L.J. 193 = 1922 A. 24.

———S. 114—*Human conduct—Failure to produce original title-deed.*

If the original title-deed of the plff. is not produced in the first Court in a suit for recovery of possession the appellate Court may draw an inference adverse to the plff. (*N. R. Chatterji and Panton*, JJ.) HABENDRA KUMAR ROY CHAUDHURI *v.* DURGACHARAN SAHA. 62 I.C. 697.

———S. 114—*Human conduct — Refusal to do an act — Refusal to attend medical inspection.*

If a person, who is alleged to be suffering from a loathsome disease, refuses to attend medical examination, an inference against him may be drawn. (*Asutosh Mookerji*, A.C.J. *and Choudhuri*, J.) BIRENDRA KUMAR *v.* HEMLATA. 48 Cal. 283 = 24 C.W.N. 914 = 60 I.C. 362 = 33 C.L.J. 97.

———S. 114—*Human conduct—Absence of cross-examination.*

A Court cannot presume that a document is proved simply because the opposing counsel refuses to cross-examine the witness; the counsel can wait until the Court gives a ruling. (*Jenkins*, C.J. *and Woodroffe*, J.) GOPESWAR DUTT *v.* BISSESSUR DUTT. 39 Cal. 285 = 13 I.C. 577 = 16 C.W.N. 268.

EVIDENCE ACT (1 of 1872), S. 114—Knowledge of law.

———S. 114—*Human conduct—Withholding of account books—Presumption.*

Defendants 1 and 2 admitted that one A was their partner in Sambat 1964 but alleged that their partnership ended in that very year. They failed to produce any evidence in support of their assertion. The best proof of this alleged dissolution of partnership would have been their own account books, but they did not produce the same. *Held*, the presumption that arises irresistibly from this withholding of their account books is that the entries therein relating to partnership transactions are contrary to this plea of dissolution. (*Moti Sagar*, J.) THE FIRM JOWALA DAS PARMANAND *v.* UTTAM CHAND. 1923 Lah. 585.

———S. 114—*Human conduct--Presumption as to ordinary course of business.*

Where sums are paid before the presiding officer of the Court at the time when a receipt was given for them, the presumption under S. 114 of the Indian Evidence Act is that the ordinary course of business was followed in the case in question. The mere statement by appellant's Counsel that these sums are not always paid at the time when the receipts are given was sufficient to throw the *onus* on the prosecution of proving that the plea was wrong. (*Scott-Smith and Flordo*, JJ.) EMPEROR *v.* AHMED SHAH. 1923 Lah. 566.

———S. 114—*Human conduct — Statement after suit—Value.*

The making of a statement in the document after the suit had been launched and was pending is very different from stating on oath in the witness box and the Court will not attach much weight to the statement even if it is admissible. (*Krishnan and Ramesam*, JJ.) TADEPALLI LAKSHMI NARASIMHAM *v.* RUKMANIAMMA. 1923 Mad. 225.

———S. 114—*Human conduct—Murder for jewels—Possession by accused soon after occurrence—Presumption.*

The possession by the accused of the jewels of a person who has been murdered, if unexplained, is presumptive evidence that the accused was the murderer and the thief. (*Spencer*, J.) *In re* NAINA MALAI KONAN. 69 I.C. 877 = 23 Cr. L.J. 697 = 14 L.W. 418.

———S. 114—*Human conduct — Document not produced—Presumption.*

The Court must presume against a party who suppresses a relevant document. (*Das and Bucknill*, JJ.) KALIKA NAND *v.* SHIVA NANDAN. 63 I.C. 625.

Knowledge of law.

———S. 114—*Knowledge of law—Transaction involving statutory obligation.*

A person entering into a transaction involving a statutory obligation must be presumed to have impliedly agreed to submit to that obligation. (*Stanyon*, A.J.C.) KHEMCHAND *v.* MALLOO. 20 I.C. 601 = 10 N.L.R. 81

EVIDENCE ACT (I of 1872), S. 114—Landlord and Tenant.

Landlord and Tenant.

———S. 114—*Landlord and tenant—Rent—Enhanced rate—Payment for long time.*

Where a tenant has been paying enhanced rent for a series of years in respect of garden crops, the Court may presume a contract supported by consideration to pay rent at that rate. (*Wallis*, C.J., *Ayling*, *Coutts-Trotter*, *Seshagiri Aiyar and Kumaraswami Sastri*, JJ.) PERIAKARUPPA MUKKANDAN *v.* RAJA RAJA RAJESWARA SETHUPATHI. **42 Mad. 75 = (1919) M.W.N. 161 = 50 I.C. 816 = 36 M.L.J. 320 (F.B.).**

———S. 114—*Landlord and tenant—Entry in Khewat.*

Entries in Khewat are *prima facie* evidence of possession. Presumption of possession arises where there is no alteration in the entry. (*Hasan*, A.J.C.) GULAM SARWAR KHAN *v.* MAHMUD ALI KHAN. **8 O.L.J. 609 = 1922 O. 98.**

Legitimacy.

———S. 114—*Legitimacy—Form of marriage gone through—Recognition by relations.*

Where a man and a woman were proved to have been recognised by all persons concerned as man and wife, so described in important documents and their daughters were respectably married as would be natural in the case of legitimate children. *Held* that these facts, following upon a ceremony of marriage which, undoubtedly took place, though its validity was attacked, afforded an extremely strong presumption in favour of the validity of the marriage and legitimacy of its offspring. The like presumption applies to the question whether the formal requisites of a valid marriage ceremony were satisfied. (*Sir Arthur Wilson.*) MANJILAL *v.* CHANDRABATI KUMARI. **38 Cal. 700 = 15 C.W.N. 790 = (1911) 2 M.W.N. 91 = 13 Bom. L.R. 834 = 14 C.L.J. 72 = 10 M.L.T. 53 = 11 I.C. 502 = 21 M.L.J. 933. (P.C.)**

———S. 114 — *Legitimacy — Connection between man and woman.*

Where the connection between man and woman is permanent, it is presumed to be not adulterous, and the burden of proving, that the connection is adulterous and involves criminal offence, lies on him who raises the contention. (*Sadasiva Aiyar and Napier*, JJ.) PALANI AMMAL *v.* KUPPUSWAMI GOUNDAN. **62 I.C. 769 = 13 L.W. 511.**

———S. 114—*Legitimacy—Presumption.*

It is open to a Sikh to marry any woman he pleased provided she adopted the Sikh religion. The mother of J.S. was always treated among the brotherhood as the wife of S.S. whose son J.S. claimed to be; J.S. was always treated as the legitimate son of S.S., who made no disposition of his property by will or otherwise, and J.S. was referred to in several deeds as the son of S.S. This was sufficient proof that J.S. was a legitimate son of S.S. (*Lyle and Ashworth*, A.J.Cs.) CHANDIKA BAKHSH SINGH *v.* WIDOW OF JAGAN SINGH. **52 I.C. 453 = 6 O.L.J. 331.**

EVIDENCE ACT (I of 1872), S. 114—Lost grant—Easement.

Liquor—Possession of full bottles of Wine.

———S 114—*Liquor — Possession of full bottles of wine.*

The possession of full bottles of wine in a person's house when the number of bottles is less than that allowed by law does not raise the presumption that the bottles were for sale. (*Eales*, C.J.) AH TAT *v.* EMPEROR. **23 Cr. L.J. 424 = 14 I.C. 963 = (1911) 1 U B.R. 96.**

Lost Grant—Easement.

———S. 114—*Lost grant—Easement.*

Where a Zamindar has been using the water of a channel for irrigating his lands from the time of the permanent settlement, the Court may presume from long possession and enjoyment, a right to use the water free of charge. Though an actual grant of an easement is not discovered or proved, it will be presumed. (*Lord Shaw.*) SECRETARY OF STATE *v.* MAHARAJA OF BOBILI. **46 I.A. 302 = (1919) M.W.N. 775 = 37 M.L.J. 724 = 18 A.L.J. 1 = 11 L.W. 204 = 2 U.P.L.R. (P.C.) 33 = 51 I.C. 154 (P.C.) = 24 C.W.N. 446 (P.C.)**

———S. 114—*Lost grant—Easement.*

The presumption of a lost grant arises out of the strong desire of the Court to find a legal origin for an ancient and uninterrupted user. The right must be one which could have been the subject of a grant. (*Beaman and Marten*, JJ.) JANARDAN GANESH KHADILKAR *v.* RAVJI BHIKAJI KONDKAR. **42 Bom. 288 = 45 I.C. 448 = 20 Bom. L.R. 398.**

———S. 114—*Lost grant—Easement—Presumption.*

The presumption of a lost grant can be drawn only where the enjoyment of the easement cannot be otherwise accounted for. (*Walmsley and Newbould*, JJ) BANWARI BULLAN ROY *v.* RASH BEHARI ROY. **50 I.C. 933.**

———S. 114—*Lost grant—Presumption—Immemorial enjoyment of a right—Government.*

Where a right has been enjoyed from time immemorial, a legal origin therefor, such as a contract or a grant must be presumed. Where a grant is made by the Government of a right irrespective of the use the grantee might make of it, the presumption is that it is a free grant (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) KESARI VENKATASUBBIAH *v.* SECRETARY OF STATE FOR INDIA. **20 I.C. 803 = 14 M.L.T. 131.**

EVIDENCE ACT (I of 1872), S. 114—Marriage.

Marriage.

———S. 114—*Marriage—Unsatisfactory evidence—Presumption.*

The law presumes in favour of marriage and against concubinage, when a man and woman have cohabited continuously. 6 App. Cas. 364 Rel. This presumption is not to be rebutted or shaken by mere balance of probability but by evidence strong, distinct, satisfactory, and conclusive. 38 C. 701 Ref. Plaintiff's mother and defendant's father lived as husband and wife for a long series of years. The defendants treated the plaintiffs as their legitimate brothers. The plaintiff's mother described herself in a document executed by her as the wife of the defendant's father who was a witness to the document. *Held*, that the presumption of law as that the plaintiff's mother and the defendant's father were married lawfully, and the presumption was not rebutted though the evidence of marriage which took place long ago was not satisfactory. (*Mookerjee and Garnduff*, JJ.) BEPIN BEHARI DAS BAIRAGHI *v.* ATUL KRISHNA DAS
15 I C. 318 = 17 C.W.N. 494.

———S. 114—*Marriage—Divorced woman.*

In the case of a divorced woman, the presumption is that she continues unmarried until proved to have married again. (*Scott-Smith*, J.) DAULAT *v.* KHAN.
81 P.L.R. 1915 = 29 I C. 194 = 88 P.W.R. 1915.

———S. 114—*Marriage—Long co-habitation.*

Cohabitation for several years as husband and wife lead to the presumption of their valid marriage. 24 I.C. 367 Foll. (*Ormond*, J.) MASHIM *v.* KIM SEIN. **17 Cr. L.J. 112 = 32 I.C. 843 = 9 Bur. L.T. 81 = 8 L.B.R. 225.**

Notice.

———S. 114—*Notice under S. 52—Bengal Cess Act—Presumption.*

No presumption of S. 114, Cl. (c) of Evidence Act applies with respect to notice provided by S. 52 of the Cess Act and the person who claims, that a right or an obligation such as the payment of cess by a tenure-holder, has accrued, must prove that the liability had been incurred and the things described in the Act had actually been done. The owner of rent free lands is not bound to pay road cess before the publication of the valuation rolls under S. 52. (*Jwala Prasad and Ross*, JJ.) PITAMBAR CHOWDHURY *v.* RAHMAT ALI. **1 P. 218 = 3 P.L.T. 282 = 1922 Pat. 167 = 1922 P. 303.**

———S. 114—*Notice—Title of third person.*

A purchaser of immoveable property in the possession of a third person is presumed to have notice of the title of such third person. (*Maung Kin*, J.) MAUNG BO *v.* MAUNG TUN BYU. **38 I.C. 121.**

EVIDENCE ACT (I of 1872), S. 114—Permanent Tenancy.

Ownership of wall.

———S. 114—*Ownership—Wall.*

Certain footings to the wall of a house existed for a long time and the lateral extension of the cornices of the house corresponded with the extension of the footings. It was presumed that the land covering the footings belonged to the owner of the wall. (*Jenkins*, C.J. *and Woodroffe*, J.) ABDUL HUSAIN *v.* RAM CHARAN LAW. **38 Cal. 687 = 12 I.C. 459 = 16 C.W.N. 313.**

Partition.

———S. 114—*Partition—Hindu joint family—Presumption of union—Rebuttal.*

Definition of shares in village records is not sufficient to rebut the presumption of union and jointness in a Hindu family. (*Lo d Shaw*) NAGESHAR *v* GANESHA, **42 All. 363 = 7 O.L.J. 43 = 2 U P.L.R. 37 = 38 M.L J. 321 = 23 O.C. 1 = 18 A L.J 532 = 22 Bom. L.R. 896 = 56 I.C. 306 = 23 M.L.T. 8 (P.C.).**

———S. 114—*Partition—Entry in revenue records as to joint property.*

An entry in Revenue records raised a presumption as to joint family estate. (*Moti Sagar*, J) BALBIR SINGH *v.* GOBIND.
1923 Lah. 532.

———S. 114 — *Partition — Separation—Hindu Law.*

Entries in revenue papers defining shares, separate residence, institution of suits all together go to prove division though none of them singly can sufficiently establish partition. (*Kanhaiya Lal and Kendall*, A J.Cs.) BRIJ MOHAN SINGH *v.* RAM MILAN SINGH.
39 I C. 433 = 4 O L J. 124.

Permanent Settlement.

———S. 114 — *Permanent settlement — Taluka—Inclusion of.*

The principle of *praesumitur retro* applies not only to cases of the existence of a taluk at the settlement but to cases of long possession when it can be presumed that certain lands existing from before settlement were within the taluk at the permanent settlement. Such a presumption is one of fact and the Court should attach weight to it having regard to all circumstances. (*Chatterjee and Richardson*, JJ.) RAM KRISTO CHAKRABARTY *v.* NARENDRA KISHORE ROY. **35 I.C. 885.**

Permanent Tenancy.

———S. 114—*Permanent tenancy—Temple trustee.*

A presumption cannot be drawn in favour of that which offends against legal principles. No presumption of permanent tenancy cannot be applied to debutter property because the creation of a fixed rent would be a breach of duty

EVIDENCE ACT (I of 1872), S. 114—Silence.

in a shebait. 13 W.R.P. 18 Rel. on. (*Jenkins, C.J. and Chatterjee, J.*) SATYASRI GHOSHAN *v.* KARTIK CHANDRA DAS. **15 C.L.J. 227 = 16 C.W.N. 418 = 18 I.C. 596 = Also 33 M.L.J. 84 = 41 I.C. 788 = 44 I.C. 695 = 34 M.L.J. 234.**

Silence.

———**S. 114**—*Silence—Failure to object to statement of accounts—Evidence of correctness.*

If a statement substantially affecting a person's interest is made to him and the circumstances are such that he would certainly or probably have objected, had the statement been incorrect, then his silence can be treated as an admission, *i.e.*, as evidence of the correctness of the statement. (*Crouch*, A.J.C.) THE MERCANTILE BANK *v.* TAHILRAM PESSUMAL. **27 I.C. 309 = 8 S.L.R. 112.**

Scope of.

———**S. 114**—*Scope of—Presumption under.*

The presumption indicated in illus. (*g*) to S. 114 of the Act cannot displace a contrary inference supported by adequate evidence. (*Sir Lawrence Jenkins.*) RAMACHANDRUDU *v.* JANAKIRAMANNA. **63 I.C. 740 = 13 L.W. 293 (P.C.).**

———**S. 114**—*Scope of—Presumption from non-production of document—Old document—Probability of loss.*

Where a document is a very old one the possibility of its having been lost and being no longer in existence is naturally much brighter than in the case of a document of recent date. Consequently the presumption arising from the non-production of the document is not quite a strong one in the case of an old document as in the case of a recent one. (*Daniels*, J.) RAMJI DAS *v.* MIHIN LAL. **1923 All. 441.**

———**S. 114**—*Scope of—Wrong-doer.*

The law relating to presumptions should not enable a wrong-doer, to turn it to his own use. (*Karamat Hussain*, J.) ZAHURAN *v.* RAHIM. **10 I.C. 742 = 8 A.L.J. 247.**

———**S. 114**—*Scope of—Co-owner waiving claim—Presumption.*

By taking over the sale and paying the full price, a co-owner waived his own claim to sue. *Held* such action on the part of the co-owner is presumptive evidence that the sale by another co-owner was not bad for want of necessity. (*Scott-Smith and Fforde*, JJ.) MT. BASANTI *v.* CHANDA SINGH. **1923 Lah. 502 (2).**

———**S. 114**—*Scope of—Custom — Village community.*

Where an agricultural tribe in a Village community live by agriculture, a presumption is in favour of custom. (*Mr. Martineau*, J.) HIRA NAND *v.* HAYAT MOHAMMAD. **61 I.C. 180.**

———**S. 114**—*Scope of—Illustration.*

The illustrations appended to S. 114 of the Evidence Act are not statements of the law qualified only by particular exceptions. They are merely what they call themselves, illustrations or instances of the application of certain maxims out of many possible instances. (*Hallifax and Macnair*, A.J.C.) GOVINDA *v.* EMPEROR. **23 Cr. L.J. 673 = 69 I.C. 157 = 17 N.L.R. 113.**

EVIDENCE ACT (I of 1872), S. 114—Value of Presumption.

Trusts.

———**S. 114**—*Trusts—Benami transaction.*

The general rule in principle of the Indian Law as to resulting trusts, differs but little from the general rule of English Law upon the same subject. The decisions have established that Hindus or Mahomedans make transfer or grants for no apparent reason or purpose. Consequently, the presumption of the resulting trust in favour of the person providing the purchase money arises in India and there is no presumption of an intended advancement in favour of the *benamidar* as there is in England. Where a transaction takes place between persons born in India of British parents and who have resided practically all their life in India, the principles and the rules of law are those of the Court of Chancery in England that will apply to them, which rules of law will apply to any given case in India, will not wholly depend on race, place of birth, domicile or residence. But the widespread and persistent usages and practices of the native inhabitants are more important. The mere statement by the husband or the father that he did not intend to confer any beneficial interest on the donee or transferee is of little avail unless he proves that he had other different motives for the action he took. Their Lordships held on the evidence that the presumption was an advancement to the wife was intended was rebutted (*Lord Atkinson.*) KERWICK *v.* KERWICK. **48 Cal. 260 = 47 I.A. 275 = (1920) M.W.N. 738 = 39 M.L.J. 296 = 13 L.W. 466 = 28 M.L.T. 194 = 32 C.L.J. 490 = 23 Bom. L.R. 730 = 57 I.C. 834 (P.C.) = 2 U.P.L.R. 153 (P.C.).**

[On appeal from 47 I.C. 376.]

Value of Presumption.

———**S. 114**—*Value of presumption—Deed in possession of mortgagor—Presumption.*

The mere fact that the deeds are in the possession of the mortgagor does not itself prove that the mortgagee was a mere benamidar for the mortgagor. (*Macleod*, C.J. *and Crump*, J.) HIRAJI *v.* VISHNU. **1923 Bom. 429.**

———**S. 114**—*Value of presumption.*

An accused was convicted under S. 412, Penal Code, and the Judge, holding that under S. 114 of the Evidence Act, he must be presumed to have known the nature of the dacoity, sentenced him to the maximum punishment. *Held*, that the sentence was excessive as the presumption alone would not justify fixing the accused with more than

EVIDENCE ACT (I of 1872), S. 114—Value of Presumption.

knowledge that the goods recovered from him had been obtained by dacoity. (*Walmsley and Huda, JJ.*) ASIMUDDIN SARDAR *v.* EMPEROR. 22 Cr. L.J. 60=53 I.C. 204= 32 C L J 89.

———S. 114 — *Value of presumption — Pedigree table.*

The mere mention of a common ancestor in a pedigree table is not of itself sufficient to prove that all the land in the possession of his descendants descended from that common ancestor. 41 P.R. 1914, Diss. (*Scott-Smith, and Moti Sagar, JJ.*) KARTAR SINGH *v.* LABH SINGH. 5 Lah. L.J. 190= 1923 Lah. 355.

———S. 114—*Value of presumption—Value of.*

Rebuttable presumptions are given to the ascertainment of facts. It is an abuse of their true function to convert them into an excuse for evading the ascertainment of facts. (*Coutts-Trotter, J.*) AYYA PERUMAL UDAYAN *v.* RAMASWAMY CHETTIYAR. 2 L.W. 650= 29 M.L J. 363=30 I.C. 983= (1915) M.W.N. 614.

———S. 114, Illn. (a)—*Presumption—Stolen property possession of—Joint trial—Thief and receiver of stolen property.*

Possession of the stolen property by a person on the next morning after a burglary is presumptive evidence that he is one of the thieves. (*Tudball, J.*) BAIJU *v.* EMPEROR. 14 Cr. L.J. 124=14 I.C. 684=11 A.L.J 91.

———S. 114. Illn. (a)—*Stolen property—Possession after a long time—Presumption.*

No ground for presumption under S. 114, Evidence Act, arises where stolen properties of an ordinary kind and of small value are found in the possession of the accused after a long time. (*Chitty and Smither, JJ.*) JOYENALLAH BEPARI *v.* EMPEROR. 19 Cr. L.J. 702=46 I.C. 158=22 C.W.N. 597.

———S 114, Illn. (a)—*Crime—Misconduct—Presumption.*

If articles are found in a house occupied by several members, there is a presumption that they were in the possession of the *karta*. There is a presumption against crime and misconduct and the more heinous and improbable a crime is, the greater is the force of the evidence required to overcome such presumption. 39 C. 245 at 255, Ref. (*Woodroffe, Coxe and Chatterjee, JJ.*) D. WESTON *v.* PEARY MOHAN DAS. 40 Cal. 898=23 I.C. 28= 18 C.W.N. 185.

———S. 114, Illn. (a)—*Recent possession—Article belonging to the accused—Blood on articles—Theft—Murder.*

Where in a case of murder the accused is found to have had recent possession of the

EVIDENCE ACT (I of 1872), S 114, Illn. (a).

articles belonging to the deceased, leaving traces of human blood, this is a fact from which the Court might presume not only theft but murder too. (*Jenkins, C.J. and Sharfuddin J.*) EMPEROR *v.* SHEIKH NEAMATULLA. 14 Cr. L.J 856=21 I C. 156= 17 C.W.N. 1077.

———S. 114, Illn. (a)—*Stolen goods—Discovery of, after long time.*

The presumption concerning stolen goods in S 114, Illn. (*a*) of the Evidence Act arises only when the stolen goods are found 'soon after' the theft. Thirteen months after the occurrence cannot be regarded as coming within the rule. (*Seshagiri Aiyar, J.*) JALNULLABDIN, *In re.* 11 L.W. 43= 53 I.C. 819=20 Cr. L.J. 819=26 M L.T. 389.

———S. 114, Illn. (a)—*Theft — Lapse of time—Effect of.*

S. 114, Illn. (*a*) of the Evidence Act is merely illustrative of the manner in which the inferences can be drawn from the common course of events, human conduct, etc. In a prosecution for receipt of stolen goods, lapse of time after the theft is usually an important factor in determining the guilt of the accused but the importance to be attached to it must vary with the circumstances of the individual case and depends on the frequency with which the property is likely to have changed hands. No maximum period is suggested as that beyond which no inference of guilt can be drawn. 6 A. 224; (1912) M.W.N. 529 Dist. (*Ayling and Phillips, JJ.*) SMITH *v.* EMPEROR. 43 I. C. 603=19 Cr. L.J. 189.

———S. 114, Illn. (a)—*Stolen property—Found in possession of a person three weeks after theft—Presumption.*

Where stolen property is found in the possession of a person three weeks after theft, the presumption is that he must have received the property knowing or having reason to believe it to be stolen and not that he has committed theft. In order to raise a presumption the length of time that has elapsed, the amount of property found in a man's possession, and the circumstances leading to discovery, have to be considered and in raising the presumption as to the receipt of the stolen property it is not necessary that there should be evidence that he knew it to be stolen. (*Sundara Aiyar and Spencer, JJ.*) *In re* GORLE KANDUNGADU. 13 Cr. L.J. 140=13 I.C. 828= (1912) M.W.N. 97.

———S. 114, Illn (a)—*Murder—Robbery—Possession of articles.*

In a case where murder and robbery form part of one and the same transaction the recent and unexplained possession of stolen articles by the accused unless shown that he was only the receiver of stolen property, would

EVIDENCE ACT (I of 1872), S. 114, Illn. (a).

raise a presumption not only of robbery but also of murder. (*Benson and Sundara Aiyar, JJ.*) PUBLIC PROSECUTOR *v.* OHIYA REDDI.
21 M.L.J. 1071=12 I.C. 682=
12 Cr. L.J. 161=(1911) 2 M.W.N. 478.

———S. 114, Illn. (a)—*Murder and robbery — Recent possession of stolen goods—Presumption.*

In a case in which murder and robbery form part of one transaction, the recent and unexplained possession of the stolen property by the accused is not only presumptive evidence against him on the charge of robbery but is also evidence against him on the charge of murder. 13 M. 426, Rel. (*Drake-Brockman, J.C. and Prideaux, A.J.C.*) RAMJI *v.* EMPEROR. 53 I.C. 481=20 Cr. L.J. 753.

———S. 114, Illn. (a)—*Possession of stolen property.*

If a thief got into a house by house breaking and the stolen property was found in his possession, he may be presumed to have committed the theft as well as house breaking. (*Fox, C.J.*) HUSSAIN *v.* EMPEROR.
32 I.C. 160=17 Cr. L J. 32.

———S. 114, Illn. (b).

See also EVIDENCE ACT, S. 133.

———Ss. 114, Illn. (b) and 133—*Approver—Uncorroborated testimony—Conviction.*

Though the absence of any corroboration of the statement of an approver is not fatal to the conviction of a person named by him as one of the participators in an offence, it casts doubts upon its justice and the accused is entitled to the benefit of the doubt. (*Walsh and Piggott, JJ.*) ALLAUDDIN *v.* EMPEROR.
52 I.C. 49 =20 Cr. L.J. 561.

———Ss. 114, Illn. (b) and 133—*Corroboration—Necessity.*

The law as such does not necessarily demand any corroboration to validate the accomplice's evidence. It is a rule of practice to have such corroboration and must be applied with due regard to each particular case. No precise degree of corroboration is required. Corroboration is required not only of the incidents but also of the identity of the offender. Every detail need not be fortified. (*Batchelor and Rao, JJ.*) EMPEROR *v.* KUBERAPPA.
14 Cr. L.J. 226=19 I.C. 821=
15 Bom. L.R. 288.

———Ss. 114, Illn. (b) and 133—*Accomplice—Evidence of.*

A conviction cannot be sustained on the evidence of an accomplice unless there is corroboration in material particulars by means of independent testimony. The degree of corroboration required depends upon the facts of such case. The position, connection and general conduct of an accused cannot be

EVIDENCE ACT (I of 1872), S. 114, Illn. (b).

taken as affording sufficient corroboration. Nor can the circumstances elicited in the accomplice's evidence be held in themselves as affording sufficient corroboration. (*Chandavarkar and Batchelor, JJ.*) EMPEROR *v.* CHHOTALAL BABAR, 13 Cr. L J. 842=
15 I.C. 814=14 Bom. L.R. 467.

———S. 114, Illn. (b)—*Accomplice—Evidence of weight due to—Corroboration.*

Evidence of an approver is in itself tainted evidence though in some cases it may be worth believing for various reasons. The uncorroborated statement of an approver taken at the end of the trial is of no value at all. Statements of witnesses extorted by the Police under threats of implication in the crime are less valuable especially where they had no reason for refraining from deposing against the culprits. (*Shadi Lal, C.J. and Wilberforce, J.*) SUNDAR SINGH *v.* EMPEROR.
21 Cr. L.J. 507=56 I.C. 667=
105 P.L.R. 1920.

———S. 114, Illn. (b)—*Accomplice—Who is—Person aware of intention to commit crime omitting to give information—Corroboration.*

A person being aware of the existence of certain people's purpose and plan to commit a murder, hides his knowledge of the fact by not disclosing it to anybody is a consenting party to the crime and corroboration is required to take his evidence for he is an accomplice. Accomplices' evidence cannot be accepted as corroborative of each other. (*Rattigan, C.J. and Martineau, J.*) SHARAH *v.* EMPEROR.
14 P.W.R. (Cr.) 1919=49 I.C. 607=
20 Cr. L.J. 191=20 P.R. 1919 (Cr.)

———S. 114, Illn. (b)—*Corroboration—Necessity.*

A conviction based on the uncorroborated testimony of an approver is illegal. (*Leslie Jones, J.*) GURDIT SINGH *v.* CROWN.
9 P.W.R. 1918 (Cr.)=44 I.C. 967=
19 Cr L.J. 439=52 P.L.R. 1918.

———S. 114, Illn. (b)—*Corroboration—Material and general.*

There is a difference between general and material corroboration which in fact means evidence concerning participation of his companion in committing the crime. To be found in the company of the approver shortly after the offence was committed is very strong indication of fellowship in the crime. 5 P.R. 1902, Dist. (*Leslie Jones, J.*) SAHAI SINGH *v.* EMPEROR. 18 Cr. L.J. 852=
41 I.C. 820=21 P.W.R. 1917 Cr.

———Ss. 114, Illn. (b) and 133—*Corroboration—Extent—Previous statements of accomplice.*

No hard and fast rule can be laid down as to the extentof corroboration of an 'accomplice.' Previous statements of an accomplice may

EVIDENCE ACT (I of 1872), S. 114, Illn. (b).

mean corroboration. S. 133 of the Evidence Act contains the rule of law and S. 114, Illn. (*b*) a rule of guidance for the assistance of Courts. 35 M. 247; 21 W.R. 69; 21 M.L.J. 283; 26 B. 193, Ref. (*Johnstone*, C.J. *and Broadway*, J.) BARKAT ALI *v.* EMPEROR.
18 Cr. L.J. 29=36 I.C. 861=
2 P.R. 1917 Cr.

———Ss. 114, Illn (b) and 133—*Approver—Corraboration—Lower class accused.*

Courts should not ordinarily depart from the well-recognized practice of accepting the evidence of an approver only when it is corroborated in material particulars. This is the mere necessity where the accused belongs to a lower class and it is a matter of no difficulty for any one to include his name as an accused and as it is difficult for him to establish his innocence. In exceptional cases Courts might be right if for reasons stated they act upon the evidence of an approver as a whole though uncorroborated in material particulars. (*Rattigan and Chevis*, JJ.) GHULAM RASOOL *v.* EMPEROR. 17 Cr. L.J. 220=34 I.C. 332=
31 P.W.R. 1916 Cr.

——S. 114, Illn. (b) — *Corroboration—What is.*

Evidence showing that the co-accused or some of them were seen in the company of the approver at or in the vicinity of the place at which, he says, dacoities were to be committed is not sufficient corroboration in support of his statement. (*Rattigan*, J.) MAHYAM SINGH *v.* CROWN. 32 I.C. 843=
17 Cr. L.J. 107=2 P.W.R. (Cr.) 1916.

——S. 114, Illn. (b)—*Value of approver's testimony.*

The value to be attached to the statements of an accomplice or approver must be decided in every case upon the particular and peculiar circumstances of every case. (*Johnstone*, C.J. *and Rattigan*, J.) BACHINTA *v.* EMPEROR.
32 I.C. 833=17 Cr. L.J. 97=
7 P.W.R. 1916 Cr.

———S. 114, Illn. (b)—*Approver—Evidence—Corroboration.*

The mere production by the accused of stolen property from a place within his possession is not sufficient corroboration of the approver's testimony to have a conviction thereon. (*Leslie Jones*, J.) UDA *v.* CROWN.
16 Cr. L.J. 634=30 I.C. 488=
26 P.W.R. (Cr.) 1915.

———Ss. 114, Illn. (b) and 133—*Corroboration—Accomplice—Evidence.*

An accomplice is a competent witness and a conviction based on his uncorroborated testimony is not illegal under S. 133 of the Evidence Act. Notwithstanding S. 114, Illn. (*b*) Courts are not tied down in any technical way but it is their duty when deciding whether any corroboration of a particular accomplice is required and what amount or kind of corroboration is required to look at the question as

EVIDENCE ACT (I of 1872), S. 114, Illn. (b).

a prudent man desiring to arrive at the truth. As a general rule, corroboration is necessary but no general rule can be laid down as to the extent and nature of such corroboration. (*Johnstone and Rattigan*, JJ.) BALMUKUND *v.* CROWN. 28 I.C. 733=216 P.L.R. 1915=
17 P.R. (Cr.) 1915=11 P.W.R.
(Cr.) 1915=16 Cr. L.J. 354.

———S. 114, Illn. (b)—*Accomplice—Corroboration.*

It is unsafe to act on the uncorroborated testimony of an accomplice even though he is a mere relative of the accused. (*Reid*, C.J. *and Ryves*, J.) HIRA *v.* EMPEROR.
9 I.C. 39=12 Cr. L.J. 5=
1 P.W.R. 1911 Cr.=19 P.L.R. 1911.

———Ss. 114, Illn. (b) and 133—*Accomplice—Corroboration.*

Per Benson, Wallis and Miller, JJ.—A Court can act on the uncorroborated evidence of an accomplice when it believes his evidence to be true. Illn. (*b*) to S. 114 of the Evidence Act does not render nugatory, the express declaration convicted in S. 133 of the Evidence Act. *Per Abdur Rahim*, J.—S. 133 should be considered along with illn. (*b*) to S. 114. Except under special circumstances, the Court should presume that the evidence of an accomplice is unworthy of credit against accused persons unless it is corroborated in material particulars. 21 M.L.J. 283 Foll. (*Per Sundara Aiyar*, J.) S. 114 should be read along with S. 133 of the Evidence Act. Though the Evidence Act does not require the Court to presume the untrustworthiness of any accomplice's evidence, the proper course for the Court to follow is to make the presumption useless there is a special occasion for not being so. *Per Benson, Wallis and Miller*, JJ.—Under S. 157 of the Evidence Act the previous statements of an accomplice are sufficient corroboration of his evidence given at the trial whatever weight may be attached to them. *Per Abdur Rahim and Sundara Aiyar*, JJ. *contra*,—The previous statements of an accomplice cannot legally amount to corroboration. (*Benson, Wallis, Miller, Abdur Rahim and Sundara Aiyar*, JJ.) MUTHUKUMARASWAMI PILLAI *v.* EMPEROR.
14 I.C. 896=13 Cr. L.J. 352=
35 Mad. 397=(1912) M.W.N. 519=
12 M.L.T. 1 (F.B.)

———Ss. 114, Illn. (b) and 133—*Corroboration—Accomplice's testimony.*

Per White, C.J. *and Ayling*, J.—Courts can act on the evidence of an accomplice even if there is no corroboration in the strict sense of the word although such evidence should be scrutinised with great care and accepted with the greatest caution. Previous statements of an accomplice can be regarded as corroborative of the evidence given by him at the trial. 11 B.H.C.R. 196 and 10 Q. 978 dissented from. *Sankara Nair*, J. *contra*:—A person should not be convicted except under very special circumstances upon the uncorroborated testimony of an accomplice. The illustrations

EVIDENCE ACT (I of 1872), S. 114, Illn. (b).

given under S. 114 are for the most part such rules of evidence as are treated as the presumptions of law. The Evidence Act converts them into maxims or presumptions to be drawn by the Court. A previous statement by the accomplice himself or a statement by another accomplice is not the corroboration required by the act. (*White*, C.J. *Sankaran Nair and Ayling*, JJ.) EMPEROR *v.* NILAKANTA. 35 Mad. 247 = (1912) M W.N. 207 = 13 Cr. L.J. 305 = 22 M L.J. 490 = 14 I.C. 849 = 11 M.L.T. 1 Supp.

———S. 114, Illn. (b)—*Evidence of—Approver—Conviction based on.*

A conviction should not be based upon the evidence of the approver alone. It should be corroborated by reliable independent evidence. (*Munro and Abdur Rahim*, JJ.) NAWZIGADU *v.* EMPEROR. 10 I.C. 284 = 12 Cr. L.J. 240.

———S. 114, Illn. (b)—*Accomplice—Credibility.*

The uncorroborated evidence of an accomplice should not be accepted unless for special reasons. But where such reasons exist, a conviction based thereon is not illegal. Where the statement of a deceased accomplice is not made in the presence of the accused, little weight can be attached to it as corroborative evidence. (*Sankaran Nair, Abdur Rahim and Ayling*, JJ.) *In re* TALARI NARAINA SWAMI, 9 I.C. 978 = 9 M.L.T. 503.

———Ss 114, Illn. (b) and 133—*Accomplice's evidence—Conviction—Absence of corroboration.*

A conviction on the evidence of an accomplice is not justified unless it is corroborated. (*Fox*, C.J. *and Ormond*, J.) PAN GANG *v.* EMPEROR. 42 I.C. 1002 = 19 Cr. L.J. 42.

———S. 114, Illn. (b)—*Accomplice's evidence—Corroboration.*

A conviction may be upheld when it is based on the uncorroborated evidence of accomplice. The Court should ordinarily and especially in Excise cases, require corroboration. Hearsay evidence cannot be admitted to corroborate accomplice's evidence. (*Eales*, C.J.) AH TAT *v.* EMPEROR. 14 I.C. 968 = 28 Cr. L.J. 424 = U.B.R. 1 (1911) 96.

——— Ss. 114, Illn. (b) and 133—*Accomplice—Corroboration.*

The provision contained in S. 133 and in S. 114 (*b*) amounts to a direction to all judges and magistrates that a fact cannot be held proved within the meaning of S. 3 if the only evidence is the statement of an unreliable witness. All accomplices are not wholly unworthy of credit. (*Pratt*, J.C. *and Crouch*, A.J.C.) RAMCHAND *v.* EMPEROR.
19 I.C. 534 = 14 Cr. L.J. 262 = 6 S L.R. 195.

———S. 114, Illn. (b)—*Corroboration—Evidence of—Accomplice.*

The presumption contained in S. 114, Illn. (*b*) does not apply when the act of the accomplice imports no great moral delinquency. The rule as to corroboration is a rule of practice. (*Pratt*, J.C. *and Hayward*, A.J.C.) EMPEROR *v.* ISVARDAS. 17 I.C. 79 = 13 Cr. L.J. 767 = 6 S.L.R. 108.

EVIDENCE ACT (I of 1872), S. 114, Illn. (c).

———S. 114, Illn. (c)—*Presumption of consideration.*

When both parties adduce evidence on the question of consideration for the pro-note the presumption of consideration does not arise. (*Krishnaswami Aiyar*, J.) *In re* KANNUSWAMI PILLAI. 9 I.C. 79 = 8 M.L.T. 468.

———S. 114, Illn. (d)—*Landlord and tenant—Continuation of relationship.*

In a suit for arrears of rent, a decree for rent obtained by the landlord in a prior suit against the same defendants is not merely an item of evidence but is conclusive as to the relationship of landlord and tenant at the time to which the previous suit referred. S. 114, Illn. (*d*) does not compel but certainly permits the Court to make a presumption as to the continuance of the state of things. (*Jenkins*, C.J. *and N. R. Chatterjee*, J.) HIRAN MOY KUMAR SAHA *v.* RAMZAN ALI DEWAN.
43 Cal. 170 = 29 I.C. 694 = 20 C.W.N. 48.

———S. 114, Illn. (d)—*Lunacy — Continuance.*

Where a person has been found to be a lunatic under the Lunacy Act the presumption is that he continues to be of unsound mind. (*Wallis*, C.J. *and Srinivasa Aiyangar*, J.) AMANCHI SESHAMMA *v.* AMANCHI PADMANABHA RAO. 3 L.W. 290 = 33 I.C. 578 = 19 M.L.T. 248.

———S. 114, Illn. (d)—*Profligacy.*

The proof of the general profligacy of a person raises a presumption under S. 114 of the Evidence Act that it continued during his life time. (*Pratt*, J. C. *and Crouch*, A.J.C.) SHAHUL *v.* ALLAH BACHAYO. 35 I.C. 504.
9 S L.R. 196.

———S. 114, Illn. (d)—*Continuance of possession.*

When evidence of acts of ownership cannot reasonably be expected, it can be presumed that the owner's possession, once proved, was continuous. (*Hayward*, J.C. *and Boyd*, A.J.C.) SECRETARY OF STATE *v.* MUSHTAK SINGH.
24 I.C. 813 = 7 S.L.R. 169.

———S. 114, Illn. (e)—*Presumption that judicial acts have been properly performed—False evidence, effect of—Rebuttal.*

An auction sale of several properties situated in several villages was sought to be set aside on the ground that the sale proclamations were not duly served in all the villages. The record of the service of the proclamations was destroyed by a fire which broke out in the Court house. *Held*, that the burden of disproving the *prima facie* presumption that official acts were rightly carried out rests with the persons challenging the sale. But if it is proved that proclamations alleged to have been

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served in specific modes in some of the villages could never have been so served, that does not leave the other cases unaffected but the whole story of the service of the proclamations completely breaks down and becomes a series of concocted falsehoods prepared for deliberately misleading the Court. The party on whose behalf this evidence had been prepared should be associated with the scheme of deceit which it was designed to carry out and such association should be regarded as an important element in determining whether his defence was honest and just. (*Lord Buckmaster*). MADHU SUDAN CHOWDHRI *v.* CHANDRABATI CHOWDHRAIN. 21 C.W.N. 897 = (1917) M.W.N. 518 = 42 I.C. 517 = 6 L.W. 437 (P.C.).

———S. 114, Illn. (e)—*Stamp — Compromise petition—Creating mortgage filed in Court —Original lost—Certified copy.*

Where the original of a compromise petition creating a mortgage and filed in Court is missing and a certified copy of the petition is filed the presumption is that the compromise petition was duly stamped. (*Mr Ameer Ali.*) AHMED RAZA *v.* ABID HUSAIN. 38 All. 494 = 5 L.W. 153 = 18 Bom. L.R. 904 = 14 A.L.J. 1099 = 20 M.L.T. 447 = 24 C.L.J. 894 = (1916) 2 M.W.N. 548 = 21 C.W.N. 256 = 1 P.L.W. 20 = 39 I.C. 11 = 43 I.A. 264 (P.C.).

———S. 114, Illn. (e)—*Statements in mutation proceedings—Oudh Land Revenue Act (XVII of 1876), S. 62.*

Statements made by a *purdanashin* lady in documents coming before officers conducting mutation proceedings who act upon them and order mutation of names are admissions by her to which weight should be attached, on the principle of '*praesumuntur recta esse acta.*' (*Lord Atkinson.*) SADIN HUSAIN KHAN *v.* HASHIM ALI KHAN. 38 All. 627 = 6 L.W. 378 = 21 M.L.J. 607 = 14 A.L.J 1246 = 19 O.C. 152 = 18 Bom. L.R. 1027 = 21 C.W.N. 130 = (1916) 2 M.W.N. 577 = 21 M.L.T. 40 = 1 P.L.W. 157 = 4 O.L.J. 22 = 25 C.L.J. 363 = 10 Bur. L.T. 140 = 36 I.C. 104 = 43 I.A. 212 (P.C.).

———S. 114, Illn. (e)—*Oath—Presumption of administering.*

The ordinary presumption is that an oath was duly and properly administered. (*Ryves, J.*) SYED AHMAD *v.* EMPEROR. 38 All. 378 = 15 Cr. L.J. 19 = 22 I.C. 163 = 11 A.L.J. 926.

———S. 114, Illn. (e)—*Official and judicial acts*—Ex parte *entries of service in reference to execution proceedings.*

Ex-parte entries in the order sheet of a Court neither prove their correctness nor raise a presumption of their being false. A party therefore who contends that they do not correctly state events must start his case. But the position is different in the case of one who is not a party to the execution proceedings

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and who is affected by such entry. 36 C. 726; 19 C.W.N. 1159, Dist. (*Mookerjee and Cuming, JJ.*) BINDHU BASHINI DASYA *v.* KESHAB LAL BASU. 21 C.W.N. 945 = 37 I.C. 66 = 26 C.L.J. 109.

———S. 114, Illn. (e)—*Thak and survey map—Presumption of accuracy.*

Thak and survey maps may be presumed to have correctly delineated the boundaries of the village and furnish valuable evidence of persons in possession at the time they were made and consequently also of title. The presumption may be rebutted. (*Mookerjee and Beachcroft, JJ.*) MOHENDRA NATH *v.* SHAMSUNNESSA. 19 C.W.N. 1280 = 27 I.C. 954 = 21 C.L.J. 157.

———S. 114, Illn. (e)—*Judicial acts—Presumption o regularity.*

The Collector is a Revenue officer though he may at times have to perform judicial functions. His acts like those of all other executive officers are presumed to be regular. If he has certified in the order sheet that he has duly served certain notices to annual encumbrances, a Judge is not entitled without evidence to conclude otherwise. (*Fletcher and Richardson, JJ.*) SITIKANTHA ROY *v.* BIPRADAS CHARAN. 27 I.C. 447.

———S. 114, Illn. (e)—*Post mark—Presumption—Addressee swearing to non-receipt—Effect.*

A post-mark is presumed to be genuine and is evidence that the cover bearing it was stamped on the date the impression bears and that the office mentioned therein was the place where it was affixed. But the date of the letter is not necessarily the date of posting. When the addressee of a letter pledges his oath that a certain cover did not reach him or was never tendered to him, the regularity of official business cannot be treated as conclusive against him. (*Mookerjee and Walmsley, JJ.*) GOVINDA CHANDRA SAHA *v.* DWARAKA NATH PATITA. 20 C.L.J. 485 = 26 I.C. 962 = 19 C.W.N. 489.

———S. 114, Illn. (e)—*Authority of agent.*

Where a petition signed by an agent on behalf of a party comes out of a public office the presumption is that the officer was satisfied about the agent's authority to sign on the party's behalf. (*Fletcher and Richardson, JJ.*) BASIRUDDIN AHMED *v.* HIMMAT ALI MANDAL. 25 I.C. 852.

———S. 114, Illn. (e)—*Act done by Public Officer—Revenue Sale Law—Commissioner.*

The ordinary presumption is that an act done by a Public Officer in his public capacity is rightly done and the person alleging the contrary has to prove the allegation. The presumption was applied to the acts of a Commissioner acting under the Bengal Land Revenue Sale Law. (*Brett and Mookerjee, JJ.*) CHOWDHURY RAM PRASAD SINGH *v.* CHOWDHURY POWAN SINGH. 21 I.C. 354 = 18 C.L.J. 97.

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———S. 114, Illn. (e)—*Official acts—Presumption of.*

Where the record of a resolution by a Municipality is lost and no secondary evidence of it is given under S. 65 the presumption of the regularity of official acts under S. 114 of the Evidence Act could not supply the deficiency in proof. (*Sharfuddin and Richardson*, JJ.) MOOKRAM ALI *v.* CUTTACK MUNICIPALITY. 15 Cr. L.J. 91=18 I.C. 651=17 C.W.N. 831.

———S. 114, Illn. (e)—*Judicial acts—Presumption.*

Although there is no presumption of law that a particular act to be performed has been done, yet, judicial acts must be presumed to have been regularly performed. (*Mookerjee and Beachcroft*, JJ.) GOKUL PADAN *v.* GANESH LAL PANDIT. 17 C.W.N. 565=17 I.C. 936=16 C.L.J. 404.

———S. 114, Illn. (e)—*Foreclosure—No presumption that the notices were served.*

In a suit to redeem a mortgage the mortgagee alleged that the mortgage was a *Bai bil-wafa* and that under foreclosure proceedings the mortgage had turned into an out and out sale. *Held*, that as the records of foreclosure proceedings were burnt, it cannot be presumed that those were regular. (*Chevis*, J.) PARMAND *v.* THIKHU. 121 P.W.R. 1918=30 I.C. 817. 57 P.L.R. 1916.

———S. 114, Illn. (e)—*Presumption—Revenue records—Burden of proof.*

A statutory presumption is made in favour of the correctness of the revenue records and the onus is on the party who disputes their correctness to show that they are incorrect. (*Johnstone and Shadi Lal*, JJ.) THIRAJ *v.* KASIM. 48 P.W.R. 1915=26 I.C. 481=124 P.L.R. 1915.

———S. 114, Illn. (e)—*Scope of.*

Illustration (e) of S. 114 of the Evidence Act is not exhaustive and the general language of the section applies to all acts or proceedings which might be presumed to have been done in the usual course of business. 32 C. 1107, Ref. to. (*Seshagiri Aiyar and Phillips*, JJ.) LAXIMIPATHAYA *v.* RAMACHANDRA. 31 M.L.J. 311=(1916) 2 M.W.N. 133=35 I.C. 421=20 M.L.T. 328.

———S. 114, Illn. (e)—*Certified copy—Presumption of genuineness.*

Under S. 114, a certified copy of a will supplied under the ordinary copyist rules may be presumed to be a correct copy of the original will which was in Court at the time when the copy was made. (*Wallis*, C.J.) DURAISWAMI REDDY *v.* MUTHULINGA REDDY. 22 I.C. 50=19 M.L.T. 1.

———S. 114, Illn. (e)—*Official statement—Presumption of accuracy.*

An official statement made in the ordinary course of official business by a public officer must be presumed to be accurate. (*Benson and Miller*, JJ.) NARAYANASWAMY NAIDU *v.* CHINLALAPATI SUBBARAJU. 14 I.C. 1007=22 M.L.J. 293.

———S. 114, Illn. (e)—*Official acts—Presumption—Rebuttal.*

The principle that acts of a Court are presumed to have been regularly done does not apply if an examination of the record shows that a party has not been properly served. (*Daniels*, O.A.J.C.) ZAIBUNNISSA *v.* HASARATUNISSA. 1 U.P.L.R. (J.C.) 1=52 I.C. 162=21 O.C. 124.

———S. 114, Illn. (e)—*Official acts—Deputy Commissioner acting under Bengal Regulation XVII of* 1806.

The action of Deputy Commissioner under Regulation XVII of 1806, is a purely ministerial one. His acts, therefore are official acts and the presumption in S. 114, illustration (e) of the Evidence Act, is applicable to them. (*Stuart*, J.C.) JWALA BAKSHI SINGH *v.* NOWAZISH ALI. 6 O.L.J. 3=49 I.C. 402=1 U.P.L.R. (J.C.) 20.

———S. 114, Illn. (e)—*Judicial acts—Presumption—Rebuttal of.*

The presumption under S. 114, Evidence Act, in favour of the legality of a Court's proceedings can only be overturned by exceptionally strong evidence. (*Lindsay*, J.C.) SHEODARSHAN LAL *v.* ASSESA SINGH. 46 I.C. 52=5 O.L.J. 179.

———S. 114, Illn. (e)—*Acts following a judicial act.*

A presumption under S. 114 of the Act can be raised even in regard to proceedings that follow a judicial act. The filing of a process fee for the issue of an order of attachment of immoveable property is not sufficient proof of such service. (*Kanhaiya Lal*, A.J.C.) LALJI *v.* GANGA PRASAD. 26 I.C. 101=1 O.L.J. 549.

———S. 114, Illn. (e)—*Official acts—Presumption of regularity—Warrant of attachment.*

The burden of proving that a warrant of attachment signed by the sheristadar but not the presiding Judge of the Court, is illegal on the ground of want of authority in the Sheristadar, is on the person alleging it. The Court will presume that all acts done in connection with an official document were properly performed. (*Mullick and Thornhill*, JJ.) KHIDIR BUXE *v.* EMPEROR. 20 Cr. L.J. 139=49 I.C. 171=3 P.L.J. 636.

———S. 114, Illn. (e)—*Official acts—Regularity of.*

Under S. 114 of the Evidence Act there is a presumption that an official act has been regularly performed; but where an applicant before the Court is attempting to rebut that presumption it is not for the Court itself to give assistance to the other side or to deal

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with the matter otherwise than impartially. (*Ros and Jwala Prasad, JJ.*) MUSSAMMAT SOHAGBATI *v.* BABU SURENDRA MOHAN SINGH. 44 I.C. 661=4 P.L.W. 295.

——— S. 114, Illn. (e)—*Acts done in connection with S. 167 of the Bengal Tenancy Act.*

Under S. 114 of the Evidence Act it must be presumed that all acts in connection with S. 167 of the Bengal Tenancy Act are done in accordance with law and are valid. (*Ros and Jwala Prasad, JJ.*) RAM PROTAP MARWARI *v.* JHOOMAK JHA. 39 I.C. 943=1 P.L.W. 440;

———S. 114, Illn. (e)—*Official acts.*

There is a presumption that official acts are regularly performed. (*Hortnoll, Offg. C.J. and Ormond, J.*) EMPEROR *v.* A. J. COOKE.
7 Bur. L T. 187=22 I.C. 195=
15 Cr.L.J. 243=7 L.B.R. 319.

———S. 114, Illn. (f)—*Letter sent by post—Presumption.*

Where a notice to quit is properly addressed and posted, the presumption is that it reached the addressee. If the letter is registered the presumption is stronger. Acknowledgment of receipt signed by person other than the addressee is not sufficient to prove that letter did not reach the addressee. See T. P. Act, 106. (*Lord Atkinson*). HARIHAR BANERJEE *v.* RAMESHI ROY. 46 Cal. 458=3 L.W. 143=
16 A.L J. 959=25 M.L J. 707=
29 C.L J. 117=23 C.W.N. 77=
25 M.L.T. 189=21 Bom L.R. 512=
(1919) M.W.N. 471=1 U.P.L.R 55=
48 I.C. 277=45 I.A. 222 (P.C.).

———S. 114, Illn. (f)—*Service of notice by post—Refusal to accept.*

A notice to quit was given by a registered post but the letter containing the notice was returned to the Post Office, the addressee having refused to accept it. *Held*, that under S. 114 of the Evidence Act the Court was entitled to presume that the letter containing the notice reached the defendant. (*Fletcher and Huda, JJ.*) GIRISH CHANDRA GHOSH *v.* KISHORE MOHAN DAS.
24 C.W.N 478=54 I C. 5=23 C.W.N. 319.

———S. 114, Illn. (f)—*Letter sent by post—Presumption.*

Proof of the fact of a letter correctly addressed having been posted and not received back may raise a presumption that it has been delivered to the addressee but proof of the fact of a letter duly sent and returned to the sender does not justify the presumption that the letter has been refused by the addressee. The presumption mentioned in section 114 of the Act is a presumption of fact, not of law. As to fixing the date of its tender to the addressee, the usual course of mail, and the place of receipt, it is a matter purely of evidence. (*Mookerjee and Walmsley, JJ.*) GOBINDA CHANDRA SAHA *v.* DWARAKA NATH PATITA.
20 C.L.J. 485=26 I.C. 952=19 C.W.N. 489.

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———S. 114, Illn. (f)—*Notices — Proof of service of—Return of registered cover containing notice—Refusal of addressee to accept.*

Where on a registered cover proved to have been posted and produced by the plaintiff in Court there is an endorsement by an officer of the Post Office stating the refusal by the defendant addressee to receive the cover it is sufficient to prove the service of the notice. (*Richardson and Newbould, JJ.*) DURGA NATH *v.* RAJENDRA NATH. 20 I.C. 353=
17 C.W.N. 1073.

———S. 114 (f)—*Posting of letter—Presumption of reaching addressee.*

The Court may presume where the posting of a letter is proved and the same is not returned by the Dead Letter Office, that it must have reached the addressee. (*Schwabe C.J. and Krishnan, J.*) ABURUBAMMAL *v.* OFFICIAL ASSIGNEE, MADRAS.
45 M.L.J. 817=19 L.W. 51=
31 M L.T. (H.C.) 217=47 Mad. 215=
1924 M. 214.

———S. 114, Illn. (f)—*Presumption under—Lower appellate Court—Second appeal.*

Where upon the evidence, a presumption of fact under S. 114, Illustration (*f*), is drawn by an Appellate Court such presumption is binding upon a Court of second appeal. (*Mittra, A.J.C.*) RAMCHANDRA KANIRAM MARWADI *v.* LAXMAN. 53 I.C. 62.

———S. 114, Illn. (f)—*Notice sent by registered post.*

Where defendant denies receipt of a notice sent by registered post, plaintiff has to prove by calling the post peon that the post card was tendered and refused by the defendant. (*Mittra A.J.C.*) RAJA UDRAM *v.* KHANBEG AMIR BEG. 48 I.C. 904.

———S. 114, Illn. (g) — *Non-production of material witness—No comment in trial Court—Appellate Court.*

No inference should be drawn against a party for not producing a material witness where the question of the absence of such witness was not raised at the trial. (*Lord Phillimore.*) BANWARI LAL *v.* MAHESH.
41 All. 63=21 C.C. 328=
23 C.W.N. 577=6 C.L.J. 168=
(1919) M W.N. 490=49 I.C. 540=
45 I.A. 284 (P.C.).

———S. 114, Illn. (g)—*Accounts—Failure to produce—Presumption—Benami.*

When a party whose business it is to produce or account for the non-production of certain books of account, relevant to the subject-matter in dispute in a case, fails even after an order for discovery has been made upon him, to produce the same or give evidence of diligent search and of failure to find them even if the fact and date of their destruction cannot be proved, two consequences would follow, *viz.*, (1) the opposite party can give secondary

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evidence of their contents and (2) the presumption arises that the contents of the books not accounted for are as regards the issues in dispute unfavourable to the party in default. (*Lord Sumner.*) MOTILAL *v.* KUNDAN LAL.
32 M.L.J. 468 = 15 A.L.J. 329 = 1 Pat. L.W. 490 = 25 C.L.J. 581 = 19 Bom. L.R. 471 = 21 C.W.N. 929 = 22 M.L.T. 10 = (1917) M.W.N. 464 = 39 I.C. 984 = 6 L.W. 92 (P.C.).

———S. 114, Illn. (g)—*Account books—Non-production of—Necessity—Burden of proof.*

A bad practice has grown in Indian procedure of parties in possession of important documents or information lying by, trusting to the abstract doctrine of onus of proof and failing to furnish the Courts with the best material for decision. Where a mortgage of *mutt* property is attacked as not binding on the *mutt*, if those in charge of the accounts of the *mutt* do not produce them to confirm their statements an inference adverse to them can be drawn from the omission. (*Lord Shaw.*) MURGESAM PILLAI *v.* GNANA SAMBANDHA PANDARA SANNADI.
40 Mad. 402 = 44 I.A. 98 = 21 M.L.T. 288 = 32 M.L.J. 369 = 15 A.L.J 281 = 1 P.L.W. 457 = 5 L.W. 769 = 21 C.W.N. 761 = 19 Bom. L.R. 456 = 23 C.L.J. 589 = 39 I.C. 659 = (1917) M.W.N. 467 (P.C.).

———S. 114, Illn. (g)—*Non-production of evidence—Adverse inference.*

In appraising the value to be given to conflicting oral testimony the Court ought to attach due weight to the fact that documentary evidence which might have concluded the case one way or another and for the custody of which one of the parties is responsible, has not been brought before it. Such an omission weakens seriously the case of the party who is or ought to be in possession of such evidence. (*Lord Shaw*). RAM PARKASH DAS *v.* ANAND DAS.
43 Cal. 707 = 43 I.A. 73 = 20 C.W.N 802 = 14 A.L.J. 621 = (1916) 1 M.W.N. 405 = 31 M.L.J. 1 = 18 Bom. L.R. 490 = 3 L.W. 556 = 24 C.L.J. 116 = 33 I.C. 583 = 20 M.L.T. 267 (P.C.).

———S. 114, Illn. (g)—*Accounts—Non-production of—Adverse inference when drawn.*

It is open to a litigant to refrain from producing any documents, not forming part of his case, that he considers irrelevant; if the other litigant is dissatisfied, it is for him to apply for their production and inspection and to exhibit them as evidence in the cause if he thinks proper. If he does not do so neither he nor the Court at his suggestion is entitled to draw any inference as to the contents of any such documents. (*Sir George Farewell.*) MUSAMMAT BILAS KUNWAR *v.* DEORAJ RANJIT SINGH.
37 All. 557 = 42 I.A. 202 = 19 C.W.N. 1207 = 29 M.L.J. 385 = 2 L.W. 830 = 18 M.L.T. 248 = 13 A.L.J. 991 = 17 Bom. L.R. 1005 = 22 C.L.J. 516 = 30 I.C. 299 = (1915) M.W.N 757 (P.C.).

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———S. 114, Illn. (g)—*Witnesses—Duty to produce and examine conduct of parties.*

Where the evidence adduced by the plaintiff, if believed, established a strong case which it was incumbent on the defendants to meet by personal denials, and all that they did was to produce evidence on collateral matters the plaintiff was held entitled to a decree. An important witness who according to the plaintiff had carried the plaint jewels to the defendants, for safe custody, ought, *prima facie* to have been called by the plaintiff. But she being a relative of the defendants having left the plaintiff's service only recently and having been summoned by the defendants it was not unnatural that the plaintiff would have left the defendants to call her. (*Lord Robson*) DURGA KUNWAR *v.* MATHURA KUNWAR.
15 C.W.N. 717 = 10 I.C. 963 = 10 M.L.T. 216 (P.C.).

———S. 114, Illn. (g)—*Non-production of documents—Inference.*

Plaintiff kept back certain books and documents relating to the matters in controversy but there had been no 'order for discovery'. *Held*, that the suit could not be dismissed though an adverse inference may be drawn from the non-production of documents. (*Richards*, C.J. *and Piggott*, J.) KISHUN LAL *v.* SULTAN SINGH. **38 All. 5 = 30 I.C. 525 = 13 A.L.J. 831.**

———S. 114, Illn. (g)—*Document not produced on demand—Presumption.*

An account book prepared by plaintiff and relied on by defendant was not produced by plaintiff when demanded by the Court. *Held*, the Court was justified in drawing an inference that it was against the plaintiff. It makes no difference that the plaintiff is minor and the guardian is female. (*Karamat Hussain and Tudball*, JJ.) MATHURI *v.* GURCHARAN.
16 I.C. 28.

———S. 114, Illn. (g)—*Non-production of document.*

A document though not produced in a previous criminal case between the same parties may be produced in a subsequent suit, but its previous non-production affects its value. (*Teunon and Newbould*, JJ.) SORMAN FAKIR *v.* MOLLA ABDUL AZIZ. **57 I.C. 949.**

———S. 114, Illn. (g)—*Accounts—Suit for—Non-production of accounts—Effect of.*

In a suit for accounts the non-production of account books by the party who has custody of them, justified the presumption under S. 114 (*g*) of the Evidence Act that they have been withheld, because if produced they would have been unfavourable to his case. If he is the plaintiff and is claiming accounts though withholding papers his suit is liable to be dismissed. 13 C.W.N. 696; 19 W.R. 14, Ref. If it is the defendant who is liable to render accounts, the Court will proceed on the footing of the evidence furnished by the

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plaintiff, and in doing so may make all reasonable presumptions against him. If the Court is satisfied that the defendant has contumaciously refused or omitted to comply with the order for production of the papers, the Court may enforce obedience by imprisonment or by attachment of property or by both. 7 Cal. 654, Ref. (*Mookerjee and Panton, JJ.*) DEBENDRA *v.* NARENDRA. **24 C.W.N. 110 = 54 I.C. 636 = 30 C.L.J. 417.**

———S. 114, Illn. (g)—*Criminal trial—Prosecution—Omission to examine eye-witnesses.*

Where the prosecution does not call all available eye-witnesses, the Court may properly draw an inference adverse to the prosecution. (*Jenkins and N. Chatterjee, JJ.*) RAM RANJAN ROY *v.* EMPEROR. **42 Cal. 423 = 16 Cr. L.J. 170 = 27 I.C. 554 = 19 C.W.N. 28.**

———S. 114, Illn. (g)—*Omission to examine witness—Pleader—Counsel.*

The presumption in S. 114, Illn. (g), applies where a counsel in a case ought to have been called as a witness but is not so called. Where a document is privileged, no adverse inference should be drawn from its non-production. (*Woodroffe, Coxe and Chatterjee, JJ.*) D. WESTON *v.* PEARY MOHAN DAS. **40 Cal. 898 = 23 I.C. 25 = 18 C.W.N. 185.**

———S. 114, Illn. (g)—*Books in plaintiff's possession—Failure to produce them—Presumption—Evidence, secondary.*

In a suit for accounts if plff. being in possession of books fails to produce these, every presumption should be drawn against him and he has no right to ask the Court to take accounts. Plaintiff cannot adduce secondary evidence of them if their loss is not proved and the deft. should not be called upon to give any account. (*Shadi Lal and Dandas, JJ.*) THAKURDAS *v.* GOWRDHAN. **56 I.C. 240.**

———S. 114, Illn. (g) — *Presumption—Criminal trial.*

Where the prosecution fails to produce an important witness the Court can presume that if he were produced his evidence would not be favourable to the prosecution. (*Chevis and Scott-Smith, JJ.*) EMPEROR *v.* AMOLAK RAM. **51 I.C. 679 = 20 Cr. L.J. 519.**

———S. 114, Illn. (g)—*Criminal trial—Witness not produced.*

Where an eye-witness is not produced before the committing Magistrate, the natural presumption is that he would not support the case for the prosecution. (*Chevis and Scott-Smith, JJ.*) KAIMI *v.* EMPEROR. **17 Cr. L.J. 267 = 12 P.R. 1916 (Cr). = 34 I.C. 987 = 39 P.W.R. 1916 (Cr).**

———S. 114, Illn. (g)—*Accounts—Non-production of—Absence of notice.*

No presumption can be drawn against a party for non-production of accounts when the notice to produce them is insufficient. (*Scott-Smith, JJ.*) HARI SHANKER *v.* BABU RAM. **251 P.W.R. 1912 = 18 I.C. 716 = 73 P.L.R 1913.**

———S. 114, Illn. (g)—*Accounts—Non-production of.*

Non-production of account books by the party in possession thereof raises a presumption against him, that if produced they would have been against him. (*Shah Din and Scott-Smith, JJ.*) SHAM DAS *v.* POHLO RAM. **18 P.W.R. 1913 = 18 I.C. 604 = 16 P.L.R. 1912 (Supp).**

———S. 114, Illn. (g)—*Failure to produce evidence.*

If a party fails to produce the best available evidence, (*i.e.*) his accounts though summoned, the onus of proof shifts on to him, though it initially lay on the other side. So held in a suit by a creditor to enforce a debt of the manager against members of the joint family. (*Wallis, C.J. and Ayling, J.*) GURUSWAMI NADAN *v.* GOPALASWAMI ODAYAR. **42 Mad. 629 = 9 L.W. 547 = 36 M.L.J. 568 = 50 I.C. 775 = (1919) M.W.N. 301.**

———S. 114, Illn. (g)—*Settlement record—Not produced—Presumption against Government.*

Where permanent settlement records in the special knowledge and custody of Government are not produced, a presumption could be raised against the claim of the Government to resume certain lands as having been excluded from assessment at the time of the permanent settlement. (*Sankaran Nair and Tyabji, JJ.*) SRI RAJA PARTHASARATHY APPA RAO *v.* SECRETARY OF STATE FOR INDIA. **18 Mad. 620 = (1913) M.W.N. 959 = 14 M.L.T. 514 = 26 I.C. 671 = 26 M.L.J. 39.**

———S. 114, Illn. (g)—*Suppression of will.*

It may be presumed as against a person who is in a position to produce a will but does not do so, that the will if produced, would be unfavourable to him. But the Courts will not make any presumption as to actual contents of the will or as to the legacies under it and persons claiming the benefit of such provisions must prove them. 25 Mad. 367; 29 I.A. 76 Foll. (*Sundara Aiyar and Sadasiva Aiyar, JJ.*) PACHETI SWAMIGADU *v.* YERRAPRAGADA AYAPPARASU. **16 I.C. 815.**

———S. 114, Illn. (g)—*Non-production of accounts.*

If a party persistently omits to produce his books of account there is a justifiable presumption that they do not support his case. (*Drake-Brockman and Findlay, J.C.*) PADAM RAJ *v.* GOPIKISAN. **16 I.C. 129.**

———S. 114, Illn. (g) — *Presumption — Discharge — Mortgage bond produced by mortgagee.*

Where a usufructuary mortgage was executed in 1876 but the mortgagee was not given possession of the property and he did not make

EVIDENCE ACT (I of 1872), S. 114, Illn. (g).

any demand or attempt to enforce the bond until his death and in 1908 the heirs of the mortgagee sued on the bond ; *held*, that under the circumstances it must be presumed that the mortgage was satisfied, notwithstanding the fact that the bond was produced by the plaintiff. 46 I.C 657 Rel. on. (*Stanyon*, A.J.C.) AMRITABAI v. JABBANBI. **46 I.C. 676.**

——S. 114, Illn. (g)—*Collection of rents—Absence of evidence of—Suit for profits.*

If in a suit for profits of land the recorded collections are suspiciously low, and the defendant does not produce evidence to show what was collected, the Court may presume that the full amount of the rents had been collected and the profits assessed on the basis of the gross rental. (*Daniels*, A.J.C.) RAGHUNATH SINGH v. HAR DAYAL. **56 I.C. 751=7 O.L J. 278.**

——S. 114, Illn. (g) —*Account books—Summoned not produced.*

The non-production, by a mortgagee in a suit on a mortgage bond, when the defence was discharge of the debt, of his account books when summoned for by the mortgagor justifies the presumption under S. 114, Illn. (g) of the fact that if produced they would have been unfavourable to the mortgagee. The fact that a careful money lender took no steps during his lifetime to recover his money after the amount rose above the value of the mortgaged property, cannot be believed. 32 A. 104 P.C. Ref. to. (*Piggott*, J.C. *and Kanhaiya Lal*, A.J.C.) LALTA PERSHAD v. MAJID UNNISSA. **25 I C. 749=1 O.L.J. 426.**

——S. 114, Illn. (g)— *Burden of proof—Defendant's failure to produce accounts raises no presumption in his favour.*

When a plaintiff sues on a contract he must support his case by conclusive proof of the contract to the Court's satisfaction on the plaintiff's failure to prove his case, there can be no presumption that his case would have been supported by certain account books of the defendant, which in fact were not produced by the defendant. 37 A. 557 P.C, Ref. to. (*Mullick and Atkinson*, JJ.) BALDHARI SINGH v. BASAR ALI KALAL. **37 I.C. 967.**

——S. 114, Illn. (i)—*Discharge—Presumption—Burden of proof—Production of document with endorsement of payment—Suspicion.*

Suspicion though a ground for scrutiny cannot be made the foundation of decision. The production of a bond with an endorsement of payment casts upon the plaintiff, the obligor, the burden of proving that the debt is still outstanding, i.e., that the bond came into defendant's hands by dishonest means, and that the signatures to the endorsement are either forgeries or unauthorised. (*Mr. Ameer Ali*) MOHAMMAD MEHDI HASAN KHAN v. MANDIR DAS. **34 All. 511=39 I A. 68=12 M.L.T. 292=15 O.C. 278=14 Bom. L.R. 1078=10 A.L.J. 378=17 C.W.N. 49=16 C.L J. 620=(1912) M.W.N. 1052=17 I.C. 396=23 M.L.J. 741 (P.C.).**

EVIDENCE ACT (I of 1872), S. 114, Illn. (i).

——S. 114, Illn. (i)—*Discharge—Mortgage deed produced by mortgagor—Presumption—Payment—Onus.*

Where the mortgagor produces the mortgage document from his custody the presumption is that the bond has been discharged and the onus is on the mortgagee to prove that it was not. 34 A. 511 Dist. P.C. (*Banerjee and Ryves*, JJ.) BINAYAK RAO v. DINKAR RAO. **20 I.C. 308.**

——S. 114, Illn. (i)—*Lost documents—Loss not proved—Scope of the section.*

Where a mortgage document was lost which was relied on by one party for certain payments made by him which were endorsed upon the document and where the other party was not able to prove the loss, it was *held*, that the presumption under S. 114 as regards lost documents could not be used in favour of the party relying upon it. (*Karamat Hussain and Chamier*, JJ.) QUADRAT ULLAH v. CHUNI MAL. **13 I.C. 60.**

——S. 114, Illn. (i)—*Burden of proof—Suit on mortgage bond—Bond in possession of defendant.*

When in a suit on a mortgage bond the defendant produces the original of the mortgage bond with the endorsement of payment, the burden is cast on plaintiff of showing that the debt is outstanding. (*Batchelor*, A.C.J. *and Shah*, J.) RAOJI FAKIRA v. DAGDU HANMANTA MAHAR. **41 Bom. 23=36 I.C. 562=18 Bom. L.R. 779.**

——S. 114, Illn. (i)—*Discharge—Bond produced by the defendant—Endorsement of discharge absent.*

Illustration (i) to S. 114 of the Evidence Act only refers to presumptions that may be raised. It does not follow that such presumptions would shift the onus of proof. Where in a suit on a mortgage the defendant pleaded discharge and produced the bond, but there was no endorsement of discharge written thereon and the person through whom the money was said to have been paid was not examined, the Lower Courts were right in holding that the mere production of the bond was not enough to shift the burden of proving the discharge which lay on the defendant. 34 A. 511 P.C. Dist. (*Seshagiri Aiyar*, J.) *In re* PARA THURINJI, **2 L.W. 604=16 M.L.T. 94=30 I.C 258=(1915) M.W.N. 638.**

——S. 114, Illn. (i)—*Discharge—Production of mortgage bond by mortgagor—Presumption.*

The production of the mortgage bond by the mortgagor is presumptive evidence that the debt has been paid off. (*Sadasiva Aiyar and Tyabji*, JJ.) APPAVU CHETTIAR v NARAYAPPA GOUNDEN. **16 M L.T. 117=30 I.C. 792=28 M.L.J. 329.**

——S. 114, Illn. (i)—*Discharge—Document in the custody of mortgagor.*

Where defendant pleads discharge of a mortgage and the document is found to have

EVIDENCE ACT (I of 1872), S. 114, Illn. (i).

been tampered with and is in possession of the mortgagor, and the mortgagee is not able to account satisfactorily for the mortgagor's possession, the Court would be entitled to draw a presumption of discharge. But still the presumption is liable to be rebutted. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) HABIB MAHOMED MARKAYAR v. MUTHU VELAN.
16 I C. 489.

———S. 114, Illn (i)—*Lost bond—Payment pleaded—Presumption.*

If a plaintiff sues for money due upon a bond and alleges its loss, and the defendant admits execution but pleads payment, the defendant must prove payment, either by the production of the bond or by other evidence or both; and if the defendant does not produce the bond, the question of its loss is only material in so far as it may raise a presumption one way or other under S. 114. (*Kanhaiya Lal*, A.J.C.) JAGANATH v. KAMTA SINGH. 12 I.C. 359 = 2 O L.J. 498.

———S. 114, Illn. (i)—*Discharge—Bond in possession of obligor—Presumption.*

If a document creating an obligation is in the hands of the obligor the obligation may be presumed to be discharged but the Court should consider, that though the bond is in the possession of the obligor under the circumstances of the case, he may have stolen it. (*Chamier*, C.J. *and Sharfuddin*, J.) KISHUN CHAND v. MASAFIR MISTRY.
3 P.L W. 285 = 39 I C. 858 = (1917) Pat. 186.

———S. 114, Illn. (i)—*Original deed bearing the endorsement of payment produced by defendant—Presumption.*

Where a defendant produced the original bond of mortgage with an endorsement of payment, it was for the plaintiff to prove that the debt was still outstanding. (*Roe*, J.) MADAN MOHAN v. ETWAR CHAND.
38 I.C. 562

———S. 114, Illn. (i)—*Discharge—Pro-note in the hand of maker—Presumption.*

If the pro-note is in the hands of the maker thereof there is a presumption that it has been paid off. If the drawee alleges that the maker came into possession of the note unlawfully the onus is on him to prove it. (*Ormond*, J.) AUNG MYAT v. HLA MAY. 10 L.B.R. 21 = 52 I C. 560 = 12 Bur. L T. 116.

——— S 115.

ACQUIESCENCE.
ADMISSION.
ATTESTATION.
CONDUCT.
CONSENT, DECREE OR ORDER.
CRIMINAL LAW.
DIFFERENT SUBJECT.
EQUITABLE ESTOPPEL.
ESTOPPEL AGAINST ESTOPPEL.
EXECUTOR.

EVIDENCE ACT (I of 1872), S. 115—Acquiescence.

EXECUTION SALE.
FRAUD.
ILLEGALITY.
INCONSISTENT PLEAS.
JUDGMENT.
LACHES.
LANDLORD AND TENANT.
LICENSOR.
MINOR.
MORTGAGOR.
NONE AGAINST STATUTE.
NONE IF TRUTH KNOWN.
NOT EXHAUSTIVE.
OMISSION.
PARTIES AND PRIVIES.
PART PERFORMANCE.
PLEADINGS.
PUBLIC POLICY.
REPRESENTATION.
RIGHT TO APPEAL.
TRUSTEE.
VENDOR AND PURCHASER.
WAIVER—ESTOPPEL.
MISCELLANEOUS.

Acquiescence.

——S. 115—*Acquiescence.*

Where a person objected to another putting up a structure on his land and objected before the Municipal authority who however refused to go into a question of title, he cannot in any sense be held to have acquiesced in the act. 21 All. 496 (P.C.) Foll. (*Gokul Prasad*, J.) MT. KOKLA KUMAR v. KALIAN MAL.
1923 All. 452.

———S. 115—*Acquiescence—Landlord and tenant—Erection of structures—Demolition.*

To raise a plea of estoppel against a landlord seeking to demolish structures erected by a tenant, it is not enough for the tenant to show that the landlord stood aside and allowed the structures to be erected. One of the essential elements of equitable estoppel is that the person who sets up that estoppel must have acted in good faith and must have been under the belief that he had a right to put up the buildings. Where the buildings in dispute have been in existence for a long period and certainly for over 12 years and the landlord has been aware of their erection and kept quite all along, he cannot turn round and claim to demolish the buildings so erected. (*Lindsay*, J.) MUSSAMMAT DULARI KOER v. SALIG RAM.
4 U.P.L.R. (A.) 82 = 1922 All. 210.

——S. 115—*Acquiescence — Acts on one basis.*

Where the correspondence between the parties showed that they proceeded on the assumption that the plaintiff was entitled to exercise a certain right the defendants who have acquiesced in it, were estopped from disputing it. (*Kajiji*, J.) LADHABAI v. SIR JAMSETJI JIJIBHAI. 42 Bom. 108 = 42 I.C. 882 = 19 Bom. L.R. 813.

EVIDENCE ACT (I of 1872), S. 115—Acquiescence.

———S. 115—*Acquiescence—Mines—Working of, by co-sharer.*

Where a co-sharer knowing that a lessee from another sharer was spending large sums of money to develop the mine, did not promptly come in with his claim for an account of the profits, his claim after long time could be barred by acquiescence. (*Fletcher and Shamsul Huda*, JJ.) BENGAL COAL COMPANY, LTD. *v.* MONORANJAN BAGCHI. **44 I.C. 297 = 22 C.W.N. 441.**

———S. 115—*Acquiescence—Laches—Effect of.*

There is a distinction between a case where the acquiescence alleged occurs while the act acquiesced is in progress, and another where acquiescence takes place after the act has been completed. In the former case, the acquiescence is proof of assent. In the latter case, when the act is completed without any knowledge or without any assent on the part of the person whose right is infringed the matter must be determined on very different legal considerations. A right of action has then vested in him, and mere delay to take legal proceedings to redress the injury cannot by itself, constitute a bar to such proceedings unless the delay on his part, after he has acquired full knowledge, has affected or altered the position of his opponent. A person cannot be barred of his remedy on the ground of waiver unless at the time of the alleged waiver he is shown to have been fully cognizant of his right and of the facts of the case. (*Mookerjee and Chapman*, JJ.) SHYAMA CHARAN BAISYA *v.* PRAFULLA SUNDARI GUPTA.
19 C.W.N 882 = 30 I.C. 161 = 21 C.L.J. 557.

———S. 115—*Acquiescence — Knowledge essential.*

The mere fact that the accounts of the Administrator *pendente lite* were passed and the plaintiff raised no objection, would not operate as an estoppel. Acquiescence cannot be imputed where there is no evidence that the plaintiff knew the facts as represented to be incorrect or that he did not rely on the representation. (*Jenkins*, C.J. *and Woodroffe*, J.) OSMAND BEEBY *v.* KHITISH CHANDRA. **41 Cal. 771 = 25 I C. 284 = 18 C.W.N. 631.**

———S. 115—*Acquiescence—Silence — Sale of joint property by one of three brothers—Other brothers standing by for years and allowing vendee spend large sums on building.*

Where one of three brothers sold ancestral property and the other brothers with knowledge of the sale kept quiet while the vendee was spending moneys in building on the land sold: *Held*, that the plaintiffs' long silence coupled with the fact that they knew all along of the building operations and abstained from asserting their own rights, showed that they acquiesced in the sale and that they were consequently estopped from asserting those rights in a suit. 177 P.W.R. 1911, 13 Bom. L.R. 164, 19 Cal. W.N. 882; 39 P.W.R. 1910, Foll. 20 C.W.N. 657; 9 All. 434; 16 All. 326; 21 All. 496 (P.C.), Ref. (*Broadway and Harrison*, JJ.) DHANPAT RAI *v.* GURANDITTA MAL. **2 Lah. 258 = 64 I.C. 520 = 10 P.L.R. 1922.**

EVIDENCE ACT (I of 1872), S. 115—Acquiescence.

———S. 115—*Acquiescence—Hindu reversioner—Widow's act.*

A widow allowed an occupancy tenant to exchange one of his occupancy fields with a non-occupancy one. Plaintiff who was one of the collaterals of the last male holder and a lambardar did not object to the exchange but affixed his seal to the patwari's report at the time of mutation. Subsequently the occupancy tenants sank a well in the field obtained by him under the exchange but the plaintiff did not object. Six years after the exchange he sued for a declaration that the exchange would not affect his reversionary right. *Held*, that the plaintiff having acquiesced in the exchange and having failed to object to the sinking of the well was estopped from objecting to the exchange. (*Abdul Raoof*, J.) ILLA-UD-DIN *v.* AMIR-UL-LAH. **56 I.C. 874 = 2 U.P.L.R. (L) 105.**

———S. 115—*Acquiescence — Knowledge of transaction—Estoppel.*

In a suit by a reversioner for recovery of properties alienated by his father it was found that he was aware of the sale, that he was present at the time of its execution and registration and that he took no steps to question the sale for more than 11 years. *Held*, that there was an estoppel by title barring the plaintiff's claim. (*Broadway*, J.) SHER KHAN *v.* ALAF KHAN. **49 I.C. 391.**

———S. 115—*Acquiescence—Sale by father—Building by alienee—Son's silence.*

The vendor's son stands by, while the land sold by his father is being built upon by the vendee and sues for possession 11 years after the sale on his father's death saying that the sale was without necessity and consideration. *Held*, the son was estopped, on the ground of acquiescence from contesting the alienation. (*Shah Din and Chevis*, JJ.) GOBICHAND *v.* RAM CHAND. **12 I.C. 729 = 177 P.W R. 1911.**

———S. 115—*Acquiescence — Building on land without title—Silence.*

Wallis, C.J.—If a man builds a house partly on his neighbour's land and the neighbour acquiesces, Courts of Equity will interfere to prevent him from disturbing the house when completely finished. *Seshagiri Aiyar*, J.—The principles of equitable estoppel can apply to only executory contracts and not to executed contracts. Where title can be acquired only in a particular way there is no room for the application of the doctrine of estoppel. S. 115 of the Evidence Act does not apply to cases where two parties exchange plots by means of an unregistered agreement and one party on

EVIDENCE ACT (I of 1872), S. 115—Acquiescence.

the ground of non-registration seeks to get back possession of his land after it had been built upon by the other. 42 C. 801 P.C., Exp. (*Wallis*, C J. *and Seshagiri Aiyar*, J.) RAMANATHAN CHETTY *v.* RAMASWAMI CHETTY.
30 M.L J. 1=19 M L.T. 114=
32 I.C. 5=(1915) M.W.N. 1043.

[Opinion of Seshagiri Aiyar, J., upheld in 40 Mad. 1134=43 I.C. 138=
38 M.L.J. 253].

———S. 115—*Acquiescence — What constitutes.*

Mere acquiescence or absence of interference on the part of daughter who claimed a share in the property would not amount to a consent which the section requires. (*Lindsay*, J.C.) BADRUNNISSA *v.* RAM BAHAROSE.
55 I.C. 873=7 O.L.J. 78.

———S. 115—*Acquiescence—Tenant building on land—Knowledge of landlord—Ejectment.*

An under-proprietary tenancy for life without power of alienation was granted to a person by a superior proprietor. The grantee died, but the superior proprietor did not enforce the reversion but allowed a trespasser to assert that title and continue to pay the under-proprietary rent. On the faith of the trespasser being treated and recognised as an under-proprietor he did acts which were to the advantage of the superior proprietor. *Held*, the superior proprietor was estopped from denying the right of the trespasser to hold the property in question as an under-proprietor for life without power of alienation. (*Kanhaiya Lal and Daniels*, A.J.Cs.) MUSSAMMAT JANKI KUNWAR *v.* MITRA SEN SINGH.
54 I.C. 901=6 O.L.J. 696.

———S. 115—*Acquiescence—Knowledge of facts essential—Pre-emption.*

In a pre-emption suit if estoppel by acquiescence as distinct from that by the prescribed notice is pleaded, it must be proved that the pre-emptor had full knowledge of what was going on and not merely the knowledge that there was a proposal to sell the property to some one or another for a certain price. (*Lyle and Ashworth*, JJ.) HANUMAN SINGH *v.* ADIYA PRASAD. 54 I.C. 520=22 O.C. 323.

———S. 115—*Acquiescence — Building on trespassed land.*

Where a person builds upon lands on which he has trespassed, the true owner is under no obligation to interfere with such building and the trespasser cannot plead that the owner is estopped by his acquiescence. (*Kanhaiya Lal*, J.C.) PADDU *v.* MAHABIR PRASAD.
53 I.C. 683=6 O.L J. 455.

———S. 115—*Acquiescence—Landlord and tenant*—Dihdari *lands—Suit by superior proprietor.*

Where a *dihdar* has been to the knowledge of the previous superior proprietors of the village in which the suit plots were situated, enjoying and mortgaging his *dihdari* rights for more than 12 years prior to the suit, the present superior proprietor cannot question the *dihdar's* under-proprietary rights. 8 O.C. 145, Dist. (*Kanhaiya Lal*, A.J.C.) KISHUN *v.* SHYAM SUNDAR. 33 I.C. 441=19 O.C. 27.

EVIDENCE ACT (I of 1872), S. 115—Admission.

———S. 115—*Acquiescence—Erroneous proceedings.*

If parties consent to a course not strictly in accordance which the procedure prescribed by the rules and do not object to it, they are not entitled to turn round afterwards and seek to get some benefit from the failure to abide by the procedure in the same way as if they had objected at the start or if they had no notice of it. (*Miller*, C.J. *and Ross*, J.) RATNAKAR GOUNTIA *v.* CHAMBA SATPASTY.
51 I.C. 881=4 P L J. 357.

———S. 115 — *Acquiescence — Trespasser building upon another's land—Building with knowledge of defective title.*

An owner can insist on having back his land with all the additional value which a stranger had imprudently added to it knowing that he is not the owner. (*Chapman and Atkinson*, JJ.) STOCKING B. *v.* TATA IRON AND STEEL COY.
2 P.L.W. 183=2 P.L J. 600=
41 I.C. 175=(1917) Pat. 273.

———S. 115 — *Acquiescence — Laches — Difference between.*

Where there is a statute of limitation the objection of simple laches does not apply until the expiration of the time allowed by the statute. But acquiescence is a different thing; it means more than laches. If a party who could object stands by and knowingly permits another to incur an expense in doing an act under the belief that it would not be objected to and so a kind of permission may be said to be given to another to alter his position, he may be said to acquiesce. (*Maung Kin*, J.) APPAN CHARAN *v.* KYSE MA. 41 I.C. 732=
11 Bur. L.T. 160.

———S. 115—*Acquiescence—When creates an estoppel.*

Acquiescence after execution of a deed by a third party does not give rise to estoppel. There is a great difference between acquiescence in an act still in progress, and mere submission to it after it has been done, as such submission cannot change the past. (*Hartnoll*, O.C.J. *and Twomey*, J.) RATHNA PILLAI *v.* N. P. FIRM. 7 Bur. L T. 88=24 I C. 60=
7 L B.R. 301.

Admission.

———S. 115—*Admission of adoption in documents—Effect.*

Execution of a registered document declaring the adoption of another, and in mutation proceedings, description as the guardian of such adopted son and a compromise entered into wherein for valuable consideration, all intention of repudiating such adoption was given up,

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operate as an estoppel and the person cannot allege that there was no adoption. (*Rafique and Piggott*, JJ.) KUNWARI UDIT NARAYAN SINGH *v.* DIVAN RANDHIR SINGH.
L. R. 3 A. 642.

———S. 115—*Admissions—Trustee, naming a certain person to be appointed as his substitute—Right to impeach appointment.*

The mere fact that the trustee named a certain person to be appointed as Receiver, would not prevent him from questioning the appointment on appeal, though his objection to the appointment of a Receiver is disallowed. (*Piggott and Walsh*, JJ.) MAHAMAD ASKARI *v.* NISAR HUSAIN. 43 All. 211=60 I.C 901=19 A L J. 50.

———S. 115—*Admissions—Compromise of previous litigation—Fraud.*

Where in pursuance of a compromise of disputed claims the defendant acknowledged the title of the plaintiff, they could not set up their fraudulent lease from a third person against plaintiff's interest in the land which was admitted and recognised by the compromise. (*Fletcher*, J.) SRIRAM CHANDRA *v.* DHARAM DHAR GHOSE. 55 I.C. 563.

———S. 115—*Admissions—Waiver—Knowledge of right.*

Where certain properties were not the subject of an arbitration award between the parties but the plaintiff subsequently sued for partition, *Held*, that waiver of plaintiff's right could not be inferred from plaintiff's omission to give evidence and explain when and how he came to know that the property was joint. In the absence of evidence that at the time of the arbitration, plaintiff knew the property was joint, his admission would not amount to waiver. Being gratuitous it did not create an estoppel. (*Wilberforce and Martineau*, JJ.) MANOHAR LAL *v.* NANAK CHAND. 52 I.C. 503=68 P.R. 1919.

———S. 115—*Admissions—Former suit—Estoppel.*

A person stating in a former suit that an alienation by him may be treated as sale, does not debar him from pleading that it was a mortgage in a subsequent suit for pre-emption. (*Martineau*, J.) TAKAYA RAM *v* WASSU MISSER. 50 I.C. 564.

———S. 115 — *Admissions — Value of evidence.*

A mere admission of the right of one party by the other in a previous case between the same parties does not create an estoppel. But it is a strong piece of evidence against the person making such admission. (*Scott-Smith and Jones*, JJ.) SULTAN *v.* GHULLA.
68 P.W.R. 1917=41 I.C. 283=139 P.L.R. 1917.

———S. 115—*Admissions—Estoppel.*

A party or person claiming through another who has made a statement in a previous case is not estopped in the subsequent case from proving that the admission in that statement was mistaken or untrue unless some other person has been induced by them to change his position. 29 A.L J. 84 (P.C.) Ref. to. (*Kanhaiya Lal and Kendall*, A.J.Cs.), SURAJ BAKHSH *v.* CHHAB KUAR. 26 I.C 98=1 O.L.J. 532.

EVIDENCE ACT (I of 1872), S. 115—Attestation.

———S. 115—*Admissions—Estoppel.*

An admission by X in a deed of compromise of the right of Y to enjoy certain property in lieu of maintenance does not amount to an inducement to third persons that Y has a good title to the land so that when X impugns the validity of the compromise, a transferee from Y cannot set up the admission as estopping X from claiming the land. (*Mullick and Atkinson*, JJ.) BALVADRU SAMANT SINGH *v.* BIMBADHAR ROY. 1 P.L J. 509=38 I C. 348=2 P.L.W. 396.

———S. 115—*Admissions—Pleader—Trial.*

A party to a suit cannot dispute the correctness of his pleader's admission for the purpose of dispensing with further proof. (*Pratt*, J.C. *and Crouch*, A.J C.) VISHUNDAS *v.* MUNICIPALITY OF HYDERABAD. 34 I.C. 494=9 S L.R. 220.

Attestation.

———S. 115—*Attestation—Effect of—Not an estoppel.*

Attestation of a deed by itself estops a man from denying nothing whatever excepting that he has witnessed the execution of the deed. It conveys neither directly nor by implication, any knowledge of the contents of the documents. To operate as estoppel, the signature must be shown by independent evidence to have been meant to involve consent to the transaction. (*Lord Buckmaster.*) PANDURANG KRISHNAJI *v* MARKANDEYA TUKARAM. 42 M.L J. 436=26 C.W.N. 201=18 N.L.R. 1=20 A L J. 305=5 N L J. 6=15 L W. 486=35 C L J. 409=30 M.L.T 249=24 Bom. L.R. 957=49 I A. 16=1922 P.C. 20 (P.C.).

———S. 115—*Attestation is not consent.*

The mere fact of attestation does not raise any presumption that the attesting witnesses were aware of the contents of the document, and hence a plea of estoppel cannot be founded on the fact alone. (*Stuart and Sulaiman*, JJ.) UDAI BHAN SINGH *v.* GAJENDRA SINGH.
1923 All. 28.

———S. 115—*Attestation—Entries in* Khewat *as mortgagees.*

Where the defendants had been shown in a *Khewat* as mortgagees in possession of certain lands which they had attested, the Court had power of drawing an inference of fact from such evidence, which, if unrebutted would estop the defendant. (*Walsh*, J.) PAKARIA *v.* RANJITA. 34 I.C. 165.

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———S. 115—*Attestation—Estoppel.*

A reversioner is estopped from contesting the validity of an alienation by reason of his having signed a deed of exchange of the disputed property. (*Scott-Smith, J.*) GANDA SINGH *v.* GULAB SINGH. 66 P.W.R. 1914= 25 I.C. 728=189 P.L.R. 1914.

———S. 115—*Attestation by person interested—Whether amounts to representation.*

The question whether an attestation by a person interested amounts to representation is a question of fact depending on the nature of particular case. (*Miller and Abdur Rahim*, JJ.) SUBRAMANIAM CHETTI *v.* DORAI SINGH TEVAR. 24 M.L.J. 49=16 I.C. 942= (1913) M.W.N. 365.

———S. 115—*Attestation—Representation.*

To give rise to estoppel no actual representation is necessary. 20 C. 296 (P.C.) Ref. It need not be verbal. It is quite enough that the conduct of the party leads another to act in the belief that he asserts no claim to the property. Attestation may in certain cases create an estoppel. If the auction-purchaser allows another to remain in possession for a long time and attests a sale-deed by him, his conduct estops him from claiming the benefit under S. 317 of C.P. Code of 1882. Per *Sadasiva Aiyar*, J.—Estoppel does not give rise to a cause of action but is only a bar to defendant's plea in answer to the action. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) KANDASAMI PILLAI *v.* RANGASWAMI NAINA. 36 Mad. 564= 23 M.L.J. 301=12 M.L.T. 211= 16 I.C. 30=(1913) M.W.N. 882.

———S. 115—*Attestation—Hindu widow—Reversioner.*

Where the heir of any deceased Hindu deliberately allows the widow to hold herself out as a true owner and attests the mortgage-deed in proof of his consent, he cannot be allowed to resile from that position and deprive the mortgagee of the money advanced on the faith of that representation as he is estopped from setting up the invalidity of the mortgage. 20 Cal. 296, Ref. (*Kanhaiya Lal*, A.J.C.) GAJADAR LAL *v.* GHULABA. 30 I.C. 289= 2 O.L.J. 868.

———S. 115—*Attestation—Effect of.*

The mere attestation of a deed does not estop the attestor from claiming his title unless it is established that he had full apprehension and knowledge of the contents of the document and that in some way or other it was signed with a view to affect his interest in the properties in suit covered by it. (*Miller*, C.J. *and Mullick*, J.) KANHU LAL MARWARI *v.* PALU SAHU. (1916) Pat. 205= 2 U.P.L.R. (P.) 171=5 P.L.J. 521= 37 I.C. 953=1 P.L.T. 546.

———S. 115—*Attestation—Effect of.*

There is no estoppel against a person challenging a sale merely because he took an active part in bringing about the sale and attested it. (*Fawcett and Crump*, A.J.Cs.) SHAHAB UDDIN *v.* VOHIDBUX. 56 I.C. 492= 14 S.L.R. 12.

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Conduct.

———S. 115—*Conduct—Transferor disclaiming transfer.*

If a person holding a full proprietary interest under a sanad from the Government has disposed of that property. No suit for re-possession of the property so granted can be maintained. (*Lord Shaw*) GANPAT *v.* LALAMIYA. 12 L.W. 574=56 I.C. 673= 16 N.L.R. 59 (P.C.).

———S. 115—*Conduct—Hindu reversioner—Consent to alienation by widow.*

A Hindu reversioner taking mortgage from an alienee from a Hindu widow is not estopped from disputing validity of the alienation after death of widow. (*Lord Dunedin*) RANGASAMI GOUNDAN *v.* NACHIAPPA GOUNDAN. 42 Mad. 513=26 M.L.J. 493= 17 A.L.J. 536=29 C.L.J. 539= 21 Bom. L.R. 640=23 C.W.N. 777= (1919) M.W.N. 162=23 M.L.T. 5= 10 L.W. 105=50 I.C. 498=46 I.A. 72 (P.C.). [On appeal from 16 I.C. 757= 23 M.L.J. 1 which itself was on appeal from 25 M.L.J. 8.]

———S. 115—*Conduct—Hindu reversioner—Conveyance by widow—Reversioner joining in conveyance.*

Where a purchaser from a Hindu widow is aware of the limited powers of vendor a reversioner who joins in the conveyance by the widow is not estopped from claiming properties on the death of limited owner if the alienation was not for a justifying necessity. The doctrine of title feeding the estoppel is inapplicable. (*Mr. Ameer Ali.*) GUR NARAYAN *v.* SHEO LAL SINGH. 46 Cal. 866= 23 C.W.N. 521=1 U.P.L.R. (P.C.) 1= 17 A.L.J. 65=36 M.L.J. 68= 49 I.C. 1=9 L.W. 333 (P.C.). [On appeal from 7 I.C. 215.]

———S. 115—*Conduct—Hindu reversioner—Compromise of disputes with widow—Taking benefit—Estopped from claiming estate.*

On the death of a Hindu leaving a widow and a daughter his sister's son (the appellant) and other members of the family disputed the right of the widow of the deceased to succeed to the property left by him. The appellant was a party to a compromise of these disputes made in 1892 by which the property was immediately divided. He did not himself take a share under the compromise, but he was thereby recognised as the adopted son of a brother of the deceased whose widow took a share. In 1898 the appellant obtained by relinquishment possession of the share of the property allotted thereby to her. In 1912 the

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widow of the original holder died, and the appellant and his brother claimed the entire property as reversioners: *Held*, that the appellant having entered into and taken the benefit of the compromise was precluded from claiming as reversioner. 31 B. 165, Dist. (*Sir John Edge.*) KANHAI LAL *v.* BRIJ LAL.
40 All. 457=22 C.W.N. 914=8 L.W. 212=
24 M.L.T. 23=35 M.L.J. 459=
16 A.L.J. 825=(1918) M.W.N. 709=
28 C.L.J. 394=5 Pat. L.W. 294=
20 Bom. L.R. 1048=47 I.C. 207=
45 I.A. 118 (P.C.).

———S. 115—*Conduct—Mortgage—Priority—Waiver.*

A prior mortgagee waiving his priority as against one item of the mortgaged property is not estopped from enforcing it against the remaining items. (*Sir John Edge.*) PADARATH HALVAI *v.* RAM NARAIN UPADIYA.
37 All. 474=42 I.A. 163=13 A.L.J. 809=
19 C.W.N. 991=17 Bom. L.R. 617=
18 M.L.T. 85=2 L.W. 639=29 M.L.J. 159=
22 C.L.J. 165=30 I.C. 365=
(1915) M.W.N. 709 (P.C.).

———S. 115—*Conduct — Withdrawal of application—Reference—Award.*

Where one of the applicants withdrew his application for revision of the order of dismissal of his suit based on a certain award, he is not precluded from challenging the award especially where the Court held that the reference to the arbitration was bad. (*Mr Ameer Ali.*) PADMAN *v.* HANWANTA. 93 P.R. 1915=
18 M.L.T. 14=19 C.W.N. 929=
13 A.L.J. 801=17 Bom. L.R. 609=
2 L.W. 645=(1915) M.W.N. 800=
22 C.L.J. 172=110 P.W.R. 1915=
29 M.L.J. 307=29 I.C. 807=
11 P.L.R. 1916 (P.C.).

——S. 115—*Conduct — Adoption—Hindu widow—Assertion of authority from husband and adoption of a boy—Subsequent treatment as adopted son—Widow estopped from denying adoption—Estoppel personal.*

Where a Hindu widow asserted in the most solemn manner under her hand and seal her husband's authority to adopt a son, and in pursuance of such authority adopted a boy from another family executed a deed of adoption in his favour brought him up as her son, married him suitably and after some time sued for a declaration that the adoption was invalid owing to want of authority from her husband. *Held*, that though the authority was oral and its precise terms could not be ascertained, the widow was estopped by her conduct and declarations from alleging want of authority, and further, that the same evidence showed that the authority was not exhausted by two prior adoptions. The estoppel of the widow would only be personal

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to her and not bind the reversioners. (*Lord Robinson.*) DHARAM KUNWAR *v.* BALWANT SINGH. 34 All. 398=39 I.A. 142=
16 C.W.N. 678=9 A.L.J. 750=
14 Bom. L.R. 495=(1912) M.W.N. 64=
12 M.L.T. 95=16 C.L.J. 60=
15 I.C. 673=23 M.L.J. 200 (P.C.).

——S. 115—*Conduct.*

Where a person gets another's name recorded as owner of a moiety of the property, and on the faith of that, another purchases it at an auction-sale, the former cannot later on claim ownership of the same. (*Ryves and Daniels, JJ.*) MATHURA PRASAD *v.* ANANDI KUNWAR. 21 A.L.J. 498=L.R. 4 A. 555=
1924 All. 63.

———S. 115—*Conduct—Agreement regarding division of property—Enjoyment of benefit thereunder—Effect of.*

Where an agreement relating to division of family properties is entered into and the parties enter into possession of the properties allotted and occupy it for a long time, they are estopped from setting up their independent rights *dehors* the agreement and from denying the rights of the other parties. (*Ryves and Gokul Prasad, JJ.*) BAHADUR SINGH *v.* RAM BAHADUR.
45 A. 277=21 A.L.J. 140=L.R. 4 All. 105=
1923 A. 204.

——S. 115—*Conduct—Compromise—Title—Recognition of—Proceedings under S. 145.*

A dispute under S. 145, Cr. P. Code, relates only to the possession of the properties and consequently a compromise of the proceedings does not estop a party from denying the title of the other. (*Banerji and Gokul Prasad, JJ.*) GOPI DAS *v.* MADHO LAL. 20 A.L.J. 952=
45 A. 152=1923 All. 77.

———S. 115—*Conduct—Admission of adoption in documents—Effect.*

Where a person executed a registered document declaring he had adopted another, and in mutation proceedings described himself as the guardian of such adopted son and even entered into a compromise wherein for valuable consideration he gave up all intention of repudiating such adoption, he would be estopped from alleging there was no adoption. (*Rafique and Piggott, JJ.*) KUNWAR UDIT NARAYAN SINGH *v.* DIVAN RANDIR SINGH.
20 A.L.J. 945=1923 All. 58.

———S. 115—*Conduct—Right to easement.*

Where the plaintiff by his conduct permitted the defendants to believe that they would have the right to use the water of the well of the plaintiff and the defendants relying upon the permission had acted upon the belief that they would be entitled to that right the plaintiff was estopped from denying the rights of the defendants under S. 115, Evidence Act. (*Shah and Hayward, JJ.*) ANANTA MURARAO *v.* GANU VITHU. 22 Bom. L.R. 415=
67 I.C. 153=48 Bom. 80.

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———S. 115—*Conduct—Judicial order—Party taking benefit of, estopped from impeaching it.*

Where a party has adopted an order of the Court, and acted under it he cannot after he has enjoyed a benefit under the order, contend that it is valid for one purpose and invalid for another. The plaintiff appealed against the decree in so far as it disallowed compound interest. After the appeal had been filed, against that part of the decree which disallowed compound interest he accepted the costs (deposited by the respondent) and which was decreed by the lower Court on the basis of simple interest as to which there was no dispute and which the plaintiff would have got in any event whether the appeal succeeded or failed. *Held*, in these circumstances the principle of estoppel did not apply to the present case and the plff. could prosecute the appeal. (*Chatterjee and Cuming*, JJ.) JOGENDRA NATH BANERJI v. KHODA BUKSHA BISWAS. 72 I.C. 554.

———S. 115—*Conduct.*

Where S. in conjunction with his deceased brother's wife executed a mortgage alleging in the deed family necessity, and title to deal with whole property, but subsequently when the shares of the deceased members of the family came to him by inheritance is estopped from setting up a claim against the mortgagee and his representative on the ground that they were aware of the true state of things. (*Greaves and Ghose*, JJ.) SARODA PRASAD v. GOSTO BEHARI HAZRA. 27 C.W.N. 943 = 36 C.L.J. 78 = 1922 Cal. 842.

———S. 115—*Conduct—Hindu joint family—Father*—Benami *transfers—Sons recognising transaction.*

Where in a joint Hindu family consisting of the plaintiffs and their father, the latter as manager of joint family properties entered into several *benami* transactions for the purpose of saving a portion of the estate from the hands of a mortgagee execution-purchaser, and being accepted by plaintiff on that footing, rights had sprung up, based on those transactions. *Held*, that plaintiffs having accepted the transactions entered into by the head of the family, they were bound. (*Chatterjee and Duval*, JJ.) SADHAN CHANDRA v. NANDA PRASAD SINGH. 55 I.C. 221.

———S. 115—*Conduct—Execution sale—Deposit by transferee—Withdrawal of deposit—Landlord cannot dispute title of transferee of holding.*

A landlord who withdraws the amount deposited by the transferee of a non-transferable holding to set aside its sale under S. 310-A of the C.P. Code of 1882 without raising any objection cannot maintain afterwards that the transferee had not from his purchase a good title to the holding. 6 C.L.J. 601, Foll. (*Mookerjee and Beacheroft*, JJ.) GADADHAR GHOSH v. MIDNAPUR ZAMINDARY CO., LTD. 43 I.C. 742.

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———S. 115—*Conduct—Will—Hindu widow—Estoppel, whether arises by accepting an invalid will by a Hindu widow.*

Where a testatrix disposed of her woman's estate by a will to her daughter with some allowance to her son, the fact that the son accepted the will does not amount to an estoppel and preclude him or his son from disputing the title of the daughter under a will. (*Teunon and Sheepshanks*, JJ.) DURGADAS KHAN v. ISHAN CHANDRA DEY. 39 I.C. 213 = 44 Cal. 145.

———S. 115—*Conduct—Landlord and tenant—Purchaser of non-transferable holding under a mortgage decree—Paying amount of subsequent rent decree against recorded tenants—No notice to landlord of the payer's interest—Landlord not estopped from disputing the payer's interest.*

The mere fact that the landlord withdraws the deposit of the amount of his rent-decree, made by the plaintiff purchaser of a non-transferable holding in execution of his own mortgage decree, to prevent a sale of the holding by the landlord in execution of his rent decree against the recorded tenants (obtained subsequent to the purchase by the plaintiff under his mortgage decree) does not estop the landlord from disputing the plaintiff's right, in the absence of any notice as to the plaintiff's interest in the holding. (*Chitty and Walmsley*, JJ.) BHARAT CHANDRA GALAI v. PRAMATHA NATH ROY. 34 I.C. 337.

———S. 115—*Conduct—Landlord and tenant.*

Where a landlord-mortgagee of the holding sues his mortgagee, he is estopped from questioning the validity of a prior mortgage of the holding on the ground of its non-transferability and that it was effected without his consent. (*Woodroffe and Chaudhuri*, JJ.) NATABAR SARKAR v. NATABAR MANDAL. 33 I.C. 112.

———S. 115—*Conduct—Mortgage by two, as co-owners—Mortgagor, if can question title of co-mortgagor.*

If A and B jointly mortgage to X a property which stands in their names on the allegation that they are proprietors in respect of the shares for which they are registered, it is futile for A or his successor to contend subsequently as against X or his representative, that B had no title to the property and that A was the sole owner. 11 B.L.R. 46; 19 W.R. 292; 22 Cal. 909, Ref. (*Mookerjee and Beacheroft*, JJ.) BALDEO NARAIN JHA v. BHAYA LAL SINGH. 30 I.C. 47 = 21 C.L.J. 635.

———S. 115—*Conduct—Adoption—Reversioner—Estoppel by conduct.*

The doctrine of estoppel by conduct is applicable to invalid adoptions. Where a reversioner deals with a person alleged to have been adopted by the last male owner as such and in that capacity accepts a *patni* from him, he is

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estopped from denying the status of the latter as adopted son. (*Fletcher and Walmsley, JJ.*) KIRANBALA DEVI *v.* BALICHARAN SINGHA. 30 I.C. 29.

———S. 115—*Conduct — Landlord and tenant—Separate holdings treated as one—Notice of ejectment.*

Where a landlord has once treated separate holdings of a tenant as one and sued for arrears of rent in respect of all of them in one suit, he is estopped from subsequently serving notice of ejectment in respect of some only of the holdings. (*Baillie, S.M.*) TULSHA DEI *v.* MAHABIR. 27 I.C. 381=1 C.L.J. 722.

———S. 115—*Conduct—Partition suit.*

In a partition suit the High Court passed a decree determining the respective shares of the parties. Defendant appealed to the Privy Council and pending the appeal to Privy Council the parties entered into an agreement by which partition was effected by metes and bounds. Subsequently the defendant's appeal was dismissed. *Held*, on an application by defendant to have the *ekrarnama* filed, that as the deft. prosecuted the appeal after the execution of the *ekrarnama*, he could not insist on its terms being carried out. (*Stephen and Mullick, JJ.*) LOKENARAIN *v.* JHO LAL. 24 I.C. 675.

———S. 115—*Conduct—Acceptance of rent by landlord.*

Acceptance of rent under protest, does not estop the acceptor from impeaching the tenancy as such acceptance does not create landlord and tenant relation. (*Mookerjee and Beacheroft, JJ.*) MOOKUNDA LAL CHAKRABURTI *v.* KALIPRASANNA CHATTERJEE. 28 I.C. 592=19 C.L.J. 255.

———S. 115 — *Conduct—Invalid grant—Acceptance of rent.*

In the case of an invalid grant, acceptance of rent from the grantee does not amount to recognition of the grant and does not validate it. (*Mookerjee and Beacheroft. JJ.*) RADHA MADHAB NARAIN *v.* MILAN MAHATO. 21 I.C. 304=18 C.L.J. 23.

———S. 115—*Conduct—Voidable transaction.*

A person may by his conduct or acquiescence make a transaction impeachable by him unimpeachable after a lapse of time. (*Holmwood and Chapman, JJ.*) HARICHARAN BOSE *v.* HARI DAS ROY. 18 I.C. 805.

———S. 115—*Conduct—Decree—Alteration of.*

A decree should be executed as made and the parties cannot make a substantial alteration therein. But the parties having acted upon the decree as altered for a long time, the judgment-debtors cannot be permitted to object

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to its validity, when they have been benefited. (*Mookerjee and Beacheroft, JJ.*) GOKHARI PADHAN *v.* GONES LAL PANDIT. 16 C.L.J. 404=17 I.C. 936=17 C.W.N. 565.

———S. 115—*Conduct—Landlord's consent—Occupancy holding.*

Where the plaintiff mortgagee of an occupancy holding obtained a decree on his mortgage and after taking a *Hukumnamah* from a co-sharer-landlord, purchased the holding in execution of his decree and became the owner of the land with the landlord's consent, he could not be ousted by any subsequent action of landlord. S. 27 of the Sp. Rel. Act did not embody the only rule of equity applicable to this case and S. 115 of the Evidence Act was particularly applicable to this case. (*D Chatterjee and N. R. Chatterjee, JJ.*) HARIMOHUN DEY *v.* RAM NARAIN DUTT. 14 I.C. 28.

———S. 115—*Conduct—Non-transferable—Occupancy holding mortgaged without the landlord's consent—Sale by mortgagor to third party—Purchaser taking fresh lease from landlord—Mortgagee's suit—Purchaser, if can plead non-transferability.*

Where a non-transferable occupancy holding which was mortgaged to plaintiff was sold to a third person and the purchaser obtained a fresh lease from the landlord at an enhanced rent, the purchaser cannot plead in a suit by the mortgagee that the holding was non-transferable. 1 I.C. 264, Rel on. (*Chitty and Coxe, JJ.*) RADHAKANTA *v.* RAMANANDA SAHA. 39 Cal. 513=16 C.W.N. 475=13 I.C. 698=15 C.L.J. 369.

———S. 115—*Conduct—If party can impeach an award, if act of arbitrator favourable.*

A party who is benefited by the wrong act of an arbitrator cannot afterwards impeach its validity. (*Mookerjee and Carnduff, JJ.*) NARSINGH NARAYAN SINGH *v.* AJODHYA PRASAD SINGH. 15 C.L.J 110=13 I.C. 118=16 C.W.N. 256.

———S 115—*Conduct—Denial of* locus standi.

The plaintiff who denies the *locus standi* of the deceased defendants' sons to proceed with an appeal, as they did not come on record as representatives in the first Court is estopped from seeking the execution of his decree against the sons. (*Mookerjee and Teunon, JJ.*) BANTAR BEHARI SIKDAR *v.* GOPAL CHANDRA NEOGI. 10 I.C. 406=14 C.L.J. 589.

———S. 115—*Conduct — Withdrawal of money from Court.*

Withdrawal of money deposited under O. 21, R. 89, C.P.C., by a private transferee of a holding by the landlord and acquiescence in the setting aside of the sale estops the landlord from questioning the transfer. 6 C.L.J. 601, Foll. (*Coxe, J.*) AHMED ALI *v.* ROSHAN ALI. 9 I.C. 619.

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———S. 115—*Conduct—Decree obtained in a previous suit as son of a particular man—No objection by co-plaintiff as to paternity—Effect.*

Where plaintiffs allowed one S. to join with them in a suit against another person and to obtain a decree as the son of a particular man without objecting that he was the son of the man and had no right to sue, they should be estopped from disputing his property in a suit by them for possession against paternity. (*Martineau and Zafar Ali*, JJ.) SUNDAR SINGH *v.* SHAM SINGH. 1923 Lah. 630.

———S. 115—*Conduct—Mortgage—Purchase subject to.*

A purchaser assuming liability for the discharge of certain mortgages on the property and receives consideration therefor, is bound by them. (*Scott-Smith and Dundas*, JJ.) ALLAH DITTA *v.* GIAN SINGH.
4 Lah. L.J. 455.

———S. 115—*Conduct—Change of position to be proved.*

A statement relied upon as constituting estoppel, must be proved to cause change in position of the party setting up the estoppel; a statement which does not amount to an estoppel, may be admissible in evidence. (*Leslie-Jones and Moti Sagar*, JJ.) ABDULLA *v.* FATEH MAHOMED. 62 I.C. 808.

———S. 115—*Conduct—Consent to mutation proceedings.*

When a person appeared at the time of the mutation in respect of the sale in dispute and expressed his consent to it, he cannot subsequently come forward and impugn it. (*Shadi Lal and Martineau*, JJ.) MUHAMMAD UMAR *v.* WALI. 2 Lah. L.J. 306.

———S. 115—*Conduct—Adoption—Recognition of.*

Where defendant, who challenged an adoption, was the grandson of a party to a compromise under which the adoption was made and under which he received a material benefit and who was present and consenting defendant, he is estopped from disputing the adoption and is bound by his grandfather's action. (*Broadway*, J.) MOMAN *v.* DHANNI.
1 Lah. 31=55 I.C. 869=72 P.L.R. 1920.

———S. 115—*Conduct—Arbitration—Consent given orally—Objection to award.*

Where a party to a suit does not join in a written application for reference to arbitration but makes an oral application accepting the arbitration and takes an active part in conducting the proceedings he is estopped from questioning the award on the ground of want of written consent. (*Wilberforce*, J.) GAURI SHANKAR *v.* GANGA RAM. 52 I.C. 889=77 P.R. 1919.

———S. 115—*Conduct—Status of person—Dispute as to—Burden of proof.*

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Those who challenge the status of a party must show that they have not by their own conduct led the person concerned to imagine that his status was accepted by them. In this respect there is a considerable difference between cases of, say, mortgage and the like, and cases of alleged adoptions, the legitimacy of children and the validity of marriages. If on the acquiescence of the collateral heirs of the adopted father, an adopted son has been brought up as a member of the village community to which his adoptive father belonged and has always been recognised as such, the collaterals are estopped from challenging the validity of the adoption on the ground that it was invalid by custom. (*Chevis and Jones*, JJ.) CHUBAR *v.* JAS KAUR. 69 P.R. 1917=41 I.C. 927=103 P.W.R. 1917.

———S. 115—*Conduct—Mutation proceedings — Assent — Withdrawal of assent on reconsideration.*

Where plaintiff's consent was given to a certain mutation of names without consideration, but was on reconsideration quickly withdrawn. *Held*, there was no estoppel by consent. (*Shadi Lal and Le-Rossignol*, JJ.) GHULAM SARWAR *v.* KARAM ILAHI & CO.
39 I.C. 204=68 P.W.R. 1917.

———S. 115—*Conduct — Company—Shareholder taking part in meetings of company—Estopped from objecting to director's authority to act on behalf of company.*

A shareholder who has taken an active part in general meetings of the company and has joined in an annual appointment of the director who has acted as such to the knowledge of the shareholders without any objection on his part is estopped from disputing the validity of his authority to act on behalf of the company. (*Rattigan and Shadi Lal*, JJ.) IMPERIAL OIL AND SOAP AND GENERAL MILLS CO., LTD. *v.* WAZIR SINGH. 31 I.C. 895=182 P.W.R. 1915.

———S. 115—*Conduct—Mortgage—Heir redeeming a portion—Subsequent suit for rest of the property.*

An heir is not estopped from claiming the rest of the property of a deceased person in the hands of a stranger by reason of his redeeming from that stranger, a small portion of that property. (*Reid*, C.J. *and Kensington*, J.) BUTA SINGH *v.* LAL SINGH.
5 P.W.R. 1915=27 I.C. 565=87 P.L.R. 1915.

———S. 115—*Conduct—Mortgage—Parties and privies.*

Where a mortgagee condones defects and defaults in the mortgage he or his representive cannot assail it later on those grounds. When a person makes another think that he recognised and accepted a transaction of his father and the latter consequently suffers liabilities, the former will be estopped from

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going back upon his recognition and acceptance. (*Johnstone and Rattigan, JJ.*) SHIB NATH *v.* ALLIAECE BANK OF SIMILA, LTD., LAHORE.
3 P R. 1915=110 P.W R. 1914=25 I.C. 480=215 P.L R. 1914.

——S. 115—*Conduct—Hindu Reversioner accepting mortgage of land sold by widow—Whether estopped from contesting sale.*

A reversioner who accepts a mortgage from a person to whom the widow had sold her share under the impression that the land mortgaged was the vendor's share and not that which the widow sold, is not estopped from contesting the sale. (*Chevis, J.*) SHEREA *v.* HAYAT MUHAMMAD. **32 P.W.R. 1914=23 I.C 515=108 P.L R. 1914.**

——S. 115—*Conduct—Partnership—Suit for settlement of account—Refusal of partner to join as co-plaintiff—Subsequent suit—Equity.*

When a partner to whom money is due from the partnership refuses to join as a co-plaintiff in a suit for settlement of the partnership accounts and otherwise concludes from his conduct that he has abandoned his claim, a relief in a subsequent suit cannot be equitably given. (*Chevis, J.*) DURGA PRASHAD *v.* HARNAM SINGH. **27 P.W.R. 1913=18 I.C. 624=49 P.L.R. 1913.**

——S. 115—*Conduct — Will—Bequest—Validity of—Right of heir to question—Gift to charity.*

Where a bequest to *Dharmarth* was used for a *langar* for more than six years, it will not amount to estoppel against the testator's heir as regards the future and so he can deny the validity of the gift on the ground of its being void for vagueness. (*Robertson and Rattigan, JJ.*) GARDIT SINGH *v.* SHER SINGH.
63 P.W.R. 1912=106 P.L.R. 1912=14 I.C. 247=78 P.R. 1912.

——S. 115—*Conduct—Estoppel by agreement.*

Where the defendant has agreed to appoint as arbitrator, a European residing at Karachi it is not open to him to plead that he does not know any European merchant at Karachi. (*Rattigan, J.*) DREYFUS & CO. *v.* GURUDITTA MAL. **70 P.W.R. 1911=85 P.L.R. 1911=9 I.C. 655=36 P.R. 1911.**

——S. 115—*Conduct—Hindu joint family—Son taking benefit during father's time—Right to impeach alienation.*

A son by getting certain lands from his father in his life-time is not estopped from challenging the father's alienations when the latter dies and the son comes into possession of the whole estate. (*Chevis, J.*) FAZL HUSSAIN *v.* AMIR HAIRDAR. **76 P L R. 1911=9 I.C. 588=78 P.W.R. 1911.**

——S. 115—*Conduct—Estoppel.*

Per *Ramesam, J.*—Where a defendant induced the Revenue authorities to issue a pattah in the name both of the plaintiff and himself, *held* he is estopped from contending that the plaintiff has no title. (*Spencer and Ramesam, JJ.*) TALIKONDA ALAKSHMINARASIMHAM *v.* TALIKONDA VENKATARATNAYAMMA. **70 I.C. 642=30 M.L.T. 334.**

——S. 115—*Conduct—Estoppel.*

In a prosecution for non-payment of license fee of municipality, failure to appeal to standing Committee does not estop the accused from contesting the validity of imposition. (*Krishnan, J.*) *In re* A.E. SMITH.
45 M.L.J. 731=18 L.W. 879.

——S. 115—*Conduct—Change of position.*

Actions and conduct of parties might give rise to estoppel where such actions and conduct have altered in such a way that the parties cannot be put back in their original position without great loss and inconvenience. (*Wallis, C.J., Oldfield and Seshagiri Aiyar, JJ.*) HUSSAIN SAIB *v.* HASSAN SAIB.
41 I.C. 184=3 L.W. 835.

——S. 115—*Conduct — Will—Daughters taking under will—Subsequent repudiation.*

Daughters taking the estate of the deceased father under a will executed by the mother are not estopped from claiming subsequently on the ground of the invalidity of the will executed by their mother. (*Sadasiva Aiyar and Napier, JJ.*) ALAMELU AMMAL *v.* BALU AMMAL. **16 M.L.T. 592=(1915) M.W.N. 26=26 I.C. 455=28 M.L J. 655.**

——S. 115—*Conduct — Disclaimer—Expression of intention not to claim.*

A mere disclaimer by a person of his preferential right to acquire land made over to rival applicant will not estop him after the land had been actually granted to him by the Government in the absence of a fraud practised on the Government or the rival claimant. 32 M. 300, Expl. (*Sundara Aiyar and Sadasiva Aiyar, JJ.*) PERIATHAMBI GOUNDAN *v.* PERIYA GOUNDAN. **23 M.L.J. 593=17 I.C. 489=12 M.L.T. 539.**

——S. 115—*Conduct — Adoption—Invalidity of.*

There is no estoppel against the plea of invalid adoption even though the adoption was acquiesced in, by the family so as to debar the adoptee being restored to his natural family unless the position of those contesting such right, has, in consequence of the adoption been changed to their disadvantage. 7 M,H.C.R. 250, Rel. (*White, C.J. and Benson, J.*) VAITHILINGA MUDALI *v.* MUNIGAN.
37 Mad. 529=23 M.L J. 189=15 I.C. 239=(1912) M.W.N. 1127.

——S. 115—*Conduct—Adoption—Status—Right to property.*

Plaintiff sued for a declaration that an alienation by R's widow was not binding on him as a reversioner. It, being admitted that

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R was given in adoption, the plaintiff contended that the adoption was invalid. Plaintiff had recorded R as an adopted person all along. *Held*, that plaintiff was not estopped from questioning R's real status, though he could not question R's rights to the property of the adopter. (*Benson and Sundara Aiyar, JJ.*) AIYANNA CHARIAR *v*, LASKHMI AMMAL
21 M.L.J. 500 = 10 M.L T. 19 = 10 I.C. 195 = (1911) 2 M.W.N. 62.

——S. 115—*Conduct—Building on land of another—Standing by.*

If a stranger builds on the land of another, although believing it to be his own, the owner is entitled to recover the land with the building on it, unless there are special circumstances amounting to a standing by so as to induce the belief that the owner intended to forego his right or to an acquiescence in his building on the land. It has to be decided in each case whether the special circumstance of that case do or do not amount to such a standing. (*Hallifax* A.J.C.) RAMRATAN *v*. SHIODATTARAI.
73 I.C. 187.

——S. 115—*Conduct—Parties—Mortgage—Foreclosure—Mortgagor and cultivator parties—Estoppel.*

In a foreclosure suit the mortgagor and the cultivator in possession of the property were made parties. The former did not appear but the latter proved that the mortgage-debt had been satisfied. The mortgagee cannot allege in appeal that the cultivator had no interest or right to redeem as he intended to secure a mortgage decree against him also by impleading him. No decree could be passed against the absent mortgagor, as the repayment of debt, was proved. (*Drake-Brockman*, J.C.) KASHAM KHAN *v*. MUSSAMMAT SAWITRI.
19 I.C. 547 = 9 N.L.R. 38.

——S. 115—*Conduct — Statement before Revenue officer in mutation proceedings—Effect of.*

A statement in the Court of an Assistant Collector during the mutation proceedings to the effect that the plaintiff and two others were in possession of the property in equal shares and that mutation of names may be made accordingly, does not prevent the plaintiff from asserting his right to the entire property in a Civil Court subsequently. (*Dalal*, A.J.C.) RAM RATAN *v*. BINDA.
72 I C, 832 = 9 O. & A.L.R. 20.

——S. 115—*Conduct—Arbitration—Arbitrator seeking to upset award.*

A dispute was settled by arbitration. Subsequently two of the arbitrators purchased the interest of one of the parties to the dispute and sought to upset the arrangement. *Held*, that they cannot dispute it. (*Stuart*, A.J.C.) BUDHA SINGH *v*. KARAN SINGH.
58 I.C. 506 = 7 O.L.J. 26.

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——S. 115—*Conduct—Sale—Acted upon—Subsequent suit for cancellation.*

Where a portion of the equity of redemption is sold and both the vendors and vendee sue for redemption, it is not open to the vendor to subsequently sue for cancellation of the sale. (*Daniels*, A.J.C.) CHAUHAN *v*. BIHARI LAL.
52 I C. 513 = 1 U.P.L.R. (J C.) 14.

——S. 115—*Conduct — Accepting rent—Starting point.*

Acceptance of an illegal enhancement of rent operates as estoppel when the tenant sets up a fresh statutory period from the date of enhancement in contesting a notice of ejectment. (*Campbell*, J.) RAMESHWAR BAKSH SINGH *v*. RAGHUBAR.
33 I.C. 163 = 2 O.L J. 725.

——S. 115—*Conduct—Nephews and grandnephews of deceased—Agreement based on existing rights—Estoppel.*

Where the nephew and grand nephews of a deceased person sue for possession on the strength of an agreement among themselves and succeed in the suit, *Held*, that the agreement was based on the recognition of an existing right and whether that recognition was correct or mistaken, it was not open to the plaintiff (nephew) to go behind it and therefore the plea of estoppel is an effective bar to the plaintiff's claim. (*Kanhaiya Lal*, A.J.C.) SHEOAMBAR SINGH *v*. BALBHADRA SINGH.
18 O.C. 61 = 23 I C. 357 = 2 O.L.J. 137.

——S. 115—*Conduct—Mutation proceedings—Withdrawal of claim.*

A withdrawal of claim in a revenue mutation proceeding does not estop a person from suing for the portion in a Civil Court, if the opposite party is not thereby prejudiced. (*Stuart*, A.J.C.) MAHADEO SINGH *v*. JAG MOHAN SINGH.
25 I C. 35.

——S. 115—*Conduct—Plaintiff's admission of other persons in suit for property—Effect.*

If a plaintiff who was the nearest heir, allowed other heirs to join him in a redemption suit and such heirs spent money and actually assisted in prosecuting the litigation, the plaintiff could not, after recovering the property, assert his superior title as the nearest heir, on the principle of estoppel by conduct. (*Lindsay*, A.J.C.) BHAGWANT SINGH *v*. RAJAH SINGH.
9 I.C. 416.

——S. 115—*Conduct—Estoppel by.*

Where, in a suit for rent, defendant objected to the non-inclusion of certain plots whereupon plaintiff included the same, reserving right to sue upon title afterwards, and then brought a suit in ejectment based on title. *Held*, defendant was not estopped by conduct. (*Das and Adami*, JJ.) CHOWDHURI RAM PRASAD SINGH *v*. RAM CHANDRA RAI.
4 P.L.T. 730 = 1925 P. 208.

EVIDENCE ACT (I of 1872), S. 115—Conduct.

——S. 115—*Conduct—Building on land—Knowledge—Improvements — Silence of landlord.*

The estoppel under S. 115 of the Evidence Act may arise by reason of either a declaration, an act or an omission, but in either case there must be an intention on the part of the person against whom the estoppel operates to cause or permit a belief in the mind of another. In the case of mere omission no such intention can well be imputed unless the true facts are known to the person whose omission is in question, but where there is a deliberate declaration or act causing or permitting such belief and inducing another to act upon it, it must be presumed that such declaration or act was intended to have its ordinary and natural effect upon the mind and actions of the other party. 20 C. 296 (P C), Ref. Where a tenant builds on land leased to him under the impression that he has a permanent lease of the same and the landlord encourages him to do this, the latter is estopped from asserting that the lease was an annual one. The rule of law applicable to the case is this. If a man under a verbal agreement with a landlord for a certain interest in land or what amounts to the same thing, under an expectation, created or encouraged by the landlord that he shall have a certain interest takes possession of such land, with the consent of the landlord and upon the faith of such promise or expectation with the knowledge of the landlord and without objection by him, lays out money upon the land, a Court of equity will compel the landlord to give effect to such promise or expectations. 21 C.W.N. 903; 4 C.W.N. 462; 23 W.R. 399; 29 B. 580; *Ramsden v. Dyson*, (1866) 1 A.C. 129, Rel. (*Miller*, C.J. *and Mullick*, J.) L. E. RALLI *v.* A. H. FORBES. **3 P.L.T. 467 = (1922) Pat. 209 = 4 U.P.L.R. (Pat.) 43 = 1922 P. 268.**

——S. 115—*Conduct—Award given after time—Acquiescence.*

Where the parties have by conduct agreed to accept the award, made after the allotted time they cannot afterwards contend that it was invalid because delivered out of time. (*Atkinson and Das*, JJ.) PATTA KUMARI *v.* UPENDRA NATH. **50 I.C. 52 = 4 P. L.J. 265.**

——S. 115—*Conduct—Entry of husband's name as joint occupier—Effect.*

The entry in Revenue Maps of a person's name as joint occupier with another, would not estop the latter from claiming as sole owner. (*Twomey*, J.) MG YE *v.* MY AUNG THA. **12 I C. 206 = 4 Bur. L.T. 255.**

Consent, Decree or order.

——S. 115—*Consent decree—Estoppel.*

Where a party agreed to dispose of the suit by the ascertainment of a simple fact under O. 23, R. 3, C. P. Code, he cannot resile from the agreement. (*Sharfuddin and Coxe*, JJ.) KHOBHARI SAH *v.* JHAMAN SAH. **34 I.C. 220 = 23 C.L.J. 482.**

EVIDENCE ACT (I of 1872), S. 115—Consent, Decree or order.

——S. 115—*Consent decree—Party to a compromise—Not estopped from contending that sale should be set aside in its entirety.*

A party to a compromise is not estopped from contending that a sale, if set aside at all, must be set aside in its entirety. (*Chapman and Newbould*, JJ.) ICCHAMONI DASI *v.* PROSANNO KUMAR MONDAL. **31 I.C. 858.**

——S. 115—*Consent decree—Agreement by plaintiff in a previous suit to give up land—Effect.*

An agreement by way of compromise in a previous suit, by the plaintiff to give up possession of a certain land to the defendant will operate as an estoppel against the plaintiff from alleging that he still had a subsisting title to it. (*Shah Din*, J.) CHHANGA *v.* PHUMMAN SHAH. **46 I.C. 7 = 121 P.W.R. 1918.**

——S. 115—*Consent decree—Jurisdiction.*

Consent to refer to arbitration does not estop a party from challenging the jurisdiction of the Court which made the reference on the agreement. (*Robertson and Beadon*, JJ.) AMOLAK SHAH *v.* CHARAN DAS. **16 P.W.R. 1913 = 52 P.R. 1913 = 17 I.C. 684 = 14 P.L R. 1912.**

——S. 115—*Consent—Act of parties—Agreement for issue of inam title-deed in the names of two persons—If either can contend there is no title in the other.*

Where there is an agreement for issue of inam title-deed in the names of two persons, neither can contend that there is no title in the other. (*Spencer and Ramesam*, JJ.) TADIKONDA LAKSHMINARASIMHAM *v.* VENKATARATNAYAMMA. **30 M.L.T. 334 (H. C.).**

——S. 115—*Consent order—Estoppel—Scope of the doctrine.*

An estoppel arises when the person is not allowed to deny the truth of some matter which he has made another to believe to be true. When it was agreed between the parties that the claim petition of the defendant should be allowed but without costs and that plaintiff should apparently in consideration of the defendant giving up the costs refrain from instituting a suit. *Held*, no question of estoppel arises. *Quaere.*—Whether such an agreement would be void on the principle contained in S. 28, Contract Act. (*Ayling and Tyabji*, JJ.) VENKATARAMA AIYAR *v.* NARAYANA AIYAR. **28 I.C. 636 = (1915) M.W.N. 237.**

——S. 115—*Consent decree—Will—Legatees—Suit by legatee under will—Consent decree—Subsequent suit between parties—Question of genuineness of will, if* res judicata.

In a suit for possession where the defendant claims the property as an adopted son and sets up a will, the fact that in a former suit in which the plaintiff was a party, the question of the genuineness of the will was at issue but was

EVIDENCE ACT (I of 1872), S. 115—Consent, Decree or order.

not contested by the plaintiff does not amount to an estoppel; nor does a question of *res judicata* arise as the decree in the previous suit is one by consent between different parties altogether. (*White*. C.J., *and Phillips*, J.) PUTTA VENKATA SATYANARAYANA *v.* PUTTA GANGAMMA. **11 I.C. 884.**

——S. 115—*Consent decree.*

For determining on what matters estoppel will operate by reason of a consent decree it will be necessary to see whether the parties decided the particular matter by compromise, whether it was embodied in the decree or whether it was necessarily involved in the decree or whether it was the basis of what was embodied in the decree. (*Benson and Sundara Aiyar*, JJ.) KUMAR VENKATA PERUMAL *v.* TATHA RAMASAWMY CHETTY. **35 Mad. 75 = (1911) 1 M.W.N. 290 = 9 M.L.T. 487 = 9 I.C. 876 = 21 M.L.J. 709.**

——S. 115—*Consent decree—Acceptance of benefit.*

An acceptance of benefits under a compromise will operate to estop the person accepting from disputing it afterwards. (*Stuart*, A.J.C.) NIAMAT KHAN *v.* DEPUTY COMMISSIONER, KHERI. **25 I.C. 816 = 1 O.L.J. 452.**

——S. 115—*Consent decree.*

In a compromise relating to occupancy holding, sale in case of default serves as estoppel. (*Das and Adami*, JJ.) NIDHI PARIDA *v.* KARUNAKAR PADHAN. **1 P. 153 = 1922 P. 483.**

——S. 115—*Consent order—Compromise of suit—Withdrawal of claim—Estoppel.*

Where a person by consent to a compromise includes another to withdraw his claim, the former is estopped from subsequently ignoring the terms of the compromise. (*Atkinson and Jwala Prasad*, JJ.) MAHADEO RAI *v.* SHEOGULUM MAHTO. **45 I.C. 332 = 2 P.L.J. 634.**

Criminal Law.

——S. 115—*Criminal Law—Doctrine of estoppel.*

There is no estoppel in Criminal Law. (*Knox and Walsh*, JJ.) MAHA RAM *v.* EMPEROR. **16 A.L.J. 414 = 46 I.C. 519 = 19 Cr. L.J. 615 = 40 All. 393.**

Equitable Estoppel.

——S. 115—*Equitable estoppel—Implied consent.*

In a suit for demolition of certain constructions erected on the plaintiff's land, it was found that the plaintiffs tried to prevent the defendants from erecting them, and that the defendants had no reasonable belief that they were the owners of the disputed land on which the constructions were made. *Held*, that it is impossible to bring the case within the principle of equitable estoppel laid down in 21 All. 490 (P.C.). (*Daniels*, J.) MAOLA *v* BAHORU. **1923 All. 867.**

EVIDENCE ACT (I of 1872), S. 115—Estoppel against Estoppel.

——S. 115—*Equitable estoppel—Land—User of—Conversion.*

The defendants, having been granted a user of certain lands for certain purposes, used it for purposes other than the purpose for which it had been granted, by digging a *baoli* which was used by the public. *Held*, there was no question of the owner standing by watching the construction of the *baoli* being made by a person who was under a mistaken belief that the land was his own property, in order to gain an advantage. The defendants could not have believed that the land was their own property and there was nothing to show that the plaintiffs had any sinister motive in abstaining at the time from protest. (*Stuart*, J.) MAULVI MAHOMED *v.* MAHABIR DAS. **1923 All. 11 (1).**

——S. 115—*Equitable estoppel—Recourse to—Clean hands.*

A Court of equity will not have recourse to the doctrine of estoppel or acquiescence for the benefit of a party who does not come into Court with clean hands. (*Mookerjee and Newbould*, JJ.) JAHARADDI MANDAL *v.* DEBNATH. **33 I.C. 762 = 20 C.W.N. 687.**

——S. 115—*Equitable estoppel — Indemnity.*

Where under a contract of indemnity, A was bound to pay interest on B's debts and on breach thereof a suit was brought against A and B in which A contended that he had paid the interest but his contention was rejected and the suit decreed. *Held*, in a suit by B against A for damages that A was equitably estopped from again contending that he had paid interest. (*Sundara Aiyar and Phillips*, JJ.) NALLAPPA REDDI *v.* VRIDHACHALA REDDI. **25 I.C. 888 = 37 Mad. 270.**

Estoppel against Estoppel.

——S. 115—*Estoppel — Acquiescence — Sale by one of three brothers—Others standing by vendee raising buildings.*

Where a property belonging to three brothers is sold by one to a stranger who erects costly buildings upon it to the knowledge of all the three and the other two stand by it for a long time, they are estopped, from contending that one of them had no right to sell without their consent. (*Broadway and Harrison*, JJ.) DHANPAT RAI *v.* GURANDATHA. **61 I.C. 820 = 2 Lah. 258.**

——S. 115—*Estoppel against estoppel.*

Estoppel against estoppel sets the matter at large. The Court has to see what the original rights of the parties are. (*Scott-Smith*, J.) JIWAN LAL *v.* BEHARI LAL. **48 I.C. 68 = 153 P.W.R. 1918.**

——S. 115—*Estoppel against estoppel.*

Estoppel against estoppel sets the matter at large explained. (*Kanhaiya Lal and Kendall*, A.J.Cs.) SARUP CHAND *v.* MUSSAMMAT PANI. **37 I.C. 198 = 19 C.C. 240.**

EVIDENCE ACT (I of 1872), S. 116—Executor.

Executor.

———S. 115—*Executor—Trustee—Executor cannot set up title adverse to the testator.*

No person who has accepted, the position of executor or trustee under a will and acquired property in that capacity can be permitted to assert an adverse title thereto on his own behalf until he has obtained a proper discharge from the trust with which he had clothed himself. (*Lord Macnaghten.*) SRINIVASA MOORTHY *v.* VENKATAVARADA AIYANGAR
34 Mad. 257=15 C.W.N. 741=8 A.L.J. 774=13 Bom. L.R. 520=(1911) 2 M.W.N. 375=14 C.L.J. 64=21 M.L.J. 669=11 I.C. 447=10 M.L.T. 263 (P.C.).
[Affirming 29 Mad. 239=16 M.L.J. 238=1 M.L.T. 71.]

———S. 115—*Executor—Legatee—Heir-at-law.*

As between the testator on the one hand and the legatee or the executor on the other, there is no estoppel. Nor is the heir-at-law of a testator *raiyat* estopped from questioning the transfer of a holding made by a will. 12 C.W.N. 1036, not Foll. In every case of gift, the doctrine of estoppel does not apply as between donor and donee. (*Mookerjee and Beachcroft*, JJ.) AMULYA RATAN SARKAR *v.* TARINI NATH DAY. **42 Cal. 284=18 C.W.N. 1290=27 I.C. 285=21 C.L.J. 187**

Execution Sale.

———S. 115—*Execution sale—Decree-holder failing to mention incumbrance in sale proclamation—Effect.*

Where the execution application asked for a sale of property subject to a mortgage in the decree holder's favour but by some mistake it was omitted in the sale proclamation and there was nothing to show there was any misrepresentation, no estoppel arises. (*Mears*, C.J. *and Banerjee*, J.) RAM SARUP *v.* BHARAT SINGH.
43 All. 703=64 I.C. 763=19 A.L.J. 744.

——S. 115—*Execution of decree—Estoppel to appeal.*

Execution of a decree has never been held to estop the decree-holder from appealing from it so far as it is against him. (*Krishnan and Venkatasubba Rao*, JJ.) TADEPALLI SUBBA RAO GARU *v.* SRI BALASU BUCHI SARVARAYUDU. **44 M.L.J. 534=18 L.W. 61=(1923) M.W.N. 533=1923 Mad. 538.**

——S. 115—*Execution sale — Subject to mortgage—Rights of auction purchaser.*

In a sale in execution of a rent decree obtained by the mortgagee, the purchaser gets the right and interests of the mortgagor if he knew of the mortgage at the time of purchase. The mortgagee can enforce his right against auction-purchaser, who knew of the mortgage at the time of purchase. (*Richards*, C.J. *and Rafique*, J.) NANAK CHAND *v.* CHAMELI KUNWAR. **17 A.L.J. 288=50 I.C. 777=1 U.P.L.R. (H.C.) 27.**

EVIDENCE ACT (I of 1872), S. 116—Execution Sale.

———S. 115—*Execution sale—Continuation—Objection that property is not saleable.*

Held, that defendant having allowed the auction sale to take place without objection and that sale having been confirmed, it became conclusive as between the parties and the purchaser acquired a vested interest in the property sold and the defendant was precluded from questioning the validity of the sale and the title of the purchaser on the ground that it was exempt from attachment. (*Banerji and Ryves*, JJ.) LALA RAM *v* THAKUR PRASAD.
40 All 680=47 I.C. 947=16 A.L.J. 691.

———S. 115—*Execution sale—Mortgage.*

A person bringing properties to an execution sale without disclosing a mortgage of his own on the property cannot set it up afterwards against the purchaser, if the latter had no notice of it. (*Chamier and Piggott*, JJ.) GANESH *v.* BABU RAM **37 All. 72=26 I.C. 427=13 A.L.J. 9.**

——S. 115—*Execution sale—Mortgage deed notified at sale—Purchaser if can plead that the deed was fictitious—Estoppel.*

A decree-holder purchaser at an execution sale can plead that a mortgage-deed notified at such sale is fictitious unless there was some act, declaration or omission on his part which operates as an estoppel. 28 A. 418, Foll. (*Griffin and Rafique*, JJ.) JAIRAJMAL *v.* RADHAKISHAN. **33 All. 257=20 I.C. 182=11 A.L.J. 357.**

———S. 115—*Execution sale — Occupancy holding—Mortgage—Fixed rate tenure—Suit and sale—No objection.*

An occupancy tenant mortgaged his holding to the Zemindar describing the holding as a fixed rate tenure. In execution of a decree, on the mortgage, the holding was purchased by a stranger. No objection was raised either in the suit or in execution that the holding was an occupancy holding. *Held*, that subsequently the judgment-debtor tenant could not say that it was an occupancy holding and not transferable. (*Tudball and Chamier*, JJ.) ASGHAR HUSSAIN *v* PAL AHIR,
34 All. 688=15 I.C. 227=10 A.L.J. 66.

———S. 115 — *Execution sale—Purchaser subject to mortgage—Estoppel affecting mortgagor—Purchaser if bound.*

A purchaser at an execution sale is bound by the same rule of estoppel as the judgment-debtor and consequently he cannot dispute the validity of a mortgage as the mortgagor himself is estopped from questioning. 22 C. 909; 10 C.L.J. 160; 21 C.L.J. 441, Rel. (*Mookerjee and Cuming*, JJ.) NANDA LAL AGRANI *v.* JOGENDRA CHANDRA DATTA.
36 C.L.J. 421=1923 Cal. 58.

———S. 115—*Execution sale—Decree-holder allowing sale advertisement in a particular way.*

A rent decree-holder allowing a sale advertisement in execution of his decree to be drawn

EVIDENCE ACT (I of 1872), S. 115—Execution Sale.

up in a particular way, *i.e.*, as Mokarari, cannot be allowed to repudiate it afterwards and plead that the purchaser has bought something different from what was advertised for sale. The estoppel would not affect the landlords who were not parties to the suit. (*Coze and Ray*, JJ.) KHIRODE CHANDRA GHOSH *v.* JANKI DAS JANUP. **20 I.C. 753.**

———S. 115—*Execution sale—Incumbrance—Omission to notify.*

The decree-holder, who must notify before the sale all encumbrances on the property about to be sold, cannot subsequently set up, against the execution purchaser, a secret encumbrance in his own favour. The principle of estoppel does not apply to the case of an execution-purchaser of a homestead land under a *ghatwal* in a sale held under the Public Demands Recovery Act, where the land was described as rent-free in the sale certificate. The plea of estoppel proves unsustainable. (*Mookerjee and Beachcroft*, JJ.) PROSANNA KUMAR MURHERJEE *v.* SRIKANTA. **40 Cal. 173=17 C.W.N. 137=16 I.C. 865=16 C.L.J. 202.**

———S. 115 — *Execution sale — Purchase subject to mortgage—Purchaser can dispute mortgage.*

Where a person purchases property subject to a mortgage, he is not by that sole fact estopped from disputing the validity of or the consideration for the mortgage. But if the mortgagee has been thereby induced to suffer some detriment or if he foregoes a portion of his money then the purchaser may be estopped from disputing the mortgage. (*Rattigan*, C.J. *and Martineau*, J.) BALA PRASAD *v.* SUJAN SINGH. **49 I.C. 997=28 P.W.R. 1919.**

———S. 115—*Execution sale—Decree-holder selling his own properties by mistake—Purchase in execution—Subsequent setting aside the sale.*

Where in execution of a money decree the decree-holder under a *bona fide* mistake brought to sale certain of his own properties as those of his judgment-debtor and the sale was confirmed and delivery of possession was made to the purchaser. *Held* that the decree-holder was estopped from setting up his own title to the properties as against the auction-purchaser notwithstanding the fact that his mistake was a *bona fide* one. 20 C. 296, Foll. (*Ayling*, O.C.J. *and Odgers*, J.) RAMASWAMI KONAN *v.* KULANDAIVELU PILLAI. **15 L.W. 272=(1922) M.W.N. 121=1922 Mad. 68.**

———S. 115 — *Execution sale — Incorrect statement in proclamation—Knowledge—Omission to object.*

Where a judgment-debtor does not raise any objection to an incorrect statement in the sale proclamation he fails in his duty to the Court and he is estopped from complaining of any irregularity resulting from an erroneous statement which he would have corrected. This rule will not apply if the judgment-debtor was not aware of the facts. (*Benson and Sundara Aiyar*, JJ.) RAJA OF KALAHASTI *v.* MAHARAJAH OF VENKATAGIRI. **38 Mad. 367=14 M.L.T. 320=21 I.C. 389=25 M.L.J. 196.**

———S. 115—*Execution sale — Judgment-debtor—Objection.*

In executing a maintenance decree, the decree-holder applied for sale of certain properties alleging that they were liable to be sold under the decree. The judgment-debtor did not object to the sale. On a subsequent similar application the judgment-debtor raised the objection. *Held*, that he cannot now be heard to say that the decree does not direct the sale of property made liable for maintenance. (*Munro and Sankaran Nair*, JJ.) KONDAMA NAIDU *v.* VISALAKSHI. **10 I.C. 632.**

———S. 115—*Execution sale — Approbate and reprobate—Judgment-debtor estopped from impeaching.*

A party cannot take the benefit of a transaction and at the same time repudiate it when the transaction is one and indivisible. Where the property of a judgment-debtor is sold in execution of the decree and the proceeds go in satisfaction of the decree and the judgment-debtor accepts the payment of the decree, he cannot impeach a part of the sale. (*Mitra*, A.J.C.) ANNAPURNABAI *v.* RAM CHANDRA. **43 I.C. 178.**

———S. 115—*Execution sale—Property sold as that of one judgment-debtor—Others' acquiescence with knowledge—Effect.*

Where in execution of a decree against several persons, a certain property was attached and sold as that of one of the judgment-debtors, and the others though they had knowledge of the proceedings and were present at the sale raised no objections whatever and even allowed the sale to be confirmed. *Held*, in a subsequent suit by them against the auction-purchaser for possession on the ground that they had an interest in the property, they were estopped by their conduct at the sale and even subsequently by allowing the sale to be confirmed. 10 I.A. 25 and 15 I.A. 171, Ref. to. (*Lyle*, A.J.C.) ABDUL RAZAQ *v.* MUHAMMAD HAJJAN. **9 O.L.J. 131=1922 Oudh 11.**

———S. 115—*Execution sale—Judgment-debtor—Decree amount—Omission to object.*

There is no estoppel against a judgment-debtor by his acknowledging the decretal amount, unless it is shown that he knew the details of the amount. The judgment-debtor can subsequently plead that the amount was less. (*Kanhaiya Lal*, A.J.C.) DELHI LONDON BANK, LTD. *v.* RAM RATAN. **32 I.C. 754=2 O.L.J. 611.**

EVIDENCE ACT (I of 1872), S. 115—Execution Sale.

——S. 115—*Execution sale—Omission—Charge not notified in sale proclamation—Effect of.*

A party to a suit who having a charge or encumbrance on the property in suit ordered to be sold, fails to have that charge or encumbrance notified in the sale proclamation, is estopped from subsequently setting up his lien against the auction-purchaser. The doctrine of estoppel cannot be said to rest absolutely upon any notice of duty on the part of the person sought to be estopped. And the word 'omission' used in S. 115 does not mean merely an omission to perform such a duty as is prescribed by law. (*Lindsay*, J C.) MANIK RAM *v.* RAM AUTAR. 27 I.C. 611= 2 O.L.J. 22.

——S. 115—*Execution sale—Sale on subsequent mortgage—Prior mortgagees if bound to get their mortgages notified at the time of sale.*

There is no duty on prior mortgagees to get their mortgage liens notified in a sale in execution and no estoppel can arise as against the auction-purchaser by reason of such non-notification. 36 C. 323, Dist. (*Lindsay*, J.C.) KIFAYAT ULLAH *v.* MAHABIR PRASAD. 24 I.C. 2=1 O.L.J. 175.

——S. 115—*Execution sale — Purchase subject to mortgage.*

An auction-purchaser of property subject to a prior mortgage is estopped from denying the validity of the mortgage on the ground of failure of consideration or undue influence; but, if he merely buys an estate which is under mortgage but does not take it subject to the encumbrance, he can impeach the validity of the mortgage. Where property is sold in accordance with a decree for sale the purchaser cannot raise a plea of priority in respect of a mortgage, not set up by the mortgagee in his suit for sale. (*Lindsay*, A.J.C.) RAMKUMAR *v.* DWARAKA PRASAD. 16 I C. 5=16 O.C. 211.

——S. 115—*Execution sale.*

Where judgment-debtor, in spite of notice of the date of settling the sale proclamation being issued to him, fails to attend, he is estopped from subsequently challenging the valuation. (*Mullick and Bucknill*, JJ.) MAHADEO SINGH *v.* DHOBI SINGH. 1923 Pat. 283=4 P.L.T. 721= 2 P. 916=1924 P. 111.

——S. 115—*Execution sale—Objection to—Consent to attachment before judgment.*

A judgment-debtor is not estopped from objecting to the validity of an execution sale on the ground that the property is a non-transferable occupancy holding merely because he consented to an order of attachment before judgment of the property. The attachment merely prevented an alienation and the judgment-debtor by consenting to it merely fettered his right to deal with the property. (*Roe and Jwala Prasad*, JJ.) BOCHAI MAHTON *v.* ISRIJAJI. 47 I.C. 29= 5 Pat. L.W. 185.

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Fraud.

——S. 115—*Fraud.*

Where there is false representation of ownership of land by a mortgagor and the mortgagee is unaware of false title the mortgagor canno take advantage of his own fraud. (*Rafiqu and Piggott*, JJ.) SAIYID MUHAMMAD *v* PURSHOTAM SARAN. 1922 All. 231.

——S. 115—*Fraud—Advantage from.*

Estoppel and the above equitable rule are quite different. The former is no more than a rule of evidence, and its operation hardly extends to cases falling under the above equitable principle. The applicability of the maxim depends on the question whether any fraud was committed at all by the person and on the question whether any advantage was derived by him by the fraud assuming constructive fraud on his part. (*Beaman and Heaton*, JJ.) MOTI RAIJI *v.* LALDAS JIBHAI. 41 Bom. 93=37 I.C. 915=18 Bom. L.R. 954.

Illegality.

——S. 115 — *Illegality — Procedure — Parties agreeing to abide by result of local inspection by Munsif.*

Where parties agree to abide by the result of a local inspection by the Munsif, the Munsiff made the inspection and left a note thereof on the basis of which his successor in office decided the case, it was held that the trial was not a good one and that the parties were not estopped from questioning the validity of the same. (*Banerjee*, J.) KISHAN NARAIN *v.* RAM BAKHSH. 22 I C. 61= 12 A.L J. 48.

Inconsistent Pleas.

——S. 115—*Inconsistent pleas—Different litigation.*

Plaintiff was estopped by his own proceeding in the arbitration wherein he received his full half of the properties belonging to his father upon the footing of the exclusion of the mother from claiming a share therein through his mother. (*Lord Dunedin*, J.) MAHOMED WALI KHAN *v.* MUHAMMAD MOHI-UD-DIN KHAN. 11 L.W. 421=24 C.W.N. 321= (1920) M.W.N. 189=27 M.L.J. 201= 58 I.C. 813=2 U.P.L.R. (P.C.) 48 (P.C.).

——S. 115—*Inconsistent pleas—Prompt and deferred dower.*

Where a Mahomedan husband in a suit by his wife, to recover from him the prompt portion of her dower, contended that the whole of the dower settled was deferred. *Held*, in a second suit by the wife to recover the deferred portion that he was estopped from raising the contention that the whole dower was prompt

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in view of his defence in the prior suit. (*Sir John Edge,*) PARBATI *v.* MUHAMMAD MUZAFFAR ALI KHAN. 34 All. 289 = (1912) M.W.N. 417 = 11 M.L.T. 316 = 9 A.L.J. 450 = 15 C.L.J. 468 = 14 Bom. L.R. 460 = 23 M.L.J. 11 = 18 I.C. 196 = 16 C.W.N. 913 (P.C.).

[On appeal from 29 All. 640 = 27 A.W.N. 221 = 4 A.L.J. 531.]

——S. 115 — *Inconsistent pleas—Jurisdiction.*

Where in a previous suit for ejectment brought in a Revenue Court, the suit was dismissed on the objection of the defendant as to the jurisdiction and the plaintiff was directed to bring his suit in the Civil Court, it is not open to the defendant to plead that the suit, when brought in the Civil Court, was not maintainable. (*Chamier*, J.) ABDUL QAYUM *v.* FIDA HUSSAIN. 30 I.C. 851 = 13 A.L.J. 851.

——S. 115—*Inconsistent pleas—Effect of.*

In a suit for ejectment in a Civil Court, defendant pleaded that he was an agricultural tenant, upon which the Munsif acting under S. 202 of the Agra Tenancy Act directed defendant to establish his plea in a Revenue Court within time. On default being made, the suit was decreed. The suit was dismissed by the appellate Court which found that deft. was a tenant of plff. and that no notice of the termination of the tenancy had been given to him under S. 106 of the T. P. Act. *Held*, that it was not open to the lower Appellate Court to find as it did having regard to the pleading of the defendant. (*Piggott*, J.) NARAYAN SARUP *v.* NANDA. 28 I.C. 568 = 13 A.L.J. 249.

——S. 115—*Inconsistent pleas—Execution proceedings.*

In execution of the decree, the decree-holder applied for sale of two mortgage-bonds, and the judgment-debtors (being representatives of the deceased debtor) prayed for time to pay the decree amount and the Court granted him and struck off the execution application. Subsequently when the decree-holder applied for the same relief, the judgment-debtors contended that the mortgage-bonds were their own property and could not be sold under the decree. *Held*, that the neither *res judicata* nor estoppel barred the objection. 4 A.L.J. 400, Foll.; 31, C. 822; 26 W.R. 44; 38 C. 127; 24 A. 188 Dist. (*Karamat Hussain*, J.) RAM CHANDAR SINGH *v.* PUTTU LAL. 11 I.C. 980 = 8 A.L.J. 845.

——S. 115—*Inconsistent pleas—Suit for dower—Prompt and deferred.*

Where in a previous suit for part of the dower as prompt, the plea had been raised that the whole was deferred, *Held*, that in a subsequent suit it cannot be pleaded by the deft's. representative in interest that the whole was

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prompt. (*Stanley*, C.J. *and Banerji*, J.) UMDA BEGAM *v.* MUHAMMADI BEGAM. 33 All. 291 = 9 I.C. 200 = 8 A.L.J. 27.

——S. 115—*Inconsistent pleas—Not to be taken.*

A party litigant cannot be permitted to take up inconsistent positions to the detriment of his opponent. 27 C.L.J. 535; 5 C.L.J. 95, Rel. (*Mookerjee and Panton*, JJ.) BAMA CHARAN CHAKRAVARTI *v.* KISHORE MOHAN RAY. 36 C.L.J. 88 = 1922 Cal. 114.

——S. 115—*Inconsistent pleas—Landlord and tenant—Settlement record.*

When an alteration in the record was made by the settlement authorities upon the joint application of a landlord and tenant, the latter is precluded from contending that the order was made without jurisdiction and is not binding upon him. 9 All. 191, Rel. (*Mookerjee and Carnauff*, JJ.) RAM PRASAD NARAYAN *v.* DAUD DURJI. 53 I.C. 89 = 30 C.L.J. 1.

——S. 115—*Inconsistent pleas — Parties not allowed to take.*

That parties should not be allowed to take up inconsistent positions in Court to the detriment of their opponents is an elementary principle of justice and equity. A defendant cannot be allowed to defeat the claim of the plaintiff on proof that, contrary to their previous allegation a decree for recovery of possession might and should have been made in favour of the plaintiff in the previous suit. (*Mookerjee and Beachcroft*, JJ.) GIRISHCHANDRA BIT *v.* BEPIN BEHARI KHAN. 44 I.C. 159 = 27 C.L.J. 535.

——S. 115—*Inconsistent pleas—Incumbrancer involving purchaser in litigation.*

An incumbrancer who, by disputing the title of the purchaser of the holding at a now sale is responsible for the delay in the issue of notices to annul the incumbrances cannot be allowed to say that the title under which the purchaser claimed to issue the notices was perfected on the date of actual sale and not on confirmation. 10 C.L.J. 640, Foll. (*Chatterjee*, J.) GOBINDCHANDRA LALA *v.* TARA PADA BHATTACHARJEE. 9 I.C. 803.

——S. 115—*Inconsistent pleas—Estoppel by conduct.*

A plaintiff who has objected to the admissibility of a certain document in a previous suit by the defendants and has practically compelled them to withdraw their previous suit, is estopped from asking the Court to grant him a declaratory decree upon basis of that very agreement. (*Rattigan and Chevis*, JJ.) ALAM SHAH *v.* NURZAMAN SHAH. 63 P.W.R. 1913 = 18 I.C. 804 = 114 P.L.R. 1913.

——S. 115—*Inconsistent pleas—Appeal.*

A female after claiming inheritance in the lower Courts as the daughter's daughter of the penultimate male holder is not estopped on

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appeal from taking up a different position and claiming as the sister of the last male holder. 134 P.R. 1907, Foll. (*Johnstone and Shah Din*, JJ.) ISHAR KUAR *v.* RAJA SINGH.
29 P.R. 1911=94 P.L.R. 1911=9 I.C. 608=124 P.W.R. 1911.

———S. 115—*Inconsistent pleas.*

The position taken up in appeal, by a litigant should be consistent with that relied on by him in the lower Court. (*Arthur Reid*, C.J.) NAWAB KHAN *v.* YATAM. 2 P.W.R. 1911=9 I.C. 36=15 P.L.R. 1911.

———S. 115—*Inconsistent pleas — Small cause—Original side.*

The defendant objected that the Small Cause Court had no jurisdiction, whereupon the District Munsif returned the plaint to the ordinary side. Against the decree of the Munsif there was an appeal to the Subordinate Judge. Against the appellate order of the latter, a revision petition was filed in the High Court and plaintiff raised the objection that the suit was of a small cause nature and that no appeal lay to the Subordinate Judge. *Held*, that the plaintiff was estopped from raising the objection. (*Oldfield and Seshagiri Aiyar*, JJ.) AIYATHURAI PILLAI *v.* GNANAPRAKASA ODAYAR. 52 I.C. 829.

———S. 115—*Inconsistent pleas—Litigants not allowed to set up.*

The mother of the last Hindu owner filed a suit for a declaration of the invalidity of an alleged adoption made to him. The mother died and the reversioners, the present plaintiffs applied to be brought on record as her legal representatives and to continue the suit. The application was dismissed on the objection raised by the present defendant. The present plaintiffs thereupon brought a fresh suit. *Held*, that the defendant was estopped from contending in the second suit that the decision in the previous suit was erroneous, that the plaintiff's proper remedy was to continue the first suit and that the second suit was barred inasmuch as the first suit had abated. 17 M.L.J. 314 and 22 Mad. 394, Ref. (*Ayling and Krishnan*, JJ.) ARUNACHALAM PILLAI *v.* VELLAYA PILLAI. 26 M.L.T. 350=52 I.C. 463=9 L.W. 845.

———S. 115—*Inconsistent pleas—Legal pleas.*

Per *Sadasiva Aiyar*, J.. *Quaere.*—Whether the principle that a party ought not to be allowed to take up inconsistent positions in pleadings in two successive proceedings involving the same question of rights can be availed of as regards pleas based on a pure abstract question of procedure law. 17 M.L.J. 314; 27 A. 544, Ref. to. *Quaere.*—Whether even assuming that the doctrine can be availed of in such cases its effect is to entitle the party taking the first or infructuous proceeding to the deduction of the time taken therein for the purpose of calculating the limitation

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period for the second proceeding. (*Sadasiva Aiyar and Spencer*, JJ.) ABDULL KOYA *v.* KALLUPURATH KANARAN. 33 M.L.J. 463=6 L.W. 696=43 I.C. 6=(1917) M.W.N. 822.

———S. 115—*Inconsistent pleas — Trial issue—Evidence of custom.*

That the defendant does not object to a witness setting up a custom is no bar to his objecting to another witness giving evidence at a later stage. When parties have interpreted an issue once in a narrower sense they cannot insist on a wider interpretation at the next stage of suit but they may contest this case on such wider interpretation. 35 C. 232 (P.C.), Dist. Where an issue is ambiguous and a party once relies on a narrower interpretation he cannot subsequently be allowed to contend that wider interpretation is applicable. Such contention at an early stage may be allowed. Though a party does not object to one witness giving evidence of custom, he can object to another witness. (*Wallis*, C.J. *and Srinivasa Aiyangar*, J.) NAICKER *v.* KAMALU AMMAL. (1915) M.W.N. 968=2 L.W. 1214=19 M.L.T. 296=31 I.C. 833=30 M.L.J. 451.

———S. 115—*Inconsistent pleas—Construction of decree.*

Where the Court has construed a decree in a particular manner and the decree has been enforced, the parties shall be estopped from claiming that it should be construed otherwise. (*Seshagiri Aiyar and Kumaraswami Sastri*, JJ.) LODD GOVINDA DOSS *v.* RAJAH OF KARVET NAGAR. 30 I.C. 357=29 M.L.J. 219.

———S. 115—*Inconsistent pleas — Rule against.*

The rule that a party should not be allowed to take up inconsistent positions applies only where a party seeks to defeat his opponent by successive inconsistent positions or having obtained a benefit by adopting a position he afterwards tries to assume a different and contradictory position while retaining the advantage gained by his former position. (*Benson and Sundara Aiyar*, JJ.) VELUSWAMY NAICKER *v.* BOMMACHI NAICKER.
14 M.L.T. 229=25 M.L.J. 324=(1913) M.W.N. 776=21 I.C. 219=5 L.W. 299.

———S. 115—*Inconsistent pleas—Section not exhaustive.*

The section is not a complete statement of the whole law of estoppel. If a person without mistake takes a particular position in litigation he cannot be allowed to change that position and the principle will still apply in another suit growing out of the judgment of the first. (*Wallis*, J.) CHOTTA KRISHNASWAMI CHETTY *v.* SITARAMA CHETTY.
23 M.L.J. 335=17 I.C. 513=(1912) M.W.N. 967.
[On appeal from 21 I.C. 24=38 Mad. 874=25 M.L.J. 264.]

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———S. 115—*Inconsistent pleas — Party added on his own motion if can claim exoneration.*

A person, who is, on his own motion or without objection impleaded as a party to a mortgage suit, cannot, after an adverse decision is given against him, undo its effect by pleading that he is an unnecessary party and that he ought to be permitted to retire from the suit. (*Mitra*, A.J.C.) ADAM KHAN *v.* DATTA RAM. **47 I.C. 536.**

———S. 115—*Inconsistent pleas—Rule when applicable.*

Before applying the rule of estoppel, it is necessary to show that a previous inconsistent statement affected the result of that litigation. A person therefore who was not a proper party to a litigation is not estopped from subsequently pleading something inconsistent with a statement made by him in the course of the former litigation. (*Mittra*, A.J.C.) RAGHUNATH *v.* SHEOLAL. **39 I C. 849 = 13 N L.R. 69.**

———S. 115—*Inconsistent pleas—Remedy by execution or by suit.*

Where a party objects that a claim in a suit is barred by S. 47, Civ. Pro. Code and the objection is allowed, he cannot, in a subsequent application, for execution, set up that the remedy is by a suit. A suitor should not be allowed to take up a position inconsistent with that on which he has succeeded in defeating a claim in a previous proceeding brought to enforce it. (*Kanhaiya Lal and Daniels*, A.J.Cs.) BASTI BEGAM *v.* SAJJAD MIRZA. **47 I.C. 558 = 21 O C. 188.**

———S. 115—*Inconsistent pleas—Identity of land.*

A party who asserted, all along that the lands could be identified, cannot turn round and assert the contrary on appeal after judgment was given against him by the Court below. (*Adami and Ross*, JJ.) CHULAI MAHTO *v.* SURENDRA NATH CHATTERJEE. **1 P. 73 = 3 P L.T. 17 = 23 Cr. L J. 182 = 1922 P. 224.**

———S. 115—*Inconsistent pleas—Suit for rent—Subsequent denial of tenancy.*

A person who successfully sues another for rent cannot subsequently be heard to impugn that the defendant was a tenant. (*Das and Bucknill*, JJ.) JITAN MAHTON *v.* LALA BHAGWAN SAHAI. **51 I.C. 262 = 2 P.L.T. 760.**

———S. 115—*Inconsistent pleas—No estoppel—If only applying facts established at a trial.*

There is no scope for the application of the principle of estoppel by reason of inconsistent positions where the plaintiff is only applying the law to the facts established at the trial, though he failed to prove what he came to prove. (*Mullick*, J.) BANKEY BEHARY LAL *v.* BHAGWANDAS MARWARI. **35 I.C. 897.**

EVIDENCE ACT (I of 1872), S. 115—Judgment.

———S. 115—*Inconsistent pleas—Acceptance of specific share in preliminary decree—Subsequent attempt to show its incorrectness—Whether estopped.*

In the preliminary decree a person accepted a specific share at the proper time. *Held* that he could not be permitted to show its incorrectness at the close of the case. (*Pratt*, J.C. *and Crouch*, A.J.C.) SIRDAR KHATUN *v.* MURAD ALI. **34 I.C. 938 = 9 S.L.R. 218.**

———S. 115—*Inconsistent pleas—Jurisdiction.*

A defendant will be barred from raising the question of jurisdiction when the case is transferred to the higher Court according to his objection in the lower Court. (*Pratt*, J.C. *and Crouch*, A.J.C.) KHAITOMAL LALCHAND *v.* FATEH MAHAMED. **32 I.C. 629 = 9 S.L.R. 164.**

———S. 115—*Inconsistent pleas.*

Where the defendants ejected plaintiff from the house she was occupying on the ground that it was not the family residence, they cannot deny her right to a residence in the family house in a subsequent suit by her for a right of residence. (*Pratt*, J.C. *and Crouch*, A.J.C.) LADHIBAI *v.* ISARMAL. **29 I.C. 25 = 8 S L R. 306.**

Judgment.

———S. 115—*Judgment—Award—Estoppel.*

There was an agreement to partition property by arbitration, between two Mahomedan brothers. The award of the arbitrators was decreed by the Court. The award contained the terms that both had to contribute to their mother's maintenance, for exclusion from inheritance in her late husband's property. In a claim by one of the brothers after their mother's death, to her property, it was held that, by his acceptance of the award, he was estopped. (*Lord Dunedin.*) MAHOMED WALI KHAN *v.* MAHOMED MOHI-UD-DIN KHAN. **24 C.W.N. 321 = (1920) M.W.N. 189 = 11 L.W. 421 = 27 M.L.T. 204 = 58 I.C. 843 = 2 U.P.L.R. (P.C.) 48 (P.C.).**

———S. 115—*Judgment—Scope of estoppel.*

A judgment operates as estoppel as regards all the findings essential to sustain the judgment. If in a suit a question is raised by the pleadings and argued and if both parties invoke the opinion of the Court thereon, the judgment of the Court is not then *ultra vires* simply an issue, which strictly construed, embraces the whole of it. (*Mookerjee*, A.C.J. *and Fletcher*, J.) MIDNAPORE ZEMINDARI CO. *v.* JOGENDRA KUMAR. **62 I.C. 491 = 33 C.L.J. 186.**

———S. 115—*Judgment* — Res judicata—*Claim suit—Decision in—Auction-purchaser.*

If a claim suit under O. 21, R. 63, C.P.C., is decided against the claimant and the property is sold in auction the decision operates as an estoppel against the claimant in a

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subsequent suit. 36 M. 141, Rel. (*Jenkins*, C.J. *and Mookerjee*, J.) PEARI MOHAN *v.* DURLAVI DASSYA. **19 C.L.J. 441 = 20 I.C. 815 = 18 C.W.N. 954.**

———S. 115—*Judgment—Findings in.*

The scope of an estoppel is not restricted to the judgment but extends to all facts in it and the judgment operates as estoppel for all the findings essential to sustain the judgment. 6 C.L.J. 621 at 631, Foll. (*Mookerjee*, J.) PANCHU *v.* CHANDRA KANTA. **12 I.C. 9 = 14 C.L.J. 520.**

———S. 115—*Judgment—Parties and privies—Creditor—Adjudication against debtor.*

A creditor is bound by an adjudication against his debtor on his title to property in the absence of fraud, collusion, etc. It is not necessary that the adjudication should have been on the merits. It is enough if the effect of the adjudication is to effectually deprive the debtor of his right to the property so long as the judgment stands. 33 M. 167; 36 M. 141; 29 M.L.J. 559, Foll. (*Seshagiri Aiyar and Moore*, JJ.) RAHIM-UN-NISSA BEGAM *v.* SRINIVASA AIYANGAR **38 M.L.J. 266 = 54 I.C. 565 = 11 L.W. 139.**

[Recently overruled by Full Bench; not yet reported.]

———S. 115—*Judgment—Assignment of decree.*

Where one creditor files a suit to cancel an assignment as being in fraud of himself, the judgment passed in such a suit cannot be relied upon by another creditor (not a party to the said suit) as deciding upon his rights also. (*Oldfield and Bakewell*, JJ.) ARUMUGA MUDALIYAR *v.* KRISHNASWAMI NAIKEN. **42 I.C. 498.**

[Compare 38 Mad. 483 = 6 I.C. 229 = 29 M.L.J. 558 = 55 I.C. 452 = 30 I.C. 962 = 43 Mad. 381.]

———S. 115—*Judgment—Estoppel—Binding on parties whose title is later in origin—Nullity—Jurisdiction.*

Where a link in the chain of a party's title consists of a decree of a Court of competent jurisdiction pronounced against the only person or persons who at the time of such decree had an interest which would entitle them to resist the plaintiff's title no person whose claim is subsequent in origin can challenge that decree or go behind it or challenge the plaintiff's title as at that date on any ground which was determined by that decree as a necessary step in its result. Per *Srinivasa Aiyangar*, J.:—It is open however to such party to show that the judgment is a nullity but the only ground on which a judgment as distinguished from a conveyance can be declared a nullity is the want of jurisdiction in the Court over the parties or the subject-matter. Where a judgment rendered after trial recognises the alienation of an office in the

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presence of all the parties interested in questioning the same a stranger cannot question it on the ground that such alienation is against public policy. (*Coutts-Trotter and Srinivasa Aiyangar*, JJ.) SUPPA BHATTAR *v.* SUPPA SOKKAYA BHATTAR. **29 M.L.J. 558 = 18 M.L.T. 402 = (1915) M.W.N. 829 = 30 I.C. 962 = 2 L.W. 1005.**

[Overruled in a recent decision by the Full Bench; not yet reported.]

———S. 115—*Judgment—Revenue Court—Co-sharers—Partition.*

A partition effected through a Revenue Court among the co-sharers of a village creates a new title in each co-sharer to whom a share in the village is allotted and the parties will be precluded from subsequently setting up a title other than what they got at the time of partition. (*Lindsay*, J.C.) JANG BAHADUR SINGH *v.* CHANDREJ SINGH. **41 I.C. 171 = 4 O.L.J. 365.**

———S. 115—*Judgment—Consent decree or order.*

A consent order raises an estoppel and so long as it stands, neither party can give the go-bye to it, though it contains clauses bad in law. (*Das and Ross*, JJ.) RAMESHWAR SINGH *v.* HITENDRA SINGH. **6 P.L.J. 203 = 62 I.C. 469 = 2 P.L.T. 268.**

———S. 115—*Judgment—Vendor and purchaser—Sale.*

Where a vendor is a party to the impeachment of the purchaser's title and the suit is decreed against the purchaser, in a subsequent suit by the purchaser to recover the purchase-money, the vendor will be estopped from saying that his former admission was improvident. The purchaser not being at fault, the vendor is liable to refund the purchase-money. (*Roe and Ali Imam*, JJ.) BHATTU RAM *v.* GANGA BASAD GOPE. **47 I.C. 87 = 3 P.L.J. 388.**

Laches.

———S. 115—*Laches—Sale—Agreement to reconvey after payment of the amount stated in the sale-deed—Redemption after a long time.*

Where land is transferred to another by a sale-deed with an agreement to reconvey after the payment of money stated on the sale-deed the vendor or his transferee cannot redeem the land after a very long time when there is evidence to show that the vendor or his transferee treated the transaction as a sale during all the time. (*Richardson and Shamsul Huda*, JJ.) NAZIR ALI *v.* COLLECTOR OF CHITAGONG. **57 I.C. 631.**

———S. 115—*Laches—Limitation.*

The principle of acquiescence by laches does not apply where a statutory period of limitation is prescribed. (*Jenkins*, C.J. *and Woodroffe*, J.) OSMOND BEEBY *v.* KHITISH CHANDRA. **41 Cal. 771 = 26 I.C. 284 = 18 C.W.N. 631**

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———S. 115—*Laches—No estoppel.*

Mere delay in filing a suit does not amount to estoppel. (*Scott Smith and Jones, JJ.*) BHAG MAL *v.* BHAGWAN DAS. 126 P.W.R. 1917= 41 I.C. 686= 11 P.R. 1918.

———S. 115—*Laches—Mortgagee's laches in suing.*

A mortgagee, is not estopped from asserting his rights by laches in suing. (*Johnstone and Rattigan, JJ.*) ALLIANCE BANK *v.* KAHAN SINGH. 111 P.W.R. 1914=216 P.L.R. 1914= 26 I.C. 856=4 P.R. 1915.

———S. 115—*Laches—Long inaction.*

Inaction for 11½ years does not estop a daughter from claiming her property from her collaterals. (*Reid, C.J. and Rattigan, J.*) BUADITTI *v.* WARIN SINGH. 64 P.L.R. 1911=10 I.C. 819= 212 P.W.R. 1911.

———S. 115—*Laches—In filing suit—Effect.*

A bailor is not entitled to any damages for wrongful use, beyond getting the value of the goods, if he is guilty of long delay in filing the suit after issuing the notice of demand. (*Fox, C.J. and Twomey, J.*) EBRAHIM AHMED MEHTER *v.* SAMUEL BATHALAR. 34 I.C. 297=9 Bur L.T. 224.

Landlord and Tenant.

———S. 115—*Landlord and tenant—Ejectment.*

If in a suit for enhancement of rent the zemindar entered into a compromise stating that the tenancy was a fixed-rate tenancy and describing certain of its incidents without mention of the grounds in cl. (*d*) of S 57 of the Agra Tenancy Act, he is subsequently estopped from asserting that it was not a fixed rate tenancy but only an occupancy tenancy in a suit for ejecting the tenant on the ground of his transferring the holding by way of mortgage. (*Holms, S.M. and Campbell, J.M.*) BHAGWAN SINGH *v.* DWARKA RAI. 29 I.C. 677.

———S. 115—*Landlord and tenant—Ejectment.*

Where a zemindar agreed not to eject his tenant so long as rent was paid and in consideration received a large amount of arrears due from a previous tenant, he is estopped from ejecting his tenant so long as he paid rent. Such an agreement need not be in writing. (*Holms, S.M.*) YUSUFUZZMAN *v.* BODHAN. 29 I.C. 656

———S. 115—*Landlord tenant—Rent, withholding of.*

Where the entry in the Thakbust khasra has been made in fraud of the owner, the withholding of the rent collected by thikadar of the proprietor does not create an estoppel or

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destroy the relationship of landlord and tenant. (*Ameer Ali*). JAGDEO NARAIN SINGH *v.* BALDEO SINGH. 3 Pat. L.T. 605= 36 C.L.J. 499=49 I.A. 399= 32 M.L.T. 1=2 P. 38=45 M.L.J. 460= 1922 P.C. 272 (P.C.).

———S. 115—*Landlord and tenant—Status of parties.*

It is not open to the representatives of a lessor to prove that the status of the original lessee was other than what was described in the lease deed. (*Mookerjee and Rankin, JJ.*) ISWAR CHANDRA NATH *v.* GOUR SUNDAR NATH. 1923 Cal. 608.

———S. 115—*Landlord and tenant—Tenancy by estoppel.*

Where Government is the owner of lands, no question of estoppel can arise against the landlord so as to interfere with the rights of a subsequent grantee from the Government. (*Sadasiva Aiyar and Spencer, JJ.*) SWAMIATHA MUDALI *v.* SARVANA MUDALI. 40 I.C. 581=33 M.L.J. 370.

———S. 115—*Landlord and tenant—Tenant if can dispute landlord's possession—Grant by Government.*

A tenant who has entered into possession under a lease from the landlord, is bound to restore the landlord's possession, before he can set up an independent title. Defendants took possession under a *kanom* deed from plaintiff and after execution of the *kanom*, plaintiff accepted quit-rent *pattahs* from Government in respect of some of the lands demised. *Held*, the arrangement between the plaintiff and Government do not take away the plaintiff's right to possession. 28 M. 526, Ref. (*Wallis and Ayling, JJ.*) NARAYANA NAMBUDRI *v.* MAHAMMAD. 16 I.C. 855.

———S. 115—*Landlord and tenant—Not permitted to derogate from his grant—Applicability of the principle.*

The rule that a person cannot be permitted to derogate from his own grant, is not of universal application and certainly cannot apply to the case of a landlord where, by a *bona fide* surrender by the tenant, he acquires statutory right of re-entry into the land which was originally dismissed in favour of the tenant. (*Jwala Prasad and Ross, JJ.*) RAM ORAON *v.* DOMAN KALAL. 2 P. 898=4 P.L.T. 562= 1924 P. 100.

———S. 115—*Landlord and tenant—Rent decree—Purchase of property subject to second decree—Effect.*

A decree-holder landlord who in execution of a rent decree purchases the holding subject to liability for a second rent decree is not estopped from proceeding against other properties in execution of the latter decree. (*Mullick and Macpherson, JJ.*) JUGAL KISHORE NARAYAN SINGH *v.* BHATU MODI. 1 P.L.R. 311=4 P.L.T. 640=2 P. 720= (1923) Pat. 205=1923 P. 517.

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———S. 115—*Landlord and tenant—Silence of landlord—Conduct of lessee.*

Where the tenants knew perfectly well what their rights were and they were not deceived or encouraged in any away, the mere silence of the landlord or his inaction does not create an estoppel against him. Further to create an estoppel it must also be shown that he was aware of what his rights were and that he had the power to prevent tenants from building. (*Miller*, C.J. *and Mullick*, J.) BUDHAN TELI *v.* MADANMOHAN LAL. **3 P.L.T. 485 = 1923 P. 111.**

———S. 115—*Landlord and tenant—Raiyati holding—Record as—Zerait by Collector—Co-sharers, estoppel.*

Where the plaintiffs who were co-sharers with the defendants allowed the Collector to record their raiyati holding as the zerait land of the latter, *held* that a question of estoppel will arise. (*Mullick and Atkinson*, JJ.) BALADEO SAHAI *v.* BRAJNANDAN SAHAY. **3 P.L.W. 266 = 43 I C. 389 = (1918) Pat. 164.**

Licensor.

———S. 115—*Licensor and licensee—Employees and contracting parties—Assignee or licensee of a right.*

The rule of estoppel applies also to employees and contracting parties generally who therefore, cannot accept the benefits of the contract and yet when called upon to perform their duties under it, repudiate it as made without right. The assignee or licensee of a right accepted and acted under, is, accordingly precluded from denying the authority from which the right proceeds. (*Mookerjee and Beachcroft*, JJ.) LAKHAN JENA *v.* ARJUN NAIK. **18 C.W.N. 1194 = 24 I.C. 387 = 19 C L J. 313.**

———S. 115—*Licensor and licensee—License under Burma Municipal Act.*

A licensee is estopped from objecting to the terms of a license which gives him rights and privileges which he would not enjoy without such license. (*Parlett*, J.) S C. PAUL *v.* EMPEROR. **18 Cr. L.J. 1012 = 42 I.C. 756 = 11 Bur. L.T. 208.**

Minor.

———S. 115—*Minor—Misrepresentation as to age—Liability.*

Where a minor executes a mortgage fraudulently representing himself to be a major, there is no estoppel precluding him from afterwards showing that he was a minor at the time. The mortgagee cannot obtain any relief against the minor on the ground of fraud. (1914) 3 K. B. 607, Ref. (*Lord Shaw.*) MAHOMED LYODOL ARIFFIN *v.* YOOHOOL GARK. **(1916) 2 A.C. 575 = 21 C.W.N. 257 = (1917) M.W.N. 162 = 19 Bom. L.R. 157 = 86 L J.P.C. 15 = 115 L.T. 561 = 32 T.L R. 678 = 39 I.C 401 = 43 I.A. 256 (P.C)**

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———S. 115—*Minor—Misrepresentation.*

A minor is not liable for money obtained on pro-note by him by misrepresenting his age. (*Richards*, C.J. *and Banerjee*, J.) DHARA SINGH *v.* GAYAN CHAND. **45 I.C. 761 = 16 A L.J. 441.**

———S. 115—*Minor—Representation—Minor not bound.*

The false representations made by the father, brother or cousin of a minor even though any of those persons acted as the natural guardian of the minor, do not impose any liability on the minor. (*Tudball and Rafique*, JJ.) DABI DAS *v.* TULSHI RAM. **19 I.C. 55 = 11 A.L.J. 202.**

———S. 115—*Minor—Execution of pro-note representing himself to be major—Suit on pro-note.*

If it is proved that the defendant represented to the plaintiff that he was a major, and the plaintiff acting on that representation lent money on the promissory note, then the Court is entitled to consider the question whether in a suit on the promissory note the defendant is estopped from pleading his minority. That, of course, would depend upon the evidence and facts of the case. (*Macleod*, C.J. *and Shah*, J.) JASRAJ BASTIMAL *v.* SADASHIV MAHADEV WALEKAR. **46 B. 157 = 1923 Bom. 169.**

———S. 115—*Minor—Minor passing promissory note on representation that he is a major.*

Where a minor represents to another that he is a major, and that other lends money on a promissory note signed by the minor, the minor may be, in a suit on the promissory note, estopped from pleading his minority. (*Macleod*, C.J. *and Shah*, J.) JASRAJ *v.* SADASHIV. **61 I.C. 457 = 28 Bom. L.R. 975.**

———S. 115—*Minor—Conveyance by—Vendor aware of real facts.*

Where the deft. was the plff.'s brother-in-law, *held* that the plff. is not estopped from denying she was a major at the date of a sale executed by her to the deft., since the latter must be presumed to have known her age and not to have been deceived by her representations as to her age. (*Macleod*, C.J. *and Heaton*, J.) GURUSHIDDSWAMI *v.* PARAWA DUNDAYA NARENDRA. **44 Bom. 178 = 55 I.C 271 = 22 Bom. L.R. 49.**

———S. 115—*Minor—Representation that he is major—'Person,' meaning of.*

The word 'person' in the section is used in its ordinary sense and includes a minor. It does not admit of any limitation so as to exclude from its connotation all persons declared under the Contract Act incompetent to contract. (*Beaman and Heaton*, JJ.) DADASAHEB DASRATHRAO *v.* BAI NAHANI. **41 Bom. 480 = 41 I C. 180 = 19 Bom L.R. 561.**

———S. 115—*Minor—Share-holder of a company—Receipt of dividend.*

Where a shareholder in a limited company was a minor at the time of the allotment of

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shares to him, and after attaining majority received dividends and raised no objection to his name being included in the register *held* that he is estopped from denying as against the company's representative that he is a share-holder. (*Scott and Davar*, JJ.) FAZULBOY JAFFER *v.* CREDIT BANK. 39 Bom. 331 = 27 I.C. 335 = 16 Bom. L.R. 730.

——S. 115—*Minor—Misrepresentation as to age—Knowledge.*

Where a defendant, a major, is misrepresented as a minor and a guardian *ad litem* was appointed for him in the suit and he allowe the suit, execution proceedings which resulted in the sale being allowed to proceed without objection, *held*, that he was estopped, from suing to set aside the decree. (*Mookerjee and Panton*, JJ.) SARAT CHANDRA *v.* BIBHAVVATI DEBI. 66 I.C. 433 (2) = 34 C.L.J. 302.

——S. 115 — *Minor — Contract Act — Estoppel with a minor.*

The law of estoppel does not operate in supersession of, but is subject to the limitations imposed by other laws, *e.g.*, Contract Act and a minor's contract being void, he is not estopped. (*Chatterjee and Newbould*, JJ.) GOLAM ABDUR *v.* HEM CHANDRA. 32 I.C. 388 = 20 C.W.N. 418.

——S. 115—*Minor—Acts of guardian.*

The law of estoppel does not apply to an infant except in case of fraud committed by him. An infant cannot be estopped by the acts or admissions of his guardian or of another person. 29 A. 292; 34 A. 22; 26 B. 433, Ref. (*Mookerjee and Beachcroft*, JJ.) RAM CHARAN DAS *v.* JOY RAM MEGHI 16 C.L.J 185 = 16 I.C. 625 = 17 C.W.N. 10.

——S. 115—*Minor*—'*Person*'—*Meaning.*

S. 115 of the Evidence Act does not apply to contract by minors. 'Person' in that section means 'person competent to contract.' 26 C. 386, Foll. (*Caspersz and Chatterjee*, JJ.) SURENDRA NATH ROY *v.* KRISHNA SAKHI DASI. 16 C.W.N. 239 = 9 I.C. 110 = 13 C.L.J. 228.

——S. 115—*Minor—Misrepresentation as to age—Contract void—No duty to restore benefit.*

Minor's contract is void *ab initio*. A false representation by a minor as to his age made to a person who knows it to be false is not such a fraud as would take away the privilege of infancy. Minor is not bound to restore benefits obtained by him before avoiding the contract. (*Broadway*, J.) BISHEN SINGH *v.* BISHNA. 1924 L. 294.

——S. 115—*Minor, false representation by—Truth known to both parties—Effect.*

A minor who makes false representation made to a person who knows it to be false is not estopped from taking away the privilege of infancy. There can be no estoppel where the truth of the matter is known to both the parties. (*Abdul Raoof*, J.) HARNAM SINGH *v.* MARAINA. 66 P.W.R. 1921.

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——S. 115—*Minor—Representation as to age.*

If a minor obtains a loan on the representation that he is of age, he cannot plead his infancy as defence to a suit on the loan. (*Le-Rossignol*, J.) HARJI MAL *v.* ABDUL HALIM. 60 I.C 267.

——S. 115—*Minor.*

Where a minor was, in appearance, old enough to act for himself and no fresh guardian was appointed after the resignation of the guardian appointed under the Guardian and Wards Act and where the District Judge ordered that his minority would continue till the age of 21 and where he entered into monetary dealings with plaintiff and represented himself to be of full age and misled the plaintiff by that false representation to advance a loan on the defendant executing a bond; *held*, that the plea of minority cannot be heard and that S. 115 of the Evidence Act applied to the case. 25 Cal. at page 393, Foll.; 25 Cal. 616 and 30 Cal. 539 P.C., Dist. 24 Cal. 265; 26 Cal. 881; 25 Cal. 371 F.B. and 76 P.R 1910, Not Foll. (*Chevis*, C.J. *and Le-Rossignol*, J.) WASINDA RAM *v.* SITA RAM. 1 Lah. 389 = 59 I.C. 393 = 31 P.W.R. 1920.

——S. 115—*Minor—False representation as to age—Mortgage.*

A mortgage made by a minor is wholly void and the mortgagee is not entitled to enforce his security created under the mortgage. The minor's false representation that he was of full age, to the mortgagee who knew it to be false is not such a fraud as to take away the privilege of infancy. 30 Cal. 539 (P.C.), Foll.; 2 Cal. W.N. 18, Dist. (*Broadway and Abdur Raoof*, JJ.) HARNAM SINGH *v.* NARAINA. 162 P.R. 1919 = 54 I.C 876 = 2 U.P.L.R. (Lah.) 40.

——S. 115—*Minor—Guardian ad-litem if bound by estoppel against himself—Ad litem of minor if estopped from suing in his personal capacity about same right.*

A decree against a minor represented by his guardian *ad litem* can be contested by the guardian in his individual and personal capacity on rights peculiarly his own; and the fact that he acted as guardian *ad litem* before is no estoppel preventing him from claiming his right. (*Kensington and Beadon*, JJ.) GANGA RAM *v.* NARAIN DAS. 1 P.R. 1915 = 22 I.C. 955 = 118 P.L.R. 1914.

——S. 115—*Minor—Estoppel against.*

There is no estoppel against a minor who enters into a contract since the contract is void. (*Spencer and Bakewell*, JJ.) JAMBAGULACHI *v.* RAJAMANNASWAMI NANDALWAR. 57 I.C. 678 = 11 L.W. 596.

——S. 115—*Minor—Lease taken by guardian—Possession of minor if adverse.*

Though S. 115 of the Evidence Act does not create any estoppel against a minor in the case of a contract or transfer of property involving

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such minor, yet when he enters into possession of property on a lease obtained on behalf by his guardian he cannot be allowed to set up his title to the property as a bar to a suit in ejectment on the expiry of the lease. (*Abdur Rahim and Spencer*, JJ.) PONNUSWAMI PILLAI *v.* SUBRAMANYA PILLAI. **33 I.C. 412.**

———S 115—*Minor—Misrepresentation as to age—Liability to refund.*

Where a minor mortgagor enters into the transaction misrepresenting his age he is under no equitable obligation to refund the money when the transaction turns out to be void. (1914) 3 K.B. 607; (1916) 2 A.C. 575; 43 I.C. 908, Rel. (*Wallis*, C.J. *and Sadasiva Aiyar*, J.) GURUSWAMI PANTULU *v.* BUDHAKARAN LAL. **26 M.L.T. 245=33 I.C. 14= 10 L.W. 225.**

———S. 115—*Minor—Estoppel.*

Quære:—Whether a minor who obtains a benefit under a conveyance by him should be refused the relief of cancellation of the sale because he misrepresented his age at the time and thereby induced the other party to part with his property. (*Coutts-Trotter and Seshagiri Aiyar*, JJ.) RAGHVAYYA *v.* SUBBAYYA. **43 I.C. 908=7 L.W. 124.**

———S. 115—*Minor—Contract—Estoppel.*

A minor is not estopped from setting up his minority. As judicially interpreted the Contract Act makes contract entered into by a minor void and the Court should not be compelled to pronouce them valid by the provisions contained in the Evidence Act. It is not apparently the case that the word 'person' in the section does not include a minor or certified lunatic or other person under a disability to contract owing to imbecility of judgment. But it might be held that such a person could not be held to have intentionally caused anything. When the law of the contract declared that an infant would not be liable upon a contract or in the statute of fraud in connection with a contract, he cannot be made liable upon the same contract, by means of an estoppel; in other words there can be no doubt about the general law that the principle of estoppel which is provision of adjective law cannot be invoked to defeat the plain provision of a statute. Per *Raymond*, A.J.C.—There is no distinction in principle between a minor plaintiff and minor defendant and if in the case of a contract entered into by a minor the principle of estoppel is to be applied to him whether he is the plaintiff or defendant it would be tantamount to binding him by an agreement which the legislature has declared to be void and hence unenforceable. (*Kennedy*, J.C., *Raymond and Kemp*, A.J.Cs.) MT. HURI *v.* ROSHAN KHUDABUX. **16 S.L.R. 112= 1923 Sind 8.**

———S. 115—*Minor—Contract—Conveyance.*

Where in a suit on a transfer of immoveable property or a contract of sale, the execution of the deed of transfer or the contract of sale, is admitted but infancy at the time of execution, is set up as a defence, the defendant is under S. 115 *prima facie* estopped from denying his authority. The deft. should first prove his minority before claiming exemption from estoppel. 26 B. 109, Foll.; 4 S.L.R. 250, Dist. (*Crouch and Hayward*, A.J.Cs.) SOBHANMAL *v.* BACHAL. **34 I.C. 890=9 S.L.R. 214.**

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Mortgagor and Mortgagee.

———S. 115—*Mortgagor and mortgagee—Personal decree claimed by debtor.*

If a person professes to have an interest in a property whatever interest he may have is bound by the mortgage and must be enforced against him and he cannot claim that a personal decree should have been passed. (*Lord Phillimore.*) BHOLANATH SEN *v.* BALARAM DAS. **31 M.L.T. 306=27 C.W.N. 607= 18 L.W. 48=(1923) M.W.N. 525= 1922 P.C. 382 (P.C.).**

———S. 115—*Mortgagor and mortgagee—Mortgagee*—Deshgat Inams—*Enfranchisement—Mortgagee in possession estopped from question—Mortgagor's right.*

Deshgat Inam lands were mortgaged in 1855 and in 1856 forfeited by Government. The mortgagee continued in possession and paid assessment to Government. In a suit to redeem in 1901; *Held*, that the effect of the order of forfeiture was merely to convert the lands from a service tenure into lands liable to pay assessment to Government. The plff. was not deprived of all right and title to the lands and the relation of mortgagor and mortgagee which existed between the parties was not extinguished. 1 Bom. H.C.R. 22; 9 B. 119. Foll. The defendant who came into possession of the lands as mortgagee of the plaintiffs could not turn round after the order of forfeiture and take the benefit of it and challenge the validity of the mortgage in virtue of which his title to the land as mortgagee had begun. (*Chandavarkar and Batchelor*, JJ.) GURBASAPPA SANGAPPA *v.* RANGA VENKATESH. **36 Bom. 539=16 I.C. 848= 14 Bom. L.R. 568.**

———S. 115—*Mortgagor and mortgagee—Denial of title.*

It is not open to a mortgagee who accepts a mortgage from a mortgagor to question the title of the latter to redeem the property on payment of the sum due under the mortgage. (*Mookerjee and Beachcroft*, JJ.) SURENDRA NATH *v.* KSHITENDRA MOHUN. **33 I.C. 29= 29 C.L.J. 434.**

———S. 115—*Mortgagor and mortgagee—Attornment of mortgagee to superior landlords—Effect of—Redemption suit.*

A mortgagee is not entitled to resist a claim for redemption impugning the title of the mortgagor to the mortgaged property. But it is

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open to the mortgagee to establish that the title of the mortgagor has expired since the creation of the mortgage, i.e. that the equity of redemption is no longer vested in him so as to entitle him to redeem the mortgage. As between a mortgagor and a mortgagee, the atroitment by the latter to the superior landlord cannot in any way prejudice the rights of the mortgagor. (*Mookerjee and Richardson*, JJ.) ABHURAM SIL *v.* HARA CHAND DAS. 29 I.C. 746.

———S. 115—*Mortgagor and mortgagee—Invalidity of mortgage—Plea of, if open.*

A mortgagor has no right to set up against his mortgagee the title of a third person. Even a trustee cannot set up as a defence for himself against the mortgagee that the mortgaged property is trust property which he had no right to mortgage. The prinoiple however is inapplicable when the mortgage is void as contrary to statute. (*Mookerjee and Beachcroft*, JJ.) MAHAMAYA DEBI *v* HARIDAS HALDAR. 42 Cal. 455 = 19 C.W.N. 208 = 27 I.C. 400 = 20 C.L.J. 183.

———S. 115—*Mortgagor and mortgagee—Occupancy holding.*

Where a portion of a holding was mortgaged by the tenant of a non-transferable holding who subsequently sold the same to the plaintiff who sued for possession. *Held*, that he could not repudiate the mortgage as beyond his competence. (*Jenkins*, C.J. *and Mookerjee*, J.) SHEIKH JAWAHAR *v.* SHEIKH NAZIR. 21 I.C. 960 = 18 C.L.J. 512.

———S. 115—*Mortgagor and mortgagee—Denial of title—Purchaser of equity of redemption who is also a co-sharer.*

The purchaser of an interest in the equity of redemption is estopped from denying the title of the mortgagee to the interest created under the mortgage. But if the purchaser has a different capacity such as that of a co-sharer with the mortgagor in the properties mortgaged he can question the title in that capacity. (*Mookerjee and Beachcroft*, JJ.) GIRIJA NATH ROY CHOWDHURY *v.* UPENDRA NATH PAL. 20 I.C. 251.

———S. 115—*Mortgagor and mortgagee—Suit by mortgagor for sale—Plea of* jus tertii.

In defence to a mortgagee's suit for sale the mortgagor or his representative is not entitled to plead that the mortgagor had no power to mortgage the whole or part of the property which he purported to mortgage; nor is the plea of *jus tertii* open to him. (*Mookerjee and Beachcroft*, JJ.) RAM JIBAN SHAH *v.* DHIKU SINGH. 16 I.C. 246 = 16 C.L.J. 264.

———S. 115—*Mortgagor and mortgagee.*

A mortgagor cannot deny his mortgagee's title and the existence of the lien which he has created nor can he defeat its enforcement against the property upon which it was placed. The question of the mortgagee's right to mortgage cannot arise in a suit between the mortgagee and the mortgagor. 10 C.L.J. 150, Rel. (*Mookerjee and Teunon*, JJ.) SHYAMA CHARAN BHATTACHARYYA *v.* MOKHADA SUNDARI DEBI. 13 C.L.J. 481 = 10 I.C. 49 = 15 C.W.N 703

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———S. 115—*Mortgagor and mortgagee—Not estopped by deed when other party alleges deed as void.*

The estoppel against a mortgagor based upon the contract between the parties, can have no operation when the contract is alleged by the other party to be void. The other party cannot both approbate and reprobate the mortgage. (*Rattigan*, J.) GHULAM MUHAMMAD *v.* LATIF AHMAD KHAN. 17 P.R. 1912 = 56 P.W.R. 1912 = 14 I.C. 495 = 68 P.L.R. 1912.

———S. 115—*Mortgagor and mortgagee—Estoppel.*

The mortgagee cannot deny the title of the mortgagor which he has acknowledged, if the only ground for his so denying is that he was not let into possession by the mortgagor. 40 Mad. 561, Foll. (*Seshagiri Aiyar and Napier*, JJ.) GOVINDA MENON *v.* KUPPAN NAMBUDRIPAD. 37 M.L.J 617 = 24 M.L.T. 472 = 49 I.C. 312 = (1919) M W.N. 20.

———S. 115—*Mortgagor and mortgagee—Inam—Inalienability.*

A mortgagee defendant holding under a mortgage by an inamdar is entitled to contend by reason of the mortgage, that the plaintiff, a purchaser in auction-sale of such inam, acquired no title to the inam, as the inam grant is inalienable. (*Abdur Rahim and Ayling*, JJ.) VENKATARANGACHARULU *v.* KRISHNAMACHARULU. 12 I.C. 710 = (1911) 2 M.W.N. 478.

———S. 115—*Mortgagor and mortgagee—Absolute title—Setting up of—Liability to be redeemed.*

Merely setting up an absolute title to the mortgaged property will not enable a mortgagee to acquire any higher right as against the mortgagor. Purchase of mortgaged property from a third party could not enlarge mortgagee's right so far as his obligation to surrender the land to the demisor was concerned. (*Benson and Sundara Aiyar*, JJ.) KADAKAM VALLE MARU *v.* OTHENAN NAIR. 10 I.C. 339 = (1911) 2 M.W.N. 61.

———S. 115—*Mortgagor and mortgagee.*

A mortgagor cannot dispute the validity of a mortgage executed by himself. (*Benson and Sundara Aiyar*, JJ.) KUMARA VENKATA PERUMAL *v.* THETHA RAMASAWAMY CHETTY. 35 Mad. 75 = (1911) 1 M.W.N. 290 = 9 M.L.T. 467 = 9 I.C. 875 = 21 M.L.J. 709.

———S. 115—*Mortgagor and mortgagee—Representative of mortgagee.*

A mortgagee sued for possession of the mortgaged property against a person as the successor

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of the original mortgagor and obtained a decree. Subsequently when the said representatives sued the mortgagee for redemption, the mortgagee disputed his right to represent the original mortgagor: *Held*, that the mortgagee was precluded from raising the plea. (*Stuart*, J.C.) GOVIND *v.* CHOKHE.
6 O.L.J. 1=49 I.C. 356=
1 U.P.L.R. (J.C.) 22.

———S. 115—*Mortgagor and mortgagee—Title to redeem.*

A mortgagee will be estopped from going behind a mortgage and contesting the mortgagor's right to redeem. (*Stuart and Kanhaiya Lal*, A.J.Cs.) JANGI RAM *v.* SHEORAJ SINGH. 30 I.C. 234=
2 O.L.J. 338.
[Also 29 I.C. 746.]

———S. 115—*Mortgagor and mortgagee—Mortgage of endowed property—Mortgagor if estopped from denying title.*

Where the mortgage deed clearly purports to be executed by the mortgagor as the proprietor of the property in his own interest, he is estopped from denying the interest which he represented as his own proprietary right in the deed. He cannot set up against the mortgagee the paramount title of a third party even though the latter might eventually prove a right to recover the property. If the Hindu public or anybody else is interested as proprietor of the mortgaged property or has a paramount title adverse to that of the mortgagor, the decision in the mortgage suit will not be binding upon such a person and it is competent to such person to take proper steps at the proper time to protect his interests. The mortgagor's plea that the mortgaged property is held in trust for the Hindu public is clearly outside the scope of the mortgage suit, so far as it asserts a third person's title. (*Dawson Miller*, C.J. *and Foster*, J.) BABU BRIJ RATAN DAS *v.* RAGHUNANDAN GIR.
1923 Pat. 49=1 P.L.R. 225=
4 P.L.T. 457=1923 P. 203.

———S. 115—*Mortgagor and mortgagee—Title, denial of—Estoppel.*

A mortgagee is not in all cases estopped from denying the title of his mortgagor. (*Pratt*, J.C. *and Crouch*, A.J.C.) NUR MAHOMED *v.* KESSUMAL. 20 I.C. 523=7 S.L.R. 11.

None against statute.

———S. 115—*None against statute—Oral gift—Actings of parties.*

As there was no registered deed of gift as required by S. 123 of the T.P. Act the gift was not complete in law and the title to the land still vested in the plaintiff donor. The mere consent of the plaintiff's father to make a gift of the land had not the effect of vesting the land in the Municipality, and inasmuch as defendant had occupied the land and constructed a part at any rate of the road before the plaintiff's father was induced to make an oral gift of the land, the plaintiff was not estopped from denying the validity of the gift. (*Shah and Hayward*, JJ.) KUVERJI KAVASJI *v.* THE MUNICIPALITY OF LONAVLA.
58 I.C. 403=45 Bom. 164=
22 Bom. L.R. 634

EVIDENCE ACT (I of 1872), S. 115—None against statute.

———S. 115—*None against statute.*

An Act of the legislature is not affected by estoppel. (*Beaman and Hayward*, JJ.) SHRIDHAR BALKRISHAN WAIDYA *v.* BABAJEE MULA AGARYA. 38 Bom. 709=23 I.C. 134=
16 Bom. L.R. 586.

———S. 115—*None against statute—Unregistered Lease—No specific performance.*

The non-registration of the document will not stand in the way of an action by the lessee against the lessor for money had and received to his use. (*Rankin*, J.) SANJIB CHANDRA *v.* SANTOSH KUMAR. 39 Cal. 507=
26 C.W.N. 329=1923 Cal. 436.

———S. 115—*None against statute.*

There cannot be any estoppel against a statute and a statutory defence not set up in a prior suit can be set up in a subsequent suit. (*Suhrawardy and Cuming*, JJ.) NAFAR CHANDRA PAL CHOWDHURY *v.* BHUSHI MOLLA. 68 I.C. 531.

———S. 115—*None against statute.*

The principle of estoppel does not apply to the plain provisions of S. 82 (2) of the B.T. Act. (*Chatterjee and Newbould*, JJ.) AKIMUDDI BEPARI *v.* CHINTAHARAN MUKHOPADHYAY. 51 I.C. 403=23 C.W.N. 437=
[But See 26 C.W.N. 4=
32 C.L.J. 296 (F.B.).]

———S. 115—*None against statute—Mortgage—Inclusion of fictitious property—Mortgagor—Estoppel.*

In a suit on the mortgage defendants set up that a plot of land not belonging to the mortgagor was fictitiously included so as to give jurisdiction to the registering officer and that the registration was void. *Held*, that the burden of disproving the existence of the plot of land lay on the defts. The defendants failed to discharge the onus and therefore the suit should be decreed with costs. The principle of estoppel cannot be invoked to defeat the plain provisions of a statute. 29 Cal. 654 and 13 C.W.N. 817 (P.C.) Dist. (*Sanderson*, C.J. *and Woodroffe*, JJ.) SUDHIR CHANDRA SETT *v.* SYED ABDULLA-UL-MUSAVI. 48 I.C. 520=
22 C.W.N. 894.

———S. 115—*None against the statute—Sale—Illegality—Judgment-debtor's right to apply.*

Where, overruling the judgment-debtor the Court orders the sale of certain property in execution contrary to the provisions of a statute, the judgment-debtor is entitled to plead

EVIDENCE ACT (I of 1872), S. 115—None against statute.

its invalidity as being opposed to law. (*Chitty and Teunon, JJ.*) LAKSHMI BIBI KUJRANI *v.* ABTAL BEHARD HALDAR. 21 I.C. 117 = 40 Cal. 884.

———S. 115—*None against statute.*

The doctrine of estoppel cannot defeat the express provisions of a Code. (*Coxe and Chatterjee, JJ.*) SHAMLAL CHATTERJEE *v.* HAZARIMAL BABU. 13 I.C. 326 = 15 C.L.J. 451.

———S. 115—*None against statute.*

Defendant can plead that he was incompetent to alienate property sold by him. At least plaintiff cannot succeed where his title is against statute law. (*Ghose and Pargior, JJ.*) ACHAMULLA SIRKAR *v.* CHOLAMUNNASSA BIBI. 10 I.C. 928 = 13 C.L.J. 479.

———S. 115—*None against statute—Statutory right.*

A mortgagor judgment-debtor's right to have a decree absolute to be passed is for his benefit and it is open to him to contract himself out of it as it is not against public policy. If he does so he will be estopped from pleading want of the decree absolute. (*Mookerjee and Casperse, JJ.*) BISWANATH PROSAD *v.* BHAGWAN DIN. 10 I.C. 836 = 14 C.L.J. 648.

———S. 115—*None against statute.*

Estoppel cannot defeat an act of the legislature. (*Mookerjee and Coxe, JJ.*) ABDUL AZIZ *v.* KANTHA MULLICK. 38 Cal. 512 = 10 I.C. 467 = 13 C.L.J. 693.

———S. 115—*None against statute—Monopoly—Validity—Prior holder if can question.*

In a suit for damages by the holder of a monopoly for a certain year against the prior holder for infringement of his rights, the latter is not estopped from contending that the monopoly itself is invalid. (*Martineau, J.*) RAMJI DAS *v.* JAI GOPAL. 1923 Lah. 245.

———S. 115—*None against statute.*

There is no estoppel against a statute; the Court is bound to enforce a statute despite the conduct of the parties in consenting to a decree. (*Abdur Rahim and Oldfield, JJ.*) RAMACHANDRA SURU *v.* AKELLA VENKATALAKSHMI NARAYANA. (1919) M.W.N. 332 = 50 I.C. 577 = 37 M.L.J. 65.

———S. 115—*None against statute.*

The rule of estoppel from pleadings cannot defeat the provisions of a statute. 38 M. 974, Foll. (*Kumaraswami Sastri and Phillips, JJ.*) RAMAMURTHI *v.* GOPAYYA. 40 Mad. 701 = 31 M.L.J. 231 = 20 M.L.T. 129 = 35 I.C. 575 = 4 L.W. 48.

———S. 115—*None against statute—Limitations to the doctrine—No estoppel against law.*

Unless the parties by their agreement make a law for themselves in violation of the law of the land the section should be held to be applicable to such agreement, and the doctrine that there can be no estoppel against a plain provision of law shall not be taken too. (*Seshagiri Aiyar and Kumaraswami Sastri, JJ.*) LODD GOVINDA DAS *v.* RAJAH OF KARVETNAGAR. 30 I.C. 357 = 29 M.L.J. 219.

———S. 115—*None against statute—Oral agreement to lease—Eviction of tenant.*

Unless the lease is registered under S. 17 of the Registration Act, a mere oral agreement to lease does not estop the supposed landlord from evicting the tenant as there can be no lease in law without registration. (*Ayling and Tyabji, JJ.*) GOPALA KRISHNA AIYAR *v.* SUKIRTHA THEENTHARA. 24 I.C. 790.

———S. 115—*None against statute.*

The doctrine of estoppel between parties litigating does not apply to an express statutory provision so as to nullify its effect. 24 B. 575, Foll. (*Mookerjee and Beachcroft, JJ.*) JOGENDRA NATH SARKAR *v.* PROBHAT NATH CHATTERJEE. 21 I.C. 926 = 19 C.L.J. 126.

———S. 115—*None against statute.*

There can be no estoppel against an Act of legislature. An agreement not to take advantage of the statute of limitation cannot affect the original cause of action unless it in effect acknowledges liability. 36 Cal. 20; 38 Cal. 512, Foll. There can be no estoppel against an Act of the legislature like the Limitation Act and the plea of limitation may be set up though there is an agreement to waive it. 38 C. 512 Foll. (*White, C.J. and Oldfield, J.*) SITARAM CHETTY *v.* CHOTA KRISHNASWAMI CHETTI. 38 Mad. 374 = 25 M.L.J. 265 = 21 I.C. 24 = (1913) M.W.N. 676.

[Reversing 23 M.L.J. 338 = 17 I.C. 513 = (1912) M.W.N. 967.]

———S. 115—*None against statute—Rule—Applicability.*

The rule that there can be no estoppel against a statute, does not apply unless it is within the knowledge of both the parties that a statutory provision is being violated. 16 C.W.N. 585, Appr. (*Benson and Sundara Aiyar, JJ.*) VEERAPPA *v.* KADIRESAN. (1913) M.W.N. 525 = 21 M.L.J. 664 = 20 I.C. 385 = 14 M.L.T. 237.

———S. 115—*None against statute—Award—Objections.*

A judgment ordering a decree on an award on the receipt of the award from the arbitrators but before the expiry of the period of time allowed for filing an application to set aside the award, on the ground that the parties have in the meantime stated that they have no objections to urge or have already urged their objections, is illegal as such statements cannot estop the parties from shifting their grounds and withdrawing the statements within the

EVIDENCE ACT (I of 1872), S. 115—None against statute.

time allowed on the ground of fraud or mistake. (*Pratt*, J.C. *and Boyd*, A J.C.) SRIKISHEN *v.* RETURMAL PARIOMAL. **34 I.C. 815 = 9 S.L.R. 183.**

———S. 115—*None against statute.*

A void transaction cannot be validated by any amount of acquiescence. It is doubtful if S. 115 applies to transaction expressly declared to be void by the legislature. (*Pratt*, J.C. *and Hayward*, A.J.C.) MIR MAHOMED *v.* KHUBOMAL. **21 I C. 517=7 S.L R. 58.**

None if truth known.

———S. 115—*None if truth known—Effect—Act upon such belief—Meaning of.*

The doctrine of estoppel does not apply where all the facts are within the knowledge of both parties. The language of the section can be extended to the encouragement of an erroneous belief as in *Ramsden* v. *Dyson*. The phrase "act on such belief" means that the party must have changed his position with reference to the subject-matter of the representation. (*Pratt*, J.) WILLIAM JACKS & CO. *v.* JOOSAB MAHOMED. **25 Bom. L.R. 1170 = 48 Bom. 38 = 1924 Bom. 115.**

———S. 115—*None if truth known.*

No estoppel comes into being where both the parties are equally aware of the facts. (*Batchelor and Rao*, JJ.) RANCHHODLAL *v.* SECRETARY OF STATE. **35 Bom. 182 = 9 I C. 765 = 13 Bom. L.R. 92.**

———S. 115—*None if truth known—Silence—Duty to speak—Negligent omission.*

The acquiescence or estoppel which will deprive a man of legal rights must amount to fraud. A man is not to be deprived of his legal rights unless he has acted in such a way as would make it fraudulent for him to set up those rights. The element or the requisites necessary to constitute fraud of that description are these:—In the first place, the plaintiff must have made a mistake as to his legal rights. Secondly the plaintiff must have expended some money or must have done some act (not necessarily upon the defendant's land) on the faith of the mistaken belief. Thirdly the defendant, the possessor of the legal right, must know of the existence of his own right which is inconsistent with the right claimed by the plaintiff. If he does not know of it he is in the same position as the plaintiff and the doctrine of acquiescence is founded upon conduct with a knowledge of your legal rights. Fourthly, the defendant, the possessor of the legal right must know of the plaintiff's mistaken belief of his rights. If he does not, there is nothing which it calls upon him to assert his own rights. Lastly, the defendant, the possessor of the legal right, must have encouraged the plaintiff in his expenditure of money or in the other acts which he has done either directly or by abstaining from asserting his legal right. Where all these elements exist, there is fraud of such a nature as will entitle the Court to restrain the possessor of the legal right from exercising it but nothing short of this will do. Where the defendants as in the present case were under no mistake about their rights, they were perfectly aware that the land belonged to the plaintiff and they wrote a letter to the plaintiff asking for permission to construct an over bridge, there is no room for any estoppel. (*Chatterjee and Cuming*, JJ.) HEMANGINI DEVI *v.* RAJAH BEJOY SINGH DUDHURIA. **73 I C. 223.**

EVIDENCE ACT (I of 1872), S. 115—None if truth known.

———S. 115—*None if truth known—Negligence—Effect.*

The plea of estoppel cannot be raised by a person put on notice who could, by reasonable diligence have found out the real facts. (*Fletcher and Shamsul Huda*, JJ.) SARDA PROSAD ROY *v.* ANANDA MOY DUTTA. **46 I.C. 228.**

———S. 115—*None if truth known.*

Unless the person to whom the false statement is made does not know the real facts and is misled by the statement, there is no estoppel. (*Chatterjee and Newbould*, JJ.) GOLAM ABDIN *v.* HEMCHANDRA. **32 I.C. 388 = 20 C.W.N. 418.**

———S. 115—*None if truth known—Facts known to party.*

If the true state of facts were known to a person or if he had any means of acquiring a knowledge of the truth, neither he nor his representative can invoke the aid of estoppel. 23 W.R. 747; 36 W.R. 456; 77 R.R. 715, Rel. The foundation of estoppel arising out of an execution sale, must be laid on a representation made before and not after the sale. Consequently to support a plea of estoppel it is not enough to produce merely the sale certificate but it is necessary to produce the sale proclamation also. (*Mookerjee and Beachcroft*, JJ.) PROSANNA KUMAR MUKHERJEE *v.* SRIKANTHA RANT. **40 Cal. 173 = 17 C W.N. 137 = 16 I.C. 365 = 16 C L.J. 202.**

[Also 12 I C. 558 = 37 Mad. 38; Also 9 I.C. 662 = 15 C.W.N. 572.]

———S. 115—*None if truth known—Name inserted as arbitrator fraudulently in submission to arbitration—Party with knowledge keeping silent if can afterwards object.*

Where the parties to a submission to an arbitrator did not object when they came to know that a name was fraudulently entered in the submission as an arbitrator they are estopped from afterwards impeaching the award. 5 W.R, P.C. 21, Rel. on. (*Mookerjee and Carnduff*, JJ.) MANINDRA NATH *v.* MOHUNANDA ROY. **13 I.C. 161 = 15 C.L J. 360.**

———S. 115—*None if truth known.*

No estoppel exists where the facts are known. (*Chitty and Chatterjee*, JJ.) KAMAL KUMAL *v.* KALIMEAH. **6 I.C. 662 = 15 C.W.N. 572.**

EVIDENCE ACT (I of 1872), S. 115—None if truth known.

———S. 115—*None if truth known—Admission by opposite party.*

If a party is fully aware of his position, an admission of the opposite party which does not in any way influence the beliefs or actions of the former does not operate as estoppel against the party making the admission. (*Leslie Jones and Broadway, JJ.*) MEHRA *v.* DEVI DITTA MAL. 2 Lah. 88=62 I.C. 665= 3 Lah. L.J. 228.

———S. 115—*None if truth known—Dealing with an agent after principal's death.*

Where a person enters into a contract with an agent after the principal's death, with the knowledge of the facts, cannot challenge it subsequently on the ground of want of authority. (*Broadway and Abdul Raoof, JJ.*) MUSAJI AHMED & CO. *v.* ADMINISTRATOR-GENERAL, BENGAL. 60 I.C. 789.

———S. 115—*None if truth known—Both parties aware of facts and laws.*

Where both parties are equally aware of the facts or law with regard to a particular question the principle of estoppel does not apply. 7 M. 3=20 C. 296, Dist. (*Johnstone and Ratligan, JJ.*) TEK CHAND *v.* GOPAL DEVI. 46 P.R. 1912=127 P.L.R. 1912= 13 I.C. 483=180 P.W.R., 1912

———S. 115—*None where truth is known to both parties.*

A person who knows the truth can hardly be allowed to rely upon an estoppel arising from a false representation. No estoppel can arise where the truth is known to the party who claims the estoppel. 30 I.A. 114, Foll. (*Krishnan and Ramesam, JJ.*) VENKATACHALA PILLAI *v.* ARUNTHAVATHACHI. (1923) M.W.N. 225=17 L.W. 755= 1923 Mad. 568.

———S. 115—*None if truth known.*

There can be no estoppel where both parties know the full facts. (*Ayling and Odgers, JJ.*) RAJAMBAL AMMAL *v.* SHANMUGA MUDALIAR. (1922) M.W.N. 581=1923 Mad. 11.

———S. 115—*None if truth known.*

Estoppel applies only when a man should be prevented from denying the truth of some matter which he has caused another to believe to be true. Where it was agreed between the parties that the claim petition of the defendant should be allowed but without costs and that plaintiff should apparently in consideration of the first defendant giving up his costs refrain from instituting a suit, *Held*, that S. 115 of the Evidence Act did not apply and there was no estoppel. Whether such an agreement would be void on the principle contained in S. 28 of the Contract Act. (*Ayling and Tyabji, JJ.*) VENKATARAMA AIYAR *v.* NARAYAN AIYAR. 25 I.C. 936=(1915) M.W.N. 287.

EVIDENCE ACT (I of 1872), S. 115—None if truth known.

———S. 115—*None if truth known.*

Estoppel does not apply when the party who would be benefited by it has known the truth, nor does it apply so as to defeat a plain provision of law. There can be no ratification of a transaction when the promisor was not in a position to contract. A cause of action cannot be founded on an estoppel nor does an estoppel arise from a representation of a mere intention. (*White, C.J. and Spencer, J.*) ARUMUGAM CHETTY *v.* VELLAICHAMI THEVAN. 37 Mad. 38=21 M.L.J. 1077=10 M.L.T. 385= 12 I.C. 563=(1911) 2 M.W.N. 461.

———S. 115—*None if truth known.*

The rule of estoppel does not hold good where the truth as to the matter stated is known to both parties. Nor can there be an estoppel to defeat the plain provision of the law. (*Brockman, J.C., Stanyon and Mitra, A.J.Cs.*) SALU BAI *v.* BAJAT KHAN. 42 I.C. 200=13 N.L.R. 130 (F.B.)

———S. 115—*None if truth known.*

Where the defts. have full knowledge of the Ikrar and of their own wrong, they cannot raise the plea of estoppel against the plff. (*Lindsay, J.C.*) BHAIYA KANDHAI PRASAD *v.* GAURI SHANKAR. 21 I.C. 256.

———S. 115—*None if truth known.*

No estoppel can arise where truth is known to both parties. (*Das and Kulwant Sahay, JJ.*) JAGDIP PRASAD SAHI *v.* MT. RAJO KUER. 2 P. 585=4 P.L.T. 581= (1923) Pat. 177=1923 P. 465.

———S. 115—*None if truth known.*

The plea of estoppel will fail if the person setting up the plea does not prove that he was ignorant of the truth in regard to the representation of the other party. (*Mullick and Atkinson, JJ.*) BANSRAJ LAL *v.* MOTI LAL. 3 P.L.W. 360=42 I.C. 425= (1918) Pat. 21.

———S. 115—*None if truth known.*

If the party raising the plea of estoppel has not believed the representation made to him, to be true or has known the real facts there will be no estoppel, for the resulting conduct is in no sense the effect of the representation. (*Sharfuddin and Mullick, JJ.*) JAGANNATH PRASAD *v.* JAINKISIN PRASAD. 1 P.L.J. 16=34 I.C. 375=3 P.L.W. 165.

———S. 115—*None if truth known.*

Estoppel is only a rule of evidence which precludes a person from denying that some statement previously made by him is true or the conventional statement of facts upon the basis of which an agreement has been entered into. (*Fawcett, A.J.C.*) FIRM OF KHUSHIRAM MELKIRAM *v.* FIRM OF MESSRS. RALLI BROTHERS. 49 I.C. 449=12 S.L.R. 78.

EVIDENCE ACT (I of 1872), S. 115—No exhaustive.

Not Exhaustive.

———**Ss. 115 and 116**—*Not exhaustive.*

The whole law of estoppel is not contained in Ss. 115 and 116. There may be other rules of estoppel not mentioned in those sections. 5 C. 669; 10 C.W.N. 747, Rel. (*Sanderson*, C.J. and *Mookerjee*, J.) BHAIGANTI *v.* HIMMAT. **20 C.W.N. 1335 = 35 I.C. 7 = 24 C.L.J. 103.**

———**S. 115**—*Not exhaustive—Representation—Feeding the estoppel—Estoppel—Principle applicable to Hindu conveyances before the Evidence Act and T.P. Act.*

The principle of S. 115, Evidence Act and S. 41 of the T.P. Act applies to conveyances executed also before the passing of the Evidence Act and the T.P. Act. (*Chaudhury and Newbould*, JJ.) KRISHNA CHANDRA GHOSE *v.* RASIK LAL KHAN. **21 C.W.N. 218 = 33 I.C. 868 = 23 C.L.J. 501.**

Omissions.

———**S. 115**—*Omission—Silence—Proprietary interest—Wrong entry in settlement.*

Co-sharers can plead in a suit that the entry in the settlement papers was wrong even though 27 years have already elapsed. (*Piggott and Walsh*, JJ.) KALI PRASAD *v.* HARBANS MISER. **50 I.C. 767 = 17 A.L.J. 588.**

———**S. 115**—*Omissions—Omission to claim relief—Deliberate omission bars a subsequent suit.*

Where a right of relief is deliberately omitted with full knowledge thereof a suit cannot subsequently be brought for such relief. (*Tudball and Rafique*, JJ.) ABDUL HAKIM KHAN *v.* KARAN SINGH. **37 All. 646 = 30 I.C. 951 = 13 A.L.J. 929.**

———**S. 115**—*Omission — Notice — Reply notice.*

Estoppel cannot be created by the mere neglect to answer a notice. (*Beaman*, J.) DAULAT RAM *v.* NAGENDAS. **19 I.C. 789 = 15 Bom. L.R. 333.**

———**S. 115**—*Omission—Duty to speak—Necessary.*

Where there is no duty to speak, silence does not amount to estoppel. (*Mookerjee and Beachcroft*, JJ.) KANDHAN MANDAR *v.* KAMALA PROSAD. **29 I.C. 734 = 21 C.L.J. 441.**

——**S. 115**—*Omission to object on partition proceedings—Effect of.*

Deft. claimed a share in partition proceedings on the basis of a gift in their favour. Plaintiff objected to the right of the defendants but was persuaded not to press his objections. He also did not oppose the redemption of a mortgage by defendants as he was not quite certain about his own right of succession. *Held*, that the plaintiff's conduct was insufficient to raise a plea of estoppel against him. (*Leslie Jones and Abdul Raoof*, JJ.) BISHEN SINGH *v.* BULANDA. **4 Lah. L.J. 419.**

EVIDENCE ACT (I of 1872), S. 115—Parties and Privies.

——**S. 115**—*Omission to object—Party brought on record not objected to.*

Where on the plff.'s death certain persons are brought on record as his legal representatives and the deft. raises no objection thereto, he cannot afterwards contend that they are not his legal representatives. (*Martineau*, J.) TEJ BHAN *v.* WALI DAD. **60 I.C. 716 = 3 Lah. L.J. 181.**

———**S. 115**—*Omission—Mortgage—Not impugned in prior proceedings.*

Failure in a previous proceeding, on the part of a defendant in that proceeding, to prove the unreal nature of a mortgage, though the mortgage-deed had been put in and he had been given an opportunity to do so, would estop him from impugning the mortgage in a subsequent suit. (*Krishnaswami Aiyar and Ayling*, JJ.) SULAIMAN *v.* PATTUNA BIVI **9 I.C. 136 = 9 M.L.T. 295.**

——**S. 115**—*Omission—Agreement between co-mortgagors to pay off prior mortgage—Failure to inform.*

Where two persons agree to pay off a prior mortgage and take a first charge on the property, it is the legal duty of each to inform his co-mortgagee within a reasonable time that he had still an outstanding claim under the prior mortgage. Otherwise he would be estopped from afterwards maintaining such claim. (*Mitra*, A.J.C.) PANDURANG SHANJI *v.* NARAYAN RAO. **44 I.C. 547.**

——**S. 115**—*Omission—Puisne mortgagee bidding unsuccessfully at Court-sale on decree on prior mortgagee—Puisne mortgagee not disclosing his mortgage.*

No estoppel prevents a puisne mortgagee not a party to a suit by the prior mortgagee from claiming his remedies, merely because he bid unsuccessfully for the property at the Court-sale in execution of the mortgage decree without disclosing his own mortgage. 4 A.L.J. 709, Dist. (*Batten*, A.J.C.) FULMAL *v.* MUSAMMAT PAPABI **21 I.C. 608 = 9 N.L.R. 160.**

———**S. 115**—*Omission—Mutation proceedings—Persons not parties thereto.*

A mutation proceeding cannot estop persons not parties to it unless it can be proved they acquiesced in such proceeding. (*Lindsay*, J.C.) KANDHAIYA BUX SINGH *v.* SHED BUX SINGH. **20 I.C. 861.**

Parties and Privies.

——**S. 115**—*Parties and privies—Transferee from person prejudicing.*

The plea of estoppel can be set up for the benefit of the person who has been induced to change his position and also for that of a transferee from him. So also estoppel works not only against the person making the representation but also against all persons claiming under him by gratuitous title. The doctrine of estoppel is based upon the

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change of position brought about by the representation or actings of the person bound by estoppel. Estoppel applies not only in favour of the person induced to change his or her position, but of a transferee from such person and it binds not only the person whose representations or actings have created it, but all claiming under him by gratuitous title. (*Lord Dunedin*). JAGANNATH PRASAD SINGH *v.* SYED ABDULLAH. **45 Cal. 909 = 16 A.L.J. 576 = 35 M.L.J. 46 = 24 M.L.T. 62 = 20 Bom. L.R. 851 = 28 C.L.J. 192 = 22 C.W.N. 891 = (1918) M.W.N. 406 = 8 L.W. 168 = 5 Pat. L.W. 83 = 45 I.C. 770 = 45 I.A. 97 (P.C.).**

———S. 115—*Parties and privies—Mortgagor and mortgagee—Puisne mortgagee.*

Where a son mortgaged his share of the joint family property to a person and after his father's death mortgaged the same to another: *Held*, that the second mortgagee, a representative in interest of the mortgagor, could not challenge the validity of the first mortgage. 30 A. 38, Dist; 16 I.C, 929, Rel.; 35 C. 877, Ref. (*Ryves and Piggott*, JJ.) TOTA RAM *v.* HAR GOBIND. **36 All. 141 = 21 I.C. 721 = 12 A.L.J. 123.**

———S. 115—*Parties and privies—Different capacity.*

Persons as representatives of the mortgagor cannot dispute the mortgagee's right; but as *mutawalis*, they can plead that the property being *wakf* the mortgage was void. (*Knox and Karamat Hussain*, JJ.) NANDAN SINGH *v.* JUMMAN. **35 All. 610 = 17 I.C. 632 = 10 A.L.J. 278.**

———S. 115—*Parties and representatives—Purchaser at execution sale affected by the same rule of estoppel as judgment-debtor.*

Purchaser at execution sale is affected by the same rule of estoppel as judgment-debtor himself. (*Chatterjee and Cuming*, JJ.) AUMODA MOHAN ROY CHOWDHURY *v.* NILPHAMARI LOAN OFFICE, LTD. **65 I.C. 215 = 26 C.W.N. 436.**

———S. 115—*Parties and privies—Auction-purchaser bound by estoppel.*

An estoppel that would have bound a mortgagor, i.e., a mortgage on the property, is binding upon a mortgagee by whom the property is purchased at a sale in execution of his decree on his mortgage. (*Mookerjee and Panton*, JJ.) KALIDAS *v.* PRASANNA KUMAR. **47 Cal. 416 = 30 C.L.J. 496 = 55 I.C. 189 = 26 C.W.N. 269.**

[But see 53 I.C. 879 = 27 M.L.J. 442.]

———S. 115—*Parties and privies—Hindu reversioner—Consent to alienation by widow.*

A Hindu reversioner does not claim through his father but directly through the last male owner and the consent of his father to an alienation by the widow does not estop him (the son) from disputing the alienation. Nor does the fact of his taking a gift of the property alienated, estop him from suing for possession. (*Mookerjee and Panton*, JJ.) RAMESHCHANDRA CHAKRABARTI *v.* SASHI BHUSAN UPPADHAY. **30 C.L.J. 56 = 53 I.C. 664 = 23 C.W.N. 1025.**

———S. 115—*Parties and privies—Hindu reversioner — Relinquishment by — Taking advantage from widow—Heirs estopped from disputing validity of transaction.*

Where a Hindu reversioner relinquished his rights to a portion of the inheritance in favour of the widow receiving a relinquishment from the widow of all her interest in the remaining portion of the inheritance neither the reversioner nor any person claiming through him, could plead that the relinquishment was not binding on him and had no effect on the portion of the inheritance relinquished in the widow's favour. (*Fletcher and Huda*, JJ.) JOGENDRA NATH BHUNYA *v.* MOHINDRA CHOSA. **47 I.C. 978.**

———S. 115—*Parties and privies—Vendor and vendee—Vendee estopped if vendors waive their right to object to sale.*

The purchaser of a non-transferable occupancy holding will be precluded from setting up non-saleability if the properties of the estate had the opportunity to object in execution. (*Chatterjee and Beachcroft*, JJ.) RAMU PAL *v.* PRAKASH CHANDRA. **32 I.C. 757.**

———S. 115—*Parties and privies—Execution purchaser— Estoppel affecting judgment-debtor.*

A purchaser at an execution sale is not entitled to raise the question of transferability of the holding and is subject to the same estoppels as the judgment-debtor. 22 C. 909; 10 C.L.J. 150; 20 C.L.J. 52, Rel. (*Mookerjee and Beachcroft*, JJ.) KANCHAN MANDAR *v.* KAMALA PROSAD. **29 I.C. 734 = 21 C.L.J. 441.**

———S. 115—*Parties and privies—Auction-purchaser—Execution sale.*

A purchaser at a sale in execution steps into the judgment-debtor's shoes whose right, title and the interests he acquired and is also subject to the same estoppel as he. (*Mookerjee and Beacheroft*, JJ.) PRODYAT KUMAR TAGORA *v.* ISRI RAM MARWARI. **16 I.C. 792.**

———S. 115—*Parties and privies—Auction-purchaser at execution sale.*

The defendants who were the representatives in interest of the tenant and were bound by the same estoppel as the judgment-debtor whose right, title and interest had been purchased by them could not have the question of the transferability of the holding raised at

EVIDENCE ACT (I of 1872), S. 115—Parties and Privies.

their instance. 11 C.L.J. 20; 10 I. C. 49, Rel. upon; 35 C. 904; 10 I.C. 928, Dist. (*Mookerjee and Carnduff, JJ.*) TULSI SINGH *v.* DAYAL SINGH. **15 I.C. 718.**

———S. 115—*Parties and privies—Strangers not affected.*

The plaintiff purchased from an occupancy raiyat the holding in dispute though the landlord's consent was essential for the validity of its transfer. Subsequently the defendant purchased the same holding in execution of a decree for rent obtained by some of the co-sharer landlords. The plaintiff sued for declaration of title and recovery of possession. *Held*, that the plaintiff got no title to the holding as it was not transferable, that there could not be estoppel against the defendants under S. 115 for they were no party to the transaction under which the plaintiff claimed title, and the suit must fail. (*Ghose and Pargiter, JJ.*) ACHAMULLA SIRCAR *v.* CHOLLAMUNNESSA BIBI. **10 I.C. 928=13 C.L.J. 479.**

———S. 115—*Parties and privies—Auction-purchaser—Transferability of holding.*

It is not open to the auction-purchaser of a non-transferable holding to raise the question of its transferability because he is only a representative of the judgment-debtor and the tenants themselves could not have raised the question. (*Woodroffe and Carnduff, JJ.*) KAILASH CHANDRA *v.* AKHOY NARAIN SOW. **10 I.C. 830,**

———S. 115—*Parties and privies—Rival claimants from same party—Occupancy holding—Mortgage of.*

As between the mortgagee purchaser of the interest of a tenant of a non-transferable holding and a private purchaser from the same person, the question of the transferability of the holding does not arise. (*Mookerjee and Teunon, JJ.*) SHYAMA CHARAN BHATTACHARAY? *v.* MOKHODA SUNDARI DEBI **13 C.W.N. 703=10 I.C. 49=13 C L.J. 481.**

———S. 115—*Parties and privies—Judgment-debtor—Execution purchaser.*

Where a Court in execution of a decree purports to sell property outside its territorial jurisdiction a subsequent purchaser in execution of a decree against the same judgment-debtor can question the validity of the former sale although the judgment-debtor himself might be estopped from questioning the validity of the sale. 35 Cal. 877; 7 Cal. L.J. 644 Not Foll.; 22 Cal. 909, Expl. (*Abdur Rahim, O.C.J. and Seshagiri Aiyar, J.*) VEERAPPA CHETTI *v.* RAMASWAMI CHETTI. **93 Mad. 135=37 M.L.J. 412=26 M.L.T. 271=53 I.C. 579=11 L.W. 232,**

———S. 115—*Parties and privies—Auction-purchaser—Decree-holder's right to sale enures for the benefit of auction-purchaser.*

When an auction sale cannot be questioned by the judgment-debtor or one claiming under him as against the decree-holder on the ground of estoppel it cannot be questioned as against the auction-purchaser also, as the decree-holder's right to sale enures for the benefit of the auction-purchaser. 20 . 296, Appl.; 18 M. 13, Foll. (*Spencer and Phillips, JJ.*) SWAMINATHA VELLALA *v.* DRMALINGA CHETTIAR. **37 I.C. 825=(1917) M.W.N. 88.**

EVIDENCE ACT (I of 1872), S. 115—Part-performance.

———S. 115—*Parties and privies—Liability of—Intermediate arrangement between original parties.*

Estoppel can be raised as a plea by parties as well as their privies. The privy cannot be deprived of such benefit by the fact that since the time the representation was made and the privity of the estate commenced, the person to whom the representation was made and the person who made the representation have come to an arrangement contrary to the representation. (*Lindsay, J.C. and Kanhaiya Lal, A.J.C.*) BADRI BISHAL *v.* BAIJ NATH. **47 I.C. 934=5 O.L.J. 458.**

———S. 115—*Parties and privies—Subsequent mortgagee—Representations of mortgagor.*

A subsequent mortgagee is bound by the representations made by the mortgagor to a prior mortgagee and cannot challenge the validity of the prior mortgage so far as it affects the share which was subsequently mortgaged. (*Staurt and Kanhaiya Lal, A.J.Cs.*) GURDAYAL *v.* TAID HUSSAIN. **6 O.L.J. 31=51 I C. 766=2 U.P.L.R. (H.C.) 35.**

Part-performance.

———S. 115—*Part-performance — Contract to settle property in consideration of dones coming and living with donor—Actings of the parties—No* locus penitentiae.

A very rich widowed aunt wanted her niece and her husband to come and live with her. To this the niece agreed but on condition that the aunt settled a village on her. Subsequently the aunt wrote to the niece and to her husband assuring them that a village had been purchased only with a view to be given to the niece and that it would be duly given to her after the death of the writer. The niece and her husband thereupon came and lived with the aunt for seven years till her death. The niece claimed the village as hers, though there was no written and registered conveyance in writing in her favour, as required by law. *Held*, that having regard to the actions of the parties, neither the aunt nor her legal representatives could resile from the contract which was specifically enforceable by the niece. The niece was accordingly held entitled to the possession of the village. The conduct of the parties and their actings had supplied whatever defects there might have been from a conveyancing point of view and the parties were estopped from going.

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behind the contract. (*Lord Shaw.*) LAKSHMI VENKAYYAMMA *v.* VENKATANARASIMHA.
39 Mad. 509=20 C.W.N. 1054=
14 A.L.J. 797=31 M.L.J. 58=
(1916) 2 M.W.N. 23=20 M.L.T. 137=
4 L.W. 56=18 Bom. L.R. 661=
34 I.C. 921=24 C.L.J. 279 (P.C.).
Also 28 I.C. 930=42 Cal. 801 (P.C.)=
But *See* 43 I.C. 138=40 Mad. 1184.
[On apeal from 32 I.C. 65.]

——— S. 115—*Part performance—Contract not embodied in statutory form—Actings of the parties — Parties not allowed to reside from contract—No* locus penitentiæ.

Locus penitentiæ, i.e., the power of resiling from an incomplete engagement, from an unaccepted offer, from a mutual contract to which all have not assented, from an obligation to which writing is requisite and has not yet been exhibited in an authentic shape, exist so long as the engagement is not complete or final. But where the actings and conduct of the parties are founded upon, *rei inter ventus* raises a personal exception which excludes the plea of *locus penitentiæ*. It is inferred from any proceedings, not unimportant, on the part of the obligee, known to and permitted by the obligor to take place on the faith of the contract, as if it were perfect; provided they are unequivocably referable to the contract and productive of alteration of circumstances, loss or inconvenience, though not irretrievable, (*Lord Shah.*) MAHOMED MUSA *v.* AGHORE KUMAR. 42 Cal. 801=43 I.A. 1=
17 Bom. L.R. 420=21 C.L.J. 231=
28 M.L.J. 518=19 C.W.N. 250=
13 A.L.J. 229=17 M.L.T. 143=2 L.W. 288=
28 I.C. 930=(1915) M.W.N. 621 (P.C.).

———S. 115—*Part performance — Conduct of parties subsequent to a deed.*

The conduct of the parties after a deed has been executed, may operate as an estoppel, if it amounts to a part-performance of the contract. (*Johnstone and Chevis, JJ.*) BULAKHI MAL *v.* U.J. FLOYAD. 27 P.R. 1911=
118 P.W.R. 1911=10 I.C. 1003=
191 P.L.R. 1911.

———S. 115—*Part-performance — Unregistered exchange—Actings of parties.*

Plaintiff and defendant exchanged adjacent lands worth more than Rs. 100 each by an unregistered deed both in good faith believing they had effected a valid transfer. Each took possession and the defendant built considerable structures on the property exchanged. Plaintiff was aware of the progress of the building and even took an additional sum of money for the excess area found to have been given in exchange. In a suit by the plaintiff to eject the defendant; *Held*, by the majority that the plaintiff was not estopped and that he was entitled to recover his plot owing to the absence of a registered conveyance as required by Ss. 54

EVIDENCE ACT (I of 1872), S. 115—Pleadings.

and 118 of the T.P. Act. Per *Abdur Rahim*, J.—Plaintiff was estopped by his conduct from recovering the plot in spite of the absence of a formal conveyance. (*Abdur Rahim, Sadasiva Aiyar and Napier*, JJ.) RAMANATHA CHETTY *v.* RANGANATHAN CHETTY. 40 Mad 1134=
6 L.W. 300=22 M.L.T. 173=
33 M.L.J. 252=43 I.C. 138=
(1917) M.W.N. 757 (F.B.).

———S. 115—*Part-performance—Incomplete engagement—Power to resile.*

Though a party has complete power to resile from an incomplete engagement, such a power will be denied when the actions and conduct of the parties have carried the incompletely executed engagement into effect. The doctrine of part-performance does not apply to a case where a Hindu widow even though purporting to relinquish her estate remains in possession thereof. (*Das and Kulwant Sahay*, JJ.) RAO BAHADUR MAM SINGH *v.* MAHARANI NAWALAKHBATI.
2 Pat. 607=4 Pat L.T. 335=
1923 P. 492.

Pleadings.

———S. 115—*Pleading—Nature of—Scope of the doctrine.*

Very often the term 'estoppel' is used with reference to transactions to which it has no proper application. In its essence it means that the party estopped has by his words or conduct prevented himself from asserting the true facts on which he would otherwise have been entitled to rely. (*Lord Buckmaster.*) SIVA PRASAD SINGH *v.* TATA IRON AND STEEL COY., LTD. 46 Cal 552=45 I.A. 275=
(1919) M.W.N. 278=52 I.C. 909=
23 C.W.N. 466 (P.C.)

———S. 115—*Pleading—Nature of plea.*

Estoppel and *res judicata* are not the same. A true *res judicata* ousts the jurisdiction of the Court, while estoppel shuts the mouth of the party. Estoppel means that a person shall not be allowed to say one thing at one time and the opposite at another; while *res judicata* means that the person shall not say the same thing twice over. (*Beaman, J.*) BHAISHANKAR *v.* MORAN. 36 Bom. 283=12 I.C. 835=
13 Bom. L.R. 950.

———S. 115—*Pleading—Plea of to be proved by production of the pleadings.*

If a plaintiff wants to show that defendants are estopped from raising a certain plea by reason of their pleadings in a previous suit between the parties mere production of a copy of the Court's judgment in the previous suit containing a summary of the pleadings in that suit is not enough but the written statement filed by the defts. in that suit should be produced. (*Walmsley and Panton*, JJ.) ANNADA PRASANNA LAHIRI *v.* BABULLA MANDAL.
47 I.C. 985.

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——S. 115—*Pleading—Onus of proving.*

The burden of proof when estoppel is set up is on the party who sets up the plea. (*Fletcher and Smither*, JJ.) BIRENDRA KISHORE *v.* BAIKUNTA CHANDRA. **46 I.C. 474.**

——S. 115—*Pleadings—Unnecessary pleas raised and decided—No estoppel.*

A plea unnecessarily raised by a party and decided by the Court also equally unnecessarily does not estop the party from putting the same in a later suit. (*Campbell*, J.) SOHAN SINGH *v.* JAWALA SINGH. **1913 Lah. 248.**

——S. 115—*Pleading—Proof.*

Precise facts which caused him to believe that his transferor was the real owner must be pleaded by a person invoking the plea of estoppel and he must also show the precise nature of the enquiries relied on by him. (*Shadi Lal*, J.) RAM SARUP *v.* MAYA SHANKAR. **46 P.R. 1918 = 45 P.L.R. 1918 = 43 I.C. 556 = 33 P.W.R. 1918.**

——S. 115—*Pleadings.*

Estoppel under S. 115 is a rule of pleading based on the principle that where a man has by representing certain things to be true caused another to alter his position, he cannot turn round and say that he is not bound by the representation. (*Abdur Rahim and Moore*, JJ.) SHANMUGHAVELAYUDHAN CHETTY *v.* KOYAPPA CHETTIAR. **(1920) M.W.N. 679.**

——S. 115—*Pleading—Plea to be raised at the trial.*

A question of estoppel can only be raised by pleading, and if the Court is to be asked to go into the matter it is essential to place before the Court facts which would enable it to come to a conclusion as to whether or not the principle of estoppel applies to the suit. (*Das*, J.) PURGAN PANDE *v.* DHANPAT TEWARI. **52 I.C. 739.**

——S. 115—*Pleading — Elements necessary.*

To establish estoppel the defendant must show that the plaintiff made a representation which was acted upon by the deft. whose position was consequently changed. (*Mullick*, J.) BASIRUL HUQ *v.* MUHAMMAD AJIUDDIN. **43 I.C. 857 = 8 P.L.W. 213.**

Public Policy.

——S. 115—*Public policy—Defeating of—No estoppel.*

An adoption by a dancing girl for purposes of prostitution is invalid. Such an adoption cannot be validated on the ground of estoppel as an estoppel cannot defeat a prohibition based on the ground of public policy. (*Ayling and Coutts-Trotter*, JJ.) KANDAIYA PILLAI *v.* CHOKKOMMAL. **28 M.L.T. 106 = 59 I.C. 214 = 12 L.W. 7.**

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——S. 115—*Public policy—Stifling criminal prosecution—Money received.*

The defendant in a suit for refund of money paid to stifle a prosecution is not estopped from showing that the money he seeks to retain was really due to him, if such plea has been specifically put forth by him. 28 I.C. 194, 9 B. and C. 902, (1903) A.C. 49 Foll. (*Wallis*, C.J. *and Seshagiri Aiyar*, J.) MUTHUVEERAPPA CHETTI *v.* RAMASWAMI CHETTI. **40 Mad. 285 = 34 I.C. 401 = 31 M.L.J. 261.**

——S. 115—*Public policy—Estoppel.*

A transfer contrary to public policy cannot be legalised by estoppel. (*Sharfuddin and Roe*, JJ.) PUNCHA *v.* BUNDESWARI. **37 I.C. 960.**

Representation.

——S. 115—*Representation—Necessity for—Suit in ejectment by landlord against tenant.*

The proprietors of certain lands sued to eject a tenant D but the suit was dismissed on appeal by the High Court on the ground that D was a raiyat and that no valid notice to quit had been given to him. Pending an appeal to the Privy Council D's legal representatives sold the holding to defts. The plff's. did not admit the validity of the sale but the defts. were brought on record before the Privy Council and the appeal was eventually dismissed. In a subsequent suit to eject defts. *Held*, that the plffs. were not estopped from suing in ejectment inasmuch as there was no representation on their part of the existence of any occupancy right in D. (*Sir John Edge.*) DAMODAR NARAYAN CHOWDHURY *v.* MILLER. **16 L.W. 692 = 4 U.P.L.R. (P.C.) 108 = 31 M.L.T. 205 = 27 C.W.N. 461 = 21 A.L.J. 365 = 44 M.L.J. 72 = 4 P.L.T. 99 = 1922 P.C. 349 (P.C.).**

——S. 115—*Representation— Change of position.*

A change in the position by representations of a person is the basis of the doctrine of estoppel. Not only the persons making the representations but all holding under them gratuitously are bound by the estoppel. Upon the sale by auction in an estate it was purchased benami on behalf of the Zemindar of the estate, but no transfer to the benamidar was made. The benamidar, upon the instruction of the Zamindar, purported to transfer the village by a deed of sale to the Zemindar's illegitimate daughter, by whom however, no consideration was paid. The Zemindar by petition supported an application by the daughter for mutation of names, whereupon she became the registered proprietrix. *Held*, that the Zemindar and those claiming under him by gratuitous title were estopped from denying the title of the grantee because as a result of the Zemindar's acts her position had been changed in that she became liable for the revenue assessed upon the

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village. (*Lord Dunedin.*) JAGANNATH PRASHAD SINGH *v.* ABDULLAH.
45 Cal. 909=45 I.A. 97=16 A.L.J. 576=5 Pat. L.W. 83=(1918) M.W.N. 406=22 C.W.N. 891=8 L.W. 163=24 M.L.T. 62=28 C.L.J. 192=20 Bom. L.R. 851=45 I.C. 770=35 M.L.J. 46 (P.C.).

——S. 115—*Representation—Negligence—Collector—Defective performance of statutory duty—Estoppel against Government—Bombay City Land Revenue Act (II of 1876) Tenure of land.*

The object of Bombay Act II of 1876 is to provide for the administration and collection of the land revenue of the Government in the City of Bombay and not to establish a system of registration of titles. The revenue register might be of use for conveyancing purposes. But neither the language of the statute nor the character of the officials who have the duty of keeping it, is such as to indicate an invitation to the public to rely on the incidental statements as to titles made in the records but which do not purport to be decisive either of the rights of the Government or those of the individuals as to anything except the liability to contribute to the revenue. A certificate of the Collector, under the provisions of the above Act, certifying an extract from the rent rolls kept in the office by which extract certain land was incorrectly described as being classified under the head 'Rent roll or quit or ground rent' does not estop the Government from resuming the land as being held under the *sanadi* tenure. (*Viscount Haldane*) MERWANI MUNCHERJI CAMA *v.* SECRETARY OF STATE. **39 Bom 661=19 C.W.N. 1036=(1916) M.W.N. 836=2 L.W. 701=29 M.L.J. 299=13 A.L.J 1026=30 I.C. 539=42 I.A. 185 (P.C).**

——S. 115—*Representation — Change of position — Prejudice to adoptee — Subsequent denial of adoption.*

A plff. who has asserted over and over again the factum of an alleged adoption, who has consented to be bound by it, who has on his own showing received valuable consideration in return for making such assertions and who has by reason of the setting up of the alleged adoption caused the deft. to be deprived of all share in landed property of his natural father is estopped from asserting that the adoption never in fact took place. (*Rafique and Piggott*, JJ.) UDIT NARAIN *v.* RANDHIR SINGH.
20 A.L.J. 915=45 A. 169=1923 All. 58.

——S. 115—*Representation—Joint family—Alienation—Effect of.*

An alienation by one co-parcener is not altogether void but is voidable at the option of other co-parceners. It cannot be challenged by the executant. 31 All. 11, Foll ; 34 A. 155.

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Diss. (*Chamier*, J.) BISHUMBHAR DAYAL *v.* PAROHADILAL. **16 I.C. 629=10 A.L.J. 112.**

——S. 115—*Representation—Common mistake.*

Estoppel cannot be established by the mere fact of sharing erroneous belief with others. (*Macleod and Heaton*, JJ.) GIRIJABAI *v.* SADASIVA VISHVANATH. **58 I.C. 394=22 Bom. L.R. 974.**

——S. 115—*Representation—Holding out a person as ostensible owner.*

Where a true owner of property holds out another as the ostensible owner and the property is sold by the latter to a *bona fide* purchaser for value, the true owner will be estopped from setting up his rights as against such *bona fide* purchaser. (*Beaman*, J.) TEHILRAM *v.* LONGIN D'MELLO. **37 I.C. 231=18 Bom. L.R. 587.**

——S. 115 — *Representation of fact—Misrepresentation—Contract executed under—Effect on heirs.*

Misrepresentation *per se* as a ground of relief must be one of fact and not of future intention. So in cases of misrepresentation of fact, the relation of the parties in law would have to be determined on the assumption that the fact was as it was represented to be. Thus where a marriage was brought about by a misrepresentation of a person that the bridegroom was his adopted son, the former is bound to make good the misrepresentation and so the adopted will be entitled to succeed as heir after his death in preference to his widow. (*Beaman*, J.) LADKABAI *v.* NAVIVAHU. **31 I.C. 708=17 Bom. L.R. 783.**

——S. 115—*Representation—Negligence.*

(*Scott*, C.J.)—An action cannot be founded on estoppel, as it is merely a rule of evidence, but it is important to prevent the defendant from denying the truth of what has been asserted by him. A person cannot take advantage of a representation alleged to create estoppel unless he is concerned in the transaction in which the representation was made. (*Russel*, J.) There can be no estoppel when the whole record or deed in which the statement relied upon is contained shows the truth. There is no estoppel when the circumstances were likely to have prevented a reasonable man from acting on the statement. (*Scott*, C.J. *and Russel*, J.) MEVANJI *v.* SECRETARY OF STATE. **16 I.C. 714=14 Bom. L.R. 655.**

——S. 115—*Representation—Fact and law—Nature of estoppel by conduct.*

Estoppel is a substantial plea which must be set up and proved by unambiguous evidence by the party wishing to take advantage of it. 20 C. 296, Expl. and Dist. The doctrine of

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estoppel by representation applies only to representation as to certain facts alleged at the time to be actually in existence, and not to promises in future which if they bind at all, bind as contracts. *Maddison* v. *Alderson*, 8 App. Cas. 467, Rel. To create an estoppel by conduct under S. 115 of the Evidence Act intentional conduct on the part of one party causing the other party to believe and act on the belief that a certain thing was true in fact and not merely true in law must be proved. Ignorance of law cannot be pleaded by either party. (*Chandavarkar and Batchelor*, JJ.) BAI KASHI *v.* JAMNADAS. **16 I.C. 133 = 14 Bom. L.R. 847.**

———S. 115 — *Representation — Person claiming title under another — Knowledge.*

Where A and B convey property to C making him believe that they are sole owners of the property and C acting on that representation takes the property for consideration, A and B are estopped from asserting the title of a third person to the property even though C has transferred the property to D who was aware of the title of that third person. (*Greaves and Ghose*, JJ). SARADA PROSAD BANERJEE *v.* GOSTO BEHARI HAZRA. **36 C.L.J. 78 = 1923 Cal. 542.**

———S. 115 — *Representation—Hindu reversioner—Joining in mortgage by widow—Reversioners if can subsequently sue.*

Some of the sons of a Hindu widow who had only a limited interest in the property joined in the mortgage executed by her and thus represented that the property was being mortgaged by their mother for legal necessity. *Held*, that the sons could not go back upon those representations when dealing with a party who had changed his position relying on the representations of fact and were as such estopped from denying the validity of the mortgage to which they were parties. A reversioner who had voluntarily signed the deed executed by a widow cannot legally claim in opposition thereto. (*Sanderson*, C.J., *Woodroffe and Mookerjee*, JJ.) SHIB CHANDRA KAR *v.* DULCKEN. **48 I.C. 78 = 28 C.L.J. 123.**

———S. 115—*Representation—Plea of, to be y raised.*

Est oppel by representation only arises where th representation is as to a matter of fact. Estoppel cannot be relied upon unless it is pleaded. (*Mookerjee and Beachcroft*, JJ.) CHANDI CHARAN NATH *v.* SOMLA BIBI. **22 C.W.N. 179 = 44 I.C. 284 = 28 C.L.J. 91.**

———S. 115—*Representation—Feeding the estoppel—Subsequent acquisition of interest.*

Where a grantor declares himself to be in possession of a specific estate and the Court finds that it was assumed by the parties that such estate was to pass and that they had acted on such assumption, an estate by estoppel is created between the parties and those claiming under them in respect of any after-acquired interest in the *grantor*. (10 C.L.R. 61 and 6 C.L.R 528, Dist.) (*Chaudhury and Newbould*, JJ.) KRISHNA CHANDRA GHOSE *v.* RASIK LAL KHAN. **21 C.W.N. 218 = 33 I.C. 568 = 23 C.L.J. 501.**

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———S. 115—*Representation—Recitals.*

It is not open to the grantor of a lease to show that the recitals in the document as to his status are incorrect and that on the true facts, he had no right to create a lease. But a purchaser of the leased land at a sale on decree for arrears of rent is not bound by this estoppel. (*Mookerjee and Roe*, JJ.) JANAKI NATH HORE *v.* PRABHASINI DASI. **43 Cal. 178 = 30 I.C. 838 = 22 C.L.J. 99 = 19 C.W.N. 1077.**

———S. 115 — *Representation — Recitals—Effect.*

An estoppel is not created by a collateral statement not concerning the direct purpose of a deed. (*Mookerjee and Teunon*, JJ.) BEPIN BEHARI MITTER *v.* TINKOWARI PATHAK. **13 C.L.J. 271 = 9 I.C. 374 = 15 C.W.N. 976.**

———S. 115—*Representation—Mortgagee—Sale of property—Claim against vendee.*

Where a mortgagee on inquiry by a vendee gives him the exact amount due on his mortgage and this information is acted upon by the latter who retains that amount out of the purchase-money for paying off the mortgage, the mortgagee is estopped from recovering any larger amount from the vendee. (*Scott-Smith and Leslie-Jones*, JJ.) SECRETARY, CHIEF KHALSA DEWAN AMRITSAR *v.* PUNJAB NATIONAL BANK, LTD. **65 I.C. 492 = 151 P.R. 1919.**

———S. 115—*Representation — Change of position—Necessity for.*

Three factors are necessary to bring a case within S. 115 of the Evidence Act (1) a representation which amounts to an intention of causing or permitting to cause belief in another; (2) belief on the part of that other and (3) an action arising out of that belief. (*Scott-Smith*, J.) HARLAL *v.* BASAN SINGH. **75 P.L.R. 1918 = 47 I.C. 98 = 75 P.W.R. 1918.**

———S. 115—*Representation— Omission—Mortgage.*

Where the mortgagee erroneously agreed to and did strike off a certain clause from a mortgagee-deed but afterwards took action upon the deleted clause it is open to the mortgagor to treat the action as a nullity since he acted upon the belief that the deletion was right. (*Scott-Smith and Shadi Lal*, JJ.) SALIG RAM *v.* CHAJJU. **118 P.W.R. 1917 = 41 I.C. 222 = 46 P.R. 1917.**

EVIDENCE ACT (I of 1872), S 115—Representation.

———S. 115—*Representation — Pre-emptor induced to treat sale as a whole—Effect.*

Persons, who, by clothing their transaction in a particular form induce the pre-emptor to claim pre-emption in respect of it as a whole cannot be allowed to turn round and claim to show that the intention expressed in the sale-deed was not their real intention. (*Rattigan and Scott-Smith*, JJ.) MAGHI *v.* NARAIN. 6 P.R. 1914 = 256 P.L.R. 1913 = 20 I.C. 31 = 163 P.W.R. 1913.

———S. 115—*Representation—Matter of law—Opinion as to legal effect of adoption.*

A mere view or opinion as to the legal effect of an adoption is not a thing within the meaning of S. 115 of the Act, and so estoppel can be created only by a representation which is the cause of the belief and which is acted upon. (*Johnstone and Rattigan*, JJ.) TEK CHAND *v.* GOPAL DEVI. 46 P.R. 1912 = 127 P.L.R. 1912 = 13 I.C. 482 = 160 P.W.R. 1912.

———S. 115—*Representation—Adoption.*

Representation on a matter of law, i.e., as to the validity of an adoption creates no estoppel. (*Ayling and Odgers*, JJ.) RAJAMBAL AMMA *v.* SHANMUGA MUDALIAR. (1922) M.W.N. 481 = 1923 Mad. 11.

———S. 115—*Representation—Ostensible owner—Purchaser from—Enquiry.*

A purchaser from an ostensible owner of property must prove that he had no notice actual or constructive of the real owner's title, before the latter can be resisted on the ground of estoppel. (*Ayling and Coutts Trotter*, JJ.) VENKATARAMA AIYAR *v.* E VENKATARAMA AIYAR. 9 L.W. 318 = 50 I.C. 969 = (1919) M.W.N. 180.

———S. 115 — *Representation — Existing fact—Relinquishment of rights of inheritance—By a Mahomedan.*

Per *Sadasiva Aiyar*, J. (contra *Spencer*, J.) The effect of S. 115 is not to prevent a person from denying the legal effect of a transaction to which he is a party, but only the truth of a 'thing' which he intentionally caused the other party to believe. The 'thing' does not refer to the legal validity of an agreement to relinquish a *spes successionis* when it accrues nor to an intention which has to come into existence in the future, *e.g.*, when a succession opens. The intentional misleading under the section refers to the present existence of a right or fact and not to a future metaphysical possibility. (*Sadasiva Aiyar and Spencer*, JJ.) ASA BEEVI *v.* KARUPPAN CHETTI. 41 I.C. 361.

———S. 115—*Representation—Effect of—Intention.*

Words used by parties are binding on them whatever their intention might be. (*Spencer, Coutts-Trotter and Napier*, JJ.) VENKATA SUBBIAH CHETTY *v.* SUBBA NAIDU. 2 L.W. 977 = 18 M.L.T. 433 = 31 I.C. 182 = (1915) M.W.N. 833.

EVIDENCE ACT (I of 1872), S. 115—Representation.

———S. 115—*Representation—Conditional promise to remit rent.*

A promise to remit rent complied with conditions is not an absolute promise of remission and the landlord can enforce his rights in full. (*Sadasiva Aiyar and Hannay*, JJ.) SUBBARAYA AIYAR *v.* KOLANDAVELU MUDALI. 26 I.C. 958.

———S. 115—*Representation—Hindu reversioner—Dealings with minor widow.*

Where on the faith of representations by the defendant who was a reversioner, that the widow was a major and competent to carry on her husband's family trade, plaintiff entered into business relations, estoppel will prevent deft. from contending that she was a minor at the time and incompetent to incur debts. And if there is no withdrawal of such representations on the part of the reversioner the mere fact that the defendant was questioning her legal capacity will not prevent the operation of such representation in respect of advances made after that date, (*Sadasiva Aiyar and Napier*, JJ.) THE SOUTH INDIAN EXPORT CO., LTD. *v.* T. SUBBIER. 28 M.L.J. 696 = 29 I.C. 957. = (1915) M.W.N. 488. [On appeal from 24 I. C. 398 = 15 M.L.T 328.]

———S. 115—*Representation—Error of law.*

An estoppel cannot be based on the ground of a mistaken impression of law regarding the validity of an adoption. (*Benson and Sundara Aiyar*, JJ.) AIYANNA CHARIAR *v.* LAKSHMI AMMAL. 21 M.L.J. 500 = 10 M.L.T. 19 = 10 I.C. 195 = (1911) 2 M.W.N. 62.

———S 115 — *Representation — Mistake—Effect.*

Representation made under a mistake of fact operates as an estoppel. (*Hallifax*, A.J.C.) RAMPRASAD *v.* IMARAT BAI. 18 N.L.R. 27 = 1922 N. 79.

———S. 115—*Representation—Prejudice—No prejudice to party misled—Effect of.*

In the absence of proof that a representation in a sale-deed has been relied upon by a person who has therefore acted to his prejudice the plea of estoppel is not available to him. The doctrine of estoppel cannot be applied to a witness who is not a party to the suit where the party calling him is not estopped. (*Mitra*, A.J.C.) RAJIB HUSSAIN *v.* ZING RAJI. 84 I.C. 962.

———Ss. 115—*Representation—Law or fact.*

A representation will not generally create estoppel if it is not a material statement of fact but of law, because an admission on a point of law cannot operate as an estoppel. (*Drake-Brockman*, J.C. *and Prideaux*, A.J.C.) GOVIND *v.* CHANDRABHAGA. 84 I.C. 675 = 13 N.L.R. 100.

EVIDENCE ACT (I of 1872), S. 115—Representation.

——S. 115—*Representation—Pre-emption suit.*

In order to maintain a plea of estoppel in a pre-emption suit, it must be proved that the plaintiff believed the representation made and brought his suit on the basis of it. (*Daniels*, A.J.C.) BANKE BEHARI LAL *v.* MANNA LAL. **73 I.C. 372=9 O. & A.L.R. 79.**

——S. —*Representatson — Promise—Prejudice.*

A mere promise does not create an estoppel if there is not any representation deceiving the opposite party and ihereby causing him to alter his position for the worse. (*Kanhaiya Lal and Daniel*, A.J.Cs.) KANIZ MEHDI BEGAM *v.* RASUL BEG. **48 I.C. 39=5 O.L.J. 551.**

——S. 115—*Representation — Change of position—Necessity for.*

S. 115 of the Act contemplates some act or conduct by which the party pleading an estoppel has been affected and induced to change his position for the worse. (*Kanhaiya Lal and Daniel*, A.J.Cs.) BISHNUNATH SINGH *v.* BALDEO SINGH. **47 I.C. 194= 21 O.C. 165.**

——S. 115—*Representation—Gratuitous—Withdrawal—Consent to entry of one's name in revenue papers.*

A party may withdraw any gratuitous admission unless there is some obligation not to do so; a mere consent to the entry of another's name in the revenue papers does not create any such obligation. A petition of compromise filed by the parties in a mutation proceeding whereby defendant's names were agreed to be substituted in respect of a certain property will not estop the plaintiffs from subsequently suing to recover possession thereof, as it did not purport to convey any title nor induced the defendants to alter their position thereby. (*Kanhaiya Lal*, A.J.C.) KALI PRASAD *v.* THAKURDEI. **23 I.C. 965= 1 O.L.J. 81.**

——S. 115—*Representation— Prejudice—Cause and effect.*

The representation by the party estopped and the action by the party seeking to estop must be connected together as cause and effect if the doctrine of estoppel is to be held to be applicable. (*Das*, J.) RAM SARAM PANDEY *v.* RAM NIHORA SINGH. **57 I.C. 268= 2 U.P.L.R. (P.)142.**

——S. 115—*Representation—No prejudice.*

Estoppel is not created by a statement in the first suit by a party when the other party was not in any way prejudiced. (*Scott-Smith*, J.) GUSAUNMAL *v.* RAM RAKHAMAL. **50 I.C. 128.**

——S. 115—*Representation— Fraudulent intention if necessary.*

EVIDENCE ACT (I of 1872), S. 115—Representation.

Fraudulent intention on the part of the party making the representation is not necessary to constitute estoppel. (*Mullick and Thornhill*, JJ.) BALBIR PRASAD *v.* JUGUL KISHORE. **46 I.C. 473=3 Pat. L.J. 484.**

——S. 115—*Representation — Ambiguous Act.*

An ambiguous act cannot create estoppel just as an ambiguous document cannot create it. (*Young*, J.) MAMSA BROS. *v.* SALLAYJEE. **46 I.C. 609.**

——S. 115— *Representation— Existing fact—Law.*

The word 'thing' in S. 115 means a fact and a fact in existence or past. 'Thing' therefore does not include a proposition of law or a promise to make a gift. (*Mccoll*, J.C.) MA PYU *v.* MAUNG PO CHET. **(1916) 2 U.B.R. 158= 39 I.C. 385=11 Bur. L.T. 14.**

——S. 115—*Representation—Negligence—Land standing in revenue registers in joint names of husband and wife—Tax receipts in joint names—Effect—Burma.*

Certain land stood in the revenue registers in the joint names of wife and husband and tax receipts were in the joint names. *Held*, the mere fact of the wife living on the land ought to have put the mortgagee on enquiry as to what the wife's interest was. In a suit on a mortgage no estoppel prevented the wife from showing that the land was her sole and separate property. (*Young*, J.) P.L.R.M. MEYYAPPA CHETTY *v.* MA MO YEIK. **30 I.C. 692= 8 Bur. L.T 124 (1).**

——S. 115 — *Representation — Husband and wife.*

A wife was allowed by her husband to take a mortgage in her own name and to take the rent. The mortgagor thought that the transaction concerned her and him (mortgagor) only. The husband is estopped from disputing a redemption from the wife. (*Mccoll*. A.J.C.) NGA TUN BAM *v.* NGA KAN. **12 I.C. 200= 4 Bur. L.T. 244.**

——S. 115—*Representation—Omission to ask for relief.*

The omission of a plaintiff to ask for restitution in a suit for a declaration that a decree is null and void does not amount to representation that he relinquishes the right to restitution. Even if it does amount to such a representation it would not operate as an estoppel being a mere statement of intention of promise in future. (*Pratt*, J.C. *and Fawcett*. A.J.C.) GHULAM MAHOMED *v.* LALCHAND. **53 I.C. 552=13 S.L.R. 153.**

——S. 115—*Representation—Matter of law—No estoppel.*

A statement of fact only and not of law is referred to by the term 'thing' in S. 115 of the

EVIDENCE ACT (I of 1872), S. 115—Right to Appeal.

Evidence Act. There can be an estoppel by misrepresentation of fact and not ordinarily of law. (*Pratt*, J.C. *and Hayward*, A.J.C.) MIR MAHOMED VALAD HAYAT KHAN *v.* KHUBOMAL VALAD DINOMAL. 21 I.C. 517 = 7 S.L.R. 58.

Right to Appeal.

———S. 115—*Right to appeal—Estoppel by conduct—Judicial proceedings—Dismissal for default of suit—Appellate Court ordering restoration on payment of compensation to the other party—Compensation accepted—Waiver of right to appeal.*

When a suit dismissed for default is ordered by an appellate Court to be restored on payment of compensation and compensation is accepted by the opposite party, the latter is equitably estopped from appealing from the order of remand. (*Tudball and Rafique*, JJ.) HAZARI LAL *v.* GANGA CHARAN. 18 I.C. 525.

———S. 115—*Right to appeal.*

Plaintiff brought a suit for partition of certain property. In appeal, the District Court found that in fact it was a suit for a declaration of title and possession. Thereupon, the plaintiff agreed to amend the plaint accordingly. Plaintiff appealed against the order of the District Judge. (*Coxe and Teunon*, JJ.) SHASHI BHUSHAN *v.* JOTINDRA NATH ROY. 38 Cal. 681 = 10 I.C. 463 = 15 C.L.J. 442.

———S. 115—*Right to appeal—Bidding at Court auction.*

The Partition Act does not estop a joint owner who bids at the auction of the joint lands held under orders of the Court under that Act, from filing an appeal in the matter. (*Johnstone*, C.J. *and Smith*, J.) FATEH CHAND *v.* BILAS RAI. 61 P.L.R. 1916 = 89 P.W.R. 1916 = 96 P.R. 1916 = 34 I.C. 887 = 140 P.W.R. 1916.

Trustee.

———S. 115—*Trustee—Breach of trust—Alienation—Setting aside.*

A trustee may commit a breach of trust in making an alienation and still may be estopped as against a *bona fide* transferee for value without notice of the trust, although the estoppel may not apply to the beneficiaries. (*Mookerjee and Beachcroft*, JJ.) SIDHU SAHU *v.* GOPICHARAN DAS. 18 I.C. 960 = 17 C.L.J. 283 = [Also 27 I.C. 400 = 42 Cal. 458]

———S. 115—*Trustee—Alienation of trust property—Breach of trust—Suit by alienor to recover trust property*—Bona-fide *purchaser.*

A trustee of a temple by whom trust property is alienated for his own purpose is not estopped from instituting a suit as trustee to recover the property for the trust from a *bona fide* purchaser for value. 6 M.L.J. 270 and 19 M.L.J. 305 Foll. 14 M.I.A. 289 at 308 Ref. 6 A. 24 and 42 Cal. 455 Dist. (*Spencer and Krishnan*, JJ.) YASIM SAHIB *v.* EKAMBARA AIYAR. 37 M.L.J. 698 = 26 M.L.T. 451 = 54 I.C. 497 = 10 L.W. 672.

Vendor and Purchaser.

———S. 115 — *Vendor and purchaser—Estoppel by deed.*

The acceptance of a conveyance in fee and entry into possession do not estop a grantee from denying the title or seisin of his grantor unless he claims under the deed. (*Mookerjee and Teunon*, JJ.) BEPIN BEHARI MITTER *v.* TINKOWARI PATHAK. 13 C.L.J. 271 = 9 I.C. 374 = 15 C.W.N. 976.

———S. 115—*Vendor and purchaser—Denial of title when allowed.*

The vendor is not estopped from denying the correctness of his title so far as the claim of a third person is concerned, but he should not be allowed to do so when he is trying to play the vendee false by supporting that claim. (*Chevis*, J.) SHAM SINGH *v.* PREM SINGH. 17 I.C. 508 = 260 P.W.R. 1912.

———S. 115—*Vendor and purchaser — Person taking a conveyance of property—If can plead non-transferability.*

A person by whom a conveyance of certain property is taken cannot subsequently plead that the property was not transferable. (*Lindsay*, J.C.) RAMA SANKAR *v.* NANIK PRASAD. 1 O.L.J. 187 = 24 I.C. 32 = 17 O.C. 150.

———S. 115—*Vendor and purchaser — Transfer of Property*—Kabzadari *without right of transfer — Transfer in breach of terms—Whether can be invalidated at transferor's instance.*

The transferor himself cannot get invalidated a transfer of lands *held Kabzadari* without any right of transfer in breach of the terms under which they are held, the condition forbidding transfer being only for the benefit of the superior proprietor. (*Chamier*, J.C.) MIRDAY BEHARI *v.* PRAG TIWARI. 11 I.C. 527 = 14 O.C. 144.

Waiver and Estoppel—Distinction.

———S. 115—*Waiver— Compromise—Right given up, if can be claimed afterwards—Estoppel.*

Where in compromising a suit, certain rights are given up, the parties are estopped from claiming those rights afterwards. (*Mears* C.J. *and Banerji*, J.) MAHAMMAD IBRAHIM *v.* CHANDAN SINGH. 63 I.C. 727 = 3 U.P.L.R. (A.) 187.

———S. 115—*Waiver—Estoppel — Distinction.*

Estoppel and waiver are questions of conduct and we must necessarily determine them on

the facts of each case. If each of the parties has by his acts intentionally caused the other to believe that the payment was a regular satisfaction of the obligation and the parties have acted on that belief, neither can afterwards deny the regularity. There is no distinction as to the law of waiver and estoppel between bonds and decrees, in regard to rights which are at the option of the creditor. When the creditor can on default of payment of interest by instalments, call up or abstain from calling up the principal debt, then for deciding whether or not waiver or estoppel has suspended or destroyed that option, it is immaterial whether the transaction vests on an instalment bond or an instalment decree. It is a fundamental proposition of law that waiver cannot be proved by payment and acceptance of overdue instalments alone. If a creditor's right to demand the whole debt depends on two consecutive instalments, and the first default is condoned by waiver, the occurrence of any succeeding default will not revive it. No conditional waiver of the first default can take place without express agreement. (*Batten and Stanyon*, A.J.Cs.) BALLABHDAS *v.* DALIP-SINGH. **12 I.C. 741=7 N L R. 147.**

Miscellaneous.

———S. 115—*Community—Representatives of community—Dealings with—Pre-emption — Villagers if bound.*

The plaintiffs, members of a village Community are precluded from claiming to pre-empt the sale which the vendees succeeded in obtaining through the active instrumentality of two of the villagers as representatives of the whole village. (*Lord Buckmaster*) IDRIS *v.* MRS. JANE SKINNER. **82 P.R. 1919= 56 I.C. 723=45 P.W.R. 1919 (P.C).**

———S. 115—*Pre-emption—Refusal of offer.*

The refusal of a pre-emptor when property was offered to him before sale according to a *wajib-ul-arz* clause creates estoppel. (*Richards*, C.J. *and Rafique*, *J.*) TODAR SINGH *v.* KEHIRI SINGH. **50 I.C. 126=17 A.L.J. 290.**

———S. 115—*Corporation—University when bound by act of its officer.*

The representations made by any individual officer without authority or sanction of the University are not binding on the University. (*Choudhuri*, J.) *In the matter of* A. RASUL. **41 Cal. 518=24 I.C. 404= 18 C.W.N. 830.**

———S. 115—*Change of position.*

When parties have changed positions neither can go back upon the arrangement. (*Kanhaiya Lal*, J.C.) RAGHUBAR *v.* RAM BHAROSE. **8 O.L J. 392=66 I.C. 412.**

———S. 115—*Assignor and assignee—Right to transfer.*

An assignor is estopped from pleading that he or she was incompetent to effect the assign-

ment. (*Piggott*, J.C. *and Sabonadiere*, A.J.C.) NAND KISHORE *v.* MANGAL DIN. **21 I.C. 8.**

———S. 115—*Estoppel and* Res judicata—*Difference.*

Estoppel precludes denial of what is the result of an act or omission and *Res judicata* aims at ending litigation. (*Miller*, C.J. *and Coutts*, J.) KALI DAYAL *v.* UMESH PROSAD. **1 P. 174=3 P.L T. 506=1922 Pat. 33= 1922 P. 63.**

———S. 115—*Estoppel—Plea, how to be raised.*

The rule of estoppel is a rule of evidence and must be pleaded with sufficient clearness. (*Das and Ross*, JJ.) ABDUR RAHIM *v.* BARIRA. **2 P.L T. 556=61 I C. 807= 6 P.L.J. 278.**

———Ss. 115 and 91 to 94—*Estoppel—Scope of the sections.*

Section 115 of the Evidence Act may no doubt override sections 91 to 94 because the law of estoppel is one which must prevail against a rule of procedure only. If a person has by the act permitted the other party to believe that the agreement was other than that embodied in the document and has caused him to act upon that belief he cannot fall back upon the provisions of section 92 and thereby escape from the consequences of his own actions. But this is a different thing from holding that when such conduct does not amount to an estoppel it may be proved in evidence or in order to show that the intention of the parties was something other than that expressed by them in the written document. If the written document is perfectly clear in its terms and applies to existing facts, evidence to show that it was not meant to apply to such facts is distinctly excluded by section 94 of the Evidence Act. (*Pipon*, J.C.) DHANNA RAM *v.* CHHABIL DAS. **72 I.C. 931.**

———S, 116.

ADVERSE POSSESSION.
ATTORNMENT.
CO-SHARERS.
JUSTERTII.
LICENSE.
MORTGAGOR AND MORTGAGEE.
NON-TRANSFERABLE TENURE.
PLEA OF OWNERSHIP BY TENANT.
SCOPE.
TENANT ALREADY IN POSSESSION.
TENANT HOLDING OVER.
TRANSFEREE FROM LESSOR.
TRUST PROPERTY.
WHEN TENANT CAN DENY.
MISCELLANEOUS.

Adverse Possession.

———S. 116—*Adverse possession—Tenant building upon land of landlord — Silence—Effect.*

If the landlord allows the buildings built on his land to stand on for over 12 years, he

EVIDENCE ACT (I of 1872), S. 116—Adverse Possession.

cannot claim their demolition. (*Lindsay*, J.) MUSSAMMAT DELARI KOER *v.* SALIG RAM.
4 U.P.L.R. (A) 82=1922 A. 210.

———S 116—*Adverse possession—Landlord and tenant—Tenant not to set up title during tenancy.*

If a person obtains possession as a tenant, he cannot himself change the nature of his holding by unilateral act, *e.g.* alleging title adverse to that of the lessor or getting an entry adverse to the latter made in records or by refusing to pay rent. But the case is different if the tenant's repudiation of title is accepted by the landlord. (*Clevis*, J.) GHAZU *v.* BAHADUR. 236 P.L.R. 1911=11 I.C. 639=
152 P.W.R. 1911.

———S. 116—*Adverse possession—Landlord and tenant.*

Any adverse action taken by a third party cannot have the effect of terminating the relationship of landlord and tenant and the tenant will be estopped from denying his landlord's title by S. 116 of the Act. The relationship of landlord and tenant already existing cannot be dissolved by the grant of a *patta* by the Government to the tenant of a third person nor can adverse possession be started by such grant of *patta*. 12 M. 422, dist.; 28 M.L.J. 44; 2 M. 296; Dissented from; 1918 M.W.N. 38, Foll. (*Seshagiri Aiyar and Napier*, JJ.) ELEDATH THANAZHI *v.* ELIANGATIL SANKARA VALIA. (1918) M.W.N. 376=
7 L.W. 574=8 L.W. 44=46 I.C. 686=
24 M.L.T. 79.

———S. 116—*Adverse possession — Under-proprietary.*

Adverse possession is not enough to sustain a claim to under-proprietary rights by a lessee. (*Lindsay*, J.C. *and Kanhaiya Lal*, A.J.C.) RAM ASRE *v.* RAJA MUHAMMAD ABDUL HASAN KHAN. 30 I.C. 218=2 O.L.J. 241.

Attornment.

———S. 116—*Attornment—Lease of unrecognised sub-division of bhag — Tenant cannot plead the invalidity of lease.*

An unrecognised sub-division of a *Narwa* was mortgaged by defendant; but he remained in possession of it under a rent note executed in favour of the mortgagee. The mortgagee sued the defendant in ejectment. *Held*, that defendant having attorned to plaintiff it was not open to him to contend in the ejectment suit that plaintiff had no right to let out the property on rent; and plaintiff was entitled to succeed. (*Macleod*, C.J. *and Heaton*, J.) DEVIDAS DWARAKADAS *v.* SHAMLAL GOPAL.
38 I.C. 595=22 Bom. L.R. 149.

———S. 116—*Attornment—Landlord and tenant—Estoppel — Facts necessary to constitute estoppel.*

Unless a tenant was actually let into possession by the landlord or he had attorned to him, estoppel does not preclude him from denying the landlord's title. (*Woodroffe and Carnduff*, JJ.) SIBU SANT *v.* METAI CHARAN DAS,
9 I.C. 806=15 C.L.J. 114.

EVIDENCE ACT (I of 1872), S. 116—Co-sharers.

———S. 116—*Attornment—Estoppel — Possession—Evidence of attornment—Essentials of estoppel.*

Payment of rent even without possession is evidence of attornment. A tenant is not estopped by payment of rent, from questioning the landlord's title. (*White*, C.J. *and Abdur Rahim*, J.) PULLAYA CHETTY *v.* VEDACHELA PILLAI. (1911) 2 M.W.N. 376=
11 I.C. 24=10 M.L.T. 44.

———S. 116—*Attornment—Payment of rent by tenant—Whether tenant can question landlord's title.*

The mere fact that the tenant has paid rent to the person recorded as landlord of the patti does not prevent his questioning the latter's title, as he has not led the landlord to believe in any representation. A person who is put in possession as tenant by another cannot deny the title of the latter unless and until he gives up possession. But, if a person already in possession attorns to another he is not thereby estopped from denying the latter's title. 11 Cal. 519, referred to. (*Mittra*, A.C.J.) SETH SAGUNCHAND *v.* LALA CHHABILERAM.
1922 Nag. 60.

Co-Sharers.

———S. 116—*Co-sharer, landlords.*

Tenant in possession under *Sarkhat*. *Held*, that a *Sarkhat* having been executed by the deft in favour of the plff. the deft. was estopped from denying the plaintiff's right to eject him, though plaintiff may be only a fractionalsharer of the house. (*Knox*, A.J.C. *and Banerjee*, J.) MATHRA PRASAD *v.* GOKUL CHAND.
41 All. 654=17 A.L.J. 835=
51 I.C. 548=1 U.P.L.R. (H.C.) 100.

———S. 116—*Co-sharer landlords—Denial title.*

Where a tenant agrees with a co-sharer landlord to occupy land and pay him the rent, he is estopped in a suit for rent by the co-sharer landlord from pleading that the other co-sharers should join in the suit. (*Piggott and Walsh*, JJ.) JAHANGIRA *v.* KARRAR HUSAIN.
44 I.C. 513=16 A.L.J. 212.

———S. 116—*Co-sharer landlords.*

In a suit for ejectment on the expiry of lease the lessee whom the plff. had brought on the land and who was holding under a lease granted by plff. cannot say, that the latter is not the sole landlord. (*Fletcher and Richardson*, JJ.) ALIMADDIN *v.* AINADDIN MAJUMDAR.
38 I.C. 534.

———S. 116—*Co-sharer landlords—Lease by one.*

A person by whom a lease is taken from one of several co-sharers cannot dispute his lessor's

EVIDENCE ACT (I of 1872), S. 116—Justertii,

exclusive title to receive the rent or to sue in ejectment. (*Maung Kin*, J.) MAUNG SHWE GYAW *v.* MA SHWE THET. **36 I.C. 71.**

Justertii.

———S. 116—*Justertii — Possession taken under—Denial of title of landlord—Estoppel.*

Where the defendant has executed a Kabuliyat in favour of the plaintiff and obtained possession of certain lands as tenant on the strength of that document, he is estopped from denying the title or possession of his grantor in a suit for rent and from setting up that the plaintiff is merely a benamidar for some other person. (*C. C. Ghose and Panton*, JJ.) PRABHAT CHANDRA CHATTERJI *v.* BIJOY CHAND MAHATAP. **50 C. 572=1924 Cal. 84.**

———S. 116 — *Justertii — Landlord and tenant—Denial of title—Estoppel.*

A tenant put in possession of land by one person cannot alter the character of his possession and make it adverse to the landlord by going over to another person and paying rent to him. (*Fletcher and Cuming*, JJ.) ABDUL HAKIM *v.* PANA MIA MIAJI. **51 I.C. 494.**

License.

———S. 116 — *License — Trade mark — Repudiation of contract by licensee.*

A licensee cannot question the right of the licensor; and without the concurrence of the licensor, the contract between him and the licensee cannot be repudiated by the latter alone. (*Imam*, J.) JAGANNATH & CO. *v.* CRESSWELL. **22 I.C. 872=40 Cal. 814.**

———S. 116 — *License — Licensor and licensees.*

A licensee is estopped from denying the title of the licensor at the time of grant though no such relationship exists at the time of suit. (*Jenkins*, C.J. *and Chatterjee*, J.) DUKHIMONI DASI *v.* TURSI CHARAN. **13 I.C. 512.**

Mortgagor and Mortgagee.

———S. 116—*Mortgagor and mortgagee—Estoppel.*

The title of either mortgagor or mortgagee under a mortgage cannot be denied by each other. In 1878, A's property was sold by A's widow to B who mortgaged it to C. in 1892. After the death of A's widow, A's reversionary heir D obtained possession of the property colluding either with B or his tenants. C sued for foreclosure on the mortgage. D resisted that he, as reversionary heir of A was entitled to the property free from the mortgage. *Held* that (1) B as mortgagor was estopped from denying the mortgagee's title and as D got into possession with the help of B, the rule of estoppel applied to B, extended to D. The latter could not, resist the mortgagee's claim but could sue for possession of the property by a separate suit. 13 M. 335, Foll. (2) The fraud of D was sufficient in law to deprive him of the right to be heard in defence to the

EVIDENCE ACT (I of 1872), S. 116—Scope.

suit that he was entitled to the property as reversionary heir of A. (*Russell and Chandavarkar*, JJ.) HILLAYA *v.* NARAYANAPPA TIMMAYA. **36 Bom. 185=12 I.C. 913=13 Bom. L.R. 1200.**

———S. 116—*Mortgagor and mortgagee.*

A mortgagor is estopped from disputing his right to mortgage as he himself covenants his good title at all events. (*Chandavarkar and Hayward*, JJ.) MAHOMED IBRAHIM *v.* SHEIKH HAMJA. **35 Bom. 507=12 I.C. 887=13 Bom. L.R. 895.**

———S. 116—*Mortgagor and mortgagee—Mortgagee in possession.*

The deft. a mortgagee in possession is not estopped under S. 116 of the Evidence Act from requiring the plaintiff to make out his title to redeem the property by virtue of his purchase from the mortgagor's legal representative. (*Chitty and Beachcroft*, JJ.) DENIBESWAR SARMA BERATHAKUR *v.* BET HORAM-SAI KIA. **40 I.C. 618.**

Non-transferable Tenure.

———S. 116—*Non-transferable tenure.*

In a suit for sale on a mortgage of Mandadari tenure it is open to the mortgagor to raise a plea as to the illegality of the mortgage as both parties must have known at the time of execution of the mortgage, that the tenure was not transferable by law. (*Banerjee and Tudball*, JJ.) KIDAR NATH *v.* NAIPAL SINGH. **34 All. 155=12 I.C. 922=8 A.L.J. 1308.**

———S. 116—*Non-transferable tenure.*

Where a transferee of a part of a non-transferable occupancy holding requires the landlord to prove his title, there is no repudiation of title. (*Teunon and Chaudhuri*, JJ.) MEHDI ALI KHAN PANEE *v.* BASIRUDDIN CHAUDHURY. **57 I.C. 956.**

Plea of Ownership by Tenant.

———S. 116—*Plea of ownership by tenant, when available.*

The tenant must surrender possession to the landlord before a claim of ownership in himself can be set up by him, when once the relation of landlord and tenant has been proved. (*Broadway*, J.) ALLAH BAKSH *v.* LAL KHAN. **67 I.C. 269=2 Lah. L.J. 662.**

Scope.

———S. 116—*Scope—Execution of lease.*

Whatever may have been the nature of a person's possession prior to a lease, once he takes a lease-deed in respect of the land from another, he is thereafter estopped from denying the title of his lessor. (*Rafique and Stuart*, JJ.) SITAL PRASAD *v.* BADRI PRASAD. **20 A.L.J. 907=1923 All. 88.**

———S. 116—*Scope of—Landlord and tenant—Third parties not affected.*

Persons not claiming possession of land under the tenant are not estopped from denying the

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title of the lessor. *Tadman v. Henman* (1893), 2 Q. B 168, Rel. (*Stuart and Kanhaiya Lal, JJ.*) MAHARAJA OF JAIPUR *v.* SURJAN SINGH. 44 All 671=20 A L.J. 615= L R. 3 A. 392=1923 All. 333.

——S. 116—*Scope—Lessee from mortgagor.*

A lessee from a mortgagor cannot question the validity of the mortgage in a suit for ejectment of the lessee. (*Newbould and Abdul Majid, JJ.*) SHASHI BHUSHAN *v.* DEB NATH. 60 I.C 705.

——S. 116—*Scope—Denial after lease term.*

S. 116 does not mean that after the expiration of the tenancy the tenant is free to dispute the title of the landlord when the possession obtained by the landlord's permission is retained by the tenant. (*Sanderson, C.J. and Mookerjee, J.*) BHAIGANT *v.* HIMMAT. 20 C.W N. 1335=38 I.C. 7=24 C.L J. 103.

——S. 116—*Scope—Estoppel—Tenant.*

It is not open to a tenant to deny his landlord's title so long as he fails to deliver possession to him. (*Spencer and Seshagiri Aiyar, JJ.*) RAMA THANTHRI *v.* SECRETARY OF STATE. 42 I.C. 290.

——S. 116—*Scope.*

The law of estoppel is not wholly contained in S. 116 of the Evidence Act. (*Sadasiva Aiyar and Napier, JJ.*) THAYELBAGAM PILLAI *v.* VENKATA RAMA KRISHNAYAN. 33 I C. 858 (1)=(1916) 1 M.W.N. 119.

——S. 116—*Scope—Denial after lease term—Landlord's title—Denial of.*

A tenant in possession cannot even after the expiration of the lease, deny his landlord's title without proving surrender or attornment to another or eviction by title paramount or notice to his original landlord that he intends to claim under another and more valid title. Eviction must be actual and not merely constructive and unexecuted decree for possession is not enough to constitute eviction. (*Ayling and Spencer, JJ.*) DEVAL RAJU *v.* MAHOMED JAFFAR SAHEB. 19 I.C. 568=36 Mad. 68

——S. 116—*Scope—Liability to pay rent to real owner.*

S. 116 does not operate as estoppel after a tenancy has come to an end, and so a tenant is liable to pay rent to the real owner. (*Dhobley, A.J C.*) MAHADEO *v.* JAINARAYAN. 62 I.C. 880=4 N.L.J. 61 and 207.

——S. 116—*Scope—Lessee—Estoppel.*

A lessee is estopped from denying his lessor's title to grant the lease. (*Macnair, A.J.C.*) CHANDOO *v.* PARBHOO. 59 I.C. 707.

——S. 116—*Scope of.*

Where the defendant held a heritable permanent and transferable right, he was estopped from denying rights of grantee. (*Coutts and Macpherson, JJ.*) MUKHERJI *v.* NARAYANSAH 6 P.L.J. 657=1922 P. 161.

EVIDENCE ACT (I of 1872), S. 116—Tenant holding over.

Tenant already in possession.

——S. 116—*Tenant already in possession.*

S. 116 applies only to cases where the landlord has put the tenant in possession and not to where the tenant has been already in possession. 11 C. 519, Dist. (*Ayling and Hannay, JJ.*) YERRAGUNTLA SESHACHARLU *v.* MUKKUMALLA CHINNIAH. 23 I.C. 721.

——S. 116—*Tenant already in possession—Landlord and tenant—Estoppel.*

S. 116 of the Evidence Act applies both to tenants put into possession at the beginning of the lease and to lessees already in possession and continued in it. 19 M. 200, *Foll.* (*Oldfield and Tyabji, JJ.*) ADAT RAO GAVAYYA *v.* DANDI SEETHARAMASWAMI. 25 I C. 615= 1 L.W. 821.

——S. 116—*Tenant already in possession — Denial of title — Admission through mistake or ignorance.*

Though, under section 116 of the Evidence Act no tenant can deny his landlord's title existing at the commencement of the lease, the rule only applies where the tenant has been let into possession by such landlord. If through ignorance or mistake a tenant has executed a rent-note and has not been put in possession by the lessor it seems that he can dispute the lessor's title. (*Prideaux, A.J.C.*) MT. LAXMIBAI *v.* DEVI. 1924 Nag. 82.

Tenant holding over.

——S. 116—*Tenant holding over—Denial of title.*

It is not open to a tenant who is holding over after notice to quit to deny the title of his landlord. S. 116 of the Evidence Act applies to the case and he cannot deny his landlord's title however defective it may be without first surrendering possession to him. (*Sir George Farewell,*) MUSSAMMAT BILAS KUNWAR *v.* DESRAJ RANJIT SINGH. 37 All. 557= 42 I A. 202=19 C W N 1207= 29 M L J 335=2 L W 830= 18 M L T. 248=13 A L J 991= 17 Bom L.R. 1006=22 C L J 616= 30 I.C. 299=(1915) M W.N. 787 (P.C.).

——S. 116—*Tenant holding over.*

A tenant who has been let into possession cannot deny his landlord's title however defective it may be so long as he has not openly restored possession by surrender to his landlord. 37 A. 557 P.C, Rel. A tenant who wishes to dispute his landlord's title must not only see that the tenancy has come to an end but that the possession which was in him as a tenant has been surrendered. A tenant who holds over and remains in possession, is estopped from using that possession to support a case in which he denies the landlord's title. (*Macleod, C J. and Hayward, J.*) EKOBA GOVINDSHET VANI *v.* DAYARAM NARAIN. 38 I C. 353= 22 Bom. L.R. 82.

EVIDENCE ACT (I of 1872), S. 116—Transferee from Lessor.

Transferee from Lessor.

——S. 116—*Transferee from lessor.*

Lessees cannot deny the title of persons by whom the place of the original lessor has been taken. (*Kanhaiya Lal*, A.C.J.) TIRBAVAN BAHADUR SINGH *v.* MUKTA PRASAD
22 I.C. 125

——S. 116—*Transferee from lessor—Landlord and tenant—Estoppel—Scope of the rule.*

The rule that a tenant may not dispute his landlord's title applies only to the title of the original landlord who let him to possession and not to that of an owner by whom the property has been acquired by some title derived from the original lessor. (*Fox*, C.J.) MAUNG PO SHIN *v.* MAHOMED THAMBI
8 Bur. L.T. 234=30 I.C. 713 (2)= 8 L.B.R. 270.

Trust Property.

——S. 116—*Trust property — Mutwalli himself a beneficiary.*

Where the trustee is justified by the Wakfnama in handing over to the successive life-tenants the possession of the trust properties, so long as he does not abdicate the position of the Mutwalli assigned to him, and the life-tenants obtain possession of the properties with the consent of the Mutwalli on the footing of their title as life-tenants under the Wakfnama the life tenants cannot be permitted to deny that the person from whom the possession was claimed had a title to such possession when they were let into it. The estoppel so created binds all those who claim under or through the life-tenants so obtaining possession, especially where the person from whom possession is claimed is not a bare trustee but is also entitled to a contingent beneficial remainder on failure of certain limitations Where a Wakfnama must be treated as valid between certain parties owing to estoppel the Mutwalli, when his beneficial remainder has taken effect, is entitled to the possession of the property under the terms of the Wakfnama both as trustee and as beneficiary. (*Scott* C.J. *and Chandavarkar*, J.) MAHOMED IBRAHIM *v.* ABDUL LATIF. **37 Bom 447= 17 I.C. 689=14 Bom. L.R. 987.**

——S. 116—*Trust property — Charitable trust.*

The manager of a charity let the defts. into possession under a lease of lands belonging to the charity. In a suit for executors of manager, defendants pleaded, that the testator had no power of disposition over the lands. The defendants were not estopped from pleading this. (*Abdur Rahim*, C.J.) VAITHYANATH AIYAR *v.* SUBRAMANAYA AIYAR.
38 I.C. 608=4 L.W. 349.

——S. 116—*Trust property—Trusteeship invalid.*

Where a *Kanom* was demised by the plff. taking as trustee of certain temple, to the first deft. who transferred it to the second defendant, and in the suit by him for recovery of land demised, it was found that the plaintiff was not a trustee at the time of the institution of the suit, having been declared by Civil Courts previously not to be a trustee. *Held*, that the suit must fail as he was not the trustee and that defendant was not estopped from denying plaintiff's trusteeship, though he could not deny the title of the temple. (*Benson and Sundara Aiyar*, JJ.) PATTAIKARA MANAKKAL *v.* CHVORAKKAPATTI MUNDE.
37 Mad. 373=11 M.L.T. 353=14 I.C. 168= (1912) M.W.N. 443.

EVIDENCE ACT (I of 1872), S. 116—When tenant can deny.

When tenant can deny.

——S. 116—*When tenant can deny—'At the beginning of the tenancy'—Meaning of.*

The words are expressly inserted in S. 116 to show that the tenant is not prevented from showing that after the commencement of the tenancy, the estate of the landlord devolved on some other person. (*Richardson*, C.J. *and Rafique*, J.) GANPAT RAI *v.* MULTAN.
38 All. 226=33 I.C. 97=14 A.L.J. 263.

——S. 116—*When tenant can deny—Landlord and tenant—Payment of rent—Attornment—Estoppel when arises.*

A tenant who pays regularly to the landlord and by whom the landlord's title has thus been acknowledged is estopped as a general rule from questioning his title but he can do so on the ground that the payment of rent by him was due to mistake, ignorance of title, misrepresentation or fraud on the part of the person to whom the rent was paid. (*Richards*, C.J. *and Banerjee*, J.) GIRDHARI LAL *v.* KALOO MESTRI. **22 I.C. 248.**

——S. 116—*When tenant can deny—Landlord and tenant—Payment of rent—Attornment.*

A tenant by whom rent is paid for several months to a person as landlord cannot question the payee's title to recover rent except on proof of fraud, mistake, misrepresentation in the payment of rent. (*Rafique*, J.) GIRDHARI LAL *v.* KALLO MISTRI. **18 I.C. 916= 11 A.L.J. 341.**

——S. 116—*When tenant can deny—Subsequent cesser of landlord's title.*

A tenant can prove a subsequent cesser of the landlord's title and he can do so by showing that the title has determined is by proving and eviction or the equivalent thereof by a title paramount. (*Sanderson*, C.J. *and Richardson*, J.) RAMCHANDRA CHATTERJI *v.* PRAMATHA NATH **63 I.C. 754.**

——S. 116—*When tenant can deny.*

Under the section the tenant is not estopped from questioning the title of the landlord after the tenancy has terminated. (*Newbould*, J.) SAKAYAT MOLLAH *v.* ALAM MOLLAH.
33 I.C. 98.

EVIDENCE ACT (I of 1872), S. 116—When tenant can deny.

———S. 116—*When tenant can deny—At the beginning of the tenancy.*

The words in S. 116 "at the beginning of the tenancy" only apply to cases in which tenants are put into possession of tenancy by the person to whom they have attorned and not to cases in which the tenants have previously been in possession. Where there was no proof of any rent ever having been paid or that the defendant was inducted as a tenant by the plaintiff and the parties were brothers and admittedly the house was once joint property *Held* in these circumstances the defendant was not estopped from denying that he was the plaintiff's tenant. (*Campell*, J.) RISHI KESH v. MELA RAM. 1923 Lah. 493.

———S. 116—*When tenant can deny—Duty to surrender possession.*

A tenant in possession cannot, even after the expiration of his lease deny his landlord's title without actually and openly surrendering possession to him. Once the relationship of landlord and tenant is established the tenant must surrender possession before he can set up a claim to be the real owner. 123 P.R. 1919, Foll. (*Broadway*, J.) ALLAH BAKHSH v LAL KHAN. 67 I C. 263=2 L.L J. 682.

———S. 116—*When tenant can deny—Landlord in possession—Lease term expired—Rights of lessee.*

A lessee whose lease has expired cannot eviot the landlord legally in possession of the property although the landlord was let into possession by the *quondam* tenant. A tenant cannot deny even a defective title of the lessor without openly surrendering the land to him. (*Le-Rossignol and Wilberforce*, JJ.) MUHAMAD MUMTAZ HUSSAIN v. NAUBANG AHMAD. 60 I.C. 502.

———S. 116—*When tenant can deny—Landlord and tenant—Duty to restore possession—Ignorance coercion.*

A tenant in possession cannot even after the tenancy period is over, deny the landlord's title, without actually and openly surrendering possession to him 24 C.L.J. 103; 38 A. 226; 78 A. 557 P.C., Foll. A tenant by whom a lease has been executed but who is not in possession is estopped from denying the landlord's title, in the absence of proof that he executed the lease in ignorance of his lessor's title or by fraud or misrepresentation or coercion. (*Martineau*, J.) MAKHAN SINGH v. BAISAKH RAM SHAH. 50 I.C. 591=123 P.R. 1919.

———S 116—*When tenant can deny—Nature of estoppel—'At the beginning of tenancy,' Contract Act, Ss. 13 and 20.*

Lessee though not let into possession by lessor, cannot dispute his title unless he can show that he was ignorant of his lessor's defective title or he was granted lease by fraud, coercion, etc. (*Abdur Rahim*, O.C.J.) It is open to a tenant to deny the title of landlord's predecessor in title. The estoppel is absolute. 'At the beginning of the tenancy' refers to the beginning of occupation of land by tenant or his predecessor in title. (*Seshagiri, Aiyar*, J.) The contract of tenancy may be avoided if it is subject to defects mentioned in Ss 13 and 20. Contract Act. (*Abdur Rahim*, O C J. *and Seshagiri Aiyar*, J.) VENKATA CHETTY v. AIYANNA GOUNDEN. 40 Mad 561= 31 M L J. 712=20 M L.T. 457= (1917) M.W.N. 53=38 I C. 817=6 L.W. 304.

EVIDENCE ACT (I of 1872), S. 116—Miscellaneous.

Miscellaneous.

———S. 116—*When tenant cannot deny—Avoidance of lease—Real or immoveable property.*

A lessee is estopped from denying the lessor's right in leasing the property where the lessee entered into the lease owing to the misrepresentation by the lessor that he was the owner of the property leased. Where the lessor was in peaceful possession for over sixty years of the *dar* (space between two fishing stakes) and let out to the lessee, the lessee cannot avoid the agreement about the lease on the footing of fraud or mistake though the lessor may not have a private and exclusive fishery right in the particular waters. A several fishery is an incorporeal hereditament and is real or immoveable property within S. 116. (*Marten*, J.) LAKSHMAN v. RAMJI. 23 Bom. L.R. 939.

———S. 116—*Mutual estoppel.*

Both landlord and tenant are estopped from denying each other's title when the lease has been executed and the parties have enjoyed the benefits. (*Mookerjee and Cuming*, JJ.) BAMAN DAS BHATTACHARYYA v. NILMADHAB SAHA. 44 Cal. 771=20 C.W N 1340= 35 I.C. 734=24 C.L J. 541.

———S 116—Zur-i-peshgi *lease—Party to, if can question lessee's title to recover rent from under lessee.*

It can not be contended by a party to a *Zur-i-peshgi* lease granted to the plaintiff that the plaintiff is not entitled to demand rent from the tenant under him. (*Richardson and Newbould*, JJ.) KAMPTA PROSAD RAI v. KULDIP RAI. 20 I.C. 70.

———S. 116—*Landlord and tenant.*

Suit for declaration by tenant is not maintainable. (*Leslie-Jones and Moti Sagar*, JJ.) MT. JAIKNAR v. LABHU. 4 Lah. L J. 207= 1922 L. 168.

———S. 116—*Renewal of lease.*

An assignee of a *kanom* by whom the title of the mortgagor (*Jenmi*) is acknowledged by accepting a fresh *kanom* deed is estopped from denying the latter's title, although he was not let into possession by the mortgagor. 40 Mad. 561, Foll.; 36 Bom 185 Ref. (*Seshagiri Aiyar and Napier*, JJ.) GOVINDA MENON v KUPPAN NAMBUDRIPAD. 21 M.L T 472= (1918) M.W.N. 20=49 I.C. 312= 37 M.L.J. 617.

EVIDENCE ACT (I of 1872), S 116 — Miscellaneous.

——— S. 116 —*Sub-tenants in waqf property.*

Sub-tenants under a leesee of a *waqf* property are estopped, in a claim of rent, from questioning their lessor's title on the ground that he came into possession under an invalid lease. (*Srinivasa Aiyangar*, J.) BALU MUDALI *v.* DURVASALU PILLAI. **4 L.W 74 = 34 I.C. 570 = (1916) 2 M W.N. 276.**

———S. 116—*Grant—Limited grant only on performance of certain conditions—Resumption on non performance—Alienation by grantee—Title inconsistent with terms of grant.*

A grantee of land attached to an office is estopped from setting up a title inconsistent with the terms of the grant and the estoppel extends to an alienee from such grantee. (*Sadasiva Aiyar and Napier*, JJ.) THAYELBAGAM PILLAI *v.* VENKATARAMA KRISHNAYAN. **33 I,C. 858 = (1916) 1 M.W.N. 119.**

———S. 116—*Minor tenant.*

Where a minor had derived a benefit from a tenure created by a lease executed on his behalf by his *de facto* guardian, under S. 116 of the Evidence Act, the minor cannot deny the title of the person in whose favour the lease was executed. (*Kanhaiya Lal and Daniels*. A.J.Cs.) KANIZ MEHDI BEGUM *v* RASUL BEG. **48 I.C. 39 = 5 O.L.J. 551.**

———S. 116—*Estoppel against person to whom property is transferred.*

A person to whom property is transferred is estopped from questioning a deed by which some other property is given to another in consideration of this other withdrawing all the claim to the property so transferred. (*Stuart and Kanhaiya Lal*. A.J.Cs.) DIP NARAIN SINGH *v.* HARGOBIND SINGH. **37 I C 69 = 3 O L J 525.**

——S. 116—*Landlord and tenant—Building by tenant on 'Sahan'—Minority of landlord—Absence of objection.*

Where plaintiffs and landlords were either minors or absentee landlords, it is open to them to plead that tenant built structures without their consent. (*Chamier*, J.C.) BIKRAMAJIT SINGH *v.* SARNAN. **10 I.C. 186.**

——S. 116—*Status of landlord—Tenant's right to dispute.*

Under S. 116 of the Evidence Act a tenant is precluded from denying the title of the landlord, but he is not estopped from questioning the status of his landlord. (*Coutts and Das*, JJ.) LOKORAM *v.* BIDYA RAM MAHTO. **53 I.O. 43 = 1920 Pat. 15.**

———S. 116—*'Once a tenant always a tenant'—Applicability.*

For the application of this maxim it is necessary to first prove that the person desiring to apply it, was a tenant at one time. (*Mullick and Jwala Prasad*, JJ.) BALDEO SINGH *v.* BRAHMADEO NARAYAN SINGH. **39 I.C. 107 = 1 Pat. L.W. 721.**

EVIDENCE ACT (I of 1872), S. 118.

———S. 117—*Licensee of trade-mark—Estoppel.*

Under S. 117 a licensee of a trade-mark shall be estopped from denying that his licensor had, at the time when the license commenced, authority to grant such license. (*Jenkins*, C.J. *and Stephen*, J.) G. S. HANNAH *v.* MESSRS. JAGANNATH & Co. **27 I.C 483 = 19 C W.N.1.**

———S. 118—*Evidence of minor—Admissibility of without oath.*

The evidence of witness of tender years though taken without solemn affirmation is admissible in evidence, though due care and caution are necessary in the receipt of such evidence. But the Court must be satisfied before receiving the evidence, if the witness is capable of understanding the nature and obligation of an oath. (*Shah and Martin*, JJ.) HARI RAMJI PAVAR *v.* EMPEROR **45 I.C. 497 = 19 Cr L J 593 = 20 Bom. L R 865.**

———S. 118—*Doubtful evidence—Admissibility.*

It is suggested by S. 118 of the Evidence Act that in India, the rule generally is in favour of the admission of all the evidence of doubtful character though the weight to be attached will be a matter for the Court's discretion. (*Batchelor and Shah*, JJ.) GOVIND *v.* EMPEROR. **34 I.C. 978 = 17 Cr L J. 253 = 18 Bom. L.R. 266.**

———S. 118—*Criminal trial—Separate trial—Accused if can give evidence.*

When the trial of two persons accused of complicity in the same offence takes place separately each is a competent witness at the trial of the other, though the case could be different if they are tried together. (*Tennon and Richardson*, JJ.) AKHOY KUMAR MOOKERJEE *v* EMPEROR. **45 Cal. 720 = 19 Cr. L J. 663 = 23 C.W N 405 = 48 I.C. 999 = 27 C L.J. 91.**

———S. 118—*Evidence of minor.*

There is no inflexible rule that before the actual examination of a child of tender years commences, the Court must by a preliminary examination test his capacity to understand and give rational answers and must form an opinion as to the competency of the witness. The trial is not invalidated by the absence of such examination. 11 C.W.N. 51, *Diss. from.* (*Mookerjee and Beachcroft*, JJ.) NAFAR SHEIKH *v.* EMPEROR **41 Cal. 405 = 14 Cr L.J 485 = 18 C L J. 532 = 20 I C 741 = 18 C.W.N. 147.**

———Ss. 118 and 120—*Statement of acquitted person—Admissibility.*

It is not legal to admit in evidence at a subsequent trial of other persons on an identical charge, the statement of an acquitted person. (*Jenkins*, C.J., *Brett and* D. *Chatterjee*, JJ.) EMPEROR *v.* NONI GOPAL. **11 I C 880 = 12 Cr. L.J. 396 = 15 C.W.N. 646.**

EVIDENCE ACT (1 of 1872), S. 118.

——S. 118—*Evidence of minor—Oaths Act (X of 1873), Ss. 5 and 13—No oath administered—Admissibility.*

In spite of S. 5 of the Oaths Act, a child's evidence is not inadmissible merely on the ground that no oath was administered to it. S. 13 of the Oath's Act governs such cases. (*Ayling and Oldfield, JJ.*) GOLLA CHINNA VENKADU *v.* EMPEROR. 22 I C. 737= 15 Cr. L.J. 161=38 Mad. 550.

——Ss. 118 and 120—*Child born during wedlock proceedings—Evidence of husband as to non-access if admissible.*

Where the husband in divorce proceedings relied on the birth of a child as evidence of adultery, under Ss. 118 and 120, Evidence Act, his evidence as to non-access was admissible. A child born 11 months after the cessation of marital intercourse between its parents, is illegitimate. (*White, C.J., Ayling and Oldfield, JJ.*) JOHN HOWE *v.* CHARLOTTE HOWE. 38 Mad. 465=(1913) M.W.N. 983= 23 M.L.J. 894=21 I.C. 645=14 M.L.T. 447.

——S. 118—*Examination of witness of tender years—Procedure.*

It is of very great importance that when the evidence of a child of tender years is adduced, the Judicial Officer should, for the sake of precaution, ascertain as a preliminary measure, by means of a few simple questions, whether the intelligence of the child is such that (whether sworn or not) it is capable of giving testimony which is patent of credit; and it is desirable that something should, at the commencement of the record of the evidence of the witness of this character be entered to show that such a test has been in a fact made. It may turn out in the course of the examination at the trial that the test has been a fallacious one and that the evidence which the child gives is not intelligible and in such a case, it is always open to the Judicial Officer to say that he cannot accept the evidence which the child is giving. On the other hand there is no obligation imposed by law upon a Judge definitely to make on the record any endorsement of his own as to a child's capacity, and when he has clearly relied upon the evidence given, it is idle to suggest that he could have been other than thoroughly satisfied as to the capacity of the child to give intelligible testimony. (*Bucknill, J.*) PANCHU CHOUDHRY *v.* EMPEROR. 66 I.C. 78= 23 Cr. L J. 233

——S. 119—*Deaf and dumb witness—Incapacity to understand.*

When a witness is so deaf and dumb as not to understand nor it is possible to make him understand the question put to him in cross-examination, he cannot be a competant witness and his evidence if taken ought to be struck out and a conviction based solely on his evidence ought to be set aside. (*Sundara Aiyar and Spencer, JJ.*) VENKATTAN *v.* EMPEROR. 14 I.C. 668= 13 Cr. L.J. 271=(1912) M.W.N. 100.

EVIDENCE ACT (1 of 1872), S. 122.

——S. 120—*Party as witness—Weight to be attached to evidence—Tests of.*

Per *Mookerjee, J.*—There is no inflexible rule that if a party, plaintiff or defendant, gives his testimony, he must be disbelieved, because he is a party to the suit; such a rule, if adopted, would nullify the provisions of S. 120 of the Indian Evidence Act, which provides that in all civil proceedings the parties to the suit shall be competent witnesses. When a plaintiff has deposed in support of his case, his testimony must be scrutinised in the same manner as that of any other witness; and the Court is free to attach to the evidence that amount of weight which it appears to deserve, from his demeanour, deportment under cross-examination motives to speak or hide the truth, means of knowledge, powers of memory and other tests by which the value of a statement of a witness can be ascertained if not with absolute certainty, yet with such a reasonable amount of conviction as ought to justify a man of ordinary prudence in acting upon those statements. (*Mookerjee and Buckland, JJ.*) JOGENDRA KRISHNA ROY *v.* KURPAL HARSHI & CO. 49 Cal. 348= 35 C L J. 173=1923 C. 63.

——Ss. 121, 124 and 125—*Questions mentioned in the sections—Whether barred.*

Questions mentioned in Ss. 121, 124 and 125 are not barred. The witness has simply a privilege of refusing to answer them and a Magistrate may warn the witness of his privilege. But such questions cannot be disallowed. (*Parlett, J.*) MAHOMED ALLAY *v.* EMPEROR. 10 I C. 917=12 Cr. L J. 277= 4 Bur. L.T. 113.

——S. 122—*Communications by husband to wife—Disclosure of the husband's death—Whether permissible.*

The restriction in S. 122 of the Evidence Act cannot be waived, or relaxed by the Court; so that disclosure by a widow of certain communications made to her by her husband immediately before his death, can not only be not compelled, but should not be permitted at all. (*Jenkins, C.J. and Sharfuddin, J.*) NAWAB HOWLADAR *v.* EMPEROR. 23 I.C. 811=16 Cr. L J 308=40 Cal. 891.

——S. 122—*Confession to husband not admissible.*

No statement of an incriminating nature made by the appellant as to her guilt under S. 302, I.P.C. to her husband could be received in evidence. (*Broadway and Martineau, JJ.*) MT. IHSANAN *v.* EMPEROR. 1923 Lah. 40.

——S. 122—*Husband and wife—Communications—Privilege.*

Under S. 122 it is not legal to admit the evidence of the wife of the accused as to certain communications between her and her husband. (*Chevis and Shadi Lal, JJ.*)JOWALA SAHAI *v.* EMPEROR. 34 P.R. 1914 Cr.= 27 I.C. 861=16 Cr. L J. 184= 226 P.L.R. 1915.

EVIDENCE ACT (I of 1872), S. 122.

———S. 122—*Confession to husband—Confession in police custody.*

A woman's confession to her husband is inadmissible in view of S. 122. An offence 'against' a person in the section does not include an offence against a son though grief may be caused by it to the father. (*Johnstone and Beaden, JJ.*) FATIMA *v.* EMPEROR.
10 P.R. (Cr.) 1914=23 I C 525=13 Cr. L.J. 613=261 P.L.R. 1914.

———S. 122—*Consent—Express.*

Before admitting evidence under S. 122 the party against whom the evidence is to be given must be asked by the Court whether he or she would consent to the evidence being given. The consent must be express. (*Scott-Smith and Agnew, JJ.*) BISHAN DAS *v.* EMPEROR.
27 P.R. (Cr.) 1913=244 P.L.R. 1913=14 Cr. L.J. 316=19 I C. 1004=44 P.W.R. (Cr.) 1913.

———S. 122—*Communication between husband and wife.*

Statements which the wife of an accused person alleges to have been made to her in respect of the offence with which he is charged, are inadmissible, without the consent of the accused or his representative in interest, under S. 122. (*Reid, C.J. and Beadon, J.*) MILKHI *v.* EMPEROR. **218 P L.R 1913=14 Cr. L J. 273=19 I C. 7 5=24 P.W.R. (Cr.) 1913.**

———S 123—*Official document withheld—Court cannot direct production.*

The proper person to determine whether an official document shall be given or withheld is the Public Officer and not the Judge and the Judge cannot compel disclosures by primary or secondary evidence. (*Mookerji, C.J. and Chaudhuri, J.*) IRWIN *v* REID.
43 Cal. 301=63 I.C. 467=25 C.W.N. 150.

———Ss 123, 124 and 162—*State document—Privilege—Register of postings.*

An entry in a posting register kept by the customs department showing the sections to which officers are posted, is not a State document privileged under S 123 or 162 of the Evidence Act. A statement made by a subordinate officer to his superior regarding the apprehension of an accused person within the hearing of various other people is a relevant fact and is admissible under S. 124 of the Act. (*Chitty and Smither, JJ.*) ROKUM ALI *v.* EMPEROR. **45 I.C. 284=19 Cr. L.J 524=22 C.W.N. 451.**

———Ss. 123, 124, 125, 155, 162 and 163—*Statement in course of departmental enquiry—Privilege—Court bound to call for statements—Cross-examination.*

Statements made by witnesses in the course of a departmental inquiry into the conduct of police officers are not privileged under Ss. 123, 124 or 126 of the Evidence Act, and can be called for at a subsequent examination of those witnesses in a Criminal Court on a charge against the police officers of taking illegal gratification. They fall within the ordinary rules of evidence as laid down in Ss. 155 and 162 of the Evidence Act. 2 Bom. L R. 329, Foll. The Magistrate is bound to call for them under S. 162 of the Evidence Act and to allow the accused to cross-examine the witnesses under S. 155, on the statements made whether they are in favour of the accused or against them. Under S. 163 the prosecution can make use of them if they turn out to be not in favour of the defence. (*Holmwood and Sharfuddin, JJ.*) HARBANS SAHAI *v.* EMPEROR.
15 I.C. 77=13 Cr. L J 443=16 C.W.N. 431.

———Ss. 123 and 124—*Confidential communications—Objections to production—Finality.*

An officer's refusal to disclose a document on grounds of public policy, is final. The court cannot call for and examine the secret archives of the state in order to satisfy itself of their confidential nature. 39 M 304 Ref. (*Stuart and Kanhaiya Lal, A.J.Cs.*) LALA TRIBHAWAN NATH SINGH *v.* DEPUTY COMMISSIONER, FYZABAD.
47 I.C. 225=5 O L J. 295.

———Ss. 123 and 126—*Questions referred to in the sections—Whether barred.*

Questions referred to in Ss. 123 and 126 are barred and the Magistrate should disallow them. (*Parlett, J.*) MUHAMMAD ALLY *v.* EMPEROR. **10 I.C. 917=12 Cr. L.J. 277=4 Bur. L.T. 113.**

———Ss. 123 and 125—*Non-production of complaint by Court.*

Under S. 125, it is not improper to refuse to produce a complaint which is demanded merely for ascertaining the informer's name; but such refusal is privileged under that Section because the disclosure of the informer's name is contrary to S 123 of the Evidence Act. (*Hayward and Fawcett, A.J. Cs.*) BAGUMAL WADHUMAL *v.* EMPEROR. **37 I C. 54=18 Cr. L.J. 70=10 S.L.R 134.**

———S. 124—*Privileged document—Who is to decide—Statement made to Court of Wards by proprietors—Disclosure.*

On a proper construction of S. 124, Evidence Act, it is quite clear that it is for the court to decide whether or not a particular document for which privilege is claimed is a communication made to a public officer in official confidence. If the court decides that it was so made, that it has no authority to compel the public officer to produce it, for according to the section the public officer, himself is the sole judge as to whether its disclosure would or would not be in the public interests. Where a proprietor wants his estate to be taken over for management by the Court of Wards, statements made to the Collector showing financial position, particulars of liability, etc. are privileged communications and their disclosure

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cannot be compelled. 32 Mad 62 : 26 Cal. 201 ref. to. (*Rafique and Lindsay, JJ.*) THE COLLECTOR OF JAUNPUR *v* JAMNA PRASAD. **20 A L J 140 = L R 3 A 134 = 4 U P.L.R. (A) 50 = 1922 All 57.**

——— **S. 124**—*Document admitted in Lower Court without objection—Effect.*

Where secondary evidence of certain documents had been admitted in the court below without any objection on the ground of privilege by the Government, it is not open to the Government to object to their admissibility in appeal under S. 124 of the Evidence Act. (*Krishnan and Ramesam, JJ.*) RATHNAMASARI *v.* SECRETARY OF STATE FOR INDIA. **44 M.L.J. 132 = 17 L.W. 416 = 32 M.L.T. (H. C.) 279 = 1923 Mad. 382.**

——— **S. 124**—*English law—Public documents—Meaning—Communication in official confidence.*

Under English law, even the documents passing from hand to hand in a public office without any special mark of secrecy are entitled to the privilege legally recognised as to the production of public documents, the ground of privilege being that it would be detrimental to the public interest to produce it. The words 'communications in official confidence' in S. 124 import no special degree of secrecy and no pledge for its maintenance but include all matters communicated by one officer to another in the performance of duties. Where therefore the document sought to be put in, was a report by one officer to another and it was objected to, as being detrimental to public interest if produced, it is sufficient ground for the Court to refuse to compel the production thereof. The officer in charge of the record is the sole judge of the character of the document and his assertion in respect thereof, binds the Court. Case Law discussed. 32 M. 62, Dist.; 18 B. 263. Foll. (*Oldfield and Tyabji, JJ.*) NAGARAJA PILLAI *v* SECRETARY OF STATE. **26 I.C. 723 = 39 Mad 304.**

——— **S. 125**—*Detective employed by prosecution—Privilege.*

In criminal prosecutions, the witnesses for the crown are privileged from disclosing the channel through which they received or communicated information. But this privilege cannot be claimed by a detective who cannot refuse on grounds of public policy to answer a question as to where he was secreted. (*Mookerjee and Richardson, JJ.*) AMRITALALA *v.* EMPEROR. **42 Cal. 957 = 16 Cr. L J 417 = 21 C L J. 381 = 29 I.C. 513 = 19 C.W.N. 676.**

——— **Ss. 125 and 126** — *Instructions to counsel, etc.—Protection from disclosing—It depends on privilege where not claimed.*

Even if a person is willing to disclose the source of his information, thus waiving his privilege under S. 125, it is the duty of the Judge to exclude the evidence. If objection is taken to its admissibility on the ground of privilege, no adverse inference could be drawn,

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for to allow this, would destroy the plea of privilege. (*Woodroffe, Coxe and Chatterjee, JJ.*) D. WESTON *v.* PEARY MOHUN. **40 Cal. 898 = 23 I.C. 25 = 18 C.W.N. 185.**

——— **S. 125**—*Object and scope of.*

S. 125 rests upon public policy and it protects the name of a spy or informant, not the nature of the information and it has no application to an informant who lays a sworn information and thereby initiates criminal proceedings. This rule is clearly applicable to gambling cases. (*Pratt, J.C. and Fawcett, A.J.C.*) LILADHAR UMERSI *v.* EMPEROR **29 I C. 79 = 16 Cr. L.J. 447 = 8 S.L.R. 309.**

——— **S. 126**—*Communication made to Vakil in the course of his employment.*

The knowledge which a vakil acquires through his client in a patent action as to the working of a stove is not admissible. It is immaterial that a communication is verbal, that is to say, by word of mouth or by demonstration and it is excluded by rule of professional privilege. (*Piggott and Walsh, JJ.*) GOPI LAL *v.* LAKHPAT RAI. **41 All. 128 = 48 I C. 605 = 16 A L.J. 987.**

——— **S. 126**—*Evidence of counsel for client—Recorded but afterwards ruled—Admissibility.*

The Court cannot rule out the evidence of a counsel as inadmissible on the ground of the incompetency of the counsel to be a witness. 9 Bom L R 1014 Ref. (*Piggott, J.*) HEARSEY *v.* MRS. EVA FORSTER. **24 I C. 165 = 15 Cr. L.J. 429 = 12 A.L.J. 285.**

——— **S. 126**—*Solicitor—Privilege—Bound to attend Court.*

A Solicitor though privileged under S. 126 from producing before a Court or a Commissioner to take evidence, a letter written to him by his client, is bound to attend the Court of the Commissioner and state whether he has received such a letter without reference to its contents. (*Fletcher and Chatterjee, JJ.*) GEORGE BURCH MONAIR *v.* CAMPBELL. **42 I.C. 582.**

——— **S. 126**—*Party and pleader on the opposite side.*

The mere fact that the suit between the parties was attempted to be compromised will not make communications regarding the claim, between the parties or between a party and the opposite side pleader, privileged, When several persons are jointly interested in the subject matter of a suit an admission by any one of these persons is receivable not only against himself but also against the other defendants whether they be all jointly suing or sued provided the admission relates to the subject matter in dispute and be made by the declarant in his character of a person jointly interested with the party against whom the evidence is tendered, (*Sanderson, C.J. and Mookerjee, JJ.*) MEAJAN MATBOR *v.* ALIMUDDIN MEA. **44 Cal 1120 = 34 I.C. 571 = 28 C.L J. 42 = 20 C.W.N. 1217.**

EVIDENCE ACT (I of 1872), S. 126.

———S 126—*Privilege of counsel—Limitations of.*

Instructions to counsel are only privileged in the sense of being protected from disclosure to the opponent and there is no privilege as against the Court. But if the Court calls for written instructions, it cannot use them as evidence in the cause. (*Woodroffe, Coxe and Chatterjee, JJ.*) D. WESTON *v.* PEARY MOHUN. **40 Cal. 898=23 I C. 25=18 C W.N. 185.**

———S. 126—*Disclosure of confidential professional communication by pleader without consent of client.*

A pleader while making certain statements in the witness-box disclosed communications made to him in the course and for the purpose of his employment as Pleader in a case, without the consent of his client. *Held*, that under S. 126 his evidence was inadmissible. The conduct of the Pleader disapproved. (*Brett and Carnduff, JJ*) BAKAULLAH MOLLAH *v.* DEBIRUDDI MOLLAH. **14 I.C. 707=16 C.W.N. 742.**

———S. 126—*Privilege—Instruction to counsel.*

Instructions to counsel are privileged documents and the counsel is prohibited from disclosing what is contained in those instructions as being of a confidential nature. (10 M. 28, Ref) (*Fletcher*, J.) PEARY MOHUN DAS *v.* DONALD WESTON. **9 I.C. 503.**

———Ss. 126 and 127—*Inspection of documents—Letter by Company's agent to be laid before solicitor—Privilege.*

A letter submitted by a Company's agent to the managing agent under orders from them giving them details of a claim made, so that the same may be laid before the company's solicitor, is privileged and no inspection of the same can be granted. (*Robinson*, J.) YANG TSZE INSURANCE ASSOCIATION, LTD. *v.* B.I. S.N. COMPANY, LTD. **20 I C. 974=8 Bur. L.T. 274.**

———S 126—*Communications for being put in the pleadings.*

Communications made to a pleader expressly for the purpose of being incorporated in the pleadings are not privileged. (*Pratt*, J.C. *and Crouch*, A.J.C.) BIBI SONA *v.* MIS ABDUL HUSSAIN KHAN. **16 I.C. 641=6 S.L.R. 1.**

———Ss 129 and 131—*Witness, note from—Privilege—Whether Judge can consider it.*

A note obtained for the purpose of preparing a brief from a witness, who was subsequently examined at the trial, of the evidence he was going to give, is privileged from production and the Judge should not allow his mind to be influenced in considering the evidence that such evidence was not produced in Court. (*Sir John Edge.*) DULHIN GENDA KUNWAR *v.* HARNANDAN SINGH. **20 C.W.N. 617=30 M.L.J. 624=(1916) 1 M.W.N. 368=33 I.C. 790=4 L.W. 214 (P.C.)**

EVIDENCE ACT (I of 1872), S. 132.

———S. 129—*Statements of witnesses for taking opinion of legal adviser—Privilege.*

Statements of witnesses recorded for the special purpose of being shown to a legal adviser with a view to ascertaining whether there is a good case to go to the Court are, privileged under S 129. (*Batten*, A.J.C.) DINBAI *v.* FROMROZ. **43 I.C. 71.**

———S. 130—*Third party if bound to produce—Rights of party who summoned the third person.*

A person not a party to the suit cannot be compelled to produce their title-deeds to his property but if he does not produce them the party summoning him may use a certified copy as secondary evidence. The failure to pay process fee for the issue of a warrant for the production of an original document does not deprive him of his right to use a certified copy as secondary evidence, (*Mookerjee and Carnduff*, JJ.) AMRIT CHAMAR *v* SHRIDHAR PANDEY. **15 C.L.J. 7=13 I C. 120=17 C.W.N. 108.**

———Ss. 130 and 131—*Cr. P.C.S. 476—C.P.C. O. 16, R. 7—Person in Court—Order to produce document—Non-compliance.*

Where under O. 16, R. 7, C.P.C., the Court called upon a person merely present in Court, to produce a document and on his stating that the document was not with him then, the Court instituted proceedings against him under S. 476, Cr. P.C. *Held*, that the Court was not justified in taking such proceedings and that before taking any such proceedings it should determine, whether the document in question was one which he could be compelled to produce. (*Mookerjee and Tunon*, JJ.) BHAGABAT PRASAD SINGH *v* EMPEROR. **14 C.L.J. 120=11 I.C. 794=12 C.L J. 450.**

———S. 132—*Privilege under — When claimed.*

The protest from a witness is not necessary for the benefit of the privilege afforded by S. 132 of the Evidence Act when he answers a question by a Court or counsel on a point relevant to the case. (*Walsh*, J.) CHATUR SINGH *v.* EMPEROR. **43 All. 92=2 U.P.L.R (All.) 355=58 I.C 825=21 Cr. L.J. 825=18 A.L.J. 940.**

———S. 132—*Witness compelled to answer—Defamation.*

Where the witness was compelled to answer the question put to him by the Judge under S. 132 proceedings for defamation could not be taken against him. 16 All. 88, not Foll. 40 A. 271, Ref. (*Walsh*, J.) GANGA SAHAI *v.* EMPEROR. **54 I.C. 890=18 A.L J. 112.**

———S. 132—*Privilege—Claim of.*

A witness must claim the benefit of the protection afforded by S. 132 before he makes the statement in respect of which a question is subsequently raised. (*Piggott*, J.) KALLU *v.* SITAL. **40 All. 271=43 I C. 828=19 Cr. L J. 231=16 A.L.J. 201.**

EVIDENCE ACT (I of 1872), S. 132.

———S 132—'*Compelled to answer*'—*Meaning of.*

Unless a person objects to any question the answer to which is likely to criminate him, he cannot be said to have been compelled to answer within S. 132 proviso. (*Heaton*, A.C.J., *Shah and Hayward*, JJ.) EMPEROR *v.* CUNNA.
39 I.C. 824=22 Cr. L J. 66=
22 Bom. L.R. 1247.

———S. 132, *proviso—Thumb impression, taking of—If equivalent to answer a question.*

The taking of a thumb impression is not equivalent to asking a question and receiving an answer and may be proved against the person in any criminal proceeding and the proviso to S. 132 does not apply where no objection is taken to the thumb impression being taken even supposing that taking thumb impression is equivalent to an answer. 3 M. 271; 21 C. 392, Foll. (*Stephen and Chatterjee*, JJ.) TUNOO MAI *v.* EMPEROR.
16 C.W.N. 603=18 C.L.J. 399=13 I.C. 925=
13 Cr. L J. 178=39 Cal. 348.

———S. 132—*Co-accused in another trial—If can be cited as witness.*

A person who is tried for an offence under S. 3 of the Gambling Act has every right to cite as his witness another person who is a co-accused with him for an offence under S. 4 in a separate trial. The co-accused's position is sufficiently protected by S 132, Evidence Act. (*Zafar Ali*, J.) RAJA RAM *v* EMPEROR.
78 I.C. 521=24 Cr. L J. 633=5 Lah. L.J. 429.

———S. 132—*Protection—When can be claimed.*

A person making a defamatory statement as a party or as a witness in a judicial proceeding, which is *prima facie* defamatory, is liable to be charged under S. 500 I.P.C., irrespective of the liability for perjury. Such person can be protected if he pleads and succeeds in applying any of the exceptions mentioned in S. 499. (*Arthur Reid*, *Kt.* C J.) PHUNDI RAM *v.* EMPEROR. 10 I.C. 682=12 Cr. L.J. 193=
7 P.W.R. 1911 Cr.

———S. 132, *proviso — Reconciliation of statements.*

A sanction to prosecute for perjury should not be given on the basis of two contraditory statements where the two statements are reconcileable and every possible presumption must be in favour of such reconciliation. 7 A. 44, Foll. (*Pratt*, J.C. *and Hayward*, A.J.C.) EMPEROR *v.* TIKAM LAKHI 24 I C 576=
15 Cr. L.J. 488=7 S.L.R. 108.

———S. 132—*Reconciliation of statements.*

Where a charge for perjury is based on two contradictory statements every possible presumption in favour of their reconciliation should be made. (*Pratt*, J.C. *and Hayward*, A.J.C.) IMAM BUX *v.* EMPEROR.
23 I.C. 747=15 Cr. L.J. 379=7 S.L.R 96.

EVIDENCE ACT (I of 1872), S. 133—Accomplice, meaning.

———S. 132, *proviso—English doctrine of absolute privilege if applies in India.*

The English doctrine of absolute privilege in cases of defamation does not apply in India. (*Pratt*, J.C.) MC. GILL *v.* BRYNE.
18 Cr. L.J. 23=13 I.C. 217=5 S.L.R. 133

———S. 133.

ACCOMPLICE AND DETECTIVE—DISTINCTION.
ACCOMPLICE, MEANING.
CONVICTION ON UNCORROBORATED TESTIMONY.
CORROBORATION, WHAT IS.
RETRACTED CONFESSION.
VALUE OF ACCOMPLICE'S EVIDENCE.
VALUE OF APPROVER'S EVIDENCE.

See also EVIDENCE ACT, S. 114, ILLN. (*b*).

Accomplice and Detective—Distinction.

———S. 133—*Accomplice and detective—Distinction.*

The detectives and accomplices are distinguished clearly when a conspiracy contains persons of both the characters. The former enter with a design of detecting or betraying it, while the latter do concur fully with other accomplices till they are not alarmed or they turn upon their associates and expose them. In the case of those corroboration equal to that of others is necessary. (*Harrington, Mookerjee and Casperse*, JJ.) PULIN BEHARY *v.* EMPEROR. 13 Cr. L.J. 609=
16 I.C. 257=16 C.L J. 517=
16 C.W.N. 1105.

Accomplice, meaning.

———S. 133—*Accomplice—Meaning.*

One who deposes that he only helped the accused in disposing of the body of the deceased after he was killed by the accused is no accomplice. (*Le Rossignol and Zafar Ali*, JJ.) JEHANA *v.* EMPEROR. 24 Cr. L J. 618=
1923 Lah. 345.

——— S. 133 — *Accomplice, meaning — Bribery of public servant.*

Persons taking part in negotiations for bribe cannot be said to be independent witnesses; and their evidence is not free from doubt, but persons merely present are not accomplices. (*Bradway*, J.) KHADAM ALI *v* EMPEROR.
20 Cr. L.J. 258=50 I C. 18=
18 P.W.R. (Cr.) 1919.

——— S. 133—*Accomplice, meaning.*

An accomplice is a witness and not an accused person. (*Reid*, C.J. *and Johnstone*, J.) EMPEROR *v.* UMADA. 9 P.R (Cr) 1911=
22 P.W.R. (Cr.) 1911=10 I.C. 340=
12 Cr. L J. 267=166 P.L.R. 1911.

———S. 133—*Accomplice—Meaning.*

Per *Abdur Rahim*, J.—Persons who actually pay bribes or co-operate therein, are accomplices and their evidence should not be accepted

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without independent corroboration. 33 C. 64 Cr. : 27 M. 271, Expl. ; 27 C. 144, Con. (Per *Ayling*, J.) Such persons are only technically accomplices and the suspicion to be thrown on their evidence may be very slight. (*Sankaran Nair, Abdur Rahim and Ayling*, JJ.) *In re* VYASA RAO. **(1911) 1 M.W.N 327 = 21 M L J. 283 = 12 Cr. L J. 150 = 9 I.C. 897 = 10 M L.T. 84.**

——S. 133—*'Accomplice,' meaning.*

A suspected participator in the crime, appearing as a prosecution witness is on the same basis as an accomplice and a conviction cannot be based upon his uncorroborated testimony. (*Rafique and Piggott* A.J.Cs.) RUSTAM SINGH *v.* EMPEROR **24 I.C. 146 = 15 Cr L J. 440 = 1 O.L.J 95.**

Conviction on uncorroborated evidence.

——S 133—*Conviction on uncorroborated testimony—Practice.*

A conviction based on the evidence of an accomplice is not bad but in established practice, it is necesary that such evidence should be corroborated by some untainted evidence in material particulars. (*Jenkins*, C J. *and Sharfuddin*, JJ.) MUNESSAR AHIR *v.* EMPEROR. **24 I.C. 174 = 15 Cr. L J 438 = 18 C.W.N. 550.**

——S 133—*Conviction on uncorroborated testimony—Practice—Approver's evidence.*

The testimony of an approver must be corraborated not only as to the crime, but also as to the identity of each accused person and that the corroboration must proceed from an untainted source This is not a technical rule, but is founded on long judicial experience. (*Jenkins*, C J., *Brett and Chatterjee*, JJ.) EMPEROR *v.* NONI GOPAL. **15 C.W N. 593 = 10 I C. 582 = 12 Cr. L J. 286 = 38 Cal. 559.**

——S. 133—*Conviction on uncorroborated evidence of accomplices—Practice.*

A conviction based merely on the uncorroborated testimony of an accomplice is not illegal. (*Sankaran Nair, Abdur Rahim and Ayling*, JJ.) *In re* VYASA RAO. **(1911) 1 M.W N. 327 = 21 M.L.J. 283 = 12 Cr. L.J. 150 = 9 I.C. 897 = 10 M L T. 84.**

——S. 133—*Conviction on uncorroborated testimony.*

A conviction based on the evidence of an accomplice uncorroborated by the evidence of other witnesses is not illegal. Such evidence must be examined, like the evidence of any other witness, to see whether it is credible or not, the fact that the witness is an accomplice being of course a strong reason for disbelieving him. It cannot be rejected merely because it is the evidence of an accomplice uncorroborated by other witnesses, but, if believed after proper examination, must be acted upon. (*Hallifax and Macnair*, A.J.Cs.) GOVINDA *v.* KING-EMPEROR. **69 I.C. 257 = 23 Cr. L J 673 = 17 N.L.R. 113.**

EVIDENCE ACT (I of 1872), S. 133—Corroboration, what is.

——S. 133—*Conviction on uncorroborated testimony.*

An accused can be convicted only when the Judge is satisfied that the evidence of the accomplices was corroborated in some material and satisfactory manner. (*Das and Bucknill*, JJ.) DHANNU BELDAR *v.* KING EMPEROR. **2 Pat. L T. 757.**

——S. 133—*Conviction on uncorroborated evidence—Practice.*

Conviction based on the uncorroborated evidence of an accomplice is not illegal although according to illustration (*b*) to S. 114 the Court may presume that an accomplice is unworthy of credit unless corroborated in material particulars provided the Court carefully tests the truth of evidence, searches for his motives, and subjects his evidence to the most rigid tests. (*Charles Fox*, C J. *Hartnoll and Twomey*, JJ.) NGA PO CHIT *v.* EMPEROR. **6 L.B.R. 4 = 9 I.C 778 = 12 Cr L J 132 = 4 Bur. L T. 50.**

Corroboration, what is.

——S. 133—*Corroboration—What is—Co-accused, retracted confession of.*

An approver's evidence supported by the retracted confession of a co-accused behind the back of the accused, is not sufficient to convict the accused. Such a retracted confession is not a corroboration of a high value. (*Tudball*, J.) DEBI DAYAL *v.* EMPEROR. **18 I.C. 672 = 14 Cr. L J. 112 = 11 A L J. 73.**

——S. 133—*Corroboration—What is.*

It is unsafe to rely upon the uncorroborated testimony of the approver; the corroboration must be of the statement connecting the accused with the offence. (*Chamier*, J.C. *and Piggott*, A.J.C.) MAKBUL AHMED *v.* EMPEROR. **12 I.C. 513 = 12 Cr. L J. 537.**

——S 133—*Corroboration—What is.*

Some dacoits raided a person's house. But before their purpose was effected, the person's neighbours drove them off. One of them was, however, captured on the spot. He confessed to a private person their purpose and disclosed the names of some of his participants; on that information others were captured: and one of them turned an informer. The first accused confessed before a first class Magistrate just after the day of occurrence but retracted it afterwards. *Held*, that in all cases depending upon an informer's evidence, the degree of support required for the evidence depends in each case upon the individual's credit. That the confession of the first accused did amply corroborate the informer's evidence and the convictions of the dacoits were legal. (*Harington and Brett*, JJ.) LALAN MULLICK *v.* EMPEROR. **13 I.C. 987 = 13 Cr. L J. 571 = 16 C.W.N. 669.**

EVIDENCE ACT (I of 1872), S. 133—Corroboration, what is.

———S 133—*Corroboration, what is—Corroboration by an approver.*

There is nothing in S. 133 to suggest that the statement of one approver cannot be regarded as corroborating that made by another approver. No doubt if it could be shown that the approvers had ample opportunity of consultation, this corroborative value would be greatly diminished. (*Lumsden*, J.) EMPEROR *v.* DARYA SINGH.

1923 Lah 666.

———S. 133—*Corroboration, what is.*

Where the only evidence against an accused person is that he has produced stolen property out of a place which is not in his own possession, that evidence is not sufficient to support a conviction for theft or for receiving stolen property. But the production of the property is clear evidence against the person producing it and is material corroboration of the evidence of an accomplice who has deposed that that person joined him in committing a dacoity or a burglary or a theft. The discovery of stolen property out of a house jointly occupied by himself and his uncle, is corroboration of the approver's story against the accused. Such production might not be sufficient evidence of itself to support a conviction for being dishonestly in possession of stolen property but it certainly is evidence against the persons producing it. The value of the evidence is another matter. (*Scott Smith*, J.) KHUSHAL SINGH *v.* EMPEROR.

25 Cr. L J. 254 = 1923 Lah. 333.

———S. 133—*Corroboration, what is—Evidence of approver—Criminal P C. Ss. 395 and 396.*

The approver referred to a story by one A who invited him along with appellants to join in the dacoity; the incident of the story told by the approver turned out to be true on police inquiry. Appellants were seen with the approver at Sukho and arrested in his company at Mandra. The possession of the three tickets all from Chakala to Mandra and bearing consecutive numbers was strong corroboration of the approver's story as to the appellants having accompanied him to the scene of the occurrence. *Held*, the guilt of the appellants had been established beyond reasonable doubt by the evidence of the approver which had been amply corroborated as against them. (*Broadway and Martineau*, JJ.) HAKIM *v.* EMPEROR.

1923 Lah. 163.

———S. 133—*Corroboration, what is.*

Tainted evidence cannot be useful for corroboration of tainted evidence. (*Shadi Lal and Abdul Qadir*, JJ.) AHMAD MIR *v.* EMPEROR. 23 Cr. L J 597 = 68 I.C 821 = 4 U.P.L R. (L) 110.

———S. 133—*Corroboration, what is.*

An approver may be telling the truth and it is quite probable that he himself was concerned in the murder but his statement as to who his accomplices were, must be corroborated by reliable evidence before it can form the basis of a conviction. The corroboration offered by the statement of two men who apparently knew something about the matter from the very beginning but refused to make any statement until the third day of the police investigation, must be regarded with doubt and these witnesses may possibly be hiding themselves at the cost of innocent men. (*Chevis*, C.J. *and Le Rossignol*, J.) FATTA *v* EMPEROR.

2 Lah. L J. 256 - 67 I.C. 828 = 18 P.W.R. Cr. 1922.

EVIDENCE ACT (I of 1872), S. 133—Retracted confession.

———S. 133—*Corroboration, what is.*

Mention of a person in confessions of co-accused obtained seriatim is not sufficient corroboration of statement. (*Chevis*, J.) LALA *v.* EMPEROR. 68 I.C. 622 = 23 Cr. L.J. 158 = 3 P.W.R. 1922 Cr.

———S. 133—*Corroboration, what is — Evidence as against a third accused.*

Confession of one accused cannot be said to be corroborated by the confession of another as against a third accused who has not confessed at all. But between the first two, the confession of one may be said to be corroborated by the confession of the second and *vice versa*. 38 Bom. 156, Dist. (*Scott-Smith and Lindsay*, JJ.) GANGA RAM *v.* EMPEROR. 60 I.C. 780 = 22 Cr. L J. 290.

———Ss. 133, 144, Illn. (b)—*Corroboration—What is—Approver's evidence.*

An accused should not be be convicted on the statement of an approver unless such testimony is strongly corroborated and the corroboration distinctly implicates the accused with crime committed. Scanty corroboration is not sufficient. (*Johnstone*, C J. *and Shah Din*, J.) NAND SINGH *v.* EMPEROR.

40 I.C. 696 = 18 Cr. L.J 696 = 9 P.W R. Cr. 1917.

———S. 133—'*Corroboration*'—*What is.*

Per *Abdur Rahim*, J.—The evidence of one accomplice is not sufficient corroboration of the evidence of other accomplices nor are previous statements made by the same person sufficient. (*Sankaran Nair, Abdur Rahim and Ayling*, JJ.) *In re* VYASA RAO.

(1911) 1 M.W.N. 327 = 21 M L J. 283 = 12 Cr. L.J. 150 = 9 I.C. 897 = 10 M L.T. 81.

Retracted Confession.

———S. 133—*Retracted confession—Value of, as evidence.*

It cannot be laid down as an inflexible rule that a confession made by a prisoner cannot be accepted as evidence of his guilt without independent corroborative evidence. The weight to be given to such a confession must depend on the circumstances under which the confession was originally given and the circumstances under which it was retracted including the reasons given by the prisoner for its retraction. It is unsafe for a Court to rely on and act on a

EVIDENCE ACT (I of 1872), S. 133—Retracted confession.

confession which has been retracted unless after a consideration of the whole of the evidence in the case the Court is in a position to come to the unhesitating conclusion that the confession is true that is to say, usually unless the confession is corroborated by credible independent evidence. A retracted confession should carry practically no weight as against a person other than its maker. (*Newbould and Fearson, JJ.*) EMPEROR *v.* BISESWAR DEY.
26 C.W.N. 1010 = 24 Cr. L.J. 145 = 1923 Cal. 217.

———S. 133—*Retracted confession — Statement of approver—Corroboration.*

Retracted confession of an accused may be sufficient corroboration of the approver's story as against himself but not against a co-accused. (*Rattigan, C.J. and Martineau, J.*) PALLIA *v.* EMPEROR. 20 Cr. L.J. 188 = 49 I.C. 604 = 12 P.W.R. (Cr.) 1919.

———S. 133—*Retracted confession—If admissible.*

A retracted statement of an approver, is admissible as evidence against an accused person. (*Odgers, J.*) VEERABHADRA *v.* EMPEROR. 61 I.C. 528 = 22 Cr. L.J. 400 = 12 L.W. 885.

———S. 133—*Retracted confession — Value of, against co-accused.*

Whatever value may be attached to the retracted confession of an accused as against himself, its value as against a co-accused is very weak. (*Jwala Prasad and Sultan Ahmad, JJ.*) MAKSUD ALI *v* EMPEROR.
60 I.C. 56 = 22 Cr. L.J. 200 = 2 Pat. L.T. 773 = 3 U.P.L.R. (Pat.) 18.

———S. 133—*Retracted confession.*

The confession of an accomplice should be subjected to the most anxious scrutiny in so far as it incriminates others, and received with caution as it is not sifted by cross-examination. Yet if after all that caution, a Judge believes it to be true, there is nothing in law to prevent the conviction of an accused on the uncorroborated and retracted confession of an accomplice. Conviction was set aside where the retracted confession of a co-accused was not convincing. (*Hartnoll and Young, JJ.*) NAG TUN, E. *v.* EMPEROR. 19 I.C. 179 = 14 Cr. L.J. 179 = 6 Bur. L.T. 47.

——— S. 133—*Retracted confession.*

The statement of an accomplice before the committing Magistrate, though retracted in the Sessions Court can be treated as substantial evidence on the same footing as any other evidence. 28 A. 683, Ref. But this evidence must be treated with caution in so far as it implicates a particular accused or assigns a particular part in the crime. (*Fawcett, J.C. and Couch, A.J.C.*) PUNHU *v* EMPEROR.
16 Cr. L.J. 238 = 27 I.C. 905 = 8 S.L.R. 203.

EVIDENCE ACT (I of 1872), S. 133—Value of accomplice's evidence.

Value of Accomplice's Evidence.

———S. 133—*Value of accomplice's evidence.*

An accomplice is a suspect witness whose evidence must be received with great caution. While it is essential that accused persons should be protected from conviction based on the mere evidence of an untrustworthy accomplice, it is important that the requirements of the Legislature in this respect should not be exaggerated by the Court as to offer a practical guarantee of immunity to persons guilty of grave offences which are in their very nature difficult of detection. When all legal precautions are taken and all relevant considerations are duly weighed, the Judge is convinced that the accomplice's evidence is true, it is his duty to say so and give effect to his mental conviction. (*Batchelor and Shah, JJ.*) GOBIND *v.* EMPEROR. 17 Cr. L.J. 256 = 34 I.C. 976 = 18 Bom. L.R. 266.

———Ss. 133 and 114, Illn. (6)—*Value of accomplice's evidence.*

Where one R paid Rs. 20 to a *Jamadar* of a District Judge on his representation to R that by paying this amount to the clerk of the Court, R would be appointed to a certain post and made this payment in the presence of two persons, one a cousin of his and another a pleader come there on professional business. *Held*, that the *Jamadar* was guilty of an offence under S. 161, I.P.C. and that R and his cousin are accomplices but that the fact of their being accomplices did not lessen the value of their evidence as there was no proof of any *animus* on their part against the *Jamadar* and that the pleader could not be said to be an accomplice as he did not co-operate in the offer of the bribe nor was he instrumental in the negotiations for the payment. (*Johnstone and Broadway, JJ.*) GHULAM MUHAMMAD *v* EMPEROR.
39 I.C. 680 = 18 Cr.L.J. 556 = 9 P.R. (Cr.) 1917.

———S. 133—*Value of accomplice's evidence—Confession of co-accused and testimony of accomplice—Probative value.*

The probative value of the evidence of an accomplice is practically the same as the confession of a co-accused. 38 B. 156, Foll. A conviction based on the evidence of an accomplice or the confession of a co-accused is not illegal though it is not safe to act on such testimony unless corroborated in material particulars. (*Wallis and Sadasiva Aiyar, JJ.*) NARAYANA AIYAR *v.* EMPEROR.
24 I.C. 183 = 15 Cr. L.J. 417 = (1914) M.W.N. 363.

———S. 133—*Value of accomplice's evidence.*

Where the complicity of a person is due solely to coercion and his evidence cannot be ascribed to any desire to escape legal consequences, the degree of discredit attaching to his evidence is practically negligible. (*Ayling and Napier, JJ.*) KILLIKYATARA BOMMA *v* EMPEROR. 19 I.C. 207 = 14 Cr. L.J. 207 = (1912) M.W.N. 1108.

EVIDENCE ACT (I of 1872), S. 133—Value of accomplice's evidence.

——S 133—*Value of accomplice's evidence—Corroboration—Practice.*

Under S. 133, Evidence Act, the evidence of an accomplice by itself is enough for a conviction, but it is a rule of practice founded on experience that in every case where an accomplice has given evidence, the Court must raise a presumption that he is unworthy of credit unless corroborated in material particulars. Failure to raise this presumption is an error of law, but in each case the weight to be attached must depend on the particular circumstances. (*Mullick and Thornhill, JJ.*) MADAN GURU *v.* EMPEROR. 73 I.C. 968=24 Cr. L J. 723= 4 Pat. L T. 381.

Value of Approver's Evidence.

——S. 133—*Value of approver's evidence.*

The evidence of an approver, if believed, is sufficient foundation whereon to repose a conviction, but in practice, the Court *ex majori cautela* insists upon corroboration of the approvers' statements in material particulars. (*Le-Rossignol, J.*) TOTA SINGH *v.* EMPEROR. 69 I.C. 462=23 Cr. L J 735.

——S. 133—*Value of approver's evidence—What is corroboration.*

An approver may be telling the truth and it is quite probable that he himself had a hand in the murder but his statement as to who his accomplices were must be corroborated by reliable evidence before it can form the basis of a conviction. The corroboration offered in this case was the statement of two men who apparently knew something about the matter from the very beginning but refused to make any statement until the third day of the police investigation. The delay may be due to their reluctance to implicate the accused after they had promised not to give information, but it was obvious that statements obtained after such a long delay must be regarded with suspicion; and these witnesses may possibly be scheming themselves at the expense of innocent men. Even if these witnesses bear no enmity to the appellants and are related to them, the long delay in making their statements makes their evidence liable to grave suspicion. (*Chevis, C J. and Le-Rossignal, J.*) FATTA *v.* EMPEROR. 23 Cr. L.J. 476=67 I C 828 (2)= 2 Lah. L.J. 296.

——S. 133—*Value of approver's evidence*

The statement of an approver, veracious though it may appear to be, and though the truth of a large part of it be established beyond all doubt, nevertheless must be corroborated. (*Jones, J.*) RAM SINGH *v.* EMPEROR. 7 P.L.R. 1916 (Cr.)=34 I.C. 993= 17 Cr. L.J 273=35 P.W.R. 1916 (Cr.).

——S. 133—*Value of approver's evidence.*

Evidence of approver may, in exceptional cases and for reasons stated, be admitted though uncorroborated. (*Rattigan and Chevis, JJ.*) GHULAM *v.* EMPEROR. 17 Cr. L J. 220= 34 I.C. 332=31 P.W.R. (Cr.) 1916.

EVIDENCE ACT (I of 1872), S. 133.

——S. 133—*Value of approver's evidence—Corroboration.*

There should be direct and material corroboration of the statement of an approver who is of very bad character. (*Rattigan, J.*) WARYAM SINGH *v.* EMPEROR. 32 I.C. 843=17 Cr. L.J. 107= 2 P.W.R (Cr.) 1916.

——S. 133—*Value of approver's evidence—Corroboration in material particulars required.*

The criterion must always be kept that, an approver's evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. (*Robertson and Rattigan, JJ.*) LAD KHAN *v.* EMPEROR. 19 P.W.R. (Cr.) 1912=13 Cr. L J 182= 13 I C. 998=117 P L.R. 1912.

——S. 133—*Value of approver's evidence.*

The evidence of an approver should not be believed without material corroboration and in order to see whether there is such corroboration the Court should scrutinise and marshal out very carefully the facts. (*Williams, J.*) MANA *v.* EMPEROR 9 I C. 232= 12 Cr. L J. 35=3 P.W.R. (Cr.) 1911.

——S. 133—*Value of approver's evidence.*

Where the evidence on a charge of murder consists of a confession by one accused against another the accused excepting himself, and the evidence of an approver is to the effect that he saw the deceased alive with the accused just before the murder; neither the confession nor the corroboration should be acted upon. (*Benson and Wallis, JJ.*) MURE VENKATA *v.* IRA-GARRAGIRI NAGI REDDI. 12 I.C. 650=13 Cr. L.J. 562= (1911) 2 M.W.N. 376.

——S. 136—*Question of—Onus in appeal—Witness disbelieved on inadmissible evidence—Effect.*

In ordinary cases the question of onus is not of great importance in appeal where both parties have produced the whole of their evidence upon an issue. But where witnesses have been disbelieved on inadmissible evidence, *e.g.*, certified copies of judgments put in without examining the witness under S. 136, the effect is that the decision is vitiated. (*Campbell, J.*) SOHAN SINGH *v.* SANTA SINGH. 1923 Lah. 491.

——S. 136—*Evidence — Disallowance of questions in cross-examination.*

Where in cross-examining a witness for the prosecution, questions are disallowed by the Court on the ground of irrelevancy or other grounds, the deposition should show what the questions are and the reason for disallowing them. (*Mullick and Sultan Ahmed, JJ.*) RAMESHWAR DUSADH *v.* EMPEROR. 55 I C. 693=21 Cr. L J. 321=1 Pat. L.T. 632.

——S. 138—*Cross-examination— Adverse party.*

The right of cross-examination belongs to an adverse party, and parties who do not hold

EVIDENCE ACT (I of 1872), S. 138.

that position, should not be allowed to intervene and take part in cross-examination and such portions should be expunged from the record. (*Sanderson, C J., Woodroffe and Mookerjee, JJ.*) JARWA BAI *v.* PITAMBAR NILAMBAR SHAH. **36 I C. 689 = 24 C L J. 149.**

——S. 138—*Right in cross-examination to demand repetition of evidence given in chief examination—Rule, if any.*

No hard and fast rule can be laid down as to the right of a counsel to demand in cross-examination the repetition of the whole story told in the examination-in-chief. (*Rattigan and Chevis, JJ.*) LAKHA SINGH *v.* EMPEROR. **89 P.L R. 1914 = 15 Cr. L J 148 = 22 I C. 724 = 30 P.W.R. (Cr.) 1914.**

——S. 138—*Opportunity for cross-examination must be given.*

It is certainly implied by S. 138 of the Evidence Act that a party must have had an opportunity to cross-examine and does not mean that merely a right to cross-examine a witness without an opportunity being offered for cross examination is sufficient compliance with the requirements of the law. (*Jwala Prasad and Coutts, JJ.*) MOTI SINGH *v.* DHANUKDHARI SINGH. **24 Cr. L J 595 = (1923) Pat. 53.**

——S. 138—*Cross-examination — Suit against several defts. — Some supporting plaintiff—Procedure.*

Where some of the defendants support the plaintiff's case and others oppose it, those who support the plaintiff's case should be ordered to cross-examine the plaintiff's witness first, if they desire and to call their evidence and address the Court before the defendants who oppose the plaintiff's case do so. (*Miller, C.J. and Mullick, J.*) MOTIRAM MARWARI *v.* LALIT MOHAN GHOSH. **5 Pat. L J 545 = 58 I.C. 238 = 1 Pat. L.T. 676.**

——S. 138—*Cross examination—Extent.*

The right of cross-examination endowed by S. 138 is not restricted by the fact that there are police papers which are not referred to by the prosecution; and the cross-examination can be made on all matters allowed by the Evidence Act. The cross-examination is not limited to matters raised in evidence elsewhere. (*Parlett, J.*) MAHOMED ALLAY *v.* EMPEROR. **10 I.C. 917 = 12 Cr. L J. 277 = 4 Bur. L.T. 113.**

——S. 142—*Leading question.*

A leading question to the prosecution witness by the prosecution cannot be allowed nor can the reply be used. (*Coutts and Adami, JJ.*) NIBU BHAGAT *v.* KING-EMPEROR. **1 P. 630 = 4 P L T. 76 = 24 Cr L J 91 = 1922 P. 532.**

——Ss. 143 and 154—*Right of accused to ask leading questions—Duty of Court.*

In the course of cross-examination by the defence for the purpose of eliciting facts in their favour from the prosecution witnesses, though these facts are irrelevant, the defence are entitled under S. 143, to ask leading questions. The Courts may, in its discretion under S. 154, permit the prosecution to cross-examine a witness even though he had been originally called by them with regard to the matters elicited by the defence. (*Mookerjee and Richardson, JJ.*) AMRITALALA *v.* EMPEROR. **42 Cal. 957 = 16 Cr L J 497 = 21 C L.J. 331 = 29 I C 513 = 19 C.W N. 676.**

EVIDENCE ACT (I of 1872), S. 143.

——S. 143—*Leading questions—Cannot be asked in Examination-in-chief.*

The Public Prosecutor will not be allowed in examination in-chief to put leading questions such as can properly be put in cross-examination of a hostile witness. (*Das and Bucknill JJ.*) DHANU BELDAR *v.* KING EMPEROR. **2 Pat. L T. 757.**

——S 143—*Leading question disallowed—Counsel to ask Judge to record, if to be made ground of appeal.*

If a Judge disallows a question, the pleader should have the question and order disallowing it recorded, as such a refusal is illegal. (*Twomey and Parlett JJ.*) DEIYA *v.* EMPEROR. **9 Bur. L.T. 133 = 17 Cr. L J 500 = 36 I C. 468.**

——S. 145—*Documents tendered after evidence—Value of.*

A witness cannot be disbelieved without his attention being drawn to the documents inconsistent with his deposition even though the documents were produced after his examination. In such a case he should be recalled for further cross-examination. (*Viscount Haldane*). NABA KUMAR DAS *v.* RUDRA NARAYAN JANA. **43 M L J. 438 = 33 M L T 309 = (1923) M.W.N. 622 = 1923 P C. 93 (P.C.).**

——S. 145—*Witness not shown, contradictory writing.*

A witness was disbelieved though he was not shown the documents to contradict his story, where after the documents were produced, he was not recalled. (*Lord Phillimore*). MERLA VENKANNA *v.* MERLA AGASTHIAN. **27 C.W.N. 725 = 32 M.L T 86 P.C.) = 1923 P.C. 31.**

——S. 145—*Absence of note about directing attention.*

Where the purpose of the production of the document must have been well understood by the witness and from the record of his deposition it was manifest that after being shown the document, he was directly asked whether it was not a fact that he was not at a particular place on the alleged date as was clear from the document and where on re-examination no attempt was made to elicit any explanation. *Held*, the witness was properly contradicted. (*Sir Lawrence Jenkins*) BAIKUNTHA NATH CHATTORAJ *v.* PRASANNAMOYI DEBEYA. **44 M.L.J. 699 = 27 C.W.N. 797 = 1923 P.C. 409.**

EVIDENCE ACT (I of 1872). S. 145.

———S 145—*Oral evidence—Contradiction of, by prior statements—Witness to be specifically asked to explain.*

A Court is precluded both on general principles and by S. 145 from treating the oral testimony of witnesses as rebutted, by his previous statements contained in documents filed in the case, unless those statements have been put to the witness in cross-examination. (*Lord Shaw.*) BAL GHANGADHAR TILAK *v.* SHRI SRINIVASA PANDIT. 39 Bom. 441 = 13 A.L.J. 670 = 19 C.W.N. 729 = 17 Bom. L.R. 627 = 22 C.L.J. 1 = 29 M.L.J. 34 = 18 M.L.T. 1 = (1915) M.W.N. 484 = 2 L.W. 611 = 29 I.C. 639 = 42 I.A. 135 (P.C.)

———S. 145—*Attention of complainant to be drawn to statements used in cross-examination to contradict.*

If the previous deposition of a complainant made before the Magistrate was admitted as a whole in order to contradict him during his cross-examination, it is not consistent with the principle, to admit the evidence in the manner without first drawing the attention of the witness especially to every point used to contradict him. (*Beaman and Macleod, JJ.*) LAKSHMANA TOTARAM *v.* EMPEROR. 31 I.C. 354 = 16 Cr. L.J. 754 = 17 Bom. L.R. 690.

———S. 145—*Witness—Prior statements.*

Prior statements of witnesses not put to them in the witness box are inadmissible in evidence. Previous statements, unless used to contradict or discount the evidence of a witness given in a suit, cannot be legtimately used and even then the particular matter or point must be placed before the witness, as one for explanation in view of its discrepancy with the evidence tendered. (*Mookerjee and Beachcroft, JJ.*) UPENDRA NATH NAG *v.* BHUPENDRA NATH NAG. 32 I.C. 267 = 21 C.W.N. 280.

———S. 145—*Previous statement—Value.*

Previous statements can be used only for the purposes of cross-examining a witness. They cannot be admitted as evidence against an accused. (*Kensington and Johnstone, JJ.*) RAKHIA *v.* EMPEROR. 157 P.L.R. 1911 = 12 Cr. L.J. 214 = 10 I.C. 119 = 56 P.W.R. (Cr.) 1911.

———S. 145—*Discrepancy in prior deposition—Duty of Court.*

Where a Court finds that there are discrepancies between a witness's statement made before it and the one previously made by him before another Court, it should ask him to explain them. (*Kanhaiya Lal.* A.J.C.) SURAJ BAKSH *v.* SUKHDEI. 32 I.C. 231 = 20 L.J. 502.

———Ss. 145 and 155—*Statements under S. 164, Cr. P.C.—Inadmissible against accused—Use of, to contradict statements subsequently made.*

EVIDENCE ACT (I of 1872), S. 146.

Statements taken under S. 164, Cr. P.C. and not covered by S. 288 are inadmissible against the accused. But they can be used for the purpose of contradicting the statements subsequently made in Court by the persons making the former statements. (*Lindsay. J.C.*) PUTTU *v.* EMPEROR. 10 L.J. 753 = 27 I.C. 196 = 16 Cr. L.J. 132 = 17 O.C. 363.

———Ss 145 and 155—(3)—*Examination of witness out of Court—Whether intended to bind down witness to certain evidence.*

Advocates and Pleaders may examine witnesses in their chambers or elsewhere before such witnesses appear in Court if they think fit. Such examination is not made with intent to fix witnesses down to certain evidence, but is made to ascertain what they know and to enable the case to be conducted properly. (*Harmoll, J.*) JORDON *v.* EMPEROR. 14 I.C. 763 = 13 Cr. L.J. 299 = 5 Bur. L.T. 38.

———S. 146—*Cross-examination as to credit—Oral evidence—Credibility of witness.*

Cross-examination as to credit is necessarily irrelevant to any issue in the action; its relevancy consists in being addressed to the credit or discredit of the witness in the box so as to show that his evidence for or against the issue is untrustworthy; it is most relevant in a case where everything depends on the Judge's belief or disbelief in the witness's story. (*Sir George Farewell.*) BOMBAY COTTON MANUFACTURING COY. *v.* MOTILAL. 39 Bom. 356 = 19 C.W.N. 617 = 17 M.L.T. 403 = 28 M.L.J. 593 = 21 C.L.J. 628 = 17 Bom. L.R. 455 = 2 L.W. 521 = (1915) M.W.N. 788 = 29 I.C. 229 = 42 I.A. 110 (P.C.)

———Ss. 146 and 148 to 152—*Scandalous question—Relevancy.*

During the examination of one of the defendants by plaintiff a question was put whether she was made pregnant by a certain person. The question was objected to but the plaintiff contended that it was relevant, his case being that the witness did not inherit the property by reason of her unchastity during the lifetime of her husband. If the plaintiff's case was that she did not inherit the property of her husband by reason of her unchastiity during his lifetime, then the question would be relevant. If, however, it was asked for impeaching her credit as a witness, the Court will have to consider the provisions of Ss. 146 and 148 to 152 of the Evidence Act. (*Chatterjee and Pearson, JJ.*) SUBALA DASI *v.* INDRA KUMAR HAZZRA. 1923 Cal. 815 (2).

———Ss. 146, 148 and 152—*Impeaching credit of witness—Indecent or scandalous questions—Power of Court to disallow.*

A certain lady from whom delt, alleged that he derived title was examined on commission and the plaintiff's pleader cross-examined her on the point whether she had not been kept by a stranger. The object of the cross-examination was to show that the lady did not inherit

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her husband's property on account of her unchastity. The Court disallowed the question without recording any reason. *Held*, that the Court below ought to consider, whether having regard to the plaint, the petition, and the issues framed, the question as it stood was relevant, and if not whether the question was allowable having regard to Ss. 146, 148 and 152 of the Evidence Act. (*Prideaux*, A J.C.) PANDU v ABDUL KADAR. **5 N L J 138 = 1922 Nag. 109.**

——S. 149—*Cross-examination—Instruction.*

Counsel for prisoner should not state as existing facts, matters which he had been told in his instructions on the authority of the prisoner but which he does not propose to prove by evidence, or suggest in cross-examination of prosecution witnesses. (*Jenkins*, C.J., *Mookerjee and Holmwood*, JJ.) EMPEROR v. NAGENDRA NATH SEN GUPTA **21 C L J 396 = 30 I C 128 = 16 Cr L J 676 = 19 C.W.N. 928.**

——S. 149—*Legal practitioner—Cross examination of witness—Privilege—Extent of—Instructions—Disclosure of.*

Counsel are not justified in making serious charges of fraud and crime unless they are personally satisfied of the existence of reasonable grounds for putting them forward. It is not sufficient to plead instructions. A Court can ask counsel as to whether they make a charge in cross-examination on instructions and if so to disclose them to the Court. They could not be used as evidence in the cause but might be used in any disciplinary proceedings taken against counsel. (*Woodroffe, Coxe and Chatterjee*, JJ.) D WESTON v. PEARY MOHUN DAS **40 Cal. 898 = 23 I.C 25 = 18 C W.N. 185.**

——S. 150—*Question affecting third party.*

Where a question in cross-examination reflects not on witness but on a third party, S. 150 which must be referred back to S 146 can have no application (*Fletcher*, J.) PEARY MOHUN DAS v. DONALD WESTON. **9 I C. 509.**

——S. 151—*Indecent or scandalous question—Latitude to counsel.*

Indecent and scandalous questions may be put either to shake the credit of a witness or as relating to facts in issue, or in order to determine whether or not a fact in issue existed. If they are put to shake the credit of a witness the Court has complete control over them to forb d such questions if necessary. But if they relate to facts in issue or to matters necessary to be known in order to determine whether or not the facts inissue existed, the Court cannot forbid such questions, though they may be indecent or scandalous. Advocates have ample discretion in the conduct of cases of which they are in charge and the Court has no power to fetter their discretion by insisting that their case should be put to this witness or that. (*Das*, J.) MAHOMED MIAN v. EMPEROR **52 I.C. 54 = 20 Cr. L.J. 566.**

EVIDENCE ACT (I of 1872), S. 154.

——S. 154—*Hostile witness—Contradictory statements—Weight due to.*

The mere fact that at the trial before the Sessions Judge a prosecution witness tells a different story from that recorded by the Police after the occurrence does not necessarily make the witness a hostile witness. 13 C. 53; 24 C.W.N. 860, referred to. Where a witness called by a party is cross-examined by him his evidence cannot be believed in part and disbelieved as to the rest but it must be rejected in toto. (*Walmsely and Pearson*, JJ.) EMPEROR v. SATYENDRA. **25 Cr L J 193 = 1923 Cal. 463 = 37 C.L.J. 173.**

——S. 154—*Hostile witness, who is.*

An unfavourable witness is not necessarily hostile. A hostile witness is one who from his manner, shows he is not inclined to tell the truth to the Court. A party, called by his opponent, cannot as of right be treated as hostile the matter being in the discretion of the Court. (*Mookerjee and Buckland*, JJ.) LUCHIRAM v. RADHA CHARAN. **66 I.C. 15 = 34 C.L J. 107.**

——S. 154—*Hostile witness—Who is—Commissioner cannot exercise discretion of Court*

A witness is considered adverse where in the opinion of the Judge he bears a hostile animus to the party calling him and not merely when his testimony contradicts his proof When a witness is treated as hostile, cross-examination must be done to discredit the witness altogether and not merely to get rid of part of his testimony. There is in this respect no distinction on principle between an attesting witness whom a party is obliged to call and any other witness whom he may cite of his own choice but the Court may be easily persuaded in the former than in the latter case. In an examination of witnesses on commission, the Commissioner cannot exercise the discretion vested in Court under S 154 of the Act. (*Mookerjee*, J.C. *and Fletcher*, J.) SURENDRA KRISHNA MONDAL v RANI DASSI. **47 Cal 1043 = 33 C L J 31 = 59 I.C. 81 = 24 C W.N 860.**

——S 154—*Hostile witness—Cross-examination—Admissibility of evidence.*

It is not open to the prosecution in a criminal trial to cross-examine their own witness unless the Court declares him to be a hostile witness, unless this is done the answer to questions would not be admissible in evidence and the Court should not allow such questions. (*Coutts and Das*, JJ.) JAGDEO SINGH v. EMPEROR. **1 Pat 753 = 4 Pat. L.T 232 = 24 Cr. L.J 69 = 1923 P. 62.**

——S. 154—*Hostile witness—Who is.*

A witness is not necessarily hostile because in an absent-minded moment he admits the truth. Before a prosecution witness can be

EVIDENCE ACT (I of 1872), S. 155.

declared hostile, there must be good ground for believing that the statement be made in favour of the defence is due to enmity to the prosecution. (*Roe and Ali Imam*, JJ.) FOUZDAR RAI *v.* EMPEROR. 4 Pat. L.W. 111 = 44 I.C. 33 = 19 Cr. L.J. 241 = 3 Pat. L.J. 419 = 1918 Pat. 251.

——**Ss. 155 and 157**—*Identification in jail—Value of, as evidence.*

Evidence of identification in the jail, is not substantive evidence in the trial as it is not on oath, and is made in extra-judicial proceedings. When a person making such an identification, states in Court that he can identify no one, the evidence of identification is inadmissible. (*Lindsay and Sulaiman*, JJ.) NAGINA *v.* EMPEROR. 19 A.L.J. 947.

——**S. 155**—*Recital of age in guardianship petition—If admissible in evidence.*

Recital of age in guardianship petition is admissible in evidence. (*Mookerjee and Rankin*, JJ.) PROHLAD CHANDRA CHOWDHURY *v.* RAMSARAN CHOWDURY. 38 C.L.J. 213 = 1924 C. 420.

——**Ss. 155 and 145**—*Witness if can be contradicted by his previous statement.*

A witness cannot, under S. 155, be contradicted by previous statement made by him unless his attention is drawn to it as laid down in S. 145 of the said Act. (*Johnstone and Shah Din*, JJ.) AMIR BEGAM *v.* BEGAM. 9 P.W.R. 1914 = 22 I.C. 861 = 127 P.L.R. 1914.

——**S. 155**—*Use of Police diary by investigating officer—Corroboration.*

The investigating police officer when in the witness-box was asked about a certain date and the names of certain persons and the Court directed him to give the date and the names from the Police diary. This the witness did. Thereupon the defence asked for an inspection of the whole diary. This was not allowed; but the Magistrate offered an inspection of the date and the names in respect of which the witness had refreshed his memory from the diary. This, however, was refused. *Held* that there was nothing illegal in the course adopted by the Magistrate. There is nothing in the law which entitles the defence to an inspection of anything more than that portion of the dairy from which the witness refreshed his memory. (*Coutts and Das*, JJ.) LACHMI SINGH *v.* EMPEROR. 3 Pat. L.T. 552 = 68 I.C. 623 = 23 Cr. L.J. 591 = 1922 P. 562 (1).

——**Ss. 155 and 157**—*Statements to Police—Corroboration—Cr. P. Code, S. 162—Police diaries.*

Statements of witnesses made to the Police should not be used to corroborate them except in very special circumstances. The evidence of a witness hostile to the Crown may be impeached by reference to the Police diary.

EVIDENCE ACT (I of 1872), S. 157.

(*Roe and Ali Imam*, JJ.) RAM CHARITRA SINGH *v.* EMPEROR. 4 Pat L.W. 325 = 19 Cr. L.J. 512 = 45 I.C. 272 = 3 Pat. L.J. 563 = 1918 Pat. 93.

——**S. 155**—*Statement to Police—Person whether bound to state truth to Police.*

Section 162, Cr. P. Code, allows the credit of a witness to be impeached, by a statement which he is alleged to have made to the Police in the course of an investigation under Chapter XIV of the Code though no person is bound to state the truth to the Police in the course of the above investigation. The statement to the Police is not evidence like a statement made on oath before a competent authority. (*Maung Kin*, J.) NGA PYE *v.* EMPEROR. 41 I.C. 668 = 18 Cr. L.J. 845.

——**S. 155 (3)**—*Contradictory statements by witness—Previous depositions how far can be admitted to impeach his credit.*

Where a previous deposition of a witness is relied on to impeach his credit under S. 155 (3), the contradictory statements alone can be admitted in evidence. (*Mookerjee and Carnduff*, JJ.) IMAMBANDI *v.* MATASUDDI. 13 I.C. 678 = 15 C.L.J. 621.

——**S. 155**—*Cr. P. Code, Ss. 157 to 167—'Local area' of C.I.D. Officer*—(*Per White*, C.J. *and Ayling*, J.)

The 'Local area' of an officer of the C.I.D, is the Presidency of Madras and he is therefore competent to investigate an offence under the Cr. P. Code. (*Sankaran Nair*, J. *Contra.*) An Inspector of the C.I.D. is not one of the officers legally entitled to investigate an offence under Ss. 157 to 167 of the Cr. P.C. and so his evidence is not admissible under S. 157 of the Evidence Act. (*White*, C.J. *Sankaran Nair and Ayling*, JJ.) EMPEROR *v.* NILAKANTA. 35 Mad. 247 = (1912) M.W.N. 207 = 13 Cr. L.J. 303 = 22 M.L.J. 490 = 14 I.C. 849 (S.B.) = 11 M.L.T. 1 Supp.

——**S. 157**—Chowkidhar's *register containing entires as to birth and death—Corroborative evidence.*

A *chowkidhar's* register containing entries of the birth and death of a person may be produced as corroborative evidence. 10 I.C. 719, Dist. (*Piggott*, J.) BALDEO *v.* ABHEY RAM. 24 I.C. 540 = 12 A.L.J. 946.

——**S. 157** — *Petition — Contents of — Admissibility.*

Per *Sanderson*, C.J.—A petition put in by a client for adjournment on the ground that their pleader could not appear on account of "hartal" is admissible in evidence in proceedings under the Legal Practitioner's Act, under S. 157 of the Evidence Act in corroboration of the evidence which the witness had already given at the time when his attention was directed to its contents and when he said the contents were true to his knowledge. Per *Woodroffe*, J.—The petition is improperly used, for the question by which it was made evidence

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was a leading one. But this rather goes to the weight of the evidence so elicited than inadmissibility. The petition is evidence of a step taken in the proceedings and would be corroborative in nature. (*Sanderson*, C.J. *Woodroffe and Mookerjee*, JJ.) EMPEROR *v.* RAJANI KANTA BOSE. **49 Cal. 732 = 35 C.L.J. 356 = 24 Cr. L.J. 33 = 26 C.W.N. 589 = 1922 C. 515**

——S. 157—*Statement, not first information—How used in evidence.*

Where a statement made to a Police officer, is not the first information under S. 154 of Cr. P. Code, the Magistrate must take from the police officer, a statement, that the particular statement was made to him. (*Beachcroft and Ghose*, JJ.) SALIM SARDAR *v.* EMPEROR. **61 I C. 650 = 22 Cr. L J. 410**

——S. 157—Kanungo's *report on inquiry—When admissible.*

Anybody who has seen a place, may be examined as to what he saw under the general provisions of law. A *Kanungo* deputed to make inquiry under S. 148 of the Cr. P. Code may give his deposition, and his report is admissible to corroborate his sworn testimony. (*Holmwood and Sharfuddin*, JJ.) ACHAMBIT DAS *v.* SARADA PRASAD HOLDA. **12 I C. 88 = 12 Cr. L.J. 480.**

——S. 157—*Evidence—Value of Test.*

A statement admissible under S. 157 of the Evidence Act can be proved by a person to whom it was made. Evidence of a person who hears a statement being made is as direct proof of the same as the evidence of a person who sees a deed is proof of the deed being done. (*Chevis*, J.) HEYMERDINGURI *v.* EMPEROR. **38 I.C. 344 = 21 Cr. L.J. 760 = 2 U.P.L.R. (L) 170.**

——S 157—*Deposition before committing Magistrate—Corroboration — Statement before investigating officer—Admissibility — Cr. P. Code, S.* 283.

The effect of S. 288, Cr. P. Code, is to place the deposition of a a witness berore the committing Magistrate exactly on the same footing as the deposition in the Sessions Court. It is "testimony" within the meaning of S. 157 of the Evidence Act and statements made by the witness before the investigating officer are admissible for the purpose of corroborating such "testimony." It is in the discretion of the Sessions Judge to believe and act upon the statments before the committing Magistrate in preference to contradictory statements made before himself on the ground that the former are corroborated by the statements made before the investigating officer. (*Ayling and Odgers*, JJ.) *In re* VELLIAH KONE. **24 Cr. L J 417 = 16 L.W. 239 = 43 M L.J. 222 = 45 M. 766 = (1922) M.W N. 506 = 31 M.L T. 175 = 1923 Mad. 20.**

——S. 157—*Statements recorded by Police during investigation.*

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Statements by witnesses, recorded by a Police Superintendent during investigation are not admissible in evidence, nor oral evidence based on such statements. 35 M. 397, Ref. The words 'legally competent' mean having power under some law, statutory or otherwise. The section is controlled by S. 162, Cr.P.C. (*Sadasiva Aiyar and Napier*, JJ.) KUMARAMUTHU PILLAI *v.* EMPEROR. **(1919) M.W.N. 199 = 20 Cr. L.J. 854 = 28 M L.T. 379 = 50 I C. 834 = 10 L.W. 289.**

——S. 157—'*Fact*'—*Meaning of.*

In S. 157 the word "fact" is used not merely in the sense of an "event", but also includes a continuing fact, such as possession, and that the documents proving possession are therefore admissible in evidence under that section. (*Ayling and Oldfield*, JJ.) MUTHALAGIRI REDDY *v.* PAPPI NAICKEN. **25 I.C. 510.**

——S. 157—*Corroborative evidence.*

The Admission Register of pupils in a school in which their ages are entered is at the most corroborative evidence under S. 157. (*White*, C.J. *and Tyabji*, J.) KRISHNAMA CHARIAR *v.* VEERAVELLI KRISHNAMA CHARIAR. **38 Mad. 166 = 13 M.L T. 385 = (1913) M.W.N. 955 = 19 I C. 452 = 24 M L J. 517.**

——S. 157—*Statements made to a C.I.D. Officer—Admissibility—Officer 'legally competent to investigate' Cr. P.C., S.* 162.

(Per *Benson, Wallis and Miller*, JJ.)—An inspector of the C.I.D. is an officer 'legally competent to investigate' within the meaning of S. 157 of the Evidence Act. (*Abdur Rahim and Sundara Aiyar*, JJ, Contra.) An officer of the C.I.D. who investigates a matter under the order of his superior is not an officer 'legally competent' within the meaning of S. 157 as he does not derive his power from the Police Act or the Cr. P.C. (*Sir Ralph Benson, Wallis, Miller, Abdur Rahim and Sundara Aiyar*, JJ.) MUTTUKUMARASWAMI PILLAI *v* EMPEROR. **35 Mad. 397 = 13 Cr. L J. 852 = (1912) M.W.N. 649 = 14 I.C. 896 = 12 M.L.T. 1 (F.B.).**

——S. 157—*Test identification—Statement made to police—Admissibility.*

Owing to the lapse of time between an identification by the Police and the trial, a witness was unable to say whether the person on trial is the person identified, *held*, that the statement made by the witness to the Police is admissible in evidence under S. 157. (*Mullick and Atkinson*, JJ.) SARWAR KHAN *v.* EMPEROR. **55 I.C. 273 = 21 Cr. L J. 257.**

——Ss. 157, 159 and 32 (2)—*Chowkidhar's diary—Entries made for illiterate chowkidhar by others, the value thereof.*

Entries of birth and death of a certain person made for an illiterate chowkidhar, in his diary by other persons, cannot, after the chowkidhar's death, be admissible in evidence under S. 32 (2) in spite of the deposition of the persons, who

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made the entries that they made them at the request of the chowkidhar. But these entries are admissible under S 157 and also possibly under S. 159 of the Act. 1 I.C. 376, Dist. (*Chamier*, C.J. *and Roe*, JJ.) NAINA KOER *v.* GOBARDHAN SINGH. 1919 Pat. 252 = 37 I.C 424 = 2 Pat. L.J. 42.

——S. 157—*Panchanama—Evidence.*

A Panchanama is not evidence of the statements contained therein and it should be proved and exhibited as relevant evidence of those statements. (*Pratt*, J.C. *and Hayward*, A.J.C.) IMPERATOR *v.* MISRI. 12 I.C. 209 = 12 Cr. L.J. 439 = 5 S L.R. 31.

——S. 159—*Refreshing memory—Question as to date of birth.*

A witness is entitled to refer to a horoscope made at the time to refresh his memory though the document is not filed in a list under O. 7, R. 14. (*Lord Phillimore*). BANWARI LAL *v.* MAHESH. 41 All. 68 = 21 O.C. 328 = 23 C.W N 517 = 6 O.L J. 168 = (1919) M.W.N. 490 = 49 I.C. 840 = 45 I.A. 284 (P.C.).

——S. 159—*Refreshing memory—Police diary—Witness can be compelled to refresh his memory.*

A witness can be compelled to refresh his memory by reference to any memorandum or other writing prepared by the witness, if there is a lapse of memory on a point asked of the witness. (*Piggott and Walsh*, JJ.) HARKHAU *v.* EMPEROR. 63 I.C. 575 = 19 A.L.J. 76.

——S. 159—*Refreshing memory—Date of death.*

The plaintiff in order to show that his father died before the property had been acquired, produced a mortgage-bond which had been executed by him on the 28th October 1892 in which he was described as the son of Khan Mahomed Akonda deceased. *Held* the deed is admissible to refresh memory as to when the father died. (*Mookerjee and Rankin*, JJ.) SAYERUDDIN *v.* SAMIRUDDIN. 1923 Cal. 378.

——Ss. 159 and 160—*Refreshing memory—When allowed.*

When a written record brings to the mind of a witness neither any recollection of the facts mentioned in it nor any recollection of the writing itself but which nevertheless enables him to swear to a particular fact from the conviction of his mind on seeing the writing which he knows to be genuine, the witness may be allowed to refresh his money by looking at the record. (*Newbould and Suhrawardy*, JJ.) ABDUL SALIM *v.* EMPEROR. 49 Cal. 573 = 33 C L.J 279 = 26 C.W.N. 680 = 23 Cr. L J. 657 = 1922 Cal. 107.

——S. 159—*Age certificate.*

An age certificate given by a medical man to his patient can be used by the medical man under S. 159. (*Coutts-Trotter and Srinivasa Aiyengar*, JJ.) VENKATA RANGAPPA NAICKEN *v.* SUBRAYA GOUNDAN. 33 I.C. 142.

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——S. 159—*Witness—Duty of—Refreshing memory.*

A witness before a Court of justice is under an obligation to tell the truth of the whole truth to the very best of his power. If upon any question he suffers from a *bona fide* lapse of memory of that failure of memory can be remedied by reference to any memorandum or other writing prepared by the witness at the time of the Court invites the witness to refresh his memory, with reference to the writing, the witness is under an obvious obligation to do so. It is part of the duty under which he lies to lay the whole truth before the Court to the best of his ability. (*Piggott and Walsh*, JJ.) HARKHOO *v.* EMPEROR. 63 I.C. 575 = 23 Cr. L.J. 142 = 24 O.C. 303.

——S. 159—*Arbitration proceedings—Evidence taken down by clerk—Whether admissible—Procedure.*

A note of evidence taken by a clerk in the course of abortive arbitration proceedings cannot be admitted in evidence, the proper procedure is to question the clerk as to what was said at the time, allowing him to refresh his memory by reference to the note under S. 159 of the Evidence Act. (*Hartnoll, Offg.*, C.J. *and Twomey*, J.) MA AUNG BYU *v.* MAUNG THET HNIN. 23 I.C. 940 = 7 Bur. L J. 240.

——S. 160—*Scope of—Correctness of statements—Proof of.*

The degree of conviction postulated by S. 160 cannot be treated as equivalent to any, on which the witness may choose to say that he is sure, whether or not it is too fantastic or illegal to commend itself to reasonable men. The witness must satisfy the Court, with reference to ordinary probabilities, of his right to be sure that the record relied on by him is correct. (*Abdur Rahim and Oldfield*, JJ.) M.S. YESUVADIYAN *v.* SUBBA NAICKER. 52 I.C. 704.

——S. 161—*Police diaries—Right of accused to inspect.*

An investigating officer examined as a witness for the prosecution was asked about a certain date and the names of certain persons. Thereupon the Court directed him to give out the particulars from a reference to his diary. *Held* that the accused was entitled to an inspection of that portion of the diary from which the witness refreshed his memory and not of the rest of the document. (*Coutts and Das*, JJ.) LACHMI SINGH *v.* EMPEROR. 2 Pat. 74 = 3 P.L.T. 562 = 23 Cr. L.J. 591 = 1922 P. 562 (1).

——S. 162—*Summons to produce document—Discretion.*

If the Court decides to summon a Government Official for the production of certain

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document, it should do so after careful consideration. And once summons have been issued, production should be insisted on, if the party so desires it. (*Drake-Brockman*, J.C.) LAXMAN RAO *v.* VITOBA. **45 I.C. 898.**

——S. 163—*Production of documents by a party—Inspection by plaintiff—Admission of documents and evidence.*

In a pending trial the defendant produced certain account books and gave inspection of the same to the plaintiff on his request. The plaintiff however did not admit the genuineness of those accounts. The Court admitted the documents in evidence without proof and asked the plaintiff to adduce rebutting evidence if any, *held* that the procedure of the lower Court was not justified by S. 163 of the Evidence Act. S. 163 does not render proof of the document to be executed unnecessary or alter the normal incidence of that burden. *Quaere.*—Whether S. 163 of the Evidence Act is applicable to accounts produced under the procedure for discovery or only to accounts produced after the trial has begun. (*Oldfield and Venkatasubba Rao*, JJ.) RAJAGOPALA AIYENGAR *v.* RAMANUJA AIYENGAR. **(1923) M W.N. 282 = 18 L.W. 165 = 1923 Mad. 607.**

——S. 163—*Documents filed under—Evidentiary value of.*

Evidence admitted under the special provisions of S. 163 of the Indian Evidence Act need not be conclusive evidence against the party who has inspected the documents. The documents which the other party has produced become evidence in the case for what they may be worth. (*Lindsay*, J C.) RAMADHIN *v.* RAM DAYAL, **23 O.C. 156 = 57 I.C. 973 = 2 U.P.L.R. (J.C.) 134.**

——S. 164—*Statements recorded—Value of.*

An indiscriminate use of S. 164, Cr. P.C. is to be deprecated. Statements should not be recorded under that section unless the person making it, is a free agent and voluntarily agrees to have his statement taken down. (*Rattigan*, C.J. *and Le-Rossignal*, J.) HIRALAL *v.* EMPEROR. **18 P.W.R. (Cr) 1918 = 16 P.R. (Cr.) 1918 = 19 Cr. L.J 517 = 48 I.C. 277 = 63 P.L.R. 1918.**

——S. 165.

Where a Magistrate on the assurance of the police *peshi* clerk in his Court asked a defence witness whether the accused had ever been challanged in a *badmashi* case. *Held* that this was an improper question unless the Magistrate had convinced himself on the best information that there was some real foundation for the facts mentioned in the question. (*Knox and Karamat Hussain*, JJ.) LUCAS, C.J, *v.* RAMAI SINGH. **23 I.C. 185 = 15 Cr. L.J. 233 = 12 A.L.J. 152.**

——S. 165—*Duty of trial Court—Interventian of appellate Court.*

The intervention of the trial Court with questions during the examination of the witness, cannot be set right on appeal unless it is established that the intervention exceeded the bounds of even the comprehensive provision of S. 165 of the Evidence Act and so impeded the legitimate work of counsel as to cause a mistrial leading to failure of justice. (*Mookerjee*, A.C.J. *and Fletcher*, J.) SURENDRA KRISHNA MONDAL *v.* RANI DASSI. **47 Cal. 1043 = 59 I.C. 814 = 24 C.W.N 360 = 33 C.L J. 34.**

——S. 165—*Evidence—Power to order production of—*Audi alteram partem—*Indicative evicence—Duty of judicial officer—Practice.*

S. 165 of the Evidence Act and O. 13, r. 10, C.P.C., are intended to enable the Court to get at the truth. But the act of sending for document under those provisions does not *ipso facto* make the document evidence in the case. If relevant evidence as a guide to such evidence is found therein, proceedings must be taken, if such evidence is admissible at that stage to have it brought into the trial according to the provisions of law. The rule of *audi alteram partem* is one of elementary justice and accords with common sense. The duty of a judicial officer is to ascertain judicially which way the truth lies and not which party has made the better fight. (*Stanyon*, A.J.C.) PUNJA *v.* BHADU. **18 I.C. 857 = 9 N.L.R. 11.**

——S. 165—*Court can call for and admit evidence.*

Even though a document is not produced at the first hearing of a case the Court can call for the document under S. 165 of the Evidence Act. (*Ashworth*, A.J.C.) SHANKAR LAL *v.* MAHBUB SHAH. **25 O.C. 286 = 1923 (O.) 59.**

——S. 165—"*Any witness*" *includes Court witness—Right of cross-examination.*

The words "any witness" in S. 165, Evidence Act include a Court witness. *Quaere* how far the right to cross-examine such a witness is an absolute right or requires the leave of Court. (*Simpson*, A.J.C.) MAKUND SINGH *v.* MT, GHAFUR.UN-NISSA. **74 I.C. 108 = 9 O. & A.L.R. 549.**

——S. 167—*Personal knowledge—Use of.*

A Magistrate cannot import his personal opinion, about the personal character, in the decision of the case before him nor can he refuse to believe evidence in the accused's favour on that account. (*Piggott and Walsh*, JJ.) JAI NARAIN *v.* EMPEROR. **20 Cr. L.J. 283 = 50 I.C. 171 = 1 U.P.L.R. (H C.) 22.**

——S. 167—*Evidence—Admission of irrelevant evidence and whether vitiates judgment.*

The main fact that inadmissible evidence was admitted by Court does not vitiate judgment if the conclusion is arrived at on the merits apart from the evidence improperly admitted. (*Mookerjee and Beachcroft*, JJ.) AMBAR ALI *v*, LUTFE ALI. **45 Cal. 159 = 21 C.W.N. 996 = 41 I.C. 116 = 25 C.L.J. 619.**

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———S. 167—*Judgment on—Evidence not on record.*

A judgment on evidence not on record will be set aside on appeal. (*Jenkins*, C.J. *and Mookerjee*, J.) MONI LAL KAR *v.* UMA CHARAN CHAKRAVARTY. 23 I.C. 571 = 19 C.L.J. 541.

——S. 167—*C.P. Code, S.* 115—*Material irregularity.*

Examination of a witness without notice to the parties or their pleaders and without affording them an opporunity to cross-examine him, or to rebut his statements and decision on such evidence, is material irregularity within S. 115, of the C P. Code. (*Mookerjee and Beachcroft*, JJ.) PEARY LAL DAS *v.* PEARY DAL DAWN. 18 C.L J. 556 = 22 I.C. 407 = 19 C.W.N. 903.

———S. 167 — *Inadmissible document—Omission to object to its admission.*

It is the duty of the Court to exclude the irrelevant document from evidence even if no objection is taken to its admissibility by the parties. Omission to object would not render it admissible. (*Miller*, C.J. *and Mullick*, J.) SUNDARA KUER *v.* RAM KAIR CHOWBAY. 5 Pat. L J. 410 = 1 Pat. L.T. 702 = 57 I.C 561 = 1921 Pat. 17.

———S. 167—*Misdirection to the jury.*

A misdirection to the jury is strictly not a case of improper admission or rejection of evidence within the meaning of S. 167. (*Ormond*, O.C.J., *Robinson, Pirlett and Maung Kin*, JJ.) THEIN MYIN *v.* EMPEROR. 9 L.B.R. 60 = 42 I.C. 161 = 18 Cr. L.J. 929 = 10 Bur. L.T. 123 (F.B).

EXAMINATION.

See EVIDENCE ACT, SS. 132-166.

EXAMINATION OF WITNESSES.

See (1) C.P. CODE, O. 16 AND O. 26.
(2) EVIDENCE.
(3) EVIDENCE ACT, SS. 118-134.

EXCESS PROFITS DUTY ACT (X of 1919).

———S. 2, 3, 15 and 31—"*Business*"—*Income-tax Act, S.* 51 (1)—*Calcutta Turf Club—Income from racing is liable to duty.*

The Calcutta Turf Club carries on 'business' within the meaning of S. 2 of the Excess Profits Duty Act and is liable to duty under S. 3 in respect of income derived from non-members under the following heads: (1) gate money or entrance fee; (2) entrance fee paid by owners of horses; (3) Book-maker's license fees; (4) percentage of totalisation. That the members do not receive a profit out of the transactions would not entitle the club to any exemption. (*Sanderson*, C.J., *Teunon and Richardson*, JJ.) THE ROYAL CALCUTTA TURF CLUB *v.* SECRETARY OF STATE. 66 I.C. 473 = 25 C.W.N. 734.

——S. 2—*Business—Meaning of—Company owning business and letting tenements—Liability to tax.*

The term 'business' in S. 2 has the same meaning which it has in the Income-tax Act. The Act does not extend that meaning nor introduces anything which, according to the scheme of the Income-tax Act, is wholly dissimilar. A person who has invested his capital in house property and kept a rent office and a staff of rent collectors, clerks, etc., for the purpose of letting out his house and collecting rents. *Held*, he was not carrying on a business within the Excess Profits Duty Act. A company which holds house property and distributes the rents in the form of dividends to shareholders is not carrying on business within that Act and although it is an association for acquiring gain, yet the method is passive by owning property and not by the active carrying on of business. (*Twomey*, C.J. *and Robinson*, J.) *In re* KALADAN SURATEE BAZAAR CO. 56 I.C. 914.

——Ss 4, 5, (h) 6 (1) (b)—*Income tax Act, S.* 2 (1)—*Capital employed in business is within section.*

Moneys invested in the shares of public companies and in Govt. securities and treated by the firm as part of the capital of the firm, are "capital employed in the business of the firm" under the Excess Profits Duty Act. Moneys lent to business concerns and individuals were also capital employed in the business. (*Sanderson*, C J. *and Richardson*, J.) MARTIN & CO. *v.* SECY. OF STATE. 67 I.C. 909 = 26 C.W.N. 875.

———Ss. 4 and 19—*Duty—Not assessable within the year—Exemption under S.* 19.

Under the Act, the assessee need not be assessed to duty within the revenue year for which the duty is imposed. S. 19 of the Act does not exempt profits from liability unless such profits are chargeable with Super tax which exceeds the excess profits duty. (*Wallis*, C.J., *Ayling and Krishnan*, JJ.) CHIEF COMMISSIONER OF INCOME-TAX *v.* RAMANATHAN CHETTIAR. 44 Mad. 768 = 14 L.W. 57 = (1921) M.W.N. 513 = 63 I.C. 420 = 41 M.L.J. 189 (F. B.)

——S. 6, (1) (b)—*Proviso—Increase of capital—Exemption—Assessee, duty of.*

Where an exemption from excess profits duty is claimed under the proviso to S. 6, (1) (*b*) of the Act, on the ground that the capital has been increased, it is the duty of the assessee to satisfy the Board as to the increase. (*Wallis, Ayling and Krishnan*, JJ.) DEPUTY COMMISSIONER, INCOME-TAX *v.* HAJEE ABDULLA CO. 70 I.C. 80 = 14 L.W. 413 (F.B.).

EXCESS PROFITS DUTY ACT (X of 1919), S. 18.

———S. 18—*Proceedings for the recovery of duty—Limitation Rules framed under the Act—Rule 24.*

Rule 24 (1) describes how the Excess Profits duty is to be recovered when default has been made in payment. This is the only rule dealing with mode of recovery, and the subject of the rule is entered as "mode and time of recovery." Also rules 23 and 24 of the rules made by the Govt. under S. 18 (1) and (2) of the Excess Profits Duty Act are classed under the heading "recovery of duty" whilst rule 13, which is the rule providing for a notice of demand being served on the person assessed, is put under the heading "demand". From this it is evident that the demand made on the assessee is treated in the rules as something quite distinct from the recovery of the duty, the proceedings for which begin when default has been made. The same distinction is made in the Income Tax Acts, VII of 1918 and XI of 1922, where the notice of demand is provided for in a chapter the subject of which is "Deductions and Assessment," whilst there is a separate chapter dealing with the subject of the recovery of the tax. The words in sub-rule (3) of the rule 24 "proceedings for the recovery of any sums" mean the proceedings taken under sub-rule (1) of that rule after default has been made in the payment. (*Martineau*, J.) GIAN SINGH BAHADUR SINGH *v.* EMPEROR. **4 Lah. 163 = 1924 Lah. 54 (1).**

———Sch. 1 — '*Carrying on business*'—*Agents, secretaries and treasurers of a mill company, status of.*

Agents, secretaries and treasurers of a mill company, are not to be considered as carrying on a business excepted under Sch. I, to the Act nor are they whole-time officers or servants of the business. (*Macleod*, C.J. *and Fawcett*, J.) *In the matter of* DORAISAMI AIYER & CO. **45 Bom. 1064 = 63 I.C. 775 = 23 Bom. L.R. 609.**

———Sch. 11, Cl. (1), Proviso—*Profits intended for business is not capital.*

Unless profits are actually employed in business, they cannot be treated as capital. Profits intended to be so used are not capital. Whether they are so employed is a question of fact and the Chief Revenue authority should decide the question on the materials before it. (*Macleod*, C.J. *and Fawcett*, J.) *In the matter of* BOMBAY AND PERSIA STEAM NAVIGATION CO. **45 Bom. 881 = 60 I.C. 964 = 23 Bom. L.R. 139.**

EXCHANGE.

See TRANSFER OF PROPERTY ACT, S. 118.

EXCLUSIVE POSSESSION.

See (1) ADVERSE POSSESSION.
(2) CO-SHARER.
(3) HINDU LAW, JOINT FAMILY.

EX-COMMUNICATIONS.

See (1) C.P.C., S. 9.

EXECUTION—Appeal.

(2) CASTE DISABILITIES REMOVAL ACT.
(3) HINDU LAW.
(4) TORT.

EXECUTING COURT.

See C.P.C., S. 21.

EXECUTION APPLICATION.

See (1) C. P. CODE, S. 47 AND O. 21, R. 11.
(2) LIMITATION ACT, ART. 181.

EXECUTION OF DOCUMENT.

See (1) DEED, EXECUTION.
(2) WILL, EXECUTION.

EXECUTION PROCEEDINGS.

See (1) C.P. CODE, O. 21.
(2) EXECUTION.

EXECUTION.

See also C. P. CODE, S. 47 AND O. 21.

APPEAL.
APPLICATION.
ATTACHMENT.
COMPLETION OF.
COMPROMISE DECREE.
CONSTRUCTION OF DECREE.
DECREE BINDING.
DECREE NULL AND VOID.
DECREE NOT TO BE VARIED.
DUTY OF COURT.
EQUITABLE EXECUTION.
EX PARTE ORDER.
FINAL DECREE.
FOREIGN DECREE.
JOINT DECREE.
JURISDICTION.
LEGAL REPRESENTATIVES.
LIABILITY OF JUDGMENT-DEBTOR.
LIMITATION.
MESNE PROFITS.
MODE OF.
RIGHT TO.
SCOPE OF.
SETTING ASIDE.
SURETY.

Appeal.

———*Appeal—Judicial order.*

Every judicial order made in the course c execution proceedings, is not an order under S. 47 of the Code. (*Mookerjee and Teunon*, JJ.) DEOKI NANDAN SINGH *v.* BANSI SINGH. **14 C.L J. 38 = 10 I.C. 371 = 10 C.W.N. 124.**

———*Appeal—Order refusing execution against partner.*

An order refusing execution of a decree against a partner of a firm against which the decree was obtained, has the force of a decree under O. 21, R. 50 (3) and is appealable. (*Ormond and Twomey*, JJ.) VALLIAPPA *v.* RANGASWAMI. **8 L.B.R. 300 = 35 I.C. 429 = 10 Bur. L.T. 42.**

EXECUTION—Application.

Application.

———*Application—Dismissed for default—Restoration.*

Where an application for cancellation of sale in favour of the applicant and recovery of the property on the allegation that the property did not belong to the judgment-debtor, was dismissed for default, the decree-holder cannot apply for the restoration of the same and the Execution Court has no power to entertain such an application. (*Rafique*, J.) BHIKAM KHAN *v.* DAN SINGH. **1923 All. 544.**

———*Application—Striking off—Effect.*

When a case is in appeal and in the meanwhile the execution proceedings are struck off, the execution proceedings and consequent attachment remain effective; so the transfer of the attached property during the pendency of the appeal is void. When once an objection is overruled it is not open to the party to raise the same over again in appeal and the decree-holder is entitled to execute his decree. (*Tudball and Sulaiman*, JJ.) DAOOD ALI SHAH *v.* HAYAT ALI SHAH.
38 I.C. 711=2 U.P.L.R. (All.) 200.

———*Application—Revival—Limitation.*

A decree for demolition of a house was made on 31st July, 1907. An application for execution was made on 15th February, 1909. On the 26th May, 1909, the judgment-debtor took two weeks' time to demolish the building and the application was struck off the file as the decree-holder consented. On the 21st July, 1913, another application was put in; *Held*, that this application was to revive the former application and execution was not barred. (*Bannerjee*, J.) GANGA PRASAD *v* JWALA PRASAD. **26 I.C. 815.**

———*Application—Continuation of—First application for arrest—Second application for attachment.*

Where a first application for execution was for arrest of the judgment-debtor and the second application was for attachment of his property, the second is not one in continuation of the first application. (*Tudball* J.) MEVA LAL *v.* AHMADALI. **13 I.C. 929=9 A.L.J. 17.**

———*Application—Law applicable—Decree passed under one act—Execution when the Act is repealed by another Act is governed by the latter Act.*

A suit terminates with the decree and consequently when after the passing of the decree, the Act under which it was passed is replaced by another Act, the application for execution must be governed by the latter Act, for though it is an application in the suit it is a separate proceeding. (*Chatterjee and Mullick*, JJ.) JAGENDRA NATH DEY *v.* GAUR SINGH MURA. **34 I.C. 385=20 C.W.N. 582.**

———*Application—Fraud—Suspension of.*

There is no suspension of execution, where there is no fraud or force which prevented the consideration of a previous application. (*Holmwood and Imam*, JJ.) KARTIK CHANDRA MONDAL *v.* NILMANI MONDAL. **32 I.C. 931=20 C.W.N. 686.**

EXECUTION—Attachment.

———*Application—Stay—Fresh application.*

The decree-holder obtaining possession after an unconditional order of stay by the appellate Court till the decision of the appeal must again apply for the same after the appeal is disposed off. (*Mookerjee and Beachcroft*, JJ.) KALI SHANKER SAHAI *v.* PROTAP UDAI NATH SAHAI. **16 I.C. 708 (2).**

———*Application—Pendency of.*

An execution application must be deemed to be pending until it is validly disposed of. (*Sadasiva Aiyar and Napier*, JJ.) VENKATAMMA *v.* MANIKKAM NAYANI VARU.
26 I.C. 244=16 M.L.T. 399.

———*Application—Abandonment—Fresh application.*

There may be a presumption of abandonment when a second application is made which may be rebutted by conduct. (*White and Oldfield*, JJ.) KURUCHA GANGU NAIDU *v.* KOOVURI BASAVA REDDY. **13 M.L.T. 145=18 I.C. 691=(1913) M.W.N. 821.**

Attachment.

———*Attachment—Money due from Railway Company—Under transmission through Post Office—Post Office, agent of the judgment-debtor.*

An attachment of the money due to the judgment-debtor from the Provident Fund of a Railway Company while in the hands of the Post Office in the form of a Money Order sent by the Fund at the request of the judgment-debtor is good as the Post Office was the agent of the judgment-debtor and not of the Railway Company. (*Tudball*, J.) PARMER *v.* CAWASJEE. **33 I.C. 723=14 A.L.J. 236.**

———*Attachment—Dismissal of application—Attachment, if subsists after.*

When the property is once attached in execution of a decree the attachment subsists even when the execution application is dismissed unless the order of dismissal amounts to a declaration that the decree is incapable of execution and unless the order raises the attachment. (*Stanley*, C.J. *and Banerji*, J.) IMTIAZ ALI *v.* BISHAMDAS. **10 I.C. 248=8 A.L.J. 819.**

———*Attachment—Claimant a third person—Failure to establish claim.*

Where the decree-holder in a suit for declaration that certain property belongs to judgment-debtor, proves the title of the latter, he is entitled to a decree, unless a third person proves that he has acquired title by adverse possession. A claimant in attachment proceedings must prove that he is the owner of the property if he fails he has no further interest in the

EXECUTION—Attachment.

proceedings. (*Macleod*, C.J. *and Fawcett*, J.) SWAMIRAO SHRINIVAS *v.* BHIMABAI PADAPPA. **45 Bom. 1020=62 I.C. 101=23 Bom. L.R. 416.**

——— *Attachment — Wrongful attachment —Decree-holder's liability.*

A suit by the rightful owner for wrongful attachment of property, which is attached in execution as being the property of the judgment-debtor is maintainable against the decree-holder, in spite of a subsequent order that the property should not be released and returned to the true owner, pending the decision of the suit by decree-holder that the property is liable to attachment. (*Mookerji*, A.C.J. *and Fletcher*, J.) BHUSHAN CHANDRA PAL *v.* NARENDRANATH KOOR.
60 I C. 280=32 C.L.J. 286

———*Attachment—Who can object to.*

An objection to the attachment of property on the ground that it does not belong to the judgment-debtor is to be urged by the person claiming ownership of the property and none else. (*Abdur Rahim and Odgers*, JJ.) GOVINDARAJULU NAIDU *v.* RANGA RAO.
40 M L J. 124=13 L.W. 97=(1921) M.W.N. 98=62 I.C. 255=29 M L.T. 99.

———*Attachment — Effect of — Whether creates charge or confers title.*

An attachment in execution is only meant to prevent private alienation and does not create any charge in favour of decree-holder. Where one property is attached under two money-decrees, and brought to sale under the latter attachment, the sale is not affected by the prior attachment in the other suit and the attaching creditor's right to redeem the mortgage, if any, on the attached property, comes to an end. The auction-purchaser purchasing property under attachment takes it free from attachment and he gets unrestricted rights of alienation, and acquires any equity or right to redeem which the judgment-debtor may have had. (*Wallis*, C.J. *and Seshagiri Aiyar*, J.) CHIMIYAPPA THARAKAN *v.* RAMA IYER. **44 Mad. 232=40 M.L J. 65=62 I.C. 121=(1921) M.W.N. 53.**

———*Attachment—Devisee's interest— Probate taken by Administrator-General—Latter not made party to execution—Effect of.*

In execution of a personal decree against a father, the son's share in the property was attached and the Administrator-General who had taken probate of the father's will was not made a party to the execution : *Held*, that the son's share could not be sold because the bequest in favour of the son becomes a vested interest in the legatee from the date of the father's death though the son may be entitled to receive it only in due course of administration. (*Benson and Abdur Rahim*, JJ.) ADUSUPATTI VENKATA RAO *v.* SWAMI PILLAI.
11 M.L.T. 27=(1912) M W.N. 56=13 I.C. 795=22 M.L.J. 228.

EXECUTION—Compromise decree.

———*Attachment—Liability of decree holder for improper attachment.*

The attaching creditor is responsible for all results that may follow from an improper attachment and all that a decree-holder warrants is that the property belongs to the judgment-debtor. (*Piggott*, J.C. *and Lindsay*, A.J.C.) BRIJ MOHAN LAL *v.* MUNNI BIBI.
13 I.C. 803=14 O.C. 343.

Completion of.

———*Completion of—Money paid into Court —When execution complete.*

When money is paid into Court in satisfaction of a decree, the execution of the decree with regard to such payment is not complete till the money has been actually paid by the Court to the decree-holder. 17 M. 165; 6 A. 366; 12 A. 399, F.B., Rel. on. (*Scott*, C.J. *and Rao*, J). SADASHIV MAHADU *v.* NARAYAN VITHA.
35 Bom. 452=11 I.C. 987=13 Bom. L.R. 661.

———*Completion of—Possession.*

Execution proceedings come to an end as soon as possession has been delivered. (*Abdul Raoof*, J.) SALAMAT ALI *v.* ALI AKBAR.
55 I.C. 646.

———*Completion of—Confirmation of sale.*

Though the decree-holder-purchaser is unable to obtain possession that would not entitle him to take out further execution for that portion of his purchase-money which is represented by the property purchased by him. Execution comes to an end with the sale of the property and whether or not the auction-purchaser obtains possession of the property sold is wholly immaterial for the purpose of the decree and it does not in any way affect it. (*Das and Adami*, JJ.) TRILOKE NATH JHA *v.* BANSMAN JHA.
1 Pat L.R. 6=2 Pat. 249=(1923) Pat 300=1923 P. 22.

———*Completion of—Objection— When to be taken.*

The objection, if any, should have been taken before the Court proceeded to sell the property. The property having been sold the execution case was at an end ; and it cannot now be urged that the objection to the sale is a question that arises in execution. (*Das and Kulwant Sahai*, JJ.) HIRJI JIVRAJ *v.* RAMJAS.
72 I C. 670 (1).

Compromise Decree.

——— *Compromise decree—Instalments—Default.*

Where a compromise decree in a partition suit is passed for money to be paid by instalments mentioning nothing about the default it can be executed by applying on each default. (*Banerjee*, J.) MUSTAFA BEGUM *v.* SIRAJUL NISA. **32 I.C. 693.**

———*Compromise decree—Executing Court can go behind the decree.*

A Court executing a decree based on a compromise can go behind the decree and consider

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the terms of the compromise for a correct understanding of the decree. (*Fletcher and Richardson, JJ.*) JOYANUDDIN KHAN *v.* JAMIRUDDIN SARKAR. 37 I.C. 916=21 C.W.N. 835.

———*Compromise decree—Not to be varied.*

A decree whether on consent or after contest must be executed as it stands and cannot be varied by the Executing Court in the light of subsequent events. (*Mookerjee and Roe, JJ.*) PRASANNA KUMARI DEBI *v.* SRIS CHANDRA. 38 I.C. 344=22 C.L.J. 561.

———*Compromise decree— Plea of tender prior to suit.*

A plea of tender prior to suit can be raised in execution proceedings where an award is made a rule of Court. (*Ayling and Seshagiri Aiyar, JJ.*) PEDA VEERANNA *v.* GONDIMALLA VEERANNA. (1917) M.W.N. 308= 38 I.C. 295=5 L.W. 718.

Construction of Decree.

———*Construction of decree.*

The Executing Court cannot be asked to interpret, the decree which is on the face of it clear and unambiguous, in the light of the pleadings or the record so as to give it a meaning inconsistent with its unambiguous terms. If a decree was erroneously drawn in the High Court, the High Court has inherent power to amend it in the necessary manner (*Piggott and Walsh, JJ.*) MUHAMMAD MARUF *v.* SULTAN AHMAD. 34 I.C. 344

———*Construction of decree—Power of executing Court to clear ambiguity in decree.*

Where a decree is incomplete and ambiguous it is not the duty of the Court executing the decree to complete it and to give a definite meaning to the ambiguity. (*Knox, J.*) MUHAMMAD HASAN ASKARI *v.* NIAZ HUSAIN. 29 I.C. 213=13 A.L.J. 428.

———*Construction of decree—Decree giving life estate to decree-holder.*

A decree giving life estate to the decree-holder cannot be executed after his death. (*Rafique, J.*) SHEO KARAN *v* MAHADEO SINGH. 19 I.C. 376=11 A.L.J. 454.

———*Construction of decree—Decree directing a party to pay money as condition precedent to recovery of possession—Payment after appeal—Right, if forfeited.*

Where a decree directs a party to pay a certain sum to another as a condition precedent to recovery of possession and provides that on default the right to recover is forfeited, and where the party pays within the same period from the decree of the Appellate Court and not from the decree of the trial Court he does not forfeit the right to recover possession. (*Scott, C.J. and Hayward, J.*) SATVAJI BALAJIRAO *v.* SAKHARLAL ATMARAM. 39 Bom. 178= 26 I.C. 784=16 Bom. L.R. 778.

———*Construction of decree—Decree operative or not—Jurisdiction.*

EXECUTION—Construction of decree.

An executing Court can determine whether the decree which it is asked to execute is a subsisting and operative decree and can refuse execution if the decree is not operative. (*Chatterjee and Walmsley, JJ.*) UGRA NARAIN SINGH *v.* BASAN NARAYAN SINGH. 17 C.W.N. 868=19 I.C. 680=18 C.L.J. 209.

———*Construction of decree—Addition to terms.*

A decree must be executed as it stands and the decree must be self sufficient. Where a decree was silent as to interest, no interest can be claimed by decree-holder, he should apply for amendment of the decree. (*Mookerjee and Beachcroft, JJ.*) BHIKARI SUKUL *v.* GADADHAR RAMANUJ DAS. 16 C.L.J. 586= 15 I.C. 735=17 C.W.N. 87.

———*Construction of decree.*

Executing Court will execute a decree as it finds it and not as the parties understand it. (*Seshagiri Aiyar and Kumaraswami Sastri, JJ.*) LODD GOVIND DOSS *v* RAJAH OF KARVETU NAGAR. 30 I.C. 357= 29 M.L.J. 219.

———*Construction of decree — Conflicting description of same property—Selection.*

Where the mortgaged property is described in such a way in the decree that one description applies to one set of existing facts and another to another set of facts the Court must ascertain from the record or other evidence to which property the decree was intended to apply. Of the two descriptions that which is more certain, stable and the least likely to have been mistaken, must prevail. (*Kanhaiya Lal and Kendall, A.J. Cs.*) GANGA PRASAD *v.* SUBHA CHAND. 28 I.C. 704=17 O.C. 256= 1 O.L.J. 664.

———*Construction of decree.*

An Executing Court has power to construct the decree in accordance with law. (*Jwala Prasad and Ross, JJ.*) RAM BHUJAMAN PRASAD SINGH *v* RAM NARAIN. 65 I.C. 224=2 Pat. L.T. 396.

———*Construction of decree—Suit against two defendants but decree against one only—Appeal — Decree against both defendants—Effect.*

A instituted a suit against B and C. The first Court granted a decree against B and dismissed the suit against C A appealed and pending the appeal executed the decree of the Lower Court against B. In the High Court he got a decree against C also and took out execution proceedings against B and C. C contended that he must be given credit to half the amount already recovered from A. *Held*, that C's contention cannot prevail inasmuch as the money was recovered at a time when there was no decree against C and that the amount should be deemed to have been recovered on account of the separate liability of B. (*Chamier, C.J. and Jwala Prasad, J.*) BAKSH BINDESHARY *v.* DHENINDER DAS. 39 I.C. 662=2 Pat. L.J. 162.

EXECUTION—Construction of decree.

———*Construction of decree—Award.*

An award decree which directed absolutely to make a payment of Rs. 500 within three months and thereon absolutely to be ejected from the house, could be paid voluntarily at any time within three months but thereafter would be enforceable by execution. (*Hayward*, J.C. *and Boyd*, A.J.C.) HOONDRAJMAL CHATOMAL *v.* DHANOOMAL CHOTOMAL.
2 I.C. 932=8 S.L.R. 58.

Decree inding.

———*Decree binding—Validity—Not to be questioned.*

It is true that an Executing Court cannot go behind the decree and must execute it as it finds it, and it is also true that ordinarily it is open to the mortgagee decree-holder, to recover the whole of the money from any part of the mortgaged property; but if the vesting of part of the equity of redemption in the mortgage debt is tantamount to discharge or satisfaction of the proportionate part of the mortgage debt there is no reason why an Executing Court should not recognise it and go into the extent to which the decree has been satisfied. (*Tudball and Sulaiman*, JJ.) SARJU KUMAR MUKERJEE *v* THAKUR PRASAD.
42 All. 344=18 A.L.J. 690=58 I.C. 743= 2 U.P.L.R. (All.) 174.

———*Decree binding—Terms not to be questioned.*

A Court executing a decree is bound to execute it as it stands. (*Banerji and Ryves*, JJ.) NURUDDIN KHAN *v.* PRANKISHAN CHAKRAVARTI. **40 All. 659=47 I C. 16= 16 A.L J. 630.**

———*Decree binding—Error in—Misdescription of property—Jurisdiction to correct decree.*

The property mortgaged was misdescribed in the decree ordered to be sold as *muafi* while the property was in fact assessed to revenue. When the mortgagee applied for execution of his decree, the objector who had purchased the same property in execution of a simple money decree pleaded that there was no *muafi*. *Held* that the misdescription not having deceived the objector when he purchased, the Court was not debarred from correcting the error in the decree. (*Tudball and Rafique*, JJ.) BASANTI *v.* KUNJ BEHARI LAL. **44 I.C. 998= 16 A.L J. 262.**

———*Decree binding.*

A Court executing a decree can only execute it as it stands; hence if the decree is not in conformity with judgment, the person interested should bring it into conformity with the judgment. (*Richards*, C.J.). RAM NATH TEWARI *v.* MUSAMMAT GENDA. **31 I.C. 864.**

———*Decree binding—Executing Court, if can go behind decree.*

The Executing Court cannot go behind the terms of the decree. (*Piggott*, J.) PARSOTTAM DAS *v.* KESHO SARAN. **24 I.C. 206.**

EXECUTION—Decree Binding.

———*Decree binding — Court, if can go behind decree.*

An Executing Court cannot go behind a valid decree. (*Karamat Husain and Tudball*, JJ.) GOBARDHAN SAHI *v.* MAHABIR SINGH.
34 All. 321=14 I.C. 506=9 A.L.J. 290.

———*Decree binding.*

The Executing Court cannot go behind the decree and enter into its merits or demerits. Its only functions are to carry out the directions in the decree as they are. (*Macleod*, C.J. *and Shah*, J.) GUMARIJI *v.* VISWANATH.
23 Bom. L.R. 1072=46 B. 243= 1922 Bom. 198.

———*Decree binding—Executing Court cannot go behind decree.*

The Court executing a decree cannot deal with the question whether the decree should stand or should be set aside. (*Macleod*, C.J. *and Fawcett*, J.) RAMCHANDRA GOVIND *v.* JAYANTA RAOJI. **46 Bom. 503= 59 I C. 715=22 Bom. L.R. 1409.**

———*Decree binding—Jurisdiction—Not to be questioned.*

A Court executing a decree cannot under O. 21, R. 7, question the jurisdiction of the Court that passed the decree. (*Scott*, C.J. *and Batchelor*, J.) HARI GOVIND *v.* NARSINGH RAO. **38 Bom. 194=23 I C. 128= 16 Bom. L.R. 26.**

———*Decree binding—Rent decrees—Sale of property under earlier—Subsequent decree if can be executed personally.*

Where two compromise decrees for rent were passed against the tenant which provided for sale of the tenure and under the earlier decree the property was sold, and then the decree-holder applied to execute the second decree against the person of the debtor: *Held*, in execution proceedings the Court cannot go behind the decrees, but if possible give effect to both; the second decree having been passed before the sale, the sale must be deemed to have taken place subject to the second decree, and hence the decree-holder must proceed in the first instance against the property itself. (*Woodroffe and Ghose*, JJ.) RATAN LAL BISWAS *v.* NAFAR CHANDRA PAL. **26 C W.N 708= 1922 Cal. 571.**

———*Decree binding.*

An executing Court is not to the Court to decide whether a particular amendment of a decree is *ultra vires* or otherwise. (*Greaves and* B. B. *Ghosh*, JJ.) RAJAKOTI KUMAR MUKERJI *v.* TINCOWRI CHAKRABURTI.
1922 Cal. 136 (2).

———*Decree binding — Court cannot go behind order—Insolvency Court.*

Where the holder of a mortgage-decree against an insolvent was a consenting party to a composition sanctioned by the Insolvency Court, the Executing Court dealing with an application for execution of the mortgage-

EXECUTION—Decree Binding.

decree cannot go behind the order passed in those proceedings unless the proceedings in the insolvency Court are set aside. (*Chatterjea and Panton, JJ.*) JUGMOHAN PRADHANI *v.* INDRA CHANDRA. 59 I.C. 95.

———*Decree binding—Objection to, validity of.*

An objection taken to the execution of a mortgage decree could not be entertained in execution and the decree must be executed as it subsists. (*Teunon and Beachcroft, JJ.*) HARENDRA *v.* PABNA MODEL CO. 55 I.C. 256.

———*Decree binding—Objection to, validity*

A decree absolute in mortgage suit passed in the presence of both the parties and on proper adjudication cannot be impeached in execution on the ground that it should not have been made absolute as an application for its execution had become time-barred. (*Fletcher and Huda, JJ.*) SHAMA CHAND MAITI *v.* BAIKUNTHA NATH MANDAL. 47 I.C. 143.

——*Decree binding—Ineffective by reasons of events subsequent.*

An objection that a decree for ejectment previously obtained can no longer be executed by reason of events subsequent, can properly be taken in execution of decree. (*Mookerjee and Cuming, JJ.*) SYAM MANDAL *v* SATI NATH BANNERJEE. 44 Cal. 954 = 21 C.W.N. 776 = 28 I.C. 493 = 24 C.L.J. 523.

———*Decree binding—Objection to legality of—Lunatic—Not properly represented.*

Any order and judgment though erroneous, is good until discharged or declared inoperative. The Executing Court cannot go into the validity or propriety of the decree. A proceeding to enforce a judgment is collateral to the judgment itself and therefore no enquiry into its irregularity or validity can be made in such a proceeding. A judgment against a person who was a lunatic at the time of trial, and yet was not represented by a legal guardian, is not to be impeached in execution but should be reversed or annulled in some special suit taken for that purpose. 31 A. 573, Ref. (*Mookerjee and Cuming, JJ.*) KALIPADA SARKAR *v.* HARI MOHAN. 44 Cal. 627 = 24 C.L.J. 375 = 33 I.C. 856 = 21 C.W.N. 1104.

———*Decree binding—Compromise decree.*

An Executing Court can go behind the terms of a compromise decree, to see if the compromise contained a penalty. (*Holmwood and Imam, JJ.*) JAMIR FAKIR *v.* RAM LAL GHOSE CHOWDHURY. 32 I.C. 687.

——*Decree binding—Validity not to be questioned in.*

In execution proceedings it is not open to a party to challenge the validity of a decree. An Executing Court has no power to go beyond the decree and cannot entertain any objection as to the legality or correctness of the decree. A decree binds the parties till set aside by appropriate proceedings. (*Mookerjee and Beachcroft, JJ.*) RAMA PRASAD ROY CHOWDHURY *v.* ANUKUL CHANDRA ROY CHOWDHURY. 27 I.C. 444 = 20 C.L.J. 512.

EXECUTION—Decree Binding.

——*Decree binding—Invalid decree—Want of jurisdiction.*

It is not open to a Court of execution to consider the validity of the decree of which execution is sought and the judgment-debtor cannot in execution proceedings object that the decree has not been passed by a Court of proper jurisdiction. (*Mookerjee and Caspersz, JJ.*) BISWA NATH PRASAD *v.* BHAGWANDIN. 10 I.C. 536 = 14 C.L.J. 648.

———*Decree binding—No power to go behind decree.*

The Court executing a decree must take it as it stands. It has no power to go behind the decree, in other words, it cannot entertain any objection as to the legality or correctness of the decree, the reason being that a decree, though it may not be according to law, is binding and conclusive between the parties if not appealed from. (*Broadway, J.*) RAM DAS *v.* S. P. NITTO. 64 P.L.R. 1922 = 67 I.C. 753 = 4 U P.L.R. (Lah.) 93.

———*Decree binding.*

An Executing Court cannot entertain any objection as to the legality or correctness of the decree. The fact that the decree is difficult to execute does not render it incapable of execution. (*Broadway and Moti Sagar, JJ.*) JIWAN MAL *v.* NANAK CHAND. 63 I.C. 976.

———*Decree binding.*

The Court of execution has to execute the decree as it stands and it is not open to the parties to impeach the validity of the correctness of the decree. (*Shadi Lal, J.*) KORA LAL *v.* PUNJAB NATIONAL BANK LTD. 56 I.C. 816 = 118 P.L.R. 1920 = 2 U.P.L.R. (Lah.) 91.

———*Decree binding—Legality of decree not to be questioned.*

An Executing Court cannot question the legality of the decree. The remedy is by suit. 35 P.R. 1900; 23 All. 181; 60 P.W.R. 1908, Foll. (*Wilberforce, J.*) HAR GOPAL *v* RAM RICHPAL. 54 I.C. 289 = 60 P.L.R. 1919.

———*Decree binding—Validity not to be questioned.*

A party cannot attack the validity of a decree in execution. The proper course of doing so is by appeal or review. (*Shah Din and Chevis, JJ.*) NARAIN DAS *v.* UDHAM SINGH. 68 P.R. 1913 = 44 P.L.R. 1913 = 18 I.C. 48 = 53 P.W.R. 1913.

———*Decree binding—Decree—Validity of—When open to question in Executing Court—Remedy by suit.*

An Executing Court cannot go behind the decree or enquire into the jurisdiction of the court which passed the decree. 43 M. 675, foll.

EXECUTION—Decree Binding.

44 C. 627, not foll. Where after the preliminary decree is passed the mortgagor dies and without bringing on record his legal representative a final decree is passed, the decree is a nullity and its validity can be impeached in a subsequent suit for declaration and injunction, 13 L.W. 290; 21 A. 16; 4 Pat. L.J. 240, Ref. (*Ayling and Odgers, JJ.*) SAWMI MUDALIAR *v.* MUTHIAH CHETTY. **16 L.W. 314 = 43 M.L.J. 293 = (1922) M.W.N. 597 = 1923 M. 212.**

———*Decree binding—Jurisdiction—Territorial—Objection to.*

Though S. 21, C.P.C., might not apply, a decree could not be questioned in execution on the ground of want of territorial jurisdiction, because it is not for the Executing Court to go into questions of the jurisdiction of the Court which passed the decree, at any rate when that was an ordinary Court in British India governed by the C.P. Code. (*Wallis, C.J. Ayling and Coutts-Trotter, JJ.*) ZEMINDAR OF ETTIYAPURAM *v.* CHIDAMBARAM CHETTAR. **39 M.L.J. 203 = 28 M.L.T. 76 = 43 M. 675 = (1920) M.W.N. 460 = 12 L.W. 217 = 58 I.C. 871 (F.B.)**
[Also 24 M.L.J. 70 = 18 I.C. 498 = 43 Mad. 885 = 53 I.C. 579 = 37 M.L.J. 442.

———*Decree binding—Mortgage—Combined decree.*

A combined decree in a mortgage suit though irregular is not void and it is not open to the judgment-debtor to object to it in execution. 21 M.L.J. 1036; 32 M. 534; 16 C.L.J. 318, Rel. (*Abdur Rahim and Kumaraswami Sastri, JJ.*) NARAYANA AIYAR *v.* SINGARAVELU VANNIAN. **33 M.L.J. 543 = (1917) M.W.N. 845 = 42 I.C. 282 = 6 L.W. 675.**

———*Decree binding—Objection to validity of.*

Though the decrees were not in accordance with the provisions of Transfer of Property Act, the irregularity cannot be questioned in execution proceedings. (*Seshagiri Aiyar and Kumaraswmi Sastri, JJ.*) VENKATAPERUMAL *v.* VENKATA REDDI. **39 Mad. 570 = 29 M.L.J. 96 = (1915) M.W.N. 334 = 29 I.C. 231 = 17 M.L.T. 427.**

———*Decree binding—Mortgage—Combined decree—Plea of invalidity of decree.*

A mortgage decree giving a personal remedy before the sale of the mortgaged property though irregular under S. 89, T.P. Act, cannot be questioned in execution proceedings. (*Wallis and Sadasiva Aiyar, JJ.*) KUMARA VENKATA PERUMAL RAJA BAHADUR VARU *v.* VELA YUDA REDDI. **24 I.C. 195 = 27 M.L.J. 28.**

———*Decree binding—Decree without jurisdiction—Whether can be questioned in execution proceedings.*

A decree passed without jurisdiction either pecuniary or otherwise cannot be questioned in execution proceeding, but only by way of an

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appeal. 30 M. 421; 9 M. 80; 22 B. 475, Foll; 26 M. 31; 28 M. 84; 15 B. 216; 17 A. 478; 28 B. 78, Dist. (*Sankaran Nair and Ayling, JJ.*) RATNASWAMI CHETTI *v.* RATNAMMAL. **1 L.W. 446 = 15 M.L.T. 415 = 24 I.C. 135 = 27 M.L.J. 388.**

———*Decree binding—'Personal decree'—and 'Decree for sale' combined.*

Where a Court has passed a personal decree at once against the defendant along with a decree for sale, an executing Court must execute it according to its terms, though erroneous. (*Sadasiva Aiyar and Spencer, JJ.*) MUTHUKURUPAN CHETTIAR *v.* CHINNASWAMI PILLAI. **22 I.C. 293 = (1914) M.W.N. 152.**

———*Decree binding—Jurisdiction of Court.*

(Per *Sadasiva Aiyar, J.*)—A Court executing a decree of another competent Court cannot go behind to decide the question of the jurisdiction of the Court which passed the decree. (*Sundara Aiyar and Sadasiva Aiyar, JJ.*) VEERARAGHAVA AIYAR *v.* MUGA SEIT. **(1913) M.W.N. 665 = 20 I.C. 701 = 14 M.L.T. 96.**

———*Decree binding—Propriety of, not to be questioned.*

A decree not in conformity with Sch. D, No. 7, C.P.C., is not null and void but it is only irregular. It cannot be questioned at the execution if allowed to remain unimpeached. (*Abdur Rahim and Spencer, JJ.*) RAJA OF KALAHASTI *v.* VENKATA PERUMAL. **21 M.L.J. 1036 = 10 M.L.T. 429 = 12 I.C. 689 = (1911) 2 M.W.N. 458.**

———*Decree binding—Executing Court cannot go behind.*

An executing Court cannot go behind the decree, and being bound by the directions contained in the decree, it cannot question its legality or correctness. 6 A. 269; 7 A. 102, Dist. (*Lindsay, J.C.*) SHEODARSHAN LAL *v.* ASSESSAR SINGH. **46 I.C. 52 = 6 O.L.J. 179.**

———*Decree binding—Validity of—Not to be questioned.*

It is not open to the judgment-debtor to contest in execution the validity of the provisions in a compromise decree without bringing a suit for the purpose. (*Piggott, J.C. and Lindsay, A.J.C.*) SHAH ALAM MIRZA *v.* WAHIDUDDAHIR MIRZA. **14 I.C. 29.**

———*Decree binding—Decree—Mistake in recitals in—Court if can go behind decree.*

Where the plaint claim is inaccurately recited in the decree the Executing Court is not bound thereby but is competent to examine the record and ascertain the actual existing circumstances. (*Miller, C.J. and Mullick, J.*) RAMESHWAR SINGH *v.* SUBU LALJHA. **3 Pat. L.J. 402 = 59 I.C. 25 = 2 Pat. L.T. 7.**

EXECUTION—Decree Binding.

———*Decree binding— Amendment — Construction of decree.*

An executing Court has no right to go behind the decree and in any way to add or amend the terms thereof. It has to execute the decree as it is, and any amendment thereof can be made either by review or under Ss. 151 and 152 of the C.P. Code. 28 Cal. 353; 1 P.L.W. 620; 15 I.C. 719, Foll. But an executing Court can give a fuller and more complete description of the property described in the decree, which would be a correct description on a proper construction of the decree read with the judgment and the pleadings. (*Jwala Prasad and Adami, JJ.*) BABU BAIJ NATH SAHAY *v.* GAJADHAR PRASAD. **38 I.C. 276 = 1 Pat. L.T. 471.**

———*Decree binding—Lunatic—No proper representation.*

Where in a suit against a lunatic the Court refused to appoint a *guardian ad-litem* for the lunatic and passed a decree against him, the representative of the lunatic after his death cannot raise an objection to the execution of the decree on the ground that it is null and void. (*Chamier, C.J. and Roe, J.*) JANG BAHADUR LAL *v.* PALTUR TEWARI.
45 I.C. 218 = 1917 Pat. 166.

———*Decree binding—Power of executing Court to go behind the decree.*

If a decree, which is not inconsistent with judgment, makes all the defendants expressly liable, the executing Court cannot exempt some from liablity. It must execute the decree as it is and cannot refuse the benefit of it to the decree-holder, though the judgment be erroneous. (19 W.R. 343, Dist.) Per *Mullick, J.*—A litigant cannot in execution proceedings raise matters which properly ought to be raised by appeal or review. Per *Jwala Prasad, J.*—If a litigant is aggrieved by a judgment he should either appeal against the judgment or apply for a review but he cannot raise in execution any question as to the interpretation of the language of the judgment when it is explicit and clear. (*Mullick and Jwala Prasad, JJ.*) DEVENDRA PRASAD *v.* RAM CHANDRA PRASAD. **39 I.C. 537 = 1 Pat. L.W. 620.**

———*Decree binding—Validity of, when questioned.*

On an application for substitution of the petitioner's name in the place of the decree-holder for executing the decree, the validity of the decree cannot be questioned. (*Ormond and Twomey, JJ.*) HAJEE MAHOMMED HADI *v.* JOAKIM. **32 I.C. 498 = 8 Bur. L.T. 216.**

———*Decree binding—Jurisdiction to pass decree—Want of.*

A decree passed without jurisdiction cannot be executed and the Court to which such decree is transferred for execution can decline to execute it. The Court charged with the execution of a decree can consider the question whether the Court which passed the decree has jurisdiction to pass it unless the decree itself precludes that question. (*Pratt J.C.*) TOPAN MUTHURAM *v.* TEK CHAND. **15 I C. 833 = 5 S.L.R. 260.**

EXECUTION—Decree Null and Void.

———*Decree binding — Executing Court whether can entertain objections to the validity of decree.*

An executing Court cannot entertain any objection to the validity of a decree or an objection that a decree passed on the basis of an award is not in the prescribed form or that it infringes the provisions of the Dekhan Agriculturist's Relief Act. (*Hayward, A.J.C.*) GHULAM MURTZA KHAN *v.* CHANGOOMAL.
11 I.C. 192 = 5 S L.R. 71.

Decree Null and Void.

———*Decree null and void—Powers of — Mortgage decree—Death of party.*

If a decree is passed against a dead person, the executing Court can treat it as a nullity. Where a decree for sale is objected to in execution on the ground that it was based on a preliminary decree passed against a dead person, the executing Court cannot treat the decree as a nullity, though it might be a good ground for setting aside the decree. (*Piggott and Walsh, JJ.*) RAM SARUP *v.* NARAIN DAS.
48 A. 198 = 9 O. & A.L.R. 131 = 20 A.L.J. 1008 = 1923 All. 141.

———*Decree null and void—Objection as to validity decree, ground of abatement by death of parties at date of decree.*

The Executing Court can entertain an objection that the decree, which, in this case, was the decree of the Appellate Court, had been passed at a time when the Appellant was dead and no representative of his had been impleaded within limitation, although no plea to this effect had been taken at the time of appeal. (*Piggott and Walsh, JJ.*) BINDHYA CHALSINGH *v.* NAWALRAJ. **43 All. 326 = 64 I C. 927 = 19 A.L.J. 95.**

———*Decree null and void—Validity of decree—Power to go into—Decree passed without jurisdiction—Power of Executing Court to refuse execution.*

A decree passed by a non-agency Court for the sale of properties partly within its own jurisdiction and partly within the jurisdiction of Godavari Agency Court is a nullity regarding the lands in the Agency tracts and as the Agency Court is not governed by the Civil Procedure Code it can go behind the decree and refuse execution. (*Krishnan and Venkatasubbarao, JJ.*) KRUTHIVENTI *v.* SEETHARAMOHANDRARAJU.
(1922) M.W.N. 728 = 16 L.W. 669 = 1923 M. 114 (1).

———*Decree null and void — Defence to execution.*

A decree passed after defendant's death without a legal representative representing him afterwards is a nullity. 13 A. 53 P.C.; 26 B. 317; 17 A. 478, Foll. The decree might

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be impeached in execution without resorting to a separate suit. (*Oldfield*, J.) SUBRAMANIA AIYAR *v.* VAITHINATHA AIYAR.
31 I.C. 198=38 Mad. 682.

———*Decree null and void—Decree against dead man.*

A final decree passed in a mortgage suit against a mortgagor who is dead at the time, though alive on the date of the preliminary decree, is void and the objection can be taken to its execution on that ground. (*Miller*, C.J., *Coutts and Manuk*, JJ.) JUNGLILAL *v.* LADDU RAM MARWARI. 4 Pat. L J. 240= 50 I.C. 529=1919 Pat. 105 (F.B.).

Decree not to be varied.

———*Decree not to be varied—Mesne profits.*

An Executing Court cannot vary the terms of a decree. It must not deduct any sums for the mesne profits not allowed by the decree. (*Richards*, C.J. *and Bannerjee*, J.) KRISHNA PAL SINGH *v.* RANJIT SINGH.
50 I.C. 895=17 A.L.J. 510.

———*Decree not to be varied.*

An Executing Court has no power to go behind the decree even though it gives the decree-holder what he may not be entitled to under some Tenancy Acts. (*Tudball and Rafique*, JJ.) RUNG LAL KUAR *v.* KISHORI LAL. 37 All. 278= 28 I.C. 278=13 A L J. 300.

——*Decree not to be varied—Power of Executing Court to go behind decree.*

An Executing Court can refuse to execute a decree against defendants who were not parties to the appeal and against whom the Appellate Court granted relief but did not incorporate it in the decree. (*Chamier*, J.) BHAGWANT *v.* RAJAB. 27 I.C 804=13 A.L J. 136.

——*Decree not to be varied—Inherent power—Executing Court.*

The Executing Court cannot deal with the question whether a decree should stand, or whether it should be set aside on any of the grounds on which a decree can be set aside. (*Macleod*, C.J. *and Fawcett*, J.) RAMANATH MULCHAND *v.* GAJANAN PANDURANG.
45 Bom. 946=62 I.C. 96= 23 Bom. L.R. 806.

———*Decree not to be varied—Final decree in mortgage suit—Appointment of receiver—No power to vary.*

The method provided in a final decree for execution cannot be altered at the instance of the judgment debtor and to the prejudice of the decree-holder. The right of the mortgagee under the decree cannot be interfered with the Court in any way either by intercepting the rents and profits or by restraining the sale of the property by the appointment of the receiver. (*Fletcher and N. R. Chatterjee*, JJ.) SITA NATH SAHA *v.* MADAN MOHAN DAS.
43 I.C. 22.

EXECUTION—Decree not to be varied.

———*Decree not to be varied.*

An Executing Court must execute the decree as it stands; it cannot alter, vary or add to the terms of the decree; the propriety or validity of the decree cannot be discussed in execution proceedings. 27 C. 95; 28 C. 353; 3 C. 161, 8 C. 332, Rel. Even the Judge making the decree deal with an application for execution of a decree be the Judge who made the decree, he cannot amend it if he has to deal with it in execution proceedings. (*Mookerjee and Carnduff*, JJ.) MADAN MOHAN NATH *v.* BHIKHA SHAHU. 15 I.C. 719=16 C.L.J. 617.

———*Decree not to be varied—Execute decree as it stands or refuse execution.*

An Executing Court cannot tamper with decrees which must be executed literally; when a decree cannot be executed literally it cannot be executed at all. (*Chevis*, J.) KHWAJA MAHMUD *v.* GHULAM RASUL.
44 I.C. 530=59 P.W.R. 1918.

———*Decree not to be varied—Partition based on award—Separate suit to determine liability on mortgage, maintainability of.*

Where an award and the decree based thereon for partition of immoveable property do not state the encumbrance created thereon by one of the parties who are father and sons and where the mortgagees are no parties to the proceeding, the Executing Court cannot decide in execution of the decree, the respective liabilities of the parties as regards the mortgage. Such a question can be decided by a separate civil suit. (*Le Rossignol*, J.) NARPAT RAI *v.* DAVI DAS. 59 P W.R 1915= 29 I.C. 755=139 P L R. 1915.

———*Decree not to be varied.*

A rent decree transferred for execution to a Civil Court is to be executed according to C. P. Code. The Court cannot go behind the decree and enforce claims not expressly mentioned therein nor can it assume the powers conferred on Revenue Courts only. (*Sadasiva Aiyar and Spencer*, JJ.) BOLLAPRAGADA VENKATALAKSHMANA GARU *v.* NANDA SEETAYA.
11 L.W. 466=(1920) M.W.N. 234= 39 M.L.J. 30=43 M. 786= 57 I.C. 764=28 M L.T. 44.

———*Decree not to be varied—Additional amounts—Decree holder's right.*

No addition can be made by a Court executing a decree beyond such as the decree directs other than the costs arising out of the execution proceeding. (*Kanhaiya Lal*, A.J.C.) DELHI AND LONDON BANK, LTD. *v.* RAM RATAN. 32 I.C 754=2 O.L.J. 611.

———*Decree not to be varied—Variance between preliminary and final decree as to rate of interest—Rights of judgment-debtor.*

A judgment-debtor cannot object in execution proceedings to the validity of the final decree on the ground that the direction to pay interest at a certain rate is in excess of the preliminary decree which directed that interest

XE CUTION—Decree not to be varied.

should run at the current rate. (*Chapman and Jwala Prasad*, JJ.) BRIJ RAJ KISHUN v. RAMESHWAR SINGH. 39 I.C. 925 = 1917 Pat. 212

———*Decree not to be varied—Interpretation of decree.*

As long as a decree stands, the Court executing it can only construe the decree and cannot consider its merits. 11 B. 597 ; 28 C. 353 Rel. On an application for execution, a Court cannot read into a decree a provision not contained in it merely because such an opinion might be expected. 19 M. 249, Ref. If a decree is ambiguous, its interpretation consistent with law will be preferred to one contrary to law. (*Hayward*, J.C. *and Cohen*, A.J.C.) TOTAL DAS v. UTUMAL. 10 I.C. 975 = 4 S L.R. 214.

Duty of Court.

———*Duty of Court.*

Execution Court has no powers to include costs claimable in final decree. (*Ryves and Gokul Prosad*, JJ.) DAMBAR SINGH v. KALLYAN SINGH. 20 A.L.J. 170 = 44 A. 330 = 1922 A. 27.

———*Duty of Court—Instalment decree—Payments under Appropriation — Barred instalment.*

Where money is payable in instalments under a decree and on default of payment of two consecutive instalments, the decree-holder is given the right to sell the property, it would be the duty of the Court when instalments are paid, to appropriate them to the earliest instalment unpaid. The debtor cannot allow such earlier instalments to remain unpaid, unless at the time he makes the payment the instalment was already barred by limitation. (*Macleod*, C.J. *and Coyajee*, J.) HANMANT TIMAJI DESAI v. RAGHAVENDRA RAO. 46 Bom. 818 = 24 Bom. L.R. 410 = 1922 Bom. 237.

———*Duty of Court—Powers of—Not to nullify the effect of decree but to give effect to it.*

The executing Court has no powers to nullify the effect of decree but to give effect to it. (*Woodroffe and Ghose*, JJ.) RATAN LAL v. NAFAR CHANDRA. 26 C.W.N. 708 = 1922 Cal. 671.

———*Duty of Court—Not to alter or amend decree but to execute it as it stands.*

It is the duty of an executing Court to look in the first instance at the decree and if the terms of the decree are clear and unambiguous, an executing Court is bound to give effect to it, even though it may regard it as erroneous. (*Leslie Jones and Broadway*, JJ.) KAKA SINGH v. LACHMAN DAS. 67 I.C. 740 = 3 L.L.J. 263.

———*Duty of Court—Decree to be executed as it stands.*

It is the duty of the executing Court to execute the decree as it stands and it is open to the Court to direct something to be done not directed by the decree on the ground that literal compliance with the decree was impossible. An executing Court has no right to direct a decree-holder build a bund at any point other than that provided by the decree. (*Scott-Smith*, J.) ALI MAHOMED v. JAHAH KHAN. 65 I.C. 126.

EXECUTION—Ex parte order.

———*Duty of Court—Person not party to decree, if can object.*

The executing Court's only duty is to execute the decree according to its terms and it is not for that Court to say that the decree is not binding on the property, in the absence of certain parties, nor can the Court entertain any objection to the execution by a person who is not a party to the decree. (*Abdul Rahim and Sadasiva Aiyar*, JJ.) GUNUPATTI NARASA REDDI v. MAKKENA KONDAP NAIDU. 61 I.C. 759 = 13 L.W. 143.

———*Duty of Court—Plea of payment to transferee decree-holder.*

The District Judge should have allowed the judgment-debtor to prove that the payments certified were made to a person entitled to execute the decree and should have decided whether the transfer really conveyed to the transferee the interests of the transferor. (*Miller and Sadasiva Aiyar*, JJ.) BALKRISHNA PILLAI v. V. MINI REDDI. 14 I.C. 702.

———*Duty of Court—Equities as between judgment-debtors.*

The Court executing the decree has nothing whatever to do with the equities arising in the case between the judgment-debtors. (*Piggott*, J.) MAZAHAR ALI KHAN v. HUSSAINI JAN. 18 I.C. 312.

Equitable Execution.

———*Equitable execution—Receiver.*

A mortgagee of a factory obtained a mortgage decree and the factory was about to be sold in execution, when the judgment-debtor applied for the appointment of a Receiver on the ground, that the sale of factory would ruin him. The Court with the consent of the decree-holder appointed a Receiver who was to work the factory. The appointment of a Receiver did not operate by way of equitable execution but was rather a partial and somewhat irregular 'execution' of the mortgage decree by consent of parties. (*Richards*, C.J. *and Banerjee*, J.) JHUNKOOLAL v. PEARY LAL. 39 All. 204 = 38 I.C. 613 = 15 A.L.J. 49.

Ex parte Order.

———Ex parte *order.*

Where a payment of decretal amount was made out of Court to persons other than decree-holder, the decree-holder's application for refund of the money should be treated as one to set aside the *ex parte* order. (*Walsh and Stuart*, JJ.) BITHAL DAS v. JIWAN RAM. 20 A.L.J. 388 = 1922 All. 190.

EXECUTION—Ex parte order.

———Ex parte *order—Effect.*

An *ex parte* order made against a party having no opportunity to be heard is liable to be revoked at his instance and the Court has inherent power to give direction to that effect. (*Mookerjee and Cuming, JJ.*) SYAM MANDAL *v.* SATI NATH BANNERJEE. **44 Cal. 954 = 24 C.L.J. 523 = 38 I.C. 493 = 21 C.W.N. 776.**

———Ex parte *order—Omission to record service of notice on judgment-debtor—Irregularity.*

The omission by a Court to record service of notice on judgment-debtor is a serious irregularity; but a mere ground that the Court did not write an express order that service of the notice was only effected, would not vitiate all subsequent proceedings. *Quaere*:—Whether notice under O. 21, R. 22 stands on the same footing. (*Sadasiva Aiyar and Spencer, JJ.*) MAHOMED MERA ROWTHER *v.* KADIR MERA ROWTHER. **22 I.C. 302 = (1914) M.W.N. 63.**

Final Decree.

———*Final decree—Appeal time, expiry of.*

A decision cannot be said to be final until the time for the lost appeal allowed has expired or if appealed, it has become final by the decree of the High Court. 1 A. 132, Foll.; 1883 A.W.N. 6 Dist. (*Walsh, J.*) RAMAUTAR SHUKUL *v.* BHAGELU SAHAI. **34 I.C. 204.**

———*Final decree—Appeal—Affirmance.*

Even when the decree of the Appellate Court affirms the decree against which the appeal is filed it is the final decree in the case and as such the only decree capable of enforcement in execution. 16 W.R. 1, Foll. (*Mookerjee and Beachcroft, JJ.*) SHAMANAND DAS CHOUDHURY *v.* RAM KANT DAS. **16 I.C. 945.**

Foreign Decree.

———*Foreign decree—Executability.*

A decree passed in a foreign Court, to which a person voluntarily submitted, is capable of execution and can on transfer be executed in the Court within whose jurisdiction he resides. (*Scott, C.J. and Shah, J.*) HARCHAND PANJI *v.* GULAB CHAND KANJI. **39 Bom. 34 = 26 I.C. 263 = 16 Bom. L.R. 620.**

Joint Decree.

———*Joint decree—Application for execution by one decree-holder—Purchase by permission—Right of other decree-holders.*

Where one of several decree-holders applied for the execution of a decree for sale, on his behalf and on behalf of other decree-holders and with permission purchased the property for a sum equal to the amount of his share and consequently the other joint decree-holders sued him to recover their shares. *Held*, that equity being on their side they were entitled to recover their share. (*Knox, Banerji and Richards, JJ.*) KESRI *v.* GANGA SAHAI. **8 A.L.J. 616 = 11 I.C. 617 (2) = 33 A. 563.**

EXECUTION—Jurisdiction.

———*Joint decree—Release of one of several judgment-debtors—Effect.*

A release of one of several judgment-debtors does not discharge the others from liability. (*Mookerjee and Carnduff, JJ.*) BHAWANI KOER *v.* DARSAN SINGH. **11 I.C. 450 = 14 C.L.J. 354.**

Jurisdiction.

———*Jurisdiction—Competency to object to sale in execution.*

A judgment-debtor can object to the execution proceedings on the ground that under law the Court is precluded from selling an occupancy holding, and that the Court should carry out the provisions of law and not to act in violation thereof. (*Banerji, Rafique and Ryves, JJ.*) KATWARI *v.* SITA RAM TEWARI. **43 All. 547 = 19 A.L.J. 473 = 63 I.C. 264 = 3 U.P.L.R. (All.) 99.**

———*Jurisdiction—Power of Court to which decree has been transferred for execution.*

The Court to which a decree is sent for execution retains its jurisdiction to execute the decree until the execution has been withdrawn from it or until it had fully executed the decree and had certified that fact to the Court which sent the decree, or until it had failed to execute the decree and certified that fact to the Court which forwarded the decree. (*Macleod, C.J. and Crump, J.*) VITHU DAULATA *v.* GANESH. **25 Bom. L.R. 453 = 1923 Bom. 396.**

———*Jurisdiction—Objection to the validity of a decree.*

The validity of a decree cannot be objected to in execution proceedings following such decree though the Court in passing has contravened some provision of law. (*N.R. Chatterji and Newbould, JJ.*) HEMCHENDRA CHOUDHRY *v.* CHANDRA MOHAN NAMODAS. **60 I.C. 204 = 24 C.W.N. 1070.**

———*Jurisdiction—Payment order—Stay of.*

When the money was received by the Lahore Branch of the Bank from the Kasauli Branch where it was attached by order of execution Court of Lahore as the agent of the decree-holder. *Held*, the money when received by the Bank in Lahore belonged to the decree-holder and it is no longer within the jurisdiction of the execution Court in Lahore to deal with it in any way, *e.g.*, issuing prohibitory order for not paying to decree-holders. (*Scott-Smith, J.*) FITZHOLMES *v.* WARYAM SINGH. **1923 Lah. 514.**

———*Ju isdiction—Objection to.*

Objection to a legality of a decree can be raised in execution. (*Mullick, J.*) ISHAN CHANDRA KUNDU *v.* NIL RATAN ADHIKARI. **4 Pat. L.T. 311 = 1 Pat. L.R. 217 = 2 P. 538 = 1923 Pat. 185 = 1923 P. 375.**

EXECUTION—Jurisdiction.

———*Jurisdiction—Concurrent execution—Legality of—Execution in several Courts.*

Both under the Civil Procedure Code of 1908 and the previous C.P. Code the legality of the concurrent execution has been recognised though in practice it is not generally carried out. On principle there is no difference between a concurrent execution after transfer in another Court and a concurrent execution in the Court in which the decree was passed. That the present C.P. Code does not view with disfavour concurrent executions is among other sections indicated by S. 46. Further separate and successive applications for execution giving reliefs of different character may always be made. 8 Cal. 687; 1 C.L.J. 315; 97 M. 232; 18 C. 515; 19 A. 98 referred to. (*Mullick and Kulwant Sahay, JJ.*) RAM SUMRAN PRASAD v. BABU RAM BAHADUR. **4 Pat. L.T. 99 = 2 Pat. 328 = 1923 Pat. 61 = 1923 P. 224.**

———*Jurisdiction.*

If the Court persists in selling property of the judgment-debtor in spite of the prayer of the decree-holder not to proceed with execution, it acts without jurisdiction. (*Jwala Prasad and Ross, JJ.*) CHOUDHARY RAM PRASAD RAI v. MAHESHKANT CHOWDHARY. **3 P.L.T. 445 = 1 P. 232 = 1922 P. 525.**

Legal Representatives.

———*Legal representatives — Objection by one of the substituted heirs as to liability—Whether Executing Court can decide the objection.*

After the death of judgment-debtor his minor son and brothers were substituted in his stead, the brother made an objection petition refusing liability: Lower Court refused to go into objections but Higher Court *held* the objections were valid. (*Jawala Prasad, C.J., and Ross, J.*) PATAIT DINANATH SAHIB v. PATAIT MALHIHI BAID. **1921 Pat. 293.**

———*Legal representative—Decree not to be questioned.*

The legal representative of mortgagor judgment-debtor are estopped from questioning the correctness of an order absolute for sale passed against the judgment-debtor during his life-time. (*Jwala Prasad and Coutts, JJ*). KESHAWESARINDAR SHAI v. DEWENDRA BALA DASSI. **4 Pat. L.J. 213 = 48 I.C. 248 = (1919) Pat. 121.**

Liability of Judgment-Debtor.

———*Liability of judgment-debtor—Negligence—Damages.*

A decree-holder cannot make the judgment-debtor liable in execution proceedings for negligently allowing the decreed house to be burnt down. (*Sadasiva Aiyar and Moore, JJ*). RAMU SHETTITHI v. MANNIAPPA SHETTITHI. **38 I.C. 520.**

EXECUTION—Mesne profits.

Limitation.

———*Limitation — Affirmance of original decree by appellate Court—Time runs from ultimate decree.*

Where the trial Court decrees the suit and the High Court and the judicial committee affirm the decree, time runs from the date of the ultimate decree. (*Mookerjee and Panton, JJ.*) RAJA SASIKANTA ACHARYA v. SARAT CHANDRA RAI. **70 I.C. 6 = 24 C.L.J. 418.**

———*Limitation*—Terminus a quo.

Where an order granting with costs of petition to set aside an *ex parte* decree was passed on 27—2—1915 and a "rubkari" specifying the costs was drawn up on 8—3—1915 and execution for the costs was applied for on 6—3—1918; held, that the "rubkari" was not a decree within S. 2 (2) of the Code but was only an order within S. 2 (14) of the Code which completed and rendered the order of the 27th February 1915 capable of execution and that limitation commenced to run from 8—3—1915 and therefore the application was in time. (*Teunon and Beachcroft, JJ.*) NOOKUR CHANDRA MULLICK v. RAJANI KANTA GHOSE. **59 I.C. 81 (2).**

———*Limitation—Decree providing for a default—Default occurring after 20 years—Bar.*

Where a decree-holder is entitled to execute his decree, only on a default, as provided in the decree, he is not debarred from executing the decree, when the default occurs for the first time. (*Oldfield and Ramesam, JJ.*) ANDAL AMMAL v. VIJIA NAIDU. **14 L.W. 632.**

———*Limitation—Failure to plead in the previous application—Effect of.*

Where in the course of a previous execution proceeding, it was open to the judgment-debtor to plead limitation, but he failed to do so, he would be precluded from raising the same in a subsequent application which is within time from the prior application. 8 Cal. 51; 24 Mad. 669, foll. (*Kanhaiya Lal, C.J.*) GANGA DIN v. DIP SINGH. **25 O C. 13 = 1922 Oudh. 117.**

Mesne Profits.

———*Mesne profits—Decree for interest—Power of executing Court to award interest at Court rate.*

Where a decree grants mesne profits but says nothing about interest the executing Court has power to award interest at Court rate. (*Walsh and Stuart, JJ.*) LALTA PRASAD v. SRI GANESHJI. **20 A.L.J. 348 = 1922 All. 117.**

———*Mesne profits—Interest on—Order of the lower Court.*

Where a decree under execution does not award any interest on mesne profits, either before or after the decree, the order of the Court below, in so far as it awards interest, is illegal and must be set aside. (*Walsh and Sundar Lal*) TEJ BEGAM v. SARVI BEGAM. **37 I.C. 674 = 16 A.L.J. 1171.**

EXECUTION—Mesne profits.

———*Mesne profits—Delivery of possession—Notice to deliver possession, whether necessary.*

Where a decree provides for mesne profits till date of delivery there is no delivery of possession until notice to that effect is sent to the plaintiff. The mere filing of a petition by the defendant that the plaintiff may take possession is not tantamount to delivery. (*Ayling and Sundara Aiyar, JJ.*) MADLACHI RAM *v.* BRUNDAVARAM. 12 I C. 272 = (1911) 2 M W.N. 288.

Mode of.

———*Mode of Decree — Satisfaction in part—Execution as regards rest.*

Though a decree for sale, is passed it is open to the mortgagor to satisfy the decree in whole or in part and in the latter case the executing Court after ascertaining if there has been satisfaction can direct execution only as to the balance. (*Piogott and Walsh, JJ.*) SAHU PARSHOTTAM SARAN *v.* BRAHMA NAND. 21 A.L.J. 818 = L.R 4 A. 674 = 1924 All. 297.

———*Mode of—Restrictions contained in* pattah.

Where a decree for arrears of rent does not restrict the decree-holder to execute the decree in any particular manner, the decree may be executed in any way the decree-holder chooses though there are restrictions in the *pattah*, which has not been embodied in the decree. (*Teunon and Pearson, JJ.*) RAJANI KANTA ROY *v.* ANANDI KINKAR ROY. 62 I.C. 711

———*Mode of—Satisfaction of a decree—Land belonging to a member can be alienated.*

A Civil Court can order the temporary alienation of the land of a member of an agricultural tribe in satisfaction of a money decree. (*Scott-Smith and Dundas, JJ.*) SAIN DITTA *v.* NUR AHMAD. 74 I C. 194 = 4 L.L.J. 476.

———*Mode of—Right of decree-holder.*

The decree-holder is entitled to all the remedies against the judgment-debtor who can be exempted from arrest only on exceptional circumstances. (*Seshagiri Aiyar, J.*) KOTHANDARAMAN CHETTY *v.* SHUNMUGAM CHETTY. 32 I.C. 608.

Right to.

———*Right to—Re-sale—Separate mortgage-bonds—Decree—Sale—Properties sold together—Re-sale before possession necessary.*

The whole matter arose out of a decree on three mortgage-bonds, where sale of all properties together had already taken place: the High Court held, on an objection by one of the transferees of the judgment-debtor, that one sale was objectionable and that each property separately mortgaged ought to have been separately sold. The decree-holder who was also auction-purchaser applied as auction-purchaser and absolute owner for possession ignoring the direction of the High Court. *Held*, that the decree-holder who was held up in his proceedings ought to be allowed to persue his alternative remedy in accordance with the judgment of the High Court, or, in other words, to apply alternatively, by way of amendment of his application. for an order for re-sale of the properties separately in accordance with the High Court direction. (*Walsh and Ryves, JJ.*) HARBANS NATH TEWARI *v.* ACHARJI NATH. 65 I.C. 16 = 3 U.P.L.R. (All.) 52.

EXECUTION—Right to.

———*Right to.*

Where S obtained a decree against D, B. and C and D in execution of a decree which he had against S realised the whole amount of S's decree from B and C and S became an insolvent and his assets including the decree were purchased by G who sought to execute the decree. *Held*, that the decree having been finally executed by D, G could recover nothing under it. (*Richards, C.J. and Banerjee, J.*) GHULAM MOHIUDDIN *v* DAMBAR SINGH. 40 All. 206 = 46 I.C. 66) = 16 A.L J. 109.

———*Right to—Decree on award—Court-fees.*

Where a proper complete decree had been drawn up on the award and the execution Court dismissed the application for execution on the ground that there was no decree as no necessary Court-fees had been paid: *held*, the order dismissing the application for execution was wrong. (*Shah and Crump, JJ.*) GANDHI VADILAL *v.* GANDHI MANEKLAL. 1923 Bom. 41 (2).

———*Right to.*

Deft. has a right to apply for execution of a decree for specific performance. (*Macleod, C.J. and Coyajee, J.*) KARIMABIBI DANBHAI *v.* ABDEREHMAN SAYAD BANU. 24 Bom. L.R. 496 = 46 B. 990 = 1923 B. 26.

———*Right to—Partition decree—Right of deft. to carry on pending execution.*

Where the plff. applies for execution of a partition decree but proposes to drop the execution proceedings on the building which was the subject of the partition being burnt down, it is open to the deft. to insist on the execution being carried on and the site being divided and put in possession of the parties according to the decree. (*Macleod, C.J. and Coyajee, J.*) CHUNI LAL JAMNADAS *v.* MUL CHAND HARJIBANDAS. 24 Bom L.R. 440 = 1923 Bom. 23.

———*Right to—Not a substantive right—Limitation.*

Proceedings in execution are proceedings in the suit and are such subject to the provision of the Code subject however to any special provision in regard to the period within which the application has to be made. The right to execute a decree is not a substantive right. (*Richardson and Newbould, JJ.*) NARENDRA LAL KHAN *v.* UPENDRA NATH. 21 I.C. 113.

EXECUTION—Right to.

———*Right to—Instalments conditional on security awarded.*

By the award the judgment-debtor was allowed to pay up the amount by instalments on giving security and if he failed to give the first instalment in time it was to be paid along with the second but he failed to give security and on his failure to pay first instalment but before the time of the second instalment decree-holder filed an application for execution for the first instalment: *Held* the payment of the first instalment along with the second was conditional on the execution of security and the application was proper. (*Martineau*, J.) BHAGWAN DAS *v.* MUT. SADDI LAL.
1923 Lah. 415 (1).

———*Right to—Second application if, lies.*

Where an execution application for delivery of possession is ineffectual, a subsequent application for the same relief can lie. (*Spencer and Venkatasubba Rao*, JJ.) VENKATA-LAKSHMI AMMAL *v.* SADASIVA AIYAR.
18 L.W. 893 = 1924 Mad. 200

———*Right to—Beneficial owner of decree.*

Where the beneficial owner of a decree applies to be made a party to a pending execution application presented by the nominal decree-holder, on the ground that his rights were not properly safeguarded, the Court is bound to implead him as a party. 26 C. 250; 44 M. 919 Ref. (*Krishnan*, J.) RUKMANIAMMAL *v.* RAMACHANDRA THONDAMAN SAHIB.
44 M.L.J. 122 = 17 L.W. 67 = 1923 Mad. 317 (1).

———*Right to—Agreement prior to suit not pleaded in suit, if can be pleaded in execution.*

An agreement prior to suit which would be an answer to plff.'s claim, but which is not pleaded in the suit cannot be pleaded in bar of execution. An agreement that a decree to be passed should not be enforced affects the question whether the decree should be passed, and should be made a ground of defence to the suit. (*Spencer and Ramesam*, JJ.) KOONAMNENI MALLAYA *v* KANNEGANTI CHINNA KOTAYA. (1921) M.W.N. 382 = 64 I C. 148 = 14 L.W. 317.

———*Right to—Maintenance decree—Charge on immoveable properties—Suit if necessary after exhausting hypotheca.*

A decree for arrears of maintenance and for future maintenance was passed and the decree-holder after the hypotheca was exhausted, proceeded against other properties belonging to her deceased husband in execution. *Held*, she was entitled to do so, without the necessity of having recourse to a suit, as the decree was not a mortgage-decree. The charge created was merely a lien not antecedent to the decree but created by it and it cannot be said there was a mortgage on the property. The procedure in execution is not limited to O. 34, C.P. Code. (*Mullick and Bucknill*, JJ.) SESHACHARI PEARI *v* RAM KISHORI KUER. 74 I.C. 861 = 2 Pat 793

EXECUTION—Scope of enquiry.

Scope of Enquiry.

———*Scope of—Application consigned to record room—First application, nature of.*

Where execution proceedings are consigned to the record room behind the back of the decree-holder and without any default on his part, it was held that a further application, though in the form of a new application for execution, is really a continuance of the older application. (*Walsh and Ryves*, JJ.) RAM LAKHMAN SINGH *v* LALA MEWA LAL.
65 I.C. 78 = 3 U.P.L.R. (All.) 13.

———*Scope of—Strangers to suit—Property sold in execution—Right to be restored.*

Where in execution proceedings, property belonging to a stranger is sold, as he is ousted and possession given to the purchaser, the stranger has a right to be replaced, although the auction-purchaser's remedy has become barred by time. (*Tudball and Sulaiman*, JJ.) RAM CHARAN SAHU *v.* GOGA. 60 I.C. 120.

———*Scope of—Judicial proceeding.*

For purposes of Ss. 192 and 193 of the Penal Code, execution proceedings are judicial proceedings. (*Shah and Crump*, JJ.) *In re* GOVIND PANDURANG.
22 Bom L.R. 1239 = 59 I C. 193 = 22 Cr. L.J. 49 = 45 Bom. 668.

———*Scope of enquiry—Amount due to puisne mortgagee left undetermined in suit—Can't be determined in Executing Court.*

The Court executing the decree has no power to ascertain what the amount due to a puisne mortgagee is, when he has failed to prove the amount due to him in the Court which heard and passed the mortgage-decree wherein he had been properly impleaded. Ordinarily when a decree is to be executed, the Executing Court has only the power to carry out the specific orders contained in the decree. (*Seshagiri Aiyar*, J.) SESHA AIYAR *v.* ARIMUTHU VATHIYAR.
34 I.C. 362 = (1916) 1 M.W.N. 323.

———*Scope of.*

An application of intervention of objections and afterwards found groundless should be treated as in continuation or revival of the earlier one for execution of a decree. (*Drake-Brockman*, A.J.C.) MT. BHURIA *v.* BALIRAM.
4 N.L.J. 213.

———*Scope of—Order in—Notice to parties—Necessity for.*

No order to the prejudice of a party can be passed without giving him an opportunity of being heard. (*Jwala Prasad and Bucknill*, JJ.) GOUR CHANDRA ROY *v* JANARDHAN PRASAD THAKUR.
4 Pat. L.T. 204 = 1923 P. 180.

———*Scope of.*

The Executing Court has power to sell only the property specified in the decree to be sold for the satisfaction of the decree and

EXECUTION—Setting aside.

not anything more. (*Jwala Prasad and Ross, JJ.*) HARADHAN CHAKRAVARTY *v.* HARGOBIND. **6 Pat. L J. 347 = 63 I.C. 552 = 2 Pat. L.T. 665.**

Setting aside.

———*Setting aside—Estoppel — Judgment-debtor not objecting.*

A judgment-debtor who once acquiesces in the execution of a decree, cannot subsequently object to its execution. (*Rigg, J.*) LALL DWARKADAS *v.* BURMA RAILWAYS CO. **10 L.B.R. 280 = 62 I C. 299 = 13 Bur. L.T. 173.**

Surety.

———*Surety—Release of judgment-debtor—Bond given out of Court but filed in Court—Enforceability of.*

A surety bond merely filed in Court under S. 58 of the C.P. Code for the release of a judgment-debtor arrested in execution of a decree is enforceable by proceedings in execution even though it had not been executed by the Executing Court directly. 2 I.A. 219, Foll. (*Oldfield and Seshagiri Aiyar, JJ.*) R. NANJUNDA RAO *v.* MARWADI DHAWMAJI SAWMIJI. **53 I.C. 674 = 10 L.W. 172.**

EXECUTION SALE.

BIDS.
DUTY OF COURT.
EX PARTE DECREE.
EXPROPRIETARY HOLDING.
LEGAL REPRESENTATIVE.
PRIVATE SALE.
RIGHTS OF PURCHASER.
SALE CERTIFICATE.
SETTING ASIDE.
STRANGER PURCHASER.
TERRITORIAL JURISDICTION.
WHAT PASSES UNDER.
See also C.P.C. O. 21, Rr. 89 TO 92.

Bids.

———*Bids — Purchase notwithstanding refusal of leave.*

Purchase by decree-holder at execution sale notwithstanding refusal of leave to bid is voidable, and not void. (*Lord Phillimore.*) RADHAKRISHNA *v.* BISHWESHWAR SAHAY. **16 L.W. 190 = 31 M.L.T. 209 = 49 I A 312 = 1 P. 783 = 21 A L.J. 23 = 27 C.W.N 294 = 44 M.L.J. 718 = 37 C.L.J. 430 = 25 Bom. L R. 630 = 8 Pat. L T. 529 = 1922 P.C. 336 (P.C.).**

———*Bids—Knocking down of property—Acceptance of bid by Nazir—Resale of property—Order for—Propriety of.*

An execution sale was held by a Court Nazir who accepted a bid and the deposit of 25 per cent of the purchase-money. After the property had been knocked down, another bidder applied to the Court which ordered a resale. *Held*, that the sale was not concluded when the property was knocked down and the deposit made and the Court had a discretion to order a resale. (*Newbould, J.*) FAZIL MEAH *v.* PROSANNA KUMAR. **1923 Cal. 316 (1).**

EXECUTION SALE—Ex parte decree.

———*Bids—Reopening of bid by order of Court—Legality of procedure.*

Where a bid was considered as the highest in a sale by the Nazir but immediately the Court ordered a re-opening of the sale on a representation being made that there were higher bids and the properties were sold for a higher price, *held*, that the procedure adopted by the Court was perfectly legal and could not be interfered with by the High Court. (*Jenkins, C.J. and Chatterjee, J.*) ASHUTOSH CHATTERJEE *v.* SUDHINDRA CHANDRA MOULIK. **13 I.C. 697.**

———*Bids—Bid of one person treated as that of another.*

A person cannot avail himself of the bid of another at a Court auction and constitute himself the purchaser by depositing the purchase-money. The consent of the bidder cannot improve his position in this matter. (*Stuart, A.J.C.*) SHAH ZADI *v.* AHMAD ALI SHAH. **47 I.C. 993 = 21 C.C. 212.**

———*Bids—Sale when complete.*

Mere closing of the bid does not complete the sale. Order of Court to that effect is necessary. (*Das and Macpherson, JJ.*) JAIBHADAR *v.* MATUKDHARI. **2 P. 548 = 4 P.L T. 498 = (1923) Pat. 190 = 1923 P. 525.**

Duty of Court.

———*Duty of Court — Adjournment — Damages if can be awarded — Order if executable.*

On the application of the judgment-debtors an execution sale was adjourned on terms and the order further provided that if any further adjournment was asked for the party would have to pay damages: *Held*, the order was illegal as it awarded damages for an event which may or may not happen; (2) that even if it was a valid order it was not by itself an executable order; (3) even if executable, an application for execution made more than three years after the next adjournment was asked for would be barred. (*Das and Kulwant Sahay, JJ.*) MAULVI JAMIL AHMAD *v.* BABU KESHO DAS. **(1923) Pat. 202 = 1923 P. 407.**

Ex parte Decree.

———Ex parte *decree—Effect on sale—Protection of stranger auction-purchaser—Position of decree-holder—Purchaser and his assignees.*

Where a decree *ex parte* is set aside, a sale effected in execution of that decree is *ipso facto* cancelled and even a fresh decree on retrial will not validate the same; where the sale becomes so cancelled a stranger purchaser for value is protected by the Court while the decree-holder purchaser and his assignees have no such protection. (*Mookerjee and Chatterjee JJ.*) ABDUL RAHMAN *v.* SARAFAT ALI. **22 C.L.J. 412 = 31 I.C. 896 = 20 C.W.N. 667.**

EXECUTION SALE—Exproprietary Holding.

Exproprietary Holding.

———*Exproprietary holding—Trees—Saleability of.*

Trees which do not form part of an exproprietary holding cannot be sold in execution of a decree. Trees forming part of an exproprietary holding can be sold. (*Tudball, J.*) MOHAN SINGH *v.* LACHMAN DAS. 33 I.C. 707 = 14 A.L J. 254.

Legal Representative.

———*Legal representative not impleaded—Effect of.*

Where the holder of a decree for rent fails to implead the heirs of the recorded tenant as parties to the execution proceedings, a sale of the holding in execution is invalid as against them and cannot affect their interest. (*Greaves and Panton, JJ.*) ABDUL AZIZ *v.* AMIR ALI. 1923 Cal. 166.

———*Legal representative—Decree against wrong person as legal representative.*

A decree against a wrong person on record as legal representative of a deceased debtor represented by the right heir as *guardian-ad-litem* could not be executed against the estate and the sale is invalid. (*Mookerjee and Beachcroft, JJ.*) SASHI BHUSHAN DASI *v.* PELARAM MANDAL. 18 C L.J 362 = 21 I.C. 519 = 18 C.W.N. 173.

Private Sale.

———*Private sale—Sale under order of Court.*

A sale held by the nominee of the parties to a consent decree on the order of the Court is a sale by the Court in execution. (*Mookerjee and Cumming, JJ.*) J. C. GALSTAUN *v.* WOOMESH CHANDRA BANERJEE. 45 Cal. 789 = 35 I C. 850 = 25 C.L.J. 303.

———*Private sale—Mortgage — Date for payment fixed—Usufructuary mortgage—Sale.*

Where a due date is fixed for payment of the mortgage money in a mortgage-deed, the mortgage is not a pure usufructuary mortgage and the mortgagee is entitled to sell immediately after the due date has passed even though he still remains in possession of the property. (*Coutts and Ross, JJ.*) JAG SAHU *v* MUST. RAM SAKHI KUER. 1 P 350 = 3 P.L.T. 332 = (1922) Pat. 58 = 1922 P. 167.

Rights of Purchaser.

———*Rights of purchaser—Title of, when complete.*

Semble.—A purchaser at an auction sale of immoveable property gets the right to have a conveyance of the property but no actual title to the property. (*Lord Dunedin*) JAGGANNATH PRASAD SINGH *v.* ABDULLAH. 45 Cal. 909 = 45 I.A. 97 = 16 A.L J 516 = 5 Pat L.W 68 = (1918 M W.N. 405 = 22 C.W.N. 881 = 8 L.W. 168 = 25 M.L.T 62 = 28 C L J 192 = 20 Bom. L.R. 851 = 45 I.C. 770 = 35 M.L.J. 46 (P.C.).

EXECUTION SALE—Rights of purchaser.

———*Rights of purchaser—Sale proclamation—Mistake as to judgment-debtor's share—Auction-purchaser if entitled to relief.*

A mistake, in a sale proclamation, as to the judgment-debtor's share in the property sold does not give any right by itself to the auction-purchaser in the absence of any intentional misrepresentation by or on behalf of the decree-holder. (*Rafique and Ryves, JJ.*) BAIJNATH PRASAD *v.* NARENDRA BAHADUR PAL 19 A.L J. 147 = 61 I.C. 74 = 3 U.P.L.R. (All.) 82.

———*Rights of purchaser — Equity of redemption.*

A executed a mortgage to B in 1898. C obtained a decree against A, in execution of which he attached the equity of redemption of A in 1907 and purchased it in 1911. After the attachment, and before 1911, B brought a suit on his mortgage of 1898 and obtained a compromise decree. C sued to redeem the mortgage. *Held*, that C was liable to pay the full amount specified in the compromise decree and not merely the amount of the original mortgage in favour of B. An attachment of property does not confer any interest in it. It merely operates to keep the property in the custody of the law until such time as a sale can be had to satisfy the decree in pursuance of which the attachment was issued. (*Richards, C.J. and Piggott, J.*) BHARAT INDU *v.* GOBARDHAN DAS. 28 I.C. 901.

———*Rights of purchaser—Undivided share—Possession—Suit for—Right of decree-holder to get judgment-debtor's share.*

A got a decree against B and brought to sale his one-sixth share. B meanwhile sued C and others for partition and got a decree that he should be given a one-sixth share on paying a certain sum which he neglected to pay and his decree remained unexecutad. A brought to sale and purchased B's one-sixth share by paying the money to be paid by B to others into Court and obtained possession. C sued for declaration of the right and that A was not entitled to possession by virtue of his purchase. *Held*, that A was not entitled to separate possession of any specific portion of the house by virtue only of his purchase at the execution sale as what passed to him was only the right, title and interest of B in an undivided one-sixth share. (*Chamier and Piggott, JJ*). RAM DULARI *v.* BALAKRAM. 37 All. 120 = 27 I C. 696 = 13 A.L.J 105.

———*Rights of purchaser — Equity of redemption.*

A purchaser at an auction sale of the equity of redemption is entitled to plead that the stipulation as to interest is hard and unconscionable. (*Banerji and Griffin, JJ.*) SRI CHAND *v.* NIADAR SINGH. 10 I C. 14 = 8 A.L.J. 407.

———*Rights of purchaser—Where property outside a suit was included in a decree by mistake.*

EXECUTION SALE—Rights of purchaser.

A suit to recover the same from the auction-purchaser will not lie unless the sale itself is declared a nullity by a Court. (*Macleod*, C.J. *and Coyajee*, J.) NAGBHATTA TIMMAN BHATTA *v* NAGAPPA SUBBAYYA.
24 Bom. L.R. 423=46 B 914=1923 Bom. 62.

———*Rights of purchaser — Decree for arrears of rent—Title acquired—Not a new tenancy.*

A purchaser in an execution sale for arrears of rent acquires not only the right, title and interest of the judgment-debtor but the tenure itself passes to him. (*Woodroffe and Walmsley*, JJ.) JNANENDRA MOHAN *v.* UMESH CHANDRA. **28 C.W.N. 985=1923 Cal. 541.**

———*Rights of purchaser—If subject to equities.*

Where the rights of landlord and tenant respecting abatement of rent had been settled by a compromise decree, an auction purchaser of the tenure at a sale for arrears of rent is bound by the same. (*Mookerjee, Newbould and Pearson*, JJ.) UDAI KUMAR DAS *v.* KATYAINI DEBI. **35 C.L.J. 292=49 C. 948=1922 Cal. 87**

———*Rights of purchaser—Accretion taking place before execution sale—Effect.*

Where in a suit by the plaintiff for declaration of title to certain lands alleging that they had accreted to the *ryoti gamai* lands which he had purchased at an execution sale it was found that the lands had reformed long before the purchase. *Held*, that the plaintiff was not entitled to the decree prayed for. (*Chitty and Smither*, JJ.) KRISHNA GOPAL BHOWMIK *v.* HEM CHANDRA BAIRAGI. **46 I.C. 908.**

———*Rights of purchasers*—Bona fide *purchasers—Protection to.*

Courts will as far as possible protect innocent purchasers from the consequences of irregularities and defects of procedure at such sale for the reason that strangers are to prescribe that proceedings are regular ; but such help cannot be extended where the Executing court has no inherent jurisdiction. (*Spencer and Devadoss*, JJ.) MAHARAJA OF JEYPORE *v.* RAJA LAKSHMINARASIMMA GARU.
18 L.W. 747=1924 Mad. 144.

———*Rights of purchaser—Property sold clearly identified but inaccurately described in documents relating to sale—Effect.*

A mortgage deed described the land comprised in it as "Nanja 55" ; and the land was so described in the decree passed in a suit upon the mortgage, the notice of sale in execution of that decree and in the certificate of sale. The land was in fact punja and not nunja ; but there was no other No. 55 in that village. *Held*, that the word "Nunja" in the mortgage deed, in the decree and in the documents relating to the execution sale, was merely an inaccurate description of the property described as No. 55 and thus identified, and that the execution sale was valid and conveyed a good

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title to the purchaser. (*Schwabe*, C.J. *and Wallace*, J.) VENKATARAMA AIYAR *v.* ELUMALAI NAICKER. **44 M.L.J 357=17 L.W. 402=(1923) M.W.N 217=32 M.L.T. (H C.) 216=1923 Mad. 442 (2).**

———*Rights of purchaser—Mortgage decree.*

The interest of a purchaser at a sale held in execution of a mortgage decree is certainly more than merely the interest of the judgment-debtor. (*Ayling and Venkatasubba Rao*, JJ.) TANJORE PALACE ESTATE BY ITS RECEIVER SUNDARAM AIYAR *v.* THIYAGARAJA PILLAI.
1923 Mad. 160 (2).

———*Rights of purchaser—Ownership when changes.*

Unless an auction sale is confirmed, ownership does not pass. (*Wallis*, C.J. *and Oldfield*, J.) NARASINGERJI *v.* PANUGANTI.
(1921) M.W.N. 519.

———*Rights of purchaser—Sale subject to incumbrance.*

On the sale of the property subject to encumbrances the vendor gets the price of his interest, whatever it may be, whether the price settled by private bargain or determined by public competition together with an indemnity against the encumbrances affecting the land. The contract of indemnity may be express or implied. If the purchaser covenants with the vendor to pay the encumbrances it is still nothing more than a contract of indemnity. The purchaser takes the property subject to burden attached to it. If the encumbrances turn out to be invalid, the vendor has nothing to complain of. He has got what he bargained for. His indemnity is complete. He cannot pick up the burthen of which the land is relieved and seize it as is own property. The notion that after the completion of the sale, the purchaser is in some way a trustee for the vendor of the amount by which the existence or supposed existence of encumbrances, had led to a diminution of the price and liable, therefore, to account to the vendor for anything that remains of that amount after the encumbrances are satisfied or disposed of, is without foundation. After the purchase is completed the judgment-debtor has no claim to participate in any benefit which the purchaser may derive from his purchase by reason of the incumbrance being less onerous than it was stated to be. (*Kotwal and Prideaux*, A J. Cs.) MITSUI BUSAN KAISHA, LTD. *v* PADAMRAJ FULCHAND. **6 N.L J 217=1923 Nag. 219.**

———*Rights of purchaser—Property purchased subject to encumbrance—Effect of.*

Where a purchaser at an execution sale buys the property which is encumbered, he must be deemed to accept the burden of the encumbrance and cannot thereafter escape from it merely because his purchase has not been profitable, 31 M. 489 ; 40 B. 646, Ref. to. (*Hallifax*, A J.C.) PANDURANG *v* NARAYAN.
76 I.C. 615=6 N.L J. 78.

EXECUTION SALE—Rights of purchaser.

———*Rights of purchaser—Alienee pendente lite—Mortgaged property—Simple mortgage—Stranger purchaser from mortgagor pending suit on mortgage.*

Where a simple mortgagee gets a decree for sale of the mortgaged property and purchases the property himself, a stranger purchasing part of the property from the mortgagor while the suit of the mortgagee against him is pending, is not competent to raise the plea of adverse possession against the mortgagee as he, the stranger purchaser, is only a representative of the mortgagor (*Kanhaiya Lal*, A.J C) MAHESH BAKHSH SINGH *v.* MANOHAR LAL. 38 I.C. 667 = 18 O.C. 369.

———*Rights of purchaser—Mortgage decree.*

An auction-purchaser in execution of a decree for sale on a mortgage purchases the rights of the mortgagors as they exist on the date of the mortgage, and the rights of the decree-holder *qua* the property sold as they exist on the date of sale. (*Piggott*, J.C. *and Kanhaiya Lal*, A.J.C.) SOHAN LAL *v.* JOT SINGH. 20 I.C. 453 = 16 O.C. 158.

———*Rights of purchaser—Purchaser subject to mortgage and purchase not subject to a mortgage but with notice—Distinction—Purchaser's rights.*

A distinction is to be drawn between the case of an auction-purchaser who buys property not subject to a mortgage but with notice and the case where he buys property declared subject to prior mortgages. In the former case, the auction-purchaser does not acquire any greater rights than that of redeeming the mortgage; in the latter, the Court does not decide whether the mortgage subsists or not; if there is a mortgage, the purchaser has to redeem it; if not, he acquires the property free from liability. The former is provided for by S. 282 of the old Code. (O. 21, R. 62, C.P.C.) and the latter by S. 287 (O. 21, R. 66) 27 A. 97; 16 M. 207; 18 B. 175; 24 A. 418, Foll. (*Lindsay*, A.J.C.) RAMKUMAR *v.* DWARKA PRASAD. 15 I.C. 5 = 16 O.C. 211

———*Rights of purchaser—Crops on the land—Delivery of possession.*

The sale of a plot of land in execution of a decree would pass to the purchaser the crops growing on the land unless they had been exempted from the sale by notification. (*Ross*, J.) DHOBI ROY *v.* MAHADEO SINGH. 4 Pat. L.T. 318 = 1 Pat. L.R. 269 = 1923 P. 365.

———*Rights of purchaser—State of the law.*

The rights of the parties at the time of the sale are fixed with reference to the state of the law at that time and any subsequent interpretation will not operate to affect the result. (*Mullick and Jwala Prasad*, JJ.) JADAB LAL SINGH *v.* DEBI LAL SINGH. 3 Pat. L.W. 149 = 2 Pat. L J. 728 = 42 I.C. 899 = 1919 Pat. 426.

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———*Rights of purchaser—Irregularity—*Bona fide *purchaser for value.*

Only an innocent purchaser for value, who is not a party to any fraud, can claim the benefit of a purchase in bad or irregular execution proceedings. 14 C. 18; 15 C, 557, Ref. (*Roe and Jwala Prasad*, JJ.) RAM KHELAWAN PANDE *v.* ASGAR ALI. 36 I.C. 661.

Sale Certificate.

———*Sale certificate—Particulars in, if can be corrected.*

The particulars given in a sale certificate cannot be corrected by reference to the boundaries given in the plaint. (*Chitty and Smither*, JJ.) KRISHNA GOPAL BHOWMIK *v.* HEM CHANDRA BAIRAGI. 46 I.C. 908.

———*Sale certificate—Revenue sale—Principle applicable to revenue sale in which sale certificate is not title deed of purchaser.*

Quære.—Whether the principles applicable to a sale under C.P. Code, 1908, are also applicable to a revenue sale in which the sale certificate is not the title-deed of the purchaser. (*Chapman, Mullick and Atkinson*, JJ.) MAHANT KRISHNA DAYAL GIR *v.* SAYED ABDUL GAFFUR. 2 Pat. L J 402 = 40 I.C. 13 = 2 Pat L W. 229.

Sale Subject to Incumbrance.

See C.P.C., O. 21; RR. 62, 66.

Setting aside.

———*Setting aside—Grounds — Omission to comply with statute—Irregular decree—Objection to sale—Suit to set aside sale—C.P. Code, S. 47—Bar.*

In a mortgage suit for sale the decree did not comply with the provisons of S. 88 of the T.P. Act as no day was fixed by Court on which payment might be made within six months from the date of declaring in Court the amount due. In execution of the decree the mortgaged properties were attached, sold and purchased with the permission of the Court by the mortgage decree-holder. The sale was duly confirmed. The sons of the mortgagor who had been parties to the suit and the execution proceedings under the decree brought the present suits to redeem the mortgage. *Held*, that the decree was intended to be made in compliance with the Act, and, whether or not its provisions were complied with, the property and all the right, title and interest of the defendant were in fact sold in execution of a decree of Court which had jurisdiction to entertain a suit in which the decree was made and that the mortgagor (plaintiff) lost all right to redeem. The question now raised could have been raised before the sale was confirmed and if so raised, would have been determined by the Court executing the decree, and the present

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suit was barred by S. 244, C.P.C., 1882 (S. 47 C. P. C.). (*Sir John Edge.*) GANAPATHY MUDALIAR *v.* KRISHNAMA CHARIAR.
41 Mad. 403=45 I.A. 54=23 M L.T. 198=
27 C.L.J. 367=34 M.LJ. 463=
4 Pat. L W. 310=(1918) M.W.N. 310=
22 C.W N. 553=16 A.L.J. 353=
20 Bom. L.R. 380=44 I.C. 855=
8 L.W. 427 (P.C.).
[Affirming 24 I.C. 187=27 M.L.J. 213]

———*Setting aside—Grounds—Decree erroneous in law—Sale in execution.*

A sale in execution of a decree passed by a Court with jurisdiction does not become a nullity merely because the Court in passing the decree exercised its jurisdiction wrongly. The remedy of the aggrieved party was to have appealed against the decree or order. Where therefore a mortgagee purchases the equity of redemption in execution of an order under S. 583 of the C.P. Code of 1882 (S. 144 new Code) against the mortgagor, the sale is valid and the mortgagor's right of redemption is extinguished. (*Mr. Ameer Ali.*) PRABHU DAYAL *v.* KALYAN DAS. 38 All. 163=
43 I A. 43=20 C.W N. 425=19 M.L.T. 206=
(1916) 1 M.W.N. 234=3 L W. 293=
28 C.L J 411=33 I C. 605=
18 Bom. L.R. 382 (P.C.)

———*Setting aside—Grounds—Non-compliance with O. 21, R. 22 of the C.P. Code.*

A judgment debtor became insolvent pending an attachment and his properties vested in the Official Assignee. A sale was held in execution without notice of execution to the Official Assignee who had been brought on record as representative. *Held*, that the sale was void. (*Lord Parker.*) RAGHUNATH DAS *v.* SUNDAR DAS KHETRI. 42 Cal 72=
18 C.W N. 1058=1 L W. 567=
27 M.L J 150=16 M L.T. 353=
(1914) M.W.N. 747=16 Bom. L R 814=
20 C L J 555=13 A L J. 154=
24 I C. 304=41 I.A. 251 (P.C.).
[Reversing 15 I.C. 288.]

———*Setting aside—Suit—Fraud—Misrepresentation by judgment-debtor's pleader—Auction purchaser not responsible.*

In a suit to set aside an execution sale on the ground of fraud and misrepresentation by the judgment-debtor's pleader that he was going to apply for an adjournment of sale and the consequent omission of bidders to be present and bid at the sale, *held*, that there was no fraud, and even if the alleged representation of the judgment-debtor's pleader be true, the auction-purchaser was not responsible. There was not sufficient ground for setting aside a sale confirmed by the Court after prompt local inquiry and for inflicting on the auction-purchaser a forfeiture of the considerable purchase-money paid by him out of his own

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funds. (*Lord Robson*) BISHAN CHAND *v.* BIJOY SINGH. 15 C W.N. 648=8 A.L.J. 587=
13 C.L.J. 538=13 Bom. L.R. 440=
(1911) 2 M.W.N. 418=21 M.L.J 662=
11 I.C. 399=10 M L.T. 335 (P.C.).

———*Setting aside—Bundelkhand Land Alienation Act—Obection to sale—Sale held and confirmed—Effect of.*

An objection in an execution case, to the effect that properties could not be sold under the Bundelkhand Land Alienation Act, was dismissed in default and the property was sold and the sale was confirmed. This order was set aside on appeal and the case was remanded by the appellate Court, and the effect of this was to revise the objection, which, if upheld, would render the sale and confirmation void as contrary to the Act. (*Sulaiman, J.*) SATDHAR *v.* RAM CHANDRA. L.R. 4 A. 167 (Civ.)=
21 A.L.J. 917=43 All. 153=1924 A. 261.

———*Setting aside—Order by appellate court—Possession taken by purchaser—Resale.*

A decree for sale was passed on three mortgages in one suit and in execution all the properties were sold in one lot and purchased by the decree-holder himself. Subsequently on an appeal by a representative of the judgment-debtor the High Court set aside the sale and directed a resale of the properties in three lots. *Held*, that the decree-holder purchaser could not apply to get possession of the properties purchased by him without applying for a resale of the properties separately. (*Walsh and Ryves, JJ.*) HARBANS NATH TEWARI *v.* ACHRAJ NATH.
3 U.P.L.R. (A.) 52=(1922) All. 378.

———*Setting aside—Irregularity in procedure—Ancestral property sold as non-ancestral property—Effect of.*

Where ancestral property is sold as non-ancestral, a suit by judgment-debtor to set aside the court sale on account of that irregularity will not lie. (*Piggott and Walsh, JJ.*) BHATELLY CHUNNI LAL *v.* CHAKKERPAN.
L.R. 3 A 167=44 A. 380=20 A L J 281=
1922 A. 56.

———*Setting aside—Sale of ancestral property.*

A sale of ancestral property by a civil Court is not void in law. (*Stuart and Ryves, JJ.*) DILIPNARAIN SINGH *v.* SARMAOTI BIBI.
17 A.L J. 982=67 I.C. 931=42 A. 58.

———*Setting aside—Sale after postponement by Court.*

A sale in execution after an order of postponement by Court is void, though the officer conducting it was not aware of the order. (*Gokul Prosad, J.*) BRAHM SINGH *v.* BHANDU. 62 I.C. 687=19 A.L.J. 225.

———*Setting aside—Purchase by decree-holder—Application by judgment-debtor with consent of decree-holder.*

In execution of a decree certain property belonging to the judgment-debtor and the

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decree-holders (one of whom was also the purchaser) was sold and the judgment-debtor by mutual consent applied to get the sale set aside on the ground of inadequacy of price. *Held*, that the Court had power to set aside the sale as there was no opposition on the part of the decree-holders or the purchaser. (*Richards*, C. J. *and Tudball*, J.) MAHOMED ABDUL RASHID ALI KHAN *v* BUDH SEN.
47 I.C. 885=16 A.L.J. 750.

——*Setting aside.*

When the auction-purchaser discovers that the judgment-debtor had no saleable interest must apply for setting aside the sale under R. 91, before he can get refund of the purchase-money. (*Macleod*, C. J. *and Coyajee*, J.) BALWANT RANGANATH *v.* BALA MALU.
24 Bom. L.R. 308=46 B. 833=1922 B. 205.

——*Setting aside—Right to refund of purchase-money.*

Where an execution sale is set aside as void the purchaser is entitled to a refund of the amount of the purchase-money with interest. (*Batchelor and Rao*, JJ.) PREMRAJ *v.* JAVARMALL. 18 I.C. 381=13 Bom. L.R. 41.

——*Setting aside—Nullity and irregularity—Distinction—Test.*

It cannot be maintained on principle that because a sale has been held in contravention of a statutory provision, it must necessarily be null and void. An irregularity is a deviation from a rule of law which does not take away the foundation or authority for the proceeding; whereas a nullity is a proceeding that is taken without any foundation or is so essentially defective as to be of no avail or effect. One test is to see if the party can waive the objection. If he can, it is an irregularity; if not, a nullity. A provision based on grounds of public policy cannot be waived; but if it is for the benefit of the individual he can. (*Mookerjee and Chotzner*, JJ.) RAJANI KANTA GHOSE *v.* SHEIKH RAHAMAN GAZI. 27 C.W.N. 766=37 C.L.J. 417=1924 C. 408

——*Setting aside—Fraud—Plea of purchaser without notice—When a bar to application.*

If a decree is obtained by fraud, the execution sale can be set aside if the facts of the cases show that the person agreed has the balance of equity in his favour as against the decree-holder and purchaser. Thus a purchaser without notice is protected the value of equity being in his favour and the application to set aside the sale will not be entertained. (*Mookerjee and Rankin*, JJ.) BISESWAR GHOSE *v.* PANCHOURI GHOSE. 37 C.L.J. 146=27 C.W.N. 587=1923 C. 538

——*Setting aside—Fraud*—Ex parte *decree—Stranger purchaser.*

An execution sale ought not to be set aside merely because the sale was held in execution of an *ex parte* decree obtained by fraud where the purchaser is a stranger who was no party to the fraud and was not aware of it at the time of paying the purchase-money. (*Teunon and Buckland*, JJ.) GOPAL PORAI *v.* SWARNA BEWA. 64 I.C. 611.

——*Setting aside—Fraud and collusion—Rent sale—Decree against heirs of original tenant—Unregistered transferee.*

P, who held a mourazi mokurari jote bequeathed it to the plaintiff. Plaintiff's name not having been registered in the landlord's books, the landlord, though aware of the bequest in plaintiff's favour sued P's heirs for rent, got a collusive decree and in execution thereof sold the jote. *Held*, that the plaintiff's right to the jote was not extinguished by the rent sale. (*Chitty and Smither*, JJ.) JAGADISH CHANDER DEO DHABEL DEB *v.* SRIDAM MAHATA. 44 I.C. 26.

——*Setting aside — Fraud—Decree impeached.*

A fraudulent decree must be set aside within three years of the knowledge of fraud. Where this is not done in time, the sale in execution thereof cannot be set aside. (*Mookerjee and Richardson*, JJ.) RAJKUMAR SARKAL *v.* RAJAKUMAR MALI. 33 I.C. 767=20 C.W.N. 659.

——*Setting aside—Auction-purchasers—Some appealing against order setting aside sale, effect of, as regards auction purchasers not appealing.*

If the appellate Court reverses the order of the first Court setting aside the sale on an appeal preferred by one of the auction-purchasers at an execution sale, the order of the first Court does not stand even against other auction-purchasers who did not appeal. (*Sharfuddin and Chapman*, JJ.) TULSI RAUT *v.* NABI BUX. 32 I.C. 198.

——*Setting aside—Grounds for—Events happening after institution of suit, if can be taken notice of.*

An execution sale can be set aside even on grounds not present when an application for the same was made, and for this purpose the Court can take notice of events which have happened since the institution of a proceedings with a view to do complete justice to the parties. (*Mookerjee and Chatterjee*, JJ.) ABDUL RAHMAN *v.* SARAFAT ALI.
22 C.L.J. 412=31 I.C. 896=20 C.W.N. 667.

——*Setting aside—Grounds—Decree barred.*

A judgment-debtor seeking to set aside a sale cannot succeed on the ground that the application for execution was time-barred. (*Carnduff and Beachcroft*, JJ.) KAMAR-UDDIN *v.* MANMATHA NATH MANNA.
19 I.C. 377.

——*Setting aside—Effect of confirmation.*

A sale confirmed in favour of an auction-purchaser is not liable to be set aside in proceedings to which auction-purchaser is not a party. (*Stephen and Richardson*, JJ.) KONNORMAL OSWAL *v.* NABIN CHANDRA DAS. 15 I.C. 228.

EXECUTION SALE—Setting aside.

———*Setting aside—No notice to auction-purchaser—Appeal.*

An appeal lies from an order setting aside execution sale without notice to the auction-purchaser at the instance of the auction-purchaser. (*Scott-Smith*, J.) GUL BANO *v.* MUHAMMED ZAKAR KHAN. **3 Lah L J 463**

——*Setting aside—Inherent power—Abuse of the process of Court—Suppression of facts—Leave to bid—Matters to be considered in granting leave.*

The Court has inherent power to refuse to confirm an execution sale if it is satisfied that it it was misled either in giving leave to bid or in fixing the real price. The Court will not however exercise the inherent power unless it has had all the facts fully before it and is satisfied that it has been misled. In order to show that the Court has been misled, it is necessary to show either actual misstatements to the Court or non-disclosure to the Court of relevant facts unknown to the Court and which there was a duty to bring before the Court. 23 Mad. 217, followed. On an application for leave to bid the main question for the Court to consider is whether it is to the advantage of every one concerned in order to obtain the highest price that the plaintiff should be allowed to bid or not. In this case their Lordships set aside an execution sale by reason of the deliberate suppression by the decree-holder in his affidavit before the Registrar on the Original Side of the facts that the properties were put to auction before and that the Court had fixed a very much higher reserve price and that a bid for a much larger amount was not accepted. (*Schwabe*, C J. *and Wallace*, J.) RAGHAVACHARIAR *v.* MURUGESA MUDALI **46 Mad 533=44 M L J 680=(1923) M W N. 324=32 M L T (H C.) 285=17 L.W. 750=1923 Mad. 635.**

———*Setting aside—Parties.*

A purchaser at a sale *held* in execution of a decree which he subsequently sought to be amended is a necessary party to the application for its amendment on the general principle that persons, whom it is desired to bind by proceedings can and must be impleaded in them and the order allowing the amendment is not binding on him, if they are not so impleaded. (*Oldfield and Ramesam*, JJ.) NARAYANA AYYAR *v.* BIYARI BIVI **16 L W. 623=32 M L T (H C.) 98=43 M L J. 559=(1922) M W.N 731=1923 Mad. 57.**

———*Setting aside—Major defendant treated as minor—Knowledge of proceedings—Estoppel.*

One of the defts. who where the judgment-debtors under a decree attained majority after the date of the decree and before proceedings in execution for sale of the property were taken. He was nevertheless represented on the record as a minor and the sale was held with him on the record as a minor. On an application by him to set aside the sale on that ground, *held* that the fact that he knew of the proceedings throughout afforded an answer to the objection, even though the decree-holder was aware of his majority. 21 M. 167; 6 L.W. 272; 39 M. 1031, Foll. (*Oldfield and Venkatasubba Rao*, JJ.) RADHAKRISHNASWAMI NAIDU *v.* ANNAMALAI CHETTIAR. **43 M.L J 92=31 M.L.T. 122 (H C.)=16 L.W. 643=(1922) M.W.N. 655=1922 Mad. 301.**

EXECUTION SALE—Setting aside.

———*Setting aside—Grounds for—Impeaching collaterally.*

The mere fact that the Court ordering the sale had notice of an attachment by the superior Court does not oust the jurisdiction of the former Court and the sale cannot be treated as a nullity. A sale in contravention of S. 63 (1), C.P.C., is not *null* and *void* but merely irregular. The title of a purchaser at a judicial sale, not himself in fault, cannot be impaired at law or in equity by showing any mere error or irregularity in the proceedings. Errors and irregularities must be corrected by a direct proceeding. If not so corrected, they cannot be made available by way of collateral attack on the purchaser's title. There cannot be a collateral impeachment of a judicial sale and a direct impeachment is possible only to the parties to the proceedings or those interested therein. 4 A. 359, Not Foll.; 18 B. 458; 22 M. 295, Foll. (*Srinivasa Aiyangar*, J.) NARAYANAN NAMBUDRI PAD *v.* TAWKER J. MEGAJI SEIT. **32 I.C. 927.**

———*Setting aside—Parties—Separate suit in a different Court to impeach whether lies.*

The validity of a duly confirmed Court sale can be questioned in a subsequent suit in a different Court only if all the parties interested therein are represented. (*Ayling and Spencer*, JJ.) SWAMI ROWAPPA *v* KUPPUSAWMY AIYENGAR. **10 M L T 210-12 I C 130=(1911) 2 M W N 342.**

———*Setting aside—Absence of attachment.*

A sale does not become null and void merely by reason of the absence of an attachment, which is intended for the protection of the decree-holder and to take the property out of the disposition of the judgment-debtor. (*Hallifax*, A.J.C.) HARIDAL *v* NARAYAN. **4 N L J 118=18 Nag L R 152=1922 Nag 267.**

———*Setting aside—Suit against two sets of defendants.*

Where the suit was brought against both sets of defendants if the plaintiff was wrongly given possession contrary to the decree, it was open to either of them to apply for restitution. (*Daniels*, J.C.) DORI LAL *v.* MT. JAMAGA **1923 Oudh 16.**

———*Setting aside.*

Acquiescence in sale without objection operates as an estoppel. (*Lyle*, A.J.C.) ABDUL RAZAK *v.* MUHAMMAD HAJJAM. **9 O.L.J 131=1922 Oudh 11.**

EXECUTION SALE—Setting aside.

———*Setting aside — Order of refusal—Appeal.*

An order refusing to set aside a sale or to allow restitution can be appealed against as a decree. (*Piggott*, J.C. *and Kanhaiya Lal*, A.J.C.) NAWAB NUZHAT-UD-DAULA ABBAS HUSAIN KHAN *v.* NAWAB DILBAND BEGAM.
21 I.C. 570 = 16 O.C. 225.

———*Setting aside—Grounds— Sanction—Absence of.*

After every attachment of a share in a *mauza*, a fresh sanction should be obtained from Government to the sale of the property attached. Where a certain share in a *mauza* was attached but a larger share was put up to sale and sold. It was held that the sale was invalid and hence it cannot be upheld even to the extent of the share actually attached. (*Lindsay*, J.C.) GAYA PRASAD SINGH *v.* MISRA SINGH. 15 I.C. 780 = 16 O.C. 81.

———*Setting aside—Sanction of Government for sale of ancestral property given after sale, if sufficient.*

Sanction of Government for the sale of ancestral property, given after the sale is not sufficient to validate the same. (*Chamier*, J.C.) MUHAMMAD AHMED *v.* PRAG NARAIN
11 I.C. 346 = 14 O.C. 115.

———*Setting aside—Sale within 30 days of proclamation is not void.*

A sale held within 30 days of the proclamation is not void but such an order is only a material irregularity. (*Miller and Mullick*, JJ.) WAZIR NARAYAN *v.* BHIKHARI RAM.
(1922 Pat. 321 = 3 Pat. L T. 691 = 4 U.P.L.R.(Pat.) 100 = 1923 P. 45.

———*Setting aside—Sale in defiance of injunction—Effect of.*

The District Court in execution of a decree fixed a date for the sale of certain properties Before that date the claimant instituted a suit in the Sub-Court and obtained an injunction restraining the decree-holder from selling the property. The District Court refused to stay the sale whereupon the sale was held and the purchase-money paid into Court On an application to set aside the sale, *held* by the High Court that though the District Court was not personally bound by the order of injunction, yet it should in the exercise of its inherent power have directed stay of the sale having regard to the fact that the decree-holder was restrained by injunction from executing the decree. In the result the sale was set aside and the money deposited in Court was refunded to the purchaser. (*Miller*, C J. *and Mullick*, J.) MAHARAJ BAHADUR SINGH *v.* A. H. FORBES. (1922 Pat. 226 = 3 P.L.T. 645 = 1 P 682 = 1923 P. 382.

———*Setting aside—Fraud.*

Though a decree is fraudulently obtained, the execution sale under it is not rendered void, unless the auction-purchaser was a party to the fraud in the execution proceedings which vitiated the sale. (*Jwala Prasad*, J.) JAGAB-NATH PRASAD *v.* BAHUBANI. 62 I.C. 594.

EXECUTION SALE—Territorial Jurisdiction.

Stranger Purchaser.

———*Stranger purchaser—Decree-holders.*

The Court has a tender regard for honest purchasers at sales held in execution of its decrees though the sales may be afterwards set aside, where those purchasers are not parties to the suit and the decree has not been passed without jurisdiction. But the mere measure of protection is not extended to purchasers who are themselves the decree-holders nor to the purchasers from those decree-holders-purchasers. (*Jenkins*, C.J. *and Chatterjee*, JJ.) SATIS CHANDRA GHOSE *v.* RAMESWRI DASI.
22 C L.J. 409 = 31 I.C. 894 = 20 C.W.N. 665.

———*Stranger purchaser—Irregularities in sale—Effect on auction purchaser.*

A *bona fide* auction-purchaser need look, only to the decree and order of sale of the executing court and is not bound to inquire further into title. So long as the decree remains valid, the proceedings taken under that decree, so far as they affect third parties in the same position as a *bona fide* auction-purchaser, cannot be impugned. 29 B. 435, 436; 10 A. 166 (P C.) Rel. (*Le Rossignol and Campbell*, JJ.) INDAR SAIN *v.* PRABHU LAL. 3 Lah. 86 = 1922 Lah. 277.

———*Stranger purchaser—Decree—Reversal of—Effect of sale.*

A *bona fide* purchaser who is not the decree-holder, or any person claiming through him, at an auction sale in execution of a valid decree acquires a valid title to the property purchased by him and is not affected by the subsequent reversal or modification of the decree. 14 C. 18: 10 A. 166; 26 C. 794; 37 C. 107 Foll. (*Broadway and Martineau*, JJ.) TARA CHAND *v.* ABDUL AHAD. 67 I.C 894.

Territorial Jurisdiction.

———*Territorial jurisdiction—Want of.*

Sale held by Court without territorial jurisdiction is void. Objection to defect of jurisdiction must be taken at the earliest opportunity in the Court of first instance. (*Mookerjee and Chotzner*, JJ.) MOHAN CHAKRAVARTY *v.* MANINDRA CHANDRA ROY CHOUDHRY.
27 C.W.N. 842 = 1923 C. 619.

———*Territorial jurisdiction—Agency court if can sell property outside.*

A court has no jurisdiction in execution of a decree to sell property over which it had no territorial jurisdiction at the time it passed the order of sale. Thus an Agency Court has no right to sell the right to collect *kattubadi* in villages situated beyond the limits of its territorial jurisdiction. (*Spencer and Devadoss*, JJ.) MAHARAJAH OF JEYPORE *v.* RAJAH LAKSHMINARASIMMA GARU.
18 L.W 761 = 1923 M. 145.

EXECUTION SALE—Territorial Jurisdiction.

———*Territorial jurisdiction.*

Where properties are transferred by Government notification from the territorial jurisdiction of the Court which passed the decree it has no jurisdiction thereafter to attach or sell the property. If, however, the sale is held in execution and confirmed, the judgment-debtor might be estopped if he sued to recover possession. The auction-purchaser however is not estopped from doing so. (1883) 13 Q B.D. 457, Foll.; 22 Cal. 909 Expl.; 35 Cal. 877 and 7 C.L.J. 644, Not Foll. Whatever may be the general position of an execution creditor in regard to cases over which a Court has jurisdiction, the principle of estoppel should not be extended to cases where the judgment-debtor is sought to be affected by a rule of procedure relating to jurisdiction. (*Abdur Rahim*, O.C.J. *and Seshagiri Aiyar*, J.) VEERAPPA CHETTY *v.* RAMASAMY CHETTI. **43 Mad. 135 = 37 M.L.J. 442 = 26 M.L.T. 271 = 53 I.C. 579 = 11 L.W. 232.**

What passes under.

———*What passes under.*

It is only the property attached that can pass by the execution sale. If the decree-holder attaches the wrong property by mistake, his remedy is to start with fresh execution proceedings. (*Lord Moulton.*) RAJA THAKUR BARMHA *v.* JIBAN RAM. **41 Cal 890 = 41 I.A. 38 = 18 C.W.N. 318 = 15 M.L.T. 137 = 12 A.L.J. 156 = 19 C.L.J. 161 = 26 M.L.J. 89 = (1914) M.W.N. 118 = 21 I.C. 936 = 16 Bom. L.R. 156 (P.C.).**

———*What passes under—Attachment and sale of property of stranger.*

Attachment and sale of defendant's property for decree against plaintiff is illegal and void and the sale is without jurisdiction. The purchaser gets no title. (*Lord Macnaghten*, J.) RAGHO PROSHAD *v.* MEWALAL. **34 All. 223 = 39 I.A. 62 = 11 M.L.T. 193 = (1912) M.W.N. 311 = 14 Bom. L.R. 212 = 16 C.W.N. 433 = 15 C.L.J. 327 = 9 A.L.J. 401 = 15 I.C. 177 = 22 M.L.J. 457 (P.C.).**

———*What passes under—Appurtenances—Sale of sixteen annas Zemindari—Groves.*

Where in execution of a mortgage decree the entire 16 annas zemindari with all appurtenances were sold and purchased by the plaintiff the sale is not exclusive of the shares in the groves. (*Richards*, C.J. *and Tudball*, J.) HASAN ALI KHAN *v.* AZHA-RUL HUSAN. **41 All. 45 = 48 I.C. 367 = 16 A.L.J. 900.**

———*What passes under—Sale of Zamindari rights—Buildings appurtenant to Zemindari.*

Where an inventory filed with the application for execution of a decree specified the Zamindari to be sold, but not the buildings situate therein the sale passed the Zamindari only and not the buildings. 4 A. 381, 22 A. 168; Dist. (*Knox and Rafique*, JJ.) SAKHAWAT ALISHAH *v.* MUHAMMUD ABDUL KARIM KHAN. **38 All. 59 = 31 I.C. 809 = 13 A.L.J. 1098.**

EXECUTION SALE—What passes under.

———*What passes under—Joint Hindu family—Decree against father—Son's interest when passes.*

In the absence of any objection by any member of the family when joint family property is put up for sale in execution of a decree against a manager it may be inferred that the intention was to pass the interest of all the members of the family in the property, though it may be open to other members of the family to dispute that intention and to satisfy the Court either that the alienation was not binding on them that the debt incurred by their father was not binding on them or any other ground that their interest in the joint family property had not passed to the auction-purchaser. 44 I.A. 1 Rel. (*Macleod*, C.J *and Crump*, J.) DADA JINAPPA *v.* YESU SAKHOBA. **25 Bom. L.R. 495 = 1923 Bom. 450.**

———*What passes under—Sale in lots—Realisation of proceeds.*

Where property is sold in execution in several lots, the proceeds are deemed as not realized, until the entire amount of purchase-money in respect of all the parcels is paid into Court. (*Mookerjee*, A.C.J. *and Fletcher*, J.) BARENDRA NATH MITTER *v.* MARTEN & CO. **62 I.C. 167 = 33 C.L.J. 7.**

———*What passes under—Question of intention—Impartible estate.*

The question what the Court intended to sell and the purchaser intended to buy is a question of fact or rather of mixed law and fact and must be decided on evidence, *e.g.* the character of the debt, the frame of the suit, the judgment and decree, the terms of the sale proclamation, the adequacy of the price, the law at the time of the sale, etc. (*Miller and Abdur Rahim*, JJ.) SOMASUNDARA *v.* MURUGAPPA. **36 Mad. 325 = (1913) M.W.N. 86 = 12 M.L.T. 571 = 18 I.C. 49 = 23 M.L.J. 658.**

———*What passes under—Mixed question of fact and law.*

In an execution sale what the Court intended to sell and what the purchaser understood he bought is a mixed question of law and fact. How the parties themselves viewed it, at the time, is of much greater value than evidence procurable some twenty years after the transaction. In determining what the Court intended to sell, the state of the law at the time of sale is not conclusive. (*White*, C.J. *and Phillips*, J.) ALAGARAYA GOUNDAN *v.* MINAKSHI NAIDU. **37 Mad. 22 = 24 M.L.J. 652 = 10 M.L.T. 298 = 12 I.C. 389 = (1911) 2 M.W.N. 328.**

EXECUTION SALE—What passes under.

——*What passes under.*

The test is what the Court intends to sell and what the purchaser understands that he bought the question of what the Court could, or should have sold does not arise. 10 Mad. 241 (P. C.); 27 Mad. 131. Foll. (*Baker*, O.J.C.) SAKHARAM v. GITABAI. 1923 Nag. 333.

——*What passes under—House and site—Sale of house without site—Rights of purchaser.*

Where in execution of a money decree a house is sold without the site on which it stands, the purchaser cannot get possession of the house without also getting possession of the site. (*Batten*, J.C.) RAMASA v. GAMBHIR CHANDSA. 6 N.L.J. 25=1923 Nag. 150.

——*What passes under—Right, title and interest of judgment-debtor—Rights of decree-holder in a different capacity.*

An auction-purchaser in execution of a money decree derives his title from the judgment-debtor and not from the decree-holder. A purchaser at an auction-sale purchases only the right, title and interest of the judgment-debtor and not any right which the judgment-creditor might have to set aside or question the validity of any deed which had been previously made by the judgment-debtor himself. (*Mitra*, A. J. C.) NARAINRAO v. FATHELAL. 43 I.C. 907=15 N.L.R. 46.

——*What passes under—Trees—Pass with land—Shade rights.*

A sale in execution of trees belonging to the judgment-debtor passes the right, title and interest of the judgment-debtor to the purchaser and the former cannot claim any shade right in respect of those trees. (*Mitra*, J.C.) GANGARAM v. YASHODABAI. 42 I.C. 261= 13 N.L.R. 163.

——*What passes under — Validity of—Person not a party.*

Persons who are not parties to a decree are not bound by it and ordinarily sale in execution does not operate to pass property of persons not bound by it. (*Lindsay*, J.C.) JADU NATH SINGH v. AFZAL KHANAM. 8 O L.J. 191= 7 O.L.J. 862=37 I.C. 526= 2 U.P.L.R. (J.C.) 118

——*What passes under—Sale of portion of the judgment debtor's property without statement of his proportionate shares.*

In execution of a joint and several decree against the defendant and his co-sharers, plaintiffs applied for sale of the joint property, of which only a portion was sanctioned. Plaintiffs bought it at the sale. But the sale proclamation and the sale certificate did not contain the proportionate interest of the several judgment-debtors. *Held*, that the auction-purchasers must be deemed to have purchased the whole and not merely the defendant's interest in the portion directed to be sold. (*Lindsay*, J.C.) BABU MAHENDRA NATH DAB SINGH v. JADUNATH SINGH. 21 I.C. 262.

——*What passes under.*

Where the D Register could not be reconciled with the khatian and khewat and where the words "Panch gunda Minjumle das gunda Pokhta" were used in execution proceedings. *Held*, the auction-purchaser would be entitled to five gundas share in the village. (*Coutts and Adami*, JJ.) RASIK BEHARI PRASAD CHAUDHURI v. HIRDENARAIN CHAUDHURI. 1923 P. 30.

——*What passes under—Rent sale for whole tenure—One village named in proclamation—Sale certificate—Effect of.*

In a suit for recovery of the entire rent due in respect of the whole tenure comprising five villages one of the villages B alone was mentioned in the plaint and the names of other villages were omitted. In execution of the rent decree the property was attached under the description of 'Bijulia asli maidakhri' and in the sale proclamation and in the certificate for sale the property was described as two annas eight pies 'Bijulia asirmi dakhilk. *Held*, that the whole tenure passed by the execution sale and not the village Bijulia only. (*Chamier*, C.J. *and Sharfuddin*, J.) DURGA PRASAD v. DINESHWAR NATH. 4 Pat. L.W. 347=43 I.C. 584= (1918) Pat. 8.

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See also (1) ADMINISTRATOR.
(2) PROB. AND ADM. ACT.

——*Rights of—Probate—Effect of—Grant—Administrator.*

The authority and title of an executor is derived from the will of his testator and not from any grant of probate. The personal property of the testator including all rights of action, vests in him upon the testator's death, and the consequence is that he can institute an action in the character of executor before he proves the will. He cannot obtain a decree before probate, but this is not because his title depends on probate, but because the production of probate is the only way in which, by the rules of Court, he is allowed to prove his title. An administrator, on the other hand, derives his title only from the grant. (*Lord Parker.*) SOONA MAVANA KENA ROONA MEYAPPA CHETTY v. SOONA NAVANA SUPPRAMANYAN CHETTY. 20 C W N. 833= (1916) 1 M.W.N. 455=18 Bom. L.R. 642= 114 L.T. 1002=43 I A. 113= 35 L.J. (P.C.) 179=35 I.C. 823= (1916) 1 A.C. 603.
[*See* also 30 M.L.J. 555=35 I.C. 1= 20 M.L.T. 50 (P.C.).

——*Acceptance of office.*

Where an executor accepts office and acquires property as such he is estopped from setting up his own title to the property until he

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obtained a valid discharge. (*Lord Macnaughten*). SRINIVASA MOORTHY *v* VENKATAVARADA. **34 Mad 257 = 18 C W.N. 741 = 8 A.L.J 774 = 13 Bom L R 5 0 = (1911) 2 M.W N 37 = 14 C L J 61 = 21 M.L.J. 669 = 11 I C 447 = 10 M L T 263 P C.).**

[Affirming 29 Mad. 239 = 16 M L J 238 = 1 M.L T. 71.]

———*Minor legatee—Deposit of sum in Bank—Breach of trust by executor—Liability of Bank—Limitation Act, Arts* 48, 60, 120.

Where in pursuance of the directions of a will, the executors deposited a sum of money, in a Bank to accumulate until the minor legatee attained majority, but some time before the event, drew out the amounts. *Held* in a suit by the legatee against the Bank for the amounts thus drawn out, in the absence of notice, actual or constructive, that the depositors were acting as trustees in the matter, the Bank was not privy to any breach of trust; that the moneys were deposited as executors and as such the Bank was entitled to deal with them. For purposes of limitation, the suit must be treated as one for conversion in which case Art. 48 would apply or for money had and received for plff's. use in which case Art. 62 would apply, but not Arts. 120 or 133. (*Macleod*. C.J. *and Shah*, J.) BANK OF BOMBAY *v*. FAZULBHOY EBRAHIM.

24 Bom. L.R. 513 = 1923 Bom. 153.

———*Liability to render accounts—Retention of assets—Debts—Onus.*

Where an executor is sued for accounts, the onus lies on him to prove that he was a creditor of the estate of the deceased testator at the time of his death and that he was consequently entitled to retain the assets of a portion of them towards the debt. (*Mookerjee and Chotzner*, JJ.) PULIN BEHARI DEY *v*. SATYA CHARAN DEY. **36 C.L.J. 367 = 1922 Cal. 79.**

———*Indemnity—Delay in filing accounts does not affect right to idemnity.*

The executor has no power to carry on business carried on for indefinite time where they were not authorised by will. Executor is personally liable for incurring debts. (*Greaves*. J.) SUDHIR CHANDRA DAS *v* RASSESWARI CHAUDHURI. **35 C L.J. 46.**

———*Co-executors—Powers of.*

Where there are several executors the powers of all may, in the absence of any direction to the contrary in the Will may be exercised by any of them who has proved the Will. 27 Cal 683, Foll. (*Mookerjee and Panton*, JJ.) RANI HEMANGINI DEBI *v*. SARAT SUN DARI DEBYA.

66 I.C. 882 = 34 C.L J. 457.

———*Execution of decree against—What passes.*

Where a widow was appointed executrix of the estate of her husband who had two minor sons, and Probate was granted to her and a decree was passed against her for arrears of rent, and an occupancy holding of her husband was sold in execution, *held*, that the whole of the holding passed under the sale, and not merely her title, right and interest in it, although her executorship may be deemed as closed on the attaining of majority of the sons, as the sons allowed their mother to remain in possession. (*Mookerjee*, A C.J. *and Fletcher*, J.) MAHENDRA NATH MONDAL *v*. SHAMSUDDIN. **33 C.L.J. 198 = 62 I C 314 = 5 C W.N. 279.**

———De son tort—*Accounts—Suit for account by one against representatives of another.*

Plaintiff and another as executors under the will of a Hindu lady took out probate but the estate was administered by the latter alone during his life-time. *Held*, that the defendants representatives of the executors who assumed management were in the position of trustees *de son tort* and it was not open to them to deny their liability as such or to contend that they were trespassers and could not therefore be liable to render accounts. The rule of English law that no liability as executor *de son tort* can arise where there is a personal representative did not apply in this case where plaintiff the rightful executor took no part in the administration when the defendants were intermeddling with the estate. The trustee represents the *cestui que trust* and the suit for accounts at the instance of the plaintiff was maintainable against the defendants. (*Chatterjee and Panton*, JJ.) DHANPAT SINGH *v*. MOHESH NATH TEWARI.

57 I.C. 805 = 24 C.W.N. 752.

———*Rights of*—Debutter *created before will—Executors—Title to* debutter *property.*

The executors of a will before the date of which a *debutter* had been created by the testator, will not get vested with the *Debutter* property and are not entitled to maintain a suit in respect thereof. (*Woodroffe and Smither*, JJ.) MOHENDRA NATH *v*. GOUR CHANDRA.

46 I.C. 857 = 22 C.W.N. 860.

———*Representation of estate — Decree obtained by—Purchaser by executor—Family arrangement.*

The fruit of the decree obtained by an executor as such goes to the beneficial owners of the estate. (*Fletcher and Smither*, JJ.) KRISHNA POOMODA DAS *v*. KEDAR NATH.

41 I.C. 732.

———*Powers of—Reference to arbitration.*

An executor or administrator is under certain circumstances, for example, for the settlement of any debt, account or claim in relation to the estate in his hands, competent to make a reference to arbitration; such right cannot be disputed when exercised within the limits of his authority. But an executor cannot make a reference to arbitration with the avowed purpose that the terms of the will may be modified and arrangements made for the management and distribution of the estate

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contrary to the directions of the testator. (*Mookerjee and Beachcroft*, JJ.) SOUDAMINI GHOSE *v.* GOPAL CHANDRA GHOSE.
19 C.W.N. 948 = 28 I.C. 557 = 21 C.L.J. 273.

———*Accounts—Residuary legatee—Right to claim account from executor.*

A residuary legatee under a will is entitled to claim an account from the executor so far as is necessary for ascertaining what the residuary share is, and an executor cannot plead that he is discharged from the liability because he has filed certain accounts in the Probate Court. (*Jenkins*, C.J. *and Mookerjee*, J.) KHETRAMANI DASEE *v.* DHIRENDRA NATH ROY. 25 I.C. 370 = 41 Cal. 271.

———*Liability of—Rents.*

The executors are personally liable for the rent of the estate vested in them and not the beneficiaries who might ultimately be entitled to the property. (*Mookerjee and Teunon*, JJ.) BIJOY CHAND *v.* PARBATY CHARAN.
10 I.C. 560 = 15 C.L.J. 468.

———*Representation of estate—Heirs of executor—Whether can enforce an agreement entered into with the executor by third person.*

The heirs of an executor have no *locus standi* to enforce an agreement entered into between the executor and a third person in connection with the administration of the estate after the executor's death in the absence of an authority from the Court. The person duly authorised to administer the testator's estate under Act V of 1881 after executor's death is the proper person to enforce the agreement. (*Shah Din and Le-Rossignol*, JJ.) DITTA RAM *v.* RUP CHAND. 31 I.C. 802 = 152 P.W.R. 1915.

———De son tort — *Suit against—Legal representatives as party to suit.*

Where an executor *de son tort* takes possession of all the assets of the deceased, a suit for general administration can be filed without joining the legal representatives and in cases where he takes possession of only a part of the assets he can be made accountable for the part he actually took possession of, without joining the legal representatives. But where administration is sought for the entire estate in cases where the executor *de son tort* has taken possession of only a part, the legal representatives would also have to be added. (*Schwabe*, C.J. *and Coutts Trotter and Kumaraswami Sastri*, JJ.) ZAMINDAR OF BHADRACHALLAM *v.* SRI RAJA VENKATADRI APPA ROW.
43 M.L.J. 486 = (1922) M.W.N. 632 = 31 M.L.T. 221 (H.C.) = 16 L.W. 369 = 46 M. 190 = (1922) Mad. 457.

———*Legatee seeking possession—Procedure.*

If one legatee or a purchaser of his interest seeks to obtain actual possession of his share of the estate, he must do so in the proper course of administration. (*Spencer and Ramesam*, JJ.) SOUNDARATHAMMAL *v.* NARAYANASWAMI AIYAR. 37 M.L.J. 667 = 31 M.L.T. 50 = 15 L.W. 589 = 1922 Mad. 303.

EXPECTANCY.

———*Joint executor—Renewal of debt.*

One of the joint executors has powers of renewal of debt barred by limitation. (*Oldfield and Venkatasubba Rao*, JJ.) ALAMURI SITARTMASWAMI *v.* PRALIVADI BHAYANKARNAM ANNAM VENKATA RAGHAVACHARYULU. 16 L.W. 52 = (1922) M.W.N. 218 = 30 M.L.T. 344 = 42 M.L.J. 559 = 1922 M. 214.

———*Management of estate—Lending money by, to another executor.*

If it is not so directed in the testator's will, one executor cannot lend money to another executor without security. In India there are no separate forms of actions for every suit, like these in England and hence the rule of English Common Law, forbidding an action of *Devestavit* being brought by one executor against another, does not apply in India. (*Sadasiva Aiyar and Napier*, JJ.) VARDARAJULU CHETTY *v.* RAJAMMA. 2 L.W. 322 = 30 I.C. 63 = (1915) M.W.N. 252.

———*Contracts by—Personal liability.*

Upon a contract of borrowing made by an executor he is only liable personally, and cannot be sued as executor so as to get execution against the assets of the testator. 7 C.W.N. 104 ; 31 Cal. 353, Ref. In special cases however the estate may be liable. (*Daniels*, A.J.C.) BABU ANANTRAM *v.* NATIONAL BANK OF UPPER INDIA, LTD. 66 I.C. 116 = 9 O.L.J. 94.

———*Liability of—Trustee.*

An executor becomes a trustee when generally speaking the funeral and testamentray expenses and the debts are discharged, the legacies are paid and sums are set apart for investment in the trust created by the will. (*Pratt*, J.C.) HEMANDAS RAMRAKHIOMAL *v.* CHELLARAM DHALLOMAL. 32 I.C. 555 = 9 S.L.R. 134.

EXECUTRIX.

See EXECUTOR.

EX PARTE.

See (1) CIV. PRO. CODE, S. 9, R. 13.
(2) JUDICIAL PROCEEDINGS.

EX PARTE CASES.

See (1) CIV. PRO. CODE, O. 9.
(2) PRACTICE.

EX PARTE DECREE.

See (1) CIV. PRO. CODE, O. 9.
(2) PRACTICE.

EX PARTE JUDGMENT.

See (1) CIV. PRO. CODE, O. 9.
(2) PRACTICE.

EX PARTE ORDER ABSOLUTE.

See CIV PRO. CODE, O. 34.

EX PARTE PROCEEDINGS.

See CIV. PRO. CODE, O. 9.

EXPECTANCY.

See T. P. ACT, S. 6.

EXPENSES OF WITNESSES.

See CIV. PRO. CODE.

EXPERT.

See EVIDENCE ACT, SS. 45, 50.

EXPERT EVIDENCE.

See EVIDENCE ACT, S. 45.

EXPERT OPINION.

See EVIDENCE ACT, S. 45.

EXPRESS MALICE.

See (1) MALICIOUS PROSECUTION,
(2) TORT.

EXPRESS TRUST.

See (1) TRUST.
(2) TRUSTS ACT.

EXPROPRIETARY HOLDING.

See (1) LANDLORD AND TENANT.
(2) OCCUPANCY HOLDING.

EXPROPRIETARY TENANCY.

See AGRA TENANCY ACT.

EXPROPRIETOR.

See AGRA TENANCY ACT.

EXPUNGING FROM RECORD.

See (1) CIV. PRO. CODE, S. 151.
(2) PRACTICE.

EXTENSION OF TIME.

See CIV. PRO. CODE, SS. 148, 151 AND O. 34.

EXTINGUISHMENT OF CHARGES.

See (1) B.T. ACT, SS. 159-163.
(2) T.P. ACT, S. 101.

EXTINGUISHMENT OF RIGHT.

See (1) LIMITATION ACT, S. 28.
(2) MERGER.
(3) T. P. ACT, S. 101.

EXTRADITION ACT (XXI OF 1879).

———S. 14—*Transfer of a case.*

As to the first of these prayers we think that we have no power to order the transfer of an enquiry under the Extradition Act, S. 14, as the Magistrate's competency to hold the inquiry depends upon the authorization of the executive Government and the High Court cannot request the Government to appoint another Magistrate with such powers nor dictate the procedure to be followed. (*Hill and Stevens*, JJ.) *In re* MOHUNT DEV DAS.
38 Cal. 550=12 Cr. L.J. 346=10 I.C. 956=
15 C.W.N. 735.

EXTRADITION ACT (XV OF 1903).

———*Action of Magistrate under—Charter Act, S. 15—Appellate jurisdiction.*

The D. C. Magistrate acting under the Extradition Act is not subject to any appellate or revisional jurisdiction. He makes an

EXTRADITION ACT (XV of 1903), S. 6.

inquiry and reports the results to Government. (*Caspersz and Sharfuddin*, JJ.) RUDOLF STALLMAN *v.* EMPEROR 38 Cal. 547=
10 I.C. 618=12 Cr.L.J. 322=
15 C.W.N. 737.

———S. 2, Chap. II—*'Chander Nagore' is Foreign State—Procedure.*

'Chander Nagore,' is a Foreign State as defined by the Act and the procedure provided by Chap. II of the Act should be followed before surrendering an offender to the Authorities of that state. (*Buckland*, J.) *In re* CHLESTE CULLINGTON. 22 Cr. L.J. 691=63 I.C. 819=
48 Cal. 328.

——— S. 3—*Detention pending enquiry—Legality*—Habeas corpus.

Detention of a fugitive criminal pending the consideration of the report of the investigating Magistrate by the Government is not illegal. The High Court's power to issue a writ of *habeas corpus* is not taken away by S. 3 (6) and (7) of the Extradition Act but where neither the arrest nor the detention is within its jurisdiction the High Court cannot issue *habeas corpus*. (*Chaudhuri*, J.) TOPY *v.* EMPEROR. 20 Cr. L.J. 257=50 I.C. 17=
46 Cal. 52.

———S. 3—*Bail.*

The Act provides for bail to be furnished by persons accused of certain crimes and the matter is one which is governed by the procedure in the Cr. P. Code. The High Court has the fullest discretion in the matter. (*Caspersz and Sharfuddin*, JJ.) RUDOLF STALLMAN *v.* EMPEROR. 15 C.W.N 736=12 Cr. L J 358=
10 I.C. 958=38 Cal. 547.

———Ss. 6 (4) and 10—*Custody for a period exceeding two months—Right to a discharge—Escape from lawful custody—Theft—Extraditable offence—Extradition proceedings*—Habeas corpus.

The warrant of arrest under which the accused was arrested in extradition proceedings referred to the offence of escaping from lawful custody but the warrant was issued on a petition charging him with theft which is an extraditable offence. *Held*, that the extradition proceedings were taken in respect of an extraditable offence. In the circumstance of the case, the accused who had been in custody for a period exceeding two months had not been committed to prison under S. 3 (4) of the Extradition Act, and consequently S. 3 (10) was inapplicable to entitle him to be discharged by the High Court. An application for transfer for a writ of *habeas corpus* and for bail refused on the merits. 38 Cal. 547, Ref. *Per Woodroffe*, J. *Semble*—The High Court has no general superintendence over such extradition proceedings. It would have no jurisdiction to grant bail. (*Sanderson*, C.J. *and Woodroffe*, J.) A. C. TOPS *v.* EMPEROR.
20 Cr. L.J. 241=49 I.C. 913=46 Cal. 31.

EXTRADITION ACT (XV of 1903), S. 7.

———Ss. 7, 8 and 8-A—*Not mentioned in treaty with Hyderabad State—Power of British Magistrate to grant bail—Cr. P. Code, S.* 496.

The offence of cheating is an extraditable offence so far as British India is concerned, notwithstanding its omission from Article 4 of the Treaty between the British Government and the Hyderabad State. A British Indian Magistrate to whom a warrant has been addressed under S. 7 of the Act has no power to admit to bail a person arrested under it apart from the provisions of Ss. 8 and 8-A of the Act. (*Heaton and Hayward, JJ.*) *In re* MURLIDHAR BHAGWANDAS. **48 Bom. 310 = 48 I.C. 674 = 20 Cr. L.J. 34 = 20 Bom. L.R. 1009.**

———Ss. 7 and 22—*Certificate—Extradition Rules, R, 3—Political Agent—Warrant issued on requisition of Native State—Certificate for trial of accused in British India—Subsequent recall of certificate—Accused ordered to be tried in Native State.*

The Political Agent has no power to cancel the certificate already granted and the subsequent order for the trial of the accused in the Native State must be set aside. R. 3 of the Rules under the Indian (Foreign Jurisdiction) Order in Council, 1902, and under S. 22 of the Extradition Act do not control S. 188, Cr. P. Code. The rule contains a reminder to Political Agents of their duty to consider the advisability of issuing certificate prior to issuing any warrant. A certificate under S. 188, Cr. P. Code, can be issued even after a warrant has already gone out. (*Batchelor and Heaton, JJ.*) *In re* VAZIRSAHEB ALLISAHEB. **18 Cr. L.J. 537 = 15 I.C. 809 = 14 Bom. L.R. 377.**

———S. 7—*Action of Magistrate—Revision—Cr. P.C., S.* 491.

Where a warrant is issued under the Act by Political Agent, the execution by the District Magistrate is an executive act and the High Court cannot interfere in revision but the power of the High Court to interfere under S. 491 of the Cr. P. Code is left untouched by the decision. (*Jenkins, C.J. and Teunon, J.*) GULLI SAHU *v* EMPEROR. **42 Cal. 793 = 26 I.C. 335 = 16 Cr. L.J. 31 = 19 C.W.N. 221 = 21 C.L.J. 112.**

———Ss. 7 and 10—*Warrant of arrest—Surrender of the accused—Procedure unknown—Revision.*

Where the Magistrate directed the surrender of the accused on a procedure unknown to Extradition Act, the order is open to revision by the High Court. (*Imam and Chapman, JJ.*) EMPEROR *v.* GULLI SAHU. **41 Cal. 400 = 14 Cr. L.J. 673 = 21 I.C. 993 = 18 C.W.N. 869.**

———Ss. 7 (2) and 18—*Criminal arrested under S. 7—Remedy of.*

A fugitive criminal arrested under S. 7 of the Act can invoke the action of Government under S. 15 of the Act. (*Jenkins, C.J. and Teunon, J.*) GULLI SAHU *v.* EMPEROR. **19 C.W.N. 221 = 21 C.L.J. 112 = 26 I.C. 335 = 16 Cr. L.J. 31 = 42 Cal. 793.**

FACTORIES ACT (XII of 1911), S. 24.

———S. 15—*Propriety of warrant—High Court—Jurisdiction.*

Though S. 15 of the Extradition Act ousts the jurisdiction of High Court to enquire about propriety of a warrant if it is issued under Chapter III of the Act, yet where an order of a Magistrate is sought to be justified as derived from the ordinary law which in fact does not give him jurisdiction, the order is open to revision by the High Court at the instance of the party whose liberty is affected by it. 7 Bom. L.R. 463 Ref. Where a warrant was issued without any evidence and without reporting the issue to the Political Agent the order was bad under S. 10, clauses (1) and (2) of the Extradition Act. (*Imam and Chapman, JJ.*) EMPEROR *v.* GULLI SAHU. **41 Cal. 400 = 14 Cr. L.J. 673 = 21 I.C. 993 = 18 C.W.N. 869.**

EXTRAORDINARY ORIGINAL CIVIL JURISDICTION OF HIGH COURT.

See RESPECTIVE HIGH COURT RULES.

EXTRA TERRITORIALITY.

See JURISDICTION.

EXTRINSIC EVIDENCE.

See EVIDENCE ACT, S. 92, ETC.

FACT, FINDING OF.

See CIV. PRO. CODE, S. 100.

FACTOR.

See CONTRACT ACT, SS. 171 AND 182.

FACTORIES ACT (XV OF 1881).

———S. 17—*'Occupier,' meaning of.*

The word 'occupier' in S. 17 of the Act bears the same meaning as it bears in similar enactments in England, that is, a person who regulates a factory and controls the work that is done there. (*Batchelor and Rao, JJ.*) EMPEROR *v.* DHANJI GOVINDJEE. **14 Cr. L.J. 384 = 20 I.C. 141 = 16 Bom. L.R. 328.**

———(XII OF 1911).

———Ss. 24 and 27—*Women—Employment of, during night—Inspector of Factories, power of.*

An owner of a factory is prohibited from employing women for night work except with the opinion of the Inspector of Factories and one who does so, is guilty of an infringement of Ss. 24 and 27 of the Factories Act. But the Inspector has no rights to issue a general prohibition against the employment of women on night duty. (*Rafique and Stuart, JJ.*) COCOLAS *v.* EMPEROR. **22 Cr. L.J. 369 = 61 I.C. 235 = 19 A.L.J. 303 = 3 U.P.L.R. (All.) 83.**

FACTORIES ACT (XII of 1911), S. 29.

———Ss. 29 and 41—*Liability of manager and occupier—Joint and several.*

Liability of the occupier and manager of a factory to be sentenced for an offence under S. 41 is joint and several. Where, therefore, both are tried jointly for an offence under the section they cannot each be sentenced to the maximum penalty provided by the section but their joint liability to pay fine should not exceed the maximum. (*Shah and Crump, JJ.*) VRIJAVALLBHODA DAS *v.* EMPEROR.

45 Bom. 220=58 I.C. 152=21 Cr. L J. 728= 22 Bom. L.R. 904.

———Ss. 41 and 42—*Occupier—Manager—Separate sentences if legal.*

Separate sentences of fine on the occupier and manager in one trial under S. 41 of the Act are illegal. An 'occupier' is the controller for the time being of the factory and may be either an owner or a lessee or a mortgagee with possession. The manager merely carries out the occupier's orders to work the factory. If there is no manager, the occupier himself is deemed to be the manager. (*Le Rossignol, J.*) NIRANJAN LAL *v* EMPEROR.

13 P.R (Cr.) 1918=45 I.C. 159= 19 Cr. L.J. 495=21 P.W.R. (Cr.) 1918.

———S. 41 (a)—*Legality of conviction—Employment.*

The Indian Factories Act is a special Act, and in the absence of definite evidence to show that a boy, seven or eight years old, was employed or allowed to work in contravention of the provisions of the Act, a conviction under S. 41 (*a*) is illegal. (*Knox, J.*) SANEHI RAM *v.* EMPEROR. **20 Cr L J. 236=49 I.C. 860= 17 A.L.J. 223.**

———S. 41 (a)—*Workmen employed to work after prescribed time—Separate conviction.*

The Manager of a Mill who employs a number of workmen to work in his Mill after 7 P.M. is liable to be convicted and sentenced separately in respect of each such workman under the provisions of S. 41 (*a*) read with S. 29 (1) of the Factories Act. (*Shah and Hayward, JJ.*) EMPEROR *v.* JOHNSON.

20 Cr. L.J. 837=53 I.C. 933= 21 Bom. L.R. 1059.

FACTUM VALET.

See HINDU LAW—(1) ADOPTION.
(2) MARRIAGE.

FAIR COMMENT.

See TORT—DEFAMATION.

FAKIR.

See MAHOMEDAN LAW.

FALSE IMPRISONMENT.

See TORT.

FAMILY ARRANGEMENT.

ACQUIESCENCE IN, FOR A LONG PERIOD
COMPROMISE, WHAT IS.
CONSIDERATION.
DESCENDANTS AND HEIRS.
LIMITED OWNER.
MEANING AND TESTS OF.
MINORS, WHEN BOUND.
MISTAKES, EFFECT OF.
PROOF.
REGISTRATION IF NECESSARY.
TRANSFER OF PROPERTY, WHETHER ESSENTIAL.

Acquiescence in, for a long period.

———*Acquiescence in, for a long period—Estoppel.*

A Hindu died in 1856 leaving behind him a widow and three daughters. Under an arrangement in 1875 the widow divided the whole of the property among her three daughters and her grandsons then living. The daughters and grandsons entered into immediate possession of their lots and mutation of names was effected in their favour. Subsequently each of the daughters dealt with the property allotted to her on the division as her own absolute property. In 1884 one of the daughters sold a portion of her share of the property to the defendant. She died in 1912, and in 1913, her surviving sister brought a suit for recovery of possession of the property alienated claiming that in consequence of the death of her mother and sisters, she had become the sole heir of her father and was entitled to possession. *Held*, that the plaintiff was bound by her own agreement and that in view of the long period of time which had elapsed since the arrangement was made she could not be allowed to repudiate the agreement and to impeach a sale which was made on the faith of it. (*Viscount Cave.*) MUSSAMMAT HARDEI *v.* BHAGWAN SINGH. **24 C.W.N. 105=2 P.L.T. 237= 50 I.C. 812=13 L.W. 436 (P.C.)**

———*Acquiescence in, for a long period—Binding nature—Conduct of the parties.*

A family settlement of a disputed claim arrived at without fraud or concealment is binding on the parties and cannot be reopened, especially when it has been acted upon and carried out. 42 Cal. 801 (P. C.) referred to. (*Piggott and Kanhaiya Lal, JJ.*) BALDEO SINGH *v.* UDAL SINGH. **43 All. 1= 18 A.L J. 877=58 I.C. 732= 2 U.P.L.R. (All.) 202.**

———*Acquiescence in, for a long period—Binding nature of—Acted upon for a very long time.*

In a case referred to arbitrators disputes had arisen between a daughter and the daughter's sons by another daughter of one C in respect of property left by C. The arbitrators gave a portion of the property to the daughter and the rest of the property to the daughter's sons by another daughter. The award was made a rule of Court and acted upon for a very

AMILY ARRANGEMENT—Acquiescence in, for a long period.

long time. *Held*, that the award was a family arrangement which was binding not only upon the actual parties to it but upon the whole family. 33 A. 356 Ref. (*Richards*, C.J. *and Banerji*, J.) MADAN LAL *v.* CHUTTAN SINGH. **16 I.C. 297=10 A.L.J. 101.**

———*—Acquiescence in, for a long period—Long acted upon—Repudiation.*

Where two daughters entitled to joint possession of the entire estate for the whole of their lifetime surrendered a portion of their interest and allowed J who had no immediate right of any kind to obtain possession of an area of 18 bighas and odd out of the whole property whereby J acquired a substantial benefit which he has been enjoying ever since, *held*, that under these circumstances J could not be allowed to turn round and repudiate the arrangement claiming as a reversioner to the last full owner. (*Lindsay*, J.C.) JAGESHAR *v.* BHUSHAN. **24 O.C. 5.**

Compromise.

———*Compromise by female heir in suit by her—If binds upon her sons.*

A *bona fide* and final settlement of disputes and of the rights of each party in a suit by a female heir to establish her title as heir to her father's property, is binding upon the reversioners. (*Chatterjea and Duval*, JJ.) SHRINATH BOSE *v.* NIBARAN. **53 I.C. 958= 25 C.W.N. 859.**

Consideration.

———*—Consideration—Provisions invalid—Effect.*

A settlement of property upon successive generations of a Mohammadan family is void by Mohammadan law, and is not validated by the use of the term 'wakf' and the insertion of a remote and illusory provision for charitable purposes. (*Lord Cave*). KHAJEH SOLEHMAN OUDIR *v.* NAWAB SIR SALIMULLAH BAHADUR. **49 I.A. 153= 31 M.L.T. 79 (P.C.)=24 Bom L.R. 1267= 49 C. 820=27 C.W.N. 101= 43 M.L.J. 386=37 C.L.J. 58= 21 A.L.J. 1=1922 P.C. 107 (P.C.).**

———*Consideration—Giving up of property under threat of litigation—Effect of.*

For a valid family settlement there must be a *bona fide* dispute which is *bona fide* settled by the members of family. There is a difference between a settlement in consideration of the settlement of family disputes or even of the screening of family scandals and yielding up property on a threat of litigation. The former transaction should bind the members of the family though they may have been minors at the time, but the latter can at best only bind the parties to it. Hence where the defendant puts forward a baseless claim to the property to which he was not rightfully entitled and the persons legally entitled thereto gave it up in order to avoid litigation. *Held*,

FAMILY ARRANGEMENT—Consideration.

there was no family settlement and the plaintiffs, who were the reversionary heirs and no party to the settlement, were not bound by it. (*Richards*, C.J. *and Rafique*, J.) HIMMAT BAHADUR *v.* DHANPAT RAI. **38 All. 335= 35 I.C. 148=14 A.L.J. 340.**

———*—Consideration—Validity.*

A compromise of a suit by a Muhammadan wife for the recovery of her dower, whereby the wife accepted in lieu thereof a life estate in a portion of her husband's estate and the husband a similar life estate in his remaining property and it was agreed that after their death the entire property should be taken by the children is a valid family settlement according to Muhammadan Law. (*Stanley*, C.J. *and Banerjee*, J.) NASIRUL HAQ *v.* FYAZ-UL RAHMAN. **33 All. 457=9 I.C. 530= 8 A.L.J. 275.**

———*Consideration—Hindu widow—Reversioner—Settlement on daughter.*

Where the Hindu reversioners parted with their rights for a sum in cash in favour of the widow so as to allow her to endow her daughter on marriage, the transaction was held to be valid family arrangement conclusively. (*Batchelor and Heaton*, JJ.) ABHISANG TIRABHAI *v.* RAISANJ FATESANG. **16 I.C. 361=14 Bom. L.R. 602.**

——— *Consideration*—Bona fide *dispute with female owner — Duty of Court to uphold arrangement—Reversioners, if can question.*

The several members of a family effected a settlement of their dispute each relinquishing all claim in respect of all property in dispute other than that falling to his share and recognizing the right of the others as they had previously asserted it to the portion allotted to them respectively. The settlement thus effected was *bona fide* settlement for the benefit of the family. A partition of the estate followed thereupon and the parties acted on its terms. The Courts were bound to give full effect to it. Such settlement is not open to objection by reversioners by means of a suit to establish their right to some of the properties. (*Chatterjea and Duval*, JJ.) SRINATH BOSE *v.* NIBARAM CHANDRA ROY. **53 I.C. 945.**

———*Consideration — Disputed claim — Parties not entitled to resile from—Relinquishment—Effect of.*

Per *Mookerjee*, J.—A statement of a disputed or doubtful claim is a valid and binding arrangement which the parties thereto are not permitted to deny, ignore or repudiate. This principle, is however, inapplicable to a case where there was no dispute to put an end to, when the compromise was effected and the consideration of the compromise was not the sacrifice of a right but the amendment of a claim. (*Sanderson*, C. J., *Woodroffe and Mookerjee*, JJ.) MARIAM BIBEE *v.* SHAIKH MUHAMMD IBRAHIM. **48 I.C. 551= 26 C.L.J. 306.**

FAMILY ARRANGEMENT—Consideration.

——*Consideration.*

Family settlement between members of a family is binding only when there are *bona fide* claims on either side and a full disclosure of facts on either side. (*Chatterjee and Mullick*, J.) SHAM LAL *v.* RAMESHWARI BASU.
38 I.C. 273=33 C.L.J. 82.

——*Consideration—Widow—Repudiation.*

Where under a family arrangement an agreement was entered into by which a reversioner was put in possession of some property by the widow and there was a good consideration for the agreements executed by them by which the reversioner abstained from suing to set aside the gift by the widow, the widow or her transferee are not entitled to sue for possession of property and to repudiate the contract. (*Reid*, C.J. *and Kensington*, J.) MUHAMMAD UMAR ALI *v.* AMAN ALI. **251 P.L.R. 1911= 12 I.C. 140=170 P.W.R. 1911.**

——*Consideration — Separate releases—Value of.*

In family arrangement to settle family affairs and have peace among the female members if separate releases are executed by the members of its various branches in favour of the sole senior member of one branch, each of such releases will be valid and binding as one of a series of transactions by which the family arrangment was secured and when a major member executes a release deed on the footing that certain debts exist, the deed is *prima facie* evidence of the existence of such debts. (*Wallis*, C.J. *and Seshagiri Aiyar*, J.) ABDUL HUSSAIN *v.* MAHOMED IBRAHIM. **3 L W. 379= 35 I.C. 243=19 M.L.T. 346.**

——*Consideration—Binding nature of—Inquiry into antecedent rights of parties.*

In judging of the validity of a compromise, Courts are not entitled to inquire into the rights of parties as they stood before the compromise to see whether the compromise has recognised them, the inquiry should be restricted to the question, whether the claims advanced by either side were *bona fide* and whether the compromise really is in settlement of such claims. Every compromise may involve the giving up of certain claims to which a party may be rightly entitled, and the acquisition of interests to which he may have no claim. But if such compromise is a settlement of disputes advanced *bona fide*, then *prima facie*, it ought to be upheld. This reason applied with greater force in cases of family settlements where the peace of the family is involved, and especially so when the settlements were effected long before the date of the dispute between the parties. (*Sundara Aiyar and Ayling*, JJ.) AUTHI LAKSHMI *v.* ANNASAMY AIYAR.
23 M.L.J. 104=(1912) M.W N. 696= 15 I.C. 723=12 M.L.T. 140.

——*Consideration—Present or future disputes.*

To validate family settlement, it is not necessary that there should be an existing dispute. It is sufficient that there should be the possibility of a future dispute which might result in litigation. The avoidance of future litigation and the consequent preservation of the family property is sufficient consideration for a family settlement. (*Lyle and Ashworth*, J.Cs.) GANDHARP SINGH *v.* NIRMAL SINGH.
22 O.C. 300=54 I.C. 325=6 O.L.J. 529.

FAMILY ARRANGEMENT—Descendants and heirs.

Descendants and Heirs.

——*Descendants and heirs—Will creating a division—Document.*

Where a document styled a will but effecting a division of family properties *in præsenti* among the sons of the executant was acted upon by all the parties concerned it is effective as a family arrangement binding on all. The mere fact that larger share was given to one of the parties is immaterial. (*Lord Moulton.*) BRIJRAJ SINGH *v.* SHEODAN SINGH.
35 All. 337=40 I.A 161=11 A L.J. 698= 17 C.W.N. 949=18 C.L J. 57= (1913) M.W.N. 515=14 M.L.T. 11= 16 Bom. L.R. 652=19 I.C. 826= 25 M.L.J. 188 (P.C.).

——*Descendants and heirs*—Bona fide *dispute—Right to succession—T. P. Act, S. 6—Chance of heir apparent—Settlement as dispute.*

The existence of a *bona fide* dispute is a good consideration sufficient to support a contract even though the claim which caused the dispute turn out afterwards to have no foundation. *Held*, that the agreement in question being a family arrangement was binding on the parties and their representatives and was not void under S. 6 of the T.P. Act. (*Piggott and Walsh*, JJ.) CHABLI *v.* PARMAL.
41 All. 611=1 U P.L R. (H.C) 91= 51 I,C. 919=17 A.L.J. 822.

——*Descendants and heirs— Binding — Nature of.*

In settlement of claims to the estate of a deceased Hindu between his brothers and his widow and his daughter, the brothers were put in possession of a substantial portion of the property and the daughter's son was given some property absolutely, from generation to generation. *Held*, that the compromise was binding on the descendants of the brothers and that the daughter's son had absolute right in the property. (*Richards*, C.J. *and Banerjee*, J.) RAM NARESH LAL *v.* SADHU SARAN LAL. **28 I.C. 585,**

——*—Descendants and heirs—Reasonableness.*

The reasonableness of family settlement is to be gathered from the state of the family at the time of the settlement and not from its condition when that has to be determined by the Courts. Children follow fathers effecting a partition or a settlement directly or indirectly. The principle of representation here overrides the principle of vested interest and if the

FAMILY ARRANGEMENT—Limited owner.

partition or settlement is fair and reasonable, the minor children cannot be allowed to question the same on attaining majority. (*Beaman*, J.) JAN MAHOMED *v.* DATU JAFFAR. 38 Bom. 449=22 I C. 195= 15 Bom. L.R. 1044.

Limited Owner.

——*Limited owner—Hindu widow— Compromise of suit—Division of estate—Alienation.*

Where suit, brought by a daughter of deceased Hindu, against the widow of his adopted son, was compromised, whereby the family estate was partitioned out amongst the several claimants. *Held* that the compromise was not an alienation by a limited owner but a family settlement in which each party took a share of the family property by virtue of independent title which was to that extent and by way of compromise admitted by the other parties. (*Lord Moulton.*) HIRAN BIBI *v.* SOHAN BIBI. 18 C.W.N 929= 27 M.L.J. 149=24 I C. 309= 1 L.W. 648 (P.C.)

[On appeal from 1 I.C. 180 and 10 I.C. 230.]

——*Limited owner — Hindu widow— Alienation—Reversioner's acquiescence.*

As the creation of the *ijara and darijara* by a Hindu widow in respect of her husband's estate is a part of a general family settlement effected for the benefit of the estate and injured nobody and as the conduct of the objecting reversioners raised a presumption that they believed the arrangement to have been made in good faith and under such circumstances of necessity, as would give it validity according to Hindu Law, and as it has always been a feature to Hindu Law to attach great weight to the sanction by expectant reversioners of an alienation of property by a Hindu woman, as affording evidence that the alienation was under circumstances which rendered it lawful and valid, the reversioners could not question it. (*Lord Moulton*) BIJOY GOPAL MUKERJEE *v.* GIRINDRA NATH MUKERJEE.

41 Cal. 793=18 C.W.N. 673= 12 A L.J. 711=19 C.L.J 620= 16 Bom. L.R. 425=16 M.L.T. 68= 27 M.L.J. 123=1 L.W. 583= 23 I.C. 162=(1914) M.W.N. 430 (P.C.)

[On appeal from 13 C.W.N. 201= 4 I.C. 513=8 C.L.J. 458.]

——*Limited owner—Alienation— Distinction between— Reversioner when entitled to challenge compromise.*

A Hindu became a convert to Mahomedanism in 1845. His son who was a Hindu predeceased him and the father died soon after. There were disputes regarding the succession to the properties between the son's daughters and the father's daughter's son. In 1860 a compromise was made under which the daughters of the son obtained from the Court of Wards possession 8½ annas share of the property and the convert's heir-at-law 7½ annas share. In a suit for ejectment after the death of the surviving daughter by the son's reversionary heirs on the ground that the defendants who were purchasers from the convert's heir at law, claimed under an alienation from the daughters without justifying necessity. *Held*, that the compromise was a family settlement and not an alienation and the defendants did not derive title from the daughters. The compromise was based on the title of the parties existing antecedent thereto and acknowledged and defined thereby. 19 A. 187, Rel. (*Mr. Ameer Ali.*) KHUNNI LAL *v.* GOBIND KRISHNA NARAIN. 33 All 356=38 I.A. 87= 15 C.W.N. 515=8 A.L.J. 552= 13 C.L.J. 575=13 Bom. L.R. 427= 10 M.L.T. 25=(1911) 1 M.W.N. 432= 10 I.C. 477=21 M.L.J. 645 (P. C.).

——*Limited owner.*

Under a family settlement the share allotted to a limited owner is an absolute estate. (*Wallis*, C.J. *and Phillips*, J.) RAMASAMI NAIDU *v.* GOMATHI. 33 I.C. 521.

——*Limited owner—Compromise.*

In some instances compromise by a limited owner may amount to family settlement; in other cases, they cannot be placed on a higher footing than they would be as contracts or alienations. (*Spencer and Seshagiri Aiyar*, JJ.) BANGARAYEDU *v.* PERAYYA SASTRI.

(1918) M.W.N. 810=30 I.C. 927= 2 L.W. 1025.

——*Limited owner—Reversioners.*

The true test to be applied to a transaction, challenged by the reversioners as an alienation not binding upon them, but which is alleged to be a family settlement, is whether the alienee derives title from the holder of the limited interest or life-tenant. There may be a family arrangement between heirs or possible claimants by inheritance but there can be no family arrangement as between legatees or alienees to which the reversionary heirs are not parties. (*Kanhaiya Lal*, J.C.) BHUSHAN *v.* DEO NARAIN. 34 I.C. 82.

——*Limited owner — Grant to widow— Nature of estate.*

Where as the result of a compromise by the executors of the will of a Hindu testator who had bequeathed to certain relatives profits of certain property in fixed shares from generation to generation the widow of a maintenance holder who had died before the compromise got a share; *Held*, she took only a life estate as she took the property in a different quality from males. 5 A L.J. 590, 10 Mad. 1 Foll. (*Lindsay*, A.J.C.) DURGA SHANKAR *v.* RAM RATAN. 13 I.C. 644.

——*Limited owner—Widow and Reversioner.*

A limited owner can bind the reversion by a compromise, in which each party takes a share of the family property, and under which each gets an independent title to his

FAMILY ARRANGEMENT—Limited owner.

share as admitted by the other. But it must be shown that the limited owner acted *bona fide* and for the preservation and benefit of the estate. When there is doubt as to whether a transaction is alienation or compromise of doubtful claim, the test is to see whether the alienee gets title from the limited owner. If there was some kind of pre-existing title and it was perfected or set at rest by the transaction, the transaction is a compromise of doubtful claim. If a fair compromise is arrived at, to preserve the harmony and honour of the family, it will be upheld by the Court, though it rests on not quite satisfactory grounds. But the right compromised must at least be such as to form the subject-matter of a claim. The right of a Hindu reversioner is a naked possibility and cannot form the basis of a claim. (*Das and Adami*, JJ.) BHAGWATI KUER *v.* JAGDAM SAHAY. **62 I.C. 933 = 2 Pat. L.T. 471.**

———*Limited owner—Rights of—On partition.*

In a compromise for partition between coparceners, certain property was given to a widow absolutely in the same manner as if the property had been partitioned under a decree. The widow took an absolute interest. (*Pratt*. J.C. *and Cohen*, A.J.C.) AMIBAI *v.* MOOSO RAHIMTOOLA. **10 I.C. 982 = 4 S.L.R. 271.**

Meaning and Tests of.

———*Meaning and tests of—Where operative.*

A family arrangement, to be operative must be without fraud and will not be supported if founded on mutual mistake or if either party has been misled by the concealment of material thing. The Court should not scan with nicety the quantum of consideration in a deed of family settlement. (*Mookerjee and Buckland*, JJ.) SATIS *v.* KALIDASI. **66 I.C. 577 = 34 C.L.J. 529.**

——*Meaning and test of—Alienation—Distinction between.*

In a compromise and in a alienation there is a transfer of interest but in a compromise, Courts are concerned only with the *bona fides* of the settlement and in alienation with justifiable necessity. 33 A. 356; 27 M.L.J. 149; 31 M. 474, Foll. (*Abdur Rahim*, O.C.J. *and Seshagiri Aiyar*, J.) VENKATA RAO *v.* TULJA RAM RAO. **(1917) M.W.N. 30 = 38 I.C. 270 = 5 L.W. 482.**

———*Meaning and tests of—Award is not enforceable as a family settlement.*

A family settlement implies a mutual settlement by certain contending parties belonging to the same family of some disputed claims and rights and an award of arbitrators is not a settlement of that character. It is the decision of a tribunal constituted by the contending parties for the settlement of their dispute and in so far as it is a valid and lawful award, it is binding on the parties to the arbitration proceedings and their successors.

FAMILY ARRANGEMENT— Minors, when bound.

Whether such an award is binding on persons whose interests are analogous to those of the parties to the arbitration proceedings is a matter which is not capable of an inflexible answer. In each case it has to be determined whether the person who agreed to the reference to arbitration was seeking to assert a right common to himself and others and had acted fairly in representing those whose interest he had undertaken to protect. (*Kanhaiya Lal and Dalal*, A.J.Cs.) CHAUDHRAIN ZARIF-UN-NISSA *v.* CHAUDHRI SHAFIQUZ ZAMAN. **26 O.C. 133 = 1923 Oudh 185.**

———*Meaning and tests of.*

Where the several members of a family settle a dispute each one relinquishing all claim to the property not falling to his share and recognising the right of the others as they had previously asserted it to the portion alloted to them respectively, the transaction is called the family arrangement and must be upheld as such. The test of such an arrangement is the recognition of a pre-existing title and not a derivation of title from each other. (*Lindsay*, J.C.) DALIP SINGH *v.* KASHI NATH. **24 I.C. 542 = 17 O.C. 108.**

———*Meaning and tests of— Real meaning ought to be ascertained—Effect to be given as much as possible.*

The Courts should ascertain the real meaning of the parties to family settlements and should give effect to as much of it as possible if the whole cannot be given effect to. (*Evans*, J.C. *and Lindsay*, A.J.C.) MAHOMED HASHIM ALI KHAN *v.* SADI HUSENKHAN. **13 I.C. 882 = 14 O.C. 356.**

———*Meaning and tests of—Binding nature-Principles applicable.*

A fair compromise of family disputes will be upheld by a Court though resting on grounds which as between strangers may not be satisfactory. The rights compromised should be of such a nature that they could at least have formed the subject-matter of a claim, though a doubtful one. When entered into by a limited owner, in order to bind reversioners, it must be a fair and honest one representing the estate and for its protection. The principle applies not only for preserving the peace but also for preserving the property. In the absence of proof of mistake, inequality of position, undue influence, fraud, etc., a family arrangement made in settlement of a disputed or doubtful claim is valid and binding and cannot be set aside merely on the basis that one party got more or less than that he would have legally got. When minors are sought to be bound, it must be shown it was for their benefit. (*Bucknill and Ross*, JJ.) RAM BAHADUR SEN *v.* GANESH BHAGAT. **2 Pat. 854 = 1924 P. 49.**

Minors, when bound.

———*Minors, when bound—Setting aside.*

A *bona fide* settlement of a family dispute which has been fairly arrived at and acted upon

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cannot be set aside by a minor party unless vitiating circumstances are alleged and proved. (*Daniels, J.*) RADHA KRISHNAN SHUKUL *v.* NOKH LAL SHUKUL. 21 A.L.J. 488 = L R. 4 A. 481 = 1923 All. 866.

———*Minors, when bound—Dispute, claim.*

In the absence of proof of mistake, inequality of position, undue influence, coercion, fraud or any similar ground, a partition or family arrangement made in settlement of a disputed or doubtful claim is a valid and binding arrangement which the parties thereto cannot deny, ignore or resile from. If the parties have settled a dispute, such settlement will not be set aside on the ground that it gave to one of them more than what he ought possibly to have received if he had taken the judgment of the Court upon the matters in difference between them. The Courts will not be disposed to scan with much nicety the amount of consideration. There is nothing in this doctrine of family agreements opposed to the general principle that, when it is sought to bind a minor by an arrangement entered into on his behalf, it must be shown that the agreement was for the benefit of the minor and that no improper advantage has been taken of the minor's position. When there is no defect, the settlement of doubtful claim is of as much advantage to a minor as to an adult and where a genuine dispute has been fairly settled the dispute cannot be reopened on the ground that one of the parties to the family arrangement was a minor. (*N. R. Chatterjee and Newbould, JJ.*) KERAMUTULLA MEAH *v.* KEAMUTTU-ALLAH MEAH. 49 I.C. 886 = 23 C.W.N. 118.

———*Minors and sons, when bound.*

Family arrangements, or references to arbitration entered into in good faith by the manager of a joint Hindu family or by a father, bind the other members of the minor sons in the absence of fraud or other good reason the contrary. (*Chevis and Scott-Smith, JJ.*) DWARKA DAS *v.* KISHAN KISHORE. 2 Lah. 114 = 61 I.C. 628 = 3 Lah. L J. 349.

———*Minors, when bound—Test to be applied to.*

Tests to be satisfied before family compromises entered into on behalf of minors will be upheld are:—(1) There must be a full disclosure of all material circumstances in the knowledge of the parties thereto whether the information withheld was asked for by the other contracting parties or not, (2) all the members of the family should have been treated impartially, (3) if the parties are not on equal terms but one of them stands in such relation to the other as renders it incumbent on him to give a fuller account of the matter or question in dispute than he has done, the Court, although no intentional fraud may be imputable to such person, will not support the compromise. (4) A family arrangement will not bind a minor if it is unconscionable in

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any way. (*Wallis, C.J. and Seshagiri Aiyar, J.*) ABDUL HUSSAIN *v.* MAHOMED IBRAHIM. 3 L.W. 879 = 35 I.C. 243 = 19 M.L.J. 846.

———*Minors, when bound—Guardian relinquishing rights.*

Relinquishment of minor's property of considerable value by guardian for insignificant sum does not bind the minor, nor it is valid as family settlement. (*Wallis, C.J. and Srinivasa Aiyangar, J.*) VISVANATHASWAMI *v.* KAMULU AMMAL. (1915) M W.N. 968 = 2 L W. 1214 = 19 M.L.T. 296 = 31 I.C. 833 = 30 M.L.J. 451.

———*Minors, when bound—When binding on all members.*

Where the major member of a family enters into a family arrangement with full knowledge of all facts for themselves and on behalf of the minor members fully represented by their natural guardians such an arrangement is binding on the minor members in the absence of fraud though certain doubtful claim had been admitted as valid by the guardians of the minors. (*White, C.J. and Sadasiva Aiyar, J.*) PRAKATERI *v.* KORAM. 14 I.C. 295 = (1912) M.W.N. 682.

———*Minors, when bound.*

A *bona fide* compromise constituting a settlement between the members of a family is binding on the minor members of the family. (*Sundara Aiyar and Spencer, JJ.*) ANANTNARAYANA AIYAR *v.* SAVITRI AMMAL. 36 Mad. 151 = (1913) M.W.N. 59 = 11 M.L.T. 63 = 13 I.C. 498 = 22 M.L.J. 231.

Mistakes, effect of.

———*Mistakes, effect of—Relief.*

Unequal division of property is liable to be set aside for mistake but not where parties accept it with full knowledge. (*Prideaux, A.J.C.*) WASUDEO *v.* VITHAL. 56 I.C. 492.

Proof.

———*Proof—Binding nature of.*

In the absence of proof of mistake, inequality of position, undue influence, coercion, fraud or like ground, a partition or family arrangement made in settlement of a disputed or doubtful claim is a valid and binding arrangement which the parties thereto cannot deny, ignore or resile from; and this principle is applicable where some of the members of the family are minors or where the settlement has been effected by a qualified owner whose act will bind the reversioners. (*Mookerjee and Panton, JJ.*) KUSUM KUMARI *v.* DASARATHI. 57 I.C. 210 = 34 C.L.J. 323.

———*Proof—Mutation petition.*

Revenue Court's order in mutation proceedings cannot of itself confer any title. A compromise petition in a Revenue Court, on which mutation is based is admissible though unregistered as proof of family arrangement

FAMILY ARRANGEMENT—Registration if necessary.

not as conferring any title in future but as a recognition of the previous titles. The petition, however, must be construed to determine its real meaning. (*Lindsay*, J.C. *and Stuart*, A.J.C.) SATROHAN LAL *v.* NAGESHAR PRASAD. **19 O.C. 75=35 I.C. 770=3 O.L.J. 339.**

Registration if necessary.

———*Registration, if necessary.*

A family settlement of disputed claims, which proceed on the assumption of an antecedent title of some kind in the parties which it merely acknowledges or defines, does not involve a conveyance of property by one party to another and does not fall within the purview of any of the provisions of the Transfer of Property Act which require an instrument in writing. 33 All. 356 (P.C.) Ref. (*Piggott and Kanhaiya Lal*, JJ.) BALDEO SINGH *v.* UDAL SINGH. **43 All. 1=18 A.L.J. 877=58 I.C 732=2 U P L R. (All.) 202.**

———*Registration—Validity.*

Per *Richards*, J.—A family arrangement, affecting right in immoveable property above Rs. 100 must be registered. Per *Tudball*, J. A *bona fide* and non-fraudulent family arrangement acted upon by all parties should be respected by Courts, but if a document purports to extinguish one's title, it must be registered. (*Richards*, C.J., *Tudball and Rafique*, JJ.) JAGRANI MISRAIN *v.* BISHESHAR DUBE. **38 All. 363=35 I.C. 701=14 A L.J. 449 (F.B.).**

Transfer of Property, whether essential.

———*Transfer of property whether essential.*

Transfer by gift is not the only means of creating title under the Hindu Law apart from inheritance or succession. If the persons entitled to a property are willing to treat a near relation as a co-sharer out of affection, and give up their claim to an exclusive right they can do so without a registered deed; the act if unequivocal creates a title in favour of the person who is taken in as a co-sharer. (*Holmwood and Chatterjee*, JJ.) GIRHI RANI MISRANI *v.* CHANDRA LAL KANATH. **17 I C. 885=17 C.W.N. 62.**

———*Transfer of property, whether essential—Release—Absence of words of conveyance.*

A release deed whereby the releaser simply undertakes to vacate his house may be operative as a *bona fide* settlement of a family dispute despite the absence of words of conveyance. (*Benson and Munro*, JJ.) MUTHUSAWMI PILLAI *v.* GOVINDASAWMI PILLAI. **9 I.C. 267=9 M.L.T. 342.**

———*Transfer of property, whether essential—Effect.*

To constitute an effective family arrangement there need not be any formal contract between the parties, 38 A. 356; 5 B.H.C.R. 128; 3 Agra H.C.R. 82; 2 Ch. A.C. 294, Ref. Such arrangements are given effect to, not because they amount to transfer of property, but because they constitute binding agreements between the parties from which the law will not allow them to withdraw. (*Lindsay*, C.J. *and Stuart*, A.J.C.) SATROHAN LAL *v.* NAGESHAR PRASAD. **19 O.C. 75=35 I.C. 770=3 O.L.J. 339.**

FAMILY SETTLEMENT.

———*Registration.*

When a suit is disposed of according to the settlement which contains matters outside the scope of the suit, then registration of that settlement is not necessary. (*Das and Adami*, JJ.) ARUNBATI KUMARI *v.* RAM NIRANJAN. **58 I.C. 299=2 P.L.T. 38.**

FATAL ACCIDENTS ACT (XIII of 1855.)

———*Damages for causing death—Finding of Criminal Court.*

To establish civil liability under Act XIII of 1855 against any person, it must be proved either that he actually committed the wrongful act himself, or at the least, that he actively aided or abetted its commission and so took part directly in causing it. It is not enough that he knew that the act was likely to be committed or that it was committed in the prosecution of a common object. The findings of a Criminal Court are not relavant in a Civil Court but the criminal proceedings may be referred to test the evidance adduced in the civil suit. 56 P.R. 1905 Dist. (*Kensington and Chevis*, JJ.) HARIA *v.* BASANTH KAUR. **8 P.L R. 1912=128 P.W.R. 1912=16 I C. 491=117 P.R. 1912.**

———S. 1—*Damages awarded — Court's power to distribute.*

Under Act XIII of 1855 the Court has powers to divide damages claimed and awarded between some only of the parties for whose benefit the claim is made. (*Richardson and Suhrawardy*, JJ.) SYED SADAQU REZU *v.* KHOSHMOHINI DASI. **1921 Cal. 317.**

———*Death caused by wrongful act—Right of heirs.*

Where a death is caused by wrongful act, the right of heirs of deceassed to sue for damages is governed by the principle of the Act even where the Act is not in force. (*Kotwal and Macnair*, JJ.) RAKHMIA BAI *v.* DHANRAJ. **64 I.C. 311.**

———S. 1—*Damages—Quantum—Basis of assessment.*

In a claim for damages under the Fatal Accidents Act the reasonable expectation of pecuniary advantage by the relatives remaining alive may be taken into account by a Jury and damages assessed as the probable pecuniary loss thereby occasioned. The fact that the deceased in some way provoked the quarrel as a result of which he died, is immaterial so far as regards the claim for damages under S. 1 of the Act. (*Abdul Raoof and Abdul Qadir*, JJ.) PIARA RAM *v.* BEHARI RAM. **69 I.C. 854.**

FATAL ACCIDENTS ACT (XIII of 1855), S. 1.

———S. 1—*Compensation—Brother of a murdered man.*

A co-parcener of the murdered man is not entitled to compensation under the Act. Compensation should be awarded looking to the members of the family of the deceased. (*Rattigan and Jones, JJ.*) BISHUNDAS *v.* RAM LAPHAYA. 106 P.R. 1915 = 32 I.C. 18 = 187 P.W.R. 1915.

———S. 1—*Compensation for death caused by railway accident—Discretionary with Court to apportion among relatives—Circumstances to be taken into consideration—Child—Meaning.*

In cases where compensation is awarded by a Railway Company before the death of a person in an accident, the discretion rests with the Court to apportion the amount of compensation among the various relatives of the deceased and in exercising that discretion the Court ought to see that by far a large share is given to persons dependant entirely on the deceased for protection, taking into consideration also the equities the others may be entitled to. For purposes of awarding compensation under S. 1 of the Fatal Accidents Act a son adopted after the death of the deceased is not a 'Child' within the meaning of the section. (*Rattigan and Scott-Smith, JJ.*) SHBI GOPAL *v.* AMBA DEVI. 26 P.W.R. 1914 = 122 P.L.R. 1914 = 22 I.C. 845 = 51 P.R. 1914.

———S. 1—*Test of injury caused—Reasonable expectation of pecuniary advantage.*

The test of injury under S. 1 of the Act is not the legal liability alone, but the reasonable expectation of pecuniary advantage by the deceased's remaining alive. The reasonableness of the expectation is largely founded upon a record of pecuniary benefit received in the past and there must be something more than a mere speculation in the future. 16 B. 254, Expl. (*Scott-Smith and Agnew, JJ.*) SECRETARY OF STATE *v.* GOPAL SINGH. 112 P.R. 1913 = 186 P.W.R. 1913 = 20 I.C. 423 = 284 P.L.R. 1913.

———S. 2—*Scope.*

Section 2 of Act XIII of 1855 has no application to a suit instituted against the wrongdoer. 13 B. 677; 28 M. 487, Foll. (*Benson, O.C.J. and Abdur Rahim, J.*) TIRUMALA NAGABHUSHANAM *v.* SRI RAJAH VENKATADRI. 23 M.L.J. 295 = (1912) M.W.N. 899 = 17 I.C. 226 = 12 M.L.T. 383.

FAZENDARI.

See LAND TENURE, FAZENDARI.

FERRIES ACT (IV of 1873).

———S. 22—*Servants of lessee collecting excessive toll without authority—Liability of.*

A servant of a lessee of a ferry who makes unauthorised and extortionate collections from passengers, acts beyond the scope of his authority, and is liable for an offence under S. 22 of the Act but the lessee is not liable as he took no part in the extortion. 24 B. 423,

FIRM.

Dist. (*Tudball, J.*) EMPEROR *v.* BEHARI LAL. 34 All. 146 = 13 I.C. 101 = 13 Cr.L.J. 8 = 8 A.L.J. 1324.

FERRIES ACT (I of 1885).

———S. 11—*District Magistrate—Power to establish subsidiary ferry—Interference with private rights.*

A proprietor of a village is entitled to ask the Court to restrain any unauthorised intrusion on his property, committed by even the Secretary of State for India, who has to justify his action under some statute. The District Magistrate has no jurisdiction to establish a subsidiary ferry beyond two miles from the *ghat* of the public ferry. There is a clear distinction between public ferry which under S. 6 can be established only by the Lieutenant-Governor, and a subsidiary ferry, which under S. 11 can be established by the District Magistrate and which is therefore a private ferry. (*Dass and Adami, JJ.*) PARDIP SINGH *v.* THE SECRETARY OF STATE FOR INDIA. 5 Pat. L.J. 500 = 1 Pat. L.T. 395 = 57 I.C. 516 = 2 U.P.L.R. (Pat.) 181 = 1920 Pat. 297.

FERRY.

See also (1) EASEMENT.
(2) EASEMENTS ACT.

———*Right to—Crown grant.*

It is not open to a person to set up a rival ferry in opposition to one who has been exercising the right for a long time unless the former could show a Crown grant expressly or by implication. (*Knox, J.*) JWALA SINGH *v.* ABDUL RAZAK. 29 I.C. 692 = 13 A.L.J. 775.

———*Right of—Acquisition—Prescription.*

A right to a ferry between two villages can be the subject of a grant from the Crown and the grant can be implied from the facts proved. The right cannot be acquired by prescription. 18 C. 652, Rel. (*Macleod, C.J. and Cayajee, J.*) SHAMA DURGAJI BHOI *v.* GANGADHAR NARAYAN. 24 Bom. L.R. 445 = 67 I.C. 419 = (1932) Bom. 245.

FICTITIOUS TITLE.

See T. P. ACT, S. 53.

FIDUCIARY RELATIONSHIP.

See (1) EVIDENCE ACT, S. 111.
(2) TRUSTS ACT, Ss. 88, 94.
(3) CONTRACT ACT, S. 16.

FINAL ORDER.

See C. P. CODE, Ss. 2 (2), 11, 104, 109.

FINDING OF FACT.

See C. P. CODE, S. 100.

FIRE INSURANCE.

See INSURANCE.

FIRM.

See (1) C. P. CODE, O. 21, Rr. 49, 50 and O. 30.
(2) CONTRACT ACT, Ss. 239—266.
(3) CORPORATION.
(4) COMPANY.

FISHERY.

———*Jalkar—Grant by Government—Navigable river—Change of course—Right to follow the river—English Law.*

A grantee of a jalkar (exclusive fishery) from the Government in Bengal, in a tidal and navigable river, can follow the shifting river for the enjoyment of his exclusive fishery so long as the waters form part of the river system within the upstream and downstream limits of his grant, whether the subjacent soil belongs to the Government or a private proprietor as being the site of the river's recent encroachment and whether shifting of the channel is gradual or is the result of sudden eruption. In this respect the law in India is different from the English Law. The rule in England which connects the subject's right to an exclusive fishery in tidal and navigable rivers within the limits of the Crown's ownership of the subjacent soil is the result of conditions partly historical and partly geographical which have no counterpart in Bengal. (*Lord Sumner*, J.) SRI NATH ROY *v.* DINBANDHU SEN. **42 Cal. 489 = 18 C.W.N. 1217 = (1914) M.W.N. 651 = 1 L.W 733 = 16 M.L.T. 319 = 12 A.L.J. 1193 = 20 C.L.J. 385 = 16 Bom. L.R. 901 = 23 I.C. 467 = 41 I.A. 221 (P.C.).**

———*Right to fish by member of public.*

The right of a member of the public in fishing by means of stakes would not pass by a grant or descent and coneequently a member is entitled to be protected from improper interference with his right of fishing as a member of the public. (*Marten*, J.) LAKSHMAN *v.* RAMJI. **23 Bom. L.R. 989.**

———*Public navigable river—Burdon of proof.*

Where a right to fish is claimed in a public navigable river on the basis of prescription or immemorial custom, the plff. has first to prove that the river is a public navigable one and that there was a grant of the bed to the *Zemindar* at the time of permanent settlement or that there was a grant of several fisheries in favour of the *Zemindar* though the channel was public and navigable. (*Mookerjee*, A.C.J. *and Fletcher*, J.) BHAGIRATH MALO *v.* ANANDA PROSONNA MUKHAPADDYA. **60 I.C. 778 = 33 C.L.J. 229.**

———*If passes title to bed of river.*

An exclusive right of fisbery in a non-navigable river does not of itself pass the right to the soil in the bed of the river. (*Fletcher and Shamsul Huda*, JJ.) MAHARAJA OF BURDWAN *v.* SECRETARY OF STATE FOR INDIA.

46 Cal. 390 = 46 I.C. 305 = 22 C.W.N. 872.

———*Rights of.*

One co-owner cannot maintain a suit against the lessee of a 'bil' from another co-owner for the recovery of the portion of the value realised by him by the sale of the fish caught, unless the co-owner, was obstructed by the lessee in the enjoyment of his right or could not get ample fish in the 'bil' to satisfy his right

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of fishery. (*Fletcher and Shamsul Huda*, JJ.) RUDRA NATH ROY *v.* JOY CHAND KAIBARTNA. **46 I.C. 280.**

———*Union of two rivers—Fishery owners' right.*

Where two rivers mingle, the fishery rights in the two rivers cannot be said to mingle and the right depends upon the fact whether the invading river has retained or lost its identity, though in extreme cases the matter can be easily settled. 42 C. 489 (P.C.) Dist. (*Chatterjee and Beachcroft*, JJ.) SARDA PRASAD ROY *v.* MUHAMMADYUSUF. **24 C.L.J. 158 = 34 I.C 228 = 21 C.W.N. 1007.**

———*River shifting its course*—Dobas *in old bed.*

Where a river shifts course leaving *dobas* in its old bed, the grantee of the exclusive right of fishery in the river retains his right over such *dobas* so long as the latter continue to be incommunication with the main channel throughout the year. (*Carnduff and Richardson*, JJ.) HEM CHANDRA CHAUDHURI *v.* SECRETARY OF STATE FOR INDIA.

23 I.C. 186.

———*River bed—Right claimed in other waters—Court how to adjudge—Jalker—Shifting course of river—Right to follow river.*

The right of fishery (Jalkar) in a river, extends over all the waters which form part of the river. The jalkar rights of a river extend to waters in the river bed though they are not connected with the flowing stream throughout the year. The grantee of a jalkar may fish in all waters comprised within the banks of the river though the particular sheets of water may during a part of the year be disconnected from permanent current. (*Jenkins*, C.J., *Harrington and Mookerjee*, JJ.) AHMADI BEGUM *v.* MAHASY TARAKNATH GHOSH.

17 C.W.N. 1173 = 21 I.C. 233 = 18 C.L.J. 399.

———*Public navigable waters—Government or proprietor of estate whether entitled.*

The Government is *prima facie* the owner of fishery right in all public navigable waters whether tidal or not. But the rights of fishery in small rivers which are tidal but not navigable belong to the proprietors through whose estates they run. (*Richardson and Newbould*, JJ.) SHRIMANTA BAGDI *v.* NIRANTAR JELIA.

19 I.C 893 = 17 C.W.N. 1108.

———*Private rights—How acquired—Prescription.*

Private rights of fishing in public waters may be acquired either by a grant from the Crown or by prescription from which a grant may be presumed. *Quaere*—Whether exclusive rights can be acquired in a tidal or navigable river by proof of mere enjoyment in the manner provided by S. 26 of the Limitation Act. A person to acquire the right of fishery, by prescription must show that he had an uninterrupted enjoyment of it openly, publicly and peacefully for over the statutory period; but where such an enjoyment was in exercise

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of a common right which he shared with others, he should show that his user was in assertion of a higher right than the general right, in himself and for his exclusive benefit. (*Coze and Teunon*, JJ.) ABHOY CHARAN *v.* DWARKA NATH MALO 39 Cal. 53 = 11 I.C. 180 = 15 C.W.N. 972.

——*Landlord and tenant—Lost grant claiming exclusive right—Declaration and injunction.*

In a suit by plaintiff for a declaration of his exclusive title to the fishery rights in a tank and for an injunction to restrain the defendants from interfering with his rights, defendants claimed the right to the fishery rent and the defendants proved the long and continued enjoyment pleaded by them. *Held*, that it was for the plaintiff to establish his title in defiance of the defendants' claim arising from it. It was not enough for the plaintiff to prove his ownership of the tank and rely simply on the presumption that the right of fishery being an incident of the right of ownership vested in him. Per *Krishnan*, J.—Where the facts required for raising a presumption of a lost grant were stated and evidence was all taken and the Courts have given their opinion on the evidence, it is not necessary for the High Court in second appeal to raise a specific issue and call for a fresh finding. It may well be that, where a right of fishery was claimed as first vested in the ryots of a village as a body, no question of unreasonableness will arise. The right claimed is a right in gross. (*Spencer and Krishnan*, JJ.) SUBRAMANIAN CHETTY *v.* VIJIA RAGHUNATAN PILLAI.
22 M.L.T. 333 = 41 I.C. 419 = 6 L.W. 769.

——*Grant of—Rights of grantee to the soil—Grant of soil.*

A proprietor can lease out a fishery without giving any rights to the soil or the bed upon which the water lies and he can then let out the land subject to the rights of the lessee of the fishery. If, on the other hand, he lets out the land first, he cannot claim the right to the water and fish that come upon the land afterwards. The landlord may reserve the right of fishery when letting out the land, but such a reservation is, strictly speaking, a re-grant of the right by the tenant to the landlord. (*Mullick and Ross*, JJ.) MRS. HENRY HILL & Co. *v.* SHEORAJ RAI. 3 P.L.T 53 = 1922 Pat. 196 = (1922) P. 9.

FISHERIES ACT (II of 1889).

——S. 8—*Conviction under*—Bona fides—*Question of possession of fishery.*

A person fishing in a river at the instigation of the Zemindar between whom and the Government there was a dispute as to the possession of the fishery, could not be convicted under S. 8 unless his *bona fides* had been properly investigated and the question of possession enquired into. (*Teunon and Huda*, JJ.) RADHA KAIBERTA *v.* EMPEROR.
19 Cr. L.J. 769 = 46 I.C. 689 = 22 C.W.N. 742.

FOREST ACT (VII of 1878), S. 6.

FIXTURES.

See T. P. ACT, Ss. 3, 108.

FOOD, ADULTERATION OF.

See MUNICIPAL ACTS.

FORBEARANCE TO SUE.

See CONTRACT ACT, Ss. 2, 28.

FORECLOSURE.

See C. P. CODE, O. 34, Rr. 2, 3.

FOREIGN COURT.

See (1) C.P. CODE, S. 13.
(2) EVIDENCE ACT, Ss. 40, 43.

FOREIGNERS ORDINANCE (III OF 1914).

——Ss. 3 and 8—*Change of residence—Jurisdiction.*

The notification by the Local Government compelling the foreigners to notify their change of residence is not *ultra vires* when such powers are delegated. Mere casual journey for a couple of nights away from home is no change of residence. (*Coutts-Trotter*, J.) *In re* CHARLES GEORGE HEDANGAR. 32 I.C. 659 = 17 Cr. L J. 67.

FOREIGN JUDGMENT.

——*Suit on—Indian currency—Decree—Rate of exchange.*

Where a suit is brought in India on a foreign judgment awarding damages in sterling the rate of exchange to be adopted should be the rate prevailing at the date of the judgment of the English Court. (*Fawcett*, J.) MADHAVJI VISRAM *v.* RAMNIKLAL. 47 Bom. 487 = 25 Bom. L.R. 173 = 1923 Bom. 437.

FOREIGN JURISDICTION ACT (1890).

——S. 4 (1)—*Foreigner—British Military Service—Jurisdiction of British Courts established in Foreign Country.*

Where an Afghan, a national born subject of the Ameer of Afghanistan was enlisted and enrolled as a Soldier in a British Indian Regiment after taking the oath of allegiance to His Majesty, and he committed an offence in the Straits Settlements. *Held*, that the Supreme Court at Hong Kong had jurisdiction to try him for the offence. The evidence of the Judge of the Provincial Court was admissible to show that the Hong Kong Court had jurisdiction over British Subjects in the place where the offence was committed. An alien enlisted by the British Crown as a Soldier is entitled to the same rights and subject to the jurisdiction of the same Courts as British enlisted subjects. (*Lord Sumner.*) IBRAHIM *v* EMPEROR. 18 C.W.N. 705 = 16 Cr. L.J. 326 = 23 I.C. 678 = 1 L.W. 989 (P.C.)

FOREST ACT (VII OF 1878.)

——Ss. 6, 7 and 9—*Government property—Land part of permanently Settled Estate—Applicability.*

Where the land is part of a permanently settled estate it is a private property and not

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the Government property within the meaning of the Forest Act and therefore cannot legally be subject of reservation under Chap. II of that Act. Ss. 6, 7, and 9 equally refer to land which is of the description mentioned in S. 3, that is the proceeding taken in respect of such land. (*Woodroffe and Suhrawardy, JJ.*) SECRETARY OF STATE *v.* ABDUL RAHAMAN. **1923 Cal. 77.**

——— **Ss. 25 and 31**—*Rules under*—*Hunting and shooting in reserved forest.*

Hunting and killing a tiger in a reserved forest even though it be for killing the tiger which killed the cattle of the accused, amounts to hunting. (*Shah Din and Marten, JJ.*) AMBIR SAHEB BALAMIYA PATIL *v.* EMPEROR. **42 Bom. 406=45 I.C. 514= 19 Cr. L.J. 610=20 Bom. L.R. 384.**

——— **Ss. 25 (b) and 76**—*Punjab Government Notifications, No. 61, 26th January 1897, R. 28 and No. 437, 3rd October 1897, R. 1*—*Sets fire to', meaning of.*

A person sets fire to a thing if he puts a match to it or sets it on the fire directly, and not if it catches fire as an indirect consequence of his act. The accused kindled a fire in his master's garden which spread to an unclassed forest, and then to a reserved forest. The accused should not be said to have set fire to either of the forests within the meaning of S. 25 (*b*). (*Johnstone, C.J. and Scott-Smith, J.*) RAO *v.* EMPEROR. **30 P.R. (Cr.) 1916= 36 I.C. 138=17 Cr. L.J. 458= 51 P.W.R. Cr. 1916=34 P.L.R. 1917.**

——— **S. 25 (d)**—*Applicability*—*Liability of licensee for agents' acts.*

A licensee under this Act would be liable criminally for every act of his agent done in carrying on the business delegated to him, if there is a breach of the condition of the license or any rule thereunder. If the owner of some cattle entrusts them to a greazier who takes them into a forest reserve to afford them better pasturage, the owner is not criminally liable but is only civilly liable. The words of S. 25 (*d*) clearly apply only to the person who does any of the acts mentioned therein. (*Stanyon, A.J.C.*) SAIYYAD RAHIM *v.* EMPEROR. **16 Cr. L.J. 485=29 I.C. 325= 11 N.L.R. 76.**

——— **S. 25 (f)**—*Cutting trees*—*Felling of each tree*—*Distinct offence.*

A person felling a number of trees in a forest is guilty of as many offences under S. 25 (*f*) of the Forest Act as the number of the trees felled by him. (*Piggott and Walsh, JJ.*) EMPEROR *v.* RAGUNATH. **43 I.C. 577= 19 Cr. L.J. 161.**

——— **S. 25 (i)**—*Hunting without a permit in a reserved forest.*

Where persons form a party and go without a permit to a reserved forest with the object of hunting, even those who do not shoot are

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punishable under S. 25. (*Banerjee, J.*) BARKAT ALI *v.* EMPEROR. **40 All. 88= 42 I.C. 922=19 Cr. L.J. 10=15 A.L.J. 824.**

——— **S. 32**—*Criminal trespass — Forest trees, cutting of*—*Penal Code, S. 447.*

A person entering a forest and cutting reserved forest trees cannot be convicted both under S. 32 of the Forest Act and under S. 447 of the Penal Code as the offence under the latter section is included in that under the former. (*Banerjee, J.*) RUP DEB *v.* EMPEROR. **20 I.C. 408=14 Cr. L.J. 424= 11 A.L.J. 340.**

——— **Ss. 32, 52 and 55**—*Confiscation of produce*—*Conviction under S. 32.*

Where a person is convicted under S. 32 of the Act, the whole of the produce in respect of which the offence was committed must be confiscated and handed over to the Forest Department of the Government. (*Johnstone, J.*) EMPEROR *v.* SADAPUR. **I.P.R. (Cr.) 1912=15 P.W.R. (Cr.) 1912= 18 I.C. 924=13 Cr. L.J. 172=37 P.L.R. 1912.**

——— **S. 41**—*Rules for Chittagong hill tracts.*

The rules apply to Government reserved forests and do not cover the case of a person who has obtained a lease of a forest in fee-simple. If he, therefore, removes bamboos from one portion of the estate to another he is not guilty under the rules. (*Chatterjee and Cuming, JJ.*) SATYARANJAN SEN GUPTA *v.* MOHAMMAD SARFARAJ. **57 I.C. 819= 21 Cr. L.J. 659.**

——— **Ss. 41 (b) and 42**—*R. 4 framed by Government of Bombay under S. 41 (b)*—Ultra vires.

R. 4 of the rules for Sind framed by the Government of Bombay under S. 41 (*b*) of the Act, prohibiting the moving of timber from private land without a certificate from the holder or manager of such land, is *ultra vires*; consequently a conviction for a breach of that rule under S. 42 of the Act cannot stand. (*Pratt, J.C. and Crouch, A.J.C.*) MITHO *v.* EMPEROR. **35 I.C. 668=17 Cr. L.J. 364= 10 S.L.R. 9.**

——— **S. 82**—*Plea of justification — Not raised.*

The plea of justification under S. 82 not having been raised in the pleadings in the Lower Court could not be allowed to be raised in appeal. S. 82 expressly provides that the sale proceeds should be applied first in discharging the amount due. (*Pratt, J.C. and Fawcett, A.J.C.*) CHANDIRAM KARAM SINGH *v.* SECRETARY OF STATE. **31 I.C. 436= 9 S.L.R. 51.**

FOREST OFFICER.

See FOREST ACT.

FORFEITURE.

See (1) ACT OF STATE.
(2) CROWN.
(3) LANDLORD AND TENANT.
(4) T. P. ACT, S. 111.

FORFEITURE ACT (X OF 1859).

——S. 20—*Mortgagor and mortgagee—Confiscation by Government of mortgagee rights—Mortgagor not effected—Redemption—Limitation.*

Where the Government confiscated only the mortgagee rights of a certain person under the Act and granted it to the predecessors in title of the defendant, a suit by the mortgagor for redemption is not governed, for the purpose of limitation, by S. 20 of the Act. (1868) N.W.P. 11 Cr. 199, Rel. on. (*Lyle*, J.) YAKUB ALI KHAN *v.* LATU SINGH. 20 I.C. 362 = 11 A.L.J. 724.

FORMA PAUPERIS.

See CIV. PRO. CODE, O. 33.

FORWARD CONTRACTS.

See CONTRACT ACT, Ss. 73, 33-92, ETC.

FOSTERAGE.

See MAHOMEDAN LAW.

FRAME OF SUIT.

See CIV. PRO. CODE.

FRAMING AND SETTING ISSUES.

See CIV. PRO. CODE.

FRANCHISE.

See MUNICIPAL ACTS.

——*Acquisition by adverse possession—Right to carry on a bazaar and levy dues thereon—Rights of Taluqdar.*

The plaintiffs and their ancestors had been carrying on a bazaar in a certain locality in a village and had received various bazaar dues from persons carrying on business within the area. Several plots in the locality were seized by the talukdar's tenants and shades were built thereon. In a suit by the plaintiff against the tenants and the talukdar, *held*, that the plaintiff had acquired, as against the talukdar, by a long adverse possession, a right like a franchise, of carrying on the bazaar and of levying dues on the persons using it and the right had become valuable property, and that the talukdar could not interfere with the plaintiff's rights. (*Lindsay*, J.C.) SHAMBHU DAYAL *v.* CHANDRA SHEKHAR. 36 I.C. 728 = 3 O.L.J. 417.

FRAUD.

See (1) C.P. CODE, SS. 11, 13 AND 47 AND O 6, R. 4, O. 21, R. 90, ETC.
(2) CONTRACT ACT, SS. 17, 19, ETC.
(3) DECREE, SETTING ASIDE.
(4) PRACTICE—FRAUD.

——Party to Fraud—Relief.

See T. P. ACT, S. 53.

——Who may plead.

See (1) CONTRACT ACT, SS. 19, 23.
(2) EVIDENCE ACT, S. 115.
(3) T. P. ACT, S. 53.

FRAUD IN COURT.

See C. P. CODE, S. 73, O. 21, R. 52.

FRONTIER CRIMES REGULATION (III of 1901).

FRAUD ON CREDITORS.

See (1) FRAUDULENT TRANSFERS.
(2) T. P. ACT, S. 53.

FRAUDULENT PREFERENCE.

See (1) PROV. INS. ACT, S. 37.
(2) PRES. TOWNS INSOLVENCY ACT, S. 56.
(3) T. P. ACT, S. 53.

FRAUDULENT TRANSFER.

See T. P. ACT, S. 53.

FREE CONSENT.

See CONTRACT ACT, S. 16.

FREEDOM OF RELIGION ACT (XXI of 1850).

See also CASTE DISABILITIES REMOVAL ACT.

——S. 1—*Conversion to Mahomedanism—Succession to.*

The Freedom of Religion Act (XXI of 1850) repeals the provision of Hindu and Mahomedan Law which inflict forfeiture of rights or property by reason of renunciation of religion, or expulsion from caste, but it does not give any person rights he never possessed under Hindu or Mahomedan Law. 33 A. 356. Referred to. (*Rigg*, J.) ASHA BIBI *v.* MA KYAW YIN. 64 I.C. 514 = 13 Bur. L.T. 217.

FREIGHT.

See RAILWAYS ACT.

FRESH EVIDENCE.

See C. P. C., O. 41, R. 27.

FRESH SUIT.

See C. P. C., O. 23, R. 1.

FROM SERVICE.

——*Dismissal from service — Notice — Damages.*

The contract of service of master and servant in the absence of agreement or custom is terminable by a reasonable notice. Wrongful dismissal entitles the servant to sue for damages. (*Twomey*, J.) E. M. MOOLA *v.* K. C. BOSE. 9 Bur. L.T. 63 = 33 I.C. 981 = 8 L.B.R. 420.

FRONTIER CRIMES REGULATION (III OF 1901.)

——Ss. 8 and 60—*Decree under S. 8—Civil Court cannot question validity—Suit pending in Civil Court—Effect.*

A decree passed under section 8 of Regn. III of 1901 whether passed wrongly or rightly is an actually subsisting decree and, under section 60 of the Frontier Crimes Regulation, it cannot be called in question or set aside by any Civil Court. The decree certainly cannot be set aside by a Civil Court. Even if the finding of the Civil Court conflicts with that decree, the decree could not be finally extinguished unless and until the Chief Commissioner had set it aside in the exercise of the

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powers of the revision. This however, is not the same thing as holding that the Civil Court cannot proceed at all with a suit which is before it, simply because some illegal proceedings under S. 10 has been taken after the suit. What the Civil Court is entitled to do is not to call in question the proceedings or the validity of the decree, but simply to ignore them. It is perfectly clear, that section 8 cannot, in any circumstances, legally come into operation at all when a civil suit is already pending. The Civil Court has entertained the suit with jurisdiction, so far as this question is concerned, to entertain it, and no illegal proceedings by any outside authority in contravention of the provisions of law could possibly affect its jurisdiction to continue the hearing of the case. An illegal proceeding under section 8, Frontier Crimes Regulation, cannot in any circumstances, oust the jurisdiction of a Civil Court to continue the trial of a civil suit which has been legally instituted before it prior to any proceedings under section 8, Frontier Crimes Regulation. (*Pipon*, J.C.) FIRM OF SHAM DAS BHIM SAIN *v.* FIRM OF KALU RAM BASHESHAR NATH.
72 I.C. 927.

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———*Doctrine of—in contracts.*

According to the doctrine of frustration, a subsequent event on contingency beyond the ken of the parties, for which none of them is responsible and for which they have not provided, may sometimes operate to avoid the contract. (*Sanderson*, C.J. *and Richardson*, J.) GOURI SHANKAR AGARWALLA *v.* H. P. MOITRA.
26 C.W.N. 573.

FULL BENCH.

See PRACTICE—HIGH COURT.

FUNERAL EXPENSES.

See (1) HINDU LAW.
(2) MAH. LAW.

FURTHER ENQUIRY.

See C. P. CODE, O. 41, Rr. 23, 25.

FUTURE INTEREST.

See T. P. ACT, O. 34.

GADABA OR GUDABA.

See GRANT—INAM.

GAMBLING.

See CONTRACT ACT, S. 23, 30 AND 65.

GAMBLING CONTRACT.

See CONTRACT ACT, S. 23.

GAMBLING IN LITIGATION.

See CONTRACT ACT, S. 23.

GAMING.

See (1) CONTRACT ACT, SS. 30 AND 65.
(2) GAMBLING ACTS, IMPERIAL AND PROVINCIAL.

GENERAL CIVIL COURTS' RULES—1911 Chap. XXI, R. 37.

GANJAM AND VIZAGAPATAM AGENCY RULES,

See AGENCY RULES.

GARNISHEE.

See also (1) C.P. CODE, O. 21, Rr. 46, 53, ETC.
(2) HIGH COURT RULES.

———*Cross-debt—Set off—Court-fee.*

A cross-debt due to the garnishee can be set off in his favour and the equity arising from the cross-debt can be set up without paying court-fee. (*Scott*, C.J. *and Batchelor*, J.) TAYABALI GHULAM HUSIEN *v.* ATMARAM SAKHARAM VANI. **38 Bom. L.R. 631 = 25 I.C. 375 = 16 Bom. L.R. 520.**

———*Debt due to estate of deceased—Share of heir.*

Debts due to the estate of a deceased person of whom the judgment-debtor is co-heir, are not proper subject for garnishee proceedings. If a garnishee order is improperly made, it should be set aside and the sum refunded to persons interested in the debt such as judgment debtor's co-heirs. When such an order is set aside the refund may not be made into the Court. But the Court can decide the parties entitled to receive the money if all the parties are before the Court. (*Wallis*, C.J. *and Krishnan*, J.) HAJEE ABDULA SAHIB *v.* ALANJI ABDUL LATIF SAHIB. **39 M.L.J. 91 = 28 M.L.T. 34 = 57 I.C. 854 = 12 L.W. 70.**

———*Order—Stopping of payment.*

If a cheque is given in respect of a pre-existing debt and the drawee is served with a garnishee order, he is not bound to stop payment. (*Moore*, J.) ARUNACHALLAM CHETTY *v.* SOMASUNDARAM CHETTY.
12 I.C. 869 = 4 Bur. L.T. 148.

———*Rights of—Whether tenants bound to employ—Wajib-ul-arz—Entry in.*

A *wajib-ul-arz* recorded a Garpagari as a village servant whose duty was to ward off hail-stones by *Mantras* in lieu of a sheaf of corn from the tenants. *Held*, the entry did not make it obligatory upon the tenants to seek the garpagari's services and to pay for them. (*Mitra*, A.J.C.) SITARAM *v.* RAKHADU.
54 I.C. 177.

GAYAWAL.

See (1) HINDU LAW—RELIGIOUS OFFICE.
(2) T. P. ACT, S. 6.

GAZETTE.

See EVIDENCE ACT, S. 81.

GENERAL CIVIL COURTS RULES—1911, Chap. XXI, R. 37.

———*High Court pleader practising in Lower Court.*

Per *Chamier*, J.:—R. 36 applies even to a pleader of the High Court when he is practising

GENERAL CLAUSES ACT (X of 1897), S. 3.

in the Subordinate Courts. (*Richards*, C.J., *Tudball and Chamier*, JJ.) *In the matter of* HAR PRASAD SINGH. 17 I C. 639 = 13 Cr. L.J. 795

GENERAL CLAUSES ACT (X OF 1897).

———*Words in singular if includes plural—Cr.P.C. Ss.* 234, 239.

Sections 234 to 238 by their terms, refer to the case of a single accused, and S. 239 is the section which deals with the case where more persons than one are accused. The existence of S 239 specifically dealing with the case of several accused, and the arrangement of the sections relating to joinder of charges, constitute such a repugnancy in the context as prevents the reading of the words "a person" in section 234 as including several persons, by applying the provision of the General Clauses Act that words in the singular shall include the plural. (*Kanhaiya Lal and Wallach*, JJ.) RAM PRASAD v. KING-EMPEROR.
22 Cr. L.J. 657 = 63 I.C. 419 = 19 A.L.J. 798 = 8 U.P.L.R. (All.) 151.

———S. 3—*Power of revising — Repealed statutes.*

To revive a repealed statute it is necessary under the above Acts to state the purpose in the Repealing Act, as in the case of English Repealing Acts, passed since 1850. (*Chaudhuri* J.) *In the matter of* JEWA NATHOO.
45 Cal. 459 = 37 I.C. 48 = 18 Cr. L.J. 64 = 20 C.W.N. 1327.

———S. 3 (13)—*Value, meaning—Exaggerated valuation.*

The word 'value' with reference to a suit, shall mean the value of the subject-matter of suit. Therefore ordinarily the value of the subject-matter of suit determines the Court of Appeal. The plff. cannot, by grossly exaggerating the valuation of the property in dispute, choose his own forum. (*Tudball and Sulaiman*, JJ.) BABAR SHAH v. MUHAMMAD RAFIQ. 62 I.C. 35.

———S. 3 (20)—*Good faith—Contract Act.*

The definition of 'good faith' given in the Act does not expressly apply to the terms as used in the Contract Act. The definition of 'good faith' which is generally understood in civil law and which may be taken as a guide in construing that expression in the Contract Act, is that nothing is said to be done in good faith which is done without due care and caution, *i. e.* care and caution expected of man of ordinary prudence. (*Parlett*, J.) MAUNG AUNG HU v. MAUNG SI MAUNG. 12 I.C. 809 = 4 Bur. L.T. 128.

———S. 3 (25)—*Immoveable property—Kolhu fastened to the ground.*

A Kolhu (*i. e.* an iron sugarcane press) fastened to the ground is immoveable property as it could not be used effectively unless so fastened. (*Ryves*, J.) MUSIA KURMI v. SUB KARAN KURMI. 23 I.C. 250.

GENERAL CLAUSES ACT (X of 1897), S. 3.

———S. 3 (25)—*Right of way—T. P. Act, S. 3—Immoveable property.*

The term 'immoveable property' in the General Clauses Act may include a right of way. But such right is not always necessarily included. It is not excluded by T. P. Act, S. 3. (*Chatterjee and Richardson*, JJ.) SITAL CHANDRA CHAUDHARI v. ALLEN J DELANVEY.
34 I.C. 430 = 20 C.W.N. 1158.

———S. 3 (25)—*Right to immoveable properties—Malikana.*

Under the Limitation Act XIV of 1859 malikana was immoveable property, the right to which was lost by 12 years non-enjoyment. (*Chatterjee and Walmsley*, JJ.) MOHESRI PRASAD SINGH v. BAIJNATH AZARI.
21 I.C. 779 = 19 C.W N. 410.

———S. 3 (25)—*Standing crops—Immoveable property.*

Standing crops are immoveable property and an illegal attachment of the same is a trespass. (*White*, C.J., *Miller and Oldfield*, JJ.) KOTAGIRI VENKATARAMANUJAM v. PATIBANDA BASAVAYYA.
14 M.L.T. 225 = 25 M.L.J. 447 = 21 I C. 218 = (1913) M.W.N. 869.

———S. 3 (25)—*Standing crops—Immoveable property.*

Standing crops are immoveable property under the General Clauses Act. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) KOTAGIRI VENKATARAMANUJAM v. PATIBANDA BASAWARAYA. 23 M.L.J. 620 = 17 I.C. 185 = (1912) M.W.N. 1222.

———S. 3 (25)—*Fishery—Immoveable property.*

A right to fishery is an interest in immoveable property. 24 C. 449; 19 C. 544, F. (*Mitra*, A.J.C.) SITARAM v. PETIA.
43 I.C. 962 = 14 N.L.R. 88.

———S. 3 (25)—'*Land*' *as used in C. P. Code—Trees.*

The definition of 'land' given in the General Clauses 3 (26) 1897 Act must be applied to the word 'land' as used in the C.P.C. and therefore 'land' in C.P.C. includes trees. (*Stanyon*, A.J.C.) SUKHANDAN v. MANAKCHAND. 10 I.C. 473 = 7 N.L.R. 63.

———S. 3 (25)—*Mortgage debt—Immoveable property.*

A simple mortgage debt is to be attached under O. 21, R. 46, C.P.C. as a debt and not as immoveable property under O. 21, R. 54, C.P.C. (*Kanhaiya Lal and Daniels*, A.J.Cs.) SHAH MOHAMED YUSUF v. LAXMINARAYAN.
6 C.L.J. 49 = 30 I.C. 187 = 21 C.C. 400.

———S. 3 (25)—*Charge on immoveable property.*

Money charged on immoveable property includes money charged on rent and profits of land and the specification of the property on the rental of which (or out of the rents and profits of which) a certain money allowance

GENERAL CLAUSES ACT (X of 1897), S. 3.

was to be be calculated, indicates the stock out of which it was to be paid and was therefore a charge on the property. (*Kanhaiya Lal*, A.J. C.) RAM JIWAN *v.* JADUNATH.
18 O.C. 380=33 I.C. 353=3 O.L.J. 20.

———S. 3 (25)—*A benefit arising out of land.*

The expression covers a right to receive cash nankar from the profits of a village. (*Kanhaiya Lal*, A.J.C.) DEPUTY COMMISSIONER, FAIZABAD *v.* JAGVAN BAKSHA SINGH. **33 I.C. 461=19 O.C. 49.**

———S. 3 (25)—*Pugmill—Immoveable property.*

Where a pugmill is erected and affixed to the earth it is immoveable property, within S. 3 (25). (*Rigg*, J.) U. THET *v.* TOLA RAM.
43 I.C. 625=11 Bur. L.T. 199.

———S. 3 (34)—*Moveable property—Meaning of.*

The definition of 'moveable property' includes a debt. (*Ayling and Srinivasa Aiyangar*, JJ.) SECRETARY OF STATE *v.* SENGAMMAL.
4 L.W. 613=36 I.C. 333=18 Cr. L.J. 1=(1917) M.W.N. 105.

———S. 3 (39)—*Person—Company—C. P. Code, O. 33, R. 1.*

A company is a 'person' and can sue through its liquidator in *forma pauperis*. (*Bakewell and Kumaraswami Sastri*, JJ.) PERUMAL KAUNDAN *v.* VENKATASAMI NAYUDU.
41 Mad. 624=45 I.C. 164=34 M.L.J. 421.

———S. 3, cl. (57)—*Will — Authority to adopt—Difference between.*

Mere authority to adopt, though revocable and taking effect on the death of a person, cannot be considered a will though the document is styled a will. There must be a disposition of property in addition to the authority to adopt if it is to be treated as a will. A mere direction for management of the property by a manager during minority is not a disposition by a will. (*Wallis*, C.J. *and Seshagiri Aiyar*, J.) JAGANNADHA GAJAPATI *v.* KUNJA BIHARI DEO. **25 M.L.T 205=9 L.W. 385=49 I.C. 929=(1919) M.W.N. 52.**

———S. 3 (59)—*Applicability—Calendar.*

Where the probabilities are not, and the evidence does not show, that the parties usually went by the Gregorian Calendar, provisions of General Clauses Act, S. 3 (59), do not apply. (*Batten*, J.C.) SETH BHOJRAJ *v.* PANDA SHANKARNATH. **1922 Nag. 265.**

———S. 6—*Vested right in procedure—Mortgage decree.*

An application for execution of a mortgage decree made more than 12 years after it was passed is barred under S. 48 though the decree was passed under the old code because no vested right in the procedure prescribed in that Code was acquired by the decree-holder within

GENERAL CLAUSES ACT (X of 1897). S. 10

S. 6 of the General Clauses Act. (*Chamier*, C.J. *and Jwala Prasad*, J.) KRISHNA DAYAL GIR *v.* SAKINA BIBI. **20 C.W.N. 952=2 Pat. L.W. 370=34 I.C. 27=1 Pat. L.J. 214.**

———S. 6—*An application to set aside ex parte-decree, whether a right or privilege.*

It is doubtful if an application for setting aside an *ex-parte* decree comes under a right or privilege under S. 6 of the General Clauses Act. In the event of its being deemed to be a right, its acquisition must be under the C.P.C. and not under the Limitation Act. (*Shadi Lal and Rossignol*, JJ.) MANOHARLAL *v.* SADIQA BEGUM. **37 I.C. 292=101 P.R. 1916.**

———S. 6—*Vested right taken away—C.P. C., old and new.*

A vested right under the Old Code which had been replaced by the New Code, is saved by S. 6 if the right had already vested before the coming into force of the New Code, (*Chamier*, J.C. *and Evans*, A.J.C.) JOGESHAR SINGH *v.* BHAGWANBUX SINGH.
9 I.C. 337=14 O.C. 10.

———S. 6—*Change in law due to addition —Scope of.*

S. 6 of the Act applies only to cases where the change in the law is the result of the repeal of an old enactment and does not extend where it is due to an addition to it. 22 C. 767, Foll. (*Fawcett*, A.J.C.) HEMANDAS *v.* CHETTARAM. **13 I.C. 264=5 S.L.R. 184.**

———S. 6, (b)—*Acknowledgment of liability under the Limitation Act* (1959)—*Not a thing done.*

An acknowledgment of liability only extends the peroid of limitation and does not confer title and is not a thing done within S. 6 (b) of the General Clauses Act. ((*Sir John Edge.*) SONI LAL *v.* KANHAIY LAL.
35 All. 227=40 I.A. 74=25 M.L.J. 131=13 M.L.T. 437=17 C.W.N. 603=11 A.L.J 389=(1913) M.W.N. 470=17 C.L.J 488=19 I.C. 291=15 Bom. L.R. 489 (P.C.).
[Affirming 32 All. 33=6 M.L.T. 348=3 I.C. 725=6 A.L.J. 931.]

———S. 6 (c)—*Contingent right — Not affected by repeal—C. P.C., O. 21, R. 93.*

Where an execution sale was held under the Old C.P.C. 1882, the auction purchaser had a contingent right to sue for recovery of the purchased money in case the judgment-debtor had no saleable interest. That right is not affected by the new provision of O. 21, R. 93 which negatives a right of suit in such a case. (*Oldfield and Phillips*, JJ.) TIRUMALAI SWAMI NAIDU *v.* SUBRAMANIAN CHETTIAR.
45 I C. 109=40 Mad. 1009.

———S. 10—*Limitation given in the section.*

S. 10 of the General Clauses Act is applicable to those cases where period of limitation has

GENERAL CLAUSES ACT (X of 1897), S. 10.

been given in the section and to the condition put in the decree. (*Richards, C.J. and Tudball, J.*) HIRDEY NARAIN *v.* ALAM SINGH.
41 All. 47=48 I.C. 353=16 A.L.J. 892.

———S. 10—*Days of grace—Lim. Act, S. 31.*

S. 10 does not apply to the period of grace allowed by S. 31 (1) of the Limitation Act. (*Scott, C.J. and Batchelor, J.*) SHEODAS *v.* NARAIN ASAJI. 36 Bom. 268=12 I.C. 811=13 Bom. L.R. 1153.

——S. 10—*Limitation—Mode of computation.*

When a certain day is fixed for complying with an order of the Court the party is entitled to have reasonable opportunity of presenting his case or substantiating it in the proper course. (*Teunon and Beachcroft, JJ.*) RAMAPATA CHATTERJEE *v.* SACHINANDAN NANDI.
35 I.C. 660.

———S. 17 (1)—*District Magistrate—Acting officer.*

It is competent to an Acting Magistrate to grant sanction for the prosecution of an offence wherever the permanent Magistrate could have done so. (*Sadasiva Aiyar and Napier, JJ.*) *In re* KANDASAMI PILLAI. 42 Mad. 69=35 M.L.J. 736=24 M.L.T. 805=49 I.C. 161=20 Cr.L.J. 129=(1918) M.W.N. 856.

———S. 21—*Factories Act, Ss. 28 and 29—Power to approve—Power to cancel.*

The Inspector of Factories approving a system of working a particular factory can, under S. 21 of the Genl. Clauses Act, cancel the approval. But where, an appeal is pending from the order of cancellation it is not desirable so long as the appeal is pending to institute a criminal prosecution in respect of the factory having been worked in contravention of the order of cancellation. (*Abdul Raoof, J.*) MADAN MOHUN LAL *v.* EMPEROR. 39 I.C. 857=22 Cr. L.J. 153.

———S. 24 — *Subsequent passing of the Registration Act* (1908) — *Effect—Notification exempting agricultural leases.*

Unregistered agricultural leases for a term not exceeding 5 years, reserving a rent less than Rs. 50, were exempted by a notification of Government of 1885. Subsequently, the Registration Act (1908) was passed. *Held*, the notification was still in force in spite of the New Registration Act under S. 24 of the General Clauses Act. (*Rafique and Piggott, JJ.*) HAJARI SINGH *v.* TARBENI SINGH.
28 I.C. 577=12 A.L.J. 792.

———S. 26—*Rights to reap crops as tenants.*

Mere temporary rights of a tenant-at-will to reap the produce as tenant are not 'immoveable property.' (*Scott-Smith and Abdul Raoof, JJ.*) MOHAMMED ISMAIL *v.* SHAMSUDDIN.
1 Lah. 567=2 Lah. L.J. 684=38 I.C. 321=2 U.P.L.R. (L.) 184.

GHATWAL.

———S. 26—*General and special Enactments—Interpretation of statutes.*

Where a special enactment, deals with an offence similar to the offence which is dealt with by a general enactment it does not follow that the provisions of the general enactment of the Penal Code, are repealed to that extent. The prosecution in such a case may lie under either but not both of those enactments as provided by S. 26 of the General Clauses Act. 22 Cal. 191 at 199, Dist. (*Abdur Rahim, J.*) SEGU BALLIAH *v.* RAMASAMIAH.
18 Cr. L.J. 992=42 I.C. 608=6 L.W. 283.

——S. 26—*Separate sentences—Opium Act* (I *of* 1878), *S.* 9 (c) (f)—*Bihar and Orissa Excise Act* (II *of* 1915), *S.* 47 (a)—*Sale of opium.*

Where a person illegally sold a certain quantity of opium and retained possession of the residue after the sale, separate sentences for possession and sale under the Opium Act and the Bihar and Orissa Excise Act do not contravene S. 26 of the General Clauses Act. (*Roe and Imam, JJ.*) BALI SAHU *v.* EMPEROR.
19 Cr. L.J. 446=44 I.C. 974=3 P.L.J. 433.

———S. 26—*Act constituting two offences.*

When one act constitutes two offences, separate punishment for each offence can be inflicted only if both offences are against the same law. (*Roe and Jwala Prasad, JJ.*) RAHMATULLA *v.* EMPEROR. 1 P.L.J. 373=18 Cr. L.J. 321=38 I.C. 433=1 P.L.W. 34

———S. 27—*Bombay High Court Rules, Rule* 107.

Rule 107 of the Bombay High Court Rules falls under S. 27 of the General Clauses Act (1897). (*Beaman, J.*) ROOPCHAND RANGILDAS *v.* HAJI HUSSAIN HAJI MAHOMED SUDAGA. 24 I.C. 437=16 Bom. L.R. 204.

GESTATION.

See. (1) T. P. ACT, S. 14.
(2) EVIDENCE ACT, S. 112.

GHATTI TOMULU.

See MAD. EST. LAND ACT, SS. 3 (11), 143, 145.

GHATWAL.

———*Jurisdiction—Civil Court—Dismissed by Police authority.*

The dismissal of Ghatwal by the Police authorities cannot be interfered with by Civil Courts. 1 W. R. 321, Foll. (*Fletcher and Richardson, JJ.*) DEBAKAR SINGH *v.* RADHA GOBINDO SINGH. 24 I. C. 527.

———*Rent—Personal property.*

Arrears of rent due during the lifetime of a Ghatwal though collected afterwards are his personal property which can be followed by the creditors in the hands of his representatives. (*Coutts and Adami, JJ.*) BRIJ NATH RAM RAMESHWAR *v.* CHANDKUMARI.
58 I. C. 17=1 Pat. L.T. 652.

GHATWALI.

See LAND TENURE - GHATWALI.

GIFT.

(1) DEED—CONSTRUCTION.
(2) HINDU LAW—GIFT.
(3) MAHOMEDAN LAW—GIFT.
(4) T. P. ACT, SS. 122—128.

GODAVERY AGENCY RULES.

See also AGENCY RULES (GODAVERY).

———*Decree passed by Court outside Agency tracts for sale of property within such area—Execution—Legality of decree—Objection to.*

It is not competent to Civil Courts exercising jurisdiction outside the Agency area to pass a decree for the sale of properties situate within the area. When such a decree is sought to be executed within the Agency area, the Agency Court has a right to refuse execution on the ground that the decree is, on its face without jurisdiction and a nullity. 42 M. 813 Foll. 43 M. 675, Dist. (*Krishnan and Venkatasubba Row*, JJ.) KRUTHIVENTI PERRAZU *v.* SRI RAJAH NALLAPARAZU MEERJA SEETHARAMA CHANDRA. 16 L W. 663 = (1922) M W N. 728 = 1923 M 113 (1).

———R. 3 (2) and (3)—*Cancellation of pleader's sanad—Suit by pleader, does not lie.*

Where the Government Agent of Godavery Agency cancelled the *sanad* of a pleader in the Agency tract for misconduct, *held*, that the Agent acted as a Court and that no suit by the pleader would lie against the Agent for what he did as a Court. (*Spencer and Ramesam*, JJ.) MALLADI VENKATARAMAYYA *v.* SECRETARY OF STATE.
(1921) M W N. 830 = 30 M.L.T. 76 = 15 L.W. 236 = 65 I C. 345 = 42 M.L J. 148.

GOOD FAITH.

See (1) SP. REL. ACT, S. 27.
(2) T.P. ACT, SS 41, 43, 53.
(3) TRUSTS ACT, S. 96.

GOODS.

See CONTRACT ACT, SS. 76—123.

GOOD WILL.

See (1) CONTRACT ACT, SS. 253—266.
(2) PARTNERSHIP.
(3) TRADE MARK.
(4) TRADE NAME.

GOVERNMENT.

See (1) ACT OF STATE.
(2) CROWN.
(3) GOVERNMENT OF INDIA ACT.
(4) GRANT.
(5) SECRETARY OF STATE.

GOVERNMENT OF INDIA ACT (1915).

———S. 28—*Security given by the Secretary of State for appellant—Engagement for the purpose of the Government of India.*

(Per *Mookerjee*, J., *Teunon*, J., Contra).—The concurrence of a majority of votes is necessary for the validity of a security given by the Secretary of State for an appellant. A covenant by the Secretary of State by which the performance of a decree by a private party is guaranteed is not an engagement within Ss. 2 and 40 of the Act, 1858. (*Mookerjee* and *Tunon*, JJ.)
38 Cal. 734 = 13 C.L J. 365 = 9 I.C. 852 = 15 C W.N. 475.

——S. 32 and 65 (2)—Ultra vires—*Legislation.*

If the Indian Legislative Council passes an enactment depriving a subject of his remedy in Civil Courts against Secretary of State for wrongs to property the act is *ultra vires.* (*Lord Macnaghten*) SECRETARY OF STATE *v.* MOMENT. 40 Cal. 391 = 40 I A. 48 = 13 M L T. 55 = 17 C.W.N. 169 = (1913) M W.N 45 = 18 Bom. L.R. 27 = 11 A L.J 49 = 17 C.L.J. 194 = Bur. L T. 1 = 24 M L.J. 459 = 18 I.C. 22 (P.C.) = 7 L.B.R. 10.
[On appeal from 8 I.C. 1129 = 8 L B.R. 163 and 8 I.C. 1189 = 3 Bur. L. T. 93.]

———S. 32—*Secretary of State—Liability to be sued.*

An enactment adding to or taking away from, the liability of the Secretary of State in Council to be sued, as settled by the Government of India Act is *ultra vires* of the Indian Legislature. (*Wallis*, J.) A. M ROSS *v.* SECRETARY OF STATE. 37 Mad. 55 = 24 M.L J. 429 = 19 I.C. 353 = (1913) M.W.N. 758.

———S 32 (3)—*Liabilities lawfully incurred—Meaning of.*

Liabilities lawfully incurred do not mean liabilities incurred by acts authorised by law but must mean liabilities incurred by servants or agents in course of undertakings in which the Government servants are lawfully engaged. (*Crouch and Hayward*, A J.Cs.) MATHARADAS *v.* SECRETARY OF STATE FOR INDIA.
11 I.C. 58 = 6 S L.R. 82.

———S. 60—*Local Governments Jurisdiction, alteration in—Effect on Civil Court's jurisdiction.*

A Government notification, declaring the deep stream of the Ganges as boundary of the two provinces also determines the jurisdiction of the Civil Courts in those places. Alteration in the jurisdiction of the Local Government does not affect the Civil Courts' jurisdiction. (*Coutts and Ahmed*, JJ.) KESHO PRASAD SINGH *v.* NIRMAL KUMAR.
1 Pat. L T. 288 = 5 Pat. L.J. 451 = 57 I C. 201 = 2 U.P.L.R. (P.) 152.

———S. 65—*Indian Legislature—Powers of—Suit against Secretary of State—Deprivation of remedy of subject*—Ultra vires—*Burma Act* (IV *of* 1898), *S.* 41 (*b*)—*Indian Councils Act*, 1861, *S.* 22 *proviso.*

S. 41 (*b*) of Act IV of 1898 (Burma) which enacts that no Civil Court is to have jurisdic-

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tion to determine a claim to any right over land against the Government, is *ultra vires* of the Indian Legislature as it contravenes S. 65 of the Government of India Act, 1858 (21 and 22 Vic., C. 106), which preserves to the subject the same remedy against the Government as there would have been against the E I. Co. An action for damages for trespass on land would have lain against the East India Co. and consequently would lie also against the Secretary of State. 5 B H.C.R. Ap. I, approved. *Obiter.*—The Indian Government might legislate validly about the formalities of procedure so long as they preserve the substantial right of the subject to sue the Government in Civil Courts like any other defendant and do not violate the fundamental principle that the Secretary of State even as representing the Crown is not to be in a position different from that of the East India Co. (*Lord Macnaghten*). SECRETARY OF STATE *v.* MOMENT.

40 Cal. 391 = 40 I.A. 48 = 13 M L.T 58 = 17 C.W.N. 169 = (1913) M.W N. 45 = 15 Bom L.R. 27 = 11 A L J 49 = 17 C.L.J 194 = 6 Bur. L.T. 1 — 24 M.L J. 459 = 18 I.C. 22 = 7 L.B.R. 10 (P.C.)

[On appeal from 8 I C. 1129 = 5 L B.R. 163 and 8 I.C. 1189 = 3 Bur. L.T. 93.]

———S. 65—*Right of action against E. I. Company not taken away by Indian Legislature.*

If a party had a right of action against the East India Company, it cannot be taken away by any Act of Indian Legislature after the company's possessions were vested in the Crown. 40 Cal. 391 (P.C.), Foll. (*Macleod*, C.J. *and Shah*, J.) DAMODAR TUKARAM *v.* SECRETARY OF STATE FOR INDIA.

45 Bom. 1161 = 62 I.C. 673 = 23 Bom. L.R. 492.

——— S. 65—*Power of legislature.*

Powers of legislature discussed. (*Ayling and Sadasiva Aiyar*, JJ.) *In re* RANGADU.

22 M L.T. 211 = 6 L.W. 428 = 42 I.C. 724 = 18 Cr. L J. 996 = (1917) M.W.N. 681.

———Ss. 65 (2), (3) and 72—*Legislative power of the Government of India—Limits of.*

Section 65 (2) of the Act does not prevent the Government of India from passing a law which may modify or affect a rule of the constitution or of the common law upon the observance of which some person may conceive or allege his allegiance to depend. It only refers to laws which directly affect the allegiance of the subject. (*Viscount Cave.*) BUGGA *v.* EMPEROR.

1 Lah. 326 = 47 I.A 128 = 39 M.L J. 1 = 18 A.L.J. 433 = 25 C.W N 650 = 21 Cr. L J. 466 = (1920) M.W N. 325 = 2 U.P L.R. (P.C.) 50 = 55 I.C. 440 = 23 Bom. L.R. 603 = 12 L.W. 296 (P.C.).

———S. 65 (2)—*'Unwritten laws'—What are.*

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Rights to personal freedom and property are the rights referred to in the phrase 'unwritten laws' in S. 65 (2) of Government of India Act. 6 B.L R. 392, approved; 40 C. 391 P.C., ref. (*Abdur Rahim*, O.C.J., *Ayling and Seshagiri Aiyar*, JJ.) ANNIE BESANT *v.* GOVERNMENT OF MADRAS.

39 Mad. 1085 = 5 L W. 1 = (1916) 2 M W.N 385 = 18 Cr. L J. 157 = 37 I C 5.5 = 21 M.L.T. 124.

———S 79—*Ordinances.*

The ordinances by the Governor-General are deemed to be made by him in Council and remain in force for six months after termination of war. (*Macleod*, J.) WILFRED R. PADGETT *v.* JAMSETJI.

41 Bom. 390 = 33 I.C. 724 = 18 Bom. L.R. 190.

———S. 79—*Calcutta Improvements Act, Ss. 42 and 69—Acquisition and taxation—Distinction between — Distinction between acquisition for recoupment and taxation for purpose of recoupment.*

When a proposed acquisition is abandoned on condition of periodical payments by the owner of a sum fixed in perpetuity or the payment in lump of the capitalised value thereof, a tax is in essence imposed on the land; such a tax can be validly imposed only with the sanction of the proper authorities duly obtained under S. 43, and the statute imposing the burden must do so in clear and unambiguous language. (*Mookerjee and Cuming*, JJ.) TRUSTEES FOR THE IMPROVEMENT OF CALCUTTA *v.* CHANDRA KANTA GHOSH.

44 Cal. 219 = 21 C.W.N. 8 = 36 I.C. 749 = 24 C.L J. 245.

———S. 101, proviso—*Additional Judges—Appointments for periods not exceeding two years.*

The proviso to S. 101 of the Government of India Act does not mean that as regards each High Court, appointment of temporary judges can only be made for periods not exceeding two years in all. The proviso must be read as meaning that appointments may be made from time to time for such period, not exceeding two years, as may be required from time to time on each occasion when the power is exercised. (*Wallis*, C J. *and Kumaraswamy Sastri*, J.) KANDASWAMI PILLAI *v.* MUTHUVENKATACHALA MANIAGAR.

43 I.C 880 = 33 M L.J. 787.

———S. 101 (d)—*High Court—Constitution of.*

The usual strength of a High Court consisted of a Chief Justice and six puisne Judges. Owing to the retirement of one of them, the Court consisted of an Acting Chief Justice and five puisne Judges, of whom two were barristers and two were members of the Civil Service. *Held*, that the constitution of the High Court was in accordance with S. 101 (d) of the Government of India Act. 9 All. 625 (F.B.), Foll. (*Knox*, J.) TEJPAL *v.* JHAGRU.

51 I C. 63 = 1 U P.L.R. (H C.) 39.

GOVERNMENT OF INDIA ACT (1915), S. 106.

———S. 106, (2)—*Power of High Court to compel Revenue authority to do itsduty.*

The order of a High Court to a revenue officer to do his statutory duty would not be the exercise of "original jurisdiction in any matter concerning the revenue" within the meaning of S. 106, Govt. of India Act. (*Lord Phillimore*). ALCOCK ASHDOWN AND CO., LTD. *v.* THE CHIEF REVENUE AUTHORITY OF BOMBAY. **47 Bom. 742=45 M.L.J. 592= 33 M L.T. (P.C.) 267=L.R. 4 (P.C.) 188= 18 L.W. 918=25 Bom. L R. 920= 21 A.L.J. 689=(1923) M.W N. 557= 50 I.A. 227=1923 P.C. 138 (P.C.).**

———S. 106 (2)—*Application under Specific Relief Act, S. 45, if lies—Income Tax Act, S. 51.*

S. 106 (2) of the Govt. of India Act and S. 52 of the Income Tax Act prohibit the High Court from entertaining any application under S. 45 of the Specific Relief Act for compelling the Revenue Board to refer the matter to the High Court under S. 51 of the Income Tax Act. Issuing an order under S. 45 of the Specific Relief Act is an exercise of original jurisdiction under S. 106 (2) of the Government of India Act. (*Wallis*, C.J. *and Oldfield*, J.) THE CHIEF COMMISSIONER OF INCOME-TAX, MADRAS *v.* THE NORTH ANANTAPORE GOLD MINES, LTD. **44 Mad. 718=41 M.L J. 177= (1921) M.W.N. 502=64 I C. 682= 14 L.W. 108.**

———S. 106 (2)—*Suit for declaration that agreement for compensation for income-tax is binding on Collector—Original Side—Trial on the merits.*

A suit for declaration that an agreement for composition of income-tax entered into between the plaintiffs and the Collector of Madras was in force and that the latter was not entitled to reassess the plaintiffs in repudiation of the agreement, is not cognizable by the High Court in its original jurisdiction. (*Coutts-Trotter*, J.) MESSRS. BEST & CO., LTD. *v.* THE COLLECTOR OF MADRAS. **48 I.C. 790=35 M.L.J. 23.**

———S. 107—*Grounds for interference.*

Though the powers conferred on the High Court under S. 107 of the Govt. of India Act are extensive enough to authorise the Court, in the exercise of its discretion, to send for the record of such a proceeding in a Subordinate Court, namely, the record of an enquiry conducted by a District Judge with a view to drawing up a list of persons proved to be touts, and to examine such record and thereafter issue such orders or instructions to the District Judge as might appear to be proper, the High Court would not interfere in the exercise of its powers of superintendence, where the sole ground upon which interference was asked for was that the decision of the District Judge was against the weight of the evidence. (*Mears*, C.J. *and Piggott*, J.) KASHI NATH *v.* EMPEROR. **46 A. 676=L.R. 4 A. 317= 21 A.L J. 671=9 O. & A.L.R. 696= 1924 A. 69.**

GOVERNMENT OF INDIA ACT (1915), S. 107.

———S. 107—*Munsiff committing party for contempt—Interference in revision.*

The High Court has jurisdiction to interfere in revision with an order of a Munsiff punishing a party for contempt. If on an application for restoration of a case being dismissed for default, the plaintiff states that 'the order was against rules and law' no contempt of Court is meant. (*Walsh*, J.) KADHORY *v.* EMPEROR, **42 All. 26=52 I.C. 279= 20 Cr. L.J. 618=17 A.L.J. 898.**

———S. 107—*Proceedings under Chap. XII, Cr. P. Code—Power of General Superintendence.*

Proceedings under Chap. XII of the Cr. P. Code are not proceedings which could be called up by S. 435 of the Code and under S. 107 of Government of India Act, the High Court has no general powers of superintendence over the inferior Courts in reepect of proceedings taken under Chap. XII of the Cr. P. Code. 19 Cal. 127 and 16 A.L.J. 189, Ref. (*Knox*, J.) SAKHAWAT ALI *v.* EMPEROR. **41 All. 302= 51 I.C. 337=20 Cr. L.J. 449=17 A.L.J. 321.**

———S. 107—*Cr. P. Code, S. 145—Proceedings under—Interference.*

S. 107 of the Government of India Act cannot be invoked so as to question proceedings which purport to be proceedings lawfully taken by a Magistrate under Chap. XII of the Cr. P. Code. If proceedings totally without legal foundation or legislative authority are taken by a Magistrate under colour of Chapter XII but not seriouly purporting to be taken under or to comply with the provisions of that chapter, there is a clear case for interference. (*Walsh*, J.) SUNDER NATH *v.* EMPEROR. **40 All. 364=44 I.C. 673=19 Cr. L.J. 369= 16 A.L.J. 189.**

———S. 107—*Scope of—Cr. P. Code, S. 145.*

There is extension of the jurisdiction of the High Court under S. 107 of the Government of India Act in the matter of the right of superintendence over the proceedings of the subordinate Courts beyond that under S. 15 of Charter Act. (*Knox*, A.J.C.) MATUKDHARI SINGH *v.* JAISARI. **39 All. 612=41 I.C. 652= 15 Cr. L.J. 828=15 A.L.J. 576.**

———S. 107—*Rent Controller— Superintendence—Powers of—Calcutta Rent Act III of 1920.*

The Court of the Rent Controller appointed under the Calcutta Rent Act is a Court of civil jurisdiction subject to the powers of superintendence conferred by the High Court under S. 107 of the Govt. of India Act and the High Court can interfere in revision with its decision. (*Woodroffe and Ghose*, JJ.) ADBUL HUQ *v.* MAHOMED DIN. **1923 Cal. 311.**

GOVERNMENT OF INDIA ACT (1915), S. 107.

———S. 107—*Proceedings under S. 145 of the Criminal Procedure Code—Abuse of the process of Court—Revision—Interference.*

Where proceedings are taken under S. 145 of the Code of Criminal Procedure which amount to an abuse of the process of Court and the object of which is to harass or annoy a successful party in prior possession proceedings, the High Court will interfere under S. 107 of the Govt. of India Act. (*Ghose and Cholzner, JJ.*) ARAN SARDAR *v.* HARA SUNDAR MAJUMDAR. 27 C.W.N 171= 37 C.L J. 39=24 Cr. L J 97= 1923 Cal. 95.

———S. 107—*Powers of superintendence of High Court—Order refusing sanction.*

Although the High Court is vested with very wide powers of superintendence over the proceedings of subordinate Courts, these powers are not to be exercised for the purpose of interfering with the order of a subordinate Court merely on the ground of error in law or error in fact. In other words the powers of superintendence are not applicable where the only question is whether the decision of the lower Court is against the weight of evidence. (*Ghose and Cuming, JJ.*) SARAT CHANDRA MANDAL *v.* RAMSAHI ROY.
26 C.W.N. 1016=36 C.L.J. 265= 23 Cr. L.J 635=1923 Cal. 45.

———S. 107—*Order of Rent Controller—Superintendence.*

The High Court has the power of revising the Rent-Controller's orders under its general powers of Superintendence under S. 107 of the Government of India Act. (*Chatterjee and Cuming, JJ.*) CHATTERJEE *v.* TRIBEDI.
26 C.W.N. 78=49 Cal. 529=1922 Cal. 427.

———S. 107—*Subordinate Court—Rent Controller—Order of, open to revision by High Court.*

Order of Rent Controller rejecting application to fix standard rent is open to revision by High Court when the rooms let are certain and easily ascertainable. (*Rankin, J.*) ALLEN BROS. AND CO. *v.* BANDO AND CO.
26 C.W N. 845.

———S. 107—*Order without jurisdiction under Cr. P. Code, S. 145—Interference.*

The High Court can under S. 107 set aside the proceedings instituted without jurisdiction by a Subordinate Court under S. 145 of the Cr. P. Code notwithstanding S 435 (3) of the Cr. P. Code and can make consequential or incidental orders under the same section. Thus it can give direction for disposal of property attached and dealt with by the Subordinate Courts. (*Mookerjee, A.C.J. Fletcher, N. R. Chatterjee, Richardson and Ghose, JJ.*) ALI MAHOMED MANDOL *v.* PIGGOTT.
50 I.C. 325=32 C.L.J. 270 (S B.).

———S. 107—*Order under S. 145, Cr. P. Code—Revision—Difference of opinion—Senior Judge.*

GOVERNMENT OF INDIA ACT (1915), S. 107.

On a difference of opinion in matters under S. 145, Cr. P. Code, the Senior Judge's opinion prevails as the jurisdiction exercised by the High Court is under S. 107 of the Government of India Act and not under Ss. 435 and 439, Cr. P. Code. (*Chaudhuri and Newbould, JJ.*) THE INDIAN IRON AND STEEL COMPANY *v.* BANSO GOPAL TEWARI. 22 Cr. L.J. 99= 59 I.C. 403=32 C L.J. 54.

——— S. 107—*Powers of superintendence—Extent of—Difference of opinion.*

On a difference of opinion among two Judges exercising revisional powers, the decision of the Senior Judge prevails on the principle of cl. 36 of the Letters Patent (Cal.). *Per Huda, J.*—The High Court's power of superintendence over inferior Courts is not confined to questions of jurisdiction alone but also applies where the inferior Courts commit an illegality or material irregularity. (*Newbould and Huda, JJ.*) MOIRAM BEWAH *v.* MRIJAN SARDAR. 31 C.L J. 183= 54 I.C. 169=21 Cr. L.J. 25=24 C.W.N. 97.

———S. 107—*Common manager under S. 100 of the B.T. Act—District Judge's orders—Revision.*

The High Court having made rules under S. 100 of the B.T. Act defining the powers and duties of common managers, it has power under S. 15 of the Charter Act to superintend and revise the orders of a District Judge under Chap. IX of the B.T Act. 40 C. 150, Ref. (*Holmwood and Walmsley, JJ.*) SATYENDRA MOHAN GHOSE *v.* RAJ MOHAN GUHA.
29 I.C. 177.

———S. 107—*Interlocutory order—Revision.*

A High Court can interfere under S. 15 of the Charter Act (S. 107 of the Government of India Act) with interlocutory orders when they might lead to failure of justice or irreparable injury. (*D. Chatterjee and Chapman, JJ.*) SIVAPROSAD RAM *v.* TRICOMDAS.
27 I.C. 917=42 Cal. 926.

———S. 107—*Order under S. 476, Cr. P.C.—Revision.*

A criminal bench of the High Court cannot revise an action taken by a Civil or Revenue Court under S. 476, Cr. P.C. unless authorised by the Chief Justice, (*Jenkins, C.J. Harrington Stephen, Mookerjee and Holmwood, JJ.*) HAR PRASAD DAS *v.* EMPEROR. 40 Cal. 417= 17 C L.J. 213=14 Cr. L J. 197= 19 I.C. 167=17 C.W.N. 647 (F B.).

———S 107—*Court-fee — Decision on — Revision.*

An erroneous decision of the Court below that the suit falls within S. 7 (xi) (c) is not final under S. 12 of the Act, and the High Court is competent to interfere with it under S. 15 of the Charter Act. (*Mookerjee and Beachcroft, JJ.*) SUNDAR MAL MARWARI *v.* MURRAY. 16 I.C. 963=16 C.L.J. 375.

GOVERNMENT OF INDIA ACT (1915), S, 107.

——— S. 107—*Power of High Court to transfer case from Agency Court —Vizagapatam Agency Rules, R.* 14.

Under S. 107 of the Government of India Act the High Court has power to transfer a case from the Court of an Agency Commissioner to an equal or superior court. The Court of the Agency Commissioner is subject to the Appellate jurisdiction of the High Court. The District Court is not a Court equal or superior to that of an Agency Commissioner and the transfer of a case from his file must be to the High Court. (*Oldfield and Venkatasubba Rao*, JJ) MAHARAJAH OF JEYPORE *v* GANGA RAJU.

46 Mad. 726=45 M L J 3=17 L.W. 517=(1923) M.W.N. 277=32 M.L.T. (H C.) 269=1923 Mad. 604.

———S. 107—*Stay of criminal proceeding—Pending civil suit—Power of High Court.*

The High Court is under S. 107 of the Government of India Act invested with powers of superintendence over all subordinate courts in the Presidency and this power includes a power to stay criminal proceedings in a Magistrate's Court till the decision of a Civil suit between the parties. Where however the decision of the Civil suit would not conclusively determine the question of possession of the property which was the only material point for the decision of the Criminal Court, the High Court refused to stay the trial of the Criminal Proceedings. (*Spencer*, J.) NAMBIA PILLAI *v.* SUDALAI MUTHU NADAN. **17 L.W. 570=(1923) M W N. 276=44 M.L J. 642=32 M.L.T. (H.C.) 191=1923 Mad. 595.**

———S. 107—*Land Acquisition Proceedings —Collector—Order of—Revision.*

Proceedings under Part III of the Land Acquisition Act are judicial and an order of the Collector refusing to make a reference on the application under S. 18 of the Act is open to revision under S. 115, C P.C. or S. 107 Government of India Act. 12 C.W.N. 241, Foll. 36 I.C. 621 Diss. (*Ayling and Krishnan*, JJ.) PARAMESWARA AIYAR *v.* LAND ACQUISITION COLLECTOR, PALGHAT.

42 Mad. 231=49 I C. 659=36 M.L J. 95.

———S. 107—*Irrelevant and scandalous matter in judgment of Subordinate Court—Power to expunge—Application by third party.*

Per Abdur Rahim, J. (*Oldfield*, J. *dissenting*). —The powers of superintendence of the High Court are of an extremely wide character and include the power to expunge such matters from judgment so that they may not be circulated and published to the prejudice of persons who are not concerned in the suit either as a party or as a witness. The High Court will only interfere in exceptional cases and with great caution in the exercise of such jurisdiction. *Per Oldfield*, J.—The High Court has no power under S. 107 of the Government of India Act to order the expunging of portions of the judgment of a Subordinate Court at the instance of a person who is not a party to a suit. The expression 'superintendence' in S. 107 does not include the relief abovementioned. (*Abdur Rahim and Oldfield*, JJ). *In re* V. KRISHNASWAMI AIYANGAR. **47 I.C. 981=35 M.L.J. 368.**

———S. 107—*Village Court —Order of Munsiff—Revision.*

An order passed by a District Munsiff under S. 73 of the Madras Village Courts Act can be revised by the High Court. (*Sadasiva Aiyar and Moore*, JJ.) PARAMASIVAM PILLAI *v.* PERIYANAYAGATH AMMAL. **31 I.C. 503.**

———S. 107—*Pending Criminal Proceedings —Revision.*

If the ends of justice so require, the High Court will interfere in revision in a pending proceeding. (*Kumaraswamy Sastri*, J.) *In re* KUPPUSAMI AIYAR. **39 Mad. 561=16 Cr. L J. 477=28 M L J. 505=2 L.W. 463=17 M.L.T. 398=29 I.C. 109=(1915) M.W.N. 365.**

———S. 107—*Dismissal of complaint—Crim. P. Code, S.* 203—*Revision.*

Where a complaint is dismissed under S. 203 without reasons, the High Court can set aside the order and direct enquiry. *Quaere*—Whether S. 439, Cr. P. C , would also empower the High Court to act in revision ? (*Oldfield*, J.) GANGA REDDI *v.* SAMARAPATHY MUDALI.

38 Mad. 512=21 I.C. 681=25 M.L.J. 510=14 Cr. L.J. 633.

———S. 107—*Power of High Court to interfere with order passed according to section* 144, *Criminal Procedure Code—Revision.*

S. 107 empowers the High Court to prevent the evasion by the Magistrate of the Law laid down in S. 144, Cr. P. C., by issuing a permanent injunction under the guise of successive renewal of temporary orders, under the section. 7 C.W.N. 140 ; 11 C.W.N. 79 ; 5 C. 7 : 25 C. 852 Ref. (*Miller and Sadasiva Aiyar*, JJ.) GOVINDA CHETTY *v.* PERUMAL CHETTY. **21 I.C. 381=14 Cr. L J. 589=25 M.L.J. 370.**

———S. 107—*Criminal case —Proceedings under S.* 145—*Interference.*

It is not the practice of the High Court to interfere under S. 15 of the Charter Act except where a Magistrate's order under S. 145, Cr. P. C., is without jurisdiction. 31 M. 318 ; 14 C, 361 ; 26 C 188 ; 25 A. 537 ; 24 B. 527 Ref. (*Ayling and Napier*, JJ.) KAMAL KUTTY *v.* UDAYAVARAMA RAJA. **13 Cr L.J. 753=17 I.C 65=36 Mad. 275=12 M.L.T. 439=23 M.L.J. 499=(1912) M.W.N. 1154.**

———S 107—*Order purported to be passed under S.* 144, *Cr.P.C.—Absolute want of jurisdiction—Powers of interference.*

Although under cl. (4) of S. 144, Cr. P.C., it is incumbent on the petitioners to go in the first instance before the District Magistrate before coming up in revision to the High Court and ordinarily that is the practice in the High Court still the High Court will interfere where

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the order of the sub-divisional Magistrate is wholly without jurisdiction. 1922 P. 435 F.B. Foll. (*Kulwant Sahay*, J.) AKAL WAHTON *v.* MAHABIR MAHTON. **1 Pat. L.R. 223 (Cr.) = 1924 P. 145.**

——S. 107—*Rateable distribution—Order defective—Interference.*

Where an order under S. 73, C.P.C., is hopelessly inadequate and does not refer to the claims of parties, arguments advanced and reasons for the conclusions arrived at, the High Court can interfere under S. 107, Government of India Act. (*Mullick and Bucknil*, JJ.) BABU BISHUN MOHAN SAHAY *v.* NARAYAN PRASAD ASTHANA. **74 I.C. 140.**

——S. 107 — *Power to expunge remarks from judgment of inferior Criminal Court—Executive order.*

S. 107 of the Government of India Act, empowers the High Court to delete irrelevant remarks from the judgments of inferior Criminal Courts. 15 C.W.N. 593; 16 C.W.N. 1105; 17 C.W.N. 238, Ref. (*Jwala Prasad*, J.) BIRNARAYAN SINGH *v.* EMPEROR. **23 Cr. L.J. 371 = 3 Pat. L.T. 239 = 1922 P. 97.**

——S. 107—*Interlocutory order.*

Direction for taking accounts in a pending suit will not be interfered with in revision unless irreparable injury will otherwise result. (*Miller*, C.J. *and Mullick*, J.) RAI BAHADUR HARIHAR PRASAD SINGH *v.* MAHARAJAH KESHO PRASAD SINGH. **3 Pat. L.T. 638.**

——S. 107—*High Court — Powers of superintendence—Effect of.*

It is the privilege and prerogative of the High Court, when once a record is brought before it which is so erroneously and manifestly unjust to exercise its powers of superintendence to revise such order or to set it aside and direct such further proceedings to be taken as justice may require, but where no record is before it, but the High Court feels its necessity, it can at the instance of a party, send for it, by powers conferred on it by S. 107. (*Atkinson and Adami*, JJ.) BRINDABAN CHANDER CHOUBE *v.* GOUR CHANDRA RAI. **1 Pat. L.T. 467 = 56 I.C. 185 = (1920) Pat. 53.**

——S. 107—*Dismissal of suit—Unjustifiable.*

Where a Court dismisses a suit on plaintiff's failure to amend the plaint without giving him an opportunity to continue the trial with the plaint as it was, it refuses to exercise a jurisdiction and its order is open to revision. (*Mullick and Jwala Prasad*, JJ.) NAURANG RAM SAHU *v.* BHAKHORI MANDAR. **51 I.C. 169 = 4 P.L.J. 277.**

——S. 107 — *Jurisdiction — Failure to exercise—Revision.*

An order returning a plaint is open to revision in cases where there is no appeal. (*Atkinson and Manuk*, JJ.) CHANDRAMANI KOER *v.* BASUDEO NARAIN SINGH. **49 I.C. 442 = 4 P.L.J. 57.**

——S. 107—*Denial of fair trial—Interference.*

Where there has been a denial of a fair trial to the applicant the High Court has power to set aside the decision of the Lower Court. (*Miller*, C.J. *and Mullick*, J.) NILMANI NATH SAHI DEO *v.* PRATAP USAI NATH SAH DEO. **4 Pat. L.J. 371 = 49 I.C. 389 = (1919) Pat. 60.**

——S. 107—*Addition of parties—Interference.*

It is open to the High Court to interfere in a proper case with an order of refusal by the lower Court to add a person as party defendant in a pending suit. (*Mullick and Thornhill*, JJ.) ABDUL HAQUE *v.* MUHAMMAD YAHA KHAN. **47 I.C. 723.**

——S. 107—*Leave to sue receiver—Refusal of.*

A High Court is entitled to exercise of its power of its superintendence under S. 107 of the Government of India Act to correct and supervise Subordinate Courts whenever they appear to have wrongly exercised their inherent powers. An order of the lower Court refusing leave to sue a receiver without reasons is liable to be set aside. (*Mullick and Thornhill*, JJ.) BRAJA BUSAN *v.* SRIS CHANDRA TEWARY. **4 P.L.J. 20 = 47 I.C. 719 = (1918) Pat. 337.**

——S. 107—*Criminal case—Revision—Rehearing—Power to direct.*

Under S. 107 of the Act, the High Court has power to direct a Sessions Judge to rehear an appeal after obtaining additional evidence. (*Mullick and Thornhill*, JJ.) ZAMIRUDDIN *v.* EMPEROR. **47 I.C. 275 = 19 Cr. L.J. 902 = 3 P.L.J. 632.**

——S. 107—*Small Cause Court—Leave to withdraw—Interference.*

Where a suit has been allowed to be withdrawn by a Small Cause Court and no reasons have been recorded for permitting such withdrawal, the High Court will set aside the order in the exercise of its powers under S. 107 of the Government of India Act, 1915. (*Chamier*, C.J. *and Sharfuddin*, J.) LUCHI RAI *v.* RAGHUBIR DUBE. **43 I.C. 438 = 2 P.L.J. 682.**

——S. 107—*High Court's jurisdiction under.*

Obiter:—Administrative as well as judicial acts of Subordinate Courts are subject to the High Court's jurisdiction to interfere under S. 107 of the Act. (*Chamier*, C.J., *Sharfuddin and Atkinson*, JJ.) RAGHUNATH SINGH *v.* HAZARI SAHU. **1 P.L.W. 111 = 2 P.L.J. 130 = 37 I.C. 872 = (1917) Pat. 105.**

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———S 107—*Legal Practitioners Act, S.* 14.

Where proceedings were instituted under the Legal Practitioners Act before the District Munsif and an application was made to transfer the same to another Court. *Held*, that the procedure under the Legal Practitioners Act is neither criminal nor civil, but purely designed for the purposes of discipline. Such disciplinary proceedings under S. 14 are not proceedings of a Court of civil jurisdiction and S. 141, C.P.C., cannot apply to them. The enquiry under S. 14 of the Legal Practitioners Act, cannot be delegated to another officer who is not the presiding officer of the Court in which the malpractices complained of were committed. Applicability of S. 107 of the Government of India Act, 1915, to proceedings, under S. 14 of the Legal Practitioners Act, discussed. (*Mullick and Atkinson*, JJ.) *In the matter of* JANAK KISHORE. 1 P.L.J. 576 = 18 Cr.L.J. 132 = 37 I.C. 485 = (1917) Pat 60.

———S. 107—*High Court's exercise of power under Charter Act.*

The exercise of power by High Court under the Charter Act is justifiable only in case of irreparable injury otherwise resulting to the parties by a judge exceeding or refusing to exercise, or only pretending to exercise, jurisdiction vested in him by law. (*Sharfuddin and Roe*. JJ.) GANGA PRASAD *v.* NANDU RAM. 20 C.W.N. 1080—1 P.L.J. 465 = 37 I.C. 129 = 3 P.L.W. 55.

———S. 107 (2)—*Superintendence—Limits of.*

The word 'superintendence' in S. 107 (2) of the Government of India Act should be construed very narrowly and does not justify the interference of the High Court so as to evade the provisions of S. 115 of the C.P. Code and to result in entertaining an appeal or revision where no such right is given by statute. (*Sanderson*, C.J., *Teunon and Walmsley*, JJ.) KUMAR CHANDRA KISHORE *v.* BASAT ALI. 27 C.L.J 418 = 44 I.C. 763 = 22 C.W.N. 627.

———S. 108—*Division Court—Meaning of.*

Under S. 108 a Division Court must consist of at least two judges. (*Coutts*, J.) RAGHUBAR SINGH *v.* JETHU MAHTON. 1 P. 384 = 3 P. L.T. 194 = (1922) Pat 88 = 1922 P. 13.

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———S. 2 (2) and (9)—*Serving under war conditions—Meaning of—Court.*

Serving under war conditions does not necessarily mean serving abroad. All possible indulgence ought to be extended, if it is true that the plaintiff served in France. (*Pelman*, J.) GURBACHAN SINGH *v.* RALLA RAM. 53 I.C. 947 = 2 Lah L.J. 37.

GRAMANATHAM.

See (1) GRANT—INAM.
(2) LAND TENURE—MIRASI.

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GRANT.

BRAHMOTTER.
CONSTRUCTION.
DHARKHAST.
FERRY.
FISHERY.
IMPLIED GRANT.
INAM.
JAGIR.
LIFE ESTATE.
MAINTENANCE GRANT.
MINERALS.
PALAYOM.
RESUMPTION.
RIGHTS OF GRANTEE.
RIGHTS OF HOLDER.
RYOTWARI PATTA.
SANKALP.
SARANJAM.
SERVICE GRANT.
WASTE LAND.

Brahmotter.

———*Brahmotters—Incidents of.*

Brahmotter lands are lands granted rent free or at a fixed rent to Brahmins for their support and that of their decendants, as a reward for sanctity of living or to enable them to devote themselves to religious duties and education. *Semble* :—The Permanent Settlement of 1793 expressly confirming mineral rights to Zemindars would suggest that up to that date they had no mineral rights and could not therefore grant such rights. (*Lord Buckmaster*). SASHI BHUSHUN *v.* JYOTI PRASAD SINGH DEO. 44 Cal. 585 = 21 C.W.N. 377 = 15 A.L.J. 209 = 32 M.L.J. 245 = (1917) M.W.N. 226 = 25 C.L.J. 263 = 21 M L T. 303 = 19 Bom. L.R. 416 = 6 L.W. 2 = 44 I.A 46 = 40 I.C. 139 = 1 P.L.W. 361 (P.C.).
[On appeal from 38 Cal. 845 = 16 C.W.N. 241 = 12 I.C. 482 = 14 C.L.J. 361.]

———*Brahmotter, Incidents of.*

A Brahmotter holding may be a tenure or *raiyati* holding. There is no presumption that it is a tenure. What it is, depends entirely on the intention of the grantor. (*Sultan Ahmad*, J.) CHANDRA KISHORE JOSHI *v.* SUDAMA RAI. 67 I.C. 756.

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———*Construction—Birt Bankati.*

In the Province of Oudh large proprietors let out lands on favourable terms on security of tenure, these grants of land are called Birt Bankati and various kinds of birts exist, the incidents of each of which differ from those of others. (*Amir Ali.*) RAJA MOHANNAD ABUL HASAN KHAN *v* LAXMI NARAIN. 26 C.W.N. 249 = 1922 P.C. 41 (P.C.).

———*Construction*—Contemporanea expositio—*Grant by sanad*—'*Lands attached to Deur*'—*History of the tenure*—*Succession*—*Impartible estate.*

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Contemporanea expositio as a guide to the interpretation of documents is often accompanied with danger and must be applied very carefully. Where, however, the document to be interpreted was a sanad granted by the Government of a general and informal character and the ambiguity covered the geographical and pecuniary extent of an admittedly ambiguous grant. *Held*, that it was legitimate to observe what the footing was on which the grantors, namely, the Government and its officials, from the date of the grant and for a long period of time proceeded. The words 'the lands attached to Daur' in the sanad in this case dated 1861, whereby the title of 'Rajah' was conferred on the father of the parties to the suit, extended to the whole of the lands in the Bombay Presidency scheduled to the plaint. Having regard to the fact that the lands had been *jagir* prior to the grant and for a long period of time had been treated as an appendage to the title of Rajah by the Government, its successors and officials, the estate must be held to be impartible and the succession to it subject to the law of *primogeniture*. (*Lord Shaw.*) RAGHOJI RAO SAHEB *v.* LAKSHMAN RAO SAHEB.
36 Bom. 639=39 I.A. 202=16 C W.N. 1083=23 M.L J. 383=12 M.L T. 472=(1912) M.W.N. 1140=14 Bom. L.R. 1226=16 I C. 239=17 C.L.J. 17 (P.C).

———*Construction—Rights of grantee.*

The rights of a grantee of land and his descendants must be determined by reference to the original *sanad* and not by the conduct of the parties. (*Piggott and Rafiqus*, JJ.) KANIZ FATIMA *v.* SAKINA BIBI.
36 All. 318=25 I.C. 120=12 A.L.J. 437.

———*Construction—Settlement of property by Government on certain persons as representing the old proprietor—Whether any trust in favour of the rightful heir of the old proprietor.*

The revenue of a village falling in arrears, the Government got it sold, purchased the same and remained in possession by leasing the lands to the old proprietors and their heirs whose names were recorded in the *Khewat*. One of the proprietors died and on a dispute between the brother and the widow of the deceased the latter was recognised by the Revenue authorities as the rightful heir and put in possession. Subsequently, the Government resolving to settle the lands on the old proprietors as represented by *Khewatdars*, granted the land to the widow. In a suit by the husband's brother against the widow to declare his right to the property on the ground that he was entitled to the land and the widow was only a trustee. *Held*, that the intention of the Government was to give the lands only to those persons whose names were on the *Khewat* at the time and that there was no trust. (*Tudball*, J.) MADHO *v.* BHAGIA.
22 I.C. 625=12 A.L.J. 1.

———*Construction — Grant to 'Aulad Wa Ahfad'—Meaning of.*

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Where land was granted to one for life and after him to his 'Aulad War Ahfad', *i.e.*, to his issues and descendants, *held*, that it was not confined to the male descendant alone. (*Richards*, C.J. *and Banerji*, J.) NURULLAH KHAN *v.* HAYATUNNISSA. **13 I C. 153.**

———*Construction—Confiscation—Effect of.*

The true effect of an order for confiscation must depend on its terms. (*Mookerjee and Cholzner*, JJ.) NURUL HUQ *v.* MAHARAJA BIRENDRA KISHORE MANIKYA BAHADUR.
38 C.L.J. 121=1924 Cal. 733.

———*Construction—Authority to give—Burden of proof*—Putra poutradi Krame—*Meaning of.*

Rent free grants was made 70 years back to excavate tanks and to hold them *putra poutradi Krame*. In a suit to recover possession by the heirs of the grantor, the burden of proof is initially on the grantees' heirs to show the grantor authority to make but where the grant has been in operation for a long term, and the grantor or his heirs have never taken any steps in ejectment, the burden is shifted on the plaintiffs to prove how they came to acquiesce in it. The Court can in such a case draw the inference that the grantor can do it. The use of the words "*putra poutradi Krame*" made it perpetual and hence transferable. (*Mookerjee and Rankin*, JJ.) TARAKESWAR PAL *v.* SIRISH CHANDRA GHOSH MANDAL.
27 C W.N. 964=1924 Cal. 236.

———*Construction—Nature of—Rent free—Long possession.*

Mere possession of land for a long series of years without payment of rent does not necessarily give rise to a rent free grant. (*Mookerjee and Beachcroft*, JJ.) GIRIJI NATH ROY CHOWDHURY *v.* CHANDI CHARAN LAHA.
33 C.L.J. 307.

———*Construction—Mode of user.*

Where the terms of the original grant are ambiguous or where they cannot be proved by direct evidence a reference to the mode of user of the lands is legitimate. 16 C.L J. 322; 46 C. 160 Ref. (*Mookerjee and Cuming*, JJ.) RANI HEMANTA KUMARI DEBI *v.* THE MIDNAPORE ZEMINDARI CO. **35 C L.J. 493=1923 Cal. 25.**

———*Construction — Surrounding circumstances—Extrinsic evidence.*

The construction of a grant depends on the interpretation of all the terms of each instrument. Except in cases of ambiguity, extrinsic evidence would not be admissible. Each case must be considered on its own facts. 46 I A. 123 Ref. (*Mookerjee and Cholzner*, JJ.) ABINASH CHANDRA DAS *v* MAJUB ALI CHOWDHURY.
35 C.L J. 196=27 C.W.N. 328=1922 Cal. 461.

———*Construction — Government grant—Talukdari Patta—Grantee given heritable and transferable right—Revenue to be assessed at certain increasing rate.*

In 1790 the plaintiff's predecessor obtained from the Government a permanent grant by

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sanad in taluki right of a certain village. The maximum assessment of the revenue was to be 8 as. per Bigha. The Government alleged that the taluk was wrongly entered as a permanently settled estate in the records and assessed certain lands within the boundaries specified in the Patta at 12 as. per Bigha, *held* the plaintiff is entitled to a declaration that the Government has no right to assess the lands included within the boundaries of the plaintiff's taluk at a higher rate than 8 as. (*Woodroffe and Cuming*, JJ.) PARBATI CHARAN SAHA *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL. **69 I.C. 188=35 C.L.J. 445.**

——— *Construction — Grant for indefinite period.*

A grant for an indefinite period is generally for his life and would pass to heirs only where there are some words showing an intention to pass hereditary interest. (*Richardson and Huda*, JJ.) JOGESH CHANDRA ROY *v.* MAKBUL ALI. **47 Cal. 579=60 I.C. 984= 25 C.W.N. 857.**

——— *—Construction—Land bounded by river.*

Having regard to the boundaries of the land demised and in the absence of evidence to show that the rivers at the date of the grant were public navigable rivers. *Held*, that the boundaries on the south and the west extended to the middle of the two rivers. (*Fletcher and Ghose*, JJ.) SECRETARY OF STATE FOR INDIA *v.* JATINDRA NATH CHAUDHURY. **58 I.C. 718=24 C.W.N. 737.**

——— *Construction — Ancient document—Conduct.*

Ancient grant deeds which are ambiguous in their terms may be construed in the light of the conduct of the parties with reference to the property granted. But this principle cannot be applied where there is no ambiguity. (*Mookerjee and Beachcroft*, JJ.) HULADA PRASAD *v.* KALIDAS NAIK. **42 Cal. 536=20 C.L.J. 312= 24 I.C. 889=19 C.W.N. 842.**

——— *Construction — Rent free — Tank known by the name of an ancestor—Use of, for generations—Inference.*

In case of a tank, popularly known by the name of the great-grandfather of a person and used by the family of such persons for four generations without any rent in respect of it having been either claimed or paid, it may be legitimately inferred that the tank was held under a rent-free grant. (*Mookerjee and Beachcroft*, JJ.) BIRENDRA KISHORE MANIKYA BAHADUR *v.* CHANDI CHARAN DEY. **24 I.C. 354 (1)=22 C.L.J. 134.**

——— *Construction—Evidence of conduct—Ambiguity.*

Where the terms of a grant are ambiguous its nature may be determined by a reference to the subsequent conduct of the parties. (*Mookerjee and Beachcroft*, JJ.) SRI RADHA MADHAB NARAN (DEB) HIKIM *v.* MILAN MAHATO. **21 I.C. 204=18 C.L.J. 23.**

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——— *Construction—Maifasand — Heritable interest in perpetuity.*

Where a grant is made to a person *Maifarzandan* it is a heritable grant in perpetuity. (*Mookerjee and Holmwood*, JJ.) SECRETARY OF STATE *v.* RASHIDUL HUQ. **21 I.C. 93= 18 C.L.J. 31.**

——— *—Construction—Ambiguity—Conduct of parties.*

Where the terms of a grant are ambiguous the conduct of the parties may be taken into account to determine its true nature. 15 C.W.N. 63 ; 15 C.W.N. 901. Foll. (*Mookerjee and Beachcroft*, JJ.) HEADYAT ALI *v* KALANAND SINGH. **20 I.C. 332=17 C.L.J. 411.**

——— *Construction — Hereditary—Omission of words of inheritance—Long usage.*

The omission of words of inheritance in a *sanad* confirming a previous grant for purposes of service is not sufficient proof *per se* that the grant is not hereditary, when evidence of long and uninterrupted usage shows that the lands have descended from father to son for more than 100 years. 14 M.I.A. 247 Foll. (*Mookerjee and Beachcroft*, JJ.) MAHADEO LAL *v.* KALANAND SINGH. **20 I.C. 69= 19 C.L.J. 241.**

——— *Construction— Evidence of conduct—Ambiguous grant.*

Where the terms of an original grant are ambiguous or the terms upon which the tenancy was created cannot be proved by direct evidence the subsequent conduct of the parties may be considered for the purpose of determining the nature of the tenancy. 15 C.W.N. 901 ; 15 C.W.N. 896 Rel. (*Mookerjee and Beachcroft*, JJ.) BAMAPADA ROY *v.* MIDNAPUR ZAMINDARI CO., LTD. **16 I.C. 376=16 C.L.J. 322.**

——— *Construction—Conveyance for consideration—Naslan Bad Naslan—Absolute estate to the family of grantor.*

F settled some lands on the family of the deceased by three sanads. F had thereby settled all possible claims against him and neither the grantor, nor his heirs were to have any further right, interest or title in the lands conveyed, the grantor's heirs sued for possession of the lands granted on the extinction of the grantee's time. *Held*, that the grant was a conveyance for valuable consideration and not a voluntary transfer. It was clearly intended to confer on perpetual and absolute estate it did not revert to the grantor's family. (*Rattigan*, J.) AHMAD HUSSAIN *v.* RUL INDAR SINGH. **14 I.C. 73= 107 P.W.R. 1912.**

——— *Construction— Resumable grant — Charity—Service tenure.*

Where a person alleged that a tenure is resumable the burden of proving the allegation is on him and not on the grantee. 28 B. 305 referred to. Under the terms of a grant it was specified that the grantee was to enjoy the lands conducting *vashipadu* to the diety. *Held* that the grant was not a service grant and that

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the offering of *vozhibadu* simply meant the "offering of rice of which the greater part returned to the grantor." (*Ayling and Ramesam, JJ.*) RAMASAMI PATTAR *v.* LAKSHMI.

17 L W. 514=32 M L,T. (H.C.) 399=(1923) M.W.N. 343=1923 Mad. 572.

———*Construction—Inam— Proceedings of Inam Commissioner.*

Where there is an inam grant, the Court must construe its terms for itself and the decision of the Inam Commissioner is not conclusive. It is not safe to interpret one document by reference to recitals in another document. It is only where the Court has given a definite meaning to certain expressions that that meaning should be applied to such expressions in other cases. In interpreting deeds and contracts, great weight should be attached to the recitals in the documents themselves in gathering the intentions of the parties thereto. (*Phillips and Devadoss, JJ.*) JAGGA RAO BAHADUR GARU *v.* GONHAR BIBI.

17 L.W. 521=(1923 M.W.N. 347=1923 Mad. 845.

———*Construction—Implied term — When presumed.*

A term will not be implied in a grant or contract unless the court is driven to the conclusion that the parties must necessarily have intended that stipulation and in that case only to the limited extent absolutely necessary to carry out what is believed to be their intention. (*Schwabe, C.J., Coutts Trotter and Kumaraswami Sastri, JJ.*) TIRUNEELAKANTAM SERVAI *v.* RAJA OF RAMNAD.

43 M.L.J, 158=16 L.W. 556=(0 M.L.T. 317=46 M. 177=1922 Mad. 263.

———*Construction—Havelli land sold by E.I. Co.-Sanad constituting—Vendee—Zamindar—Peishcush—Lankas if included in the grant—Subsequent conduct of Government servants—Limitation.*

Certain villages on the bank of the Krishna river belonging to Government were sold by them in 1802 to the predecessor in title of the Zamindar of Vallur and a sanad was issued in 1803 fixing peishcush at a certain amount which included also the income from mustard shown on the lankas and keelankhas left by the subsiding of the flood of the river and it appeared that both prior and subsequent to the grant so much of the river bed as was within the *ad medium filum* limit was treated and enjoyed by the owners on either bank with the knowledge and acquiescence of the Government as forming the riverbed *ayakat* of the villages abutting on the river, the Government having remained quiet, probably under the erroneous view that the English Law negativing the right of the Crown to the bed of a non-tidal river also applied to India. A question arose in 1911 between the grantee and the Government as to whether the grant of 1803 included also the portion of the riverbed adjacent to the village granted. Under the

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facts and the circumstances and in the absence of a special reservation in favour of the Crown, even giving full weight to the principle that grants by the Crown must be construed strictly in favour of the Crown, the grant in question included the rivers bed *ayakat* area as part of the villages which were expressly mentioned. Even if there were any doubts or ambiguity as to what exactly was included in that grant of 1803, the nature of the subsequent possession by the grantee and the conduct, assertions and declarations of the parties from and after the grant and the views entertained by the grantor at the time of the grant can be legitimately referred to as evidence of the nature and extent of the grant. (1907) A.C. 369 ; 27 M. 131, P.C. ; 15 M. 101 ; (1879) A.C. 670, Ref. (*Sadasiva Aiyar and Burn, JJ.*) SECRETARY OF STATE *v.* VENKATANARASIMHA NAIDU.

27 M.L.T. 147=(1920) M.W.N. 203=58 I.C. 639=11 L.W. 256.

———*Construction—Principles — Grantor's rights—Consideration.*

Prima facie the terms of a grant should be looked to, to ascertain the nature of the estate granted by it and it is only where there is any doubt about its import that other considerations can be taken into account. Where the language is unambiguous and clear, the extent of the right possessed by the grantor should have no weight. 45 C. 739, Foll. (*Seshagiri Aiyar and Phillips, JJ.*) CHOCKALINGA NAYAKAN *v.* ARUNACHALAM CHETTIAR.

26 M.L.T. 262=52 I.C. 239=(1919) M.W.N. 353.

———*Construction—Land bounded by non-navigable river—Right to bed of the river* ad medium filum aquae—*Presumption—Onus.*

Where there is a grant of land described as bounded by a non-navigable river the onus of showing that the grant did not cover the bed *ad medium filum a quoe* is on the grantor or his representative. The presumption may be strong or weak according to the circumstances of the particular case, and the amount of evidence required to rebut it will vary accordingly. Cases reviewed. (*Wallis, C J., Sadasiva Aiyar, Oldfield, Spencer and Bakewell, JJ.*) SRI RAJAH VENKATA LAKSHMI NARASIMHA *v.* THE SECRETARY OF STATE FOR INDIA.

41 Mad. 840=33 M.L.J. 159=47 I.C 606=(1918) M.W.N. 662 (F.B.).

———*Construction*—Contemporanea exposito—*Application.*

The doctrine of *contemporanea exposito* must be confined to the acts and the conduct of the grantor beginning contemporaneously with the grant and continued for a long course of years and should not be extended to acts and conduct done, say, 40 years after the date of the grant. 36 B. 639 (P.C.) Foll. (*Sadasiva Aiyar and Spencer, JJ.*) SWAMINATHA MUDALI *v.* SARAVANA MUDALI.

40 I.C. 681=33 M.L.J. 370.

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———*Construction—Kayam patta—Heritable and transferable.*

The words 'Kayam patta' means *prima facie* a perpetual lease. Where a kayam patta grant was made in 1857 and the grantees dealt with the lands as if they were entitled to permanent rights and the grantor and grantee both shared a land acquisition compensation and there was evidence proving that the grantor regarded the grant in the same terms of neighbouring villagers as a permanent grant: *Held*, that in the circumstances described above that a heritable grant was conveyed, though that intention has not been indicated by the use of the words 'from son to grandson' or from generation to generation as is usually done. *Prima facie* the words 'Kayam patta' mean perpetual lease; but a long course of decisions have held that these words and the words 'istimrari mokurary' and 'Kayam sasvata' do not *prima facie* convey more than life estates. But in construing grants the surrounding circumstances have to be looked into. (*Wallis*, O.C.J. *and Coutts Trotter*, J.) VENKATARAMANNA *v.* VENKATAPATHI NAYANI VARU. **28 M.L.J. 510 = (1915) M.W.N. 313 = 29 I.C. 188 = 17 M.L.T. 269**

———*Construction — Beneficial interpretation.*

The correct rule of interpretation of a document with doubtful import is that the benefit of the construction should be given to the grantee. (*Macnair*, A.J.C.) RAMU *v.* SADOO. **58 I.C. 954.**

———*Construction—Sanad—'Rule of primogeniture in'—'Lineal primogeniture.'*

The 'Rule of primogeniture' in the sanad granted by the Governor-General was founded on that of English rules, *viz*, 'lineal primogeniture.' The Sanad resembles to some extent an estate in fee simple but is differentiated in that the former excludes females; it resembles to some extent an estate in tail male, with this difference that a collateral can succeed under the terms of sanad. The word 'Successors' means 'successors on death' including both heirs and devisees but not transferees during life-time. 31 I.C. 748 at 764 and 765. 'Nearest male heir' is not to be interpreted as 'nearest male heir according to the personal law of the grantee'. (*Stuart and Kanhaiya Lal*, A.J.Cs.) GHULAM ABBAS KHAN *v.* BIBI UMMATUL FATIMA. **18 O C, 188 = 31 I C. 743 = 2 O L.J. 636.**

———*Construction—Muafi lands—47 years' possession from the first regular settlement—Presumption.*

Where a Muafidar proved by means of a copy of the *khasra* of the first regular settlement that the Muafi land was in possession of his ancestor and since that date to the date of the institution of the suit the possession amounted to 47 years: *Held*, that under such circumstances a presumption could fairly be made that the land was held for 50 years. (*Baillie*, S. M.) LACHHMAN PRASAD *v.* RAM TIRATH DAS. **24 I.C. 781 (2) = 1 O.L.J. 275.**

———*Construction—Jaghir—Life estate.*

In the absence of words clearly indicating a contrary intention a jaghir is presumed to be the grant of an estate only for life. 3 Bom. 186; 46 C. 693; (1921) Pat. 369 referred to. (*Miller*, C.J., *and Mullick*, J.) GURU MAHADEO ASRAM PRASAD SINGH *v.* JAGATRAJ KUER. **71 I.C. 929.**

———*Construction—Jagir to person and his heirs—Nature of estate taken.*

Where the grant of jagir is made to a person and his heirs and there is nothing to control the ordinary meaning of the words, the grantee takes an absolute interest. 15 Bom. 422, Foll. (*Das and Adami*, JJ.) GULAM NABI *v.* CHOUDHURI BASUDEB DAS. **1 P. 201 = 1922 P. 411.**

———*Construction—What passes—Adha and Urdha—Meaning.*

When the word 'Adha' is used in a grant the entire region from the surface to the centre of the earth vests in the grantee when 'Adha and Urdha' are used the grant has the same effect. (*Jwala Prasad and Adami*, JJ.) RAMLAL *v.* SATYHYA NIRANJAN CHAKRAVARTI. **6 P.L.J. 563 = 1 P.L T. 474 = 57 I.C. 786 = (1921) Pat. 49.**

———*Construction — 'Putra pautradi'—Meaning of.*

Per Atkinson, J.—The words of limitation 'Putra pautradi' used in a grant convey an absolute perpetual estate in the lands descendible from generation to generation coupled with full power of alienation, though these words may be controlled by custom limiting their scope and operation. (*Per Chapman*, J.) In 1765, before the advent of the British jurisdiction in Chota Nagpur the words 'putra pautradi' had not acquired a technical significance and the Privy Council decisions dealing with this expression were in respect of wills prior to 1868 by which time it had acquired a technical significance. (*Chapman and Atkinson*, JJ.) LAL GAGENDRA NATH SAHI DEO *v.* LAL MATHURALAL NATH SAHI DEO. **20 C.W.N. 876 = 35 I.C. 383 = 1 P.L.J. 109.**

Dharkhast.

———*Dharkhast — Grant by Subordinate Revenue Officer— Improvements — T P. Act, S. 51—Standing orders of the Board of Revenue.*

O. 15, cl. 16 of the Board's standing orders empowers the Deputy Collector to cancel the grant of Dharkhast, if at any time within three years, he is satisfied that the decision was passed under a mistake of fact. The mistake of fact need not be such as would render an agreement void under S. 20 of the Contract Act. The limitation that the interests of Government or the public should be affected by the grant if it is sought to be revoked, applies only

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to cases in which the grant exceeds the limit of authority possessed by the officer making it but not to decisions passed under a mistake of fact or owing to fraud or misrepresentation. 26 M. 268, Dist. (*Ayling and Napier, JJ.*) DRVARAMANI BHOGAPPA *v.* PEDDA BHINAKA GOWD. 28 I.C. 51=(1915) M.W.N. 148

———*Dharkkast—Right of Government.*

Plaintiff applied for Dharkhast grants and was granted on condition that he would not get the land if subsequently required for by Government for a railway. *Held* (*Sadasiva Aiyar, J.*) the lands were on temporary grants and plaintiff could get no compensation if they were taken by Government for railway. (*Seshagiri Aiyar, J.*) Plaintiff got no property in the lands till the Railway question was decided and he could not contend that he would not surrender if required for anything except Railway. The meaning of *Shivai jama* explained: In the case of *Shivaijama* system no property passes to the cultivator and the land continues to be at the absolute disposal of the Government. (*Sadasiva Aiyar and Seshagiri Aiyar, JJ.*) ALEMAN RAM RAO *v.* SECRETARY OF STATE. 1 L.W. 389= 24 I.C. 904=(1914) M.W.N. 388.

Ferry.

———*Ferry—Crown grant—Right to ply boats—Prescription.*

Where the Zemindars of a certain *mouza* were found to have used a ferry continuously and for a long time, their right is entitled to prevail unless the plaintiffs who were starting up an opposition ferry could show a Crown grant or could give evidence from which a Crown grant could be presumed. (*Knox, J.*) JWALA SINGH *v.* ABDUL RAZAK. 29 I.C. 692=13 A.L.J. 775.

Fishery.

———*Fishery—Exclusive fishery—Evidence of grant—Ancient grant—Evidence of conduct.*

The evidence of a Government grant of an exclusive fishery in navigable rivers ought to be conclusive and clear. In the case of grants of more than a century old, as the original grants are but rarely forthcoming, recourse must be had to secondary evidence of them or to the inference of a legal origin to be drawn from long user. (*Lord Sumner.*) SRINATH ROY *v.* DINABANDHU SEN. 42 Cal. 489= 41 I.A. 221=18 C.W.N. 1217= (1914) M.W.N. 654=1 L.W. 783= 16 M.L.T. 319=12 A.L.J. 1193= 20 C.L.J. 385=25 I.C. 467= 16 Bom. L.R. 901 (P.C.)

———*Fishery—Lost grant—Easements Act, S. 15.*

No presumption of a lost grant can be made in the case of the right of fishery where the use of the fishery was in harmony with the right of the public to fish by stakes which is an acknowledged method of public fishing on the West Coast of India. (*Marten, J.*) LAKSHMAN *v.* RAMJI. 28 Bom. L.R. 939.

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Implied Grant.

———*Implied grant—Right of way—Long enjoyment—Effect—Pleadings and proof.*

The enjoyment of a right of way for about 70 years is evidence of a grant or other legal origin. In claiming right of way, the plaintiff should state whether he claims the right by prescription, grant, or in any other way and the defendant should know by which title the plaintiff claims the right as otherwise he might be seriously prejudiced. Where, however, the plaint stated facts, which if proved, would be evidence of a grant and also establish a right by prescription and an issue was framed sufficiently wide to cover both the aspects of the right, there can be no prejudice to the defendant. (*N. R. Chatterjea and Greaves, JJ.*) KSHIROD CHANDRA GHOSE *v.* SRISHCHANDRA GHOSE. 28 I.C. 894.

———*Implied grant—Rent-free—Long possession—Presumption.*

Long possession without payment of rent justifies an inference of a rent-free grant. 10 W.R. 61; 14 W.R. 108, Foll. (*Mookerjee and Beachcroft, JJ.*) NAWABI ALI *v.* BIRENDRA KISHORE MONIKYA BAHADER. 24 I.C. 424=22 C.L.J. 124

———*Implied grant—Rent-free—Presumption—Long possession.*

The principle that long possession without payment of rent may justify an inference that the possessor holds under a rent-free grant does not apply where such possession may be attributed to a lawful origin other than a rent-free grant. (*Mookerjee and Beachcroft, JJ.*) GIRIJANATH ROY *v.* CHANDI CHARAN. 24 I.C. 286.

———*Implied grant—Easement—Presumption from long user.*

The use by the tenants of a tank belonging to the landlord from time immemorial for irrigation purposes will justify an inference that the servants had acquired to a right to irrigate their lands from the water of the tank by a presumed grant. 4 C. 633, P.C., Ref. to. (*Beachcroft and Newbould, JJ.*) BHUPENDRA NATH *v.* ANANDA PRASAD. 20 I.C. 359.

———*Implied grant—Effect of acknowledgment by Talukdar.*

A grant can be presumed from an acknowledgment by the Taluqdar. 9 O.C. 167, Foll. (*Kanhaiya Lal, A.J.C.*) KISHAN *v.* SHYAM SUNDAR. 35 I.C. 441=19 O.C. 27.

———*Implied grant—Inference from user.*

Where the plaint contained a plea of immemorial user, the Court can legitimately draw an inference of grant from such user. (*Ghose, J.*) AMRITANATH BISWAS *v.* JOGENDRA CHANDRA BHATTACHARJEE. 1922 P. 484.

GRANT—Implied Grant.

———*Implied grant—Rent free—Non-payment of rent for a long number of years—Whether evidence of rent free grant—Presumption.*

The fact that no rent has been paid for a large number of years in respect of a parcel of land is evidence of a grant of the land rent-free, but it is not conclusive evidence. The Court should look to the nature, scope and character of grant. 22 C.L.J. 126, Ref. (*Chapman and Atkinson, JJ.*) NAIK PANDEY *v.* RAJDHARI LALL. **3 P L.W. 220 = 42 I.C. 813 = (1917) Pat. 295.**

———*Implied grant—Presumption of lost grant—Basis of.*

In the case of a presumption of lost grant in favour of a person, actual user and enjoyment by the person is the only basis for the presumption and so when there is evidence only of use of surface rights of a *mouza* by cultivation, no presumption of lost grant to exercise mineral rights in the *mouza* can be made. (*Atkinson and Kingsford, JJ.*) NAWAGARH COAL CO., LTD *v.* BEHARI LAL. **20 C.W N. 1136 = 1 P.L J. 275 = 57 I C. 430 = 2 P.L.W. 324.**

Inam.

———*Inam* — Dharmadaya—*Determination of the nature of tenure—Summary Settlement Act* (II *of* 1863) *S.* 16.

Where the grant made was Inam *Dharmadaya* and was to be hereditary : *Held* the signification of such a grant is that it was made on grounds of religion, and not on political grounds. The mere fact that in occasional correspondence the grant is referred to as "jagir" or "saranjam", *i.e*, political, cannot derogate from the effect of the language of the grant itself. The question whether the tenure was political was one which was for determination by the Government under the provisions of the interpretation S 16 of the Summary Settlement Act (II of 1863) and that, by treating the title as one to which the act applied, the Government must determine that the tenure was not political. (*Viscount Haldane.*) MAHARAJA OF KOLHAPUR *v.* SHRI BALA MAHARAJ. **33 M L T 373 = 60 I.A 108 = (1913) M.W N. 638 = 48 Bom. 1 = 26 Bom L R 252 = 1923 P C. 194 (P.C.).**

——*Inam—Grant of both warams—No presumption as to.*

In the case of an inam grant there is no presumption that both the warams were granted to the Inamdar or only that the melwaram was granted. It is a question of fact to be decided on the evidence in each case. 41 M. 1012 ; 43 M. 166 ; 43 M. 567 Ref. 44 M. 588 disapproved. (*Mr. Ameer Ali*). SRI CHIDAMBARA SIVAPRAKASA PANDARA SANNADHIGAL *v.* VEERAMA REDDI. **45 Mad. 536 = 43 M L.J. 640 = 16 L W. 103 = 31 M L.T. 54 (P.C.) = (1922) M.W.N. 749 = 49 I.A. 236 = 1922 P.C. 292 (P.C.)**

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———*Inam—Desai Inam—Summary settlement— Quit-rent — Imposition of — Right of inamdar to alienate—Bombay Summary Settlement Act* (II *of* 1863), *S.* 12.

The ancestors of the testator had held the office of Desai (Chief Revenue Officer) under native rulers from the 17th century, and from time to time received grants of villages. The services of the *desais* as Revenue Collectors were not required by the British Government. In 1862 the Government officials after an investigation, offered a summary settlement of the lands to the *Desai* who accepted it subject to the commutation payment in the nature of a Nazarana or quit-rent. Settlements so made were expressly validated by S. 12 of Bom. Act II of 1863. The last *Desai* died in 1906 without co-parceners, having disposed of the lands by will. *Held*, that the High Court was right in holding that the lands were alienable like ordinary property and passed under the will. (*Sir John Edge.*) SUNDERBAI *v.* COLLECTOR OF BELGAUM. **48 Bom. 376 = (1919) M.W.N. 214 = 23 C.W N 753 = 21 Bom. L.R. 1148 = 52 I C. 897 = 46 I A. 15 (P C).**

[On appeal from 38 Bom. 272 = 23 I C. 221 = 16 Bom. L R. 161].

——*Inam—Presumption—Grant of village by Zamindar—Brahmin grantee.*

There is no presumption that the Melwaram or right to land revenue alone was granted in the case of an inam granted by a Zemindar to a Brahmin. (*Viscount Cave.*) UPADRASHTA VENKATA SASTRULU *v.* DIVIR SEETHARAMUDU. **43 Mad. 166 = 17 A L.J. 725 = 37 M L J. 42 = 21 Bom L.R. 923 = 26 M L T. 173 = 30 C L J. 441 = 10 L W 633 = 24 C.W N. 129 = 51 I.C 301 = 46 I.A. 123 (P.C.).**

[Reversing 38 Mad. 891 = 24 I.C. 224 = 26 M.L J. 885],

———*Inam — Presumption of grant of revenue only—None.*

There is no presumption that the grant of an inam (agraharam) by a native ruler prior to British rule conveyed only the melwaram or royal share of the revenue (*Sir John Edge.*) SURYANARAYANA *v.* PATANNA. **41 Mad 1012 = 28 M L T 30 = (1918) M.W N 859 = 23 C W N. 273 = 9 L W. 128 = 29 C L J. 153 = 1 U.P L.R (P.C.) 11 = 33 M L J. 585 = 21 Bom. L R 517 = (1919) M W N. 463 = 48 I C. 689 = 45 I.A. 209 (P C).**

[Reversing 38 Mad 608 = 26 M L J 99 = 22 I C. 339 = 13 M.L.T. 268]

———*Inam—Title-deed—Value of—Antecedent state of affairs.*

Where, the precise terms of an Inam grant by a native ruler, could not be ascertained either owing to the loss of the original grant or other circumstances, the inam title-deeds conferred by Government are of great assistance

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in finding out the antecedent circumstances relating to the grant. (*Sir Walter Phillimore.*) SETHURAMASWAMIAR *v.* MERUSWAMIAR.
41 Mad. 246=7 L.W. 22=
4 Pat. L W. 91=34 M L J. 130=
16 A L J. 118=22 C.W N. 457=
20 Bom. L R. 514=45 I.A. 1=
43 I C. 806=27 C.L J. 231 (P.C.).
[Also 43 Mad. 253=38 I.C. 238=46 I.A 204.]
[On appeal from 34 Mad. 470=
20 M.L.J. 103=4 I.C 76=6 M L T. 319.]

———*Inam—Resumption — Situate within Zemindari.*

Inams are Government grants subject to quit-rents and in some instances to services. They were not assessed for land revenue at the date of the permanent settlement. Where the quit-rents payable in respect of inams in a Zemindari were treated as Zamindari assets and taken into account in fixing the jumma or peishoush, the Zamindar is entitled to the inam lands on resumption or acquisition in other ways. (*Lord Parker.*) KANDUKURI BALASURYA PRASADA RAO *v* SECRETARY OF STATE FOR INDIA. 40 Mad. 886=
44 I.A. 163=31 M L J. 144=
22 M.L.T 76=16 A.L.J. 697=
21 C.W N. 1089=(1917) M W N. 536=
19 Bom. L R. 731=6 L.W. 310=
2 Pat. L W. 260=41 I C. 98=
26 C.L.J. 290 (P.C.).
[On appeal from 34 Mad. 295=
20 M.L J. 813=8 M.L.T. 389=
8 I.C. 67=(1910) M.W.N. 895.]

———*Inam—Jaghir—Saranjam.*

The term inam is of generic significance, applicable to Government grant as a whole and includes saranjams. Saranjam is the Marathi equivalent for a jaghir. A jaghir is ordinarily the grant of the revenue and not of the soil. Jaghir tenure is personal, not hereditary and is resumable at pleasure and is therefore impartible. (*Lord Shaw.*) RAGHAJI RAO SAHEB *v.* LAKSHMAN RAO SAHEB. 36 Bom 639=
39 I.A. 202=16 C.W.N 1068=
23 M L J 383=12 M.L.T. 472=
(1912) M.W.N. 1140=14 Bom. L R. 1226=
16 I.C. 239=17 C.L.J. 17 (P.C.).

———*Inam—Presumption as to what passes —Recent Privy Council rulings on the law.*

Grant of village by the Crown under the British rule is presumed to be subject to such rights of occupancy, if any, as the cultivators at the time of grant may have had. (*Macleod*, C.J. *and Shah*, J.) TUNJABAI GOPAL DESHAI *v.* KRISHNAJI RAMACHANDRA DESHPANDE.
24 Bom. L.R 251=46 Bom. 741=
1922 Bom. 6.

———*Inam—Land or revenue — Vatan—Construction.*

In the case of Vatan property the distinction between the grants of the royal share of revenue and grants of the soil cannot be conveniently made without detriment to the statutory restriction on the Vatandar's power of alienation and should not be made unless it is clearly justified by the terms of the grant. (*Shah and Hayward*, JJ.) AMRIT VAMAN *v.* HARI GOVIND
44 Bom. 257=56 I C. 411=
22 Bom. L. R. 275.

———*Inam—Resumption.*

Lands granted *pro servitis impensis et impodendis*, i.e., on account partly of services already rendered and partly of services to be rendered in the future may be resumed for wilful default. (1870) 13 M.I.A. 438, Foll. (*Batchelor*, A.C.J. *and Kemp*, J.) YAMUNABAI *v.* LAGMANNA. 52 I C. 770=
21 Bom. L R 820.

———*Inam—Resumption — Land burdened with services—Grants of office to which lands are annexed by way of remuneration—Onus.*

For the purposes of resumption, grants fall into two main categories, grants of land burdened with service, and grants of office to which lands are annexed by way of remuneration instead of, or along with cash. The former grants are always irresumable, unless the grantor can show that they have been specially conditioned so as to enable him to resume for failure to perform these services or at his own will to discontinue the service and resume the lands. Grants under the second category are always resumable unless the grantee can show that they have been specially conditioned otherwise so as to prevent their resumability. In every case the burden of proof is upon the grantor suing to resume, to show that either the grant was of a kind falling under the second category, or if a grant of the kind, falling under the first category, that it was specially conditioned. 28 B. 305, 39 B. 68; 18 Bom. L.R. 695, Foll. (*Beaman and Heaton*, JJ.) CHANDRAPPA *v* BHIMA. 43 Bom. 37=
47 I C. 330=20 Bom. L.R. 779.

———*Inam—Kadim Haks—Right of the inamdar to pay haks allowances direct to the hakdars.*

A village was granted to the ancestors of the plaintiff as the personal inam by the Peishwa, the grant having been 'exclusive of the Hakdars and *Inamdars*.' The inam was continued by the British Government on the same terms. The plaintiff claimed the right to pay the *Kadim Haks* of *Gramjoshi*, *Naikwadi* and *Chowgula* direct to the *Hakdars* in question and not through the British Government. *Held*, negativing the claim, that the manner of payment of the *Haks*, in the past gave no support to the plaintiff's contention that he was entitled to pay direct; the grant showed that the rights of the *Hakdars* were secured and one of those rights was the right of dealing directly with the Government. (*Heaton and Shah*, JJ.) CHINTAMAN *v.* SECRETARY OF STATE. 30 I.C. 548=17 Bom. L.R. 682.

———*Inam—Deshghat Vatan—Barkhi services—Resumption.*

In the Bombay Presidency, where there is a grant of Deshghat Vatan lands for personal

services, it cannot be presumed that the grantor has the option to determine the services and to resume the lands. The right, when claimed, must be made to appear from the terms of the grant or the proved circumstances of the case. (*Heaton and Shah, JJ.*) YELLAVA *v.* BHIMAPPA. 39 Bom 68=28 I C. 12= 17 Bom. L R. 128.

———*Inam prior to* 1802—*Presumption.*

Where lands were granted in inam prior to 1802, that fact is strong evidence to raise the presumption that they were excluded from the Permanent Settlement. (*Ayling and Odgers, JJ.*) TOTA VARAHALIAH *v.* SREE VENKATA SURYANARAYANA. 18 L.R. 324= (1923) M.W.N. 732=1924 M. 117.

———*Inam—Burden of Proof—Widow.*

There is no presumption that an Inam grant by a Zemindar is a grant of both the warams or of the melwaram only. The nature of the grant must be determined from the evidence in the case. 36 M.L.J. 585 ; 41 M. 1132 ; 37 M.L.J. 42 ; 45 M. 586 ; 43 M.L.J. 640 (P.C.) Referred to. (*Phillips and Devadoss, JJ.*) SRI RAJA VENKATARANGAYYA APPARAO BAHADUR *v.* MORAMPUDI RAJIRAJU. 46 M.L.J. 238=(1923) M.W.N. 765= 1924 Mad. 93.

———*Inam—Charity inam—Share of the proceeds of the inam appropriated to the private use of the inamdar—Effect of.*

The fact that a third share of the proceeds of an inam has been appropriated by the inamdars for their private uses does not make it the less a charity inam for the grant was only one and could not be split up into parts—a personal grant of one-third and a charity grant of two thirds of the inam. 40 M. 116 Rel. on. (*Ayling and Ramesam, JJ.*) SUNDARARAJA CHARIAR *v.* ALI MAHOMED ETHIBAR KHAN SAIB. 44 M.L.J. 649=1923 Mad. 661.

———*Inam—Service Inam—Surplus income—Right to—Resumption on failure of service—Rights of Government—Powers of Court.*

Where there is an inam burdened with a trust, the surplus remaining after the expenses of the trust have been met belongs to the inamdar and he is not accountable therefor. 30 M.L.T. 101 ; 15 L. W. 241 Ref. It is not for the Court to treat inams as resumed on the ground of the services having become unnecessary. The power of resumption rests only with the Government and the Government alone can give directions for application of its income. (*Spencer and Devadoss, JJ.*) JAKKAM REDDI SESHADRI REDDI *v.* PICHI REDDI. 32 M.L.T. (H.C.) 89=1923 Mad. 163.

———*Inam—Service Inam—Alienation—Attachment of property in execution and sale—Legality of.*

An inam granted for the performance of Swasthivachakam service in a Hindu temple is not liable to be attached and sold in execution of a decree against the holder for the time being. The grant is one burdened with the performance of service of a public nature and the sale of such property is also opposed to the nature of the interest affected and is also contrary to public policy within S. 23, Contract Act. (*Schwabe, C.J. Coutts Trotter and Kumaraswami Sastri, JJ.*) NETI ANJANEYALU *v.* SRI VENUGOPAL RICE MILL, LTD, TENALI. 45 Mad. 620=42 M.L.J. 477= 15 L.W. 513=(1922) M.W.N. 307= 30 M.L.T. 265=1922 Mad. 197 (F.B.)

———*Inam—Enfranchisement—Title deed issued to widow—Absolute estate—Rights of reversioners.*

Where a service inam land is enfranchised in the name of a woman and the title deed in terms is an absolute grant of the land to her, she takes an absolute estate in the property and it descends to her own heirs as distinguished from those of the last male owner. 44 Mad. 643 P. C. foll. Where after the death of her minor son who held the office of Karnam, the mother was appointed to the office and the inam land was afterwards enfranchised in her name, her daughter's sons will succeed to the property in preference to the relations of her husband. (*Spencer and Devadass, JJ.*) ABDUKURI VENKATARAMADAS *v.* PACHIGOLLA GAVARRAJU. 43 M.L.J. 153= (1922) M.W.N. 308=31 M.L.T. 154 (H.C.)= 16 L.W. 228=1922 Mad. 173.

———*Inam—Enfranchisement—Karnam service—Title deed—Arrangements relating to—Effect.*

Imam title deeds do not create a title wher none existed before. They are not conclusive as to the title of the persons in whose favour enfranchisement is to operate, and it is open to the aggrieved parties to show that a name or names have been added by mistake. At the time of the enfranchisement of a karnam service inam, the office holder and his deputy entered into an agreement as a result of which the title deed was issued in the names of both : *Held*, both were estopped from contending that the title does not pass to the other. (*Spencer and Ramesam, JJ.*) TADIKONDA LAKSHMINARASIMHAM *v.* VENKATARATANAYAMMA. 30 M.L.T. 334 (H.C.).

———*Inam—Lands attached to Temple pujari office—Adverse possession.*

Where lands attached to the office of *pujari* of a temple have been held by a person for more than 12 years as owner that person gets an absolute and indefeasible right thereto against all the succeeding office holders also. (*Sadasiva Iyer and Spencer, JJ.*) SUBRAMANIA GURUKKAL *v.* AMMAKANNU AMMAL. 14 L.W. 376=41 M.L.J. 450=70 I.C. 477= (1921) M.W.N. 696.

———*Inam—Private grant—Presumption—Resumable grant—Nature of tenure.*

The rule that there is no presumption in favour of the restriction of an *inam* grant to

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the melwaram, is not confined to crown grants, but applies equally to grants by private individuals. The fact that an *inam* grant is resumable does not affect the character of the tenure created by the grantor or raise any presumption as to the existence of persons having an interest in the property prior to the grant. (*Oldfield, J.*) MALLAMPALLI PERAYYA *v.* VATCHARAYI VANKATAPATHI RAJU.
68 I.C. 804 = 13 L.W. 601.

———*Inam—Crown grants, construction of—Presumption—Minor Inams — Occupancy right—Onus of proof.*

A crown grant of an *Inam* in the absence of evidence one way or the other must be taken to be a grant of both the Melvaram and the Kudivaram. The two judgments of the Privy Council in *Suryanarayana* v. *Patanna*, 41 M. 1012 *and Venkata Sastrulu* v. *Sitaramudu*, 43 M. 166 do not expressly lay down a presumption that the grant is of both the Melvaram and the Kudivaram but such an initial presumption is deducible from the facts of those cases. In cases of minor inams of less than a village in extent the burden of proving the existence of occupancy rights is on the tenant who sets up such right. (*Wallis, C.J., Coutts-Trotter and Ramesam, JJ.*) MUTHU GOUNDAN *v.* PERUMAL AIYAR.
44 Mad. 588 = 40 M.L.J. 429 = 13 L.W. 463 = (1921) M.W.N. 263 = 63 I.C. 790 = 29 M.L.T. 398 (F.B.).

———*Inam—Crown Grant—Presumption—Burden of proof.*

Where the Government, makes a grant of land at its absolute disposal, a third person cannot deprive the grantee's title on the ground that he was a landlord of the grantee and such third person's prior right as landlord is destroyed by the act of grant of the Government. There is no presumption of law that an inam grant of a village is *prima facie* a grant of the land revenue only. The terms of the grant, and whole circumstances connected therewith have to be looked into. In a suit for ejectment, the burden of proving that the tenancy is terminated and there is a ground for eviction lies on the plaintiff. (*Sadasiva Aiyar and Spencer*, JJ.) SUBBRAMANIA AIYAR *v.* ONNAPPA GOUNDAN.
12 L.W. 576 = 39 M.L.J. 629 = 61 I.C. 597 = 28 M.L.T. 389.

———*Inam—Effect of enfranchisement—Claim by divided members.*

Mere enfranchisement of service inam lands in the name of the office holder does not debar a divided member of the family of the office holder from claiming a share in the enfranchised lands. Exclusive possession of the inam lands by the office holder is not *per se* adverse, even against the divided members. 46 Cal. 362 has not overruled the decisions in 26 Mad. 330 and 30 Mad. 434. The divided member must prove that the inam lands were kept as undivided property at previous partitions and that he is a member of the original service holder's

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family. (*Ayling and Odgers*, JJ.) DEVULAPALLI VENKATA SUBBA RAO *v.* SATYANARAYANAMURTI. **60 I.C. 27 = 12 L.W. 642.**

———*Inam—Presumption—Grant of soil—Ashtabhogam incidents of.*

There is no presumption that an Inam grant is only of the melwaram. The determining factors are the terms of the grant and the circumstances connected therewith. A grant by the Maharajah of Mysore of lands with Ashtabhogam and Dasa Swamyom incidents conveys the soil to the grantee. (*Sadasiva Aiyar and Spencer*, JJ.) SUBRAMANIA AIYAR *v.* ONNPAPA GOUNDAN. **12 L.W. 577.**

———*Inam — Presumption — Land or revenue.*

There is no presumption that the land revenue alone was granted in the case of inams granted by the Zemindar prior to the permanent settlement. 41 M. 1012, Foll. (*Seshagiri Aiyar and Odgers*, JJ.) NANDIGAM SUBBARAYUDU *v.* KANNAM SAHEB. **54 I.C. 22 = (1919) M.W.N. 886.**

———*Inam—Enfranchisement — Office of karnam—Effect of.*

Where up to the time of the enfranchisement certain inam lands were annexed to the karnam's office and enjoyed by the holder of the office for the time being who was the only person who had any right to them, as a result of enfranchisement, the land which till then had been an endowment of a hereditary office, came to be held by the family which was entitled to the office. 30 Mad. 434, Ref. Having regard to the fact that the inam in question was karnam inam and to the annual payments made to the karnam for the time being and to the fact that the Shrotriemdars might have got into possession by some arrangement as to management, the onus was strongly upon the Shrotriemdars, to show that their possession was adverse and not permissive. The registered holders of the hereditary office of karnam can sue to recover possession of the inam lands after enfranchisement without joining other members of the family as parties. (*Wallis, C.J. and Spencer*, J.) ADDAGANTI CHINNA VENKATA SUBBA RAO NARASAMMA *v.* YEMANUR VENKATARAMAYYA.
53 I.C. 161 = 10 L.W. 422.

———*Inam — Resumption — Mention of general charitable object—Illegal resumption by Government—Suit to recover property from Government—Limitation.*

Dharmadayam inams granted by the Crown for charitable objects on condition of certain services being performed by the trustees of a mosque cannot be resumed merely because the trustee has made a temporary alienation of the endowed properties, so long as the services mentioned in the deed of grant are substantially performed and the endowed property is not wholly lost to the charity. The order of resumption was a nullity as the contingency on which alone the Government was entitled to

resume had not arisen, and that the object of the suit being to recover possession. Art. 144 and not Art. 14 of the Limitation Act applied. (Per *Abdul Rahim*, J.)—The doctrine of Cypres execution will be applicable to charitable inams where a general charitable object is mentioned in the grant. (*Abdur Rahim and Spencer*, JJ.) SECRETARY OF STATE *v.* GULAM MAHBOOB KHAN. **42 Mad. 673=37 M.L.J. 71=9 L.W. 587=51 I.C. 363=(1919) M.W.N. 736.**

———*Inam*—*'Poromboke'—Right to communal property.*

The words 'besides Poramboke' in the grant of a whole village as *sarvamaniam* should be construed as excluding burning and burial grounds and other lands required for communal purposes. 24 M.L.J. 36; 37 M. 364, Rel. Such properties vest in the Government in trust for the community. (Per *Sadasiva Aiyer*, J.):—Meaning of 'Poramboke' discussed. The effect of the Uslam case (43 I.C. 98) is to vest river and channel beds in the Inamdar. (*Sadasiva Aiyar and Spencer*, JJ.) VENKATARAMA SIVAN *v.* SECRETARY OF STATE FOR INDIA. **36 M.L.J. 203=9 L.W. 381=25 M.L.T. 232=50 I.C. 360=(1919) M.W.N. 191.**

———*Inam—Resumption—Charity—Rights of.*

Where the Government resumed an inam granted to a mosque by the Nawab of the Carnatic and imposed the full assessment for failure of the trustees of the mosque to carry out the trust and a patta was issued to the trustees but the lands themselves were not resumed. *Held*, that, as the grant was of both the land and the revenue, the ownership of the land was unaffected, and as it was subject to a charitable trust, it still continued to be so. 5 L.W. 402; 26 Mad. 330 and 30 Mad. 434, Foll. (*Ayling, Kumaraswami Sastri and Krishnan*, JJ.) MUHAMMED ESUF SAHEB *v.* SATHAR SAHIB. **42 Mad. 161=36 M.L.J. 262=25 M.L.T. 141=49 I.C. 821=(1919) M.W.N. 228.**

———*Inam—Enfranchisement by Government—Right of other members to share.*

A person, who belongs to a family having a hereditary interest in a karnam's inam and becomes divided in status from the holder of the office for the time being, cannot, on enfranchisement of the inam subsequently, claim a share in the land attached to the office of karnam. (*Spencer and Krishnan*, JJ.) PYRAPPA *v.* SYAMA RAO. **25 M.L.T. 177=(1918) M.W.N. 849=49 I.C. 250=8 L.W. 614.**

———*Inam—Rights of Inamdar—* Kudivaram *and* Melvaram, *distinction between.*

In an inam village having no occupancy tenants owned by an Inamdar who is also the Mirasidar, the distinction between *kudivaram* and *melvaram* has no place. A Mirasidar who

gets *shrotriem* grant from Government can be said to be an Inamdar also. In a suit by trustees of temple as Inamdars against tenants the tenants must prove that the trustees had no *kudivaram* right. (*Sadasiva Aiyar and Napier*, JJ). NAINA PILLAI *v.* RAMANATHAN CHETTIYAR. **41 I.C. 788=38 M.L.J. 84.**

[Also 44 I.C. 895=35 M.L.J. 234.]

———*Inam—Resumption—Darimilla in a Zamindari—Lakhiraj lands—Exemption of—Government, if can resume inam—Enfranchisement.*

Darimilla inams, *i.e.*, inams granted subsequent to the Permanent Settlement cannot be resumed by Government. Lakhiraj lands are exempt from the payment of public revenue. Where a Zamindari in which the inam in suit was situated was resumed after the Permanent Settlement and regranted to the Zemindar subsequently in 1826 on the same peishcush and there was no ground to show the inam consisted only of lakhiraj lands which alone under the terms of the sanad granted in 1826 were excluded from the assets of the Zemindari. *Held*, that the enfranchisement of the inam by the Government was *ultra vires* and does not bind the Zemindar. (*Abdur Rahim and Srinivasa Aivangar*, JJ.) VALLURI NARASIMHA RAO PANTULU GARU *v.* THE SECRETARY OF STATE FOR INDIA. **36 I.C. 219=3 L.W. 573.**

———*Inam—Unenfranchised—Title by adverse possession in.*

If an inam grant for service is trespassed upon by a stranger before its enfranchisement and held adversely for the statutory period, the holder acquires a title to it, by prescription under S. 28 of the Limitation Act. 24 I.C. 501, Dist. (*Seshagiri Aiyar and Phillips*, JJ.) DINVAHI LAXMANPATI *v.* PINGALI NARSIMHAIN. **(1916) 1 M.W.N. 473=34 I.C. 898=3 L.W. 590.**

———*Inam—Jeroyati—Meaning.*

The term 'Jaroyati' as used in parts of the Telugu districts means merely 'non-inam.' (*Sadasiva Aiyar and Moore*, JJ.) RAVU SESHAYYA GARU *v.* RAJA OF PITTAPUR. **3 L.W. 485=(1916) 1 M.W.N. 396=34 I.C. 730=31 M.L.J. 214.**

———*Inam—Service—Whether a public charitable trust—Lease by some inamdars for 40 years—Remedy of others.*

An *Inam* granted on condition of the grantees providing water for the use of travellers passing through that place is not a public charitable trust and the leasing out of such an inam for 40 years by the minority of the Inamdars does not entitle an Inamdar who has not joined in the lease to sue for a declaration that the lease is absolutely void as a whole and that he was entitled to the possession of the whole inam. The only relief to which such an Inamdar entitled is a declaration that the lease

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is not binding on his share of the inam. (*Coutts Trotter and Moore*, JJ.) KUPPARAJU VENKATASUBBIAH *v.* MURUGULA SHEIK SILAR SAHIB. 19 M.L.T. 144=32 I C 947= 3 L.W. 157.

———*Inam—Enfranchisement—Service inam—Sale subsequently—Validity of—Enfranchisement—Effect of on rights of members of a joint family—Alienation—Subsequent enfranchisement.*

The sale of lands forming a *Barki* service inam, subsequent to its enfranchisement, is valid, even though made in pursuance of an agreement to sell entered into prior to the enfranchisement. An enfranchisement does not destroy the rights of any members of a joint family which has a hereditary interest in an inam. 26 M. 339, Foll. There is nothing in cl. 2 of S. 10 of Madras Act II of 1894 which affects the family title to lands which form the emoluments of an office. 8 M 249, Ref. An alienation of a service inam is wholly void and the enfranchisement of the inam of later date does not entitle the alienee to invoke the aid of the provisions of S. 43 of the T.P. Act. 30 M. 255; (1913) M.W.N. 415 and 999, Foll. (*Spencer and Coutts-Trotter*, JJ.) KARRI RAMAYYA *v.* VILLORI JAGANADHAM.

39 Mad. 930=18 M.L.T. 860= 2 L.W. 674=30 I.C. 889=(1915) M.W.N. 838.

———*Inam—Resumption—Darimilla inam—Gadaba Tirasti lands—Grant in lieu of wages—Jirayati mode of enjoyment—Enhancement of Kattubadi — Resumption — Ejectment suit—Onus—Civil Court.*

Darimilla inams are inams granted subsequent to the Permanent Settlement for doing personal service to the Zemindar in lieu of wages. Certain '*Gadaba Tirasti*' lands in the Vizagapatam District had been granted in inam subsequent to the Permanent Settlement for doing personal service to the Zemindar in lieu of wages. They had been once ordinary *Jirayati* lands at the time of the grant and the character of the enjoyment was not at any time lost or altered in the course of its devolution to the present occupants. The Zamindar sued to resume the lands and eject the tenants. *Held*, that the onus lay on the Zemindar to show a right to eviot. Resumption is no more than a taking back of what was once given and does not necessarily imply dispossession from land. The acquiescence of Inamdars in the enhancement of the *Kattubadi* implied no more than a readiness on their part to accept a lower rate of remuneration for their services than they had been receiving originally. (*Spencer and Coutts-Trotter*. JJ.) IDUBILLI SIYYADDI *v.* SRI RAJA VISWESWRA NISSANKA.

30 I.C. 416=18 M.L.T. 142.

———*Inam—Right of inamdar—Poramboke.*

An Inamdar is by virtue of his Inam title-deed entitled to the unassessed waste lands in the village. (*Wallis* C.J. *and Coutts-Trotter*, J.)

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BALAKRISHNA RAO *v.* SECRETARY OF STATE. 39 Mad. 494=29 M.L.J. 276= 18 M.L.T. 151=30 I.C. 355= 2 L.W. 695.

———*Inam—Presumption—Grant of melvaram—Applicability of a Civil Court.*

It is not the Revenue Courts alone but the Civil Courts also should presume that an inam grant is of the revenue only and not of land until the contrary is proved. 19 I. C. 440, Foll. (*Oldfield and Sadasiva Aiyar*, JJ.) GOVINDA REDDI *v.* RAVI KESAVALU NAIDU.

29 I.C. 1003.

[This is no longer law 41 Mad. 1012= 43 Mad. 166 (P.C.)]

———*Inam—Resumption—Service inam—Title-deed in grantee's name—Services connected with the temple—Rights of temple.*

Where the inam title-deed was granted to a dancing woman for performing certain services in a temple and she subsequently alienated the inam and neglected the services, the trustees of the temple sued for possesion of the inam. *Held*, that the suit by the trustees was not maintainable. The Government might if it chose resume the inam. 14 M. L. J 134, Ref. (*Miller and Sadasiva Aiyar*, JJ.) MATTE SARAYYA *v.* VEPPARATHI VYDYANATHAM. 1 L.W. 490=27 I.C. 168= 27 M.L.J. 57.

———*Inam—Agraharam—Presumption.*

There is no presumption that a grantee of an *Agraharam* is not the owner of the Kudivaram at the time of the grant. (*Kumaraswami Sastri*, J.) RAMALA VENKATASWAMI *v.* KANUMALA NARASIMHAYYA.

26 I C. 357=16 M.L.T. 596.

———*Inam—Presumption* — Sarvamaniam *and* Ashtabogam.

The words *Sarvamaniam* and *Ashtabogam* in a grant by a Zamindar merely means that there is no superior holder and that all the rights of the grantor are transferred. Such rights as communal rights and rights of occupancy must be presumed to have been excluded. The presumption is that the grant is of land revenue and not of the land itself. (*Sankaran Nair and Tyabji*, JJ.) PARANKUSA ZATINDRA MAHADESIKASWAMI *v.* SUBRAMANIA PILLAI.

26 I.C. 117.

———*Inam—Presumption.*

The presumption is that the land also, not merely the land revenue, is granted where there is no kudivaram interest at the date of the grant. 12 M. 98. Foll. (*Seshagiri Aiyar and Kumaraswami Sastri*, JJ.) NANJUNDIAH *v.* VENKATA SUBBAYYA. 1 L W .670= 16 M L.T 239=26 I.C 87= 27 M.L.J 618.

———*Inam—Resumption—Palanquin bearing service—Lands granted for.*

The rights of resumption of lands granted by a Zemindar for the performance of the private

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service of *Gadaha* or palanquin bearing to the Zemindar is in the latter and not in Government. (*Wallis*, C.J. *and Kumaraswami Sastri*. J.) SATRACHERLA VEERABADHRA SURYANARAYANA *v.* SECRETARY OF STATE. **25 I.C. 878=1 L.W. 662.**

———*Inam—Resumption — Temple trustees —Inam for reciting Vedas—Confirmation by Government—Resumption—Power of.*

Where an inam granted to *Vritikars* by a Zemindar is confirmed by Government it can be resumed by it alone and the Trustees of the temple have no right to take possession of the lands. (*Benson and Sundara Aiyar*, JJ.) TANGIRALA CHIRANJIVI *v.* RAJA MANIKYA RAO RAJYA. **25 I.C. 283=27 M.L.J. 179.**

———*Inam—Rights of Inamdar—Inamdar and lessees—Quit-rent increased by enfranchisement.*

Where an Inamdar holding the inam by leases for a fixed period gets it enfranchised for his own benefit the lessees are not liable for the consequent increase in the quit-rent. (*Sadasiva Aiyar*, J.) RAVEPATI RAMAYYA *v.* ADDANKI SESHAYYA. **23 I.C. 765.**

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Desai inams of Navalgund should be treated as property of ordinary Hindu land owner subject to payment to Government of agreed quit rent. (*Scott*, C.J. *and Heaton*, J.) BREADON *v.* SHRIMANT SUNDARABAI.

38 Bom. 272=23 I.C. 221=16 Bom. L.R. 164.

———*Inam—Implies only grant of revenue—Where terms of title-deed are absolute right to minerals also is transferred—Right of Govt. to minerals will not be lost unless expressly given up—Enfranchisement does not impose any further liability than enhanced quit-rent fixed by Inam Commissioner.*

A grant made by the Government implies only grant of revenue if the terms of the grant do not expressly purport to transfer anything else. Where the terms of an *inam* title-deed are absolute and purport to convey the free-hold of a village, the right of the Government to the minerals in the village is also included in the grant. Even if the Government have often empressed different views about their right to minerals found in an Inam village, those views will not disentitle Government from asserting such right if they have not, by express words parted with it. Per *Sadasiva Aiyar*, J.—The effect of enfranchisement is that the full free-hold interest in a village passes and such estate is not liable to any further burden in the shape of Government revenue than that of enhanced quit-rent fixed by Inam Commissioner. (*Sadasiva Aiyar and Spencer*, JJ.) SECRETARY OF STATE *v.* SRINIVASACHARIAR. **23 I.C. 144=16 M.L.T. 277.**

———*Inam — Resumption— Pre-settlement inam—Right of Government.*

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Lands *held*, on condition of personal services to the Zemindar and in which the Government is not interested (*e.g.*, police or magisterial duties) could be included in fixing the peishoush of the Zemindari for they are not 'lands paying only favourable quit-rents under Reg. XXV of 1802.' The Government is therefore not entitled to resume such pre-settlement inams unless they prove they were excluded in fixing the peishoush. (*Sankaran Nair and Tyabji*, JJ.) SRI RAJA PARTHASARATHY APPARAO *v.* SECRETARY OF STATE.

38 Mad. 620=(1913) M.W.N. 959=14 M.L.T. 514=21 I.C. 871=26 M.L.J. 89.

———*Inam—Darmilla inam—Resumption —Ejectment.*

An inam granted by a Zemindar to his servant for personal services is resumable whenever he chooses to dispense with his services. Where a Zemindar grants lands on favourable rent to his servant in consideration of personal service, mere dispensing with service does not give a right to the possession of the lands so long as the tenant is willing to pay the rent stipulated and to render the service. 23 M. 318; 20 M. 299; 1 M. 205; 21 M. 299, Rel. (*Ayling and Tyabji*, JJ.) KARUPMAYA ANANGA BHEEMA *v.* SONDI PRAHALADHA BISSOYI RAT.

14 M.L.T. 562=21 I.C. 833=(1914) M.W.N. 179.

———*Inam—Enfranchisement—Liability of the Zemindar for assessment.*

If a pre-settlement *nottam* inam is enfranchised but cannot be localised in the Zemindari limits the Zemindar is not liable to additional assessment therefor. (*Benson and Sundara Aiyar*, JJ.) N. RAMA RAO *v.* SECRETARY OF STATE. **21 I.C. 49=(1913) M.W.N. 639.**

———*Inam—Presumption.*

In the case of inam land, the presumption is that the kudivaram was not vested in the Inamdar. (*Benson and Sundara Aiyar*, JJ.) SITAMRAJU RAMABRAHMAM *v.* M. LAKSHMANNA. **20 I.C. 843=23 M.L.J. 33=(1913) M.W.N. 771.**

[This is not correct. *See* 41 Mad. 1012 (P.C.)=43 Mad. 166 (P.C.)]

———*Inam—Presumption—Melwaram.*

An agraharam inam granted by a Nazvid Zamindar is presumed to be only of the melwaram right. (*Sankaran Nair and Tyabji*, JJ.) KANANDA NARSIMHA CHARYALU *v.* KAVICHERLA RAMA BRAMHAM. **24 M.L.J. 656=20 I.C. 753=(1913) M.W.N. 774.**

[This is no longer law. 22 I.C. 389=41 Mad. 1012 (P.C.)]

———*Inam — Presumption — Melwaram—Burden of proof—Waste lands.*

An Inamdar in a suit for ejectment must show that both the melwarams are vested in him on the ground that he was in occupation

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when the inam was granted. It is immaterial whether the inam was granted by the Government or by a Zemindar. The presumption is that melwaram right alone was granted. The Inamdar if he can show that the lands were waste at the time of the grant will be entitled to the entire right in the property. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) YEDDMA PUDDI LAKSHMI NARASIMHA ROW *v.* REPALLI SITARAMASWAMI. 24 M.L.J. 288 = 19 I.C. 440 = (1913) M.W.N. 282.

[This is no longer correct. 41 Mad. 1012 = 43 Mad. 166 (P.C.).]

———*Inam — Melwaram — Kudiwaram — —Rights—Holding of tope of trees—Powers of inam authorities.*

The rights of the melwaramdar and the kudiwaramdar are governed by the law applicable to landlord and tenant such as the Rent Recovery Act and it is not within the powers of the inam authorities to define such relations. When at the time of the inam grant of a melwaram right in any occupancy holding, the holding consisted entirely of a tope of trees, the melwaramdar has a right to the trees and the raiyat cannot cut them down for his own use. (*Benson and Sundara Aiyar*, JJ.) RAMA AIYANGAR *v.* JAGANNATHA PANDI AIYAR. 38 Mad. 155 = 24 M.L.J. 342 = (1913) M.W.N. 216 = 18 I.C. 719 = 13 M.L.T 291.

———*Inam—Poramboke—Right of grantee to river bed.*

To convey the bed of the river passing through lands granted in inam by Government it is not necessary that there should be an express grant of water in the stream. (*Sankaran Nair and Abdur Rahim*, JJ.) SECRETARY OF STATE *v.* AMBALAVANA PANDARA SANNADHI. 18 I.C. 294 = 37 Mad, 369 (Note).

———*Inam—Rights of holder—Extent of land under cultivation—Wet area.*

Under the terms of the inam deed the grantee was to pay quit-rent on a certain area which was only approximately estimated and he was free from all further charge and the extent was afterwards found to be greater and the Government levied from the Inamdar water cess for irrigation of this excess extent. *Held*, Government must be intended to be free from further charge besides quit-rent, all the area registered as wet land especially when only an approximate area was mentioned in the the title-deed. (*Miller and Sadasiva Aiyar*, JJ.) BOMMIREDDI PALLI VENKAYYA *v.* SECRETARY OF STATE. 18 I.C. 102 = (1913) M.W.N. 858.

———*Inam — Poramboke— Land between flood bank of river and river bed.*

The words ' besides Poramboke ' in an inam grant granting all cultivated dry and wet lands in the village area includes land formed between the flood banks of the river and its sandy river bed. All land not yielding revenue to Government is sometimes called poramboke; unassessed waste lands overgrown with trees or grass is always poramboke. (*Sankaran Nair and Sadasiva Aiyar*, JJ.) SECRETARY OF STATE *v.* RAGHUNATHA THATHACHARIAR. 38 Mad. 108 = 24 M.L.J. 31 = 18 I.C. 41 = (1913) M.W.N. 261.

———*Inam—Land or revenue— Melvaram and kudiwaram.*

A grant after describing the lands granted proceeds thus: ' Total of sixty *velies* of land including wet and dry lands, water, trees, stores, Nidhi Nirshapa Sidha Dadhya present and future Patti, all Bani and all Kajna with all Samudana with water from the land.' *Held*, that this was a grant only of the land revenue and, that a suit for declaration that the resumption of the same by Government was illegal, was barred by S. 4 of the Pensions Act. Government may grant kudiwaram to one person and the melwaram to another simply; similarly though both the kudiwaram and the melwaram may be combined in the hands of Government there is nothing to prevent it from treating them as distinct interests and granting them to the same person. Land revenue is not a servitude attaching to the land. The kudiwaram and melwaram are distinct interests constituting the totality of ownership in the land. The revenue is not a servitude on property which belongs to the kudiwaram holder. (*Benson and Sundara Aiyar*, JJ.) MUTHU SRI JIRJAMBA BAI SAHIB *v.* SECRETARY OF STATE. 23 M.L.J. 687 = (1913) M.W.N. 255 = 15 I.C. 871 = 12 M.L.T. 541.

———*Inam—Poramboke—Right of grantee to channels and tanks.*

An inam title-deed contained the following words: ' I acknowledge your title to a personal inam consisting of the right to the Government revenue of land claimed to be.....acres situated in the village of L' and the words ' Besides poramboke ' were inserted in the margin. *Held*, that the insertion of the words 'besides poramboke ' need not necessarily be taken to be an acknowledgment by the Government of the inamdar's title to all kinds of poramboke. The effect to be given to those words depends on the evidence in each case and the circumstances attending the grant. 14 I.C. 261; 28 M. 539, Ref. to. Where the channels or tanks in the village granted were not connected with a Government source of irrigation and were not controlled by the Government to any appreciable extent, the said words had the effect of investing the property in the channels and tanks in the inamdar. (*Benson and Sundara Aiyar*, JJ.) THE SECRETARY OF STATE *v.* KANNAPALLI. 37 Mad. 384 (Note) = 23 M.L.J. 109 = 15 I.C. 595 = (1912) M.W.N. 771.

[Also 18 I.C. 295 = 37 Mad. 369 (Note)].

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———*Inam—Revenue — Exemption from—Onus—Acquisition for a Municipality—Transferee of Municipality—Inam land.*

Municipal Council acquired certain inam land under the Land Acquisition Act and by successive sales the plaintiff became the owner of it. *Held*, that when the land vested in the Government it became ordinary Government property liable to assessment in the hands of any person who might afterwards become its occupier. If the plaintiff claimed to hold the land free from the payment of assessment as the Government may fix, he must show some grant exempting him from the payment of the ordinary assessment. The Government order conferring an absolute property on all transferees from a Municipality simply removed all the objections to the transfer on the ground that the transferor is a Municipal Council and did not grant to such transferees exemption from payment of land revenue. (*Sundara Aiyar and Phillips*, JJ.) CHALLA PILLAI HANUMANULU PANTULU *v.* THE SECRETARY OF STATE. **36 Mad. 373 = 22 M.L.J. 448 = 15 I.C. 376 = 11 M.L.T. 207.**

———*Inam—Poramboke—Shrotriem tenure—'Besides poramboke'—Meaning of—Rights of grantee.*

A grant of Shrotriem tenure of certain villages on payment of quit-rents and containing a provision for resumption and also containing the words 'besides poramboke' does not give the grantee a right to river beds though they formed part of the original villages or even to all porambokes such as burning grounds, thrashing floors, public roads and rivers. A shrotriem grant in the Madras Presidency gives no right to the lands and so the grantee cannot interfere with the tenants so long as they pay the established rents. The object of the grant is to make provision for officials whose office is no longer necessary and only the income of the lands is granted. (*Benson and Bakewell*, JJ.) PAPALA NARAYANASWAMI NAIDU *v* PENSALANI KANNUIAPPA NAIDU. (1912) **M.W.N. 496 = 14 I.C. 261 = 24 M.L.J. 33.**

———*Inam—Presumption—Grant by Zemindar.*

Where an inam is granted by a Zemindar the presumption is that only the melwaram right is granted. (*Benson and Sundara Aiyar*, JJ.) GULLAPALLI BHADRAYYA *v.* GULLAPALLI VENKATARATNAM. **10 M.L.T. 54 = 11 I.C. 545 = 21 M.L.J. 803.**

[This is no longer law. See 43 Mad. 166 = 51 I.C. 304 (P.C.).

———*Inam—Estates in Berar—Fixity of rent—Enfranchisement—Berar Inam Rules.*

The devolution and incidents of an inam estate in Berar are regulated by the Berar Inam Rules, subject entirely to the sanad or certificate or other document evidencing the special terms of the grant in the paticular case. An Inam or grant may be entire or only partial. The mere fact that the same portion of the revenue which has been paid previous to the Inam enquiry has continued to be paid would not show that the jagir had been enfranchised and that it had become a freehold. Property consisting of an ordinary Inam village is liable to partition at the suit of a co-sharer, except when it is held on saranjam or other impartible tenure or where the terms of the original grant imposed a condition upon its enjoyment that the management should rest with a particular branch of the family of the grantee. (*Dhobley*, A.J.C.) KRISHNA RAO *v.* NILKANTH. **5 N.L.J. 25 = 18 N.L.R. 163 = 1922 Nag. 52.**

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———*Inam in Berar—Alienation.*

An alienation by an *inamdar* holding the *inam* under R. 5 of the Berar Inam Rules, is not binding on his successor and a plea of adverse possession cannot be successfully raised against the successor of the alienor. (*Hallifax*, A.J.C.) MD. SIRAJ-UD-DIN *v.* FAYAZ-UD-DIN. **59 I.C. 473.**

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———*Jagir — Resumable grants —Circumstances leading to the inference that grant is resumable—Service tenures—'Resumption'.*

Where the jagir was specifically mentioned as a service tenure involving the performance of police and other duties and the settlement with the Taluqdar showed that the rent was increased from Rs. 735 to Rs. 1,000, four villages were taken out of the Pargana and set apart for the maintenance of the widows of the previous holder and a new patta was granted to him by the Maharajah and a new Parvana was issued to him at the zemindar's instance for possession of the jagir: *Held*, in face of these facts it is idle to contend that the settlement with the taluqdar was a continuance of the old tenure. Had the talukdar succeeded to the jagir by right of inheritance, the maintenance of the Ranis, the widows, would have had no concern with it or the right to take away any part of the property to provide for their maintenance. The Maharaja's interference on behalf of the widows is explainable only on one hypothesis, that he was making a new arrangement by virtue of a right recognized by the authorities. "Resumption" in connection with these service tenures does not mean that on failure of the direct male line it "escheats to the Zemindar and becomes what is called his *Sir* or khas property; the jagir retains its character, but the Zemindar becomes entitled to make a new settlement with the knowledge and sanction of the authorities. (*Mr. Ameer Ali*). RAJA SRINATH RAY *v* MAHARAJA PRATAP UDAI NATH SAHAI DEO. **33 M.L.T. (P.C.) 408 = 28 C.W.N. 145 = (1923) M.W.N. 702 = 1923 P.C. 217 (P.C.).**

———*Jagir—Life estate—Putra pautradi—Meaning of—Collateral heirs—Resumption, on failure of lineal male heirs—Chota Nagpur.*

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A jagir is to be taken *prima facie* an estate for life only though it might be granted in such terms as to be heritable. In order to make the estate one of inheritance, the terms making the grant must, if they are to be considered alone, be unambiguous and must clearly show whether it was intended by the grantor that the right of inheritance should be general or should be confined to a particular class of heirs. A village in Raj Ramgarh, Chota-Nagpur was granted as jagir, to be enjoyed by the grantee (the brother of the then Zemindar) *putrapoutradi*. The evidence in the case showed that succession to jagirs in the locality had always been in the male line of the grantee. *Held*, that the jagir was resumable by the descendants of the grantor upon failure of the grantee's male descendants. 7 C. 304 ; 24 C. 834, Dist. (*Sir John Edge.*) RAM NARAIN SINGH *v.* RAM SARAN LAL. **46 Cal. 683 = 29 C.L.J. 332 = 36 M.L.J. 314 = 17 A.L.J. 398 = 21 Bom. L.R. 597 = (1919) M.W.N. 318 = 50 I.C. 1 = 23 C.W.N. 966 (P.C.).**

[Reversing 42 Cal. 305 = 28 I.C. 610 = 19 C.W.N. 466.]

——*Jagir — Incidents of — Saranjam—Inam*

A grant in jagir of the ordinary character implies no grant of the soil but a personal grant only of the revenue to the grantee. It is personal and not hereditary and is resumable at pleasure and being personal and temporary, is necessarily impartible. A custom of primogeniture would be radically inconsistent with the personal and non-transmissive character of a grant in jaghir. The term 'Saranjam' is the Marathi equivalent to the term jagir. The term 'inam' is one of more generic significance and is applicable to a Government grant as a whole and includes a Saranjam. (*Lord Shaw.*) RAGHOJI RAO SAHEB *v.* LAKSHMAN RAO SAHEB. **36 Bom. 639 = 39 I.A. 202 = 16 C.W.N. 1066 = 28 M.L.J. 383 = 12 M.L.T. 472 = (1912) M.W.N. 1140 = 14 Bom. L.R. 1226 = 16 I.C. 239 = 17 C.L.J. 17 (P.C.)**

——*Jagir—Jagirs by Native princes for Police services—Service tenure—Ejectment.*

In a suit for the ejectment of the Sarbarakar in certain mouzas in Zillah Kurdah, Orissa, the lands were found to be one of those jaghirs granted by Native princes for certain services and also paying certain light quit-rent. The service consisted in maintaining Paiks for performing Police and military duties. After confiscation by British Government these lands were treated as Khas Mahal and at the Settlements were resumed, though the Dalbehars (hereditary military chiefs) were engaged for the collection and payment of Government Revenue under the name of Sarbarakars. In 1861 the Government of Bengal made a grant of the village in which the suit jagir land was situate to the Mathadharis who thus became the owners of village free from the interference of the Government officials. The Mathadharis now claimed to have dismissed the defendant, who was in possession of some Sarbark jagirs in the village from service as if he were a mere servant or officer first of Government and then of Mathadharis. *Held*, that the Sarbarakars were something higher than mere servants and from 1861 were treated by Mathadhris as tenants and the defendants therefore could not be ejected. (*Chitty and Teunon, JJ.*) KRIPASINDHU ROY PITAM *v.* MOHUNT PARMANAND DAS GOSSAIN. **22 I.C. 389 = 18 C.W.N. 74.**

——*Jagir—Incidents—Alienability—Liability to forfeiture—Inheritance—Course of descent.*

The term 'Jagir' does not necessarily imply a conditional grant and evidence that jagirs in a district are conditional and inalienable would not warrant the grant being regarded as conditional. In the case of a jagir created by a document its alienability and liability to forfeiture depend on the terms of the particular grant and not on those of grants made to others. (*Jenkins* C.J. *and Mookerjee*, J.) BHAGWAT BAKSH ROY *v.* SHEO PRASAD SHAHU. **18 C.L.J. 277 = 21 I.C. 481 = 18 C.W.**

——*Jagir—Funeral expenses, if a charge on income.*

Each new Jagirdar gets his Jagir free of claims in connection with his predecessor, and it is doubtful whether funeral expenses of the previous holder are a legal charge on the Jagir income. A declaratory decree in a favour of a Jagirdar who refused to pay funeral expenses was refused especially because he did not claim refund of expenses paid under order of Collector. (*Chevis, J.*) ASAD ALI *v.* MT. SHARIFUNNISSA. **1922 Lah. 366.**

——*Jagir—Meaning of—Punjab.*

In the Punjab the term 'Jagir' is ordinarily restricted to an assignment of land revenue and not of the land. Ordinarily Jagir is not land. (*Kensington and Rattigan, JJ.*) MAYA DAS *v.* GURDIT SINGH. **146 P.W.R. 1912 = 16 I.C. 853 = 167 P.L.R. 1913.**

——*Jagir—Inam—Distinction.*

Jagirs like inams were usually given for life, though in course of time they also became permanent and heritable. An inam was a present or gift either to an individual or for a public purpose, while jagirs generally involved conditions of service or a reward for service. (*Coutts-Trotter and Srinivasa Aiyangar, JJ.*) SAM *v.* RAMALINGA MUDALIAR. **40 Mad. 664 = 34 I.C. 803 = 30 M.L.J. 600.**

——*Jagir—Berar Inam rules—Rules governing such grants.*

It is not the law that every grant of a Jagir whatever the circumstances under which it was made or the special conditions attached to it may be is governed absolutely by the Berar Inam Rules. The duty of the court in matters

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affecting a Jaghir is to ascertain the meaning and effect of the grant in each case from the circumstances and objects with which and the reliefs under which the same was granted. (*Hallifax and Prideaux*, A.J.C.) SUBBAN ALI *v.* IMAMI BEGAM. **1922 Nag. 129.**

———*Jagir—Berar.*

The Berar Inam Rules of 1859 modified to the extent stated in the Sanad Certificate in each case are applicable to every grant of Jagirs in Berar, whatever the circumstances under which it was made or the special conditions attached to it may be. In case of a grant which is merely a remission of the revenue, the actual benefit of the remission cannot be restricted to some only of the already existing owners of the proprietary interest or to particular heirs, and for that reason such a grant practically amounts to grant to all the existing shares and all their heirs during the continuance by the particular persons or the particular heirs to whom the grant is made. But where a grant of the proprietary interest is combined with a remission of the revenue there are no circumstances or vested interests, which compel the grantee to share the benefit of the grant with others, the devolutions as well as the duration of the whole estate are regulated by the operation of the terms of the grant. (*Hallifax and Predeaux*, A.J.Cs.) MIR SUBHAN ALI *v.* IMAMI BEGAM. **4 N.L.J. 192.**

———*Jagir—Incidents of—Heritability and transferability.*

A grant was obtained by a Prince from his father, the King of Oudh and after the annexation of Oudh, was maintained by British Government. A sanad was issued to Prince by Government as follows: 'It having been established after due inquiry that the Prince holds the undermentioned villages in rent free tenure under the former Government, the Chief Commissioner is pleased to maintain the tenure in property so long as there are lineal heirs... subject to conditions.' This grant was held to be a heritable and transferable estate lasting as long as the grantee had lineal descendants subject to the contingencies specified in the grant. (*Stuart and Kanhaiya Lal*, A.J.Cs.) HUSAIN ALI MIZA *v.* MUHAMMAD AZIM KHAN. **31 I.C. 728 = 18 O.C. 168.**

———*Jagir—Nature of tenure—Life estate—Assertion of higher right—Effect of.*

Jagirs are to be considered as life tenures only and with all other life tenures are to expire with the life of the grantee unless otherwise expressed in the grant. The mere assertion of a Jagirdari right acquiesced in by the superior landlord cannot be taken to import a claim to or an acknowledgment of a larger interest than that of life estate. 36 M.L.J. 347; 3 B. 186, followed. (*Miller*, C.J. *and Jwala Prasad*, J.) MAHARAJAH PRATAB UDAI NATH SHA DEO *v.* GANESH NARAYAN SAHI. **70 I.C. 282 = 1931 Pat. 369.**

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———*Jagir—Resumptian—Nature and effect of transfer of a portion—Onus of proof.*

Where a portion of the jagir has been sold and the transferees and persons claiming under them are in possession for generations, the onus of proving the existence of a right of resumption of the jagir by the descendants of the Jagirdar lies on the latter. (*Chamier* C.J. *and Sharfuddin*, J.) RAMESWAR LAL BHAGAT *v.* GIRWARI PRASAD SINGH. **5 P.L.W. 316 = 45 I.C. 883 = (1918) Pat. 156.**

———*Jagir—Tenure heritable and transferable—Execution sale*—Res judicata.

The Police jagirs in the Zamindari of Pachete are hereditary subject to the right of the Government to dismiss a *Jagirdar* and appoint if necessary even an outsider. When a police jagir was sold in execution of a decree and the succeeding jagirdar objected to the sale and the objection was overruled, and he then brought a suit which was dismissed, *held*, that his heir, the plaintiff, is barred by *res judicata* reason of the dismissal of the suit by his father. (*Mullick and Jwala Prasad*, JJ.) JADAB LAL SINGH *v.* DEBI LAL SINGH **3 P.L.W. 149 = 2 P.L.J. 725 = 42 I.C. 399 = (1919) Pat. 426.**

———*Jagir—Agreement between Zemindar and Jagirdar for commutation of customary dues.*

Under an agreement entered into by a Jagirdar with certain Zemindars holding permanent rights in the jagir land the Jagirdar agreed to accept certain rates in cash and kind in consideration of the customary dues he was entitled to receive as Jagirdar. The Jagirdar's son after his father's death brought a suit to avoid this agreement alleging that by the terms of the grant conferring the jagir a limited estate only was conveyed and therefore the grantee's rights to alienate were limited to his lifetime. *Held*, that the intention of the grantors was to confer hereditary estate in perpetuity without imposing any condition restricting alienation to make a permanent settlement; the plaintiff therefore was bound thereby. (*Crump and Kemp*, A.J.C.) MIR SHER MAHOMED *v.* JETHOMAL. **53 I.C. 484 = 14 S.L.R. 1.**

Life Estate.

———*Life-estate—Hikim.*

According to a family custom the eldest of the owner succeeded to the property as Raja and the second was the Hikim. A grant by the Hikim is operative during the life of the Raja only and not for the lifetime of the grantor or grantee. (*Mookerjee and Beachcroft*, JJ.) SRI SRI RADHA MADHAB NARAIN (DEB) HIKIM *v.* MILAN MAHATO. **21 I.C. 204 = 18 C.L.J. 28.**

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———*Maintenance grant—Tivai grant—Custom of reverter on failure of male descendant*

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of donee — Adoption by widow — Rights of adopted son.

In the Thakorate of Gamph a Hindu Rajput family in the Bombay Presidency, holding an impartible estate subject to the rule of primogeniture it was customary to grant villages to junior sons of the holder of the *gaddi* for Jivai or maintenance. The grant reverted to the *gadi* on failure of the grantees' male descendants, widows being excluded. One of such grantees died issueless leaving a widow who purported to adopt a son subsequently. *Held*, that the adopted son inherited the grant. (*Mr. Ameer Ali.*) PARTAP SINGH SHIVSINGH *v.* AGARSINGHJI RAISINGH. **43 Bom. 778 = 36 M.L J. 511 = 17 A.L.J. 522 = 21 Bom. L.R. 496 = 1 U.P.L R. (P.C.) 39 = (1919) M.W.N. 818 = 10 L.W. 389 = 50 I.C. 457 = 24 C.W N. 57 (P.C.)**

[Reversing on appeal but not on this point 28 I.C. 529 = 17 Bom. L.R. 273.]

———*Maintenance grant—Rights of grantee and his heirs - Annuity — Right of collateral heirs—Charge on estate—Perpetuity—Liability of heirs of grantor.*

Where in settlement of the rights of a claimant to the Zemindari of Ramnad, the then Zemindarini and her heirs agreed to pay a specified annuity to the claimant and his heirs, (*santhathiparamparyamai*). *Held* on the construction of the document that the right to the annuity was not confined to lineal heirs of the grantee ; that the annuity was a charge on the estate and not a covenant and was not obnoxious to the rule of law against perpetuities ; and that the agreement was enforceable, against the estate in the hands of the Zemindarini's successors (*Lord Phillimore.*) RAJA RAJESHWAR DORAI *v.* SUNDARA PANDIAYASMID THEVAR. **42 Mad. 531 = 17 A.L.J. 153 = 36 M.L J. 164 = 23 C W N. 849 = 29 C.L.J. 351 = 25 M.L.T. 400 = 21 Bom. L.R. 885 = (1919) M W.N 611 = 49 I.C. 704 = 10 L.W 362 (P C.)**

[Affirming 27 I.C. 283 = 27 M.L.J. 694.]

———*Maintenance grant* — Babuana *and Sohag grant—Incidents of—Dharbanga Raj—Custom of exclusion of widows — Effect of partition—'Auras putra poutradick'—Meaning of.*

The Dharbanga Raj is an impartible estate ascending by primogeniture according to the custom of the family. The younger sons of the Maharaja are by family custom (*kulachar*) entitled by way of a *babuana* grant to the portion of the Raj estate for the maintenance of himself and his male descendants in the male line. Similarly the wife of the younger sons gets by way of sohag grant, the usufruct of a portion of the Raj estate for the maintenance of herself and her male descendants in the male line. In each case the property granted continues to form part of the Raj from which it is never separated and reverts to the Maharajah

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for the time being on the failure of male descendants in the male line of the grantee. Babuana and Sohag grants differ essentially from absolute grants and are subject to the *kulachar* (family custom) under which they are authorised and in accordance with which they are made. Widows and daughters and the descendants of daughters are by custom applying to such grants excluded from the succession. The fact that there was no evidence of the exclusion of a widow after a partition between the members of the joint family holding properties originally the subject of babuana and sohag grants would not prevent a logical extension of the kulachar to such a case and the custom excluding the widows would apply notwithstanding a partition. Babuana and Sohag grants descend in the family of Dharbanga Raj, not to the eldest male heir of the grantee, but to all the existing male heirs in the male line of the grantee as co-parceners. 36 I.A. 176, Dist. The words 'auras putra poutradik' in sanads evidencing babuana grants must be consistently with the custom excluding widows and not as general words of inheritance. (*Sir John Edge.*) EKRADESHWAR SINGH *v.* JANESHWARI BAWASIM. **42 Cal. 582 = 41 I.A. 275 = 18 C W.N. 1249 = 27 M.L.J 373 = 16 M.L T 382 = 1 L.W. 863 = (1914) M W N. 807 = 12 A.L.J. 1217 = 21 C L.J. 9 = 25 I.C. 417 = 17 Bom. L.R. 18 (P.C.).**

[On appeal from 3 I.C. 207.]

———*Maintenance grant—Perpetual or life—Dauhi transha—Meaning.*

A rich and soulless Zemindar made a Mashhara bandegi-patra (maintenance grant) in favour of his daughter, providing that the daughter had been receiving a certain sum for her maintenance and other expenses and that unless some deed was executed objection might be raised in future to her getting the 'settled amount of maintenance' which was, therefore, made 'Kaim', (permanent) by the deed and that the daughter would get the same in '*dauhitransha*'. *Held*, that the grant was perpetual not limited to the life of the daughter's sons and that '*dauhitransha*' was intended to mean 'in the line of the daughter's son'. (*N.R. Chatterjee and Panton, JJ.*) RAJLAKHI DEBYA *v.* SAROTA-SUNDRI DEBY. **56 I.C. 803**

———*Maintenance grant*—Khorposh—*Incidents of.*

Khorposh grants are heritable in the male line and determinable only on the failure of male heirs. The interest of a *Khorposhdar*, though more than an interest for life, be is nevertheless a limited interest, liable to be defeated at any time by the failure of heirs and therefore resumable by the proprietor for the time being. (*Chitty and Teunon, JJ.*) JAGANNATH MARWARI *a.* GIRIDHARI SINGHA. **29 I.C. 429 = 19 C.W.N. 102.**

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———*Maintenance grant*—Pachete Raj—*Customs.*

According to the family custom in the *Pachete Raj*, a maintenance grant to the members of the Raj is not absolute but lasts for the lifetime of the grantee and it is optional with the successor of the grantor to resume or confirm the grant. Where the holder of a *Pachete Raj*, after having granted to defendant certain villages for her maintenance, created a *putni* in favour of the predecessor of the plaintiff alleging resumption of the grant but in fact it was not resumed by his successor on his death, in a suit by a plaintiff to eject the defendant as trespasser. *Held*, that the suit was premature for want of title. (*Mookerjee and Beachcroft*, JJ.) CHOTA BAHIRA SAHEBA *v.* PURNA CHANDER CHANDPURI. **21 C.L.J. 144=27 I.C. 982=19 C.W.N. 1272.**

———*Maintenance grant—Dharbanga Raj—Babuana and Sohag Grants—Revenue and cesses—Liability to pay—Decree for revenue against holder—Sale of property*

The revenue and cesses in respect of the properties granted in the case of Babuana grants are to be paid by the grantee to the Raja. If the holder of the grant for the time being does not pay the revenue and cesses to the Raja he might sue to recover the same and if necessary, realise the same by the sale of the Babuana property and such a sale would effectually defeat the claims of all the members of the family entitled to maintenance out of the property. (*N. R. Chatterjee and Walmsley*, JJ.) HITENDRA SINGH *v.* MAHARAJA SIR RAMESHWAR SINGH BAHADUR. **22 I.C. 873=18 C.W.N. 42.**

———*Maintenance grants—Life estate—Presumption—Rebuttal—Alienability.*

Grants for maintenance are resumable *prima facie* on the death of the grantee. 23 A. 194; 22 W.R. 225, Foll. But this is not an inflexible rule and if property is vested in the grantee and his descendants by appropriate words creating an hereditary estate it is not cut down to a life estate and made inalienable because it is a maintenance grant. 9 M.I.A. 55; 3 B. 186; 4 C.L.J. 399; 4 A. 370, Ref. (*Mookerjee and Holmwood*, JJ.) SECRETARY OF STATE *v.* RASHIDUL HUQ. **21 I.C. 93=18 C.L.J. 31.**

———*Maintenance grant.*

Unenfranchised *inam* lands not granted for public or private services but for maintenance of the donee and his heirs, are capable of alienation as the alienation is not prohibited by law nor is it opposed to public policy and therefore the attachment and sale in execution of decree against the donee is not invalid. (*Sadasiva Aiyar and Coutts-Trotter*, JJ.) VENKATRAMA AIYAR *v.* CHANDRASEKARA AIYAR. **41 Mad. 632=40 M.L.J. 345=13 L.W. 383=62 I.C. 625=(1921) M.W.N. 204.**

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———*Maintenance grant—Permanent grant—Presumption—Payment for a long series of years.*

In cases where a maintenance grant is not forthcoming, the fact that payment has been made for successive generations may be taken as evidence from which a permanent heritable grant might be presumed. But in respect of the grant for life there is no analogy between a maintenance grant and the service grant. (*Wallis*, C.J. *and Seshagiri Aiyar*, J.) SUGUTUR IMMEDY PEDDA CHIKKA *v.* SUGUTUR IMMEDY SAMBASADASIVA CHIKKA. **43 I.C 654.**

———*Maintenance grant—Succession.*

Where a grant of an inam was made as a subsistence grant to the ancestors of plaintiff's and the defendant's family it cannot be taken apart from the original inam grant, that it ceased so far as the plaintiff's family was concerned on the death of his adoptive father and that it only passed to lineal descendants and not to an adopted son. (*Benson and Sundara Aiyar*, JJ.) BOYANA PALLI *v.* POTHAPALLI. **12 I.C. 548=(1911) 2 M.W.N. 384.**

———*Maintenance grant—Construction of.*

A maintenance grant is *prima facie* for the life-time of the grantee or the grantor and the use of the word 'always' or 'for ever' does not *per se* create a heritable estate. (*Drake Brockman*, J.C.) MAHOMED ALI KHAN *v.* SHUJAT ALI KHAN. **46 I.C 913.**

———*Maintenance grant—Khasi—If heritable—Presumption.*

The presumption in the case of grants to a person as khasi is that it is for furnishing emoluments for the office of Khasi and the mere addition of the words 'for maintenance' cannot make it a heritable and divisible grant. (*Stanyon*, A.J.C.) MOHAMMAD JAFAR ALI *v.* MOHAMMAD TURB ALI. **46 I.C. 853.**

———*Maintenance grant—Dihdar, definition of.*

A dihdar was originally a person to whom a certain portion of the property was assigned by the vendee for his subsistence. (*Kanhaiya Lal*, A.J.C.) KISHUN *v.* SHYAM SUNDAR. **35 I.C. 411=19 O.C. 27.**

———*Maintenance grant—Life estate.*

Every document must be interpreted on its own terms not in the light of other documents which are differently worded. The mere fact that the object of the grant is the maintenance of the grantee would not retract from the absolute nature of the grant, if otherwise it gives full right to the grantee. The presumption that it is for a life estate prevails only when there are no words making it heritable and transferable. (*Piggott*, J.C.) MULLU *v.* RAGHUBAR SINGH. **18 I.C. 127.**

———*Maintenance grant—Rights of grantee—Rent and profits of estate—Accretion.*

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Where a Hindu wife is given possession of certain villages under a lease by her husband subject to the payment of rent to him, she has no estate in the villages but only a maintenance grant; and the substance of the grant is that it is the rents, issues and profits that are alienated and not the immoveable properties out of which such rents, issues and profits arise which remain the property of the grantor and annexed to his estate The undisposed of accumulations of the wife cannot follow the "estate" because the title to the estate was never in the wife but always in her husband the grantor. In order that there may be an accretion there must be an estate to which the accumulations may accrete. (*Das and Adami, JJ.*) RAMESHWAR NARAIN SINGH *v.* RIKNATH KOERI. 67 I.C. 451=1923 P. 165.

Minerals.

——*Minerals—Right of grantee—Presumption—Rent-free grant.*

Where a Zemindar granted in 1791 a Zemindari village as rent-free brahmottar land, the grantee 'to enjoy it comfortably by cultivating and getting the same cultivated by others' *held*, that the minerals underneath did not pass to the grantee. 37 I.A. 136; 24 C. 440; 36 I.A. 148; 39 I.A. 133; 44 I.A. 46, Rel. on. Where a grant is made by a Zemindar of a tenure at a fixed rent or rent-free, though the tenure may be permanent, heritable and transferable, minerals will not pass in the absence of express evidence to that effect. (*Sir John Edge.*) RAGHUNATH ROY *v.* RAJA OF JHERIA. 47 Cal. 95=46 I.A. 168=17 A.L.J. 897=36 M.L.J. 660=1 U.P.L.R (P.C.) 43=24 C.W.N. 914=26 M.L.T. 76=30 C.L.J. 160=21 Bom. L.R. 895=50 I.C. 849=10 L.W. 347 (P.C.) Also 28 I.C. 811=19 C.W.N. 875.

———*Minerals—Inamdar—Right to.*

In the absence of an express grant of the right to quarry stones in the inam grant, the inamdar is not entitled to quarry stones free of payment of royalty to Government. The enfranchisement of the inam would not confer a greater right on the grantee than what he had under the original grant. The conduct of the Government at one time in paying compensation to the grantee for acquisition of such quarries would not estop the Government from claiming their rights. (*Sir Lawrence Jenkins.*) SECRETARY OF STATE *v.* SRINIVASACHARIAR. 40 M.L.J. 262=13 L.W. 592=29 M.L.T. 181=(1921) M.W.N. 111=48 I.A. 56 (P.C.)

[Reversing (*Abdur Rahim*, O.C.J., *Seshagiri Aiyar and Phillips*, JJ.) SECRETARY OF STATE *v.* SRINIVASACHARIAR 40 Mad. 268=31 M.L.J. 483=20 M.L.T. 323=5 L.W. 170=39 I.C. 837=(1917) M.W.N 292. This itself was an appeal from 23 I.C. 144=15 M.L.T. 271.

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———*Minerals—Mokurrari lease—Rights of grantee—'Mai Hak Hakuk' (with all rights) —Meaning of.*

A Mokurrari lease by the Zemindar 'with all rights' (Mai hak hakuk) does not convey the right to the subjacent minerals in favour of the lessee. Even though a mokurrari lease is a permanent, heritable and transferable tenure, unless there is an express or plainly implied grant of subjacent minerals, they remain with the Zemindar. The expressions 'mai hak hakuk' do not increase the actual corpus of the subject affected by the puttah. In the absence of a specific provision to the contrary, it is an essential characteristic of a lease that the subject of it is one which is occupied and enjoyed and the corpus of which does not disappear by reason of the user. 37 I.A. 136; 39 I.A. 133; 44 I.A. 46, Ref. (*Lord Shaw*) GIRDHARI SINGH *v.* MEGHLAL PANDEY. 48 Cal. 87=22 M.L.T. 338=16 A.L.J 851=33 M.L.J. 687=3 Pat. L.W. 169=26 C.L.J 534=(1917) M.W.N. 232=22 C.W.N 201=7 L.W. 90=20 Bom. L.R 64=42 I.C 651=44 I.A. 245 (P.C.)

[On appeal from 34 Cal. 388=5 C.L.J. 208=11 C.W.N. 527.

———*Minerals—Right of grantee—Proof—Rights to Zemindar—Permanent Settlement.*

Where a grant is made by a Zemindar of a tenure at a fixed rent although the tenure may be permanent, heritable and transferable, minerals will not be held to have formed part of the grant in the absence of express evidence to that effect. 37 I.A. 136; 39 I.A. 133, Rel. A talabi brahmottar grant of a mouzah by a Zemindar prior to 1790 did not carry with it mineral rights. (*Lord Buckmaster*). SASHI BHUSHAN MISRA *v.* JYOTI PRASHAD SINGH DEO. 44 Cal. 585=1 Pat. L.W. 361=21 C.W.N. 377=16 A.L.J 209=32 M.L.J. 243=(1917) M.W.N. 226=25 C.L.J. 265=21 M.L.T. 303=19 Bom. L.R. 416=6 L.W. 2=40 I.C 139=44 I.A. 46 (P.C.).

[See also 50 I.C. 849=47 Cal. 93 (P.C.), 42 I.C. 631=45 Cal. 87 (P.C.), 6 I.C. 785=37 I.A. 136 (P.C.), 15 I.C. 219=39 I.A. 133 (P.C.).

[On appeal from 38 Cal. 818=12 I.C. 482=14 C.L.J. 361=16 C.W.N. 241.

———*Minerals—Right—Khorposh grants.*

A *khorposh* grant for the maintenance of the junior members of the family of a Zemindar does not carry with it a right to the sub-soil minerals (*Chitty and Teunon, JJ.*) JAGANNATH MARWARI *v.* GIRIDHARI SINGHA. 29 I.C. 429=19 C.W.N. 102.

———*Minerals—Right to, when passes—Maintenance grant.*

Where a deed of grant is one for maintenance for the life of the grantee and does not contain any express provision authorising the grantee to open new mines and use the minerals

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thereof, the grantee has no right to grant a mining lease for the purpose of opening and working new mines. (*Mookerjee and Beachcroft*, JJ.) F F. CHRISTIAN *v.* TEKAITNI NARBADA KOERI. **20 C.L.J 527 = 27 I.C. 471 = 19 C.W.N. 796.**

———*Minerals—Mines unopened at date of grant—Right in.*

A Mogloi *Brahmottar* grant more than 100 years old, even though permanent, does not pass the mines, unopened at the date of the grant. 37 C. 723, P.C.; 38 C 845; 39 C. 696, P. C., Foll.; 1 C. 391, P.C., Dist. (*Fletcher and Richardson*, JJ.) KANJA BEHARI SEAL *v.* RAJA DURGA PRASAD SINGH. **42 Cal. 346 = 20 C.L.J. 301 = 26 I C. 819 = 19 C.W.N. 203.**

———*Minerals — Zemindari — Nimak Sayahar Mahal—Righ of grantee to enter on land.*

A grant carries with it the means reasonably necessary for its enjoyment and the grantee of a *nimak sayahar mahal* is entitled to enter on the land of the Zamindari to dig for saltpetre. He is not merely the grantee of the revenue on saltpetre manufactured by others. (*Jenkins*, C J. *and Mookerjee*, J.) GOPAL CHAND *v.* JANKI KUAR. **41 Cal. 256 = 18 C.L J. 151 = 20 I.C. 650 = 17 C.W.N. 1195.**

———*Minerals—Patni.*

Under a patni, the Patnidar got all the rights previously exercised by the Zamindar. The patnidar was to hold and enjoy all the lands of the mahals with 'all zemindari rights whatsoever.' *Held*, that mining rights were granted with the patni to the patnidar. (*Prinsep and Hill*, JJ.) ALLI QUADEER *v.* JOGENDRA NARAIN. **16 I.C. 411 = 16 C.L.J. 7.**

———*Minerals—Grant by Zemindar—Subsoil rights.*

A grant, by a Zamindar, of a tenure in lands within his zemindari does not pass the minerals unless it appears clearly from the terms of the grant that the minerals were included in the grant. 47 C. 25. P.C., Foll. (*Miller*, C.J. *and Coutts*, J.) KUMAR PRAMATH NATHA MALLIA *v.* MEIK. **3 Pat. L J 273 = (1920) Pat. 146 = 56 I.C. 184 = 1 Pat. L.T. 360 [Also 57 I.C. 766 = 1 Pat. L.T. 563.]**

———*Minerals—Khorposh—Right to subsoil—Power to admit such rights of Zamindar ose estate is under Encumbered Estates Act.*

Prima facie Khorposhdars are mere maintenance holders having no right to grant leases of sub-soil rights in the khorposh village to others. A Zamindar whose estate is under the Chota Nagpur Encumbered Estates Act cannot execute a document admitting that the Khorposhdars have right to the sub-soil of the Khorposh lands. (*Chamier*, C J., *and Jwala Prasad*, J.) SATYA CHARAN SRIMANI *v.* DINA NATH GORAIN. **42 I C. 823 = (1917) Pat. 237.**

GRANT—Resumption.

———*Minerals—Mines—Principles governing rights of grantor and grantee.*

When the sub-soil is not expressly granted, a permanent tenure, though hereditary, does not include in it the enjoyment of the mineral rights; and in the case of the grantor having both the ownership and the right of property in the surface and the sub-soil prior to the date of the grant of the land, severance of the surface rights from the property in the sub-soil is presumed at the time of the grant, the grantor's rights being analogous to those of a fee simple free-hold owner in England. This presumption gives the grantor a right to enter on the land for exercising his rights in the sub-soil which are deemed to be reserved to him. The principles of free-hold, and not of copy-hold should govern the case, as under the former system there is no deadlock as there is under the latter, when no reservation or custom is proved. A Court can by injunction prevent damage by the grantor or his assignees in working the mines. 37 C. 723, P.C., 39 C. 696, P.C. Ref. to; 45 L.J. Ch. 699, Dis. *Atkinson and Kingsford*, JJ.) NAWAGARH COAL CO., LTD. *v.* BEHARI LAL. **20 C.W N 1135 = 1 P. L J. 278 = 37 I.C 480 = 2 P. L.W. 324.**

Palayom.

———*Palayom—Service tenure—Enfranchisement.*

Where a palayom is granted on service tenure, it is inalienable so long as the liability to render service subsists. As soon as the services are abolished the lands become alienable and heritable like ordinary property though a sannad fixing the peishcush has not been issued. (*Ayling and Seshagiri Aiyar*, JJ.) KRISHNA AIYAR *v.* SWAMINATHA AIYAR. **8 L.W. 140 = 24 M.L T. 101 = 47 I.C. 723 = (1918) M.W.N. 803.**

Resumption.

———*Resumption—Services.*

Grant of land for services rendered and to be rendered cannot be resumed by the grantor either on discontinuance or after they are no longer required. (*Batchelor*, A.C.J. *and Shah*, J.) BASLINGAPPA *v.* CHANDRAPPA. **35 I.C. 860 = 18 Bom. L.R. 695.**

———*Resumption—Service grant.*

Where there is a grant of land burdened with duty or service, the duty or service being the sole motive and condition of the grant, on failure or refusal to perform the duty or service the land is resumable. Where an hereditary office is created, and bestowed hereditarily upon a person's family from generation to generation and lands are assigned as remuneration therefor and the lands so granted are not resumable. (*Beaman and Rao*, JJ.) MUDHVACHARYA RAMCHANDRA CHARYA *v.* SHRIDHAR NARSIMHA BHAT. **37 Bom. 409 = 19 I.C. 876 = 15 Bom. L.R. 357.**

GRANT—Resumption.

———*Resumption—Grant by Government—Right to resume for Government purposes—Resumption by Government and sale to private individual.*

Under a kabuliyat, the occupancy of certain land was granted to A by the Collector subject only to the condition that it should be competent to Government to resume the land whenever it should be required by Government for Railway, or other purposes. Subsequently the Government resumed the land and sold it to B, a descendant of the person from whom the Government had acquired the land. *Held* (1) that the Government remained the proprietors of the land and could deal with the land in any way they pleased like any private owner; (2) that the Government as proprietors of the land could resume it when they required it for their proprietary purposes. Government purposes must be construed as meaning that they were purposes of Government as the state proprietor, purposes which Government alone were entitled to prescribe in the exercise of their discretionary power. (*Chandavarkar and Batchelor, JJ.*) SABBLO SALESHETTI *v.* SECRETARY OF STATE FOR INDIA.
36 Bom. 438=15 I.C. 782=14 Bom. L.R. 41

———*Resumption—Nankar grant—Grantee willing to perform service—Right of grantor to determine the tenure—Ejectment.*

Where grant of land in nankar is subject to burden of service and not merely in lieu of wages, the grantor cannot put an end to the tenure, whether the services are performed or not, so long as the grantee is willing and able to perform the services; and he cannot be ejected. (*Holmwood and Chapman, JJ.*) JOGENDRA NARAIN SARKAR *v.* RAMACHANDRA ADHIKARI. **23 I.C. 300.**

———*Resumption—Muafi.*

Where a muafi is resumed and a settlement is thereafter made the action of the settlement authority does not affect the position of the settlee with regard to the property. (*Kensington, C.J. and Rattigan, J.*) KISHEN DEVI *v.* SHIB SARAN. **77 P.R. 1914=25 I.C. 697=217 P.L.R. 1915.**

———*Resumption — Rights of occupancy tenants.*

Where an inam is resumed by Govt. and ryotwari pattas are granted to the Inamdars, the rights of the occupancy tenants in the inam are not affected and they cannot be ejected thereunder. In exercising the right of resumption, as against a part owner, the rights of other part owner should not be disturbed. (*Ayling and Seshagiri Aiyar, JJ.*) ELAVARTI VENKATAPPACHARYULU *v.* TIRUMALAREDDI PAPIREDDI. **45 Mad. 550=62 I.C. 309=13 L.W. 203.**

———*Resumption—Effect on tenants.*

Where Government resumes an Inam and a ryotwari patta issued to the inamdar and it did not appear that the tenant on the land had at the time of resumption acquired permanent rights of occupancy either by grant, contract or prescription, the inamdar is entitled to eject the tenant. Per *Sadasiva Aiyar, J.*—Even if the tenants had obtained occupancy rights by prescription or grant from the inamdar, the resumption by the Government put an end to the inam grant and the subordinate titles of the tenant under the inamdar. The new title acquired by the Inamdar by the grant to him of a ryotwari patta by the Government after resumption could not be effected by those subordinate rights available against him only if the old title as inamdar continued. (*Sadasiva Aiyar and Spencer, JJ.*) SUBRAHMANIA AIYAR *v.* ONNAPPA GOUNDAN.
12 L.W. 877.

———*Resumption—Right of Government—Decision of Inam Commissioner.*

The Government has no right to resume inams included in the assets of a Zemindari at the time of the Permanent Settlement. If the Inam Commissioner passes enfranchisement proceedings with regard to them, he would be acting *ultra vires*. (*Seshagiri Aiyar and Burn, JJ.*) MANNA SULTAN *v.* SECRETARY OF STATE. **10 L.W. 372=26 M.L.T. 265=53 I.C. 332=37 M.L.J. 661.**

———*Resumption — Charitable inam—Resumption and enfranchisement—Incidents of.*

In the case of resumption of inam of a trust the land becomes the property of person to whom it is granted by Government as a ryotwari tenure though the grantee may be a former trustee. 26 M. 339; 30 M. 434, Dist. In the case of enfranchisement of inam there is a change in the tenure and not in the ownership. (*Oldfield and Phillips, JJ.*) DEVI PUNNIAH *v.* GORUNTLA KOTAMMA. **40 Mad. 989=38 I.C. 237=8 L.W. 157.**

———*Resumption—Rights of grantee.*

The grantee of a favour or indulgence can make no claim against his grantor that the thing should be treated as irrevocable unless he can invoke the doctrine of estoppel in his favour. (*Sadasiva Aiyar and Napier, JJ.*) KATHALI MICHAEL PILLAI *v* J.M. BARTHI.
39 Mad. 1086=19 M.L.T 249=30 M.L.J. 423=3 L.W. 848=34 I.C. 857=(1916) 1 M.W.N. 307.

———*Resumption—Service Inam—Grant by Zemindar—Whether resumable.*

Per *Seshagiri Aiyer and Phillips, JJ. contra Wallis, C.J.*) A grant burdened with service is not resumable so long as the grantee is willing to perform the service. The presumption in Government grants that the lands granted as service inams are resumable does not necessarily apply to grants by Zemindars. (*Wallis, C.J., Seshagiri Aiyar and Phillips, JJ.*) KAMARAVATU MRUTYNJYADU *v.* RAJA OF PITTAPURAM. **30 M.L.J. 132=38 I.C. 901=(1916) 1 M.W.N. 279.**
[On appeal from 26 I.C. 78=(1914) M.W.N. 936.]

GRANT—Resumption.

——*Resumption—Darmilla—Meaning of—Resumable—Where service not required—Considerations of so many things—Nature of tenure—How decided—The burden of proving that it is not resumable is in grantee.*

Where the grant is made for "Nakesh" the grant is more or less a Darmilla grant that is a grant subsequent to Permanent Settlement. Such grant is resumable by the grantor when such service is no longer required. In the following circumstances the grant of a certain land as inam is resumable when the services are no longer required. If the grant is made (1) In consideration of past services done, (2) providing that the grantee was to enjoy from son to grandson and so on in succession, (3) with a condition of payment of Kattubadi at Rs. 3 per annum, (4) for a service which is Nakesh or personal. The question whether the grant is resumable or not has to be decided on a consideration of all the circumstances appearing in the evidence, including the nature of the service, the terms of the grant, the question whether the service is attached to any officer known by any particular designation and so on. The nature of a tenure has to be decided upon the evidence in each case and in the case of a grant subsequent to the Permanent Settlement to which services of a personal as opposed to public character are attached, the burden of proving that it is not resumable is on the grantee. Even in the case of the grant of an estate burdened with a certain service, though the zemindar is not ordinarily entitled to resume he is so entitled if in the grant itself appropriate terms are introduced giving the grantor a right to resume the lands on the non-fulfilment of certain conditions. (*Ayling and Sadasiva Ayyar*, JJ.) KAMARAVUTHU MRUTYUNJAYUDU *v.* RAVU VENKATA KUMAR MAHIPATHI. 26 I.C. 78 = (1914) M.W.N. 936.

——*Resumption—Service and office grant.*

There is a distinction between the grant of an estate burdened with service and the grant of an office the duties of which are compensated by the use of certain land. A grant burdened with service cannot be resumed, merely because the necessity for the service is over, though it may be forfeited for wilful failure in the service. The other class of grants are resumable. The Zemindar can resume where a service grant is included in the *mal* assets of a Zemindari at the Permanent Settlement. A tenure has to be decided upon the evidence in each case. A grantee must show that a grant subsequent to the Permanent Settlement to which services personal as opposed to public are attached is not resumable. (*White*, C.J. *and Phillips*, J.) VADISAPU APPANDERA *v.* VYRICHERLA VEERABHADRARAJU.
10 M.L.T. 391 = 12 I.C. 487 = (1911) 2 M.W.N. 406.

——*Resumption—Transferability.*

A resumable grant is not transferable. A marwat grant is not transferable although it is not resumable. (*Simpson*, A.J.C.) SIYA RAM *v.* SALIK. 10 O.L.J. 835 = 5 L.R. Oudh 13 = 1924 Oudh 124.

GRANT—Rights of Grantee.

——*Resumption—Service grant.*

No suit lies for resumption of a service grant in the absence of any allegation of specific service. (*Holms*, S. M.) MUHAMMAD ALI MUHAMMAD *v.* SHAUKATALI. 34 I.C. 713 = 3 O.L.J. 231.

——*Resumption—Effect of.*

The object of the Government in Bengal in the resumption proceedings was not to resume the lands and to re-settle the lands with the persons who originally held them. The resumption was not of the land but of the revenue and resumption meant nothing more than assessing the land to Government revenue. (*Das and Bucknill*, JJ.) MAHANT RAMRUP GIR *v.* LAL CHAND MARWARI.
1 P. 475 = 3 P.L.T. 352 = 1922 P. 243.

Rights of Grantee.

——*Rights of grantee—Grant of land bounded by stream—Partition grant.*

Where land is bounded by a stream is granted the grantee gets the bed of the stream up to the middle point. The grant, however, may contain reservations. This construction applies to a grant in partition just as to any other grant. A grant is usually construed in favour of the grantee rather than of the grantor. Hence, where an agreement for partition was entered into between owners of lands bounded by a stream, and the plaintiff claimed thereunder all the land on the southern side of the river and the bed of the river up to the middle point, and the exclusive right of fishing at those points, and the only reservation which the agreement showed was about the use of wells, tanks and water-courses; *held*, that the plaintiff could get the bed of the river up to the middle point together with the right of fishing. (*Richards*, C.J. *and Sunder Lal*, J.) POWELL *v.* POWELL. 36 I.C. 567 = 14 A.L.J. 684.

——*Rights of grantee—Partibility.*

The ordinary rule is that if persons are entitled beneficially to shares in an estate, they may have a partition except when the estate is held on an impartible tenure or where the terms of the grant impose a condition upon its enjoyment that the management should rest with a particular branch of the family of the grantees. Incidents of *Saranjam* considered. (*Dhobley*, A. J. C.) KRISHNAJI *v.* NILAKANTH. 18 N.L.R. 163 = 6 N.L.J. 26 = 1922 Nag. 52.

——*Rights of grantee—Accretions—Right to.*

The question whether property subsequently acquired by the grantee is to be considered a portion of the grant depends on the proof of

the intention to incorporate it with the grant. (*Stuart and Kanhaiya Lal*, A J.Cs.) MAHAMMAD ABDUL RAQUIB KHAN *v.* SALAMAT BIBI. 25 I C 680=1 O L J 7.

———*Rights of grantee—Digwari grant.*

A *Digwar* cannot transfer the lands comprised in his grant, to another nor can he himself acquire any interest in the uncultivated land. (*Miller*, C.J. *and Ross*, J.) BAIDYANATH MAHTO *v.* SHYAN MAHTO. 59 I.C. 899.

Ryotwari Patta.

———*Ryotwari patta—Effect of.*

Grant of patta to a Mirasidar by Government does not destroy occupancy rights that may exist at the time of the grant. (*Benson and Sundara Aiyar*, JJ.) VENKATACHALA GOUNDAN *v.* RANGRATNAM AIYAR. 13 M.L T. 450=(1913) M.W.N. 434=20 I C. 874=24 M.L J. 871.

[Affirmed by 56 I.C. 117=43 Mad. 567 (P.C.)]

Sankalp.

Sankalp—Under-proprietary holding.

A sankalp is a grant but it may be grant of a leasehold of a non-transferable tenure not liable to termination at the will of the grantor or on the happening of any contingency. The former invests the sankalp holder with the status of a mere privileged lessee and the latter makes him an under-proprietor. (*Kanhaiya Lal*, J.C.) JANKI *v.* GANGA PAL 53 I.C. 975.

Saranjam.

———*Saranjam—Presumption.*

A grant of Saranjam may be either of the soil and the whole revenue derived from it, or a grant of the Royal share of the revenue only. There is no presumption that a grant of Saranjam is a grant of Royal revenue only. It must be determined in each case upon the facts what was the quality of the original grant although it may be that it is ordinarily a grant of the Royal revenue only. It was plain that the original grant was made in respect of political services; but there was nothing in any of the documents produced which suggested that all that the grant was intended to give to the grantees was a lease from payment of the royal share of the revenue. On the contrary in one of the early documents founded on the grant, mention was made expressly of the Kasba Hebli (subject of the grant) with its hamlets and Wathhoi, with the Mahal Jukath and Mokassa " with the whole of the dues and cesses and hidden treasures, exclusive however of the dues of Hackdars and Inamdars " and the language of the other documents was in similar terms. It was significant also that in the deed of partition executed by the grandfather of the plaintiff in 1979 the property partitioned was described as the Jaghir villages of Kasbe Hebli and Majre Watanhal

and the Mouza of Talvai and Kurdapor obtained from the British Government." Throughout the documents there was no suggestion that what was conveyed was merely the Royal share of the land revenue of the lands was conveyed to the grantees and the amount of the *nazarana* which had been levied from time to time appeared to have been based on the yearly revenue of the estate, " there being no suggestion that the revenue derived by the holder as occupant " was distinct from the Saranjamdar was not liable to Nazarana. *Held*: All these considerations are sufficient to justify the inference that the original grant was a grant of the soil. (*Lord Salvesen*). THE SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* LAXMI BAI. 47 Bom. 327=24 M L.J. 471=28 C.W N. 49=17 L.W. 403=32 M.L.T. (P.C.) 111=37 C.L J. 464=28 Bom. L.R. 527=50 I.A. 49=1923 P.C. 6 (P.C.).

———*Saranjam—Grant of Miras rights by Saranjamdar—If binding on his successors.*

A grant of Miras rights by a Saranjamdar is binding on his successors when the Saranjam descends by inheritance. (*Shah and Crump*, JJ.) SAKHARAM GOPAL PAGE *v.* TRIMBAK RAO RAMACHANDRA. 28 Bom. L.R. 315=61 I.C. 40=45 B. 694.

———*Saranjam—Construction of.*

Saranjam or jagir (the terms being convertible), ordinarily means the grant of the royal share of the revenue and not of the soil and the person alleging a grant of soil must prove it. In the case of an inam where the grant is merely of the royal share of the revenue and not of the soil, resumption means only the discontinuance of exemption from payment of land revenue and interference with actual occupation is not allowable. In the case of jagir involving grants of the soil as well as of the royal share of the land revenue the words 'resumption' and 'assessment' mean two different things. A Saranjamdar may acquire occupancy rights which remain unaffected by the resumption of saranjam except as to assessment thereafter payable to the Government. Government can resume the royal share of land revenue but subject to the right to occupation of the saramjandar. (*Batchelor and Shah*, JJ.) GURURAO *v.* SECY. OF STATE. 41 Bom. 408=39 I.C. 68=19 Bom. L.R. 117.

Service Grant.

———*Service grants* — Karnam *Lands—Nature of title—Enfranchisement, effect of.*

The *Karnam* of a village holds his office not by hereditary or family right but as personal appointee, though the appointment in certain cases, are exercised by members of a particular family. The lands which form the emoluments of the office do not become the family property and they are inalienable and designed to be the emolument of the officer into whose hands, the office passes. The effect of enfranchisement is

to free the lands from their inalienable nature and to empower the Government to deal with them as they pleased. The law applicable to the enfranchisement of Palayams cannot be applied to the case of a karnam office. (*Lord Buckmaster, Lord Dunedin, Lord Shaw and Sir John Edge.*) VENKATA JAGANNATH *v.* VEERABHADRAYYA. **44 Mad. 468 = 48 I A. 244 = 34 C L J 16 = 14 L W. 59 = 41 M.L.J. 1 = 61 I C. 667 = (1921) M.W.N. 401 (P.C.).**

———*Service grant—Lands remaining long in a family and descending by primogeniture.*

Service land is usually inalienable and evidence that it had remained for a long period in a family and descended by rule of primogeniture is more consistent with its being held for service than under any special family custom. If the service comes to an end the last holder in the absence of any sons or co-sharers can put an end to any tenure based on family custom. (*Scott*, C.J. *and Heaton*, J). BRENDON *v.* SHRIMANT SUNDERABAI. **38 Bom. 272 = 23 I.C. 221 = 16 Bom. L.R. 165.**

———*Service grant—Grant in favour of menial servant—Servant whether trustee—Resumption.*

Where a temple menial servant holds no office of a hereditary character and he is remunerated for his duties by the use of certain lands, the lands cannot be held to be burdened with any service in connection with the temple, and the holder is not a trustee, and after cessation of his service, the land is liable to be resumed immediately. (*Choudhuri and Cuming*, JJ.) JOYNATH SARKAR *v.* HARI MOHAN DAS. **59 I.C. 469.**

———*Service grant—Delegation—Validity.*

The rights of a Saunjibdar will be lost by him if he performs his duties by a representative. (*Rattigan*, J.) FAQIRIA *v.* SOBHA. **9 I.C. 925 = 18 P.W.R. 1911.**

———*Service grant—Religious office.*

In the case of a grant for upkeep of mosque and performance of religious services therein the grantee is not bound to account for disposal of income so long as services are performed. (*Spencer and Ramesam*, JJ.) MOHAMED HUSSAIN *v.* ABDUL RAHIM BEG. **(1922) M.W.N. 74 = 42 M L.J. 272 = 15 L.W. 241 = 1922 Mad. 8.**

———*Service grant—Grant burdened with service—Nakesh.*

Where the grant is of this nature "so long as the holders of those grants are willing and able to perform the services the zemindar has no right to put an end to the tenure whether the services are required or not." There is no authority for holding that the nature of services makes any difference in the case of such a grant: though in the case of service grant where lands are enjoyed in lieu of wages, the power of arbitrary resumption would largely turn on whether the

services were private or public. When the service performed by the grantee is of a private nature and personal to the grantor and not of public nature or an obligation of a feudal character it is styled as "Nakesh". (*Ayling and Sadasiva Aiyar*, JJ.) KAMARVUTHU MRUTYUNJAYUDU *v.* RAVU VENKATA KUMAR MAHIPATHI. **26 I.C. 78 = (1914) M.W.N. 936.**

———*Service grant—Effect of failure to perform services—Character of holding not changed.*

The fact that no services are performed by the grantee of a service tenure does not in itself make the holding adverse. (*Coutts and Ross*, JJ.) NANDLAL SAHU *v.* TIKAIT SHRINIVASA. **1 P. 292 = 1922 P. 551.**

Waste Land.

———*Waste land — Tank — Poramboke—Right of owners—Fishing and trees.*

Where evidence proved that plaintiff constructed a tank on the village poramboke and made all necessary repairs from time to time while the public had free access to the tank and that plaintiff exercised the right to the fish in the tank and to the trees on the bank, *Held*, that the village site must be presumed to have been granted to plaintiffs family perhaps subject to the condition of constructing and maintaining a tank for the use of the public. (2) that the right to fish and to enjoy the usufruct of the trees was reserved to the plaintiff. (*Miller and Abdur Rahim*, JJ.) BHUPATHIARAZU VENKATAPATTHIRAJU GARU *v.* PRESIDENT, TALUK BOARD, NARASAPUR. **19 I.C. 727 = 13 M.L. . 419.**

GRATUITOUS ACT.

See CONTRACT ACT, SS. 69, 70.

GRATUITY.

See C. P. C., S. 60.

GRAZING RIGHTS.

See (1) ADVERSE POSSESSION.
(2) EASEMENT.
(3) EASEMENTS ACT.

GROSS NEGLIGENCE.

See TORT—NEGLIGENCE.

GROUNDS FOR REMAND.

See C. P. C., O. 41, Rr. 23, 25.

GROUNDS FOR REVIEW.

See C. P. C., O. 47.

GROUNDS FOR TRANSFER.

See C. P. C., S. 24.

GROUNDS OF APPEAL.

See (1) APPEAL
(2) C. P.C., O. 41.
(3) PRACTICE.

GROVE.

See (1) LANDLORD AND TENANT.
(2) OUDH RENT ACT.

GROVE-HOLDER.

See AGRA TENANCY ACT.

GROWING CROPS.

See (1) GENERAL CLAUSES ACT, S. 3 (25).
(2) IMMOVEABLE PROPERTY.
(3) T.P. ACT, S. 3.

GUARANTEE.

See CONTRACT ACT, SS. 124-147.

GUARDIAN.

See (1) C.P. C., O. 32.
(2) GUARDIANS AND WARDS ACT.
(3) HINDU LAW—GUARDIANSHIP.
(4) MAHOMEDAN LAW — GUARDIANSHIP.
(5) MINOR.

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———*Alienation by guardian in her own name.*

Where a property belonging to her minor sons was mortgaged by a Hindow widow, not in a representative capacity but as an owner, deriving full proprietary title from a will of her deceased husband which subsequently turned out to be invalid. *Held*, the family property cannot be held liable under the mortgage, even though the *de facto* guardianship of the widow and legal necessity are proved; for the mortgage by a widow who had no title to the property is *ipso facto* void and the questions as to her motives are entirely irrelevant. (*Ryves and Daniels*, JJ.) NANDAN PRASAD *v.* ABDUL AZIZ. 21 A.L.J. 872=46 A. 497=1923 All. 581.

———*Debt by guardian--Reasonable necessity —Creditor, duty of—Application of money.*

If the creditor acts honestly and under a *bona fide* belief arrived at after due enquiry that the necessity existed he is protected and is entitled to recover the debt irrespective of the manner in which the guardian may have ultimately applied it. (*Kanhaiya Lal and Suleman*, JJ.) RAGUBANS UPADHAYA *v.* INDRAJIT SINGH. 20 A.L.J. 886=1922 All. 536.

———*Promissory note by guardian—Necessary purpose—Minors not bound.*

The promissory note sued upon contained the words I (the sister) had taken these rupees because I conduct a suit in the Court is the guardian of minors named Thakordas and Sangerlal (brothers) and I shall pay you the rupees of the promissory note with interest at one per cent per mensem whenever you will demand to same. *Held* that assuming that she the executant (sister of minors) was a *de facto* guardian she does not purport in the document to bind the minors. They cannot therefore be personally responsible on the note, nor could the sister as the next friend or as sister of the minors make a contract with the plaintiff which would bind the estate of the minors. The plaintiff may proceed against the minors to recover moneys which they might be liable to pay as a debt incurred by their father or by their mother or sister for necessary purposes,

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in another suit properly framed. (*Macleod*, C. J. *and Crump*, J.) PARBHUBHAI *v.* BAI LALITA. 1923 Bom. 304.

———*Custody of minor—Application for, if lies.*

A father who has never had the care or custody of his child can file a regular suit for the custody of his son, but cannot under the above Act apply for an order upon the person having the custody of the infant to hand him over to the father. 25 Bom. 574, Foll.; 39 Mad. 807, Dist. (*Scott*, C.J. *and Heaton*, J.) ACHRATLAL JEKISENDAS *v.* CHIMANLAL PARBHUDAS.
40 Bom. 600=37 I.C. 218=
18 Bom. L.R. 582.

———*Deed executed in personal capacity—Effect.*

Where a person executes a document in his own name and there is no doubt as to his acting as guardian of his ward does not question of ratification rise at all. The act must be taken as one which had no reference to the ward. (*Mookerjee and Walmsley*, JJ.) ANNADA KUMAR DAS *v.* DWARKA NATH MANDAL.
27 C.W.N. 1029=1924 Cal. 162.

———De facto *guardian — Alienation by—Muhammadan Law.*

A mother acting as *de facto* guardian of a Muhammadan minor cannot alienate the minor's property. (*N. R. Chatterjee and Panton*, JJ.) ASHIRUDDIN MOHAMMAD *v.* TAHER MOHAMMED. 59 I.C. 306.

———*Custody of minor—Mother's right to—Parting with child under agreement.*

The mother cannot be deprived of her natural right of absolute control over her own child by any agreement by which she made over the child to another to be brought up as the latter's own, though she might have definitely stipulated never to claim back the child. But there may be circumstances, *e.g.*, want of means which would render it undesirable in the interests of the infant that she should resume her rights after associations or expectations have been created on the part of the infant. However the law should lean in the mother's favour. (*Chatterjee and Panton*, JJ.) FANNY EMMELINE PETERSON *v.* EARNEST HENRY SHAVE. 56 I.C. 242=24 C.W.N. 711.

———*Guardian — Alienation—Fraud void or voidable.*

A sale of a minor's property by his guardian in fraud of his right is only voidable at the instance of the minor after attaining majority. (*Chatterjee and Newbould*, JJ.) KRISHNA DHONE *v.* BHAGABAN CHANDRA.
34 I.C. 188.

———*Guardian* de facto*—Power to mortgage.*

A *de facto* guardian has no power to mortgage the property of the ward. (*Reid*, C.J. *and Rattigan*, J.) CHOGHATTA *v.* ASO MAL.
30 P.R. 1913=17 I.C. 871=
270 P.L.R. 1914

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———*Admission of guardian as to—Nature of possession—How far binding.*

Though a guardian cannot make admissions binding on wards, yet where the question that is being investigated is the nature of the possession of a guardian and he admits he is holding with the consent of the trustees, that will be admissible to prove that it was not adverse. (*Schwabe*, C.J. *and Coutts-Trotter*, J.) SHUNMUGAPPA *v* SANGARAYA CHETTY.
18 L.W. 907=33 M.L.T. (H C.) 226=1924 Mad. 125.

———*Arbitration on behalf of ward—Onerous terms in reference—Gross negligence.*

The guardian's conduct in waiving the minor's right to object to irregular procedure was grossly negligent and that the minor was not bound by the reference or award. (*Spencer and Venkatasubbu Rao*, JJ.) CHINTAL APUDI SANYASI *v*. CHINTAL APUDI VENKATA RAO. **44 M.L.J. 263=17 L.W. 71=(1923) M.W.N. 7=32 M.L.T. 321=1923 Mad. 801.**

———*Sale by guardian — Subsequent sale by minor—Plea of invalidity—Whether personal*

The guardian alienated certain property belonging to the minor. The minor afterwards alienated the same property on attaining majority. The transferee from minor sued for possession. The transferee from guardian objected on the ground that the plea of invalidity of sale not being for necessity nor for minor's benefit, was personal and the transferee cannot put it forth, *held*, that the transferee can put it forth that plea. (*Hallifax*, A.J.C.) MOHANLAL *v*. KISAN. **62 I C. 313=17 N.L.R. 53.**

———*Agent appointed by guardian—Liability to account.*

An agent appointed by a guardian of a minor is not liable to account to the minor for acts done by him as agent, the principle regarding trustees *de son tort*, not being applicable to him. (*Abdur Rahim*, O C J., *and Ayling*, J.) RAMANATHAN *v*. MUTHIA CHETTY. **43 Mad. 429=38 M.L.J. 247=11 L.W. 405=56 I C. 358=(1920) M.W.N. 270.**

———*Guardian* de facto—*Powers of settlement for minor's benefit, if void.*

Where in a settlement of accounts between the plff. represented by his mother and maternal grandfather and defts. who were partners with plff 's father, a certain amount was fixed to be paid to plff. and interest to be paid regularly till the amount is paid and the plff.'s next friend his maternal uncle was regularly receiving interest *Held*, that plff. cannot sue for an account. In cases of urgent and imperative necessity, or where the transaction from its nature must necessarily be beneficial to the minor a *de facto* guardian can alienate the property of the minor whether moveable or immoveable other acts of a *de facto* guardian if of a similar nature, are also binding. and the

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settlement having been accepted and acted upon for so many years by the minor's mother, his maternal grand-father, and even his present next friend, he cannot now turn round and say it was unauthorised and therefore should be set aside without even alleging that the settlement was not fair and *bona fide* or that it was liable to be opened on account of errors. (*Abdur Rahim*, O C J. *and Seshagiri Iyer*, J.) HAJEE SIDDIK HAJEE *v*. MAHD. HUSHUM SAIT.
(1916) 2 M.W.N. 341=37 I C 728=4 L W. 521.

———*Guardian* de facto—*Alienation by.*

An alienation by *de facto* guardian not for necessary purposes need not be set aside. (*Sadasiva Aiyar and Tyabji*, JJ.) THAYAMMAL *v*. KUPPANNA KOUNDON. **38 Mad 1125=26 I.C. 179=27 M.L J. 285.**

———*Mother—Alienation by—Guardian* de facto—*Suit by alienee—Defence.*

The want of authority of *de facto* guardian is a good defence to a suit by a mortgagee against a minor to enforce a mortgage by such guardian. In a suit by the minor to set aside the mortgage a Court might decline to grant relief until the minor compensates the mortgagee for the benefit derived by him. Where a deed is executed by a minor and his mother without the latter describing herself as guardian, the mother cannot be held to be acting for the minor. A creditor seeking to bind a minor's estate should take care that the bond drawn up makes the minor's estate in law liable for the debt. (*White*, C.J. *and Spencer*, J.) ARUMUGAM CHETTY *v*. VELLAICHAMI THEVAN.
37 Mad 38=21 M.L J 1077=10 M.L.T. 385=12 I C. 568=(1911) 2 M.W.N. 461.

———*Guardian—Alienation by—Validity.*

In a partition suit where the acts of a guardian are impeached by minors after his death, the validity of the dispositions depend upon their beneficial nature at the time they were made. The dispositions can be set aside if there is no evidence as to the beneficial nature. (*Abdur Rahim and Ayling*, JJ.) ULLIKARA KUTHUVA *v*. MOHIDEEN BAVA.
12 I C. 54=(1911) 2 M.W.N. 18.

———*Contract by guardian — Personal liability of ward.*

A guardian cannot contract in the name of his ward, and thus impose a personal liability on the ward; but a ward becomes personally liable under a covenant entered into by the Court of Wards on his behalf under section 61 of the U.P. Court of Wards Act. (*Wazir Hassan*, A.J.C.) B. PIRTHI PAL SINGH *v*. RAJA MUHAMMAD EJABY RASUL KHAN.
74 I.C. 90

———*Mother — Alienation by — Validity—Legal necessity—Charge—Decree, form of.*

If a mortgagee advancing money to a guardian on the security of a minor's property, said guardian not acting under the authority

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of the Court, cannot prove necessity for raising the whole money, or prove that he was satisfied as to the necessity for such loan the contract of mortgage is voidable and is liable to be set aside at the option of the minor but the mortgagee will be entitled to a charge on the property for the necessary amount where a portion of the money has been spent for the minor's benefit, a decree ought to be passed subject to a charge in favour of the mortgagee for the amount found to be spent. 10 M.I.A. 454 ; 21 W.R. 287 ; 9 All. 340, Ref. (*Piggott*, A.J.C.) RAM BHAROSE SINGH *v.* MATA PROSAD. 14 I.C. 14.

———*Guardian —Mortgage by—Subsequent admission by ward—Effect.*

Where a mortgage deed by a guardian on behalf of a minor contained recitals as to necessity and there was no other evidence as to necessity and besides the mortgagee had made no enquiries still subsequent admission by the minor on attaining majority that the debt was due from him though not amounting to estoppel or ratification of the transaction nevertheless shifts the burden of proof that the recitals are incorrect on to him and in the absence of such evidence and explanation as to the circumstances in which the admission was made such admissions can be made the basis of a decree. (*Chamier and Evans*, A.J.Cs.) SHEO NARAYAN SINGH *v.* MAHABIR PRASAD. 9 I.C. 56.

———*How far minor bound by acts of guardian.*

A person under disability is no doubt bound by acts of his guardian, but such a person can reopen the proceedings after the disability ceases, if he satisfies the Court that the act of the guardian has prejudiced him. (*Das and Kulwant Sahay, JJ.*) RAO BAHADUR MAN SINGH *v.* MAHARANI NAWALAKHBATI. 2 P. 607 = 4 P.L.T. 335 = 1923 P. 492.

———*Guardian—Hand note by—If binding on minor.*

A minor cannot be bound by the hand note executed by the Guardian. (*Coutts and Sultan Ahmed JJ.*) KASHIPRASAD *v.* AKLESHWARI PRASAD. 58 I.C. 22 = 2 P.L.T. 22.

———*Illegitimate children.*

Equity Courts in England regard the mother as the guardian of an illegitimate child. The same rule should be applied in India, neither the father nor the mother has any absolute right to the custody of their illegitimate child. (*Fox, O.J. and Hartnoll, J.*) MA MYA *v.* FELI SLYM. 5 Bur. L.T. 165 = 17 I.C. 926 = 6 L.B.R. 116.

GUARDIANS AND WARDS ACT (VIII of 1890).

———Habeas Corpus — *Order directing defendant to bring back minors from England, advisability of.*

A mandatory order directing the defendant to take possession of the persons of infants and bring them back to India, should not be made as if the minor resisted the defendant, it would expose him to a proceeding under a writ of *Habeas Corpus*. (*Lord Parker.*) ANNIE BESANT *v.* NARAYANIAH. 38 Mad. 807 = 41 I.A. 314 = 27 M.L.J. 30 = 18 C.W.N. 1089 = 1 L.W. 570 = (1914) M.W.N. 585 = 16 M.L.T. 165 = 20 C.L.J. 253 = 16 Bom. L.R. 625 = 24 I.C. 290 = 12 A.L.J. 1155 (P.C.).

———*Proceedings under — Nature of jurisdiction – Interference in appeal.*

Proceedings under the Guardians and Wards Act cannot be attacked on the ground of a lack of that formality and precision of procedure which the C. P. Code exacts from a Court in India in a trial of a suit properly so called. The exercise of parental jurisdiction in guardianship matters by a District Judge cannot be guided by hard and fast rules, and if the order passed is on the whole a reasonable one, it will not be interfered with on appeal. (*Walsh and Ryves, JJ.*) MT. KHUNDI DEVI *v.* CHOTEY LAL. 44 A. 587 = 20 A.L.J. 463 = 1922 All. 338.

———*District Court—Jurisdiction in regard to minors.*

The jurisdiction of the District Court in regard to minors is confined only to the powers expressly conferred on it by the Guardians and Wards Act. (*Scott, C. J. and Heaton, J.*) ACHRATLAL JEKISENDAS *v.* CHIMANLAL PARBHUDAS. 40 Bom. 630 = 37 I.C. 218 = 18 Bom. L.R. 582.

———*Property in the hands of third person—Order of—Court declining to interfere—Appeal.*

There is no appeal against an order of the District Judge refusing to order the person in possession of a minor's property to hand over the property to an appointed guardian and referring the guardian to a separate suit. (*Chevis, J.*) NATHU RAM *v.* KARMON. 40 P.L.R. 1912 = 13 I.C. 326 = 115 P.W.R. 1912.

———*District Court—Powers of, under the Act.*

The powers conferred upon the District Court by the Guardians and Wards Act are totally dissimilar to its powers as a Court of Ordinary Civil Jurisdiction and so an order purporting to be made under the Act which is not warranted by its provisions cannot be considered as a decree in a suit 36 Cal. 193 ; 24 W.R. 193; 9 All. 191, Dist. (*Abdur Rahim and Spencer, JJ.*) KOMMA SOMAKKA *v.* KODIDALA PEDDA RAMAIH. 36 Mad. 39 = (1911) 2 M.W.N. 519 = 13 I.C. 251 = 22 M.L.J. 193.

———*Provisions of, not to be applied to enable husband to get possession of wife.*

The provisions of the Guardians and Wards Act should not be put in force in order to enable a husband to get possession of the person of his wife. (*Scott, J.*) ASIBAI *v.* GIRDHARI RAM. 67 I.C. 882 = 8 P.L.J. 293.

GUARDIANS AND WARDS ACT (VIII of 1890).

———*Right of Muhammadan mother to visit her child in the custody of his father as guardian.*

There is no machinery under the Guardian of Wards Act to work out the right of the mother, under Muhammadan Law, to visit her child in the custody of the father as guardian. (*Rigg*, J.) HAZARA BIBI *v.* SULEIMAN HAJI MOHAMAD. 59 I.C. 562=13 Bur. L.T. 86.

———S. 4—*Welfare of minor.*

Any friend of the minor can invoke the protection of the Court in case of minor being ill-treated but a stranger must satisfy the Court that the welfare of the minor would be better secured by removing the father from the lawful custody. Thus in castes not permitting widow remarriage where infant girls are married a stranger cannot successfully deprive the father of the custody of the infant daughter who is about to be given in marriage. (*Macleod*, C.J. *and Shah*, J.) KESHAVLAL *v.* AMBALAL. 64 I.C. 376=23 Bom. L.R. 1225.

———Ss. 4 (2) and 7 (2)—*Guardian, if includes guardian* de facto—*Guardian appointed under the Act—Removal of guardian* de facto.

A *de facto* guardian is a guardian within S. 4 (2) of the Act and is removed from guardianship under S. 7 (2) by the Court's order appointing guardian. (*Ayling and Krishnan*, JJ.) WALLACE SITHA BOI *v.* WALLACE RADHA BOI. 51 I.C. 236=36 M.L.J. 189.

———S. 4 (5) and (8)—*Residence—Minor leaving for England—Presented—Meaning of.*

Minors who had left before the institution of the suit for England and were living there, were not "ordinarily resident" of the District and hence were beyond the jurisdiction of the District Court. Under the Guardians and Wards Act a suit *inter partes* is not the form of procedure prescribed for proceedings in a District Court. (*Lord Parker*). MRS. ANNIE BESANT *v.* NARAYANIAH. 38 Mad. 807= 41 I.A. 314=27 M.L.J. 30= 18 C.W.N. 1089=1 L.W. 520= (1914) M.W.N. 585=16 M.L.T. 165= 20 C.L.J. 253=16 Bom. L.R. 625= 24 I.C. 290=12 A.L.J. 1155 (P.C.).

———S. 7.

ANCESTRAL PROPERTY.
APPOINTMENT.
CONSIDERATION.
ENQUIRY.
MALA FIDE APPLICATION.
SECURITY BY GUARDIAN.
TESTAMENTARY GUARDIAN.
TRUST PROPERTY.

Ancestral Property.

———S. 7—*Ancestral property.*

No guardian can be appointed in respect of a Hindu minor's undivided ancestral property. 25 All. 407 (P.C.), Foll. (*Mullick and Thornhill*, JJ.) MAHANAND MISSIR *v.* DASRETH MISSIR. 46 I.C. 815.

GUARDIANS AND WARDS ACT (VIII of 1890), S. 7—Appointment.

Appointment.

———Ss. 7 and 17—*Appointment cannot be made—Contrary to decree.*

An order appointing a husband as guardian of his minor wife cannot be passed in disregard of the Civil Court's decree that he cannot have the custody of her person until she attained majority. (*Wilberforce*, J.) KHUDA BAKSH *v.* LAL. 2 Lah. L.J. 509.

———S. 7—*Appointment of guardian—Finality of.*

An order appointing a guardian is final (subject to any other order passed in appeal) even if it was made under a misapprehension of the case. (*Le Rossignol and Martineau*, JJ.) MUSSAMMAT RAHUM *v.* MUSSAMMAT HUSSAIN BIBI. 52 I.C. 841=73 P.R. 1919.

———S. 7—*Appointment—Minor not entitled to present possession of properties—Court, if may appoint guardian.*

Under the Guardians and Wards Act, it is open to a Court to appoint a guardian of the properties of a minor even though, the minor is not entitled to present possession of those properties. Such appointment will not interfere, with the right of the other persons to possession of the properties, as executor or trustee or otherwise. (*Oldfield and Ramesam*, JJ.) ALWAR AMMAL *v.* NARAYANA. 70 I.C. 360=14 L.W. 706.

———Ss. 7 and 39—*Appointment—Effect—Removal of other guardians.*

An appointment of a guardian under S. 7 operates to remove by implication one who has not been appointed in any of the ways mentioned in S. 39. (*Abdur Rahim and Kumaraswami Sastri*, JJ.) KRISHNAMURTHI AIYAR *v.* PARVATHI AMMAL. 42 I.C. 505= 6 L.W. 760.

———Ss. 7 and 34—*Appointment—Unconditional order—Operation of.*

An order of appointment of a guardian under the above Act operates immediately unless the order is made conditional upon security being furnished, in which case its operation commences with the furnishing of the security. 17 Cal. 347 (P.C.), Ref. to. (*Ayling and Seshagiri Iyer*, JJ.) SUBBA NAICK *v.* RAMA AIYAR. 40 Mad. 775=5 L.W. 261= 37 I.C. 892=(1917) M.W.N. 426.

———S. 7 (2)—*Appointment—Effect.*

When a guardian is appointed by Court for minor's property no other person not even the *de facto* guardian can legally bind the minor's estate. (*Wallis*, C.J. *and Spencer*, J.) ARUMUGAM CHETTY *v.* VELLICHAMI THEVAN. 37 Mad. 88=21 M.L.J. 1077= 10 M.L.T. 385=12 I.C. 868= (1911) 2 M.W.N. 461.

———Ss. 7 (b), 10—*Appointment—Dispute about guardianship of minor's property—Duty of Court.*

GUARDIANS AND WARDS ACT (VIII of 1890), S. 7—Appointment.

Once the power of the Court is invoked it is its duty as soon as any dispute about the guardianship of the minor's property or any allegation of detriment to the minor's interests resulting from such dispute is properly brought to its notice to set right the matters in the interests of the minor and appoint a proper person as his guardian. (*Kotwal*, A.J.C.) JIWANDAS *v.* RAJRANI. 64 I.C. 433.

——S. 7—*Appointment—Effect—Removal of natural guardian.*

Appointment of guardian of person and property of a minor under the Act means removal of natural guardian. (*Drake-Brockman*, J.C.) HANNUMAN SINGH *v.* GANESH PRASAD. 80 I.C. 580.

——Ss. 7 and 8—*Appointment of guardians—Application for.*

Sections 7 and 8 do not necessarily require that when once proceedings have been instituted on a proper application, application should be taken from the person whom the Court appoints, though certainly in practice it is more usual to take one (*Daniels*, A.J.C.) MT. ISLAMAN *v.* MT. MAQBULAN 73 I.C. 255=9 O & A.L.R. 74.

Consideration.

——S. 7—*Considerations—Minor to attain majority shortly—Declaration of guardian, whether proper.*

Where a minor is to attain majority shortly, the Courts cannot prolong the minor's minority under S. 3 of Indian Majority Act as amended by S. 52, Guardians and Wards Act, by appointing a guardian under S. 7, Guardian and Wards Act. (*Lord Parker.*) MRS. ANNIE BESANT *v.* NARAYANIAH. 38 Mad. 607=27 M.L.J. 30=18 C.W.N 1083=1 L.W. 520=(1914) M.W.N. 583=16 M.L.T. 165=20 C.L.J 253=16 Bom. L.R. 625=12 A.L.J. 1165=24 I.C. 290=41 I.A. 314 (P.C.).

——S. 7 (3)—*Considerations—Will—Not probated—Postponement of decision—Discretion of Court.*

In an application for the appointment of a guardian of a minor, the Court has jurisdiction and is bound to consider the fact that there is a will although no probate had been granted in respect of the same. If the validity of the will is in question, it is discretionary with the Court to defer decision of the question of guardianship until the question of probate has been determined. 17 Bom. 560; 16 Mad. 380; 29 Bom. 882, Rel. (*Jenkins*, C.J. *and Woodroffee*, J.) AKHOY KUMARI DEBI *v.* HAZARI DASI DEBI. 42 Cal. 958=28 I.C. 972=19 C.W.N. 513.

——Ss. 7 and 17—*Considerations—Husband and wife—Appointment of husband as guardian for wife—Restitution of conjugal rights.*

GUARDIANS AND WARDS ACT (VIII of 1890), S. 7—Consideration.

The provisions of the Guardians and Wards Act should not be enforced to enable a husband to get possession of his wife which he has failed to do by execution of the decree obtained by him for restitution of conjugal rights. (*Scott-Smith*, J.) ASI BAI *v.* GIRDHARI RAM. 67 I.C. 882 (2)=3 Lah. L.J. 293.

——S. 7—*Considerations—Welfare of minor—Duty of Court.*

The law does not make it incumbent upon the Court to grant every application for guardianship. The welfare of the minor is the sole criterion in deciding whether a guardian should be appointed or not. Where the dispute is as to the validity of the marriage of the minor and the matter is not free from difficulty, the Court should refer them to a regular suit. (*Shadi Lal*, J.) KHAGANA *v.* LAKHMI DAS. 42 I.C. 191=90 P.L.R. 1917.

——Ss. 7 and 8—*Considerations—Minor girl in property—Mother to be left undisturbed.*

A mother should be left undisturbed as regards the guardianship of her minor girl, where there is no property to be administered by the Court and a statutory guardian is unnecessary. (*Johnstone*, C.J.) MAHANT DEVI *v.* MADHO. 84 P.R. 1915=31 I.C. 237=176 P.W.R. 1915.

——Ss. 7 and 17—*Considerations—Welfare of minor—Re marriage of mother.*

The re-marriage of a mother is not a sufficient reason to deprive her of the custody of her children. The question in cases of guardianship always is, whether it is for the welfare of the minor to appoint a guardian. The Court ought not to accept each and every application made for the appointment of a guardian. (*Shadi Lal*, J.) FATIMA *v.* RANI. 101 P.L.R. 1916=28 I.C. 507=36 P.W.R. 1916.

——S. 7—*Consideration—Mother living in open adultery—Minor's paternal aunt, if can be appointed.*

The appointment of the minor's paternal aunt as guardian is proper when it is proved that the mother is living in open adultery and has borne children of such connection. (*Beadon*, J.) HARNAMI *v.* PARTAPI. 30 P.W.R. 1914=23 I.C. 938=67 P.L.R. 1914.

——Ss. 7 and 18—*Considerations—Necessity to appoint.*

A guardian need not be appointed merely because an application for appointment is made. It should be considered whether it is really necessary to appoint a guardian. When the mother of a minor is managing the affairs of her son properly, no guardian need be appointed. (*Robertson*, J.) MUSSAMMAT DEOKI *v.* PAKHAT MAL. 60 P.W.R. 1913=19 I.C. 783=118 P.L.R. 1913.

——S. 7—*Considerations—Mother—Proper guardian.*

A mother is the proper guardian for the person and property of a minor, until the con-

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trary is proved. An uncle should not be preferred specially when he is seporate and was not on good terms with the minor's father during his lifetime. The fact that one will seek the assistance of her relatives in the management of the property is not objectionable. (*Kensington, J.*) PARTAP KUAR *v.* JWALASHAT.
62 P.L.R. 1913=19 I C. 438=12 P.W.R. 1913.

——Ss. 7, 17 and 21—*Considerations—Welfare of minor—Will of minor—Appointment of a guardian for minor—Matters to be considered in making an order.*

An order of appointment of a guardian to a minor can only be made on the sole ground of welfare of the minor; the Court cannot go against the will of the minor, especially when he is old enough to form an intelligent opinion. (*Rattigan and Chevis, JJ.*) BHAGVANA *v.* RAM CHAND. 231 P.L.R. 1911=11 I.C. 478=196 P.W.R. 1911.

——Ss. 7 and 25—*Considerations—Father's right to custody—Arrangement with mother—Effect.*

Where there is nothing established against a father except that he and his wife are on bad terms and living apart, he is entitled to the custody of his child. The fact that he at one time agreed to allow the child to remain with the mother is immaterial as it is a revocable agreement. (*Oldfield and Venkatasubba Rao JJ.*) SRI RAJA BOMMDEVARA SATYANARAYANA *v.* NARASIMMA. 18 L W. 173=(1923) M.W.N. 668=1924 Mad. 45.

——S. 7 (1)—*Considerations—Welfare of minor—Appointment of guardian by Court—Welfare of minor, the only criterion.*

Where an application is made under the Act the only question to be considered under S. 7 (2) is whether it is for welfare of the minor, that an order should be made and whether a particular person should be made his guardian according to his personal law, is an irrelevant point. (*Sadasiva Aiyer and Moore, JJ.*) DURGAMMA *v.* LINGAPPA. 33 I C 77=19 M L.T. 294.

——S 7—*Considerations — Rights of mother—Wishes of relatives.*

Where no charge of waste or mismanagement had been proved, the mere desire of the relatives of the minor is not a sufficient reason for depriving the widowed mother of the minor of her recognised claim to be the guardian of her minor child's property. (*Kotwal, A.J.C.*) MT. LAXMIBAI *v.* ABDUL KADIR.
68 I.C. 474.

——Ss. 7, 17 and 19 (b)—*Consideration—Welfare of minor—Fitness of natural guardian—Power of Court to inquire into—Conversion of father to Islam—Effect.*

A Court can both in equity and under the Act interfere with the legal rights of guardianship of the parents. The welfare of the children should primarily be considered. The

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Court should ascertain what could be for the welfare of the minors, whether any of them was sufficiently advanced to make an intelligent preference, what means were at the disposal of such parents to provide for them in future and whether the father would under the altered circumstances be able to provide a fit home for his children. If the father is not able to provide a fit home he should be held to be not fit to be the guardian. Per *Crouch*, A.J.C.:—The provisions of the Act are in no way limited by the English Practice. English decisions cannot be considered to have any authority in India when dealing with a conflict between Hinduism and Islam. Change of religion by itself does not necessarily render a father unfit to be the guardian of his minor children. Ss. 17 and 19 of the Act must be read together.—*Quaere:*—Whether the general rule that a child should follow the religion of the father could apply without qualification to a case where the religion has been newly adopted by the father and is not that in which the child was born or reared. (*Hayward, J. C. and Crouch, A.J.C.*) RADHI BAI *v.* D. R. VASANMAL.
41 I.C. 571=11 S.L.R. 17.

Enquiry.

——Ss. 7 and 13—*Enquiry—Application under—Courts, duty of.*

A Court dealing with an application under the Act should not dispose of the matter in the absence of the applicant by making an order in favour of his opponent as though the absent person were a defaulter in a Civil suit. In determining whether a person is a minor the Court should take an independent view of its own and not adopt a finding in some Civil suit that that person is a minor. (*Walsh and Ryves, JJ.*) RAM SAHAI *v.* CHHOTEY LAL.
19 A.L J. 489=63 I C. 567=3 U.P.L.R. (All.) 105.

——S. 7—*Enquiry under — Summary, nature of.*

S. 7 contemplates only a summary inquiry followed by an order for the welfare of the minor, and not elaborate inquiries whether the property left by the deceased was joint or self-acquired. When an application is made on the footing and with the claim that the minor is separately entitled to separate property, the Court should appoint a proper person as guardian of his property leaving it to the guardian to institute suits for the recovery of the property claimed. (*Batchelor and Shah, JJ.*) GURAPPA SHIVGENAPPA PUTTI *v.* TAYAWA SHIDAPPA. 40 Bom. 513=35 I.C. 16=18 Bom. L.R. 343.

——S. 7—*Enquiry—Summary of.*

The proceedings under S. 7 of the Guardians and Wards Act are summary. The Judge has to make such enquiry as he thinks necessary to satisfy his mind, and has got unfettered discretion in the number of witnesses to be

examined, length of cross-examination etc. (*Kincaid, J.C.*) BIBI FATMA *v.* BAKARSHAH. 65 I.C. 888=13 S.L.R. 175.

GUARDIANS AND WARDS ACT (VIII of 1890), S. 7—Mala fide Application.

Mala fide Application.

——S. 7—*Mala fide application—Minor having no property—Institution of proceedings with ulterior motives—Legality of.*

Where no guardian for the person or property of a minor was necessary and a master instigated his servant who was the grandfather of the minor to make an application for appointing himself as the guardian so that the minor may be married to his son, it was held that it was not a *bona fide* judicial proceeding and orders made thereon were wholly without jurisdiction. (*Mookerjee and Carnduff, JJ.*) SUBHADRA KOER *v.* DHAJADHARI GOSSAIN. 15 C.L.J. 142=13 I.C. 898=16 C.W.N. 444.

Security by Guardian.

——Ss. 7 (1) and 34—*Security by guardian—Appointment on condition of furnishing order whether under S. 7 (1) or S. 34.*

An order of appointment of a guardian of property of an infant of condition that he furnishes security is an order under S. 7 (1) and not under S. 34 and is appealable under S. 47 (4). Where a guardian is appointed on condition that he furnishes security the amount taken as security is sufficient if it affords reasonable protection against malpractices which require time to be carried out. 1 C.L.J. 180, Foll. (*Mookerji and Beachcroft, JJ.*) HARENDRA NATH MOOKERJI *v.* ARDHENDHU KUMAR GANGULY. 24 I. C. 202.

——Ss. 7 and 47 (a)—*Security by guardian—Conditional and final orders of appointment—Appeal.*

An application for the appointment of a guardian for the minor's property was made on which the Court passed an order appointing the mother as guardian and directing her to furnish security within two weeks of the date of the order. After such security was furnished and accepted the Court issued a final order of appointment. An appeal was preferred against the final order alone. *Held*, that the first order was only preliminary and conditional and did not take effect till the security was furnished and that the final order was the only order appointing the mother as guardian under S. 7. An appeal against the latter order was, therefore, maintainable. (*Spencer and Krishnan, JJ.*) SANGAYYA THEVAN *v.* PETAMMAL. 35 I.C. 513=11 L.W. 377.

——Ss. 7 and 34—*Security by guardian—Acts of guardian prior to furnishing security.*

In case of a conditional order of appointment of a guardian the minor's natural guardians act done in good faith prior to the furnishing of security by the guardian appointed are valid. (*Ayling and Seshagiri Iyer, JJ.*) SUBBA NAICK *v.* RAMA IYAR. 40 Mad. 775=5 L.W. 251=37 I.C. 892=(1917) M.W.N. 425.

GUARDIANS AND WARDS ACT (VIII of 1890), S. 7—Trust Property.

——Ss. 7 and 47 (a)—*Security by guardian—Conditional and final orders — Postponement of appointment.*

The Act does not require two orders viz. *interim* order of approval and a "final order" of appointment of the guardian of property nor does it postpone the appointment till security is furnished. On the other hand the appointment should be before the requisition for and the furnishing of security. (*Sadasiva Aiyar and Moore, JJ.*) GOPPAMMAL *v.* SRINIVAS AIYANGAR. 31 I.C. 452=20 M.L.J 508.

Testamentary Guardian.

——S. 7 (3)—*Testamentary guardian—Hindu Law—Appointment of guardian for minor nephew—Validity.*

Under Hindu Law, a man cannot appoint a guardian for his minor nephew. A provision in the will of a Hindu testator appointing a guardian for his nephew does not bind the Courts under S. 7 (3) of the Guardian and Wards Act (*Chevis, J.*) DHANPAT RAM *v.* PREM SINGH. 20 P.L.R. 1911=12 I.C. 452=20 P.W.R. 1911.

——S. 7—*Testamentary guardian—Oral declaration—Sufficiency of.*

It is only where there is a *written* will appointing a guardian that a testamentary guardian stands in the way of the appointment of a statutory guardian by the Court. In the case of an appointment of a guardian by an oral will it is open to the Court to ignore this appointment and make statutory appointment of its own if it considers best in the interests of the minor. (*Ayling and Venkatasubba Rao, JJ.*) PARVTI AMMAL *v.* ELAYAPERUMAL KONAR. 16 L.W. 415=(1922) M.W.N. 167=1922 Mad. 70 (1).

——S. 7 (3)—*Testamentary guardian—Precludes order under.*

Under S. 7, cl. (3) where a guardian has been appointed by will, an order under that section declaring another person to be guardian in his stead shall not be made, until the powers of the guardian appointed by the will have ceased under the Act. (*Sadasiva Aiyar and Moore, JJ.*) ALAGAPPA IYENGAR *v.* MANGATHI AMMANGAR. 40 Mad. 671=34 I.C. 766=30 M.L.J. 504.

Trust Property.

——Ss. 7 and 29—*Trust properties—If guardian can be appointed for—No interest in surplus income.*

Properties given to the head of a mutt as trustee are trust properties and no guardian in respect thereof can be appointed under S. 7. Nor can sanction be granted under S. 29 to sell the properties. Such a sale is invalid. A Dharmakarta has ordinarily no interest in the surplus income of the mutt properties though in a given case such a right might be established. A right to a portion of the income of the

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trust properties does not vest the properties in the beneficiary so as to attract the provisions of S. 7 and 29 of Guardians and Wards Act. 6 L.W. 337, Foll. (*Seshagiri Aiyar and Bakewell*, JJ.) OBLA VENKATACHALAPATHI AIYAR *v.* THIRUGNANA SAMBANDA PANDARA SANADHI. **83 M.L.J. 297 = 42 I.C. 273 = 6 L.W. 637.**

——S. 7—*Trust property.*

An application under S. 7 of the Act for the appointment of a guardian for the management of the *debutter* properties of an idol on behalf of an infant *Shebait* cannot be entertained where the minor is merely a trustee and has no proprietory interest in the properties. (*Coutts and Dass*, JJ.) KILLBY *v.* BAHURIA SHEORATAN. **1 P. 432 = 3 P.L.T. 805 = 1922 P. 527.**

——Ss. 8 and 11—*Objection petition by relative of minor—Application for appointment of guardian—Failure to serve notice under S. 11, if fatal.*

The petition of objection of the relative might be regarded in substance as an application by a relative of the minor for the appointment of a guardian within S. 8 of the G. and W. Act, 1890. Failure to comply with the provisions of S. 11 as to the service of notice of the application, was not a fatal defect which would invalidate the proceedings of the Court, as all the parties interested were already before the Court. 38 Cal. 783, Dist. (*Mookerjee and Beachcroft*, JJ.) SUNDAR MONI DAI *v.* BANG SIDHAR PATNAIK. **18 C.W.N. 160 = 16 I.C. 900 = 17 C.L.J. 405**

——S. 8—*Order without application—Validity—Pardhanashin lady—If can apply.*

A Court has no power to make an order appointing a guardian of minors except on a substantial application. The mere fact that the mother of a minor is a pardanashin lady is no obstacle to her being appointed guardian of the minor son. (*Chitty and Chatterjea*, JJ.) JAIWANTY KUMARI *v* GAYADHAR UPADHYA. **38 Cal. 226 = 15 C.W.N. 676 = 10 I.C. 334 = 14 C.L.J. 226.**

——Ss. 8 and 16—*Court's interference in family affairs.*

A Court should refuse to take proceedings under the Act when the result would be an endless series of family disputes and thus may involve an unnecessary interference with the family arrangements which are quite satisfactory .(*Kensington*, C.J.) HAYAT KHATUM *v.* SHARAM KHATUM **93 P.R. 1914 = 26 I.C. 524 = 238 P.L.R. 1915.**

——S. 8—*Appointment of guardian—Right of appeal or revision.*

It is open to a person on whom notice should have been served but has not been, to come forward and object in revision to the order passed appointing a person as guardian. (*Daniels*, A.J.C.) MT. ISLAMAN *v* MT. MAQBULAN. **73 I.C. 255 = 9 O. & A.L.R. 74.**

GUARDIANS AND WARDS ACT (VIII of 1890), S. 9.

——Ss. 9, 10, 19 and 52—*Custody of minor—Suit or application—Delegation of guardianship—Revocation of—Suit in District Court—Transfer of, to High Court—Letters Patent (Mad.), cls. 13 and 20—Mandatory order for delivery of infants' resident in England—Impropriety of.*

A Hindu father appointed the deft., an English lady, as guardian of the persons of his minor sons on the offer of the deft. to take them to Europe and educate them in England. Subsequently the father cancelled the arrangement and demanded his children back. On the defendant's refusal to do so, the father instituted a suit in the Chingleput District Court for a declaration that he was entitled to the custody and guardianship of his sons and for an order directing the deft. to hand them over to him. The suit was transferred under cl. 13 of the Letters Patent to the High Court of Madras which granted a decree as prayed for. *Held*, that the suit was entirely misconceived and should be dismissed. The District Court has no jurisdiction over infants except such as is conferred by Guardians and Wards Act. The jurisdiction of the District Court is limited by S. 9 of the Act to infants ordinarily resident within the District and the minors in question having left India months prior to the proceedings were not ordinarily resident in the District. A suit *inter partes* is not the form of procedure prescribed by S. 10 of the Guardians and Wards Act for proceedings touching the guardianship of infants. *Semble*: The powers of the Madras High Court to which the suit was subsequently transferred under cl. 13 of the Letters Patent, relating to the case would be those which but for the transfer might have been exercised by the District Court. Even if the High Court had any jurisdiction with regard to minors beyond that exercisable by the District Court a mandatory order directing the deft. to deliver possession of the minors ought not to have been made since any attempt to enforce it would expose the deft. to *habeas corpus* proceedings in England and also because the minors were not represented before the Court and no steps were taken to ascertain their wishes and interests. The order of the High Court declaring one of the infants who was soon to attain majority, a ward of Court and then declaring the plff. as their guardian under S. 7 so as to prolong his minority without consulting the infant's wishes and when the plff. was a fit person to be the guardian opposed to S. 19 of the Guardians and Wards Act. (*Lord Parker.*) ANNIE BESENT *v.* NARAYANIAH. **38 Mad. 807 = 41 I.A. 214 = 27 M.L.J. 30 = 18 C.W.N. 1089 = 1 L.W. 520 = (1914) M.W.N. 885 = 16 M.L.T. 166 = 20 C.L.J. 253 = 16 Bom. L.R. 625 = 24 I.C. 290 = 12 A.L.J. 1155 (P.C.).**

——Ss. 9, 39—*Residence of applicant.*

According to the Act, the applicant for guardianship of minor must be residing within the

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jurisdiciton of the Court to which the application is made. (*Rafique and Piggott, JJ.*) ASGHAR ALI *v.* AMINA. 36 A. 280 = 21 I C. 59 = 12 A.L J. 392.

———S. 9 and 25—*Custody of minor—Suit or application.*

The dictum of the (P.C.) in *Besant* v. *Narayaniah* (38 Mad. 807) that a suit *inter parties* is not the right proceeding does not do away with the effect of the judgment in *Sharifa* v. *Mune Khan*, 25 Bom. 574; 2 Bom. L.R. 167. (*Scott, C. J. and Heaton, J.*) ACHRATLAL JEKISENDAS *v.* CHIMANLAL PARBHUDAS.
40 Bom. 600 = 37 I.C. 215 = 18 Bom. L R. 583.

———Ss. 9 and 25—*Custody of minor—Suit in Mufussal Court—Jurisdiction.*

A Mufussal Court other than the District no jurisdiction to entertain proceedings by a father for the custody of his minor child. A suit will not lie for the purpose in the Civil Court. 38 Mad. 807, Foll.; 40 Bom. 660, Diss.; 4 Beng. L. R. (App.) 36; 8 Cal. 266; 9 Mad. 31; 26 All. 594 and 25 Bom. 574, Rel. (*Wallis, C.J., Ayling and Sadasiva Iyer, JJ.*) K. SATHI *v* RAMANDI PANDARAM.
42 Mad. 647 = 9 L.W. 600 = 37 M.L J 93 = 26 M L T. 61 = 53 I.C. 399 = (1919) M.W.N. 487 (F.B.).

———Ss. 9 and 25—*Custody of minor—Suit, if maintainable.*

A suit by a father for custody of his child is maintainable especially as no remedy exists under the Guardians and Wards Act. (*Robinson, J.*) MATHURABAN *v.* TEWARY.
44 I.C. 753 = 10 Bur. L.T. 186.

———S. 9—*Custody of minor—Suit for application.*

The Guardians and Wards Act forbids proceedings being taken in the ordinary way touching the guardianship of infants. A suit for custody of a child must be brought under the Guardians and Wards Act which confers jurisdiction on the District Court over minors ordinarily resident in the District. The objection to jurisdiction could be raised at any stage. 27 M.L.J. 30 (P.C.), Foll. (*Young, J.*) ARUNACHALLAM PILLAY *v.* AYAMA.
8 L.B.R. 211 = 29 I.C. 768 = 8 Bur. L T. 128.

———S. 9 (2)—*Appointment of guardian—Property of minor in the hands of administratrix.*

A guardian of the property of a minor, in the hands of the administratrix to his father's estate can be validly appointed. The appointment of administratrix does not mean that the minor has no property in the estate. 8 B.L R. 208, relied on. (*Sanderson, C.J., and Mookerjee, J.*) LALIT KUMAR MUKERJEE *v.* DASARATHI SINGHA. 56 I.C. 261 = 48 Cal. 802.

GUARDIANS AND WARDS ACT (VIII of 1890), S. 11.

———S. 10—*Illness of child no reason.*

Illness of a child in the custody of the adoptive father is no reason to make over the child to the natural father. (*Campbell, J.*) PIARE LAL *v.* UDAI RAM. 1923 Lah. 376.

———S. 10 (1) (a)—*Application stating age and date of birth of minor—Whether evidence to prove age of minor.*

Proceedings for the appointment of a guardian, the cause title of which stated the age of the minor at the date of proceedings are not admissible in evidence for the purpose of showing what the age of the minor then was. (*Fletcher and Newbould, JJ.*) BROJA KRISHNA GHOSE *v.* BENIMADHAB GHOSE. 41 I.C. 744.

———Ss. 11, 13 and 17 (3)—*Guardian of minor, appointment of—Person in custody of minor—Opportunity to adduce evidence.*

An order appointing a person to be the guardian of the property and the person of the minor without giving the person in custody of the minor an opportunity to adduce evidence to show the unfitness of the applicant for guardianship and without fixing the date for the hearing of the petition, is bad and ought to be set aside. (*Chatterjee and Walmsley, JJ.*) TALUK RAJ KOER *v.* CHOOLACHOOA KOER. 20 I.C. 578.

———S. 11—*Fit case to appoint a guardian.*

Where it was alleged that an alienation of a part of the property of the minors was necessary to pay off certain debts on which interest was accumulating and that it would be impossible to alienate so long as the applicant did not get a certificate of appointment from the Court. *Held* that this was a fit case in which the application for the appointment of a guardian ought to have been accepted. (*Moti Sagar, J.*) MT. TAHAN *v.* SHADI. 1923 Lah. 601 (1).

———Ss. 11, 13 and 48—*Refusal to appoint applicant as guardian—Subsequent application for the same purpose not maintainable—Proceedings under the Act—Nature of.*

Where a person's application to be appointed as guardian of a minor is rejected and there is no appeal from that order a subsequent application for the same purpose by the same person is not competent. Proceedings under the Guardians and Wards Act are not intended to be summary. Where a District Judge commits a material irregularity in appointing a particular person as guardian ignoring the procedure laid down in Ss. 11 and 13 and failing to consider whether the guardian was by character and capacity a fit person and whether the appointment was for the welfare of the minor, his procedure is materially irregular. (*Kotwal, A.J.C.*) GOPALRAO *v.* SHRAWAN. 1923 N. 86.

———Ss. 11, 13 and 17—*Person not a party to proceedings—Appeal—Revision.*

A person who is not made a party in an application under S. 10 but to whom notice ought to have gone under S. 11 (a) (ix) as a

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person interested in the result of the application, cannot under S. 47 (*a*) file an appeal from the order passed on the application. But he can file a revision under S. 115, C.P.C. Ss. 13 and 17 are wide enough to cover an enquiry into any of the matters which can legitimately form the subject of opposition to the grant of a certificate of guardianship to a particular individual. (*Stuart and Kanhaiya Lall*, A.J Cs.) JHANDESHUR *v.* BAIJ NATH.
1 O L J. 761 = 27 I.C. 121 = 18 O.C 65.

———S. 12—*Minor becoming* Muttawalli—*Powers of, District Judge's.*

Where a minor, in respect of whom a guardianship application is made, becomes a *Muttawalli* under a trust deed, the District Judge is empowered to give directions for the discharge of the *Muttawalli's* duties pending the majority of the minor or a regular suit by some person interested in the endowment. (*Piggott and Walsh*, JJ.) KHATUN BEGAM *v.* EJAZ AHMAD.
39 All. 288 = 37 I.C. 885 = 15 A.L.J. 132.

———Ss. 12 and 25—*Court's power to put minor in possession of guardians.*

If an appointment of the guardian of the person of a minor is made, the proceedings cannot be regarded as complete until the guardian has obtained effective possession of the person of the ward. If the guardian is not in such possession, the Court should take action under S. 12 to place the minor in the possession of the guardian. 26 All. 594, Ref. (*Chamier and Piggott*, JJ.) UTMA KUAR *v.* BHAGWANTA KUAR. **37 All 515 = 29 I.C. 416 = 13 A.L.J. 742.**

———S. 12—*Power of District Judge to direct any party to proceedings to deposit in Court any sum due to minor—Jurisdiction.*

In a proceeding under this Act for the appointment of a guardian, the District Judge has no power to direct any party to the proceeding to deposit in Court any sum due to the minor. (*Rafique and Piggott*, JJ.) MOHAN SINGH *v.* ANAR KUER. **24 I.C 518 = 12 A.L.J 768.**

———Ss. 12, 43 and 47—*Application for guardianship — Pending—Order sanctioning mortgage—Validity.*

An order of the District Judge sanctioning the marriage of a minor girl, while an application for the appointment of her guardian is pending is bad. (*Shah and Crump*, JJ.) LAXMINARAYAN SESHAGIRI *v.* PARVATIBAI PARMESHWAR. **44 Bom. 690 = 57 I.C. 79 = 22 Bom. L.R. 899.**

———S. 12 (1)—*Power to direct payment into Court or to appoint Receiver of property.*

On an application under S. 12 the Court has power to direct payment of the minor's money into Court or to appoint a Receiver of his property. (*Robertson*, J.) *In re* BAI JAMNABAI.
36 Bom. 20 = 11 I.C. 554 = 13 Bom. L.R. 487.

GUARDIANS AND WARDS ACT (VIII of 1890), S. 13.

———Ss. 12 (1), 25, (1) and 45—*Discretion as to marriage of minor—Disobedience of—Order of Judge—Jurisdiction.*

Where a Court appointed a guardian for the person of a minor and also provided that the minor should not be married without the consent of a particular person or the Court and on the violation of the order by the guardian in giving the minor in marriage the Court ordered production of the minor and imposed fine under S. 45 of the Guardians and Wards Act on their failure to produce the minor, *held*, that the order of the Judge was not made either under S. 12 (1) or under S 25 (1) and so S. 45 of the Guardians and Wards Act had no application. (*Mookerjee and Carnduff*, JJ.) SUBHADRA KOER *v.* DHAJADHARI GOSWAMI.
18 C.L J. 147 = 14 I.C. 380 = 16 C.W.N. 447.

———S. 13—*Evidence—Kanungo's report, whether admissible.*

In proceedings under this section the report of a Girdawar Kanungo in favour of the appointment of a certain person as guardian is inadmissible in evidence and the order of appointment should not be based upon it. (*Rafique and Piggott*, JJ.) SUBHAG SINGH *v.* RAGUNANDAN SINGH. **36 All. 282 = 24 I C. 116 = 12 A.L J. 385.**

———S. 13—*Procedure, if summary.*

The procedure under S. 13 is not intended to be summary and therefore a Court should not reject an application for the appointment of a guardian of a minor without enquiry. 17 Bom. 560; 15 I.C. 195, Foll. (*Scott Smith*, J.) JIWAN *v.* ZEBO. **63 P.L R. 1917 = 44 I.C. 976 = 134 P W.R. 1917.**

———S. 13—*Order with enquiry—Husband claiming to be guardian of his minor wife.*

A husband may in many cases be a suitable guardian of his minor wife but the question must be settled, one way or the other, after proper inquiry as contemplated by S. 13 of the Guardians and Wards Act. An order made without proper inquiry is bad and ought to be set aside. (*Scott-Smith*, J.) TIRHU *v.* LACHMAN. **109 P.L.R. 1912 = 15 I C. 195 = 71 P.W.R. 1912.**

———S. 15—*Joint guardians—Inability to give security—Appointment of one—Consent of mother.*

A guardian who was supported by the mother of a minor was appointed along with another person as joint guardian. He failed to furnish the necessary security, the joint guardian was appointed sole manager of the minor's property. No opportunity was given to the mother to state her views before this appointment was made. *Held*, that the order was injudicious and made without due consideration and ought to be set aside. (*Sharfuddin and Richardson*, JJ.) MAHABBAT ALI CHOWDHURY *v.* SHAMSHER ALI CHOWDHURY.
15 I.C. 703.

GUARDIANS AND WARDS ACT (VIII of 1890), S. 17.

———S. 17—*Religion of minor—Duty of Court in considering the question of custody of young girl.*

The Court in considering the question of custody of a young girl should see that she should be placed under the guardianship of a person who will bring her up in the religion of her people. (*Mears*, C.J. *and Bannerji*, J.) RAM PRASAD *v.* DISTRICT JUDGE OF GORAKHPORE. 57 I.C. 881 = 2 U P.L.R. (A) 336.

———S. 17—*Mother leading irregular life—Appointment of guardian—Conditions.*

The guardianship of a minor child was temporarily taken out of the hands of the mother who was leading a very irregular life at the time of the institution of the proceeding and her conduct was such that it would be wrong to confide a child to her. The mother does not permanently forfeit all her natural right to the custody of her child. The mere fact that the mother earns a small and possibly precarious income is in itself no reason for depriving her of the child. (*Chatterjee and Panton*, JJ.) MRS. WANIFRED *v.* MRS. WANIFRED CHAPMAN. 57 I.C. 13 = 31 C L.J. 365.

———S. 17—*Illiteracy of—Mother, whether disqualification.*

Simple illiteracy is no disqualification for the appointment of a mother as guardian of her sons. (*Chatterjee and Chapman*, JJ.) *In re* NIKHARANNESSA BIBI. 33 I C. 918 = 20 C.W.N. 663.

———S. 17—*Considerations—Welfare of minor—Rights of guardianship—Wishes of minor and of deceased parents.*

In selecting a guardian the main consideration must be the welfare of the minor and the recognised rights of guardianship under the Law to which the minor is subject, must, if necessary, be given a subordinate position. Consistently with the welfare of the minor the Court should also have regard to the wishes of the deceased parents of the minor and also to the minor's wishes when he is of years of discretion. 32 Bom. 50; 29 All. 210. Foll. (*Mookerjee and Beachcroft*, JJ.) FULKUMARI BIBEE *v.* BUDH SINGH DHUDHURIA. 28 I.C. 112 = 18 C.W.N. 1198.

———S. 17—*Welfare of minor.*

Where there was a maintenance order against the father, the amount under which was long delayed and partly not paid and where the ward, a boy of 14, wanted to learn tailoring while the father wanted him to be put to school, *Held*, the father should not be appointed as guardian especially when he had re-married and divorced the ward's mother. (*Campbell*, J.) MT. MUKABAR *v.* KARIM BAKHSH. 1923 Lah. 283.

———Ss. 17, 7—*Consideration — Husband who failed to get restitution if a good guardian.*

In case of his failure to get restitution of conjugal rights by execution of the decree the husband should not be appointed guardian of the person of his wife. (*Scott-Smith*, J.) ASA BAI *v.* GIRDARI RAM. 67 I.C. 882 = 8 Lah. L.J. 293.

———S. 17—*Unchaste mother—Rights of guardianship.*

The mere fact of unchastity is not enough to deprive a mother of her rights of guardianship. (*Kotwal*, A.J.C.) MT. GANGU *v.* MT. KONGSHI. 74 I.C. 53 = 1923 Nag. 306.

———Ss. 17 and 19—*Guardianship of minor—Father—Suit for custody of child.*

Where a father has never had custody of his infant child there is no provision under Guardians and Wards Act by which the father can obtain the custody of the child. S. 19 of the Guardians and Wards Act precludes from appointing any one other than the father of the minor as guardian of the minor unless the minor's father is found to be unfit to be guardian of the minor's person. The words of S. 19 of the Guardians and Wards Act so far from being subject to the provisions of S. 17, expressly override them. 38 M. 807, followed. (*Batten*, J.C. *and Halliax*, A.J.C.) DHAN KUMARI DEVI *v.* MAHENDRA SINGH. 6 N.L.J. 111 = 19 N.L.R. 45 = 1923 Nag. 199.

———S. 17—*Remarriage of a minor's mother—First husband's reversioner v. step-father—to guardianship.*

Remarriage of a minor's mother does not deprive her of the right to guardianship when the minor is too young to be taken away from her custody. The minor should be left in her charge, but one of the first reversioners of the deceased father of the minor and not her new husband should be appointed as guardian of the minor's property. (*Chevis*, J.) AHMAD *v.* RAHMATAN. 40 I.C. 107 = 32 P.W.R. 1917.

———S. 17—*Religion of minor—Presumption as to—Duty of guardian—Marriage of Christian minor with* Chamar *valid—Right to be appointed guardian.*

A child in India must under ordinary circumstances be presumed to have his father's religion and his corresponding civil and social status, and it is therefore ordinarily the duty of a guardian to train his infant ward in such religion. 11 W.R. 77 P.C., Foll. An Indian Christian who was originally a *Chamar* died leaving behind his wife and a minor daughter. Shortly after this, the wife was received back into the *Chamar* brotherhood and immediately afterwards she married the minor girl to a *Chamar* to whom she had been already betrothed by her father. On an application for the appointment of a guardian to the person of the minor. *Held*, that in as much as the father of the girl was, and died, a Christian, the girl must be presumed to be a Christian and the alleged marriage was therefore invalid (2) that the mother of the girl having renounced the Christian religion was not a fit person to have charge of the girl who must be brought up as

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Christian until she reached years of discretion when she could choose for herself. (*Scott-Smith*, J.) ALLUNT *v.* BADAMO.
32 I.C. 897=46 P.W.R. 1916.

——S. 17—*Welfare of minor—Maternal grandmother v. paternal grand-father's brother.*

A minor's maternal grandmother will be preferred when the minor's welfare requires it to his paternal grandfather's brother as guardian of the person and property of the minor. (*Beadon*, J.) BATA *v.* MUSSAMMAT BHAGAN. 45 P.W.R. 1913=19 I.C. 609=192 P.L.R. 1913.

——Ss. 17 and 19—*Father—Guardianship—Second marriage.*

The fact that the father has married a second wife is not a sufficient ground for holding that he is unfit to be the guardian of his children in the absence of proof of ill-treatment by the father or the step-mother. Th the first wife was not properly treated, is not a ground for presuming that the children will not be properly looked after. The Legislature advisedly draws a distinction between the legal rights of husband and parents on the one side and those of the other near relations on the other side. The former could be deprived of the right of guardianship only when they are found to be unfit to be guardians and the latter when it does not conduce to the welfare of the minor. S. 19 applies to the former case and S. 17 applies to the latter case. (*Seshagiri Aiyar and Napier*, JJ.) AUDIAPPA *v.* NALLENDRAN. 39 Mad. 473=28 M.L.J. 442=17 M.L.T. 389=29 I.C. 4=(1915) M.W.N. 330.

——S. 17—*Welfare of minor—Father's wishes.*

Under S. 17 of the Act the question of guardianship has to be decided with reference to all the considerations mentioned in the section and where it is positively injurious to give effect to a father's wishes, the Court will interfere even in his life time. (*Wallis and Abdur Rahim*, JJ.) ALHEHRECHT *v.* BATHEE JELLAMMA. 11 M.L.T. 53=(1912) M.W.N. 53=13 I.C. 453=22 M.L.J. 247.

——S. 17—*Welfare of the child—Paramount consideration.*

The welfare of the minor is the paramount consideration in an application for the appointment of a guardian for the person of a minor though the rights of guardianship under law must also be considered but the qualification or otherwise of the proposed guardian is only secondary to that of the minor's welfare. 32 Bom. 50; 20 All. 210; 33 All. 222; 10 I.C. 283; 21 M.L.J. 195; 16 M.L.J. 357, Foll. (*Sundara Iyer and Spencer*, JJ.) MUTHUVEERAPPA CHETTY *v.* PUNUSWAMI CHETTY. (1911) 2 M.W.N. 561=22 M.L.J. 68=13 I.C. 16=10 M.L.T. 477.

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——S. 17—*Presumptive heir as guardian, if desirable.*

Usually, it is undesirable to appoint any one guardian of the person of a minor, who is the presumptive heir to the minor's property. (*White*, C. J. *and Sankaran Nair*, J.) KRISHNASWAMI CHETTY *v.* COTTAH MANGAMMAL. 10 I.C. 283=(1911) 1 M.W.N. 366

——S. 17—*Considerations — Management of business—Purdanashin lady — Security — Remuneration.*

The mere fact that an applicant is a *purdanashin* lady is no ground for rejecting her claim to be appointed guardian of the property of a minor. Where however the minor's estate owns a big business which could not be managed by a woman of the status of the applicant without an assistant, that may be a ground for appointing another person as guardian. Where an appellate Court considers the advisability of the appointment of a particular person as guardian it may take into consideration also the questions of the remuneration that will have to be paid to him as well as the security which he is likely to furnish. (*Kotwal*, A.J.C.) MT. RAJRANI *v.* BHAGWANDAS. 1923 Nag. 232.

——S. 17—*Paternal uncles as maternal uncles—Hindu Law*

The paternal uncles are, under the Hindu law preferential guardians to maternal uncles, but if the former claim an interest in the minor's property adverse to the minor, they are not entitled to the custody of the minor under the Guardians and Wards Act. (*Stuart*, J.C.) BAIJNATH *v.* EMPEROR. 1 O.L.J. 416=23 I.C. 840=15 C.L.J. 640.

——S. 17—*Discretion of District Judge—Interference in appeal.*

The discretion vested in a District Judge acting under S. 17 of the Guardians and Wards Act is very wide and orders passed within the bounds of such discretion can rarely be interfered with by the High Court. (*Piggott*, A.J.C.) KANIZ JAFAR *v.* ZAQIA BEGAM. 11 I.C. 340=14 O.C. 103.

——Ss. 17 and 19 (c)—*Welfare of minor—Natural right of father—Conversion to Islam from Hinduism—Effect.*

S. 19 recognises the natural rights of the father and is controlled by S. 17 according to which the paramount consideration is the welfare of the minor. A Hindu father's conversion does not operate to deprive him of the guardianship of his children by reason of Act, (XXI of 1850). Nor his conversion *per se* reason for the Court to declare the father unfit, for the Court cannot say that one religion is better than the other. (*Pratt and Crouch*, A.J, Cs.) SHEIK MAHOMED *v.* MR. RADHABAI. 47 I.C. 817=12 S.L.R. 14.

——S. 17 (1)—*Welfare of minor.*

It was not for the benefit and welfare of the minor to take him out of the custody of his

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mother especially when the application for appointment of guardianship was made simply for the vindication of the applicant's right as paternal grandfather. (*Tudball and Ryves, JJ.*) SUDHIA *v.* MAKKA. **34 I.C. 418 = 18 A.L.J. 71.**

———S. 17 (1) (2)—*Scope of — Muhammadan Law—Guardianship for marriage.*

Though the Act enables the Court to appoint anybody as guardian, S. 17 (2) lays down Rules which bring the provisions of the Act into tune with those of the Mahomedan Law according to which the father has a preferential claim to be the guardian of his minor daughter's property. The Rules as to guardianship for marriage of a minor are governed exclusively by Mahomedan Law. (*Chatterjee and Newbould, JJ.*) HADISH BAPARI *v.* BOGAMULLA SHEIK. **38 I.C. 787 = 25 C.L.J. 551.**

———S. 17 (1)—*Mahomedan mother—Rights of.*

A Mahomedan mother is the proper guardian of her children under 7 years and she cannot be removed from such guardianship unless she is found guilty of gross and open immorality. (*Holmwood and Teunon, JJ.*) JANNA TUNNESSA BIBI *v.* HAFIZ UD-DIN **10 I.C. 904.**

———S. 17 (1) and (2)—*Guardianship of the person of a minor—Preference among claimants—Presumptive heir ineligible.*

When the claims of distant relations to the guardianship of the person of a minor have to be compared there is no question of preference other than what arises from a consideration of the minor's welfare. The presumptive heir to the property of a minor is not a suitable person to be appointed guardian of his person as such a person stands to gain by the minor's death. 16 M.L.J. 357 ; 2 C.L.R. 583; 10 I C. 288, Ref. (*Spencer and Venkatasubba Rao, JJ.*) NARASAYYA *v.* VENKATAPPA. **44 M.L.J. 62 = (1923) M.W.N. 12 = 17 L.W. 92 = 1923 Mad. 369.**

———S. 17 (1) and (2)—*Friend of debtor to estate—Should not be appointed.*

Where the guardian appointed by the testator is a debtor of the estate and specific charges are made against him by the widow which may make it necessary to call the guardian appointed by the will to account, it is advisable not to appoint as guardian any person on terms of friendship with such person. (*Kotwal, A.J.C.*) MT. RAJRANI *v.* MT. BHAGWANDAS. **1922 Nag. 232.**

———Ss. 17 (1) and 19 (a)—*Mahomedan Law — Minor boy and girl — Guardianship—Mother and Paternal uncle—Preference.*

Under S. 17 (1) of the Guardians and Wards Act the Court is bound to take the Mahomedan Law into consideration in deciding as to who is to be selected as a guardian for minor Mahomedan. The husband is the most unsuitable guardian for a girl who has not attained the age of puberty. It is desirable that the guardian of the person should also be the guardian of the property. Under the Mahomedan Law the mother is a preferential guardian over a paternal uncle of a boy who is under 7 years of age and even if he is above seven, the Court, which takes the place of a father, can appoint the mother in preference to the paternal uncle as the guardian. (*Batten, A.J.C.*) MAHAMAD KHAN *v.* SULTAN BEGAM. **43 I.C. 849.**

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———S. 17 (3)—*Considerations—Wishes of minor.*

A boy aged 14 years and a girl aged 16 years, are old enough to form an intelligent preference, such preference is strongly entitled to consideration under S. 17 (3). 9 Mad. 391, Diss ; 16 Bom. 307 ; 12 All. 213 ; 25 Cal. 881 ; 23 Cal. 290 ; 22 M.L.J. 247, Foll. (*Stanyon, A.J.C.*) BATOOLAL *v.* MRS. EKSTRAND. **12 N.L.R. 38 = 32 I.C. 977.**

———Ss. 19 and 25—*Application for guardianship by father is not competent.*

An application by a Hindu father under S. 19 of the Guardians and Wards Act is not competent. The application should be under S. 25 of the Act asking the Court to direct the return of the boy to the father. Under the Hindu Law the father is the natural guardian of his minor son and he can apply to the Court, if his ward leaves or is removed from his custody, for an order for the minor's return, and the Court will, if it is of opinion that it will be for the welfare of the ward to return to his guardian, make such an order. (*Macleod C.J. and Shah, J.*) BAI TARA *v.* MOHANLAL LALLUBAI. **24 Bom. L.R. 779 = 1922 Bom. 405.**

———S. 19—*Father, if can be appointed guardian.*

The Court has, subject to the explanations in S. 19 of the Act, no power to appoint a father the guardian of the person of his children and where the Court does so the order of appointment is without jurisdiction and can be called in question. (*Lindsay, J.C.*) MUSHAF *v.* MOHAMMAD FAWAD. **21 O.C. 194 = 48 I.C. 60 = 6 O.L.J. 616.**

———S. 19 — *Scope of — Appointment of guardian—Father.*

Where the parties to a case are not European British subjects, S. 19 of the Guardians and Wards Act lays down in clear and unmistakable terms that the Court is not authorised to appoint or declare a guardian of the person of a minor whose father is living, unless that father is unfit to be a guardian. There is no reason to suppose that an application by the father himself was intended to be excepted from the provisions of the section. The view of the legislature presumably is that the father is the natural guardian and does not require appointment. (*Brown, A.J.C.*) RAMJAN KHAN *v.* MABIAN BIBI. **4 U.B.R. 146 = 1923 Rang. 120.**

GUARDIANS AND WARDS ACT (VIII of 1890), S. 19.

———S. 19 (b)—*Natural guardian living—Court whether can appoint another guardian—Minor absent.*

During the natural guardian's life, a Court cannot appoint another guardian under S. 19 unless in its opinion, the natural guardian is unfit, and since a guardian is appointed in the interests of the minor, it cannot appoint one, if the minor is absent and his interests are not considered. (*Lord Parker.*) MRS. ANNIE BESANT *v.* NARAYANAIAH. **38 Mad. 807 = 41 I.A. 314 = 27 M.L.J. 30 = 18 C.W.N. 1089 = 1 L.W. 520 = (1914) M.W.N. 585 = 16 M.L.T. 165 = 20 C.L.J. 253 = 16 Bom. L.R. 625 = 24 I.C. 290 = 12 A.L.J. 1155 (P.C.).**

———S. 19 (b)—*Father living—Appointment of guardian.*

When the minor's father is living no other guardian can be appointed, unless he is in the Court's opinion unfit for the appointment. (*Oldfield and Seshagiri Aiyar*, JJ.) SUBRAMANYA PILLAY *v.* AMMAYEE AMMAL.

2 L.W. 831 = 29 I.C. 740 = (1914) M.W.N. 414.

———S. 19 (b)—"*Father*,"—*Meaning of.*

"Father" in S. 19 (*b*) means father of a child born in wedlock and not the natural of putative father. Following Hindu and Mahomedan Laws the Guardian and Wards Act does not recognise the father as the guardian of his illegitimate child because the only point to be considered in appointing the guardian of a minor is his welfare. (*Fox*, C.J. *and Twomey*, J.) MA MYO *v.* MAUNG KYAN.

9 Bur. L.T. 205 = 36 I.C. 646 = 8 L.B.R. 415.

———S. 19 (c)—*Property of minor under Court of Wards—Application by husband for guardianship of person.*

Where the property of a minor is under the Court of Wards the Court cannot appoint or declare even the husband of the girl as the guardian of her person. (*Hayward*, J.C.) HAJI MAHOMED BARDIO. *In re.*

24 I.C. 944 = 7 S.L.R. 199.

———Ss. 20, 27 and 39—*Guardian dealing with ward's money—Investment—Duty to account for profits—Breach of trust.*

A guardian stands in a fiduciary relation to his ward and is not allowed to make any profit out of his office; and he is bound to deal with the property of the ward as carefully as a man of ordinary prudence would do. If the ward's moneys were used by the guardian in his business, the latter would be bound to account for the profits he had made out of the use of that money or could have made but for his gross or wilful default. Every plain neglect of duty by a guardian amounts to a breach of trust and he must compensate his ward for any loss occasioned thereby. *Prima facie* it is the duty of a guardian to invest moneys belonging to his ward and S. 33 of the Act provides means by which a guardian may obtain assistance of the Court in his dealings with his ward's funds. (*Broadway and Abdul Raoof*, JJ.) LABHU RAM *v.* BHAGMAL.

54 I.C. 926 = 157 P.R. 1919.

GUARDIANS AND WARDS ACT (VIII of 1890), S. 24.

———S. 21—"*Guardian*"—*Meaning—Minor step-mother if can be appointed*—Purdanashin *lady—Appointment as guardian.*

There is no inflexible rule of law that a *purdanashin* lady should not be appointed guardian of the person and property of her infant son. She should not be appointed where her appointment would not be to the advantage of the infant. The word "guardian" in S. 24 refers to the guardian of the person of the minor. A minor step-mother is competent to act as guardian of the person of her infant step-son. 5 Bom. L.R. 542; 3 Bom. 2, Rel. (*Mookerjee and Beachcroft*, JJ.) SUNDAR MONI DAI *v.* BANG SIDHAR PATANIK. **18 C.W.N. 160 = 16 I.C. 900 = 17 C.L.J. 405.**

———S. 24—*Marriage of minor—Court's power to restrain.*

The Court is not bound to assume responsibility for a minor's marriage but the Court may restrain a marriage if it is unsuitable even though the guardian has given his consent. But the Court will not interfere when the minor becomes competent under her personal law to contract a marriage. (*Piggott and Walsh*, JJ.) MAHOMED FASAHAT ULLAH *v.* TAHAIRA BIBI. **40 I.C. 136.**

———S. 24—*Marriage of minor—Court's duty.*

It is no part of a Court's duty under the Guardians and Wards Act to assume direct responsibilities for the marriage of a minor girl. The Court must leave the matter to be settled by the parties themselves and decline either to sanction or probibit the marriage. 22 Bom. 509. Ref. (*Kensington*. C.J.) LAL SINGH *v.* SHAM LAL. **98 P.R. 1914 = 27 I.C. 381 = 201 P.L.R. 1915.**

———Ss. 24 and 43—*C. P. C.* (*Act V of* 1908) *S.* 115—*Order not warranted by Act—Revision.*

Where a District Court purporting to act under the Guardians and Wards Act made an order directing a person to pay a certain sum to the guardian of minor on a petition presented by the latter asking the Court for permission to give the minor in marriage and also for directing that other person to pay a fixed sum to the guardian. *Held*, that the order of the Judge directing amount to be paid was not warranted by the section of the Act and could be set aside under S. 115 of the C. P. C. (*Abdur Rahim and Spencer*, JJ.) KOMANA SOMAKKA *v.* KODIDALA PEDDA RAMIAH.

36 Mad. 39 = (1911) 2 M.W.N. 519 = 13 I.C. 251 = 22 M.L.J. 193.

GUARDIANS AND WARDS ACT (VIII of 1890), S. 24.

———S. 24—*Marriage of ward—Power of Court.*

A District Judge is competent to sanction the marriage of a minor girl under the guardianship of one appointed by the Court with a particular bridegroom. Under the Shia law such a minor girl who has attained puberty and the age of discretion has an absolute right to marry a man of her choice subject always to the District Judge's superintendence and veto. (*Mullick and Atkinson, JJ.*) ABBASI *v.* MUSTAPA BEGUM. 52 I.C. 998.

———S. 25—*Welfare of minor—Enquiry—Practice.*

In deciding the question of a custody of a minor the welfare of the minor alone is to be considered. All that the Court has to do is to satisfy itself, what is best in the interests of the minor and is not bound to make a protracted enquiry. (*Scott-Smith, J.*) JUGGO KAUR *v.* DURGA DAS. 209 P.L.R. 1914= 27 I.C. 257=150 P.W.R. 1914.

———S. 25—*Father's right to custody of minor child.*

The father has a right to custody of a minor child. (*Oldfield and Venkatasubba Rao, JJ.*) SHRI RAJA BOMMADEVARA SATYANARAYANA *v.* NARASAYAMMA. 18 L.W. 173= 1924 Mad. 45.

———S. 25—'*Custody*',—*Meaning of—Separate suit by guardian, if lies.*

The word 'custody' in S. 25 includes both actual and constructive custody. A guardian appointed under the Guardians and Wards Act is only entitled to apply under the act for the custody of the minor and cannot bring a separate suit. A guardian who has not actual custody can apply for an order for return to custody when the person who has actual custody repudiates to the guardian's knowledge the right of the guardian to the actual or legal custody of the minor. (*Sadasiva Aiyar and Napier, JJ.*) MOHIDEEN IBRAHIM NACHI *v.* MAHOMED IBRAHIM SAHIB 39 Mad. 608= 38 I.C. 894=30 M.L.J. 21.

———S. 25—*Custody, applications for conditions.*

Where a ward leaves or is removed from the custody of a guardian of the person it is open to the guardian to apply under S. 25. In such a case it is not essential that there should be a certificated guardian before such an application. (*Heaton and Shah, JJ.*) DAYABHAI RAGHUNATH DAS *v.* BAI PARVATI. 39 Bom. 438=28 I.C. 597= 17 Bom. L.R. 332.

———S. 25—"*Guardian and Custody*", *meaning of—Delegation of enquiry by Court—Validity.*

The expression "guardian" in S. 25 of the Act is not confined to statutory guardians appointed under the Act but includes any person having the care of the person of a minor or of his property or both of his person and property. Such a person need not necessarily be the *de facto* guardian of the minor. The "custody" referred to in S. 25 of the Act includes both the actual and constructive custody. The duty of enquiry under that section of the case is cast upon the Court and cannot be delegated (*Lindsay, J.C.*) MUSHAF *v.* MOHAMMAD JAWAD. 21 O.C. 194= 48 I.C. 60=5 O.L.J. 616.

GUARDIANS AND WARDS ACT (VIII of 1890), S. 29.

———S. 27—*Unauthorised act of previous guardian—Ratification.*

A guardian appointed under the Guardians and Wards Act cannot ratify the unauthorised acts of a former guardian; this can be done by the minor alone on attaining majority. (*Mittra, A.J.C.*) SHANKAR *v.* GOVINDA. 55 I.C. 311.

———S. 27—*Acknowledgment of barred claim.*

It is unwise on the part of the guardian to admit that his wards were liable for the debt when the debt could not be legally recovered owing to the lapse of time. (*Lindsay, A.J.C.*) BANKEY LAL *v* SWAMI DAYAL. 2 U.P.L.R. (J.C.) 82=7 O.L.J. 207= 56 I.C. 528=28 O.C. 27.

———S. 27—*Rent due by guardian in respect of property in hands of mortgagee—Liability of minor to pay rent.*

There is nothing in S. 29 to prohibit a lease being taken by the guardian of property belonging to the minor from a person holding the same under a mortgage made for legal necessity. The lease, while it imposes upon the minor the liability to pay rent brings with it, a corresponding gain and the transaction is, if beneficial to the minor, of a nature within the competence of the guardian binding on the ward. (*Kanhaiya Lal, J.C.*) GUR DIN *v.* DURGA DIN. 54 I.C. 19=2 U.P.L.R. (J.C.) 52.

———S. 27—*Remission of rent by guardian.*

A guardian has a discretion under S. 27 to allow a remission of rent to the tenant on failure of rain or other source of irrigation though the tenant has no legal right to claim remission. The ward not having repudiated the Guardian's Act must be deemed to have ratified it. 28 I.C. 5. (*Fawcett, J.C. and Crouch, A.J.C.*) GHULAM MAHOMAD *v.* SHAHEB SINGH. 28 I.C. 5=8 S.L.R. 222.

———S. 29—*Contract for sale by certificated guardian—Suit for damages for breach of.*

A contract by a certificated guardian on behalf of the minor, for the sale of immoveable property with the sanction of the Court, is a valid contract and a suit for damages for the breach thereof is maintainable. 39 Cal. 232, P.C., Dist. (*Ryves and Lyle, JJ.*) BABU RAM *v.* SAIDUNISSA. 38 All. 499= 20 I.C. 916=11 A.L.J. 783.

GUARDIANS AND WARDS ACT (VIII of 1890), S. 29.

———**Ss. 29 and 30**—*Sanction—Sale long after, invalid.*

A transfer 15 years after the sanction granted by the Dt. Judge, cannot be held to be in pursuance of the sanction. (*Griffin and Chamier*, JJ.) SHAMINATH *v.* LALJI.
35 All. 150 = 18 I.C. 251 = 11 A.L.J. 107.

———**Ss. 29 and 30**—*Transfer without sanction of Court—Sanction obtained under O. 21, R. 83, C.P. Code—Effect of.*

The certificated guardian of a minor sold the property of the minor, which had been attached, with the sanction of the Court under O. 21, R. 83, C.P. Code, but without obtaining sanction under S. 29 of the Guardians and Wards Act. Subsequently the certificated guardian sold the property with the sanction of the Court under S. 29 of the Guardians and Wards Act. *Held*, that the first sale was voidable at the option of the subsequent transferee but the subsequent transferee can get back the property only on his reimbursing the prior transferee whose money had benefited the minor. 3 C.L.J. 260, Ref. Under S. 30 of the Guardians and Wards Act disposal of immoveable property by a guardian in contravention of Ss. 28 and 29 is voidable and could be set aside in a proper proceeding. Where therefore a person seeks to avoid it, he is in the position of a person who seeks equity and must do equity. The sanction obtained under O. 21, R. 83, C.P.C. does not cure the defect arising on account of the want of sanction under S. 29 of Guardians and Wards Act. The scope of an enquiry under S. 29 of the Guardians and Wards Act is entirely distinct from the scope of an enquiry under O. 21, R. 83, C.P. Code. When an application is made under S. 29 of the Guardians and Wards Act to a District Judge to sanction a proposed alienation, the matter to be considered is the benefit of the infant. When an application is made to an execution Court to sanction an intended transfer under O. 21, R. 83, C.P.C., the matter for enquiry is the protection of the execution creditor. Compliance with the provisions of O. 21, R. 83, C. P. Code, does not render unnecessary the fulfilment of the requirements of S. 29 of the Guardians and Wards Act in a case which falls within the scope of both these provisions of the law. (*Mookerjee and Cuming*, JJ.) DIJENDRA MOHUN SARMA *v.* MANORAMA DASI. **49 C. 911 = 36 C.L.J. 326 = 28 C.W.N. 57 = 1922 Cal. 150.**

———**S. 29**—*Lease by Court guardian for 7 years—Sanction of Court not obtained—Lease in accordance with compromise sanctioned by Court—Validity.*

A Court guardian granted a lease of the minor's properties for a term of 7 years without obtaining the sanction of the Judge under S. 29 of the Act; but the lease was in accordance with a compromise entered into with the sanction of the Court. *Held*, as the sanction of the compromise by the Court under O. 32, R. 7, C. P. Code, signified that the compromise was for the benefit of the minor, which is also what S. 29 of the Guardians and Wards Act signifies, the lease was valid. (*Stephen and Mullick*, JJ.) ABDUR RASHID *v.* SHEIKH KHANDKAR. **68 I.C. 997 = 35 C.L.J. 206.**

———**Ss. 29 and 30**—*Manager of joint Hindu family—Appointed guardian—Mortgage by validity.*

The karta of joint Hindu family who is appointed guardian of minor member of the family under the Guardians and Wards Act comes under the control of the Court and cannot mortgage the minor's share as karta. If the guardian mortgages the minor's property without Court's sanction the minor will be equitably liable only if it is shown that the debt was actually applied for the benefit of the minor. (*Chaterjee and Newbould*, JJ.) UPENDRA NATH BISHWAS *v.* SHIB KUMARI DEBI.
52 I.C. 616 = 23 C.W.N. 634.

———**S. 29**—*Mortgage by guardian without sanction of Court—Sale with sanction—Mortgagee's right.*

A mortgage by a guardian, without sanction of the Court, cannot be enforced against a purchaser of the mortgaged property with sanction of the Court, but the mortgagee is entitled to a decree against the guardian personally for the mortgage amount. (*Fletcher and Shamsul Huda*, JJ.) RAJANI KANTA ROY *v.* MANMATHA NATHA NANDI. **46 I.C. 665.**

———**S. 29**—*Contract by guardian to sell—Liability of ward.*

Where a guardian contracted to sell the ward's property, with the sanction of the Dt. Judge at a price higher than that fixed in the sanction is valid and enforceable against the minor. 39 Cal. 232 (P.C.), Dist. (*Chatterjee and Newbould*, JJ.) HELLALUDDIN MIA'S WIFE *v.* JANAKI NATH SIRCAR. **40 I.C. 490 = 22 C.W.N. 477.**

———**S. 29**—*Sale by guardian with Court's permission*—Pardanashin *lady—Fraud—T. P. Act, S.* 41—Bona fide *purchaser for value.*

A sale by a guardian of the Wards property with the permission of the Court transfers a good title to the vendee whether the guardian is a *pardanashin* lady or otherwise, and the mere fact that the guardian is a female does not raise a presumption of fraud practised on the Court. A purchaser from such a purchaser for consideration is a *bona fide* purchaser for value without notice of fraud. (*Fletcher and Richardson*, JJ.) JADU NATH ACHARYA *v.* TARAK CHANDRA CHATTERJEE.
28 I.C. 810.

———**Ss. 29 and 30**—*Mortgage in excess of sanction voidable.*

A mortgage of the minor's land in excess of that, for which sanction was granted to the guardian is voidable at the minor's option especially when the mortgagee knew the terms

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of the sanction. 16 C.W.N. 715, Dist. (*Stephen and Halmwood*, JJ.) HRIDOYNA *v.* SHRI NATH CHAKRAVART 19 I.C. 624.

——S. 29—*Letter reducing rent—Lease less than five years—Validity.*

Obiter.—S. 29 does not forbid the passing of a letter by a guardian reducing the rent payable under a lease for a term less than five years. (*Sharfuddin and Coxe*, JJ.) GANENDRA MOHAN CHOWDHURY *v.* GYA PRASAD TEWARI. 16 I.C. 52.

——Ss. 29 and 33—*Transfer by guardian without Court's permission—Avoidance—Defence—Restoration of benefit.*

A mortgage by the guardian of a minor without the Court's permission is not void but only voidable by the minor and the latter can, without bringing an action to set it aside plead his intention to rescue it when an action is brought to enforce it but he must restore any benefit he might have received thereunder. (*Jenkins*, C.J. *and Chatterjee*, J.) HEMCHANDRA *v.* LALIT MOHAN KAR.
16 C.W.N. 715=14 I.C. 515=
16 C.L.J. 537.

——Ss. 29 and 30—*Sale without permission of Court.*

A sale by a guardian without the Court's permiession is voidable under Ss. 29 and 30 of the Act even though the transaction was for the minor's benefit and a perfectly honest one. (*Coxe*, J.) KARNIKHAN *v.* SALAMUDDI.
18 I.C. 594.

——Ss. 29, 30 and 31—*Sale by certified guardian with permission of the Court—Fraud on Court—Title of vendee.*

A sale by a certificated guardian of the prorty of a ward with the permission of the Court, transfers good title to the vendees unless the Court's permission was obtained by fraud. (*Le Rossignol and Martineau*, JJ.) MUSSAMMAT RAHUNI *v.* MUSSAMMAT HUSSAIN BIBI. 52 I.C. 841=73 P.R. 1919.

——Ss. 29 and 30—*Alienation by certificated guardian contrary to S. 92—Right to avoid.*

A certified guardian under the Guardians and Wards Act is not free from the limitations imposed by S. 29 of the Act because he or she is also an actual guardian. S. 30 of the Act gives a minor a right to avoid a sale made in a contravention of S. 29 even if the whole of the sale price was spent in benefiting him. (*Chevis*, J.) SHIB LAL *v.* SHAM DAS.
61 P.R. 1918=110 P.L.R. 1918=
47 I.C. 383=162 P.W.R. 1918.

——S. 29—*Applicability — Transfer by guardian ad litem.*

S. 29 of the Act does not apply to transfers of property made on behalf of minors by their guardians *ad litem* and no sanction of the Court is necessary. (*Shah Din and Wilberforce*, JJ.) MT. BARKAT *v.* MT. JAMILA. 44 I.C. 834=
61 P.W.R. 1918.

GUARDIANS AND WARDS ACT (VIII of 1890), S. 30.

——Ss. 29 and 30—*Transfer of Property without sanction—Liability of minor—Duty to restore benefit.*

The restrictions on the powers of a guardian appointed under the Guardians and Wards Act can be enforced only to such extent as is laid down by the provisions of that Act 45 I.A. 73 (P.C.) Dist. A decree directly affecting the minor's immoveable property cannot be passed in respect of a transaction entered into by a certificated guardian on behalf of his ward without the sanction of the District Judge but a simple money decree can be passed against him to the extent to which he is found to have benefited by the transaction. (*Kanhaiya Lal and Lyle*, A.J.Cs.) LALA PURUSHOTAM DAS *v.* NAZIR HUSAIN. 54 I.C. 846=6 O.L.J. 668.

——S. 30—*Order under—Not appealable.*

An order under S. 30 of the Guardians and Wards Act is not appealable. (*Piggott and Walsh*, JJ.) LACHMI PRASAD *v.* BALDEO DUBE. 44 A. 458=20 A.L.J. 390=
1923 All. 14 (1).

——S. 30—*Hypothecation of minor's property without permission of District Judge—Voidable—Restitution of benefit.*

Under S. 30, the hypothecation of immoveable property of a minor by his guardian without the permission of the District Judge is voidable at the instance of the minor, but if the amount for which an hypothecation of minor's property was made, was received for the benefit he cannot avoid the hypothecation without a refund of the money by which he has been benefited. 22 Mad. 289. Foll. (*Banerji*, J.) NUR BUKSH *v.* RUKUM SINGH.
11 I.C. 784=8 A.L.J. 754

——S. 30—*Guardian under Act of* 1864—*Alienation by, after Act of* 1890 *without sanction—Validity.*

A guardian under Act, 1864, cannot validly alienate the ward's property without sanction after the Act of 1890 came into force. Alienation without sanction is void. (*Scott*, C.J. *and Beaman*, J.) SHANKERBHAI KASHIBHAI *v.* RAISINAGI JASWANT SINGI.
42 I.C. 908=19 Bom. L.R. 868.

——S. 30—*Transfer of minor's interest in decree—Judgment-debtor, if can impugn.*

A judgment-debtor cannot object to the transfer of a minor's interest in the decree made by his certified guardian without the leave of the District Court so as to prevent its execution by the transferee. (*Beachcroft and Walmsley*, JJ.) JAGBANDHU PAUL HALADHAR PAUL. 41 I.C. 269=27 C.L.J. 110.

GUARDIANS AND WARDS ACT (VIII of 1890), S. 30.

———S. 30—*Mortgage by certified guardian without Court's sanction—Avoidance—Restoration of benefit.*

When a certified guardian of a minor executed a mortgage of the minor's property without the District Judge's sanction therefor, the minor desiring to avoid the transaction must first restore all the benefits which he has in fact received and the mortgagee on his part is bound to show the extent of the application of the money for the benefit of the estate of the minor. When in the case of a mortgage bond by a certified guardian, the rate of interest was Rs. 7-8-0 with annual rents which rate was not sanctioned by the Court it was held that the mortgagee was entitled to not more than 12 per cent. simple interest. (*Chatterjee and Richardson, JJ.*) MANSRAM DATT *v.* AHMAD HUSAIN. **37 I.C. 380=21 C.W.N. 63.**

———S. 30—*Loan taken by guardian—Avoidance—Restoration of benefit.*

Where there has not been a sanction of the District Judge but it is clear that a guardian could not have succeeded in borrowing money unless he paid interest and the loan was in the interests and for the benefits of the minor under S. 30 of the Guardians and Wards Act the minors could be allowed to go back on the agreement only on condition that they on their part restored all benefits which they had received under it, *i.e*, that it is the principal amount and a reasonable rate of interest thereon (9 per cent. reasonable). A guardian's agreement to pay interest and to make it a charge on proof though not sanctioned by the District Judge, is not void but only voidable under S. 30 of the Guardians and Wards Act at the instance of the minor. (*Rattigan and Rossignol, JJ.*) MAHAMMED ISMAIL *v.* GOUR PRASAD. **34 I.C. 916=24 P.R. 1916.**

———S. 30—"*Any other person*"—*Whether includes creditor injuriously affected.*

The words "any other person affected thereby" in S. 30 do not include a creditor whom a transfer of property might injuriously affect. (*Rattigan and Scott-Smith, JJ.*) LALJIDAS *v.* CHAITRAM. **75 P.R. 1914= 104 P.L.R. 1914=22 I.C. 829= 75 P.W.R. 1914.**

———Ss. 31 and 47—*Sale of minor's properties with Court's sanction—Re-sale if can be ordered—Duty of Court.*

A District Judge giving an unconditional sanction to a sale of a minor's property by a guardian cannot after its execution and registration order a re-sale thereof. A District Judge should look after the interest of minors and see that guardians do their duty and file proper accounts and furnish security at the time of their appointment. (*Richards, C.J. and Banerji, J.*) PREMSUKHDAS *v.* LACHAMAN TEWARI. **46 I.C. 542.**

GUARDIANS AND WARDS ACT (VIII of 1890), S. 31.

———S. 31—*Permission—When to be granted—Inquiry—Necessity for.*

S. 31 of the Guardians and Wards Act requires that permission to a guardian to do any of the acts mentioned in S 29 shall be granted only in case of necessity or advantage to the ward. The order granting the permission should also recite the necessity or advantage. But though no inquiry is instituted, the order does not become void. (*Mookerjee and Rankin, JJ.*) PROHLAD CHANDRA CHOWDHURY *v.* RAMSARAN CHOWDHURY. **38 C.L.J. 213=1924 C. 420.**

———S. 31—*Mortgage by guardian—Order of Court—Duty of creditor.*

Where a District Judge after being satisfied by *ex parte* enquiry, sanctions a mortgage on behalf of a minor, the lender if he acts *bona fide* need not go behind the order or see to the application of the money unless he is a party to any fraud practised for obtaining sanction. (*Chatterjee and Newbould, JJ.*) AKHIL CHANDRA SAH *v.* GOURI SHANKER SHAH. **41 I.C. 302=21 C.W.N. 864.**

———S. 31—*Sanction of Court—Revocation of—Grant to guardian of power to sell—Power of Court to stop sale.*

Even if a Court has given sanction under Ss. 29 and 31 (1), it is not beyond the power of that Court to intervene and stop that sale if it finds it would be detrimental to the ward's interest. The Legislature does not intend that a Court should give unfettered power to a guardian to sell an estate without fixing at least an approximate price. (*Johnstone, C. J. and Rattigan, J.*) SULTAN SINGH *v* HASHMAT ULLAH. **109 P.R. 1915= 119 P.W.R 1915=29 I.C. 804= 38 P.L.R. 1916.**

———Ss. 31 and 48—*Sale of minor's property—Sanction of Court — Misrepresentation and fraud of guardian—Suit to set aside sale by minor—What must be shown.*

A suit to set aside a sale of a minor's property made on his behalf during his minority with the sanction of the District Judge by his certified guardian, cannot be maintained successfully unless it can be shown that the Judge's order was illegal or that the sale was not in conformity with that order, or that the proceedings were vitiated by fraud on the part of the purchaser. Fraud and misrepresentation on the part of the guardian does not render the sale illegal unless it is shown that the purchaser was privy to the fraud or at least was aware of it. Therefore, a *bona fide* purchaser is sufficiently protected by the fact that the sale had the sanction of the District Judge. 5 Cal. 363; 22 Cal. 535; 31 Bom. 590, Expl. (*Kanhaiya Lal and Daniels, A.J.C.*) SATRENHAN SINGH *v.* GANGA BAKSH SINGH. **6 O.L.J. 39= 49 I.C. 375=1 U.P.L.R. (J C) 24.**

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———S. 31 (2)—*Sanction cannot cure inherent defects—Suit by minor to set aside the sale—Onus.*

Per *Spencer*, J.—Sanction of court given under S. 31 of the Guardians and Wards Act will not cure inherent defects that may exist in a sale by a guardian. It is only *prima facie* evidence that the transaction was a good one and the minor may at any future time have it set aside on the ground that it was fraudulent or improper, the burden of proof being in the first instance on the minor. Per *Ramesam*, J.—The true rule as to the effect of the sanction is that it throws the onus on the minor to show that the alienation was improperly made contrary to the usual rule requiring the purchaser to establish the validity of the alienation or that he acted with due care and caution after making such enquiry as an honest and prudent man would make. It is not necessary for the minor seeking to impeach the transaction to make out fraud on the part of the purchaser. Per *Spencer*, J.—Where the order granting sanction for a sale by a guardian did not recite the necessity for the same but simply ran thus :—"In the circumstances, the sale of 9 acres in full satisfaction of the mortgage debt is sanctioned," *held*, that the order did not comply with S. 31 (2) of the Act. (*Spencer and Ramesam*, JJ.) NALLAKA VENKATASWAMI *v.* RUGAM VEERAMMA.

45 Mad. 429 = 42 M.L.J. 333 = 15 L.W. 373 = (1922) M.W.N. 357 = 1922 Mad. 135.

———S. 31 (2)—*Permission to sell—Necessity not mentioned—Effect—Section imperative.*

S. 31 (2) is mandatory and not merely directory. An order which failed to recite the necessity for the advantage of, the transfers is not a legal order and cannot be pleaded as sufficient sanction for a sale by the guardian. (*Lindsay*, J.C.) BANKEY LAL *v.* SWAMI DAYAL.

23 O.C. 72 = 7 O.L.J. 207 = 66 I.C. 328 = 2 U.P.L.R. (J C) 82.

———S. 31 (3) (a)—*Bona fide sale of minor's property—Conditions precedent and subsequent.*

Where the District Judge acting under the Guardians and Wards Act empowers the guardian to sell a property of the minors for an alleged debt of theirs and further directs him to put in the bonds after these have been satisfied and so endorsed by the creditor, it does not follow that non-compliance with the latter direction makes the sale invalid if actully carried out and the vendee has all along been in possession of the purchased property. Where the same property is held partly by adult co-sharers and partly by minors, the very fact that the minor's share was sold for a price a little over that for which the shares of adult co-owners was sold goes to indicate the *bona fides* of the sales of the shares of the minors. (*Chitty and Richardson*, JJ.) DYAM KHAN *v.* SARAT CHANDRA DEO.

26 C.W.N. 218.

GUARDIANS AND WARDS ACT (VIII of 1890), S. 34.

———S. 31 (4)—"*Any person*," *meaning of.*

The words "any person" in S. 31 of Act VIII of 1890 means any person interested in an application made on behalf of a minor not merely his friends or relatives. (*Abdur Rahim and Sundara Iyer*, JJ.) RAJA VENUGOPAL BAHADUR *v.* THIRUMAL KANDAMA.

33 Mad 743 = (1911) 2 M W.N. 165 = 10 M.L.T. 259 = 11 I.C. 946 = 21 M L J. 885.

———S. 32—*Interest in a trust—Protection by appointment of guardian.*

A minor's interest in a trust can be protected, and the benefits thereof secured to the minor, by the appointment of a guardian of the property of the minor in respect of the interest. (*Piggott and Walsh*, JJ.) KHATUN BEGAM *v.* EJAZ AHMAD. **39 All. 288 = 37 I.C. 885 = 15 A.L.J. 132.**

———Ss. 32 and 43—*Order of suspension—Guardian—Curtailment of powers of.*

Until the guardian is actually removed or discharged he remains a guardian though with curtailed powers and the Court has authority under the Act to pass such orders as are necessary for the protection of the minor's property. An order of suspension of the guardian can be passed by the Judge under S. 32. (*Beachcroft and Walmsley*, JJ.) URMILA SUNDARI DASI *v.* RATI KANTA SAHA.

40 I.C. 397.

———S. 34—*Marriage of minor female—Sanction of Court—Application by guardian—Opposition of relatives.*

Once a guardian is appointed under the Guardians and Wards Act, any application for the marriage of the minor by the guardian must be considered from the point of view of benefit to the minor, and any relation that might be entitled to be heard on the application will be heard ; but such opposition must be considered at its true value and cannot be considered as an absolute bar to the Court giving sanction to the marriage. (*Macleod*, C.J. *and Shah*, J.) GANU GOPAL SONAR *v.* DATTATREYA LAXMAN POTDAR. **24 Bom. L.R. 848 = 1932 Bom. 335.**

———Ss. 34, 35, 45—*Attachment of property of guardian is improper.*

The Court has no power to attach the property of the guardian or his surety for the purpose of realising the balance. S. 35 of the Act provides the remedy for the realisation of the amount due from the guardian. Ample powers are also given under S. 45 of the Act to the District Judge. (*Abdul Raoof*, J.) RADHAKISHAN *v.* KHUSHI RAM.

1923 Lah. 506 (1).

———Ss. 34 and 39—*Appointment of guardian does not become effective until security is furnished.*

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An order appointing a person as guardian though appealable as soon as it is made, does not become effective or entitle the guardian to act as such, until he has furnished security. Failure to furnish security is a ground for removal of the guardian. (*Harrison*, J.) MT. KHUSAL DEVI *v.* SUKH DIAL. **71 I.C. 672.**

——**Ss. 34 and 37**—*Direction to guardian to deposit money due to minor—Not appealable.*

Where a guardian is directed to deposit in the Court the money due to the minor there is no appeal against the order but it may be corrected on revision for proper reason. (*Abdul Raoof*, J.) RADHA KISHEN *v.* KHUSHI RAM. **67 I.C. 309.**

——**Ss. 34 and 35**—*Surety bond—Right to sue—Assignment by Court—Breach of the conditions of the bond—Remedy—Procedure—Limitation.*

The Court is the obligee under a bond executed by sureties under S. 34(a) of the Guardians and Wards Act and can alone sue on the bond in the absence of an assignment in due form of law. The fact that the principal bond executed by the guardian is lost would not prevent the bond being duly assigned. Where there has been no order of the Court directing the guardian to exhibit accounts to pay or apply the balance found due under S. 34, Cls. (*b*) to (*e*) of the Guardians and Wards Act there is no breach of the conditions of the bond and a suit on the bond assigned by the Court is not maintainable. *Obiter:*—In the case of bonds under the Guardians and Wards Act the proper procedure is to get an order to pay against the guardian under S. 34 (*d*) or a decree against him, and if he fails to satisfy the order or decree, then to sue the sureties in respect of this breach as to which there will be no defence. The period of limitation is that prescribed by Art. 68 of the Limitation Act except where the bond charges immoveable property. (*Wallis*, C.J. *and Seshagiri Aiyar*, J.) KRISHNA CHETTIAR *v.* VENKATACHELLA CHETTIAR. **42 Mad. 302=36 M.L.J. 114=25 M.L.T. 229=(1919) M.W.N. 468=49 I.C. 587=9 L.W. 278.**

——**S. 34**—*Appointment of guardian on condition of furnishing security—If restricts Court's general powers to impose conditions—If ultra vires.*

S. 34 does not deprive the Court of its general power to impose conditions on guardians and so the appointment of a guardian conditional on his furnishing security is not *ultra vires*. (*Ayling and Seshagiri Iyer*, JJ.) SUBBA NAICK *v.* RAMA AIYAR. **40 Mad. 775=5 L.W. 261=37 I.C. 892=(1917) M.W.N. 426.**

——**Ss. 34 and 47**—*Order fixing amount under S. 34 (e)—Appeal.*

No appeal lies from an order under S. 34 fixing the amount to be applied for the maintenance, education and advancement of the ward and the persons depending on him. (*Oldfield and Napier*, JJ.) GOPAMMAL *v.* SRINIVASA IYENGAR. **27 I.C. 921=28 M.L.J. 96.**

——**Ss. 34(a) and 45**—*Order appointing a person guardian subject to his furnishing security within a time—Failure to furnish—Penalty.*

Where a person has been appointed guardian of a minor subject to his furnishing security and he fails to furnish security within a certain period he nevertheless renders himself liable to penalty provided for in S. 45 of the Act. (*Piggott and Walsh*, JJ.) JADDO TEWARI *v.* BARAM DEO SINGH. **51 I.C. 88=17 A.L.J. 377.**

——**Ss. 34 (a) and 39**—*Failure to furnish security—Supersession of guardian.*

The District Court can supersede a guardian if he fails to furnish security within the fixed time. (*Beadon*, J.) BUTA *v.* MUSAMMAT BEGAM. **45 P.W.R. 1918=19 I.C. 609=192 P.L.R. 1913.**

——**S. 34 (b)**—*Inventory—Sum to be allowed for minor's maintenance.*

It is essential that when appointing a guardian for the estate of a minor the Court should direct the guardian to file an inventory or list of minor's property in Court, and should allow a maximum sum for the maintenance, education and advancement of minor, which sum should never be exceeded without the leave of the Court. (*Richards and Tudball*, JJ.) LACHMANDAS *v.* RAMDAI. **10 I.C. 243.**

——**Ss. 34 (c) and 41 (3)**—*Minor attaining majority—Power of District Judge to review accounts—Right of minor.*

A District Judge who has appointed a guardian and directed him to file accounts has to look into those accounts from time to time during the minority but when the minor has attained majority there is no obligation on him to review the account or direct the guardian to render the accounts afresh. But he has power to direct the ex-guardian to hand over possession of all papers and accounts to the ex-minor who can take such steps as he might be advised. (*Richards*, C.J. *and Bannerji*, J.) MAHOMED KHASIM HOOSAIN *v.* AHMAD HOOSAIN. **39 I.C. 175.**

——**S. 34 (c)**—*Accounts—Lump sum in lieu of rent—Agreement with mother of ward by guardian for exoneration from liability, the ward managing properties himself—If binding on ward.*

Where the guardian of a ward, to save himself the cost of appraising rents, agrees to pay a stipulated sum annually as the profits of the estate he is bound to take good years with bad, and if, in any year, the collections are less, the

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ness is his, and not the ward's. An agreement by a guardian with the mother of his ward that, in consideration of the ward being allowed to manage the estate himself, the guardian would be indemnified against any suit for rendition of accounts is not binding on the ward. Even though annual accounts are passed by the Judge the guardian will not be relieved from his responsibilities. (*Kanhaiya Lal and Daniels*, A.J.Cs.) PARTAB SINGH *v.* KHURRAM SINGH. 53 I.C. 75=6 O.L.J. 407.

——Ss. 34 (d), 47 and 48—*Order directing guardian to pay money — Examination of accounts—If appealable.*

An order under S. 34 (d) which is final under S. 48 directing the guardian of a ward to pay a certain sum of money as balance due from him is not appealable, but it would be open to examination by the High Court on the revision side. (*Broadway, J.*) RAM JAS *v.* CHANI. 4 Lah. L J. 272=1923 Lah. 89 (1)

——S. 34 (d)—*Accounts filed in Court—Presumption of correctness — Guardian — Reimbursemsnt—Right to.*

A guardian who is spending more than the income of the ward's estate upon the ward is not entitled to recover the excess personally from the ward. Accounts filed by the guardian into the Court and checked by it are presumed to be correct. (*Lindsay*, J.C.) GOPAL *v.* SARJU 45 I.C. 899=21 O.C 74.

——S 34 (e)—*Court can ask guardian to apply income for maintenance.*

Under S. 34 (e) of the Act the District Judge has power to direct the guardian to apply for maintenance of the ward such portion of the income of the property of the ward as the Judge from time to time sees fit to direct. (*Shah Din*, J.) NAJABAT ALI *v.* MEHTAB BIBI. 34 P R. 1912=96 P.W.R. 1912= 14 I.C. 789=137 P.L.R. 1912.

——Ss. 34 (e) and 36—*Order directing a guardian to pay a sum of money to petitioner, if executable as a decree—C. P. Code, S. 2 (14).*

An order under S. 34, Cl. (e) directing the guardian of a ward to pay a certain sum of money to another is not an order under S. 2(14) C.P.C., and is, therefore, not executable as a decree. 36 Mad. 39, Foll. (*Spencer and Srinivasa Iyengar*, JJ.) PARVATHI AMMAL *v.* CHOKKALINGA CHETTY. 41 Mad. 251= (1917) M.W.N. 602=41 I.C. 251=6 L.W. 526.

——Ss. 35, 36—*Suit against representation of guardian—Maintainability.*

A suit for accounts by a ward against his late guardian or his representatives, if it is proved that his property had gone into their hands, is maintainable. (*Shah and Orump*, JJ.) NARA-

GUARDIANS AND WARDS ACT (VIII of 1890), S. 39.

YANA BALAJI NAGARKAR *v.* KASHIBA KASHEO DANDNAIK. 22 Bom. L.R 633= 58. I.C. 213=44 B. 852.

——S. 36—*Suit against guardian—Leave of the Court obtained subsequent to suit—Effect.*

A suit brought against the guardian of the property of a minor under S. 36 is maintainable though the leave of the Court is obtained subsequent to the filing. (*Macleod*, C.J. *and Heaton*, J.) MAINHARI TARDI *v.* SHANKAR MORU TARDI. 22 Bom. L R. 787= 57 I.C. 340=44 B. 602.

——Ss 36 and 37—*Suit against representatives of guardian or manager for account—Maintainability.*

Where defendant was appointed manager of the plaintiff's property during his minority under Act XI of 1858 a suit by the latter after attaining majority against the manager for accounts might, if the manager died pending the suit, be proceeded with against his heir. Ss. 36 and 37 of Guardians and Wards Act appear to indicate that a suit against the representatives of a manager for an account would lie. (*Chitty and Teunon*, JJ.) MAHARAJ BAHADUR SINGH *v.* BASANTA KUMAR ROY. 18 I.C. 876=17 C W.N. 695.

——Ss, 36, 37 and 41 (3)—*Suit for accounts by minor against legal representatives of guardian.*

A minor can sue the legal representative of his deceased guardian for accounts where the guardian had died without rendering accounts, and S. 41 (3) is no bar to it. (*Shah Din and Leslie Jones*, JJ.) MUHAMMAD JAMIL *v.* MEHRAM BIBI. 65 P.R. 1918= 124 P.W.R. 1918=46 I.C 457= 122 P.L R. 1918.

——S. 39—*Removal from guardianship—Grounds—Neglect of education of minor.*

Where the father who was appointed guardian of the person and the property of his minor son and who had precarious means of livelihood, laid claims to his minor son's money, neglected his education, and took another wife. *Held*, that the father was not a fit person to act as guardian from the point of view of minor's welfare, and should be removed. (*Tudball and Rafique*, JJ.) GANGA NARAIN *v.* KAUNSILA. 19 I.C. 65=11 A L.J. 209.

——S. 39—*Removal of guardian—Notice to show cause—Essential.*

As person should not be appointed guardian of the person or the property of an infant without enquiry into his fitness for the office, no order for removal of the guardian should be passed till the guardian is informed of the charges brought against him and is allowed a reasonable opportunity to explain and, if possible, to defend his conduct. 17 C.W.N. 862, Ref. (*Mookerjee and Ouming*, JJ) JAGANNATH PANJA *v.* MAHESH CHANDRA PAL. 28 C.L.J. 149=35 I.C. 286=21 C.W.N. 688.

GUARDIANS AND WARDS ACT (V of 1890), S. 39.

———S. 39— *Removal of guardian—Appeal—Notice to show cause essential before removal.*

When the question is whether the guardian has been properly removed, the order of removal is appealable. The Court has to proceed under S. 39 after informing the present guardian under what clause or clauses of S. 39, he is being proceeded against. (*Coxe and Chatterjee, JJ.*) MAHADEO MONDAL *v.* BIDHI CHAND MONDAL. **27 I.C. 28=20 C.L.J. 298.**

———Ss. 39, 47 and 48—*Revocation of order of appointment—Appeal.*

An order revoking a previous order appointing a guardian upon a misrepresentation of facts could not be questioned by way of appeal under S. 47 as the order was not made under any of the clauses of S. 39 of the Act. S. 48 does not preclude the District Judge from reconsidering his order. (*Mookerjee and Beachcroft, JJ.*) RASHMONI DASI *v.* GANADA SUNDARI DASI. **20 C.L.J. 213=26 I.C. 275=19 C.W.N. 81.**

———S. 39—*Removal of guardian—Grounds—Re-marriage of mother.*

A Hindu widow who has been appointed a guardian of her minor sons, need not be removed from such guardianship, simply because she re-marries. The discretionary power conferred upon the Court to remove the re-married mother must be regulated from the point of view of the welfare of the infant concerned. (*Mookerjee and Caspersz, JJ.*) GANGA PRASAD *v.* RAMSHREY SHAHU. **38 Cal. 862=15 C.W.N. 579=10 I.C. 69=13 C.L.J. 583.**

———Ss. 39 and 47 (g)—*Refusal to remove guardian—Appeal.*

There is no appeal from an order made by the District Judge refusing to remove a guardian. 19 Cal. 487; 23 Cal. 201; 20 Bom. 667; 20 All. 493. Foll. (*Shah Din, J.*) RAM KISHEN *v.* THAKURDAS. **14 I.C. 56=195 P.W.R. 1912.**

———S. 39—*Guardianship of person—Hindu Joint family.*

The Court cannot appoint a guardian of the person of a Hindu minor of a joint family. (*Spencer and Bakewell, JJ.*) JAMBAGATHACHI *v.* RAJAMANNARSWAMI NANDHWAR. **57 I.C. 678=11 L.W. 596.**

———S. 39—"*Instrument*"—*Meaning of.*

The word "instrument" in S. 39 must be confined to instruments *ejusdem generis* with a will and does not cover a compromise decree. 18 Bom. 375, Foll. (*Abdur Rahim and Kumaraswami Sastri, JJ.*) KRISHNAMURTI AIYAR *v.* PARVATHI AMMAL. **42 I.C. 505=6 L.W. 760.**

———S. 39—*Testamentary guardian—Invalid appointment—Will, if can be set aside under S. 39.*

Under S. 39, a will need not and could not be set aside when the testator had no legal power to appoint a guardian for the property. (*Sadasiva Iyer and Moore, JJ.*) ALAGAPPA IYENGAR *v.* MANGATHAYI AMMANGAR. **40 Mad. 672=34 I.C. 763=30 M.L.J. 504.**

———S. 39—*Guardian not validly appointed—Trespasser, if could be removed.*

Where a guardian is appointed by a stranger for the minor son of another, he is a trespasser and cannot be removed by a petition under S. 39, Guardians and Wards Act, which applies to removal of guardian properly appointed. (*Sadasiva Aiyar and Spencer, JJ.*) KANAKA SABAI MUDALIAR *v.* PONNUSAMI MUDALIAR. **21 I.C. 848.**

———S. 39 (e)—*Disregard of terms of appointment—Removal.*

Failure by a guardian to comply with the terms of his appointment justifies his removal by the Court. (*Reid, C. J.*) GHEHA *v.* BHARI. **98 P.W.R. 1913=20 I.C. 10=164 P.L.R. 1913.**

———Ss. 39 (e), 45, 34 (e)—*Guardian disobeying order under 34 (e)—Imposition of fine ultra vires.*

If the guardian refuses to carry orders of the court, he can be removed under S. 39 (*e*) of the Act, S. 45 of the Act makes a provision for imposing a penalty on the guardian for contumacy but the omission on his part to obey the direction of the Court under S. 34 (*e*) is not made punishable. (*Shah Din, J.*) NAJPAT ALI *v.* MEHTAB BIBI. **34 P.R. 1912=90 P.W.R. 1912=14 I.C. 789=137 P.L.R. 1912.**

———S. 39 (h)—*Guardian—Residence—Jurisdiction of Court.*

An applicant for guardianship must reside within the jurisdiction of the Court to which he makes the application. (*Rafique and Piggott, JJ.*) ASGHAR ALI *v.* AMINA BEGAM. **36 All. 280=24 I.C. 59=12 A.L.J. 392.**

———S. 39 (h)—*Guardian—Residing outside jurisdiction at time of appointment—Removal—Review—C. P. Code, S. 114.*

A person appointed guardian of a minor by a Court whose jurisdiction does not extend to his place of residence cannot be removed from such guardianship subsequently, under S. 39 (*h*) of the Guardians and Wards Act on the ground that he does not live within the jurisdiction of the Court. S. 114, C.P. Code, has no application to orders passed under the Guardians and Wards Act. 143 P.R. 1903 Rel. (*Reid, C. J.*) RALLA *v.* MANGALAN. **116 P.R. 1912=174 P.L.R. 1912=15 I.C. 539=211 P.W.R. 1912.**

GUARDIANS AND WARDS ACT (VIII of 1890), S. 40.

———S. 39 (j)—*Hindu Widow's Re-marriage Act* (XV *of* 1856), *Ss.* 3 *and* 5—*Hindu widow appointed testamentary guardian—Re-marriage—Effect of.*

A widow appointed as a testamentary guardian does not become legally disqualified by re-marriage, to continue to be guardian. (*Kensington*, J.) MAYA DEVI *v.* GOAPL.
47 P.L.R. 1913=18 I.C 133=
32 P.W.R. 1913.

———S. 40—*Application for removal of guardian dismissed—Subsequent application is barred.*

Where an application for the removal of a duly appointed guardian of the pereon of a minor has been dismissed and the order of dismissal has been duly confirmed on appeal, a fresh application on the same allegations as before, for removal of the guardian of the minor is not sustainable. The fact that the widowed mother of the minor is living with her newly married husband in the same house as the minor is no ground for her removal from guardianship of her minor son. (*Piggott and Walsh* JJ.) BHAGWAN DAS *v.* MANGALIA.
20 A L J 959=45 A 196=1922 A. 540.

———S. 41—*Removal of guardian—Return of property of minor.*

The guardian must without prejudice to his title or to anything he could establish by suit be compelled to give up possession on ceasing to be guardian. (*Robertson*, J.) PARMAN NAND *v.* ARURA RAM. 33 P.L R. 1912=
14 I.C. 674 (1)=112 P.W.R. 1912

———S. 41 (2) and (3)—*Powers of Court to order delivery of possession when can be ordered.*

Until Court has passed an order for the removal of the guardian it has no power to call upon him to deliver the property in his possession. The power of compelling the guardian to deliver possesion of the property can only be exercised in the interest of the minor. These summary powers are meant for his protection. They cannot be invoked by a person claiming adversely to the minor. The remedy for such adverse claimants lies in a regular suit. (*Miltra*, A.J.C.) MT. SITABAI *v.* SHANKAR. 1922 Nag. 266.

———S. 41 (3)—*Death of minor—Liability of guardian to deliver up property.*

The death of a minor does not put an end to the responsibility of the guardian to account to the Court for the period of the stewardship. The Court, however, has no jurisdiction to order the guardian on the death of the minor to deliver up all moveable property, cash and documents to his widow. (*Walsh and Ryves*, JJ.) CHANDRA BHUKHAN SINGH *v.* SUJAN KUAR. 42 All. 1=52 I.C. 167=
17 A.L J. 861.

GUARDIANS AND WARDS ACT (VIII of 1890), S. 41.

———Ss. 41 (3) and 48 (1) (c)—*Direction to render accounts after termination of guardianship—Money spent for necessities of minor without permission of Court—Detention in jail for non-delivery.*

S. 41 of the Act does not authorise a Court to order accounts to be rendered after the termination of the guardianship. But the Court has power under S. 41 (3) to direct a guardian on the termination of his guardianship to deliver any property including money belonging to the ward in his possession. 5 C W.N. 207, Foll. Where a guardian has actually applied the balance in his hands for the necessaries or benefit of the minor he cannot be called upon to pay such money as if "property of the minor in his possession" and detained in jail for non-payment merely because there was no permission to spend money in that way. (*N. R. Chatterjee and Richardson*, JJ.) ABDUL HASIM *v.* SRIMATI MALEKA KHATUN.
49 I.C. 132=29 C.L.J. 44.

———S. 41 (3)—*Suit for accounts against deceased guardian's representatives, if lies.*

A ward cannot maintain a suit against the widow and minor sons of his deceased guardian. 22 All. 332, Foll. ; 11 Bom. L. R. 190; 7 I. C. 214, Dist (*Kensington*, J.) PRITAM SINGH *v.* MUBARAK SINGH. 78 P.L R. 1911=
9 I.C. 591=74 P.W R. 1911.

———S. 41 (3)—*Death of ward—Power to direct guardian to hand over properties to heir.*

Where the powers of a guardian for the proprety of a minor cease, owing to the minor's death, the Court has jurisdiction under S. 41 (3) of the Guardians and Wards Act to pass an order directing the guardian, to deliver the property of the minor to the later's heir. 33 Bom. 419, Foll. The expression "property belonging to the ward" in S. 41 (3) includes property which belonged to the person who was a ward though by the cessation of his minority or by his death, he has ceased to be a ward. "Any cause" includes death of the minor which terminates the guardianship. (*Oldfield and Sadasiva Iyer*, JJ.) NATARAJ PILLAI *v.* SUBBARAYA PILLAI. 51 I C 529=
(1918) M W.N. 440.

———S 41 (3)—*Guardian de facto—Requisition for delivery of properties.*

The Court has power under S. 41 (3) of the Act to require a *de facto* guardian to deliver the infant's properties to the guardian appointed under the Act. (*Ayling and Krishnan*, JJ.) WALLACE SITA BAI *v.* WALLACE RADHA BAI. 51 I C. 236=36 M.L.J. 169.

———S. 41 (3)—*Absence of express order of discharge—Suit against sons, if lies.*

A suit will lie against the guardian's son and a surety, to render accounts in the absence of an

GUARDIANS AND WARDS ACT (VIII of 1890), S. 41.

order of discharge of the guardian. (*Martineau*, J.) JAGAT SINGH *v.* SUNDAR SINGH.
67 I.C. 935 = 3 Lah. L.J. 361.

——S. 41 (4)—*Order of discharge not express—Civil suit by ward for accounts.*

To bar a suit by a ward on attaining majority against a guardian for rendition of accounts, the order of discharge under S. 41 (4) must be in express terms. 34 Cal. 211; 15 C.L.J. 57, Foll. (*Broadway*, J.) AMARNATH *v.* RAGHPAT RAI. **25 P.R. 1918 = 108 P.L.R. 1917 = 41 I.C. 341 = 73 P.W.R. 1917.**

——Ss. 41 (4) and 48—*Order of discharge must be express—Guardian cannot set up title of third person.*

An order by a Court discharging a guardian must be express and cannot be inferred from other facts. A certificated guardian cannot be heard to say that he did not do his duty but et the properties remain under the management of somebody elee. A guardian, without taking his discharge and giving up possession cannot set up as against his *cesuique trust* his paramount title or the paramount title of a third person. (*Das and Ross*, JJ.) ABDUL RAHIM *v.* BARIBA.
2 Pat. L.T. 556 = 61 I.C. 807 = 6 Pat L.J 273.

——S. 42—*Applicability.*

S. 42 comes into operation only where a guardian is properly removed. (*Coxe and Chatterjee*, JJ.) MAHADEO MONDAL *v.* BIDHI CHAND MONDAL. **27 I.C. 28 = 20 C.L.J. 298.**

——S. 42—*Order appointing guardian—Whether appealable.*

An order appointing a guardian under S. 42 is appealable under S. 47 of the Act. (*Pratt*, J. C. *and Kemp*, A. J. C.) GHULAM HYDER *v.* ABDUL FATEH MAHOMED KHAN.
23 I.C. 776 = 7 S.L.R. 90.

——Ss. 43, 12 and 47—*Application for guardianship of the person of a minor girl—Orders regarding marriage of the girl—Validity.*

Pending the disposal of an application for an appointment of guardian of the person of a minor girl, the Court sanctioned the proposal of her marriage. *Held*, that the order passed by the Court regarding the marriage of the minor could not be made either under S. 12 or S. 43 and no appeal lay under S. 47. (*Shah and Crump* JJ.) LAKSHMI NARAIN SESHAGIRI *v.* PARVATIBAI PARMESHWAR.
41 Bom. 690 = 57 I.C. 79 = 22 Bom L.R. 899.

——S. 43—*Order under—Disobedience—Power of Court to act suo moto—Security for guardian's appearance and production of another person—C.P.C., O. 39, R. 2.*

A guardian disobeying an order of the District Court under the Guardians and Wards Act can be ordered to give security for his own appearance but cannot be compelled to cause the production of another person. The Court is competent to act *suo moto* in regard to a disobedience of an order under Guardians and Wards Act unlike a disobedience to an injunction issued under the C. P. C. In the former case, the Court acts in the interest of the minor and in the latter the order is solely for the party's benefit. (*Sankaran Nair*, J.) RAMASAMI CHETTY *v.* LAKSHMI ACHI.
(1913) M.W.N. 172 = 13 M.L.T. 211 = 18 I.C. 922 = 24 M.L.J 231.

——S. 43 (4)—*Order under—Nature of—Disobedience—Sanction.*

An order made under S. 43 (1) and (2) of the Guardians and Wards Act is in the nature of an injunction and the same sanction should be applied in case of disobedience as is prescribed in Ss. 492 and 493 of the C.P.C. (1882) whether or not disobedience is capable of removal or reparation. But where the order is one without jurisdiction, the injunction is void and a person disobeying such order cannot be punished. (*Mookerjee and Carnduff*, JJ.) SUBHADRA KOER *v.* DHAJADHARI GORWAMI.
15 C.L.J. 147 = 14 I.C. 380 = 16 C.W.N. 417.

——Ss. 45 and 34 (d)—*Recusancy—Meaning of—Failure to comply with requisition.*

The word "recusancy" in S. 45 of the Guardians and Wards Act means something more than mere disobedience of an order under Cl. (*d*) in S. 34 of the Act and the person disobeying would not be sent to jail in the absence of proof that he has some means. (*Neubould. and Panton*, JJ.) BULAI CHAND *v.* NARAIN CHANDRA. **49 I.C. 624.**

——S. 45(1) (b)—*Failure to deposit moneys alleged to be misappropriated—Fine—Legality.*

The Court can impose a fine on a guardian, only if the guardian fails to pay into the Court on a requisition under S. 34 (*d*) the balance due on the accounts given by him in compliance with a requisition under S. 34 (c) and not for failure to deposit moneys alleged generally to have been misappropriated. (*Mookerjee and Cuming*, JJ.) JAGANNATH PANJA *v.* MAHESH CHANDRA PAL.
25 C.L.J. 149 = 36 I.C. 286 = 21 C.W.N. 688.

——S. 45 (1) (b) and S. 34—*Guardian's failure to realise purchase-money from his vendee—Order to pay unrealised money in Court or pay a daily fine—Whether* ultra vires.

An order by Court directing a guardian pay unrealised purchase-money when the purchaser did not at all pay the price to the guardian into Court or pay in default a daily fine, is *ultra vires*. (*Chatterjee and Chapman*, JJ.) *In re* NIKHRANNESSA BIBI. **33 I.C. 918 = 20 C.W.N. 663.**

——S. 46—*Report of Collector—When evidence.*

It is only when the District Court calls upon the Collector to report under S. 46 then it is

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open to the Court to treat it as evidence. (*Shah, A.C.J. and Crump J.,*) NAGAVA GURLINGAYA NANDI *v.* COLLECTOR OF BELGAUM. 25 Bom. L.R. 1232 = 1924 Bom. 157.

———Ss. 47 and 48—*Refusal to remove guardian—Appeal.*

An order refusing to remove a guardian is final and no appeal lies against it under Ss. 47 and 48. (*Tudball and Sulaiman, JJ.*) MUHAMMAD ANWAR ALI *v.* DARA SHAH KHAN. 18 A.L.J. 624 = 86 I.C. 208 = 2 U.P.L.R. (A) 217.

——— Ss. 47 and 43 — *Order sanctioning marriage—Appeal.*

An order of the District Judge sanctioning a marriage of minor girl while an application for appointing a guardian for her is pending, is not appealable under S. 47 as the order does not under S. 43. (*Shah and Crump, JJ.*) LAXMINARAYAN SESHAGIRI HALDIPUR *v.* PARVATIBAI PARMESHWAR MUDLIARI. 44 Bom. 690 = 57 I.C. 79 = 22 Bom L.R. 399.

———Ss. 47, 48 and 50—*Application dismissed for non-appearance—Second application if lies—Order dismissing the latter application—Appeal.*

Where one application by the petition to be appointed guardian of his minor son and daughter is dismissed for default of appearance a second substantive application for the same purpose is maintainable. The order of the District Court dismissing the application is appealable. In view of the fact however that the daughter was close upon her majority the application for her guardianship should be dismissed though it can proceed in respect of the minor son. (*Chitty and Teunon, JJ.*) AHMAD ALI *v.* RAISUNNESSA. 18 I C 985 = 17 C.W.N. 429.

———Ss. 47 and 48—*Order appointing guardian—Not open to Review.*

An order for appointing a guardian of a minor under S. 7 of the Guardians and Wards Act is not open to review, as S. 48 makes such an order final. 143 P. R. 1906 foll. (*Scott-Smith, J.*) MUSSAMMAT SHARFAN *v.* MST. BHOLI. 4 Lah. L J. 274: 1922 Lah. 395.

———Ss. 47, 48 and 34—*Order directing guardian to pay money into Court—Appeal—Revision.*

No appeal is allowed against an order calling upon a guardian to pay into Court the balance due from him on settlement of his accounts. But orders under S. 34 of the Guardians and Wards Act are open to examination by the High Court on the revision side. (*Broadway, J.*) RAM DAS *v.* CHANI. 58 I.C. 587.

———Ss. 47 and 48—*Order returning—Application for guardianship for presentation to proper Court—Appeal—Revision.*

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An order returning an application for guardianship for presentation for the Court having territorial jurisdiction, is not appealable. The Chief Court would not exercise its revisionar powers as she had another remedy open to her namely of presenting her application to the proper Court. (*Abdul Raoof, J.*) MUSSAMMAT MURAD BIBI *v.* UMAR DIN. 53 I C. 863 = 107 P.R. 1919.

——— Ss. 47 and 48—*Third party in possession of minor's property—If can be compelled to hand it over to the guardian—Order refusing to compel—Appeal.*

There is no provision in the Act by which a person who is in possession of the minor's property can be compelled to hand over the property to the person appointed by the Court as guardian of the property. An order of the District Judge declining to compel such person to hand over the property to the guardian, is not appealable. (*Chevis, J.*) NATHU RAM *v.* KARMON. 40 P L R 1912 = 13 I.C. 326 = 115 P.W.R. 1912.

———S. 47—*Approval of security by guardian—Appeal.*

An appeal lies only against an order appointing a person, guardian of the property of a minor; but an order approving the security furnished by him and ratifying the original appointment is not appealable under S. 47 of the Guardians and Wards Act. 27 I.C. 941, Foll. (*Sadasiva Aiyar and Moore, JJ.*) GOPPAMAL *v.* SRINIVASA AIYANGAR. 34 I C 432 = 30 M.L.J. 606.

———S. 47, Cl. (g)—*Joint guardians—Removal of one for ind-finite period—Appeal—Order without enquiry—Legality of.*

An order by which one of two joint guardians appointed under the Guardians and Wards Act was permitted to manage the minor's estate singly, until the disposal of the application for Letters of Administration made by the other guardian, is appealable under S. 47, Cl. (g) of the Act. Such an order if made without any inquiry into the truth or otherwise of the respective allegations of the guardians, is unsustainable. The mere fact that a guardian has applied for Letters of Administration is no ground for his removal from the management of the property. (*Mookerjee and Newbould, JJ.*) KAMAKSHA BASINI CHOWDHURANI *v.* JAGAT SUNDARI CHOWDHURANI. 30 I.C. 875 = 22 C L J. 70.

———S. 48 — *Dismissal of application to guardianship—Suit to contest, if maintainable.*

An order dismissing an application for guardianship cannot be contested by a regular suit. (*Shadi Lal, J.*) NAGINA SINGH *v.* SUNDER. 33 I.C. 987 = 24 P.W.R. 1916.

———S. 48—*Order refusing to remove guardian—Not appealable.*

Where the District Court refuses to remove a guardian its order is final and there is no

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appeal against it. (*Oldfield and Devidoss, JJ.*) KONTHALATHAMMAL *v.* SOUNDARATHACHI.
46 Mad. 873 = 45 M.L.J. 481 = 18 L.W. 256 = 33 M.L.T. (H.C.) 80 = 74 I.C. 896 = (1923) M.W.N. 902.

——— **Ss. 48 and 41 (3)**—*Requisition—Suit in Court—Maintainability.*

S. 48 of the Act does not cover the case of a requisition under S. 41 (3) and a separate suit will lie to contest the propriety of the requisition under S. 41 (3). (*Ayling and Krishnan, JJ.*) WALLACE SITH BOI *v.* WALLACE RADHA BOI. **51 I.C. 236 = 36 M.L.J. 189.**

——— **S. 50** —*Rules under—Postponement of appointment until security is furnished*—Ultra vires.

Per *Sadasiva Aiyar*, J.—(Contra)—Rules and forms made by the High Court under S. 50 requiring the appointment of guardian to be postponed to the furnishing and approval of security are *ultra vires*. Per *Moore*, J.—The same are *intra vires*. The procedure based on rules framed by the High Court under S. 50 of the Act, prevailing in the Mofussil Courts of first making an appointment of a guardian conditional on security being furnished and of confirming the same later on being satisfied with the security or treating the petition as pending till proper security is furnished is correct. (*Sadasiva Aiyar and Moore, JJ.*) GOPPAMMAL *v.* SRINIVASA AIYANGAR.
34 I.C. 432 = 30 M.L.J. 803.

GUDABA OR GADABA.

See GRANT INAM.

GUZARAT TALUKDAR'S ACT (VI OF 1888).

——— **S. 2 (1) (a)**—*Mulgameti—Meaning of—Kathis of Salangpur—Status of—Talukdars.*

The Talukdari estates in Guzarat are the remnants of old Rajput kingdoms, those disintegrated being either disrupted by internecine feuds or crushed by foreign invaders. The Subordinate States thus formed were known by names generally indicative of their origin. The smallest of those subordinate rulers was the Gameti or ruler of a single village. Under the British rule the old rulership slowly degraded into a mere landlord estate. A Talukdari is therefore an estate which connoted rulership in pre-British times but which is now a landlord estate to which some seignorial or subordinate rights may or may not still be attached. When the estate connoted rulership of a single village the holder is a Mulgameti (*i.e.*) a gameti who has lost all or most of his lordships. As these estates were very small the holder was not included in the definition of Taluqdar until the Amending Act (II of 1905) recognised as a Taluqdar a Mulgameti who holds lands directly from Government. Per *Marten*, J:—A mulgameti is one who is descended from a former ruler and owner of the village and still retains by regrant or otherwise some portion of the lands or interests therein of such former ruler and owner, but not necessarily any of his governing rights. The kathis of the village of Salangpur in the Dhanduka Taluka of the District of Ahmedabad are Mulgametis but they do not hold land directly from the Government and are not therefore Talukdars within the meaning of S. 2 (1) (a) of the Guzarat Talukdar's Act, 1888 as amended by S. 2 (1) of Act II of 1905. (*Marten and Pratt, JJ.*) SIR DOLAT SINGJI *v.* OGHAD VIRA.
25 Bom. L.R. 726 = 1924 Bom. 72.

——— **S. 10**—*Decree-holder for share of Talukdari—Right to get divided.*

Under S. 10, a person who has obtained a decree of Court that he is entitled to a share of the Talukdari estate, can have his share divided from the rest of the estate and hold the same as a separate estate. The section does not say that the decree must operate as *res judicata* between all parties appearing before the Talukdari settlement officer. (*Batchelor and Rao, JJ.*) GAMBHIR SINGH *v.* AGAR SINGH. **9 I.C. 943 = 13 Bom. L.R. 118.**

——— **S. 16** — *Decision contemplated by section—Nature of—Order rejecting an application for partition.*

The only kind of decision contemplated by S. 16 of the Gujarat Talukdar's Act is the decision referred to in S. 15 (2) which must be given after the making of all necessary inquiries and the taking of such evidence as may be adduced. An order rejecting an application for partition is not a "decision" within S. 16 (1). (*Batchelor and Rao, JJ.*) GAMBHIR SINGH *v.* AGAR SINGH. **9 I.C. 943 = 13 Bom. L.R. 118.**

——— **S. 29**—*Exclusion of time—Execution of decree against—Talukdar—Obtaining of—Certificate—Time spent—Deduction of.*

Held, that an application for execution of decree in 1916 was in time as by virtue of Sub-S. 3 of S. 29-E of the Guzarat Talukdar's Act, the applicant was entitled to exclude the time from 16th Septr., 1910 (the date of the decree) to August, 1914, the date of the due submission of the decretal claim to the Managing Officer which was the date for the application of the certificate. (*Shah and Marten, JJ.*) HARGOVIND *v.* NAJA SURA. **43 Bom. 44 = 47 I.C. 726 = 20 Bom. L.R. 872.**

——— **S. 29 B** — *Mortgage by* Talukdar—*Mortgagee mortgaging the mortgage rights to another—Latter ejected by Taluk Officer—Effect.*

A *Talukdar* mortgaged his lands to A who in his turn mortgaged his rights to B. The *Talukdari* Settlement Officer who took charge of the lands of the *Talukdar* issued a call to the creditors to notify their claims. Neither B nor the minor heir of A notified the claim and B was ejected. In a suit by B for recovery of possession, *held*, he was entitled to possession so long as he claimed under A and as long as

GUZARAT TALUKDAR'S ACT (VI of 1888), S. 29 B.

the mortgagee's rights were in existence. (*Macleod*, C. J. *and Shah*, J.) HARANBHAI *v.* COLLECTOR OF KAIRA.

23 Bom. L.R. 1046 = 46 B. 239 = 1922 B. 200.

———S. 29-B—*Claim under—If limited to Talukdar estate.*

Claims under S. 29-B are not limited to claims against Talukdar's estate. (*Scott*. C. J. *and Beaman*, J.) SHANKAR BHAI KASHI BHAI *v.* RAISINGI JASWATSINGI.

42 I.C. 903 = 19 Bom. L.R. 855.

———S. 29-B—'*Unable*,' *meaning of—Not restricted to physical inability.*

Where a person asserting the rights of a mortgagee appealed against the decree of a Subordinate Judge negativing those rights but in the meantime the property passed under the management of Talukdari Settlement Officer, under the Act and a notification under S. 29 (B) of that Act was issued by him calling on all claimants to appear and establish their rights within six months of the date of the notification but the person asserting the rights of mortgagee could not establish his claim within time as the appellate decree in his favour was passed after the period of six months in the notification and the Talukdari Settlement Officer appealed, against the decree, as a person representing the estate but failed and the decree holder applied for certificate for execution under S. 29-B of the Act. *Held* that (1) As the appeal was not heard and decided within 6 months from the notification, the appellant was unable to establish his claim. The word 'unable' in S 29—B (9) is not restricted to a physical inability on the part of the claimant. (*Scott*, C. J. *and Batchelor*, J.) MANILAL POPAT LAL *v.* KHODABAI SARTANSING. **16 Bom. L R. 511 = 25 I C 365 = 38 B 604**

———S. 29-B, cls. (1 and (2)—*Notice under—Necessity for—Decree against Talukdar—Execution.*

Although a decree had been passed against a Talukdar, which was being executed before S. 29-B was enacted, still notice of the claim is necessary after the notification under S. 29-B, has been issued. 11 Bom. L.R. 1358 ; 19 Bom. L.R. 855, Ref. (*Macleod*, C. J. *and Coyajee*, J.) THE TALUKDARI SETTLEMENT OFFICER *v.* AKUJI ABHOAM.

24 Bom. L R. 762 = 46 B. 998 = 1922 Bom. 350.

———S 29 (e)—*Exclusion of time—Application for execution.*

On 22—2—1903 B obtained a money decree against G, a Talukdar, and applied for execution on 8—12—1903. On 21—9—1905 G's estate came by notice in the management of the Talukdari Settlement Officer under S. 29 (e) of the Act (1888). B submitted his claim to the officer on 6—8—1906 but it was rejected on

GUZARAT TALUKDAR'S ACT (VI of 1888), S. 31.

12th August of the same year. B then applied to the Civil Court on 12—3—1909 and sought to bring it within time, by claiming to exclude the period taken up before the Talukdari Settlement Officer ; *held*, that the period cannot be excluded in computing the time for the application, for, S. 29 (e) was no absolute bar on B's right to apply to the Court for execution owing to the submission of his claim to the Talukdari Settlement Officer. (*Chandavarkar and Heaton*, JJ.) GANPAT SINGH *v.* BAEJIBHAI. **33 Bom. 324 = 10 I.C. 912 = 13 Bom. L.R. 292.**

———S. 31—*Talukdari estate—Meaning of—Vanta lands.*

The words "Talukdari estate" in S. 31 of the Guzerat Talukdar's Act are used in a technical sense limited to the Talukdar's interest in the estate held by him by reason of his status as a talukdar. Where lands situated in a Taludkari village and shown in the Government register as Sirkar Udar Jamabandhi, were recently entered as Vanta in the register of Inami Vanta lands kept by the Talukdar they do not cease to be "Taludar's estate" within the meaning of S. 31 of the Guzerat Talukdar's Act. Vanta tenure is prescription of remote antiquity without any deeds or grants. 4 B 887, Ref. (*Macleod*, C.J. *and Coyajee*, J) SHANKARLAL TAPIDAS *v.* BAJIKHAN AKHTYARKHAN. **24 Bom. L R. 709 = 1922 Bom. 312.**

———S 31—*Jivaidar, if Talukdar—Succession to Talukdari.*

Land held as Talukdari is distinct from land held under ordinary law of joint family. The rules of succession applicable to it are therefore distinct. A Jivaidar is a Talukdar and therefore he is the only person entitled to deal with the property. (*Macleod*, C.J. *and Heaton*, J.) BHAIJI ISHVARDAS SHAH *v.* THE TALUKDARI SETTLEMENT OFFICER.

44 Bom. 932 = 58 I.C. 89 = 22 Bom. L.R. 908.

———Ss. 31 and 33—*Adverse possession as mortgagee—Sections inapplicable — Power of Talukdari Settlement Officer.*

A Talukdar granted a plot of land in his talukdari estate to the father of the defendant for maintenance in 1862 who mortgaged it with possesion in 1889. In 1894 the mortgagor died and in 1895 the mortgagee died. After the death of the mortgagor the mortgagee and his son remained in possession of the property as mortgagee. In 1907 the Talukdari Settlement Officer summarily evicted the plaintiff under S. 79 (a) of the Land Revenue Code as amended by S. 33 of the Gujarat Tulukadaris Act, who brought suit for possession; *held*, that the plaintiff was entitled to succeed on the ground that he had been in adverse possession claiming title as mortgagee for more than 12 years since the death of the mortgagor. Ss. 31 and 33 of the Talukdars Act do not apply.

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(*Scott*, C.J. *and Chandavarkar*, J.) TALUQDARI SETTLEMENT OFFICER *v.* RIKHAVELAS. 37 Bom. 380=19 I C. 891=15 Bom. L.R. 378.

———S. 33—*Summary eviction.*

Summary eviction is restricted to *talukdar's estate*, and other estates cannot summarily be taken possession of. (*Scott*, C.J. *and Beaman*, J.) SHANKARBHAI KASHIBHAI *v.* RAISINGI JASWATSINGI. 42 I.C. 908=19 Bom. L.R. 855.

———S. 33—*Arrears of assessment—Attachment by mamlatdar of ornaments of Khatedar—Talukdari village-Minor Talukdar—Guardianship of Collector.*

A mamlatdar in charge of the management of a talukdari village, as a subordinate of the Collector who is the guardian of the minor talukdar, has power to attach under Ss. 150 and 154 of the Bombay Land Revenue Code to attach the ornaments of a khatedar for arrears of assessment due for previous years. (*Scott*, C.J. *and Heaton*, J.) DALUCHAND *v.* GULABBHAI. 34 I.C. 198=18 Bom. L.R. 323.

GUMASTHA.

See (1) CONTRACT ACT.
(2) PRINCIPAL AND AGENT.

HABEAS CORPUS.

See HIGH COURT.

HACKNEY CARRIAGES ACT (XIV OF 1879).

——Ss. 6 and 7—*Insein Rules, R.* 15—*Refusal by driver to ply hackney carriage for hire—Liability of driver and owner.*

The driver of a hackney carriage is not punishable for infringement of R. 15 of the Insein Rules under the Hackney Carriages Act for refusal to ply it for hire, because he does not "keep" the carriage; nor is the "owner" liable for refusal of his servant. It must be shown that the hirer applied to the "owner" and was refused by him. (*Twomey*, J.) EMPEROR *v.* KAMALI KHAN.
15 Cr. L.J. 552=7 Bur. L.T. 301=24 I.C. 960=8 L B.R, 91.

HANDWRITING.

See (1) EVIDENCE.
(2) EVIDENCE ACT, SS. 47, 67 AND 68.

HAT.

———*Right to hold market—Grant—Intimidation of customers.*

There is no such thing as a market franchise or a right to hold a market conferred by grant from the Crown, nor can such right be acquired by prescription. The right to hold a market is treated as an incident to the ownership of the land. The proprietor of the old market has no monopoly or privilege which is entitled to protection and immunity from competition. Where illegal means in the nature of intimidation and physical compulsion were employed by agents of the defts. acting within the scope of their employment to induce traders who would have gone to plff.'s old hat to attend deft's. new hat, and as a natural consequence thereof, there was diminution of plff's. profits from his hat. *Held*, that the plff. was entitled to a civil remedy by way of a suit for damages. (*Richardson and Greaves*, JJ.) HEM CHANDRA ROY *v.* KRISTO CHANDRA SAHA SARDAR.
24 C.W.N. 800=58 I.C. 879=47 C. 1079.

HIBA-BIL-EWAZ.

———*Right to hold—Injunction.*

A party is entitled to hold a hat in his own village on any day subject to their committing no offence against public tranquillity. If by holding a hat on particular days he violates the legal rights of the other party to hold his hat on those days, he will be restrained from holding his hat on such days. (*Holmwood and Chapman*, JJ.) BROJENDRA KISHORE ROY CHOWDHURY *v.* ABDUS SOBHAN CHOWDHURY. 27 I C. 617.

——*Right to hold—Lawful Act.*

The holding of a hat on a man's own property is not in itself a wrongful act and, therefore any ulterior consequences which may arise from it cannot give rise to any proceeding against the owner of the land for committing any act likely to cause a breach of the peace, unless these ulterior consequences are made the basis of proceedings under S. 144, Cr. P. C. (*Holmwood and Imam*, JJ.) RAKHAL DAS SINGH *v.* EMPEROR. 13 Cr. L J. 511=15 I.C. 685=19 C.W.N. 248.

HEARSAY EVIDENCE.

See (1) EVIDENCE.
(2) EVIDENCE ACT.

HEIRS.

See HINDU LAW—SUCCESSION.

HEIR, BEQUEST TO.

See WILL.

HEREDITARY ALLOWANCE.

See HEREDITARY OFFICE.

HEREDITARY OFFICE.

See (1) BOMBAY HEREDITARY OFFICES ACT.
(2) HINDU LAW, RELIGIOUS OFFICE.
(3) MAHOMEDAN LAW, RELIGIOUS OFFICE.
(4) MADRAS HEREDITARY VILLAGE OFFICES ACT (III OF 1895).
(5) T. P. ACT, S. 6.

HERMIT.

See HINDU LAW—SUCCESSION.

HIBA-BIL EWAZ.

See MAHOMEDAN LAW,—GIFT.

HIDDEN TREASURE.

See TREASURE TROVE ACT.

HIGH COURT.

See (1) GOVERNMENT OF INDIA ACT.
(2) JURISDICTION.
(3) PRIVY COUNCIL.

HIGH COURT.

———*Subordinate Courts—Duty to follow precedents.*

It is duty of Courts subordinate to a High Court to follow the decision of the High Court to which they are subject. (*Sir John Edge*) PUTTU LAL *v.* PARBATI KUNWAR.
37 All 359=42 I.A. 165=19 C.W.N. 881=
13 A.L.J 721=17 Bom. L.R. 669=
18 M.L.T. 61=29 M.L J. 63=
22 C.L J. 180=2 L.W. 881=
29 I.C. 617=(1915) M.W.N. 514 (P.C).

———*Contempt—Subordinate Court.*

Hight Court has power of take cognizance of contempt of Subordinate Court. (*Mr. Macleod and Shah*, JJ.) EMPEROR *v.* BALAKRISHNA GOVIND. 46 B. 592=
23 Cr. L J. 177=
24 Bom. L.R. 16=1922 Bom. 62.

———*Subordinate Courts—Jurisdiction over.*

The jurisdiction of the Sudder Diwanee Adaulat (under B.R. II of 1827) to exercise general supervision over Subordinate Courts is still preserved to the High Court under S. 9 of the Indian High Courts Act. 24 and 25 Vic., C. 104. (*Batchelor and Hayward*, JJ.) BAI ATRANI *v.* LHEPSINGH BARIA.
40 Bom. 86=33 I.C. 858=
17 Bom. L.R. 1097.

———*Chief Justice—Powers of—If can constitute Bench for trying only an issue in a case.*

It is open to the Chief Justice of a High Court to appoint a special Bench to try a case, but he cannot fetter the discretion of the Court as to how it should be tried. He cannot appoint Bench to merely try one issue in a case. (*Greaves and Buckland*, JJ.) GIRIDHARILAL HANUMANBOX *v.* EAGLE STAR AND BRITISH DOMINIONS INSURANCE COY. LTD. 27 C.W.N. 955=1924 Cal 186.

———*Rules by Government under express provisions of law—Interference.*

The High Court will not interfere with rules and conditions framed by Government under express provisions of law unless they are in conflict with some legal principles. (*Chaudhuri and Cuming*, JJ.) NAGENDRALAL DAS *v.* MUNICIPAL COMMISSIONER OF CHITTAGONG. 59 I.C. 840=47 Cal. 426.

———*Contempt—Commitment for.*

The High Court has no jurisdiction to punish, as an offence in a summary proceeding, conduct in relation to a proceeding in the mofussil Criminal Court, as such jurisdiction is neither derived from the Supreme Court or the Sudder Deewany, and the Sudder Nizamut Adaulats, nor is vested in the High Court by the Charter Act, (1861), or the Letters Patent under that Act, and as such conduct is not contempt of the High Court. (*Jenkins*, C.J., *Stephen, and Mookerjee*, JJ.) GOVERNOR OF BENGAL *v.* MOTILAL GHOSH. 41 Cal. 173=
14 Cr. L.J. 321=17 C.W.N. 1263=
20 I.C. 81=18 C.L J. 152.

HIGH COURTS ACT. 1861 (24 & 25 Vic., c. 104), S. 15.

———*Power of Judges—Rules guiding.*

The rules governing the powers of the Judges of the Indian High Court are contained in the Letters Patent, the Rules of the Court and the orders passed by the Chief Justice under the provisions of the High Courts Act. (*Fletcher*, J.) PEARY MOHUN DAS *v.* DONALD WESTON.
9 I.C. 809.

———*Powers of superintendence—Proceedings of Board of Revenue under S. 169, Madras Estates Land Act—If can be revised.*

Proceedings of Board of Revenue under S. 169 Madras Estates Land Act can be revised by the High Court. (*Spencer and Devadoss*, JJ.) BURLA APPANNA *v.* ANALA LATCHAYYA.
46 M L.J. 726=33 M.L.T. 92 (H C.)

———*Certiorari — Power to issue writ—Limits of.*

Per *Sundara Aiyar*, J. (*Sadasiva Iyer*, J., *dissenting*). The High Court has no jurisdiction to issue a writ of *certiorari* on an officer beyond the limits of its Original Jurisdiction. Per *Sadasiva Aiyar*, J.—The Power to issue the writ of *certiorari* to quash judicial proceedings passed by persons in the mofussil rests in the High Court. 6 B.L.R. 392, Foll. The powers of the High Court with regard to the writs of *Habeas Corpus and certiorari* are the same. Nothing shall be intended to be beyond the power of the superior Courts unless expressly taken out of it. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) *In re* NATARAJA AIYAR.
36 Mad. 72=23 M.L J. 398=13 M L T. 367=
16 I.C. 765=13 Cr. L J. 723=
(1913) M.W.N. 1012.

HIGH COURTS ACT, 1861 (24 & 25 Vic., c. 104.)

———S. 9—*Limitation of powers under S. 9—Power of Indian Legislature to constitute Courts not subject to the High Court.*

The jurisdiction conferred upon the High Court by S. 9 of the High Courts Act is subject to the legislative powers of the Indian Legislative Council which can create new Courts independent of the control of the High Court. (*Miller*, C.J., *Mullick and Ali Iman*, JJ.) SHEO NANDA PRASAD *v.* EMPEROR.
3 P.L.J. 581=19 Cr. L.J. 883=
5 P.L.W. 324=46 I.C. 977=
1919 Pat. 1 (F.B.).

———S. 15—*Proceedings under Ch. XII of Cr. P. Code.*

The High Court cannot interfere under the section in proceedings under Ch. XII of the Cr. P.C. (*Knox*, J.) MUTSADDILAL *v.* TARIF.
38 I.C. 978=18 Cr. L J. 418.

HIGH COURTS ACT, 1861 (24 & 25 Vic., c. 104), S. 15.

———S. 15—*Power of superintendence—High Court—Chota Nagpur Tenancy Act, S. 85—Proceedings under.*

High Court cannot exercise superintendence under S 15 of the High Courts Act over proceedings for settlement of fair rents before a Revenue Officer under S. 85 of the Chota-Nagpur Tenancy Act of 1908. (*Mookerjee and Beachroft, JJ.*) UMA CHARAN MANDAL *v.* MIDNAPORE ZEMINDARY COY.
19 C.L.J. 300 = 23 I.C. 886 = 18 C.W.N. 782.

HIGH COURT RULES.

See UNDER VARIOUS HIGH COURTS.
(1) ALLAHABAD,
(2) BOMBAY,
(3) CALCUTTA,
(4) LAHORE,
(5) MADRAS,
(6) PATNA AND
(7) RANGOON.

HIGHWAY.

DEDICATION.
OBSTRUCTION.
OWNERSHIP.
PROCESSION.
WHAT IS.

Dedication.

———*Dedication — Proof of — Intention—User by public—Effect of—Public street—Road through private market when public trade by license.*

To constitute a valid dedication to the public of a highway by the owner of the soil, there must be an intention to dedicate by the owner of the soil. User by the public is only evidence of such intention. There may be a dedication by the public for a limited purpose *e.g.*, footway, horseway, etc. but there cannot be a dedication to a limited part of the public. *Poole* v. *Haskinson*, 11 M. and W. 827, Rel. In determining whether a road through private property is a public high way though no express dedication is proved, it is of crucial importance to distinguish between evidence showing an intention to dedicate to public generally and evidence showing that visitors to or traders with tenants whose shops abut on the road have, by permission a right of passage. (*Lord Shaw.*) MUHAMMAD *v.* MUNICIPAL COMMITTEE OF KARNAL CITY. 1 Lah. 117 = 47 I.A. 25 = 1 P.W.R. 1920 = 13 P.L.R. 1920 = 38 M.L.J. 455 = 11 L.W. 579 = 18 A.L.J. 466 = 22 Bom. L.R. 563 = 2 U.P.L.R. (P.C.) 87 = 56 I.C. 1 = 28 M.L.T. 1 (P.C.)
[On appeal from 38 I.C. 458.]

———*Dedication of—Acceptance, if necessary.*

No formal act by any person or authority is required for the acceptance of a highway dedicated to the public use, such acceptance can be inferred from the public user of the way. (*Chatterjee and Walmsley, JJ.*) SURAJ MAL KHARAD *v.* AKSHOY KUMAR ROY.
40 I.C. 74 = 21 C.W.N. 595.

———*Dedication—Presumption—User.*

The principles of the English law regarding the presumed dedication of a road to the public arising from user of such road by the public being founded on reason and common-sense and conducive to public convenience, are applicable to India. 62 P.R. 1898, Foll. (*Johnstone, C.J. and Scott-Smith, J.*) MUNICIPAL COMMITTEE, KARNAL *v.* MUHAMMAD RUSTAM ALI KHAN. 108 P.R. 1916 = 35 I.C. 458 = 146 P.W.R. 1916.
[On appeal see 56 I.C. 1 = 1 Lah. 117 (P.C.)

———*Dedication to class — Rights over other's property.*

Public highway cannot be dedicated to a class. All rights over other's property are private whether they belong to a class or an individual and whether they arise from any source. (*Ayling and Napier, JJ.*) SUBBAYA NADAN *v.* AIYAVOO REDDY. 5 L.W. 782 = 37 I.C. 977 = (1917) M.W.N. 70.

———*Dedication—Presumption from user,*

If the public have been using the streets belonging to a temple for a very long time for passing and re-passing, this may be sufficient to raise a presumption of the dedication of the streets to the public for use as a highway. (*Benson and Sundara Iyer, JJ.*) ALAGASINGA BHATTAR *v.* TALUK BOARD RAJAMUNDRY.
16 I.C. 626 = 12 M.L.T. 159.

———*Dedication—Proof of—Grant User.*

Public rights of way as distinguished from easement arise from a dedication to the public by the owner of the soil over which they pass. Dedication arises from a gift expressed in a deed or implied from custom and user. Where a person encloses a public path over his land and allows any new one to be opened in its place, he must be presumed to have made a fresh grant to the public of the new path. (*Batten, A.J.C.*) LAXMAN *v.* TUKIA.
44 I.C. 868 = 14 N.L.R. 78.

———*Dedication — Inference from user—English law—Applicability of.*

It is competent to a Court to draw an inference of dedication of a highway to the public from long user. Though the general principles of English Common law as regards highways are applicable to India, the whole of the English Common law should not be bodily imported. (*Wazir Hasan, A.J.C.*) RAI BAIJRANG BAHADUR SINGH *v.* BABU BADRI NATH. 4 U.P.L.R. (P.C.) 105 = 9 O.L.J. 497 = 1923 Oudh 26.

Obstruction.

———*Obstruction—Special damages.*

A narrowing of a public highway practically amounting to blocking it, is a special damage.

HIGHWAY—Obstruction.

(*Sunder Lal*, J.) RAM KRISHUN *v.* BANWARI RAI. 25 I.C. 266.

———*Obstruction — Village pathway — Special damage not necessary to enforce right to pathway.*

The plaintiffs asked for declaration of a village pathway used by all the people of the village for certain specified purposes. The defendants contended that the alleged pathway was not a public highway but was a permissive foot track. *Held*, that the suit was for the enforcement of a village pathway and no question of special damage arose in the case. 15 Cal. 460 Foll. It is only in the case of a public highway that the question of special damage arises; where the case is one of a village pathway, there is no question of special damage. 23 C.W N. 91, Ref. (*Mookerjee and Rankin*, JJ.) HARISH CHANDRA SAHA *v.* HARISHCHANDRA CHACKERBUTTY. 1923 Cal. 622.

———*Obstruction—Injunction to restrain—Special damage—Inability to commit nuisance.*

In the absence of proof of special damage to plaintiff beyond that suffered by the rest of the public who used the way there was no cause of action to the plaintiff to sue for injunction. If the passage was a public highway, the plaintiff was not entitled to erect a scaffolding on it and he could not sue in respect of a nuisance when the special damage he asserted was his own inability to commit a nuisance. *Beachcroft*, J.) SHYAM LAL DEY *v.* MANMATHA NATH SARKAR. 31 I.C. 324.

———*Obstruction— Special damage—Proof of.*

Proof by the plaintiff that he and his servants had been compelled to go by a longer route and thereby incur additional expense is sufficient special damage entitling the plaintiff to sue for removal of an obstruction of a highway. Infringement of a pathway in which plaintiff had got a right with other villages by reason of a grant implied from long user does not require special damage to give the plaintiff a cause of action. The mere fact that the pathway is described in the plaint as a public pathway would not make any difference. (*Fletcher and Huda*, JJ.) HARIHAR DAS *v.* CHANDRA KUMAR GUHA. 49 I.C. 79=23 C.W.N. 91.

———*Obstruction — Suit for removal of—Proof of special damage necessary—Admission by one defendant, if binds others.*

A suit for the removal of an obstruction to a public road will lie only on proof of special damage to the plaintiff. An admission in such a suit by one defendant cannot bind the others. (*Coxe and Chatterjea*, JJ.) HEYAT BAKSH *v.* LACHMINIA. 22 I.C. 916.

———*Obstruction—Special damage—Village pathway.*

A public highway is different from a way over which a section of the public may have a right of way. Under S. 30 of the C.P.C., (1882) a suit to vindicate the plaintiff's right to village pathway obstructed by the defendant

HIGHWAY—Ownership.

is maintainable even without special damage. (*Jenkins and N. Chatterjee*, JJ.) KALI CHARAN *v.* RAM KUMAR. 18 I.C. 67= 17 C.W.N. 73.

———*Obstruction—Cause of action—Order under S. 144, Cr. P. Code.*

An order under S. 144, Cr. P.C., does not affect the civil rights of the parties and if the right sought to be established in a public right special damage must be alleged and proved. 32 Mad. 527; 29 M.L.J. 91, Foll. (*Seshagiri Aiyar and Bakewell*, JJ.) KALMATTAPPA *v.* JOISH NARAYANA BHAT. 42 I.C. 387.

———*Obstruction—Special damage.*

A suit by a private person in respect of an obstruction to a public way must allege, and the plaintiff must prove, special damage of a substantial character to himself. 23 M.L.J. 539; (1913) M.W.N. 1001, Foll. (*Sadasiva Aiyar and Napier*, JJ.) SIVA SANKARA REDDY *v.* MUTHUSWAMI KONAN. 25 I.C. 603.

———*Obstruction—Special damage—Access to house.*

The right of a person to have access to his land abutting on a public pathway is not a private right but a right in common with the public and he cannot therefore maintain a suit for obstruction without alleging and proving special damage of a substantial character. 29 M.L.J. 539, Foll; 31 All. 444, Ref. (*Sadasiva Aiyar and Spencer*, JJ.) KANDASAWMY KAVUNDAN *v.* KURUPANNA KAVUNDAN. (1913) M.W.N. 1001=21 I.C. 601= 14 M.L.T. 509.

———*Obstruction — Special damage—Suit under S. 91, C.P.C.*

Obstruction of a way having not caused any special damage can afford no cause of action to a member of the public. Per *Sundara Aiyar*, J. Special damage need not always be pecuniary. 22 Cal. 551; 14 Mad. 137, Ref.; 8 A L.J. 19, Not appr. Per *Sadasiva Aiyar*, J—Special damages should be something substantial and not mere pecuniary damage to the extent of four annas or eight annas. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) KHAJI SAYED HUSSAIN SHAB *v.* EDIGA NARASIMHAPPA. 23 M.L.J. 539=12 M.L.T. 491= 16 I.C. 962=(1913) M.W.N. 991.

———*Obstruction—Damage special—Proof of.*

Special damage for obstruction of a high way has to be proved in a suit for its removal by a private owner. (*Prideaux*, A.J.C.) CHAINU *v.* MANBODH. 45 I.C. 895.

Ownership.

———*Ownership—Dedication, presumption of, when ownership unknown.*

Where the ownership of a road is unknown, the dedication of it to the public is presumed

HIGHWAY—Ownership

from proof of its user by the public. (*Ayling and Napier*, JJ.) SUBBARAYA NADAN *v.* AIYAVOO REDDI. 5 L.W. 752 = 37 I.C. 977 = (1917) M.W.N. 70.

——— *Ownership of soil—Ad medium filum doctrine—Applicability.*

The doctrine that where a public path is admitted to be the boundary between the two estates, the presumption is that the soil up to half of the road belongs to each estate, must be confined to cases where it is clearly proved or both sides are agreed, that the limits of each village do not extend beyond the off side of the path. (*Sadasiva Iyer and Napier*, JJ.) ARUNACHELLAM CHETTY *v.* RAMANATHAN CHETTY. 31 I.C. 664.

Procession.

———*Procession — Nuisance — Control by Police.*

Religious processions are lawful and come within a proper user of the highway. But they are always subject to the control of the Dist. Magistrate and Police Officers. They cannot be allowed to repeatedly stop on the public way so as to block the road and prevent the public from using it. (*Tudball and Sulaiman*, JJ.) MUHAMMAD ZAMAN *v.* MANZUR HASAN. 19 A.L.J. 740 = 63 I.C. 984 = 3 U.P.L.R. (A) 129.

———*Procession—Right of public to use it in lawful manner—Restriction of right—Burden of proof.*

The public are entitled to the lawful use of public streets, and those that would curtail this right, are bound to show some law or custom taking away this right. Thus the right of Lingayats in Belgaum District to the exhibition of the religious symbol in procession in public street can be exercised subject only to orders under S. 144, Cr. P.C. or under Ss. 42 and 44 of Bom. Dt. Police Act. 26 M. 76; 34 Bom. 571, Ref. to. (*Batchelor and Shah*, JJ.) DUNDAPPA MALLAPPA SIGANDHI *v.* SECRETARY OF STATE. 37 I.C. 363 = 18 Bom. L.R. 460.

———*Procession — Obstruction — Cause of action—Order under S. 144, Cr. P. Code—Suit for injunction without proof of damages—Right to go in procession.*

An order of a Magistrate under S. 144 of the Cr. P. Code forbidding a person or body of persons from using a highway for the purpose of procession invests the person or persons with a cause of action if they allege it to be an infringement of their legal rights though such order is itself *intra vires* and no special damage be alleged or proved. 2 Bom. 457, 32 Mad. 527; 32 Mad. 478 20 M.L.J. 118; 11 Bom. L.R. 372, ref. A person or body of persons by whom a right is claimed to go in procession along a public highway can bring a declaratory suit to establish that right against a person who threatens to obstruct it without allegation or

HIGHWAY—What is.

proof of special damage. (*Wallis*, C.J., *Ayling and Seshagiri Aiyar*, JJ.) VALAN PAKKIRI TARAGAN *v.* SUBBAYYA SAMBAN. 42 Mad. 271 = 36 M.L.J. 79 = 25 M.L.T. 39 = (1919) M.W.N. 46 = 49 I.C. 533 = 9 L.W. 208 (F.B.).

———*Procession—Damages—Cause of action—Special damage.*

In the case of obstruction to a procession passing along public road, an action lies for an injunction on proof of special damage. Special damage does not mean actual pecuniary loss. It may consist in inconvenience or loss, consequent on waste of time involved in taking another route or in some damage peculiar to the community constituting the procession. (*Oldfield and Phillips*, JJ.) GANAPATHY MOOPPAN *v.* SUBBA NAYAKAN. 28 M.L.T. 258 = 44 I.C. 834 = (1918) M.W.N. 547.

——— *Procession, obstruction to—Right of user of any member—Presumption.*

All members of public have a right of user of the public highway for conducting a religious or ceremonial procession without obstruction from anybody. This right is legally vested in every man even though the highway may not have been used for a particular purpose. (*Ayling and Napier*, JJ.) SUBBAYYA NADAN *v.* AIYAVOO REDDI. (1917) M.W.N. 70 = 37 I.C. 977 = 5 L.W. 752.

——— *Procession—Right of user—Grant of injunction—Religious procession.*

Every citizen has an inherent right to conduct religious processions through the public streets. This natural right may be restricted in the interests of public safety or its exercise may be limited. The right of every citizen to pass in procession through public streets is a Civil right. Where an injury is of such a character that pecuniary compensation will not afford sufficient relief and where it is necessary to avoid multiplicity of judicial proceedings, an injunction will be granted. Cases discussed. (*Seshagiri Aiyar and Kumaraswamy Sastri*, JJ.) ANDI MOOPAN *v.* MUTHUVIRAMMA REDDI. 29 M.L.J. 91 = 29 I.C. 248 = 17 M.L.T. 453.

———*Procession—Right to go in.*

The members of a religious community or denomination, are entiled to pass through a public way in procession for purposes of religious worship. 32 Mad. 478; 32 Mad. 527, Ref. (*Sundara Iyer*, J.) SENGODAN *v.* EMPEROR. 16 I.C. 806 = 13 Cr. L.J. 534.

What is.

———*What is.*

All the ground whether metalled or unmetaled over which the public have a right of way is a public road. (*Richards*, C.J. *and Tudball*, J.) MUNICIPAL BOARD, AGRA *v.* SUDARSHAN DAS SHASTRI. 37 All. 9 = 26 I.C. 206 = 12 A.L.J. 1137.

HIGHWAY—What is.

———*What is—Elements necessary to prove.*

To establish a highway by user it is not necessary that it should lead from one public place to another public place. A public right of way cannot be established by proof of user alone without evidence to prove dedication to the public, such as evidence that the owner has allowed the public to spend money in improving the road. (*Ashworth*, A.J.C.) DHANI RAM *v.* ABDUL KARIM. 38 I.C. 441 (2) = 22 O.C. 168.

HINDU BEQUESTS VALIDATION ACT (MADRAS ACT I OF 1914).

———S. 2 (2).

S. 2 (2) is very general and validate dispositions taking effect at a future date after the passing of the Act as the testator desires. (*Abdur Rahim and Srinivasa Aiyangar*, JJ.) KUDAPPA VENKAYAMMA *v* KAKARLA NARSAMMA. 40 Mad 540 = 4 L.W. 189 = 31 M.L.J. 33 = 35 I.C. 180 = 20 M.L.T. 221.

HINDU LAW.

ADOPTION.
ALIENATION.
APPLICABILITY.
ASCETICS.
CASTE.
CONVERSION.
CUSTOM.
DEBTS.
GIFT.
IMPARTIBLE ESTATE.
JOINT FAMILY.
LIMITED OWNER.
MAINTENANCE.
MARRIAGE.
MINORITY AND GUARDIANSHIP.
NIBANDHAS.
PARTITION.
RELIGIOUS ENDOWMENT.
RELIGIOUS OFFICE.
RE-UNION.
REVERSIONER.
SCHOOLS OF LAW.
STRIDHANAM.
SUCCESSION.
TEXTS.
WIDOW.
WILL.

———**Adoption.**

AFFILIATION.
AGREEMENT.
AUTHORITY.
BURDEN OF PROOF.
CAPACITY TO TAKE.
CEREMONIES.
CUSTOMARY FORM.
DANCING GIRLS.
ELIGIBILITY.
ESTOPPEL.
EVIDENCE.
FACTUM VALET.
INVALID ADOPTION.
RIGHTS OF ADOPTED SON.
SETTING ASIDE.

HINDU LAW—Adoption—Agreement.

SIMULTANEOUS ADOPTIONS.
WIDOW.

Adoption—Affiliation.

———*Adoption—Affiliation.*

Affiliation means the taking of a person into one's family without the ceremony of adoption. The person affiliated takes whatever property is given to him. (*Ayling and Hannay*, JJ.) CHALLA NABA *v.* VEDIMMULLA VIRA. 28 I.C. 893 = (1914) M.W.N. 919.

Adoption—Agreement.

———*Adoption—Agreement — Agreement between adopter and father of adoptee—Validity of.*

A Dhayabaga Hindu took in adoption a boy with whose father he entered into an agreement whereby it was suggested that the adopted son would become entitled to all the adopter's properties, moveable and immoveable, and to perform the services of the idols and all rites and ceremonies in connection with paternal and maternal ancestors. The agreement further provided that in case a son should be subsequently born to the adopter both would be equally entitled to all the aforesaid moveable and immoveable properties which might be left by him. A son having been subsequently born: *Held*, that by the agreement, the adopter intended that the adopted son and the natural born son should inherit both the debutter and the secular properties of the adopter in equal shares. (*Sir John Edge.*) ASITA MOHAN GHOSE MOULIK *v.* NIRODE MOHAN ROY GHOSE MOULIK. 24 C.W.N. 795 = 47 I.A. 140 = (1920) M.W.N. 541 = 12 L.W. 556 (P.C.).

———*Adoption—Agreement to pay annuity—Legality of.*

A grant of an annuity as consideration for the agreement to give a boy in adoption is invalid and unenforceable. *Quaere*: Whether the payment of the annuity, if there had been good consideration for it, could be enforced against the sons of the grantor. 6 Bom. L.R. 642; 7 Bom. L.R. 686, Ref. (*Macleod*, C.J. *and Coyajee*, J.) NARAYAN LAXMAN *v.* GOPAL RAO TRIMBAK. 24 Bom. L.R. 414 = 1922 Bom. 382.

———*Adoption—Agreement—Ante adoption—How far binding.*

An agreement between the natural father and adopting widow that she was to have absolute right of management and enjoyment of all income until death of the widow being unreasonable and unfair is not binding on the boy. (*Heaton and Shah*, JJ.) PURSHOTTAM *v.* RAKH MAHAI. 23 I.C. 599 = 16 Bom L.R. 57.

———*Adoption—Agreement not to adopt.*

Where a Hindu widow having authority to adopt from her husband enters into an agreement whereby she undertakes not to adopt in consideration of her getting some properties,

HINDU LAW—Adoption—Authority.

the agreement is void as contrary to the public policy. (*Wallis*, C.J. *and Seshagiri Aiyar*, J.) JAGANATHA *v.* KUNJA BIHARI.

25 M.L.T. 204=9 L.W. 385=
49 I.C. 929=(1919) M.W.N. 52.

Adoption—Authority.

———*Adoption—Authority—Construction.*

According to the Bombay School of law the duty of a Hindu widow to obey her husband's command compels her to act upon any mandatory direction that he may give by will as to the way in which her power of adoption should be exercised. The adoption by the widow of a boy different from the one specified in her husband's will was invalid. A condition in a will imposing duties on the adopted son is one subsequent to the appointment and not a condition precedent to the exercise of the power. (*Lord Buckmaster.*) SITA BAI *v.* BAPU ANNA PATIL. 47 Cal 1012=
39 M.L.J. 106=(1920) M W N. 556=
12 L.W. 386=47 I A 202=
16 N.L.R. 162=22 Bom L R 1359=
25 C.W.N 97=57 I.C 1=
2 U.P.L.R. (P.C) 106 (P.C.).

———*Adoption—Authority—Construction of—Authority to adopt if no issue, male or female.*

A Hindu testator by his will authorised his widow to adopt a son to him if no issue, male or female, should be born to him. The testator died without issue, but had a posthumous daughter, who herself died a short time after birth. The widow purported to adopt after the daughter's death. *Held*, that though there was a strong presumption that a Hindu would have liked the representation by an adopted son if he died issueless, still the clear language of the instrument excluded such presumptions and the authority to adopt did not exist in view of the events that happened. (*Viscount Cave*). BHAGWAT KOER *v.* DHANUKDHARI PRASHAD. 46 I.A. 259=
37 M.L J. 513=17 A.L J. 1036=
(1919) M.W.N. 860=1 Pat. L.T. 1=
53 I.C. 347=2 U.P.L.R. (P.C.) 27 (P.C).

———*Adoption—Authority—Construction—Successive adoptions.*

The law recognises the validity of an authority given to a Hindu widow by her deceased husband to make successive adoption on failure of the previous adoption, to attain the object for which the power is given, *viz.*, the perpetuation of the deceased's line to discharge the obligations that rests on a pious Hindu. (*Viscount Haldane.*) MADAN MOHAN DEO *v.* PURUSHOTTAM. 41 Mad 855=
45 I.A. 158=8 L W 167=35 M L J 138=
5 Pat L W. 179=16 A.L J 725=
(1918) M W.N. 621=24 M L.T 231=
28 C.L.J. 403=20 Bom. L.R. 1041=
46 I.C. 481=23 C.W.N. 177 (P.C.)

[On appeal from 38 Mad. 1108=
27 M.L.J. 306=24 I.C. 999=
16 M L.T. 413.]

HINDU LAW—Adoption—Authority.

———*Adoption—Authority to adopt—Multiple adoptions.*

Under the Dayabhaga a testator has not only the power to authorise his widow to make successive adoptions on failure of the prior adopted child, but he can attach to such authority a direction that her estate should not be interfered with or divested during her life. (*Mr. Ameer Ali.*) BHUPENDRA KRISHNA GHOSE *v.* AMARENDRA NATH DEY.

43 Cal. 432=43 I A. 12=19 M.L.T. 97=
20 C W N 169=30 M L.J. 110=
23 C L J. 169=14 A L J. 167=
3 L.W. 252=1916 1 M W N 73=
18 Bom. L.R. 347=34 I.C. 892 (P.C.)

[Affirming 41 Cal. 612=24 I.C. 458=
18 C W.N 260.]

———*Adoption — Authority to adopt—Revocation.*

Authority was given by an earlier will of the testator to his wife to adopt but he executed a later will containing inconsistent dispositions of property but not revoking earlier will. The latter will was found to be invalid and inoperative. *Held*, that the authority to adopt was not revoked. (*Lord Wrenbury*). VENKATANARAYANA PILLAI *v* SUBBAMMAL.

39 Mad 107=43 I A. 20=20 C.W N. 234=
3 L W. 177=19 M.L T. 147=14 A L J. 178=
(1916) 1 M W.N. 97=23 C L J. 366=
18 Bom. L.R. 372=32 I.C. 373=
29 M L.J. 851 (P.C.).

[On appeal from 13 I.C. 251=
(1911) 2 M.W.N. 519.]

———*Adoption—Authority—Construction—Exercise of power—Consent of four out of five trustees obtained to adoption—Validity of.*

Where a Hindu by his will appointed five persons as trustees and authorised his widow to make an adoption with their consent, an adoption by the widow with the consent of four of them who had proved the will and acted as trustees, the fifth having declined to act, is a valid exercise of the authority. It was no part of the duty of the trustees with reference to the fiduciary position in which they stood to the widow to inform her that she could win her husband's temporal estate by not making an adoption in violation of the dying wishes of her husband and at the price of sacrificing his soul's happiness. (*Lord Shaw*) BAL GANGADHAR TILAK *v.* SHRI SHRINIVAS PANDIT.

39 Bom. 441=42 I.A. 135 13 A L J. 570=
19 C W.N 729=17 Bom L R 527=
22 C.L J. 1=29 M.L.J. 34=
18 M.L T. 1=(1915) M.W.N. 484=
29 I.C. 639=2 L.W. 611 (P.C.).

———*Adoption—Authority to adopt—Construction—Joint power to two widows—Adoption by one, after death of other, invalid.*

A Hindu testator having two widows, authorised them to adopt by his will in these terms; "You (the two widows) should adopt a boy who is our sannihita (near relation) whenever it strikes you that our sammastanam (family

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or estate) should continue." Both the wives survived the testator, and one of the widows purported to adopt after the death of her co-widow. *Held*, without determining whether the joint power to adopt given to the two widows was valid, that the power could not be validly exercised by one widow after the death of the other, and that the adoption was therefore invalid. Where a discretionary power of adoption is given to the testator's two widows and the power is to be exercised by the joint donees in agreement, it is clear law independently of English doctrines or decisions that the death of one of the donees puts an end to the joint power. (*Lord Moulton.*) VENKATA NARASIMHA APPA ROW *v.* PARTHASARATHY APPA ROW. 37 Mad. 199 = 41 I.A. 51 = (1914) M.W.N. 299 = 12 A.L.J. 315 = 18 C.W.N. 594 = 26 M.L.J. 411 = 15 M.L.T. 285 = 23 I.C. 166 = 16 Bom. L.R. 828 (P.C.)

[On appeal from 29 Mad. 437 = 16 M.L.J. 178.]

——*Adoption—Authority—Joint power—Senior widow—Rights of.*

A Hindu left all his properties to his two widows by will and authorised them to adopt in these terms:—"They (the widows) may, if necessary adopt a boy of good family according to their necessity." The senior widow alone adopted the appellant after the death of the junior widow. *Held*, that the power of adoption given by the will was a joint and permissive one; it required a joint agreement to adopt, *i.e.*, a selection of heir and actual adoption by both the widows. The appellant therefore was not an adopted son of the testator. 37 Mad. 199 (P.C.), Foll. (*Mears*, C.J. *and Banerji*, J.) LACHMI PRASAD *v.* PARBATI 18 A.L.J. 108 = 54 I.C. 910 = 2 U.P.L.R. (H.C.) 40

——*Adoption — Authority — Prohibition implied.*

A Hindu left all his property by a will to his two daughters and none else. He made no adoption. The Bombay Vatan Act postponed female members in the matter of succession to the Vatan to male members. So the widow adopted a son. *Held*, the adoption of the widow cannot be upheld as it was against the testator's wishes who had already disposed his property by a will. (*Batchelor and Rao*, JJ.) MALGAUDA PARAGOWDA PATIL *v.* BABAJI DATTU BHAKARE 37 Bom. 107 = 17 I.C. 716 = 14 Bom. L.R. 1121.

——*Adoption — Authority to adopt—Construction—Existence of natural son.*

Where a Dayabaga Hindu dies leaving a son and a widow and gives authority to the widow to adopt a son either during the lifetime of his natural son or after his death, the authority so given is not invalid and the widow can validly adopt after the death of the natural son, leaving no issue but his own widow, provided she does not divest any estate but her own.

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Cases considered. (*Teunon and Greaves*, JJ.) KUMUD BANDHU SAHA *v.* ROMESH CHANDRA SAHA. 48 Cal. 749 = 23 C.W.N. 358 = 49 I.C. 609 = 29 C.L.J. 214.

——*Adoption—Authority—Construction—Given to two widows by will.*

Where a Hindu testator declared in his will that permission would be granted to his two wives to adopt a boy and that the adopted boy would have to be taken from amongst his near representatives but his wives would adopt whomsoever they would select, it was held that the will conferred an authority on the two widows severally to adopt according to the rule of law, that is, by the senior widow and upon her failure, the junior widow and that there was no restriction on the power of the widows to choose the boy. 12 I.A. 198; 12 Cal. 406, Appl. Powers are to be construed in accordance with the intention of the donor or grantor; that intention is to be gathered from the instrument itself, although a reference may sometimes be had to the circumstances under which it was given. Powers are to be liberally construed in equity in furtherance of the purpose for which they were created. (*Mookerjee and Beachcroft*, JJ.) SARADA PRASAD PAL *v.* RAMAPATI PAL. 16 C.L.J. 304 = 16 I.C. 817 = 17 C.W.N. 319.

[See also 23 I.C. 166 = 37 Mad. 199 (P.C.)]

——*Adoption—Authority—Power of adoption to two widows—General rule—Prior rights of senior widow — Anumatipatra—Power to adopt to two widows—Simultaneous adoption.*

Where two Hindu widows have power to adopt, the senior widow has generally the prior right to adopt and the junior widow cannot adopt unless the senior widow has refused to do so. Where an authority to adopt given to two widows was vague and uncertain. *Held* that the widows were not authorised to adopt simultaneously but the widows were to adopt successively, *i.e.*, in case the senior widow refused to adopt, then the junior might adopt. (*Jenkins*, C.J. *and Woodroffe*, J.) RAJIT LAL KARMAKAR *v.* BEJOY KRISHNA KARMAKAR 39 Cal. 582 = 14 I.C. 17 = 16 C.W.N. 440.

[On appeal from 12 I.C. 460 = 38 Cal. 694.]

——*Adoption — Authority—Specified boy—Adoption of another.*

A widow cannot adopt a boy different from that authorised by husband without attempting to follow instructions of husband. *Quaere*:—Whether she can so adopt if the father of the boy she is authorised to adopt, is unwilling to give him an adoption? 29 Mad. 382; 29 M.L.J. 144; 22 Bom. 996, Ref.; (1917) M.W.N. 16; 32 M.L.J. 47, foll. (*Wallis*, C.J. *and Burn*, J.) SINDIGI LINGAPPA *v.* SINDIGI BASAPPA. (1917) M.W.N. 16 = 38 I.C. 164 = 32 M.L.J. 47.

——*Adoption—Authority—Construction—Will.*

The prohibition to adopt may be express or implied. A provision in a will by a testator,

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that if by divine favour I have a male child has reference only to a natural son and does not confer an authority to adopt even by necessary implication. (*Abdur Rahim*, O C.J. *and Phillips*, J.) SHIYALI SUBRAYA CHETTY *v.* CALVE SUBRAYA CHETTIAR.

21 M.L.T. 315 = 37 I.C. 404 = 5 L.W. 740.

———*Adoption—Authority—Construction—Successive adoption.*

Authority to adopt a particular boy empowers a widow to make a second adoption on the death of the first boy. (1 Str Notes 104; 22 Bom. 96; 26 Mad. 681; 29 Mad. 382; 6 I.A. 196; 21 M.I.A. 397, Ref.; 19 Cal; 526; 27 Cal. 996; 37 Mad. 199, *Dist.* Per *Oldfield*, J:—An authority to adopt a particular boy must be construed strictly without any adoption to provide for subsequent eventualities based on the presumed intention of the testator. (*Sankaran Nair and Oldfield*, JJ.) CHENGA REDDI *v.* VASUDEVA REDDI. **29 M L J. 144 = 29 I.C. 770 = 2 L.W. 562**

———*Adoption—Authority—Where ineffective.*

Where the power to adopt was given a long time back and other circumstances intervene and the estate becomes vested in other persons, *i.e.*, in an heir other than the widow or undivided co-parcener the power becomes ineffective and cannot be acted upon. 26 Mad 681, in 627. Foll.) (*White* C.J. *and Oldfield*, J.) KUNDUKURI VEERA BASAVARAJU *v.* KUNDUKURI BALASURIYA. **23 I.C. 3 = (1914) M.W.N. 502.**

[O.A. 43 I.C. 706 = 41 Mad. 998 (P.C.).

———*Adoption—Authority—Construction—Secend adoption.*

Where an authority to adopt is given in general terms and a son adopted in pursuance of it dies, the widow can make a second adoption. But if the son first adopted leaves a widow behind him, the power of making a second adoption could no longer be exercised. A deed of authority to adopt should be construed by the terms of the deed in the light of such extensive evidence as would be admissible in the case of construction of a will. Authority to adopt is to be regarded as general in its nature in the absence of restrictive conditions. 29 Mad. 382, Foll.; 34 All 398; 15 C.W.N. 524; 3 W R. 15 (P.C.) Dist. (*White* C.J. *and Seshagiri Aiyar*. J.) MADANA MOHANA ANANGA BHIM DEV KESARI *v.* PURUSHOTHAMA ANANGA BHIMA DEO. **38 Mad. 1105 = 27 M L J. 306 = 24 I.C. 999 = 16 M.L.T. 413.**

[On appeal 46 I.C. 481 = 41 Mad 835.]

———*Adoption—Authority—Construction.*

Where the will recited "I have no male issue, etc; but have two married wives only. They two should adopt a boy for the perpetuity of my name after me. And at present there is one of my kinsmen, X resident of Burhampur. My wives should adopt him as son after me. If he is not available, my two wives should, with the consultation of each other, adopt any other boy of my own family. If no boy in the family is available my wives should adopt none. If there is a difference of opinion between the two wives as to the boy to be adopted that boy should be adopted whom my younger wife Sonu will choose and "perpetuate my name and manage the property." *Held*, looking to the intention of the testator which was that a certain boy was to be adopted, though both widows are mentioned, the will does not restrain the authority of either, The main object was that a particular boy was to be adopted; the mention of both widows was subservient to the adoption itself. The document gave the widows as far as this boy is concerned no option. It did not allow them any power of selection. Therefore the fulfilment of the wish of the testator by the remaining widow who was the only person who could fulfil it was not against but in accordance with what the testator contemplated. (*Kotval and Prideaux*, A.J.Cs.) AMBADAS *v.* KASHIBAI. **1923 Nag. 27.**

HINDU LAW—Adoption—Burden of proof

———*Adoption—Authority—Construction—Several widows—Specific boy.*

When permission is given to several widows to adopt, the elder widow and on her refusal, the younger one can adopt. Except in the Bombay school of law, an authority to adopt a specified boy cannot be exercised with respect to any other boy. (*Drake Brockman*, J.C. *and Prideaux*, A.J.C.) SHANKAR KUNBI *v.* SAVITRI. **50 I.C. 599.**

Adoption—Burden of Proof.

———*Adoption—Burden of proof—Treatment by family for long time.*

The onus of proving an adoption is on the party setting it up. But very slight evidence may be sufficient for this purpose, where the alleged adopted son has been treated as such for a long series of years. (*Mookerjee and Cuming* JJ.) KAILASH CHANDRA NAG *v.* BEJOY CHANDRA NAG. **36 C.L.J. 434 = 1923 Cal. 18.**

———*Adoption—Burden of proof.*

Where in none of the correspondence which passed between the uncle and the nephew did the former refer to the nephew as his son; nor did he refer to his wife as his mother but on the contrary referred to her as his aunt, and as the nephew was the only other member of the family there was no necessity to adopt him. *Held* the alleged adoption is not proved. (*Scott-Smith and Moti Sagar*, JJ.) MT. UTTAM DAI *v.* DINA NATH. **1923 Lah. 369.**

———*Adoption—Burden of proof.*

The ordinary rule of law is that he who relies on an adoption must establish it but in some cases there may be presumption in its favour. (*White*, C.J. *and Tyabji*, J.) VENKATA SAMBA SADASIVA DEVAR *v.* PAPAYYA DEVAR. **21 I.C. 787 = (1913) M.W.N. 828.**

HINDU LAW—Adoption—Burden of proof.

———*Adoption—Burden of proof.*

In a suit to set aside adoption by a widow the person setting up adoption is bound to prove whether the suit is for declaration or for possession also. (*White*, C.J. *and Ayling*, J.) RAJAGOPALA REDDY *v.* NATHU GOVINDA.

34 Mad. 329=9 M.L.T. 123=9 I.C. 342=21 M.L J. 445.

Adoption—Capacity to take.

———*Adoption—Capacity to take — Where there are more widows than one—Rule.*

Where there are more than one widow, only one of them can receive the child in adoption so as to step into the position of being its adoptive mother. But a power given to more than one widow to adopt is not necessarily invalid. (*Lord Moulton*) VENKATA NARASIMHA APPA ROW *v.* PARTHASARATHY APPA ROW.

37 Mad. 199=41 I A. 61=(1914) M.W.N. 299=12 A L J. 315=18 C.W N 534=26 M L J. 411=15 M L.T. 285=23 I C. 166=16 Bom. L.R. 328 (P.C.)

———*Adoption—Capacity to take—Widow of immature age—Adoption of son of certificated guardian.*

In the case of an adoption by a Hindu widow of immature age, the Court is bound to consider all the circumstances surrounding the adoption set up, which she disputes as not having been made by her of her own free-will; and this is specially so where the adopted son is the son of the certificated guardian of the widow. The onus would lie on the plaintiff to satisfy the Court that all precautions had been taken which were necessary to convince the Court that the adoption was made with the free consent of the girl. 7 B.H.C R. App. i; XX Rel. (*Macleod*, C.J. *and Coyajee*, J.) GANASHAMDAS VISHNUDAS *v.* LAXMIBAI. **24 Bom. L.R. 726=1922 Bom. 218**

———*Adoption—Capacity to take—Person having a Dumb grandson.*

A person having a grandson who is congenitally dumb cannot be treated as sonless and cannot validly adopt. (*Macleod*, C J., *and Shah*, J.) BHARMAPPA *v.* UJJANGAUDA.

23 Bom. L.R. 1520=66 I C 216=1923 B. 173.

———*Adoption — Capacity to take—Minor widow.*

Adoption by a widow 17½ years of age is invalid under the Hindu Law. *Per Macleod*, C.J., *Obiter.*—A girl younger than 15 cannot validly adopt. (*Macleod*, C.J. *and Shah*, J.) PARVATANA *v.* FAKIRNAIK. **64 I.C 899=23 Bom. L R. 1076.**

———*Adoption—Capacity to take—Second adoption.*

Hindu widow is not competent to adopt a son during the lifetime of a son previously adopted by her husband. (*Shah and Fawcett*, JJ.) BHAU *v.* NARASAGOUDA.

64 I.C. 614=23 Bom. L.R. 1272.

HINDU LAW—Adoption—Capacity to take.

———*Adoption—Capacity to take—Widow after remarriage adopting her son by first husband for second husband.*

A widow cannot, after re-marriage, give in adoption her son by first husband, especially when she adopts him to her second husband after his death as in such case, the person giving and taking in adoption would be the same individual. (*Macleod*, C.J., *Shah and Hayward*, JJ.) FAKIRAPPA VEERABHADHARAPPA *v.* SAVITREWA SANGAPPA.

62 I C. 818=23 Bom L R. 492 (F.B.)

———*Adoption—Capacity to take—Widow—Unchaste—Sudras.*

Under Hindu Law of Bombay among Sudras, a widow though unchaste can make a valid adoption. 5 Beng. L.R. 362; (1894) P.J. 22, Foll. (*Macleod*, C. J., *and Fawcett*, J.) BASVANT MUSHAPPA HUBLI *v.* MALLAPPA KALLAPPA HUBLI. **22 Bom. L R 1400=59 I C. 600=45 B. 459.**

———*Adoption—Capacity to take—Wife of a lunatic.*

The wife of a lunatic cannot validly adopt under the Hindu Law. (*Macleod*, C.J. *and Fawcett*, J.) RAMKRISHNA *v.* LAXMINARAYAN.

59 I.C. 453 (1)=22 Bom. L.R. 1181.

———*Adoption—Capacity to take—Existence of adopted son.*

Where one adopted son exists a Hindu widow has no right to adopt a son unless and until previous adoption is set aside. (*Macleod*, J.) BHUJAGONDA *v* BALA BHOKARE.

44 B. 627=57 I.C. 513=22 Bom. L.R. 817.

———*Adoption—Capacity to take—Minor widow.*

Under Hindu Law a Hindu widow of the age of twelve who has not reached puberty cannot make a valid adoption. The adopting widow must have reached such an age of discretion, that she must be able to realise the importance of her act and to make up her own mind as to the person she ought to adopt. There may be circumstances which will enable the Court to consider whether a widow has reached the age of discretion. That she has attained puberty may be one circumstance, but not necessarily the only one. The actual age of the widow may be another test and the most important one. (*Macleod*, C.J. *and Heaton*, J.) MURUGAPPA BASAPPA *v.* KALAVA GOLAPPA.

44 Bom. 327=55 I.C. 361=22 Bom. L.R. 91.

———*Adoption—Capacity to take—Murderer—Rights of adopted son.*

Under the Hindu Law a person who has become *patita* owing to his having committed a murder is not disqualified from adopting a son. Such a son can inherit to the property of his adoptive father who had already separated and had obtained his share before his disqualification. (*Scott*, C.J. *and Shah*, J.) VAMAN *v.* KRISHNAJI. **51 I C. 363=21 Bom. L.R. 427.**

HINDU LAW—Adoption—Capacity to take.

———*Adoption—Capacity to take—Age of widow.*

A widow of 15 years is sufficiently mature to adopt. A minor who has arrived at the age of discretion is a competent person to adopt under S. 2 (*a*) of the Majority Act. (*Scott*, C.J. *and Shah*, J.) BASAPPA *v.* SHRIDRAMAPPA.
43 Bom. 481=50 I.C 736=21 Bom. L.R. 217.
[But see 40 I.C. 518=40 Mad. 928.]

———*Adoption—Capacity to take—Existence of natural son.*

In the presence of a natural son of a deceased Hindu, his widow cannot be presumed to have any authority from him to adopt and if she does adopt a boy, the adoption will be invalid. (*Heaton and Shah*, JJ.) DALPATSINGJI *v.* RAISINGJI NARAHSINGJI. **39 Bom 528=29 I C. 943=17 Bom. L.R. 566.**

———*Adoption—Capacity to take—Convert.*

But adoption is not necessarily inheritance or succession though it leads in inheritance or succession. Consequently a Mahomedan convert does not presumably carry with him the law of adoption. (*Chandavarker and Heaton*, JJ.) BAI MACHUBAI *v.* BAI HIRA BAI.
35 Bom. 264=10 I C. 816=13 Bom. L R. 231.

———*Adoption—Capacity to take—Successive adoptions.*

Adoption of a second son in the lifetime of first adopted son is invalid. (*Scott-Smith*, J.) SHANTI PRASAD *v.* DHANDEVI.
50 I.C. 113=42 P W.R 1919.

———*Adoption—Capacity to take—Father—Rights of daughter in law.*

Adoption is tantamount to a bequest and a daughter-in law who cannot contest the power of testamentary disposition of her father-in-law is therefore not competent to challenge an adoption made by him. (*Chevis and Shadi Lal*, JJ.) BASANTI *v.* NATHA. **12 P.R. 1916=58 P.W.R. 1916=33 I.C. 147=33 P L R. 1917**

———*Adoption—Capacity to take—Minor widow—Adoption invalid.*

Adoption by a minor widow, who has not attained sufficient maturity of understanding the nature of the act is invalid and she can recover her husband's property from the adoptee unless his position has been prejudiced. In such case there is no estoppel against her. 34 All. 398 (P.C.), Dist. (*Sadasiva Aiyar and Spencer*, JJ.) RAMACHARI *v.* SARASWATI AMMAL. **12 L W. 544=60 I.C 246=(1920) M W.N 721.**

———*Adoption—Capacity to take—Minor—Widow of eleven years having authority—No exercise of discretion—Absence of disinterested advice from guardian.*

A Hindu widow of about eleven years of age who had been authorised by her husband's will to adopt if and when she chose, purported to adopt a boy and it was found that at her age, at the time, she was incapable of exercising any discretion and that her father who acted as her guardian did not give disinterested advice in the matter of adoption. *Held*, that the adoption was void and was incapable of being validated by subsequent ratification. 18 Cal. 69; 13 Mad. 214: 1 Cal. 289 (P.C.); 29 Mad. 437; 37 Mad. 199 (P.C.); 27 Cal. 996 (P.C.); 1 B.L.R. 49 (F.B.); 15 W.R. 548, Ref. Where it is left to the sole discretion of a widow to adopt her discretion could not be displaced by her guardian's advice however disinterested. 13 Mad. 214, Diss. (*Oldfield and Sadasiva Iyer*, JJ.) KOVVIDI SATTIRAJU *v.* PALAMSETTY VENKATASWAMI. **40 Mad. 925=32 M.L.J 119=40 I C. 518=5 L.W. 603.**

———*Adoption—Capacity to take—Lunatic.*

Adoption is not an alienation of property like a lease or mortgage. It affects only status. Therefore a person for whose estate a manager has been appointed under the Lunacy Act is not debarred from making an adoption till the order is set aside. A lunatic can adopt during an interval of sound mind; the burden of proving which is on the person setting up the adoption. (*Wallis*, C. J. *and Srinivasa Aiyangar*, J.) AMANCHI SESHAMMA *v.* AMANCHI PADMANABHA RAO. **3 L.W. 290=33 I C. 578=19 M.L.T. 243.**

———*Adoption—Capacity to take—Presence of a congenitally idiot son.*

The adoption of a son is not invalid even though there is congenitally idiot natural born son. (*Mitra and Prideaux*, A.J.Cs.) RAIJA *v.* BHIMRAO. **37 I C. 617.**

———*Adoption—Capacity to take—Husband—Consent of wife.*

A Hindu governed by Mitakshara can adopt even without consent of his wife. (*Stuart*, A.J.C.) NARAIN DAT *v.* GOPAL DAS.
33 I.C. 361=18 O.C. 341.

———*Adoption—Capacity to give—Father—Mother.*

The father sued for the custody of the child whose mother he deserted and which was given in adoption to another by the mother. *Held*, (1) the plff. could not be said to have relinquished his right since he was in a position to look after the child at the time of the alleged adoption and that such adoption made without his consent was not valid; and (2) even if he had acquiesced he could cancel the adoption. (*Parlett*, J.) MA THE *v.* MG PO TUN.
17 I.C. 962=5 Bur. L T. 171.

Adoption—Ceremonies.

———*Adoption—Ceremonies—Datta Homam—Brahmins.*

The performance of the ceremony of Datta Homam is not essential, even among Brahmins, to the validity of an adoption, where the adopted son belongs to the same gotra as the adoptive father. 11 Mad. 5; 4 M.H.C.R. 165, Rel

HINDU LAW—Adoption—Ceremonies.

24 Bom. 221, Appr. (*Lord Shdw*). BAL GANGADHAR TILAK *v.* SHRI SHRINIVAS PANDIT. **39 Bom 411=42 I A. 135= 18 A.L J 510=19 C.W.N. 729= 17 Bom. L.R. 527=22 C.L J. 1= 29 M.L J. 34=18 M.L.T. 1= (1915) M.W.N. 484=29 I.C. 639= 2 L.W. 611 (P.C.).**

———*Adoption—Ceremonies — Performance of—Presumption.*

Where an adoption has taken place more than 48 years ago and the adoption has not been challenged during that time by any member of the family interested in so doing and it was urged that the adoption was invalid for non-performance of dattahoman, *held* that it was permissible to presume from the fact that the adoption had not been challenged for such a long period that if the ceremony was necesseary, it must have been performed, 29 A. 184; 29 A. 519, Rel. (*Kanhaiya Lal and Sulaiman, JJ.*) CHHOTE LAL *v.* CHANDRA BHAN. **45 All. 59=1923 All. 176.**

———*Adoption — Ceremonies — Giving and taking.*

In the absence of proof of a giving and taking of an alleged adopted son no amount of acknowledgment would make him an adopted son. But where there is evidence of such giving and taking, evidence of acknowledgment can be relied on in proof of the adoption. (*Woodroffe and Walmsley, JJ.*) KRISHNA BHAMINI DASI *v.* BROJA MOHINI. **65 I.C. 38=25 C.W.N.403**

———*Adoption — Ceremonies — Sudras — Kayasthas.*

Kayasthas are Sudras according to law prevailing in Bengal. Mere giving and taking of a son without any religious ceremony gives validity to an adoption among the Sudras. Pollution on account of birth does not vitiate adoption among Sudras. It affects only religious ceremonies which are not necessary among them. (*Chaudhuri and Newbould, JJ.*) ASITA MOHAN GHOSE *v.* MOLIAN GHOSE. **35 I C. 127=20 C.W.N. 901.**

———*Adoption — Ceremonies — Sagotras— Datta Homam.*

Among the twice-born classes *Datta Homam* is not essential when the adoptive father and the adopted child belong to the same gotra. Authorities reviewed. (*Mookerjee and Beachcroft, JJ.*) KATKI *v* LALPATI PUJARI. **20 C.L.J. 319=27 I.C. 39=20 C.W.N. 19.**

———*Adoption—Ceremonies—Dattaka form —Jains—Rights of adopted son.*

There is nothing in *Manak Chand v. Munna Lal*, 95 P.R. 1909 to show that Jains cannot adopt in *Dattaka* form or that an adopted son among Jains can, in no case, become a member of the family of his adoption. (*Broadway and Abdul Qadir, JJ.*) GOPI MAL *v.* PANNA LAL. **72 I.C. 824.**

HINDU LAW—Adoption—Ceremonies.

———*Adoption—Ceremonies — Giving and taking—Execution of deed.*

Formal, but not necessarily complicated ceremonies of giving and taking, are essential for validity of an adoption. An adoption deed followed by appropriate treatment does not of itself constitute valid adoption. (*Shadi Lal and Le-Rossignol, JJ.*) GANGA RAM *v.* AMIR CHAND. **50 I.C. 355.**

———*Adoption—Ceremonies*—Datta Homam.

Datta Homam is not essential to the validity of an adoption in the Punjab. (*Kensington, O.C.J. and Beadon, J.*) DIWANCHAND *v.* DWARKANATH **271 P.L R. 1913= 20 I C. 303=175 P.W.R. 1913.**

———*Adoption— Ceremonies— Giving and taking—Suaras.*

Corporeal delivery and acceptance of the child is the essence of adoption among Sudras. (Also 6 Cal. 381; 19 Cal. 452, Foll.) Manifestation of intention to adopt a particular boy cannot be regarded as a step in furtherance of adoption and decision in 7 Mad. 548 cannot be extended to the Sudra adoption. A Sudra widow cannot adopt in pursuance of a mere intention expressed by her husband during his lifetime. Unless the boy had been given and taken corporeally by the husband, the widow cannot do so and validate the adoption. 6 Cal. 381 (P.C.); 19 Cal. 452 (P.C.), Foll. (*Wallis, C.J. and Seshagiri Aiyar, J.*) KUPPUSAMI REDDI *v.* VENKATALAKSHMI AMMAL. **18 M.L.T 434=31 I.C. 855= (1916) M.W.N. 960.**

———*Adoption—Ceremonies—Jains.*

No religious ceremonies are required to the validity of adoption among the Jains, as they do not believe the Hindu doctrine of the spiritual efficacy of sons. But the secular ceremony of giving and taking must be performed. (*Drake-Brockman, J.C.*) JAMUNABAI *v.* JUHARMAL. **56 I.C. 81.**

———*Adoption—Ceremonies—Jains.*

Jains follow Hindu Law in cases of adoption so that giving and taking make a valid adoption. The adoptee must be handed over to the adoptive parent. If the adoptee is grown up he need not be kept on the lap of the adoptive parent. Mere sitting by the side is sufficient. (*Mitra and Prideaux, A.J.Cs.*) JEEVRAJ *v.* SHEO KUMARBHA. **56 I.C. 65.**

———*Adoption—Ceremonies*—Datta Homam Sudras.

No religious ceremonies are necessary, not even *Datta Homam* for the validity of an adoption among Sudras. 5 Mad. 358; 5 Cal. 770 (P.C.), Rel. But giving and taking accompanied by actual corporeal delivery of the boy is absolutely essential for valid adoption. (*Drake-Brockman, J.C. and Prideaux, A.J.C.*) SHANKAR KUNHI *v.* SAVITRI. **50 I.C. 398.**

HINDU LAW—Adoption—Ceremonies.

———*Adoption—Ceremonies*--Datta Homam *—Giving and taking—Deed—Authority to adopt —Agreement conferring benefit on adoptive mother, if valid.*

The absence of *Datta Homam* would not amongst the twice born classes, make an adoption invalid. In Berar, the husband's authority to adopt is presumed in the absence of a prohibition. There must at least be a giving and taking to constitute an adoption. A mere deed of adoption cannot confer the rights of an adopted son. (*Mittra*, A.J.C.) CHANDRABAGABOI *v.* RAMCHAND. **46 I.C. 860.**

———*Adoption—Ceremonies—Sagotras.*

The performance of requisite ceremonies, *e.g.*, *datta homan* for adoption can be dispensed with if the adoptive father and the adopted boy belong to the same gotra. (*Stuart and Kanhaiya Lal*, A.J.C.) LAL TRIBHAWAN NATH SINGH *v.* DEPUTY COMMISSIONER, FYZABAD. **47 I.C. 223=5 O.L.J. 295.**

———*Adoption—Ceremonies*--Datta Homam *—Necessity of—Agarwala Banias.*

Among Agarwala Banias the non-performance of *datta homam* does not vitiate an adoption. (*Lindsay*, J.C.) GANGA DEI *v.* GOKAL DAS. **48 I.C. 318=20 O.C. 356.**

———*Adoption—Ceremonies*—Putreshti Jag *—Necessity for.*

Putreshti Jag ceremony is not essential to the validity of an adoption even amongst the regenerate classes. An adoption is valid if *upanayanam* is not performed in the natural family although the other initiatory rights including tonsure have already taken place in the natural family of the adopted son. 20 C.W.N. 19 ; 2 Pat. L.J. 481 ; 20 C.W.N. 901, Referred to. (*Miller*, C.J. *and Foster*, J.) RAJA MAKUND DEB *v.* SRI JAGANNATH JENAMONI. **2 P. 469=5 P.L.T. 427= 1 P.L.R. 201=1923 Pat. 97= 1923 P. 423.**

———*Adoption — Ceremonies— Kshatriyas —Brother's son—Adoption six days after the birth.*

There is no prohibition among Kshatriyas against the adoption of a brother's child before the 11th day after birth by reason of the doctrine of pollution, or before the 21st day by reason of the impurity of the body of the child. Where religious rites are not a necessary requisite, *e.g.*, where a Hindu of one of the twice-born castes adopts a boy of the same gotra as himself, the omission of such rites cannot affect the validity of the adoption. The face of pollution, which only affects the degree of merit attached to the religious rites, is also immaterial to the validity of the adoption. (*Mullick and Atkinson*, JJ.) SREEMATTY LAKSHIMIMALAI JOMAMANI BAHURIA *v.* UDIT PARTAP SINGH. **49 I.C 218= 3 P.L.J. 499.**

———*Adoption—Ceremonies—Putreshtiyaga unessential—Twice-born classes—Adoption from different gotra.*

HINDU LAW—Adoption—Customary form.

Putreshtiyaga ceremony, unlike *datta homam* is a matter of form and not essential to an adoption among twice born castes, at least when the adopter and the adopted son belong to the same gotra in which case even the *Datta Homam* has been held to be unnecessary. 16 W.R. 179 ; 20 C.W.N. 19 ; 20 C.W.N. 901, Foll. (*Mullick and Atkinson*, JJ.) SHEO LOTAN RAI *v.* BHIRGOON RAI. **2 P.L.J. 481=41 I.C. 375=1 P.L.W. 785.**

Adoption—Customary Form.

———*Adoption—Customary form—Dhusars —Onus of proof of custom.*

In a suit between Dhusars residing in the Wardha District of the Central Provinces, but originally coming from the district of Gurgaon in the Punjab, for a declaration that the adoption of the defendant, an orphan boy, was invalid in law :—*Held*, that the evidence adduced as to custom was sufficient, as between the parties, to entitle the Court to dismiss the suit. (*Sir John Edge*). RAM KISHORE *v.* JAINARAYAN. **17 N.L.R. 163=64 I.C. 782= 48 I.A. 405 (P.C.).**

———*Adoption—Customary form*—Illatom *—Adoption of son-in-law when son alive— Reddis—Komma caste.*

There is no analogy between adoption proper, the object of which is primarily religious, and an *illatom* affiliation, the object of which is secular only, and the rules of Hindu Law do not apply to the latter, which is regulated solely by custom. *Illatom* affiliation is valid even though the affiliator has a son or an undivided brother living. The custom of taking an *illatom* son-in-law is the same in the Kamma caste and in the Reddi caste. (*Sir John Edge.*) NALLURI KRISTNAMMA *v.* KAMEPALLI VENKATASUBBAYYA. **42 Mad. 808=46 I.A. 168=17 A.L.J. 662= 37 M.L.J. 1=26 M.L.T. 35= 23 C.W.N 1010=30 C.L.J. 145= 10 L.W. 193=21 Bom. L.R. 906= 51 I.C. 1=(1919) M.W.N. 551 (P.C.).**

[On appeal from 26 I.C. 69.]

———*Adoption—Customary form—Agarwal Banias of Zira—Custom at variance with Hindu Law — Evidence of — Concurrent findings.*

The Courts in India concurrently found that in matters of adoption the Agarwal Banias of Zira (Punjab) do not, in matters of adoption, follow the general rules of Hindu Law but that by the custom amongst them, an unequivocal declaration of adoption followed by the treatment of that boy as an adopted son is sufficient to constitute a valid adoption. *Held*, that the evidence, though limited, was sufficient as between the parties and those claiming through or under them, to justify the finding of Courts below ; but the case could not be a satisfactory precedent if in any future litigation between other parties, fuller evidence of the

HINDU LAW—Adoption—Customary form.

custom should be forthcoming. (*Sir John Edge.*) CHIMEN LAUL *v.* HARI CHAND.
40 Cal. 873 = 40 I A. 157 = 17 C.W.N. 885 = 126 P.W.R. 1913 = 167 P.L.R. 1913 = 18 C.L.J. 70 = 14 M L T. 83 = 102 P.R. 193 = (1913) M.W.N. 509 = 19 I.C. 639 = 15 Bom. L.R. 646 (P C.).

———*Adoption — Customary form—Jains —Ceremonies—Orphan boy, if can be adopted.*

Among the Jains, adoption is a mere temporal or secular arrangement and has no spiritual or religious object or significance. The adoption of an orphan boy is valid by custom among them. (*Macleod*. C.J *and Fawcett*, J.) PARSHOTTAM GANPAT *v.* VENICHAN GANPAT. 45 Bom. 751 = 61 I.C. 492 = 23 Bom. L.R. 227.

———*Adoption—Customary form—Dvyamushayana.*

Dvyamushyana adoption must be made only by express agreement. Otherwise the presumption is that adoption is in ordinary form. Such express agreement must be clearly proved. (*Batchelor and Shah*, JJ.) LAXMI PATIRAO SHRINIVAS *v.* VENKATESH TIRMAL.
41 Bom. 315 = 38 I C. 552 = 19 Bom. L R. 23.

———*Adoption—Customary forms—Dvyamushyana—Presumption.*

If the only son of a brother is given in adoption, the adoption is not necessarily in dvyamushyana form. (*Batchelor and Shah*, JJ.) LAXMI PATI RAO SHRINIVAS *v* VENKATESA TIRMAL. 41 Bom. 315 = 38 I C. 552 = 19 Bom, L R. 23.

———*Adoption—Customary form*—Illatom *—Strict proof.*

The claim that a person has been taken as *illatom* son-in-law must be proved by very reliable evidence. (*Wallis*, C.J. *and Tyabji*, J.) PANDA PATYYA *v.* PANDA VENKAMMA
2 L.W. 455 = 29 I C. 54 = 17 M L.T. 393.

———*Adoption —Customary form*—Illatom *—Existence of natural son.*

Under the Hindu Law the adoption is invalid when the adoptive father has a son. But the *illatom* adoption itself being opposed to Hindu Law, no presumption of the invalidity of an *illotom* adoption arises on the ground of the existence of a natural son at the time of the adoption. (*Sankaran Nair and Spencer*, JJ.) NALLURY KRISHNAMMA *v.* KAMAPALLI RAMALINGAM. 26 I.C. 54.
[Affirmed on appeal 42 Mad. 805.]

———*Adoption — Customary form*—Illatom *—Proof.*

An *illatom* agreement can be implied from the circumstances of a case and is a valid contract. (*Subramania Iyar and Davies*, JJ.) VACHOONE BALARAMI REDDY *v.* VACHOORE RAMANNA. 18 I.C. 698 = 13 M.L.T. 113.

———*Adoption — Customary form*—Illatom *—What constitutes.*

HINDU LAW—Adoption—Dancing girls.

Living in a father-in-law's house and assisting his widow after her husband's death does not constitute an *illatom* for which a specific agreement is necessary. (*Muthusamy Iyar and Best*, JJ.) GADIYAM NARAYUDU *v* MALLAVARAPU VENKAMMA. 11 M L T. 121 = 13 I.C 866 = 22 M L J. 265.

———*Adoption—Customary form*—Illatom.

Illatom adoption is not invalidated by the marriage being celebrated after the death of the taker. (*Wallis and Munro*, JJ.) VENKAYALPATTI *v.* NEGANDLA. 11 I.C. 28 = (1911) 2 M.W.N. 193.

———*Adoption—Customary form*—Putrika putra.

Although the practice of adopting the *putrika putra* son has fallen into disuse, it is nevertheless recognised by the Mitakshara Law. According to the Hindu Law a son affiliated in the *putrika putra* form is a valid substitute for a son. The form is by no means become obsolete and effect cannot legitimately be refused to an affiliation in the *putrika putra* form if it is made. (*Stuart and Kanhaiya Lal*, A.J.Cs.) LAL TRIBAVAN NATH SINGH *v.* DEPUTY COMMISSIONER, FYZABAD. 47 I.C. 225 = 5 O L.J. 294.

———*Adoption—Customary form—Appointment.*

It is doubtful whether the obsolete custom of appointing daughters to raise issue can be revived. Even if revived it must be conclusively proved. Mere description in a deed of a daughter as *putrika* and her sons as *putrika putra* is not sufficient proof. *A putrika* if not affected by all the liabilities incident to a son and so is not liable to discharge the father's debts though the whole joint family may be liable. (*Atkinson and Kingsford*, JJ.) BABUI RITA KUER *v.* PURAM MAL. 1 Pat. L.J. 581 = 38 I.C. 44 = 2 Pat. L.W. 393.

Adoption—Dancing Girls.

———*Adoption—Dancing girls.*

Naikins (Prostitute) adoption of a daughter was held to be invalid. (*Batchelor and Rao*, JJ.) HIRA NAIKIN *v.* RADHA NAIKIN.
37 Bom. 116 = 17 I C. 834 = 14 Bom. L.R. 1129.

———*Adoption—Dancing girls —Prostitution—Validity of adoption—Estoppel.*

An adoption by a dancing girl for purposes of prostitution is invalid. Such an adoption cannot be validated on the ground of estoppel as an estoppel cannot defeat a prohibition based on the ground of public policy. (*Ayling and Coutts-Trotter*, JJ.) KANDAIYA PILLAI *v.* CHOKKAMMAL 28 M.L T. 106 = 59 I.C. 215 = 12 L.W. 7.

———*Adoption—Dancing girls—An adoption by a dancing girl.*

Adoption of a girl by dancing girl is valid if it is not for making her a prostitute. Calling

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an adopted girl Abhimanaputhri does not make her any the less an adopted daughter among dancing girls and her right of succession to her adoptive mother is not affected. (*Abdur Rahim and Ayling, JJ.*) NAGAMUTHU PILLAI *v.* DASI SUNDARAMMA. **32 I C. 743.**

——— *Adoption—Dancing girls—Validity of.*

Quaere—" Whether adoption of dancing girl by dancing girl is valid. (23 M.L J. 493, Foll.) (*Sadasiva Aiyar and Napier, JJ.*) VISALAKSHI AMMAL *v.* DORASINGA PILLAI. **29 I.C 974.**

———*Adoption—Dancing girl—Since married.*

The adoption of a girl by a Hindu married woman is invalid, even though the woman was once a dancing girl. A dancing girl when married and leading a family life cannot be treated as a dancing girl. Per *Sadasiva Aiyer, J.*—It is illegal for a prostitute to adopt a minor girl much more so if the prostitute has married and tried to lead the life of a moral married woman. (*Sundara Aiyar and Sadasiva Aiyar, JJ.*) GUDDATTI REDDI *v* GANAPATHI KANDANNA. **23 M.L.J 493 = 12 M L.T. 467 = 17 I.C. 422 = (1912) M.W.N. 1138.**

Adoption—Eligibility.

———*Adoption—Eligibility—Orphan.*

According to the law of the Mitakshara, as recognised by the Benares school, the adoption of a boy whose parents are both dead is invalid. *Sir John Edge.*) RAMKISHORE *v* JAINARAYAN. **17 N.L.R. 163 = 64 I.C. 782 = 48 I.A. 405 (P.C.)**

———*Adoption — Eligibility for — Sister's son.*

Semble.—As a general rule of Hindu Law a man cannot adopt his sister's son but there might be a custom to the contrary. (*Sir John Edge*). KANHAI LAL *v.* BRIJ LAL. **40 All. 487 = 45 I A. 118 = 22 C.W N. 914 = 8 L W. 212 = 24 M L.T. 28 = 35 M L J. 459 = 16 A.L J. 825 = (1918 M W N. 709 = 28 C.L J. 394 = 5 Pat. L W. 294 = 47 I. C. 207 = 20 Bom. L.R. 1048 (P.C.)**

———*Adoption—Eligibility—Brother's son.*

Under an authority given by her husband a widow can validly adopt her brother's son. (*Lord Shaw*). BHAGWATI PRASAD SINGH *v.* NAND PRASAD SINGH. **33 I.C. 596 (P.C.)**

———*Adoption—Eligibility — Test — Brother's son—Validity—Dattaka Mimamsa.*

A Hindu widow making an adoption by virtue of her deceased husband's authority can validly adopt her brother's son or grandson. As the adoption by the widow is not in her own right and to herself, but to her deceased husband, the test of eligibility of the adopted son must be the test which would have applied had the adoption been made by the husband himself in his lifetime. The rule of Hindu Law

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that a legal marriage must have been possible between the adopter and the mother of the adopted boy refers to their relationship prior to marriage. 27 All. 417, Appr.; 3 Mad. 15; 27 All. 433; 22 Bom. 973, Ref. (*Sir John Edge.*) PUTTU LAL *v.* PARBATI KUMAR. **37 All 359 = 19 C.W N 841 = 13 A.L.J. 721 = 17 Bom. L R. 549 = 42 I.A. 155 = 22 C.L.J. 190; 29 M.L.J. 63 = 18 M.L.T. 61 = 2 L.W. 881 = 29 I.C. 617 = (1915) M.W.N. 514 (P.C.)**

———*Adoption — Eligibility for — Sister's son.*

In the absence of a special custom the adoption of a sister's son is invalid according to Hindu Law. (*Richards, C.J. and Banerjee, J.*) RAGHUNATH DAS *v.* KISHEN LAL. **28 I.C. 854.**

———*Adoption—Eligibility—Married man—Sudras.*

Adoption of a married man is not valid even among *Sudras.* (*Griffin and Chamier, JJ.*) JHUNKA PRASAD *v.* NATHU. **36 All. 263 = 18 I.C. 960 = 11 A.L.J. 298.**

———*Adoption — Eligibility — Daughter's son.*

A daughter's son can be adopted by a Sudra. (*Richards, C.J. and Bannerji, J.*) LALA *v.* NAHAR SINGH. **34 All 658 = 16 I.C. 181 = 10 A.L J. 299.**

———*Adoption — Eligibility — Marriageability test.*

A step-mother's brother's grand daughter's son can be taken in adoption as it does not offend against the marriage possibility test. (*Richards, C.J. and Banerjea, J.*) RAGHUBIR DAYAL *v.* RANI KUNWAR. **14 I.C. 48.**

———*Adoption—Eligibility—Only son.*

A Hindu widow can make a valid gift of her only son in adoption. 25 B. 539, Foll. (*Macleod, C. J. and Crump, J.*) GANPATI SHANKARAPPA *v.* KRISHNAPPA. **1924 Bom. 159.**

———*Adoption—Eligibility—Sister's son—Leva Patidars of Gujarat.*

Among the Leva Patidars of Gujarat, who are Sudras, the adoption of a sister's son is valid. (*Macleod, C.J. and Crump J.*) KAHANDAS NARAN *v.* JIVAN. **25 Bom. L.R. 510 = 1923 Bom. 427.**

———*Adoption—Eligibility—Sister's son—Nullity—Void adoption confers no title.*

Among the Deshastha Brahmins, the adoption of the sister's son is a nullity. An adoption is either effectual for all purposes or a nullity. A void adoption confers no right and creates no disability. Hence where a person is once adopted which adoption is null and void, there is no bar to his being validly adopted a second time into another family. (*Macleod, C.J. and Crump, J.*) BHAU ABAJI DESHPANDE *v.* HARI RAMCHANDRA PATKI. **25 Bom. L.R. 411 = 1923 Bom. 301.**

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———*Adoption — Eligibility* — Daughter's husband.

Under the Hindu Law as administered in the Bombay Presidency, the adoption of a daughters's husband is valid (*Macleod*, C.J. *and Shah*, J.) SITABAI NAGESH DESAI *v.* PARVATIBAI NAGESH. **24 Bom L.R 748 = 47 B. 35 = 1922 Bom. 239.**

———*Adoption—Eligibility—Sister's son—Rule of Virudda Sambandha.*

Per *Justice Shah*, J.—The question as to whether the rule of Viruda Sambandha applies to the case of an adoption of a sister's son when the adoptive father has left his family of birth long before the date of adoption and has passed the adoption in another family or in another branch of the same family was raised but not decided. (*Shah and Fawcett*, JJ.) BHAU *v.* NARASAGOUDA **64 I.C 614 = 23 Bom. L R. 1272**

———*Adoption—Eligibility for — Father's first cousin.*

The adoption of a father's first cousin is valid. The rule of Viruddha Sambhanda is not applicable to the case. 39 Bom. 410 : 29 Bom. 973 ; 97 All. 359, Ref. (*Scott*, C.J. *and Shah*, J.) MALLAPPA *v* GANGAVA **43 Bom. 209 = 49 I C. 517 = 21 Bom. L.R. 17.**

———*Adoption— Eligibility — Half-brother —Dattaka Mimamsa.*

Under the Hindu Law, the adoption of a half-brother is not invalid. The opinions of Nandapandita when not supported by any text of the Smriti writers are generally speaking recommendatory and not mandatory. (*Heaton and Shah*, JJ.) GAJANAN *v.* KSHINATH. **39 Bom. 410 = 28 I.C. 678 = 17 Bom. L.R 372.**

———*Adoption— Eligibility—Father's sister's son.*

The adoption of a father's sister's son is valid. As the rule that no one could be adopted whose mother the adopter could not have legally married is restricted to cases of daughter's son, sister's son, and mother's sister's son. 32 Bom. 619; 36 Bom. 533, Foll. (*Batchelor and Shah*, JJ.) RAMAKRISHNA GOPAL JOSHI *v.* CHIMANJI VYANKATESH. **21 I C. 34 = 13 Bom. L R. 824.**

———*Adoption—Eligibility—Orphan.*

The adoption of an orphan is invalid in Hindu Law. (*Scott*, C J. *and Chandavarkar*, J.) SHRINIVAS *v.* BALWANT VENKATESH. **37 Bom. 513 = 20 I C 162 = 15 Bom. L R. 688.**

———*Adoption—Eligibility—Tests— Viruddha Sambhanda—Mother's brother's son.*

Under Hindu Law, the rule that no one can be adopted whose mother the adopter could not have legally married is now limited to the cases of a daughter's son, a sister's son, and a mother's sister's son. 32 Bom. 619, Foll. Adoption of the son of his mother's brother is valid.

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(*Chandavarkar and Batchelor*, JJ.) YAMNAVAR GOVIND APPAJI *v.* LAXUMAN BHIMRAO. **36 Bom. 533 = 16 I.C. 180 = 14 Bom. L.R. 543.**

———*Adoption— Eligibility—Boy of another sub-caste—Sudras.*

An adoption, by a Sudra of one sub-division of another person, belonging to another sub-division of the same caste is valid. The question of inter-marriage and the question of adoption between two classes of Sudras is just the same question. (*Wilson and O'Kinealy*, JJ.) GIRISH CHUNDER ROY *v.* MAHOMED SHAHJED CHOWDHRY. **25 C.W.N. 634.**

———*Adoption— Eligibility—Child in arms.*

Adoption of a child of 13 days is not illegal but practically inconvenient. (*Richardson and Buda*, JJ.) BEJOY SINGH *v.* MATHURIYA DEBYA. **36 I.C. 97.**

———*Adoption — Eligibility — Daughter's daughter's son—Mitakshara School, Western India.*

The adoption of daughter's daughter's son is valid under the Mitaksbara of Hindu Law prevailing in Western India. (*Chitty and Richardson*, JJ.) MADHU SUDAN SINHA *v.* KALI CHARAN SINHA. **46 I.C 246 = 27 C.L.J. 119.**

———*Adoption—Eligibility—Married boy.*

A married boy cannot be validly adopted among any class of Hindus. 10 B. 80 ; 13 M. 129 ; 32 A. 247 ; 35 A. 263, Rel. (*Chevis*, J.) HIRA *v.* HARDAT SINGH. **47 P.L.R. 1922 = 1923 Lah. 28.**

———*Adoption—Eligibility—Daughter's son —Custom of khatris in Amritsar.*

Under Hindu Law the adoption of a daughter's son is invalid but according to the custom of the *khatris* in the town of Amritsar, it is valid. (*Shadi Lal*, C J. *and Le-Rossignol*, J.) PARAMANAND *v.* SHEO CHARANDAS. **2 Lah. 69 = 21 P L.R. 1921 = 59 I.C. 256 = 15 P.W.R. 1921.**

———*Adoption—Eligibility—Orphan.*

An orphan cannot be adopted. It is only the parents of a boy that can give him in adoption. (*Shah Din*, C.J. *and Le-Rossignol*, J.) RAMJI DAS *v.* DURGA PERSHAD. **45 I C. 90 = 6 P R. 1918.**

———*Adoption—Eligibility—Person already adopted.*

It is not competent to the widow's of two persons even if brothers to take the same person in adoption either at the same time or at different times. (*Rattigan and Scott-Smith*, JJ.) GOPI KISHEN *v.* GOPI KISHEN. **27 P W R. 1915 = 27 I.C. 701 = 57 P.L.R. 1915.**

———*Adoption—Eligibility—Only son.*

According to Hindu Law the adoption of an only son is valid. (*Shahdin and Scott-Smith*, JJ.) WARYAM SINGH *v.* JIWAN SINGH. **19 I C. 254 = 205 P.L.R. 1913.**

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——*Adoption—Eligibility— Orphan—Adoptive father if estopped from questioning adoption.*

An adoption of an orphan is invalid and the adoptive father himself may dispute its validity. There can be no estoppel where both sides know the full facts. A representation as to a matter of law, viz., the validity of an adoption cannot give rise to an estoppel. 11 B. L.R. 291, 395; 21 M.L.J. 500, 503, Rel. (*Ayling and Odgers*, JJ.) RAJAMBAL AMMAL *v.* SHANMUGA MUDALIAR. (1922) M W.N. 481= 1923 Mad. 11.

——*Adoption—Eligibility—Orphan given by elder brother.*

The principle of *factum valet* does not validate the adoption of an orphan son given in adoption by his elder brother. (*Ayling and Odgers*, JJ.) BANDARU MARAYYA *v.* BANADARU RAMLAKSHMI. 44 Mad 260= 39 M L J. 495=(1920) M.W.N 708= 12 L.W. 613=60 I.C. 141=28 M.L T. 428.

——*Adoption — Eligibility — Daughter's son—Custom—Madras Presidency.*

Adoption of a daughter's son or a sister's son is valid by custom among the Brahmins of the Andhra portion of the Madras Presidency as it is in the southern districts. (*Oldfield and Phillips*, JJ.) (VADREN RANGANAYAKAMMAGARU) *v.* SOMASUNDARA RAO. 59 I.C. 609= 43 Mad. 876.

——*Adoption — Eligibility — Brother's daughter's son—Kshatriyas of South Canara.*

The adoption of brother's daughter's son is allowed by custom among the members of the community of Singas presumably of impure Kshatriya caste who originally migrated from Rajputana and remained settled in South Canara for a very long time. 4 Bom. L.R. 140; 27 C.L.J. 119 and 36 Bom. 533, Ref. (*Sadasiva Iyer and Spencer*, JJ.) SOORATHA SINGHA *v.* KANAKA SINGHA. 43 Mad. 867= 12 L.W. 245=69 I C. 585= (1920) M W.N. 828.

——*Adoption—Eligibility.*

Females could not be taken in adoption even by dancing girls. Such adoption is illegal, as it has prostitution for its object. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) GUDDATTI REDDI *v.* GANAPATHI KANDANNA. 23 M.L J. 493=12 M L.T. 467= 17 I C. 422=(1912) M.W.N. 1138. [Also 25 I.C. 987=38 Mad. 1144.]

——*Adoption—Eligibility for—Orphan.*

No one but the parent of a child can give him away in adoption either by himself or by any one else. 2 M H.C.R. 129; 6 B H.C.R. 83; 10 B.H.C.R. 268, Ref. There is no presumption in law that an apparent adoption, which had taken place long ago and was throughout acquiesced in, by all concerned, was made in pursuance of an authority given by some person competent to give away the son in adoption. 7 B. H.C.R. App. XXXIII at p. XXXIV Dist. The adoption of an orphan would be valid, if there was evidence to show that the adoptee's natural parents had given the boy away to a person who made the adoption years afterwards and even after the death of the natural father. 7 Mad. 548, Ref; 18 Mad. 145, Ref. (*White*, C.J. *and Benson*, J.) VAITHILINGA MUDALI *v.* MUNIGAN. 37 Mad. 529= 23 M.L.J. 189=15 I C 299= (1912) M.W.N. 1127.

——*Adoption— Eligibility — Marriage—Sudras.*

An adoption of a Hindu Sudra after marriage is clearly invalid. (*White* C.J. *and Sankaran Nair*, J.) JANAKIRAM PILLAY *v.* VENKIAH CHETTY. 11 I.C. 583= 10 M.L.T. 21.

——*Adoption—Eligibility*—Cousin *of the same degree.*

There is nothing in the Hindu Law to prevent the adoption of a cousin standing in the same degree of relationship to the common ancestor as the person adopting. 3 M 15; 36 M. 353; 34 B. 491; 14 M. 459, Ref. (*Drake Brockman*, J.C.) GULAB THAKUR *v.* FADALI. 68 I.C. 566.

——*Adoption—Eligibility for — Married man—Jains.*

Among Jains a married man can lawfully be adopted as adoption is a purely secular matter; among them religious ceremonies not being essential. 29 All 495; 30 All. 197; 32 All. 247; Foll. (*Drake-Brockman*, J.C.) JAMUNABAI *v.* JUHARMAL. 66 I.C. 81.

——*Adoption— Eligibility — Marriage — Sudras.*

The adoption of a married Sudra is invalid according to the Mitakshara as understood by the Benares School of Hindu Law. 35 All. 263, Foll. (*Prideaux*, A.J.C.) KRISHNA MALI, *v.* DEOLIA. 44 I.C. 928.

——*Adoption—Eligibility—Wife's brother—Rules of prohibited degree.*

The Viruddha Sambandha rule is confined to the three cases of daughter's son, sister's son and mother's sister's son mentioned in para. 17 of Dattaka Mimamsa. Adoption of a wife's brother by Brahmins governed by Bombay School is valid in the absence of an established custom to contrary. (*Stanyan*, A.J.C.) PRALHAD *v* MAHADEO. 21 I.C. 266= 9 N.L.R. 130.

——*Adoption — Eligibility — Daughter's son—Kashmir Brahmins.*

According to a custom prevailing among Kashmir Brahmins it is permissible to adopt a daughter's son. (*Stuart and Kanhaiyalal*, A. J.Cs.) IKBAL NARAIN *v.* RAJENDRA NARAIN. 21 O.C. 276=48 I C. 767=5 O.L.J. 701.

HINDU LAW—Adoption—Eligibility.

———*Adoption—Eligibility—Case.*

A primary caste must adopt from within its own limits. 21 All. 412 (P.C.), Rel. to; 30 Cal. 999, Dist. (*Stuart and Kanhaiya Lal*, A.J.Cs.) NARAIN SINGH *v.* SHIAM KALI KUNWAR. **23 I.C. 43=17 O.C. 186.**

———*Adoption—Eligibility—Kshatriya boy of 19.*

Among Kshatriyas a boy of the age of 19 whose *upanayanam* ceremony had not been performed at the time of his adoption could be validly adopted and notwithstanding the prohibition of the adoption of a boy over 5 years of age in the Dattaka Mimamsa. (*Miller*, C.J. *and Foster*, J.) RAJA MAKUND DEB *v.* SRI JAGANNATH JENAMONI. **2 Pat. 469= 4 Pat. L.T. 427=1 Pat. L.R. 201= 1923 Pat. 97=1923 P. 423.**

Adoption—Estoppel.

———*Adoption—Estoppel—Widow.*

Where a Hindu widow solemnly asserts her husband's authority to adopt a son and takes a boy in adoption, treats him as adopted son and brings up as such, she is subsequently estopped from denying her authority to adopt. The estoppel is however, personal to the widow. (*Lord Robson.*) DHARAM KUNWAR *v.* BALWANT SINGH. **34 All. 398=39 I.A. 142= 16 C.W.N. 675=9 A.L.J. 730= 14 Bom. L.R. 485=(1912) M.W.N. 64= 12 M.L.T. 95=16 C.L.J. 60= 15 I.C. 678=23 M.L.J. 200 (P.C.).**

[On Appeal from 30 All. 849=5 A.L.J. 568= (1908) A.W.N. 231=4 M.L.T. 385.]

———*Adoption—Estoppel.*

A widow representing that she has authority to adopt and making an adoption cannot subsequently impeach the validity of the same. (*Richards*, C.J. *and Banerjee*, J.) GANGA PRASAD *v.* BUDA SEN. **11 I.C. 27.**

———*Adoption—Estoppel.*

A widow adopting an orphan boy is not estopped from asking for a declaration that the adoption is invalid. (*Drake Brockman*, J.C. *and Prideaux*, A.J.C.) GOVIND *v.* CHANDRABHAGA. **34 I.C. 675= 12 N.L.R. 100.**

Adoption—Evidence.

———*Adoption—Evidence of—Old adoption—Treatment.*

Where there is no direct evidence to prove that the widow of a person who died in 1822 had authority to adopt but the fact that for many years past the adopted person behaved as an adopted person and that he was treated as such by others including the ancestors of the plaintiffs, now denying the adoption, has been established, it must be inferred that the widow had authority to adopt and that the adoption was known and recognised in the family. (*Piggot and Walsh*, JJ.) PREM DEVI *v.* SHAMBHU NATH. **42 All. 382=76 I.C. 600= 18 A.L.J. 475.**

HINDU LAW—Adoption—Evidence.

———*Adoption—Evidence of—Affidavit filed in interlocutory proceeding—Procedure—Question put by Judge to person present in Court—Answer not challenged—Comment.*

The question being whether A the deceased husband of the respondent, was adopted as a son by B, the deceased husband of the appellant, *held*, that the High Court was wrong in reversing the decision of the trial Court that an adoption had taken place. B's purohit on being examined as witness to prove that no adoption had taken place deposed that the obsequies of B were performed by his brother C and not by A, C, who was present in the Court when the purohit was being examined was asked by Judge if it was so and he answered in the affirmative. C had not been called as a witness, and no attempt was made on behalf of the respondent to challenge his statement or have him entered into the witness box for cross-examination. *Held*, that this furnished legitimate matters for comment to the trial Judge. (*Viscount Haldane*) GANNABHATTULA VENKAMMA *v.* GANNABHATULA VENKATARATHNAMMA. **23 C.W.N. 961= (1919) M.W.N. 844=10 L.W. 899= 27 M.L.T. 107 (P.C.).**

———*Adoption—Evidence of—Absence of deed of adoption or other written record—No entries in account books.*

When there is no deed of adoption, or other formal written record, when the ceremonies said to have taken place were of the briefest possible description and when the child's name was not changed and he was never taken to live with his new family or recognised by them in any way, it is highly improbable that the adoption took place. Having regard to the habits of the Indian people with regard to the keeping of the accounts regarding their most minute transactions, the absence of any reference to expenditure on the ceremony of adoption in the accounts either of the natural or of the adoptive father covers an alleged adoption with suspicion. 32 A.C. 104 (P.C.), Rel. (*Lord Parmoor.*) DIVAKAR *v.* CHANDAN LAL. **44 Cal. 201=18 Bom L.R. 992= 26 C.L.J. 17=21 M.L.T. 6=5 L.W. 103= (1917) M.W.N. 50=21 C.W.N. 315= 32 M.L.J. 636=39 I.C. 6= 12 N.L.R. 164 (P.C.).**

———*Adoption—Evidence.*

Mere execution of a deed does not effect an adoption, and it has yet to be found in a Court of law that in a community where an orphan adoption is recognised as valid such an adoption could be made up by a deed alone. (*Macleod*, C.J. *and Crump*, J.) SHIDAPPA *v.* SANTAWAKOM. **1923 Bom. 302.**

———*Adoption—Evidence—Presumption as to factum.*

Where an adoption was never challenged for many years it would be a little difficult for the adoptee to establish exactly what occurred. *Held*,

HINDU LAW—Adoption—Evidence.

therefore that the factum of adoption must be taken as proved and that it is a fair presumption to make that such adoption was made with the necessary assent of the collaterals (*Broadway, J.*) KANHAYA v. NAURANG. 1923 Lah 374.

———*Adoption—Evidence—Registered deed—No continuous treatment as son—Subsequent repudiation.*

Where, after executing a registered deed of adoption, there was no evidence of continuous treatment as adopted son and the adopter consistently repudiated the adoption, the alleged adoption could not be said to be satisfactorily established. (*Shah Din and Agnew, JJ.*) GHULAM HAIDER v. GHULAM NABI.
312 P.L.R. 1913=21 I.C. 618=
227 P.W R. 1913.

———*Adoption—Evidence—Treatment.*

Existence of deed without subsequent treatment of adoptee as adopted son is not sufficient to prove adoption especially when there is motive for making a pretence of adoption. (*Johnstone and Chevis, JJ.*) BURA v. NARAIN SINGH. 63 P.W.R. 1911=9 I C. 668=
82 P.L.R. 1911.

———*Adoption—Evidence—Authority acted upon after long time—Effect.*

Courts will be justified in viewing with care an adoption which purports to be based on an authority given many years before the event. (*Wallis, C.J. and Seshagiri Iyer, J.*) ADUSAM ALLI KRISNAYYA v. ADUSAMALLI LAKSHIMI PATHI. 30 M.L.J 265=32 I C. 253=
19 M.L T 266

[Affirmed on appeal 56 I C 391=
43 Mad. 630 (P.C.)]

———*Adoption—Evidence of—Recitals in deeds—Evidence Act, S. 50.*

When an adoption alleged to have taken place 40 years ago has to be proved, the adopted son being dead, evidence of the enjoyment of properties of the adoptive father by the adopted son and acquiescence of persons who but for the adoption would have been entitled to the property is admissible to prove adoption under S. 50 of the Evidence Act. (*Wallis, J.*) MULLANGI VENKATARANGAM CHETTY v. VENKATASUBBAMMAL. 13 M L T 515=
19 I C 740=25 M.L J 373

———*Adoption—Evidence—Delay in adopting—Presumption as to factum of authority.*

Delay in adopting by a widow duly authorised only proves unwillingness on the part of widow to divest herself of the estate till actual necessity arose, but does not raise a presumption against the factum of authority or that the adoption was not properly made. (*Benson and Sundara Aiyar, JJ.*) KAMALAPUDI SUBBIAH v. IMMADISETTI SAKKAYA
10 M L.T 553=11 I C. 334=
(1911) 1 M.W N. 350.

———*Adoption—Evidence.*

Where the name of the boy alleged to have been adopted, was not changed and where no proof was produced to prove the expenditure of the adoption ceremony, though the alleged adoptive father kept regular accounts, and where no reference was made to the adoption at the time of mutation, when widow's name was substituted for that of her husband. *Held*; the adoption was not proved. 12 N.L.R. 164, followed (*Kotval and Prideaux. A. J. C.*) DEORAO v. MT. ANNAPURNABAI.
1922 Nag 185.

HINDU LAW—Adoption—Invalid adoption.

Adoption—Factum Valet.

———*Adoption*—Factum valet.

The doctrine of *factum valet* only applies to adoptions where matters which do not affect the essence of the adoption have been disregarded. The adoption of an orphan cannot be validated by the application of this principle. (*Prideaux and Macnair, A. J. Cs.*) SONIBAI v. DHANRAJ. 56 I C. 620.
[Also 16 I.C. 180=36 Bom. 533]
[Also 39 M.L.J. 495=12 L.W. 613=
(1920) M.W.N. 708.]

Adoption—Invalid Adoption.

———*Adoption — Invalid adoption —Position of adopted son.*

A person whose adoption is invalid, is in the eye of law an absolute stranger to the adoptive family. (*Sir Samuel Griffith*). RAMKISOR KEDARNATH v. JAYANARAYAN RAMRACHAPAL. 40 Cal 966=40 I. A. 213=
(1913) M. W. N. 661=14 M. L. T. 161=
17 C. W. N. 1189=18 C. L. J. 237=
15 Bom. L.R,867=11 A.L.J. 865=
25 M L J. 512=20 I.C. 958=
10 N.L.R 1 (P.C.).

———*Adoption—Invalid adoption—Maintenance.*

A boy whose adoption is found to be invalid has no right to be maintained out of the estate of the adoptive family. The mere fact that ceremonies were properly performed and that the widow thought that she had authority to adopt would not affect the question. 12 B.H.C. R. 361 (397); 1 M.H.C.R. 363; 1 M H.C.R. 45. Ref. (*Heaton and Shah, JJ.*) DALPATSINGJI v. RAISINGJI NAHARSINGJI
39 Bom 528=29 I C 913=
17 Bom. L R 563.

———*Adoption — Invalid adoption—Performance of* Upanayanam*—When a bar.*

An *Upanayanam* is not valid unless performed by the father or in his absence, by another kinsman in the family to which the boy concerned actually belongs. The performance of the *Upanayanam* in a family into which the boy is wrongly believed to have entered by an invalid adoption, is a nullity and is no bar to his subsequent adoption. (*Oldfield and Phillips, JJ.*) VADREU RANGANAYAKAMMA v. SOMASUNDARA RAO. 69 I C 603=
43 Mad. 876.

———*Adoption—Invalid adoption—Ratification of void adoption.*

HINDU LAW—Adoption—Invalid adoption.

A void adoption cannot be ratified. Ratification in relation to adoption means confirmation of an imperfect obligation, by the person legally bound by it. (*Oldfield and Sadasiva Iyer*, JJ.) KOVVIDI SATI RAJU *v.* PATAMSETTI VENKATASWAMI. **40 Mad 928 = 32 M.L.J. 119 = 40 I.C 518 = 5 L.W. 603.**

———*Adoption—Invalid adoption — Rights of invalidly adopted son.*

An invalid adoption does not under Hindu Law, *per se* destroy the adoptee's rights in his natural family. 1 M.H.C.R. 363; 12 B.H. C.R. 364, 397, Ref. (*White*, C.J. *and Benson*, J.) VAITHILINGA MUDALI *v.* MUNIGAN. **37 Mad. 529 = 23 M.L J. 189 = 15 I.C. 299 = (1912) M W.N. 1127.**

———*Adoption—Invalid adoption—Effect of—Possession of property.*

A person can acquire property by long possession as adopted son of another under an invalid adoption but it cannot give him the status of an adopted son or put an end to his position as a member of his natural family. (*Benson and Sundara Aiyar*, JJ.) AIYANNA CHARIAR *v.* LAKSHMI AMMAL. **21 M.L.J. 500 = 10 M.L T 19 = 10 I C. 194 = (1911) 2 M.W.N 62.**

———*Adoption—Invalid adoption—Supply of ornaments to parents.*

The supply of clothes or ornaments to the parents of the boy to be adopted or the payment of money therefor in anticipation of the adoption cannot invalidate the adoption or be taken to indicate that it was made from sinful or improper motives (*Stuart and Kanhaiya Lal*, A.J.Cs.) TRIBHUVANNATH SINGH *v.* DEPUTY COMMISSIONER, FYZABAD. **47 I C. 225 = 5 O L J. 295.**

———*Adoption—Invalid adoption—Giving and taking—Motives of adopter—Relevancy of.*

A mother can give her son in adoption even without her husband's express consent where such consent cannot be obtained as where he is dead or has joined a religious order. The fact that the person adopting had mixed motives for the adoption could not be sufficient in law to render the adoption invalid. Where the adopter has a right to adopt, the fact that there were motives of a worldly nature which induced him to adopt would not vitiate the adoption especially were the rights of other persons are not infringed. (*Miller*, C J. *and Foster*, J.) RAJA MAKUND DEB *v.* SRI JAGANNATH JENAMONI. **2 Pat. 469 = 4 Pat L.T. 427 = 1 Pat. L.R. 201 = 1923 Pat 97 = 1923 P. 423**

Adoption—Rights of Adopted Son.

———*Adoption—Rights of adopted son—Sudras of Madras Presidency—Adopted son and afterborn son—Shares.*

In the Madras Presidency among Sudras, an adopted son shares, on partition equally with an after-born son. The rule to the above effect in *Dattaka Chanarika* has been accepted in the presidency for more than a century and is not inconsistent with the Smritis or Mitakshara. 40 M. 692, overruled. (*Sir John Edge.*) PERRAZU *v.* SUBBARAYUDU. **44 Mad 656 = 48 I.A. 280 = 19 A L J 621 = 41 M L J 33 = 34 C L.J 56 = (1921) M W N. 510 = 3 U.P.L.R. (P.C.) 46 = 23 Bom L R 920 = 14 L W. 270 = 61 I.C. 690 = 26 C.W N. 1 (P.C).**

———*Adoption—Rights of adopted son—Extent of.*

The rights of an adopted son, unless curtailed by express texts, are in every respect the same as those of a natural born son; and an adoption, so far as the continuity of the line of inheritance is concerned, has a retrospective effect. (*Mr. Ameer Ali*) PARTAP SINGH SHIR SINGH *v.* AJAR SINGH RAISINGJI. **36 M.L J. 511 = 17 A.L J. 522 = 21 Bom. L.R 496 = 1 U P.L R. (P.C) 39 = (1919) M.W N. 318 = 10 L W. 339 = 50 I. C. 457 = 24 C.W.N 57 (P.C.).**

[On appeal from 28 I C 529 = 17 Bom. L.R. 273.]

———*Adoption—Rights of adopted son—Authority to adopt limiting his rights—Dayabagha.*

Under the Dayabagha law a testator has power to attach to an authority to his widow to adopt, a condition that her estate should not be interfered with or divested during her life just as he can postpone the succession of his natural born son by interposing life estate. (*Mr. Ameer Ali*). BHUPENDRA KRISHNA GHOSE *v.* AMARENDRA NATH DEY **43 Cal. 432 = 43 I.A. 12 = 19 M L T. 97 = 20 C W N. 169 = 30 M.L.J. 110 = 23 C.L J. 169—14 A.L.J. 187 = 3 L.W. 252 = (1916) 1 M.W N. 73 = 31 I.C. 812 = 98 Bom L.R. 347 (P C.).**

[Affirming 41 Cal. 642 = 24 I.C. 459 = 18 C.W N 350.]

———*Adoption—Rights of adopted son—Same as those of natural son—Rule—Exception—Partition.*

According to the Hindu Law an adopted son occupies the same position in the family of the adopter as a natural born son, except in a few instances which are accurately defined by the Dattakka Mimamsa and Dattaka Chandrika. These instances relate to marriage and to competition between an adopted son and a legitimate son subsequently born to the adoptive father. 4 Cal. 425, disappr, 9 W. R. 423; 8 C. L. R. 57, appr; 8 Cal. 302 and 10 Cal. 232, Rel.; where of two brothers B and H who were members of a joint Hindu family, B left a widow who adopted pltf. as B's son and H left the defendant his natural born son. *Held*, on a partition, the adopted son (plaintiff) was entitled to an equal share of the joint family

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property with the defendant. (*Sir John Edge*). NAGINDAS BHUGWANDAS *v.* BACHOO HURKISSONDAS **40 Bom. 270=43 I.A.66=30 M.L.J. 193=14 A.L.J. 185=3 L.W. 259=19 M.L.T. 193=18 Bom. L.R. 172=(1916) 1 M.W.N. 258=23 C.L.J. 395=32 I.C. 403=20 C.W.N. 702 (P.C.)**

———*Adoption — Rights of adopted son—Natural family.*

Adoptee is not a lineal descendant of his natural father and cannot succeed to the occupancy holding of his brother by natural father. (*Richards*, C.J. *and Tudball*, J.) THAMMAN SINGH *v.* DAL SINGH. **37 All. 7=27 I.C. 34=12 A.L.J. 123.**

———*Adoption—Rights of adopted son—Succession to stridhanam.*

Adopted son succeeds to stridhanam of his adoptive mother in preference to husband's collaterals. (*Richards*, C. J. *and Banerjee*, J.) GANGA PRASAD *v.* BUDH SEN. **11 I C. 27.**

———*Adoption—Rights of adopted son—Alienations by widow—Effect on.*

As soon as a person is adopted, all the alienations of the estate made by the widow would become ineffective against him unless it could be shown that they were made for necessity. (*Macleod*, C. J. *and Crump*. J.) GANPATI SHANKRAPPABI *v.* KSHNAPPA.
1924 Bom. 159.

———*Adoption—Rights of adopted son—Succession to maternal grandfather's property in natural family.*

A person who is adopted into another family cannot succeed to the property of his maternal grandfather in his natural family. 43 I. A, 56, 68 ; 10 I. A. 138, Ref. (*Macleod*, C.J. *and Crump*. J.) BHAUSAHEB SHIDGAUDA *v.* RAMGAUDA ANNAGAUDA. **25 Bom. L R. 813=1923 Bom. 471.**

———*Adoption—Rights of adopted son—Property obtained on partition in natural family.*

Where a person governed by the Mitakshara Law, as obtained at a family partition with his father his share of the ancestral property and he is subsequently adopted in another family he is not thereby divested of the property which vested in him on partition, 29 M. 437, Foll.; 40 B. 429, Dist. (*Macleod*, C J. *and Crump*, J.) MAHABLESHWAR *v.* SUBRAMANYA.
47 Bom, 542=25 Bom. L.R. 274=1923 Bom. 297.

———*Adoption—Rights of adopted son—Succession.*

An adopted son takes completely the place of a natural son, and is competent to inherit the property of his adoptive mother's ancestors. (*Macleod*. C.J. *and Shah*. J.) DATTATRAYA *v.* GHANGABAI. **46 Bom. 541=24 Bom L R. 69=1922 Bom. 321.**

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———*Adoption—Rights of adopted son—Execution of decree of natural father.*

A decree permitted the decree-holder to open a new door in a wall of his house. The decree-holder died afterwards leaving him surviving a son who was given in adoption in another family and a daughter's son. The decree-holder's son applied to execute the decree. The applicant who was the son of a deceased decree-holder since adopted into another family could not by virtue of his adoption, be treated as non-existent in the family of his natural father for the purposes of execution of his decree, and the nearest heir of the decree-holder was the daughter's son. (*Scott*, C.J. *and Hayward*, J.) RAMCHANDRA *v.* MANU BAI. **43 Bom. 774=52 I C. 695=21 Bom. L.R. 776.**

———*Adoption—Rights of adopted son—Provision for maintenance of adoptive mother—Gift of charity.*

An agreement entered into at the time of adoption between the natural father and adoptive father for a reasonable provision for the maintenance of the widow of the adopter is valid under the general custom modifying the strict Hindu Law. But this exception should not be extended so as to include gifts to temples, etc. The grant would be invalid and not binding on the adopted son. 16 Mad. 400 : 2 M. 91 ; 16 Cal. 556 ; 27 Mad. 577 ; 19 Bom. 428 ; 40 Bom. 668, Foll. (*Heaton and Hayward*, JJ.) BALKRISHNA MOTIRAM GUJAR *v.* SHRI UTTAR NARAYAN DEV. **43 Bom. 542=50 I.C. 912=21 Bom. L.R. 225.**

———*Adoption—Rights of adopted son—Son born to adopted son after adoption, position of.*

A son, in the mother's womb at the time of the father's adoption, is born into his father's adoptive family and not into his father's natural family. (*Beaman and Heaton*, JJ.) ADVIFAKIRAPPA *v.* FAKIRAPPA ADIVEPPA.
42 Bom. 547=46 I.C. 644=20 Bom. L.R. 703.

———*Adoption—Rights of adopted son—Marriage.*

There is an entire cessation of connection with the natural father's family, and marriage within the prohibited degrees of relationship in the natural family is prohibited. *Quaere*:—Whether the disabilities arising from natural relationship are confined to marriage. 41 Bom. 318, Ref. (*Batchelor and Shah*, JJ.) LAXMIPATIRAO SRINWAS *v.* VENKATESH TIRMAL.
41 Bom. 315=38. I.C. 552=19 Bom. L.R. 23.

———*Adoption—Rights of adopted son—Alienation—Setting aside.*

An adoption has not the effect of divesting estates vested before it was made. But the adopted son can question the validity of an alienation as and from the date of his adoption as an alienation will be valid only if it had been made for legal necessity. (*Beaman and Heaton*, JJ.) MOTI RAIJI *v.* LALDAS JIBBAI.
41 Bom. 93=37 I.C. 945=18 Bom. L.R. 954.

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——— *Adoption—Rights of adopted son—Agreement—Binding nature of.*

Execution of a will contemporaneously with adoption makes it a family arrangement which is binding on the adopted son who cannot both approbate and reprobate the instrument. (*Batchelor and Shah*, JJ.) KASHI BAI RAMCHANDRA GHATGE *v* TATYA GENU.
40 Bom. 668=36 I. C. 546=18 Bom. L.R. 740.

———*Adoption—Rights of adopted son—Natural family.*

The divesting of vested estates is by no means an uncommon incident of adoption under certain circumstances and seems to be quite consistent with Hindu law. An adoption under the Mitakshara law has the effect of divesting the adopted son of all rights to the property of his natural father even though it had vested in him exclusively before adoption. (*Batchelor and Shah*, JJ.) DATTATRAYA *v*, GOVIND SAMBHAJI. 40 Bom. 429=34 I.C. 423=18 Bom. L.R. 258.

———*Adoption—Rights of adopted son.*

A right of action is not necessarily the same as the acquisition of title to property. Whether the two rights coalesce in a given case depends on the circumstances. If an adoption is made by the owner of a property, the adopted son from the mere fact of adoption acquires no title to it. (*Scott*, C J. *and Chandavarkar*, J.) SHRINIVAS *v*. BALWANT VENKATESH.
37 Bom 513=20 I.C. 162=15 Bom. L.R, 533.

———*Adoption—Rights of adopted son—Effect of.*

An adopted minor son is not bound by an agreement between his natural father and the adoptive widow that the property would go to daughter of the widow on her attaining majority. He can repudiate it after attaining majority. (*Scott*, C.J. *and Chandavarkar*, J.) VYASACHARYA NARAYANACHARYA *v*. VENKUBAI RANGACHARYA UPADYA.
37 Bom. 251=17 I.C. 741=14 Bom. L.R. 1109.

———*Adoption—Rights of adopted son—Step-mother—Co-wives of adopter.*

Where a man takes son in adoption after the death of his first wife the adopted son becomes a step brother of a daughter by the first wife. The adopted son becomes the full son of the wife joining in the adoption and the step son of the others. (*Walmsley and Huda*, JJ.) SRIMATI GUNAMANI DASSI *v*. DEVI PROSANNA ROY. 54 I.C. 891=23 C.W.N. 1038.

———*Adoption—Rights of adopted son—Agreement by natural father restricting rights.*

An anti adoption agreement by the adoptive mother with the natural father of the adopted son is valid and binding on the adopted son if it amounts to a fair and reasonable arrangement for the enjoyment of her husband's property. But neither the adoptive mother nor the natural father has any right to impose a personal contract on the minor adoptee. Such an agreement does not bind the minor. (*Chatterjee and Walmsley*, JJ.) PANCHANON MAJUMDAR *v*. BINOY KRISHNA BANERJEE.
44 I.C. 638=27 C.L.J. 275.

———*Adoption—Rights of adopted son—Widow—Family arrangement—Agreement for maintenance.*

Disputes having arisen between the nephew and widow of the deceased, regarding the latter's maintenance, agreements were entered into between the parties on the footing that on the death of the widow the deft. would be entitled to the estate of the deceased and the deft. in pursuance of the agreements deposited a sum for the maintenance of the widow. Thereafter the plff. was adopted by the widow. *Held*, that agreements entered into by the widow only with reference to her maintenance could not be set up as deeds of family arrangement between the members of the family then in existence as barring the rights of the adopted son. (*Fletcher and Huda*, JJ.) MATHURA DAS KARNAM *v*. SRIKISSEN KARNAM. 44 I.C. 5=27 C.L.J. 517.

———*Adoption—Rights of adopted son—Adopted son's right with natural after born son.*

An adopted son of a Sudra shares equally with the after born natural son in the ancestral secular and debutter properties. An *ekrar* by an adoptive father at the adoption that the adopted and natural son if born afterwards shall share equally in all properties is valid and binds the heirs and legal representatives. (*Chaudhuri and Newbould*, JJ.) ASITA MOHAN GHOSE *v*. NERODE MOHAN GHOSE.
35 I.C. 127=20 C.W.N. 901.

———*Adoption—Rights of adopted son—Succession.*

Under the Hindu Law the rights of an adopted son unless curtailed by express texts are in every respect similar to those of a natural son in the matter of succession. The text of Vasistha which says that if after an adoption a legitimate son be born, then the adopted son obtains a fourth share, should not be extended to cases not comprised strictly within its letter and spirit, i.e., to cases of collateral succession. (*Sanderson*, C. J., *Woodroffe and Mookerjee*, JJ.) GANGADHAR BOGLA *v*. HIRA LAL BOGLA 43 Cal. 944=20 C.W.N. 489=34 I.C. 10=23 C.L.J. 372.

———*Adoption—Rights of adopted son—Son's share.*

The share of an adopted son is the share of his adoptive father. If the adoptive father was himself an adopted son, the share would on a partition with natural born uncles be only a half share if the adoptive father was the natural brother of those uncles. The rule is not

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applicable to Sudras. (*Tottenham and Norris*, JJ.) PARAMANUND *v.* KRIRHNA CHARAN.
12 I C. 6 = 14 C.L J. 183.

———*Adoption—Rights of adopted son—Mitakshara Law.*

Where the adoption is not in the Dattaka form, he cannot, under Mitakshara, succeed collaterally in the adoptive father's family. (*Broadway and Abdul Raoof*, JJ.) TIRATH RAM *v.* KAHAN DEVI. 1 Lah 588 = 60 I.C. 101 = 3 Lah. L J. 35.

———*Adoption—Rights of adopted son—Natural son.*

An adopted son takes one-fourth of the entire estate in the presence of a natural son. By adoption the adoptee becomes a co parcener with the adopter who could not thereafter dispose of any property belonging to the joint family. (*Shadi Lal*, C. J. *and Le-Rossignol*, J.) PARAMANAND *v.* SHEO CHARANDAS.
2 Lah. 69 = 21 P.L.R. 1921 = 53 I.C. 256 = 18 P.W.R. 1921.

———*Adoption — Rights of adopted son—Agreement curtailing rights of the son.*

An agreement between the natural and adoptive parents of the boy that his right to the property of the adopter will begin on the death of the adopting mother is perfectly valid. (*Scott-Smith*, J.) SHANTI PARSAD *v.* DHAN DEVI. 50 I C 113 = 42 P.W.R. 1919.

———*Adoption—Rights of adopted son—Kritrima son.*

Only when an adoption is in *Dattaka* form that adopted son has the right of collateral succession. In case of *Kritrima* adoption an adopted son succeeds to the estate of adoptive father only as the relationship is a personal one. (*Shah Din*. J.) JIWAN MAL *v* JAMNADAS. 67 P.L.R. 1911 = 10 I.C. 822 = 232 P.W.R. 1911.

———*Adoption—Rights of adopted son.*

Unless there is a custom to the contrary a person by whom it is alleged that the suit property was inherited by his father from his adoptive father cannot claim a share in the property left by the natural father of his father and his possession of it is adverse as against the collaterals of his father's real father. (*Shah Din and Chevis*, JJ.) LOK NATH *v* AMAR NATH. 24 P.L.R. 1911 = 9 I.C. 541 = 123 P.W.R. 1911.

———*Adoption—Rights of adopted son—Bequest as to charity—Dispute as to.*

Where a Hindu testator being the sole owner of certain properties made a will giving authority to his wife to adopt a son and also making certain dispositions of his property to charity, the son adopted under the authority cannot dispute the bequest under the charity. 21 M. 11 ; 43 B. 542 ; 12 L.W. 17 ; 12 M 490, Ref.

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(*Spencer and Devadoss*, JJ.) SRI GADICHERLA VENKATA NARASIMHA RAO GARU *v.* NAYAPATHY SUBBA RAO. 46 Mad. 800 = 17 L.W. 31 = 32 M L T (H C.) 47 = (1923) M W N. 111 = 1923 Mad. 376.

———*Adoption—Rights of adopted son—Disposition by husband's will—Provisions of will intended to take effect after adoption.*

A Hindu testator provided by his will that his senior widow should adopt a boy after his death and that if after such adoption disagreement should arise between his junior widow on the one side and the senior widow and adopted son on the other side, the junior widow should be given 15 acres absolutely. Both the adoption and the disagreement took place accordingly. *Held*, in a suit by the junior widow for the recovery of the 15 acres ; in the absence of any agreement with the natural father at the time of adoption that it was to be subject to a liability to give 15 acres to the junior widow the latter was not entitled to recover, 27 Mad. 597 dist., and her right to sue for maintenance and residence however remained unaffected. A son adopted to a deceased Hindu, stands in the same position as if he was his posthumas son. 43 Bom. 778, Foll. A Hindu has no such power of alienation over ancestral properties as would affect the rights of his adopted son unless the alienation was made for necessity and an attempted alienation by will to take effect on a certain contingency expected to occur after an adopted son comes into existence subsequent to the death of the testator, and is therefore invalid. (*Sadasiva Iyer and Spencer*, JJ.) BHYRI APPAMMA *v.* BHYRI CHINNAMMI.
68 I.C. 511 = 12 L.W. 17.

———*Adoption—Rights of adopted son—Father and subsequently born aurasa son—Partition.*

On a partition between a father, his *aurasa* son and a son adopted, the adopted son is entitled to one-ninth share, the father and the *aurasa* son becoming each entitled to a four-ninths. On partition of patrimony *inter se* between the members of the joint family, the adopted son taking in such cases only a limited share. In collateral succession the share of the adopted son is as extended as that of a natural born son. 43 Cal. 944 ; 43 Bom. 778 ; 40 Bom 270, Dist. (*Seshagiri Iyer and Moore*, JJ.) VENKAMAMIDI BALAKRISHNAYYA *v.* VENKAMAMIDI VENKATA TRIAMBAKAM.
43 Mad. 398 = 38 M.L J. 86 = 27 M L T. 142 = 11 L.W. 379 = 55 I.C. 371 = (1920) M.W.N. 272.

———*Adoption—Rights of adopted son—Alienation by widow can be impeached during lifetime of widow.*

A son adopted by a Hindu widow under her husband's authority can during her lifetime recover property alienated by her for no necessary purpose before the adoption was made.

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The adoption terminates her interest in the property which rests in the adopted son and alienation by her also ceases to have effect afterwards. 26 M. 143; 39 Mad. 1035. Overruled; 32 Cal 669; 33 Bom. 88. Rel. (*Wallis*, C J. *and Oldfield and Kumaraswami Sastri*, JJ.) VAIDYANATHA SASTRI *v.* SAVITRI AMMAL
41 Mad 75=33 M L J. 387=
(1917) M W.N 653=22 M L T 275=
42 I.C. 243=6 L.W. 542 (F.B.).
[Also 1 I.C. 647=33 Bom. 88.]

———*Adoption — Rights of adopted son—Competition with natural son.*

Adopted son takes one-foruth share of subsequently born natural son among Sudras. (*Sadasiva Ayiar and Napier*, JJ.) NARASIMHAPPA *v.* CHINNA KENCHAPPA. 33 I.C. 244.

———*Adoption—Rights of adopted son—Affiliation—Gift to affiliated son.*

A gift to an affiliated son is valid and is not affected by any subsequent adoption by the affiliator's widow. (1914) M.W.N. 1919, Ref. (*Ayling and Hannay*, JJ.) CHALLA NARHI REDDI *v.* VUDUMULA VIAREDDI.
25 I.C. 893 -(1914) M.W.N 919.

———*Adoption—Rights of adopted son—Postponement of vesting of estate—Validity of.*

Where a person is adopted a condition postponing the vesting of the estate in the adopted son beyond two lives in existence is valid. (*Hallifax*, A.J.C.) KOLHI *v* MT. CHOTTIBAI.
1923 Nag. 121 (1).

———*Adoption—Rights of adopted son—Divesting of estate—Estate already vested.*

Where a person before his adoption had inherited his father's property in the natural family, or had obainted a portion of the estate on partition his rights in the property of his natural family which had vested in him are not divested by his subsequent adoption into another family. (*Dhobley*, A.J.C). MARALI *v.* LAXAMAN. 5 N.L J. 83=1922 Nag. 16.

———*Adoption—Rights of adopted son—Benefit to mother.*

An agreement conferring a benefit on the adoptive mother, to be valid, must be a fair and reasonable one. 27 Mad. 577, Foll. (*Mittra*, A.J.C.) CHANDRABHAGABOI *v.* RAMCHAND.
46 I.C. 850.

———*Adoption—Rights of adopted son—Partition limited.*

An ante adoption agreement prohibiting partition during lifetime of adoptive father is binding on adopted son; since it only limits the son's enjoyment and does not deprive him of any right in the property. (*Batten*, A.J C.) KORAT *v.* PANCHAM. 33 I.C. 780=
12 N.L.R. 29.

———*Adoption—Rights of adopted son.*

Under the Hindu law an adoption made by a widow dates back to the death of the adoptive father, 31 M. 75; 21 B. 319, Foll. (*Daniels and Lyle*, A.J.Cs.) KUAR NAGESHAR SAHAI *v.* KUAR MATA PRASAD 25 O C. 189=
9 O L.J. 235=1922 Oudh 233.

———*Adoption—Rights of adopted son—Authority to junior wife subject to life-estate—Validity of adoption.*

The junior widow of the talukdar adopted a son in pursuance of a will made by the Talukdar, whereby he bestowed a life-estate upon her and gave her the power to adopt a son and further directed that the adopted son would take possession of the taluk only after her death under S. 22, Cl. 8 of the Oudh Estates Act. *Held*, that the adoption was good, as it effectuated the intention of the talukdar as expressed in his will and the taluk could not lose the character of impartiability in the hands of the adopted son. (*Stuart and Kanhaiya Lal*, A.J Cs.) LALA TRIBHAWAN NATH SINGH *v.* DEPUTY COMMISSIONER, FYZABAD
47 I C. 225=5 O L.J. 294.

———*Adoption—Rights of adopted son—Mutation of names.*

An adopted son can claim mutation of his name in respect of the property of his adoptive father's uncle whether the property be talukdari or non-talukdari. In Hindu Law an adopted son takes exactly the same position as a natural son. (*Holmes*, S.M. *and Campbell*, J. M.) NAGESHAR SAHAI *v* MATA PERSHAD.
31 I.C. 436=3 O.L.J. 178.

———*Adoption—Rights of adopted son—Relationship.*

The adopted boy takes the position of a natural son with regard to adoptive father but not with regard to wife of adoptive father who has not consented. (*Stuart*, A. J. C.) NARAIN DAT *v.* GOPAL DAS. 33 I.C. 361=
18 O.C. 341.

———*Adoption—Rights of adopted son—Agreement between natural parent of adopted son and adoptive mother—Validity.*

Held, Per *Coutts*, J.—Contracts entered into by the natural father of a minor are binding on a minor provided they have been properly entered into and are for his benefit. The agreement reserving a life estate to the adopting widow being one which at the time it was entered into was fair and reasonable was binding on the adoptee unless it was contrary to Hindu Law. Such agreements have been held to be binding. 11 Bom. 391; 38 Bom 227; 27 Mad. 577. Foll.; 16 Cal. 556 (P.C.), Dist. The construction of the will of the last owner being doubtful, it was construed by competent legal authority as giving a life-interest to his widow and this interpretation having been accepted as a condition of the adoption and incorporated into the agreement. It was not open to the plff. to contend that the construction was wrong. He cannot be allowed to approbate that part of the agreement which construes the will in his favour as giving the power to adopt him in the

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form he was adopted and reprobate that portion which construes the will as giving the Rani a life-interest. Per *Roe*, J.:—In view of the doubt as to the true interpretation of the will, the agreement would be binding on the parties as a family arrangement. (*Roe and Coutts*, JJ.) RANI KESHOBATI KUNWARI *v.* KUNWAR SATYA NARAYAN SINGH.
5 Pat. L.W. 167=47 I C. 53=
(1918) Pat. 294.

———*Adoption—Rights of adopted son—Agreement between adopted son and adoptive mother—Validity.*

An agreement by the adopted son an adult at the time of the adoption giving an absolute power over the property to the adopting mother till her death, is binding upon the adopted son and is not valid. (*Fawcett*, J. C.) GOVERDHANDAS CHELLARAM *v.* LALOOMAL.
53 I.C. 546=13 S.L.R. 155.

Adoption—Setting aside.

———*Adoption—Setting aside—Revocation not permissible.*

If an adoption has once taken place, the adoptive father cannot subsequently revoke it. (*Lord Parmoor.*) DIWAKAR *v.* CHANDAN LAL.
44 Cal. 201=18 Bom. L R. 992=
25 C.L.J 17=21 M L.T. 6=
5 L.W.103=(1917 M.W N. 50=
21 C.W N. 314=32 M L J 636=
39 I C. 6=12 N.L R. 164 (P.C.).

——— *Adoption — Setting aside — Remote reversioner.*

Where there is a nearer reversioner entitled to sue, it is in the discretion of the Court to grant a declaration as to the validity of an adoption at the instance of a remote reversioner. (*Richardson and Huda*, JJ.) MATHURA DEBYA *v.* BEJOY SINGH. 62 I.C. 627.

———*Adoption—Setting aside.*

Where an adoption has once been complete it cannot be set aside or repudiated by the adoptive father. (*Robertson and Beadon*, JJ.) SANT SINGH *v.* MULA. 23 P L R.1913=
17 I.C. 350=44 P.R. 1913.

Adoption—Simultaneous adoptions.

———*Adoption—Simultaneous adoptions—Second adoption during lifetime of first adopted son.*

An adoption of second son during the lifetime of the first adopted son is invalid. The simultaneous adoption of two boys is also invalid. A person whose adoption is invalid remains in the family of the natural father. (*Johnstone and Rattigan*, JJ.) TEKCHAND *v.* GOPAL DEVI. 45 P.R. 1912=127 P L.R 1912=
13 I.C. 462=180 P.W.R. 1912.

Adoption—Texts.

See HINDU LAW—TEXTS.

HINDU LAW—Adoption—Widow—Consent of sapindas.

Adoption—Widow.

AUTHORITY OF HUSBAND.
CONSENT OF SAPINDAS.
CO-WIDOWS.
DAUGHTER-IN-LAW.
LIMITS OF HER POWER.
MAHRATTA SCHOOL.
MOTIVES.

Adoption—Widow—Authority of husband.

———*Adoption—Widow—Authority of husband—Custom—Entry in* Wajib-ul-arz.

An entry in the *wajib ul arz* that the widowe could adopt in a certain locality is the statement of a custom to the effect she could do so even in the absence of authority from her husband. (*Sir John Edge.*) BISHWANATH SINGH *v.* JUGAL KISHORE. 45 M.L J. 215=
18 L.W. 88=(1923) M.W.N. 620=26 O.C. 228=
38 C.L.J. 299=33 M.L.T. (P.C.) 289=
9 O & A L.R. 563=10 O.L J. 379=
50 I A. 179=1923 P.C. 90 (P.C.).

———*Adoption—Widow—Authority of husband*—Sitambari Jains—*Ceremonies.*

Among *Sitambari Joins* the widow of a sonless jain can legally adopt to him a son without any express or implied authority from her deceased husband, and the adopted son may, at the time of adoption, be a grown up and married man. The only essential ceremony necessary is the giving and taking of the adopted son. (*Sir John Edge*). SHEOKUARBAI *v.* JEORAJ. (1920) M.W.N. 627=16 N.L.R. 170=
2 U.P.L.R. 161 (P.C.)=61 I C. 481=
25 C.W.N. 273 (P.C.).

———*Adoption—Widow—Authority of husband—Co-parcener's consent.*

Under the Hindu Law the widow of deceased co-parcener cannot adopt unless she has either the express authority of her husband or the consent of her husband's co-parceners. If she otherwise adopts such adopted son cannot claim to be entitled to the self-acquired property of his adoptive father. (*Macleod*, C.J. *and Fawcett*, J.) PANDU KRISHNA JADHAV *v.* DHONDI KRISHNA PATIL.
59 I C. 783=22 Bom. L.R. 1403.

Adoption—Widow—Consent of sapindas.

———*Adoption—Widow—Consent of* sapindas—*Rule—Exception—Dravida School—Duty to ask for consent.*

Under the Mitakshara Law as administered in the Dravida country a Hindu widow although not authorised by her husband to adopt a son to him, may nevertheless make such an adoption with the consent of his nearest *Sapindas*. The consent required is that of a substantial majority of those agnates nearest in relationship who are capable of forming an intelligent and honest judgment on the matter. Save in exceptional cases, *e.g.*, minority and lunacy, the consent of the nearest *Sapindas* must be asked

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and if it is not asked it is no excuse to say they would certainly have refused; but where a *Sapinda* is clearly proved to have withheld his consent from corrupt or malicious motives his dissent may be disregarded. In all other cases the absence of consent on the part of the nearest *Sapindas* cannot be made good by the authorisation of more distant relatives. But regard should be had to grave social objections, the rights of parties in actual possession. (*Viscount Cave.*) ADUSUMILLI KRISTNAYYA v. ADUSUMILLI LAKSHMIPATHI

43 Mad. 650=18 A.L.J. 601=39 M.L.J. 70=46 I.A. 99=24 C.W.N. 905=28 M.L.T. 70=56 I.C. 391=(1920) M.W.N. 585 (P.C.).

———*Adoption—Widow—Consent of* sapindas—*Whose consent necessary — Omission to ask for consent.*

Under the Dravidian custom, in the absence of authority from her deceased husband, a widow may adopt a son with the assent of all his male agnates. 12 M.I.A. 397, Foll.; 1 Mad. 174; 1 Mad. 69, Dist and Foll. In the case of an undivided family the consent must be obtained by a widow within that family. If the father-in-law is alive, from him: if not from the deceased husband's brother, the assent of separate and remote kinsmen is insufficient. The principle is the same if the husband dies separate from his kindred. In considering what assent is sufficient, rights of property cannot be disregarded: and the widow cannot be allowed to adopt on the assent of remoter relations when there are nearer one in existence. It is the duty of the widow to apply for the consent of all the nearest sapindas and it is not a good reason for her failure to so apply that the widow knew that the nearest sapindas if asked for their consent would have refused. (*Mr Ameer Ali*) VEERA BASAVARAJU PANTULU v. BALASURYA PRASADA RAO.

41 Mad. 998=25 M.L.T. 1=17 A.L.J. 84=36 M.L.J. 40=23 C.W.N. 231=29 C.L.J. 184=9 L.W. 243=21 Bom. L.R. 238=1 U.P.L.R. (P.C.) 18=43 I.C. 703=43 I.A. 265 P.C.).

[On appeal from 25 I.C. 8=(1914) M.W.N. 502]

———*Adoption—Widow—Consent of* sapindas—*Co widows—Senior and junior widow.*

A junior widowed daughter-in-law can validly adopt with the consent of her father-in-law, when her husband while living was joint with his father. (*Shah and Crump, JJ.*) DNYANU PANDU v. TANU BALARAM.

44 Bom. 503=67 I.C. 113=22 Bom. L.R. 390

———*Adoption—Widow—Consent of Sapindas — Consent of next reversioner— Remoter reversioners bound.*

If the nearest reversioner of the adoptive father consents to an adoption, the remoter reversioners cannot object. 78 P.R. 1908 and 16 I.C. 468, Rel. (*Jhonstone and Chevis, JJ.*) SOHAJ RAM v. RAM LAL. **78 P.L.R. 1914=22 I.C. 852=69 P.W.R. 1914.**

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———*Adoption—Widow—Consent of sapindas—Corrupt consent—Person claiming through such sapinda—Estoppel.*

Where a Hindu widow succeeds as heir to her unmarried son who died at the age of 18, she is competent to adopt a son to her husband with the consent of his sapindas. The mere promise of payment for the consent of a sapinda does not vitiate the consent. There must be something more than a promise of payment to raise the plea of the invalidity of the consent on the ground that it was corruptly given. *Obiter*: Neither a sapinda who has given his consent for a bribe or through corruption nor any one claiming through such a sapinda, can set up the invalidity of the adoption on the ground that there was no proper consent. The maxim "*Nemo allegans furtitudinam suam est audiendus*" is one applicable to India. 32 M.L.J. 484; 31 Bom 405, Rel. (*Schwabe C.J. and Coutts Trotter J.*) PARTHASARATHI REDDY v. KANDASAMI REDDI. **45 M.L.J. 161=18 L.W. 156=(1923) M.W.N. 423=32 M.L.T. 349 (H.C.)=1923 Mad. 711.**

———*Adoption — Widow — Consent of sapindas*

The right of the Court to scrutinise the kinsmen's reasons extends only where consent is refused and not where consent is given inasmuch as the law imposes a responsibility upon kinsmen in granting their consent to an adoption. A daughter's son is not entitled to be consulted regarding an adoption by a widow who has obtained the consent of the nearest sapindas, as he is not a *gnati*, and Bhinnagotra sapindas are not included under the term sapindas in the texts which require their consent to an adoption. Consent of the Sapindas to an adoption by the widow is material as guaranteeing the propriety of the widow's action in making the adoption. Where such consent has not been shown to have been obtained by fraud, coercion or corruption, it is sufficient authority for the adoption. (*Oldfield and Phillips, JJ.*) VADREU RANGANAYAKAMMAGARU v RYALI SOMASUNDRA RAO.

39 I.C. 609=43 Mad. 876.

———*Adoption—Widow—Consent of* sapindas—*Subsequently given.*

The subsequent assent of the sapindas will not validate an adoption by a widow who had no such assent at the time of the adoption. (*Wallis, C.J. and Kumaraswami Sastri, J.*) DORAISAMI v. CHINNA GOUNDAN.

32 M.L.T. 538=(1918) M.W.N. 89=34 M.L.J. 268=43 I.C. 560=7 L.W. 335.

———*Adoption—Widow—Consent of* sapindas—*Arbitrarily withdrawn—Subsequent adoption—Validity.*

Though a *sapinda* may after giving consent to an adoption by a widow review his opinion and revoke his consent before it is acted upon, yet such revocation if made without assigning any reasons and capriciously it is not valid. It

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is not competent for the Court to speculate as to the reasons which might possibly justify his conduct. 36 Mad. 145; 26 Mad. 627, Expl. A mother succeeding as heir to her first adopted son would be divested by a subsequently adopted son of the inherited property whether it is ancestral or self-acquired. 1 Mad. 174 (P.C.), Ref. (*Ayling and Seshagiri Iyer*, JJ.) SURYA NARAYANA *v.* RAMADOSS,

41 Mad. 604=34 M.L.J. 87=22 M.L.T. 501=7 L.W. 72=43 I.C. 526=(1918) M.W.N. 203.

———*Adoption—Widow—Consent of* sapindas—*Widow ignoring nearer* sapindas *on account of hostility—Adoption with consent of remoter* sapindas *whether valid.*

Assent of the *sapindas* is necessary for adoption by widow in Madras. The assent is regarded as a substitute for authority of the husband and Hindu Law requires that such an assent should be obtained from those who would be the natural advisers and protectors of the widow, *prima facie* therefore it should be sought from those who are next in the line of succession. The widow can apply to more remote *sapindas* where there are one or two near *sapindas* who from improper motives withhold their consent, but she must consult the nearer ones before doing so even though they be inimical to her. She has no right to conclude on *a priori* reasoning that the consultation would be futile. (*Wallis, C.J. and Seshagiri Iyer*, J.) ADUSAMALLI KRISHNAYYA *v.* ADUSAMALLI LAKSHMIPATHI. **30 M.L.J. 265=32 I.C. 253=19 M.L.T. 286**

[Affirmed on appeal 56 I.C. 391=43 Mad. 650 (P.C.)]

———*Adoption—Widow—Consent of* sapindas—*Representation by widow—Effect of.*

In the absence of anything to show that a reversioner consenting to an adoption was actuated by any representation of a widow that her husband had given her authority to adopt, a Court is entitled to presume that the reversioner, in giving his son to be adopted by the widow, was fully conscious of what he was doing and was mindful of all those considerations which he as a reversioner, ought to take into account. (*Wallis, C.J. and Tyabji*, J.) PANDA PATYYA *v.* PANDA VENKAMMA.

2 L.W. 455=29 I.C. 54=17 M.L.T. 393.

———*Adoption—Widow—Consent of sapindas—Undivided family—Consent of member—Long delay—Motive.*

The managing member of a Hindu family cannot be said to have acted improperly in declining to sanction an adoption made by the widow of a deceased member after long delay to enable her to alienate the property outside the family. In an undivided family the consent of the managing member alone might be sufficient to validate the adoption. (*Sankaran Nair and Oldfield*, JJ.) RAMA RAO *v.* NARASIMHA RAYA NIM VARU.

28 M.L.J. 363=28 I.C. 392=2 L.W. 286.

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———*Adoption—Widow—Consent of sapindas—Refusal—Grounds for.*

In giving or refusing consent to an adoption a sapinda is not entitled to proceed on grounds personal to himself but must act with deliberate consideration of what is for the benefit of the family. Where in answer to a request for his consent for adoption by a widow the next reversioner refused it on the ground that it would deprive him of his right to succeed to the property, *held*, that the consent was improperly refused. 27 M.L.J. 638; 26 Mad. 637, Rel. (*Wallis*, C.J. *and Hannay*, J.) VENKATAPATHI SOMAYAJULU *v.* PUNNAMMA.

17 M.L.T. 218=2 L.W. 284=28 I.C. 378=(1915) M.W.N. 286.

———*Adoption—Widow—Consent of sapindas—Refusal on personal ground—Effect of—Adoption with consent of other sapindas.*

The consideration that should guide a sapinda in giving his consent to adoption by a widow is not personal loss but the benefit to the estate. An adoption therefore, made with the consent of remote sapindas when the nearer one refused a consent on the ground of his personal loss of inheritance, is perfectly valid. (*Sankaran Nair and Spencer*, JJ.) KALLEPALLI VENKATARAMA RAJU *v.* KALLEPALLI BAPAMMA. **39 Mad. 77=(1915) M.W.N. 911=26 I.C. 868=27 M.L.J. 638.**

———*Adoption—Widow—Consent of* sapindas—*Refusal—Reasons.*

A Sapinda is not bound to state his reasons for refusing to give his consent to an adoption by the widow. (26 Mad. 627, Foll.) Where there are five grades of reversioners, the consent of two only of the third grade of sapindas both of whom are interested in making the adoption is not such a consent of the majority of *sapindas* as would amount to an authority to adopt. (*White*, C.J. *and Oldfield*, J.) KANDUKURI VEERA BASAVARAJU *v.* KANDAKURI BALASURIYA. **23 I.C. 3=(1914) M.W.N. 502.**

[On appeal 48 I.C. 706=41 Mad. 998.]

———*Adoption—Widow—Consent of sapindas—Consent of remote reversioners—General consent.*

When nearest sapindas unreasonably withhold consent authority of remote sapindas is sufficient. (1914) M.W.N. 620, Ref. An authority to adopt given to a widow by the sapindas of her husband is not legally invalid merely because it is expressed in general terms and an adoption in pursuance thereof is not invalid if made immediately and where all the sapindas are alive. 26 Mad. 681; 36 Mad. 145, Dist. (*Wallis and Sadasiva Aiyar*, JJ.) NAGARAMPALLI KANESAM *v.* NAGARAMPALLI BATCHAMMA. **1 L.W. 611=24 I.C. 257=(1914) M.W.N. 620.**

HINDU LAW—Adoption—Widow—Consent of sapindas.

———*Adoption—Widow—Consent of sapindas—Deceased sapinda.*

Adoption with consent of a deceased sapinda is ineffective if not approved by sapindas living at the date of adoption. A widow cannot act upon consent given by the sapinda but subsequently withdrawn. (*Benson and Abdur Rahim*, JJ.) MANI *v.* SUBBA RAYAR.
36 Mad. 145=19 I.C. 663=24 M.L.J. 484.

———*Adoption—Widow—Consent of sapindas—Consideration—Invalid.*

The receipt of consideration of Sapinda for giving consent to an adoption by a widow vitiates such consent. (*White and Phillips*, JJ.) DANAKOTI AMMAL *v.* BALASUNDARA MUDALIAR. **18 I.C. 989=36 Mad. 19.**

Adoption—Widow—Co-widows.

———*Adoption—Widow—Co-widows—Preferential right of senior widow.*

A junior widow adopting without senior widow's consent must have special authority from her husband. But a senior widow (i.e.) the widow that is married first, has a preferential right and can adopt without the husband's consent or that of his sapindas or of the junior widow in Bombay. (*Scott and Shah*, JJ.) BASAPPA *v.* SHRIDRAMAPPA. **43 Bom. 481=50 I.C. 736=21 Bom. L.R. 217.**

———*Adoption—Widow—Co-widows—Preferential right.*

As between co-widows, it is the senior widow that has the preferential right to adopt and the junior widow is not entitled to adopt without the consent of the senior. Judgment of Stephen, J., in 12 I. C. 460, Appr. (*Jenkins*, C.J *and Woodroffe*, J.) RAMJIT LAL, KARMAKAR *v.* BEJOY KRISHNA KARMAKAR. **39 Cal 582=14 I C. 17=16 C W.N. 440.**

———*Adoption—Widow—Co-widows.*

In case of two Hindu widows, it is the senior who has the right to adopt and unless she refuses to exercise her power, a junior widow cannot adopt. When power to adopt was given in the following terms:—"Each of my two wives shall be at liberty to adopt three sons successively, that is one after another. *Held*, that simultaneous adoption was not sanctioned but the power was to be exercised according to the general law, and that the power was given to the two wives successively and that under the terms used, the junior widow was not entitled to adopt till the senior one had exhausted her right or refused to exercise it. (*Stephen*, J.) BIJOY KRISHNA KARMAKAR *v.* RANJIT LAL KARMAKAR. **12 I C. 460=38 C. 695.**

———*Adoption—Widow—Co-widows—Preferential right of senior widow—Sudras—Implied prohibition—Living away from husband—Adoption by junior widow.*

In the absence of any direction from the husband, the senior widow has under the Hindu Law the preferential right to adopt. 27 Cal. 351; 39 Mad. 772; 2 L W. 24, Foll.; 5 Bom. H.C.R., 181; 48 Cal. 582, Ref. The above rule applies to Sudras also. The senior widow does not forfeit her preferential right to adopt, from the mere fact of her having lived apart from her husband, in the absence of any proof of adultery or misconduct on her part. The proper course for a junior widow would be to ask the senior widow to get the consent of the male *sapindas* to perform the adoption and to perform it herself and only if the senior widow was unwilling to perform it herself, it would be for the junior widow to ask her to agree to the adoption ceremony, being performad by herself. Per *Ramesam*, J.—From the mere fact that the husband and wife were living apart for a long time, a probibition against the wife's right to adopt cannot be implied. 23 Bom. 789, Fol.; 8 Bom. 9. Dist. (*Spencer and Ramesam*, JJ.) MUTHUSAMI NAICKEN *v.* PULA VARATTAL **43 Mad 216=42 M.L.J. 101=(1922) M.W.N 68=30 M L.T 60 (H.C.)=15 L.W. 40=1922 Mad. 106.**

———*Adoption—Widow—Co-widows—Preferential right of senior widow—Adoption by junior widow without consent of the senior widow.*

Where a Hindu dies sonless leaving more than one widow, the preferential right to adopt (with the consent of the *sapindas*) vests with the senior among them and an adoption made by the junior widow without the consent of the senior widow though with the consent of the *sapindas*, is invalid. The co-widow is a *sapinda* whom the junior widow is bound to consult. 28 M.L.J. 72; 13 Bom. 160; 5 Bom. H.C.R.A. C.J. 181: 39 Cal. 582, Ref. (*Wallis* C.J, *and Coutts-Trotter*, J.) RAJA DAMRA KUMAR VENKATAPPA NARAYANIM VARU *v* DAMRA RANGA RAO GARU. **39 Mad. 772=29 M.L.J. 18=18 M.L.T. 19=30 I C. 103=(1915) M W.N. 425.**

———*Adoption—Widow—Co-widows—Adoption by junior with consent of* sapindas.

Under the Mitakshara law an adoption made by junior widow of a deceased Hindu without the consent of the senior widow is invalid even though the adoption was made with the consent of the majority of the *sapindas* as the senior right has a preferential right to make an adpotion. 28 M. 315, Ref.; 13 B. 160; 39 C. 582, Foll. (*Sankara Nair and Spencer* JJ.) KAKERLA CHUKKAMMA *v.* KAKERLA PUNNAMMA. **(1915 M.W.N. 19=27 I.C 775=28 M L J 72=16 M L.T. 612=2 L.W. 24.**

Adoption—Widow—Daughter-in law.

———*Adoption—Widow—Daughter-in-law—Power of—Vesting of estate—Divesting.*

Where the daughter-in-law succeeds as a Gotraja Sapinda of the last male owner in the absence of any nearer heir, she cannot adopt to

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her husband so as to affect the devolution of the estate inherited by her as a Gotraja Sapinda. (*Macleod*, C.J. *and Shah*, J.) DATTATRAYA *v.* GANGABAI **46 Bom. 541 = 24 Bom. L R. 69 = 1922 Bom. 321.**

———*Adoption —Widow—Daughter-in law.*

In the case of an undivided family the junior widowed daughter-in-law can make a valid adoption with the consent of her father-in-law. (*Shah and Crump*, JJ.) DNYANU PANDU CHARAN *v.* TANU BALARAM CHARAN. **22 Bom. L.R. 390 = 51 I.C. 113 = 44 Bom. 608.**

———*Adoption—Widow — Daughter-in-law —Restrictions imposed by father-in-law.*

The power of a Hindu widow to adopt a son to her husband could not be controlled by the will of her father-in-law, deceased. If she adopts a son contrary to the terms of the will, the adopted son could not take as *persona designata* under the will, but he could take as the grandson of the testator under the adoption. (*Macleod*, C.J. *and Heaton*, J.) NATHWARLAL GIRDHARLAL *v.* RANCHGOR BHAGWANDA. **55 I C. 313 = 22 Bom. L.R. 71.**

———*Adoption—Widow — Daughter-in-law —Consent—Will—Construction.*

There is no authority for holding that a father-in-law can authorise his daughter-in-law to adopt under the Hindu Law ; the only way in which a widow can adopt is either by the authority of her husband or by the consent of her nearest *sapindas* given *bona fide* and honestly. No *sapinda* is entitled to give by way of a will to take effect after his death, a consent to an adoption by a widow. The consent has to be given with reference to the circumstances attendant upon the proposed adoption and usually at the request of the widow. Consent to a future adoption cannot validate the adoption. 36 Mad. 145, Ref. (*Krishnan and Ramesam*, JJ.) TADEPALLI LAKSHMI NARASIMHAM *v.* RUKMANIAMMA **1923 Mad. 235.**

Adoption—Widow—Limits of her power.

———*Adoption —Widow—Limits of her power—Estate not vesting in widow—Effect of —Rights of adopted son—Jivai grant.*

Unless there is time limit imposed in the authority which empowers a Hindu widow to adopt or she is directed to adopt promptly, she may make the adoption so long as her power is not exhausted or extinguished. Her right to make an adoption is not dependent on her inheriting as a Hindu female owner, her husband's estate; she can exercise the power even though the property (a maintenance grant) reverts back to the line of the donor, on her husband's death without male issue. An adoption so far as the continuity of the line of inheritance is concerned has retrospective effect and the son adopted by the widow would take

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the properties of his deceased father just like a natural son. 10 M.I.A. 165; 1 Mad 69; 41 Mad, 855; 31 B. 373, Ref. to (*Mr. Ameer Ali*) PRATAB SINGH SHIR SINGH *v.* AGAR SINGHJI RAISINGJI, **43 Bom. 778 = 36 M.L J. 511 = 17 A L.J. 822 = 21 Bom. L.R. 496 = I U.P.L.R. (P.C.) 39 = (1919) M W.N. 313 = 10 L.W. 339 = 50 I.C. 457 = 24 C W.N 57 (P.C.).**

[On appeal from 28 I.C. 529 = 17 Bom. L.R. 273.]

———*Adoption—Widow—Limits of her power.*

Quaere ;—Whether the widow of a co-parcener who died in 1853, could adopt a son in 1896 after the joint family property had vested in the widow of his brother's son. (*Mr. Ameer Ali*,) VEERABASAVARAJU PANTULU *v.* BALASURYAPRASADA RAO. **41 Mad. 998 = 23 M L T. 1 = 17 A.L.J 34 = 36 M.L.J. 40 = 28 C.W.N 251 = 29 C.L.J 184 = 9 L.W. 243 = 21 Bom. L.R. 238 = 1 U P.L R. (P C.) 18 = 48 I.C. 706 = 43 I.A. 265 (P.C.)**

[On appeal from 25 I C. 3 = (1914) M.W.N. 502.]

———*Adoption —Widow - Limits of her power.*

Hindu Law recognises the validity of an authority given to a widow by her deceased husband to make successive adoptions on failure of the previous one. The power of the widow however comes to an end when the son first adopted has died after attaining full legal capacity to continue the line either by the birth of a natural born son or by the adoption to him of a son by his own widow. 26 Bom. 526. Appr. (*Viscount Haldane.*) SRI MADANA MOHANA DEO *v.* SIR PURUSOTTAMA ANANGA BHEEMA. **41 Mad. 835 = 35 M.L J 138 = 5 P L W 179 = 8 L.W 167 = 16 A L J 725 = (1918) M.W N. 621 = 24 M L T. 231 = 28 C L.J 403 = 20 Bom, L R 1041 = 45 I A 156 = 46 I C 481 = 23 C.W N. 177 (P.C.).**

[Affirming but on different grounds. 38 Mad. 1105 = 24 I C. 999 = 27 M.L J. 306.]

———*Adoption — Widow — Limits of her power.*

A widow can adopt even though there is no co-parcener capable of taking by survivorship. The theory that adoption should be to last male holder does not apply to a joint Hindu family. But when the sole surviving co-parcener dies and the estate vests in his widow, no other widow can adopt. (*Piggott and Walsh*, JJ.) LACHMI KUNWAR *v.* DURGAI KUNWAR. **40 All. 619 = 46 I.C 566 = 16 A L.J. 646.**

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——*Adoption — Widow — Limits of her power.*

If it is established that events had occurred which could constitute an adoption, apart from any question of the competency of the person alleged to be adopted the widow cannot dispute such an adoption made by her husband. 1922 B. 397. Foll. (*Macleod*, C. J. *and Crump*, J.) SHIDAPPA *v* SANTAWAKOM.
1923 Bom. 302.

——*Adoption — Widow — Limits of her power—Extinction of joint family—Vesting of property in co-parcener's widow.*

The widow of a deceased co-parcener of a joint Hindu family cannot in the absence of specific authority make an adoption subsequent to the death of the co-parcener who survived her husband especially when the estate has vested in the widows of the surviving co-parcener. 44 B. 483; 26 B. 516; 48 I.A. 513; 11 B 463. Ref. (*Shah*, A.C.J. *and Crump*, J.) SHIVBASAPPA *v.* NILANA. 24 Bom. L.R. 1162=47 B. 110=
1923 Bom. 17.

——*Adoption — Widow — Limits of her power—Not competent to impeach adoption made by husband.*

A widow is bound by the act of her husband in making an adoption and she must accept all the implications of an adoption by him, valid or invalid. 23 Bom. L.R. 1272, Foll. (*Macleod*, C.J. *and Coyajee*, J.) CHIMABAI MALGAUDA PATIL *v.* MALLAPPA PAYAPPA.
24 Bom. L.R. 489=1922 Bom. 397.

——*Adoption — Widow — Limits of her power—Widow inheriting as gotraja sapinda.*

In the Bombay Presidency a Hindu widow succeeding to an estate not her husband's but as a gotraja sapinda of the last male holder cannot make a valid adoption. The decision in 32 B. 499 is still good law and has not been affected by the decision in 48 I. A. 513. (*Macleod*, C.J. *and Shah*, J.) YEKNATH NARAYAN KULKARNI *v.* LAXMIBAI KESHO GOPAL.
24 Bom. L.R. 816=47 B 37=
1922 Bom. 347.

——*Adoption — Widow — Limits of her power—Re-marriage—Capacity to give and take in adoption.*

A widow cannot, after re-marriage, give in adoption her son by first husband, especially when she adopts him to her second husband after his death as in such case, the person giving and taking in adoption would be the same individual. (*Macleod*, C.J., *Shah and Hayward*, JJ.) FAKIRAPPA VEERBHADRAPPA *v.* SAVITRAWA SENGAPPA.
62 I.C. 318=23 Bom. L.R. 482 (F.B.).

——*Adoption — Widow — Limits of her power—Widow consenting to adoption by widow or predeceased nephew cannot herself subsequently adopt.*

Where a Hindu widow consents to the adoption of a boy by the widow or a pre-deceased

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nephew of her husband her own power of adoption comes to an end, and she cannot subsequently adopt to her husband. (*Macleod*, C.J. *and Shah*, J.) VAMAN VITHAI KULKARNI *v* VENKAJI KHANDO KULKARNI.
45 Bom. 829=61 I.C. 460=23 Bom. L.R. 269.

——*Adoption — Widow — Limits of her power.*

A Hindu died in union with his nephew who also died leaving him surviving a widow. Thereupon the former's widow adopted a son. *Held*, the adoption was invalid. The widow of a deceased co-parcener of a joint Hindu family cannot in the absence of any specific authority make the adoption subsequent to the death of a co-parcener who survived her husband; and more particularly when the latter surviving co-parcener has left a widow. (*Macleod*, C.J *and Heaton*, J.) THAKARANA TEJRANI *v.* SARUPCHAND. 44 Bom. 483=
55 I.C. 864=22 Bom. L.R. 209.

——*Adoption — Widow — Limits of her power — Son dying separate and issueless—Consent of sapindas.*

A Hindu died in union with his brothers leaving a widow and a minor son. The minor son became divided in interest from his uncles and then died unmarried. The widow next adopted. *Held*, that the widow was competent to make the adoption without the consent of her husband's brother. Per *Macleod*, C.J.:—The rights of reversioners are not vested so that her adoption of plff. was not derogatory of any vested right. That and the condition that the son's estate has not vested first in some other than herself are the only two conditions which stand in the way of the widow's right to adopt even if her husband died in union. (*Macleod*, C.J. *and Heaton*, J.) MALLAPPA BHARMAPPA *v.* HANMAPPA MARDEPPA
44 Bom. 297=55 I.C. 814=
22 Bom. L.R. 203.

——*Adoption — Widow — Limits of her power—Widowed daughter-in-law.*

It is competent to the widow of a predeceased son to make a valid adoption to her husband with the contemporaneous consent of her mother-in-law in whom the estate vests as heir of the last full owner. 23 Bom. 827, Foll. (*Heaton and Shah*, JJ.) SHIDAPPA BAPU BIRADKAR *v.* NINGANGAUDA SIDDAN GAUDA. 38 Bom. 714=27 I.C. 81=
16 Bom. L.R. 663.

——*Adoption — Widow — Limits of her power—Bombay Vatan Act* (V *of* 1886), *S.* 2.

An adoption by a widow having the effect of divesting the estate in a third person if made without that person's consent is invalid. This principle is applicable even if the mother adopt. after the death of her first son unmarried. Where a Hindu widow first adopted a boy who died unmarried whereupon the property which was vatan vested in the nearest male reversioner, a second adoption by her is invalid and

HINDU LAW—Adoption—Widow—Limits of her power.

ineffective to divest the estate. 10 M I.A. 279; 4 I.A. 1; 23 Bom. 327, Rel. (*Batchelor and Shah*, JJ.) BHIMABAI KRISHNAPPA DESAI v. TAYAPPA MURARRAO NADGAUDA.

37 Bom. 538=21 I.C. 107=15 Bom. L.R. 783

[This is no longer correct 50 I.C 457=43 Bom 718 (P.C.).]

———*Adoption — Widow — Limits of her power—Object of adoption.*

The object of adoption among Hindus is not merely the due perpetuation of lineage but also to secure for the adoptive father and his ancestors the spiritual blessings which can only be conferred by a male heir. The spiritual purposes of a son are not exhausted in the person of a son who attains maturity but dies leaving a widow though without any issue. In Hindu Law the only express prohibition of adoption is in the case of a man who has either a son, grandson or great-grandson living. 5 Cal. 615; 10 Mad. 205; 17 Cal. 122; 8 Cal. 302; 32 Cal. 861; 33 Cal 1306 and 41 Mad. 855 (P.C.), Ref. An adoption which would have the effect of divesting an estate which is already vested in a person other than the adopting mother is not permissible according to the cases. An adoption by a widow under an authority of her husband after the death of her natural son leaving a widow, but no issue is valid if thereby she divests no estate but her own. (*Teunon and Greaves*, JJ.) KUMUD BANDHU SAHA v. ROMESH CHANDRA SAHA.

46 Cal. 749=23 C.W.N. 858=49 I C. 609=29 C.L J. 214.

———*Adoption — Widow — Limits of her power—Original owner dying leaving behind him his widow and a son—Death of son after attaining 25 years of age—Power of adoption of the widow of the original owner, not at an end.*

Where a Hindu died leaving his widow and his son and the latter died after having attained his age of majority, but without leaving him surviving his widow, the power of adoption of the widow of the original owner is not exhausted and she can adopt a son to her deceased husband. Observations in 41 M. 855 (P.C.) considered as obiter and not binding. 35 M.L J. 793 and observations of Sir John Wallis, C.J., in 25 M.L.T. 204, dissented from. The case-law on the subject reviewed and discussed. (*Schwabe*, C.J. *and Wallace*, J.) YADAVALLI TRIPURAMBA v. YADAVALLI VENKATARATNAM.

46 Mad. 423=41 M L J. 349=1923 Mad. 517.

——*Adoption—Widow—Limits of her power.*

The rule that an adoption by a widow must be made to the last male owner has no application to joint family property, which, for this purpose includes joint impartible Zemindari also. In such cases the limit imposed by law to the period within which the widow can exercise a power of adoption conferred on her is reached only where there has been a son natural or adopted to the person giving the authority and that son dies attaining full legal capacity to continue the line either by the birth of a natural born son or by the adoption to him of a son by his own widow. 41 Mad. 855, Foll. (*Wallis*, C. J. *and Seshagiri Aiyar*, J.) SRI JAGANNATHA GAJAPATI v. SRI KUNJA BIHARI DEO.

25 M.L.T. 204=(1919) M.W N. 52=49 I.C. 929=9 L.W. 335.

——*Adoption—Widow — Limits of her power—Death of adopted son at age of four—Second adoption by widow—Validity—Rights of second adopted son.*

A member of a Hindu joint family dies leaving behind him his widow, his undivided brother and joint and separate property. In pursuance of authority given by him his widow adopted two boys in succession, the second after the death of the first at the age of four. *Held*, that the adoption was valid and that the second adopted son was entitled to a share in the joint property by partition and to his deceased father's separate property by inheritance. Per *Oldfield*, J.—The existence of a co-parcener otherwise competent to take by survivorship is no obstacle to the widow's exercise of the power of adoption recognised in 10 M.I.A. 279 and 41 Mad. 855 (P.C.). Per *Phillips*, J.—The theory that an adoption should be to the last male holder is not applicable to joint Hindu families living in co-parcenary. (*Oldfield and Phillips*, JJ.) VENKATARAMIER v. GOPALAN.

38 M.L.J. 698=24 M.L T. 440=(1918) M.W.N. 719=49 I C. 48=9 L.W. 43.

——*Adoption —Widow— Limits of her power.*

The doctrine of vesting and divesting of an estate by an adoption applies to separate as well as joint property. The rule that in order that an estate once vested may be divested, the adoption should be made to the last male holder, is inapplicable to co-parcenary properties. There is no limit of time within which a widow should make an adoption where a person is in existence who is competent to adopt a boy in whom the full proprietary title will vest, it must be taken to be the limit of the exercise of the power by the widow to make successive adoptions. Where the exercise of the power to make a second adoption will not result in creating a new line of succession but will only transfer the estate from one intermediate owner to another with the prospect of the latter even to be divested, the limits of the power must be taken to have been reached. (*White*, C.J. *and Seshagiri Aiyar*, J.) MADANA MOHANA v. PURUSHOTTAMA ANANGA.

38 Mad. 1105=27 M.L.J. 306=24 I.C. 999=16 M.L.T. 416.

[Affirmed on appeal 46 I.C. 481=41 Mad. 855 (P.C.)]

HINDU LAW—Adoption—Widow—Limits of her power.

——*Adoption — Widow— Limits of her power.*

An estate is divested by an adoption not made to last holder but to a prior male holder of the estate. At any rate such adoption is invalid without consent of person on whom estate is vested. 37 Bom. 598; 21 I.C. 107, Ref. (*White, C. J. and Phillips, J.*) CHINNACHAMI *v.* RAMASWAMY CHETTIAR. 10 M.L.T. 453= (1911) 2 M.W.N. 589=13 I C. 7= 23 M L J. 85.

[This view is no longer correct. *See* 46 I.C. 491=41 Mad. 855 (P.C.).]

——— *Adoption — Widow— Limits to her power—Estate vested in surviving co-parcener.*

A Hindu widow who has not the family estate vested in her and whose husband was not separated at the time of the adoption is competent to make an adoption with her husband's authority and the consent of the senior surviving co-parcener. 41 Mad. 998 (P. C.), Foll. (*Mittra and Prideaux*, A.J.Cs.) RUSTAM RAO *v.* DINKARAO. 65 I C. 38.

———*Adoption—Widow — Limits of her power.*

There is no limit of time during which a Hindu widow may act upon the authority given to her to adopt a son to her deceased husband. Where, a Hindu son, whether natural or adopted, having inherited the property of his deceased father, dies leaving a son, or widow or any other person, as his heir other than the widow of his father, any power to adopt, held by his father's widow comes to an end; but this rule does not apply where the son dies leaving no heir other than his father's widow. (*Stanyon*, A.J.C.) NARAIN RAMA RAO *v.* DEBIDAS NARASINGH. 47 I.C. 41.

Adoption—Widow—Mahratta School.

———*Adoption—Widow—Mahratta School.*

It is a general principle of Hindu Law as to adoptions that directions may be given by the husband orally or in writing, as for instance by a will, as to the way in which his widow should exercise a power of adoption to him and it is the duty of the widow to obey such directions. A direction to operate as a prohibition against a Hindu widow adopting a boy to her husband as a son except the boy named by him must be explicitly made and clearly intended by the husband to limit the discretion of his widow for all time, and on every occasion on which otherwise after his death, his widow might validly make an adoption to him. In the Mahratta Country of the Presidency of Bombay, a Hindu widow, who is sole or joint heir to her husband's estate, may adopt a son to her deceased husband without authority from her husband and without the consent of his kindred, if the act is done by her in the proper and *bona fide* performance of a religious duty, and neither capriciously nor from a corrupt motive nor in ignorance of her right. But she cannot adopt where her husband has expressly forbidden an adoption. (*Sir John Edge*). YADAO *v.* NAMDEO. 17 N.L R. 145= 64 I.C. 536=43 I.A. 513 (P C.).

HINDU LAW—Alienation—Co-parcener.

———*Adoption—Widow—Mahratta School—Maheshwari Hindus domiciled in Bengal—Authority from husband or consent of* sapindas.

Among Maheshwari Hindus who had emigrated from Bikaneer and settled in Bengal and governed by the Mitakshara Law, it is open to the widow of a divided member to adopt without authority of the husband or the consent of the *sapindas*. (*Fletcher and Huda*, JJ.) MATHURA DASS KARNANI *v.* SRIKISSEN KARNANI. 44 I.C. 5=27 C.L J. 517.

Adoption—Widow—Motives.

———*Adoption — Widow—Motives* — Bona fides.

An adoption cannot be said to be made in the performance of a *bona fide* religious duty where the authority to adopt was given more than 30 years ago and the adoption is made by the widow with a view to her own advantage. (1 Mad. 174, Foll.) (*White*, C.J. *and Oldfield*, J.) KANDUKURI VEERA BASAVARAJU *v.* KANDUKURI BALASURYA. 25 I C. 3= (1914) M.W N. 802.

[On appeal 48 I.C. 706=41 Mad. 998 (P.C.)]

Advancement.

See (1) BENAMI.
(2) TRUST ACT, S. 82.

Alienation.

See also HINDU LAW—
(1) DEBTS.
(2) JOINT FAMILY.
(*a*) FATHER.
(*b*) MANAGER.
(3) RELIGIOUS ENDOWMENT.
(4) WIDOW.

CO-PARCENER.
FATHER.
GUARDIAN.
MANAGER OF ENDOWMENT.
MANAGER OF JOINT FAMILY.
WIDOW.
WILL.

Alienation—Co-parcener.

———*Alienation—Co-parcener—Berar.*

The law of the Mitakshara is to be interpreted in Berar in the same manner as in Bombay and according to that law a co-parcener has power to sell his share in the joint family property without the consent of his co-owners. (*Viscount Cave*). SYED KASIM *v.* JORAWAR SINGH. 43 M.L.J. 676=31 M.L,T. 48 (P.C.)= 16 L.W. 223=5 N.L.J. 209=18 N.L.R. 127= 21 A.L.J. 57=27 C.W.N. 179= 49 I.A. 358 (P.C.)=1922 P.C. 358.

HINDU LAW—Alienation—Co-parcener.

——*Alienation—Co-parcener—Necessity—Charge of murder—Money raised for defence.*

Where a member of a joint Hindu family stood charged with murder and in order to defend himself he raised funds by charging the family properties, the alienation is justified by legal necessity. 26 M.L.J. 528; 34 A. 4, Ref. Where a member of the joint family sues for a declaration that a charge created upon the family property should be declared null and void on the ground that it was created without legal necessity the plaintiff should give *prima facie* evidence before the creditor is called upon to give evidence with regard to the validity of his document on which the claim is based. (*Rafique and Piggott, JJ.*) LALA RAM RAGHUBIR LAL *v.* DIP NARAIN SINGH **46 A. 311 = L R. 4 A. 380 = 9 O & A L.R 349 = 21 A.L J. 168 = 1923 A. 287.**

——*Alienation—Co-parcener—Necessity—Antecedent debt—Exorbitant rate of interest—Liability of other members—Adult member joining in execution—Presumption of necessity—Setting aside alienation—Equities.*

Where an alienation of joint family property is effected by the concerted action of all the members of the joint family who had attained majority at the time a presumption arises in favour of such alienation having been made for real family necessity. Where the rate of interest specified in a mortgage is high and there is, in addition, a provision for a penalty on non-payment of interest punctually, the provision for compound interest and the penalty might be regarded as improvident and therefore not binding on the minor members of the joint family. The existence of an antecedent debt of the father does not justify his alienating the whole of the family property at a sum considerably less than the market value. Where in a suit by the sons to avoid an alienation, the debt was partly for binding necessity, the plffs. are bound to discharge the binding portion of the debt before obtaining possession of the property alienated. (*Piggott and Walsh, JJ.*) GOVIND DASS *v.* RAM CHARAN LONIA. **1923 A. 235.**

——*Alienation—Co-parcener.*

An alienation by a co-parcener would be justified if made either (1) in a season of distress, (2) for the sake of the family, (3) pious purposes. (*Mears, C J. and Banerji, J.*) THAKURJI *v.* NANDA AHIR. **48 All. 530 = 19 A.L J. 580 = 63 I.C. 646 = 8 U.P.L.R. (A.) 75.**

——*Alienation—Co-parcener—Alienation by one member to another member.*

Where joint family property is transferred by one member to another member, a suit by the latter against a holder of a decree against the transferor, for declaration that the property is not liable to attachment and sale is not maintainable. (*Rafique and Stuart, JJ.*) RAMCHAND *v.* MATHURA CHAND. **60 I.C. 898 = 19 A.L.J 299.**

HINDU LAW—Alienation—Co-parcener.

——*Alienation—Co-parcener—Consent of others.*

Joint family property cannot form the subject of gift, sale or mortgage by one co-parcener without the sanction, express or implied, of all the other co-parceners except during a "season of distress." (*Knox, J.*) THAKERJI *v.* NANDA AHIR. **55 I.C. 317 = 2 U.P.L.R. (All.) 120.**

——*Alienation—Co-parcener—Consent of others.*

Where one of two brothers in a Hindu family sells his property and there is no evidence of any quarrel between them there is a strong possibility that the other brother knew of the sale. (*Richards, C.J. and Rafique, J.*) MADHO RAM *v.* JAGA SINGH. **52 I C. 18 = 1 U.P.L.R (H.C.) 7.**

——*Alienation—Co-parcener—Setting aside—Right to.*

An alienation by one member of the joint family property purporting to be made on behalf of the family as a whole can be impeached by the other members on the ground of want of authority, or absence of legal necessity or family benefit; but a stranger to the family cannot impeach it. (*Piggott and Walsh, JJ.*) BANSARI DAS *v.* SHEODARSHAN. **45 I C. 451 = 16 A.L.J. 394.**

——*Alienation—Co-parcener—Disqualification—Leprosy.*

There is no principle of Hindu Law under which a co-parcener who contracts leprosy is disqualified from dealing with his own property or share in the joint family property for a necessary purpose. (*Piggott and Walsh, JJ.*) MAN SINGH *v.* GAILLI. **40 All. 77 = 43 I.C. 62 = 15 A.L.J 860.**

——*Alienation—Co-parcener—Agreement to sell.*

Agreement to sell by one brother with the consent and authority of the other is binding as against a subsequent purchaser from both. (*Richards, C J. and Banerji, J.*) THAKUR DIN *v.* SEETLA SAHAI. **23 I C 530 = 12 A.L J 52.**

——*Alienation—Co-parcener—Rights of alienee—Partition.*

Where the other co-parceners consent to an alienation by one of them, then the alienation is binding on them and the mortgagee is entitled to proceed against the property even though subsequently in partition it fell to some one else's share. 1 I.A. 106, Dist. (*Ryves and Piggott, JJ.*) SUNDAR LAL *v.* BRIJ LAL. **38 All. 543 = 21 I C. 734 = 11 A.L.J. 916.**

——*Alienation—Co-parcener.*

A member of a joint family cannot alienate the joint family property or his share in it without the consent of the other co-parceners or without legal necessity (*Knox and Rafique, JJ.*) PRAG LAL *v.* RAMESHWAR DAYAL. **20 I.C. 921.**

HINDU LAW—Alienation—Co-parcener.

———*Alienation Co-parcener—Contract of sale—Specific performance.*

It is not open to one of two brothers forming a joint Hindu family to sell the property without the consent of the other and an agreement to sell by him cannot be specifically enforced. (*Griffin*, J.) SEETLA SAHAI v. THAKUR DIN.
20 I.C. 247=11 A.L.J 458.

———*Alienation—Co-parcener—Consent.*

One member cannot mortgage even his share of family property without the consent of others in United Provinces. (*Richards*, C.J. *and Banerji*, J.) BUDHUSING v. KAWALNUIN.
19 I.C. 430.

———*Alienation—Co-parcener.*

Per Karamat Hussain, J.:—A transfer by some only of the members of a joint Hindu Mitakshara family is void. 15 All. 339, Ref. (*Karamat Hussain and Chamier*, JJ.) BARAN DEO RAI v. RUP NARAIN. **11 I.C. 654 (All.)**

———*Alienation — Co-parcener — Legal necessity.*

If a member of a joint family mortgages a property to one and sells the same to another the vendee is entitled to question the mortgage for want of legal necessity. (*Richards*, C.J., *Banerjee and Chamier*, JJ.) MUHAMMAD MUZAMILULLAH KHAN v. MITHULAL.
33 All. 783=11 I.C. 220=8 A.L.J. 201.

———*Alienation—Co-parcener—Liability of others.*

Alienation of a joint family property by a co-parcener in whose name the property stands must be presumed to be effected by him on behalf of the joint family and as binding on the co-parcenary. (*Richards and Tudball*, JJ.) CHANDRA DEOMISSER v. HARPAL SINGH.
9 I.C. 293.

———*Alienation—Co-parcener.*

Where the added members had properly and wisely decided to get rid of property which was in a ruinous condition so as to be a burden to the family and which was ordered by the Municipality to be pulled down the transaction binds the minor co-parceners. Per *Shah*, J.—Benefit to the family may under certain circumstances mean a necessity for a transaction. (*Shah and Fawcett*, JJ.) NAGINDAS v. MAHOMED YUSUF.
64 I.C. 923=23 Bom. L.R. 1094.

———*Alienation—Co-parcener — Rights of alienee.*

In Bombay the sale of a co-parcener's share is not invalid though the share is described in the deed as the whole property. The purchaser, however, cannot get joint possession but he may demand partition. He can however obtain a direction that he be left to recover the interest of the vendor in the particular property by a separate suit for partition in which all co-parceners and all family properties should be joined. (*Heaton and Hayward*, JJ.) PANDU v. GOMA RAMAJI. **43 Bom. 473=50 I.C. 765=21 Bom. L.R. 218.**

HINDU LAW—Alienation—Co-parcener.

———*Alienation—Co-parcener — Remedy of alienee—Partition suit.*

The remedy of the alienee from a co-parcener is to sue for a general partition, in case the other co-parceners claim their share of the alienated property (*Batchelor*, C.J. *and Kemp*, J.) HANMANDAS RAMDAYAL v. VALABHADAS SHANKARDAS. **43 Bom. 17=46 I.C. 133=20 Bom. L.R. 472.**

———*Alienation — Co-parcener—Rights of alienee—Setting aside.*

Alienee from co-parcener only gets a right to partition and not to possession before such partition. A sale by one co-parcener even of his share can be set aside by his co-parceners if the sale is without consideration as it is void altogether. (*Scott*, C.J. *and Heaton*, J.) NARO GOPAL KULKARNI v PARAGOWDA BASAGOWDA. **41 Bom. 347=39 I.C. 23=19 Bom. L.R. 69.**

———*Alienation—Co-parcener—Mortgage—Suit on—Other members, if parties—Partition.*

Where a creditor of a co-parcener's share sues to establish his mortgage, the other members of the family are not necessary parties and before executing his decree and purchasing his share he cannot ask for partition in the same suit. (*Davar*, J.) LALCHAND v. BALKRISHNA. **21 I.C 689=15 Bom. L.R. 914, Note.**

———*Alienation—Co-parcener.*

No owner of property is competent to convey to a person a higher right than what he himself possesses and therefore no member of a joint family can, by alienation of his interest, prejudice the rights of any other member. (*Mookerjee and Buckland*, JJ.) JOGOBUNDU v. RAJENDRA. **66 I.C. 121=34 C.L.J. 29.**

———*Alienation—Co-parcener—Contract for sale—Specific performance.*

Where a co-parcener has contracted to sell a share of the joint family property to plaintiff representing he had authority to do so, specific performance may be decreed against him if the share allotted to him would suffice to fulfil the contract. (*Mookerjee and Walmsley*, JJ.) SHAMA CHARAN KOTAL v. KUMED DASI.
42 I.C. 378=27 C.L.J. 611.

———*Alienation—Co-parcener — Rights of alienee—Purchaser's right to joint possession—Transfer of Property Act, S. 44.*

A stranger purchaser of the share of an undivided Hindu co-parcener cannot claim to be put in joint possession of the family dwelling-house. He can either ask for delivery of possession of what he acquired by purchase, by partition in execution proceedings or bring a separate suit for partition (*Mookerjee and Roe*, JJ.) GRIJA KANTA CHAKARBUTTY v. MOHIN CHANDRA ACHARJEE.
20 C.W.N. 678=35 I.C. 294=23 C.L.J. 567.

HINDU LAW—Alienation—Co-parcener.

———*—Alienation—Co-parcener—Contract to sell—Suit for specific performance.*

In Bengal specific performance of a contract to sell by a co-parcener cannot be enforced because no co-parcener has any interest in the property which he can transfer and so he is incapable of performing it. (*Fletcher and Chatterjee*, JJ.) JANAKI NATH SINGH ROY *v.* JAMINI KANTA SINGH ROY. 22 I.C. 612.

———*Alienation—Co-parcener—Agreement to sell or lease share—Specific performance.*

A member of a Mitakshara joint family is not entitled to any specific property and cannot make a valid alienation of it. An agreement by him to sell or lease his share is not specifically enforceable. If the manager contracts on behalf of himself and the other co-parcener to sell the entire property without necessity, the vendee will be entitled only to damages and not to specific performance. (*Jenkins*, C.J. *and Mookerjee*, J.) SHAIKA ABDUL RAHMAN *v.* JADUNANDAN SINGH JHA.
21 I C. 523=18 C.L J. 315.

———*Alienation—Co-parcener—Rights of purchaser.*

Where a Hindu, governed by the Mitakshara alienates his share of the family property for no necessity or benefit of the family, there would remain nothing in the hands of the transferee after his death, for his surviving co-parceners are entitled to his share by survivorship. (*Harrington and Carnduff*, JJ.) JAGARNATH MISSIR *v.* SHAMA PANDEY.
18 I.C. 819.

———*Alienation—Co parcener—Agreement for sale—Specific performance.*

Specific performance of a contract to sell joint family property by the co-parceners cannot be enforced against all or some of them as they have no definite share to convey before partition. The remedy of the vendee is to sue for damages. (1895) 1 Q B. 683, Foll. (*D. Chatterjee*, J.) JADHU NANDAN SINGH *v.* ABDUL RAHAMAN. 11 I C. 892=
16 C.W.N. 93.

———*Alienation—Co-parcener.*

An alienation which is not made by one of the co-parceners of a joint Hindu family for family necessity is liable to annulment in its entirety. (*Le-Rossignol and Wilberforce*, JJ.) MUNSHI LAL *v.* SOHAN LAL.
66 I.C. 681=3 Lah. L J 137.

———*Alienation—Co-parcener—Rights of alienee—Subsequent partition—Effect.*

Where partition takes place after the mortgage of his shares by the co-parcener, the mortgagee should proceed only against those items which fell to the mortgagor on partition. (*Chevis and Le-Rossignol*, JJ.) PREM SHAH *v.* KABIN CHAND. 43 P L R 1916=
30 I.C. 31=128 P.W.R. 1916.

HINDU LAW—Alienation—Co-parcener.

———*Alienation—Co parcener—Will—Validity of.*

Will by a co-parcener of his share of the joint family property in favour of distant collateral is valid. (*Shah Din and Chevis*, JJ.) SHAM LAL *v.* CHHAJJU MAL.
31 P.W.R. 1918=19 I C. 51=
76 P L R. 1918.

———*Alienation—Co-parcener—No consent of others—Suit for cancellation of alienation—Valuation.*

In a suit by one member of a joint family for the cancellation of a mortgage executed by another without his consent, the value of the suit is the mortgage money payable and not the share mortgaged. In Madras and Bombay, an alienation by one member of a joint Hindu family, without the consent of the other members is valid to the extent of the alienor's share; but in Bengal, Punjab, and United Provinces, unless such an alienation is for the benefit of the family it will not bind the other members and it may be annulled at their instance. (*Rattigan*, J.) PIARE LAL *v* RAM CHAND. 21 P.R. 1912=11 I.C. 443=
112 P.W R. 1911.

———*Alienation—Co-parcener—Alienee's rights—Suit by surviving member for recovery of property alienated—Allotment of property alienated to vendee—Conditions—Mesne profits—Plaintiff's right to—Manager—Sale by—Voidable and not void.*

An alienee from an undivided co-parcener has a right to sue for the partition of the family property and to recover his alienor's share, in the case of a sale of an undivided share, that share, and in the case of a sale of a specific item of property, an equitable right to have that property assigned, if possible, to his alienor's share. The share of the alienor which passes to the alienee is the share to which the former was entitled at the date of alienation. In a suit by a co-parcener for the recovery of the property alienated by another co-parcener or for partition, the alienee is entitled to claim partition, if it can conveniently be done. In a suit by a grandson to recover possession of properties sold by his deceased grandfather, the Court below held that the sale was not for necessity and gave a decree to the plaintiff for a division of the property into two parts and for recovery by plaintiff of one-half with mesne profits from the date of sale. On appeal by the alienee it appeared that the plaintiff was the only surviving member of the family, and that, at the date of the sale, the grandfather was entitled, as and for his share, to property at least equal in value to the property sold and that there would be no inconvenience in allotting entire property to the alienee. *Held*, that the alienee was entitled to retain the whole of the suit property, that the plaintiff's suit should have been dismissed, and that the plaintiff was not therefore entitled to any mesne profits. *Held further* that, the sale being by a manager the plaintiff would in no event

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have been entitled to mesne profits before the date of plaint. (*Phillips and Venkatasubba Rao*, JJ.) RAMASWAMI AIYAR *v.* VENKATARAMA AIYAR. **46 Mad. 815 = 45 M.L J. 203 = 18 L.W. 188 = (1923) M.W.N. 786 = 1924 Mad 81.**

———*Alienation— Co-parcener — Rights of alienee—Allotment of whole of alienated property to purchaser in — Conditions—Sale by member on his own behalf and on behalf of other members—Sale not in interests of family —Security bond taken by purchaser from vendor to indemnify former against loss due to claim by other members—Effect.*

A purchaser from a member of a Joint Hindu family of property which that member has no right to sell, it being the joint property, can enforce the sale only by a partition of the entire family property ; and if, in such partition, the property sold can, with due regard to the interests of the other sharers to the debts due by the family, and to an equitable allocation of the various items of family property to shares of the several co-parceners, be wholly allotted to the vendor's share, the purchaser will be entitled to the whole property which the vendor professed to convey to him. Whether the alienee in such cases can get the property does not depend upon whether a suit is first brought by him for a partition of the whole joint property or by the other co-parceners for a partition of a part. The decision in 40 C. 966 ; 25 M.L.J. 512 (P.C.) is authority for the position that even in a suit by the other co-parcener for a share of the alienated property, it would be open to the Court on the application of the alienee to decree a general partition in which the principle of equity mentioned above should be applied. The principle of equity applies equally to cases in which the alienor purports to sell the property on behalf of himself and of the other co-parceners and to those in which he purports to sell the property as his own. It applies whether or not the sale was a proper alienation in the interests of the joint family. The purchaser is not to be deprived of this equity merely because, at the time of the sale, he took from the vendor a security bond (in the form of a charge on other joint family property) by which the vendor gave him an indemnity against the loss that might arise by any claim of the vendor's minor son. (*Sekwabe*, C J. *and Wallace*, J.) DAVUD BEEVI AMMAL *v.* RAMAKRISHNA AIYER. **44 M.L.J. 309 = 17 L W. 332 = (1923) M.W.N. 202 = 32 M L.T. (H.C.) 263 = 1923 Mad. 457.**

———*Alienation—Co-parcener—Share of, in specific items of family property attachable.*

There can be no attachment of a co-parcener's share in each item of joint family property but only of his undivided share in the whole of the joint family properties. (*Oldfield and Bakewell*, JJ.) JAGANATHAN SUBBIAH *v.* VENKATA SUBBIAH. **53 I.C. 336 = 10 L.W. 419.**

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———*Alienation—Co-parcener—Validity of —Madras.*

According to the Mitakshara Law in the Presidency of Madras, a mortgage by a co-parcener of his share of the joint family properties is valid though not supported by family or other necessity. 35 Mad 47, Foll. ; 39 All. 600, Dist; 40 I A 171, Foll. (*Phillips and Krishnan*, JJ.) BOGISETTI AKKA NAGAMA *v* PANGANAMMA KRISHNA RAO. **10 L W. 153 = 52 I C 716 = (1919) M.W.N. 536.**

———*Alienation—Co-parcener—Gift—Consideration of marriage.*

In the Madras Presidency it is competent to a co-parcener to alienate his share in the whole of the family property or in any particular item of it, for valuable consideration but he cannot make a valid gift of his share. This power of the co-parcener to alienate his share for consideration is not confined to sales or mortgages, but includes every kind of alienation for valuable consideration. Where a co-parcener settles property on the bridegroom-elect in consideration of the latter marrying the co-parcener's foster-daughter, the alienation is supported by consideration and is enforceable against the co-parcener's share in the family properties. (*Abdur Rahim and Olafield* JJ.) NANJUNDA SAMI CHETTY *v.* KANAGARAJU. **42 Mad. 164 = 49 I.C. 866 = 36 M.L J 242 = 25 M.L T. 374 = (1919) M W.N 139 = 9 L.W. 132.**

———*Alienation—Co-parcener—Gift.*

By Hindu Law a member of a joint Hindu family cannot make a gift of his share to another member. (*Ayling and Seshagiri Aiyer*, JJ.) KAVERAMMA *v.* VISHNU KANKULLAYYA. **49 I.C. 263.**

———*Alienation — Co-parcener — Decree against some co-parceners—Execution sale—Rights of other co-parceners.*

A collective decree obtained against some of the co-parceners in a joint family on a sham transaction is binding on those co-parceners themselves but not the others. If the joint family property is sold in execution of the decree the other co-parceners can sue for the recovery of their shares only. In such a suit a decree for partition can be made without driving the purchasers to a fresh suit. (*Spencer and Krishnan*, JJ.) NADHAMUNI IYER *v* APPU ODAYAN. **48 I C. 799.**

———*Alienation—Co-parcener—Contract to sell—Rights of alienee.*

In a suit for specific performance of contract to sell his share in certain joint family properties by one member, the other members are not proper parties. If however there had been partition and of fraudulent design against the alienee be proved then the other members may be proper parties. Right to sue for partition arises only after the legal title is transferred.

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(*Wallis*, C.J., *Atdur Rahim and Srinivasa Aiyangar*, JJ.) T. RUNGAYYA REDDI *v.* SUBBRAMANYA AIYAR. **40 Mad 365 = 32 M.L.J. 575 = 5 L.W. 797 = 40 I.C. 429 = 21 M.L.T. 385 (F.B.).**

———*Alienation—Co-parcener—Gift.*

Gift by a co-parcener of his undivided share is unenforceable. (*Abdur Rahim and Oldfield*, JJ.) AYAVIER *v.* SUBRAMANIA AIYAR. **32 M.L.J. 439 = 40 I.C. 208 = 6 L.W. 22.**

———*Alienation—Co-parcener—Effect of.*

An alienation by a member of a joint Hindu family does not disturb the joint status. (*Abdur Rahim*, O.C.J. *and Seshagiri Aiyar*, J.) VENKATARAO *v.* TULJA RAM RAO. **(1917) M.W.N. 30 = 38 I.C. 270 = 5 L.W. 482.**

———*Alienation — Co-parcener—Rights of alienee.*

A purchaser of an undivided share of a member of a joint Hindu family does not become a tenant-in-common with the other members of the family. (*Abdul Rahim, Seshagiri Iyer and Phillips*, JJ.) BALABHADRA PATRO *v.* KHETRADOSS. **31 M.L.J. 278 = 4 L.W. 99 = 37 I.C. 168 = (1917) M.W.N. 149.**

———*Alienation — Co-parcener — What passes.*

Where a man has a double capacity and deals in only one capacity he must be deemed to have parted with interest vested in an undisclosed capacity as well. 42 Cal. 56, Foll. An alienee from a co-parcener is not entitled to joint possession with the other co-parceners. His right is to obtain by partition the share to which his alienor was entitled. 39 Mad. 205; 38 Mad. 684, Foll.; 5 Cal. 148; 10 Cal. 626, Ref. (*Seshagiri Aiyar and Phillips*, JJ.) AUDIMULA MUDALI *v.* ALAMELAMMAL. **(1916) 2 M.W.N. 115 = 36 I.C. 365 = 4 L.W. 126.**

———*Alienation — Co-parcener — Sale of — Whole interest in the joint family—Proof—No disruption of status.*

Per *Moore*, J. (*Sadasiva Iyer*, J. *Contra.*)—When a father alienates his share in the whole of the family properties, he continues to be a member of the joint family even with sons subsequently born, but the latter can claim no share, no property being in existence at the dates of their birth. 22 I.C. 555; 25 I.C. 585; 34 Cal. 372, Appr (*Sadasiva Aiyar and Moore*, JJ.) SOUNDRARAJAN *v.* SARAVANA PILLAI. **34 I.C. 794 = 30 M.L.J. 592.**

———*Alienation—Co-parcener — Agreement to sell—Specific performance.*

Specific performance of a contract entered into by one deceased member can be enforced against surviving members. (*Coutts-Trotter and Seshagiri Aiyar*, JJ.) NOCHAT KIZHAKKE MADATHIL VENKATESHWARA IYER *v.* KALLORE ALI ILLATH RAMAN NAMBUDRI. **3 L.W. 435 = 33 I.C. 696 = 19 M.L.T. 329.**

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———*Alienation — Co-parcener — Specific property—Rights of alienee in suit.*

If, in a partition of the family property, the alienated property, could have been allotted to the alienor without injustice to the other co-parceners, the alienee of specific properties from a co-parcener, can be given possession of the properties purchased by him and the alienor should be muleted to that extent of his share. (*Sankaran Nair and Tyabji*, JJ.) SENCHURAMA NAIDU *v.* ANNAPURNI AMMAL. **30 I.C. 79.**

———*Alienation—Co-parcener.*

A co-parcener cannot alienate any specific property belonging to the joint family so as to entitle the alienee to that property. All that the alienee gets is to intervene in a partition suit and see the equities are so adjusted that the properties alienated fall to the share of the alienor. (*Sankaran Nair and Spencer*, JJ.) DUVUR SUBBA REDDI *v.* KAKUTURU VENKATARAMA REDDI. **38 Mad. 1187 = 26 I.C. 983 = 16 M.L.T. 370.**

———*Alienation — Co-parcener — Rights of alienee—Mesne profits.*

An alienee from a co-parcener of his undivided share in the joint family property does not obtain a vested interest in the properties purchased by him and cannot claim past mesne profits from the other members of the family from the date of purchase to the date of suit. His remedy is a suit for partition. 28 Bom. 201; 25 Mad. 690; 35 Mad. 47; 23 M.L.J. 64, Dist; 26 M.L.J. 576, Foll; 5 Cal. 148, P.C.; 10 Cal. 626 (P.C.) and 40 Cal. 966 (P.C.), Ref. (*Wallis*, C.J. *and Kumaraswamy Sastri*, J.) MAHARAJA OF BOBBILI *v.* VENKATARAMANUJULU NAIDU. **39 Mad. 265 = 16 M.L.T. 181 = 25 I.C. 585 = 27 M.L.J. 409.**

———*Alienation—Co-parcener — Transferee from—Adverse possession.*

A transferee from a Hindu co-parcener of his interest cannot claim adverse possession against the other members of the family. (*Ayling and Tyabji*, JJ.) MUTHU KRISHNA IYENGAR *v.* SANKARA NARAYANA IYER. **16 M.L.T. 196 = 1 L.W. 699 = (1914) M.W.N. 708 = 23 I.C. 573 = 27 M.L.J. 600.**

[This view is open to question.]

———*Alienation—Co-parcener — Rights of alienee—Usufructuary mortgage by one co-parcener—Rights of mortgagee.*

A usufructuary mortgagee from one co-parcener is entitled to a decree for joint possession along with the others. Per *Napier*, J.:—He is not entitled to a decree for joint possession. He is only entitled to a declaratory decree and he must work out his rights by a partition suit. (*Oldfield and Napier*, JJ.) KOTA BALABHADRA PATRO *v.* KHETRA DOSS. **25 I.C. 401 = 16 M.L.T. 229.**

[*See* On Appeal 31 M.L.J. 275 = 36 I.C. 801 = 4 L.W. 99.]

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———*Alienation — Co-parcener—Rights of alienee.*

If the alienation is not binding on the family the alienee acquires the interest of the alienor at the date of the alienation without any increase or decrease by subsequent changes in the joint family. 35 Mad. 46 Ref. (*Wallis, J.*) SITARAM NAIDU v. BALAKRISHNA NAIDU.
26 M.L.J. 604=22 I.C. 633=15 M.L.T. 78.

———*Alienation — Co-parcener — Effect—Division in status.*

An alienee from a co-parcener of some items of the family property has no right to sue for partition and allotment to him of his share of those items irrespective of the rights of others. 20 Cal. 533; 24 All. 483; 28 Bom. 201; 11 B.H.C.R. 72 Appr. Nor has he a right to possession or the status of a tenant-in-common though he might have obtained symbolical possession in execution of a decree against one co-parcener. 5 Cal. 148; 10 Cal. 626 Foll. A transferee gets only an equity i.e., right to partition and the transferor remains a member of the family until partition is effected. The alienee may sue for general partition. 34 Mad. 269 Appl. (*Sankaran Nair and Bakewell, JJ.*) NANJAYA MUDALI v. SHANMUGA MUDALI. **38 Mad. 684=26 M.L.J. 576=15 M.L.T. 186=22 I.C. 556=(1914) M.W.N. 358.**

———*Alienation — Co-parcener — Partial necessity.*

Where one co-parcener sues to set aside a sale made by another and it is found that part only of the consideration money was binding on the family he can recover his share on payment of his share of that part of the purchase money. (*Sadasiva Aiyar and Spencer, JJ.*) SUBBAIYA MUDALIAR v. THULASI MUDALIAR **14 M.L.T. 537=1 L.W. 66=22 I.C. 44=(1915) M.W.N. 16.**

———*Alienation — Co-parcener — Setting aside—Binding nature of—Part of consideration—Nature of decree to be passed in suits by other members.*

In cases where an undivided member of a joint Hindu family sells certain ancestral property for a consideration of which a certain portion is held to be binding on the family, the member who seeks to have the sale declared not valid and binding cannot get a decree for recovery of his share, unless he pays his share of that portion of consideration held binding on the family. The principle is that consideration for the sale must be distributed over the shares of the members in proportion. 30 Mad. 89 Not foll. (*Sundara Aiyar and Sadasiva Aiyar, JJ.*) VADIVALAM PILLAI v. NATESAM PILLAY. **37 Mad. 435=13 M.L.T. 192=23 M.L.J. 256=16 I.C. 835=(1912) M.W.N. 851.**

———*Alienation — Co-parcener — Right of alienee—Joint possession.*

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Alienee of the share of a co-parcener could not be granted joint possession nor could a share be awarded to him. He must bring a suit for general partition. (*Sundara Aiyar and Sadasiva Aiyar, JJ.*) NARAYANA SWAMI NAIDU v. THIRUMALASETTI SUBBAYYA.
24 M.L.J. 79=16 I.C. 698=(1913) M.W.N. 56.

———*Alienation—Co-parcener—Effect of—Severance in status.*

On alienation by a co-parcener of his share in the family property the joint tenancy is put an end to and the co-parceners become tenants-in-common. 35 Mad. 47 Ref. *Quære.*—Whether the transferor co-parcener takes by survivorship or inheritance the share of another co-parcener who dies subsequent to alienation. (20 Mad. 690. 717, Ref.) (*Benson and Miller, JJ.*) SRINIVASA SUNDARA THATHA CHARIAR v. KRISHNASWAMY IYENGAR.
(1912) M.W.N. 579=15 I.C. 354=11 M.L.T. 312.
[This is not good law. *See* 39 Mad. 269=25 I.C. 585 F.B.]

———*Alienation—Co-parcener—Effect of—Partition.*

Where a co-parcener alienates his share in the family property the joint family ownership becomes severed to the extent of the share of the alienating member. But it does not affect the joint ownership of all the members including also the transfer or with respect to the other properties The alienee acquires the share of his alienor as it stood at the date of the alienation. (*Benson and Sundara Aiyar, JJ.*) SUBBA ROW v. ANANTHANARAYANA IYER.
23 M.L.J. 64=14 I.C. 525=11 M.L.T. 393.

———*Alienation — Co-parcener — Right of alinee*—Bona fide *purchaser.*

The equitable lien which a transferee from a co-parcener has over his transferor's undivided share, cannot be enforced against *bona fide* purchasers for value without notice of the undivided interest. 15 All. 339 P.C. 18 Cal. 157 P.C. Ref. (*Sundara Iyer and Spencer, JJ.*) VENKATESA IYENGAR v. KOMALA AMMAL.
(1912) M.W.N. 65=11 M.L.T. 84=13. I.C. 468=22 M.L.J. 212.

———*Alienation — Co-parcener — Alienee's rights—Share.*

Per *Sundara Aiyar*, J.:—An alienee from a co-parcener obtains title to the alienor's share in the property alienated as it was on the date of alienation. (*Abdur Rahim and Sundara Iyer, JJ.*) DORAISAWMI SERUMADAN v. NANDISAWMI SELUVAN. **10 M.L.T. 418=(1911) 2 M.W.N. 450=12 I.C. 698=21 M.L.J. 1041.**
[On appeal 21 I.C. 410=38 Mad. 118.].

———*Alienation—Co-parcener — Rights of alienee—After-born son.*

The mortgagee from a Hindu co-parcener can proceed against the share of a son subsequently born in the family. An alienee of the

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interest of an undivided co-parcener takes the co-parcener's interest as it stood on the date of alienation and is not affected by subsequent births in the family. 14 Mad. 403 not appr. ; 25 Mad. 690 ; 10 Cal. 626 (P C.), 5 Cal. 148 ; Ref. (*White*, C.J., *Benson*, *Munro and Sinkaran Nair*, JJ.) CHINNU PILLAI *v.* KALIMUTHU CHETTI. **35 Mad 47 = 21 M L.J 243 = (1911) 1 M.W.N. 233 = 9 I C 566 = 9 M L T 389 (F.B).**

———*Alienation—Co-parcener—Attachment—Effect of death.*

The death of the member does not affect the rights of the creditor who has attached the share of the deceased in his life-time. (*White*, C.J. *and Ayling* J) MURUGAIYA MUDALIAR *v.* AYYADORAI MUDALIAR. **9 I C 286 = 9 M.L.T. 96.**

———*Alienation — Co-parcener—Gift by—Void.*

A gift even of his own share by an undivided co-parcener is invalid. (*Baker*, J C.) MULLA FAIZ ALI *v.* MT. HARKUAR. **1923 Nag. 334.**

———*Alienation—Co-parcener.*

Per *Dhobley*, *A J.C.*—Alienation for value by co-parcener is valid in C.P. and Berar to the extent of co-parcener's interest though not for legal necessity. (*Kotwal*, *Dhobley and Prideaux* A.J.Cs.) DHADABAI *v.* NARAYAN. **5 N.L.J. 73 = 1921 Nag. 28.**

———*Alienation — Co-parcener—Execution sale of undivided share in ancestral property—Rights of execution purchaser.*

An execution purchaser of an undivided share in ancestral property is not entitled to sue for profits accruing therefrom without first bringing a suit for partition of the share purchased as the auction sale will not effect a division of the ancestral property. (*Macnair*, A.J.C.) SIDH GOPAL *v.* HARI LAL. **59 I.C. 428.**

———*Alienation—Co-parcener—Right of.*

In Central Provinces, an alienation by a co-parcener is valid to the extent of the alienor's own interest in the property. (*Kotval*, A J.C.) SETH KISAN LAL *v.* NATHU. **56 I.C. 44 = 16 N.L.R. 131.**

———*Alienation— Co-parcener — Right of transferee—Central Provinces.*

The equity to enforce a partition in favour of a *bona fide* transferee for value is recognised in Central Provinces in the case of an alienation by co-parcener of his share in the joint family property. (*Findlay*, A.J.C.) NANHUSAC *v.* GANPATI. **53 I.C. 231.**

———*Alienation—Co-parcener—Mortgage of share.*

A co-parcener can mortgage his own share of the family property without any such necessity as is binding on all the other co-parceners. 5 Cal. 148, P.C.; 5 Bom, 48, P.C ; 15 All. 339, P.C.; 39 All. 437, P.C. ; 39 All. 500, P.C., 18 Cal. 157, P.C., Ref. (*Batten*, A.J.C.) BEARI LAL *v.* HUKUMCHAND. **46 I.C. 754.**

———*Alienation—Co-parcener—Sale or gift of a member's share.*

Under the law of the Mitakshara joint family property owned by the members of the family as co parceners cannot be the subject of a gift, sale or mortgage by one co-parcener except with the consent, express or implied of all the co-parceners. Any deed of gift, sale or mortgage granted by one co-parcener on his own account of or over the joint property is invalid and the estate is wholly unaffected by it and it entirely stands free of it. 20 All. 437, Ref. (*Drake Brockman*, J.C.) RAO VINAYAK *v.* LAXMAN. **44 I.C 51 = 14 N L.R. 56.**

———*Alienation —Co-parcener — Alience's right to mesne profits.*

In a suit by an alienee from a co-parcener for partition, he is not entitled to past mesne profits (*Mitra*, A J.C.) AMRITRAO *v.* GOVIND. **21 I.C, 590 = 9 N.L.R. 145**

———*Alienation — Co-parcener — Central Provinces.*

In Central Provinces one co-parcener, may at any time alienate for value, his share of the ancestral undivided estate by private arrangement. (*Drake Brockman*, J C.) HIRA RAM *v.* UDHE RAM. **19 I.C. 861 = 9 N.L.R. 74.**

———*Alienation—Co-parcener—Rights of parcener and his transferee.*

A parcener in a joint Hindu family, can only claim by partition a severence of his own share, and cannot compel the other parceners to make a partition *inter se*. He can, if excluded from the enjoyment of the family properties claim a restoration to joint possession without suing for partition. But a purchaser from a parcener of his share in a specific property cannot get joint possession of the part purchased but must sue for partition of the whole estate. (*Stanyon*, A.J.C.) MOHAN LAL *v.* TEKCHAND. **18 I C. 826 = 9 N L.R. 18.**

———*Alienation—Co-parcener—Consent of other members.*

A sale effected by a member of a joint Hindu family is not necessarily void, but only voidable, if an objection was taken to it by the other members of the joint family; similarly a gift by a member with the consent of the other members of the family is valid. (*Kanhaiya Lal*, J.C.) MAHABIR PANDE *v.* MATHURA PRASAD. **9 O & A L.R 822 = 1924 Oudh 138.**

———*Alienation— Co-parcener—Necessity—Recitals—Effect.*

One member of a Hindu family executed a mortgage. Its recitals do not form by themselves evidence that the deed was executed for

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legal necessity but there must be independent evidence thereto. (*Syed Wazir Hasan*, A.J.C.) RAM NATH v. RAM HARAKH. 10 O.L.J. 243; 9 O. & A.L.R. 857=1924 Oudh. 49.

———*Alienation—Co-parceners—Mortgage by members—Legal necessity—Personal decree.*

Where a mortgage is executed by some members of a joint family but the creditor seeks to enforce the mortgage debt against the mortgagor personally and not against the mortgaged property, the question of necessity does not arise, in the absence of fraud, undue influence or other circumstances which would invalidate the contract. The defendants who entered into the covenant are clearly personally liable and the other defendants are only liable to the extent of the assets of the executants who are dead which have come into their hands. A personal decree could be passed against the sons and grandsons of the deceased executants who had been impleaded on the ground of pious obligation. 41 A. 571; 19 O. C. 159: 39 A. 437, Rel. (*Daniels and Lyle*, A.J.C.) MAHRAJ PRAG DIN v. BHAGWATI SAHAI. 66 I.C. 687=8 O L J. 418.

———*Alienation—Co-parceners—Alienation by some of their share—Subsequent donee from all the co-parceners—Rights of.*

Two out of four cousins who formed a joint family, sold to R. a certain area of revenue paying land belonging to the joint family for Rs. 800. Subsequently after the death of one of the four cousins, the remaining cousins, forming the joint family, made a gift of the entire property in a certain mahal to G. Thereupon G along with other co-sharers of the village sued R for the possession of the area of land sold to him by the two cousins on the basis that the transfer of joint Hindu family property by some members of the joint family only was invalid. *Held*, that G can set up the invalidity of the sale in favour of R and that no condition could be imposed on the plaintiffs to repay the sale price to R before obtaining possession. (*Dalal and Wazir Hasan*, A.J.Cs.) RAGHUBAR PANDE v. GOKUL PRASAD. 65 I.C. 107 (2)=24 O C. 307.

———*Alienation—Co-parcener — Rights of other members—Mortgage.*

A mortgage of joint family property by one member of the joint family is voidable and not void by the others whose rights are invaded. A mortgagee brought a simple money suit on the dismissal of his previous suit for foreclosure on the ground that the mortgaged property is ancestral joint family property. *Held*, that the mortgagee could obtain relief under S. 65, Contract Act even in the absence of a personal covenant in the bond. The said contract having become void in the defence raised by the sons, the consideration failed from the date of the defence in the foreclosure suit and the suit was barred as limitation began to run from the date of the decree. (*Lindsay*, J.C.) SHAMBU v. NAND KUMAR. 58 I C. 963=23 O.C 284.

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———*Alienation—Co-parcener — Rights of alienee.*

An alienation by a co-parcener without the consent of all the other co-parceners is wholly invalid and the estate is wholly unaffected. 39 All. 437; 44 I.C. 51, Rel Silence on the part of co-parceners does not amount to consent so as to validate an alienation by a co-parcener. (*Lindsay*, J.C.) NADIR SINGH v. INDRA SINGH. 46 I C. 860=21 O C. 156,

———*Alienation—Co-parcener — Alienation to others—Effect.*

Alienation by one member to remaining members is as valid as a transfer to a stranger with the consent of all. 16 All. 369, Fol. (*Karkaya Lal*, A.J.C.) BISHUN SARUP v. NABI MOHAMMAD KHAN. 42 I.C. 712=20 O.C. 277.

———*Alienation — Co-parcener—Rights of alienee — Partition—Rights of mortgagee — Share converted into cash.*

Transfers of a share in an undivided estate by one co-sharer does not affect the interests of his co-sharers injuriously and where a non-fraudulent division of the undivided shares subsequently takes place the proper course for the transferee to follow is the transmuted security, although in cash, in the hands of his transferor. 16 O.C. 161, Expl. (*Stuart*, A.J.C.) ABDUL WAHAB. v. BASANT LAL. 41 I.C. 413=4 O L J. 386.

———*Alienation — Co-parcener—Power to dispose by will.*

A co-parcener has no power to dispose of ancestral property even though not immoveable by will. 8 M. H. C. R. 6; 16 Mad. 353, Ref. (*Stuart*, J.C. and *Kendall*, A.J.C.) GUR NARAIN v. GULZARI LAL. 1 O L J. 803=25 I.C. 917=17 O.C. 318.

———*Alienation—Co-parcener—Voidable.*

A mortgage by a member of a joint Hindu family is not void but simply voidable at the instance of other members. (*Lindsay*, A.J.C.) DEBI PRESAD v. SHRO NARAIN. 21 I.C. 581.

———*Alienation—Co-parcener—Effect.*

A co-parcener has no authority to mortgage without the consent of other sharers his undivided share in a portion of the joint family property in order to raise money on his own account. 12 N L.R. 1, (F.B.), Foll. (*Lindsay*, A.J.C.) BINDA PRASAD v. GAYA PRASAD SINGH. 13 I.C. 547.

———*Alienation—Co-parceners—Invalidity.*

Where a co parcener creates a mortgage over joint family properties on his own account the mortgage is invalid even as regards his own share in the family property. (*Das and Adami*, JJ.) DEBI LAL SAH v. NANDKISHORE GIR. 1 P. 266=3 Pat. L T 259=1922 P. 22.

HINDU LAW—Alienation—Co-parcener.

———*Alienation — Co-parcener — Rights of alienee— Mortgagee — Rights of mortgagee— Charge against mortgagor's share.*

A mortgage of the whole or share of the joint family property of a Mitakshara family, unless justified by legal necessity or by an antecedent debt, or assented to by the other members of the family is void and inoperative as against the property and gives the mortgagee no rights even against the mortgagor's undivided share. Where, however, the mortgagor's share has been separated from that of the other members of the family an actual partition by metes and bounds not being essential for this purpose or where the share has by legal process been attached or sold at the instance of the creditor it may become available as security for the mortgage-debt. In special circumstances where the property has already passed into the hands of the mortgagee, the Court, if satisfied that the equities of the case require it, may, in its discretion, set aside the alienation upon the terms that the property when restored shall be held separately, the share of the mortgagor being subject to the lien for the mortgage debt and interest. (*Miller and Mullick*, JJ.) AMAR DAYAL SINGH *v.* HARA PRASAD SAHU.
1 P.L.T. 511=58 I.C. 72=6 P.L.J. 605.

———*Alienation— Co-parcener—Necessity— Expenses of defending in criminal case.*

A member of a joint Mitakshara family is entitled to use the family funds in repelling a criminal charge made against him. (*Das and Coutts*, JJ.) PREM SUKH DAS *v.* RAM BUJHAWAN MAHTO. **1 P.L.T. 34=52 I.C. 964= 1919 Pat. 451.**

———*Alienation — Co-parcener — Alienee's rights.*

A mortgagee of an undivided share in joint property is bound by a partition of the property amongst the co-sharers and if the property mortgaged to him does not form part of the share of his mortgagor, he can only look to the share of the joint property which his mortgagor gets as a substitute, for the security of his mortgage debt. 1 I.A. 106, Foll.; 24 All. 483; 20 Cal. 533, Ref. (*Atkinson*, J.) BARHAMDEO NARAYAN *v.* HAJARI LAL.
39 I.C. 586.

———*Alienation—Co-parcener — Undivided share — Execution sale of member's share— Distinction—Suit by purchaser for possession in both cases—Maintainability.*

One member of a Hindu joint family cannot by a deed transfer his undivided share in the family property or give the transferee the right to apply for partition; but where in execution of a decree the undivided interest of a member of a joint Hindu family has been put up for sale, the purchaser can sue for partition of the interest purchased. (*Chamier*, C.J. *and Roe*, J.) SOMAN KOERI *v.* RAM KINKER DAS.
1 P.L.W. 16=38 I.C. 222= 1917 Pat. 128.

HINDU LAW—Alienation—Father.

———*Alienation—Co-parcener — Charge— Creation of—Effect.*

A charge created by a co-parcener on his share of the property without necessity cannot survive him. (3 B.L.R. 31; 5 Cal 855; 18 Cal. 157; 19 C.W.N. 849, Ref.; 3 Cal. 198; 5 Cal. 148 Ref. (*Roe and Jwala Prasad*, JJ.) JWALA PRASAD *v.* PROTAH UDAI NATH SAHI DEO.
1917 Pat. 27=2 Pat. L.W. 406= 37 I.C. 184=1 Pat. L.J. 497.

———*Alienation — Co-parcener—Rights of alienee—Mortgage—Equity.*

Under the Hindu Law as administered in the Punjab the interests of a co-parcener cannot be sold for consideration. But a mortgagee has an equity against the interest of the mortgagor. The manager of the family can alienate the coparcenary property for necessary purposes. If the manager happens to be the father he can alienate family property to discharge antecedent debts *i.e.*, debts previously incurred wholly apart from the security afforded by the joint family estate. (*Pipon*, J.C.) BHAGAT SINGH *v.* RAM PARKASH.
69 I.C. 602.

———*Alienation — Co-parcener—Rights of alienee—Mesne profits.*

Per *Crouch*, A.J.C.:—In case where an undivided member of a co-parcenary purports to sell a particular parcel of the joint estate he can only transfer such interest, right and title as is actually vested in him. The alienee is neither entitled to joint possession nor to partial partition; and the only right he acquires is a right to compel general partition as his vendor might have compelled and an equity to have the particular property, he purchased, allotted, if possible, to his share. 11 B.H.C.R. 76 and 28 Bom. 201, Ref. The possession of a transferee from a Hindu father under a deed is not unlawful until repudiation. 45 I.C. 284 (P.C.), Ref. But even afterwards mesne profits are not to be awarded as of right but only as damages in the discretion of the Court. 39 All. 61, Ref., 23 M.L.T. 243, Dist. (*Pratt*, C.J. *and Crouch*, A.J.C.) DULARAM RINIOMAL *v.* BADALDAS JAMIATRAI.
88 I.C. 478=10 S.L.R. 34.

Alienation—Father.

———*Alienation — Father—Manager can mortgage joint property for moral purposes or to pay antecedent debt.*

(1) The managing co-parcener of a joint undivided estate cannot alienate or burden the estate qua manager except for purposes of necessity; but (2) if he is the father and the reversioners are the sons he may, by incurring debt, so long as it is not for an immoral purpose, lay the estate open to be taken in execution proceeding upon a decree for payment of that debt; (3) if he purports to burden the estate by mortgage, then unless that mortgage is to discharge an antecedent debt it would not bind more than his own interest. (*Sahu Ramchandra* v, *Bhup Singh*).

HINDU LAW—Alienation—Father.

44 I.A. 126, *Dist.* (4) Antecedent debt means antecedent in fact as well as in time; that is to say, that the debt must be truly independent and not part of the transaction impeached. (5) There is no rule that this result is affected by the question whether the father, who contracted the debt or burdens the estate, is alive or dead. (*Lord Dunedin*). RAJA BRIJ NARAIN RAI *v.* MANGLA PRASAD RAI
21 A L J. 934 (P.C.) = 46 M L.J. 23 = 19 L W 72 = 33 M L T (P.C.) 457 = 46 A. 95 = 51 I A. 129 = 5 L.R P.C. 1 = 28 C.W.N. 252 = 3 P.L T. 1 = 2 Pat. L.R. (Civ.) 41 = 1924 P C. 50 = (1924) M W.N. 68.

———*Alienation—Father—Invalid mortgage is not good consideration for later sale.*

A mortgage of joint family property which is invalid on that date, cannot become a just and legal consideration for a later sale, on the principle of antecedent debt. The antecedency should be one not only in time but in fact. Case law referred to. The doctrine of pious obligation cannot be invoked against grandsons when the sons are alive. (*Lord Shaw*). CHET RAM *v.* RAM SINGH. 44 All. 268 = 43 M.L.J 98 = L.R. 8 P.C, 141 = 27 C.W.N. 150; 24 Bom L R. 1231 = 16 L.W. 89 = 31 M L T. 50 (P C.) = (1922) M.W.N. 466 = 4 U.P.L.R. (P.C.) 64 = 3 P.L.R. (P.C.) (1922) = 3 Pat. L T 363 = 49 I.A. 228 = (1922) P.C. 247 (P.C.).

———*Alienation—Father—Mortgage—Necessity—High rate of interest—Immorality—Onus of proof—Mortgage not for necessity—Liability of share of mortgagor.*

Under the Hindu Law the sons challenging mortgages effected by their father on the ground of immorality must prove that the money was borrowed for immoral purposes. The legal necessity for the loan as well as for the high rate of interest stipulated for is to be proved by the plaintiff mortgagee in the absence of proof of which the rate cannot stand. Where the mortgagee fails to prove justifying necessity, no decree can be passed even against the manager mortgagor as the transaction is altogether void. (*Lord Phillimore*, J.) MANA LAL *v.* KARRU SINGH. 56 I.C. 766 = 1 Pat. L.T. 6 (P.C.)

———*Alienation—Father—Setting aside—Son's suit to set aside—Mesne profits—Conditional decree.*

The possession of a transferee from a Hindu father under a sale deed which was set aside on condition of the son's paying a certain sum of money to the vendee (representing the antecedent debts binding on the son) could not be said to be unlawful while the deed stood and no mesne profits could be awarded against him. (*Lord Phillimore.*) BANWARI LAL *v.* MAHESH.
41 All. 68 = 49 I C. 840 = 21 C.C. 328 = 23 C.W N. 877 = 6 O L J. 163 = (1919) M.W.N. 490 = 45 I.A. 264 (P.C.).

HINDU LAW—Alienation—Father.

———*Alienation—Father—Decree against—Sale of right and interest of father in execution—Right acquired by purchaser—Son's interest in property if and when will pass.*

The rules that a sale of family property in execution of a decree obtained against a Hindu father for debts which are neither illegal nor immoral involves the sale of the interest of his son or sons, therein does not always apply. The creditor's conduct for example may evidence his intention not to proceed against the interest of the son or sons. This is peculiarly so where the form of his proceedings point to an election to seek execution against his own debtor's interest and no further. Where the certificate of sale recited that the decree-holder has bought "the right and interest of the judgment-debtor (the father) to be allotted by division". *Held* that there was strong indication of an intention to proceed against the father's interest only. (*Lord Sumner*) RADHA KRISHNA CHANDERJI *v.* RAM BAHADUR.
16 A L.J. 33 = 43 I C. 268 = 23 M L.T 26 = 4 P.L.W. 9 = 34 M L J. 97 = 7 L.W. 149 = 22 C.W.N. 330 = 27 C.L.J. 191 = (1918) M.W.N. 168 = 20 Bom. L R. 501 (P.C.).

———*Alienation—Father—Necessity, absence of—Sons, whether bound.*

The joint property of a Mitakshara Hindu family cannot be alienated as against co-sharers by way or mortgage or otherwise except for necessity, or for the payment of an antecedent debt, quite distinct from the debt, incurred in the mortgage itself, and the sons of the mortgagor are not bound by any such alienation and there is no pious obligation to pay any such debt. (*Viscount Haldane*) JOGI DAS *v.* GANGA RAM. 21 C.W N. 957 = 42 I.C 791 = (1917) M.W.N 739 (P C.)

———*Alienation—Father—Decree against—Execution sale—Son's interest passes—Debt not immoral or illegal—Sale of right, title and interest.*

Under the Mitakshara Law a judgment against the father alone can always be executed against the whole joint family property except where the debt in respect of which the judgment was obtained was incurred for illegal or immoral purposes. The words "right, title and interest of the judgment-debtor (father)," in the sale certificate do not necessarily import that when the father is the judgment-debtor, nothing but his share of the joint family property is sold. There is no reason why the execution creditor should be deprived of his undoubted rights by such a narrow construction. In cases of this kind the substance and not the technicalities of the transaction should be regarded. Having regarded to the conduct of the sons in the case and to the price paid by the execution creditor, who purchased the property, it was held that the intention was to sell the whole property including the interest of the

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——— *Alienation — Co-parcener — Rights of alienee— Mortgagee — Rights of mortgagee— Charge against mortgagor's share.*

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——— *Alienation—Father—Necessity against cedent debts—What are.* ...his

Under the Mitakshara Law the joint family property, which is owned by all the members of the family, as co-parceners, cannot be the subject of a gift, a sale or mortgage except with the consent, express or implied, of all the other co-parceners. The father as manager and head of the family can sell or mortgage the property so as to bind his sons, for family or estate necessity. The principle in regard to this is analogous to the power vested in the head of a religious endowment or mutt or in the guardian of an infant. The father can also validly alienate the joint family property to discharge a debt which was really antecedent to the alienation (*i.e*) which was incurred wholly apart from the security of the joint family property and which is not proved to have been incurred for immoral purposes. The doctrine of *onus probandi* in cases where legal necessity is urged, is based largely upon the necessity of protecting the rights of third persons. Where a mortgagee sued on a mortgage granted 27 years before at an exhorbitant rate of interest, and nothing had been done in the interval, the onus of proving its binding nature as against the sons was rightly laid on the mortgagee. 6 M.I.A. 393, Ref. (*Lord Shaw*) SAHU RAM CHANDRA *v.* BHUP SINGH. **39 All 437 = 14 I.A. 176 = 21 C.W.N. 698 = 1 P L W. 151 = 15 A.L.J. 437 = 19 Bom. L R. 498 = 26 C L J 1 = 33 M L J 14 = (1917) M W N. 439 = 22 M L T. 22 = 39 I C 280 = 6 L.W. 213 (P.C.)**

———*Alienation—Father—Setting aside — Suit by son for recovery of property—Limitation—Form of decree—Equities — Rights of sons subsequently born.*

A Mitakshara father became solely entitled to the ancestral properties by survivorship but allowed his uncle's widow to adopt a son and subsequently put the adopted son in possession of specific family properties. The sons, the eldest of whom was born before the alienations brought a suit questioning the validity of the adoption and the allotment to the adopted son and for recovery of the properties so alienated. *Held*, that it was in substance a suit to set aside the father's alienation under Art. 126 of the Lim. Act treating the adopted son as a stranger, that the eldest son having been born at the date of alienation and attained majority within three years of suit could sue not only on his own behalf but on behalf of subsequently born son who would be entitled to share in the relief if the eldest son succeeded in the suit; that the son was not bound to ask for a partition of the family properties but could sue for annulment of the alienation and joint enjoyment

HINDU LAW—Alienation—Father.

——— *Alienation—Co-parcener — Charge—Creation of—Effect.*

A charge created by a co-parcener on his share of the property without necessity cannot survive him. (3 B.L.R. 31 ; 5 Cal 855 : 18 Cal. 157 ; 19 C.W.N. 849, Ref. ; 3 Cal. 198 ; 5 Cal. 148 Ref. (*Rce and Jwala Prasad*, JJ.) JWALA PRASAD *v.* PROTAH UDAI NATH SAHI DEO. **1917 Pat. 27 = 2 Pat. L.W. 406 = 37 I.C. 184 = 1 Pat. L.J. 497.**

—*Alienation — Co-parcener—Rights of ...rtgage—Equity.*

...n Law as administered in ... of a co-parcener ... But a

——— *Alienation—Father—Small por... of consideration not binding—Sale must be upheld—Necessity — Onus of proof— Effect of pre-emption.*

If, in a suit by a son challenging his father's alienation, on the ground that the consideration is not binding, the Court finds that the amount of the consideration, for which legal necessity has not been established, is trifling and can be overlooked, the sale must be upheldy but otherwise it must be set aside. The Court should also see if the amount covered by legal necessity could have been raised without the alienation in question. The onus of proving legal necessity or inquiry enough to satisfy a prudent man that the necessity did exist, lies on the creditor in the first instance, in a suit, questioning an alienation by the father of a joint Hindu family, brought by the son; and that the onus is not affected by the fact that a pre-emption has taken place and that it is the pre-emptor himself against whom the relief is claimed. (*Daniels*, J.) CHANDRIKA SINGH *v.* BHAGWAT SINGH. **4 L.R.A. (Civ.) 545 = 1924 All. 170.**

———*Alienation— Father— Mortgage by— Public auction-sale—Rights of parties.*

Where joint family property went either under a conveyance executed by the father in consideration of an antecedent debt or a sale in execution of a decree against the father, the sons cannot recover the property so long as they do not show that the debts were contracted for immoral purposes and the purchasers had notice of the same. Where the sale was a public auction-sale and the sons could safeguard their rights if they had taken steps in time, they cannot afterwards question the rights of the purchaser by challenging the validity of the original mortgage executed by their father. (*Kanhaiya Lal*, J.) JADUBIR *v.* GAJADHAR. **21 A.L.J. 809 = 5 L.R.A. (Civ.) 58 = 1924 All. 169.**

———*Alienation—Father—Necessity—Onus— Antecedent debt—Suit by son to set aside alienation.*

To lay down a general proposition of law that in every case where a Hindu son brings a suit to recover possession of properties from the transferees from his father the burden lies on him to prove that the transfer was without an

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44 I.A. 126, *Dist.* (4) Antecedent debt means antecedent in fact as well as in time; that is to say, that the debt must be truly independent and not part of the transaction impeached. (5) There is no rule that this result is affected by the question whether the father, who contracted the debt or burdens the estate, is alive or dead. (*Lord Dunedin*). RAJA BRIJ NARAIN RAI *v.* MANGLA PRASAD RAI

21 A L J. 934 (P.C.) = 46 M L.J. 23 = 19 L W 72 = 33 M L T (P.C.) 457 46 A. 95 = 51 I.A. 129 = 5 L.R. GOKUL 28 C.W.N. 252 = L.J. 659 = 2 Pat. L.R. (Civ. 698 = 1924 All. 37.

——*Son—Father — Son's rights— sale.*

It is only when joint family property has passed out on account of an antecedent debt or sold by public auction that the sons cannot challenge the alienation unless they show the debt was tainted with immorality. Where the sale is not at a public auction, the alienee has to justify the alienation by showing antecedent debt or legal necessity. (*Lindsay and Sulaiman, JJ*) SAHEB SINGH *v.* GIRDHARI LAL.

45 A. 876 = L R 4 A. 284 = 1924 All. 24.

——*Alienation—Father— Necessity—Pressure—Existence of debts*

In order to justify an alienation made by the father of a joint Hindu family it is not sufficient in law to show that at the time of the alienation debts binding on the family were outstanding. It must be further shown that the alienation had to be undertaken under the pressure of a present necessity for the discharge of the debts. The power of the father to charge the estate can only be exercised rightly in case of need or for the benefit of the estate. The actual pressure on the estate, the danger to be averted or the benefit to be conferred upon it in the particular instance, is the thing to be regarded. These observations apply to a mortgage as well as a sale. (*Rafique and Lindsay, JJ.*) BANDHU RAM *v* RAM KISHUN SONAR. 21 A L.J. 884 = L. R. 4 A 406 = 1923 All. 535.

——*Alienation—Father—Suit by son to set aside—Form of decree—Consideration partly binding*

Where a Hindu son sues to set aside an alienation of ancestral property made by his father on the ground that it is not binding upon him and the Court finds that out of the sale consideration, a portion was not required for family necessity the plaintiff would be entitled to a decree for possession subject to his re-imbursing the purchaser to the extent to which the sale was a valid sale. The form of decree in a case of this kind should, therefore, be a decree for possession in favour of the plaintiff subject to his paying to the purchaser so much of the consideration as was required for the necessity of the family. (*Mears, C J. and Banerji, J.*) DWARKA RAM *v.* JHULAI PANDE. 45 A. 429 = 9. C & A.L.R. 494 = 1923 All. 248.

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——*Alienation—Father—Decree against—Sale of right and interest of father in execution—Right acquired by purchaser—Son's liability in property if and when will pass—*ing neces-

The rules that a sale years later some of execution of a decree of the mortgage and father for debt other executant renewed the immoral the consideration for the mortgage being the original mortgage-deed. In the interval between the first and the second mortgage, several sons had been born to the executants of the mortgage. *Held*, that the sons who had been born subsequently to the first deed of mortgage could not question the binding character of the transaction. 33 A, 283 44 A. 193. Ref (*Mears, C. J. and Piggott, J.*) PARTAB SINGH *v.* BOHRA NATH.

45 All. 49 = 1923 All. 197.

——*Alienation—Father—After born son—Right to set aside alienation.*

A mortgage of joint family property was made by a Hindu father without the consent of his only son who shortly after brought a suit for a declaration that the mortgage was not binding on the family property. Prior to the decision of this suit, another son was born.

Held, in proceedings by the mortgagees to enforce their rights under the mortgage that as the alienation was made by the father without the consent of the son then alive, who also promptly challenged it, the after-born son was also entitled to contest the validity of the mortgage; also that his interests were quite separate from those of his elder brother and hence he was not bound by the decision in the prior suit. (*Rafique and Lindsay, JJ.*) BHUP KUAR *v.* BALBIR SAHAI.

44 A. 190 = 19 A. L J. 978 = 1922 All. 842.

——*Alienation—Father—Gift to idol.*

A gift by a father of a small portion of the family property in favour of an idol for pious religious purposes is valid though not made "during season of distress." (*Mears, C.J. and Banerji, J.*) THAKURJI *v* NAND AHIR.

43 All. 560 = 19 A.L J. 580 = 63 I.C. 516 = 3 U P.L R. (A) 75.

——*Alienation—Father— Consideration—Small part, for legal necessity—Effect of.*

In a suit by a son to set aside an alienation by the father of joint family property, where only as small portion of the consideration is found for legal necessity, the sale could be set aside on payment to the vendee of the small sum and the vendee has no charge upon even the alienor's share, for the rest of the consideration. (*Lindsay and Kanhaiyalal, JJ.*) RAM SAHAI *v.* PARBHU DAYAL. 63 I.C 358 = 19 A.L.J. 687.

——*Alienation—Father—Necessity, burden of proof.*

A father as manager has no general right to sell or mortgage joint family property though the money raised by it is used by him for some profitable business. The person seeking to

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support such disposition must prove the necessity for it. (*Piggott and Gokul Prasad, JJ.*) GANGA PRASAD *v.* RAM SARUP. **60 I.C. 68.**

——*Alienation—Father—Antecedent debts—Son's liability.*

An alienation of a joint ancestral property by a Hindu father to satisfy an antecedent debt binding on him and which would be son's pious duty to pay is binding on the son. (*Piggott and Walsh, JJ.*) MAN SINGH *v.* GAINI. **40 All. 77=43 I.C 62=16 A.L J. 860.**

——*Alienation — Father—Legal necessity—Improvements effected by vendee—Sale set aside by sons—Form of decree.*

Taking a mortgage by selling family property is not for the benefit of the family and the alienor's sons were held entitled to the property along with inseparable improvements in the house but without costs of suit. (*Banerjee and Ryves, JJ.*) CHARANJI LAL *v.* GANGA RAM. **42 I.C. 670=15 A.L J 763.**

——*Alienation—Father — Setting aside—Sale not for antecedent debt or for necessity Son's rights—Decree directing refund.*

A Hindu father's sale of family property not for an antecedent debt or for legal necessity entitled sons to recover the property without paying back the amount paid by the purchaser to the father, since it cannot be regarded as a debt of the father until the sale has been set aside. 11 Cal. 396, Diss. (*Banerjee and Piggott, JJ.*) MADAN GOPAL *v* SATI PRASAD. **39 All. 483=40 I.C. 451=15 A.L J. 426.**

——*Alienation — Father — Interest — Burden of proof.*

A Hindu father executed a mortgage of family property, bearing interest at 18 per cent with six monthly rests in lieu of a common pro-note carrying interest at 6 per cent. *Held*, (Per *Walsh*, J.) Courts ought to apply the strict law and that the rate of interest should not be reduced on the ground that the rate charged is in itself an evidence of undue influence or fraud. *Held*, (Per *Sunder Lal*, J.) that it was for the creditor to show that it was necessary to borrow the money at an exorbitant rate of interest. (*Walsh and Sundar Lal, JJ.*) PADAM SINGH *v* RAM RUP. **36 I.C. 217=14 A.L.J. 772.**

——*Alienation—Father— Setting aside—Rights of purchaser—Mesne profits.*

Where a sale made by a father and manager of a joint Hindu family without legal necessity is repudiated and set aside by his sons by a suit, the purchaser is liable for mesne profits from the date of the suit as he holds and continues in possession at his own risk from that date. The institution of the suit is a repudiation of the sale. (*Walsh and Sundar Lal, JJ.*) BHIRGEE NATH *v.* NARSING TEWARI. **39 All. 61=35 I.C. 475=14 A.L.J. 1161.**

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——*Alienation—Father—Setting aside—Subsequent born son.*

A Hindu having a minor son alienated properties and the son did not take steps to set aside alienations within three years of his attaining majority. *Held*, that the sons born to the latter after his claim was barred had no right to dispute the sale by the grandfather as the property ceased to be joint family property at the time of their birth. (*Banerjee and Walsh, JJ.*) LACHMI NARAIN PRASAD *v.* KISHAN KISHORE CHAND. **38 All. 126=33 I C. 913=14 A L J. 25.**

——*Alienation—Father—Consent of son—Attestation.*

If there is no legal necessity for the sale by a Hindu father the son could contest the alienation. Though the powers of a Hindu father as manager of the joint family were extensive, they did not extend to the alienation of joint ancestral family property otherwise than for legal necessity It is doubtful whether consent could be rightly inferred from mere attestation in the absence of other evidence, (*Piggott, J.*) PACHKAURI RAUT *v* RAM KHELAWAN CHAUBE. **29 I.C. 749.**

——*Alienation—Father—Son in mother's womb, if can contest.*

A son in his mother's womb is competent to contest an alienation made by his father while he was in the womb. 16 Mad. 76; 27 M.L.J. 580, Foll.; (1869) W.R 340, Not foll, 11 W.R. 11 (P.C.), Ref. to, (*Richards, C.J. and Banerjee, J.*) DEO NARAYAN SINGH *v* GANGA PRASAD. **37 All 162=26 I.C. 571=13 A.L J. 69.**

——*Alienation—Father—Setting aside—Estoppel.*

Where joint family property is mortgaged by one co-parcener his sons are estopped from urging that the property did not belong solely to mortgagor. (*Banerjee and Chamier, JJ.*) SHIAM SUNDER *v.* BUDDHU LAL. **24 I.C 252=12 A.L.J. 794.**

——*Alienation— Father — Necessity—Decree on mortgage—Death of father.*

Where a Hindu father mortgaged a portion of the family property and the mortgagee obtained a decree on the mortgage, and the father died subsequent thereto, *held*, that not even the father's share could be sold in execution of the decree, 31 All, 176, Foll. (*Piggott, J*). ALI AHMAD *v.* SOHANLAL. **24 I.C. 6=12 A.L J. 613.**

——*Alienation—Father—Setting aside—Sons entitled to set aside—Part of consideration—Terms of decree*

A son in a joint Hindu family can ask for the setting aside of an alienation made by the father unless the consideration for the alienation is an antecedent debt or the debt was incurred for legal necessity, but in such cases the alienation can be set aside on payment of such part of the consideration as was for antecedent debt. (*Rafique and Piggott, JJ.*) RAM DYAL *v.* SURAJ MAL. **23 I.C. 891.**

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———*Alienation—Father—Setting aside—After-born son.*

An after-born son of a Hindu cannot challenge a mortgage executed before his birth as having been incurred for immoral purposes. (*Richard and Piggott, JJ.*) NARAYAN DAS *v.* HARDIAL. **35 All. 571=21 I.C 830=11 A L J. 941.**

———*Alienation—Father—Legal necessity—Who can avoid sale—Rights of purchaser of share.*

An auction-purchaser of the right of the father alone in joint family property mortgaged by the father is not entitled to raise the plea of want of legal necessity so long as there are sons to challenge his purchase. 11 I.C. 240. Dist. (*Griffin and Chamier, JJ.*) BAKHSHI RAM *v.* UDILADHAR. **35 All 353=21 I C 619=11 A.L J. 871.**

———*Alienation—Father—Mortgagee of the family—Duty of.*

The mortgagee of a joint Hindu family is bound to inquire into and satisfy himself as to the legal necessity of the loan, cannot simply rest satisfied on the mere statement of the mortgagor that there were antecedent debts for which the money was borrowed. (*Lyle, J.*) TRIBENI PRASAD *v.* RAM NARAIN. **20 I.C. 951=11 A.L.J. 713.**

———*Alienation—Father — Consent—Presumption.*

In the absence of any evidence either way, consent of a co-parcener to a mortgage by his father might be presumed from long inaction with knowledge of the mortgage till the mortgagee sues on it. 33 All. 283. Foll. (*Karamat Husain and Chamier, JJ.*) KAMTA PRASAD SINGH *v.* SIDH NARAIN SINGH. **14 I.C. 251.**

———*Alienation—Father—Sale in execution of decree—Sons not parties—Son's right to redeem.*

Per *Karamat Husain, J. Chamier, J.*) dissenting.) In execution of a decree obtained on a mortgage executed by a Hindu father which is binding on the sons, the joint family property was brought to sale. *Held*, the sons who were not parties to the suit are entitled to redeem it, for, though the private sale by a father and a Court-sale by auction is binding on the sons owing to the pious duty to pay the father's debt, yet the auction-sale cannot extinguish the right of redemption. (*Karamat Husain and Chamier, JJ.*) BAL DEO SINGH *v.* HIRA LAL. **13 I.C. 951=9 A L J. 67.**

———*Alienation—Father — Interest—High rate—Burden of proof—Creditor—Delay in suit.*

It is for the creditor suing on a mortgage by an ancestor, the defendants (his descendants) to prove that there was necessity for borrowing at the high rate stipulated in the bond and if he fails to show the necessity, the Court can reduce the rate especially when the suit is filed after a long time. (*Richards, C J. and Banerjee, J.*) NANDRAM *v.* BHUPAL SINGH. **34 All. 126=13 I.C. 5=8 A.L.J. 1294.**

———*Alienation—Father—Liability of sons.*

Sons of a father in joint family are bound by their father's alienation effected to pay off antecedent and not immoral debts. They cannot impeach it saying that they were not parties to it. (*Knox and Piggott, JJ.*) SHEO DAYAL *v.* JAGANNATH. **12 I C. 111=8 A.L J. 922.**

———*Alienation—Father — Antecedent debt—Family necessity—Liability of sons.*

Where a mortgage is executed by the father in lieu of an antecedent debt it binds the sons and it is not necessary to prove that the antecedent debt was for family necessity. If the debt in lieu of which the mortgage was executed is a debt which is not for the first time incurred at the time of the mortgage but a debt which existed prior to and independently of such mortgage and was *bona fide* debt, that is, was not a debt colourably incurred for the purpose of forming the basis of a subsequent mortgage or other similar subject, that would be an antecedent debt sufficient to bind his sons and grandsons. Evidence of general immorality and extravagance is not sufficient to enable a son of his pious liability to pay his father's debt unless he could show that the debt was incurred for an immoral purpose. (*Richards, C.J. and Banerjee, J.*) BHAGAWATI PRASAD *v.* GANGA PRASAD. **11 I.C. 930=8 A.L J 649.**

———*Alienation—Father — Necessity — Inquiry.*

A father of a Hindu joint family governed by Mitakshara cannot execute a mortgage of the joint family property so as to bind his sons where the loan is not obtained for the family necessity, or to meet an antecedent debt. 31 All. 176, Ref. The mere payment of previous debt is not a sufficient inquiry within the rule in 16 W R 81. (*Karamat Husain and Chamier, JJ.*) BARAN DEO RAI *v.* RUP NARAIN. **11 I C. 651.**

———*Alienation—Father—Antecedent debt—Liability of sons.*

A debt due at one time by the father of a joint family but which is time barred is not an antecedent debt and if the father executes a mortgage in consideration of such debt the mortgage does not bind his sons. (*Knox and Piggott, JJ.*) INDAR SINGH *v.* SARJU SINGH. **11 I.C. 737=8 A.L J 1099.**

———*Alienation—Father — Setting aside—Right of after-born son.*

If the adult co-parceners do not consent to alienation by the father, an after-born co-parcener can impeach such alienation. (*Richards, C.J. and Banerjee, J.*) TULSI RAM *v* BABU LAL. **33 All. 651=10 I C. 908=6 A.L.J. 793.**

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———*Alienation—Father—Antecedent debts—Liability of son's share.*

A mortgage by father of whole joint property is binding it for antecedent debts as against the the son's share in the hands of his widow. (*Karamat Hussain, J.*) SOHINI *v.* MOHAN KUAR. **10 I.C. 228**

———*Alienation—Father — Necessity—Antecedent debt.*

In a suit upon mortgage by an ancestor the mortgagees have only to prove that there was an antecedent debt of the ancestor existing at the date of execution of the mortgage but not the nature of the debt. (*Stanley, C J. and Banerjee, J.*) DHARAJIT *v.* SIRIA. **9 I C. 484**

———*Alienation—Father—Decree against—Execution sale—Effect on son's interest.*

The sale of a certain joint family properties in execution of a decree against the father does not pass the son's share in the property sold. (*Batchelor, O.J. and Kemp, J.*) HANMANDOSS RAM DYAL *v.* VALABHADAS SHANKARDOSS **43 Bom. 17=46 I C. 133=20 Bom. L R. 472**

———*Alienation — Father — Necessity — Time-barred debts—Antecedent debt.*

An alienation to pay a time-barred antecedent debt, does not bind existing son. The alienee can proceed against the father's share as it was at the date of alienation. After born sons do not decrease this share. (*Scott, C.J. and Beaton, J.*) NAKO GOPAL KULKARNI *v.* PARAGOWDA BASA GOWDA. **41 Bom. 347= 39 I.C 23=19 Bom. L R. 69.**

———*Alienation—Father—Sale in execution—What passes.*

There is no rule whether of Hindu or any other law that a person who advisedly buys a fraction of an estate has good title to the whole. If the Court intended to sell more than what might have been sold, no more can pass to the purchaser than what was in fact offered for sale. Where in the conditions of sale a clause is inserted that the interest of the sons is sold in execution in pursuance of Bombay Civil Circular No. 96 R. 15 (1), the interest of the sons does not pass to the purchaser. (*Batchelor and Shah JJ.*) TIMMAPAN DEVARBHATTA *v.* NAR SINGH TIMMAYYA HEBAR; **37 Bom. 631=21 I.C. 123=15 Bom. L.R 794**

———*Alienation — Father—Debts—Execution sale.*

A decree for a personal debt of the father which is not for immoral or illegal purposes may be executed by sale of the whole family estate in his lifetime. (*Scott, C.J. and Batchelor, J.*) DATTATRAYA VISHNU *v.* VISHNU NARAYAN. **36 Bom. 68= 12 I.C. 949=13 Bom. L.R. 1161.**

———*Alienation—Father—Family necessity.*

Family necessity is an expression that must receive a reasonable construction. A reasonable latitude, too, must be allowed for the exercise of a manager's judgment, especially in the case of a father, though this must not be extended so as to free the person dealing with him from the need of all precautions when a minor son has an interest in the property. (*Richardson and Huda, JJ.*) MUKTI PROKASH NANDE *v.* ISWARI DEI DEBI **57 I.C. 853= 24 C.W.N. 938.**

———*Alienation—Father — Decree against father—Suit to set aside.*

In a suit to set aside a sale in execution of a decree against a father, it is open to the plff. to go behind the decree and show the nature of the debt. (*Sanderson, C J. and Mookerjee, J.*) SANT PRASAD SINGH *v.* HARI SINGH. **38 I.C. 161.**

———*Alienation — Father — Setting aside—After-born son.*

An alienation by a Mitakshara father without necessity and without the consent of sons then living would be invalid not only against the latter but also against any after-born son and no consent or ratification by the former after the birth of the latter is binding upon the latter. (*Mookerjee and Beadon, JJ.*) HAZARIMALL *v.* ABANI NATH. **17 C.L J. 38= 18 I C 625=17 C.W.N. 280.**

———*Alienation—Father—Rights of alienee.*

Where on the one hand legal necessity is not proved nor on the other that the debt was for illegal or immoral purposes the mortgagee would be entitled to a decree directing the debt to be raised out of the whole ancestral property. (*Jenkins, C J., and Chatterjee, J.*) BISSOMOTH PRASAD MATITA *v.* BRINDRSRI PRASAD SINGH. **40 Cal. 342=17 I.C 577= 17 C.W.N. 1025.**

———*Alienation—Father—Consideration—Small portion not for necessity—Suit by sons to set aside sale.*

Where the sons of a Hindu father sued to set aside alienations of the family property made by him and it was found that a small portion of the consideration was not a family necessity, *held* that the sales ought not to be set aside as being unnecessary unless it can be proved or reasonably presumed that the sale of a lesser area for the exact amount required for necessity was feasible. (*Martineau and Brasher, JJ.*) GOKHARAM *v.* SHAM LAL. **3 Lah 426= 1933 Lah. 268.**

———*Alienation—Father—Legal necessity—Son's right to impeach.*

In the absence of a finding that a father has been recklessly extravagant, or wantonly wasting his property, the vendee of the property from the father is not required to prove that the previous debts were contracted for necessary purposes; he has only to prove their existence. The son cannot impeach such a sale. (*Martineau, J.*) JAGAT SINGH *v.* GANDA SINGH. **1922 Lah. 801.**

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———*Alienation—Father—Suit by sons to set aside.*

In a suit by a Hindu son to set aside alienations of joint family property by his father, if it is found that the sales are not valid and binding on the family, the plff. would be entitled to a decree that his rights as co-parcener are not affected by the alienation. The decree in favour of the plff. should not be made conditional on his refunding his share of the purchase-money. 39 A. 43 ; 30 A 252 : 53 P.R. 1901, *rel.*; 11 O. 396, Not foll (*Le-Rossignol and Campbell, JJ.*) BADAM *v.* MADHO RAM
2 Lah 338 = 1922 Lah. 241.

———*Alienation—Father—Son's suit to set aside—Form of relief.*

A Hindu son is entitled to set aside an alienation by his father of ancestral property which has not been affected for the payment of an antecedent debt or for any family necessity, 53 P.R. 1901 ; 28 A 328 ; 39 A. 485, Ref. In a suit for possession of the properties so alienated the son is not bound to refund the purchase-money but can claim possession of the property. 11 C. 396 ; 32 I.C. 891 Ref. (*Broadway and Martineau, JJ.*) KALI CHARAN *v.* JAGGU.
67 I C 89.

———*Alienation—Father.*

In the case of sale by father for necessity, sons are not entitled to pre-empt. (*Scott Smith, J.*) SUKHA RAM *v.* KOTU RAM. **67 I.C 76.**

———*Alienation — Father — Necessity—Burden of proof.*

A vendee from the father, in a joint Hindu family must, as against the sons, make out legal necessity as to that part of the consideration which is not in the nature of antecedent debts. Legal necessity and family benefit must be proved positively and cannot be assumed. (*Abdul Raoof and Harrison, JJ.*) LAIK SHAH *v.* DINA NATH. **63 I.C 515.**

———*Alienation—Father—After-born son—Suit by.*

Under the Hindu Law, a son conceived is the same as a son born and if he is born alive, he has a right to challenge alienations and other acts affecting his rights in the joint family property. (*Chevis and Scott-Smith, JJ*) DWARAKA DAS *v* KRISHNAN KISHORE.
2 Lah. 114 = 61 I.C. 628 = 3 Lah. L J. 349.

———*Alienation — Father — Necessity— Antecedent debt.*

Alienation by father is binding on the sons. If the alienation is (1) for family necessity or (2) to discharge an antecedent debt. Such antecedent debts must be real and not a cover for a breach of trust. (*Scott-Smith, J.*) LAJJA RAM *v.* NARINJAN LAL. **45 I C 989 = 101 P.W R. 1918.**

———*Alienation—Father—Debt—Proof of immorality.*

Each item of the consideration need not be proved to have been spent on immoral purposes when it is shown that the alienor at the time of mortgage was indulging in drinking, prostitution and debauchery, and was without any business or occupation upon which the money might legitimately have been spent. 50 P.R. 1919, Foll (*Shah Din and Le-Rossignol, JJ.*) KISHEN SINGH *v.* BHAGWANDAS.
31 I.C. 476 = 98 P.R. 1918.

———*Alienation—Father—Suit by minor sons—Good faith.*

Where in a suit by the minor sons for a declaration that the sale of ancestral property by their father shall not affect their reversionary right after his death, it appeared that the alienor was in need of money for household necessities and took the money in good faith : *Held*, that the question of valid necessity was one of fact in the case and its necessity being proved, the plaintiff's suit must fail. (*Johnstone, C J. and Rattigan, J.*) RAJA *v.* ALLAH DITTA,
112 P W R. 1918 = 110 P.R. 1918 = 29 I.C. 802 (1) = 37 P L.R. 1916.

———*Alienation—Father—Necessity—Careless management—Absence of immoral purpose—Sons bound.*

Where plff. sues his father a Zamindar and an alienee from him for a declaration that the alienation would not bind him, the Court should not expect exceptionally careful management or thrift. It should simply see whether there has been wanton waste or reckless extravagance. (*Johnstone, J.*) BUDH SINGH *v.* BIR LAL. **25 P L.R. 1911 = 9 I.C. 845 = 40 P.W.R. 1911.**

———*Alienation—Father—Necessity.*

Where a father transfers property describing it as his self-acquisition and it is found that the recital was incorrect but that there was necessity of justifying the alienation can be upheld. 34 A. 296 P. C., Dist.; 28 I. C. 365, Rel. (*Spencer and Devadoss, JJ.*) VADAMALAI PILLAI *v.* SUBRAMANIA CHETTIAR. (1923) **M.W.N. 57(2) = 16 L.W. 926 = 1923 Mad. 262.**

———*Alienation—Father—Setting aside——Mesne profits—Liability for.*

In the case of a sale by a father or managing member of a joint Hindu family for alleged necessity, the sale would be good till avoided because it is open to the other co-parceners to affirm the transaction. Consequently in a suit by a co-parcener to set aside the alienation, the plff. will not be entitled to mesne profits before the suit in the absence of a repudiation of the sale before that date. (*Kumaraswami Sastri and Devadoss, JJ.*) SUBBA GOUNDAN *v.* KRISHNAM CHARI. **43 Mad 419 = 42 M.L J. 312 = 30 M L T. 217 = 15 L W. 887 = (1922) M W.N. 269 = 1922 Mad. 112.**

———*Alienation—Father—Suit by son for partition against father and father's alienee—Alienation held not binding on son—Form of decree to be given to the son.*

If in a suit for the partition by a son against his father and an alienee from the father the

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Court holds the alienation not to be binding on the son, the son is entitled to get a decree for his share in the family properties without any condition being imposed on him to refund the consideration paid by the alienee to the father, 39 All. 37; 11 Cal. 396, not foll. Per *Seshagiri Aiyar*, J.—A son is bound to pay only such debt of his father as exist while they are joint; and the son getting a decree for partition becomes divided from his father as from the date of the suit for partition. Any liability of the father to refund the consideration to the alienee arising as the result of the decree for partition is a liability for unliquidated damages and not a debt, and even if it becomes a judgment-debt it is not a debt on the date of a suit for partition. (*Wallis*, C.J. *and Seshagiri Aiyar*, J.) SRINIVASA AIYANGAR *v.* KUPPUSWAMI AIYANGAR. **41 Mad. 801 = (1920) M.W.N. 630 = 64 I.C. 698 = 14 L.W. 78.**

———*Alienation—Father—Validity.*

An alienation by the father of the whole of the family property for the purpose of extricating a divided member out of his financial difficulties or because the property was difficult to manage, is not valid. (*Sadasiva Aiyar and Coutts Trotter*, JJ.) DORASWAMI AIYAR *v.* SESHADRI VENKATRAMA AIYAR.

63 I.C. 228 = 13 L.W. 618

———*Alienation—Father—Not binding on family—Suit by sons for recovery of their share—Purchaser if entitled to charge for any portion of consideration—Prior suit by father for setting aside sale*—Res judicata.

In a suit by the sons for the recovery of their share in joint family property sold by their father for purposes found not to be binding on the family, the purchaser is not entitled to any charge on the sons' share for any portion of the consideration paid by him. The suit is not barred by *res judicata* by reason of the dismissal of a suit by the father for setting aside the sale on the ground for fraud, undue influence and want of consideration. The purchaser cannot treat the consideration which he seeks to get refunded as a debt of the father which it is the duty of the sons to pay. 14 M.L.T. 537; 39 A.L.J. 37; 41 Mad. 136, Rel. (*Abdur Rahim and Napier*, JJ.) KILLARU KOTTAYA *v.* POLAVARAPPU DURGAYYA.

47 I.C. 192 = 35 M.L.J. 451.

———*Alienation—Father—Son's suit to set aside—Counter-claim by vendee in respect of portion.*

In a suit by Hindu son for a declaration that an alienation of family property made by his father is invalid so far as his share is concerned, the Court cannot pass a decree against him for payment to the vendee of the share of the consideration found to be not necessary, treating it as damages payable to the vendee by the father for failure of consideration. The cause of action for recovering the portion of consideration found to be not necessary or beneficial arises only after the date of the decree in this suit and therefore no counter-claim to recover

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that amount can strictly be raised or considered in the son's suit. (*Sadasiva Iyer and Spencer*, JJ.) MUTHU KRISHNA NAIDU *v.* KANOJA.

39 I.C. 501 = (1917) M.W.N. 273.

———*Alienation—Father—Setting aside—By sons to the extent of their share—Alienee's rights*—Res judicata—*C. P. Code, S.* 52.

A sale of family properties by a Hindu father was after his death set aside in a suit by the sons to the extent of their share and the alienee afterwards sued the sons to recover the proportionate share of the consideration. It was held that the alienee's claim was not barred though he did not agitate it in the previous suit and that he could recover the amount from the assets in the hands of the sons and from their own joint family properties. (*Seshagiri Aiyar and Napier*, JJ.) RAMAN PANDITHAN *v.* SATHA KUDUMBAN.

31 M.L.J. 502 = 20 M.L.T. 320 = (1916) 2 M.W.N. 217 = 36 I.C. 387 = 4 L.W. 366.

———*Alienation—Father—Setting aside—After born son.*

Where a Hindu father alienates the whole of the family property belonging to himself and his son, a son born subsequently acquires no right to a share in the property and is not entitled to set aside the alienation and recover his share as there is no property held jointly. (*Sadasiva Aiyar and Moore*, JJ.) SOUNDARARAJAN *v.* SARAVANA PILLAI.

34 I.C. 794 = 30 M.L.J. 592.

———*Alienation—Father—Setting aside—Suit by son.*

A Hindu son cannot recover more than his share of the properties fraudulently transferred by his father. 20 Mad. 326, Dist. (*Sadasiva Iyer and Tyabji*, JJ.) RAMASUBBA IYER *v.* AVUDAI AMMAL. **23 I.C. 123 = (1914) M.W.N. 595.**

———*Alienation—Father—Rights of alienee—After-born son—Effect.*

An alienation by a father is not determined by the birth of a son subsequent to the alienation, but the share of the other members in the remaining property will be proportionately reduced to make up the share of the after-born son. (*Wallis*, J.) GANESH ROW *v.* TULJA RAM ROW. **24 I.C. 696 = 26 M.L.J. 460.**

———*Alienation—Father—Contract for sale—Specific performance.*

In a suit for specific performance of a contract, to sell family property by the father acting on behalf of his sons also it is open to the Court to grant decree against his share only. *Obiter.*—If the plaintiff expressly asks for it, a declaration of the son's liability could be made in the suit. (*Ayling and Tyabjee*, JJ.) KONDAPANENI COTTAYYA *v.* GANGARU SESHAYYA. **(1913) M.W.N. 995 = 21 I.C. 778 = 14 M.L.T. 495.**

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———*Alienation—Father — Setting aside*—Onus.

The difference between the case of a son attacking a sale by the father and a co-parcener attacking a sale by the manager is one of *onus*. In the former case the son must show that the debt was incurred for illegal and immoral purposes, while, in the latter the creditor must show that the debt was incurred for proper purposes. (*Miller and Abdur Rahim, JJ.*) SOMASUNDARA *v.* MURUGAPPA.

36 Mad. 325=(1913) M.W.N. 86=12 M.L.T. 571=18 I.C. 49=23 M.L.J. 658.

———*Alienation — Father—Debts — Joint decree — Satisfaction by one — Liability of another's son.*

The liability of a judgment-debtor, to contribute when the decree had been satisfied by another joint judgment-debtor can be enforced against his son. 25 Mad 590, Ref. (*Wallis, J.*) DESAI NAMBERUMAL *v.* NARAINASAWMI.

9 I.C. 1023=9 M.L.T. 449.

———*Alienation — Father — Necessity — Essentials.*

An alienation by father of a family property will undoubtedly bind the son's share even in the absence of antecedent debt if there was justifying necessity. 29 Mad. 200, Dist. (*Munro and Sankaran Nair, JJ.*) VINUKONDA VERRABADRAM *v.* KONATALAPPALLI JAGANNADHA ROW.

21 M.L.J. 443=9 I.C. 22=9 M.L.T. 502.

———*Alienation—Father—Right to set aside—Members subsequently born.*

Where a Hindu father executes a mortgage over family property at a time when he had no son, it is not competent to the sons who are subsequently born to challenge the alienation. The subsequently born sons, take the estate as they find it at their birth and cannot impeach prior alienations by the father. (*Dhobley, A. J.C.*) JAIRAM *v.* VENKATA RAO.

5 N.L.J. 66=1922 Nag. 101.

———*Alienation—Father—Necessity.*

It is open to the sons to impeach an alienation by their father on the ground that there was no legal necessity for the alienation of their shares in the joint family property and on the ground that no portion of the debt was an antecedent debt binding on them. The sons are not merely confined to the plea that the debts of the father were incurred for immoral or illegal purposes. (*Kotwal, Dhobley and Prideaux, A.J.Cs.*) DHUDABAI *v.* NARAYAN.

5 N.L.J. 73=1922 Nag. 28.

———*Alienation—Father—Setting aside—Right of son in womb to challenge alienation.*

A son in womb at the date of alienation has a right to challenge, the alienation on the ground of want of legal necessity or its not being binding otherwise. (*Macnair, A.J.C.*) PARASRAM *v.* LAKHMICHAND. **57 I.C. 578.**

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———*Alienation—Father— Setting aside*—Onus—*Debts—Immorality.*

To exempt the son's share in family property from liability for his father's debts the son must not only show that the debts were incurred for immoral purposes but should also establish a connection between the particular debt and the specific immoral purpose. Mere proof of extravagant or of immoral habit will not shift the onus on to the creditor. 30 All. 156 ; 28 All 508 ; 14 Bom. 320, Foll. (*Mittra, A.J.C.*) BHIKA *v.* HARLAL. **45 I.C. 206.**

———*—Alienation— Father—Legal necessity—Proof.*

Necessity cannot be inferred by mere recital in the deed, that money was borrowed for private expenses and the existence of a large family of the alienor. (*Drake-Brockman, J.C.*) HIRA RAM *v.* UDHE RAM. **19 I.C. 861=9 N.L.R. 74.**

———*Alienation—Father—Mortgage—Sons' liability.*

There is a distinction between the sons' liability under a mortgage executed by a father of a joint Hindu family and his remedy after proceedings taken against the father on foot of the mortgage. In the case of a joint Mitakshara family consisting of a father and minor sons, the father is necessarily the manager of the joint family, and as such, for all purposes, is a representative of the family. In the case of a joint Mitakshara family where the father, the managing member mortgaged family property for an antecedent debt and a suit was brought and decree obtained against the father, such suit and decree should be regarded as instituted and pronounced against him, in his representative capacity ; and if a son after a decree being obtained against the father, upon a mortgage executed by the father, sues to have it declared that his share is not liable to satisfy the said decree, or after a sale in execution of such a decree, sues to recover possession of his share, he cannot succeed, unless he proves that the debt was contracted for immoral or illegal purposes, or that the debt was of an illusory character. The rule as laid down in *Suraj Bansi Koer's* case is not limited to the cases in which the property had passed out of the hands of the family and gone into the hands of persons who were neither previous creditors when the sale is a private alienation nor judgment-creditors when the sale is by public auction. (*Dalal and Simpson, A.J.Cs.*) RUP KISHORE *v.* KANHAIYA LAL.

26 O.C. 266=10 O.L.J. 141=9 O & A.L.R. 384=1923 Oudh 127.

———*—Alienation — Father — Mortgage — Decree against—Suit by son to set aside—Decree on mortgage—Effect of.*

Except in cases where joint ancestral property has passed out of the joint family either under a conveyance executed by the father in consideration of an antecedent debt or in order to raise money to pay off an antecedent debt under

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a sale in execution of a decree for the father's debts and in no others, the sons are not under an obligation to show that the debts represented by a mortgage executed by the father were debts which were contracted for immoral or other purposes not binding on the estate. A decree, unless it is binding on the sons, does not improve the position of the creditor any more than a sale which a father effects in order to pay a debt incurred by himself on the security of the mortgaged property. The exception to the general rule that no manager, guardian or trustee can be entitled for his own purposes to dispose of the estate, which is under his charge, cannot be extended where a liability under a mortgage merges into a decree, unless that decree can by any rule of law be held to be binding on the other members of the family. If a mortgage is not valid so far as it purports to encumber the joint family property, it cannot become a just and legal consideration, if, in the absence of the sons of the mortgagor a decree has been obtained on foot thereof against the mortgagor. Otherwise the protection intended for the junior members of the family can in that way be easily circumvented and become illusory. (*Kanhaiya Lal*, J.C.) GANGA BAKHSH SINGH *v.* RAGHUBAR SINGH. **23 O.C 293=9 O & A L R 359= 10 O.L.J. 61=1923 Oudh 182.**

———*Alienation—Father—Mortgage without legal necessity or antecedent debt.*

A mortgage which is not binding on the estate in the father's lifetime would not be binding on the sons, for the mere circumstance of pious obligation of Hindu sons to pay their father's debts. 21 C.W.N. 957 (P.C.), Foll. (*Dalal, and Daniels* A.J.Cs.) RAM SARUP SINGH *v.* JAGESHUR SINGH. **26 O.C. 341=9 O. & A L R. 157= 1923 Oudh 180.**

———*Alienation—Father.*

The existence of a pious obligation does not validate a mortgage or alienation which is otherwise invalid. (*Kanhaiya Lal*, J.C.) RAM AUTAR *v.* BENI SINGH. **25 O.C. 89=1922 Oudh 135.**

———*Alienation—Father—Consideration—Major portion of, binding—Effect on transfer.*

Where a large portion of the consideration amount is borrowed for legal necessity the transfer by the manager of a joint Hindu family cannot be said to be void and the transaction, can be upheld if the transferee offers to pay up the non binding portion of the debt. 36 I.C. 57, Foll. (*Dalal*, A.J.C.) GAJADHAR BAKHSH SINGH *v.* BAIJNATH. **68 I.C. 967 (2)=8 O.L.J. 605.**

———*Alienation — Father — Son's right to recover property.*

Held, that the principle, that where ancestral property has passed out of a family under a sale-deed executed by the father, the sons cannot recover the property merely proving absence of legal necessity, applies only where the sale

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under which the property has passed away was executed in lieu of antecedent debts or in execution of a decree for debt. 11 A 321; 41 I.A. 126; 6 I.A. 68 and 31 All 176, Foll. (*Daniels*, J.C.) LACHHMAN SHUKUL *v.* RAM KISHORE. **64 I.C. 220=24 O.C. 218.**

———*Alienation—Father—Son, if can recover property.*

Where joint family property goes away either by a father's alienation to pay off an antecedent debt or in execution of a decree for the father's debt, the sons, by virtue of their pious obligation to pay their father's debts, cannot recover the property. But they can do so, if they show that the debts were contracted for immoral purposes and that the purchasers had notice of such purposes. This holds good even if the father is alive. (*Kanhaiya Lal*, J.C.) RAM NIDH *v.* ISURDIN. **63 I.C. 288=24 O.C. 161.**

———*Alienation—Father—After born son.*

Whether the father is the sole co-parcener at the time of alienation, it is valid and cannot be impeached by a son born after the alienation takes place. (*Lindsay*, J.C.) KANDHAI *v.* BIBI NAWAB BEGAM. **62 I.C. 811= 8 O.L.J. 283.**

———*Alienation—Father—Suit to set aside by subsequently born son—Limitation.*

The right of a subsequently born son to challenge the alienation by his ancestor on the ground of the absence of legal necessity therefor comes into existence as soon as the alienation is made and is available to any member of the joint family, who, being in existence at that time, has not been a consenting party to the alienation. Therefore limitation begins to run from the date of the alienation and inasmuch as no fresh cause of action accrues to a subsequently born son a suit by such son to challenge the alienation must be brought within the original period of limitation. (*Lindsay*, J.C.) OUDH BEHARI SINGH *v.* SURAJ BALI. **61 I.C. 801=8 O.L.J. 205.**

———*Alienation — Father — Essentials of validity.*

The elements necessary to validate an alienation are that the purpose for which the money was borrowed was necessary by law and that there was pressure on the estate sufficient to render the alienation necessary. An alienation could be upheld where if only that amount had been borrowed, which the Court finds for legal necessity, a mortgage would still have been necessary; if not the alienation should be set aside on condition that the creditor be repaid the money advanced with interest. (*Daniels*, A.J.C.) UMRAO SINGH *v.* GAYA PRASAD. **60 I.C. 647=23 O.C. 374.**

———*Alienation — Father — Reversion taking from a collateral.*

A reversioner inheriting property from a collateral gets absolute estate and his sons and grandsons cannot impeach alienations of the property made by him. A mortgage by father

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binds the family property if made for family benefit or necessity or to pay an antecedent debt. (*Stuart*, A.J.C. *and Pandit Kanhaiya-lal*, A.J.C.) BHARAT SINGH *v.* SARSRUTI SINGH. 7 O.L.J. 439=60 I.C. 137= 23 O.C. 241.

———*Alienation—Father—Son's suit to set aside onus.*

Where joint family ancestral property has passed out of a joint family either under a conveyance by the father in lieu of antecedent debts or under a sale in execution of a decree for the father's debts, his sons cannot recover their property unless they show that the debts were contracted for immoral purposes and the purchasers had notice of the same. The mere fact that the purchasers were the creditors of the father does not make any difference in the application of the rule. (*Wazir Hasan*, J.C.) VASUDEO LAL *v.* MAHABIR. 23 O.C. 344= 59 I.C. 670=8 O.L.J. 18= 3 U.P.L.R. (J.C.) 1.

———*Alienation—Father—Inquiries—Duty of alienee—Enquiry—Extent of.*

An alienee from the father of a joint Hindu family will be protected if he makes enquiries as to the necessities of the loan and satisfies himself that the necessities represented to exist. If the necessity for the loan cannot be established by direct evidence it may be assumed if reasonable care was shown to have been taken to ascertain that it existed and that the transferee acted in good faith. 40 All. 171. (P.C.), Foll. (*Stuart and Kanhaiya Lal*, A.J. Cs.) JAI NARAIN *v.* BAJRANG BAHADUR SINGH. 7 O.L.J. 330=56 I.C. 826= 2 U.P.L.R. (J.C.) 116.

———*Alienation—Father—Decree against—Sale of mortgaged property—Redemption suit by sons—Whether maintainable.*

The mortgagees purchased the property in a sale in execution of their decree against their father alone upon a mortgage by him. A suit by the sons who were not parties to the above suit was held maintainable for redemption of the mortgaged property. (*Lindsay*, J.C.) DRIGPAL SINGH *v.* SUKANANDANLAL. 7 O.L.J. 161=56 I.C. 299= 2 U.P.L.R. (J.C.) 96.

———*Alienation—Father—Necessity—Consent of sons—Presumption—Bulk of the consideration supported by necessity—Relief—Form of.*

The consent of the sons of a Hindu to an alienation by their father may be inferred from their failure to object at the same time to the alienation. Where there is a delay in impeaching an alienation by a Hindu father of the family property the burden of proving that the alienation was not for a legal necessity is upon those who seek to have the alienation set aside. A sale of a small portion of a joint Hindu family property to pay off a portion of a debt incurred for the purchase of acquiring new property may be justified. Where the bulk of

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the consideration is found to have been taken for legal necessity the sons cannot question the sale. (*Ashworth*, A.J.C.) RAM NARAIN *v.* LALTA PRASAD. 33 I.C. 634=6 O.L.J. 501.

———*Alienation—Father—Antecedent debts—Compulsory execution by Court—Setting aside sale.*

A conveyance in consideration of an antecedent debt of a Hindu father may be enforceable during the father's lifetime. 39 All. 437. P.C. Ref.—Where the deed of conveyance would be enforceable in the father's lifetime if executed by him, the fact that the person entitled to claim thereunder got it executed by the Court under a decree would not make any difference. Where the bulk of the consideration consists of antecedent debts or is given for valid necessity so that it would have been impossible to raise the required amount except by effecting the sale in dispute, the fact that the vendor could obtain from the purchaser something over and above the amount binding upon the estate is an insufficient ground for setting aside the deed. (*Daniels and Lyle*, A.J.Cs.) GUR SAHAI *v.* GIRDARI LAL 22 O.C. 84= 1 U.P.L.R. (J.C.) 84=32 I.C. 75= 6 O.L.J. 411.

———*Alienation—Father—Antecedent debts—Debt due to alienee—Necessity.*

Where in alienation by the father of joint Hindu family the antecedent debts, to discharge which the sale was made, were owing to the alienee himself, the alienee is bound to prove necessity for the loan and cannot rely on the antecedency of the debt. (*Kanhaiyalal*, A.J.C.) HARPAL SINGH *v.* HARAKH BAHADUR SINGH. 22 O.C. 16= 30 I.C. 795=1 U.P.L.R. (J.C.) 32.

———*Alienation—Father—Necessity—Burden of proof—Fixation of rate of interest.*

The alienee must prove necessity for further charges on the property, if the property is made subject to further charges and also for a high rate of interest if such is charged. The fixing of rate of interest is within Court's discretion but its decision on the point may be challenged in second appeal. (*Stuart*, A.J.C.) SARABJIT SINGH *v.* GUR BAKSH SINGH. 36 I.C. 916= 19 O.C. 189.

———*Alienation—Father—Debts—Antecedent debts—Necessity.*

Debts not proved to have existed nor incurred for necessity are not antecedent debts to justify alienation. (*Stuart*, J.C. *and Kanhaiya Lal*, A.J.C.) GANESH *v.* NAGKSHAR BAKSH SINGH. 35 I.C. 780=3 O.L.J. 451.

———*Alienation—Father—Mortgage—Suit—Decree.*

In a mortgage suit where necessity is disproved the creditor cannot be allowed to ask in appeal for a simple money decree inasmuch as the debt had not been allowed to prove immorality. (*Lindsay*, J.C.) BUDHAULAL *v.* JAGANNATH 35 I.C. 757=3 O.L.J. 215.

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——— *Alienation— Father — Manager — Difference.*

Even though inadequacy of consideration may be sufficient to set aside alienation by manager of a family yet that is not a sufficient reason to render invalid an alienation by the father though he may be also the manager. (*Lindsay*, J.C.). JUGAL KISHORE *v.* RAJHABAR SINGH. **31 I.C. 89.**

——— *Alienation—Father—Setting aside—Right of after born son,*

An alienation by sole surviving co-parcener cannot be questioned by after-born son as he acquires vested right only in such family property as existed on the date of his birth. (*Stuart and Kanhaiya Lal*, A J.Cs.) MAHESH *v.* BANWARI LAL. **31 I.C.717=18 O.C. 162.**

——— *Alienation—Father—Setting aside—Sons—Antecedent debt.*

If a father in a Hindu joint family alienated some property in which a part of the consideration was for legal necessity, a son can recover his share in the property on paying the proportionate amount of consideration money required for legal necessity, or for discharging antecedent debt. A mortgagee, enforcing a mortgage made by the father against sons in a joint family of the joint property, must prove the legal necessity or the antecedent debt or at least that his reasonable enquiries showed the above facts. A debt incurred at the time of mortgage of money advanced as consideration of the mortgage is not an "antecedent debt." (*Chamier and Piggott*, A.J.C.) MAHABIR PRASAD *v.* BASANT SINGH. **12 I C. 347= 14 O C. 299.**

———— *Alienation —Father— Great grandfather— Alienation contested by grandson but suit dismissed—Second suit by alienee against great grandson — Right of great grandson to challenge alienation with respect to entire property.*

The dismissal of a suit by a grandson contesting in his own rights an alienation by his grandfather of the ancestral property is no bar to the right of the great grandson, who was living at the time of the alienation to challenge the same in his own right and with regard to the entire property alienated not merely to the extent of his share. (*Sundar Lal* O.J.C.) BABU RAM *v* CHOTE LAL. **11 I C. 291.**

——— *Alienation—Father—Antecedent debt.*

Where a mortgage is executed by a father for an antecedent debt the lender is not bound to prove family necessity or benefit. (*Jwala Prasad*, A.C.J. *and Das*, J.) ABDUL RAHMAN *v.* SHIB LAL. **63 I C 570= 2 Pat. L.T. 572.**

——— *Alienation — Father — Gift—Bridegroom—Ancestral property—Liability of—Sons of grantor—Whether liable.*

The sons and grandsons of the grantor of a maintenance to a bridegroom on the occasion of his marriage are bound, to the extent of the ancestral property in their hands, by such grant. (*Miller*, C.J. *and Mullick*, J.) MADHUSUDAN PRASAD *v.* RAMJI DAS. **1 Pat. L.T. 541=57 I.C. 341= 3 Pat. L.J. 516.**

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——— *Alienation — Father—Mortgage—Suit by sons to set aside—Onus—Suit to enforce security—Difference.*

There is a distinction between a case where the sons bring a suit for setting aside alienations made by their father and recovery of possession of property which has passed into the hands of the alienee and that brought by the mortgagee to enforce his security against the joint family. In the former case, the sons must show the grounds on which they seek to set aside the alienation ; in the latter it is the mortgagee who has to show how he claims re-payment of the debt of the father. 39 All 437 ; 31 All. 176 (F.B.), Ref. (*Coutts and Sultan Ahmed*, JJ.) SUKDEO JHA *v.* JHAPAT KAMAT. **5 Pat. L.T. 120=1 Pat. L J 49= 2 U.P.L.R. (Pat.) 39=84 I.C. 946= 1920 Pat. 67**

——— *—Alienation—Father—Setting aside—Sons not in existence, if can question.*

Sons born after an alienation by the father of ancestral property have no right to question such an alienation, inasmuch as the transfer was prior to any right which accrued to the sons by reason of their birth. It does not matter if the alienation was unnecessary or for illegal or immoral debts. 34 Cal. 372 ; 33 All. 283, Foll. (*Chapman and Jwala Prasad*, JJ.) BISHWANATH PRASAD SAHU *v.* GAJADHAR PRASAD SAHU. **1917 Pat. 356= 3 Pat. L.W. 286=43 I.C 370= 3 Pat. L.J. 168.**

——— *Alienation—Father—*Mitakshara.

A father can sell or mortgage his and also his sons' shares to pay off an antecedent debt of his own, unless it is of an immoral or illegal nature, and the decree passed against the father can be enforced against sons, though the sons were not parties to the suit. (*Chapman and Roe*, JJ.) RAGHUNANDAN SINGH *v.* PARMESHWARDAYAL SINGH. **2 Pat. L J 306=1 Pat. L.W. 636= 39 I.C. 779=1917 Pat. 137.**

——— *—Alienation—Father—Decree on mortgage—Binds sons' interest in the joint estate—Sons not parties to the suit.*

A decree on a mortgage against a Hindu father governed by the Mitakshara Law binds the sons' interest in the joint estate, even though the sons may not have been parties to the suit. The right to redeem the family property subject to a mortgage by the father and sold in execution of a mortgage decree, cannot be exercised without first setting aside the sale. It is doubtful whether a Mitakshara son can sue to redeem the property, if he has been deliberately and with notice of his existence

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omitted from a suit upon a mortgage made by his father. (*Sharfuddin and Roe, JJ.*) BHOLAJHA *v.* KALI PRASAD.
1 Pat. L.J. 180 = 34 I.C. 288 = 2 Pat. L.W. 413.

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———*Alienation—Guardian—Legal necessity.*

Where the mother as guardian alienated certain property but only a portion of the consideration for the alienation of the property was for legal necessity. *Held*, on the paying back to the vendee that part of consideration which was for legal necessity the plaintiffs would be entitled to get back their share in the property alienated. (*Gokul Prasad, J.*) LAKHRAM SINGH *v.* SHEO PRASAD.
1922 All. 316.

———*Alienation— Guardian — Necessity—Interest exhorbitant.*

Two mortgage bonds were executed, one for Rs. 1,000 with compound interest at 18 per cent. per annum, and the second which was executed the next day was for Rs. 99 executed by the mother of the mortgagors of the first deed and was attested by the sons. *Held*, that in regard to the first bond there was no necessity for borrowing money at 18 per cent. per annum and 10 per cent. per annum, simple interest was ample; and in regard to the second bond the mere fact that the sons witnessed it did not make the mortgage valid. (*Richards, C.J. and Bannerjee, J.*) LAL SINGH *v.* SUBJAN SINGH.
38 I.C. 864 = 15 A.L.J. 124.

———*Alienation — Guardian — Binding nature on minor.*

The test with regard to the binding nature of an alienation by a natural guardian upon the minor as laid down in *Hunooman Persaud's case* 6 M.I.A., p. 393, is that the power *must be* exercised by the guardian rightly for necessity or for the benefit of the infant. It would be open to the alienee to establish that he had made all proper and necessary enquiries and that he had acted in good faith in advancing the moneys to the natural guardian of the minor. (*L. A. Shah and L. C. Crump, JJ.*) RAOJI THAKARAM *v.* PREMRAJ SADARAM MARWADI.
1923 Bom. 213.

———*Alienation—Guardian—Prudence and necessity*—De facto *guardian.*

The guardian of a minor is not limited only to making such dispositions of the latter's property as he is compelled to make by sheer necessity. Whether what he did was or was not for the benefit of the minor and as such binding on the latter was determined in this case by asking what would have been the probable result if the guardian had not taken the steps he did take and as it appeared that bigger sacrifices would have become inevitable if the steps in question had not been taken,

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the transaction was upheld as that of a prudent administrator. (*Walmsley and Panton, JJ.*) SM. ISHANI DASI *v.* RAJENDRANATH JASH.
23 C.W.N. 858 = 48 I.C. 303 = 28 C.L.J. 260.

———*Alienation — Guardian — Benefit—Necessity.*

'Benefit' is different from 'necessity' but does not necessarily include a speculative development of a minor's estate. (*Mookerjee and Newbould, JJ.*) KRISTA CHANDRA *v.* RATAN RAM PAL.
20 C.W.N. 645 = 35 I.C. 673 = 23 C.L.J. 432.

———*Alienation—Guardian—Not described as such—Mother acting on behalf of her minor sons.*

When a transaction was entered into by a Hindu mother in her own name, but really on behalf of and for the benefit of her minor sons, the latter would be bound by it. The Court must look to the substance of the transaction, not merely to the form of expression. (*Mookerjee and Beachcroft, JJ.*) GIRIJA NATH ROY *v.* UPENDRA NATH PAL.
20 I.C. 261.

———*Alienation— Guardian — Necessity—Convenience of management.*

Under the Hindu Law the natural female guardian of a minor cannot dispose of the property of the minor because she wishes to live with her relatives and obtain their help in managing their ancestral properties. The fact that her relatives and those of the minor advise her to that effect makes no difference. (*Abdur Rahim and Spencer, JJ.*) PONNUSWAMI PILLAI *v.* SUBRAMANIA PILLAI.
53 I.C. 412.

———*Alienation—Guardian—Minor's rights.*

Relinquishment by mother acting as guardian of minor son of a Zemindary for an insignificant consideration, does not bind the minor even as a family settlement. (*Wallis, C.J. and Srinivasa Aiyangar, J.*) VISVANATHASWAMI NAICKER *v.* KAMULU AMMAL.
(1915) M.W.N. 968 = 2 L.W. 1214 = 19 M.L.T. 296 = 31 I.C. 833 = 30 M.L.J. 451.

———*Alienation— Guardian — Necessity—Proof—Recitals.*

Mere recitals in documents as to the binding nature of debts incurred by a guardian are not enough to bind the minor. There must be evidence *aliunde* to establish it. 1 L.W. 794: Foll. (*Ayling and Seshagiri Aiyar, JJ.*) RAMINEEDI RAMACHANDRAYYA *v.* BOBBA JANAKIRAMAYYA.
1 L.W. 808 = 26 I.C. 66 = (1915) M.W.N. 874.

———*Alienation — Guardian — Release — Validity of.*

The guardian of a minor without independent advise and in absence of disputes about the minor's right cannot execute a release of all the minor's rights over a large extent of property in consideration of grant of small portion. (*Miller and Abdur Rahim, JJ.*) VISVANATHASWAMI NAICKER *v.* KAMU-AMMAL.
21 I.C. 724 = 25 M.L.J. 271 =

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———*Alienation — Guardian — Minors — Right to set aside—Limitation.*

When the mother of two Hindu minor brothers alienates their property as guardian and the elder of the two attains majority and does not challenge the alienation within three years of his majority, the rights of both the minors become extinguished. (*White*, C J. *Sankaran Nair and Sadasiva Aiyar*, JJ.) DORAISWAMI SERUMADAN *v.* NANDISAWMI SELUVAN. **38 Mad 118=25 M L J. 405= 21 I.C. 410=14 M L.T. 401=**

[On appeal from 10 M L.T. 418= (1911) 2 M.W.N. 450=12 I C 615= 21 M.L J. 1041]

———*Alienation—Guardian—Minor— Sale to discharge mortgage.*

Where a step-mother sells the family property to discharge a mortgage debt of a minor's father, the sale is not binding on the minor who not being personally liable gained nothing by the sale. But he can recover the property by payment of the debt. (*Sundara Aiyar*, J.) *In re*, RAMA REDDI. **15 I.C. 678= 11 M.L.T. 403=**

———*Alienation—Guardian de facto—Void.*

An alienation of the property of a minor by his *de facto* but not his *de jure* guardian, is absolutely void and the minor need not set it aside before obtaining possession. (*Prideaux*, A J.C.) SHAHU *v.* MOHIDDIN **63 I.C. 397= 4 N.L.J. 80=**

———*Alienation—Guardian—Minor, when bound.*

The powers of alienation of a guardian are the same as those of a manager of a joint family acting for the co-parceners and a minor is bound by acts of his guardian done *bona fide* and for his benefit. (*Drake Brockman*, J.C.) HANUMAN SINGH *v.* GANESH PRASAD. **50 I.C. 580=**

———*Alienation—Guardian—Necessity—Recitals.*

The mere recital of the existence of two mortgages in a subsequent deed does not bind the persons other than the executant and it is incumbent on the mortgagee to prove that the mortgage was executed for family necessity and for the benefit of the minor on whose behalf the guardian purported to act. 36 All 187 and 41 Bom. 300, Ref. (*Kanhaiya Lal*, A.J.C.) BABU *v.* SADA SHEO. **34 I.C. 240= 32 O.C 268.**

———*Alienation—Guardian—Discharge of prior mortgage—Charge—Plaintiff's right to contest—Mortgage barred.*

Where in a suit for ejectment the defendants who were in possession, by virtue of their having paid off a prior mortgage on the property, claimed the amount so paid off, and the plaintiff's right to contest the validity of the mortgage was barred by limitation, *held*, that the plaintiff was bound to pay the amount claimed by the defendants before recovering possession of the property. (*Piggott and Lindsay*, A.J. Cs.) MUSAMMAT MASATO *v.* AZIZULLAH KHAN. **20 I C. 275=16 O.C. 119=**

HINDU LAW — Alienation—Manager of endowment.

———*Alienation— Guardian— Legal necessity—Performance of Gaya Sradh of uncle of minor.*

The expenses of the performance of Gaya Sradh of a Hindu minor's uncle not being beneficial to the minor do not constitute any legal necessity. (*Sharfuddin and Roe*, JJ.) SUBA MAHTON *v.* MUNSHI MAHTON. **40 I.C. 625.**

———*Alienation — Guardian —Necessity—Onus.*

It is for the alienee or creditor to prove that a transaction by a guardian of a Hindu minor was for a legal necessity and for the benefit of the minor. Where he is sued on the loan along with the minor and the guardian confesses judgment, a money decree should be passed against the guardian. (*Parlett*, J.) ANNAMALAY CHETTY *v.* NAUMA. **17 I.C. 909=5 Bur. L.T. 157.**

———*Alienation—Guardian—Setting aside —Guardian not party—Estoppel.*

The guardian is a necessary party to a suit by a minor co-parcener after attaining majority against the alienee from the guardian in possession, on the ground that the alienation was fraudulent. A party relying on the guardian's appointment for one purpose is estopped from repudiating it for another. (*Crouch*, A.J.C.) VALJI JASRAJ *v.* TAYBJI MAHMED BHOY. **25 I.C. 676=8 S.L.R. 44.**

Alienation—Manager of Endowment.

———*Alienation—Manager of endowment— Powers of—Acquisitions with income of asthal— Accretion to asthal.*

The mahant of a Hindu *asthal* of mutt holds the property in trust for the institution itself. He can only alienate it in case of necessity. Acquisitions with the income of an *asthal* are subject to the same trust as the original property and subject to the same restrictions on alienation. In the absence of a necessity which would render the debts contracted by him binding on the institution a mahant has no power to alienate its properties for the purpose of discharging those debts and if the *asthal* was not liable for such debts, his successor is entitled to have the sale set aside. (*Mr. Ameer Ali.*) BASUDEO ROY *v* MAHANTH JUGAL KISHWARDAS. **5 Pat L W. 57= 35 M L.J 5=22 C W.N. 841= 28 C L.J 476=24 M L.T. 305= 20 Bom. L R 1088=16 A L.J. 601= 8 L W. 130 45 I C. 818= (1918) M W.N. 431 (P.C.)**

———*Alienation—Manager of endowment— Permanent lease—Necessity—Benefit.*

A permanent lease of temple lands at a fixed rent or rent free for a premium, is valid only

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if justified by unavoidable necessity. This is so whether the lands are agricultural lands or a building site, for in either case the debutter estate is deprived of the chance it would have, if the rent were variable of deriving benefit from the enchancement in value of the future of the lands leased. 13 M.I.A. 270; 31 I.A. 83; 26 I.A. 148, Ref. The expression "benefit to the estate" as justifying an alienation by the guardian of an infant or the trustee of a religious endowment cannot be precisely defined; but it includes the preservation of the estate from extinction, the defence against hostile litigation affecting it, the protection of it or portions of it from injury or deterioration and such like things. 6 M.I.A. 393; 2 I.A. 145; 4 I.A. 52, Ref. A shebait would not be justified in selling debutter land solely for the purpose of getting capital to embark on a money lending business, however, attractive and lucrative it might be. Nor is he entitled to alienate part of the endowment of his own charity to enrich a separate and alien charity. A custom authorising the shebait of a temple to alienate dedicated property absolutely at his will and pleasure would be opposed to the intention of the original endower who presumably meant the worship to be perpetual. (*Lord Atkinson*), PALANIAPPA CHETTY v. SREEMATH DEIVASIKAMONY PANDARA SANNATHI.

40 Mad. 709=21 C.W.N. 729=
15 A.L.J. 485=1 Pat. L.W. 697=
38 M.L.J. 1=19 Bom. L.R. 567=
22 M.L.T. 1=(1917) M.W.N. 507=
26 C.L.J. 153=6 L.W. 222=
39 I.C. 732=44 I.A. 147 (P.C.).

[Affirming 9 I.C. 281=35 Mad. 535.]

———*Alienation—Manager of endowment—Mortgage—Necessity—Proof of—Lapse of time—Acknowledgment by successive trustees—Non-production of accounts.*

In a suit on a mortgage granted over the property of a mutt by its head, the onus is on those representing the mortgagee to prove that the debt was incurred for a necessary expense of the institution itself. Where however many years have elapsed since the debt was originally incurred, both lender and borrower being dead, and succeeding heads of the mutt have recognised the debt as binding on the Mutt, the Court should be more readily satisfied than where the mortgage is of more recent date or its validity has been disputed. If the books of the mutt which would show the nature of the transaction are withheld from the Court, an inference adverse to the mortgagor can be properly drawn. (*Lord Shaw.*) MURUGESAM PILLAI v. GNANA SAMBANDA PANDARA SANNADHI. 40 Mad. 402=31 M.L.T. 288=
32 M.L.J. 369=16 A.L.J. 281=
1 Pat. L.W. 457=8 L.W. 789=
21 C.W.N. 761=19 Bom. L.R. 456=
25 C.L.J. 589=(1917) M.W.N. 487=
39 I.C. 659=44 I.A. 98 (P.C.).

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———*Alienation—Manager of endowment—Shebait—Limitation.*

Where the Shebait of lands dedicated to the service of an idol grants a permanent lease, a suit by his successor to recover possession after 12 years of the alienation is not barred by Art. 134 of the Limitation Act of 1877. (*Lord Macnaghten.*) ISWAR SHIYAM CHAND JIN v. RAM KANAI GHOSE. 38 Cal. 526=38 I.A. 76=
15 C.W.N. 417=9 M.L.T. 448=
8 A.L.J. 529=13 Bom. L.R. 421=
14 C.L.J. 238=(1911) 2 M.W.N. 281=
10 I.C. 693=21 M.L.J. 1145 (P.C.).

———*Alienation—Manager of endowment—Alienation of temple property.*

Custom may render private alienations valid but in determining the question, the benefit to the idol is of primary importance. Property dedicated to a deity is *Extra commercium*, and needs special protection of the sovereign whose duty it is to intervene to prevent fraud and waste. Persons having the management and possession of the property of an idol must be empowered to do whatever may be necessary for the service of the idol and for the benefit and the preservation of its property. (*Chaudhury and Cuming*, JJ.) NITYA GOPAL BANNERJEE v. PROVASCHANDRA MUKERJI.
21 C.W.N. 809=56 I.C. 19=31 C.L.J. 37.

———*Alienation—Manager of endowment—Bona fide purchase—Plea of.*

In dealing with property validly dedicated for religious purposes no question of *bona fide* purchase for value arises. (*Greaves and Panton*, JJ.) SARADINDU MUKERJEE v. CHARU CHANDRA DUTT. 53 I.C. 885=23 C.W.N. 872.

———*Alienation—Manager of endowment—Permanent lease—Validity.*

The grant of a permanent lease without legal necessity is in excess of the powers of the *shebait* who grants the lease. The grant of a permanent lease at a considerable annual rent is a transfer for valuable consideration and Art. 134 of the Limitation Act applies to a suit for recovery of possession. (*Fletcher and Teunon*, JJ.) RAMESHWAR MALIA v. JIA THAKUR.
43 Cal. 34=29 I.C. 337=19 C.W.N. 1082.

———*Alienation—Manager of endowment—Shebait—Powers of.*

The shebait of an idol occupies a position which is analogous to that of a manager of an infant; he has the possession and management of the dedicated property but not the power to alienate it. S. 31, Cl. (2) of the Land Acquisition Act, therefore applies to the case of a shebait. (*Coxe and Ray*, JJ.) RAMPRASANNA NANDI v. SECRETARY OF STATE.
40 Cal. 895=22 I.C. 272=19 C.W.N. 682.

———*Alienation—Manager of endowment—Setting aside—Estoppel.*

The manager of an endowment might be guilty of breach of trust in making an alienation and yet might be estopped as against the

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bona fide transferee for value without notice of the trust. The beneficiary, the idol might not be estopped however. (*Mookerjee and Beachcroft, JJ.*) SIDHU SAHU *v.* GOPI CHARAN DAS. **18 I C 969=17 C L J. 233.**

———*Alienation—Manager of endowment—Necessity—When justifiable—Setting it aside—Onus.*

An alienation of endowment property made by a mahant is not valid if it is shown that there was no necessity for alienation. The power of a shebait in this respect is analogous to that of the manager of the property of an infant. Such an alienation can be justified only if there were no other means of raising money but by the alienation. (*Mookerjee and Carnduff, JJ.*) JAGANNATH DAS *v.* BIBI RUPA. **13 I.C. 88.**

———*Alienation—Manager of endowment—Power of alienation.*

The powers of a Mahant of religioue institution in matters of an alienation of endowment property are analogous to those of a Hindu widow, 3 P.R. 1902, Foll. (*Shah Din and Scott-Smith, JJ.*) AMIN CHAND *v.* SANT MURLIDHAR. **18 P R. 1918=211 P.L R. 1913=19 I.C. 219=151 P.W.R. 1913.**

———*Alienation—Manager of endowment—Permanent-tenancy,*

The grant of occupancy right to tenants of a charity land by the trustees would ordinarily be a breach of trust and there can be no presumption in favour of such a tenancy in those properties, 40 Mad. 709; 10 L.W. 427, Foll. (*Sadasiva Aiyar and Spencer, JJ.*) SUBRAMANIA AIYAR *v.* PONNAPPA GOUNDAN.

39 M.L.J. 629=28 M.L.T. 389=61 I.C. 597=12 L.W. 576.

[*Also* 41 I.C. 788=33 M.L J. 84.
44 I.C 894=34 M.L J. 234.
13 I C. 596=15 C.L.J. 227.]

———*Alienation—Manager of endowment—Permanent lease.*

It is only under exceptional circumstances that a permanent alienation of a temple property by a trustee can be justified and when it is a question whether the temple authority granted a permanent lease or not, the presumption is against any intention to make such a grant. 40 Mad. 709 (P.C.); 13 M.I.A. 270; 15 C.L.J. 227, Foll. (*Wallis, C J, and Krishnan, J.*) CHINNMAL *v.* RATNASABAPATHY CHETTIAR. **12 L.W. 191=59 I C. 241=(1920) M.W.N 532.**

———*Alienation—Manager of endowment—Suit to recover—Estoppel.*

A trustee of a temple who for his own private purposes alienates trust property is not estopped from recovering the properties on behalf of the trust from a *bona fide* purchaser. (*Spencer and Krishnan, JJ.*) YASIM SAHIB *v.* EKAMBARA AIYAR. **37 M.L.J. 698=10 L.W. 672=54 I.C. 497=26 M.L T. 441.**

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———*Alienation—Manager of endowment—Permanent lease—Malabar Devaswam.*

Perpetual Kanom by a trustee of the Malabar devaswam is not binding on devaswam. (*Seshagiri Aiyar and Phillips, JJ.*) KUTTI PURATH KUNHUNNI PANIKKAR *v.* RAMAN.

26 M.L.T. 332=10 L.W. 427=52 I C. 675=(1919) M.W.N. 742.

———*Alienation—Manager of endowment—Lease—Necessity.*

The trustee of a religious trust is not entitled to grant a permanent lease of the trust properties. 40 Mad. 709 (P.C.) Foll. (*Sadasiva Aiyar and Napier, JJ.*) VENKATAPPIER *v.* RAMASWAMI AIYAR. **10 L.W. 137=52 I.C. 517=(1919) M.W.N. 548.**

———*Alienation—Manager of endowment—Trustee—Powers of.*

Since it is beyond the ordinary legal competence of the trustee of a religious endowment to grant a permanent lease of the properties of the trust a presumption in favour of the permanent tenancy from long possession and uniform rent could not lightly be made in the case of temple lands. (*Spencer and Krishnan, JJ.*) CHANDRASEKHARA SWAMI *v.* NAINAR AMMAL. **7 L.W. 194=43 I.C. 977=(1918) M.W.N. 219.**

———*Alienation—Manager of endowment—Setting aside—Suit by disciples to set aside—Limitation—Form of relief.*

It is competent to the disciples of a mutt in representative capactity to sue to set aside an alienation of mutt properties and for possession to be given to the head of the mutt. The suit is governed by Art. 120 or Art. 144 according as it is for declaration or for possession and limitation starts from the date of alienation. 28 M.L.J. 410, Foll. (*Wallis C.J. and Seshagiri Aiyar, J.*) CHIDAMBERNATH THAMBIRAN *v.* NILLASIVA MUDALIAR. **41 Mad. 124=33 M.L.J. 357=22 M.L.T. 218=42 I.C. 366=6 L.W. 666.**

———*Alienation—Manager of endowment—Permanent lease—Binding nature—Mataadhipathi—Legal position of.*

A permanent lease at a fixed rent for all time by the head of a *mutt* is not binding on his successors in the absence of legal necessity even if the rent reserved was adequate at the time of the lease. The head of a *mutt* holds the property of the *mutt* as a trustee for the *mutt* though he has large administrative powers. The sole beneficiary is the *mutt* according to the general rule. 43 Cal. 707 (P.C.), Foll. The position of the head of the *mutt* enunciated in 27 Mad. 435 and 33 Mad. 265 is changed by 43 Cal. 707, (P.C.) (*Sadasiva Aiyar and Burn, JJ.*) BALUSWAMI AIYAR *v.* VENKATASWAMI NAIKEN. **40 Mad. 745=40 I C. 531=32 M.L.T. 24.**

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———*—Alienation—Manager of endowment—Alienation of offerings.*

(Per *Coutts Trotter and Seshagiri Aiyar*, JJ.) That the money offerings made by the worshippers was the money of the deity and the *archakas* had no proprietary interest in them that permanent lease of such offerings by the Committee of the temple though *bona fide* was invalid. (*Abdur Rahim*, O.C.J., *Seshagiri Aiyar and Phillips*, JJ.) KALLYAN *v.* KASTURI RANGA. **40 Mad. 213=31 M L.J. 777=20 M L T. 490=8 L W. 625=38 I.C. 73=(1917) M.W.N. 400 (F.B.).**

———*—Alienation—Manager of endowment—Power to grant lease.*

The trustees of a religious endowment cannot make the trust liable to pay compensation to a tenant who builds on a lease site without a right of permanent occupancy. (*Sadasiva Aiyar and Seshagiri Aiyar*, JJ.) MURUGAPPA CHETTIAR *v.* RANGASAMI NAICKEN. **33 I.C. 57.**

———*Alienation—Manager of endowment—Permanent lease—Custom.*

A perpetual lease of a religious trust property is beyond the powers of the trustee. 20 M.L.J. 969, Foll. A custom which gives him such a power is not considered a valid custom, being opposed to law. No single trustee and no succession of trustees can create a lawful usage by acts in excess of their legal powers consitituting breaches of trust on their part. (*Sadasiva Aiyar and Napier*, JJ.) PERUMAL GRAMANI *v.* MAHAMAD KASIM SAHIB. **28 I.C. 840.**

———*—Alienation—Manager of endowment—Lease of reversion—Unfavourable terms.*

The grant of a reversionary lease is always objectionable and can be justified only in exceptional cases. Where a trustee just before his retirement grants a renewed lease for a long term at a low rental, several years before the expiry of the current lease, the lease is voidable by the succeeding trustee. (*Wallis*, O.C.J. *and Seshagiri Aiyar*, J.) MANGALA SAMI THEVAR *v.* THE RAJAH OF RAMNAD. **27 I.C. 361=1 L W. 1075.**

———*Alienation—Manager of endowment—*Bona fide *inquiry.*

An alienation by a trustee of religious trust is valid and must be upheld if the alienee has made *bona fide* enquiries and satisfied himself of its necessity. 2 Cal. 341, P.C., Foll.; 27 Mad. 465, F.B., Ref. to. (*Sadasiva Aiyar and Hannay*, JJ.) KUTTAYAKATH VIRA VERMA VALIA RAJAH AVERGAL *v.* ERIMHAL KARUANTA VALAPPIL AYISONMMA. **1 L.W. 981=16 M.L.T. 503=26 I C. 239=(1914) M.W.N. 909.**

———*Alienation—Manager of endowment—Powers of alienation.*

A Mathadhipati has an absolute right to dispose of the income of the property, subject to upkeep of mutt. Alienation by the head is not necessarily utterly void, at least it cannot be avoided during his lifetime. Though he is owner in fee simple, he has in many respects the powers of life-tenant and his position is similar to corporation sole in England. His position is similar to the estate of Hindu female heir succeeding to a male's estate. (*Miller and Sadasiva Aiyar*, JJ). MUTHUSAMIER *v* METHA VITHI SWAMIAR AVERGAL. **38 Mad. 355=25 M L J. 393=(1913) M.W N. 581=19 I C. 691=13 M.L T. 498.**

———*Alienation—Manager of endowment—Mortgage—Necessity—Proof.*

Whether the mutt properties are liable for debts incurred by the head for expenses for a litigation to contest a nomination by a previous incumbent depends upon the circumstances of each case. Where the income of the properties is at his disposal he cannot charge the corpus for such debts. (*Wallis and Sankaran Nair*, JJ.) GNANA SAMBANDA *v.* SABAPATIYA. **18 I.C. 221=(1913) M W N. 106.**

———*Alienation—Manager of endowment—Powers of majority—Lease of mortgage.*

A demise of temple property granted by a majority of the trustees of a temple without consulting the minority is invalid and does not bind the temple. 6 Mad. 270; 34 Mad. 406, Foll. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) ISTOOP *v.* AYAPPAN. **16 I.C. 435.**

———*Alienation—Manager of endowment—Permanent lease.*

A permanent lease of trust property at a fixed rent by the head of a mutt is invalid. A trustee has no power to create a perpetual tenure except on special grounds or circumstances of necessity. 13 M I.A. 270; 6 I.A. 88; 27 Mad. 291: 36 Cal. 1003; 2 Cal. 341; 5 M.L.T. 220; 28 Mad. 391; 6 M.I.A. 393; 12 Bom. 247, Ref; 2 I.A. 145; 27 Mad. 465; 27 Mad. 435; 5 Bom. 393; 6 Bom. 546, Ref. (*Wallis and Krishanswami Aiyar*, JJ.) DEVASIGAMANI PANDARASANNADHI *v.* PALANIAPPA CHETTIAR. **34 Mad. 535=9 M.L.T. 83=20 M.L J. 969=9 I.C. 281=(1911) 2 M.W.N. 154. [Affirmed on appeal 39 I C. 722=40 Mad. 709]**

———*Alienation—Manager of endowment—Lease—When valid.*

A lease by the manager of a temple is not valid unless the money was borrowed for the purposes of the temple and the loan was justified by an existing necessity and the lease was one which a prudent owner would be justified in making. 14 B.L.R. 450 (P.C.), Foll. (*Mittra*, A.J.C.) NARASINGHDAS *v.* ALADADKHAN. **43 I.C. 381=14 N.L.R. 12.**

———*Alienation—Manager of endowment,*

Asthan is merely a institution of ascetics and sanyasis having no worldly connections of wealth or family and the mahant is presumed

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to have no property other than that of the institution and the offerings made to him. But he may hold private property, the character of which he must prove as such. In absence of such proof an alienation by a mohant is *ultra vires*. The fact of many alienations by successive mohants means so many breaches of trust. (*Daniels and Wasir Hussain*, A.J.Cs.) RAM PAL *v.* DURGA BHARTI. **7 O L.J. 547 = 60 I.C. 440 = 23 O.C. 303.**

———*Alienation—Manager of endowment—Necessity.*

Trust property dedicated to a religious or charitable purpose should not be alienated except for legal necessity. (*Stuart and Kanhaiya Lal*, A.J.Cs.) BASDEO BAN *v.* RAM SARAN. **45 I.C. 292 = 5 O.L.J. 38.**

———*Alienation—Manager of endowment—Interest—Necessity—Onus.*

A mortgagee of endowed property must prove that legal necessity for the loan are *bona fide* that enquiries as to the necessity therefor. A Court is not bound to decree interest at the contract rate but has full discretion to allow a reasonable rate. (*Lindsay*, J.C.) DURGA BHARTI *v.* GUPTAR PRASAD. **42 I C. 406 = 4 O.L.J. 547.**

———*Alienation—Manager of endowment—Powers.*

A *mohant* can alienate trust property only for the benefit of the trust, and a time for a suit against him to set aside an alienation by him runs from the date of his death. Per *Jwala Prasad*, J.—He can justify his alienations only as being in the interest of the trust. He cannot claim adverse possession in the trust property. Per *Das*, J.—*Shebait* of an idol has no interest in the endowed properties while the head of an institution has a life-estate in the properties which are the subject-matter of the endowment. (*Jwala Prasad*, A.C.J. *and Das*, J.) RAMPODARETH SINHA *v.* BASDEO DAS. **63 I.C. 231.**

———*Alienation—Manager of endowment—Powers of.*

A person cannot sell the property bequeathed to him with a complete dedication to a religious trust, that can do so if it is merely subject to an obligation to perform certain services. 35 Bom. 156; 15 Cal. 329, Foll. (*Hayward*, J.C. *and Boyd*, A.J.C.) TAHIL RAM *v.* AILMAL KHEMOOMAL. **24 I.C. 221 = 7 S.L.R. 120.**

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———*Alienation—Manager of joint family—Necessity—High rate of interest—Exorbitant rate—Reduction—Power of Court.*

Those who support a mortgage of joint family property made by its manager must prove not only that there was necessity to borrow the principal, but that it was not unreasonable to borrow at some such high rate and upon some such terms, as are provided by

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the mortgage. If the rate of interest is exorbitantly high although the security is ample the Court can properly infer that it was unnecessarily high, and can make a mortgage decree allowing a reduced rate. 34 All. 126; 18 I.A. 1, Ref. In a suit on a mortgage as above it is open to the defendant while admitting necessity to borrow the principal, to contend that the rate of interest was unnecessarily high. (*Lord Phillimore*). NAWAB NAZIR BEGAM *v.* RAO RAGHUNATH SINGH. **41 All. 571 = 36 M.L.J. 521 = 23 C.W.N. 700 = 26 M.L.T. 40 = 17 A.L.J. 591 = 21 Bom. L.R. 484 = 30 C.L.J. 86 = 11 L.W. 188 = (1919) M.W.N. 498 = 50 I.C. 434 = 46 I.A. 145 (P.C.).**

[On appeal from 19 I.C. 639.]

———*Alienation—Manager of joint family—Gift.*

Gift of an ancestral property by a member of a joint family is invalid. (*Sir Walter Phillimore.*) RADHAKANTA LAL *v.* NAZMA BEGUM. **45 Cal. 733 = 22 C.W.N. 649 = 27 C.L.J. 632 = 16 A.L.J. 537 = 5 P.L.W. 72 = 23 M.L.T. 393 = (1918) M.W.N. 386 = 35 M.L.J. 99 = 45 I.C. 806 = 20 Bom. L.R. 724 (P.C.).**

———*Alienation—Manager of joint family—Necessity—Mortgagor's share, if liable.*

The mortgage of a joint estate made by the manager of the property, who is not the father of the other members of the joint family, can only be justified so far as it is wanted for the joint family purposes. If the necessity cannot be established by direct evidence it may be assumed if it can be shown that reasonable care was taken to ascertain if such circumstances existed and the transferee acted in good faith. In either case the burden of proof lies on the person who claims the benefit or the mortgage. If the debt was not incurred for necessity, not even the mortgagor's own interest can be sold in enforcement of the mortgage, 39 All. 500-Foll. When the mortgage is for a larger amount than the necessity warrants, it will only be upheld to the extent to which the necessity has been proved. (*Lord Buckmaster.*) ANANT RAM *v.* THE COLLECTOR OF ETAH. **40 All. 171 = 34 M L J. 291 = 27 C.L.J. 363 = 20 Bom. L R. 524 = (1918) M.W.N. 446 = 7 L.W. 323 = 4 Pat. L.W. 226 = 16 A.L.J. 245 = 23 M.L.T. 228 = 44 I.C. 290 = 22 C.W.N. 484 (P.C.).**

———*Alienation—Manager of joint family—Necessity—Antecedent debt—None—Alienation void and ineffective even as against the share of alienor.*

Where one of the members of a joint Hindu family mortgages the family property without consent express or implied of the others, and there is no special undertaking by the mortgagor that he has power to mortgage the joint property, the mortgage is void even as regarde

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the share of the mortgagor in the joint family property. (*Viscount Haldane.*) LACHMAN PRASAD *v.* SARNAM SINGH. 39 All. 600 = 44 I.A. 163 = 15 A.L.J. 584 = 2 P.L.W. 29 = 21 C.W.N. 990 = 33 M.L.J. 39 = 19 Bom L R. 646 = 26 C L J. 97 = (1917) M.W.N. 516 = 40 I.C. 284 = 6 L.W. 334 (P.C.).

———*Alienation—Manager of joint family—Sale—Recital that manager was absolute owner and that is minor brother assented—Mortgage to pay off debts of ancestor—Liability of minor's share.*

Whereof two brothers forming a joint Hindu family the elder brother executed a mortgage of the family property falsely declaring that the same was impartible and his exclusive property, that his younger brother was entitled only to maintenance and that the latter was also made a party to the deed " in order to make known his consent and approval to the loan " and that the property was made security therefor, and the evidence showed that the younger brother was a minor at the time of the transaction. *Held*, that even if it was proved that the elder brother had taken the loan for the purpose of discharging debts contracted by his father, the debt could not on the face of the deed be regarded as one contracted by the elder brother as manager of a joint family consisting of himself and his younger brother, and that the mortgage-deed was as against the minor not merely voidable but void to all intents and purposes and neither the minor nor his share of the family property was liable. (*Sir John Edge.*) BALWANT SINGH *v.* CLANCY.
34 All. 296 = 39 I.A. 109 = (1912) M W.N. 462 = 11 M L.T. 344 = 9 A.L.J. 609 = 15 C L J 475 = 16 C.W.N 577 = 33 M.L J. 16 = 14 I.C. 629 = 14 Bom. L.R. 422 (P.C.)

———*Alienation—Manager of joint family—No necessity—Voidable not void.*

An alienation by the manager of a joint Hindu family without necessity is not absolutely void. It is voidable at the instance of the persons whose interests are affected by it, namely, the co-parceners in the property. 45 M. 449 ; 46 M. 40 Rel. (*Ryves and Daniels, JJ*) JAGESHAR PANDE *v.* DEO DAT PANDE. 45 A. 654 = 21 A.L J. 608 = L.R. 4 A. 324 = 9 O. & A.L.R. 879 = 1924 All. 61.

———*Alienation—Manager of joint family—Necessity—Alienee of properties subject mortgage—Rights of.*

Where a mortgage is executed by the manager of a joint Hindu family and subsequently equity of redemption is sold by all the members of the family it is open to the transferee to show that the mortgage was without necessity and therefore not binding on the family. A transaction which is viodable remains good so long as it is not challenged by the members who have the option to have it set aside. It is for them to exercise or not to exercise the option.

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If without exercising the option and in fact admitting the validity of the mortgage they transfer the property, the transferee cannot be allowed to say that he has acquired that option by the transfer. (*Lindsay and Sulaiman, JJ.*) INAYAT ILAHI *v.* HARDEO SAHAI.
45 A. 692 = 21 A.L.J. 610 = 1924 All. 29.

———*Alienation—Manager of joint family—Family benefit.*

There is no rule of Hindu Law proper warranting the manager of a joint Hindu family to alienate property for the benefit of the estate. The original law allows such a thing only to arrest distress in the family. But British Indian Law has allowed the validity of such alienations. (*Gokul Prasad, J.*) SHANKAR SAHI *v.* BINDHU RAM. 1923 All. 868.

———*Alienation—Manager of joint family—Necessity proved in part—Position of purchaser.*

It is not always possible for a manager to sell or mortgage a property for the exact amount required for family necessity but that would not justify him to mortgage or sell property for a larger amount than is absolutely necessary. Rs. 80 out of the total consideration of Rs. 400 was held not to be such a small amount as might be neglected in considering the question of the valid necessity for the alienation. The deed was set aside and plaintiff was made to pay Rs. 320 to the purchaser. 20 A.L.J. 621; 27 All. 494 and 25 All. 330, *Foll.* (*Gokul, Prasad, J.*) MATADIN TEWARI *v.* SURAJBALI SINGH. 1923 All 622.

———*Alienation—Manager of joint family—Necessity—Burden of proof on purchaser.*

In a suit by the junior members of a joint Hindu family to contest a sale by the manager the burden of proving that the sale was justified by necessity is on the purchaser. 8 A.L.J. 1022. Ref. (*Rafiq and Stuart, JJ.*) RAM SARUP SINGH *v.* RAM SARAN SINGH. 20 A L.J. 935 = 1922 All. 539.

———*Alienation—Manager of joint family—Mortgage by manager—Necessity—Onus.*

In the absence of evidence tending to shake confidence in the transactions themselves or in the conduct and case of the manager or of the creditor, the onus is shifted back on to the sons or members of the family who wish to repudiate a mortgage by the manager though the initial onus is on the creditor to prove necessity. As a matter of business and common sense Courts will decline to take judicial notice of the fact that fathers of joint Hindu families or managers or kartas as the case may be, where the father is dead are necessarily and chiefly occupied in going out of their way to borrow money for purposes which they know to be unlawful and which can confer no benefit upon the general body of the family to which they belong and of which they are respected heads. On the contrary, the presumption must be in their favour, *viz.*, that inasmuch as their own interest are indissolubly interwoven with the interests, and

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the affections, of the other members, the borrowing is to assist and benefit the joint family. Though the onus of proof to support a mortgage of family property is on the creditor the question of onus is not a mere question of law. Once the principle of onus has been settled, the question still remains in the decision of each particular case, as to whether having regard to the transaction which have been established by evidence, the onus still remains where it was or whether, on the other hand it has been made to shift. In each particular case whether the onus has been shifted or not, becomes a mixed question of fact and law or rather a question of the due application of recognised principle to the varying circumstances of each case. 31 A. 176; 39 A. 437; 43 I.A. 249 Rel. (*Walsh and Ryves*, JJ.) PEARE LAL *v.* SUNDER SINGH. **20 A.L.J. 658 = L.R. 3 A. 593 = 41 A. 756 = 1922 All. 436.**

———*Alienation—Manager of joint family—Necessity—Test of.*

Where a portion of the consideration for sale of ancestral property by the manager of a joint family is found to be binding on the family, the question is not whether the consideration, which was taken for legal necessity, formed the bulk of the consideration, but whether the portion, which was not taken for legal necessity, was such a small portion as might reasonably be left out of account. It is not always possible for the manager of a joint Hindu family to sell property exactly for the amount for which the legal necessity might exist. He might be able to raise a loan by a mortgage, but it might not always be possible for him to find a mortgagee willing to take a mortgage of the property for the amount required unless the security given leaves a sufficient margin to cover the principal and interest that might eventually fall due on that transaction. In many cases the sale of a portion might be out of question and fails to command either a purchaser or its proper value. (*Lindsay and Kanhaiya Lal*, JJ). JAI NARAIN PANDE *v* BHAGWAN PANDE. **44 All. 683 = L R. 3 A. 427 = 20 A L.J. 621 = 1922 All. 321.**

———*Alienation—Manager of joint family—Necessity—Antecedent debt—Exorbitant rate of interest—Liability of other members—Adult member joining in execution—Presumption of necessity—Setting aside alienation—Equities.*

An alienation of joint family property effected by all the members of the joint family who had attained majority with mutual consultation at the time raises a presumption that such alienation was for real family necessity. Where the rate of interest specified in a mortgage is high and there is, in addition, a provision for a penalty on non-payment of interest punctually, the provision for compound interest and the penalty might be regarded as improvident and therefore not binding on the minor members of the joint

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family. The existence of an antecedent debt of the father does not justify his alienating the whole of the family property at a sum considerably less than the market value. Where in a suit by the sons to avoid an alienation, the debt was partly for binding necessity, the plaintiffs are bound to discharge the binding portion of the debt before obtaining possession of the property alienated. (*Piggott and Walsh*, JJ.) GOVIND DASS *v.* RAM CHARAN LONIA, **68 I.C 307 = 4 U.P.L.R. (A) 25.**

———*Alienation—Manager of joint family—Necessity—Third party not to question.*

The head of joint Hindu family consisting of himself and his nephews sold the equity of redemption, in respect of certain property belonging to the family. In a suit by the vendor for redemption, the mortgagees pleaded that there being no legal necessity for the sale it was invalid. *Held*, the vendor being the head of the family was competent to execute the sale but whether as between him and his nephews the sale was valid and binding sale was not a question which could be raised by the mortgagees. (*Banerjee and Walsh*, JJ.) DURGA PRASAD *v.* BHAJAN. **42 All 50 = 58 I C. 487 = 17 A.L.J 947 = 2 U.P.L.R. (A) 405.**

———*Alienation—Manager of joint family—Mortgage — Simple money decree granted—Mortgagee's rights,*

Where a mortgagee gets a simple money decree in a suit on a mortgage of joint family property and no necessity is proved for the mortgage, the mortgagee can attach and put for sale interest of the mortgagor alone. (*Tudball and Sulaiman*, JJ.) SURAJ NARAYAN SINGH *v.* JANHOLI SUKHUL. **42 All. 586 = 2 U.P.L.R. (All.) 196 = 57 I.C. 14 = 18 A.L.J. 677.**

———*Alienation—Manager of joint family—Setting aside—Partly binding.*

Where major portion of consideration is for necessity, proper decree is to confirm the sale on payment of the amount not required for legal necessity. (*Tudball*, J.) CHATTER *v.* CHOTE, **40 I.C. 269.**

———*Alienation—Manager of joint family—Necessity—Building of residential house.*

Building of a residential house may be a necessity. The manager of a joint Hindu family must be allowed a certain discretion in dealing with the family property. (*Piggott and Lindsay*, JJ.) RAM SINGH *v.* NARAIN LAL. **35 I.C. 326.**

———*Alienation—Manager of joint family—Necessity—High rate of interest—Payment of Government revenue—Onus—Decree—Form of.*

It is for the creditor to show that a mortgage by the manager was made for family necessity, that it was also necessary to borrow at so high a rate and that the full amount of

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consideration was paid. Money borrowed for payment of Government revenue and utilised for that purpose is a debt for family necessity. Where a decree is passed for the sale of joint family property, the family property cannot be sold for any greater sum than the sum for which necessity is found notwithstanding that some of the members of the family have not appealed. (*Richards*, C.J. *and Banerji*, J.) GAYA PRASAD TEWARI *v.* RAMPHAL MISIR.
28 I.C. 21=13 A.L.J. 246.

———*Alienation—Manager of joint family —Sister's marriage.*

Expenses of sister's marriage are legal necessity and is binding on minors even though the eldest brother is not the natural guardian. (*Richards and Banerjee*, JJ.) RAMACHARAN *v.* MEHIN LAL. 36 All. 188=22 I C. 633=12 A.L.J. 139.

———*Alienation—Manager of joint Hindu family—Necessity—Interest.*

Mortgagee from Hindu family manager, must prove necessity for the loan at a higher rate of interest. (*Banerji and Ryves*, JJ.) RAO RAGHUNATH SINGH *v.* NAZIR BEGAM.
19 I.C. 639.

———*Alienation—Manager of joint family —Voidable.*

A mortgage executed by one member of a joint Hindu family is not altogether void but is voidable only at the instance of the persons whose rights are affected prejudicially by it. The executant cannot challenge the deed on the ground of invalidity. 31 All. 11, Foll.; 34 All. 155, Dist. There is a distinction between a mortgage of a tenure, the transfer of which is forbidden by the Legislature and a mortgage of property, the transfer of which is not forbidden but is voidable at the instance of other persons. (*Chamier*, J.) BISHUMBHAR DAYAL *v.* PARSHADI LAL. 16 I.C. 629=10 A.L.J. 112.

———*Alienation—Manager of joint family —Legal necessity.*

Where the manager mortgaged the ancestral property and the money thus realised by the mortgage was utilized in the acquisition of property for the joint family. *Held*, that the mortgage was executed for legal necessity and was binding upon all the members. (*Richards*, C. J. *and Banerjee*, J.) BOHRA JETH MAL *v.* DHARAM SINGH.
14 I.C. 748.

———*Alienation—Manager of joint family —Consent—Presumption.*

Where an adult co-parcener keeps silent without challenging a mortgage by his father till a suit by the mortgagee is filed, he might be presumed to have consented to the mortgage. 33 All. 283 Foll. (*Karamat Hussain and Chamier*, JJ.) KAMPTA PARSHAD SINGH *v.* SIDH NARAIN SINGH. 14 I.C. 251.

———*Alienation—Manager of joint family—Suit to set aside—Onus.*

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The onus is on the alienee to prove that he made inquiries as to necessity for the alienation by the Manager of a Joint Hindu family. 1 L. W. 249; 28 I.C. 673. Ref. The pressure on the estate, the danger to be averted and the benefit conferred on the estate are the things to be considered. If the alienee proves pressure and necessity he is not affected by the previous mismanagement of the estate. (*Karamat Hussain and Chamier*, JJ.) DIRG BIGAI SINGH *v.* BHAN PRATAP SHAH SING. 13 I.C. 945=9 A.L.J. 163.

———*Alienation—Manager of joint family—Legal Necessity—Burden of proof.*

Where an infant on coming of age, challenges the alienation by the Manager of a joint family, the transferee must prove the justifying circumstances for the alienation. (*Chamier*, J.) GAYA PRASAD *v.* RAGHUNATH PRASAD.
12 I.C. 178=8 A L J. 1022.

———*Alienation—Manager of joint family—Necessity—Minor co-parcener.*

A sale of a minor co-parcener's share of joint family property by the manager could be justified only on the ground of necessity. It is going too far to say that a manager of a joint Hindu family can justify a sale of joint family property merely on the ground that the sale at the time appeared to be advantageous. 44 I.A. 147, referred to. (*Macleod*, C.J. *and Crump*, J.) VISHNU VISVANATHA *v.* RAE CHANDRA.
25 Bom. L.R. 508=1923 Bom. 453.

———*Alienation—Manager of joint family —Clause in adoption deed giving father free power of alienation—Effect—Bombay School.*

In a deed of adoption, the adoptee agreed not to object to his adoptive father's mode of management. He afterwards objected to certain alienations as not binding on him. *Held*, the alienations should be tested by the standard of a father's powers in spite of the deed and the son's share will not pass if it is an unauthorised alienation. (*Macleod*, C. J. *and Crump*, J.) BALAPPA GHENAPPA *v.* AKKUBAI.
74 I.C. 220 (2).

———*Alienation—Manager of joint family—Necessity—Proof.*

Proof lies upon the alienee from the manager of a Hindu family that he made the necessary enquiries as to the necessity for the alienation and satisfied himself as to the same. When such enquiry is made and he acts *bona fide*, is not bound to see that the consideration is applied for necessity. The burden of proving *bona fides* and enquiry is on him. (*Scott-Smith and Fforde*, JJ.) RODHA RAM *v.* AMAR CHAND.
4 Lah. 208=1924 Lah. 141.

———*Alienation—Manager of joint family—Consideration used for legal necessity—Suit by reversioner.*

Where money was borrowed by mortgaging ancestral property to fight out successfully an uncontested pre-emption suit. *Held*, the act in

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borrowing the money to obtain the land by pre-emption was an act of good management and that it must be held that the loan was raised for valid necessity. (*Scott Smith and Fforde*, JJ.) PARTAB SINGH *v.* HAKIM SINGH.
4 Lah. 171 = 1923 Lah. 480.

———*Alienation—Manager of joint family—Portion of consideration binding—Decree.*

In a suit by a Hindu co-parcener to set aside an alienation made by the manager where part of the money was found to be binding on the family, the Court should make the decree for possession conditional on the payment of the Court-fees necessary for suits for possession. (*Martineau and Harrison*, JJ.) AMIR AND DAULAT *v.* KHAN CHAND. **1923 Lah. 285.**

———*Alienation—Manager of joint family—Necessity—Burden of proof—Alienation of property—Consideration—Proof of.*

Where an alienation is sought to be contested after the lapse of a long series of years, alienee should not be called upon for strict proof of legal necessity. (*Abdul Raoof and Bevan-Petman*, JJ.) SUHUA *v.* DEVI DIAL.
70 I.C. 1002 = 4 L.L.J. 516.

———*Alienation—Manager of joint family—Legal necessity—Proof of after a lapse of time.*

Strict proof of legal necessity for an alienation should not be insisted upon after a lapse of many years, especially when 3/5ths of the consideration has been given for necessity. (*Shadi Lal and Broadway*, JJ.) TARACHAND *v.* KASHIRAM.
17 P.R. 1917 = 9 P.W.R 1917 = 39 I. C. 121 = 71 P.L.R. 1917.

———*Alienation—Manager of a joint family—Legal necessity—Presumption.*

When all the surviving male members of a Hindu family raise a loan for a purpose, the whole of the amount is presumed to be raised for the purpose. When a long time has passed from execution of a deed by all the male members, necessity for the debt may safely be presumed. (*Johnstone*, C.J. *and Shah Din*, J.) JIVNA *v.* NATHU. **38 I. C 586 = 17 P.W.R. 1917.**

———*Alienation—Manager of joint family—Inquiries.*

If the creditor of the manager has the means to know the purpose for which the loan is made he must satisfy himself as to the existence of legal necessity for the debt. (*Brodway and Shadi Lal*, JJ.) AMAR NATH *v.* BULAKI DAS. **62 P.W.R. 1917 = 50 P.L.R. 1917 = 38 I.C. 363 = 21 P.R. 1917.**

———*Alienation—Manager of joint family—Liability of co-parceners—Mortgage.*

A decree in a suit on a mortgage by a deceased manager without necessity should be limited to the assets of the mortgaged lands in the hands of the surviving co-parceners. In the absence of necessity the decretal amount

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should not be made a charge on the lands. (*Rattigan and Leslie-Jones*, JJ.) ARURA *v.* BALAK RAM. **157 P.L.R. 1915 = 30 I.C. 528 = 147 P.W.R. 1915.**

———*Alienation—Manager of joint family—Necessity—Trade.*

Among Jat agriculturists an alienation in lieu of money borrowed for the purposes of trade is not an alienation for necessity. (*Rattigan and Shadi Lal*, JJ.) SANTA SINGH *v.* WARYAM SINGH. **19 P.R. 1915 = 207 P.L.R. 1914 = 24 I.C. 861 = 147 P.W.R. 1915.**

———*Alienation—Manager of joint family—Setting aside—Proceeds of sale divided by members of the family—Effect.*

Where the proceeds of an alienation made by manager of a joint Hindu family are divided among themselves by the junior members at a family partition it is not open to the latter to impeach the alienation as not being supported by necessity. (*Schwabe*, C. J. *and Wallace*, J.) DURAISAMIER *v.* SUBBARAYA IYER.
17 L.W. 348 = 33 M.L.T.(H.C.) 277 = (1923) M.W.N. 242 = 1923 Mad. 442 (1).

———*Alienation — Manager of joint family — Major portion of the consideration binding—No misconduct—Form of decree.*

Where in a suit by a minor to set aside an alienation of joint family property by his father it is found that out of the recited consideration of 500 rupees only Rs. 320 was paid for necessity and the balance was not so paid, on a question arising as to the proper form of decree to be passed in the case. *Held*, that as the value of the properties had depreciated considerably and as there was no misconduct on the part of the purchaser, the properties should be sold and the proceeds distributed in the shares to which the parties were entitled. (*Sir Waller Schwabe*, C. J.) KUTTUVA MEENATCHI AIYAR *v.* DARMIAH RANGA CHARLU.
16 L.W. 595 = (1922) M.W.N. 719 = 1923 Mad. 120.

———*Alienation — Manager of joint family—Mortgage for purchasing other lands.*

Where the manager executed a mortgage of ancestral lands for purchasing other lands in another village and it was not shown that the transaction was for the benefit of the family: *Held*, that the minor co-parcener's share in the joint family lands was not liable be sold to discharge the mortgage debt. (*Sadasiva Iyer and Spencer*, JJ.) SUBRAMANIA CHETTY *v.* CHIDAMBARA MUDALI.
14 L.W. 495 = 41 M.L.J. 459 = 69 I.C. 756 = (1921) M.W.N. 740.

———*Alienation—Manager of joint family—Binding character—Burden of proof.*

The onus of proving that an alienation made by the adult members of a joint Hindu family, is not binding on the minors, for want of consideration, lies on those minors seeking to

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set it aside. (*Ayling and Seshagiri Aiyar, JJ.*) KRISHNA *v.* MADHAVA. 63 I.C. 258.

———*Alienation—Manager of joint family—Setting-aside—Necessity—Past consideration not valid.*

If only a very small part of the consideration found invalid, the sale will be upheld if the purchaser pays to the plff. the part of the consideration which is not binding on him. In raising equity in favour of the purchaser adequacy of the price paid, and necessity for sale are relevant considerations. 46 Cal. 566 (P.C.), Foll. But when the consideration found to be valid is only a small portion of the whole, there is no equity in favour of the purchaser. (*Spencer and Krishnan, JJ.*) VISVANATHA SASTRIGAL *v.* VALAMBAL AMMAL. 62 I.C. 701.

———*Alienation—Manager of joint family—Gift to co-parcener.*

A gift of joint family property to a co-parcener by the other members for performing the shradha of a deceased sonless member is valid. (*Seshagiri Aiyar and Phillips, JJ.*) BAGIRATHI AMMAL *v.* BAGIRATHI AMMAL.
25 M.L.T. 358=50 I.C. 597.=
(1919) M. W. N. 350.

———*Alienation—Manager of joint family—Decree against—Sale in execution.*

To ascertain what passes at a sale in execution of a decree against the manager it is necessary to look (1) at the circumstances attending the creation of the debt, (2) form of plaintiff's claim, (3) the decree, (4) attachment, (5) sale proclamation, (6) certificate of sale. A decree against a Mitakshara father as manager of the family under the Transfer of Property Act for sale of properties not mortgaged is not in the nature of a personal decree against the father as a member and all the family properties pass by sale in execution of such a decree. (*Oldfield and Krishnan, JJ.*) PATTABHIRAMA NAIDU *v.* SUBRAMANIA CHETTY. 45 I.C. 76=7 L.W. 438.

———*Alienation—Manager of joint family—Necessity—Purchase of fresh property—Trade—Adult co-parceners joining in sale—Effect of—Suit by minor members to set aside alienation—Mesne profits—Right to.*

The starting of a prospective trade is not a ground justifying alienation of family properties by the manager. An alienation of joint family properties for the purpose of purchasing other properties instead is not binding on the members of the family, at any rate in the absence of clear benefit to the family. Where the sale-deed itself does not show any necessary purpose and there is no evidence of necessity, the fact that the adult members of the family joined in it does not give any weight to the transaction. Where the co-parceners of a joint family sue to set aside alienations by the Manager they are not as of right, entitled to mesne profits from the date of alienation.

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Mesne profits are in the nature of damages which the Court will mould according to the justice of the case. 39 All. 61, Ref. (*Wallis, C.J. and Kumaraswamy Sastri, J.*) GANESA AIYAR *v.* AMBETHASWAMI ODAYAR.
23 M.L.T. 245=44 I.C. 605=
(1918) M.W.N. 892.

———*Alienation—Manager of joint family—Description as guardian.*

An alienation by the Manager of a family on behalf of the family is binding on all the members of the family and the mere fact that the Manager misdescribes himself as the guardian of the minor members, is immaterial. (*Spencer and Krishnan, JJ.*) MUTU KUMARA CHETTIAR *v.* ALAGAPPA CHETTIAR.
42 I.C. 551=6 L.W. 518.

———*Alienation—Manager of joint family—Setting aside—Suit by minor—Necessity.*

Where an alienation made by an elder brother after attaining majority and by the mother as the guardian of the minor plff. is found to be for a *bona fide* family purpose, the transaction is valid even though the plff.'s mother is unnecessarily joined in the deed, 34 All. 213, Dist. Mere non-mention of the fact that he executed the conveyance as a managing member does not render the deed any the less effective. The interests of the minor must be properly represented. This rule is subject to the rule that is it not open to every one to intermeddle with the estate of the minor on the ground that he is acting for the minor's benefit. (*Spencer and Seshagiri Aiyar, JJ.*) SURAPA RAJU *v.* VENKAYYA.
32 I.C. 802=(1915) M.W.N. 908.

———*Alienation—Manager of joint family—Gift—Daughter on marriage—Validity of.*

A gift by the manager of a tenth of the joint family properties to the daughter of the co-parcener on the occasion of her marriage, is binding not only on the sons of the donor but also on the other co-parceners. (*Sankaran Nair and Oldfield, JJ.*) *In re* SUBBA NAICKER. 30 I.C. 781=2 L.W. 754.

———*Alienation—Manager of joint family—Necessity—Fund raised to defend a member against criminal charge.*

A fund raised by alienating joint Hindu family property to defend a member of the family against a criminal charge is a fund raised for family necessity and the alienation is binding on the joint family if it is shown there were no other funds available. (*Sankaran Nair and Tyabji, JJ.*) SENCHURAMA NAIDU *v.* ANNAPURNI AMMAL. 30 I.C. 79.

———*Alienation—Manager of joint family—Necessity—Bona fide belief—Inquiry.*

An alienation of joint family lands by the manager of a joint Hindu family is binding upon the other members of the family, if th-

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purchaser after making *bona fide* inquiries as to the necessity had purchased it for a proper price believing in the existence of the necessity. The failure on the part of the purchaser to prove that the purchase money was really spent for the purposes mentioned will not invalidate the sale. (*Sadasiva Iyer and Spencer*, JJ.) GANGASETTI *v.* RAMAMURTHI. **28 I C. 673 = 1 L.W. 249.**

——*Alienation—Manager of joint family —Necessity — Expense of defending head of family from criminal prosecution—Legal necessity.*

The expense of defending the head of a Hindu family, in a criminal prosecution is a legal necessity and a sale therefor is binding on the members of that family. 34 All. 4 ; 33 All. 472, Foll. The principle enunciated in 6 M.I.A. 393 at 424 as to mortgages applies with necessary changes to sales as well. (*Tyabji and Spencer*, JJ.) RAMALINGAM PILLAI *v.* MUTHAYYAN. **1 L.W. 344 = 26 M.L.J 528 = 24 I C. 356 = 16 M.L T. 76.**

——*Alienation—Manager of joint family —Minor's share—Purchaser's duty.*

In order that an alienation, by the manager of joint Hindu family, of a minor co-parcener's share, may be binding on the minor, the purchaser must show that there actually was necessity or he in good faith believed, there was family necessity. (*Ayling and Sadasiva Aiyar*, JJ.) SUBRAMANIA NADAN *v.* RAMSAMI NAIDU. **21 I.C. 636 = 25 M L J. 563.**

——*Alienation—Manager of joint family —What passes.*

In determining what interest passes to vendee under a sale-deed executed to him by the manager of joint Hindu family it is competent to attempt to look to surrounding circumstances to see whether the executant purported to convey only his interest of the family interest. A manager can bind the minor's interest by a contract for sale of joint family property and for necessity and specific performance can be decreed against that interest. (*Ayling and Napier*, JJ.) KRISHNA IYER *v.* SHAMANCE. **23 M.L.J. 610 = 17 I.C 497 = (1912) M.W.N. 1188.**

——*Alienation—Manager of joint family—Necessity—Sale of joint property—Partition.*

A sale of family property with the object of conveniently adjusting the shares of the rest of the family property is valid, the object being one of family necessity. (*Benson and Sadasiva Aiyar*, JJ.) SHANMUGAM PILLAI *v.* SURYANARAYAN PILLAI. **11 M.L.T. 407 = 15 I.C. 688 = (1912) M.W.N. 546.**

——*Alienation—Manager of joint family—Necessity—Marriage—Maintenance.*

An alienation by the manager of a family for providing for the maintenance and expenses of the marriage of his sister or step-sister is valid. (*Miller and Sundara Aiyar*, JJ.) SEENI AMMAL *v.* ANGAMUTHU. **13 I.C. 802 = (1912) M.W.N. 99.**

——*Alienation—Manager of joint family —Benefit—Purchase of other lands.*

The manager is entitled to sell family land if the object of the sale is to purchase which are not inferior to ancestral lands or if the transaction is for the benefit of the family. Burden of proof is on alienee. (*Sundara Aiyer*, J.) *In re* KRISHNASWAMI DAS. **(1912) M.W.N. 167 = 13 I.C. 643 = 11 M.L T. 182.**

——*Alienation—Manager of joint family —Marriage expenses of male members.*

The marriage expenses of the male members of an undivided Hindu family are a legitimate charge on the family property. 20 M.L.J. 855, Foll. (*Benson and Sundara Aiyar*, JJ.) ARUNACHELLA REDDI *v.* ARUNACHELLA REDDI. **10 I.C 285.**

——*Alienation—Manager of joint family —Rights of alienee.*

If a sale by the manager of a joint family is not binding on the other co-parceners the alienee may elect to take the vendors's share or sue for the return of the purchase-money. In the former case he has no equity enforceable against the other co-parcener in respect of payments properly made. 23 Mad. 89, Foll. ; 31 Mad. 176 ; 19 I.C. 861 ; 13 C.W.N. 815 ; 22 Mad. 312 ; 16 Mad. 76, Dist. (*Mittra*, A.J.C.) BHIJRAJ *v.* NATHURAN. **37 I.C. 498 = 12 N.L.R. 161.**

——*Alienation—Manager of joint family—Necessity—Subsequent partition—Security of mortgagor's share.*

A mortgage of the whole or a share of the joint family property of a mitakshara family is void and inoperative as against the property hypothecated and gives the mortgagee no right even against the mortgagor's undivided share. Where the mortgagor's interest has subsequently been separated from that of the other members of the family, it may become available as security for the mortgage debt. (*Simpson and Dalal*, A.J.Cs.) RAM RATAN *v.* GANGA BUKSH SINGH. **23 O.C. 245 = 10 O.L.J, 193 = 9 O. & A.L R. 222 = 1923 Oudh 265.**

——*Alienation—Manager of joint family—Necessity—Proof of—Recital—Value of.*

Where an alienation by the manager of a joint Hindu family is impugned by the junior members, the recitals in the deed of sale are not sufficient by themselves to establish necessity but they are clear evidence of the representation made by the manager. Where proof of actual enquiry has become impossible, the recital coupled with the circumstances, such as would justify the reasonable belief that an enquiry would have confirmed the truth of the recital is enough to support the necessity

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alleged. A representation by the father as to the existence of antecedent debts, is on the same footing as a representation by the manager as to necessity. The real value of the representation is that it indicates the scope of the enquiry that has been or may be presumed to have been made. 5 O.L.J. 629; 29 O. C. 211, explained; 36 A. 187; 43 I. A. 249, referred. (*Ashworth*, J.C.) JAMNA PRASAD *v.* BALBHADAR. **25 O.C. 388=9 O L.J. 601=1923 Oudh 147.**

———*Alienation—Manager of joint family—Necessity—High rate of interest.*

It is incumbent upon those who support a mortgage made by a manager of a joint Hindu family to show, not only that there was necessity to borrow, but that it was not unreasonable to borrow at such high rate of interest and upon such particular terms as are contained in the mortgage. Where it is not shown that there was necessity to borrow on such a high rate of interest that rate cannot stand and the Court is empowered to reduce the contract rate to a reasonable rate of interest. (*Simpson and Wazir Hasan*, A.J.Cs.) BABU BASANT RAI *v.* LALA KESHO RAM. **9 O.L.J. 612=1923 Oudh 139.**

———*Alienation—Manager of joint family—Manager and others, difference between—Suit to recover property—Decree, form of.*

In the case of an alienation not binding on a joint Hindu family, while the manager can sue to recover the whole entire property on behalf of the family, individual members can maintain the suit only in respect of their own shares. Where an alienation was made by an adult brother and the mother on behalf of her minor sons, and suit is brought by one of the latter to have it set aside, the proper decree to be passed is for possession of his share of the property on payment of his share of the consideration, if any, which is found binding. (*Daniels*, A.J.C.) MAHESH DAT *v.* RAM ASRE. **9 O.L J. 188=4 U.P.L.R. (J.C) 38=1922 Oudh 114.**

———*Alienation—Manager of joint family—Necessity—Recitals—Adult members joining in alienation—Effect of.*

Where a sale-deed of joint family property executed by the heads of all the branches of the family mentions the purpose for which the sale was made, there is no room for raising any presumption with regard to the necessity for the transaction from the fact that all the members joined in its execution. The Court has merely to see whether the purpose recited is one which is recognised as valid under the Hindu Law. 8 B. 602, Rel. (*Daniels*, A.J.C.) MUSSAMMAT MANZURAN BIBI *v.* JANKI PRASAD. **9 O L.J. 35=1922 Oudh 50.**

———*Alienation—Manager of joint family—Necessity—Recitals, evidentiary value of.*

Recitals in a deed of alienation as regards the purposes for which the money was borrowed may not be sufficient to prove those purposes as regards third parties. But the recital is clear evidence of the representation made to the creditor and if the circumstances are such as to justify a reasonable belief that an enquiry would have confirmed its truth, then when proof of actual enquiry has become impossible the recitals coupled with the circumstances will be sufficient evidence to support the deed. (*Daniels*, A J.C.) RAM SARAN *v.* DAWAN SINGH. **66 I.C. 36=24 O.C. 386.**

———*Alienation—Manager of joint family—Suit to set aside—Cause of action—Members subsequently born.*

The cause of action for a suit for setting aside an alienation of joint family property accrues to the members on the date of the alienation or the alienee's taking possession. Members subsequently born into the family do not get a fresh cause of action on their birth. 24 O.C. 330; 61 I.C. 801, Rel. (*Dalal*, A.J.C.) SHEOAMBAR KHAN *v.* RATIPAL SINGH. **65 I.C. 401=8 O L.J. 679.**

———*Alienation—Manager of joint family—Speculation.*

A mortgage of the family property by the manager for the benefit of the family is binding on the joint family property. An alienation for purposes of a speculative nature is not binding on the family but it cannot be said that in no case can the starting of a new business justify an alienation of the family property. (*Daniels*, A.J.C.) SHEO RATAN *v.* DRIG PAL. **68 I.C. 554=8 O.L.J. 314.**

———*Alienation—Manager of joint family—Necessity—Inquiry by purchaser.*

The burden of proof lies on a mortgagee from a father in a joint Hindu family to show that an alienation by the person with a limited power was for legal necessity. (*Stuart and Kanhaiya Lal*, JJ.) JAI NARAYAN *v.* RAJ RANG BAHADUR SINGH. **48 I.C. 914=5 O.L.J. 691.**

———*Alienation—Manager of joint family—Setting aside—Right of after born co-parcener.*

Alienation without the consent of even one member and without necessity is invalid not only against that non-contesting member but also against subsequently born co-parcener. 33 All. 654, Ref.; 18. O.C. 162; 3 O.L.J. 180, Ref. (*Kanhaiya Lal*, A.J.C.) SRI KRISHNA *v.* LAKHPAT. **39 I.C. 287=4 O.L.J. 73.**

———*Alienation—Manager of joint family—Binding on other members—Benefit.*

A deed of transfer executed by the manager of a joint Hindu family who was its only adult member at the time binds the other members of the family, if it is to their benefit though the manager did not execute the deed explicitly as manager. (*Stuart*, A.J.C.) MAHADEO PRASAD *v.* TIKNI. **36 I.C. 686=3 O.L.J. 390.**

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———*Alienation—Manager of joint family—Benefit—Necessity.*

An advantageous acquisition of some property at the expense of the ancestral estate, made, in the interests of the family (i. e.,) to enlarge its means of subsistence, by the manager, is binding on the minor members, just as such as one made to pay antecedent debt or to meet an immediate necessity and the minors cannot on attaining majority impeach the transfer of which the benefit has been enjoyed. (*Stuart*, J.C. *and Kanhaiya Lal*, A.J C.) MUNESHAR BAKHSH SINGH *v* ARJUN SINGH. **3 O.L J 237 = 31 I.C. 738 = 19 O.C. 100.**

———*Alienation—Manager of joint family—Setting aside—After born member.*

Only valid alienation of joint family property binds the after-born member. But ratification of an invalid alienation of joint property by all the members at the date of the alienation will not bind an after-born member. (*Lindsay*, J.C.) MURARI LAL *v.* JALIPA SAHAI **34 I.C. 447 = 3 O.L J. 180.**

———*Alienation—Manager of joint family—Minors not represented expressly—When binding.*

Assignment of mortgage rights belonging to a joint family by the one major male member thereof who does not purport to act as family manager, is valid and binding on the minor members where the transfer was out of family necessity. (*Lindsay*, J.C.) RUKMIN KUAR *v.* ASHIQ HUSSAIN, S.C. **34 I.C. 3 = 3 O.L J. 32.**

———*Alienation—Manager of joint family—Marriage expenses—Necessity.*

Among *Thakurs* of Oudh governed by *Mitakshara* the expenses of a marriage of a daughter of deceased member to whose property the remaining male members have succeeded by survivorship is a family necessity. 26 Mad. 505, Diss. (*Stuart*, A J.C.) GANGA BAKHSH SINGH *v.* AHBARAN SINGH. **33 I.C. 601 = 3 O.L J. 11.**

———*Alienation—Manager of joint family—Consent of other persons.*

No alienation by one co-parcener, even if he is a managing member of the family will bind the other adult co-parceners, unless their consent to the alienation is either expressed or may be implied from their conduct. (*Lindsay*, J.C.) KAMTA *v.* BHAGIRATH. **27 I.C. 517 = 2 O.L.J. 30.**

———*Alienation—Manager of joint family—Setting aside—Rights of Junior members and alienees.*

A co-parcener in a joint Hindu family property, who establishes that a member of the family has alienated family property without legal necessity, can sue to recover the whole property. He cannot be allowed to sue for his own share of any specific portion thereof for the simple reason that in a Mitakshara joint family no particular share can be predicted as belonging to any individual member. The only concession, which the Courts have so far made in the direction of allowing the share of the transferor to be affected, is where the share of the transferor has been attached in execution of any money-decree. In such a case, the Courts have held that a co-sharer who sues for the recovery of the whole property will be allowed to recover, but it will be declared that the purchaser of the interest of the transferor is entitled to a partition and to recover thereafter that portion of the property which represents the transferor's interest therein. (*Mullick and Bucknill*, JJ.) SHYAM SUNDER RAI *v.* JAGARNATH MISRA. **2 Pat. 925 = 1 Pat. L.R. 373 = 1923 Pat. 263 = 1923 P. 590.**

———*Alienation—Manager of joint family—Legal necessity.*

To save other properties from sale at execution, the manager sold the mortgaged property. But the purchase money could not be paid by the purchaser and the manager became a surety to the mortgage executed by the purchaser in order to be able to find money to set aside the execution sale before confirmation. *Held*, there was legal necessity for the last transaction and the manager was justified in becoming a surety to the mortgage. (*Das and Adami*, J.) KANHAI LAL KHEMKA *v.* THAKUR PRASAD SINGH. **1923 P. 268.**

———*Alienation—Manager of joint family—No necessity—Jurisdiction of court to grant equitable relief does not exist.*

Where an alienee from the manager of a joint Hindu family fails to enquire and satisfy himself of the truth of the representations made by the manager, there is no room for the application of any equitable doctrine based on the representations. If notwithstanding the representation by the manager, he agrees to make good that representation if necessary by partition or otherwise the court has power to compel him to do that which he undertook. In the absence of any such undertaking, the court has no power in a suit brought to set aside an alienation of joint family property to direct that the share of the executant be available for the alienee the transaction being void altogether. 39 A. 500, Foll.: 13 C.W.N. 815; 14 C.W.N. 552, Diss. (*Das and Bucknill*, JJ.) JATADARI SINGH *v.* DUKHI SINGH. **4 Pat. L T. 65 = 1923 P. 197.**

———*Alienation—Manager of joint family—Necessity—Consent.*

The law is that the head of a joint family cannot mortgage the joint family property without consultation with, and consent of, other members, but where legal necessity is proved it is unnecessary to prove consent, because this will be implied in the case. (*Coutts and Ross*, JJ.) KAMLA PRASAD *v.* NATTUI NARAYAN SINGH. **1922 Pat. 136 = 3 Pat. L T. 401 = 1923 P. 347.**

HINDU LAW—Alienation—Manager of joint family.

———*Alienation—Manager of joint family—Necessity as regards rate of interest—Plea necessary.*

To support a mortgage by the karta of a Hindu family, the plaintiff mortgagee has to prove not only the necessity for the loan but also the necessity to borow at the rate stipulated The onus as regards the latter is however discharged if the defendant does not specifically raise the plea that the rate of interest was not justified by legal necessity; for the facts necessary to prove legal necessity for the mortgage may be entirely different from the facts necessary to prove that there was necesaity to borrow money at such and such a rate. Where no such plea was raised in the trial court, it cannot be allowed to be raised in appeal. (*Miller, C.J and Adami, J.*) AINTHAN GOPE *v.* KHAKHAR SAHU. 3 Pat L.T. 367= 67 I.C. 790=1922 Pat. 356.

———*Alienation—Manager of joint family—Essentials of validity.*

In order that an alienation should be binding on the family, it must be proved that it was for family benefit and it is immaterial whether the alienation was by *karta* or not. Whether the transaction is a loan for purchase of goods, the creditor must show that he made enquiries and was satisfied that it was for family benefit. (*Jwala Prasad and Das, JJ.*) DEBI SARAN SAHAI *v.* BANKEY BEHARI LAL. 63 I.C. 223.

———*Alienation—Manager of joint family—Mortgage—Whether affects share of mortgage.*

A mortgage by the *Karta* of a joint Hindu family, without the consent of the other members, the debt not having been incurred for any family necessity or in payment of an antecedent debt, is in invalid, and gives the mortgagee no charge even upon the undivided share of the mortgagor. (*Miller, C.J. and Mullick, J.*) BANKHANDI RAI *v.* KISHORI MANDAL. 2 P.L.T. 17=6 P.L J. 72= 61 I.C. 102=1921 Pat. 113.

———*Alienation—Manager of joint family—Enquiry by creditor.*

Dealing with a Hindu family governed by *Mitakshara* a creditor cannot content himself with entries in the Collectorate registers or survey papers, but must enquire, whether and how far the other members are interested in it; the *prima facie* presumption will be that they are so interested. (*Miller, C.J. and Mullick, J.*) KANHU LAL MARWARI *v.* PALU SAHU. 5 Pat. L.J. 521=1 Pat. L.T. 546= 2 U.P.L.R. (Pat) 171=57 I C. 353= 1920 Pat. 205.

———*Alienation—Manager of joint family—Contract for sale of land—Minor members bound, if necessity or benefit proved—Contract specifically enforceable against them.*

Contracts such as agreements to sell, made by the managing members of a joint Hindu family some of the members of which are minors, for family necessity or for the benefit of the family, can be enforced against the family. Case-law discussed. (*Chamier, C.J. Mullick and Atkinson, JJ.*) HARI CHARAN-KUAR *v.* KAULA RAI. 1 Pat. L W 587= 2 Pat. L.J. 513=40 I.C. 142= 1917 Pat. 201.

HINDU LAW—Alienation—Widow—Consent of reversioner.

———*Alienation—Manager of joint family=Necessity—Criminal litigation.*

Expenses for defence of the manager against a criminal charge are not necessity. Such money may be spent by the manager with the consent of other members. (*Chatman and Roe, JJ.*) NATHU RAI *v* DIN DAYAL RAI 39 I.C. 665=2 Pat. L.J. 166.

———*Alienation—Manager of joint family—Necessity—Litigation.*

Prosecution of one member of joint family, is not such a necessity as would justify alienation of the whole joint family property. (*Pratt, J.C. and Crouch, A.J.C.*) MOTU MAL *v.* JAVERMAL. 19 I.C. 908=6 S.L.R. 265.

———**Alienation—Widow.**

COMPROMISE.
CONSENT OF REVERSIONER.
CO WIDOWS.
CUSTOM.
DEBTS.
DUTY OF LENDER.
GIFT.
MAINTENANCE.
MORTGAGE.
NECESSITY.
RELINQUISHMENT.
RIGHTS OF ALIENEE.
SETTING ASIDE.
SURRENDER.
TRANSFER OF RIGHTS, TITLE AND INTEREST.
WILL.

Alienation—Widow—Compromise.

———*Alienation — Widow— Compromise—Distinction between.*

If a question arises whether a transaction is an alienation or compromise or a doubtful claim, a test is to see whether the alienee derives title from the limited owner. If the transaction recognises an antecedent title of one kind in both the parties as the agreement acknowledges and defines what that title is; the transaction is not an alienation but a compromise of a doubtful claim which would be binding on the reversion 27 C.L J. 296, Foll.; 33 All. 356; 40 All. 487. Dist. (*Dass and Bucknill, JJ.*) BHAGWATI KUAR *v.* JAGDAM SAHAY. 62 I.C. 933=2 Pat L.T. 471.

Alienation--Widow--Consent of Reversioner.

———*Alienation—Widow—Consent of reversioner—Distinction between—Test of—Reversioner taking mortgage from alienee, if estopped.*

HINDU LAW—Alienation—Widow—Consent of reversioner.

There is a distinction between the power of a Hindu widow to surrender or relinquish the estate of her deceased husband and her power to alienate it for necessity. She can surrender her whole interest in the whole estate in favour of the nearest reversioner or reversioners at the time, but the surrender must be *bona fide*, not a device to divide the estate with the reversioner. In this case the question of necessity does not arise. If the widow alienates the whole property and all the nearest reversioners consent, then the alienation falls under this head of surrender. When the alienation of the whole or part of the property is to be supported on the ground of necessity, then if actual necessity or *bona fide* enquiry and belief by the alienee is not proved *aliunde*, the consent of such reversioners as might fairly be expected to object would be presumptive proof which if not rebutted by contrary proof, will validate the transaction as a right and proper one. 30 All. 1, P.C., Dist. Where a Hindu widow transferred property to an alienee from whom a prospective reversioner takes a mortgage of a portion of the property, the reversioner is not estopped from disputing the validity of the alienation on the death of the widow. (*Lord Dunedin*) RANGASWAMI GOUNDAN *v.* NACHIAPPA GOUNDAN. **42 Mad 523 = 36 M.L.J. 493 = 17 A.L.J. 636 = 29 C.L.J 539 = 21 Bom. L.R. 640 = 10 L.W. 105 = 28 C.W.N. 777 = (1919) M W.N. 262 = 26 M.L.T. 8 = 50 I C. 498 = 46 I.A. 72 (P.C.).**

[Reversing 26 I.C. 767 = 28 M.L.J. 1.]

———*Alienation — Widow — Consent of reversioner—Reversioner joining in conveyance —Effect of—Duty of purchaser—Reversioner subsequently succeeding—Estoppel—Transfer of Property Act, S.* 43.

It lies on a purchaser from a Hindu female to acquaint himself with the extent of her powers. A reversioner with a mere expectancy who joins in the conveyance by the limited owner cannot validate it, if it is otherwise invalid. The reversioner so joining is not estopped from denying the vendor's power to convey more than her life-interest unless the purchaser has been misled after enquiry. Except in that case therefore, the conveyance does not operate on any interest acquired after the vendor's death, by the reversioner joining in the conveyance. (*Mr. Amir Ali.*) GUR NARAIN *v.* SHEO LAL SINGH. **46 Cal. 566 = 46 I.A. 1 = 17 A.L.J. 66 = 36 M L J. 68 = 9 L W. 385 = 23 C.W.N. 521 = 49 I.C. 1 = 1 U P.L.R. 1 (P.C.).**

[On appeal from 7 I.C. 218].

———*Alienation—Widow—Consent of reversioner—Attestation—Effect of.*

An attestation proves no more than that of the signature of the executant has been affixed to a document in the presence of a witness. It does not involve the witness in any knowledge of the contents of the deed or affect him with notice of its provisions. It might, at least, be material for cross examining the witness as to his knowledge of the transaction. It does not, by itself, create an estoppel nor imply consent. (*Lord Chancellor*). NANDLAL *v.* JAGAT KISHORE ACHARJYA. **44 Cal. 186 = 20 M L.T. 335 = 31 M L J 563 = (1916) 2 M.W.N. 386 = 4 L W. 458 = 18 Bom. L R. 868 = 14 A L.J. 1103 = 24 C.L.J. 487 = 1 P L.W. 1 = 21 C W.N. 225 = 10 Bur. L.T. 177 = 36 I C. 420 = 43 I.A. 249 (P.C.).**

———*Alienation—Widow—Consent of reversioner—Attestation—Effect of—No estoppel.*

To be valid as against the reversioners or affect their reversionary rights, a charge created by Hindu widow or an alienation effected by her can be supported only by proof *aliunde* that such debt was contracted for valid and legal necessity, and the onus of establishing such necessity rests heavily on those who claim the benefit of the transaction. The requirement of the law may, however, be fulfilled by proving the consent or concurrence of the reversioners to or in the transaction. But such consent must be established by positive evidence that upon an intelligent understanding of the nature of the dealings they concurred in binding their interest; and such consent should not be inferred from ambiguous acts or be supported by dubious oral testimony. The consent must be of all those who are likely to be interested in disputing the transaction. Mere attestation of a deed does not necessarily import consent to an alienation effected by it and does not estop the reversioner from impeaching it. (*Mr. Amir Ali*). HARI KISHEN BHAGAT *v.* KASHI PRASAD SINGH. **42 Cal. 876 = 42 I.A. 64 = 17 M.L T. 115 = 19 C W.N. 370 = 13 A L.J. 223 = 2 L.W. 219 = 21 C.L J. 225 = 28 M.L.J. 566 = 17 Bom. L.R. 426 = 27 I.C. 674 = (1915) M.W.N. 11 (P.C.).**

———*Alienation — Widow — Consent of reversioners—Family settlement—Necessity.*

A Hindu widow, at a time when the estate was in serious peril, came to an arrangement with the reversioners whereby she demised the estate to the several reversioners or their representatives for a term of 60 years (she being then 42 years of age) and reserved to herself only a small income representing a bare maintenance. The plaintiffs, the actual reversioners and the sons of one of the ijaradars, had for a period of 11 years preceding the death of the widow acted up to the terms of the said arrangement and took benefits thereunder, but, subsequently, on the death of the widow brought a suit for possession of some of the properties demised on the ground that the arrangement above set forth was fraudulent and not supported by any legal necessity and so not binding upon them. *Held*, that the arrangement impugned was legal and binding

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upon the plaintiffs, that their conduct amounted, to an admission that the said arrangement was made in good faith and was supported by a necessity and that the suit must in consequence be dismissed. Great weight is to be attached to the sanction by expectant reversioners of an alienation of property as affording evidence of the property of the alienation. (*Lord Moulton.*) BIJOY GOPAL MUKERJI *v.* GIRINDRA NATH MUKERJI. **41 Cal. 793 = 18 C.W.N. 673 = 12 A.L.J. 711 = 19 C.L.J. 620 = 16 Bom. L.R. 428 = 16 M.L.T. 68 = 27 M.L.J. 123 = 1 L.W. 533 = 23 I.C. 162 = (1914) M.W.N. 430 (P.C.).**

———*Alienation—Widow—Consent of reversioner—Presumption.*

The fact that the immediate reversioner consented at the time of the transfer by a Hindu widow, would raise a presumption in the absence of evidence to the contrary, of legal necessity but the legal necessity relied upon must be such as under the Hindu Law would justify a transfer. (*Stuart and Sulaiman*, JJ.) UDAI BHAN SINGH *v.* GAJENDRA SINGH. **L.R. 3 A. 376 = 1923 All. 28.**

———*Alienation — Widow — Consent of reversioner.*

In the case of a mortgage by a Hindu widow or other female limited owner, effected with the consent of such of the next reversioners as are capable of giving consent, if legal necessity is not proved and the alienee does not prove reasonable enquiry on his part, the consent of such reversioners is a presumptive proof, which, if not rebutted, will validate the transaction. (*Tudball and Sulaiman*, JJ.) BHUP SINGH *v.* JHAMMAN. **19 A.L.J. 881 = 1922 All. 169.**

———*Alienation—Widow—Consent of reversioner—Proof of necessity.*

In the case of an alienation by a Hindu widow if it is proved that the consent of the immediate reversioners had been obtained, it raises a strong presumption of the existence of legal necessity for the transfer, which, if not rebutted by contrary proof, will validate the transaction as a right and proper one. 30 A. 1 ; 86 M.L.J. 493, foll. (*Tudball and Sulaiman*, JJ.) HARJAN RAI *v.* MAHABIR TEWARI. **64 I.C. 474.**

———*Alienation—Widow—Consent of reversioner.*

A transfer by a widow for no necessity is beyond her power and even if the next reversioner joins in the transfer it will not bind the reversioners more remote. (*Mears*, C.J. *and Bannerjee*, J.) GHISIAWAN PANDE *v.* RAJ KUMARI. **43 All. 534 = 63 I.C. 556 = 19 A.L.J. 476.**

———*Alienation—Widow—Consent of reversioner—Estoppel.*

A reversioner of a Hindu widow estops himself from asserting a transfer by her as illegal

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and without necessity when he personally consents to it and acts for the vendee to acquire a portion sold. The strong presumptive evidence of legal necessity is the consent of the nearest reversioner. (*Piggott and Walsh*, JJ.) MATA PRASAD SHUKUL *v.* DEVI SHUKULAIN. **38 I.C. 576 = 2 U.P.L.R. (All.) 59.**

———*Alienation—Widow—Consent of reversioners—Rights of.*

Where a Hindu widow transfers part of her estate which she cannot legally transfer, the reversionary heirs can seek their remedy for the recovery of the estate, but cannot claim to be reimbursed for anything done by her in violation of the right which she possessed. (*Bannerjee and Sulaiman*, JJ.) JWALA PRASAD *v.* SUKHDEI. **37 I.C. 59 = 2 U.P.L.R. (All.) 171.**

———*Alienation—Widow—Consent of reversioner—Attestation—Effect of.*

Mere attestation of an instrument by a reversioner does not necessarily import concurrence by him. From his mere subscription the inference does not necessarily arise that when he attested the document he fully understood what the transaction was and that he was the concurring party to it. The question whether the attestation of a document should be held to simply assent is a question of fact, and must be determined with reference to the circumstances of each case. (*Chamier and Piggott*, JJ.) LAKHPATI *v.* RAMBODH SINGH. **37 All. 350 = 29 I.C. 218 = 13 A.L.J. 616.**

———*Alienation—Widow—Consent of reversioner—Rights of remote reversioner.*

Alienation to three out of the four nearest reversioners and assented to by the other cannot be impeached by the remote reversioner. (*Bannerjee and Chamier*, JJ.) SURABALE SINGH *v.* BIRTHU. **24 I.C. 482.**

———*Alienation—Widow—Consent of reversioner—Effect of.*

An alienation by a widow with the consent of immediate reversioner cannot be questioned by the next reversioners at the widow's death, even though no necessity is proved. Attestation is evidence of knowledge of the nature of transaction. 30 All. 1. (P.C.), Foll. (*Bannerjee*, J.) ISMAIL JODAHA *v.* JAGANATH. **19 I.C. 355.**

———*Alienation—Widow—Consent of reversioner—Gift—Estoppel.*

A gift made by a widow with the consent of the reversioner is not valid and will have no effect beyond the lifetime of the widow. It is open to the reversioner at the time when the succession opens to dispute the validity of the gift and as one reversioner does not claim through another, his father's consent does not estop him from disputing the gift. (*Richards*, C.J. *and Bannerjee*, J.) SARNAM KUNWARI *v.* RAGUNATH KUNWARI. **16 I.C. 187.**

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———*Alienation—Widow—Consent of reversioner—Sale to next reversioner—Necessity.*

A sale by a Hindu widow to the nearest reversioner living at the time of the sale, is equivalent to a sale with the consent of the said reversioner and is, therefore, sufficient to pass good title independently of any direct evidence in support of the plea that the sale was for legal necessity. 30 All. 1; 35 Cal. 939; 19 Cal. 236; Foll. 31 Mad. 128; 31 Mad. 366, Diss. (*Piggott*, J.) SHEO DAS DUBE *v.* DALGANJAN DUBE. **15 I.C. 637.**

———*Alienation—Widow—Consent of reversioner—Effect of—Suit to set aside alienation by reversioner while retaining benefit—Estoppel.*

Where a widow alienates property with the consent of the next reversioner who gets a substantial benefit from the transaction it is not open to that reversioner or his descendants to impugn the alienation while retaining the the benefit. (*Macleod*, C J. *and Crump*, J.) BHAUSAHEB SHIDGAUDA *v.* RAMGAUDA ANNAGAUDA. **25 Bom. L.R 813= 1923 Bom. 471.**

———*Alienation—Widow—Consent of reversioner—Reversioner joining in conveyance—Effect of.*

A Hindu widow and one of her daughters conveyed, under a deed of gift, portion of the family property to the sons of the daughter who had died. After the death of the widow, the daughter sued to set aside the gift: *Held*, that the deed of gift was good only for the life of widow and was bad as regards the transfer of the daughter'e interest to succeed to the reversioner. (*Macleod*, C.J. *and Heaton*, J.) BAI PARVATI *v.* DAYABHAI MANCHHARAM. **44 Bom. 488=58 I.C. 266= 22 Bom. L.R. 704.**

———*Alienation—Widow—Consent of reversioner—Necessity—Onus.*

In the case of an alienation by a Hindu widow as soon as the alienee on whom first the onus lies to show that alienation was for legal necessity proves that the reversioners have consented, the onus shifts to the person impeaching the alienation to show that there was no legal necessity. 42 Mad. 523 (P.C.) Rel. Where an alienation by a Hindu widow is attacked on the ground that she has sold more than what was justified by legal necessity the burden of proof lies on the plff to show that so much of the land as was required as the plff. says would suffice for the legal necessity could have been sold. Otherwise one is entitled to presume that the widow could not have sold less than she did in order to realise what was required. (*Macleod*, C J. *and Heaton*, J.) MADHAV KRISHNA DESHPANDE *v.* SHIDDAVA DANAPPA. **55 I C. 332= 22 Bom. L.R.79.**

———*Alienation—Widow—Consent of next reversioners—Effect.*

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The consent to an alienation by widow, of the persons constituting the next reversion, whether male or female, is binding on the person eventually succeeding to the estate. 13 M.I A. 209; 5 Bom. 563; 25 Bom. 129. Ref. (*Scott*, C.J.) PURAMESWARI BAI *v.* RAGHAVENDRA CHIDANAND, **50 I.C 419= 21 Bom. L R. 203.**

———*Alienation—Widow—Consent of reversioners.*

The consent of reversioners to a Hindu widow's alienation is only a factor in the proof of legal necessity. It is not sufficient to do away with all other proofs. 10 Cal. 1102, Dist. appr. (*Beaman and Heaton*, JJ.) MOTI RAIJI *v.* LALDAS JIBHAI. **41 Bom. 93= 37 I.C. 955=18 Bom L R. 984.**

———*Alienation—Widow—Consent of reversioner—Effect of.*

The question whether an alienation is validated by the reversioner's consent or not depends on the character and number of persons consenting and also on the nature and purpose of the alienation itself. The Court must be satisfied that the kinsmen to whose interest it was to make opposition did not oppose it. (*Beachcroft and Heaton*, JJ.) ABHESONG *v.* RAISAUG. **16 I.C. 531=14 Bom. L.R. 602.**

———*Alienation—Widow—Consent of reversioner—Effect of.*

The consent of nearest reversioner is not always sufficient to validate an alienation by a widow but in some cases such a consent not only raises a presumption as to the propriety of the alienation but also creates an estoppel against persons claiming under the reversioner. (*Scott*, C.J. *and Rao*, J.) RAMAKRISHNA KUPPUSWAMI *v.* TIRUPRABAI. **12 I.C. 529=13 Bom. L.R 940.**

———*Alienation—Widow—Consent of reversioner—Necessity—Reversioner joining in conveyance—Effect of.*

A conveyance jointly by a widow selling her widow'e estate and the reversioner, his reversionary interest, is good and operative to convey the whole estate. 40 Cal. 72; Foll. (*Chaudhuri and Cuming*, JJ.) BHOLA NATH CHOWDHURI *v.* HARMANI DASI. **53 I.C. 42=30 C.L.J. 6.**

———*Alienation—Widow—Consent of reversioner—Partial alienation—Presumption of necessity—Estoppel.*

The doctrine of relinquishment and acceleration cannot apply to partial transfers by a limited owner, which can be supported only by legal necessity. The consent of the reversioner is merely strong presumptive evidence of the necessity. The propriety of an alienation with the consent of the next reversioner may come in question not only with reference to the conduct of the widow, whether or not she was justified by necessity, but also with reference to the conduct of the next reversioner whether

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or not his conduct was honest. If in the absence of legal necessity he engineered the transaction to suit his own ends and for his own immediate gain, his consent would lose all virtue. The transaction would stand no higher than a partial alienation in his favour and would have to be judged from that standpoint. Nevertheless, whatever might be said of the conduct of the widow or the next reversioner, the transferee, if he made due enquiry and acted *bona fide*, would still acquire a good title. Nor would the antecedent mismanagement of the estate effect him unless he was in some way a contributory party thereto. (*Richardson and Walmsley*, JJ.) SHYAMADAS ROY CHOWDHURY *v.* RHADHIKA PROSAD CHATTERJI. 22 C.W.N. 846=47 I.C. 653= 29 C.L.J. 24.

———*Alienation—Widow—Consent of reversioner—Consideration.*

The consent of reversioners to a mortgage by a Hindu widow raises a presumption or the existence of legal necessity even where a sum of money is paid to one of the reversioners for obtaining his consent. (*Chatterjee and Newbould*, JJ.) SYAM PEARY DASSAYA *v.* EASTERN MORTGAGE AND AGENCY CO., LTD, 40 I.C. 865.

———*Alienation—Widow—Consent of reversioner.*

Per *Mookerjee*, J.—The concurrence of the reversioner raises a presumption that the alienation is made for a proper purpose. (*Jenkins*, C.J. *Mookerjee and Holmwood*, JJ.) UPENDRA NATH BOSE *v.* BINDESHRI PRASAD, 20 C.W.N. 210=32 I.C. 468= 22 C.L.J. 452.

———*Alienation—Widow—Consent of reversioners—Effect on.*

Alienation by widow in favour of a third party has not the effect of accelerating the estate and entitling the next reversioner to immediate possession. (*Chitty and Walmsley*, JJ.) SARABJIT PRATAP BAHADUR SAHU *v.* BHAGWAT KORRI. 30 I.C. 578

———*Alienation—Widow—Consent of reversioner—Mortgage by conditional sale—Sale made absolute.*

A mortgage by conditional sale was made by a widow with the consent of the then next reversioner. It was made absolute by decree of Court before the right to object accrued to the actual reversioner, during the life time of the widow. *Held*, the actual reversioner could not impugn the alienation thereafter. 40 Cal. 721, Rel. (*Holmwood and Chapman*, JJ.) SHIBA SUNDARI DASI *v.* RAM GOVINDA DAS. 28 I.C. 90

———*Alienation—Widow—Consent of reversioners—Will.*

A widow though capable of transferring absolutely *inter vivos* property inherited from her husband with the consent of the next reversioner cannot make a testamentary disposition even with such consent. (35 I.A. 1, Ref.) (*Jenkins*, C.J. *and Mookerjee*, J.) DURGA SUNDARI *v.* RAMA KRISHNA. 21 I.C. 714=18 C.L.J. 162. [Affirming 12 I.C. 591.]

———*Alienation — Widow — Consent of reversioner—Effect of.*

Assent of the reversioner for an alienation of part of the estate by a Hindu widow is only evidence of the propriety of the transaction. Assent of the whole body of immediate reversioners to an alienation of the entire estate validates the alienation. (19. I.C. 273, Foll.) (*Mookerjee and Beachcroft*, JJ.) GOPESWAR MISRA *v.* GOPINI BAISHNABI. 17 C.W.N. 1062=21 I.C. 200= 19 C.L.J. 318.

———*Alienation—Widow—Consent of reversioner—Effect.*

The consent of a reversioner to an alienation by a Hindu widow cannot do more than raise a presumption of necessity. 5 Cal. 44, Not foll. 17 C.L.J. 499. Foll. (*Stephen and Mullick*, JJ.) NALEIN CHANDRA SHAHA *v.* HEM CHANDRA RAY, 20 I.C. 248=19 C.W.N. 265.

———*Alienation—Widow—Consent of reversioners—Effect of.*

An alienation by way of mortgage by a Hindu widow of a portion of her husband's property without proof of legal necessity or reasonable enquiry, and honest belief as to its existence on the part of the mortgagee, but with the consent of the next reversioner for the time being, will be binding on the actual reversioner if the presumption of legal necessity and of reasonable inquiry and honest belief raised by such consent is not rebutted by more cogent proof. Cases reviewed. To uphold an alienation by a Hindu widow of her husband's estate, it should be shown (1) that there was legal necessity or (2) that the alienee after reasonable inquiry as to the necessity acted honestly in the belief that it existed or (3) that there was such consent of the next heirs as would raise a presumption either of the existence of necessity or of reasonable inquiry and honest belief as to its existence or (4) that there was a consent on the next heirs to an alienation capable of being supported by reference to the theory of surrender and the consequent acceleration of the interest of the consenting heirs, in which case the alienation must be of the whole estate with the consent of all the nearest reversioners. (*Jenkins*, C.J., *Harrington*, *Stephen*, *Mookerjee and Holmwood*, JJ.) DEBI PRASAD CHOWDHARY *v.* GOLAP BHAGAT. 40 Cal. 721= 17 C.W.N. 701=19 I.C. 278= 17 C.L.J. 499 (F.B.)

———*Alienation—Widow—Consent of reversioner.*

Where it was found that though the husband of the widow left large landed property, the

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lands were unproductive and the widow unable to live on without borrowing, a mortgage created by her could not be said to be without necessity. Where a reversioner had attested the mortgages and had acted throughout as the attorney of the widow, he is estopped from challenging the alienation as having been made without consideration or necessity. (*Le-Rossignol and Wilberforce, JJ.*) ARURA *v.* SHIVDEV SINGH. **4 Lah. L.J. 45=1922 Lah. 61.**

———*Alienation—Widow—Consent of reversioner—Implied.*

The fact that a reversioner cultivated the lands alienated by the widow under the vendee so long as the widow lived, does not estop him from claiming the properties on the death of the widow. (*Le-Rossignol and Wilberforce, JJ.*) BAHAR KHAN *v.* KISHEN CHAND. **52 I.C. 845=72 P.R. 1919.**

———*Alienation—Widow—Consent of reversioner—Presumption arising from consent and its rebuttableness.*

An alienation by a Hindu widow not justified by legal necessity is not valid even with the consent of the next reversioners unless the consent gives rise to a presumption of the existence of the necessity or reasonable enquiry and honest belief as to its existence. The presumption is rebuttable by cogent proof of the absence of lawful necessity. (*Shadi Lal and Broadway, JJ.*) TARA CHAND *v.* KHASIRAM. **17 P.R. 1917=9 P.W.R. 1917= 39 I.C. 121=71 P.L.R. 1917.**

———*Alienation—Widow—Consent of reversioners—Life interest in the property.*

There were three brothers holding an estate in equal shares. On the death of one of them, his widow succeeded to a life interest in her husband's share of the estate. A part of the estate was acquired by Government under the Land Acquisition Act and the widow's share of the purchase money was paid to her with the consent of her brothers-in-law. Their minor sons presented the suit for declaration that the widow is only entitled to use by way of maintenance the income of the sum which she received as compensation and that after her death plaintiffs shall be entitled to the capital and on injunctions restraining the defendant from using the capital during her life time. Both the lower Courts upheld the plaintiff's cause, hence the defendant lodged a second appeal to the Chief Court. *Held*, (1) the question of consent is of fact, and hence they are not estopped from suing by their father's *bona fide* consent. (2) that the mere fact their fathers consented to allow the widow to receive compensation in cash, provides the plaintiffs with no cause of action provided that the welfare of the estate has not been threatened by the widow. Yet in view of the fact that the defendant asserted that the plaintiff had no right in the property and she had set

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up an absolute title the plaintiffs have cause of action. (*Rattigan and Leslie Jones, JJ.*) SARDAR BEGUM *v.* MAHAMMAD SHARIF. **63 P.R. 1916=160 P.W.R. 1916= 35 I.C. 855=3 P.L.R. 1917.**

———*Alienation—Widow—Consent of nearest reversioner—Effect on remote reversioner.*

The consent of the nearest reversioner to an alienation by a Hindu widow of her husband's estate, does not always validate the alienation and debar the remote reversioners from contesting it. 40 Cal. 721, Rel. on. (*Shah Din and Scott-Smith, JJ.*) DEVIDAS *v.* RAJA KHAN. **209 P.L.R. 1914=91 P.R. 1914= 24 I.C. 417=160 P.W.R. 1914=**

———*Alienation—Widow—Consent of reversioners—Effect of.*

An alienation by a Hindu widow with the consent of the nearest reversioners given in good faith and with due regard to the interests of the family is binding on the remote reversioners. (*Johnstone and Rattigan, JJ.*) TAKECHAND *v.* GOPAL DEVI. **46 P.R. 1912= 127 P.L.R. 1912=13 I.C. 482= 160 P.W.R. 1912.**

———*Alienation—Widow—Consent of reversioner—What passes.*

A conveyance by a widow and the next heir can only transfer the interest of the party in possession and no more. (*Spencer and Seshagiri Aiyar, JJ.*) KUNJABU VENKATARAMANAYYA *v.* DEJAPPA KONDE, **22 M.L.T. 233= (1917) M.W.N. 679=6 L.W. 580= 42 I.C. 540=34 M.L.J. 319.**

———*Alienation—Widow—Consent of reversioner—Effect.*

The consent of nearest presumptive reversioner is only presumptive evidence of justifiability and does not render the transaction unimpeachable by the actual reversioner. 30 All. 1 P.C. ; 28 M.L.J. 1, Foll. ; 42 Cal. 876 P.C. Expl. (*Seshagiri Aiyar and Napier, JJ.*) KONDAPPALLI PARASURAMAREDDI *v.* MATEREDDI VENKAYYA. **6 L.W. 250= 42 I.C. 496=22 M.L.T. 260.**

———*Alienation—Widow—Consent of reversioner—Estoppel.*

Where a Hindu reversioner and his son sued to set aside an alienation by the widow and the father was found to have expressly consented to the alienation knowing the nature of the transaction. *Held*, that the father could not dispute the validity of the alienation. (*Abdur Rahim, O.C.J. and Seshagiri Aiyar, J.*) VENKATA RAO *v.* TULJA RAM RAO. **(1917) M.W.N. 30=38 I.C. 270= 5 L.W. 482.**

———*Alienation—Widow—Consent of reversioner — Surrender — Remote reversioner — Consent of the next female reversioner not obtained—No consent even after alienation.*

Two co-widows gave their interests in the property of the deceased husband to the daughters

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son of one of them, the other widow consenting to the relinquishment in exchange for an absolute interest in a portion of the property. The daughter who was the immediate reversioner was not shown to have consented to the widow's action either at the time of relinquishment or afterwards. *Held*, the property did not pass to the daughter's son. The relinquishment does not amount to surrender because it was not of the whole estate, one of the widows having secured an absolute estate in a portion of the property in lieu of her half share in the whole, and because it was not in favour of the daughter, the nearest reversioner at the time. The relinquishment is not an alienation made with the consent of the whole body of the reversioners, for the daughter did not consent to the relinquishment, nor were the other expectant reversioners, shown to have consented. *Abdur Rahim, J.*—The consent of substantially the whole body of expectant reversioners is as sufficient as legal necessity, to validate an alienation though such consent was given after the transaction and for consideration. *Per Srinivasa Aiyangar, J.*—The consent of the kindred is, where evidence of actual necessity is lost by lapse of time, very valuable evidence, also when the *bona fides* of alienee are doubtful, the consent of the reversioners to the transfer alleged to be a transfer for legal necessity, may, unless rebutted, be sufficient proof. Consent unless given *bona fide* and without being purchased is useless. 8 M. I.A. 529, Foll. (*Abdur Rahim and Srinivasa Aiyangar, JJ.*) MULUGU KOTAYYA *v.* MUDIGONDA CHANDRA MOWLI SASTRI. **31 M L J 406 = 20 M.L.T. 148 = (1916) 2 M W.N. 137 = 36 I.C. 407 = 4 L.W. 149.**

——*Alienation—Widow—Consent of reversioner—Gift.*

The rule of caveat emptor does not apply in alienation by widow and it cannot be presumed that only life-estate is conveyed. 31 M.L.J. 92, Ref. *Quære.*—Whether consent of reversioners will validate gift by widows. (*Coutts Trotter and Seshagiri Aiyar, JJ.*) VEERAKKAL *v.* THIRUMAKKAL. **34 I.C. 696.**

——*Alienation — Widow — Consent of reversioner—Evidence of necessity.*

The consent of the nearest reversioner to a partial alienation by a Hindu widow is only evidence of necessity for the alienation and is not conclusive evidence of the validity thereof. 30 All. 1, Expl.; 21 Mad. 198, Foll. (*Coutts-Trotter and Seshagiri Aiyar, JJ.*) MALLA SURIAH *v.* CHOUDHARI SURAN NAIDU. **19 M.L T. 239 = 32 I C. 993 = 3 L.W. 278.**

——*Alienation—Widow—Consent of reversioner—When presumed.*

A reversioner's consent to an alienation of a widow's estate will be presumed if his subsequent acts show that upon an intelligent understanding of the nature of his dealings, he concurred in binding his interests as reversioner, and the reversioner in such a case, will be estopped from disputing the alienation. 28 M.L.J. 1; 42 Cal. 876, Ref. (*Ayling and Phillips, JJ.*) VENKATASUBBA AIYAR *v.* MUTHUSWAMI AIYAR. **(1916) M.W.N. 128 = 31 I C. 487 = 18 M.L.T. 321.**

——*Alienation—Widow—Consent of reversioner—Effect.*

Consent by a reversioner to an alienation made by a Hindu widow by itself makes the transaction valid, and is not merely presumptive and rebuttable evidence of necessity. 30 All. 1; 28 M.L.J. 1, Ref. (*Sadasiva Aiyar and Napier, JJ.*) SOUTH INDIAN EXPORT CO., LTD. *v.* T. R. SUBBIER. **(1915) M.W.N. 483 = 29 I.C. 957 = 28 M L.J. 696.**

[This is no longer law. 50 I C. 498 = 42 Mad. 523.]

——*Alienation—Widow—Consent of reversioner—Effect.*

The onus of proving that a charge created by the widow is binding on the reversioners, lies heavily on the persons who claim the benefit of the transactions and when the only evidence let in was that a series of documents executed by the widow, attested by the reversioners and the widow had been maintaining a large number of persons, related to her but not relating to the husband's family. *Held*, the evidence was insufficient to prove necessity. 19 C.W.N. 370, Foll. (*Wallis, C.J. and Tyabji, J.*) PANDA PATYYA *v.* PANDA VENKAMMA. **17 M L T. 393 = 29 I C 54 = 2 L.W. 485.**

——*Alienation — Widow — Consent of reversioner—Effect of.*

The effect of the consent of the next reversioner to an alienation by the widow is that it makes it conclusive. And Courts are bound to presume the validity of the alienation made with the consent of the next reversioner. But such a presumption does not arise when a reversioner accepts a conveyance in his own favour. The doctrine of validation by assent is based on the doctrine that a person may well be presumed not to act against his interest. The assent also raises an estoppel against the person assenting. The assent or ratification by the next reversioner need not be at or before the date of the alienation. It is enough if he ratified the transaction. 30 All. 1 (P.C.), Ref. (*Wallis, C.C J., Seshagiri Aiyar and Kumaraswami Sastri, JJ.*) NACHIAPPA GOUNDAN *v.* RANGASWAHI GOUNDAN. **17 M L T. 87 = 2 L.W. 69 = 26 M.L J. 1 = 26 I.C 757 = (1915) M.W.N. 58 (F.B.).**

[Reversed on appeal 50 I.C. 498 = 42 Mad. 523.]

——*Alienation—Widow—Consent of reversioner—Effect.*

The consent of a reversioner given, not at the time of the alienation by the widow but

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in the course of a suit is not sufficient to pass full title to alienee. 23 W. R. 214, Foll. (*Sadasiva Aiyar and Hannay, JJ.*) LAKSHMINARAYANA AIYAR *v.* ULAGAMMAL.
26 I.C. 528=28 M.L.J. 256.

———*Alienation—Widow—Consent of reversioner—Effect of.*

Consent of the next reversioner to an alienation of portion of the estate will not validate the alienation so as to bar the right of remote reversioners to question the alienation. The principle is the same even if the alienation is of the whole. (*Oldfield and Seshagiri Aiyar, JJ.*) MEENAKSHI *v.* MUNIANDI PANNIKKAN.
38 Mad. 1144=1 L.W. 704=(1914) M.W.N. 672=16 M.L.T. 270=25 I.C. 957=27 M.L.J. 353.

———*Alienation — Widow — Consent of reversioner*—Bona fide.

The consent of the reversioner which validates an alienation by the widow must be *bona fide* one, whether the alienation is partial or total. (*Ayling and Seshagiri Aiyar, JJ.*) RAMA KAVUNDEN *v.* KURUTHASWAMY NAICK. **16 M.L.T. 251=25 I.C. 951=(1914) M.W.N. 797.**

———*Alienation—Widow—Consent of reversioner.*

A Hindu widow may alienate the whole estate with the consent of the next reversioner for consideration. No question of necessity arises. 40 Cal. 721; 27 M.L.T. 133, Dist. (*Wallis and Oldfield, JJ.*) ADAIKKA MAISTRY *v.* MUTHUSWAMI AMBALAGARAN.
25 I.C. 144=27 M.L.J. 24.

———*Alienation—Widow—Consent of reversioner—Relinquishment—Consideration— Gift and sale—Estoppel.*

A reversioner may be estopped by his consent, given for consideration from contesting a Hindu widow's future alienations. 31 Mad. 366, Foll. *Held, (Per Sundara Aiyar, J.)* The reversioner in the case was estopped from contesting a gift by a widow to her adopted son whose adoption was invalid by reason of a relinquishment deed be executed to the widow prior to the date of the gift. It did not matter that the term of the deed of relinquishment itself did not show that any alienations were contemplated. There is no distinction in the applicability of the rule with reference to alienations for consideration and alienations for no consideration. (1913) M.W.N. 758, Foll. *Per Sadasiva Aiyar, J.*—Nor is there any warrant for any distinction between alienation of part and alienation of the whole estate; consent to future alienations stands on the same footing as ratification of past alienations. There is no distinction between an alienation by the widow to third persons with the reversioner's consent and a relinquishment by the reversioner to the widow herself thereby conferring on her an absolute estate. The distinction is not sound and cannot be

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supported on a proper legal basis. 30 All. 1, Ref. (*Sundara Aiyar and Sadasiva Aiyar, JJ.*) RAGUPATHI *v.* KANNAMMA.
23 M.L.J. 363=12 M.L.T. 325=16 I.C. 710=(1912) M.W.N. 1223.

———*Alienation— Widow— Consent of a reversioner—No consideration— Alienation of whole and of part—Difference.*

If the next reversioner, either at the time of the alienation or thereafter, consents to or ratifies the transaction, such transaction cannot be re-opened by the person who is the nearest reversioner at the time of the widow's death. The consent of the person entitled to the reversion would by itself validate the alienation irrespective of any question of legal necessity. 30 All. 1, Appl.; 31 Mad. 336, Ref. The above rule is not restricted to cases in which the alienation by the widow was made for consideration, though not for legal necessity. 34 Bom. 165, Diss. *Quare.* Whether alienation of a portion of the husband's estate by the widow when there is no justifying necessity could be validated by consent of the next reversioner. 32 Mad. 206; 31 Mad. 366, Ref. (*Abdur Rahim and Ayling, JJ.*) KUPPIER *v.* KOTTA CHINNARAMIER. **16 I.C. 493=(1912) M.W.N. 758.**

———*Alienation—Widow—Consent of reversioner—Effect.*

Consent of the body constituting the reversion, who would be interested in disputing the alienation, affords good evidence that the transfer was in fact made for justifying cause, *i.e.*, legal necessity. 11 Bom. L.R. 1291; 4 I.C. 584, Ref. Reversioners' consent to an alienation is strong evidence of the necessity for such alienation and also estops them from disputing such alienation. 17 Cal. 896, Dist. (*Benson and Sankaran Nair, JJ.*) KRISHNA AIYAR *v.* SAMBASIVA SASTRIGAL. **11 I.C. 24.**

———*Alienation—Widow—Consent of reversioner—Effect.*

An alienation by widow with the consent of the next reversioner at the date of the alienation cannot be questioned by the next reversioner on the widow's death. (*Abdur Rahim and Ayling, JJ.*) KUPPIER *v.* KOTA CHINNASWAMIER. **9 M.L.T. 356=10 I.C. 421=22 M.L.J. 488.**

———*Alienation—Widow—Consent of next reversioner—Effect.*

A Hindu widow is competent to alienate with the consent of the next reversioner (male) and the alienation cannot be challenged by a remote reversioner, who, at the time, was a minor. (*Drake-Brockman, J.C.*) NATHURAM *v.* SAKHAWATALI. **57 I.C. 633.**

———*Alienation—Widow—Consent of reversioner, effect of—Presumption.*

An alienee from a Hindu widow must prove by evidence that the widow was in need of money at the time of the alienation and that

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be made enquiries as to the necessity for the loan. The mere presence of the reversioner at the time of the payment of the consideration for the sale to the widow does not raise a presumption of necessity. But the vendee may prove that the presence of the reversioner and his conduct amounted to a representation of necessity which he *bona fide* believed. (*Dalal*, A.J.C.) SHEOAMBAR KHAN *v.* BALKARAN SINGH. **8 O.L.J. 619=1922 Oudh 112.**

———*Alienation—Widow—Consent of reversioner—Evidence of necessity—Question of fact.*

In the case of an alienation by a Hindu widow the consent of the male reversioners is presumptive evidence of legal necessity depends on the facts of each case. (*Wazir Hasan*, A.J.C.) RAM BODH SINGH *v.* RAM NARAYAN SINGH. **4 U.P.L.R. (J.C.) 3=66 I.C. 776=8 O.L.J. 512.**

———*Alienation—Widow—Consent of reversioner—Perpetual line.*

A Hindu widow has power, apart from legal necessity to alienate her husbands' estate with the concurrence of the next reversioners. But ordinarily the consent of the whole body of the persons constituting the next reversion should be obtained. Where a permanent lease was granted by a Hindu widow without such consent, *held*, that though the lease was not binding on the reversion, the lessee does not become a trespasser on the death of the widow. (*Kanhaiya Lal*, A.J.C.) CHAWHAN *v.* RAM SARUP. **20 O.C. 232=42 I.C. 27=4 O.L.J. 535.**

———*Alienation—Widow—Consent of reversioner—Necessity—Presumption—Attestation—Effect of.*

The consent of the nearest reversioners to an alienation by a Hindu widow if proved to have been given with a full knowledge of the facts, raises a strong presumption of legal necessity or of circumstances which would have led a *bona fide* enquirer to believe in the existence of necessity. Mere attestation does not imply consent. (*Lindsay*, J.C.) BALWANT *v.* RAM DAT. **44 I.C. 611=4 O.L.J. 711.**

———*Alienation—Widow—Consent of reversioner—Attestation—Effect of.*

Mere attestation does not imply knowledge or consent. The consent of reversioners to a transfer by a widow may operate as evidence of legal necessity or of the transfer being justifiable. The reversioners of a Hindu widow do not claim under each other and therefore one of them cannot by consent to the transaction of the Hindu widow dispose of other's interests. The reversioners have only a *spes successionis* which cannot be transferred. (*Lindsay and Rafique*, A.J.Cs.) MATHURA PRASAD *v.* JAGATBAHADUR SINGH. **18 I.C. 289.**

———*Alienation—Widow—Reversioners—Right of to set aside—Limitation.*

A gift of an absolute estate by a Hindu widow is not binding on the reversioner and he can elect to treat it as a nullity and sue for possession at any time within 12 years of his interest becoming vested without first suing to have it set aside notwithstanding Art. 91 of the Limitation Act. (*Miller*, C.J. *and Mullick*, J.) MAHARAJAH KESHO PRASAD SINGH *v.* CHANDRIKA PRASAD SINGH. **2 Pat. 217=1923 P. 122.**

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———*Alienation—Widow—Consent of reversioner—Necessity, proof of.*

The consent of an immediate reversioner to an alienation by a Hindu widow is presumptive proof of legal necessity and the consenting reversioner cannot challenge the legal necessity. (*Das and Adami*, JJ.) ADHIKARI KUER *v.* LOKENATH RAI. **1 Pat. L.T. 835=66 I.C. 426=2 U.P.L.R. (Pat.) 93.**

Alienation—Widow—Co-widows.

———*Alienation — Widow — Co-widows—Will.*

Where co-widows divided their property and agreed not to challenge alienation by gift sale or otherwise by each other, *held*, that a will by one could not be challenged by the other, 14 M.L.J. 175, Dist. (*Benson and Sundara Aiyar*, JJ.) PACHATAIAMMAL *v.* ELUVAN CHETTI. **10 I.C. 386=(1911) 1 M.W.N. 311.**

———*Alienation—Widow—Co-widows.*

One of two co-widows can alienate for her life, her share in the estate inherited from her husband, whether before or after partition. The alienation will be binding on the other and would defeat her rights of survivorship, if she consented to it. (*Drake-Brockman*, J.C. *and Prideaux*, A.J.C.) GOVIND *v.* CHANDRA BHAGA. **33 I.C. 675=12 N.L.R. 100.**

Alienation—Widow—Custom.

———*Alienation — Widow — Custom—Presumption.*

The mere fact of alienation by a widow will not raise a presumption that she is doing so by reason of a special custom. If an out-and-out transfer has been allowed to pass unchallenged by those who have a right to challenge that may raise a slight presumption as to custom. (*Kendall*, A.J.C.) RAM DAT *v.* SUKHIA. **25 I.C. 869=1 O.L.J. 470.**

Alienation—Widow—Debts.

———*Alienation—Widow—Debts — Decree debt.*

A genuine sale effected by a Hindu widow of an immoveable property in satisfaction of a mortgage decree is binding on the reversioners. (*Sir John Edge*). MEDAI DALAVOI THIRUMALAIYAPPA MUDALIAR *v.* NAINAR TEVAN. **16 L.W. 478=4 U.P.L.R. (P.C.) 92=(1922) M.W.N. 804=27 C.W.N. 865=21 A.L.J. 282=31 M.L.T. 159=1922 P.C. 307 (P.C.).**

———*Alienation—Widow—Husband's debts—Agreed to be paid by deceased's relative—Alienation for.*

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Where the relatives of the deceased husband undertook to pay off the husband's debts but did not pay, the widow would not be justified in alienating the husband's property to pay off these debts. The legal and pious duty of the widow is at an end when the relative undertakes to pay and thereby the debt ceases to be the debts of the deceased or his widow. (*Richards*, C.J. *and Bannerjee*, J.) NATHAN *v.* THULASA. **46 I.C. 728=16 A.L.J. 443.**

———*Alienation—Widow—Debt of husband—Interest*—Bona fide *purchaser.*

A widow is not bound to discharge her husband's debts from the income of his estate but must pay therefrom the interest on the debts, as she is entitled only to the real net income from the properties. A purchaser will however not be affected by the fact that the widow could have discharged the interest from the income. If there was actual pressure on the estate, or if the creditor after *bona fide* inquiry believed that there was necessity, the sale must be upheld. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) BODSU JAGGAYYA *v.* GOLI APPALA RAJU. **18 I.C. 953=(1913) M.W.N. 278.**

———*Alienation—Widow—Debt—Consideration exceeding debt.*

The mere fact that the amount obtained by sale by a Hindu widow for discharging a legal debt, exceeds by 1/6 the amount due under such debt, does not render the sale liable to be set aside on payment of the purchase money. (*Hallifax*, A.J.C.) ANANDRAO *v.* SARASWATI BAI. **6 N.L.J. 116=1923 Nag. 126.**

Alienation—Widow—Duty of Lender.

———*Alienation—Widow—Duty of lender—Onus of proving legal necessity on the purchaser.*

The onus of supporting a sale from a Hindu widow is undoubtedly on the purchaser, and he must adduce evidence to prove legal necessity as would bind the husband's estate. Recitals in mortgages or deeds of sales with regard to the existence of necessity for the alienation can never be treated as evidence by themselves of the fact and to substantiate the allegation there must be some evidence *aliunde*. (*Ameer Ali*) LALA BRIJ LAL *v.* INDA KUNWARA. **26 M.L.J. 442=8 C.W.N. 649=12 A.L.J. 493=36 A. 187=19 C.L.J. 460=(1914) M.W.N. 405=16 M.L.T. 395=16 Bom. L.R. 852=28 I.C. 715=1 L.W. 794.**

Alienation—Widow—Gift.

———*Alienation—Widow—Gift to son-in-law of entire property to induce him to marry—Validity.*

A Hindu widow has for certain purposes a clear authority to dispose of her husband's property and she might do it for religious purposes which included dowry to a daughter. Although as a general rule such dowry shall not exceed "a quarter" the words "quarter" simply enjoins the allowance of as much as will suffice for the marriage. A gift of the whole property of small value will be held valid after her lifetime. 37 Cal. 1 and 22 Mad. 113. Referred to. (*Ryves*, J.) BHAGWATI SHUKUL *v.* RAM JATAN TEWARI. **1922 All. 381.**

———*Alienation—Widow—Gift—Consent of reversioner.*

Where a widow made a gift of her husband's property with the consent of her husband's mother in favour of the nearest reversioners next to the mother, the gift is binding on the mother and no question of transfer of expectancy arises. 30 All. 1, Foll. (*Knox*, J.) JAMNA KUNWAR *v.* RAMAHIT SINGH. **28 I.C. 496.**

———*Alienation—Widow—Gift to daughter having sons—Effect.*

A gift by a widow to a daughter having sons amounts in reality to no more than to a relinquishment by the widow of her interest in her husband's estate. (*Richards*, C.J. *and Bannerjee*, J.) MUSSAMMAT GOWRI *v.* GOPAL. **25 I.C. 503.**

———*Alienation—Widow—Gift—Consent of next reversioner.*

A gift by a Hindu widow in favour of a possible reversioner, with the consent of the person who would have taken the estate if she had died at the time is invalid. 30 All. 1, Dist; 32 All. 176; 34 All. 129, Rel. (*Richards*, C.J. *and Bannerjee*, J.) BENI MADHO SINGH *v.* JAGAT SINGH. **16 I.C. 337=10 A.L.J. 33.**

———*Alienation—Widow—Gift.*

A gift by a widow of the property inherited from her husband with consent of presumptive heir does not bind the actual reversioner. (*Karamat Husain and Chamier*, JJ.) ABDULLA *v.* RAM LAL. **34 All. 129=12 I.C. 601=8 A.L.J. 1318**

———*Alienation—Widow—Gift—Charity.*

A Hindu widow has no power to make an endowment of her husband's property except for purposes conducing to the spiritual welfare of the husband. (*Stanley*, C.J. *and Bannerjee*, J.) SOHAN BIBI *v.* SHAN BIBI. **10 I.C. 280.**

———*Alienation—Widow—Gift—Religious or charitable purposes.*

Under the Hindu Law a gift by a widow for the religious benefit of her husband is invalid if it be a gift of the whole or of practically the whole of the husband's property. 22 Cal. 506; 34 Mad. 288; 6 B.H.C.R. 1, Ref. (*Batchelor*, A.J.C. *and Shah*, J.) PANACHAND *v.* MANOHAR LAL. **42 Bom. 136=43 I.C. 729=20 Bom. L.R. 1.**

———*Alienation—Widow—Gift—Daughter.*

A gift by widow at the time of daughter's marriage conduces to the spiritual benefit of the deceased husband and is valid and binding on the reversion. (*Batchelor and Heaton*, JJ.) ABHESANG *v.* RAISANG. **16 I.C. 561=14 Bom. L.R. 602.**

HINDU LAW—Alienation—Widow—Gift.

——*Alienation—Widow—Gift—Charitable purposes.*

A Hindu widow cannot make unrestricted dispositions in charity though gifts to Brahmins and idols to a small extent may be binding on the reversion. 22 Cal. 506, Ref. (*Mookerjee and Beachcroft*, JJ.) LACHMI PROSAD CHOUDHURY *v.* JAGMOHAN LAL CHOUDHURY. **22 I C. 594=18 C.L J. 633.**

———*Alienation — Widow —Gift—Religious purposes.*

A widow has a very limited power of alienation for religious purposes and that only when it would conduce to the spiritual welfare of her deceased husband and not of herself. Her powers to alienate for her son's spiritual welfare the property got as heir to her son are more limited. Installation of an idol and endowment of a temple do not come within the category of acts conducive to the spiritual benefits of the deceased husband. 2 W.R (P.C.) 59; 22 Cal. 506, Rel. (*Harrington and Carnduff*, JJ.) HAR MANJE NARAIN SINGH *v.* RAM GOPAL ACHARI. **19 I.C. 417=17 C.W.N. 782.**

———*Alienation—Widow—Gift.*

A Hindu widow cannot make a valid gift of the husband's property without the consent of the reversioners. (*Rattigan and Scott-Smith*, JJ.) DIWAN CHAND *v* JIWAN MAL.
135 P L.R. 1918=26 I.C. 910=222 P.W.R. 1918.

———*Alienation—Widow—Gift with consent of reversioner—Consideration—Effect.*

Where a widow makes a gift of her husband's estate with the consent of her reversioners, and agrees to pay them a sum of money for their consent, the transaction is bad, but is one to divide the estate between them and as such is invalid. (*Ayling and Odgers*, JJ.) KOKUMANU KOTAYYA *v.* PEDDI VEERAYYA.
(1923) M.W.N. 679=1924 Mad. 177.

———*Alienation — Widow — Gift—Entire property to daughter and daughter's son.*

A Hindu widow cannot divide the entire property of her husband among her daughters and daughter's children so as to bind the reversioner. The fact that the portions of the estates are given away at different times cannot validate such a disposition. 22 Mad. 118; 71 M.L J. 528; 21 M.L.J. 695, Dist. (*Abdur Rahim and Srinivasa Aiyangar*, JJ.) VIRASAMI NAIDU *v.* BOMMADEVARA PICHAYYA.
33 M.L.J. 536=43 I.C. 167=6 L.W. 753.

———*Alienation — Widow — Gift — When justifiable.*

A widow has no right to make a gift even of a reasonable portion of her husband's property to her husband's niece after the consummation of the lady's marriage. 23 Mad. 118; 35 Mad. 628; 22 M.L.J. 321, Dist. *Quære.*—Whether she has the right to make such a gift even to her own daughter after the consummation of her marriage. (*Sadasiva Aiyer and Napier*, JJ.) KALAVAGUNTA SINGARACHARLU *v.* SREEMAN GUDIMALLA. **29 I C. 269.**

HINDU LAW—Alienation—Widow - Gift.

———*Alienation—Widow—Gift—Surrender.*

Whether the alienation is surrender of interests or a gift is to be determined from the construction of document. (*Miller and Sadasiva Iyer*, JJ.) ARTHANARI GOUNDAN *v.* RAMASWAMI GOUNDAN. **13 M L.T. 445=20 I.C. 305=(1913) M.W N. 448=25 M L J 8 (F.B.).**

[On appeal 26 I.C. 757=28 M.L.J. 1. 30 I.C. 498=42 Mad. 523 (P.C.)]

———*Alienation — Widow — Gift—Taking care of donor.*

A widow gave certain property to her niece for having taken care of her in the past and on promise of taking care of her till her death. *Held*, the necessity for the gift was not apparent and could not bind the reversioners. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) POLIREDDI CHINNAMMA *v.* MAGANTI VENKATARAMAYA. **16 I C. 60=(1913) M.W.N. 75.**

———*Alienation—Widow— Gift—Religious purpose—Gift in accordance with wishes of deceased husband.*

A gift by a Hindu widow in accordance with the expressed dying wishes of her husband, especially one entailing the many spiritually beneficial acts that were contemplated, would be binding on the reversioners. 6 N.L.R. doubted. (*Hallifax*, A J.C.) RAMCHANDRA BALKRISHNA *v.* RAM CHANDRA.
1922 Nag. 222.

———*Alienation—Widow—Gift—If challenged by reversioners—Strangers if can—Impeach—Nature of the transaction.*

A sale, mortgage or gift by a Hindu widow which purports to pass the absolute title is valid against every one except the reversioners and unless the reversioners elect to treat it as a nullity, it subsists as against every one else. A Hindu widow is not a tenant for life, but owner of her husband's property subject to certain restrictions on alienation and subject to its devolving upon her husband's heirs upon her death. But she may alienate if subject to certain conditions being complied with; her alienation is not therefore absolutely void but is *prima facie* voidable at the election of the reversionary heir. He may think fit to affirm it, or he may at his pleasure, treat it as a nullity without the intervention of any Court, and he might show his election to do the latter by commencing an action to recover possession of the property. Consequently a gift of the whole of her husband's property made by a Hindu widow not challenged by the reversioner during her lifetime and acquiesced in by those who would take a vested interest after her death cannot be challenged by any one else. It is the reversioners and the reversioners alone who can dispute the gift. If they choose to allow the property to which they are entitled to remain in the possession of the donee that

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is their affair and no one else can object. If the donee remains in possession under a claim of right for 12 years, he will acquire an indefeasible title even against the reversioner. (*Miller*, C.J. *and Mullick*, J.) MAHARAJAH KESHO PRASAD SINGH *v.* CHANDRIKA PRASAD SINGH. **2 P. 217=3 P.L.T 797= 1923 P. 122.**

———*—Alienation — Widow —Gift—Dedication of property to idol.*

A woman having the estate of a Hindu mother cannot create a valid title in favour of an idol. (*Atkinson and Das*, JJ.) SRITHAKUR PRMOD BANABIHARI *v.* ATKINS. **53 I.C. 106=4 Pat. L.J 538.**

Alienation—Widow—Maintenance.

———*—Alienation — Widow — Maintenance —Future maintenance.*

A Hindu widow is justified in alienating her husband's estate where its income is insufficient for her maintenance. She is not obliged first to run into debt and then to sell the land in order to discharge the debt with interest added. If by first selling the land she can so improve the estate as to provide sufficient for her own maintenance, this is not merely a prudent but a necessary arrangement. (*Chevis and Campbell*, JJ.) RADHA RAM *v.* KUSHI RAM. **1922 Lah. 201.**

———*—Alienation — Widow—Maintenance.*

If the rents realised are insufficient to provide for the maintenance and to pay a maintenance debt, the widow is entitled to alienate immoveable property for the above purpose. Within the limits imposed on her, the widow has absolute power of enjoyment of her immoveable property. A sale beyond legal necessity would be binding only during her life-time. (*Hayward*, A.J.C.) RATANSI *v.* UMABAI. **9 I.C. 997.**

Alienation—Widow—Mortgage.

———*—Alienation — Widow — Mortgage — Burden of proof necessary to borrow—Upon the particular terms—Proof whether necessary.*

A person who deals with a Hindu Widow having a limited estate is bound to establish the facts, which justified the transaction under which he claims. In the case of a mortgage, made by a widow, it is incumbent on the mortgagee to show not only that there was necessity to borrow, but also that it was not unreasonable to borrow at a high rate and upon the particular terms, and, if this is not shown, the rate and terms would not stand even though the charge may be upheld. (*Kanhaiyalal*, J.C.) DARYAO SINGH *v.* KALI SINGH. **9 O.L J. 213=4 U.P.L.R. (O.C.) 63= 1922 Oudh 175.**

———*—Alienation — Widow — Mortgage — Interest—High rate—Necessity—Proof of—Onus on creditor—Liability of reversioner.*

A person who takes mortgage from a Hindu widow if he charges a high rate of interest in consideration of the risk he incurs, that covenant cannot be enforced against the person to whom the property ultimately goes after the death of the widow, even with regard to that portion of the consideration which may be found to be supported by legal necessity, unless the circumstances attending the loan, indicate that the rate of interest charged was reasonable. Ordinarily 1 per cent. per mensem is reasonable in such cases. (*Kanhaiya Lal*, J.C.) BAIJ NATH *v.* SHEORAJ SINGH. **22 O C. 260=53 I C. 761= 6 O L.J. 469.**

HINDU LAW—Alienation—Widow—Necessity.

———*—Alienation—Widow—Mortgage debt—Mode of realisation—Reversioner's right.*

A Hindu widow in possession of her husband's estate can realise the mortgage debts due to the estate by alienating her mortgagee's right for consideration. When a Hindu widow in possession of husband's estate tries to realise debts due to the estate, the reversioners can exercise some sort of control over the proceedings and the Courts will by means of necessary orders enforce their rights to prevent the widow from committing waste or from making arrangements amounting to alienation of the corpus of the estate. (*Piggott*, J.C. *and Sabonadiere*, A. J. C.) NAND KISHORE *v.* MANGAL DIN. **21 I.C. 8.**

———*—Alienation—Widow—Mortgage by—Interest—High rate—Necessity for—Burden of proof.*

Where in a suit against the reversioners on a mortgage by a Hindu widow the principal is found to be for necessity, the question as to the necessity of the rate of the interest should not be gone into unless specially raised by the defendants. (*Das and Adami*, JJ.) JAG SAHU *v.* RADHA KISHAN. **2 U.P.L R (Pat.) 127= 1 Pat. L.T. 209=5 Pat L J. 287= 56 I.C. 867=1920 Pat. 211.**

———*—Alienation—Widow—Mortgage by—What passes.*

A mortgage by a widow of her right and interest in her husband's estate is not necessarily a mortgage only of her life interest. (*Sharfuddin and Roe*, JJ.) NARAIN BATI KUNWARI *v.* RAMDHARI SINGH. **20 C W.N. 731=1 Pat. L.J. 81= 34 I.C. 277=3 Pat. L W 377.**

Alienation—Widow—Necessity.

———*—Alienation—Widow—Necessity.*

The expression "necessity" when used in connection with an alienation by a Hindu widow, has a somewhat special, almost technical, meaning. A widow can alienate if there are no other means available for the obligatory ceremonies to secure the repose of the soul of her husband. She can alienate immoveable property to pay the last owner's debts or (if there is no other avaliable source of supply) for her own or for infant children's maintenance. Necessity does not mean actual

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compulsion but the kind of pressure which the law recognises as serious and sufficient. (*Lord Phillimore.*) RAMSUMRAN PRASAD *v.* MT. SHYAM KUMARI 31 M.L.T. 200 = 9 I.A. 342 = 3 Pat. L.T. 749 = 16 L.W. 956 = 21 A.L.J. 18 = 9 O. & A.L.R. 175 = 27 C W.N. 269 = 37 C.L.J. 316 = 45 M.L.J. 751 = 1922 P.C. 356 (P.C.).

———*Alienation — Widow - Necessity—Suit by reversioner.*

A Hindu who was separate, died leaving behind, two widows, defendant No. 1 and another. He possessed considerable property but was heavily in debts and the property in question was subject to a mortgage. The two widows separated and a moiety of the property was enjoyed by each, subject to a proportionate share of mortgage debt. Defendant (1) sold her share for Rs. 5,300 to satisfy a mortgage decree for Rs. 4,588-2-2 and the balance Rs. 711-13-10 was appropriated to reimburse herself for expenses of her husband's brother's daughter's marriage. The plaintiff, the nearest surviving agnate brought a suit after a long delay for a declaration that the sale was void against him as a reversioner. *Held*, the husband of defendant (1) died leaving his debts unpaid and it was to satisfy the debts secured by mortgages that the defendant (1) sold her moiety of the property ; there was therefore necessity in law and in fact for the sale of the moiety of property. The sale would not be invalid no matter what may have been the purpose to which the defendant (1) applied the balance of Rs. 711-13-10. The purchasers, were not bound to see that the defendant (1) applied to any particular purpose. Further held that the delay on the flimsy ground that the plaintiff was not aware of the sale was inexcusable. (*Sir John Edge*). MEDAI DALAVOI, THIRUMALAIYAPPA MUDALIAR *v.* NAINAR TEVAN.

16 L.W. 478 = 31 M.L.T (P.C.) 149 = (1922) M.W.N. 804 = 4 U.P.L.R. (P.C.) 92 = 27 C.W.N. 365 = 21 A.L.J. 282 = 1922 P.C. 207 (P.C.).

———*Alienation—Widow—Necessity —Religious or charitable purposes—What are—Gift of a small portion of the estate to Deity for the spiritual welfare of her deceased husband—Validity of.*

The Hindu Law recognises two sets of religious acts as justifying an alienation by a Hindu widow. One is in connection with the actual obsequies of the deceased, and the periodical performance of the obsequial rites prescribed by the Hindu Religious Law, which are considered as essential for the salvation of the soul of the deceased. The other relates to acts which, although not essential or obligatory, are still pious observances which conduce to the bliss of the deceased's soul. With reference to the first class of acts the powers of the Hindu female who holds the property are wider than in respect of the acts which are simply pious and if performed are meritorious so far as they conduce to the spiritual benefit of the deceased,

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In one case if the income of the property or the property itself is not sufficient to cover the expenses she is entitled to sell the whole of it. In the other case she can alienate a small portion of the property for the pious or charitable purpose she may have in view. Where a Hindu widow after performing a pilgrimage to Jagannath gifted a small portion of her husband's estate (in this case a one seventy-fifth) for the observance of bhog (food offerings) to the deity and for the maintenance of the priest and she purported to make the gift for the welfare of her deceased husband's soul and his salvation. *Held*, that the gift was valid though the widow had ample income from her husband's estate out of which she might have made the gift. 8 M I A. 329 ; 13 M.I.A. 209 ; 8 Mad. 552; 34 Mad. 288 approved. 22 Cal. 506 Dist (*Mr. Ameer Ali*). SARDAR SINGH *v.* KUNJ BEHARI LAL.

44 All. 503 = 16 L.W. 871 = 31 M L T (P.C.) 262 = 49 I.A. 383 = 37 C.L.J. 383 = 44 M.L J. 766 = (1922) P.C. 261 (P.C.)

———*Alienation—Widow—Necessity— Permanent lease—Fair rent—Onus.*

A person who deals with a Hindu widow having a limited estate must be aware that he may be called upon to establish the facts which justify the transactions under which he claims. The mere fact that the rent reserved was a fair market rent, or the price obtained was a fair market price cannot alone, and in themselves, be regarded as sufficient. (*Lord Buckmaster.*) NABAKISHORE MANDAL *v.* UPENDRAKISHORE MANDAL.

20 A L.J. 22 = 26 C.W.N. 322 = 35 C.L.J. 116 = 42 M.L J. 253 = (1922) M.W.N 95 = 24 Bom. L R. 346 = 15 L.W. 417 = L.R. 3 (P.C.) 77 = 30 M.L.T. 234 = 3 Pat. L.T. 311 = 1922 P.C. 89 (P.C.)

———*Alienation—Widow—Necessity—Proof of—Lapse of time—Presumption—Onus.*

Where a sale of family property by a Hindu widow is impeached for want of justifying necessity and a very long time (82 years in this case) has elapsed since the sale took place, though the onus is on the alienee to prove necessity it is not reasonable to expect such full and detailed evidence of the circumstances which gave rise to the sale as in the case of an alienation at a more recent date and presumptions are permissible to fill in the details which have been obliterated by time. (*Lord Shaw*) CHINTAMANIBHATLA VENKATA *v.* RANI OF WADHWAN.

43 Mad 541 = 47 I.A. 6 = 38 M.L.J. 393 = 11 L.W. 451 = (1920) M.W.N. 315 = 18 A.L J. 367 = 22 Bom. L.R. 541 = 55 I.C. 538 = 2 U.P.L.R. P.C. 77 (P.C.)

———*Alienation — Widow — Necessity — Litigation—Lapse of time.*

It is for the transferee from a Hindu widow to establish either that there was legal neces-

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sity in fact for the borrowings, or that from sufficient enquiries made, he honestly believed that there was such necessity. Lapse of time does not affect the question except in so far as it might give rise to a presumption of acquiescence or save the alienee from adverse inferences arising from the scanty proof offered. It is not sufficient to establish that there were litigations and expenses must have been incurred. It must be shown that the expenses could not have been met from the income of the estate, that they were reasonable, and what they were. If there be no legal necessity, the fact that the full price was paid, does not by itself justify a sale by a Hindu widow. (*Viscount Haldane*) RAVANESHWAR PRASAD SINGH *v.* CHANDI PRASAD. **43 Cal. 417=36 I C. 499 (P C)**
[On Appeal from 38 Cal. 721= 12 I.C. 931]

——*Alienation—Widow—Necessity—Proof of—Recitals—Value of—Old alienation—Maintenance of widow.*

The onus of proving that an alienation by a Hindu widow is binding on the reversioner is on the alienee. 23 I.A. 57 Ref. Recitals of necessity in the deed of alienation cannot by themselves be proof of its existence. If the alienations were challenged immediately, so that independent evidence would be available, the recitals would deserve but slight consideration. If by effluxion of time, evidence independent of the recital disappears and becomes unavailable a recital of necessity consistent with probability and circumstances, assumes greater importance and cannot lightly be set aside. The recital is clear evidence of representation to the purchaser and, when evidence of actual enquiry by him has become impossible, the recital, coupled with circumstances which justify a reasonable belief that an enquiry would have confirmed its truth is sufficient evidence to support the alienation. Otherwise a title would become weaker as it grows older. In the absence of sufficient current income the maintenance of a widow (after paying off the debts and other expenses is a necessity justifying an alienation by her. The maintenance need not be measured merely by a sufficient sum to support bare existence. The periods at which the properties were sold, the small sums for which they were sold and the disposition of the property, piece by piece, with fair regularity for a period of 16 years, all supported the view that the widow was unable to maintain herself out of the income and the sale was therefore justifiable. (*Lord Chancellor*) NANDLAL *v.* JAGAT KISHORE ACHARYA.
44 Cal. 188=20 M L T. 335=31 M L J. 563= (1916) 2 M.W N. 336=4 L W. 468= 18 Bom. L R. 868=16 A.L J. 1103= 24 C L J. 487=1 P L.W. 1=21 C W.N. 225= 10 Bur. L.T. 177=36 I C 420= 43 I.A. 249 (P.C.).

——*Alienation—Widow—Necessity—Onus of proof—Recitals in deed, whether sufficient evidence.*

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It is the purchaser who must support a sale by a Hindu widow and there must be evidence to prove legal necessity as would bind the husband's estate. Recitals in mortgages or deeds of sale as to the existence of necessity for alienation are not evidence by themselves of the fact and in order to substantiate the allegation there must be some other evidence which is external. (*Mr. Ameer Ali.*) BRIJ LAL *v.* INDIA KUNWAR. **36 All 187= 26 M L J 443=18 C.W.N. 649= 12 A L J. 495=19 C.L J. 469= (1914) M W.N. 405=15 M L.T 395= 16 Bom. L.R. 352=23 I C. 715= 1 L.W. 74 (P.C.)**

——*Alienation—Widow—Necessity—Payment of husband's debts during his lifetime—Voluntary payment—Onus.*

The payment by a Hindu wife of her husband's debt during his lifetime must be considered (in the absence of evidence to the contrary) as voluntary payment, and will not support an alienation by the widow after her husband's death, of the estate with a view to discharge her debts. The obligation lay on the appellant to prove that there was such liability and she has not satisfied it. (*Lord Macnaghten.*) BHAWANI KUNWR *v.* HIMMAT BAHADUR. **33 All. 342=15 C W N 466= 13 C.L J. 441=9 M.L.T, 465= 8 A.L J 474=13 Bom. L R. 384= 21 M.L.J. 611=10 I C. 274= (1911) 2 M.W.N. 445 (P.C.).**
[On Appeal from 30 All. 352]

——*Alienation—Widow—Necessity — Liability to pay—Revenue—Rebuttal.*

Where an estate in the hands of a widow has to pay arrears of government revenue that constitutes proof of necessity for an alienation, even if government has not taken any steps to realise it by sale. But this can be related by showing that at that time she had other funds in her hands for paying the same. (*Ryves and Daniels, JJ*) LALTA PRASAD *v.* DARSHAN SINGH. **1924 All. 149.**

——*Alienation — Widow — Necessity — Payment of mother's debts.*

Recitals in a deed of sale by a Hindu limited owner are not in themselves evidence of necessity. 44 C 186 followed. It is not competent to a daughter to alienate the estate for her mother's debts so as to bind the ultimate reversioners. The reversioners are in no way bound by a decision against the daughters. (*Stuart, J.*) SITA RAM *v.* REWA RAM. **1923 All. 366.**

——*Alienation — Widow — Necessity — Recitals in deed—Value of.*

Though recitals in a sale deed by a Hindu widow could not by themselves be taken as conclusive evidence of legal necessity, the recitals coupled with other evidence, circumstantial or otherwise, may amount to sufficient proof in the circumstances that the

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transactions were binding on the family. 44 C. 166 (P.C.) Rel. (*Lindsay and Stuart, JJ.*) SARJU PRASAD *v.* MAHOMED SHAKUR.
1922 All. 126.

———*Alienation — Widow — Necessity—Alienation to pay husband's time barred debts.*

A Hindu mother, inheriting her son's estate, as such, cannot make an alienation to pay her husband's time-barred debts not charged on the property. (*Gokul Prasad and Stuart, JJ.*) SHEORAM *v.* SHEO RATAN. 19 A.L J. 613 = 63 I.C. 279 = 43 A. 604.

———*Alienation — Widow — Necessity —* Mitakshara *Law.*

To support an alienation by widow, as being one for religious or charitable purpose it must be proved that the acts intended to be performed, were supposed or intended to conduce spiritual welfare on the husband. Dedication of *Dharmasala* is a religious act, and may confer spiritual benefit on the dedicator but it does not follow that it confers the benefit on a third party. The question is always one of fact. An act supposed to confer spiritual benefit on the widow does not necessarily confer such a benefit on the husband. (*Rafique and Stuart, JJ.*) SHYAMDIR *v.* BIRBHADRA.
43 All. 463 = 62 I C. 432 = 19 A.L.J. 312.

———*Alienation—Widow—Necessity—Business of husband,*

It is a general rule of Hindu Law that a widow in possession of her husband's estate, cannot alienate moveable or immoveable property inherited from him except for legal necessity. But in the course of management of her husband's business, she can transfer only if the prudent conduct of business requires it, the prudent conduct of business amounting to necessity. The profit or loss on a transfer made by a widow is not a test of necessity. (*Stuart and Ryves, JJ.*) PAHALWAN SINGH *v.* JIWAN DAS. 42 All. 109 = 59 I.C. 162 = 18 A L.J. 41.

———*Alienation—Widow--Necessity—Money paid for one purpose applied to another—Effect of.*

The fact that money advanced to a Hindu female for one legal necessity is used or diverted to some other purpose equally valid is insufficient in itself to make the transaction invalid. (*Walsh and Ryves, JJ.*) JAGDISWAR PRASAD *v.* SHEO BAKSH RAI.
51 I.C. 855 = 1 U.P.L R. (H.C.) 119.

———*Alienation — Widow — Necessity—Excessive sale—Indivisible estate.*

The sale of the whole of an indivisible large property, *e.g.*, a house, by a female having a limited estate to pay off a debt of the last male holder is valid though the price realised is much in excess of the debt. (*Tudball and Rafique, JJ.*) BALKRISHNA DAS *v.* HIRA LAL.
41 All. 338 = 50 I.C. 74 = 17 A.L.J 239.

HINDU LAW—Alienation—Widow—Necessity.

———*Alienation — Widow — Necessity—Benefit—Feeding.*

A Hindu widow succeeded as heir to her son and made an oral gift of a portion of the property in her possession in favour of the *pandas* of the temple of Jagannath. On her return she made a formal deed of gift in which after alluding to the oral gift she stated that she had made the gift and *shanklap* for the salvation of her husband and his family members and for her own salvation. The portion endowed constituted no more than 180 parts of the estate. *Held*, that the gift was valid having been made with a view to the spiritual benefit of the widow's husband and her sons who were included in the expression "husband's family members." An alienation made by a Hindu widow for the spiritual benefit of the deceased will not be set aside merely because it was not made in connection with a *shradh* ceremony of the deceased. In the case of an alienation for a purpose regarded as indispensable to welfare of the late husband, *e.g.*, *Shradh*, funerals, etc , the question will not be what proportion does the property alienated bear to the entire estate but only whether the alienation was a reasonable one and suitable to the position of the family. There may be alienations made by a Hindu widow for the purpose of doing pious acts for the benefit of her late husband which are not in the nature of spiritual necessities; and with regard to such alienations the question of the proportion borne by the property alienated to the value of the entire estate becomes pertinent. (*Piggott and Walsh, JJ.*) KUNJ BEHARI LAL *v.* LALTU SINGH. 41 All. 130 = 48 I.C. 847 = 16 A L.J. 986.

———*Alienation — Widow — Necessity—Interest—High rate.*

To support an alienation from a Hindu widow, legal necessity must be shown not only for the loan but also for raising it at a very high rate of interest. It is not sufficient to show the existence of previous debts but these debts too must be proved to have been incurred for legal necessity. (*Richards, C.J. and Banerjee, J.*) CHITAR MAL *v.* RAM NARAIN.
24 I.C. 84 = 12 A L.J. 603.

———*Alienation — Widow — Necessity—Marriage of daughter — Pilgrimage — Feast, expenses of construction of well.*

Money borrowed by a widow for the expenses of the marriage of her daughter is for legal necessity. Expenses for the construction of a well may be a legal necessity if proved to be for the benefit of the estate. A feast given by a Hindu widow on return from a pilgrimage is not so intimately connected with the pilgrimage as to justify its allowance as money spent for legal necessity. (*Stanley, C.J. and Banerji, J.*) MAKHAN LAL *v.* GAYAN SINGH.
33 All. 255 = 9 I.C. 199 = 8 A.L.J. 13.

HINDU LAW—Alienation—Widow—Necessity.

———*Alienation—Widow—Necessity—When liable to be set aside.*

Where a part of the consideration for an alienation by a Hindu widow is for necessity, and there is not much difference between the actual sale price and the true value of the lands, the alienation is valid. (*Shah*, A.C.J. *and Coyajee*, J.) CHANBASAPPA *v.* CHANBASAPPA.
25 Bom. L R. 1078=1924 Bom. 176.

———*Alienation—Widow—Necessity— Onus of proof—Recitals to be specific.*

A Hindu widow cannot sell more than her interest in her husband's property unless there is legal necessity and the onus is on the purchaser to prove it. If payment of debts is relied on there ought to be a recital in the deed of the specific debts paid off. (*Macleod*, C.J. *and Shah*, J.) MOHAN SINGH UMED RAMOL *v.* DALPATSINGH KAMBAJI **46 Bom. 753= 24 Bom. L.R. 289=1922 Bom. 51.**

———*Alienation — Widow — Necessity— Assisting reversioner — Son subsequently adopted.*

An alienation of her husband's property by a widow to assist a reversioner in his pecuniary difficulties is not binding on a son subsequently adopted by her to her husband. (*Scott*, C.J. *and Roe*, J.) RAMAKRISHNA KUPPUSWAMI *v.* TRIPURBAI. **12 I C. 529= 13 Bom. L.R. 940.**

———*Alienation—Widow—Legal necessity—Marriage of daughter—Pilgrimage.*

A debt by a widow for her daughter's marriage expenses is legal necessity. A Hindu widow has a larger power of disposition for charitable purposes conducing to the spiritual welfare of her husband. Expenses for pilgrimage leading to the spiritual benefit of her husband come under legal necessity. (*Chandávarkar and Hayward*, JJ.) GANPAT DHAKOO *v.* TULSI RAM.
36 Bom. 88=12 I.C. 271=13 Bom. L.R. 860.

———*Alienation — Widow — Necessity — Inquiry as to—Recitals in document—Effect.*

A recital in a mortgage effected by a Hindu widow as to necessity is clear evidence of representation and if there is some proof of inquiry, all these taken together are sufficient to support the deed. (*Ghose and Panton*, JJ.) BANKU BEHARY DE *v.* BISSESWAR LAL MARWARI. **1923 Cal. 578.**

——*Alienation—Widow—Necessity—Proof of—Recitals in deed—Enquiry — Burden of proof—Lapse of time.*

When a person claims title under an alienation effected by a Hindu widow in respect of the estate of her husband, the burden lies on him to establish either that there was legal necessity in fact which justified the alienation or that he made proper and *bona fide* enquiries and did all that was reasonable to satisfy himself as to the existence of such necessity. 35 C. 420; 16 A. 420; 35 C,L.J. 116, Ref. In the application of this primary rule, it is to be borne in mind that recitals in conveyances or mortgages of the existence of legal necessity are not by themselves evidence of the fact and there must ordinarily be some evidence to substantiate the allegations *aliunde*. 36 A. 187; 37 A 369, Ref. Though lapse of time does not affect the question of onus of proof regarding legal necessity, it may give rise to a presumption of acquiescence or save the alienee from adverse inference arising from the scantiness of the evidence offered on his behalf. To put the matter in another way, when by efflux of time, direct evidence independent of the recital becomes unavailable, a recital of necessity consistent with probability and the circumstances assumes greater importance; it is clear evidence of a representation to the purchaser and when evidence of actual enquiry by him has become impossible, the recital coupled with circumstances which justify a reasonable belief that an enquiry would have confirmed its truth, is sufficient evidence to support the transaction. Where there is pressure on the estate, it is not necessary to determine whether the estate might have been kept free from debts by prudent management. 23 C. 766, 189: This is so especially where the lender acted *bona fide* and enquired into the necessity for the loan. 6 C. 843: 20 C.L.J. 23; 30 C.L.J. 56; 19 C.W.N. 80, Ref. Where the transaction was in the main for legal necessity it would not be impeachable on the ground that a smaller sum would have been sufficient to remove pressure at the time. 27 C.W.N. 365 (P.C.), Ref. (*Mookerjee and Rankin*, JJ.) CHANDRA KISORE DATTA MAJUMDAR *v.* KUMAR UPENDRA CHANDRA CHOUDHURY. **37 C.L.J. 319=1923 Cal. 563.**

———*Alienation—Widow—Necessity—Proof of—Recitals—Value of.*

Where a Hindu widow executed a sale more than 40 years ago and the sale was recited to be for legal necessity and the transaction was not impeached by the then reversioners during the widow's life time, *held*, that the presumption was in favour of the existence of a legal necessity as recited in the deed in question and that it was not competent to any person other than the nearest reversioner to avoid the sale. (*Walmsley and Ghose*, JJ.) JABEDALI SHEIKH *v.* PRASANNA KUMAR NAG
27 C.W.N. 433=1923 Cal. 423.

——*Alienation — Widow — Necessity — Posthumous son—Position of.*

An unborn child, is treated as born, only when it is for its benefit, but is not considered as born for the benefit of third persons. The title of a posthumous son must operate retrospectively to the time of death of his father and his rights, in case of alienation of the estate by his mother before his birth, are the same as his rights in the event of a partition before his death. He is not bound by an alienation by his mother, of his paternal estate before his birth. (*Mookerjee and Panton*, JJ.) KUSUM KUMARI *v.* DASARATHI. **34 C.L.J. 321.**

HINDU LAW—Alienation—Widow—Necessity.

——*Alienation — Widow — Necessity — Lease by widow mother—Burden of proof.*

The adult sons of a widow are not bound by a lease given by her of their property where there is nothing to show that they received any benefit therefrom. The minor sons can be bound by it if there was legal necessity or benefit to the minor, the burden to prove which is on the person taking the lease. (*Chatterjee and Newbould*, JJ.) HEM CHANDRA ROY *v.* SHASHI BHUSHAN. **68 I C. 853.**

——*Alienation—Widow—Necessity—Proof of—Recitals of—Reversioner joining in alienation—Estoppel.*

The mere fact that a conveyance of a portion of her husband's estate is executed jointly by a Hindu widow and the then next reversioner does not by itself create an indefeasible title in favour of the vendor. He must prove legal necessity or such *bona fide* inquiry as entitles him to protection from a Court of Equity. A mere recital in the deed as to the existence of such necessity by itself, is insufficient. The concurrence of the then next reversioner is a presumption in favour of the validity of the transaction. Where the creditor is not shown to have made a *bona fide* inquiry, he must prove that there was an actual pressure on the estate or danger to be averted such as a threatened suit on a genuine debt, an outstanding decree or an impending sale which the widow had no funds to meet. Where persons contesting an alienation by a Hindu widow claim not through their father but directly as reversioners to the estate of the last male owner they are not precluded by any rule of estoppel from disputing the validity of the alienation nor are they affected by the circumstance that they had, after the death of their father and before the death of the widow taken by inheritance land transferred by the widow by way of gift to their father. (*Mookerjee and Panton*, JJ.) RAMES CHANDRA CHAKRAVARTI *v.* SASI BHUSAN UPADHYA. **23 C.W.N. 1025 = 53 I.C. 655 = 30 C.L.J. 56.**

——*Alienation—Widow—Necessity—Proof of—Recitals of legal necessity—Alienation if may bind reversioners—Estoppel — Ratification.*

The recitals of legal necessity in an alienation by a Hindu widow made more than 40 years before suit could not be given the weight attached to similar recitals in 44 Cal. 186, in as much as evidence was available as to the pecuniary condition of the estate at the time of the alienation and it was made to a person who in fact managed the estate for the widow. The alienation, in this case, a permanent Ijara, was not made for legal necessity nor was it binding on the reversioners apart from legal necessity as being for the "benefit of the estate." 40 Mad. 402, Ref. The reversioners did not by getting themselves substituted as the legal representatives of the widow in a suit for arrears of Ijara rent which had fallen due in her lifetime, ratify the Ijara. (*N. R. Chatterjee and Smither*, JJ.) UPENDRA KISHORE MANDAL *v.* NOBO KISHORE MANDAL **48 I.C. 993 = 28 C.W.N. 65.**

——*Alienation — Widow — Necessity — Proof of.*

The propriety of an alienation by one of several limited owners of a portion of the property in her separate possession should be determined with reference to the separate portion in her possession. (*Richardson and Walmsley*, JJ.) SHYAMDAS ROY CHOWDHURY *v.* RADHIKA PRASAD. **22 C W N. 816 = 47 I.C. 853 = 29 C.L J. 24.**

——*Alienation—Widow—Necessity—Debts of husband—Permanent lease.*

A Hindu widow has got powers to grant a permanent lease to discharge a usufructuary mortgage of her husband. 36 I.C. 420, P.C., Rel on. (*Fletcher and Shamsue Huda*, JJ.) BAIKUNTHA NATH BANKER *v.* SATISH CHANDRA BHUSAN. **46 I.C. 876.**

——*Alienation — Widow — Necessity — Maintenance.*

A Hindu widow is not bound to incur debts for her maintenance. She may sell a portion of the property instead of mortgaging the whole for such purpose. (*Chitty and Smither*, JJ.) KULAK CHANDAR DAS *v.* KULA CHANDRA DAS. **46 I.C. 269.**

——*Alienation—Widow—Necessity — Test —Worldly purposes and promotion of spiritual welfare, distinction between.*

The test to be applied, where an alienation made by a limited owner is impeached, is whether the transaction is fair and proper, lawful and valid, and justified by Hindu Law; necessity is only one of the phases of the test of propriety. The widow has a larger power of disposition for religious or charitable purposes or for purposes which are supposed to conduce to the spiritual welfare of her husband than what she possesses for purely worldly purposes. A Hindu widow, daughter or mother, is entitled to alienate a small portion of the estate in her hands for religious purposes. Case law discussed. The disposition for the performance of a work of recognised religious merit, is lawful, valid and proper, especially where the area alienated does not constitute an unreasonably large fraction of the entire estate. (*Mookerjee and Newbould*, JJ.) KHUBLAL SINGH *v.* AJODHYA MISSER. **43 Cal. 574 = 31 I.C. 433 = 22 C L J. 345 =**

——*Alienation—Widow—Necessity— Government revenue.*

Government revenue and other Government demands, are a necessity justifying alienation if they cannot be met out of the income. (*Sharfuddin and Coxe*, JJ.) GAJADHAR PARSHAD SAHU *v.* BINDUBASHINI PERSHAD, **29 I.C. 181.**

HINDU LAW—Alienation—Widow—Necessity.

———*Alienation—Widow—Necessity — Inquiry.*

An alienee from a Hindu widow must prove either legal necessity therefor or a *bona fide* inquiry as to the legal necessity. (*Mookerjee and Beachcroft, JJ.*) RAMESHWAR MANDAL *v.* PROVABATI DEBI. **20 C L J. 23 = 25 I.C. 84 = 19 C.W.N. 313.**

———*—Alienation — Widow—Necessity—Pilgrimage to Ganga—Feast to Brahmans—Legal necessity.*

A Hindu widow is justified in alienating her husband's property in making a pilgrimage to Ganga to perform *Sradh* ceremony and feasting Brahmans after the ceremony. (*Mookerjee and Beachcroft, JJ.*) DENO NATH GOSH *v.* HRISHIKESH PAL. **18 C.W.N. 1308 = 24 I.C. 670 = 20 C L J. 285.**

———*Alienation — Widow — Necessity—Barred debts.*

Sale *bona fide* made in satisfaction of a debt which, had it not been barred, would have made the sale one for purposes, is not by the mere fact that the debt is barred, voidable at the option of the reversioners. Alienation for house hold expenses during and in anticipation of famine is for necessity. (*Coxe and Chatterjee, JJ.*) KHOJENDRA NARAYAN SINGH *v.* SANTO LAL. **22 I.C. 669.**

———*—Alienation—Widow—Legal necessity—Inquiry—Nature of.*

Inquiry from widow without reference to the creditors mentioned in the deed is not sufficient to protect the alienee. (*Holmwood and Chatterjee, JJ.*) JANBHAI *v.* BALBHADRA SUAR. **10 I.C 350 = 15 C.W.N. 793.**

———*Alienation—Widow—Necessity— Just debt—Sale of equity of redemption.*

The plaintiffs sued for a declaration that a sale of ancestral property by the widow of one J would not affect their reversionary rights, J originally mortgaged, the land for Rs. 1,500 in 1903. The mortgage was converted into a sale by the widow in 1910, the consideration being Rs. 1,500 due on the mortgage, Rs. 1,221-13 due as interest and Rs. 24 spent on repairing a well and due from the mortgagor under the terms of the deed of mortgage. *Held* : that the widow had no necessity to sell the equity of redemption, the debt being a charge only on the mortgaged land and not being recoverable from the person or other property of the mortgagor, and that the interest due under the mortgage was not a just debt, as held in 65 P.R. 1900, F.B. (*Scott-Smith, J.*) BODH RAJ *v.* RAJA SINGH. **1923 Lah. 668.**

———*—Alienation — Widow — Necessity—Partial necessity.*

If in the case of a sale by a widow a small portion of the purchase money was not required for urgent necessity, it does not follow that the sale itself was not due to necessity,

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unless it could be reasonably presumed or unless it is proved that the sale of a lesser area for the exact amount required for necessity was feasible (case law discussed). The principle is applicable with all the more force to the case of an alienation by a male proprietor. (*Martineau and Brasher, JJ.*) GOKHA RAM *v.* SHAM LAL. **3 Lah. 426 = 1923 Lah. 268.**

———*Alienation—Widow—Necessity partially proved—Conversion of sale into mortgage.*

The sale of immoveable property by a limited owner ought not to be converted into a mortgage merely because a trifling portion of the consideration was paid in cash for current expenses and was not proved to have been for necessity. 130 P.R. 1906 and 8 P.R. 1908 foll. (*Scott-Smith and Brasher, JJ*). HASSAN MUHAMMAD *v.* MAHANDA. **5 Lah. L.J. 292 = 1923 Lah. 245.**

———*Alienation—Widow—Necessity— Bulk of the consideration for necessity—Form of decree.*

A Hindu widow is not always bound to sell exactly for the amount for which there is legal necessity. In each case the court has to see whether having regard to the circumstances the alienation was a proper one. 1 B. L. R. 201, 14 C. W. N. 895, Ref. The rule that a widow should not alienate in anticipation of a necessity is not an inflexible rule. What is to be seen is whether in the particular case, the widow has dealt fairly towards the expectant heir. Even granting that a minor portion of the consideration is not proved to have been taken for legal necessity, the alienation ought to be upheld. 26 I. C. 178 ; 26 I. C. 418, Ref. (*Abdul Raoof and Martineau, JJ.*) NAMAN MAL *v.* HAR BHAGWAN. **2 Lah. 357 = 1922 Lah. 317.**

———*Alienation — Widow — Necessity — Future necessity.*

A Hindu widow is not competent to alienate her husband's estate in order to raise money for a future necessity. A daughter's marriage which is not likely to take place for several years to come is not a necessity. 46 P.R. 1912 Foll. Where there is a mortgage on the estate but there is no pressure from the creditor the widow is not justified in selling immoveable property for paying off the mortgage and keeping the balance on her hands in anticipation of future necessity. 31 Mad. 153 Dist. (*Abdul Raoof and Martineau, JJ.*) BALLA SINGH *v.* GURDIT SINGH. **3 Lah. L J. 485.**

———*Alienation — Widow — Necessity—Proof—Debt paid to third person.*

Under the Hindu Law, a widow cannot alienate immoveable property inherited by her from her husband except for special purposes or for religious and charitable purposes or for those which are supposed to conduce to the spiritual welfare of her husband. The payment of a debt contracted by the widow from a third

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person does not of itself justify an alienation by her of immoveable property. (*Shadi Lal and Martineau*, JJ) GOWARDAN DAS *v.* VIRU MAL. 1 Lah. 48=66 P.L R. 1920= 55 I.C. 817=41 P.W R. 1920.

———*Alienation—Widow—Necessity—Religious purpose—Excessive alienation.*

Whether or not an alienation by a Hindu widow is for spiritual benefit of her deceased husband, whether or not the amount of property alienated is excessive, are questions to be decided according to the relative values of the total estate and of the properties alienated. There is no justification for a *sardarni* making an endowment for the establishment and upkeep of a *langar* and *sadabart*. 4 All. 482; 32 Cal. 473; 32 Cal. 506, and 17 C.W.N. 782; 43 Cal. 574, Ref. (*Scott Smith and Broadway*, JJ.) GAHL SINGH *v* SURJAN SINGH. 54 I.C. 955=146 P.R. 1919.

———*Alienation—Widow—Necessity— Conduct of reversioner.*

If the revereioners admit the existence of debts at the time of mutation after sale in the widow's lifetime, they cannot impeach the sale after her death as being without necessity. (*Scott-Smith and Wilberforce*, JJ.) AUTAR SINGH *v.* HARBHAJAN DAS. 50 I C. 80.

———*Alienation—Widow—Necessity—Partial necessity—Suit by reversioner—Form of decree.*

The proper form of decree in a suit to set aside alienation by a Hindu widow in case the alienation is partly justifiable; is to declare that the alienation shall not affect the reversioner's interest except for the amount of consideration which is found to be binding. (*Chevis and Shadi Lal*, JJ.) RADHA RANI *v.* GUJARAMAL. 40 I.C. 496.

———*Alienation—Widow—Necessity— Conversion of mortgage into sale.*

A sale executed in consideration of a mortgage of the property sold must be deemed to be without consideration inasmuch as the conversion of the mortgage into a sale is not supported by any consideration. (*Scott-Smith and Shadi Lal*, JJ.) RAJENDRA SINGH *v* ABDUL GHANI. 40 I.C. 63=25 P.R. 1917.

———*Alienation — Widow — Necessity — Payment of mortgage debt of next reversionary heir.*

A widow is not justified in selling her husband's property to pay off the mortgage debt due by the next reversionary heir of her husband. (*Shah Din*, O.J.) SARADARA *v.* MODAN. 69 P.W.R. 1917=39 I C. 785= 142 P.L.R. 1917.

———*Alienation—Widow— Necessity—Self-acquired property.*

A widow has no right to alienate the property of her husband, even if the property was not

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ancestral except for necessity. 114 P.R. 1907; 14 I.C. 71; 23 I.C. 127, Ref. (*Broadway*, J.) FATTU *v.* PARTAPI. 39 I.C. 642= 15 P.W.R. 1917.

———*Alienation—Widow—Necessity—Major portion binding—Small sum spent on Chaubarkh ceremony of last male owner's second wife—Reversioner—Estoppel.*

The sale by a widow of which a large major portion of the consideration was proved to be for necessity and a portion was spent for *Chaubarkh* ceremony of the last male owner's second wife in which plaintiff took part and himself received a part of price, was held valid and the vendee was exempted from proving the use of a small sum in view of plaintiff's conduct. (*Shadi Lal*, J.) RODU *v.* DAROPATI. 33 I.C. 999=27 P.W.R. 1916.

———*Alienation—Widow—Necessity— Debt—Marriage.*

A sale by the widow of the ancestral house to discharge the debt contracted long ago by her husband is valid. Money borrowed for the marriage of an agriculturist's daughter is for legal necessity. (*Johnstone*, C.J. *and Shah Din*, J.) JIWANA *v.* NATHU. 38 I.C. 586= 17 P.W.R. 1917.

———*Alienation—Widow—Necessity—Marriage of daughter.*

A Hindu widow has no power to alienate her husband's property in order that she may return a sum of money for her child's marriage, which marriage is not likely to happen for many years to come. No alienation can be made for providing for her future maintenance. 32 Bom. 577 Rel. on. (*Johnstone and Rattigan*, JJ.) TAKCHAND *v.* GOPAL DEVI. 46 P R. 1912=127 P L.R. 1912= 13 I.C. 482=180 P.W.R. 1912.

———*Alienation—Widow—Necessity— Partial—Right of alienee for possession.*

Where there is only partial necessity proved for a mortgage by a widow, the mortgagee is not entitled after the widow's death, to recover possession of the property from the reversioner not even a fraction of it proportionate to the amount found to be for necessity. The reversioner is, in such a case in the position of a party to a contract which has not been completed by the other party. (*Reid*, C.J. *and Shah Din*, J.) KHAIRA *v.* MAULA. 49 P.R. 1911=136 P.W.R 1911= 11 I.C. 191=212 P.L R. 1911.

———*Alienation — Widow — Necessity—Woman's estate—Estate given for maintenance to a married daughter.*

Quære.—Whether a married daughter can dispose of property which she inherits on the death of her father for the purpose of her own maintenance. (*Abdur Rahim and Moore*, JJ.) SHANMUGA VELAYUDHAN CHETTY *v.* KOYAPPA CHETTIAR. (1920) M.W.N. 679.

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———*Alienation — Widow — Necessity——Proof of—Lapse of time.*

In the case of alienations by a limited owner the onus is on the purchaser to show necessity. The Court may consider the evidence favourably owing to lapse of time but it is of no use when there is no evidence of necessity. (*Spencer and Seshagiri Aiyar*, JJ.) KUNJARU VENKATARAMANAYYA *v.* DEJAPPA KONDE.

22 M.L T. 233=(1917) M.W.N. 679=6 L.W. 530=42 I.C. 540=34 M.L J. 319.

———*Alienation—Widow—Necessity—What is,*

The income of a widow is an important factor to be determined whether an alienation is for necessity. The private expenses of the widow are not properly necessary; and maintenance ought primarily to be paid out of income and so the onus is on the alienee to show that the alienation of the corpus for these purposes was necessary. The expenses of litigation on account of an unlawful act of the widow are not necessary. (*Spencer and Krishnan*, JJ.) BHUVARAHA IYENGAR *v.* NATESA IYER. **5 L W. 127=37 I.C. 763=(1917) M.W.N. 40.**

———*Alienation — Widow — Necessity — Improvident transaction—Absence of good faith—Improvements.*

A Hindu widow sold immoveable property of her husband for a low price for debts of her husband on a mortgage of those properties which were being gradually wiped out from the usufruct. The widow's real object was to get some ready cash into her hands and the alienees were not ignorant of the real object. *Held*, the alienation was invalid against the reversioners. The existence of a debt due by the husband's estate on the date of the sale, does not entitle the widow to sell away a portion of the property, if the sale would be imprudent. An alienee under such an alienation who is not a *bona fide* alienee is not entitled to improvements. (*Sadasiva Iyer and Phillips*, JJ.) MUDDUSAWMI SIDDAPPA *v.* BHASKAR LAKSHMI NARASAPPA. **29 M.L.J. 357=18 M.L.T. 223=(1915) M.W.N. 631=30 I.C. 853=2 L W. 758.**

———*Alienation — Widow — Necessity — Burden of proof on alienee—Attachment by creditor—Onus.*

The burden of proving that an alienation by a widow is binding on the reversioner is on the alienee. But if a creditor of the husband attaches property which had been alienated by the widow, the onus is on him to show that the alienation was nominal and without consideration, and conveys only her life estate and that the remainders could be validly attached. (*Sadasiva Iyer and Tyabji*, JJ.) SEGU CHIDAMBARAMMA *v.* SAREDDI HUSAINAMMA. **39 Mad. 865=29 M.L J. 516=(1915) M.W.N. 517=18 M.L T. 395=30 I.C. 101=2 L.W. 952.**

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———*Alienation — Widow — Necessity—Partial.*

In the case of a sale by a widow the mere fact that a portion of the purchase-money was not required for urgent necessity. It does not follow that the sale itself was not for necessity unless it could be reasonably presumed or unless it is proved that the sale of a lesser property for the exact amount was feasible. (*Sadasiva Iyer and Napier*, JJ.) KANNU CHETTY *v.* AMIRTHAMMAL. **26 I.C. 418=1 L.W. 877.**

———*Alienation—Widow—Necessity—Proof of—Old transaction—Burden of proof.*

Courts should approach the evidence as to necessity adduced in respect of an old alienation of a Hindu widow with a much more indulgent mind than where the alienation attacked took place only a few years before suit. 18 W.R. 77; 6 M I.A. 303; 25 Cal. 103; 35 Mad. 108; (1912) M.W.N. 559, Foll. (*Ayling and Sadasiva Iyer*, JJ.) KANTHU *v.* DA A UPADYA. **26 I.C. 376.**

———*Alienation — Widow — Necessity—Interest on debt.*

A widow can alienate her husband's property for the purpose of paying the interest due by the husband if she cannot pay it from her usual income. (1913) M.W.N. 275; 18 M. 113, Foll. (*Tyabji and Spencer*, JJ.) SAKHIREDDY APPALASWAMY *v.* SAKHIREDDY VENKANNA. **24 I.C. 534=(1914) M.W.N. 488.**

———*Alienation — Widow — Necessity — Partial.*

Where an alienation by a Hindu widow is found to be for justifiable necessity only for part of consideration it binds the reversioners to that extent. 18 Mad. 113, Foll. (*White*, C.J. *and Wallis*, J.) GOVINDA NADAN *v.* VASUDAVA NADAN. **16 I.C. 385.**

———*Alienation — Widow — Necessity — Future necessity.*

A Hindu widow has no right to sell her husband's property for a consideration to be received by her unless there is any urgent necessity in the near future. (*Sundara Iyer*, J.) *In re* VELAPPA GOUNDAN. **13 I. C. 610=(1912) M.W.N. 196.**

———*Alienation—Widow—Necessity—Burden of proof—Anticipating wants.*

Onus of proving the binding nature of the alienation is on the purchaser. A widow cannot mortgage her husband's property and raise a loan to be kept in deposit with the tender to be drawn by her as legitimate occasion arises from time to time. (*Krishnaswami Aiyar and Ayling*, JJ.) APPAJEE *v.* RAMACHARLU. **9 M.L T. 307=10 I C. 676=(1911) 1 M.W.N. 267**

———*Alienation—Widow—Necessity—Pressure—Demand by creditor.*

Actual demand by a creditor is not necessary to justify a widow in selling her husband's

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property to discharge a debt. Where interest on a debt of Rs. 400 amounted to Rs. 300 held the widow acted prudently in discharging such debts by an alienation. (*Benson and Sundara Aiyar*, JJ.) MUTHU KRISHNAN CHETTY *v.* ANNAPURNATHACHI. **9 I.C 803 = 9 M.L.T. 313.**

———*Alienation—Widow—Necessity—Religious rites.*

A Hindu widow is entitled to the cost of performing *Virthams* usually observed by widows. 23 Cal. 723, Ref. (*Benson and Sundara Aiyar*, JJ.) SUBRAMANIA AIYAR *v.* MUTHAMMAL. **21 M.L J. 482 = (1911) 1 M.W.N 200 = 9 I.C. 614 = 9 M.L.T. 316.**

———*Alienation—Widow—Necessity—Sale to discharge incumbrances.*

Sale of a portion of the estate by the widow to save the remaining portion from being lost is valid, when the incumbrances are heavy and the income does not cover the interest of the debt. (*Benson and Abdur Rahim*, JJ.) BAPPU RAJU *v.* KONDU RAJA. **9 I.C. 324 = 9 M.L.T. 220.**

———*Alienation—Widow—Necessity.*

Legal necessity has to be proved by those who receive the benefit of the alienation by a person with qualified power. (*Dhobly*, A.J.C.) JAIRAM *v.* VENKATRAO. **1922 Nag. 101.**

———*Alienation — Widow — Necessity — Alienation in excess of legal necessity.*

Excessive alienation over legal necessity by a widow may bind reversioners. The test is whether the sale is justified by legal necessity. If it is, and if the amount that is legal and necessary to raise practically constitutes the whole of the consideration then reversioners cannot set aside the alienation. (*Prideaux*, A.J.C.) PADMU SINGH *v.* BADRA BAI. **57 I.C. 675.**

———*Alienation — Widow — Necessity — Debts—Interest in excess of amount—Damdupat—Berar.*

A Hindu widow in Berar cannot alienate her husband's property for paying interest in excess of what was legally recoverable under the rule of Damdupat which is in force in Berar. (*Mitra*, J.) RAMCHANDRA *v.* MT. RADHA. **26 I.C. 598 = 10 N.L.R. 91.**

———*Alienation — Widow — Necessity — Proof of—Recitals in deeds.*

Recitals in deeds cannot by themselves be relied upon for the purpose of proving the ascertainment of facts which they contain, for it is obvious, that if such proof were permitted, the rights of reversioners could always be defeated by the insertion of carefully prepared recitals. Where all the original parties to the transaction are dead, all those who could have given evidence on the relevant points have grown old, or passed away, a

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recital consistent with the probability and circumstances of the case has greater importance and cannot be lightly set aside. But where the person in whose favour the sale was effected was alive and was examined and disbelieved by the Courts below, the recitals ought not to carry much weight. (*Kanhaiya Lal*, J.C.) QAMAR JEHAN BEGAM *v.* BANSIDAR. **12 I.C. 1016 = 9 O. & A.L.R. 341.**

———*Alienation—Widow—Necessity—Partial—Effect of—Sale and mortgage.*

Where the entire consideration for the sale effected by a Hindu widow except a portion of it, is shown to be for necessity, the vendee cannot be deprived of the rights of his purchase. In case of mortgage, such question does not arise because reversioners can sue for redemption on payment of amount for which they may be held liable. (*Stuart and Kanhaiya Lal*, A.J.C.) BHARATH SINGH *v.* MUNNU SINGH. **2 U.P.L.R. (J.C.) 93 = 56 I.C. 291 = 7 O.L.J. 151.**

———*Alienation—Widow—Necessity—Reversioner joining in mortgage by widow.*

Legal necessity will be presumed in case of a joint mortgage by a widow and the reversioners which can be regarded as an evidence of the assent of the reversioners until the presumption is not rebutted, the reversioners cannot on succeeding to the reversionary rights impugn the mortgage thus made. (*Kanhaiya Lal*, J.C.) BHAGWANA *v.* RAMESHWAR. **22 O.C. 266 = 53 I.C. 674 = 6 O.L.J. 460.**

———*Alienation—Widow—Necessity—Rate of interest.*

The lender of money to a widow unless acting *mala fide* is not bound to inquire into how the necessity for the loan was brought about and can recover it even though the widow be at fault. A very high rate of interest cannot be recovered by him unless cause is shown but reasonable rate is to be allowed. (*Lindsay*, J.C.) DWARAKA PRASAD *v.* PRITHIPAL SINGH. **47 I.C. 108 = 5 O.L.J. 271.**

———*Alienation—Widow—Necessity—Proof of—Recitals in deed.*

Very strict proof of necessity cannot be required of persons holding under deeds of transfer executed by a Hindu widow long before they are challenged. The Court can in such a case presume necessity. Where money is advanced for necessity it is not essential that the deed should recite that fact. (*Lindsay*, J.C.) RAJ BAHADUR LAL *v.* BINDESHRI. **46 I.C. 314 = 5 O.L.J. 219.**

———*Alienation—Widow—Necessity—Surplus fund.*

Where under a transfer of property by a Hindu widow for necessity, the consideration is left with the transferee for satisfying it but owing to his failure it is otherwise satisfied the transfer becomes void and the reversioners are entitled to recover property without paying

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anything. When the purchaser has *bona fide* parted with money to meet a legal necessity, it should be refunded to him with interest when the transfer is avoided. Where a widow alienates property for legal necessity and leaves the consideration amount in the hands of the transferee for satisfaction of that necessity, the transferee having the control and application of the consideration money is bound to see the money was properly applied in discharge of the necessity. 18 Cal. 311. (P.C.), Ref. to. (*Kendall and Kanhaiya Lal*, A.J.Cs.) KANCHAN KANWAR *v.* AMAR SINGH.
25 I.C. 806 = 1 O L J. 475.

———*Alienation—Widow—Necessity— Partial—Right of reversioner.*

Where a mortgage by a widow was found to be necessary only in part it is good only to that extent as against the reversioner, but the reversioner cannot redeem within the period during which the widow herself cannot. (*Lindsay*, J. C.) GAYA DIN UPADHYA *v.* TRILOKI NATH SINGH. **22 I.C. 261 = 16 O.C. 283.**

———*Alienation—Widow—Necessity—Proof.*

Mere allegation by a widow that the money was borrowed by her for expenses of funeral or for payment of revenue is not by itself sufficient to bind the reversioners. Where a widow borrows for expenses of her daughter's marriage, it must be proved that the income of the property held by her was not enough for her to live on and that it was necessary to borrow. (*Evans*, J.C.) BINDI *v.* BALDEO. **12 I.C. 336.**

———*Alienation—Widow—Necessity—Loan for daughter's marriage.*

Mere borrowing by a widow for her daughter's marriage is not a legal necessity unless the strained circumstances of the widow's finances be proved by evidence to create the necessity for the loan. (*Dawson Miller*, C.J. *and Mullick*, J.) AJTI CHAUDHURI *v.* JANAK LAL CHAUDHURI. **1923 Pat. 332 = 1924 P. 336.**

———*Alienation—Widow—Necessity— Burden of proof.*

When property is alienated to meet the expenses of litigation to protect the estate, it must be shown that at the time of alienation, there was no money in the hands of the widow, and the burden of proving it lies on the creditor. (*Das and Ross*, JJ.) NARAIN SINGH *v.* SARJUG SINGH. **60 I C. 486.**

———*Alienation — Widow — Necessity — Daughter's marriage.*

There is no legal necessity for a widow to mortgage the estate to secure funds for her daughter's marriage, until the marriage has been fully settled. (*Miller*, C.J. *and Foster*, J.) RAMYAD PANDAY *v.* RAMBHABA PANDE.
4 Pat. L J. 734 = 54 I C. 857 = 1920 Pat. 83.

———*Alienation—Widow—Necessity—Payment of rent.*

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Payment of rent is clearly a legal necessity but a sale of immoveable property for the purpose of discharging an obligation to pay rent is not necessarily justified on such grounds and unless it can be shown that there was no other ostensible means of satisfying a rent decree except by allowing the property to be sold at auction, it cannot be held that the sale of the property as distinguished from the obligation to pay the rent decree was justified by legal necessity. 13 C.W.N. 544, Ref. (*Miller*, C.J. *and Adami*, J.) MUSSAMMAT DHANIA *v.* HAKAYAT PANDEY, **52 I.C. 316.**

———*Alienation—Widow—Necessity — Test of.*

The pressure on the estate, benefit conferred on it, and the needs of those entitled to maintenance should be considered in considering the question of legal necessity. (*Atkinson and Manuk*, JJ.) DHUMUNMIRAIN *v.* NIRSU OJHA.
50 I.C. 101.

———*Alienation—Widow—Necessity—Proof of—Recitals, value of.*

Recitals in a document are not always sufficient to prove legal necessity. (*Roe and Coutts*, JJ.) BISHEN DAYAL SINGH *v.* MT. JAISAI KUER. **43 I.C. 745 = 1918 Pat. 323.**

———*Alienation—Widow—Necessity—Gaya Shradh.*

The performance of a Gaya Shradh is a legal necessity which will justify an alienation if it is shown that the expenses of the Shradh could not have been met out of the funds in the hands of the widow. (*Roe and Coutts*, JJ.) BABU BISHEN DAYAL SINGH *v.* MT. JAISERI KUER. **43 I.C. 745 = 1918 Pat. 323.**

———*Alienation—Widow—Necessity — Enquiry—Recitals.*

Actual existence of necessity is not necessary to justify an alienation by a Hindu widow. It is enough if a representation had been made to the purchaser as to the existence of necessity and he had acted honestly after satisfying himself by proper inquiry. Recitals are evidence of the representation and when proof of enquiry has become impossible owing to lapse of time, the recital coupled with the other circumstances would be sufficient to support the alienation. (*Chapman, Atkinson and Ali Imam*, JJ.) BAHADUR *v.* JAGERNATH PRASAD
(1918) Pat 181 = 3 Pat. L J. 199 = 45 I.C. 749 = 4 Pat. L W. 577 (F.B.).

———*Alienation—Widow—Necessity—Onus—Costs of litigation.*

Under Hindu Law the onus of proving the necessity for a loan contracted by a limited owner is on the lender and to discharge this onus he must show not merely that the object of the loan was a legitimate one but also that the funds available to the limited owner were insufficient to meet the necessity. If he fails to prove legal necessity he can still succeed by

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showing that he made enquiries and was honestly satisfied that such necessity existed. Costs of litigation are a recognised head of necessity but the power to borrow therefor is limited. (*Miller*, C.J. *and Ali Imam*, J.) RADHA KISHAN RAI *v.* NAURAUTAN LAL
46 I.C. 627=3 Pat. L.J. 522.

———*Alienation — Widow — Necessity — Marriage of daughter.*

The marriage of a daughter is a religious act, the expenses of which should be charged by the widowed mother on the husband's property. (*Sharfuddin and Roe*, JJ.) NARAIN BAKTI KUNWARI *v.* RAM DHARI SINGH.
20 C.W.N. 734=1 Pat. L.J. 81=34 I.C. 277=3 Pat. L.W. 317.

———*Alienation — Widow — Necessity — Maintenance.*

Where the income is not sufficient for the widow's future maintenance she can alienate for that purpose. She is not bound to wait till she incurs debts for such maintenance. She must be allowed some latitude as in the case of the manager of a family. (*Pratt*, J.C. *and Fawcett*, A.J.C.) MOTI SINGH *v.* SOBHO MAL. 30 I.C. 963=9 S.L.R. 69.

Alienation—Widow—Relinquishment.

———*Alienation—Widow— Relinquishment.*

Alienation with consent of the next heirs may be supported as a relinquishment and consequent acceleration of the interest of the consenting heirs. But the alienation must be due of the whole estate. (40 Cal. 721, Ref.) Such relinquishment is valid though the widow obtained a benefit thereby. (10 Cal. 1102, Foll.) 30 All. 1, Ref. (*Richardson and Fletcher*, JJ.) SURESSUR MISSER *v.* MOHESH RAM MESRAIN. 31 I.C. 983=20 C.W.N. 142.

Alienation—Widow—Rights of Alienee.

———*Alienation—Widow—Rights of alienee —Mortgage—Improvements by mortgagee.*

Where a mortgagee with possession from a Hindu widow spends money in improving the property and a reversioner sues to set aside the mortgage on the death of the widow, the mortgagee is entitled to be reimbursed for improvement. In any event the mortgagee is entitled to remove what he has placed on the property at his own expense. (*Macleod*, C.J. *and Crump*, J.) SIDDAPPA MAHALINGAPPA *v.* PANDURANG VASUDEO. 47 Bom. 698=25 Bom. L.R. 395=1923 Bom. 385.

———*Alienation — Widow — Rights of alienee.*

When there is nothing to show that legal necessity for a transfer by a widow did not exist, the rule of *caveat emptor* does not apply as against the transferee. (*Seshagiri Aiyar and Bakewell*, JJ.) BALUSU VEERARAGHAVALU *v.* BOPPANA MANIKYAM. 31 M.L.J. 380=35 I.C. 92=20 M.L.T. 339.

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———*Alienation—Widow—Rights of alienee —Possession of alienee, if wrongful.*

A Hindu widow's alienation is only voidable and the alienee's possession cannot be wrongful until the reversioner signifies his intention to avoid the transfer. (*Kotwal*, A.J.C.) RAIJI *v.* SHRIRAM 59 I.C. 368.

———*Alienation—Widow—Rights of alienee Consideration—Not party binding—Liability of purchaser for mesne profits.*

If a sale by a Hindu widow of her husband's property is partially invalid owing to want of legal necessity the whole sale must be set aside and the purchasers should restore mesne profits for the period that they have been in possession. 13 C.W.N. 514 (P.C.) Ref. (*Jwala Prasad*, J.) DHONDHIA *v.* HEKYAT PANDEY.
49 I.C. 841.

Alienation—Widow—Setting aside.

———*Alienation—Widow—Setting aside—Improvements—Mesne profits—Set off.*

Where an alienee from a Hindu widow effected permanent improvements on the property which resulted in an increased rental and the alienation was set aside by the reversioner on the death of the widow, the Court can set off against the mesne profits awarded to the decree-holder the increased rent that was due to the improvements, even though the person in possession had not actually executed the improvements at the moment when the decree for possession was made. (*Lord Buckmaster*). BARHAM DEO NARAIN SINGH *v.* RAM RATAN SAHU. L.R. 3 P.C. 20.

———*Alienation — Widow—Setting aside— Reversioner's suit.*

A presumptive reversionary heir alone may bring a suit for declaration that an alienation by a widow was not binding on the reversioners. If such nearer heir has precluded himself by his own acts a remoter heir may sue. A presumptive necessary heir's failure in one suit does not preclude him from suing again on a subsequent alienation and then the remote heirs cannot sue. (*Lord Dunedin*). JHANDU *v* TARIF.
37 All. 45=19 C.W.N. 197=21 C.L.J. 26=28 M.L.J. 453=17 M.L.T. 10=2 L.W. 113=17 Bom. L.R. 44=27 I.C. 892=(1918) M.W.N. 394 (P.C.).

———*Alienation — Widow— Setting aside —Delay—Effect of.*

Considerable delay in the institution of a reversioner's suit for declaration that an alienation by the widow is invalid and for possession cannot prejudice the plaintiff's claim if the suit is within time and delay is reasonably explained. (*Lord Moulton.*) SREEMUTTY MANO KARANI DEBI *v.* CARAPADA MITTER. 21 I.C. 311=18 C.W.N. 718 (P.C.).

———*Alienation—Widow — Setting aside— Suit by remote reversioner—When lies.*

A remote reversioner cannot maintain a suit for a declaration that an alienation by a widow

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is not binding on the reversioners unless the nearer reversioners are in collusion with the widow or have precluded themselves from interfering. The minority of the nearest reversioner does not in itself entitle a distant reversioner to maintain a suit. 6 Cal. 764, (P.C.), Ref. (*Piggott and Walsh*, JJ.) GUMANAN *v.* JAHANGIRA. **40 All. 518 = 46 I C. 186 = 16 A L J. 465.**

———*Alienation—Widow—Setting aside—Equities—Duty to refund consideration.*

If it has been proved that a sale by a widow having a limited interest, has benefited the estate by the payment of debts which were binding on it, although the amount paid may not amount to the whole of the consideration money received for the property sold, the Court, when it sets aside the sale, will direct payment to the alienee to the extent of the benefit received by the estate, and it must follow that if the consideration money for the sale is found intact at the death of the widow, the estate has benefited to that extent. So that if the reversioner after the widow's death wishes to have the sale by her set aside, he can only succeed if he restores the money. It would be different if it could not be proved that the purchase-money was still intact in the estate. (*Macleod*, C.J *and Coyajee*, J.) SOMESHVAR JETHABAI DAVE *v.* SOMESHWAR GOVINDRAM JOSHI. **24 Bom. L.R. 493 = 1923 Bom. 16.**

——*Alienation—Widow—Setting aside—Position of stranger as regards alienations.*

A mortgagee from a widow cannot challenge the rights of the alienee of the equity of redemption from a Hindu widow since an alienation by the widow is only voidable at the instance of the reversioners. (*Macleod*, C. J. *and Heaton*, J.) SITARAM *v.* KHANDU. **22 Bom. L R. 1153 = 59 I.C. 480 = 48 B. 105.**

——*Alienation—Widow—Setting aside—Voidable not void.*

A conveyance by a Hindu widow, when it is not for legal necessity, is not void but voidable that is, capable of being avoided. Such a conveyance cannot be avoided at the instance of a person having no interest in the matter but only by her reversionary heirs. (*Fletcher and Duval*, JJ.) JAGAT CHANDRA CHOWDHURY *v.* BISHWAMBHAR ROY. **55 I.C. 743.**

——*Alienation—Widow—Setting aside—Form of relief.*

Where an alienation by a widow is set aside, reversioner is not bound to refund the amount not found to be for necessary purposes. (*Walmsley and Greaves*, JJ.) CHAIRMAN, BALLY MUNICIPALITY *v* PRAMATHA NATH MOOKERJEE. **41 I.C. 775.**

———*Alienation—Widow—Setting aside—Voidable.*

A sale by widow is only voidable at the instance of reversioners, and a purchaser under such a sale can sue in ejectment after the death of the widow. (*Chatterjee and Newbould*, JJ.) MAHENDRA CHANDRA DATTA *v.* ABHOY CHARAN SARMA. **40 I.C. 353.**

———*Alienation—Widow—Setting aside—Void or voidable—Binding against all but reversioners.*

An alienation without legal necessity by a Hindu widow is voidable and not void, so that until a reversioner, including the ultimate reversioner, *viz*, the crown, elects to avoid it or treat it as a nullity, it stands good. (*Coxe and D. Chatterjee*, JJ.) DEO NANDAN PRASAD *v.* UDIT NARAYAN SINGH. **23 I.C. 298 = 18 C.W N. 940.**

———*Alienation—Widow — Setting aside—Right, if personal to reversioner—Alience from reversioner.*

The right to avoid an alienation effected by a Hindu widow is not personal, to the reversionary heirs and a transferee from them may exercise it. An alienation by a widow is not absolutely void, it is *prima facie* voidable at the election of the revereionary heirs. There is nothing for the Court either to annul or cancel as a condition precedent to the reversioner's right of action. They may, if they think fit, affirm the transaction or they may, at their pleasure, treat it as void without the intervention of Court. (*Mookerjee and Beachcroft*, JJ.) NISHAKAR CHAKRAVARTI *v.* RAM KUMAR TEWARI. **16 I.C. 634.**

——*Alienation—Widow—Setting aside.*

An after-born son divests the estate from the time of his birth and an alienation by widow before his birth is valid, if made for necessity. (*Scott-Smith and Martineau*, JJ.) HIRA *v.* BULA. **49 P.W.R. 1920 = 1 Lah. 128 = 56 I.C. 256 = 1 Lah. L.J. 36.**

——*Alienation—Widow— Setting aside—Liability to compensate alienee for improvements on the alienated property.*

A reversioner, suing for possession of property alienated by the last limited owner, need not compensate the alienee for unnecessary improvements and repairs, such as building a temple on the property, unless the reversioner is proved to have acquiesced. The alienee may be allowed to remove the materials of improvement. 20 Bom. 298, Foll. (*Rattigan and Chitty*, JJ.) MATHU MAL *v.* KEDAR NATH. **36 I.C. 62 = 77 P.L.R. 1916.**

——*Alienation—Widow — Setting aside—Right of reversioners.*

In spite of the existence of a daughter, reversioners of a deceased Hindu, can sue for a declaration that an alienation made by the widow shall not affect their reversionary rights. 17 I.C. 379, Dist. (*Johnstone*, C.J. *and Chevis*, J.) TEK CHAND *v.* SOMAN SINGH. **27 P.R. 1916 = 147 P.L.R. 1916 = 34 I.C. 831 = 218 P.W.R. 1916.**

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———*Alienation—Widow — Setting aside—Settlement in favour of daughters—Alienation by daughters—Suit by grandsons—Maintainability—Limitation.*

Under a settlement by a Hindu widow in favour of her two daughters each of them purported to take absolutely a moiety of the estate. They subsequently made various alienations of the property without any justifying necessity. The elder daughter died first in 1905 and the younger daughter died in 1908. In a suit instituted in 1918 by the grandsons of the last male owner for recovery of the property from the alienees on the ground that the alienations were not supported by legal necessity. *Held*, that under Art. 141 of the Limitation Act, the period of limitation began to run only from the date of the death of the surviving daughter and that the suit was not barred. (*Spencer and Devadoss, JJ.*) JOGA VEERAYYA *v.* NAKINA SALLAYYA.
16 L.W. 752 = 1923 Mad. 168.

———*Alienation—Widow — Setting aside—Suit by one of two reversioners for recovery of the property—Other reversioner impleaded as defendant — Decree for a share—Partition suit.*

Where one of two reversioners sues to recover his share of properties alienated by the widow impleading the other as deft. and the latter offered to pay Court-fee on his share and prayed for a decree purporting to follow the procedure open to a co-sharer deft. in a suit for partition of joint property. *Held*, that the scope of the present suit was different from that of a suit for partition and that it was not open to the Court to give a decree in favour of the deft. for his share of the property. (*Oldfield and Bakewell, JJ.*) DHIKARI VISHNU MURTHIAYYA *v.* AUTHAIYA.
47 I C. 833 = 35 M.L J. 183.

———*Alienation—Widow — Setting aside—Necessity for substantial portion— Decree—Form of.*

The proper course in a case where a substantial portion of the consideration is for necessity is to allow purchaser to retain the property on payment of the portion of purchase-money not proved to be intended for necessity. (*Coutts Trotter and Srinivasa Iyengar, JJ.*) AWASARALA SESHAMMA *v.* RAVU VENKATA KRISHNARAYANIMGARU.
(1916) 1 M.W.N, 163 = 33 I.C. 883 = 3 L.W. 413.

———*Alienation—Widow — Setting aside—Rights of alienee— Previous conditional sale by husband.*

If it is found that a widow executed an out and out sale-deed incorporating a previous conditional sale-deed by the husband, the alienee and his representatives can fall back on their rights under the conditional sale-deed if the sale-deed by the widow is set aside. 35 All. 211 ; 1 Mad. 1, Foll. (*Ayling and Sadasiva Aiyar, JJ.*) S. KANTHU *v.* DASA UPADHYA.
26 I C. 876.

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———*Alienation—Widow— Setting aside—Major portion binding—When binding on reversioners.*

When the greater portion, *viz.*, Rs. 1,022 of the consideration for a sale *viz.*, Rs. 1,800 by a Hindu widow is for a legal necessity and the price paid is not unreasonably low the sale is binding on the reversioners. (*Miller and Tyabji, JJ.*) THALAGARA RAMMANNA *v.* KALAGARA GANGAYYA.
26 I.C. 178 = 27 M.L.J. 182.

———*Alienation—Widow— Setting aside—Major portion of consideration binding.*

Where a portion of the consideration for a sale by a Hindu widow was found to be not binding on the estate the transferee may retain the property and pay that part of the consideration to the reversioner. 14 C.W.N. 895, Foll. (*Miller and Tyabji, JJ.*) THALAGARA RAMMANNA *v.* KALAGARA GANGAYYA.
23 I.C. 778.

———*Alienation—Widow—Setting aside—Equities—Form of decree.*

A reversioner suing to declare an alienation by the widow invalid is not liable to have his suit dismissed if he has not offered in his plaint to pay that portion of the amount found to be a good charge on the reversion. 31 Mad. 153, Not foll. The decree must be confined so as to bind the plaintiff. It should not also be so as to benefit and bind the actual reversioner at the time of the widow's death. (*Sadasiva Aiyar and Tyabji, JJ.*) ARUNACHELA GOUNDEN *v.* KUPPUNADHA GOUNDEN.
14 M L.T. 391 = 21 I.C. 562 = (1913) M.W.N. 866.

———*Alienation—Widow— Setting aside—Reversioner, suit by, for possession as survivor —Declaration of reversionary right, if can be granted.*

Where a reversioner brought a suit as the survivor of the deceased for possession of the property alienated by the widow and failed to establish the survivorship, he should not be allowed to change his cause of action, and ask for a declaration that the alienation should not affect his right as reversioner. (*Sundara Iyer, J.*) *In re* VALLAPPA GOUNDAN,
13 I.C. 610 = (1912) M.W.N. 196.

———*Alienation—Widow — Setting aside sale—Effect of.*

Where a reversioner sued for lands alienated by a widow during her lifetime, no compensation can be awarded to the alienee for any excess in the extent of land discovered in the sale deed. The alienee however was entitled to interest at 6 per cent. on the purchase-money

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from the date of the widow's death. (*Sundara Aiyar and Spencer, JJ.*) NALLASAWMY PILLAI *v.* RAMASWMY PILLAY.

13 I.C. 450.

———*Alienation — Widow—Setting aside—Reversioner—Rights of.*

An alienation by a Hindu widow of the estate or a portion of the estate is not void *ab initio* but is only voidable if it transgresses the limitations imposed by the Hindu Law on the power of alienation. The death of the alienor does not necessarily render the alienation inoperative. 25 C. 1 (P.C.), Ref. (*Wazir Hasan, A.J.C.*) BAHADUR SINGH *v.* SULTAN HUSAIN KHAN. 8 O.L.J. 535=3 U.P.L.R. (J.C.) 83= 1922 Oudh 171.

———*Alienation— Widow—Setting aside—Rights of reversioners—Mesne profits.*

Where a Hindu reversioner sues to recover property alienated by a Hindu widow, he is entitled to mesne profits from the death of the widow. A voidable transaction is good as against third parties till it is set aside but as regards the person who has the right to avoid if it is in a state of suspense until such party exercises his option. (*Daniels and Lyle, A.J.Cs.*) SAIYID MAHOMED HADI *v.* MT. PARBATI. 9 O.L.J. 312=25 O.C. 2= 1922 Oudh 91.

———*Alienation — Widow—Setting aside—Decree—Form of.*

When the major portion of the purchase money is proved to be paid for necessity the alienation must be upheld. Otherwise the reversioner will get possession on his paying the binding portion of the consideration. (*Kendall, A.J.C.*) BUNIYAD HUSAIN *v.* MATADIN SINGH. 3 O.L.J. 313=36 I.C. 57= 19 O.C. 122.

———*Alienation—Widow — Setting aside—Rights of reversioner—Option to avoid.*

In the case of an alienation by a limited owner not justified by necessity, the reversioner may treat the alienation which purports to extend beyond the life of the limited owner as a nullity and he may sue for possession at any time within 12 years of the death of the limited owner without first seeking to set aside the transfer in favour of the deft. In other words if he elects to treat the transfer as a nullity after the death of the limited owner he may do so and there is nothing left in such a case to be set aside and he may sue for possession and is entitled to obtain possession. All that is necessary for the reversioner is to exercise his option and he may do so by merely bringing a suit to claim possession. From the moment the reversioner exercises his option there is nothing left in the transferee. There are more ways than one by which a tenancy may determine. The limited owner has no power to grant a tenancy beyond her own life as against the reversioner and once the reversioner elects to treat the interest granted to the tenant as an interest extending only for the life-time of the grantor then in such a case it terminates upon the death of the grantor and there is nothing more to be done to terminate the tenancy. (*Miller, C.J. and Mullick, J.*) RAGHUBAR SINGH *v.* JETHU MAHTON. 1922 Pat. 383=4 P.L.T. 396= 2 P. 171=1923 P. 130.

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———*Alienation—Widow— Setting aside—Grant of permanent leases.*

The mere grant of *darmukurari* leases or creation of rent-free brahmottar grants or causing a portion of private lands to be converted into a raiyati lands is not waste. Such acts are not binding on the reversioner. (*Roe and Coutts, JJ.*) RANI KISHO BATI KUMARI *v.* KUMAR SATYA NARAIN SINHA.

5 Pat. L.W. 167=47 I.C. 55= 1918 Pat. 294.

———*Alienation— Widow—Setting aside—Necessity partial—Suit by reversioner—Form of decree.*

Where a Hindu widow made an alienation of her husband's estate a reversioner can sue to declare that it is partially valid and partially void as against the reversionary rights. 37 Mad. 275; 35 Cal. 420 (P.C.), Rel. The proper form of a decree is to declare that the alienation should affect the reversionary rights only to the extent to which legal necessity is proved and is otherwise invalid. 4 Cal. 190 (P.C.), Ref. (*Pratt, J.C. and Fawcett, A.J.C.*) MOTHI SINGH *v.* SOBHO MAL.

30 I.C. 968=9 S.L.R. 69.

———*Alienation— Widow—Setting aside—Moveables.*

A widow is entitled to dispose of her moveable property in any manner she pleases whether such property is stridhan or inherited from males. 4 S.L.R. 77; 8 I.C. 214, Foll. (*Hayward, A.J.C.*) RATANSI *v.* UMREBAI.

9 I.C. 997.

Alienation—Widow—Surrender.

———*Alienation— Widow — Surrender — Partial.*

Where on an alienation by a widow of the estate to the next reversioners, a portion of the property is given back to the widow for her lifetime, the life estate she enjoys in the property so given is essentially different from a widow's estate and could not be construed as a reservation or restoration of the widow's estate. (*Richardson and Fletcher, JJ.*) SURESSUR MISSER *v.* MOHESH RANI MESRAM.

31 I.C. 983=20 C.W.N. 152.

———*Alienation — Widow — Surrender — Partial.*

A surrender of a partial interest may be a valied alienation if there is consent of the whole

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body of reversioners. (*Abdur Rahim and Srinivasa Aiyangar*, JJ.) MULUGU KOTAYYA *v.* MUDIGONDA CHANDRAMOWLI SASTRI.
20 M L.T. 148 = 4 L W. 149 = (1916) 2 M.W.N. 137 = 36 I.C. 407 = 31 M.L.J. 408.

[This is on longer law. *See* 50 I C. 498 = 42 Mad. 323 (P.C.)]

———*Alienation — Widow — Surrender — Effect of.*

A subsequent surrender by widow of her estate in favour of reversioners does not affect the rights of a prior mortgagee from her. (*Sadasiva Aiyar and Napier*, JJ.) KOTTAPALLI SUBBAMMA *v.* GATAVALLABHULA.
39 Mad. 1035 = 32 I.C. 813 = 30 M.L.J. 260.

———*Alienation — Widow — Surrender — Effect of.*

The validity of the alienation made by a Hindu widow cannot be affected by a subsequent relinquishment of the estate by her to the reversioner. (*Wallis*, O.C.J. *and Hannay*, J.) SINGARAM CHETTIAR *v.* KALYANASUNDARAM PILLAI. 1 L.W. 687 = 26 I.C. 1 = (1914) M.W.N. 735.

———*Alienation—Widow—Surrender— Reconveyance.*

An alienation by a Hindu widow of the whole of her property to the next reversioner on the latter's undertaking to recover a portion thereof to the widow of her nominee is valid whether consideration actually passed or not, (31 Mad. 44, Appl.) (*Miller and Abdur Rahim*, JJ.) KARETTI BRAHMANAOKUDU *v.* KARETTI MAHALAKSHMI. 24 M L.J. 533 = (1913) M.W.N. 433 = 17 I C. 487 = 13 M L.T. 468.

Alienation—Widow--Transfer of Right, title and interest.

———*Alienation—Widow—Transfer of right, title and interest.*

Where a Hindu widow in possession of her husband's property conveys a portion of the property after reciting circumstances of necessity such as would give her power to dispose of her absolute interest and the words of conveyance referred to all her existing right, title and interest in the property, *held*, that the words were wide enough in the circumstances to dispose of the absolute interest. (*Lord Atkinson.*) THAKUR VASONJI MORARJI *v.* CHANDA BIBI. 37 All. 369 = 17 Bom. L R. 556 = 18 M L T. 31 = 19 C.W.N. 873 = (1915) M.W.N. 449 = 2 L.W. 676 = 22 C.L.J. 180 = 29 I C. 781 = 29 M.L.J. 130 (P.C.)

Alienation—Widow—Will.

———*Alienation—Widow—Will.*

A Hindu widow cannot make a will in favour of a person so as to confer a title upon him even when there are no heirs of her husband,

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capable of taking the estate after her death. (*Broadway and Abdul Raoof*, JJ.) TIRATH RAM *v.* MUSSAMMAT KHAN DEVI.
60 I.C. 101 = 1 Lah. 585.

Alienation—Will.

———*Alienation—Will—Subsequent birth of son.*

Where the head of a *mitakshara* Hindu family makes a will, the subsequent birth of a son, who thereupon becomes a co-parcener in the family estate, renders the will inoperative. It becomes absolutely void and not merely voidable. (*Mitra and Prideaux*, A.J.Cs.) GULAB DAS *v.* THAR MIN BAI. 36 I.C 995.

Ancestral Estate.

See HINDU LAW—(1) ALIENATION.
(2) JOINT FAMILY.

Ancestral Property.

See HINDU LAW—ANCESTRAL ESTATE.

Antecedent Debt.

See HINDU LAW—(1) ALIENATION.
(2) DEBTS.
(3) JOINT FAMILY.

Apostacy.

See (1) HINDU LAW—SUCCESSION.
(2) CASTE DISABILITIES ACT.

Applicability.

See also HINDU LAW—CONVERSION.

———*Applicability—Aboriginal Bhuiyas—"Chowrasi" gadis—Succession—Adoption—Special custom—Property situate in Santhal Parganas—Bhagalpur Court—Jurisdiction—Regulation III of* 1872.

The holders of "Chowrasi" gadis, of which Lachmipur Raj is one claim to be Surjabansi Rajputs and as such high caste Hindus. They are really descendants of aboriginal Bouiyas who had become Hindus long ago. On the question whether an adopted son succeeds to the gadi, either by law or custom, *Held*, that this claim of Chowrasi gaditshad adopted in general, not only Hindu religion and Hindu social usages, but also the Hindu Law regulating succession to landed property, though they still retain some relics of non-Hinduism. (*Lord Phillimore.*) SAHDEO NARAIN DEO *v.* KUSUM KUMARI. 44 M.L J. 476 = 32 M.L.T. (P.C.) 121 = 4 Pat. L T. 217 = 2 Pat. 280 = 37 C.L J. 369 = 18 L.W. 597 = (1923) M W.N. 377 = 27 C.W.N. 901 = 25 Bom. L R 860 = 50 I.A. 58 1923 P.C. 21 (P.C.).

———*Applicability—Halai Memons of Porebunder.*

There are among the Mahomedans certain groups whose ancestors were Hindus and profes-

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sed the Hindu religion and were then converted to Islam. Among these groups may be reckoned, as is shown by decided cases, Khojas, Suni Borahs, Molesalam Girasias, Cutchi Memons, Nassapooria Memons and lastly, Halai Memons. Halai Memons domiciled in Porebunder follow the Hindu law with regard to the succession of females. (*Lord Dunedin.*) KHATUBAI *v.* MAHOMED HAJI ABU.

37 C L J. 131=25 Bom. L.R. 127= 17 L.W. 208=44 M.L.J. 35= 33 M.L T 45=47 B. 196=50 I A 108= 27 C.W N. 774 (P.C.)=1923 P.C. 414.

———*Applicability—Labbais of Coimbatore —Custom, proof of.*

Labbais of Coimbatore who are Hindu converts to Muhamadanism are *prima facie* governed by Mahomedan Law in matters of succession and the Hindu law rule excluding women from succession except in specified cases does not apply to the Labbais. The evidence in the case was held not sufficient to support the plea of a special custom to that effect. (*Sir Lawrence Jenkins.*) MAHOMED IBRAHIM ROWTHER *v.* SHAIK IBRAHIM ROWTHER. **45 Mad. 308=43 M.L.J 69= (1922) M.W.N. 470=36 C.L J. 64= 24 Bom. L.R. 944=30 M.L.T. 85= 16 L.W. 354=L R. 3 P.C. 149= 26 C.W.N. 793=49 I.A. 119= 1922 P.C. 59 (P.C.).**

———*Applicability of—Migrating family— Bombay School—Daughter succeeding—Absolute inheritance.*

A Hindu residing in a particular province of India is held to be subject to the particular doctrines of Hindu Law recognised in that Province. But this law is not merely a local law. It becomes the personal law, and part of the status of every family which is governed by it; consequently where any such family migrates to another Province governed by another law, it carries its own law with it. A member of such a family is governed by the original personal law of the family, unless it can be shown that the original law has been renounced in favour of the law of the place to which he or his family migrated. Persons who or whose ancestors have emigrated from the Bombay Presidency to the Central Provinces are *prima facie* subject to the law as expounded in Bombay. According to that law the daughter succeeds to the father in an absolute inheritance. The decisions of the Bombay Courts merely declared the law as it has existed as a custom in the Maharatta country and therefore governed these migrating families: 1 Bom. H.C.R. 180; 1 Bom. H.C.R 117; 5. Bom. 662 at 671; 30 Bom. 229; 1 N.L.R. 154. Overruled. (*Lord Dunedin.*) BALWANT RAO *v.* BAJIRAO.

12 L.W. 679=16 N.L.R. 187=39 M.L.J. 166= 18 A.L.J. 1049=(1920) M.W.N. 483= 28 M.L.T. 157=22 Bom. L.R.1070= 47 I.A. 213=57 I.C. 545 48 Cal. 30 =25 C.W.N. 248 (P.C.),

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———*Applicability — Migrating family— Nagar Brahmins—Mayukha.*

Where a family of Nagar Brahmins of Gujarat was domiciled for over a century in Benares, and they were ignorant of any rules to be found in the Mayukha commentary and were unable to prove a single instance of special succession under the Mayukha, *held*, that the family was governed by the Mitakshara Law prevailing in Benares. (*Rafique and Lindsay*, JJ.) LAKSHMI RAM JANI *v.* HARI RAM DUBE.

52 I C. 25=1 U.P.L.R. (H.C.) 13.

———*Applicability—Jats.*

Jats are governed by Hindu Law in the absence of special custom. The onus of proving a special custom is on the person setting it up. In the U. P. of Agra and Oudh there is no custom of exclusion of daughters among Jats. They are treated as Hindus for the purposes of S. 37, Bengal N. W. P. and Assam Civil Courts Act. (*Tudball and Rafique*, JJ.) MUSAMMAT BHAGWANI *v.* KHUSHI RAM.

24 I.C. 982.

———*Applicability — Jats — Inheritance— Custom—Exclusion of daughters and daughter's sons.*

There is no custom among Jats of Sardhana *Tahsil* Meerut District which excludes daughter's and daughter's sons from inheritance. (*Karamat Hussain and Tudball*, JJ.) NAULI *v.* KHERI. **15 I.C. 607.**

———*Applicability — Halai Memons— Bombay.*

The Halai Memons of Bombay, unlike those of Kathiawar, are governed by Mohammadan law in matters of succession. 21 Bom. L.R. 85, foll. (*Marten and Fawcett*, JJ.) SIR MAHOMED YASUF *v.* HAR GOVINDAS JIVAN.

24 Bom. L.R. 753=47 B. 231=1922 Bom. 392.

———*Applicability—Migrating family—New domicile—Effect of.*

Severance from the domicile of origin and permanent residence in Bombay would, in the case of persons falling within the purview of the Indian Succession Act, effect a change of domicile and with it a change of law, *e g.*, from French to Anglo-Indian or Portguese to Anglo-Indian but it would not change the law of succesession for Hindus or Mahomedans. A Hindu or Mahomedan who renounces his domicile of origin does not thereby subject himself to the law of his domicile of choice. (*Scott*, C J. *and Macleod*, J.) MAHOMED AJI ABU *v.* KHATU BAI. **43 Bom. 647=51 I.C. 513= 21 Bom. L.R. 85.**

———*Applicability of—Migrating family— Principle, if applicable to Muhammadans.*

Where a Hindu family migrates from one part of India to another, *prima facie*, they carry with them their own personal law, and if they are alleged to have become subject to a new local custom, this new custom must be affirmatively proved to have been adopted. But when a Mahomedan family governed by the

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Hindu law of succession as a custom migrate to another country and settle among Mahomedans, the presumption that they have accepted the law of the people whom they have joined is one much more readily made. The analogy in the latter case is that of a change of domicile on settling in a new country rather than the analogy of a change of custom on migration within India. (*Viscount Haldane.*) ABDURRAHIM HAJI *v.* HALIMABAI. **32 M L.J. 247 = 20 C.W.N. 862 = 43 I.A. 35 = 18 Bom. L R. 635 = 32 I.C. 413 = (1916) 1 M.W.N. 176 (P.C.)**

———*Applicability—Burden of proof.*

One who sets up a different law or custom for Hindus than the Hindu law must prove it. (*Beaman and Macleod*, JJ.) DAHYABHAI MOTIRAM *v.* CHUNNILAL **38 Bom. 183 = 22 I.C. 289 = 15 Bom L.R. 1136.**

———*Applicability—Coversion to Mahomedanism—Evidence Act, S. 102.*

A Hindu convert to Mahomedanism is presumed by the very act of the conversion to have abandoned Hindu law and usage to which he was subject, and those who allege that the Hindu law and usage has been retained must prove it. (*Chandavarkar and Heaton*, JJ.) BAI MACHHUBAI *v.* BAI HIRABAI. **35 Bom. 264 = 10 I C. 816 = 13 Bom. L.R. 251.**

———*Applicability*—Rajbansis.

Rajbansis are governed by the ordinary Hindu Law. (*Ghose and Panton*, JJ.) SANTALA BEWA *v.* BUDASWARI DASI. **30 Cal. 727 = 27 C.W.N. 669 = 1924 Cal. 98.**

———*Applicability — Migrating family—Mithila School—Dayabaga Law.*

A Hindu family, residing in a particular province of India, is presumed to be governed by the law of the place where it resides. 20 C. 409. Ref. to. This presumption is rebutted, where the family is shown to have migrated from one province to another. The presumption then arises that the family carried with it the laws and customs as to the succession and family relation prevailing in the Province from which it came. 12 Moo. I.A. 81 ; 29 C. 433, referred to. Thereafter the burden shifts and lies upon those who assert it to prove that the family after migrating has adopted the law and usages of the place to which it has migrated, 31 A. 477 ; 24 M. 650 ; 40 C. 407; 34 B. 559, referred to. Where however it is proved by numerous instances of succession in the family and evidence of the observance of right and ceremonies at marriages, births and deaths which indicates the relinquishment of Mithakshara law and the adoption of the Dayabaga Law in the family, the Court would act upon such evidence and infer that the family had adopted the Dayabaga law. The Hindu law is not merely a local law but is essentially a personal law, an integral factor of the status of every family which is governed by it. In its new domicile, the family may, by the reflex action

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of manners and customs prevalent in resident families, consciously or unconsciously, modify its own governing rules ; there may thus be an acceptance of a new law not due to sudden change by choice or agreement, but by the gradual evolution of a family usage. When a new family usage has thus grown up in the course of generations possibly with the concurrence or acquiescence of families of the same group, that furnishes the governing law of the family. 29 C. 433 ; 43 I.A. 35 ; 47 I.A. 213, followed. (*Mookerjee and Cuming*, JJ.) SARADA PRASANNA ROY *v.* UMA KANTA HAZARI. **50 Cal. 370 = 37 C L J. 233 = 1923 Cal. 488.**

———*Applicability — Brahmos — Whether Hindu—Declaration under Act III of* 1872.

A man by becoming a Brahmo does not necessarily cease to be a Hindu, that is to say something further than mere becoming a Brahmo is necessary for a man to cut himself off from Hinduism. A declaration under Act III of 1879 is effective only for the purposes of the Act and does not involve a renunciation of the Hindu religion. (*Greaves*, J.) *In the goods of* JNANENDRA NATH ROY. **49 Cal. 1069 = 26 C.W.N. 799 = 1923 Cal. 265.**

———*Applicability of—Aboriginal tribes—Kacharies.*

The Aboriginies (Kacharies) of Assam are governed by the Dayabaga Law. (*N R. Chatterjea and Pearson*, JJ.) NEARAM KACHARI *v.* ARDARAM KACHARI. **64 I.C. 145 = 36 C L J. 34.**

———*Applicability of—Migrating family—Presumption—Adherence to religious and social rules of the place of origin—Effect of—Brahmins and Kayasthas of Bengal—Dayabhaga Law.*

A Hindu family residing in a particular Province of India is presumed to be governed by the law of the place where it resides but where a Hindu family, is shown to have migrated from one place to another the presumption is that it carries with it the laws and customs as to succession and family relation prevailing in the province from which it came. This presumption, however, is rebuttable by evidence that the family has adopted the law and usages of the place to which it has migrated. The Brahmins and Kayasthas of Bengal migrated from Kanauj and originally brought with them the Mithila law ; it was after their settlement in this province that the Dayabhaga school of Hindu Law was founded by Jimutvahana about the 14th century and that is the law which now governs the Hindu population of Bengal even though they may have originally migrated from North Behar. Instances of succession consistent with the Mitakshara and inconsistent with the Dayabhaga Law or evidence that the family had conformed to religious and social rites and usages consistent with the Mitakshara and inconsistent with the Dayabhaga law may shift the burden. A Hindu family which has migrated into Bengal

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and had retained some of its former religious rites and ceremonies may yet be shown to have acquired a course of devolution of property in accordance with the Dayabhaga Law. (*Mookerjee and Panton*, JJ.) PITAMBAR CHANDRA SAHA *v.* NISHI KANTA SAHA.
24 C.W.N. 215=55 I.C. 5=31 C.L.J. 52.

———*Applicability — Koches of Assam—Aboriginals.*

The Koches (aboriginals) of Assam are governed by the Dayabhaga Law in the absence of proof of a custom at variance therewith. 11 B.L.R. 131, Ref. *Mookerjee and Panton*, JJ.) OFFICIAL ASSIGNEE OF BENGAL *v.* BIDYA-SUNDARI DASI. **24 C.W.N. 145=54 I.C. 700=30 C.L.J. 428.**

———*Applicability — Migrating family — Personal law.*

A person migrating from one place to another is presumed to carry the laws and customs as to succession and family relations along with him. (29 Cal. 433, Foll.) Such presumption, however, may be rebutted, by proof of adoption of the law of the place to which he migrates. (12 M.I.A. 81; 31 All. 477; 34 Bom. 553, Foll.) (*Mookerjee and Beachcroft*, JJ.) KULADA PRASAD PANDEY *v.* HARIPADA CHATTOPADHYAYA. **40 Cal. 407=16 C.L.J. 311=17 I.C. 257=17 C.W.N. 102.**

———*Applicability—Koch tribe—Nowgong in Assam.*

Where there are no averments to the contrary in the pleadings no contrary indication in the evidence, the Koch tribe of Nowgong must be held, to be Hindus and where the plff. a Koch of Nowgong does not allege that he is governed not by the strict rules of Hindu Law but by some other law or custom applicable to the people of his class it must be held, that the ordinary Hindu Law of the Bengal School is applicable to him. (*Banerjee*, J.) DINO NATH MOHUNTO *v.* CHUNDI KOCH. **16 I.C. 349=16 C.L.J. 14.**

———*Applicability — Personal law—Presumption.*

In the absence of proof to the contrary it is presumed that a person is governed by his personal law whenever he goes. A person cannot be governed by more than one personal law providing for different cases. Thus a person cannot have one personal law in case of succession to his maternal ancestor's property and another in case of succession to the estate of his paternal ancestors. (*Mookerjee, and Caspersz*, JJ.) BAHAGABATI KOER *v.* SOHODRA KOER. **18 I.C. 691=16 C.W.N. 834.**

———*Applicability—High caste Hindus in the Punjab.*

High caste Hindus living in towns in the Punjab and working as traders are governed by Hindu Law, in the absence of evidence to show custom in derogation of the Hindu Law. (*Martineau and Zafar Ali*, JJ.) MT. BAL KAUR *v.* DEOKI. **4 Lah. 235=1923 Lah. 579.**

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———*Applicability—Converts—Presumption.*

Where the person in a question continued to maintain a close connection with his family and brotherhood at his original place of residence, the presumption is that his family is governed in matters of succession by the same rules as are in force in its original home. Where the family is descended from converts to Mahomedanism from Hinduism the presumption is that they follow Muhammadan Law. The presumption is a rebuttable one. *Broadway and Campbell*, JJ.) NAJM UD DIN *v.* ABDUL HAMID. **1923 Lah. 175.**

———*Applicability—Beri Khatris of Jagroon.*

The Beri Khatris of Jagroon are governed by Hindu Law and not by custom in matters of succession. (*Broadway*, J.) BAL MUKAND *v.* KISHEN DEVI. **1923 Lah. 6.**

———*Applicability of—Custom of succession.*

In matters of succession the Courts must apply the ordinary Hindu Law when a custom to the contrary is not proved. (*Shadi Lal*, C.J. *and Le-Rossignol*, J.) DALIPA *v.* DALLU.
4 Lah. L.J. 336.

———*Applicability — Punjab Brahmins—Custom.*

In a case of disputed succession or alienation on the ground of custom the universal rule is that a Brahmin is presumed to be governed by his personal law and if he alleges a custom contrary to the rules of that law he is bound to prove by cogent and clear evidence that he is governed by such custom. The question of custom is one of fact depending upon the particular circumstances alleged and proved in each case. (*Abdul Raoof and Martineau*, JJ.) HARBANS LAL *v.* ATRA. **53 I.C. 858.**

———*Applicability—Aroras of Punjab.*

Hindu Law is applicable to Aroras. (*Rattigan and Jones*, JJ.) CHANDAN MAL *v.* MUSAMMAT WASINDI BAI. **92 P.R. 1915=31 I.C. 541=168 P.W.R. 1915.**

———*Applicability of—Migrating family—Personal law.*

In the case of a Hindu who with his family left the ancestral home in Bikaneer and settled down in Delhi, succession to the property "in the absence of any proof that they were governed by some family custom" was governed by the principles of their personal law. (*Rattigan and Scott-Smith*, JJ.) GOPI KISHEN *v.* GOPI KISHEN. **27 P.W.R. 1915=27 I.C. 701=57 P.L.R. 1915.**

———*Applicability—Kumhars.*

The strict Hindu Law does not apply to Kumhars. They are governed by custom. (*Kensington*, J.) BALLIA *v.* EMPEROR.
24 P.W.R. 1914. Cr.=23 I.C. 839=15 Cr. L.J. 639=161 P.L.R. 1914.

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———*Applicability—Khatiks — Low caste Hindus.*

Khatiks are low caste Sudras and are governed by Hindu Law. (*Johnstone, J.*) BHOLAR *v.* EMPEROR. 181 P L.R. 1914= 15 Cr. L J. 539=24 I.C. 947= 31 P.W.R. Cr. 1914.

———*Applicability — Sikhs — Conversion from Muhammadanism.*

Sikhs are Hindus governed by Hindu Law modified by custom. Sikhism admits of conversion to its fold from Muhammadanism and no special ceremony is prescribed for the conversion. (*Reid, C.J. and Rattigan, J.*) DHALIP KAUR *v.* FATTI. 99 P.R 1913= 41 P.W.R. 1913=18 I C. 930= 100 P.L.R. 1913.

———*Applicability · Thattans of North Malabar—Presumption as to partibility—Illegitimate sons of Thattans—Rights of inheritance.*

The Makkathayam law which the Thattans follow corresponds in the main to the ordinary Hindu Law and *prima facie* involves partibility. (*Schwabe, J.*) VAZHAYILPARKUM *v.* VAZHYIL-PARKAM. 44 M L J. 274=18 L.W. 525= (1923) M.W.N. 173=46 M. 597= 1923 Mad. 452.

———*Applicability—Evidence—Rules of—Not in force after the Evidence Act.*

When dealing with the question of a rule of evidence the Hindu Law will not apply. (*Krishnan and Venkata Subbarao, JJ.*)PONDUR ADEYYA *v.* JALUDI BURRAYYA. 43 M.L.J. 728=16 L.W. 976= 32 M L J. 6=(1923) M.W.N. 49= 1923 Mad. 182.

——— *Applicability*—Ezhuvas *or Iluvas and* Thiyas *in Malabar.*

The presumption that Hindu Law is ordinarily applicable to *Ezhuvas* and *Thiyas* is unwarranted. In the present case it is not proved that the castes are not governed by Hindu Law but by a special custom which confers a special status of inheritance on women and their descendants. (*Oldfield and Hughes, JJ.*) KARUPPATIYAL K. P. RAMAN *v.* RAMULATHA LARUKKAL MUTHU. 40 M.L J 801=13 L.W. 218= 62 I C. 534=(1921) M.W.N. 233.

———*—Applicability—A Hindu domiciled in Southern India.*

A Hindu domiciled in Southern India is ordinarily governed by Hindu Law as expounded by Southern commentators. (*Sadasiva Aiyar and Spencer, JJ.*) THAIKANDHI POKANCHI *v.* ILLIVATUKAL ACOHUTTAN. 39 M L J 417=60 I.C. 209=13 L.W. 101.

——— *Applicability of — Muhamadans — Navayats of South Canara—Family trade.*

When a Muhammadan trading family lived as members of a joint family following Hindu manners and customs purchased properties indiscriminately in the names of the various members, a suit for partition would lie and the shares would be allocated according to the principles of Hindu Law, 42 Cal. 801, (P C). Foll.; 12 Mad. 380, Ref. Many incidents of the Hindu joint family system obtain by custom among Navayats. (*Wallis, C.J. Oldfield and Seshagiri Aiyar, JJ.*) HUSSAIN SAHIB *v.* HASSAN SAHIB. 41 I.C. 184=5 L W. 838. (On appeal from (1915) M.W.N. 860= 31 I.C. 927=2 L.W. 1140.

HINDU LAW—Applicability.

———*—Applicability of Labbais of Coimbatore —Retention of Hindu usages.*

Labbais or Tamil speaking converts to Muhammadanism in the Coimbatore District, adhere to the Hindu Law in matters of succession and partition and have the same restrictions of female succession as the Hindus. 8 Mad. 464; 1 Cal. 186; 27 M.L.J. 156; 15 Mad. 281; 9 M.L.T. 92, Foll. (*Wallis, C. J. and Srinivasa Iyengar, J.*) IBRAHIM ROWTHER *v.* MUHAMMAD IBRAHIM ROWTHER. 39 Mad. 664=29 M.L.J. 763= 30 I.C. 806=(1915) M.W.N. 866.

———*Applicability—Chetties.*

Malabar Chetties are governed by Hindu Law. (*Oldfield and Tyabji, JJ.*) AZIMANILA VEETTIL KANAM PILLAI *v.* KAYINABI GOPALAN NAIR. 26 I.C. 337=(1914) M.W.N. 883.

———*—Applicability—Degraded women.*

The law applicable to a degraded women is the ordinary Hindu law and that which is by custom applicable to dancing girls. (*Oldfield and Seshagiri Iyer, JJ.*) MEENAKSHI *v.* MUNIANDI PANNIKKAN. 38 Mad. 1144= 1 L.W. 705=(1914) M.W.N. 672= 16 M.L.T. 270=26 I.C. 957= 27 M.L J. 363.

———*Applicability—Berar.*

In Berar wherever the *mitakshara* and Mayukha differ, the latter predominates. (*Kotval, A.J.C.*) SHRIRAM *v.* RAJA RAM. 19 N L.R. 193=1924 Nag. 83.

———*Applicability—Gonds of Central Provinces—Burden of Proof.*

A Gond is not a Hindu and is not governed by the Hindu Law. In the case of any particular Gond, he can prove he has adopted any particular Custom or all the principles of Hindu Law, but it is for him to prove his allegations. (*Halifax and Kotval, A.J.C.*) VITHOBA *v.* LALSINGH. 19 N.L.R. 104=1923 Nag. 317.

———*—Applicability — Gujars of Ninar — Central Provinces.*

The Gujars of the Ninar District of the Central Provinces are governed by the Benares school of Hindu Law. (*Batten, J.C.*) RAM BHABAI *v.* TOTA RAM. 6 N.L J. 39= 1923 Nag. 188.

———*Applicability—Sub-School of Hindu Law—Jaiswar Sub-division of Kalar caste—Residence—Domicile.*

In view of the decision of the Privy Council in 48 C. 80 (P.C.) a Hindu residing in a particular

HINDU LAW—Applicability.

province of India is *prima facie* subject to the doctrines of Hindu Law recognised in that province. The Jaiswar Sub-division of the Kalar caste residing in the Central Provinces is governed by the Benares School of Hindu Law, having originally migrated from Oudh. In determining a person's domicile, the place where his property is situate is not conclusive. (*Kotwal and Prideaux*, A.J.C.) GOVIND *v.* RADHABAI KALAR. **1923 Nag. 7 (2).**

——*Applicability* – Gonds — *Guardianship of property* — *Mother* – *Brother.*

Gonds are not Hindus and the onus of proving that a Gond family has accepted the Hindu Law and is governed by it rests on the party alleging it. Consequently in the absence of proof of any special custom the question of guardianship among Gonds must be decided according to justice, equity and good conscience. As regards the properties of a minor, Gond, his brother is a preferential guardian to his mother though as regards the person of the minor, the mother is next to the father the natural guardian. (*Hallifax*, A.J.C.) KOLHU *v.* BELSING. **17 N L R. 183=1922 Nag. 201.**

——*Applicability—Damdupat.*

Rule of Damdupat is not applicable to a decree by a puisne mortgagee. (*Kotwal*, A.J.C.) NARAYAN *v.* NATHMAL.
17 N.L.R. 200=1922 Nag. 155.

——*Applicability—Berar.*

The *lex loci* of Berar and the Maharashtra is the Mitakshara interpreted by the Mayukha. (*Prideaux*, A.J.C.) GOVINDA *v.* DOOMI.
65 I.C. 671=5 N.L.J. 187.

——*Applicability — Migrating family — Jains.*

A Hindu carries his personal aw with him and the Jains also do the same. The ordinary presumption that a Hindu family migrating from one part of the country to another takes with it its first laws and customs as to succession must be applied in the case of Jains also, unless it can be established that after migration the family have adopted the particular doctrines in its new domicile. (*Drake Brockman*, J.C. *and Prideaux*, A.J.C.) MUSSAMMAT ZUNKABI *v.* BUDHMAL.
57 I.C. 253.

——*Applicability — Adoption of Hinduism if valid—Onus of proof.*

A man does not become a Hindu by calling himself one, nor is the adoption by non-Hindu of usages resembling some parts of the Hindu Law a sufficient ground for applying the whole of that law to him *en bloc*, in the same way and to the same extent as if he were a Hindu. In the case of a family which is not originally Hindu but which had adopted Hinduism the burden of proving that the family is governed in a particular matter by the Hindu Law is upon the person who asserts that it is so governed. (*Stanyon*, A.J.C.) UJIYAR *v.* TILOCHAN-
44 I.C. 435.

HINDU LAW—Applicability.

——*Applicability — Dayanandis — Arya Samaj.*

Dayanandis are Hindus forming a set of the Arya Samajists. They believe in the supremacy of the Vedas. (*Coutts and Adami*, JJ.) MT. SURAJ JOTE KUER *v.* MT. ATTAR KUMARI.
3 P.L.T. 551=(1922) Pat. 235=1922 P. 378.

——*Applicability—Community—Non-Hindu in origin—Subsequent adoption of Hinduism—Presumption — Extent of adoption*—Basi Chowrasi Gaddidars—*Marriage —Adoption—Impartibility.*

In dealing with the custom of an entire community it is of more importance to have regard to the history of the main body than to the history of the less important branches. The *Basi Chowrasi Gaddidars* are a recognised community. Probably the community was non-Hindu in orgin ; but the members have all now accepted Hinduism to such a degree as to raise a presumption that the community has assimilated the law of adoption and so far as the Lachmipur *Gaddi* is concerned there is no custom in it to the contrary. It is only in the case of the Tundi, Gudan Jharia and Palganj *gaddis* that the tradition exists that the holders of the Kharagdhiha *gaddis* were orginally Rajputs. The indication therefore, is that as a group these *gaddidars* were originally indigenous and at some time unknown accepted Hinduism. The estates of these *gaddidars* are impartible and descend to the eldest son ; but this does not show that they are non-Hindus. The rule against marrying within the same *gotra* is not an universal rule among Hindus but is recognised by the *Basi Chowrasi Gaddidars* inasmuch as they do not marry within certain groups. (*Chapman and Atkinson*, JJ.) SHAHDEO NARAINDAS *v.* RUSUM KUMARI.
46 I.C. 929.

——*Applicability—Born Hindus.*

The application of a Hindu Law to a person does not depend upon his being born a Hindu. A Hindu need not be an orthodox Hindu or a member of the four castes. The Hindu Law applies to a Hindu till the abandonment by him of his religion. (*Ormond and Twomey*, JJ.) MAUNG THIT, MAUNG *v.* MA YAIT.
10 Bur L.T. 194=37 I.C. 780.

——*Applicability—Sind and Bombay Presidency—Rule of succession.*

Where a rule of succession is of general authority in Bombay Presidency it is held to apply also in Sind, unless the person alleging to the contrary sets up an invariable and ancient special usage. (*Fawcett*, J.C *and Kemp* A,J.C. DOWLAT RAM *v* NARAYAN DAS.
60 I.C. 929=14 S.L.R. 231.

——*Applicability—Convert to Muhammadanism.*

In a suit by a Hindu son to the estate of his father, a convert to Muhammadanism, the appellate Court may apply Hindu or Muhammadan law, as the case may be, though it was

HINDU LAW — Applicability — Cutchi Memons.

expressly put under the Hindu Law in the lower Court. (*Fawcett*, J.C. *and Boyed*, A.J.C.) HASSOMAL MURIJMAL *v.* GHULAM MOHAMAD. 27 I.C. 357=8 S.L.R. 156

Applicability—Cutchi Memons.

See KHOJAS AND CUTCHI MEMONS.

Applicability—Khojas.

See KHOJAS AND CUTCHI MEMONS.

Ascetics.

———*Ascetics—Nihang—Marriage— Marriage illegitimate—Succession.*

An ascetic of the Nihang order, among whom marriage is forbidden, cannot validly contract a marriage and the issue of any such marriage being illegitimate has no claim to the ascetic's property. (*Richards*, C.J. *and Banerji*, J.) SESPURI *v.* DWARKA PRASHAD. 21 I.C. 432=11 A.L.J. 778.

[Affirming on appeal 16 I.C 222.]

———*Ascetics—Nihang Gossains—Marriage —Invalid.*

Among ascetics of Nihang order marriage is not permissible in the absence of a special custom and a son born of marriage is no heir and cannot succeed to the *gadi* and its properties. (*Rafique*, J.) RAM KISHORE *v.* JAGANNATH PURI. 21 I.C. 85=11 A.L.J. 738.

———*Ascetics—Succession— Bairagi, whether are Sanyasis.*

Whether Bairagis can be classed as Sanyasis is doubtful as their order is not confined to twice-born members. (*Scott*, C.J. *and Hayward*, J.) RAMDAS GOPALDAS SADHU *v.* BALDEO DAS KANSHALYADAS. 39 Bom. 168= 26 I.C. 607=16 Bom. L R. 757.

———*Ascetics—Sudra—Yati or Sanyasi.*

According to Smrithis a Sudra cannot be a yati or sanyasi. (*Chatterjee and Newbould*, JJ.) LOCHAN BIMMA *v.* ADHAR CHANDARA MAHONILA. 35 I.C. 630.

———*Ascetics—Sudras.*

Quære:—Whether Bairagees can be classed as Sanyasis, the order of Bhairagees not being confined to members of the twice-born castes. A Sudra cannot enter the order of Sanyasis. (*Holmwood and Chapman*, JJ.) HARISH CHANDRA ROY *v.* ATIR MAHMUD. 40 Cal. 555= 18 I.C. 474=17 C.W.N. 517.

———*Ascetics—Sanyasam—Renunciation of the world—Onus.*

In 1883, plff. mortgaged his share in the house and left the village, adopted a life of an itinerant mendicant, attached himself as chela to a guru, never re-visited his village and had not married. *Held*, that under the circumstances the interference was not unwarranted that the plff. had renounced the world and abandoned his property and that the burden of proving the contrary was on the plff. and he had failed to discharge it. (*Rattigan*, C.J. *and Shah Din*, J.) LACHMAN GIR *v.* GOPI. 43 I.C. 167=18 P.W.R. 1918.

———*Ascetics—Succession* — Sudra *ascetic dying without relations.*

According to *Yajnavalkya* upon the death of a *sudra* ascetic without relations his secular property descends to his '*sishya*' and does not escheat to Government. The *Mitakshara* recognises the interposition of the preceptor, pupil and the fellow-student, between the relatives of the deceased and the King. (*Ayling and Odgers*, JJ.) SAMBASIVAN PILLAI *v.* SECRETARY OF STATE. 44 Mad. 704= 13 L.W. 638=41 M L J. 103= 63 I.C. 659=(1921) M.W.N. 481.

———*Ascetics—Sanyasin—Characteristics.*

Sanyasin's main feature is relinquishment of all property and abandonment of wordly concerns. On becoming Sanyasin the property vests in his heirs. Praishamantram is absolutely essential to a Sanyasam. Rites and ceremonies necessary for Sanyasin discussed. (*Abdur Rahim and Srinivasa Aiyangar*, JJ.) KONDAL ROW *v.* SHAMULAWARU. 40 I.C. 535=33 M L.J. 63.

Authority.

See HINDU LAW—TEXTS.

Bandhus.

See HINDU LAW—SUCCESSION.

Benami Purchase.

See BENAMI.

Benami Transactions.

See BENAMI.

Betrothal.

See HINDU LAW—MARRIAGE.

Bequest.

See HINDU LAW—WILL.

Caste.

———*Caste—Son of Hindu by Mohomedan concubine.*

A Hindu had a son by his Muhomedan mistress. The son was brought up by the father as an orthodox Hindu, married Khshatriya ladies according to the Hindu ritual, wore the Hindu caste mark, and worshipped the Hindu idols. *Quære.*—Whether the son becomes a Hindu and whether issue of his marriage with the Khshatriya ladies is illegitimate according to Hindu Law. (*Lord Atkinson*) SHER BAHADUR *v.* GANGA BAKHSH SINGH. 36 All. 101= 41 I.A. 1=18 C.W.N. 401=15 M.L.T. 169= (1914) M.W.N. 184=12 A.L J. 188= 26 M.L J. 291=19 C.L.J. 277= 1 O.L.J. 109=17 O.C. 68=22 I.C. 293= 16 Bom. L.R. 306 (P.C.)

HINDU LAW—Caste.

——*Caste—Bharbunjas and Kurmis.*

Bharbunjas do not occupy a higher social status than Kurmis. (*Piggott*, J.) SOHAN LAL *v.* MT. DURGA. **21 I.C. 691.**

——*Caste—Lewa Kunbis—Sudras.*

The Lewa Kunbis residing at Chandgdev in the East Khandesh District are Sudras. (*Macleod*, C.J. *and Shah*, J.) MANOHARAM BHIKU *v.* DATTU. **54 I.C. 110 = 21 Bom. L.R. 1172.**

——*Caste—Bhatias—Twice born.*

Bhatias rank as twice born but below Aroras and Banias. (*Robertson and Shah Din*, JJ.) AYA RAM *v.* THARI BAI. **34 P.W.R. 1913 = 74 P.L.R. 1913 = 19 I.C. 87 = 78 P.R. 1913.**

——*Caste*—Kshatriya — *Illegitimate offspring—Sudrae.*

The offspring of an illicit connection of a man and a woman of *kshatriya* caste is not a Sudra. (*Evans*, J.C. *and Lindsay*, A.J.C.) SITLA BAKSH SINGH *v.* GAJARAJ SINGH **12 I.C. 767 = 14 O.C. 227.**

——*Caste—Regulations, value thereof.*

Caste regulations, prevailing amongst Hindus, do not form part of Hinduism and a breach thereof does not make a Hindu a non-Hindu in the eye of law. (*Ormond and Twomey*, JJ.) MAUNG CHIT MAUNG *v.* MA YAIT. **37 I.C. 780 = 10 Bur. L.T. 194.**

Charitable Institution.

See HINDU LAW.— RELIGIOUS ENDOWMENT.

Conversion.

See also (1) HINDU LAW—(*a*) APPLICABILITY. (*b*) SUCCESSION.
(2) FREEDOM OF RELIGIOUS ACT.

——*Conversion—Hulai memons of Porebunder.*

There are among the Mahomedans certain groups whose ancestors were Hindus and professed the Hindu religion, and then were converted to Islam. Among these groups may be reckoned, as it is shown by decided cases, Khojas, Suni Borahs, Molesalam Girasias, Cutch Memons, Nassapooria Memons; and lastly, Halai Memons. Halai Memons domiciled in Porebunder follow the Hindu Law with regard to the successions of females. (*Lord Dunedin.*) KHATUBAI *v.* MAHOMED HAJI ABU. **27 C.W.N. 774 = 41 M.L.J. 35 = 47 B. 146 = 32 M.L.T. 45 = 17 L.W. 208 = 37 C.L.J. 131 = L.R. 4 A. (P.C.) 42 = 23 Bom. L.R. 127 = 1922 P.C. 414 (P.C.).**

——*Conversion—Christianity—Succession.*

Succession to the estate of a Hindu convert to Christianity who dies a Christian and intestate, is governed by the Succession Act.

HINDU LAW—Conversion.

Since the passing of the Act, a person ceasing to be a Hindu cannot elect to continue to be governed by the Hindu Law, in matters of succession. (*Lord Shaw*). KAMAWATI *v.* DIGBIJAI SINGH. **43 All. 525 = 18 L.W. 1 = 64 I.C. 559 = 48 I.A. 381 (P.C.).**

——*Conversion—Effect of.*

Where a Hindu father living jointly with son becomes a convert to Mahomadanism, he does not lose his right to joint family property. The son does not become the sole owner. (*Mr. Ameer Ali*) KHUNNI LAL *v.* GOVIND KRISHNA NARAIN. **33 All. 356 = 38 I.A. 87 = 15 C.W.N. 545 = 8 A.L.J. 552 = 13 C.L.J. 575 = 13 Bom. L.R. 427 = 10 M.L.T. 25 = (1911) 1 M.W.N. 432 = 10 I.C. 477 = 21 M.L.J. 645 (P.C.) [Reversing 29 All. 487 = 4 A.L.J. 365 = 27 A.W.N. 151].**

——*Conversion—Minority and Guardianship—Minor.*

Though an undivorced mother of a Hindu infant becomes a Christian she can still be appointed the guardian of the infants if she be in a position to satisfy the Court that she will be able to carry out the obligation of bringing up her children in the faith of her husband. (*Woodroffe and Richardson*, JJ.) DWIJAPADA KARMAKAR *v.* MISS. BAILEAN. **34 I.C. 632 = 20 C.W.N. 608.**

——*Conversion—Effect.*

Conversion does not entail forfeiture of rights or property or right or interest in ancestral property but effects a severence as between himself and the other co-parceners. (*Mookerjee and Beachcroft*, JJ.) KULADA PRASAD PANDEY *v.* HARIPADA CHATTOPADHYAYA. **40 Cal. 407 = 16 C.L.J. 311 = 17 I.C. 257 = 17 C.W.N. 102.**

——*Conversion—Marriage—Effect of.*

Under the Hindu Law the conversion of the wife to another religion does not dissolve the marriage tie. (*Abdul Raoof*, J.) MUSSAMMAT NANDI *v.* EMPEROR. **59 I.C. 33 = 1 Lah. 440.**

——*Conversion—Apostacy—Effect.*

Conversion of a Hindu to Muhammadanism separates him from the co-parcenary. (*Shadi Lal and Jones*, JJ.) GANGA SINGH *v.* BEGAM. **57 P.R. 1916 = 159 P.W.R. 1916 = 35 I.C. 549 = 4 P.L.R. 1917.**

——*Conversion — Muhammadanism — Sikhs.*

Sikhs are a section of Hindus. Any Muhammadan could be converted to Sikhism. Drinking of sanctified water with *patashas* is sufficient for conversion. The laws of the Sikhs are more those of Hindus, modified by custom. (*Reid*, C.J. *and Rattigan*, J.) DHALIPKUR *v.* FATTI. **99 P.R. 1913 = 41 P.W.R. 1913 = 18 I.C. 930 = 100 P.L.R. 1913.**

HINDU LAW—Conversion.

———*Conversion—Legitimacy—Sikh Jat—Abduction of a sweeper—Change of religion and marriage—Issue—Legitimacy of—Presumption.*

Where a Sikh Jat abducted a sweeper whose husband was living and married her after conversion to Mahomedanism and had children by her. *Held*, that the children were their legitimate children and that a strong presumption can be drawn that the husband of the sweeper had divorced her. (*Robertson and Shah Din, JJ.*) SHERU *v.* JAWAHIR SINGH. 88 P.R. 1912=13 I.C. 662= 240 P.W.R. 1912.

———*Conversion—Converts to Mahomedanism—Labbais of Coimbatore.*

Labbais or Tamil speaking converts to Mahomedanism in the Coimbatore District adhere to the Hindu Law in matters of succession and partition and have the same restrictions on female succession as the Hindus. 8 Mad. 464; 1 Cal. 186; 27 M.L.J. 156; 15 Mad. 281; 9 M.L.T. 62, Foll. (*Wallis, C. J. and Srinivasa Iyengar, J.*) SHEIK IBRAHIM ROWTHER *v.* MUHAMAD IBRAHIM ROWTHER. 39 Mad. 665= 29 M.L.J. 763=30 I.C. 806= (1915) M.W.N. 866.

———*Conversion—Effect on marriage—Hindu woman converted to Mahomedanism—Marriage with Moslem—Hindu husband alive—Offspring of second marriage, if legitimate.*

If a Hindu woman becomes a convert to Muhammadanism and marries a Muhammadan during the lifetime of the Hindu husband, the offspring of the second marriage is illegitimate. (*Sadasiva Iyer and Spencer, JJ.*) BUDHUASA ROWTHER *v.* FATIMA BI. 15 M.L.T. 107= 26 M.L.J. 260=22 I.C. 697= (1914) M.W.N. 278.

———*Conversion—Effect.*

The conversion of some members of the joint Hindu family destroys the joint Hindu family and though the co-parceners may be joint owners the incident of survivorship will no longer subsist. (*Abdur Rahim and Sundara Aiyar, JJ.*) KUNHICHEKKAN *v.* LYDIA ARUCANDAN. 11 M.L.T. 232=14 I.C. 480= (1912) M.W.N. 386.

———*Conversion—Marriage — Apostacy — Effect of.*

Apostacy does not dissolve the marriage tie under the Hindu Law. (*Lindsay, J. C.*) ABDUL KARIM *v.* ABDUL RAZIK. 28 I.C. 201=2.C L J. 101.

———Co-parcener—Alienation.

See HINDU LAW—(1) ALIENATION. (2) JOINT FAMILY.

Custom.

See also CUSTOM (GENERAL).

HINDU LAW—Custom.

———*Custom—Partition—Custom of Patnibhaga—Moopu Succession.*

Among the particular class of Nattukottai Chetties living in the seven villages in the Madura District there exists a valid custom under which in the case of marriage of a second wife during the life of the first, the first wife is entitled to have some property set aside for her maintenance which would descend to her son if she had one and is then called *Moopu* and the property of the husband is notionally divided—one moiety to the sons of the 1st wife and the other to the sons of the 2nd as per division *Patnibhaga*. (*Lord Phillimore*). PALANIAPPA CHETTY *v.* ALAGAM CHETTY. 44 Mad. 740=48 I.A. 539= 14 L.W. 609=(1921) M.W.N. 687= 1922 P.C. 228 (P.C.).

———*Custom—Proof—Adoption of daughter's son among Agarwala Vaishyas.*

In support of the alleged custom the defendant examined some 33 witnesses. Thirty of these spoke of the general custom permitting the adoption of a daughter's son prevailing among the Agarwala Vaishyas and they were able to cite at least 31 witnesses out of which 20 instances were accepted as being instances where adoption either of a daughter's son or a sister's son had taken place. Out of these 20 instances 11 were instances of the adoption of a daughter's son. *Held*, the custom set up by the defendant was satisfactorily established. (*Lindsay and Sulaiman, JJ.*) MT. BALLO *v.* RAMKISHAN. 21 A.L.J. 478= 1923 All. 49.

———*Custom in contravention of general—Hindu Law—Quantum of proof.*

A custom in derogation of the general Hindu Law is a matter which has to be proved with more thoroughness and with greater precision than a case which merely affects the parties on record and does not adversely affect parties who themselves are not present in Court, but are nevertheless interested by virtue of belonging to the same community. (*Mears, C.J. and Piggott, J.*) MT. DHOLA KUAR *v.* MATHURA SINGH. 1923 All. 341.

———*Custom—Validity of.*

In a case under Hindu Law or custom English notions of liberty and liberty of contract should not be taken into consideration. (*Chandavarkar and Hayward, JJ.*) GHELABAI GAURISHANKAR *v.* HARGOWAN RAMJI. 36 Bom. 94=12 I.C. 928= 13 Bom. L.R. 1171.

———*Custom—Applicability of—High caste Hindus.*

It would be dangerous to seek to extend custom by such logical processes as analogy. The initial presumption in the case of high caste Hindus is in favour of such Hindus following their personal law, and the onus of proving any special or general agricultural

HINDU LAW—Custom.

custom lies on the person asserting the existence of such custom. (*Broadway*, J.) PARS RAM *v.* HUKMAN SINGH. **73 I.C. 239.**

———*Custom — Dancing girls — Inheritance—Males and females inherit equally.*

There is a custom in the caste of dancing girls by which sons and daughters share the inheritance equally, contrary to ordinary Hindu Law. Thurston's Castes and Tribes of Southern India, Vol. II, page 127, Ref. (*Schwabe*, C.J. *and Coleridge*, J.) BERA CHANDRAMMA *v.* CHANDRAM NAGANNA.
45 M.L.J. 228=(1923) M.W.N. 567=18 L.W. 309=1924 Mad. 94.

———*Custom—Validity—Partition.*

One of the tests to be applied for ascertaining the existence of a valid custom is to see whether the right claimed was ever contested and whether the person who, but for such custom, would under the general law, be entitled to certain property, abandoned the contest and suffered themselves to be excluded, thus accepting it consciously as having the force of law. 16 All. 221; 8 Mad. 464, Foll.; 2 M. H. C.R., 47 Ref. Where there is no proof that people living in a particular area voluntarily adopted a method of division of property which is contrary to Hindu Law applicable to their caste, it is unreasonable to recognise the existence of such a custom and impose it upon all the persons of the caste resident in the area, whether or not they have entered into special agreements. (*Sankaran Nair and Spencer*, JJ.) ALAGU CHETTY *v* PALANIAPPA CHETTY.
2 L.W. 272=28 I.C. 278=(1915) M.W.N. 221.

———*Custom—Partition—Athangudi Chetties.*

There is no custom among the Athangudi Chetties by which division was to be effected *per Stirpes* according to the number of wives having sons. (*Sankaran Nair and Spencer*, JJ) ALAGU CHETTY *v.* PALANIYAPPA CHETTY.
2 L.W. 272=28 I.C. 278=(1915) M.W.N. 221.

———*Custom—Duty of Court—Judge's duty.*

Though the function of the Court is not to create law but merely to interpret the statute, customary, and common laws and they could not be deprived of the power of moving slowly with the better sense of the community which is changing its custom. Caste and religious questions cannot be considered in a too rationable manner and if a custom is not too irrational or immoral and has been prevailing for a long time Courts should give effect to it. (*Miller and Sadasiva Aiyar*, JJ.) MARIAPPA NADAN *v.* VAITHIALINGA MUDALIAR. **18 I.C. 979=(1913) M.W.N. 247.**

———*Custom—Prostitution.*

Per Sadasiva Aiyar, J.—Prostitution is as repugnant to Hindu religion as to any other. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) GUDDALI REDDI *v.* GANAPATHI GANDANNA.
23 M.L.J. 493=12 M.L.T. 467=17 I.C. 422=(1912) M.W.N. 1138.

HINDU LAW—Debts—Antecedent debts.

———*Custom—Applicability of.*

A custom at variance with the Hindu Law must be strictly applied and cannot be made the basis of any other variation from the law. (*Stanyon*, A.J.C.) SITARAM *v.* LACHMAN.
17 I.C. 133=8 N.L.R. 128.

———*Custom—Essentials.*

A custom must be ancient, continuous, definite, and reasonable. (*Stuart*, A.J.C.) MUSAMMAT PUNNI *v.* CHET RAM.
24 I.C. 640=1 O.L.J. 319.

———*Custom—Bairagis—Succession, rules of.*

Among Bairagis, succession to any property acquired by a member, subsequent to his admission into the association, is regulated either by special rules as to succession or by the custom prevailing in the association. (*Fawcett and Raymond*, J.Cs.) RAM DAS *v* AJUDHIA DAS. **63 I.C. 685=14 S.L.R. 137.**

Damdupat.

See DAMDUPAT.

Dancing Girl.

See HINDU LAW—SUCCESSION.

Daughter.

See HINDU LAW—LIMITED OWNER.

Daughter's Estate.

See HINDU LAW—DAUGHTER.

Dayabhaga.

See HINDU LAW—TEXTS.

Debts.

See also HINDU LAW—(1) ALIENATION.
(2) JOINT FAMILY.

ANTECEDENT DEBTS.
CO-PARCENER.
DISCHARGE.
FATHER.
IMMORAL OR ILLEGAL.
LIABILITY.
MANAGER.
NECESSITY.
SON'S LIABILITY.
TRADE.
WIDOW.

Debts—Antecedent Debts.

———*Debts—Antecedent debts—Meaning of—Invalid mortgage not a good consideration for later sale.*

Antecedent debt is a debt not only antecedent to the alienation in time but also incurred wholly apart from the ownership or security supposed to be available by such joint estate.

HINDU LAW—Debts—Antecedent debts.

Invalid mortgage is not a good consideration for later sale. (*Lord Shaw.*) CHET RAM *v.* RAM SINGH. 44 All. 369 = 43 M.L.J. 98 = 27 C W N 150 = 24 Bom. L R. 1231 = 4 U.P.L R. (P.C.) 64 = 16 L W. 89 = (1922) M.W.N. 455 = 31 M.L.T. 50 (P.C.) = 49 I.A. 228 = 3 Pat L.T. 363 = L R. 3 P.C. 141 = 3 P.L.R. 1922 = 1922 P.C. 247.

——*—Debts—Antecedent debts—Mortgage at a time when there was no son in the joint family.*

Where a person mortgaged his property before the birth of a son and subsequently after the birth of such son he again mortgaged it in order to discharge the previous mortgage *held* that the prior mortgage constituted an antecedent debt 39. A. 437 ; 44 A. 382 referred to. (*Daniels*, J.) TIRLOK SAITHWAR *v.* LALSA SAITHWAR. 1923 A. 488 (2).

——*Debts—Antecedent debts—Money required for satisfying decree for pre-emption—If one.*

A pre-emption decree merely gives an option of acquiring certain property at a certain price. The decree-holder is under no obligation to acquire the property unless he chooses: money required for such a purpose is not an antecedent debt. *Per Walsh*, J.—There must be a real dissociation in fact to give effect to the doctrine of antecedenoy. (*Piggott and Walsh*, JJ.) CHATUR BHUJ *v.* GOBIND RAM. 4 U.P.L.R. (A) 43 = 1923 All. 218.

——*Debts—Antecedent debts.*

The doctrine of antecedent debt, resting as it does on the theory of pious obligation, is only intended for the protection of third parties who may have acquired rights in good faith in the family property, and if a vendee cannot invoke it for validating a sale effected in lieu of an invalid antecedent mortgage in his own favour, it is still less open to a creditor, whose mortgage has been declared to be invalid to recover the debt, represented by that mortgage, while the mortgagor is alive, from the shares of his sons, who have been exempted from liability out of the very property, the mortgage of which has been declared to be unenforceable. The debt for the payment of which this liability is sought to be enforced is in no sense an antecedent debt. It is the very debt for the repayment of which the mortgage was made; and if the doctrine of pious obligation cannot be invoked to support the mortgage, it can hardly be invoked during the father's lifetime to enforce the liability of the family property other than the interest of the debtor for its repayment. (*Stuart and Kanhaiya Lal*, JJ.) KISHAN SINGH *v.* CHEJJU SINGH. 45 A. 90 = 1923 All. 206.

——*Debts—Antecedent debts.*

Prior mortgage debts forming consideration of the mortgage in suit are not antecedent debts so as to bind the sons, but an oral debt incurred by a co-parcener of the grandfather which was binding on the grandfather binds the grandson as an antecedent debt. (*Piggott and Sulaiman*, JJ.) RAM RATAN MISIR *v.* KAPIL DEO SINGH. 1923 All. 20.

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——*Debts—Antecedent debts—Mortgage—Necessity.*

Where the evidence shows that a mortgage executed by a Hindu father was in order to discharge certain prior mortgages and the prior mortgages had themselves been incurred for legal necessity, then the mortgage can be enforced against the whole family property including the interest of the son. The prohibition in *Sahu Ramachandra* v. *Bhup Singh*. 39 A. 497 (P.C.) does not apply to such a case. (*Rafique and Piggott*, JJ.) RANJIT SINGH *v.* GANGA SAHAI. L.R. 3 A. 328 = 1923 All. 291.

——*Debts—Antecedent debts—Prior mortgage—Discharge of—Son not born at the time—Rights of.*

A prior mortgage executed by a Hindu father is an "antecedent debt" to discharge which he could alienate the family property. If the son was not born at the date of the prior mortgage he could not question the necessity for the same, when seeking to set aside the alienation. 39 A. 437 (P.C.) = 33 A. 283 Ref. (*Piggott and Walsh*, JJ.) SURAJ PRASAD *v.* MAKHAN LAL. 20 A.L.J. 236 = 1922 All. 51.

——*Debts—Antecedent debts—Pro-note in contemplation of subsequent mortgage—Personal covenant by father in mortgage.*

Neither a debt contracted by a Hindu father on a promissory note which recited that the money was to form part of a mortgage of family property to be executed later on, nor money borrowed by him on a mortgage of family property containing a covenant for personal liability, can be deemed an antecedent debt inasmuch as the money was not borrowed wholly apart from the security of family property, and irrespective of the credit which the borrower obtained by reason of the ownership of family assets. (*Mears*, C.J. *and Banerji*, J.) RAM SARUP *v* BHARAT SINGH. 64 I.C. 763 = 19 A.L J. 744.

—— *Debts—Antecedent debts—After born son.*

A deed executed by a Hindu father long before the birth of a son, is valid and a deed executed in lieu of that deed must be considered to be for an antecedent debt. (*Tudball and Rafique*, JJ.) GIRDHARI LAL *v* GOBINDRAM. 68 I.C. 28 = 19 A.L.J. 456.

——*Debts—Antecedent debts—Father—Pious obligation—Grandson's liability.*

An obligation incurred by the father of a Mitakshara joint family which would be binding upon his sons must have been incurred antecedently to the transaction in suit, and secondly, it must have been incurred wholly apart from the ownership of the joint estate or the security afforded or supposed to be available

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by such joint estate. If a Hindu father borrows money on the security of the joint estate and there is nothing to show that the money was advanced to him on personal credit, the debt is not an antecedent debt binding on the sons. The doctrine of pious obligation comes into operation only against the sons, or in case of their death, against the grandsons. The doctrine is based on spiritual considerations apart from the ownership of the property. *Held*, (1) that a prior mortgage by the father did not constitute an antecedent debt within the decision in 39 All. 437. (P.C.); and (2) that there was no pious obligation on the grandsons in the lifetime of their respective fathers to pay off the debts of their grandfather. (*Rafique and Lindsay*, JJ.) RAM SINGH *v.* CHETRAM.
41 All. 529=17 A.L J. 706=
51 I.C. 119=1 U.P.L.R. (H C.) 52.

——*Debts—Antecedent debts—What are.*

"Antecedent debts" means obligations incurred irrespective of the ownership of the estate and apart from the security afforded by it (*i. e.*) personal debts of the father for his own purposes. 39 All. 437 (P.C.), Rel. (*Tudball and Rafique*, JJ.) BRIJ NARAIN RAI *v.* MANGAL PRASAD. 41 All. 235=
17 A.L J. 249=50 I.C. 101=
1 U.P.L.R. (H.C.) 49.

——*Debts—Antecedent debts — Brothers—Previous obligation.*

In a joint family an antecedent debt incurred by a brother who is the Manager of the family is not binding on other brothers unless it be for legal necessity. There is no pious duty imposed on brothers and nephews to pay off debts of brothers and uncles. (*Tudball*. J.) NIRBAHAY LAL *v.* KALLAN. 46 I.C. 516.

——*Debts—Antecedent debts—Immoral—Liability of son.*

Antecedent debts tainted with immorality would not make the son liable in respect of a mortgage executed for the discharge of such debts. A mortgage executed in lieu of a money decree obtained against the father in respect of sums not accounted for by him, is enforceable as an antecedent debt binding on the sons and grandsons of the mortgagor. (*Banerji and Piggott*, JJ.) NIDDHA LAL *v.* COLLECTOR OF BULANDSHAR.
35 I.C. 209=14 A.L.J. 610.

——*Debts—Antecedent debts— Mortgage—Son's liability.*

Money paid at the time of the registration of a mortgage executed by a Hindu father is not an antecedent debt for which the son's shares will be liable. (*Richards*, C.J. *and Piggott*, J.) KUNNUMAL *v.* TARA CHAND. 29 I.C. 152.

——*Debts — Antecedent debts—Son's liability.*

A mortgage by father to secure purchase-money of property which he had successfully bid for at an auction sale is an antecedent debt and as such the sons were bound to pay it. (*Ryves and Piggott*, JJ.) KAFILDEO *v.* THAKUR PRASAD. 36 All. 17=21 I.C. 868=
11 A.L.J. 961.

——*Debts—Antecedent debts—What are—Alienation in respect of—Propriety of.*

The object of the alienation by way of mortgagee having been to pay off the antecedent debts incurred by the father prior to the mortgage, the whole debt was antecedent under Hindu Law, though the original debt was due to the mortgagee himself. There is nothing in the judgment in I.L.R. 39 All. 437 (P.C.), which supports the contention that the antecedent debt must not be due to the alienee. If the money is borrowed on the security of a mortgage to pay off the antecedent debts it would be an alienation in respect of the antecedent debts. (*Shah and Hayward*, JJ.) PANDURANG *v.* BHAGWANDAS.
44 Bom. 341=55 I.C. 544=
22 Bom. L.R. 120.

——*Debts—Antecedent debts.*

The security bond executed by a father under the Mitakshara law for the purpose of obtaining a stay of the execution of a money decree passed against him creates a charge on the family property to discharge an antecedent debt not tainted with immorality and is enforceable against his successors. (*Richardson and Huda*, JJ.) MUKTI PRAKASH NANDE *v.* ISWARI DEI DEBI. 57 I C. 858=
24 C.W.N. 938.

——*Debts—Antecedent debts contracted on the security of family property.*

A Hindu father has power to alienate the joint family property for an antecedent debt where such antecedent debt has been contracted on the security of the family property. This rule is not affected in any way whatever by the observation of the Privy Council in 39 All. 437. 42 Mad. 711, F.B., *Foll.* (*Moti Sagar*, J.) DALJIT SINGH *v.* HARI CHAND
1923 Lah. 669.

——*Debts—Antecedent debts.*

An antecedent debt is one which was incurred only prior to the security sought to be enforced but must be quite independent of it. (*Abdul Raoof and Harrison*, JJ.) LEIK SHAH *v.* DINA NATH. 63 I.C. 516.

——*Debts—Antecedent debts—Promissory note—Deposit of title deeds—Personal covenant—Liability of ancestral property for debts of father.*

Where moneys are advanced to a Hindu father and a pro note is taken for the amounts advanced and subsequently the title-deeds of properties are deposited as collateral security, in a suit by the creditor to enforce the debt, *held*, that the promissory note debt remained a simple money debt, though subsequently secured by a deposit of title-deeds, and that being dissociated in fact from the mortgage, it constituted an antecedent debt for which the

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whole of the family properties were liable including the shares of the sons. Per *Spencer*, J:—The personal covenant contained in an earlier mortgage and subsisting at the time of a later mortgage cannot constitute an "antecedent debt" in a legal sense. A personal covenant given by a father at the time of entering into a mortgage does not constitute an antecedent debt. 39 A. 437; 44 A. 368, Rel.; 60 I.C. 177, diss. Per *Devadoss*, J.:—A personal covenant in a prior mortgage can be an antecedent debt in respect of a subsequent mortgage of the same properties. 39 A. 437; 44 A. 368; 21 C.W.N. 957, Rel. (*Spencer and Devadoss, JJ.*) VADAMALAI PILLAI *v.* SUBRAMANIA CHETTIAR. (1923) M.W.N. 57 (2) = 16 L W. 936 = 1923 Mad. 262.

———*Debts—Antecedents debts—Prior mortgage debt.*

An independent debt, not immoral or illegal, contracted by a Hindu father, on the security of the joint estate antecedent to the mortgage debt sued on, can be treated as an antecedent debt so as to support the charge on the son's shares also to the extent of the sums secured on the prior mortgage. The well settled rule of law in the Madras Presidency that a Hindu father has power to alienate the joint family properties for an antecedent debt where such antecedent debt has been contracted on the security of the family property is not affected by the decision in 39 All. 437 (P. C.). 35 M. L.J. 382, Overruled. (*Wallis, C.J., Oldfield, Sadasiva Aiyar, Coutts-Trotter and Seshagiri Aiyar, JJ.*) ARUMUGAN CHETTY *v.* MUTHU KOUNDAN. 42 Mad. 711 = 37 M.L.J. 166 = 9 L.W. 865 = (1919) M.W.N. 409 = 52 I.C. 525 = 26 M.L.T. 96 (F.B.)

———*Debts—Antecedent debts—Prior mortgage.*

An alienation by the father of a Hindu joint family is binding on the sons under two circumstances (1) where the alienation is for purposes of family necessity, (2) where it is for discharging an antecedent debt incurred by the father. The expression 'antecedent debts' applies only to debts incurred antecedently on the father's sole responsibility and wholly apart from the ownership of joint testator the security afforded or supposed to be available by such joint estate. A prior mortgage which has not been proved to have been created to discharge a debt antecedent to it cannot be treated as an antecedent debt for the purpose of binding the sons' interest in co-parcenary property in a subsequent mortgage. (*Spencer and Krishnan, JJ.*) BADAGALA JOGI NAIDU *v.* BENDALUM PAPIAH NAIDU. 48 I.C. 289 = 35 M.L.J. 382.

[This is no longer law in Madras See 52 I.C. 525 = 42 Mad. 711 (F.B.)]

———*Debts — Antecedent debts — Future liability.*

Debts to arise in future through failure of consideration are not antecedent debts due at time of sale for the purpose of validating the sale. (*Sadasiva Iyer and Spencer, JJ.*) SUBBAIYA MUDALIAR *v* THULASI MUDALIAR. 14 M.L T. 357 = 1 L W. 65 = 22 I.C. 44 = (1914) M.W.N. 16.

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———*Debts—Antecedent debts—Mortgage incurred previously.*

It is settled law that a mortgage executed by a father is not an antecedent debt since it is not incurred by the father independently of the security of the joint family property. 39 A. 437, Foll. (*Prideaux, A.J.C.*) PURNIA *v.* SONIA. 1923 Nag. 23.

———*Debts — Antecedent debts — Mortgage debt if can be so regarded—Son's liability.*

Under the Hindu Law a mortgage debt contracted by the father on the security of the family properties is not an antecedent debt for which the son would be liable. 39 A. 437; 41 A. 235; 41 A. 529; 5 P.L.J. 120; 15 N.L.R. 88; 16 N.L.R. 64, Rel. (*Prideaux, A.J.C.*) BALOO *v.* GODAWARI BAI. 5 N L J. 238 = 1922 Nag. 186.

———*Debts—Antecedent debts—Liability for—After-born sons.*

Where a mortgage of family property executed by a Hindu father before the birth of any son is renewed by another mortgage after the birth of a son, the latter mortgage is binding as an antecedent debt on the son's share of the family property. (*Batten and Kotwal, A.J.Cs.*) SHEO NARAIN *v.* NATHU. 5 N.L J. 114 = 1922 Nag. 1.

———*Debts — Antecedent debts— What is—Test.*

To make a debt, which is in fact antecedent in point of time, not antecedent in the sense of the ruling in *Sahu Ram's* case. 39 A. 437 (P.C.), it must be found that there was an understanding between the creditor and the debtor at the time of the loan that it will be secured later by a mortgage of the joint estate. The true test is whether the payment of the advance and the transfer securing its payment are a single transaction. 9 N.L.R. 74; 14 N.L.R. 41, Rel. (*Kotwal and Prideaux, A.J.C.*) PANDURANG *v.* KESHORAO. 64 I.C. 718.

———*Debts—Antecedent debts — Alienation by father—Son's liability.*

Even during the father's lifetime an alienation for his antecedent debts binds the shares of his sons in the co-parcenary property. Alienation includes a mortgage as well as a sale. 39 All. 437, Appl. (*Mitra and Prideaux, A.J.Cs.*) RATANCHAND *v.* SHEO CHARAN. 51 I.C. 28 = 15 N.L R. 88.

———*Debts—Antecedent debts—Mortgage.*

A prior mortgage over joint family property created by a Hindu father cannot be treated as an antecedent debt for the purpose of binding the sons' interest in the co-parcenary property by an alienation. (*Mitra, A.J.C.*) DILESHRAM BRAHMAN *v.* NOHAR SINGH. 68 I.C. 198.

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———*—Debts—Antecedent debts—Enforceable against the son during father's lifetime — Immoral or illegal purposes—Onus.*

The pious obligation of a Mitakshara son to pay his father's debts is not during his father's lifetime, a ground for giving effect as against the son, to a mortgage of ancestral joint family property executed by the father to secure a debt which is neither antecedent nor justified by legal necessity. A loan made to the father on the occasion of such a mortgage is not an "antecedent" debt and if the loan is not justified by the legal necessity the mortgage is to that extent inoperative as against the son's share. 39 All. 437, P.C. and 9 N.L.R. 74, Ref. If in a suit to enforce such a mortgage the son is impleaded as a party he can show that any antecedent debt forming part of the consideration is tainted with immorality; but it is not incumbent on him to go further and prove that when the debt was contracted, the creditor was aware or might have been aware of the immoral purpose for which the money was taken. 28 All. 508, Foll. (*Drake Brockman*, J.C.) DILLI SINGH *v.* BINA. **44 I.C. 806 = 14 N.L.R. 41.**

———*—Debts—Antecedent debts—Test of.*

The true test seems to be whether the payment and the transfer are in reality a single transaction or not. Religious duty of son to pay off debt must be distinguished from liability of son to respect an alienation by the father. (*Drake-Brockman*, J.C.) HIRA RAU *v.* UDHI RAU. **19 I.C. 861 = 9 N.L.R. 74.**

———*—Debts—Antecedent debts—Mortgage.*

The definition of an antecedent debt as one "incurred irrespective of the credit obtainable from joint family property" is to be regarded as one to be construed in the light of the particular facts before a Court and as not excluding from the category of antecedent debt money borrowed on a hypothecation bond since the personal liability of debts so secured continues to exist independently of the hypothecation. A usufructuary mortgagor is not as such personally liable to pay the loan. It is open to the alienee to invoke the antecedency of the father's debts to support an alienation as against the son even during the father's life-time. 39 A. 437; 23 O.C. 211, Ref. (*Ashworth*, J.C.) JAMNA PRASAD *v.* BALBHADDAR. **25 O.C. 388 = 9 O.L.J. 601 = 1923 Oudh 147.**

———*—Debts— Antecedent debts— Alienation by father—Pro-notes.*

Where a mortgage was taken by the creditor in lieu of pro-notes executed by the father. *Held*, the effect of the novation of the contract was practically to render the earlier bonds unenforceable. The consideration of the mortgage is therefore a good consideration binding on the sons who were charged under the Hindu Law with the responsibility of paying the debts due by their father who died during the pendency of the suit on the mortgage. (*Kanhaiya Lal*, J.C.) RAM SINGH *v.* MT. RAGHUBANSA. **26 O.C. 201 = 9 O. & A.L.R. 29 = 1923 Oudh 3.**

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———*—Debts — Antecedent debts— Personal liability under mortgage—Alienation by father.*

To justify an alienation of joint family property by a father on the ground of antecedent debt, there must be not only antecedency in time but also true dissociation in fact. In the absence of proof of such a debt, the sons are not precluded from impeaching the alienation. The personal liability of a Hindu father executing a usufructuary mortgage, in case of dispossession of the mortgagee, does not constitute debt which can be treated as antecedent, 39 A. 437; 31 A. 176; 21 O.C. 200; 23 O.C. 204, Ref. (*Daniels*, J.C.) MUSSAMMAT MANZURAN BIBI *v.* JANKI PRASAD. **9 O.L.J. 38 = 1922 Oudh 80.**

———*—Debts—Antecedent debts — Essentials.*

An antecedent debt must not only be prior in time but must be quite separate from the mortgage in question. If a person borrows money on a mortgage, a little more than a fortnight after a prior mortgage, there is no separation so as to render the latter an antecedent debt. (*Daniels*, A.J.C.) UMRAO SINGH *v.* GAYA PRASAD. **60 I.C. 647 = 23 O.C. 374.**

———*—Debts—Antecedent debts—Pious obligation of the sons—Divided sons—Liability of.*

Where an earlier bond carried a personal liability to repay the amount borrowed and the amount secured by a subsequent deed was credited towards the payment of earlier deed, *held*, since the entire amount of the earlier deed was borrowed to repay money debts not secured by joint family property was an antecedent debt. The question of antecedent debts becomes material only when legal necessity cannot be established. The pious obligation of a son or a grandson to pay off his ancestral debts does not depend on whether the two were joint or separate in estate because the doctrine is found on religious considerations to which the question of separation is entirely irrelevant. Where the debt is one which the father himself was under a pious obligation to pay, a subsequent debt incurred to pay that debt is an antecedent debt binding on his sons in turn. (*Daniels and Wazir Hassan*, A.J.Cs.) RAM SARAN *v.* MANGAL SINGH. **60 I.C. 219 = 23 O.C. 327.**

———*—Debts—Antecedent debts — Mortgage debt in absence of personal obligation.*

A mortgage debt is not as such an antecedent debt unless coupled with a personal obligation to pay the debt. (*Daniels and Wazir Hasain*, A.J.Cs.) RAM DEI *v.* SURAJ BAKSHA. **23 O.C. 204 = 7 O.L.J. 509 = 60 I.C. 117 = 2 U.P.L.R. (J.C.) 166.**

———*—Debts — Antecedent debts—Arrangements to pay off decree—Legal necessity.*

A Hindu saved his family estate by a mortgage from an execution sale to pay off the

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amount of a decree. *Held*, the arrangement was for the benefit of the family and amounted to antecedent debt. A son would be under a pious obligation to satisfy the mortgage. (*Kanhaiya Lal*, A.J.C.) HARIHAR DAT *v.* MATHURA PRASAD. 7 O.L.J. 467 = 57 I.C. 599 = 2 U.P.L.R. (J.C.) 143.

———*Debts—Antecedent debts—What are.*

Joint family property may be sold or charged by father to discharge an antecedent debt; *i.e.*, a debt incurred not only prior to the date of the sale or charge but incurred wholly apart from the ownership of the joint estate or the security afforded or supposed to be afforded by it. After joint family property is thus sold or mortgaged, no question as to whether the antecedent debt was incurred for legal necessity or other purposes binding upon the sons or whether the transaction entered into by the father is enforceable against the sons during his lifetime arises, 39 All. 437, (P.C.) Ref. (*Lindsay*, J.C.) PUDAI RAM *v.* BAIJNATH LAL. 23 O.C. 264 = 56 I.C. 745 = 7 O.L.J. 273.

———*Debts—Antecedent debts—What are.*

A debt which is not entirely disconnected with the subsequent debt, is not an antecedent debt merely becaue it is only precedent to such subsequent debt. (*Ashworth*, A.J.C.) RAM NARAIN *v.* LALTA PRASAD. 53 I.C. 664 = 6 O.L.J. 504.

———*Debts—Antecedent debts — Mortgage—Liability of sons.*

A debt could not be regarded antecedent so as to bind the sons as such, unless it had been incurred irrespective of the credit obtainable from the joint family property. As it had not been shown that the debts, for the payment of which the money was borrowed by the father had been so incurred, the sons of the mortgagor were not liable to pay the mortgage debt. (*Lyle and Ashworth*, A.J.Cs.) CHANDIKA BAKHSH SINGH *v.* WIDOW OF JAGAN SINGH. 52 I.C. 449 = 6 O.L.J. 331.

———*Debts — Antecedent debts—Test of—Prior and subsequent creditors need not be different—Mortgage debt.*

To constitute an antecedent debt binding on the sons, the prior and the subsequent creditor may not necessarily be different persons nor the father dead at the time the subsequent creditor claims his debt incurred by the father to satisfy the prior debt. But such debt must not have been secured by a mortgage of the joint family property and that the prior and the subsequent debts should not be contemporaneous in fact. 39 All. 437; 21 O.C. 200, Rel. (*Lyle and Ashworth*, A.J.Cs.) MUHAMMAD BAQAR ALI KHAN *v.* HAZARI. 52 I.C. 108 = 6 O.L.J. 297.

———*Debts—Antecedent debts—Mortgage.*

Where there is a personal debt enforceable apart from the prior mortgage, it is an antecedent debt as to support an alienation to discharge the mortgage. (*Daniels, and Lyle*' A.J.Cs.) GURU SAHAI *v.* GIRDHARI LAL. 22 O.C. 84 = 1 U.P.L.R. (J.C.) 54 = 52 I.C. 75 = 6 O.L.J. 411.

———*Debts—Antecedent debts—Mortgage.*

A mortgage of family property to pay an antecedent mortgage is not justified unless the antecedent mortgage itself is justified. A prior mortgage debt cannot be an antecedent debt for it was not incurred apart from the security of the property. 39 All. 437, (P.C.) Ref. (*Kanhaiya Lal*, A.J.C.) KESHO DUTT *v.* RAM SUNDAR. 22 O.C. 26 = 6 O.L.J. 244 = 50 I.C. 880 = 1 U.P.L.R. (J.C.) 86.

———*Debts—Antecedent debts — Alienation by father.*

Alienation by father for so called antecedent debts is not valid if the transferee was the original creditor and could not prove necessity for the prior debts. (*Kanhaiya Lal*, A.J.C.) HARPAL SINGH *v.* HARALAH BAHADUR SINGH. 22 O.C. 16 = 50 I.C. 795 = 1 U.P.L.R. (J.C.) 82.

———*Debts—Antecedent debts—Mortgage—Personal covenant in simple mortgage—Son's liability.*

The personal obligation to repay, compromised in a simple mortgage may amount to an antecedent debt which the sons may be bound to discharge if the debt was not incurred for illegal or immoral purposes. 39 All. 437, Foll. (*Kanhaiya Lal and Daniels*, A.J.Cs.) RAMAN LAL *v.* RAM GOPAL. 21 O.C. 200 = 47 I.C. 987 = 5 O.L.J. 629.

———*Debts—Antecedent debts—Barred debt.*

Barred debts are not "antecedent debts." 19 Bom. L.R. 69, Ref. A surety debt is binding on the sons. (*Stuart*, J.C.) DEO NARAYAN SINGH *v.* LAL HARI HAR SAHEIN SINGH. 38 I.C. 821 = 20 O.C. 1.

———*Debts—Antecedent debts—Meaning.*

Money taken by a Hindu father at the time of the alienation of the ancestral property or as part and parcel of the transaction is not an antecedent debt. 29 Mad. 200; 21 All. 176; 14 O.C. 299, Ref. (*Stuart and Kanhaiya Lal*, A.J.Cs.) BAKTAWAR SINGH *v.* RAM SINGH. 36 I.C. 44 = 3 O.L.J. 289.

———*Debts—Antecedent-debts—Question of—When arises.*

The defence of antecedent debt arises only when the sons are impeaching the alienation made by their father and does not arise when one brother is challenging the alienation of another brother. (*Lindsay*, A.J.C.) BINDA PRASAD *v.* GAYA PRASAD SINGH. 18 I.C. 857.

———*Debts—Antecedent debts — Mortgage debts.*

The doctrine of antecedency applies where the debt is one incurred in substance and reality antecedently to the mortgage whether or not the debt so incurred was secured by a

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charge on the family property. Where the debt is one incurred by the heads of all the branches of a joint Hindu family the whole family property can be made liable including the interests of all the sons and grandsons. 6 Pat. L J. 526 ; 42 M. 713 foll. (*Miller*, C.J. *and Bucknill*, J.) HARI PRASAD SINGH *v.* SOURENDRA MOHAN SINHA. **3 P.L.T. 709 = 1922 P. 450.**

———*Debts — Antecedent debts — Doctrine where applies.*

Per Bucknill, J.—The doctrine of antecedent debts applies only when the relationship of father and son exists. (*Das and Bucknill*, JJ.) KALIKA NAND *v.* SHIVA NANDAN. **63 I.C. 625.**

———*Debts—Antecedent debts—Mortgage by father.*

Per *Curiem* (*Dawson Miller*, C.J. *diss.*)—A prior mortgage by father may also be an antecedent debt, so as to be a valid consideration for a subsequent sale or mortgage, if it is not only prior in time but also independent of and unconnected with the subsequent mortgage or sale and if the debt was not contracted for immoral or illegal purposes. (*Miller*, C.J., *Jwala Prasad Das*, *Adami and Bucknill*, JJ.) MATHURA MISRA *v.* RAJKUMAR MISRA. **2 P.L.T. 407 = 62 I.C 132 = 1921 Pat. 245 (F.B.)**

———*Debts—Antecedent debts—Secured and unsecured.*

Per *Jwala Prasad*, J.—No distinction such as secured and unsecured antecedent debts can be made. If a real antecedent mortgage independent of and unconnected with a subsequent mortgage is proved, there is no reason why the family property cannot be validly mortgaged subsequently for such a debt just as in the case of a personal debt. (*Jwala Prasad and Ross*, JJ.) MICHU MISSIR *v.* BABHADRA PRASTI. **62 I.C. 116 = 2 P.L.T. 147.**

———*Debts—Antecedent debt—What is.*

To constitute an antecedent debt, the debt must have firstly been to discharge an obligation antecedently incurred, and, secondly, the obligation antecedently incurred must have been incurred wholly apart from the ownership of the joint estate. (*Miller*, C.J. *and Mullick*, J.) BANKHANDI RAI *v.* KISHORIMONDAL. **2 P.L.T. 17 = 6 P.L.J. 72 = 61 I.C. 102 = 1921 Pat. 113.**

———*Debts—Antecedent debts—What are—Son's liability.*

A Mitakshara father as the manager of the joint family has got the power to alienate the joint family properties for family necessity or payment of antecedent debts. This is an exception to the general rule that no co-parcener of the Mitakshara joint family, without the consent of the other co-parceners, can sell or mortgage such properties. An antecedent debt is neither a debt which is prior in time to the father's security but not quite independent of it, nor a debt prior in time to the suit in which it was sought to be enforced, but a debt which is not only prior in time but incurred completely apart from the security which is sought to be enforced. (*Coutts and Sultan Ahmad*, JJ.) SUKDEO JHA *v.* JHAPAT KAMAT. **3 P.L.J. 120 = 1920 Pat. 67 = 1 P.L.T. 49 = 54 I.C. 946 = 2 U.P.L R P. 39.**

HINDU LAW—Debts—Co-parcener.

———*Debts—Co-parceners—Liability of.*

A debt incurred by the manager of the family for purchase of a house, which is purchased with the consent of all the adult co-parceners, is binding on the family. (*Richardson and Banerjee*, JJ.) PITAMBAR LAL *v.* SITAL. **25 I.C. 263 = 12 A.L J. 641.**

———*Debts—Co-parcener — Liability of—Joint family.*

When a debt is contracted by one member of an admittedly joint Hindu family the creditor must show that the debt was raised for joint family purposes; the presumption would be the other way. 45 P.R. 1899; 59 P.R. 1893; 34 Bom. 72, Ref.; 34 All. 135, Not Foll. (*Johnstone*, C.J.) BRIJ LAL *v.* JAISHI RAM. **172 P.L.R. 1915 = 30 I.C. 500 = 106 P.W.R. 1915.**

———*Debts — Co-parcener — Debt by one member—When binding on others.*

A debt by a member of a family (though not the manager) which is incurred on behalf of the family is binding on all the members. The borrowing member will be deemed to be the agent of the manager. It is a case of a combined application of the Hindu Law and the law of agency and involves no unjustifiable extension of either. (*Oldfield and Ramesam*, JJ.) OHILISETTI VENKATAKRISHNAIAH *v.* ATAYAM SUBBIAH. **14 L. W. 520 = 41 M L.J. 851 = 68 I.C. 462 = (1921) M.W.N. 830.**

———*Debts—Co-parcener—Decree against—Liability of property.*

If a money decree is passed against a member of a joint Hindu family, the family property is liable to the extent of the share of that member, provided that interest was attached in execution of the decree during the lifetime of the judgment-debtor. (*Batten*, A.J.C.) JAGRITDAS *v.* BHAGISAO. **28 I.C. 362 = 11 N.L.R. 46.**

———*Debts—Co-parcener—Liability of.*

Members who have ratified and adopted debt so as to warrant their being treated as contractory parties are personally liable. 22 Mad. 166, Rel. (*Atkinson* J.) SITARAM SONAR *v.* RAJ KUMAR NONIA. **38 I C. 691.**

———*Debts—Co-parceners—Liability of.*

The onus is on creditor to make enquiries as to necessity for the loan and to show that he made such enquiries if he wants to make all

HINDU LAW—Debts—Discharge.

the members of the joint family liable for a debt. (*Chapman and Atkinson*, JJ.) MANDIL DAS *v.* MEGH NARAIN. 1 P.L.J. 89 = 34 I.C. 742 = 3 P.L.W. 46.

Debts—Discharge.

——*Debts—Discharge*,

Where debts due to family are sometimes paid to the father and sometimes to the son, payment to son is good discharge. (*Shah Din*, J.) JAHANGIR *v.* GANDA SHAH. 69 P.L.R. 1911 = 10 I.C. 838 = 230 P.W.R. 1911.

Debts—Father.

——*Debts—Father—Mortgage — Mortgage by father not proved immoral—Decree against father and sons—Form of.*

The mortgage being one executed by a *Mitakshara* father, and the sons having failed to show that the loan was taken for immoral purposes; and the mortgagee having failed to prove legal necessity, a decree was passed to the effect, *viz.*, mortgage-decree against the share of the father, and if the sale of that share was insufficient to satisfy the decretal amount balance to be realised by sale of the son's shares and interest six months' time being allowed for redemption. (*Chaudhuri and Newbould*, JJ.) BABU KRISHNA PRASAD *v.* BABU RAMPERSHAD SINGH. 33 I.C. 990 = 20 C.W.N. 808.

——*Debts — Father — Insolvency— Sons' share vests in Official Assignee—Remedy of sons.*

Where a father in a joint Hindu family, becomes an insolvent, his son's share vests in in Official Assignee. The son if he desires to challenge such vesting, he must file a suit against the Official Assignee and must show that the father's debts were acquired for immoral purposes. (*A. Raoof*, J.) BIHARI *v.* SATNARAIN. 3 Lah. 329 = 1923 Lah. 1.

——*Debts—Father—Accounts—Son's liability—Grandson.*

The sons and grandsons are liable for the debts contracted by a father of a joint Hindu family who had a running account on the basis of which a balance was struck. (*Abdur Raoof*, J.) HAYMARAM *v.* CHATTA RAM. 2 Lah. L.J. 831.

——*Debts—Father — Revival of barred debts.*

The manager of a Hindu family has no power to bind the co-parceners by reviving a barred debt but his sons will be liable as it is neither immoral nor illegal. (*Lindsay and Kanhaiyalal*, A.J.Cs.) HARIHAR BAKSH SINGH *v.* BHARAT PRASAD. 20 I.C. 890 = 16 O.C. 188.

Debts—Immoral or Illegal.

——*Debts—Immoral or illegal—Proof of.*

A general charge of immorality is not sufficient to prove that the debts were contracted by a father for immoral purposes. (*Lord Macnaghten*). SRI NARAIN *v.* RAGHUBANA RAI. 17 C.W.N. 124 = 25 M.L.J. 27 = 17 I.C. 729 = (1913) M.W.N. 768 (P.C.).

——*Debts—Immoral or illegal.*

General evidence of immoral character or misconduct is insufficient to prove that the debts in question were tainted with immorality. (*Mears*, C.J. *and Banerjee*, J.) RAM SARUP *v.* BHARAT SINGH. 43 All. 703 = 64 I.C. 763 = 19 A.L.J. 744.

——*Debts—Immoral or illegal—Antecedent debt—Liability of sons and grandsons to pay off.*

The sons and grandsons of a Hindu are liable on a mortgage executed by him to pay off a simple money decree passed against him for not having accounted for some money belonging to a person whose agent he was as the consideration was an antecedent debt; but if such an antecedent debt relates to a transaction tainted with immorality its existence would not entitle the subsequent mortgage to be enforced against the joint family property. (*Banerjee and Piggott*, JJ.) NIDDHA LAL *v.* COLLECTOR OF BULANDSHAHR. 35 I.C. 209 = 14 A.L.J. 610.

——*Debts—Immoral or illegal—Indemnity—Son's pious obligation.*

Ancestral property in the hands of a Hindu son is liable for money due under an indemnity clause in a sale-deed, executed by his father. (*Richards and Banerjee*, JJ.) RAGUNANDAN PRASAD *v.* CHEM RAM. 27 I.C. 895.

——*Debts—Immoral or illegal—Libel—Liability of son.*

Debt incurred for the purpose of filing an appeal in a libel case is binding on the son. (*Richards and Griffin*, JJ.) SUMAR SINGH *v.* CHAUBE LIDAHAR. 33 All. 472 = 9 I.C. 629 = 8 A.L.J. 306.

——*Debts—Immoral or illegal—Debt due to breach of trust.*

A debt which a father has to pay owing to a breach of duty as a trustee cannot be regarded under Hindu Law as tainted with immorality; and his sons are liable to pay the same. 37 Mad. 458; 39 Cal. 862; 32 Bom. 348, Rel. on. The liability of the sons under Hindu Law to pay their father's debt, not tainted with illegality or immorality, is not affected by the fact that the father is alive at the time. The onus of proving that criminality attached to the debt is on the sons. (*Scott*, C.J. *and Shah*, J.) HANMANT *v.* GANESH. 43 Bom. 612 = 21 I.C. 612 = 21 Bom. L.R. 435.

——*Debts—Immoral or illegal—Contravention of Government rules.*

Debts of father for carrying on private trade contrary to Government servants' conduct rules is not illegal or immoral and so the sons are liable in respect of such debt. 32 Bom. 348, Dist. (*Scott*, C.J. *and Shah*, J.) RAMAKRISHNA TRIMBAKNADKARNI *v.* NARAIN SHIVRAO ARAS. 40 Bom. 126 = 31 I.C. 301 = 17 Bom. L.R. 955.

HINDU LAW—Debts—Immoral or illegal.

———*Debts—Immoral or illegal—Proof.*

A mortgage executed by a Hindu father binds the son's interest in the property unless the particular loan was incurred for immoral purposes. Simple proof that the father was addicted to immorality and extravagance is not enough. A decree for a personal debt of the father, not illegal or immoral, may be enforced by sale in execution in his lifetime of the entire family estate, including son's interest. 12 Mad. 142, Foll. (*Scott*, C.J. *and Batchelor*, J.) DATTATRAYA VISHNU *v.* VISHNU NARAIN. **36 Bom. 68=12 I.C. 949= 13 Bom. L.R. 1161.**

———*Debts — Immoral or illegal—Son's liability to pay father's debt—Criminal misappropriation.*

Property was bought by H. & T. at a revenue sale but the sale having been reversed, T withdrew the amount of the purchase-money. In a suit by H, to recover his share of the purchase-money a decree was passed against T in execution of which ancestral property belonging to T was sold. *Held*, that the debt was not immoral and the son was bound to repay it, and that, therefore he was not entitled to recover his share of the ancestral property. (*Chapman and Mullick*, JJ.) HARI SINGH *v.* SANT PRASAD SINGH. **32 I.C. 969.**

———*Debts—Immoral or illegal—Proof—Son's liability.*

Under the Mitakshara, the onus of proving the illegal and immoral nature of the debt contracted by the father lies upon the son setting it up and is not discharged by proof of general immorality or extravagant life. The connection between the particular debt and the immorality must be proved. (*Mookerjee and Beachcroft*, JJ.) HAZARMALL *v.* ABANI NATH. **17 C.L.J. 38=18 I.C. 623= 17 C.W.N. 280**

———*Debts—Immoral or illegal—Omission to render accounts—Liability of son.*

Failure to account for money may create a civil liability; but it does not necessarily amount to a criminal act. Where a *Mitakshara* father failed to account for the money of his principal in his hands. *Held*, that his sons were bound to pay this debt. 39 Cal. 862, Rel. (*Mookerjee and Beachcroft*, JJ.) KRISHNA CHARAN MAHANTI *v.* RADHA KANTA ROY. **16 I.C. 410.**

———*Debts—Immoral or illegal—Evidence of—Son's liability.*

A father's debts will be binding on the sons unless incurred for illegal or immoral purposes. General evidence of extravagance and immorality on the part of the father is not sufficient. 18 Cal. 21, Rel on. (*Chitty and Teunon*, JJ.) SHIBESHUR PRASAD BHARAT *v.* BRIJ MOHAN MISIRI. **14 I.C. 183.**

———*Debts—Immoral or illegal—Surety—Liability of son.*

HINDU LAW—Debts—Immoral or illegal.

A son is liable for the debts incurred by father as surety even where no money has been advanced. (*Coxe and Imam*, JJ.) RASIK LAL MANDAL *v.* SINGESHWAR ROY. **39 Cal. 843=16 C.L.J. 107= 14 I.C. 147=16 C.W.N. 1103.**

———*Debts—Immoral or illegal—Decree of Court—Father's powers.*

No substantial difference in principle can by made between an obligation to repay moned actually borrowed, and an obligation created by a judgment of Court. The liability imposer by the Court upon a *Mitakshara* Hindu fatheto indemnify a person for damages to his proe perty creates a debt which may be justly recovered from the ancestral property in the hands of his son. Meaning and scope of "*Auyavaharika* debts" discussed. (*Mookerjee and Carnduff*, JJ.) CHAKORI MAHTON *v.* GANGA PRASAD. **39 Cal. 862= 16 C.W.N. 819=12 I.C. 609=15 C.L.J. 228.**

———*Debts—Immoral or illegal—Failure by father to render accounts—Son's liability.*

Where defendant's father as manager of plaintiff's estate during his minority and while it was under Court of Wards failed to account. *Held*, liability imposed by the Court upon the father to indemnify the person with whose property he had improperly interfered creates a debt for which the ancestral property in the hands of the son might justly be held liable. Admittedly the father was not criminally prosecuted and the suit was one for accounts which he had failed to deliver. Every breach of civil liability does not necessarily involve a mortal turpitude, and it has not been shown that the debt in question was criminal in law for the discharge of which the son is not liable. (*Abdul Raoof and Moti Sagar*, JJ.) GUR SARAN DAS *v.* MOHAN LAL. **4 Lah. 93= 1928 Lah. 399.**

———*Debts—Immoral or illegal—Proof—Creditor party to waste.*

Where it is alleged by the son that a particular debt was contracted for such purpose, the burden lies on him to prove his allegation. The burden is not shifted by showing that the father lived an extravagant or immoral life; a direct connection between the debt and the father's immorality, must be shown but where the creditor is fully aware of the waste by the father, the son is not liable for the debt. (*Shah Din and Le-Rossignol*, JJ.) JASWANTI *v.* TEJ NARAIN. **120 P.W.R. 1917= 41 I.C. 192=10 P.R. 1918.**

———*Debts—Immoral or illegal—Onus.*

Where from one known source all necessary and legal debts of a person are defrayed all other loans are presumably expended on immorality. This presumption arises only when the debtors had no debts or business on which the loans *might* have been expended with propriety. 50 P.R. 1913, Ref. (*Chevis and Le Ressignol*, JJ.) INDAR NARAIN *v.* NANAK CHAND. **74 P.W.R. 1916= 32 I.C. 454=58 P.R. 1917.**

HINDU LAW—Debts—Immoral or illegal.

———*Debts—Immoral or illegal—Proof of—Son's liability.*

An illegal or immoral debt of the father is not binding on the son. Where the father was all along living an immoral life it will not be reasonable to call on the son to prove that this or that item of debt was incurred for this or that particular piece of immorality. (*Johnstone and Rattigan*, JJ.) SHIB NATH *v.* ALLIANCE BANK OF SIMLA, LTD, LAHORE.

110 P.W.R. 1915=218 P.L.R. 1915=
25 I.C. 480=3 P.R. 1915.

———*Debts—Immoral or illegal—Proof of—Joint family.*

A debt contracted by a Hindu father for an immoral purpose is not binding on the son, even though the property is acquired by the father himself. Isolated acts of immorality or even general immorality are not enough to prove that a debt for immoral purpose was incurred, but there must be a clear connection between the immoral life and the debts contracted. It is sufficient to prove that the borrower was at the time living a licentious life, beyond his means, and that he was without any business or occupation on which the money might legitimately be spent. (*Robertson and Beadon*, JJ.) RAM NATH *v.* BULAIRA.

80 P.R. 1913=69 P.L.R. 1913=
17 I.C. 785=15 P.W.R. 1913.

———*Debts—Immoral or illegal—Onus.*

To avoid liability for a debt of his father the son has to establish a direct connection between the debt and the alleged illegal or immoral purpose. The onus cast by law on the son is not discharged by evidence showing that the father was keeping a concubine and to that extent must have incurred additional expense. Direct evidence of the application of a debt for a specific immoral purpose is not always possible to obtain and it will be sufficient if the evidence is such that the Court could infer that the debt must have been incurred for immoral purpose. 15 Cal. 717; 14 Bom. 320; 36 Bom. 68. Foll. (*Abdur Rahim and Moore*, JJ.) MUTHUSAWMI GOUNDAN *v* ARUMUGA GOUNDAN. 89 I.C. 390=12 L.W. 169.

———*Debts—Immoral or illegal — Proof of.*

When a Hindu son seeks to escape liability for the debts contracted by his father on the ground that they were contracted for immorality, he ought to show by reasonable proof that there is a connection between the debts and the immoral purpose. The immoral character of the debts is not proved by showing that the father was leading an immoral life, that the income of the family was sufficient for the family needs and that there was no trade or business necessitating the borrowing of loans. 17 I.C. 785, not Foll. (*Sadasiva Aiyar and Spencer*, JJ.) DHULLIPALGA BUTCHAYYA *v.* KUPPA VENKATAKRISHNAYA.

88 I.C. 797=36 M.L.J. 296

HINDU LAW—Debts—Immoral or illegal.

———*Debts—Immoral or illegal—Surety.*

A Hindu son is bound to pay his father's debt contracted by him as surety if not for an illegal or immoral purpose and the claim can be enforced against him even during the lifetime of his father. (*Abdur Rahim and Ayling*, JJ.) SUBRAHMANYA AIYAR *v.* SHAH WALLACE & CO. 38 M.L.J. 402=12 L.W. 117=
88 I.C. 648=28 M.L.T. 107.

———*Debts—Immoral or illegal—Omission to account for moneys.*

Under the Hindu Law a person is liable to account for amounts collected by his father and grandfather in their capacity as trustees but subsequently misappropriated by them. The fact that the misappropriation would amount to a criminal offence does not affect his liability. Meaning of "*Avyavaharika*" debts in the Hindu Law discussed. (*Wallis*, C. J. *and Seshagiri Ayyar*, J.) GARUDA SANYASAYYA *v.* NEERELLA MUTHAMMA.

38 M.L.J. 661=9 L.W. 1=48 I.C. 740=
28 M.L.T. 86.

———*Debts — Immoral or illegal—Suretyship to pay on default—Different kinds of suretyship.*

A Hindu father entered into a suretyship obligation in the following words; "I shall make the said V pay the amount due under the said promissory note within two months from this date. In default of payment as aforesaid by the said person within said time, I shall pay the amount of principal and interest on the said promissory note and get back the said promissory note and the surety bond and the title-deeds." *Held*, that the promise amounted to a suretyship for payment and his sons are bound under the Hindu Law to pay the debt created thereby. There are three kinds of suretyship according to the Mitakshara for appearance for assurance and for payment. Distinction between the various kind of suretyship discussed. (*Wallis*, C.J. *and Spencer*, J.) THANGATHAMMA *v.* ARUNACHELLA CHETTIAR. 41 Mad. 1071=33 M.L.J. 229=
48 I.C. 76=(1918) M.W.N. 673.

———*Debts—Immoral or illegal—Proof of.*

Evidence to show that the father led an immoral life is not sufficient to exclude the father's right to sell his joint property. There must be evidence to show that the particular debts in question was contracted for an immoral purpose. (*Spencer and Krishnan*, JJ.) SUBBA RAO *v.* SWAMIA PILLAI. 47 I.C. 834=
7 L.W. 407.

———*Debts — Immoral or illegal—Mesne profits—Son's liability.*

Where in a suit against a Hindu father and his sons, mesne profits are decreed against the father only, the son's interest also could be proceeded against, since it was not a debt for which the sons are not liable. (5 Cal. 148 (P.C), Ref. to; 28 All. 388, Foll.) (*Ayling and Napier*, JJ.) ZANAMANDRA PAPIAH *v.* LANKA SUBBASASTRULU. (1914) M.W.N. 616=25 I.C. 396=
27 M.L.J. 275.

HINDU LAW—Debts—Immoral or illegal.

———*Debts—Immoral or illegal—Surety—Decree against father—Partition between father and son—Liability of son.*

A son is liable for the surety debt of his father only if they remained joint; but if there was a partition made even after the date of decree against the father, the son's property is not liable for such debt. 24 Mad. 555; 8 I.C. 131; 4 M.L.T. 277, Foll; 11 Bom. 37; 4 I.A. 247; 5 Cal. 148; 3 Cal. 21; 28 Bom. 383, Dist. (*Wallis*, C.J. *and Oldfield*, J.) DEVAGUPTAPU KAMESHWARAMMA *v.* VADADI VENKATASUBBA RAO **33 Mad. 1120=27 M.L.J. 112=24 I.C. 474=(1914) M.W.N. 742.**

———*Debts — Immoral or illegal— Fine—Enquiry by creditor as to neceessity.*

When a creditor suing the sons for debt of the father made enquiries and ascertained that the debt was required to pay off a fine imposed on the father, but did not proceed further to ascertain that the fine was paid when the father was convicted of a criminal offence the enquiry is not sufficient and the creditor is not protected. (*Miller and Oldfield*, JJ.) SAVUMIAN *v.* NARAYANAN CHETTIAR. **23 I.C. 218=15 M.L.T. 372.**

———*Debts—Immoral or illegal—Breach of trust.*

The liability of contribution arising out of a decree of Court directing re-imbursement of trust funds expended by the father along with other trustees, extended to the sons. (*Benson and Sundara Iyer*, JJ.) VENUGOPAL NAIDU v. RAMANANDHAN CHETTY. **37 Mad. 458=11 M.L.T. 427=14 I.C. 705=23 M.L.J. 61.**

———*Debts—Immoral or Illegal.*

The term "illegal" or "immoral" is used as a translation of the word Avyavaharika. A summary of the eight kinds of debts coming within that category which are specified in the texts is given in the judgment of Mukerjee, J. 39 C. 862 and it includes "promises without consideration" (*Hallifax*, A.J.C.) ARJUN *v.* CHHAGAN LAL. **6 N.L.J. 185=1923 Nag. 300.**

———*Debts—Immoral or illegal—Onus of proof.*

In cases of allegation that a particular debt was contracted for immoral purposes the onus of proving the immoral purpose is on the son and not on the creditor. Proof of immoral habits does not shift the onus on to the creditor. 31 All. 176, Dist.; 30 All. 156, Ref.; 14 Bom. 320, Foll. (*Mittra*, A.J.C.) BHIKA *v.* HARLAL. **45 I.C. 206.**

———*Debts—Immoral or illegal—Liability of son.*

The sons are not bound for money due under a contract of indemnity unless the transaction comes with term "*Vyavaharika*" lawful, usual or customary. (*Stuart*, J.C.) DEO NARAYAN SINGH *v.* LAL HARI HAR SARAN SINGH. **38 I.C. 821=20 O.C. 1.**

HINDU LAW—Debts—Immoral or illegal.

———*Debts—Immoral or illegal—Proof.*

To show that a particular debt was immoral, the sons must show their father's immorality as regards that particular debt and not only his general bad character. (*Stuart and Kanhaiya Lal*, A.J. Cs.) BAKHTAWAR SINGH *v* RAM SINGH. **36 I.C. 44=3 O.L.J. 289.**

———*Debts—Immoral or illegal—Liability of son—Determination of.*

The liability of son for debts of a father alleged to be immoral or illegal should be determined before the decree is passed and not in execution. (*Lindsay and Kanhaiya Lal*, A.J.Cs.) MAHADEO PERSHAD *v* GAJRAJ SINGH. **34 I.C. 897=3 O.L.J. 164.**

———*Debts—Immoral or illegal—Proof.*

General allegations of immorality on the part of a father is not sufficient to exempt the sons from their liability to discharge the father's debts unless they prove that the particular debts in question were contracted for immoral purposes. (*Lindsay* J.C. *and Kanhaiya Lal*, A.J.C.) NARENDRA BAHADUR *v.* ABDUL HAQ. **30 I.C. 216=2 O.L.J. 237.**

———*Debts—Illegal or immoral—Liability of son.*

Money borrowed for wrestling is not for illegal or immoral purposes. (*Tudball and Evans*, A.J. Cs.) JAI RAM *v.* SHEO SHANKER BARSH. **9 I.C. 406.**

———*Debts—Immoral or illegal—Burden of proof.*

Where a son impeaches an alienation by his father on the ground that the debts were incurred for immoral or illegal purposes, it is not necessary to prove that each item was expended for an immoral purpose. When a person is shown to be leading a licentious life and living beyond his means, the fact that there is no business proved on which the loans could have been expended raises a presumption that they must have been expended for licentious purposes. (*Pipon*, J.C.) BHAGAT SINGH *v.* RAM PARKASH. **69 I.C. 602.**

———*Debt—Illegal or immoral—Payment to a near relation.*

A debt by a Hindu father to pay to a near relation to repay certain trust money misappropriated by him, is neither immoral nor illegal. (*Dass and Ross*, JJ.) BENARES BANK *v.* JAGDIP NARAYAN. **6 P.L.J. 198=62 I.C. 465=2 P.L.T. 468.**

———*Debts—Immoral or illegal—Surety—Sons's liability—Liability of grandsons.*

A Hindu son or grandson governed by Mitakshara is liable for the debt of his father or grandfather contracted on a contract of a suretyship for the payment of money and which is *vyavaharika*, i. e., lawful, useful or customary unless the transaction is illegal or immoral. (*Coutts and Adami*, JJ.) BALAKRISHNA SAHAI *v.* SHAM SUNDAR SAHAY. **56 I.C. 963.**

HINDU LAW—Debts—Immoral or illegal.

———*Debts—Immoral or illegal—Decree—Liability of joint family property—Necessity.*

A debt created by decree against a Hindu father of a joint family in respect of money not accounted for by him is not an illegal or an immoral debt, especially when there is a finding that there was legal necessity for incurring the debt so created, and it may be recovered from the ancestral property belonging to the joint family. 39 Cal. 862; 3 Pat. L.J. 533. (*Mullick and Atkinson, JJ.*) GANESH RAI *v.* DEO SARAN AHIR. 4 P L.J. 692=52 I.C. 271=1920 Pat. 100.

———*Debts—Immoral or illegal—Surety—Surety against embezzlement.*

It is unlawful for the father of a joint family governed by the Mitakshara to stand surety against embezzlement and a debt incurred by him in so standing surety is illegal for which son's shares in family property are not liable. 44 Cal. 524; 15 C.L.J. 228, Rel. (*Chapman and Roe, JJ.*) SATYA CHARAN CHANDRA *v.* SATPIR MAHANTY. 51 I.C. 791=4 P.L J. 309

———*Debts—Immoral or illegal—Sums not accounted for by father.*

Mitakshara sons are bound by a sale of their property held in execution of a decree against their father even where it is not shown that the debt was not for legal necessity, unless they succeed in proving that the debt was an immoral debt. But every civil debt does not necessarily involve a moral stigma. 39 All 497; 44 Cal. 524 (P.C.); 31 All. 176, Rel. Moneys collected by a father as an agent and not properly accounted for are not immoral or illegal debts. 39 Cal. 862, Foll. and Rel. (*Mullik and Atkinson, JJ.*) MOHANTHA GADAHAR RAMUNAJ DAS *v.* GHANA SHYAM DAL. 47 I.C. 212=3 P.L.J. 533.

———*Debts—Immoral or illegal—Surety debt—Pious obligation*—Vyavarika.

It is not necessary that the father should have actually received money in order to create a debt which it would be the pious duty of the son to pay. A contractual liability to pay money is a debt enforcible against the son provided it is neither illegal nor immoral and comes within in the meaning of the term "*Vyavarika*" which means lawful, usual or customary. A Hindu is liable for the surety debt of his father or grandfather where the suretyship is for the payment of money. The suretyship contemplated by the Hindu Law is of the same kind as the Contract Act. (*Mullick and Thornhill, JJ.*) MATABIR PRASAD *v.* SRI NARAYAN. 4 P. L.W. 437=3 P. L.J. 396=46 I.C. 27=1918 Pat. 328.

———*Debts—Immoral or illegal—Expense of criminal case—Pious obligation of son.*

Under Mitakshara a son is under a pious obligation to pay the debt incurred by his father in defending himself against a criminal charge especially where the offence charged was not one involving any moral turpitude. It is not however his duty to repay the money borrowed by the father for paying the fines of his co-accused. (*Chapman, J.*) CHUMAN CHAUDHURY *v.* RAM SUNDER CHAUDHURY. 39 I.C. 861.

HINDU LAW—Debts—Liability.

———*Debts—Immoral or illegal—Damages—Breach of contract.*

Decree creates a debt indicating the liability of the son and the Court must look to the purpose for which the debt was incurred and not to the circumstances of the original liability. Debt of father arising out of a decree for damages for breach of contract to sell property held by him as trustee will be binding on son. (*Crouch and Hayward, A.J.Cs.*) SAMANMAL GANGUMAL *v.* MAGHANMAL VERSIMAL. 19 I.C. 378=6 S.L R. 180.

———*Debts—Immoral or illegal—Suretyship—Liability of minors.*

A Surety bond executed by members of the joint Hindu family for purposes not immoral, bind their heirs, especially when it is for family benefit (*i.e.,*) the sureties having got an appointment for their brother as cashier, (*Mr. Bosanquet*). GANGA SAHAI *v.* BOMBAY-BARODA, AND CENTRAL INDIA RY. 50 I.C. 248.

Debts—Liability.

———*Debts—Liability for—Father's debt.*

By the Mitakshara Law according to 44 Cal. 524, a judgment against the father of the family cannot be executed against the whole of the Mitakshara property if the debt in respect of which the judgment has been obtained was a debt incurred for illegal or immoral purposes. In every other event it is open to the execution creditor to sell the whole of the estate in satisfaction of the judgment obtained against "the father alone". These words could not be clearer and they are absolutely comprehensive. There are no limitations, qualifications or reservations to the effect that the debt must be incurred by the father representing the estate or purporting to be for the benefit of the estate or in some capacity other than his personal capacity. The words in 44 Cal. 524 are "*In every other event* it is open to execution creditor to sell the whole of the estate in satisfaction of the judgment obtained against *the father alone*" and there is nothing to qualify the words "the father alone." The decision in 44 Cal. 524 is to the effect that, once a simple money decree is passed against the father and manager of a joint Hindu family, that simple money decree can be executed by the execution creditor against the whole of the estate, and will operate against the interests of the sons, unless the debt has been incurred for illegal or immoral purposes. The decision in 15 A.L. J.R. 487 lays down an absolutely different proposition that joint family property cannot be transferred by an act of volition on the part of the manager, except with the consent of other co-parceners or for legal necessity or in payment of antecedent debts, and that the

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doctrine of the pious duty of a Hindu son to satisfy his father's debts can have no operation to validate such a transfer, so long at any rate as the father is alive. But in order to apply the principle of the second decision, there must be a transfer by the volition of the manager. (*Stuart*, J.) SHAMBU DIYAL SINGH *v.* ISWAR SARAN. 1923 All. 306.

——*Debts—Liability—Grandfather's debts—Liability of grandsons—Debt of granduncle accepted by grandfather.*

Where the joint family property was mortgaged in favour of the plaintiff by the grandfather of the defendants along with other adult members of the joint family in favour of the plaintiff and it was found that the mortgages had been executed in renewal of an earlier mortgage which in its turn was executed, in satisfaction of a debt of the grandfather's brother. *Held*, in a suit to enforce the mortgage, that the grandfather of the defendants having accepted the debts of his brother as a debt payable by the joint family, the grandsons were liable for the mortgage. (*Piggott and Sulaiman*, JJ.) RAM RATAN MISIR *v.* KAPIL DEO SINGH. L.R. 8 A. 541=1923 All. 20.

——*Debts — Liability of heirs — Suit against widow and brothers of deceased—Form of decree.*

In a suit against the widow and brothers of deceased executant of a bond not for a joint family debt a decree should be given against the widow for assets in the hands of the widow. (*Piggott*, J.) PAHLWAN SINGH *v.* JANKI. 40 All. 17=42 I.C. 858=15 A L.J. 849.

——*Debts—Liability for—Father and son*

Where father borrowed first and then son took upon himself liability and borrowed further, *held*, the father is not liable even for the debt incurred by him unless family necessity has been proved. (*Campbell*, J.) BALLA *v.* BARU MAL. 1923 Lah. 685 (2).

——*Debts—Liability.*

Debt incurred by any member of a joint Hindu family cannot bind the other members unless it is shown from the facts of the case that the loan was either taken for the benefit of the family or for the purposes of a joint family business. (*Leslie-Jones*, J.) BHURA *v.* BANARASI DAS. 174 P.L.R. 1915=30 I C. 481 (2)= 113 P.W.R. 1915.

——*Debts—Liability of heir.*

A person claiming a share in a deceased Hindu's property is bound to contribute proportionally to the amount required for liquidating his debts and funeral expenses. (*Robertson and Beadon*, JJ.) THAKAR SINGH *v.* UJAGAR SINGH. 8 P.W.R. 1913=18 I.C 583= 26 P.L.R. 1913.

——*Debts—Liability—Debts by managing member.*

Members of a joint Hindu family are liable only to the extent of the joint family property, for the debts contracted by the managing member for family necessity and the liability cannot be enforced personally against them. (*Kumaraswami Sastri*, J., *Krishnan and Odgers*, JJ.) P. RAMA PATTER *v.* A. VISWANATHA PATTER. 41 M L J. 567=15 L.W. 130= (1922) M.W.N. 27=66 I.C 155= 30 M L.T. 209.

——*Debts—Liability—Partition.*

A partition of a joint family, after a debt is incurred for the benefit of the family, does not relieve the co-parceners from liability for the debt to the extent of the family property in their hands. (*Sadasiva Iyer and Napier*, JJ.) MUTHU REDDY *v.* CHINNASAMI REDDI. 12 L W. 403=(1920) M.W N. 613= 89 M.L.J. 486=59 I.C. 685= 28 M.L.T. 308.

——*Debts—Liability of family property—Necessity.*

All co-parceners are liable on a pro-note executed by two of them for family necessity the liability being imposed by Hindu Law apart from the contract entered into by the other members. (*Srinivasa Aiyangar*, J.) CHINNIAH CHETTY *v.* TIKKANI RAMASWAMY CHETTY. 31 I.C. 317.

——*Debts—Liability for—Pious obligation—Death of son—Liability of mother succeeding to estate of her son.*

There may be no pious obligation on a mother succeeding to the estate of her son for the payment of the debts due by her husband, but if the son has succeeded to the estate of his father, the person who succeeds such son is as much liable for the payment of the debt due by his father to the extent of the family property, unless it is tainted with immorality, as a person who would directly succeed to the property on his death. (*Kanhaiya Lal*, J C.) SHEO NANDAN LAL *v.* SHEO BALAK. 9 O. & A.L R 264=10 O L J. 303= 1923 Oudh 251.

——*Debts — Liability — Share in joint family—Insolvency Court — Jurisdiction—Receiver—Partition.*

A share in joint family property is not saved from attachment and sale and, therefore, is not outside the jurisdiction of the Insolvency Court. As the share in the joint family vests in the Receiver who can sue for its partition. (*Daniels and Dalal*, A.J.Cs.) LAL BAHADUR *v.* PASPAT PRASAD. 10 O.L.J. 31= 9 O. & A.L R. 173=1923 Oudh 151.

——*Debts — Liability — Presumption — Joint family.*

If two branches of a family form a joint family each branch is liable for the debt due from the family and the member incurring the debt is presumed to have authority to do so. (*Das and Adami*, JJ.) INDER CHAND *v.* BIDYADHAR PANDE. 1921 Pat. 107= 2 P.L.T. 111=60 I.C 232= 5 P.L J. 744.

HINDU LAW—Debts—Manager.

Debts—Manager.

———*—Debts—Manager—Powers of borrowing—Necessity—Interest—Rate of.*

The manager of a joint Hindu family has authority to borrow money upon reasonable commercial terms for purposes of necessity and all terms of the mortgage in excess of this necessity, are beyond the scope of his authority. (*Lord Parmoor*) RAM BUJAWAN PRASAD SINGH *v.* NATHURAM. 44 M L J. 615 = 4 P.L.T. 29 = 32 M.L.T. (P.C.) 129 = 2 P. 285 = 88 C.L.J. 25 = (1923) M.W N. 382 = 1 P.L.R. 445 = 18 L.W. 767 = 25 Bom. L.R. 568 = L.R. 4 P.C. 75 = 50 I.A. 14 = 1923 P.C. 37 (P.C.).

———*Debts—Manager—Agreement to contribute—Relief.*

The manager of a Hindu family sued on an agreement by the members of the family whereby he was entitled to recover one-half of the amount paid by him for family debts but a part of such debts was not for family purposes, *held* that it would be unjust and inequitable to give him decree for a half of the entire amount, as he has forfeited his claim to the sum misapplied and is entitled only to a share of the balance outstanding. (*Viscount Cave*). POKHAR SINGH *v.* JAGU SINGH. 2 Pat. L.T. 587 = (1921) M.W.N. 66 = 25 C W.N. 745 = 61 I C. 681 = 8 U.P.L.R. (P.C.) 81 (P.C.).

———*Debts—Manager—Hundi executed for family necessity—Liability of other members.*

Where the manager of a joint Hindu family executes a negotiable instrument and borrows money for joint family purposes the whole of the joint family property including the share of the junior members would be liable for the hundi. (*Ryves and Daniels*, JJ.) RAGHUNATH SINGH *v.* SRI NARAYAN. 45 All. 484 = 21 A.L J. 323 = L.R. 4 A. 211 = 1923 All. 424.

———*Debts—Manager— Promissory note—Liability of co-parceners.*

Where a promissory note is executed by a member of a joint Hindu family as manager the other members cannot be made liable on a suit on the pro-note, though they would be liable for the debt. (*Macleod*, C.J. *and Crump*, J.) VITHAL RAO *v.* VITHAL RAO.
25 Bom. L R, 161 = 1923 Bom. 244.

———*Debts—Manager—Binding nature of—Onus.*

There is no presumption that a debt contracted by the manager of a Hindu family is contracted for the benefit of the family and the burden is on the creditor to prove necessity or family benefit. 34 A. 135; 118 P.W.R 1915; 48 P.W.R. 1919, Rel. (*Martineau and Zafar Ali*, JJ.) KHAZANA MAL *v.* JAGAN NATH.
4 Lah. 200 = 5 Lah. L.J. 236 = 1924 Lah. 41.

———*Debts—Manager — Decree against—When binding on other members.*

HINDU LAW—Debts—Manager.

A decree passed against the manager of a joint family as representing the family, provided it be in respect of a debt contracted by him for family necessities or for the family business may be executed against the whole co-parcenary property. 36 A. 383 (P. C.), Rel. But it must be shown that the manager was sued in a representative capacity. There is no presumption that a debt contracted by the manager of a Hindu family was contracted for the benefit of the family. In each case it must be proved that the debt for which all the members of the family are sought to be made liable was incurred for the benefit of the family. 174 P.L.R. 1916, Ref. (*Abdul Raoof and Harrison*, JJ.) MELA MAL *v.* GORI. 3 Lah. 288 = 66 I.C. 485 = 1922 Lah. 200.

———*Debts—Manager—Liability of minor and adult co-parceners.*

Where the manager contracts debts for the ordinary purposes of the family business, the co-parceners whether adult or minors are liable but only to the extent of their share in the property. (*Broadway and Abdul Raoof*, JJ.) BISHEN SINGH *v.* KIDAR NATH.
62 I.C. 800 = 2 Lah. 159.

———*Debts—Manager—Presumption.*

Debt contracted by managing member of joint Hindu family is not presumed to be for the benefit of the family. (*Rattigan*, C.J.) RAM DHAN DOSS *v.* RAMJI DAS
50 I.C. 215.

———*—Debts—Manager—Joint family—Proof of the propriety—Required—No presumption.*

It cannot be presumed that debt incurred by the manager of joint Hindu family is contracted for the benefit of the family or firm. It must be proved from the facts of the particular case. ((*Leslie Jones*, J.) BHURA *v.* BANARSI DAS. 174 P.L.R. 1915 = 30 I.C. 481 (2) = 113 P.W.R. 1915.

———*Debts—Manager—Necessity—Proof of—Non-production of accounts—Effect of.*

The burden of proving necessity for a loan contracted by the manager of a joint Hindu family is on the creditor who has advanced money on the security of the joint family property But if he is unable to establish legal necessity, he is still entitled to succeed if he shows that there was a representation made to him as to the existence of a legal necessity and that he made an honest inquiry and that he was satisfied that there was such a necessity. It is very often impossible for the creditor to compel third parties to produce their account books and the plaintiffs cannot fail because the third parties did not produce the account books. (*Das and Adami*, JJ.) CHINTAMANI MAHAPATRA *v.* SATYABADI KAR. 1 P. 715 = 1923 P. 71.

———*Debts—Manager—Duty of lender—Onus of proof.*

A lender must satisfy himself by honest enquiry that the manager is acting for the

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benefit of the estate. The representation of the manager is not sufficient. The lender is not bound to see to the application of the money but if he does to it the question of enquiry becomes immaterial. The lender's act will be *mala fide* where it is shown that he must have known that the transaction was bound to involve the family in ruin and that the borrower was acting in his own interest rather than in the interest of the family. Where the *karta* exercises his discretion *bona fide* and for the benefit of the estate it should not be narrowly scrutinized by the Court. The onus of proof is on the alienee to prove that the charge created by the *karta* was for justifying necessity or for the benefit of the family. Where a charge is created by the substitution of a new security for an older one and the consideration for the older one was an old precedent debt, there is *prima facie* presumption in the lender's favour of a consideration that bind the estate. (*Das and Bucknill*, JJ.) KALIKA NAND *v.* SHIVA NANDAN. **68 I.C. 625.**

——— *Debts—Manager — Necessity—Money borrowed to obtain thickka lease.*

The manager of a joint Hindu family can borrow money to obtain a *thicca* lease for the family benefit. (*Das and Ross*, JJ.) SADHU SARAN PRASAD SINGH *v.* BRAHMADEO PRASAD SINGH. **2 P. L.T. 318 = 61 I.C. 20 = 6 P.L.J. 256.**

——— *Debts—Manager—Powers of—Authority to borrow—Junior member.*

Where a Hindu joint family consisted of two branches, and a member of one of such branches borrowed money on a mortgage for the purposes of the family, *held*, that the presumption was that such member had authority to borrow the money for joint family necessity and that the mortgage was, therefore, binding on the joint family. (*Das and Adami*, JJ.) INDERCHAND *v.* BIDHYADHAR PANDAY. **60 I.C. 282 = 8 P.L.J. 745.**

——— *Debts—Manager—Trade—Liability of sons.*

The manager of a joint family has no authority whatever to affect or dispose of any portion of joint family property in order to enable him to embark on speculative transactions but the mortgagee is not bound to satisfy the Court in each case that the transaction was bound to benefit the joint family. There is a certain element of risk in every business transaction. A son is bound to pay the commercial debt of his father. 39 Cal. 862, Ref. Where a mortgage was executed by the manager of a joint Hindu family in order to pay for the premium of a lease of 3,000 bighas of khudkasht land and there was every probability that the transaction would be a profitable one for the joint family, it was held that the transaction was binding on the joint family. (*Das and Adami*, JJ.) SHEOTHAL SINGH *v.* ARJUN DAS. **1920 Pat. 155 = 56 I.C. 879 = 1 P.L.T. 136.**

HINDU LAW—Debts—Necessity.

Debts—Necessity.

——— *Debts—Necessity—Burden of proof.*

The burden of proving that there was a necessity to pay a rate of interest in excess of the ordinary commercial terms is on the creditor. Where the junior members of the family in their written statement plead absence of necessity for a loan by the manager and that the joint family properties are not liable for the said debt it is open to the defendant to prove that the interest on the loan was exhorbitant and far in excess of the ordinary commercial rate and therefore not binding on the family. (*Lord Parmoor*) RAM BUJAWAN PRASAD SINGH *v.* NATHU RAM. **44 M.L.J. 615 = 4 Pat L.T. 29 = 32 M.L.T. (P.C.) 129 = 2 Pat. 285 = 38 C.L.J. 25 = (1923) M.W.N. 382 = 1 Pat. L.R. 445 = 18 L.W. 767 = 25 Bom. L.R. 568 = L.R. 4 P.C. 75 = 50 I.A. 14 = 1923 P.C. 37 (P.C.)**

——— *Debts—Necessity—High interest.*

Where the rate of interest in a mortgage executed by the manager of a joint Hindu family is high the mortgagee must prove necessity for borrowing at such high rate failing which the Court has power to award a reasonable rate of interest. (*Lord Phillimore*). NAZIR BEGAM *v.* RAO RAGUNATH SINGH. **41 All. 571 = 46 I.A. 145 = 23 C.W.N. 700 = 26 M.L.T. 40 = 11 L.W. 188 = 17 A.L.J. 591 = 21 Bom. L.R. 484 = 30 C.L.J. 86 = (1919) M.W.N. 498 = 50 I.C. 434 = 1 U.P.L.R. (P.C.) 49 = 36 M.L.J. 521 (P.C.). [On appeal from 19 I.C. 639.]**

——— *Debts—Necessity.*

In a case where a mortgagee wishes to enforce a charge against the family property the burden lies on him to satisfy the Court that the mortgage transaction had been entered into for family necessity or in lieu of antecedent debt or with the consent, express or implied, of all the members of the family. A long series of renewals of mortgage transactions extending for over a generation without any protest by any member of the family would show its acquiescence, and raise a fair presumption, that if there had not been a valid necessity for them, some objection would have been raised. (*Lindsay and Sulaiman*, JJ.) INAYAT ILAHI *v.* HARDEO SAHAI. **45 A. 692 = 21 A.L.J. 610 = 1924 All. 29.**

——— *Debts—Necessity.*

Whether the rate of interest is unduly high a creditor in order to bind the estate, must prove not only the necessity of the loan but also the necessity to borrow it at so extravagent a rate. 20 A.L.J. 233; 30 A. 394; 46 I.A. 145, Ref. to. (*Reves and Daniels*, JJ.) RAGUNATH SINGH *v.* SRI NARAIN. **43 A. 484 = 21 A.L.J. 323 = L.R. 4 A. 211 = 1923 All. 424.**

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———*Debts—Necessity — Speculative litigation.*

Where the manager of a joint Hindu family borrows money for the purposes of conducting a speculative litigation which is successful and might enure for the benefit of the family, the debts cannot be justified on the ground of legal necessity. If the litigation resulted in benefit to the estate the debts would be binding on equitable principles. 4 A. 532 ; 44 I.A. 147, referred to. (*Rafique and Lindsay*, JJ.) BHAGWAN DAS *v* MAHADEO PRASAD PAL.
43 A. 390=21 A.L.J. 271=1923 A 298 (2).

———*Debts—Necessity—Debts contracted by guardian—Enquiry.*

A creditor of a Hindu minor is not bound to see to the application of the money. If a person dealing with the manager of a family or with the guardian of a minor, does make inquiries and act honestly, the real existence of an alleged and reasonable necessity is sufficient to validate the debt and he is not bound to see to the application of the money. (*Kanhaiya Lal and Sulaiman*, JJ.) RAGHUBANS UPADHYA *v.* INDERJIT SINGH.
20 A.L J. 866=L.R. 3 A. 470=43 A. 77=1922 All. 526.

———*Debts— Necessity—High rate of interest.*

As regards the rate of interest necessary or proper in a mortgage by the manager of a joint Hindu family no hard and fast rule can be laid down. The question in such a case is "what is a reasonable rate of interest" and a finding as to the reasonable rate of interest is really one of fact. Even if it is a matter of discretion, the High Court would not interfere in second appeal with the discretion of the Court below. (*Lindsay and Gokul Prasad*, JJ.) BINDESHRI PRASAD *v.* JAG PRASAD RAI.
L.R. 3 A. 498=1922 All. 335.

———*Debts — Necessity — High rate of interest.*

In a suit by the mortgagee regarding joint family properties mortgaged to him, he has to show it was necessary to borrow the money at the rate of interest specified, if it happens to be exorbitant. (*Mears*, C.J. *and Banerjee*, J.) RAM SARUP *v* BHARAT SINGH.
43 All. 703=65 I.C. 768=19 A.L.J. 745.

———*Debts—Necessity—Son not impleaded in suit on mortgage—Effect.*

A Hindu father mortgaged the family property to A and then sold it to B. A sued on his mortgage without impleading the son. B objected that the mortgage was not valid as the debt was not binding on the family. *Held*, that no decision as to the validity of the mortgage can be given until the son of the mortgagor was impleaded. (*Gokul Prasad and Lindsay*, JJ.) TIKAM SINGH *v.* NATHU.
68 I.C. 40.

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———*Debts—Necessity—Burden of proof.*

Mortgage of family property to obtain money to purchase Zemindari shares, the purchase being for the benefit of the family binds all the members. The mortgagee need only prove that he was told that Zemindari shares were to be purchased and that he believed it to be true. Mortgage of property to pay off a prior mortgage, the validity of which is admitted, and the prior mortgage, both are binding on the family. (*Banerjee and Sulaiman*, JJ.) TULA RAM *v.* TULSI RAM.
42 All. 659=60 I.C. 3=18 A.L.J. 699.

———*Debts—Necessity—Liability of sons.*

A mortgage by a Hindu father of joint family property in lieu of antecedent debts and debts incurred for the benefit of the family is binding on his son's share of the joint family property. The payment of a prior mortgage or the consideration for the acquisition of property for the joint family are debts for which the joint family is liable. (*Banerjee and Tudball*, JJ.) ATAR SINGH *v.* RAGHUNATH SAHAI.
55 I.C. 974=2 U.P.L.R. (All.) 118.

———*Debts—Necessity—Interest—High rate—Reduction of rate.*

It is incumbent upon a mortgagee suing to enforce his mortgage to prove not only the existence of family necessity for the mortgage but that there was necessity for borrowing at an onerous rate of interest. 36 M. L. J. 521, Rel. on. The rate of interest was reduced from 24 per cent. compound interest to simple interest at 18 per cent. per annum. (*Banerji and Piggott*, JJ.) RAMKHELAWAN *v.* RAM NARES SINGH.
41 All. 609=17 A.L.J. 738=51 I.C. 52=1 U.P.L.R. (H.C.) 97.

———*Debts—Necessity—High rate of interest.*

A mortgagee from a Hindu father must prove the necessity for a high rate of interest if he desires to claim such interest. Otherwise the Court will give a decree for such interest as is reasonable. 19 I. C. 639, 28 I. C. 21, Rel. (*Rafique and Lindsay*, JJ.) BIKHI SAHU *v.* KODAI PANDAI. **50 I.C. 815=17 A.L.J. 580.**
[Also 50 I.C. 484=41 All. 571 (P.C.)]

———*Debts — Necessity — High rate of interest—Onus—Govt. Revenue.*

It is for the creditor to show that there was necessity for the loan and the payment of a high rate of interest was necessary. Money borrowed for payment of Government revenue and utilised for that purpose is for family necessity. (*Richards*, C.J. *and Banerji*, J.) GAYA PRASAD TIWARI *v.* RAMPHAL MISRI.
28 I.C. 21=18 A.L.J. 216.

———*Debts — Necessity — High rate of interest.*

Sons are not bound to pay any exorbitant rate of interest which their father may choose

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to promise to pay on a debt borrowed by him in the absence of clear proof of necessity therefor. (*Karamat Hussain and Chamier, JJ.*) NATH MAL DAS *v.* DALIPH SINGH. **13 I.C. 401.**

———*Debts—Necessity—Liability of other members.*

There is no presumption that a debt contracted even by the manager of a joint family is for a necessary purpose. 34 All. 185, Ref. Plaintiff must prove benefit or consent or necessity. (*Karamat Husain and Chamier, JJ.*) GANPAT RAI *v.* MUNNI LAL. **34 All. 135 = 13 I.C. 34 = 9 A.L.J. 54.**

———*Debts—Necessity — Criminal charge against a member—Fund to defend against—For family necessity.*

Money secured by a mortgage of a joint family property, for defending a member of the family against a criminal charge is raised for family necessity and the mortgage is binding on the joint-family. (*Karamat Husain and Chamier, JJ.*) BENI RAM *v.* KUNWAR MAN SINGH. **8 A.L.J. 1015 = 11 I.C. 663 = 34 A. 4.**

———*Debts—Necessity — Representation by father.*

Where the creditor lends his money on a representation made by a father that the course which he proposes to take a course not unreasonable in itself is calculated to promote the interest of his family, the creditor ought not to suffer because owing to the misconduct of the father, things turn out badly. Under these circumstances nothing prevents him from levying execution on the family property to satisfy a decree for money against the father personally. (*Richardson and Huda, JJ.*) MUKTI PROKASH NANDE *v.* ISWARI DEI DEBI. **37 I.C. 858 = 24 C.W.N. 938.**

———*Debts—Necessity — Suit just within time—Evidence Act, S. 114—Conduct.*

Although a suit to set aside alienation by a father on the ground, among others. of want of necessity, was within limitation, yet the conduct of the plaintiff in instituting the suit just at the close of the period prescribed, was held to be an important factor in determining the nature of the transaction and in finding out whether the alienation was or was not for necessity. The mere fact that the area of the property comprised in the mortgage forming the antecedent debt is not known does not justify an inference of want of necessity. (*Moti Sagar, J.*) DALJIT SINGH *v.* HARI CHAND. **1923 Lah. 669.**

———*Debts—Necessity.*

Debts incurred for a litigation in respect of the abduction of the alienor's wife, may be reasonably regarded as necessary. (*Broadway, J.*) ANOKH SINGH *v.* SAPURAN SINGH. **1923 Lah. 660.**

———*Debts—Necessity—Antecedent debt due to third party.*

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The existence of the antecedent debts due to third parties constituted valid necessity. (*Scott-Smith and Fforde, JJ.*) MT. BASANTI *v.* CHANDA SINGH. **1923 Lah. 502 (2).**

———*Debts—Necessity— Onus of proof—Presumption.*

In suits by creditors for the money due from joint family, no general and inflexible rule can be laid down ; the presumption proper to be made will vary with circumstances and must be regulated by and dependent on them. (*Broadway and Zafar, Ali, JJ.*) CHALA RAM *v.* KISHAN CHAND. **1923 Lah. 462 (2).**

———*Debts—Necessity—Onus on creditor.*

The onus of proving necessity for a debt contracted by the manager is on the creditor who seeks to bind the other members of the family. (*Rattigan, C.J. and Scott-Smith, J.*) HAR KISHEN *v.* LAHORE BANK. LTD. **51 I.C. 712 = 65 P.R. 1919.**

———*Debts—Necessity—Proof.*

Debts contracted by the manager of a joint Hindu family or a firm is not necessarily for purposes of family or firm and the credit must prove the fact in every case. 172 P.L.R. 1915 Diss; 34 All. 135, Foll. (*Martineau, J.*) FIRM PARAS RAM JWALA DAS *v.* GIAN CHAND **80 I.C. 36.**

———*Debts—Necessity—Proof—Liability of members of a joint Hindu family.*

There is no presumption that a debt borrowed even by the manager of a Hindu family was contracted for the benefit of the family or firm. 34 All. 135, Rel. (*Leslie Jones, J.*) BHURA *v.* BANARSIDAS. **174 P L.R. 1915 = 30 I.C. 481 = 118 P.W.R. 1915.**

———*Debts—Necessity—Debt for the benefit of family—Promised by son—Liability under.*

Where a debt was contracted by the father in a joint Hindu family, for family necessity and when he was away from home, his wife and son signed an acknowledgment to save the bar of limitation and the dealings with the creditor continued till finall accounts were settled and in the absence of the father, the son and his mother signed a promise to pay the debt. *Held* that the promise signed by the son and his mother was binding on them in as much as the debt contracted by the father was for the joint family, and hence due by its members under S. 25 of the Contract Act. (*Kumaraswami Sastri, Krishnan and Odgers, JJ.*) P. RAMA PATTER *v.* R. VISWANATH PATTER. **41 M.L.J. 567 = 15 L.W. 130 = (1922) M.W N. 27 = 66 I.C. 155 = 30 M.L.T. 209.**

———*Debts—Necessity—Marriage expenses—Females.*

The expenses incurred in the bangle ceremony and Simantham ceremony of the daughter of a deceased Hindu co-parsener do not create any legal obligation on the girl's

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uncles to discharge. (*Sadasiva Aiyar and Burn*, JJ.) VISALAKSHI AMMAL *v.* KALI NARAYANASWAMI AIYER. 10 L W. 540 = 38 I.C. 796 = (1919) M.W.N. 878.

———*Debts—Necessity—Proof—Liability of other members—Onus.*

The onus of proving that the debt by manager is for the family benefit lies on the creditor in the first instance but if the members of the joint family withhold the account books of their business they cannot rely on the weakness of the plff.'s case. The onus shifts to them. (*Wallis*, C.J. *and Ayling*, J.) GURUSAMI NADAN *v.* GOPALASAMI ODAYAR.
42 Mad. 629 = 36 M.L.J. 568 = (1919) M.W.N. 301 = 50 I.C. 775 = 9 L.W. 547.

———*Debts—Necessity — Pro-note executed by one member—Promisee's duty.*

The payee of a pro-note by one member of a joint family must enquire as to the existence of family necessity, but need not see to the application of the money. (*Ayling and Seshagiri Aiyar*, JJ.) NATARAJA NAICKEN *v.* AYYASAMI PILLAI, 5 L.W. 410 = (1917) M.W.N. 230 = 32 M.L.J. 854 = 38 I.C. 389 = 21 M.L.T. 405.

———*Debts—Necessity — Marriage expenses —Whether binding.*

Marriage being an obligation on Hindus who do not desire to become perpetual Brahmachaaris or Sannyasis, debts incurred for marriage expenses of a male co-parcener are binding on the family. (*Wallis, Sundara Aiyar and Sadasiva Aiyar*, JJ.) GOPALKRISHNAMARAJU *v.* VENKATA NARASARAJU, 37 Mad. 273 = 23 M.L.J 288 = 12 M.L.T. 292 = 17 I.C. 308 = (1912) M.W.N. 903 and 1231.

———*Debts—Necessity—Evidence of recitals.*

In a suit on mortgage bond by a Hindu father, the recital in the bond that it was executed for the discharge of antecedent debts is legal evidence against the sons. The Court is not bound, from such recital, to draw a presumption, that the bond was for the purpose of discharging antecedent debts. 6 M.I.A. 393, Dist. (*Sundara Iyer and Sadasiva Iyer*, JJ.) GANGISETTI RAMAYYA *v.* KALLIKA PERRAYYA. 16 I.C. 511 = (1912) M.W.N. 959.

———*Debts—Necessity — Marriage expenses —Liability of co-parceners.*

The maternal uncle giving away a girl in marriage where the paternal grandfather and uncle have practically abandoned guardianship, is entitled to recover the expenses from the family property in the hands of the paternal grandfather though at the time of the marriage they were in a state of pollution. A marriage celebrated during a period of pollution is not on that account alone invalid. (*Abdur Rahim and Sundara Aiyar*, JJ.) VENKADAM NARAYANA IYER *v.* SIVA SUBRAMANIA IYER. 13 I.C. 985 = 22 M.L.J. 49.

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———*Debts—Necessity — Marriage expenses of a member.*

The mortgage of a family property to meet the expenses of the marriage of a member of the family is binding on all male members of that family. (*Benson and Sundara Iyer*, JJ.) MARINA KRISHNAYYA *v.* DODISETTI RAMANNA. 12 I.C. 539 = (1911) 2 M.W.N. 360.

———*Debts — Necessity — Marriage of daughter — Liability of co-parceners for expenses.*

The co-parceners are bound under Hindu Law to pay the reasonable expenses of the daughter's marriage of a co-parcener. (*Benson and Sundara Iyer*, JJ.) ACHA RANGANAIKAMMAL *v.* ACHA RAMANUJA AIYANGAR.
35 Mad. 728 = 21 M.L.J. 600 = 10 M.L.T. 87 = 11 I.C. 570 = (1911) 2 M.W.N. 285.

———*Debts—Necessity—Expenses of criminal case—Purchase of war bonds.*

Debts incurred by the manager in defending himself against a criminal charge are payable by the family. A sum of Rs. 32,000 is not an unreasonable expenditure in the case of a respectable family. Debts incurred for purchasing war bonds and thus assuring a steady income to the family are also binding on the family. 4 Pat. L J. 653, Rel. (*Kotval and Prideaux*, A.J.Cs.) NIMBAJI *v.* KISAN LAL. 66 I.C. 668.

———*Debts—Necessity — Representation by father or manager—Necessity for inquiry—Recitals.*

The representations of the borrower are not merely evidence, but may in particular circumstances be sufficient to shift the burden of proof from the lender to the person impeaching the debt or alienation. Something more than mere representations of the borrower is necessary to constitute reasonable inquiry on the part of the lender especially where other avenues of inquiry were open to the borrower. 6 M.I.A. 393; 35 M. 108, foll. (*Hallifax*, A.J.C.) GANBA *v.* SHRI VISHWESHWAR MAHADEO DEOSTHAN OF NAGPUR.
4 N.L.J. 26 = 65 I.C. 269 = 17 N.L.R. 194.

———*Debts—Necessity—Pre-emption decree —Payment of.*

The fact that a transaction is entered into by all the adult members of the family is sufficient to raise a presumption of necessity. An amount payable under a pre-emption decree is a debt for which the manager is justified in borrowing money on the security of the family property. (*Daniels*, A.J.C.) SHAM SHER DATT SINGH *v.* LALTA SINGH.
72 I.C. 1000 = 9 O. & A.L.R. 389.

———*Debts—Necessity—Loan to save family business.*

Where the manager borrows money to save the family property and to remove the fear of disturbance likely to be caused in the family business, the existence of necessity may be

presumed, where there is nothing to show that the lender acted otherwise than in good faith. If a previous loan on a pro-note by manager binds the family, a subsequent mortgage in lieu of it cannot be impeached. (*Stuart and Kanhaiya Lal*, A.J.Cs.) PALAK RAM *v.* RAM SUNDAR. 7 O.L.J. 530=60 I.C. 410= 2 U.P.L.R. (J.C.) 168.

———*Debts—Necessity— Interest— Exorbitant rate—Debt by Hindu father on credit of family property.*

In case of debts contracted by a Hindu father on the credit of the family property Courts have a discretion to interfere if the interest charged is excessive or exorbitant. The appellate Court will be slow to interfere where it can be shown that such discretion has been exercised in a reasonable manner. (*Lindsay*, J.C.) DARGAHI *v.* CHAUDHURI RAJESHWARI PERSHAD. 48 I.C. 783= 21 O.C. 265.

——*Debts — Necessity — Interest — High rate.*

A creditor who advances money to a Hindu widow for legal necessity at a high rate of interest is not entitled to recover interest at that rate, unless he explains why that rate was fixed. In such cases the creditor should be allowed a reasonable rate of interest. (*Lindsay*, J.C.) DWARAKA PRASAD *v.* PRITHI PAL SINGH. 47 I.C. 106=5 O.L.J. 271.

———*Debts—Necessity—Interest.*

Debt carrying exessive interest does not bind the son so far as an onerous rate of interest is concerned unless it is justified by the state of the family, the burden of proving which lies on mortgagee even as deft, and if a decree is obtained against father on the footing of such interest, sons must be relieved from liability under the decree if they pay reasonable interest. (*Stuart and Kanhaiya Lal*, A.J.Cs.) SADHO CHARAN PRASAD *v.* RAM RATAN. 40 I.C. 369=4 O.L.J. 337.

———*Debts— Necessity — Proof — Family necessity.*

There is no presumption that debts incurred by members of a joint Hindu family were incurred for family necessity; the fact must be proved by the creditor although it may be difficult for him to adduce evidence on the point owing to a lapse of time. In a case of a transfer of family property by some members there is no presumption that the remaining members consented to the transfer. (*Stuart*, A.J.C.) BISHWANATH SINGH *v.* RAMPAL SINGH. 33 I.C. 778=3 O.L.J. 26.

———*Debts — Necessity —Proof — Trading family.*

No presumption that debts incurred by joint Hindu family were incurred for necessity. But in the case of trading families manager has implied authority. So the creditor need not enquire into the purpose. (*Lindsay*, J.C.) GHANSHYAM DAS *v.* HARDEI. 32 I.C. 380=2 O.L.J. 552.

———*Debts—Necessity—Mortgage by father —Necessity not proved—Decree for sale—Personal decree—Liability of surviving members.*

Where property of a joint family is mortgaged by the father and there is no allegation of legal necessity it is incumbent on the mortgagee to prove that the sons and grandsons of the original mortgagor were liable to discharge the debt and that the property in their hands is liable to be sold. The mortgagee cannot get a mortgage decree unless he proves that the money was borrowed for purposes which are binding on the joint family. (*Lindsay*, J. C.) RAMNATH *v.* MAHADEO PRASAD. 30 I.C, 382=2 O.L.J. 378.

———*Debts—Necessity—Marriage expenses —Twice-born.*

Marriage is obligatory on Hindus who do not desire to adopt the life of a perpetual Brahmachari or Sanyasi and so the debts reasonably incurred for the marriage of a twice-born Hindu are binding on the joint family. (*Kanhaiya Lal*, A.J.C.) GHAZAFFAR HUSSAIN *v.* MAHABIR PRASAD. 17 I.C. 309.

———*Debts—Necessity—Borrowing by manager—Rights of creditor—Interest—Enforceability against family.*

When a contract of loan entered into by a head member or karta of a joint Hindu family is sought to be enforced against the other members on the ground of necessity, it must be shown not only that there was a necessity to borrow the principal sum but that the rate of interest agreed upon was also a necessity; in other words, that it was impossible for the karta or the head member to obtain a loan for family necessity except at the rate of interest agreed upon. The creditor in such a case has not only to show that there was a family necessity so as to bind the members of that family on behalf of the parties to the contract with respect to the loan advanced but that the rate of interest was the market or commercial rate. He will not be entitled to enforce a higher rate of interest against the other members and to make the joint family properties liable for interest higher than the current market rate of interest. (*Jwala Prasad and Ross*, JJ.) MAHADEO PRASAD *v.* BISSESSAR PRASAD. 2 P. 488=4 P.L.T. 707=1924 P. 71.

——*Debts—Necessity—Pressure of creditors —Proof of.*

Where there has been a long series of transactions it is not always possible for the creditor to prove exactly the purpose for which any particular item was borrowed, and in such a case, it is sufficient for the creditor to show that the family was in chronic need of money and that the moneys were advanced on the representation of the manager that they were

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needed for such object. Moreover where the necessity arises from the pressure of a judgment-debt the person dealing with the manager of a joint Hindu family he is entitled to treat the judgment as *prima facie* proof of necessity, and he is under no obligation to go behind the judgment in order to enquire whether the debt covered by the decree was for legal and binding necessity of the family. (*Das and Kulwant Sahay*, JJ.) DUKHIT OJHA *v.* JANKI SINGH.
4 P. L.T. 377 : 1923 P. 443.

———*Debts—Necessity — Manager — Decree against—Suit by junior member to set aside decree—What has to be proved.*

In a suit by the junior member of a joint family to set aside a decree against the manager as fraudulent, he has to show that there was no legal necessity for the debts sued for, and it is not for the creditor to show that there was legal necessity for it. Where the evidence adduced in a case based on fraud is equally consistent with the allegations of the plaintiff as with the denial of the defendants, a case of fraud is not established. (*Das and Bucknill*, JJ.) DAMODAR PRASAD *v.* RAM SARUP KUMAR.
4 P. L.T. 102 = 1923 Pat. 187 =
1. P.L.R. 252 = 1923 P. 327.

———*Debts—Necessity.*

Where some junior members were charged with offences in connection with family property and the manager then being in jail, the junior members raised a loan by a mortgage; *Held*, the mortgage was for a family purpose and was binding. The defence of a member of a joint family is regarded among the Hindus as a pious and necessary act to remove the stigma of disgrace upon the whole family consequent on a conviction. (*Jwala Prasad and Ross*, JJ.) DHANUKDHARI SINGH *v.* RAMBIRICH SINGH. 1 P. 171 = 1922 P. 683.

———*Debts—Necessity—Marriage expenses of male members of joint family.*

Under the Hindu Law the marriage expenses of the male members of a joint Hindu family is a necessity and debts contracted to meet such expenses would be binding on his family, 37 Mad. 273; 32 All. 675; 32 Bom. 81, Foll. (*Das and Adami*, JJ.) DEBI LAL SAH *v.* NAND KISHORE GIR. 1 P. 266 =
3 P.L.T. 759 = 1922 P. 22.

———*Debts—Necessity—Proof of—Mortgage suit.*

In a mortgage suit, the mortgage was proved to have been executed by the ancestors of the defts. to pay a previous bond and it was also proved that the mortgagee was in possession without objection by defts. for twenty-five years. *Held*, that no proof of necessity is required and that the conduct of the defts. amounted to acquiescence. (*Adami and Bucknill*, JJ.) RAM CHOWDHARI *v.* TILAK-CHOWDHARY. 60 I.C. 387.

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———*Debts—Necessity—High rate of interest—Burden of proof.*

The principle that it is incumbent on those who support a mortgage made by the Manager of a joint Hindu family to show not only that there was a necessity to borrow but that it was not unreasonable to borrow at a higher rate of interest applies to the case of a mortgage. 6 C.L.J. 462; 41 All. 571; 41 All. 581, Ref. In the absence, however, of a specific plea in the written statement that there was no necessity to borrow at a higher rate of interest the burden of establishing that necessity does not lie on the mortgagee. (*Adami and Das*, JJ.) JAG SAHU *v.* RAID RADHA KISHUN.
5 P.L.J. 287 = 1 P.L.T. 209 =
(1920) Pat. 211 = 58 I.C. 867 =
2 U.P.L.R. (P.) 127.

———*Debts—Necessity—Criminal litigation.*

A joint family member can use family funds in repealing a criminal charge. On the consent of the co-parcener members, a karta can alienate joint family property for family necessity. The consent of a son after the completion of a mortgage by the father is not the ratification of the deed but a presumptive proof of a joint family necessity. (*Das and Coutts*, JJ.) PREM SUKH DAS *v.* RAM BUJHAWAN MAHTO.
1919 Pat. 451 = 52 I.C. 965 = 1 P.L.T. 34.

———*Debts—Necessity—Criminal prosecution of one of the members—Effect of.*

The stigma of a criminal charge against a member of a joint family being regarded among Hindus as a disgrace to all the members of the family, any expense incurred to protect a family, from such a threatened disgrace is necessarily in the interests of all the members of the family. Where, therefore, the Manager of a joint Hindu family raises money to defray the expenses of defending a criminal case against him, the family property is liable for the debts so incurred. (*Jwala Prasad and Das*, JJ.) HANUMAT MAHTON *v.* SONADHARI SINGH. 4 P.L.J. 653 =
1920 Pat. 13 = 52 I.C. 784 =
1 P.L.T. 133.

———*Debts—Necessity — Borrowing money for purchasing other property nearer home—Speculation.*

The onus is upon a creditor who advances money to the Manager of a Mitakshara joint family to prove legal necessity or benefit to the joint family or *bonafide* and reasonable inquiries relating thereto. The purchase of property near one's residence is a matter of sentiment and at best a speculation, and the money borrowed for the same, with interest and compound interest, leaving no margin for the profits but rather imposing a burden cannot be said to constitute legal necessity and is not binding upon the other members. The creditor must make a diligent enquiry into the alleged necessity

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and any representation made to him by the karta has little value. (*Atkinson and Kingsford*, JJ.) DIP NARAIN CHOUDHURY *v.* DEVENDRA NATH DAS. **43 I.C. 193=3 P.L.W. 181.**

———*Debts—Necessity—Government Revenue.*

Money borrowed for payment of Government revenue on the family property is a necessity binding on all the members of the family. (*Chamier*, C.J. *and Sharfuddin*, J.) RANJIT PRASAD *v.* RAM JALAN PANDEY. **1 P.L.W. 197=37 I.C. 833= 1917 Pat. 113.**

———*Debts—Necessity—Inquiry.*

The creditor must show that he made reasonable enquiries as to necessity for the loan. (*Chapman and Atkinson*, JJ.) MANDIL DAS MEGH NARAYAN DUBEY. **1 P.L.J. 89= 34 I.C. 742=3 P.L.W. 45.**

Debts—Son's Liability.

———*Debts—Son's liability exists even in life time of father—Pious obligation.*

The law is now well established that under the Hindu Law the pious obligation of a son to pay his father's debts exists whether the father is alive or dead. Observations of their Lordships in *Sahu Ramachandra* v. *Bhup Singh* (44 I.A. 126) regarding the pious obligation of sons as not existing during lifetime of father disapproved. 11 A. 321 ; 4 I.A. 247 ; 13 I.A. 1; 15 I.A. 99 ; 16 I. A. 1 ; 17 I.A. 11 ; 44 I.A. 1 ; 15 All. 75 ; 28 Bom. 383 and 22 Mad. 49 Ref. (*Lord Dunedin*). RAJA BRIJ NARAIN RAI *v.* MANGAL PRASAD RAI. **21 A.L.J. 934 (P.C.)=46 M.L.J. 23= 19 M.L.W. 72=33 M.L.T. (P.C.) 457= 46 A. 98=51 I.A. 129=5 L.R.P.C 1= 28 C.W.N. 253=5 P.L.T. 1= 2 Pat. L.R (Civ.) 41=1924 P.C. 50= (1924) M.W.N. 68=26 B.L.R. 500= 11 O.L.J. 107.**

———*Debts—Son's liability—Mortgage—No necessity or antecedent debt — Rights of creditor.*

A mortgage of the joint family property by the father is void in the absence of proof of necessity or of an antecedent debt ; the transaction itself gives to the mortgagee no rights against the father's interest in the joint family property. L.R. 17 I.A. 194, Appl. Exceptions to the above general rule may arise from special circumstances, *e.g.*, from a representation or undertaking by the mortgagor that he had power to mortgage the joint property. 12 B.L. R. 90, Dist. (*Viscount Haldane.*) LACHMEN PRASAD *v.* SARNAM SINGH. **39 All. 500= 15 A.L.J. 584=2 P.L.W. 29= 21 C.W.N. 990=33 M.L.J. 39= 19 Bom. L.R. 646=26 C.L.J. 97= (1917) M.W.N. 516=6 L.W. 334= 40 I.C. 284=44 I.A. 163 (P.C.).**

HINDU LAW—Debts—Son's Liability.

———*Debts— Son's liability — Necessity— Antecedent debt— Pious obligation—Onus of proof.*

Under the law of the Mitakshara, the father in his capacity of manager and head of the family has power to affect or dispose of joint family property for estate or family necessity, but otherwise he has no power of sale or mortgage except for an antecedent debt. A borrowing on the occasion of a mortgage or in consideration of a sale is not such an antecedent debt. The exception only applies to the case where the father's debt has been incurred irrespective of the credit obtainable from the joint family property. To validate a mortgage for an antecedent debt not only antecedency in time but real dissociation in fact is required. The exception in this respect has been invoked for the protection of third parties who have taken their title for onerous consideration, and in good faith and should not be extended so as to cover a breach of trust by father. 31 All. 176, Appr.; 29 Mad. 200 ; 34 Cal. 184, Disappr. The pious obligation of the sons and grandsons under the Mitakshara law, to discharge their father's and grandfather's debts does not attach while the father and grandfather are alive and the latter cannot dispose of their shares in the joint family property on that ground. (*Lord Shaw*) SAHU RAM CHANDRA *v.* BHUP SINGH. **39 All 437=44 I.A. 126= 21 C.W.N. 698=1 P.L.W. 557= 15 A.L.J. 437=19 Bom. L.R 498= 26 C.L.J. 1=33 M.L.J. 14= (1917) M.W.N. 439=22 M.L.T 22= 39 I.C. 280=6 L.W. 213 (P.C.).**

———*Debts—Son's liability—Decree against father — Right, title and interest—Sale of — Purchaser's right — Mitakshara joint family.*

Under the Mitakshara Law a judgment against the father alone can always be executed against the whole joint family property except where the debt in respect of which the judgment was obtained was incurred for illegal or immoral purposes. The words "right, title and interest of the judgment-debtor (father)" in the sale certificate do not necessarily import that, when the father is the judgment-debtor, nothing but his share of the joint family property is sold. There is no reason why the execution creditor should be deprived of his undoubted rights by such a narrow construction. In cases of this kind the substance and not the technicalities of the transaction should be regarded. Having regard to the conduct of the sons in the case and to the price paid by the execution creditor, who purchased the property, it was held that the intention was to sell the whole property including the interest of the sons. 14 I.A. 77 ; 17. I.A. 11, Ref. to (*Lord Buckmaster.*) SRIPAL SINGH *v.* PRODYOT KUMAR. **44 Cal. 524=32 M.L.J. 133= 15 A.L.J 147=(1917)M.W.N. 193= 21 C.W.N. 442=28 C.L.J. 220= 21 M.L.T. 222=19 Bom. L.R. 290= 39. I.C. 252=44 I.A. 1 (P.C.).**

HINDU LAW—Debts—Son's Liability.

———*Debt—Son's liability—Decree on mortgage—Suit by sons to recover.*

Hindu sons cannot recover joint family property which has been sold in execution of a mortgage decree against their father without showing that the mortgage debt was for illegal or immoral purposes. 48 C. 34 ; 42 A. 38 ; 39 A. 437, Rel. (*Ryves and Daniels, JJ.*) SITLA PRASAD *v*, MT. CHAMELI BAHU.
21 A.L.J. 683=L.R. 4 A. 326=
9 O. & A.L.R. 766=1924 A. 111.

———*Debts—Son's liability—Decree against father.*

A decree against the father of a joint Hindu family cannot be executed against the whole family property if the debt in respect of which the judgment has been obtained was a debt incurred for illegal or immoral purposes. In every other event it is open to the execution creditor to sell the whole of the estate in satisfaction of the judgment obtained against the father alone. Where the properties of the family have been sold in execution of a decree against the father and purchased by a stranger, the sons cannot question the sale unless they can show that the debt was illegal or immoral. 39 A. 437 ; 44 A. 368 ; 15 A.L.J. 147, referred to. (*Lindsay and Sulaiman, JJ*). RAM CHANDER *v.* MAHOMED NUR. 45 A. 345=21 A.L.J. 485=
L.R. 4 A. 237=1923 A. 891.

———*Debts—Son's liability—Pious obligation—Death of father.*

Where the debt of the father is neither for legal necessity nor antecedent, the son is not under a pious obligation to pay it merely because the father is dead. (*Daniels, J.*) RAJA SINGH *v.* DURGA SINGH.
1923 A. 529 (1).

———*Debts—Son's liability—Mortgage invalid—Pious obligation to pay debt.*

The liability of a son or grandson to pay the debt of his ancestor, which is not tainted with immorality or was not taken for illegal purposes, is not enforceable so long as the original debtor is alive and is capable of paying his debts. During the lifetime of the father apart from any question of family benefit or necessity the liability of a son to pay a debt due by his father is only contingent. The existence of that liability contingent or vested, has been utilised to build up the doctrine of antecedent debt to validate a mortgage or sale effected by the father to pay such debt ; and in many cases, a creditor has been allowed to recover a debt due by the father from the entire family property, if not tainted with immorality, as if the liability were concurrent. 44 A. 126 : 39 A. 237, Ref. If the attempt to enforce a mortgage on the theory of pious obligation fails, the right to attach the family property during the life time of the father on the strength of that pious obligation can be still less recognised because if no pious obligation exists, it must be as insufficient to support the one as to support the other. (*Stuart and Kanhaiya Lal, JJ.*) KISHAN SINGH *v.* CHEJJU SINGH.
L.R. 3 All. 609=1923 A. 205.

HINDU LAW—Debts—Son's Liability.

———*Debts—Son's liability—Pious obligation of son during life time of father.*

As long as father is alive son's pious obligation does not arise and their share is not liable to attachment and sale in execution of a money decree against father. (*Gokul Prasad, J.*) RAMKISHORE *v.* ABDUL KARIM.
1923 All. 178 (1)

———*Debts—Son's liability—Decree debt—Pious obligation—Extent of.*

A Hindu son is liable for the unsatisfied decree debts of his deceased father to the extent of the ancestral properties unless he shows that the debt was contracted for an illegal or immoral purpose. This is so even if the son was a party to the decree against the father. (*Piggott and Walsh, JJ.*) RAMANAND SHUKUL *v.* CHHOTEY LAL. 20 A.L.J. 969=1923 All. 124.

———*Debts—Son's liability—Decree against father—Liability of entire family estate.*

Where there is a simple money decree against a Hindu father which is not shown to have been on the basis of a debt tainted with illegality or immorality, the decree can be executed against the father and the father's interest in the family property can be attached and sold. 39 A. 237, Dist ; 15 A.L.J. 147, Foll. (*Stuart and Sulaiman, JJ.*) KALYAN SINGH *v.* DHARAM SINGH. 20 A.L.J. 721=
L.R. 3 All. 492=1923 A. 489.

———*Debts—Son's liability—Father—Renewal of time-barred debts.*

A Hindu father can execute a fresh bond in lieu of time-barred debts contracted by him and the sons would be under a pious obligation to pay off the bond after his death. The Hindu Law does not recognise any rule as to the extinction of claims by the efflux of time. 6 M. 293, Foll. (*Gokul Prasad and Stuart, JJ.*) RAMKISHAN RAI *v.* CHHEDI RAI.
44 All. 628=20 A.L.J. 577=1922 All. 402.

———*Debts—Son's liability to pay father's debt in lifetime of father.*

The son's pious duty to pay his father's debt cannot be enforced in the life-time of his father and the son has the right to object to the payment of such debts out of his share when the father is alive. (*Gokul Prasad and Lindsay, JJ.*) SHEODAN SINGH *v.* BHAGWAN SINGH.
43 All. 496=19 A.L.J. 431=
3 U.P.L.R. (A.) 80=
1922 All. 323.

———*Debts — Son's liability — Father — Decree against.*

It is competent to the holder of a simple money decree against a Hindu father to attach and bring to sale in execution the whole family property including the son's shares therein, unless the debt where on the decree was obtain-

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ed was tainted with immorality or illegality. (*Piggott and Walsh* JJ.) MOHAN LAL *v.* BALA PRASAD. **44 All. 619=L.R. 3 A. 515= 1922 All. 310.**

———*Debts—Son's liability—Father's debt contracted while estate under the Court of Wards.*

Where a Hindu contracted debts while his estate was under the Court of Wards and he was incompetent to contract, his son is under no pious obligation to pay off the debt. A bond executed in lieu of the debt is not enforceable against the son. (*Rafique and Lindsay*, JJ.) CHAUBEY BALDEO PRASAD *v.* BINDESHRI PRASAD. **20 A.L.J. 24=1922 All. 215.**

———*Debts—Son's liability—Father—Mortgage debt.*

In the absence of proof of legal necessity or of an antecedent debt to discharge which a mortgage by a Hindu father was executed, the Court, would not enforce the mortgage against the son's share of the property on the ground of their pious obligation to pay their father's debt. 52 I.C. 108 not, Foll. 65 I. C. 950 ; 22 O.C. 84 ; 31 A. 176 Rel. (*Dalal*, A.J.C.) GAJADHAR BAKHSH SINGH *v.* BAIJNATH. **20 A.L J. 208= 8 O.L J. 605= 1922 All. 50.**

———*Debts—Son's liability—Sale of family property in execution—Suit by son to set aside —Plea of immoral debt.*

The entire ancestral property belonging to a Hindu father and his sons was sold by a creditor in execution of a decree obtained by him against the father. On this the sons filed a suit for setting aside the sale alleging that the debt had been incurred for immoral purposes but this they failed to prove. In these circumstances the sale is valid and the creditor can sell the property. Further, sale of ancestral property by a Civil Court is not void altogether. (*Stuart and Ryves*, JJ.) DALIP NARAIN SINGH *v.* PARMAOTI BIBI. **42 All. 58=67 I.C. 931= 17 A.L.J. 982.**

———*Debts— Son's liability— Mortgage— Decree for sale—Sale proceeds insufficient— Mortgagee's right only to proceed against son's mortgagor for balance—Personal remedy.*

In execution of a decree for sale on a mortgage against a Hindu father the only property comprised in the mortgages was sold. The sale proceeds, however, did not fully satisfy the mortgage, and for the remaining sum the decree-holder applied for a personal decree under O. 34, r. 6, of the C. P. Code. The decree was passed against the father alone, although the personal remedy under the first of the two mortgages had become time-barred. The father then died and the decree-holder sought to attach and to bring to sale the property of the joint family which had come to the son by survivorship. *Held*, that the application had been rightly dismissed as the personal decree passed against the father to which the son was no party was made up in part of the time-

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barred debt. (*Richards*, C.J. *and Banerjee*, J.) SHIAM BEHARI LAL *v.* BHURE LAL. **17 A.L J. 578.**

———*Debts—Son's liability—Time barred debt.*

The grant of a fresh deed by a Hindu father, in respect of a time-barred debt does not bind the son on the ancestral property. (*Tudball and Rafique*, JJ.) GIRDHARI LAL *v.* GOBIND RAM. **63 I.C. 25=19 A.L.J. 456.**

———*Debts—Son's liability.*

A mortgage by Hindu father to discharge debts contracted for immoral purposes does not bind the son's interest in the family. (*Walsh and Ryves*, JJ.) GOKUL SINGH *v.* GOKUL SINGH. **62 I.C. 111=3 U.P.L.R. (A.) 14.**

———*Debts—Son's liability—Rash bargain by father—Liability of family property.*

The father bid at an auction sale and deposited one-fourth of the purchase-money, but failed to pay the balance upon which the property was resold and fetched a small sum. The judgment-debtor thereupon applied to recover the deficieney and an order was made to recover the deficiency by sale of the family properties. The son thereupon brought a suit to set aside that order. *Held* that the suit must succeed as what was due from the father was in the nature of a penalty and therefore not binding on the son. (*Tudball and Rafique*, JJ.) RAUTAN LAL *v.* BIRJBHUKAN SARAN. **61 I.C. 774,**

———*Debts—Son's liability.*

Debts incurred by a Hindu father for the benefit of the family, and not tainted with immorality are binding on his sons by reason of their pious obligation. A mortgage of family property to pay off a previous mortgage debt is binding on the family. (*Piggott and Kankaiyalal*, JJ.) LACHMI NARAYAN *v.* DEOKI. **59 I.C. 797.**

———*Debts—Son's liability—Decree on debt —Onus.*

To render a son liable for his father's debt the existence of a debt due by the father must be proved by the creditor. The fact that there is a decree against the father, obtained in a suit to which the son was not a party, is not evidence against the son. 39 All. 437, Foll. (*Banerjee and Piggott*, JJ.) BHAGWANT *v.* TULSI RAM. **51 I.C. 130=1 U.P.L.R. (H. C.) 48.**

———*Debts — Son's liability — Suit by creditor.*

Prima facie decree obtained against one cannot be executed by the attachment and sale of another's property. But the position of a son in a joint Hindu family is by reason of his pious duty to pay his father's debt not incurred for immoral purposes, very different from that of an ordinary third party. 13 Cal. 21, Ref. A creditor having obtained a decree against a Hindu father on a promissory note is entitled to put to sale the family property and the sons are entitled to show that the debt was such as

they were not liable to pay. 28 All., 288; 8 A. L.J. 433, Foll. A creditor suing on a pro-note executed by a Hindu father, who makes the sons parties to the suit but afterwards withdrawn the suit against the sons cannot be placed in a worse position as regards the execution of his decree than he would if the sons had not been impleaded. (*Tudball and Piggott*, JJ.) INDAR PAL *v.* IMPERIAL BANK.
37 All. 214=28 I.C. 593=13 A.L.J. 211.

———*Debts—Son's liability—Right of sons to avoid—Applicability to certain cases.*

The Hindu Law rule that the sons can avoid a decree passed against their father on showing that they were no parties to the decree and that the debt for which the decree was passed was such as could not bind them is not applicable to a case where they are not seeking to evade payment but offering to redeem the property mortgaged by their father. (*Rafique and Piggott*, JJ.) SUNDAR SINGH *v.* RATAN LALL.
36 All. 516=24 I.C. 612=12 A.L.J. 855.

———*Debts—Son's liability—Execution sale—Setting aside.*

Where ancestral property is sold in execution of a decree for a father's debt the son should prove that the debt was contracted for immoral purposes before he could set aside the sale. (*Lyle*, J.) PANARU SHUKUL *v.* BALDEO SAHAI. 21 I.C. 45.

———*Debts—Son's liability — Mortgage—Compromise by the Manager—Liability of sons and grandsons.*

After executing a mortgage, a suit was brought by the Manager of joint Hindu family for declaration that the mortgage was fictitious. A compromise was effected for a certain sum. This compromise created a loan even if there was none in the beginning and there being sufficient consideration, the sons and grandsons were bound to discharge this debt. (*Ryves and Lyle*, JJ.) RAM KUBER PANDE *v.* RAM DASI.
35 All. 428=20 I.C. 44=11 A.L.J. 645.

———*Debts—Son's liability—Decree against father—Execution sale.*

As it is the pious duty of a Hindu son to pay his father's debt not connected with immoral purposes a sale for a payment of such debt would be binding on the son and his interests in the ancestral property and would give a complete title to the purchaser. (*Richards*, C.J. *and Banerjee*, J.) POKHPAL SINGH *v.* CHIDDU SINGH. 15 I.C. 903=9 A.L.J. 653.

———*Debts—Son's liability—Extent of.*

The liability of son to pay his father's debts arises from the date when father fails to discharge his obligation. (*Karamat Hussain and Chamier*, JJ.) CHAMPALAL *v.* SHAW SUNDAR MALLI. 13 I.C. 830.

———*Debts—Son's liability—Liability of grandsons.*

Grandsons cannot question the sale of joint family property in execution of a decree obtained against the grandfather merely on the ground that they were not parties to the suit. 25 All. 214; 28 All. 182; 7 A.L.J. 852, Foll.; 30 All. 256, Dist. (*Stanley*, C.J. *and Griffin*, J.) KEHRI SINGH *v.* CHUNILAL.
33 All. 436=9 I.C. 476=8 A.L.J. 216.

———*Debt—Son's liability—Personal decree against father—Creditor—Right of, to proceed against joint family property.*

The decision of the Privy Council in *Sahu Ram v. Bhup Singh*, 39 A 437 (P.C.), does not affect the rule that a creditor who has obtained a personal decree for money against a Mitakshara father, is entitled to levy execution against the entirety of the joint family property. (*Richardson and Huda*, JJ.) MADHU SUDHAN DAS GOSWAMI *v.* ISWAR DEYI DEBI.
48 Cal. 341=61 I.C. 25=24 C.W.N. 949.

———*Debts—Son's liability—Form of decree.*

Where the consideration for the mortgage was received by the mortgagor, the mortgagee cannot be held inoperative merely because the mortgagee has failed to prove that the money was applied as stated in the mortgage bond. He can get a decree to the effect that if the father's share is not sufficient to satisfy the decree, the son's share also will be sold. (*Chaudhuri and Newbould*, JJ.) BABU KRISHNA PRASAD *v.* BABU RAM PERSHAD.
33 I.C. 990=20 C.W.N. 808.

———*Debts — Son's liability — Minor—Guardian.*

Where the mother of a minor executed a bond on his behalf but not describing herself as guardian to pay a debt of his deceased father, the son and not the mother was liable for the same as it is a pious obligation on the son to discharge his father's debt. (*Mukerjee and Beachcroft*, JJ.) SIVA NARAYAN GHOSE *v.* RAMAKHYA GHOSE. 23 I.C. 877.

———*Debts—Son's liability—Decree against father—Execution sale.*

'Right, title and interest' of a father might be the father's share alone or it might include the son's share also. It depends on the intention to be gathered from the circumstances of each case. The son's share too could be sold in execution of the decree against the father even though he was not a party to the proceedings in Court. Sale on execution of such decree would be held good if creditor had no notice of illegality or immorality. Sons need not be parties but if it is found that the interest of the father alone was sought to be proceeded against the fact that sons were not parties would be material. (*Chatterjee and Walmsley*, JJ.) HITENDRA SINGH *v.* RAMESHWAR SINGH. 22 I.C. 873=18 C.W.N. 42.

———*Debts—Son's liability—Question to be determined in execution—C. P. Code, S. 53.*

The whole of the ancestral property and not merely that portion of it in the hands of a

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Mitakshara son, which upon partition would have represented the interest of the father, if a partition had been effected during his lifetime, is responsible for the satisfaction of the judgment debt in execution of a decree passed against the deceased Mitakshara father, where the loan was not incurred by the father for immoral purposes, 22 W. R. 56; 13 Cal. 21, Foll. S. 53, C.P.C. (1908), provides that a question as to what property would be liable in execution, is to be determined in execution proceedings and not by a separate suit. (*Mookerjee and Carnduff, JJ.*) LACHMI PRASAD SINGH *v.* BASANT LAL.
16 I.C. 970=16 C.L.J. 85.

———*Debts — Son's liability — Liability of grandson.*

A grandson is not liable to pay interest on the grandfather's debt. But when a decree was passed against both grandfather and father, the father being liable for interest and the mesne profits decreed, the son's son too is liable. (*Coxe and Chatterjee, JJ.*) RAMDEO PRASAD SINGH *v.* GOPI KOERI. 16 C.W.N. 383=13 I.C. 349=15 C.L.J. 256.

———*Debts—Son's liability—Decree against father.*

A decree against the father on a mortgage by the father has no more force than the mortgage itself, which must be proved in order to bind the son for an antecedent debt or for legal necessity. (*Scott-Smith and Zafar Ali, JJ.*) HANS RAJ *v.* BALAQI MAL. 1923 Lah. 356.

———*Debts—Son's liability—Father—Insolvency—Adjudication—Vesting of son's interest in official assignee—Remedy of sons.*

On the insolvency of a father governed by the Mitakshara Law, the whole of the joint family property including the interest of his sons, vests in the Official Assignee. But the sons have their remedy on their establishing that the debts of the father were illegal or immoral and that their sharers would not be liable for the same. 48 I.C. 526; 49 I.C. 848, not foll; 7 B. 438; 11 B. 37; 19 M. 74; 42 C. 225, Ref. (*Shadi Lal, C.J., Chevis and Abdul Raoof, JJ.*) BIHARI LAL *v.* SAT NARAIN.
3 Lah. 329=1923 Lah. 1.

———*Debts — Son's liability—Mortgage by father.*

The son's share of the family property is not liable to satisfy a mortgage created by the father unless it is shown that the mortgage was created to discharge an obligation antecedently incurred by the father and the obligation was incurred wholly apart from the ownership of the joint estate. 39 A. 437; 51 A. 235; 6 P.L.J. 72, Foll. (*Scott-Smith and Abdul Qadir, JJ.*) LAKHU MAL *v.* BISHEN DAS.
3 Lah. 74=1922 Lah. 291.

———*Debts—Son's liability—Father—Insolvency of—Interests of sons vest in Receiver.*

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Where a Hindu father governed by the Mitakshara law is adjudicated an insolvent, the interest of the insolvent including that of his sons in the joint family property vests in the Official Assignee. The son must prove such circumstances as would exempt his share of family properties. 3 Lah. 329 (F.B.) Foll. (*Scott-Smith, J.*) FIRM OF RALIA RAM JOWANDA MAL *v.* OFFICIAL RECEIVER OF GUJRANWALA ESTATE. 69 I.C. 729.

———*Debts—Son's liability—Pious obligation.*

A money decree against a Hindu father for a debt neither illegal nor immoral, whether incurred for family purposes or not, may be enforced in his lifetime by the execution sale of the entire co-parcenary property and is binding on the sons. In order to absolve a Hindu son from liability for his father's debts it is not enough to prove that the father was a man of extravagant and vicious habits, but there must be some definite connection established between the debt and the expenditure. The pious obligation of a Hindu son to pay his father's debts extends to debts incurred by the father during his minority which, after attaining majority, he agrees to pay. The onus of proving that a decree obtained on a debt contracted by a Hindu father cannot be executed against the entire family property including the son's share on the ground that the debt was non-existent or illegal is on the son. 16 Mad. 99 Foll. (*Abdul Raoof and Moti Sagar, JJ.*) RAM RATTAN *v.* BASANT RAI. 2 Lah 263=64 I.C. 121=3 Lah. L.J. 563=

———*Debts—Son's liability—Decree against father.*

To render a son liable for the father's debts, the mere existence of a decree against the father is not an evidence against the son who was not a party to the suit in which the decree was obtained. (*Chevis, J.*) KASTURIMAL *v.* LAJJA RAM. 60 I.C. 751.

———*Debts — Son's liability — Fictitious debt.*

Where a debt is not found to exist, no decree can be passed against the son of the alleged debtor or against the joint family property. (*Tudball and Sulaiman, JJ.*) JHAMMAN LAL *v.* GOMAL SINGH. 57 I.C. 36=2 P.L.R. 154.

———*Debts—Son's liability—Father—Execution sale of entire property including son's interest.*

A money decree against a Hindu father when the debt was neither illegal nor immoral and whether he incurred expenses for the family purposes or not, may be enforced in his lifetime by the execution sale of the entire co-parcenary estate and is binding on his son. 39 All. 437 (P.C.) Dist. (*Shadi Lal and Le-Rossignol, JJ.*) AMAR NATH *v.* RUSTOMJI.
15 P.R. 1918=24 P.W.R. 1918=43 I.C. 678=112 P.L.R. 1918.

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———*Debts—Son's liability.*

A son is as much liable as the father when the latter borrows money for family purposes. (*Shadi Lal*, J.) ANANT RAM *v.* MANSA RAM. 82 I.C. 780=39 P.W.R. 1916.

——*Debts—Son's liability—Punjab.*

The estate of the minor son which came to him though his father could not be made directly or indirectly liable in respect of claims against his father for monies when the father did not charge the estate in his possession with the payment of those debts. 173 P.L.R. 1912, Foll. (*Reid*, C. J. *and Rattigan*, J.) CHOGHATTA *v.* ASRO MAL. 30 P.R. 1913= 17 I.C. 371=270 P.L.R. 1914.

———*Debts—Son's liability—Mortgage by father.*

There is a difference between a suit by the son to have an alienation of joint family property by their father declared invalid and a suit by creditors seeking to fix the liability of the father on the son. It is only when a son seeks to avoid liability that he has to prove that the debt incurred by his father was an immoral one. Where the son filed a suit for declaration that a mortgage of ancestral property executed by his father was not for necessity and therefore not binding on him, *held* that the debt though not binding on the son as a mortgage still there was nothing to debar the mortgagee from enforcing the decree which he might obtain against the father for the amount of the loan against ancestral property including the property mortgaged. 53 P.R. 1901; 15 P.R. 1918, followed. (*Broadway and Campbell*, JJ.) HARKISHEN SINGH *v.* LAHORE BANK, LTD. (1922) M.W.N. 692= 1923 M. 134.

———*Debts—Son's liability for father's debt —Remedies of creditor.*

So long as a Hindu family remains undivided, a creditor can proceed against the interest of the sons in the ancestral property for the debts of their father which have not been contracted for illegal or immoral purposes. 4 M. 1; 41 M. 136, 140; 38 M. L. J. 402; 39 A. 437; 43 M.L. J. 98 Ref. If the sons after partition in a joint Hindu family effect a *bona fide* partition at a time anterior to the date when their father's debt is contracted, their responsibility is different and the father's creditor cannot then proceed against their divided shares. 22 M. 519; 41 M. 138; 40 M. L. J. 473, Ref. (*Spencer and Devadoss*, JJ.) KURUKUNDI SAMA RAO *v.* FIRM OF MARWADI VANAPPI VAJINJI. (1922) M.W.N. 708=43 M.L.J. 715= 32 M.L.T. 9=17 L.W. 661=46 M. 65= 1923 M. 36

———*Debt—Son's liability—Cause of partition being that the father incurs debts.*

The son's share on partition between father and sons, is not liable for the debts contracted by the father before division but not charged on the property; the fact that the partition was effected because the father was incurring debts would not affect the *bona fides* of partition. (*Abdur Rahim and Oldfield*, JJ.) KURRI VENKATA REDDI *v.* CHELLURI SURYANARAYANA MURTHI. 40 M.L.J. 473= 29 M.L.T. 265=(1921) M.W.N. 261= 62 I.C. 980=13 L.W. 516.

———*Debt—Son's liability—Ready money debt.*

The son's obligation to pay off his father's debts attaches to an antecedent debt as also to a ready money debt and if can be enforced during the father's life-time by the attachment of the son's share in the joint family property. (*Ayling and Coutts-Trotter*, JJ.) RAJARATNAM CHETTY *v.* ADILAKSHMAMMAL. 62 I.C. 218=28 M.L.T. 278.

———*Debts — Son's liability — Execution sale.*

A creditor suing a Hindu for his personal debt not tainted by immorality or illegality is entitled to include the sons of the debtor as parties to the suit and to sell the whole ancestral property including the son's share in execution of the decree. The decision in 39 All. 437 (P.C.) has not altered the previous law in this respect. (*Abdur Rahim and Ayling*, JJ.) SUBRAMANIA IYER *v.* SHAW WALLACE & CO. 38 M.L.J. 402=12 L.W. 117= 58 I.C. 648=28 M.L.T. 107.

———*Debts—Son's liability—Personal debts —Liability of sons—Suit on mortgage—Personal decree against whole ancestral properties.*

In a suit upon a mortgage executed by the father the Court found the mortgage to be not binding as such upon the sons and passed a decree for sale in respect of the father's share of the mortgaged property and declined to pass a decree under O. 34, R. 6, C. P. C. The debt was not proved to be illegal or immoral. *Held*, that the plff. was entitled to a conditional decree for the recovery from the mortgagor personally and from the ancestral properties of himself and his sons of any balance left in case the net proceeds of the sale of the father's share of the mortgaged property was found to be insufficient to pay the amount due to him. The decision in I.L.R. 39 All. 437 (P.C.) alters the law as to the pious obligation of a Hindu son even during his father's lifetime for a debt of the latter which is not immoral or illegal. (*Oldfield and Krishnan*, JJ.) KANDASWAMI GOUNDAN *v.* KUPPA MOOPAN. 43 Mad. 421=38 M.L.J. 203= 11 L.W. 221=(1920) M.W.N. 181= 58 I.C. 320=27 M.L.T. 96.

———*Debts—Son's liability—Sale of family property in execution of money decree—Son's suit to recover his share.*

A Hindu suing to recover his share of family property sold in execution of a decree obtained against his father is bound to show that the debt for which the property was sold was not binding on him because it was contracted for

illegal or immoral purposes or because it was contracted merely to enable the father to sell all the son's properties. In the absence of such proof by him his suit must fail. (*Spencer and Krishnan*, JJ.) SUBBA RAO *v.* SWAMIA PILLAI. **47 I.C. 834=7 L.W. 407.**

———*Debts—Son's liability — Alienation—Set aside by son—Consideration—Liability to pay.*

Where a sale by a Hindu father is set aside in a suit by the sons on the ground that it is not for binding family purposes, the purchaser cannot treat the consideration which he seeks to get refunded as a debt of the father which it is the pious duty of the sons to repay. 22 Mad. 312, Foll.; 39 All. 437; 41 Mad. 136, Dist. (*Abdur Rahim and Napier*, JJ.) KILLARU KOTAYYA *v.* PALAVARAPPU DURGAYYA. **47 I.C. 192=35 M.L.J. 461.**

———*Debts—Son's liability—Promissory note executed by father after partition in renewal of a note executed before—Pious obligation of son.*

A Hindu son cannot be made liable during his father's lifetime on a promissory note executed by his father after partition in renewal of a note executed by him before partition. The decision in *Sahu Ram Chandra* v. *Bhup Singh*, 44 I. A. 126 does not overrule the right of a creditor of a Hindu father whose debt has not been incurred for an illegal or immoral purpose to join the father and his sons in a suit on the debt and to bring to sale in execution of the decree in such suit the interest both of the father and his sons in the joint family property. Per *Kumaraswamy Sastri*, J.—It is the primary duty of the father to pay debts incurred by him not for any family necessity but for his own purposes. The pious duty of the son only arises when the assets of the father are insufficient assuming that it arises at all during the life-time of the father. In other words, the pious duty is limited to the debts which the father is unable to satisfy out of his share or his self-acquired properties. (*Wallis*, C.J. *and Kumaraswami Sastri*, J.) PEDA VENKANNA *v.* SREENIVASA DEEKSHITULU. **41 Mad. 136=33 M.L.J. 519=22 M.L.T. 334=6 L.W. 649=43 I.C. 225=(1918) M.W.N. 55.**

———*Debts—Son's liability—Extent of.*

A son is not jointly bound with the father to pay the debts of the latter. During lifetime of father the son cannot be sued apart from the father. The son's liability lasts only so long as the father's liability subsists and if the latter is at an end, the pious obligation of the son also ceases. *Quære*:—On the insolvency of the father does the power of the father to sell the share of the son for his debts vest in the official assignee. (*Ayling and Srinivasa Aiyengar*, JJ.) NARAYANA CHETTIAR *v.* VEERAPPA CHETTIAR. **40 Mad. 581=20 M.L.T. 318=(1916) 2 M.W.N. 271=4 L.W. 422=35 I.C. 918=31 M.L.J. 386.**

———*Debts — Son's liability—Promissory note—Onus.*

To make the sons liable on a promissory note executed by their father who was a member of joint Hindu family with the sons, it is sufficient to join the sons in the suit on the pronote and give them an opportunity of showing circumstances which would prevent the debt being binding on them or a decree being passed against them. It is not necessary to plead and prove that the debt was incurred by the father for purposes binding on the family where the plea of want of consideration is raised the onus of proof in the case of sons is not different from that in the case of their father. 27 M.L.J. 595; 23 Mad. 597; 30 Mad. 88, Ref. (*Wallis*, C.J. *and Hannay*, J.) NACHIAPPA CHETTY *v.* DAKSHINAMURTHY. **17 M.L.T. 232=28 I.C. 345=(1915) M.W.N. 217.**

———*Debts—Son's liability—Suit—Whether should be against one or all sons—Form of decree.*

The creditor is not bound to sue all the sons for the debt of the deceased Hindu father. Even in a suit against one son for a proportionate portion of the debt, it was held that the decree should be for the whole amount of the debt to the extent of that son's share in the joint family property. (*Miller*, J.) SALEM TOWN BANK *v.* RAMASWAMY IYER. **26 I.C. 362=27 M.L.J. 2.6.**

———*Debts—Son's liability — Mesne profits.*

A decree was passed against the father only in a suit against him and his sons for mesne profits. On attachment in execution of that decree the son objected that his share is not liable to attachment as he was not a party to the decree. *Held*, the son was bound to pay his father's debts under religious and moral considerations and the decree against the father alone made no difference in his position. (*Ayling and Napier*, JJ.) ZENAMANDRA PAPIAH *v.* LANKA SUBBA SASTRULU. **(1914) M.W.N. 616=25 I.C. 396=27 M.L.J. 276.**

———*Debts—Son's liability—Liability of co-parceners—Onus.*

Essential difference between the liability of sons and liability of co-parceners lies in the onus which is on the sons on the one case, to prove the illegal and immoral nature of the debt and on the creditor to prove necessity on the other. (*Miller and Abdur Rahim*, JJ.) SOMASUNDARA AVALAPPA NAICKER *v.* MURUGAPPA CHETTIAR. **36 Mad. 325=18 I.C. 49=23 M.L.J. 668=12 M.L.T. 571=(1913) M.W.N. 86.**

———*Debt—Son's liability—Mortgage—Personal remedy barred.*

The fact that the personal remedy against the judgment-debtor in a mortgage decree was barred does not extinguish the debt; therefore if the interest of a son was sold to satisfy such a debt, it must be held that it was for an

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antecedent debt and the son would be bound. 15 Cal. 717; 17 Cal. 684, Foll.; 29 Mad. 200 and 16 M.L.J. 62, Ref. (*Benson and Miller*, JJ.) MUTHUSAMI CHETTIAR *v.* SUBRAMANIA IYER. 11 M.L.T. 142=14 I.C. 69= (1912) M.W.N. 453.

———*Debts—Son's liability—Legal representative of son.*

Where a simple money decree is obtained against the father, and on his death, his sons are brought on record as his legal representatives, the execution proceedings are binding on the sons. 7 Mad. 255; 32 Mad. 429. Expl. (*Wallis and Sankaran Nair*, JJ.) BHAGAVATULU *v.* KELESWARAPPA VENKATA. (1911) 1 M.W.N. 198=9 I.C 648= 9 M.L.T. 481.

———*Debts—Son's liability—Decree against father when can be reopened.*

If in regard to an admitted or proved existing debt of their fathers the sons are only entitled to plead that it was illegal or immoral, it must be admitted that they are also entitled to plead that there was no debt of their fathers existing at the time at all, and there is no difference between that and the plea that there was no debt of their father existing at the time which was of such a nature as to justify an alienation of their shares for its satisfaction. (*Hallifax* A.J.C.). ARJUN *v.* CHHAGAN LAL. 6 N.L.J. 185=1923 Nag. 300.

———*Debts—Son's liability—Father's surety debts.*

Under the Hindu Law sons are liable to pay their father's debts incurred by him as a surety for the re-payment of money lent. Case-law examined. (*Hallifax*, A.J.C.) MAYARAM *v.* BHAIRON PRASAD. 19 N.L.R. 29= 1923 Nag. 115 (2).

———*Debts—Son's liability—Pious obligation.*

The pious obligation to pay father's debts will not justify a decision binding the son with it during the father's lifetime if the debt is neither antecedent nor for necessity. (*Macnair*, A.J.C.) PARASRAM *v.* LAKSHMICHAND. 57 I.C. 578.

———*Debts—Son's liability—Extent of.*

It is the primary duty of a Hindu father to pay debts incurred by him not for any family, but for his own purposes and the pious duty of a son if it arises at all only arises if the father's share or his self-acquisitions are insufficient to meet the debts. (*Findlay*, A.J.C. NANHUSAO *v.* GANPATI. 53 I.C. 231.

———*Debts—Son's liability—Sons' right to challenge decree against father.*

Where the sons bring a suit for a declaration that a foreclosure decree passed against their father is not binding on them on the ground they were not made parties to the foreclosure suit and it is not shown that the mortgage debt was either illegal or immoral, the sons' suit is not sustainable. The mere fact that in the foreclosure suit the father was not described as the manager of the joint family did not make the decree any the less binding on his sons, in the absence of proof that the father acted in a way prejudicial to the interests of the family. (*Kanhaiya Lal*, J.C.) BHAGWATI PRASAD *v.* KALLU RAM. 25 O.C. 256= 1923 Oudh 51.

———*Debts—Son's liability—Pious obligation.*

Under the Hindu Law, subject to certain limited exceptions, the whole of the undivided estate of a joint family is liable in the hands of the sons for the debts of the father unless the debts are taken for illegal or immoral purposes. There is a pious obligation on the sons to pay such debts. The obligation is only contingent during the father's lifetime, the father may discharge the same in his lifetime or there may be ample personal estate of the father available out of which the debts might be discharged or no joint family property left from which their satisfaction might be possible. It makes no difference in principle whether the property passed out by foreclosure or sale. (*Kanhaiya Lal*, J.C.) BINDESHARI SINGH *v.* AUDESH PRASAD SINGH. 25 O.C. 16=1922 Oudh 85.

———*Debts—Son's liability — Mortgage — Personal remedy.*

In the absence of proof of necessity the sons of a Hindu are not liable for a mortgage debt contracted by their father. The remedy of the creditor on the basis of the pious obligation of the sons is not co-extensive with his remedy on a binding security. Where the sons are sought to be made liable on the personal obligation contained in the mortgage executed by their father, the suit must be brought within six years from the due date under the bond. 31 A. 176, Foll; 39 A. 437, Ref. (*Lindsay*, J.C.) RAM CHHATTAR *v.* RAN LAL. 65 I.C. 950= 25 O.C. 395.

———*Debts—Son's liability—Joint or separate status of the family.*

The question as to the pious obligation of the son to pay a debt does not depend upon whether the son was separate or joint with the father. That question is based on religious considerations. Nor is the pious obligation concerned with the question whether the debts are secured or unsecured but is concerned only with the question whether the debt is lawful or incurred for unlawful or immoral purposes. (*Daniels and Wasir Hassan*, A.J.Cs.) RAM SARAN *v.* MANGAL. 8 O.L.J. 87=28 O.C. 327= 60 I.C. 219=2 U.P.L.R. (J.C.) 191.

———*Debts—Son's liability — Pious obligation.*

The son cannot recover the property lost by his father either by voluntary or involuntary sale for antecedent debts unless he shows that the debt was taken for immoral purposes or was of such character that he was not in any

HINDU LAW—Debts—Son's liability.

contingency bound to discharge. (*Stuart and Kanhaiya Lal*, A.J.Cs.) BHARATH SINGH *v.* SARSUTI SINGH. 23 O.C. 244=60 I.C. 137= 7 O.L.J. 459.

——*—Debts—Son's liability — Father alive.*

Son's liability to pay the father's debt during father's lifetime though contingent may still be binding on the son so as to justify alienation by compromise by the father. (*Kanhaiya Lal*, A.J.C.) HARI HAR DATTA *v.* MATHURA PRASAD. 7 O L J 467=57 I.C. 599= 2 U.P.L.R. (J. C.) 143.

——*—Debts—Son's liability—Pious obligation.*

Where an alienation by a Hindu father is questioned by his sons during his life there is no pious obligation on the sons to pay the debt. 39 All. 437 (P.C.), Foll. (*Stuart and Kanhaiya Lal*, JJ.) JAI NARAYAN *v.* RAJRANG BAHADUR SINGH. 48 I.C. 914=5 O.L.J. 691.

——*Debts—Son's liability—Pious obligation of sons—Liability debtor's share.*

So long as the father in a Hindu family is alive the pious obligation to discharge his debts which is imposed by the Hindu Law upon his sons cannot be enforced. Under a decree against any individual co-parcener for his separate debt, a creditor may during the life of the debtor seize and sell his undivided share in the family property. (*Lindsay*, J.C.) MANNA LAL *v.* BHAGWAN DIN. 47 I.C. 679=5 O.L.J. 447.

——*—Debts—Son's liability — Execution of decree.*

Where the debt was not incurred for the benefit of the family it is only the father's share of the joint property that can be sold in execution of a personal decree against the father while he is alive. 39 All. 437 (P.C.), Cons. (*Stuart and Kanhaiya Lal*, A.J.C.s) BHARATH SINGH *v.* PRAG SINGH. 20 O.C. 311= 43 I.C. 291=5 O.L.J. 9.

——*—Debts—Son's liability.*

As son is not liable for money taken at time of the alienation and so forming part and parcel of that transaction. 29 Mad. 200; 31 All. 176; 14 O.C. 299, Ref. In order to exempt himself from liability the son must show that debt never existed or that it was contracted for illegal or immoral purposes. 1 I.A. 321; 35 Cal. 148: 13 Cal. 21 (35) (P.C.), Ref. (*Stuart and Kanhaiya Lal*, A.J.Cs.) BAKHATAWAR SINGH *v.* RAM SINGH. 36 I.C 44= 3 O.L.J. 289.

——*—Debts—Son's liability—Barred-debts.*

A promise to pay a barred debt is neither illegal nor immoral and is therefore binding on the sons. But it is not binding on the other co-parceners because it is not for the family benefit. 31 A. 171; 8 A.L.J. 649; 6 Mad. 293, Ref. (*Lindsay* J.C. *and Kanhaiya Lal*, A. J.C.) HARI HAR BAKSH SINGH *v.* BHARAT PRASAD. 20 I.C. 590=16 O.C. 185.

HINDU LAW—Debts—Son's liability.

——*Debts—Son's liability—Extent of.*

A mortgage by father not for necessity nor for immoral purposes is binding on the sons as well. 13 Cal. 21; 24 All. 129; 106 Cal. 860; 34 Cal. 184, Ref. (*Tudball and Evans*, A.J.Cs.) JAI RAM *v.* SHEOSHANKAR BAKSH. 9 I.C. 406.

——*Debts—Son's liability during father's life-time.*

Where the debts incurred by a Hindu father were not incurred for legal and justifying necessities of the joint family or for the benefits of the defendants Nos. 3 and 4 (his sons) and it is also not found that the debts were incurred for immoral purposes, the minor sons of the father are bound to satisfy their father's debt on the theory of the pious obligation of the sons to pay their father's debt. The Court should accordingly make a decree against the defendants Nos. 3 and 4 and limit their liability to the extent of the co-parcenary property of the joint family. (*Kulwant Sahay and Foster*, JJ.) DEBENDRA KUMAR *v.* FYZABAD BANK, LTD. 4 P.L.T. 516=1924 P. 94.

——*Debts—Son's liability—Ancestral or self-acquired property.*

The onus or proof of immorality or illegality as affecting the debt incurred by the father is upon the sons, for after the death of their father their liability to pay the father's debt arises under the express text of the Mitakshara on the ground of their pious obligation to save their fathers from the region of torment or hell. The sons, are, therefore, bound to pay the decree debt of their father under the Hindu Law. Their liability is a personal one, and it is not barred up to six years from the date of the decree. The rule of Hindu Law is that where a son or a guardian takes ancestral property by survivorship, he is bound to pay out of such property all debts of his ancestor not incurred for immoral or illegal purposes including the judgment-debtor. (*Jwala Prasad and Adami*, JJ.) SHEIKH KAROO *v.* RAMESHWAR SAO. 3 P.L.T. 43=1923 P. 143.

——*—Debts — Son's liability — Personal decree—Separate property.*

A son in his representative capacity is liable for the debts of his deceased father only to the extent of the assets of the co-parcenary property held by him, even if a person obtains a personal decree against the son for recovery of such debts, the decree must be construed in the light of S. 52 of the Civ. Pro. Code, and the decree-holder should not be allowed to proceed against the separate property of the son. (*Jwala Prasad and Ross*, JJ.) BHUJAWAN PRASAD SINGH *v* RAM NARAYAN. 65 I.C. 224 (1).

——*—Debts—Son's liability.*

A Hindu son is bound by a charge on ancestral property created by his father before his birth. (*Coutts and Ross*, JJ.) RAMCHANDRA PRASAD *v.* MAHABIR PRASAD SINGH. 64 I.C. 247.

HINDU LAW—Debts—Son's liability.

———*Debts—Son' liability—Liability sonal*.

The son's liability to pay off his father's debts is personal irrespective of any ancestral or self-acquired property of his father in his hands. Where a son or grandson takes ancestral property by survivorship, he must pay all debts, those incurred for immoral and illegal purposes excepted, including judgment-debt, and the burden of proving illegality or immorality lies on the son or grandson. (*Jwala Prasad and Adami*, JJ.) KEROO *v.* RAMESHWAR SAO. 62 I . 905=6 P.L.J. 451.

———*Debts—Son's liability.*

Where a Hindu father contracted a debt to help a relative expecting to get back the money and some benefit out of it, the son is liable to pay the debt. (*Roe and Coutts*, JJ.) BARAIK RADHA NATH SINGH *v.* THAKUR DEVENDRA NATH SAHI DEO. 52 I.C. 681= 1919 Pat. 278.

———*Debts—Son's liability—Mortgage by father.*

A mortgage by the head of the family as Karta of joint family property for the benefit of the family affects the shares of all members of the family. If the mortgagor uses the words "My share" it includes the shares of his sons and grandsons who are subordinate to him. (*Roe and Jwala Prasad*, JJ.) DEODHARI SINGH *v.* BHUPUARNI SINGH. 42 I.C. 486= 3 P.L.W. 1.

———*Debts — Son's liability — Father's debts—Suit for, recovery of, against father and his sons.*

In a suit against a Hindu father and his undivided sons for the recovery of debts contracted by the father alone the plaintiff's claim would stand unless the sons prove that the debts were contracted for immoral or illegal purposes. The amount borrowed may or may not have been spent for the benefit of the sons. 22 Mad. 49, Foll. (*Mullick and Jwala Prasad*, JJ.) NATHUNI SINGH *v.* BAIJNATH PRASAD. 2 Pat. L.J. 212=39 I.C. 352= 1. P.L.W. 300.

———*Debts—Son's liability—Not affected by want of necessity or of consent of adult son.*

The liability of a son to pay his father's debt is not affected by the absence of the son's consent though a major at the time or of family necessity; it arises from moral and religious duty. (*Chapman and Atkinson*, JJ.) BHAGAT SASHU *v.* ABDUL KARIM. 1 Pat. L.J. 86= 34 I.C. 23=2 Pat. L.W. 430.

Debts—Trade.

———*Debts — Trade — Business purposes—Necessity—Proof of.*

Where the manager of a joint Hindu family mortgages a joint estate, it must be still incumbent on the parties supporting the mortgage to prove that the money raised on the mortgage was required for family purposes. No doubt if the family is carrying on a trading business, it would be very much easier to prove that the money was required for the purposes of that trade, and so for family purposes, than if the family were mere agriculturists. (*Macleod*, C.J. *and Crump*, J.) VITHAL YESHWANT *v.* SHIVAPPA MALLAPPA. 47 Bom. 637=25 Bom. L.R. 323= 1923 Bom. 265 (2).

HINDU LAW—Debts—Trade.

———*Debts — Trade — Debt by manager—Liability of minors.*

A joint family which carries on a trade handed down from ancestors becomes a trading family, and in such a case, the minor members are liable for the debts contracted by the managing member for the purposes of the trade or purposes incidental to it. (*Scott-Smith and Leslie-Jones*, JJ.) DAYAL SINGH *v.* BAHAL SINGH. 60 I.C. 610.

———*Debts—Trade—Minor's liability.*

A minor co-parcener during minority is only liable to the extent of his interest in property. After majority too, his share is liable. Rights and liabilities of a joint family firm must be considered with regard to general rules of Hindu Law also. So death of one co-parcener does not dissolve the partnership. (*Rattigan, Shah Din and Le-Rossignol*, JJ.) GOKUL CHAND *v.* HUKAM CHAND NATHUMAL. 70 and 71 P.R. 1917=109 P.W.R. 1916= 35 I.C. 715=154 P.L.R. 1916 (F.B.).

———*Debts— Trade— Debts borrowed by member conducting business — Liability of minor members.*

Where a member of a joint Hindu family who carries on an ancestral business on behalf of the family contracts debts for purposes of the trade, the creditors are entitled to go against the whole of the family property including the shares of the minor members inasmuch as the debt is borrowed for a family purpose. 35 M. 692, distinguished; 5 L. W. 341; 34 Bom. 72; 38 M.L.J. 55, Rel. on. (*Spencer and Devadoss*, JJ.) SUBBARAYA MUDALI *v.* THANGAVELU MUDALI. 45 M.L.J. 44=1924 Mad. 33.

———*Debts — Trade — Liability of co-parceners.*

Co-parceners though not signatories to a pro-note executed for family trade purposes are liable on a promissory note executed by the Manager of a family trade. (1912) M.W.N. 1011, Diss. (*Coutts-Trotter*, J.) AYYASAMI PILLAI *v.* GURUSAMI NAICKEN. 33 I.C. 691=3 L.W. 463.

———*Debts— Trade— Liability of co-parceners.*

All co-parceners can be sued, on a note executed by one member in the family name where a joint family trades under a firm name. (*Kumaraswami Sastri*, J.) VENKATARAMIAH PANTULU *v.* SUBRAMANIAM. 26 I.C. 393=16 M.L.T. 389.

HINDU LAW—Debts—Trade.

———*—Debts—Trade.*

In a Hindu family carrying on agricultural business, debts contracted by manager or father are binding on other members and their shares in the joint family are bound to satisfy the debts, if the money is spent for family purposes. (*Twomey*, C.J, *Robinson*, *Maung Kin and Rutledge*, JJ.) S.T.S.V. CHETTY *v.* V.N. VADANVETTY. 12 Bur. L.T. 266 = 88 I.C. 711 = 10 L.B.R. 87 (F.B.)

———*Debts—Trade—Liability of minor co-parceners.*

Minor partners of a joint family business are only liable for the debts of the business to the extent of their share in the property of the firm. (*Ormond*, J.) O. A. M. K. CHETTY FIRM *v.* V. K. P. CHETTY FIRM. 31 I.C. 271 = 8 L.B.R. 112.

Debts—Widow.

———*Debts—Widow—Mortgage— Execution —Subrogation.*

A Hindu widow obtained a decree for possession of her husband's estate on payment of a certain sum of money which was spent for the discharge of debts binding on the estate. She raised the money by a mortgage executed in favour of one U. and obtained possession. She had previously executed other mortgages in favour of K and M. U. sued on his mortgage and claimed priority over the mortgages of K and M on the principles of subrogation. *Held*, that the doctrine of subrogation cannot be resorted to by the appellant for the purposes of claiming priority over K and M. (*Piggott and Lindsay*, JJ.) UMARAI LAL *v.* RUKMIN KUAR. 36 I.C. 647 = 14 A.L.J. 953.

———*Debts—Widow—Legal necessity.*

Debts contracted by a widow in possession of her husband's estate to meet the expenses of litigation in defending her life-estate or for protecting the estate are for legal necessity. The lender has only to show there was pressure on the estate and necessity for borrowing for meeting the costs of litigation or that he satisfied himself after reasonable enquiry. (*Chatterjee and Walmsley*, JJ.) STEVENS *v.* JANKI BALHALI. 22 I.C. 805 = 19 C.W.N. 80.

———*—Debts—Widow — Liability of reversioner.*

A reversioner is liable for debts incurred by the widow for payment of her husband's debts unless he proves either that the debt had already been paid or that the widow was deceived into a belief that they were legally recoverable. The reversioner is not liable for money advanced to the widow without reasonable inquiry on the part of the creditor and in the absence of reasonably credited representation of necessity. (*Kanhaiya Lal and Sabonadiere*, A.J.Cs.) BHAGWANT SINGH *v.* DAULAT SINGH. 21 I.C. 757 = 16 O.C. 272.

Degradation.

See HINDU LAW—SUCCESSION.

HINDU LAW—Gift.

Devasthan.

See HINDU LAW — RELIGIOUS ENDOWMENT.

Disqualification.

See HINDU LAW—SUCCESSION.

Divorce.

See HINDU LAW—MARRIAGE.

Endowment.

See HINDU LAW—
(1) GIFT.
(2) RELIGIOUS ENDOWMENT.

Exclusion from inheritance.

See HINDU LAW — SUCCESSION—EXCLUSION.

Executor.

See HINDU LAW—WILL.

Factum Valet.

See HINDU LAW—
(1) ADOPTION.
(2) MARRIAGE.

Family Arrangement.

See FAMILY ARRANGEMENT.

Family dwelling-house.

See HINDU LAW—
(1) JOINT FAMILY.
(2) PARTITION.

Family Settlement.

See FAMILY ARRANGEMENT.

Family Trade.

See HINDU LAW—
(1) ALIENATION.
(2) DEBTS.
(3) JOINT FAMILY—TRADE.

Female's Estate.

See HINDU LAW—SUCCESSION.

Firm.

See HINDU LAW—FAMILY TRADE.

Gift.

See also HINDU LAW—
(1) ALIENATION.
(2) JOINT FAMILY.
ABSOLUTE ESTATE.
CONSTRUCTION.
CO-PARCENER.
FATHER'S POWER.
FORMALITIES OF.
IDOL.
LIMITATIONS.
LIMITED ESTATE.
LIMITED INTEREST.
MANAGER OF JOINT FAMILY.
WIDOW.

HINDU LAW—Gift—Absolute estate.

Gift—Absolute Estate.

———*Gift—Absolute estate—Gift by husband to wife—Words empowering alienation.*

Where a Hindu husband makes a gift of land to his wife, he can use words of sufficient amplitude to convey in the terms of the gift itself the fullest rights of ownership including the power to alienate. In such a case it is not necessary that the power to alienate should be given by express declaration. 30 A. 84; 30 M.L.T. 149, Ref. (*Lord Buckmaster*) RAMACHANDRA RAO *v.* RAMACHANDRA RAO.
45 Mad. 320=43 M.L J. 78=
34 Bom. L.R. 983=16 L.W. 1=
(1922) M W N. 359=20 A L J. 684=
26 C.W.N. 713=30 M.L.T. 154=
36 C L J. 545=L.R. 3 P.C. 168=
49 I.A. 129=1922 P.C. 80 (P.C).

———*Gift—Absolute estate—Gift to female—"Malik"—Repugnant estate.*

A Hindu testator bequeathed the "entire estate" to the deft. subject to conditions of which the 4th provided: 'I have bequeathed Mauza Khudda to Gomi (a foster daughter) after my death she shall be owner in possession (*malik o-qabiz*) of the entire Mauza Khudda.' *Held*, that Gomi though a female took an absolute estate in Mauza Khudda the words "malik-o-qabiz" in Cl. 4 meaning "owner in possession" signified a full ownership of property and the other expressions in the will did not alter the absolute estate. Taking the clauses together there was no repugnancy and the general disposition in favour of the defs. was subject to an exception in respect of Mauza Khudda bequeathed to Gomi. 35 I.A. 17, Rel. (*Lord Shaw.*) FATEH CHAND *v.* RUP CHAND 38 All. 446=43 I.A. 183=
18 Bom. L.R. 900=20 M.L.T. 461=
21 C.W N. 102=4 L.W. 397=
(1916) 2 M.W.N. 387=37 I.C. 122=
26 C.L.J. 182 (P.C.).

———*Gift — Absolute estate — Bahamah wajab—Meaning of.*

Held on a construction of the gift that the estate conferred on the widowed daughter-in-law was an absolute estate and that the words "bahamah wajab" occurring in the deed of gift meant "with all rights." (*Stuart*, J.) ABHEY SINGH *v.* HIMTA. 65 I.C. 653=
1923 All. 234 (1).

———*Gift—Absolute estate—Female donee—Malik.*

The words "Malik Mustagil" in respect of property gifted to a woman, in the absence of circumstances indicating that the donee was to take a mere life-estate, conferred an absolute estate. A grant should be constructed in favour of the grantee rather than of the grantor. 30 All. 84, Rel. to. (*Richards*, C.J. *and Banerjee*, J.) NAULAKHI KUAR *v.* JAI KISHEN SINGH.
40 All. 675=45 I.C. 905=16 A.L J. 564.

———*Gift—Absolute estate—Female donee,*

In construing a deed of gift to a Hindu female regard must be had to the contents of the same on the merits and the intentions of the donor and no presumption should be drawn from the fact of the donee being a female. (*Johnstone and Rattigan*, JJ.) GURMUKH SINGH *v.* MAKHAN SINGH. 61 P.R. 1911=
11 I.C. 846=147 P.W.R. 1911.

———*Gift—Absolute estate—Females—Presumption.*

Per *Krishnan*, *J*—The presumption as regards bequests in favour of a Hindu woman being only a life-estate is no longer applicable in this Presidency. (*Spencer and Krishnan*, JJ.) CHIDAMBARA NATHA GOUNDEN *v.* SELLAPPA REDDI. 10 L.W. 620=
34 I.C. 524=27 M.L.T. 37.

———*Gift — Absolute estate — Females—Nature of estate granted.*

In the case of gifts to Hindu females where there are words indicating that an absolute estate should pass they should be given a liberal interpretation and the estate should not be cut down by reason of any presumption under the Hindu Law. The grant of an absolute estate should be made from the whole tenor of the document. For the grant of an absolute estate to a female it is not necessary that there should be express words giving power of alienation. 2 I.A. 7, Ref.; 22 Mad. 357 and 18 M.L.T. 346, Not foll. (*Spencer and Kumaraswami Sastri*, JJ.) MURAKONDA RAMASWAMI *v.* MURAKONDA LAKSIMI DEVI,
33 I.C. 253=10 L.W. 269.

———*Gift—Absolute estate—Wife—Will.*

Where the husband gives property to his wife and the words of the gift are sufficiently clear there is no presumption that the donee takes only a limited estate. 33 All. 84 (P.C.), Rel. The rule laid down by the Privy Council in 2 I.A. 7 is a rule of construction to be applied only when there is some uncertainty or ambiguity in the language of the instrument of gift. A Hindu gave the residue of his properties to his two wives and adopted son as follows: "Of the remaining property the adopted boy is to be entitled to enjoy one-half. Of the remaining half these two persons my senior wife S. K, and my junior wife S.T. shall each take a half." *Held*, each wife of thesettler took an absolute estate in the fourth share of the properties given to her by the settlement. A widow who acquires property absolutely under a gift or settlement from her husband can dispose of the same by will. 7 Mad. 387 and 14 Mad. 274, Diss.; 30 All. 84 and 38 All. 446, Rel. (*Wallis*, C.J. *and Seshagiri Aiyar*, J.) RAMACHANDRA RAO *v.* RAMACHANDRA RAO. 42 Mad. 283=32 I.C. 94=
36 M.L.J. 306.

———*Gift—Absolute estate — Wife—Maintenance—Nature of estate taken—Presumption.*

A Hindu husband made a gift to his childless wife in these words "I have gifted this day in lieu of maintenance the undermentioned house, with rights of alienation by sale," with "site, watercourses and treasures." *Held*, that

HINDU LAW—Gift—Absolute estate.

the deed conferred an absolute heritable estate on the widow. A gift to a female should not be construed less literally than a gift to a male and the broad proposition that a gift to a Hindu female (especially to a wife or a widow by her husband) should be construed with a prejudice in favour of a life-interest is not deducible from the authorities cited in support thereof. 2 I.A. 7, Expl.; 7 Mad. 387 ; 2 L.W. 887, Diss. ; 17 Bom. 503 ; 17 M.L.J. 622, Dist. (*Sadasiva Aiyar and Spencer*, JJ.) MUTHU VENKATANARAYANA CHETTY *v.* ATHIPANDURANGA NAIDU. **31 I.C. 217 = (1919) M.W.N. 103.**

——*Gift—Absolute estate—Female donee—Restriction on alienation.*

A Hindu father made a gift to his daughter in these terms: "These properties having been gifted to and delivered possession of to you, yourself and your Santhathikal Puthra Paramparayami may enjoy the same without creating any incumbrance, sale, etc." *Held*, that the deed conveyed an absolute estate and that the words were only words of limitation and not of purchase. 10 M.L.T. 203, Foll. The restriction against alienation was a repugnant condition and therefore invalid. (*Abdur Rahim and Kumaraswami Sastri*, JJ.) KANTHAMMAL *v.* MEENAKSHISUNDARAM IYER. **(1917) M.W.N. 867 = 43 I.C. 15 = 7 L.W. 32.**

——*Gift—Absolute estate—Female donee—Construction.*

Gift from "generation to generation" confers absolute estate even on a limited owner. (*Benson and Sundara Iyer*, JJ.) NARASIMMA HEGADATHI *v.* BILLAKESU PUJARI. **31 I.C. 513 = 25 M.L.J. 637.**

——*Gift—Absolute estate—Female donee.*

Where the words of the gift are capable of conferring an absolute estate the mere fact of donee being a female will not derogate from the grant. 22 Mad. 357 ; 31 Mad. 179 ; 35 Cal. 896 (P.C.), Dist. (*White*, C.J. *and Seshagiri Iyer*, J.) GOMMATTAM RAMANUJA IYANGAR *v.* SATAGOPACHAR. **24 I.C. 20 = 27 M.L.J. 329.**

——*Gift—Absolute estate—Female donee.*

Under Hindu Law a grant in favour of a female does not necessarily confer an absolute estate on her. S. 82 of the Succession Act does not apply to such a case. (*Kanhaiya Lal*, A.J.C.) CHAURAS KUNWAR *v.* JAGANNATH SINGH. **7 O.L.J. 147 = 56 I.C. 287 = 2 U.P.L.R. (J.C.) 89.**

——*Gift—Absolute estate — Widow to a married daughter.*

A Court should refuse to declare that the deed of gift by a widow to her married daughter does not prejudice the reversionary right. 11 All. 253, Foll. (*Stuart*, A.J.C.) THAKURDIN SINGH *v.* BHAGWANT KUNRI. **32 I.C. 734 = 2 O.L.J. 629.**

HINDU LAW—Gift—Construction.

——*Gift—Absolute estate—Female donee.*

There is no presumption that a Hindu woman, other than a widow, cannot take anything more than a life-interest. (*Sharfuddin and Mullick*, JJ.) JAGANNATHA PRASAD *v.* JAIKISHIN PRASAD. **1 P.L.J. 16 = 34 I.C. 375 = 3 P.L.W. 164.**

Gift—Construction.

——*Gift—Construction* — Bahamah wajab —*Meaning of.*

Held on a construction of the gift that the estate conferred on the widowed daughter-in-law was an absolute estate and that the words "bahamah wajab" occurring in the deed of gift meant "with all rights". (*Stuart*, J.) ABHEY SINGH *v.* HIMT. **1923 A. 234.**

——*Gift—Construction—Bequest to some members of a joint family.*

Where the devisees or donees are only some of the members of a joint Hindu family and there is a clear intention to exclude the remaining members and to confer on the devisees or donees interests to be held, separate from any property which the joint family, might happen to possess, there is no ground for assuming that the devisees or donees were intended to hold the property as co-parceners in the sense of the Hindu Law. (*Chamier and Piggott*, JJ.) PRABHU DYAL *v.* HARICHARAN. **26 I.C. 689.**

——*Gift — Construction — Will — Donee named as adoptee—Gift to donee as a persona designata—Gift not conditional on adoption.*

Where there is absolutely nothing in the will to show that the fact of the adoption of the plaintiff was the motive or reason for the gift, in the absence of anything of the kind, interpreting the language of the gift in its ordinary meaning, the Court must treat it as a gift to donee as a *persona designata* and hold the gift as valid. The distinction between what is description only and what is the reason or motive of a gift or bequest may often be very fine but it is a distinction which must be drawn from a consideration of the language and the surrounding circumstances. (*Macleod*, C.J. *and Shah*, J.) BAI DHONDUBHAI *v.* JAVADEKAR. **1922 Bom. 352.**

——*Gift—Construction — Absolute gift—Krishnarpana.*

A gift accompanied by the words Krishnarpana amounts to an absolute and irrevocable gift though the donor was only a trustee of the subject-matter of gift, and the donee was bound by temporary condition that he should pay a trivial sum as Jodi. (*Batchelor and Roe*, JJ.) RANGACHARYA APPACHARYA *v.* SANKHALPACHARYA. **37 Bom. 231 = 19 I.C. 887 = 15 Bom. L.R. 178.**

——*Gift—Construction—Female donee—Annuity*—Putrapautradi Krame—*Effect of.*

A series of life-estates in tail male is repugnant to Hindu Law and Courts will give

HINDU LAW—Gift—Construction.

to the expression "*putra pautradi Krame*" occurring in a gift of an annuity to a Hindu lady, its usual technical meaning so that the annuity will be perpetual and on the death of the lady, her son would take an absolute estate. (*Teunon and Newbould*, JJ.) RAJENDRA MOHAN MOULIK *v.* UPENDRA NATH GUHA.
64 I.C. 518.

——— *Gift — Construction — Self-acquired property.*

Under the Mitakshara Law, where gifts are made by a father to several sons, whether they are made *inter vivos* or by will, as a substitute for the partition of the property among them, there is no reason to suppose that the father intended to favour any one son more than any other. The natural supposition is that the sons are intended to take their shares as they would take them on partition after the father's death, that is, as an ancestral property. (*Richardson and Huda*, JJ.) MUKTI PRAKASH NANDE *v.* ISWARI DEI DEBI.
57 I.C. 888=25 C.W.N. 988.

———*Gift—Construction.*

Where the expression used was "*jo waste, guzarike digavi*," held these words indicate that there was no intention of making over the lands to her as an absolute gift. 34 A. 234, Dist. (*Scott-Smith and Brasher*, JJ.) MT. MALAN *v.* KISHORE CHAND. 1923 Lah. 17.

——— *Gift—Construction—Bequest to adopted son*—Persona designata.

Where a Hindu widow took a boy in adoption and made a will mentioning the fact of adoption and also made a bequest to the adopted son and recited that she made the will with a view to remove subsequent disputes arising in connection with the management of the family property. It was held that the validity of the adoption was not a condition precedent to the bequest; but the words "adopted son" were only descriptive and in spite of them invalidity of the adoption the devisee could take under the will. (*Shah Din*, C.J. *and Le-Rossignol*, J.) RAMAJI DAS *v.* DURGA PRASAD.
48 I.C. 90=6 P.R. 1918.

———*Gift—Construction--Defeasance clause—Effect of—Transferee from donee—Position of.*

A clause in a deed of gift that the donor was to become entitled to the properties gifted on the happening of a specified contingency is not invalid or opposed to Hindu Law. A Hindu who had been sentenced to transportation for life made a gift of his properties to a relation of his subject to a condition that the donee should hand over the properties to the donor in case he returned to his native village after the termination of his sentence. The donee alienated the properties gifted to strangers who had notice of the terms of the gift. The donor subsequently returned and sued for possession. *Held*, that he was entitled to recover the properties from the alienees who could not be said to be *bona fide* purchasers. (*Krishnan and Venkatasubba Rao*, JJ.) VENKATARAMA AIYAR *v.* AIYASAMI AIYAR. 43 M L.J. 350=16 L.W. 552=(1922) M.W.N. 657=31 M.L.T. 465=1923 Mad. 67.

HINDU LAW—Gift—Co-parcener.

——— *Gift—Construction—Charity.*

Where provision is made for a charity by a Hindu the presumption is that it creates a charge on the estate. True test is to whom is the surplus reserved. (*Seshagiri Aiyar and Napier*, JJ.) KATHAN MUTHRIAN *v.* SIVA BAGHIATHAMMAL. 4 L.W. 104=36 I C. 782=20 M.L.T. 204.

———*Gift—Construction— Tenants-in common.*

When a Hindu male owner gives his property to his daughter and son-in-law, during their marriage, to be enjoyed by them in common, they take the properties as tenants-in-common and not as joint tenants with right of survivorship. 23 Cal. 620, Foll. (*Ayling and Napier*, JJ.) KAPINI GOWNDAN *v.* SARANGAPANY.
3 L.W. 287=34 I.C. 744=(1916) 1 M.W.N. 288.

———*Gift—Construction*—Aun Santhathi—*Meaning.*

Unless excluded by force of the context, an adopted son is included in the expression 'Aun Santhathi' (male descendant). (*Sankaran Nair and Spencer*, JJ.) BALA SUBRAMANIA PILLAI *v.* PITCHA PILLAI.
33 I.C. 852=(1916) 1 M.W.N. 306.

———*Gift—Construction—Interpretation of* "Santhathi paramparaya"—*Son taking as a gift—Character of property.*

The words "*Santhathi paramparaya*" give clear indication of the fact that the annuity created was intended to descend to all heirs of the grantee and not to lineal heirs merely. A son taking an estate from his father as a gift is not free from liability to which he would have been subject had he taken the same as an heir and son (Per *Seshagiri Iyer.*) There is no change in the character of the property if a person is entitled as an heir but instead of taking it one takes it under a will. This principle is applicable in case of *inter vivos* transfers. (*Wallis*, O C.J. *and Seshagiri Aiyar*, J.) RAJARAJESWARA DORAI *v.* V. SUNDARAPANDIYASWAMI. 27 I.C 283=27 M.L J. 694.

Gift—Co-parcener.

———*Gift — Co-parcener—Performance of ceremony.*

Gift of joint family property to a co-parcener by other members, for performing the shradha of a deceased sonless member is valid. It is really supported by consideration. 19 M.L.J. 62; 34 Mad. 422, Ref. (*Seshagiri Iyer and Phillips*, JJ.) BAGIRATHI AMMAL *v* BAGIRATHI AMMAL. 25 M.L.T. 358=30 I.C. 697=(1919) M.W.N. 380.

HINDU LAW—Gift—Co-parcener.

———*Gift—Co-parcener — Validity—Right of sons.*

A gift by a member of a joint Hindu family of some immoveable property, to his daughter which was reasonable as compared to his share in all the joint family properties, and which was not impeached by his undivided son during his lifetime cannot be impeached by the son or the grandson after the donor's death. (*Sankaran Nair and Oldfield*, JJ.) NARAYANA *v.* RAMALINGA. **36 I.C. 428=39 Mad. 537.**

———*Gift—Co-parcener.*

Gift by one co-parcener to another of his share of the property other than a surrender is bad. (*Stuart and Kanhaiya Lal*, A.J.Cs.) BAKHTWAR SINGH *v.* RAM SINGH. **86 I.C. 44=3 O L.J. 289.**

Gift—Father's power.

———*Gift—Father's power—Gift in favour of daughter.*

According to Mitakshara a Hindu father has the power of making within reasonable limits, gifts of moveable property to a daughter. What is reasonable in the circumstances is a question of fact. (*Mr. Ameer Ali.*) RAMALINGA ANNAVI *v.* NARAYANA ANNAVI. **45 Mad. 489=43 M.L J. 428=(1922) M W N. 399=26 C.W.N 929=16 L.W. 639=20 A.L.J. 839=24 Bom. L.R. 1209=30 M.L.T. 255=49 I.A. 168=1922 P.C. 201 (P.C.).**

———*Gift—Father's power—Testamentary gift.*

Whatever power the Karta of a joint Hindu family may have of making a gift *inter vivos* he has no power to make a bequest of any portion of the joint family property to take effect after his death. 8 M. H.C.R. 6; 5 Cal. 149; 16 Mad. 353; 5 Bom. 48, Foll. (*Mears, C.J. Banerjee and Piggott*, JJ.) LALTA PRASAD *v.* SHEAM SINGH. **42 All. 461=18 A.L.J. 503=58 I.C. 667=2 U.P.L.R. (All.) 137.**

——*Gift—Father's power.*

Gift by father on his own behalf and on behalf of his minor son is voidable at the instance of minor son. (*Griffin and Ryves*, JJ.) SHEO GULAM *v.* BADRO NARAYAN LAL. **19 I.C 550=11 A.L J 798.**

——*Gift—Father's power—Ancestral property in favour of female members of the family Will—Consent of adult sons—Minors, if bound.*

In a joint Hindu family the father with the consent of his adult sons and with the consent of relations who are interested in his minor sons, can make a fair and reasonable provision by will in favour of the female members of his family. 35 All. 337 (P.C.); 35 Mad. 628; 17 M. L. J. 528; 27 M. L. J. 485, Foll. (*Sadasiva Aiyar and Spencer*, JJ.) APPANA PATRACHARIAR *v.* SRINIVASA CHARIAR. **40 Mad. 1122=32 M.L J. 364=3 L W. 514=21 M L.T. 403=40 I C. 118=(1917) M.W.N. 355.**

[*See* **contra 43 Mad. 824**]

HINDU LAW—Gift—Formalities of.

———*Gift—Father's power.*

A gift to the daughter of an undivided brother, is, if reasonable, binding on the donor's son. (*Sundara Aiyar and Spencer*, JJ.) PUGALIA VETTORAMMAL *v.* VETTOR GOUNDAN. **(1912) M.W.N. 89=11 M.L.T. 103=13 I.C. 475=22 M.L.J. 321.**

———*Gift—Father's power—Daughter.*

A gift of 8 acres of ancestral land by a Hindu father to his daughter after marriage when the family was possessed of 200 acres of land is valid. 37 Cal. 30; 30 Mad. 452; 22 Mad. 113, Dist. (*Munro and Sankaran Nair*, JJ.) ANIVILLA SUNDARAMAYYA *v.* CHERLALA SITAMMA. **35 Mad. 628=21 M.L.J. 695=9 M.L T. 469=10 I C. 66=(1911) 1 M.W.N. 422.**

———*Gift—Father's power — After born son.*

Gift of ancestral property by father does not bind an after born son (conceived on date of gift) and the subsequent death of the son does not cure the invalidity. (*Kanhaiya Lal and Kendal*, A. J. Cs.) JAGJIWAN BAKHSH SINGH *v.* PATRAJ KUAR. **38 I.C. 449=3 O.L J. 741.**

Gift—Formalities of.

———*Gift—Formalities—Delivery of possession if necessary.*

Under the Hindu Law, delivery of possession of immoveable property is not essential to the validity of a gift thereof. 17 A. 169; 25 A. 358, Foll.) (*Ryves and Gokul Prasad*, JJ.) DEBI SINGH *v.* BANSIDAR. **1922 All. 44.**

———*Gift—Formalities—Delivery of possession.*

Before the T.P. Act came into force a gift could be validly made by an oral transfer followed by delivery of possession. 11 Cal. 121, Foll. (*Mookerjee and Buckland*, JJ.) JAGANNATH MARWARI *v.* CHANDNI BIBI. **26 C.W.N. 65=67 I.C. 81=34 C L J. 432.**

———*Gift—Formalities of—Donee already in possession—Joint holding.*

When the donee is already in possession along with the donor of a joint holding, a gift of a share therein is valid without actually dividing off the gifted portion. (*Shadi Lal*, J.) HIRA SINGH *v.* JHANDA SINGH. **106 P.L R. 1917=42 I.C. 371=80 P.W.R. 1917.**

———*Gift — Formalities of—Possession, delivery of—Donor in loco parentis—Gift to minor and adult together.*

If a donor stands in *loco parentis* to the donee whose parents are living actual possession of the property gifted need not be given to the donee. The donor can accept the gift on behalf of the donee. But where a joint gift is made to a minor and an adult, the donor in *loco parentis* of the minor cannot accept the gift even to the extent of the minor's share. (*Abdul Rahim and Seshagiri Iyer*, JJ.) SABJAN SAHIB *v.* ABDUL AZEEZ SAHIB. **42 I.C. 665.**

HINDU LAW—Gift—Formalities of.

——*Gift—Formalities of—Acceptance.*

A gift which is not accepted can be revoked. (*Dalal*, A. J. C.). NANHUN *v.* RAM DAYAL.
74 I C. 818=9 O. & A.L.R. 460.

——*Gift—Formalities of—Oral gift—Proof of.*

The onus of proving an oral gift is upon the person setting it up. (*Das and Adami*, JJ.) RAMESHWAR NARAIN SINGH *v.* RIKNATH KOERI. 1923 P. 165.

Gift—Idol.

——*Gift—Idol—Not in existence—Validity.*

A gift in favour of an idol not in existence at the time of the gift is invalid. (*Richards*, C. J. *and Banerjee*, J.) PHUNDAN LAL *v.* SRIMATI ARYA PRITINEDHI SABHA.
33 All. 793=11 I.C. 260=8 A.L.J. 944.

——*Gift—Idol—Nature of gift.*

A gift to a Swami for the purposes of an idol vests the property in the Swami and his successors as trustees with the idol as the beneficiary. (*Bachelor and Rao*, JJ.) RANGA CHARYA APPACHARYA *v.* DASA CHARYA SANKHALPA CHARYA. 37 Bom. 231=
19 I.C. 387=16 Bom. L.R. 178.

Gift—Limitations.

——*Gift—Limitations.*

A gift over on an indefinite failure of male issue in the donor's line is void. (*Mr. Ameer Ali*) PURNA SAHI *v.* KALIDHAN PAL.
38 Cal. 603=15 C.W.N. 693=8 A.L.J. 681=
13 Bom L.R. 481=14 C.L.J. 1=
(1911) 2 M.W N. 403=10 M.L.T. 361=
11 I.C. 412=21 M.L.J. 1119 (P.C.).

——*Gift—Limitations—Unborn person—Validity—Creation of annuity.*

A grant of an annuity is a right of property and as it is an incorporeal right, the test of validity in each case is, whether, under the circumstances, the donor has sufficiently indicated an intention that the transfer should take effect as a corrody and with that intention has done all that is practicable by way of transferring such indicia of property as may be in existence. If there is such a transfer there is no room for the application of the rule in the *Tagore case* as to the invalidity of a gift to an unborn person. 18 C.L.J. 85; 39 C. 87, Ref. (*Mookerjee and Chotzner*, JJ.) JATINDRA MOHAN MONDAL *v.* GHANASHYAM CHOWDHURY. 38 C.L J. 428=50 C. 285=
1923 Cal. 27.

——*Gift—Limitations—Defeasance.*

Defeasance by way of gift over must be in favour of somebody in existence at the time of the gift. (*Reid and Clark*, JJ.) KALLU MAL *v.* CHAHINDI. 36 I.C. 222=97 P.L.R. 1916.

——*Gift—Limitations—Unborn persons—Invalid.*

The creation of a future interest in immoveable property in favour of persons unborn is contrary to Hindu Law. (*Sankaran Nair and Spencer*, JJ.) VENKATAPPA NAYANIM VARU *v.* THIMMA NAYANIM VARU.
(1914) M.W.N. 900=
27 I.C. 379=27 M.L.J. 656.

HINDU LAW—Gift—Limited estate.

——*Gift — Limitations — Gift subject to mortgage—Donee cannot impeach mortgage for want of legal necessity.*

A donee of joint family property subject to an antecedent mortgage cannot question the necessity or propriety of the mortgage. 11 N.L.R. 1, Ref. (*Prideaux*, A.J.C.) NARAYAN *v.* SHANKAR LAL. 1923 Nag. 127.

Gift—Limited Estate.

——*Gift—Limited estate—Gift for maintenance to Hindu widow.*

A gift of land for the maintenance of a childless Hindu widow confers only a life estate and very strong evidence must be produced to prove that the gift to a childless widow was intended to create an absolute interest. (*Fletcher and Smither*, JJ.) GANENDRA NATH SANYAL *v.* MOHENDRA MOHINI DEBYA.
42 I.C. 885.

——*Gift—Limited estate — T. P. Act, S. 8—Wife.*

A gift by a Hindu in favour of his wife for her maintenance and performance of *debshiba* without words of inheritance or empowering alienation usually contained in deeds of absolute gift is a gift only for life of the donee. 2 I.A. 8; 11 Cal. 121 (P.C.), Ref. The remainder remains in the donor and is descendible to and transferable by his heirs. (*Chatterjea and Beachcroft*, JJ.) PRIYAMBADA DASI *v.* RAM GOPAL GHOSA. 27 I.C. 407.

——*Gift—Limited estate—Gift to wife—Construction.*

A gift by husband to his wife is stridhanam in so far as it passes to her heirs. But she does not take an absolute estate in it. (*Reid, and Clark*, JJ.) KALLU MAL *v.* CHAHINDI.
36 I.C. 222=97 P.L.R. 1916.

——*Gift—Limited estate—Gift by widow.*

A gift by a Hindu widow of property in which she has only a life interest passes nothing to the donee beyond her life interest notwithstanding words of alienation contained in the gift deed. The onus of proving that an absolute estate passed by the gift of a Hindu widow lies on those asserting it. (*Coutts Trotter and Seshagiri Iyer*, JJ.) VEERAKKAL *v.* THIRUMAKKAL. 34 I.C. 596.

——*Gift — Limited estate — Wife — Gift with all rights.*

Where a certain deed of gift executed by a Hindu husband in favour of his wife soon after his marriage with her provided that the donee and her children should enjoy the properties with all rights (*Sarwa Swathanthrathudan*). *Held*, that the above words did not convey an

HINDU LAW—Gift—Limited estate.

absolute estate to the wife. (*Ayling and Tyabji*, JJ.) MANIKA MUDALI *v.* MUTHACHI GOUNDAN. **18 M.L.T. 346=30 I.C. 685=2 L.W. 887.**

———*Gift—Limited estate.*

The rule in Tagore's case that a gift to a man, his sons, and grandsons passes a general estate of inheritance, has no application where the words in the deed expressly or impliedly limit the right. When different words are used to convey an absolute interest and a partial interest and where the donee is himself 70 years old the intention can be inferred to be to give a life-estate and not an estate of inheritance. 18 W.R. 359 (P.C.); 7 Cal. 304 (P.C.); 24 Cal. 834, Dist.; 28 Cal. 720. Foll. (*Oldfield and Tyabji*, JJ.) SEETHAI AMMAL *v.* MAHADEVA IYER. **25 I.C. 936.**

———*Gift—Limited estate—Widow—Gift to.*

There is no presumption that a gift by a man to his widowed daughters is only gift of a life-estate. (*Sadasiva Iyer and Seshagiri Iyer*, JJ.) BODY MUTTAYYA *v.* KAVAORI KODANDA RAMAYYA. **23 I.C. 594=(1914) M.W.N. 387.**

———*Gift—Limited estate—Woman's estate—Rights of grantee.*

The Hindu Law permits the creation of a woman's estate in favour of a female by contract of parties as well as by a grant inasmuch as she can obtain it by inheritance. A member of an undivided Hindu family can grant to his deceased brother's widow the share of her husband which the latter would have got on partition. The female will hold such an estate by the grantee as the ordinary widow's estate and it will be regarded as one given her in lieu of the maintenance and on her death, the property will pass to her husband's heir. (*Benson and Sundara Iyer*, JJ.) MEDA VENGAMMA *v.* MITTA CHELANIAH. **36 Mad. 484=28 M.L.J. 168=15 I C. 17=12 M.L.T. 293**

———*Gift—Limited estate.*

Gift by a Hindu male to a female should *prima facie* be taken to confer life-estate only. *Held* that the deed in question conveyed very limited powers to the donees for the lifetime of the executant and declared them as his heirs after his death in accordance with the ordinary rules of succession. (*Chapman and Roe*, JJ.) MUSSAMMAT SASIMAN CHOWDHARANI *v* SIBNARIAN CHAUDHURY. **39 I.C. 755=1 P.L.W. 375.**

Gift—Limited Interest.

———*Gift—Limited interest—Donee.*

There is no presumption of law in favour of an estate conveyed to a Hindu widow being a limited one, 61 P.R. 1911, Foll. (*Broadway*, J.) TULSI RAM *v.* MUSSAMMAT JAI DEVI. **53 P.L.R. 1919.**

———*Gift—Limited interest—Daughter.*

There is no presumption of Hindu Law that a gift to a daughter is of an absolute estate.

HINDU LAW—Gift—Manager of joint family.

Held, on the construction of the will in question that the daughter's children took the reversion after the death of the daughter. (*Abdur Rahim and Oldfield*, JJ.) SESHACHARLU *v.* SHESHAMA. **47 I.C. 758=34 M.L.J. 479.**

———*Gift — Limited interest — Widow—Nature of estate—Presumption.*

Where a widow takes property from her husband under a document not produced, and there is no evidence as to the terms of the document that the presumption is that widow had only a life-estate in the property. (*Sankaran Nair and Oldfield*, JJ.) NATARAJA SARMA *v.* RAMBHADRA NAIDU GARU. **28 I.C. 853.**

———*Gift—Limited interest—Widow.*

In the absence of words of limitation gifts to women in Hindu Law, with the exception of a widow, must be presumed to transfer an absolute interest unless there is something repugnant in the context. (*Sharfuddin and Mullick*, JJ.) JAGANATH PRASAD *v.* JAIKISHAN PRASAD. **1 P.L.J. 16=34 I.C. 378=3 P. L.W. 164.**

Gift—Manager of Joint Family.

———*Gift — Manager of joint family—Charity—Powers of.*

Under the Mitakshara Law a manager of a joint Hindu family can in the performance of a religious duty make a gift of a reasonable property to a temple. (*Seshagiri Aiyar and Phillips*, JJ.) RAMALINGA CHETTY *v.* SIVA CHIDAMBARA CHETTY. **42 Mad. 440=36 M.L.J. 575=9 L.W. 224=(1919) M.W.N. 426=49 I.C 742=25 M L.T. 283.**

———*Gift—Manager of joint family—Gift to son-in-law.*

A gift of a reasonable portion of the joint family property to a son-in-law in consideration of a marriage is valid. (*Ayling and Tyabji*, JJ.) SUNDARAM IYER *v.* KRISHNASWAMI IYER. **28 I.C. 992.**

———*Gift—Manager of joint family—Gift to daughter and sister—Intention.*

The managing member of a joint Hindu family with the view of obtaining a suitable husband for his daughter conveyed certain properties to his daughter and his sister the mother of his future son-in-law. *Held*, that the conveyance to the sister was intended to be *benami* for the daughter. The recital in the deed that the properties were his self-acquisitions did not in the circumstances of the case negative his intention of exercising any power of disposition he might have as managing member of the family. 42 Cal. 56, Foll. A gift of Rs. 1,500 (out of the acquisition of Rs. 17,000) is reasonable and valid. (*Wallis*, C.J. *and Hannay*, J.) SABAPATHY CHETTY *v.* PONNUSAWMY CHETTY. **28 I.C. 365.**

HINDU LAW—Gift—Widow.

Gift—Widow.

———*Gift—Widow—Gift of whole estate to daughter on marriage—Effect—Death of daughter.*

Where a widow at the time of her daughter's marriage makes a gift of her whole estate, it amounts in law to an acceleration of the daughters' estate. The fact that it purported to be a gift on marriage does not affect the question. Where the daughter dies before the mother, the latter does not succeed and the cause of action for the next reversioner begins to run from that date and when he allows possession to remain with another for more than 12 years, his rights are barred. (*Benerji, A.C.J. and Ryves, J.*) SARTAJI *v.* RAMJAS.
21 A.L.J. 796=L R. 4 A. 505=
9 O. & A.L.R. 1013=46 All. 59=
1924 All. 165.

———*Gift—Widow—Nearer reversioners interested—Right of a remote reversioner.*

Where a Hindu widow makes a gift in which the nearer reversioners are interested and which is made to a nearest reversioner, a remote reversioner can challenge such a gift. (*Ryves and Gokul Prasad, JJ.*) JAGDEO TIWARI *v.* KUBER NATH PANDEY. 1923 All. 312.

———*Gift—Widow—Consent of nearest reversioner who is insolvent—Effect.*

A gift by a Hindu widow of the whole estate with the consent of the nearest reversioner who happened to be an insolvent is not a surrender of the whole estate in favour of the nearest reversioner and can be supported only if necessity is proved. If the Hindu Law theory is based on the notion that there is first a surrender to the nearest reversioner and an immediate conveyance by him, then as soon as the estate vests in him, it enures to the benefit of the Receiver in insolvency and hence cannot afterwards be conveyed to another (*Piggott and Walsh, JJ.*) HARIHAR PRASAD *v.* UDAI NATH SAH. 45 A. 260=21 A.L.J. 77=
L.R. 4 A. 10=1923 All. 190.

———*Gift—Widow—Spiritual welfare—When binding.*

A gift made by a Hindu widow of a moderate portion of her husband's estate for her husband's spiritual welfare is valid. It is insufficient for a pious or meritorious purpose, but must be made with the object of the husband's spiritual welfare. Per *Eforde, J.—Quære.*—Whether ¼ of the whole estate can be said to be a moderate portion? (*Abdul Raoof and Eforde, JJ.*) MUNSHI LAL *v.* MT. SHIV DEVI.
4 Lah. 336=1924 Lah. 137=
5 L L J. 496.

———*Gift—Widow—Invalid gift when operative as surrender.*

It cannot be said that a gift by a widow to a daughter or more generally a gift by a widow to another reversioner should be regarded as a surrender of the estate whatever by the terms of the gift. The question depends on the terms

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of the gift in question. 11 A. 253; 32 A. 582, Foll. (*Oldfield and Devadoss, JJ*). KARUMURI RAMALAKSHMI *v.* BODA NAGARATNAM.
(1923) M.W.N. 172=44 M.L.J. 677=
17 L.W. 11=1923 Mad. 835.

———*Gift—Widow—Maintenance.*

Where a Hindu widow in possession of her husband's estate and yielding an annual income of Rs. 45 conveyed certain properties to her mother-in-law in lieu of maintenance. *Held*, that an absolute estate was conferred on the mother-in-law. The question whether an absolute or limited estate is given depends on the terms of the deed. Per *Seshagiri Iyer, J.*—Ordinarily an estate taken by Hindu female on transfer or inheritance is the same; a male is presumed to take an absolute estate and a female a limited one, in the absence of express words; if apt words are used the estate conveyed whether to male or female would be absolute. Words conferring power of sale will not be conclusive but if the words convey unmistakeably full estate, sex is no reason for cutting down the estate. (*Seshagiri Aiyar and Ayling, JJ*). NAMASIVAYA PILLAI *v.* KUTHALALINGAM PILLAI. 21 M L.T. 30=(1917) M.W.N. 78=
38 I.C. 840=5 L.W. 211.

———*Gift—Widow—Alienation—Consen of reversioners—Presumption as to validity.*

The consent of the whole body of next reversioners to a gift by a Hindu female owner for life is as presumptive evidence of that gift having been made for purposes or in circumstances which would validate it after the donor's death, in the way in which such consent was held in 42 Mad. 523 (P.C.) to be presumptive evidence of the legal necessity for an alienation for consideration. The consent of the people interested in quarrelling with an alienation would be equally strong proof of its being justifiable whether it was a gift or a sale or a mortgage. The donee gets an absolute estate, though the consenting reversioners are themselves life-tenants. (*Batten, J. C. and Hallifax, A.J.C.*) MT. KUSHI BAI *v.* MANRAKHAN. 1923 Nag. 265.

———*Gift—Widow—Consent of reversioner—Necessity—Presumption.*

The doctrine, that consent of a reversioner to a widow's alienation raises a presumption that the transaction is a proper one and for valid necessity, is not applicable in case of gift by a widow. Hindu Law does not recognise any expression of a Hindu's wish during life as validating an alienation made by his widow after his death. (*Daniels and Dalal, A. J.Cs.*) DRIGPAL SINGH *v.* HARHAR BAKSH.
65 I.C. 80=25 O.C. 245.

Guardian.

See HINDU LAW—MINORITY AND GUARDIANSHIP.

Husband and Wife.

See HINDU LAW—MARRIAGE.

HINDU LAW—Impartible Estate—Acquisitions.

Idol.

See HINDU LAW, REL.—ENDOWMENT.

Illegitimacy.

See HINDU LAW—SUCCESSION.

Interest.

See DAMDUPAT.

Impartible Estate.

ACQUISITIONS
ALIENATION.
CUSTOM.
DEBTS.
INCIDENTS OF.
MAINTENANCE.
OFFICE.
RIGHTS OF JUNIOR MEMBERS.
SUCCESSION.

Impartible Estate—Acquisitions.

———*Impartible estate—Acquisitions—Property acquired with income from the estate is no accretion.*

Where all the estate possessed by the Raja other than the impartible Raj was derived from the income of the Raj itself : *Held*, the produce of the impartible estate ordinarily does not belong to and form an accretion to the original property. The income when received is the absolute property of the owner of the impartible estate. It differs in no way from property that he might have gained by his own effort or that had come to him in circumstances entirely disassociated from the ownership of the Raj. *Quære.*—Whether it be possible in any circumstances to treat moveable property as an accretion to a landed estate of this character. (*Lord Buckmaster*). RANI JAGADAMBA KUMARI *v.* THAKUR WAZIR NARAIN SINGH.
44 M.L.J. 503 = 25 Bom. L. R. 676 = (1923) M.W.N 460 = 18 L.W. 555 = 28 C.W.N. 98 = 37 C L.J. 287 = 32 M L T. (P.C) 157 = L.R. 4 A (P.C.) 65 4 Pat. L.T. 319 = 2 P. 319 = 50 I.A. 1 = 1923 P C. 59 (P.C.)

———*Impartible estate—Acquisitions—Accretion.*

In the absence of proof of a special family custom or of an express intention to incorporate the property subsequently acquired by a talukdar, holder of an impartible estate, with the original estate, succession to such acquisitions follows the ordinary law of inheritance. 29 I.A. 82, Rel. (*Mr. Ameer Ali.*) JANKI PERSHAD SINGH *v.* DWARKA PERSHAD SINGH.
35 All. 391 = 40 I.A 170 = 17 C.W.N. 1029 = 14 M L T. 110 = 25 M.L J. 34 = (1913) M W.N. 630 = 18 C L J. 200 = 11 A L.J. 818 = 15 Bom. L R. 853 = 20 I.C. 78 = 16 C.C. 216 (P.C.)
[On Appeal from 9 I.C.83.]

———*Impartible estate — Acquisitions—Succession — Primogeniture — Muhammadan family.*

HINDU LAW—Impartible Estate—Alienation.

The Privy Council affirmed the judgment of the Punjab Chief Court holding that the estate of Kunjpara created by a sanad from the Muhammadan ruler in 1748 as a hereditary jagir, was an impartible Raj which had thencefourth descended under a family custom by the rule of primogeniture, at variance with the ordinary Muhammadan Law. The custom also applied to acquisitions made by the holders of the estate after 1849, when the Government withdrew from the Chiefs of Kunjpara the Civil and Criminal Powers they had hitherto exercised. There was nothing to show that the Government thereby intended to alter their status or vary their custom of succession. (*Mr. Ameer Ali.*) IBRAHIM ALIKHAN *v* MUAMMAD AHSANULLAH,
39 C. 711 = 11 M.L.T. 225 = (1912) M W.N. 316 = 50 P.W.R. 1912 = 15 C.L.J. 352 = 9 A.L J. 390 = 14 Bom L.R, 270 = 22 M L.J. 478 = 16 C W.N. 625 = 13 I.C. 695 = 168 P.L,R. 1912 = 39 I.A. 85 (P.C.).
[On Appeal from 47 P.R. 1908.]

———*Impartible estate — Acquisitions—Accretion—Proof of—Intention.*

Whether an acquisition by a taluqdar or a grantee is to be considered as an accretion to his taluq grant depends upon proof of his intention to incorporate the accretion with the taluq or grant. (*Stuart and Kanhaiya Lal*, A.J.Cs.) MUHAMMAD ABDUL RAQUIB KHAN *v.* SALAMAT BIBI. **25 I C. 680 = 1 O.L.J. 397,**

———*Impartible estate—Acquisitions—Savings—Devolution of purchases from them.*

When there is no evidence to show that the holder of an impartible estate, who had purchased properties out of his savings therefrom intended to incorporate the purchased properties with the ancestral estate, for the purpose of his succession such properties are self-acquired and must follow the rule of the Mitakshara Law as to self-acquired property. (*Chapman and Roe*, JJ.) RANI JAGADAMBA KUMARI *v.* THAKUR WAZIR N. SINGH.
2 P L J. 239 = 38 I.C. 255 = 3 P.L.W. 437.

Impartible Estate—Alienation.

———*Impartible estate—Alienation— Rights of holder—Power to dispose of estate.*

Persons living jointly with the holder for the time being of an impartible estate have no co-parcenary rights in it and they cannot claim a partition of properties. The holder can alienate the estate so as to defeat or determine any contingent interest that members of the joint family might have in it under the custom of primogeniture. (*Sir John Edge*). TARA KUMARI *v.* CHATURBHUJ NARAYAN SINGH.
42 Cal. 1179 = 42 I.A. 192 = 19 C.W.N. 1119 = 29 M L.J. 371 = 18 M.L.T. 228 = 2 L W. 843 = 13 A.L.J. 1034 = 17 Bom. L.R 1012 = 22 C L.J. 498 = 30 I.C. 833 = (1915) M.W.N. 717 (P.C.)

HINDU LAW—Impartible Estate — Alienation.

———*Impartible estate—Alienation—Custom.*

It is only where a custom, in restraint of alienation, is not proved that an impartible estate is alienable. A maintenance grant by the Raja of Paohete to a junior member lasts only during his lifetime. (*Mookerjee and Beachcroft, JJ.*) CHOTA BAHIRA SAHEBA *v.* PURNA CHENDUR CHAUDHURI.

19 C.W.N. 1272=27 I.C. 982=
21 C.L.J. 114.

———*Impartible estate—Alienation—Custom of inalienability—Proof of—Permanent Settlement Regulation* (XXV *of* 1802), *S.* 8—*Effect of.*

Held with reference to the Zemindari of Karvetnagar that during the period, the Polygar was semi-independent under the Nawab, a restraint on alienation of the whole or part of the Raj without the permission of the overlord was under the very circumstances of the tenure necessary, (2) that however, as soon as the military tenure under which the properties were held, was put an end to and the British Government granted the lands under a quite different tenure with express powers of alienation and after imposing a liability on the lands to be attached and sold in execution, the restraint on alienation came to an end. Per *Napier*, J.:—By the sanad the Government created a new estate with the incident of alienability for the benefit of the Zemindar and the fact that the similar language is found in the sanad of other Zemindaries on whose alienation there is no such restraint under the prior Government does not affect the question. Per *Curiam*.—The essence of a custom is its being some special usage modifying the Law. A practice, however, long standing which merely followed but did not modify the then existing law cannot be relied on as a custom having the force of law. 22 Mad. 383 (P.C.) Foll. Where the evidence showed that from time to time the son or brother of the Zemindar for the time being protested against an alienation made by him not for necessity and set up a custom or inalienability but each Zemindar on inheritance from his father continued to alienate the properties without any necessity; *held*, that the custom as to the inalienability had not been proved. (*Sadasiva Iyer and Phillips, JJ.*) ZEMINDAR OF KARVETNAGAR *v.* SUBBARAYA PILLAI.

(1916) M.W.N. 146=43 I.C. 871=
7 L.W. 35.

———*Impartible estate — Alienation—Custom—Military tenure—Permanent settlement—Effect of.*

Impartibility leads logically to the existence of a power of alienability and not to a rule of inalienability. The custom of impartibility and of succession by a single owner are incidents attached not to the property of a family but to the law governing that particular family. 28 Mad. 508 (P.C.); 30 Cal. 848 (P.C.); 36 Cal.

HINDU LAW—Impartible Estate—Custom.

943 (P.C.) 12 M.I.A. 523; 1 Cal. 186 (P.C.), Foll., inalienability of the Karvetnagaram Estate prior to Permanent Settlement ceased with the Permanent Settlement and there could be no longer any inalienability due to tenure. Inalienability based on alleged custom was not proved. The evidence proved that each Zemindar had exercised the right of alienating any portion of the estate he chose for any purpose which he thought fit. Moreover where a supposed custom has followed the ordinary law as laid down by the Courts, though wrongly assumed to be the ordinary law, such custom, as it did not modify the law as generally understood and had not independently the force of law, cannot be recognised as valid custom having the force of law. (*Sadasiva Iyer and Napier, JJ.*) RAJA KUMARA VENKATA PERUMAL RAJU *v.* UDDAGIRI PAPA NAIDU. 41 I.C. 208=21 M.L.T. 351.

———*Impartible estate—Alienation—Right of junior member to set aside.*

Whether in view of the fact that the son of the holder has only a chance of succession he can sue during father's lifetime for declaration of invalidity against his interest of sale of Zemindari in execution of a decree against the holder. Under the law as it stood in 1869, the holder of an impartible Zemindari was competent to incur debts and make alienations of the whole estate only for necessary purposes. (*Miller and Abdur Rahim, JJ.*) SOMASUNDARA *v.* MURUGAPPA. 36 Mad. 326=
(1913) M.W.N. 86=12 M.L.T. 571=
16 I.C. 49=23 M.L.J. 658.

Impartible Estate—Custom.

———*Impartible estate—Custom—Proof of impartibility.*

The mere fact that the successive holders of a Zamindari have alienated portions of the estate by way of grants for the maintenance of junior members does not negative the impartibility of the estate. 10 All. 272 (P.C.); 41 Mad. 778 (P.C.), Ref. (*Lord Atkinson.*) KISHORE SINGH *v.* GAHENBAI. 15 N.L.R. 176=
37 M.L.J. 562=17 A.L.J. 1077=
26 M.L.T. 491=1 U.P.L.R. (P.C.) 94=
33 I.C. 630=(1920) M.W.N. 82 (P.C.)

———*Impartible estate—Custom—Proof of—Origin of the tenure—Raj—Family custom—Concurrent findings.*

The Zemindari of Nidadavole which had originally formed part of the estate of Nuzvid was granted in 1802 under a sanad in common form under Madras Regulation (XXV of 1802). It was claimed that the estate was impartible as being in the nature of a raj (no family custom of impartibility being alleged or proved). Both the Courts in India held that the estate was not in the nature of a raj. *Held*, that the concurrent findings of the Courts below should be accepted, especially as it was not shown that they were not justified by the

evidence. 12 App. Cas. 101, 104, Ref. (*Lord Parker of Waddington.*) VENKATA NARASIMHA APPA ROW *v.* PARTHASARATHY APPA ROW. 41 I.A. 51=17 C W.N. 1221= 14 M.L T. 259=25 M.L J. 386= 18 C.L.J. 893=(1913) M W N. 791= 21 I.C. 339=15 Bom. L.R. 1010 (P.C.).

———*Impartible estate—Custom—Proof of—Madras Regulation* (XXV *of* 1802)*—Sanad in common form—Proof of family custom.*

The principles applicable to the determination of the question whether an estate is partible or impartible are these: (1) The absence of a sanad under Madras Regulation (XXV of 1802) does not affect the title to the land. 1 I.A. 282, 306, Ref. (2) The acceptance of a sanad is common form under Regulation (XXV of 1802) does not, of itself, avail to alter the succession to a hereditary estate. 32 I.A. 261. (3) Unless there can be an existing estate with other incidents which a sanad in common form can operate to confirm such a sanad will confirm or confer on the grantee an estate descendible according to the ordinary rules of inheritance under the Hindu Law. 7 I. A. 38. (4) To establish that any estate is descendible otherwise than in accordance with the ordinary rules of Hindu Law, it must be proved either that it is from its nature impartible and descendible to a single heir or that it is so impartible and descendible by virtue of a special family custom. 6 M.I.A. 164, Ref.; and (5) The nature of the estate and the existence or otherwise of a special family custom are questions of fact to be determined on the evidence available in each case. 17 I.A. 134, Ref. (*Lord Parker of Waddington.*) VENKATA NARASIMHA APPA ROW *v.* PARTHASARATHY APPA ROW. 41 I.A. 51=17 C W N 1221= 14 M.L.T. 259=25 M L J. 386= 18 C L J. 393=(1913) M.W.N. 791= 21 I.C. 339=15 Bom. L R. 1010 (P.C) [On Appeal from 29 Mad 437= 16 M.L.J. 178]

———*Impartible estate—Custom—Evidence of—Grant of lands by Government sanad.*

Where lands granted originally as Jaghir were subsequently treated by Government and its officers as an appanage to the title of "Rajah", *held*, that the incidents of impartibility and primogeniture attached to the grant. (*Lord Shaw.*) RAGHOJI RAO SAHEB *v.* LAKSHMAN RAO SAHEB. 36 Bom. 639= 39 I.A. 202=16 C W.N 1058= 28 M.L.J. 383=12 M L T. 472= (1912) M.W.N. 1140=14 Bom L R 1226= 16 I.C. 289=17 C L J. 17 (P.C.)

———*Impartible estate—Custom—Evidence of—Allotment of lands to junior members—Effect of.*

The Privy Council upheld the decision of the Chief Court that the estate of Kunjpara which was created by a sanad from the ruling power in 1748, as a heriditary jagir was an impartible *raj* which had thenceforth descended under

a family custom by the rule of primogeniture, at variance with Muhammdan Law. A few instances of allotments of villages to junior cadets of the family were insufficient to disprove the custom of impartibility, in the absence of evidence to show under what circumstances they were so allotted or what proportion they bore to the share which the junior members would have got on partition. (*Mr. Ameer Ali.*) IBRAHIM ALI KHAN *v.* MUHAMMADAN AHSAN ULLAH. 39 Cal. 711=11 M.L.T. 225= (1912) M.W.N. 316=50 P.W.R. 1912= 15 C L J. 352=9 A L J 390= 14 Bom. L.R. 270=22 M.L J. 478= 16 C.W.N. 625=168 P.L R. 1912= 13 I.C. 695=39 I.A. 85 (P.C.) [On Appeal from 47 P.R. 1908].

———*Impartible estate—Custom—Compromise.*

On a devise of an impartible estate there were claims to the estate under and against the will which were compromised, *held*, on a construction of the compromise that the impartibility of the estate was maintained. (*Sir John Edge.*) LEKRAJ *v.* HARPAL SINGH. 34 All. 65=11 M.L.T. 1= (1912) M.W.N. 16=9 A.L.J. 40= 16 C.W.N. 217=15 C L.J. 72= 14 B L.R. 33=23 M.L.J. 1= 13 I.C. 259=39 I.A. 10 (P.C.).

———*Impartible estate—Custom—Proof of.*

Custom of impartibility should be ancient and invariable and should be established by person alleging it by clear and unambiguous evidence. (*Mookerjee and Beacheroft, JJ.*) HAZARIMAL *v.* ABANI NATH. 17 C.L.J. 38=18 I.C. 625= 17 C.W.N. 230.

———*Impartible estate—Custom — Family custom—Not attached to property.*

The custom of impartibility and of succession by single owner are incidents attached not so much to the property held by a family as to the law governing the family. (*Sadasiva Iyer and Phillips, JJ.*) ZEMINDAR OF KARVETNAGAR *v.* SUBBARAYA PILLAI. (1918) M.W.N. 146=43 I.C. 871= 7 L.W. 36.

———*Impartible estate—Custom — Impartibility—Proof of.*

An acquired Zemindari is not impartible unless a custom of impartibility is proved to exist in the family before the acquisition. (*Wallis, C.J. and Seshagiri Aiyar, J.*) MUTHUSAMI NAICKER *v.* MUTHUSAMI NAICKER. 27 I.C. 3.

———*Impartible estate—Custom — Jagir—Saranjam.*

Whether a particular estate is impartible or is subject to the ordinary Hindu Law of inheritance must be decided according to the circumstances of each case and the evidence

HINDU LAW—Impartible Estate—Custom.

given in it. A saranjam in the Bombay Presidency is ordinarily impartible and it descends to the eldest representative of the last holder. This special feature of a saranjam estate should not necessarily be made applicable to a jagir village in Berar, especially when the jagir in question is a grant of the village itself and not merely of the revenue. (*Dhobley*, A.J.C.) KRISHNA RAO *v.* NILKANTH 5 N L J 25 = 18 N.L.R. 163 = 1922 Nag. 52.

———*Impartible estate—Custom—Proof of—Estate not absolutely owned by the family.*

Impartibility never attaches to small estates and it cannot survive as a family custom independently of some particular estate. A family custom of succession to an estate not absolutely owned by the family can never exist. An impartible estate in Hindu Law is not only consistent with but postulates that the family to which it belongs is joint. No presumption against indivisibility of possession or title can arise by reason of joint living. (*Ashworth and Simpson*, A.J.Cs.) THAKUR RUDRA PRATAP NARAIN SINGH *v* THAKUR NIRMAN PRASAD SINGH. 9 O.L.J. 852 = 1923 Oudh 61.

———*Impartible estate— Custom — Agreement to create—Not valid.*

Owners of property which is in its nature partible, cannot, by an agreement among themselves, impress upon it permanently the character of impartibility. (*Daniels*, A J.C.) SAKHAWAT ALI *v.* ABU SAID.
52 I.C. 73 = 22 O.C. 100.

———*Impartible estate — Custom—Gaddidars.*

The estates of the Baisi Ghowrasi Gaddidars are impartible and descend to the eldest son. But this does not show that they are non-Hindus now. They have adopted Hinduism to such a degree as to raise a presumption that the community has assimilated the law of adoption. (*Chapman and Atkinson*, JJ.) SHAH DEO NARAIN DAS *v.* KUSUM KUMARI.
46 I.C. 929.

———*Impartible estate — Custom — Chota Nagpur.*

The custom of impartibility and primogeniture prevails in the estate of the Maharajah of Chota Nagpur and in his family. (*Atkinson and Jwala Prasad*, JJ.) RAMCHARAN MAHTO *v.* HARIHAR MAHTO. 35 I.C. 892.

Impartible Estate—Debts.

———*Impartible estate—Debts—Succession—Survivorship.*

All members of a family are to be deemed to be joint in estate where one member holds the ancestral impartible property. Survivorship governs the succession in such a case. Therefore, the successor is not the heir or legal representative of his predecessor and cannot be said to hold his assets. (*Richards*, C J. *and Banerjee*, J.) INDAR SEN SINGH *v.* HARPAL SINGH. 34 All. 79 = 12 I.C. 915 = 8 A.L.J. 125.

HINDU LAW—Impartible Estate—Incidents of.

———*Impartible estate — Debts — Liability of successor.*

A creditor is not bound to inquire to what extent the debts could have been avoided by proper management. (*Miller and Abdur Rahim*, JJ.) VARAGIMA SOMASUNDARA *v.* MURUGAPPA. 36 Mad. 325 = 3 M L J. 658 = 12 M.L.T. 571 = 18 I.C. 49 = (1913) M.W.N. 86.

———*Impartible estate—Debts—Liability of successor.*

The interest of the holder of an impartible estate does not die with him and his successors are bound by debts created by him on the estates. 10 All. 272, F'oll. (*Chamier, Chapman and Roe*, JJ.) SHYAM LAL SINGH *v.* BIJAY NARAYAN KUNDU. 2 P.L.J. 136 = 1 P.L W. 140 = 39 I.C. 86 = (1917) Pat. 121.

Impartible Estate—Incidents of.

———*Impartible estate—Incidents of.*

No co-parcenary exists in an impartible Zemindari, which is merely a creative of custom. (*Viscount Cave*) BISHEN PRAKASH NARAYAN SINGH *v.* JANKI KOER.
24 C.W.N. 857 = 28 M.L.T. 105 = 62 I.C. 289 = 12 L.W. 349 (P.C.).

———*Impartible estate — Incidents of — Dharbanga Raj—Custom.*

By Kulachar the properties of Dharbanga Raj descend according to the rule of primogeniture. Junior sons are entitled by family custom to *babuana* grant for the maintenance of themselves and their male descendants in the male line (and the wife of the younger son gets by a *sohaj* grant the usufruct of a portion of the estate for the maintenance of herself and her male descendants in the male line). Such lands descend not to one male descendant only but to all existing male heirs in the male line of the grantee as co-parceners and is partible as among them. 36, I.A. 176, not Foll. and Expl. Such partition however does not put an end to the custom excluding females and descendants of female lines from succession to these lands. These lands in spite of the grant form part of the Raj. Even the use of such words as 'Auras Putra Pautradi' in these grants are not words of general inheritance but (as the grants are the creature of custom) should be regarded as words of limitation consistent with the custom. (*Sir John Edge.*) EKRADESHWAR SINGH *v.* JANESHWARI BAHUASIN.
42 Cal. 582 = 18 C.W.N. 1249 = 21 C.L.J. 9 = 27 M.L J. 373 = (1914) M.W.N 807 = 16 M.L.T. 382 = 1 L W. 863 = 12 A.L.J. 1217 = 41 I.A. 275 (P.C.) = 25 I.C. 417 = 17 Bom. L.R. 18 (P.C.).

———*Impartible estate—Incidents of—Wainganga Zemindaris of C. P. C.—Amgaon semindari.*

The Amgaon Zemindari before the Thirty Years Settlement was of the nature of a Raj and therefore impartible and subject to the rule of single succession, the other members of the

HINDU LAW—Impartible Estate—Incidents of.

family of the Zemindar for the moment being entitled to suitable maintenance and to any specific share in the income. It was an estate of an exactly similar character that was conferred by Government on the Zamindar at the Thirty Years Settlement, In addition a custom had by that time grown up in the Amgaon family that the estate should be held as an estate of that nature and subject to those conditions. Nothing occurred at the Thirty Years Settlement or has occurred since, to alter the nature of the grant or to affect the validity of the family custom. The Zemindari is therefore declared to be impartible. Important history of the C. P. Zemindaris traced. (*Batten*, J.C. *and Hallifax*, A.J.C.) MALHAR RAO *v.* MARTAND RAO. **6 N L J 189 = 1923 Nag. 201.**

——*Impartible estate — Incidents of—Coparcenary.*

There can be no co-parcenary in an impartible estate. 41 Mad. 778 (P.C.), Foll. (*Hallifax*, A.J.C.) JIRJODHAN *v.* MADAN. **62 I.C. 610 = 4 N.L.J. 4.**

——*Impartible estate—Incidents of—Mortgage in the names of two persons—Presumption.*

A fact that the mortgage stood in names of the two persons goes against the case that the estate was impartible. (*Ashworth and Simpson*, A.J.Cs.) THAKUR RUDRA PRATAP NARAIN SINGH *v.* THAKUR NIRMAN PRASAD SINGH. **9 O.L.J. 552 1923 = Oudh 61.**

——*Impartible Estate — Incidents of — Divided and undivided family.*

Though the members of a joint Mitakshara family do not acquire in impartible property the same rights as in impartible property belonging to the family such as the right of joint enjoyment, the right of partition or the right of restraint on alienation, they retain the right of survivorship of proving that an impartible estate was the separate or self-acquired property of the last owner is on those making the assertion. 25 C.W.N. 564 = 46 C. 362 = 15 C. 471, Ref. (*Miller*, C.J. *and Foster*, J.) THAKURAIN FULBATI KUMARI *v.* MAHARAJAH KUMAR RAO MAHESHWAR. **2 P. 685 = 4 P.L.T. 473 = 1923 Pat. 161 = 1923 P. 453.**

Impartible Estate—Maintenance.

——*Impartible estate — Maintenance — Rights of junior members.*

Apart from custom and from certain near relationships to the holder, the junior members of the family of a Zemindar entitled to an impartible Zemindari have no right to maintenance out of it, There is no invariable custom by which any member of the family beyond the first generation from the last holder can claim maintenance as of right. Where the plaintiff, the son of the paternal uncle of the holder of a Zemindari brought a suit for maintenance, it was held by the Judicial Committee that the issue which should have been tried was whether according to the custom among Uriya Zemindars or the custom of the family, the plaintiff is entitled to maintenance out of the income of the Zemindari ; the burden of proving the custom entitling him to maintenance should have been put upon the plaintiff and not upon the defendants to prove the custom negativing the ordinary law. (*Viscount Cave.*) MAHARAJAH OF JEYPORE *v.* VIKRAMA DEO GARU **37 M L J. 198 = 21 Bom. L.R. 930 = 10 L.W. 436 = 17 A.L.J. 1011 = (1919) M W.N. 824 = 24 C.W.N. 226 = 52 I.C. 333. = 31 C.L J. 91 (P.C).**

HINDU LAW—Impartible Estate—Maintenance.

——*Impartible estate — Maintenance — Grant for—Liability of grantor.*

In a suit for recovery of a certain *Zamindari* a compromise was arranged that the plaintiff and his heirs should receive a fixed monthly allowance in future from the holder of the Zamindari and his successors. The son of the grantee sued for arrears of allowance and obtained a decree but his heirs were held to have no right to execute it and they had to institute a regular suit. *Held*. that (1) The grant could be charged on the Zamindari and could be enforced by descendants of the original grantee. (Per *Seshagiri Aiyar*, J.)—As appeared from the language of the grant, the grantor's heirs were under liability for all times to come. That a special language was not needed for creating a charge and the charge created in the present case was entered to be one on the *Zamindari*. (*Per Wallis*, C.J.)—The grant amounted to, one to junior members of an impartible property for maintenance and could not be deemed to be a charge on the whole estate. The words used could not be taken as sufficient for creating a change on the *Zamindari* only an annuity in the nature of a personal estate which was descendable as a real estate, was created. (*Wallis*, O.C.J. *and Seshagiri Aiyar*, J.) RAJARAJESWAR DORAI *v.* SUNDARAPANDIYASWAMI. **27 I.C. 283 = 27 M.L.J. 694.**

——*Impartible estate — Maintenance—Right of widows of junior members.*

Widows of junior members are entitled to receive maintenance out of it, but it is doubtful where a compromise to that effect is valid. 23 M.L.J. 70, Rel. (*Miller and Tyabji*, JJ.) KACHI YUVA RANGAPPA KALAKKA THOLA UDAYAR *v.* KULANDAI AYAL, **26 M L.J 205 = 23 I C. 831 = (1914) M W N. 874.**

[This is no longer law. 41 Mad. 778 = 52 I.C. 333 = 47 I.C 354 = 37 M.L J. 188 (P.C.)]

——*Impartible estate — Maintenance—Remoteness of relationship—Effect on right to maintenance.*

The right of a family member to claim maintenance from the holder of an impartible

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estate joint with the claimant must depend on the question whether, if the estate were partible the person claiming the maintenance would be entitled to maintain a suit for partition. The question of succession to an impartible estate discussed. The decree of relationship for determining the right to maintenance out of an impartible estate must be taken to be the same for determining the right to partition in the case of a partible estate. The right to maintenance is not lost by reason of the fact that the person claiming maintenance is only an adopted and not *aurasa* son of his father. The fact that a member is removed more than three degrees from the common ancestor is no bar,to his succession by survivorship and therefore is not a bar to his right to maintenance. (*Benson and Sundara Iyer*, JJ.) TIRUMAL ROW SAHEB *v.* RANGASAWMY.

23 M.L J. 79=(1912) M.W.N. 790=
15 I.C. 512=12 M.L.T. 253.

[This is no longer law.] See 52 I C. 333
41 Mad. 778=47 I.C 334 (P.C.)=
37 M.L J. 188 (P.C.)

———*Impartible estate — Maintenance — Relatives of Zemindar.*

The relatives of former Zemindars, claiming maintenance from an impartible Zemindari, must prove a custom entitling them to such a right. (*Macnair*, A J.C.) DHARAM SINGH *v.* LOKNATH SINGH. 62 I.C. 198.

———*Impartible estate— Maintenance — Junior members—Transferee—Custom.*

A transfer of an impartible estate is not subject to rights of maintenance claimed by younger members of the family of the transferor, unless a family custom to that effect is established. (*Roe and Coutts*, JJ.) THAKUR DEBENDRA NATH SAH DEO *v.* DEO NANDAN SINGH. 48 I.C. 613=3 P.L.J. 648.

Impartible Estate—Office.

———*Impartible estate—Office— Grant by sovereign—Lands granted to holder of office of priest described as such.*

Where land is granted by a sovereign to the royal priest described as such and is made resumable on failure of lineal heirs, the estate is not impartible but subject to ordinary law of inheritance and partition among the heirs of grantee. Where there is a grant of lands by a sovereign for a charitable purpose and the charity is to be performed by the holder of the office of royal priest, the properties of the endowment are not subject to partition among the heirs of grantee but are impartible and can be held only by the priest for the time being. (*Sir Walter Phillimore.*) SETHURAMASWAMIAR *v.* MEERUSWAMIAR.

41 Mad. 296=4 P.L W. 91=34 M.L.J. 130=
16 A.L.J. 113=27 C L J. 231=
22 C.W.N. 457=20 Bom. L.R. 514=
45 I.A. 1=7 L.W. 22=43 I.C. 806 (P.C.)

[On Appeal from 34 Mad 470=
20 M.L.J. 108=6 M.L.T. 319.]

HINDU LAW—Impartible Estate—Rights of junior members.

———*Impartible estate—Office — Grant for service—Acquisitions from.*

Property allotted by the State to a person in consideration of the discharge of certain duties or as emoluments of an office is *prima facie* impartible even though the duties or office may be hereditary in a particular family. Acquisitions from the property are *prima facie* the self-acquisition of the grantee. (*Mitra*, A.J.C.) SHIV RAM AMBADASS *v.* SHRIDHAR SHIVRAM. 43 I.C. 137.

Impartible Estate—Rights of junior members.

———*Impartible Estate—Rights of junior members—Partition by a member—Proof.*

It is competent to a member of a joint family to separate himself from the family by a clear and unequivocal intimation of his intention to sever, and this is also true with regard to an impartible estate; but as in that case the person separating forfeits his chance of inheriting the whole of the estate by survivorship, it requires strong evidence to establish such separation. (*Lord Buckmaster*). RANI JAGADAMBA KUMARI *v.* THAKUR WAZIR NARAIN SINGH.

44 M.L J. 503=25 Bom. L.R. 676=
(1923 M.W.N. 460=18 L.W. 555=
28 C.W.N. 98=37 C.L J 267=
32 M.L.T. (P.C.) 157=L.R. 4 A. (P.C.) 66=
4 P.L.T. 319=2 P. 319=50 I.A. 1=
1923 P.C. 59.

———*Impartible estate—Rights of junior members.*

Junior members cannot partition nor agree to separate. Where the junior members partitioned property given to their ancestor for maintenance; *held* that it was not conclusive of the question whether the Raj had ceased to exist. (*Richards*, C.J. *and Rafique*, J.) BALJ NATH PRASAD SINGH *v.* TIJ BALI SINGH.

38 All 590=38 I.C. 894=
14 A.L J. 918.

———*Impartible estate—Rights of junior members.*

Junior members in an impartible Zemindari have no legal rights to maintenance unless there is a custom to the contrary. (*Wallis*, C.J. *and Krishnan*, J) GURUSAMI PANDIYAN *v.* PANDIA CHINNATHAMBIAR. 44 Mad. 1=
39 M.L J. 529=(1920) M.W.N. 660=
61 I.C. 252=28 M.L.T. 365.

———*Impartible estate—Rights of junior members*—Dayabhaga *family.*

A junior member of the family of the holder of an impartible *Zemindary* is entitled to maintenance only as in a *Dayabhaga* family because of his relationship and not of any interest in the property. (*Sankaran Nair and Oldfield*, JJ.) GANGADHAR RAO BAHADUR *v.* RAJA OF PITTAPUR. (1915) M.W.N. 369=
28 M.L.J. 624=29 I.C. 356=39 M. 398.

Impartible Estate—Succession.

——*Impartible estate—Succession—Separate or self-acquired.*

Though a Raj is impartible, it cannot become separate or self-acquired property. It may be self-acquired or joint family property. In the latter case succession will be governed by the rule obtaining in the joint families *i.e.*, by the rules of survivorship although the incumbent will hold it without the others sharing it. (*Lord Dunedin*) BAIJNATH PRASAD SINGH *v.* TEJ BAGI SINGH **43 All. 228 = 48 I.A. 195 = 19 A.L.J. 317 = 33 C.L.J. 388 = 40 M.L J. 387 = (1921) M W N. 300 = 25 C W.N. 564 = 2 Pat. L.T. 257 = 23 Bom. L R. 654 = 29 M.L.T. 358 = 3 U.P.L.R. (P.C.) 35 = 60 I.C. 534 (P.C.) =**

[On Appeal from 38 I.C. 849.]

———*Impartible estate—Succession—Co-parcenary, none.*

An impartible Zemindari is the creation of custom and it is of its essence that co-parcenary in it does not exist. Consequently the widow of a co-parcener succeeds in preference to his undivided male cousin. (*Viscount Cave.*) RAJKUMAR BABU BISHUN PRAKASH *v.* MAHARANI JANKI KOER. **24 C.W.N 857 = 28 M.L.T, 105 = 12 L.W. 349 (P.C)**

[The Privy Council have since, in a fully argued case, held that this decision is erroneous. *See* Baynath Prasad Singh v. Tej Bali Singh, 60 I.C. 534 (P.C.)]

———*Impartible estate—Succession—Primogeniture—Conditions of its recognition—Acceptance by the head of the family of a Government sanad cannot destroy custom—Impartible estates—Origin.*

A custom of primogeniture, whereby women are excluded from inheritance and the male relative in the eldest line of male descent from the last holder or his father or grandfather succeeds, if observed and acted upon for a long time, becomes the law of the family regulating the succession to the family estate ; and the ordinary Hindu Law does not apply. Such a custom may survive the primitive condition of things out of which it originally sprang ; and the head of the family for the time being, cannot by accepting a Government Sanad containing clauses inconsistent with the custom, destroy it or render it inoperative. A family may agree, expressly or impliedly, to continue to observe a custom necessitated by the condition of things existing in primitive times, after that condition had completely altered ; and in such a case, the principle embodied in the expression *cessat ratio cessat lex* does not apply. One of the ways in which impartible estates may originate is by independent chiefs or feudatories exercising almost autocratic powers being gradually in the course of time reduced by a paramount power to the position of ordinary Zemindars. They may also owe their origin to family arrangements followed up in practice

for many generations, whereby it was originally agreed that the family property should be impartible and be held and managed for the benefit of the whole family by a single member at a time in a certain order of succession the other members being entitled to maintenance only, without any power of interference with the management. (*Lord Atkinson*). RAO KISHORE SINGH *v* GAHLNABIBI.

(1920) M.W.N. 82 = 15 N.L.R. 176 = 37 M.L J. 562 = 17 A.L J. 1077 = 26 M.L.T. 494 = 53 I.C. 630 = 1 U.P.L.R. (P.C.) 94 (P.C.).

———*Impartible estate—Succession—Oudh—Taluka—Primogeniture—Accretions — Substitution of properties for those granted by sanad —House allotted to talukdar—Crown grant.*

The Crown has in British India power to grant or transfer lands and by its grant or transfer to limit in any way it pleases the descent of such lands. But a subject has no right to impose upon lands or other property any limitation of descent which is at variance with the ordinary law of descent applicable to his case. Villages transferred by the Government in exchange for villages included in the talukdari Sanad in Oudh must be treated as talukdari villages and where a house is granted by Government to a Talukdar for his use as such, the right to possession of it would on his death pass to his successor in the Talukdari Estate and not to his heirs under the personal law. There being no family custom of primogeniture the acquisitions of the Talukdar passed to his heirs under the Hindu Law. (*Sir John Edge.*) RAJENDRA BAHADUR SINGH *v.* RANI RAGHUBANS KUNWAR. **40 All. 470 = 21 O.C, 106 = 24 M.L.T. 282 = 5 O.L.J 401 = 8 L.W. 570 = (1918) M.W.N. 831 = 28 C.L J. 456 = 23 C.W N 101 = 20 Bom. L.R. 1075 = 43 I.C. 213 = 48 I.A. 134 (P.C.).**

——*Impartible estate—Succession—Widow of last owner—Right to inherit—Separation in estate.*

The widow of the last holder of an impartible estate which descends by primogeniture is not excluded from succession to the estate as his heir, if her husband was in fact separated and died without male issue. There is no inconsistency between impartibility and the right of females to inherit. The general law of inheritance will prevail unless a custom of exclusion of females from succession is proved. 12 M.I.A. 523 ; 9 M.I.A. 539 and 29 I.A, 178, Ref. to. Where the holder of an impartible estate granted a maintenance grant to his only brother who built a separate house for himself, established a separate *Tulsi Pinda* (worship) and *Thakurbari*, lived separately from his brother and defrayed the expenses of his daughter's marriage out of his own pocket. *Held*, that there had been a complete separation between the brothers and that on the death of the holder of the estate without male

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issue his widow succeeded to the estate. (*Sir John Edge.*) TARA KUMARI *v.* CHATURBHUJ NARAYAN SINGH. 42 Cal. 1179 = 42 I A. 192 = 19 C W.N. 1119 = 29 M.L J. 371 = 18 M L T. 228 = 2 L.W. 813 = 13 A.L J. 1034 = 17 Bom. L.R. 1012 = 22 C L.J. 498 = 30 I.C. 833 = (1915) M W.N. 717 (P.C.).

[The effect of this case and other decision of the Privy Council is fully explained in 60 I C 534 (P.C.)].

———*Impartible estate—Succession—Babuana and Sohog grants.*

Babuana and Sohog grants made by the Darbhanga Raj for the maintenance of the male and female members of the family, though liable to revert to the raj on failure of male issue in the male line of the grantee are ancestral property in the hands of sons of the grantee and are liable to partition. There is a custom of exclusion of widows and daughters from inheritance. (*Sir John Edge.*) EKRADESHWAR SINGH *v.* JANESHWARI BAHUASION.

42 Cal. 582 = 41 I.A. 276 = 18 C.W.N. 1249 = 27 M.L J. 373 = 16 M.L.T 382 = 1 L W. 853 = (1914) M.W.N. 807 = 12 A L J. 1217 = 21 C L J. 9 = 25 I C. 417 = 17 Bom. L.R. 18 (P.C.)

[On Appeal from 3 I.C. 207].

———*Impartible estate—Succession — Primogeniture*—Kismats *in Nawagrah* Zemindari.

In the Nawagarah *Zemindari* in Manbhum. Chota Nagpur, *Kismats* descend by the rule of primogeniture on the eldest sons, the maintenance grants being made to the younger branches of the family. Each *Kismat* is to all intents and purposes regarded as an impartible estate. (*Chetty and Teunon, JJ.*) JAGANNATH MARWARI *v.* GIRIDHARI SINGHA.

29 I.C. 429 = 19 C.W.N. 102.

———*Impartible estate—Succession—Pittapur Zemindary.*

The Zemindary of Pittapur is an impartible estate governed by the Mitakshara Law and descending by lineal primogeniture. (*Sankaran Nair and Oldfield, JJ.*) GANGADHAR RAO BAHADUR *v.* RAJA OF PITTAPUR.

(1915) M.W.N. 369 = 28 M L J 624 = 29 I.C. 356 = 39 M. 396

———*Impartible estate—Succession—Survivorship — Family arrangement superseding senior line—Effect.*

Where as the result of a family arrangement the junior line in an impartible estate was substituted for the senior line, but there was no other evidence of any further interference with the rights of the senior line, the estate still remains joint family property and on the extinction of the junior line, the senior line takes by survivorship. Per *Krishnan, J.*—To show that an impartible estate has become the separate property of the holder, it is not

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absolutely necessary to prove that there was some division in which that property was involved or that the right of others in it were abandoned. Each case has to be decided on its own facts. Per *Ramesam, J.*—The holder of an impartible estate cannot by giving a registered notice to the junior members that he intends to be divided in status as regards all the partible properties and impartible properties put an end to the rights of junior members over the impartible estate. Case-law on the subject fully reviewed. (*Krishnan and Ramesam, JJ.*) ANNADANA JADAYA GOUNDER *v.* KONAMMAL. 17 L.W. 107 = (1923) M.W.N. 15 = 1923 Mad. 402.

———*Impartible estate—Succession—Rival claimants of the same degree of relationship—Priority.*

In cases of impartible estates the rules of ordinary Hindu Law of succession apply, in the absence of a special custom, subject to such modifications as are inherent in the impartible character of the estate. The first question is whether the propositus was or was not separated from the other members of the family. 42 Cal. 1179, Foll. Where he is joint the estate must be treated as if it had been partible and would therefore be governed by the law of survivorship. But where there are more than one person coming within the rule the nearest coparcener of the senior line and not the nearest in blood will succeed to the propositus in preference. Where, however, he was divided, the estate is to be treated as a separate property and the law relating to separate or self-acquired property will apply and the rule that the nearest in blood excludes the more remote will be applied and on the last case the representative of the senior branch will be preferred where there are persons in the degree of relationship. 20 Cal. 649, Foll. (*Wallis, C.J and Krishnan, J.*) GURUSWAMI PANDIYAN *v.* SEENATI, KALLAI PANDIA CHINNATHAMBI.

39 M.L.J 529 = (1920) M.W.N. 660 = 44 M. 1 = 61 I C. 252 = 28 M.L.T. 365.

[See the same principles stated in 60 I.C. 534 (P.C.)].

———*Impartible estate—Succession—Munagala Zemindari if impartible.*

The Munugala Zemindari in the Kistna District is impartible and the succession is according to the custom of primogeniture. (*Wallis, C.J. and Sadasiva Aiyar, J.*) KREESARA VENKATAPPAYYA *v* NAYANI VENKATARANGA RAO. 43 Mad. 288 = 39 I.C. 978 = 38 M.L J. 149.

———*Impartible estate—Succession—Illegitimate son—Widow.*

An illegitimate son is postponed to the widow of a deceased holder of an impartible estate, if divided or to the other co-parceners, if there was a joint family. (*Miller and Abdur Rahim, JJ.*) VISVANATHASWAMY NAICKER *v.* KAMUAMMAL. 21 I.C. 725 = 24 M.L J. 271.

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——*Impartible estate—Succession—Partition—Proof of.*

In the absence of evidence to show that the Zamindari fell to the share of a particular branch in division the mere fact that the various co-parceners are in enjoyment of separate properties is not sufficient to show that the Zemindari was divided. Grant of a patta over part of the estate for maintenance followed by complete separation in food and estate is proof of partition. (*Miller and Abdur Rahim*, JJ.) VISVANATHASWAMI NAICKER *v.* KAMU AMMAL. 21 I.C. 724=24 M.L J. 271.

——*Impartible estate—Succession to.*

A custom of impartibility of estate does not necessarily imply the existence of a custom of descent different from that recognised by the Hindu Law. (*Daniels*, A.J.C.) HAR BAKSH SINGH *v.* NAGINDRA BAHADUR SINGH. 22 O.C. 68=6 O.L J. 266=32 I C. 2=1 U.P.L.R. (J.C.) 74.

——*Impartible estate—Succession—Order.*

The rules governing succession to a partible estate are to be looked at and the principle of survivorship applied in finding out the succession to an impartible estate. Nearest co-parcener of senior line is preferable to the co-parcener nearest in blood. (*Lindsay, and Stuart*, A.J.Cs.) GHISIA SINGH *v.* GAJRAJ SINGH. 18 O.C. 289=33 I.C. 371=3 O L.J. 45.

——*Impartible estate—Sucession by survivorship—Application for personal decree—Succession certificate if necessary.*

Where a person succeeded to an impartible estate by survivorship and applied for a decree under O. 34, r. 6 of the C. P. Code against another, a succession certificate need not be obtained as a condition precedent to the maintainability of the application. Case-law as to succession in impartible estates considered. (*Das and Adami*, JJ.) SHIVA PRASAD SINGH *v.* BENI MADHAB CHOWDHURY. 1 P. 387=4 P.L.T. 6=1922 P. 529.

——*Impartible estate—Succession—Origin of the estate—Subsequent dealings—Partition of estate.*

An estate may be the family property of a joint undivided family and yet be impartible. Where the family in question was an ancient and noble one the property had been granted in ancient times by the Moghul Emperor for services, the permanent settlement had been made with the Raja for the time being to the exclusion of his brothers, the repeated succession of the eldest son to the estate though there were many sons left: *Held*, that the estate was impartible and the succession to it went to the eldest male defendant in the senior branch. The mere fact that separate estates have been formed by the division of one entire estate, is not a circumstance which decides the issue in favour of partibility. The impartibility of the estate does not destroy its nature as

HINDU LAW—Joint family.

joint family property or render it the separate property of the last holder unless there was something equivalent to partition. (*Das and Adami*, JJ.) DWARKA PRASAD *v.* JAI BARHAM. 1922 P. 322.

——*Impartible estate—Succession—Junior members—Right of.*

Junior members have no community of interest with the holder and do not take by survivorship, though they take by the order of succession prevailing in the family. They are not co-parceners but they have only right to maintenance in the family. The junior member may succeed the senior after death. (*Chamier*, C.J., *Chapman and Roe*, JJ.) SHYAM LAL SINGH *v.* BIJAY NARAYAN KUNDU. 2 P.L J. 136=1 P.L.W. 140=39 I C. 36=1917 Pat. 121.

——*Impartible estate—Succession—Primogeniture and impartibility.*

In the estate of the Maharajah of Chota Nagpur and in his family the existence of the custom of impartibility and primogeniture is established in all cases. (*Atkinson and Jwala Prasad*, JJ.) RAMCHARAN MATHO *v.* HARIHAR MATHO. 35 I.C. 392.

——*Impartible estate—Succession—Primogeniture—Chota Nagpur—Estates granted by Maharajah.*

Under the custom of primogeniture prevailing in all the estates granted by the Maharajah of Chota Nagpur to his relations, the Bodla Estate in Chota Nagpur descends as an impartible estate to the eldest male heir by lineal descent. (*Chapman and Atkinson*, JJ.) LAL GAJENDRA NATH SAHI DEO *v.* LAL MATHURLAL NATH SAHI DEO. 20 C.W.N. 876=35 I C. 888=1 P.L J. 109.

Inheritance.

See HINDU LAW—SUCCESSION.

Jains.

See HINDU LAW—APPLICABILITY.

Joint Family.

ACQUISITION.
ALIENATION.
ANCESTRAL PROPERTY.
CONSTITUTION OF.
DANCING GIRLS.
EXCLUSION
FAMILY PROPERTY.
FATHER.
FEMALES.
MANAGER.
PARTNERSHIP.
PRESUMPTION.
RIGHTS OF CO-PARCENERS.
RIGHTS OF MEMBERS.
SELF-ACQUISITION.
SEPARATE PROPERTY.
SURRENDER.
SURVIVORSHIP.
TRADE.

HINDU LAW—Joint family—Acquisition.

Joint family—Acquisition.

———*Joint family—Acquisition—Property acquired by disposal of ancestral property—Joint family property—Gift of, invalid.*

The widow of A, who had been adopted into another family, made an absolute transfer of properties which A inherited from his adoptive father in favour of B, C and D, the surviving natural brothers of A in consideration of benefits received from the latter's ancestral funds, which was challenged as beyond her competence as a Hindu widow. D conveyed some of the properties which he thus got from A and others which he subsequently bought to his concubines and to a daughter by one of them. After D's death D's son R with whom D lived jointly and R's son claimed these properties as joint family properties which D had no authority to alienate. *Held*, (without deciding whether the alienation by A's widow was valid or not and whether A's property which D got was his ancestral or self-acquired property, but assuming that it was D's self-acquired property) that the evidence showed such blending of this property of D, in which R and his sons as they were born became co-parceners as to make it joint property. As all the properties which were the subject-matter of the deeds of gift were joint properties of D, they did not operate even on the one-sixth share which D might have got by partition of the estate with his co-parceners since D had no separate sixth share and the whole property accrued on his death to surviving members of the family. 40 All. 159, Foll. (*Sir Walter Phillimore.*) RADHA KANT LAL *v.* MUSAMMAT NAZMA BEGUM.

43 Cal. 733=22 C.W.N. 649=
27 C.L.J. 632=16 A.L.J. 837=
5 Pat. L.W. 72=23 M.L.T. 393=
(1918) M.W.N. 386=35 M.L.J. 99=
43 I.C. 806=20 Bom. L.R. 724 (P. C.).

———*Joint family—Acquisition — Nucleus of ancestral property—Burden of proof.*

When there is a nucleus of joint family property with the assistance of which subsequent acquisitions has been made the burden of proving that any particular property is separate lies on the person who asserts it. Such a nucleus need not be a substantial one but must be yielding some income. (*Lindsay and Daniels, JJ.*) SUKHNANDAN *v.* BRIJNANDAN.

1923 All. 574.

———*Joint family—Acquisition—Throwing into common stock character of family property determined by intention.*

Members of a joint family may, by their intention expressed in conduct, impress upon any property of which they may be possessed the character of joint family property. Once there is a family chest any contribution or addition to it instantly partakes of its character and cannot be separated. The quantum of contribution made by the several members is immaterial. (*Beaman, J.*) HARI DAS *v.* VELJI CHATURBHUJ.

20 I.C. 476=
13 Bom. L.R. 585.

HINDU LAW—Joint family—Alienation.

———*Joint family—Acquisition—Presumption—Property.*

Where members are living jointly and acquire properties, the presumption is they acquire it for the benefit of the family and the party who denies jointness must rebut the presumption. (*Greaves and Cuming, JJ.*) SOSHI KUMAR SARKHEL *v.* CHANDRA KUMAR CHAUDHURI. 35 C.L.J. 348=1923 Cal. 204.

———*Joint Family — Acquisition—When joint family property—Nucleus—Existence of.*

The mere existence of a family nucleus will not impress the acquisitions of a member of the family with the character of joint family property unless it is shown that the acquisitions could have been made from the income derived from that nucleus. Consequently where a member of a joint Hindu family obtained on partition with his brothers properties worth 200 rupees and was allotted debts to the extent of Rs. 500 and he subsequently acquired as *Dubash* (agent) of certain big commercial men, *Held*, that the acquisitions were his own self-acquisitions and that the nucleus did not impress them with the character of joint family property. 27 M.L.J. 677; 33 A. 677, Ref.; 35 All. 564; 27 M. 228; 2 Lah. 40, Ref. (*Spencer and Devadoss, JJ.*) VADAMALAI PILLAI *v.* SUBRAMANIA CHETTIAR.

16 L.W. 936=(1923) M.W.N. 87=
1923 Mad. 262.

———*Joint family—Acquisition — Money spent on litigation as a result of which property was obtained.*

In the absence of anything to show that property acquired as a result of a litigation by a member of a joint Hindu family was thrown into the common stock, it does not become joint family property merely by reason of the fact that the funds of the joint family were spent in the litigation. (*Phillips and Devadoss, JJ.*) CHELLASAMI ATCHAMMA *v.* CHELLASAMI VENKATA SUBAYYA. 16 L.W. 268=
(1923) M.W.N. 187=1923 Mad. 428.

Joint family—Alienation.

———*Joint family — Alienation — Senior brother requiring the deed—If others party.*

Where the senior brother alone enters into a transaction on behalf of a joint family, a presumption can be drawn under S. 114, Evidence Act that the junior member too was a party, though only constructively. (*Hallifax, A.J.C.*) GANIA *v.* GANGA PRASAD. 6 N.L.J. 269.

———*Joint family—Alienation — Father—No necessity—Effect on mortgage.*

Where a mortgage of joint family property executed by a Hindu father is made for purposes not laid down in Hindu Law the mortgage as such becomes void *ab initio*. (*Simpson, A. J. C.*) UDAIRAJ SINGH *v.* RAMUDIT TEWARI. 10 O.L.J. 376=
1924 Oudh 147.

HINDU LAW—Joint family—Alienation.

———*Joint family—Alienation—Necessity—Burden of proof—Father setting aside after born son—Rights of.*

The principle that where property has passed out of a joint Hindu family, the burden lies on the plaintiff (son) to prove that the transfer was made for an immoral purpose by the manager of the family applies only where the property has passed out of the family by foreclosure or sale in execution of a decree or where such a decree has been passed and new rights have come into existence. Where there has been a transfer for cash down and the son contests the legality of the sale the onus lies on the vendee to prove the validity of the consideration. Where a Hindu father has alienated ancestral property and where a son who was in existence at the time of the alienation brings a suit to set it aside and before the suit is decided another son is born, such son also acquires a right to set aside the sale. 19 A.L.J. 978, Foll. (*Dalal*, J.C.) JANG BAHADUR SINGH v. RANJIT SINGH. **10 O L J 353 = 1924 Oudh 141.**

———*Joint family—Alienation—When binding—Mortgage—Antecedent debt.*

A mortgage cannot be enforced against joint family property unless it is established that its antecedent debt independent of the mortgage or legal necessity was its consideration. (*Kanhaiya Lal*, J.C.) PRAN v. SHEO LAL. **26 O.C. 321 = 1924 Oudh 135.**

———*Joint family — Alienation — Setting aside—Rights of members.*

A sale of joint family property having infringed the rights of a single member of a joint Hindu family, he can have the entire sale set aside. Either the vendors were entitled to deal with the joint family property, in which case the alienation is valid or they were not entitled to do so, in which case they cannot alienate even their own share. (*Dalal and Simpson*, A.J.Cs.) DWARKA PRASAD v. MT. RAM DEI. **10 O L J. 360 = 1924 Oudh 120.**

———*Joint family—Alienation—Execution sale of the interests of a co-parcener—Remedy of other members—Rights of the purchaser.*

Though a creditor of a member of a joint Hindu family can attach and purchase at an execution sale the interest of that member in the family property, it is not open to the creditor to take possession of that interest. He acquires the right to compel a partition but not a right to enter into joint possession with the other members of the family. (*Das and Kulwant Sahay*, JJ.) MEDNI PRASAD SINGH v. NAND KESHWAR PRASAD SINGH. **2 P. 386 = 1923 P. 451.**

———*Joint family—Alienation—Manager of joint family—Benefit.*

The test to determine whether a mortgage by the Manager of a joint Hindu family is binding on the family is a real benefit according to the family and not the legal necessity for the transaction. The Manager has power to do whatever is best for the benefit of all concerned. (*Das and Adami*, JJ.) SHEOTAHAL v. ARJUN DAS. **1 P.L T. 136 = 56 I C. 879 = 1920 Pat. 155.**

HINDU LAW—Joint family—Ancestral property.

———*Joint family—Ancestral property—Inherited from mother—Joint tenancy—Tenancy-in-common.*

A joint tenancy is created where property is inherited by unobstructed succession called rikhta. In such a case the heirs take the property as co-parceners. Absolute property of the mother devolves on the sons not as joint tenants but as tenants-in-common. A tenancy in-common is created where property is inherited by obstructed succession. In this case the idea of inheritance and the idea of partition go together; one is a necessary complement of the other, so that, at the very moment the inheritance falls in the heirs takes by partition that is, as owners of defined shares and therefore, as tenants-in-common. Heritage in the case of stridhan is obstructed succession. (*Chandavarkar and Russel*, JJ.) BAI PARSON v. BAI SOMLI. **36 Bom. 424 = 15 I.C. 774 = 14 Bom. L.R. 400.**

———*Joint family—Ancestral property—Grant for maintenance.*

A portion of an impartible estate granted by the holder thereof to his younger son for maintenance, is ancestral in the latter's hands and cannot be capriciously alienated by him to the detriment of his sons. (*Mookerjee and Beachcroft*, JJ). HAZARIMALL v. ABANINATH **17 C.L.J. 38 = 18 I.C. 625 = 17 C.W.N. 280.**

———*Joint family—Ancestral property—Through whom derived.*

Property does not cease to be ancestral because it is derived through the mother. (*Abdul Raoof and Bevan-Petman*, JJ.) SUHIVA v. DEVI DIAL. **70 I.C. 1002 = 4 L.L J. 516.**

———*Joint family — Ancestral property—Abandonment and reacquisition—Effect.*

If the inhabitants of a village leave the village abadi and the land passes out of cultivation and later on, some of them or their descendants come back, they reacquire the land cultivated by them and do not require it as ancestral property. (*Scott Smith and Abdul Qadir*, JJ.) MANOHAR v. NANHI. **66 I.C. 399 = 2 L. 366.**

———*Joint family—Ancestral property.*

Property acquired out of income of ancestral property must be considered as ancestral property according to Hindu Law. (*Rattigan and Leslie Jones*, JJ.) BUDHA RAM v. MUHAMMAD DIN. **86 P R. 1915 = 196 P.L R. 1915 = 31 I C. 315 = 165 P.W.R. 1915.**

HINDU LAW—Joint family—Ancestral property.

———*Joint family — Ancestral property— Bequest by ancestor.*

Property derived from an ancestor but which is divided among co-parceners neither according to Hindu Law, custom or according to the terms of the will left by the ancestor, is ancestral property. (*Johnstone and Ratligan*, JJ). SHIB NATH *v.* ALLIANCE BANK OF SIMLA, LTD., LAHORE. 110 P.W.R. 1914 = 3 P.R. 1915 = 23 I.C. 430 = 215 P.L.R. 1914.

———*Joint family—Ancestral property.*

Ancestral property in Hindu Law is confined to property which has been derived from certain male lineal ancestors as enumerated in the Text books. (*Kensington*, C.J. *and Shah Din*, J.) KARAM CHAND *v.* JAI RAM.
224 P.L.R. 1914 = 124 P.W.R. 1914 = 24 I.C. 928 = 92 P.R. 1914.

———*Joint family — Ancestral property— Right by birth—Punjab.*

The Mitakshara doctrine of a son being born with a share in a joint family is unknown in the Punjab. 90 P.R. 1892; 105 P. R. 1895 and 113 P.R. 1886, Foll. (*Shah Din and Beadon*, JJ.) TULSI RAM *v.* SHIB DAS.
6 P.R. 1913 = 19 I.C. 11 = 228 P.L.R. 1913.

———*Joint family — Ancestral property— Bequest by father in favour of son.*

Where a Hindu father bequeathes his self-acquired properties to his son by will, the question whether the son takes it as ancestral or self-acquired property is one of intention turning upon the construction of the instrument, the presumption being that the property is to be held by the son as ancestral. The omission to mention the names of the grandsons, is immaterial. 3 M. H. C. R. 50 and I. L. R. 24 Mad. 429, Foll. (*Abdur Rahim and Spencer*, JJ.) INDOJI JITAJI *v.* KOTHAPALLI RAMA CHARLU. 84 I.C. 146 = 10 L.W. 498.

———*Joint family—Ancestral property— Maintenance grant.*

Property given for maintenance to the illegitimate son of an undivided co-parcener is not ancestral property of the illegitimate son; the son of the illegitimate son gets no right by birth in it. 24 Mad. 429; 17 C.L.J 88, Dist. (*Sadasiva Iyer and Napier*, JJ.) KRISHNASWAMI NAIDU *v.* SEETHALAKSHMI AMMAL. 39 Mad. 1029 = 18 M.L.T. 513 = 31 I.C 803 = 3 L.W. 317.

———*Joint family— Ancestral property— Inheritance from maternal grandfather.*

According to the Mitakshara Law the property which descends on daughter's sons from their maternal grandfather is ancestral property in which the grandsons takes an interest at birth. 27 Mad. 382; 34 Mad. 211, Foll.; 25 Mad. 678, Ref.; 35 Cal. 1039, Dist. (*Spencer and Coutts-Trotter*, JJ.) KARRI RAMMAYYA *v.* VILLORI JAGANNADHAM 39 Mad. 930 = 18 M.L.T. 360 = 2 L.W. 874 = 30 I C 889 = (1916) M.W.N. 888.

———*Joint family—Ancestral property — Bequest by father to son—Construction.*

Whether property bequeathed by father to son is to be taken absolutely or with incidents of ancestral property is a question to be determined by ascertaining the intentions of the testator from the words of the will. In the absence of intention to the contrary, it must be presumed that the father intended the sons to take the property as ancestral property. 24 Mad. 429, Foll. (*Kumaraswami Sastri*, J.) NAIDU *v.* NAIDU. 30 I.C. 272 = 18 M.L.T. 129.

———*Joint family—Ancestral property — Bequest by father.*

Where a family is joint and continues to be joint after the death of the testator, the property obtained by his sons and grand sons under the will is joint property unless there is a contrary intention expressed in the will. 24 Mad. 429, Ref.; 24 Mad. 429, Rel. on. (*Kumaraswamy Sastri*, J.) VENKKTARAMIAH PANTULU *v.* SUBRAMANIAM. 26 I.C. 893 = 16 M.L.T. 489.

———*Joint family—Ancestral property — Self-acquired—Distinction not known in ancient Hindu Law—"Paternal estate"—Meaning of.*

Per *Sadasiva Aiyar*, J.—The distinction between "ancestral" and "self-acquired" property of a father was not known in ancient Hindu Law. "Paternal estate" in Hindu Law books meant not the father's self-acquisition alone but merely the estate which the son inherited "through his relation as such son" to his father. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) SRINIVASA AIYANGAR *v.* THIRUVENGADATHAIYANGAR. 28 M.L.J. 644 = (1918) M.W.N. 1031 = 15 M.L.T 307 = 23 I.C. 264 = (1914) M.W.N. 282.

———*Joint family—Ancestral property — Inheritance from collaterals.*

Under Hindu Law property inherited from a collateral is not ancestral. (*Lindsay*, J.C.) PUDAI RAM *v.* BAKJANATH LAL
23 O.C. 284 = 56 I.C. 743 = 7 O.L.J. 273.

———*Joint family—Ancestral property—Inherited property.*

Self-acquired estate descending from father to sons is joint ancestral estate in their hands. (*Lindsay*, J.C.) ACHHABIR SINGH *v.* JANG BAHADUR SINGH. 48 I C. 901 = 6 O.L J. 687.

———*Joint family—Ancestral property — Bequest by father.*

Property bequeathed by father to a son is not joint family property. 14 O C. 244, Foll. (*Stuart*, A.J.C.) JADUNATH SINGH *v.* BHABHUTI PRASAD. 33 I.C. 785 = 3 O.L.J 29.

HINDU LAW—Joint family—Ancestral property.

———*Joint family— Ancestral property—Collateral succession.*

Where a joint family inherits encumbered property from a collateral, the mere fact that the encumbrance is paid off out of the joint family funds does not show that the property is acquired from such funds and the mere fact that the property is managed by the managing member of the family does not establish whether it is or is not treated as joint family property. Where the property is not self-acquired but inherited by the members of a joint Hindu family governed by the Mitakshara Law, and is such as could have been partitioned among them at the time that it was inherited, the rule of survivorship applies irrespective of the fact whether such property came by obstructed or unobstructed inheritance, *i.e.*, whether it was inherited from a direct ancestor or from a collateral. (*Stuart and Kanhaiya Lal*, A.J. Cs.) SURAJ BAKSH *v.* SUKDEI. **32 I.C. 291= 2 O.L.J. 502.**

———*Joint family—Ancestral property—Father's self-acquisition.*

The self-acquired property of a member of a joint Hindu family without exercising his powers of disposal over it passes to his sons as ancestral property. The mere fact that he has not availed himself of the power of disposal is an indication that he treated it as joint family property. (*Evans*, J.C. *and Lindsay*, A.J. C.) RAMESHAR *v.* RUKMIN. **12 I.C. 770= 14 O.C. 244.**

Joint family—Constitution of.

———*Joint family—Constitution of--Tenancy in-common.*

When a Hindu female and a male jointly acquire property, they take it as tenants-in common and not as joint tenants. Thus they cannot form a joint Hindu family in the technical sense. (*Abdur Rahim and Srinivasa Iyengar*, JJ). VEERARAGAVA REDDI *v.* KOTA REDDI. **31 M.L.J. 465= 20 M.L.T. 345=33 I.C. 532= 3 L.W. 422.**

Joint family—Dancing Girls.

———*Joint family—Dancing girls—Joint property.*

The ordinary presumption that property standing in the name of one co-parcener is the property of all does not apply to dancing girls. (*Sadasiva Aiyar and Napier*, JJ.) VISALAKSHI AMMAL *v.* DORASINGA PILLAI. **29 I.C. 974.**

Joint family—Debts.

See also HINDU LAW—(1) ALIENATION. (2) DEBTS.

Joint family—Exclusion.

———*Joint family — Exclusion — Mesne profits.*

Where owing to differences on religious matters between two brothers who formed a joint Hindu family the junior brother lived separately but was offered a decent allowance by the senior which he refused to accept as being inadequate. *Held*, that there was no exclusion if the junior brother from the joint family and that he was not entitled to claim mesne profits for the period in question from the senior brother. (*Mr. Ameer Ali.*) SURAJ NARAIN *v.* IQBAL NARAIN. **35 All. 80= 40 I.A. 40=13 M.L.T. 194=17 C.W.N. 333= 11 A.L.J. 172=(1913) M.W.N. 183= 17 C.L.J. 288=24 M.L.J. 345= 15 Bom. L.R. 456=18 I.C. 30= 16 O.C. 129 (P.C.).**

———*Joint family—Exclusion—Leprosy—Father—Dealing with his own property or ancestral property for legal necessity.*

There is no principle of Hindu Law under which a leper is disqualified from dealing with his own property or from dealing with joint family property so as to bind his sons, provided the alienation is made for legal necessity. (*Piggott and Walsh*, JJ.) MAN SINGH *v.* MUSSAMMAT GAINI. **40 All. 77= 43 I.C. 62=18 A.L.J. 860.**

———*Joint family—Exclusion—Co-parcener—Exclusion, when complete.*

A member of a joint Hindu family who was refused partition of his share and remained out of possession without receiving any profits for over 12 years was held excluded from joint family property. (*Sadasiva Iyer and Hannay*, JJ.) SINNASAMY GOUNDAN *v.* SUBBANAN GOUNDAN. **26 I.C. 901=(1915) M.W.N. 29.**

———*Joint family — Exclusion—Holding belonging to family—Co-parcener's right—Non-participation in cultivation and profits—Whether extinguished.*

The mere fact of a co-parcener not taking a part in cultivation or on payment of rent or receipts of profits, for more than 12 years does not extinguish his interest in the holding unless he ceases to be a member of the joint family. (*Hallifax*, A.J.C.) SULKA *v.* RAKHI. **57 I.C. 339.**

———*Joint family—Exclusion — Suit by member for possession from another—Mesne profits.*

Where a member of a joint Hindu family sues for the recovery of family property from another member claiming to hold it adversely, the plff. is entitled to a decree for joint possession of an undivided share but not to mesne profits. (*Daniels*, A.J.C.) GOKUL PRASAD *v.* KAILASH NATH. **4 U.P.L.R. (J.C.) 19= 8 O.L.J. 596=1922 Oudh 55.**

———*Joint family—Exclusion—Partition.*

A person living apart from his step-brother the manager of the estate for nine years in mess, allowed the property to remain joint. He brought a suit for partition impleading the step-brother and his transferees as defts. *Held*, the plaintiff's suit being for a *de facto* and *de jure* division he could not rely on the ordinary presumption of jointness. The plaintiff to

HINDU LAW—Joint family—Family property.

succeed in ejecting the appellant transferee from his possession must prove his title independently of presumption as the transferee was altogether a stranger to the family and in the possession of the property in dispute. The property in dispute was separate self-acquisition of the step-brother after their division; and the plaintiff could claim no title to it. (*Eason, A.J.C.*) SHEO DAYAL *v.* LALTA PRASAD.

23 O.C. 184=58 I C. 608=
7 O.L.J. 565.

Joint family—Family property.

———*Joint family—Family property—Blending of ancestral and self-acquired property.*

Self-acquired property may be converted into ancestral property by the member of the Hindu joint family by throwing it into the common stock. This has to be decided from the facts of each case. (*Sir Walter Phillimore*). RADHAUNTALAL *v.* NAZINA BEGUM.

45 Cal. 783=22 C.W.N. 649=22 C.L J. 632=
16 A.L.J. 837=3 Pat. L W. 72=
23 M.L.T. 393=(1918) M W N. 386=
35 M L J 99=45 I C. 806=
20 Bom. L.R. 724 (P.C.).

———*Joint family—Family property—Acquisitions—Gift by Manager—Effect of.*

In a joint Hindu family it is possible that a member of the family should make separate acquisition, and keep moneys and property so acquired as his separate property, but the question whether he has done so is to be judged from all the circumstances of the case. 34 I.A. 65, Ref. Though the manager of a joint Hindu family systematically mixed his professional earnings with receipts from the joint family properties in his accounts, and purchases by him in the name of himself or his brother are to be regarded as joint family property, it is still competent to him to make a gift out of his earnings to his own son-in-law though they have been brought into the account. A statement by the manager during his lifetime that he brought the properties as a provision for his son-in-law is an admission under S. 32 (3) of the Evidence Act and coupled with the other evidence as to the intention of the Manager, is sufficient to defeat a claim that the property was bought in the name of the son-in-law *Benami* for the joint family. (*Lord Buckmaster.*) SURAJ NARAIN *v* RATAN LAL.

40 All. 159=21 C.W.N. 1065=20 C.C. 211=
2 Pat. L.W. 160=33 M.L J. 180=
15 A.L J. 681=19 Bom. L.R. 787=
22 M L.T. 121=26 C.L J. 267=
6 L.W. 509=(1917) M W N. 477=
4 O.L J. 762=40 I.C. 988=
44 I.A. 201 (P.C.).

———*Joint family — Family property — Acquisitions—Source of payment of purchase-money.*

In determining whether property which stands in the name of a junior member is his self-acquisition the source from which the money, with which the purchase-money was paid comes is the criterion. Unless there is evidence to prove that the property was purchased with the money of the junior member, the presumption is that the property acquired by the head of the family in the name of his son is joint family property. 3 M. I. A. 229; 6 M. I. A. 53. (*Mr. Ameer Ali*) PARBATI DASI *v.* BAIKUNTHA NATH DAS.

15 M.L.T. 63=(1914) M W N. 42=
12 A.L J. 79=19 C.L J. 129=
18 C.W.N. 428=16 Bom L R. 101=
22 I.C. 51=26 M.L J. 248 (P.C.).

———*Joint family — Family property — Throwing into the common stock.*

Property granted to a person by the Government as a reward for his services is self-acquired property. But it might become the property of the joint family if it is thrown into the common stock and the income of the whole of the property is devoted to the expenditure of the family, one account being kept of the income from the self-acquired and the ancestral property. (*Sir John Edge.*) INDAR SHAI *v.* SHIAM BAHADUR. 13 M.L T. 156=
(1913) M.W.N. 122=15 Bom. L R. 418=
25 M.L J. 57=17 C.L.J. 299=
17 I C. 760=17 C.W.N. 509 (P.C.).

———*Joint family—Family property—Presumption—Mortgage in favour of member.*

The presumption as regards a mortgage got by a member is that the funds belong to the family. (*Richards, C. J. and Banerji, J.*) PUNNU *v.* KOUSA. 40 I.C. 463.

———*Joint family — Family property — Grant by Government.*

Joint family property confiscated by Government and subsequently regranted to one co-parcener without reference to original grant must be presumed to be joint family property. (*Richards, C.J. and Rafique, JJ.*) BAIJNATH PRASAD SINGH *v.* TEJ BALI SINGH.

38 All. 590=38 I.C. 895=14 A.L J. 913.

———*Joint family — Family property — Course of conduct.*

Purchase by a co-parcener of a property on behalf of the family and treatment of it as joint family property makes it the property of the family. (*Banerjea and Chamier, JJ.*) SHIAM SUNDER LAL *v.* BUDDHU LAL.

24 I.C. 252=13 A.L.J. 784.

———*Joint family — Family property—Acquisitions—Presumption.*

Where in a joint Hindu family property is purchased in the name of one individual there is no presumption that it is his separate property. The onus is on the person alleging it to be a self-acquisition to prove it. Unless the contrary is proved the presumption is that property purchased by a father in the name of the sons was purchased out of the funds of the joint family. (*Richards, C. J. and Piggott, J.*) KUNDAN LAL *v.* SHANKAR LAL.

35 All. 364=21 I.C. 13=11 A.L J. 910.

HINDU LAW—Joint family—Family property.

———*Joint family — Family property — Possession of—Widow of co-parceners — Joint interest.*

In a joint Hindu family all property is presumed to be held jointly no matter whose name appears in the Revenue Records. Where two brothers were joint their widows also must be presumed to be in joint possession of the property. No question of adverse possession arises in such a case. (*Griffin*, J.) SRI CHAND *v.* SURAJ KUAR. **9 I C. 146**

———*Joint family — Family property—Throwing into common stock.*

Where a member of a joint Hindu family converts his self-acquisition into joint family property, all members of the family have the same right in it as in ancestral property. (*Beaman and Heaton*, JJ.) RANGBHAT RAMACHANDRA DHAT *v.* SITABAI BAND BHAT. **45 I.C. 584=20 Bom. L.R. 388.**

———*Joint family—Family property—Joint acquisitions—Proof.*

Where father and son live together and where Hindu brothers live together as joint family work together and acquire property together it has the character of joint family property irrespective of nucleus. The point of nicety in determining when the common family fund becomes impressed with that character is to discover the intention of the person having the control of the fund that it should be appropriated to the common use. Where a Hindu father starts with nothing the mere fact that there are infant children does not lead to the conclusion that his individual earnings should become a common fund. Where the children grow up it becomes difficult to determine when the acquisitions of the one fund become acquisitions of the other. The test to determine when self-acquisitions become joint family property is contribution. (*Beaman*, J.) HARI DAS LALGI *v* NAROLAM RAGHAVJI. **14 I.C. 769=14 Bom. L.R. 237.**

———*Joint family—Family property—Properties in possession of one member—Presumption—Transferee from members.*

A transferee from a member of a joint Hindu family of property, must show that the property was the separate property of his vendor, although there was no nucleus of ancestral joint family property. The presumption that property standing in the name and in the possession of a member of a joint Hindu family is joint family property would arise even where there was in fact no nucleus of ancestral joint family property. 19 W.R. 178; 10 W.R. 122, Rel. (*Teunon and Walmsley*, JJ.) GADHARBHATAK *v.* SATISH CHANDRA GHOSE. **31 I.C 854.**

———*Joint family—Family property—Property in the hands of one member—Presumption.*

Where it is proved that there was a nucleus of joint family property, any property in the hands of a member of such family must be presumed to be family property. 30 Cal. 231, Ref. to. (*Carnduff*, J.) GANPATI *v.* BALAMUKUND. **13 I.C. 206.**

———*Joint family—Family property—Onus of proof.*

Where separation is proved the onus is shifted on the plaintiff who asserts jointness of proving that the house is joint property. (*Campbell*, J.) NARSINGH DAS *v.* UTTAM CHAND. **1923 Lah. 392.**

———*Joint family—Family property—Question of status—Burden of proof.*

An agreement of family settlement was followed by an arbitration award and the award was duly registered: Under the award the house in dispute was assigned to the widows of one of the brothers *Held*, the onus was shifted on to the plaintiffs' reversioners to prove that the property was joint Hindu family property at the time of alienation of the house in question by widow. A decree for maintenance against the male members of the family on the ground that the widow was entitled to be maintained out of her husband's share of the joint property does not help the plaintiffs to prove that there was any joint Hindu family. The house in suit might very well be joint family property without the family being joint in the true sense. (*Scott Smith and Motisagar*, JJ.) KARAM CHAND *v.* MT. HAR KUAR. **1923 Lah. 371.**

———*Joint family—Family property—Onus of proof.*

All the property in the hands of the members of a joint Hindu family is to be treated as joint property but it is open to any other member to show that any particular property is his separate property. (*Shadi Lal*, C.J. *and Le-Rossignol*, J.) PARAMANAND *v.* SHEO CHARAN DAS. **2 Lah. 69=21 P L R. 1921=59 I.C. 256=15 P.W.R. 1921.**

———*Joint family — Family property — Acquisition by member—Presumption—Plea of self-acquisition—Onus.*

The legal presumption is that all the properties held by any member of a joint family so long as the family is joint are joint properties. Joint acquisitions made by the several members in a joint family, while the family is joint are presumed to have been made from joint funds and belong to the joint family. The mere fact that any particular acquisition is in the name of a member of the joint family, does not warrant the assumption that it is the exclusive acquisition of the member of the named and not of the whole joint family. (*Broadway*, J.) GOPAL SHAH *v.* JAWAND SINGH. **49 I.C. 1007=30 W.R. 1919.**

———*Joint family—Family property—Purchase by father in son's name.*

Purchase by a Hindu father in the name of the son does not denote advancement but that

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it is *benami*. 6 M.I.A. 53; 13 M.I.A. 232 and 13 W.R. (P.C.) 1, Ref. (*Scott-Smith and Shadi Lal*, JJ.) GHULAM DASTAGIR *v.* TEJA SINGH. 73 P.R. 1918=47 I.C. 367= 159 P.W.R. 1918.

———*Joint family—Family property—Purchase in minor son's name—Advancement—Property in the son's hands not ancestral.*

When land is purchased by a father in the name of his minor son, to make an advancement of the purchase money to the son, such property in the hands of the son is not ancestral property. (*Shah Din and Chevis*, JJ.) NATHA MAL *v.* JIWAN RAM. 33 I.C. 793= 77 P.W.R. 1916.

———*Joint family—Family property—Reversion—Maintenance grant.*

Property allotted to a widow for maintenance continues to be joint family property. (*Rattigan and Jones*, JJ.) CHANDAM MAL *v.* MUSAMMAT WASINDI BAI. 92 P.R. 1915= 31 I.C. 541=168 P.W.R. 1915.

———*Joint family — Family property — Acquisition—Presumption.*

The normal state of a Hindu family is joint and an acquisition in the name of any one member does not warrant the assumption that it is his exclusive acquisition. (*Shah Din and Scott-Smith*, JJ.) SHAM DAS *v.* POHLO RAM. 18 P.W.R. 1913=18 I.C. 604= 16 P.L.R. 1912. (Supp.)

———*Joint family — Family property — Benami purchase—Burden of proof.*

Where the head of a joint Hindu family makes a purchase in the name of another member the onus of proving the purchase was not *benami* lies on the person asserting it. (6 M.I.A. 53, Foll.) The onus may, however, be shifted in particular cases. Thus where the transaction is shown to be in the nature of a distribution among various members or for the advancement in life of one of them the initial presumption may cease to exist. (13 M I.A. 395, Ref.) (*Reid*, C.J. *and Robertson*, J.) RAJA RAM *v.* FATTEH CHAND. 187 P.L.R. 1913=17 I.C. 216= 258 P.W.R. 1912.

———*Joint family — Family property — Throwing into the common stock—Registration.*

Semble.—Where a divided member of a joint family throws his properties into the common stock so as to make it joint family property of a reunited family, a registered instrument is necessary to validate it. (*Abdur Rahim and Seshagiri Aiyar*, JJ.) REDDI *v.* REDDI. 8 L.W. 500=47 I.C. 716=(1918) M.W.N. 680.

———*Joint family — Family property — Throwing into Common Stock.*

Blending private earnings with receipt of joint family shows an intention to make them joint property. Self-acquisition may be converted into joint family property (1) clear

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declaration to that effect, (2) substantial contribution being made by the sons, (3) unequivocal conduct showing that the son was treated as equal owner. If father and son trading together the presumption is that the earnings become joint family property. (*Sadasiva Iyer and Napier*, JJ.) NARASIMHAPPA *v.* CHINNA KENCHAPPA. 38 I.C. 244.

———*Joint family — Family property — Throwing into Common Stock.*

The earnings of one member of a joint Hindu family do not necessarily belong to the family in the absence of any evidence that they were thrown into the common stock or that they were jointly made by all members of the family. (*Coutts Trotter and Srinivasa Iyengar*, JJ.) YECHURI RAMA MURTHI *v.* YECHURI RAMAMMA. 30 M L.J. 308=33 I.C. 961= 3 L.W. 322.

———*Joint family — Family property—Throwing into common stock.*

Per Coutts Trotter, J.:—If a man has property which he has acquired by his own exertions but shows by his subsequent conduct and subsequent dealings with that property that his intention was that it should be regarded, and he himself regards it, as being property in which his family has a share, then that becomes thence forward, family property under the Hindu Law. 10 M.I.A. 490; 25 Mad. 149; 10 Bom. L.R. 175; 15 Bom. L.R. 584; 32 Bom. 479; 17 I.C. 347, Foll. (*Coutts-Trotter and Srinivasa Aiyangar*, JJ.) TAYALAMBAL *v* KRISHNA PATTAR. 32 I.C. 955.

———*Joint family — Family property — Presumption.*

Even if the property is purchased without the aid of joint family funds, acquisitions in the absence of intention to the contrary be treated as joint family property. (*Ayling and Tyabji*, JJ.) MUTHAN *v.* PUNIAKOTTI MUDALIAR. 31 I.C. 18.

———*Joint family — Family property — Dancing Girls.*

The ordinary presumption that property standing in the name of one co-parcener is the property of all does not apply to dancing girls. (*Sadasiva Iyer and Napier*, JJ.) VISALAKSHI AMMAL *v.* DORASINGA PILLAI. 29 I.C. 975.

———*Joint family—Family property—Inam Desai—Grant of—Joint Hindu family.*

The presumption is that a Desai Inam devolves to the benefit of all the members of a joint undivided Hindu family where it devolves on the managing member for the time being. 26 Mad. 339, Foll. (*Seshagiri Iyer and Kumaraswami Sastri*, JJ.) NANJUNDIAH *v.* VENKATASUBBAYA. 1 L.W. 670= 16 M.L.T. 239=26 I.C. 87=27 M.L.J. 618.

———*Joint family — Family property — Acquisitions—Nucleus—Onus.*

Where there is a substantial nucleus of family property of which the father was the

HINDU LAW—Joint family—Family property.

Manager, the onus would lie on those who assert that any property afterwards acquired was without detriment to that property and was his self-acquisition. (*Sadasiva Aiyar and Seshagiri Aiyar*, JJ.) SUBBA NAIDU *v.* VENKATTA RAMA NAIDU. 23 I C. 528 = 15 M.L.T. 418.

———*Joint family — Family property—Insurance—Premia paid by joint family.*

Where the premia are paid out of the joint family funds the amount recovered is joint family property though the policy is taken for the benefit of the wife and children. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) SRINIVASA IYENGAR *v.* THIRUVENGADATHAYYANGAR. 38 Mad. 556 = 25 M L J 614 = (1913) M W N. 1034 = 15 M L T 307 = 23 I.C. 264 = (1914) M.W.N. 282.

———*Joint family — Family property — Presumption.*

If the members of a Hindu family live together, work together, throw their earnings into a common stock the presumption is they must have intended the property to be joint family property and on a partition the share of each is joint family property in which his son acquires a right by birth. (*Bakewell*, J.) MADAVAIYA CHETTY *v.* DAMODARAM. 12 M.L T. 240 = 17 I.C. 347 = (1912) M.W N. 972.

———*Joint family — Family property — Transfer of name in khata.*

Merely from a transfer of khata from the name of the father in a joint family to that of one of the sons no presumption arises that the subject of the transfer has ceased to be joint family property and become the self-acquisition of that particular member. There may be circumstances which indicate that the property was intended to be made the separate property of the son. (*Kotwal*, A.J.C.) MT. KASHI *v.* PANDURANG. 1923 Nag 75.

———*Joint family—Family property — Acquisitions by members.*

Where property is acquired jointly by the members of a family, the property so acquired is presumed to be co-parcenary property. 25 Mad. 149, Foll. (*Drake-Brockman*, J.C. *and Prideaux*, A.J.C.) MUSSAMMAT ZUNKERI. *v.* BUDHAMMAL. 57 I C. 252.

———*Joint family—Family property— Purchase in name of one member—Effect of.*

A purchase in the name of a member of a joint Hindu family is a *benami* transaction especially when he is not the Manager. The property is joint family property. (*Mitra*, A.J.C.) NARAHAR *v.* NARAIN. 56 I.C. 386.

———*Joint family—Family property—Acquisition—Nucleus of ancestral property—Acquisitions kept separate, proof of.*

The presumption of jointness in respect of property acquired by each member of a joint Hindu family having an original nucleus is not rebutted by the fact that the ancestral assets were small in proportion to the value of the subsequent acquisitions. Though it is possible that a member of a joint family could make separate acquisitions and keep the money and property separate yet the question whether he has done so is to be judged from all the circumstances of the case. 40 All. 159 (P.C.), Foll. (*Drake Brockman*, J.C. *and Button*, A.J.C.) KRISHNAJI *v.* PARAMANAND 49 I.C. 240.

HINDU LAW—Joint family—Family property.

———*Joint family—Family property—Property in the name of a member.*

Property in the hands of and dealt with by one member cannot be presumed to be part of joint family property unless it is proved that it belonged or purchased out of joint family funds. (*Stuart and Kanhaiya Lal*, A. J. C.) IKBAL NARAIN *v.* RAJENDEA NARAIN. 21 O.C 276 = 48 I C 767 = 3 O.L.J. 701.

———*Joint family — Family property — Acquisition of co-parcener.*

There is no presumption that acquisition in the name of one co parcener is his separate property. But the presumption is that it was acquired out of joint family funds. (*Stuart and Kanhaiya Lal*, A. J. CS.) LALJAGAN *v.* MATHURA PRASAD. 39 I C. 498.

———*Joint family—Family property—Presumption.*

There is no presumption that property belonging to a member of joint Hindu family is necessarily joint ancestral property. (14 O. C. 244, Ref.) (*Stuart*, A.J C.) JADUNATH SINGH *v.* BHABHUTI. 33 I.C. 788 = 3 O L.J. 29.

———*Joint family — Family property— Money advanced by one member—Presumption.*

Where money is advanced by a member of a joint Hindu family, the presumption is that it is adavnced from the family funds. (*Lindsay*, A.J.C.) SYED MUHAMMAD HADI *v* MUSSAMMAT PARBATI. 18 I.C. 228.

———*Joint family — Family property — Acquisition by female—Presumption.*

Where a property is acquired by a lady whose husband is a member of a joint family for her own benefit and her children, the acquisition cannot be presumed to be for the benefit of the entire joint family. (*Das*, J.) SHIVA NARAIN RAM *v.* PHULJHARIA. 52 I.C. 402.

———*Joint family — Family property — Acquisitions—Dealings—Presumption.*

When the head of the joint family collects money due on family bonds and issues again on fresh loans the presumption is that both the transactions are for the family. A purchase made by the Kartha of a joint family from joint funds in his own name is joint family property. (*Roe and Coutts*, JJ.) KAMALESHRI PRASAD SINGH *v.* RAGHUBANS PRASAD SINGH. 48 I.C. 949 = 1918 Pat. 62

HINDU LAW — Joint family—Family property.

———*Joint family — Family property — Acquisition by one member—Presumption.*

There is no presumption that property acquired in the name of one member of a joint family is his separate property. (*Miller*, C.J. *and Ali Imam*, J.) RAMDAYAL MAHTO *v.* UTTIM MAHTO. 46 I.C. 255 = 5 P.L.W. 122.

———*Joint family — Family property — Manager—Lease.*

Where a father in a joint Mitakshara family takes a sub-lease the presumption is that it was taken for the benefit of the joint family. (*Roe and Jwala Prasad*, JJ.) KAILASPATI CHAUDHURY *v.* MUNESHWAR. 3 P.L.J 576 = 43 I.C. 965 = 4 P.L.W. 109.

———*Joint family — Family property — Throwing into common stock.*

Acquisition by co-parceners does not become joint family property in the absence of evidence that the money was thrown into the common fund. Mere living together is not such evidence. (*Mullick and Atkinson*, JJ.) TAJMULALI *v.* JAG MOHAN DAS. 1 P.L.J. 529 = 38 I.C. 96 = 2 P.L.W 445.

———*Joint family—Family property—Property thrown into common stock—Survivorship.*

Under Hindu Law, property jointly acquired and thrown into common stock is subject to succession by survivorship as between the parties who acquired it. (*Mullick*, J.) GOBARDAN SAHU *v.* BULKHAN MAHTON. 36 I.C. 263 = 1 P.L.J. 195.

Joint Family—Father.

———*Joint family—Father—Compromise by—How far binding.*

One Rajaram's share was decreed in a partition suit along with a considerable amount. Rajaram's minor son was a party to the partition suit. Rajaram released the right to the sum, on his opponent Tuljaram agreeing not to prosecute the appeal against the partition decree. The appeal was therefore not prosecuted. The minor son of Rajaram on attaining majority filed a suit for recovering the sums which was dismissed by both the Courts in India but the Privy Council remanded his suit for trial holding that the arrangement by Rajaram did not bind Rajaram's son. Before the suit came on for trial Rajaram got two more sons who were added as co-defendants. The new-born sons pleaded that the arrangement by Rajaram failed wholly. *Held*, that the agreement did not purport to be a release of individual rights or shares in the fund at all; it did not purport to effect any division of the joint family estate that then existed between Rajaram and his son in the subject-matter of these decrees. On the contrary what it purported to do was to release the whole of the debts that were then owing to the joint family in consideration of Tuljaram not prosecuting his appeals. The attempted arrangement failed so far as the infant was concerned; and, if it failed so far as the infant was concerned, in the events that have happened it must also be regarded as failing (*Lord Buckmaster*). T. R. VENKATA RAO *alias* GANESH RAO *v.* T. V. TULJARAM RAO. 43 Mad. 298 = 43 M L J. 298 = 26 C W N 646 = 36 C L J. 319 = (1922) M W N. 392 = L.R. 3 P C 125 = 4 U.P.L R. P C. 33 = 20 A.L.J. 833 = 24 Bom. L R 1191 = 49 I A. 91 = 30 M L T. 272 = 1922 P C. 69 (P.C.).

———*Joint family—Father—Power of, to partition.*

A Hindu father has power to effect a fair partition among his sons But if he gives away property to a stranger the sons will not be bound thereby. (*Sir Samuel Griffith*) RAMKISHORE KEDARNATH *v.* JAINARAYAN RAMRACHPAL. 40 Cal. 966 = 40 I A. 213 = (1913) M.W.N. 661 = 14 M L T. 163 = 17 C.W.N. 1189 = 18 C.L.J. 287 = 15 Bom. L.R. 867 = 11 A L.J. 865 = 25 M L J. 512 = 20 I C. 958 = 10 N.L R. 1 (P.C.).

———*Joint family—Father—Power to partition.*

A Hindu father has no right to make a partition by will at any rate without the consent of the various members. (*Lord Moulton*). BRIJ RAJSINGH *v.* SHEO DAMSINGH 38 All. 337 = 26 M L T 183 = 17 C W N 959 = (1913) M.W N. 515 = 11 A.L J 698 = 14 M.L.T 11 = 18 C.L J. 57 = 15 Bom. L.R. 652 = 19 I C 826 = 40 I.A. 161 (P.C.).

———*Joint family—Father—Revival of time barred debt.*

The father of the joint family cannot revive a barred debt and bind the family property to secure its payment. (*Richards*, C.J. *and Banerji*, J.) DALIP SINGH *v* KUNDAN LAL. 38 All. 207 = 18 I.C. 726 = 11 A.L.J. 255.

———*Joint family—Father—Representation in suit—Sale in execution of decree—Son minor, not party to the mortgage—Right of son's widow to impeach the sale.*

A father executed a mortgage of joint family property and a decree was obtained on it. Property was sold; the minor son who was not a party to the suit died and his widow brought a suit to challenge the sale of her husband's share. The widow was held not entitled to do so. (*Richards*, C.J. *and Banerji*, J.) SOHNI *v.* MOHAN KUER. 13 I C. 944 = 9 A.L.J. 23.

———*Joint family—Father—Decree against—Mortgage—Son's interest whether passes.*

Unless the sons can show that the alienation by father was not binding on them or the debt was not binding, a decree against father will pass the interest of sons also in the joint family property. (*Macleod*, C. J. *and Crump*, J.) DADA JINAPPA *v.* YESU SAKHOBA. 1923 B. 450 = 25 Bom. L.R. 495.

HINDU LAW—Joint family—Father.

———*Joint family—Father—Representation in suits—Suit for declaration of title to land—Sons, if necessary parties.*

When a Hindu father brought a suit for a declaration of his title to certain land and for other reliefs, without impleading his undivided sons as parties. *Held*, that the latter were necessary parties and the suit cannot proceed without them. 7 C.L.J. 251, at 260, 261, Rel. on. (*Richardson and Newbould*, JJ.) JAGAT NARAIN SINGH *v.* UDIT NARAIN SINGHA.
20 I.C. 262.

———*Joint family—Father—Right to son's self-acquired property.*

When the son maintains the father out of his self-acquired property without any intention to create any title to property the latter cannot claim any right in the property during the lifetime of the son. 18 Cal. 341, (P.C.), Ref.; 33 Cal. 1119, Dist. (*Casperse*, J.) ARJUN RAM PAL *v.* SADANANDA SARMA. 9 I.C. 1.

———*Joint family—Father — Compromise by.*

A *bona fide* compromise of a doubtful claim, entered into by the father as manager of the family, binds the minor sons. (*Scott-Smith and Leslie-Jones*, JJ.) SHAMBUNATH *v.* DWARKA DAS. 60 I.C. 524.

———*Joint family—Father—Power to make a will.*

A son becomes by birth, a co-parcener with his father in the ancestral property and the father cannot therefore validly bequeath by will that property without the son's consent. (*Rattigan and Scott-Smith*, JJ.) DIWAN CHAND *v.* JIWAN MALL. 135 P.L.R. 1916=26 I.C. 910=222 P.W.R. 1916.

———*Joint family—Father — Powers of—Agreement to be bound by oath—Sons bound.*

An agreement by the father in the course of legal proceedings, to be bound by oath cannot be said to be fraudulent as against the sons. 5 Mad. 259; 6 Mad. 284, Disappr.) *Sadasiva Aiyer and Napier*, JJ.) SAMU *v.* SWAMINATHA IYER. 16 M.L.T. 163=25 I.C. 221=1 L.W. 643.

———*Joint family—Father—Compromise.*

A *bona fide* compromise of a disputed claim by the father as Manager of the joint Hindu family is binding on the minor son. 11 M.L.T. 70; 1 All. 651; 27 All. 203; 4 I.C. 954; 7 I.C. 134; 1 I.C. 573; 12 C.W.N. 687; 11 M.L.J. 70; 33 All. 356; 9 M.L.T. 498; 14 I.C. 295; 35 All. 428, Foll.; 2 C.W.N. 687, Ref. (*Wallis and Sadasiva Aiyer*, JJ.) VENKATAGIRI NAYANI VARU *v.* SUBBARAYALU NAYANI.
24 I.C. 491.

———*Joint family—Father—Decree—Execution sale—Sons, if bound—Right of sons to impeach sale.*

The father, in a joint family consisting of himself and his three sons, mortgaged the entire family property. The mortgagee sued the father and brought the property to sale in execution without impleading the sons as parties. *Held*, that to the extent the father represented the family, the decree was binding on sons. It was open to the father in the suit against him to plead invalidity of the mortgage under Sch. III, C.P.C., but as he did not do so, the sons were bound by *res judicata* from raising it, and obtaining a decision thereon in the present suit. The sons were entitled to have the question tried as to whether the mortgage executed by the father was binding upon them. (*Mitra and Prideaux*, A.J.Cs.) MOTIRAM *v.* ASARAM. 33 I.C. 776.

———*Joint family—Father—Decree against—Father's suit dismissed on oath by deft.—Son's suit withdrawn with permission—Suit by sons for their share maintainable.*

In a suit by the father and one of the three sons, the deft. took oath and the suit was dismissed as against the father and the son who did not agree to be bound by oath was allowed to withdraw his suit with permission to bring a fresh suit. Subsequently this son and the two brothers brought a suit to recover their three quarters of the debt. *Held*, that the parties were in the same position as if the father and sons had sued jointly and the father had given up his claim to his share and that the sons were entitled to a decree for their share of the debt on its being proved. (*Batten*, A.J.C.) RAMESHWAR *v.* BHANGI LAL.
32 I.C. 995=12 N.L.R. 45.

———*Joint family — Father — Powers of—Reference to arbitration.*

A Hindu father can refer disputes to arbitration and in the absence of fraud or collusion the award is binding on the others. (*Mittra*, O. A.J.C.) RAM DYAL *v.* MITIRAM.
24 I.C. 863=10 N.L.R. 74.

———*Joint family — Father — Representation in suit—Liability of son.*

A Hindu son whether minor or major, though not in fact a party to a suit on a mortgage against his father is constructively a party being represented by his father. So he cannot reopen the decree except on the ground that the debt is not binding on him. (*Batten*, A.J.C.) GORE *v.* KASHIRAM. 18 I.C. 848=9 N.L.R. 1.

———*Joint family — Father—Foreclosure decree against—Son not party—Transfer of Property Act, S. 85.*

Though the suit is clearly not brought against the father in a representative capacity, in the absence of anything to show that the debt due by father was a personal debt and the suit was brought against him in his personal capacity or that the mortgagee had a notice of the existence of the sons. It is not open to the sons, after the property has passed out of the family to set up their right against the remedy obtained by the creditor in enforcement of his debt. 6 O.C. 101, Foll. (*Kanhaiya Lal*, J.) BHAGWATI PRASAD *v.* KALLU RAM.
1923 Oudh 45.

HINDU LAW—Joint family—Father.

———*—Joint family—Father—Compromise—Sons if bound.*

A compromise entered into by a Hindu father with regard to ancestral property for the purpose of avoiding a litigation and in the nature of a family settlement is in the absence of fraud, collusion, undue influence, or other like reason, binding on his sons. (*Lyle and Ashworth*, A.J.Cs.) GANDHARAP SINGH *v* NIRMAL SINGH. **22 O.C. 300=54 I C. 325= 6 O.L.J. 529**

———*Joint family—Father—Decree against—Execution of—Setting aside of—Immoral purpose.*

The sons in a joint Hindu family under the *Mitakshara* cannot sue to have the execution sale of ancestral property on a decree passed against their father upon a debt contracted by them, set aside unless they can prove that the debt was contracted for immoral purposes. (*Stuart*, A.J.C.) JADUNATH SINGH *v.* BHABHUTI PRASAD. **33 I.C. 785=3 O.L.J. 29.**

———*—Joint family—Father—Liabilities of sons.*

Sons are not bound by any and every act done by the father in his capacity as manager. (*Lindsay*, J.C.) KANDHAIYA BUX SINGH *v.* SHEO BUX SINGH. **20 I.C. 851.**

———*—Joint family—Father—Insolvency of—Share of sons.*

The share of sons in joint family property is not liable to be sold to pay the debts of the father who has become an insolvent. (*Roe and Coutts*, JJ.) BABU SAHAJ NARAYAN SAHI *v.* WAJID HUSSAIN. **49 I.C. 848.**

———*—Joint family—Father—Decree against.*

Where a decree for sale on a mortgage is obtained against the father his sons are debarred from instituting a suit for redemption unless they prove that the cause of action on which the decree was passed was not one for which they would be liable. 36 All. 883 (P.C.), Ref. to. (*Chamier*, C.J. *and Sharfuddin*, J.) RANJIT PRASAD *v.* RAMJATAN PANDYE. **1 P.L.W. 197=37 I.C. 833= (1917) Pat. 113.**

———*—Joint family — Father — Decree absolute against father—Suit by sons.*

Where in a suit on a mortgage a decree absolute for sale has been passed against a deceased mortgagor without substituting his sons as his heirs and a sale has taken place pursuance of such a decree the sons cannot challenge the sale. 28 Cal. 73, Ref. to. (*Mullick and Kingsford*, JJ.) JAHNANI PRASAD SINGH *v.* GHARBARAN DABEY. **35 I.C. 404.**

Joint family—Females.

———*—Joint family—Females—Position of.*

An unmarried daughter of a member of joint Hindu family has no legal position in regard to the family property beyond that she is entitled to maintenance out of it and to have her marriage expenses paid out of it. (*Batchelor*, A. C. J. *and Kemp*, J.) GANESH AMBIT DHOKRIKAR *v.* RANGANATH MANOHAR PANSARA. **46 I.C. 49=20 Bom. L.R. 513.**

HINDU LAW — Joint family — Manager—Bond in favour of.

Joint family—Manager.

ACKNOWLEDGMENT.
ARBITRATION.
BOND IN FAVOUR OF.
BREACH OF CONTRACT.
COMPROMISE.
CONTRACT.
DECREE AGAINST.
DE FACTO.
DISCHARGE.
LIABILITY TO ACCOUNT.
LOAN.
MINOR.
POWERS OF.
REPRESENTATION.
RIGHT TO EXCLUSIVE POSSESSION.
RIGHT TO SUE.

Joint family—Manager—Acknowledgment.

———*Joint family—Manager—Acknowledgment of debts.*

An acknowledgment of a debt by the manager of a joint family trade is only personal and does not bind the other members. (*Wallis*, C.J. *and Phillips*, J.) KISSANDOSS *v.* KHUTAN MAKANJEE SPINNING AND WEAVING COMPANY, LTD. **36 I.C. 389.**

———*Joint family—Manager—Acknowledgment by—Effect.*

An acknowledgment of a debt by the manager of a family is binding on the family. (*Sankaran Nair and Spencer*, JJ.) CHIDAMBARAM CHETTI *v.* RAMASWAMI CHETTIAR. **26 I.C. 911=27 M.L.J. 631.**

Joint family—Manager—Arbitration.

———*—Joint family—Manager—Arbitration.*

If a claim against the joint family property is referred to arbitration by some members and a settlement is effected, the arbitration and settlement does not bind the family property. (*Abdur Rahim and Oldfield*, JJ.) BHUMI REDDI SUBAMMA *v.* BHUMI REDDI AHADU. **12 L.W. 668=60 I.C. 618= (1921) M.W.N. 28.**

———*—Joint family—Manager—Arbitration.*

Reference to arbitration by the manager in good faith and without collusion is binding on other members. (*Coutts Trotter and Kumaraswami Sastri*, JJ.) UPPARA CHINNAGAPPA *v.* GADDAM CHINNA HANUMANNA. **9 L.W. 314=50 I C. 471= (1919) M.W.N. 425.**

Joint family—Manager—Bond in favour of.

———*—Joint family—Manager — Bond in favour of—Presumption.*

The presumption is that a bond in the name of the managing member of a joint Mitakshara

HINDU LAW — Joint family — Manager— Bond in favour of.

family is joint family property and it is for those who assert the contrary to make good their case. Proof that some of the members of the family had some private transaction does not prove that the particular bond in question was the private property of the member in whose name it was held. (*Viscount Cave.*) BANDHU RAM *v.* CHINTAMAN SINGH.

26 C W N. 406=3 Pat. L.T. 295= 20 A.L.J. 493=1922 P.C. 215.

——*Joint family — Manager—Bond in favour of—Payments to other members if a valid discharge.*

When a contract is entered into by a Manager of the joint family no other member of the family is competent to interfere or to give receipts in connection therewith. But the payment by a debtor who has executed a bond in favour of a manager to the other members of the family under the *bona fide* belief that the contract is with all the members should be given credit to. (*Rattigan and Shah Din*, JJ.) KRIPAL SINGH *v.* SANT SINGH.

71 P.R. 1911=30 P.L.R. 1912=13 I.C. 305= 205 P.W.R. 1911.

——*Joint family — Manager—Bond in favour of—Payment to junior members.*

The word " promise " in S. 2 of the Contract Act means, in reference to bonds, a person in whose favour the document has been executed. Where money has been advanced by the manager of a joint family and a bond taken in his name the other members do not become co-promisees with him. (*Seshagiri Aiyar and Napier*, JJ.) ANNALAMMA *v.* BELLAM CHENCHAYYA. **41 Mad 637=7 L.W. 221= 34 M.L.J. 315=45 I.C. 419=23 M.L.T. 215.**

Joint family—Manager—Breach of contract.

——*Joint family—Manager — Breach of contract—Suit for damages.*

A manager of a joint Hindu family who contracts to sell property is personally liable for damages for failure to do so if the contract is found to be not binding on the minors. Relief of the contracting parties is immaterial. (*Abdul Rahim, Napier and Seshagiri Aiyar*, JJ.) ADIKESWAN NAIDU *v.* GURNATH CHETTY. **40 Mad. 338=32 M.L.J. 180= (1917) M.W.N. 171=5 L.W. 426= 39 I.C. 358=22 M.L.T. 300.**

——*Joint family — Manager—Breach of contract by previous Manager — Contents of plaint.*

In a suit by the present manager for breach of contract by a former manager of a joint Hindu family it must be clear in the plaint that the suit is by that managing member as a manager. It is not sufficient that he should be incidentally on the record as one out of many members of the family of whom some 30 per cent. have been omitted. 33 All. 272, Ref. (*Roe and Jwala Prasad*, JJ.) GIRWAR NARAIN MAHTEN *v.* MT. MAKBUNISSA. **36 I.C. 842=1 P.L.J. 168.**

HINDU LAW — Joint family — Manager— Contract.

Joint family—Manager—Compromise.

——*Joint family—Manager—Compromise —Minor's liability.*

Where A, under a compromise relinquished the family claims under a decree but the then minor son on becoming major was by the decision of the Privy Council remitted to his original rights under the decree and the case was remanded for decision as to share but during the interval two other sons were born to A, *held* in the events that had happened the compromise agreement must be regarded as failing to convey any of the joint estate at all. (*Lord Buckmaster.*) VENKATA ROW *v.* TULJA RAM ROW. **20 A.L.J. 833=26 C.W.N. 646= 30 M.L.T. 272=45 M. 298= 4 U.P.L.R. (P.C.) 33=(1922) M.W.N. 392= 43 M.L.J. 298=24 Bom. L.R. 1191= 36 C.L.J. 319=1922 (P.C.) 69 (P.C.).**

——*Joint family—Manager—Compromise decree—How far binding on sons.*

The compromise is no better than an alienation of joint family property the son's rights in the joint family property cannot be affected by a compromise decree obtained against a Hindu father. (*Dalal, A. J. C.*) RAM DAYAL *v.* NIMAR SINGH. **26 O.C. 355=1924 Oudh 133.**

Joint family—Manager—Contract.

——*Joint family—Manager — Contract—Purchase of immoveable property — Specific performance—Minor defendants—No necessity or benefit—Specific performance refused.*

An agreement for purchase of immoveable property entered into by the manager of a joint Hindu family cannotafter his death be specifically enforced against the surviving co-parceners. (*Phillips*, J.) BAPPU *v.* V. A. ANNAMALAI. **44 M.L.J. 226=17 L.W. 364= (1923) M.W.N. 218=32 M.L.T. 253= 1923 M. 313.**

——*Joint family—Manager—Contract for Sale—Legal necessity.*

A suit on a contract to sell entered into with the managing member of a Hindu family can be enforced against his sons if the contract is binding on them. But if the sale is not for a legal necessity, then the Court is justified in refusing to decree specific performance. (*Sadasiva Aiyar and Napier*, JJ.) SHUNMUGAM CHETTY *v.* SUBBA REDDI. **31 I.C. 1.**

——*Joint family—Manager — Contract—Sale of land—Existence of minor members—Specific performance.*

The relation of the manager of a joint Hindu family to a minor member of the family is not the same as that of a guardian to his ward. 12 N.L.R. 12, foll. Where a contract is made by the manager of a joint Hindu family acting on behalf of the family including its minor members to sell immoveable property, it is open to the purchaser to claim specific performance of the contract against the whole family including

HINDU LAW — Joint family — Manager— Contract.

the minors. 39 Cal. 232; 35 All. 499; 30 Cal. 539, Dist.; 2 P.L.J. 513, Foll. (*Hallifax*, A.J.Cs.) THAKUR HARGOVIND *v.* MEHTAB SINGH. 18 N L R. 67 = 1922 Nag. 193.

———*Joint family — Manager—Contract— Power to agree to pay barred debt.*

The manager of a joint Hindu family has no power to enter into any agreement to pay off a time-barred debt. (*Das and Ross*, JJ.) SADHU SARAM PRASAD SINGH *v.* BRAHMDEO PRASAD SINGH. 2 P.L.T. 318 = 61 I C. 20 = 6 P.L.J. 266.

Joint family—Manager—Decree against.

———*Joint family — Manager — Decree against—Decree if binding on minor members.*

Where a suit is brought against the managing member of a joint Hindu family and the other adult members, the decree obtained in the suit is binding on the minor members also though they were not parties to the suit. (*Mears*, C.J. *and Bannerji*, J.) TULSHI *v.* BISHNATH RAI. 21 A.L.J. 175 = L.R. 4. A. 134 = 1923 A. 284.

———*Joint family — Manager — Decree against.*

Where a decree had been obtained against the manager alone the question of the liability of the shares of the other co-parceners who were not parties to the suit nor legal representatives would arise only at the stage of sale. 14 Bom. 597 and 23 Bom. 872, Doubted. (*Scott*, C.J. *and Shah*, J.) LAKSHMAN NILKHANT *v.* VINAYAK KESHAV. 40 Bom. 329 = 38 I.C. 956 = 18 Bom. L.R. 52.

———*Joint family — Manager — Decree against sale—Effect of.*

Where joint family property is sold in execution of a money decree against the manager as manager of the family which character was not denied by the other members of the family and the decree was acquiesced in by them; *held*, that their interest also was conveyed by the sale in execution. (*Scott*, C.J. *and Chandavarkar*, J.) MADHUSUDAN SHIVRAM *v.* BHAU ATMARAM LAD. 18 I.C 386 = 15 Bom. L.R. 36.

———*Joint family — Manager — Decree against—How far binding on the other members.*

A decree obtained against the head of a family to which the other members are not parties may be operative against the latter under certain circumstances but the principle clearly does not apply unless it is shown that the matter was one in which the member sued was entitled to represent the whole family. (*Mookerjee and Walmsley*, JJ.) AMRITA SUNDARI *v.* SHERAJUDDIN AHAMED 29 I.C. 156 = 19 C.W.N. 665.

———*Joint family — Manager — Decree against—Suit for redemption by sons.*

HINDU LAW — Joint family — Manager— Decree against.

Where a foreclosure decree has been obtained against the head of a Mitakshara joint family the son can redeem afterwards only if he shows that the mortgagee had notice of his interest in the property at the time of the foreclosure suit and intentionally omitted to implead him. (*Coxe and Imam*, JJ.) BALKHI MAHAPATRA *v.* BROJO BASHI PANDA. 14 I.C. 333 = 16 C.W.N. 1019.

———*Joint family — Manager — Decree against—Ex parte decree—Defences open not raised—Decree res judicata against junior members.*

An *ex parte* decree passed against manager cannot be impeached by junior members on the ground that the contract forming basis of decree was a wagering one. This plea ought to have been taken by the manager himself. (*Le Rossignol and Harrison*, JJ.) RAM RATAN *v.* THE FIRM OF HURSUKH ROY. 43 P.L.R. 1922.

———*Joint family — Manager — Decree against—Accounts—Liability of.*

The Manager is not personally liable to pay a co-parcener suing for partition his share of the debts due to the family. So ordinarily no personal decree against the manager should be passed but a Receiver should be appointed. But where the manager is found guilty of fraud and it is likely he would not render and help the Receiver, a personal decree would be justified. (*Sankaran Nair and Oldfield*, JJ.) RAMA AIYER *v.* RAJAGOPAUL AIYER. 14 M.L.T. 510 = 21 I C. 898 = (1913) M.W.N. 982.

———*Joint family — Manager — Decree against—Effect of, on other members—Binding debts.*

A decree against the managing member of joint family on a debt binding on the family property will bind the other members also if the relief was to be obtained against the managing member not in his individual capacity but as representing the family. Mere omission to describe him as a managing member does not show that he was not sued as such. (*Benson and Abdur Rahim*, JJ.) JIJAMBA BAI SAHIB *v.* SAGNIRAM JATHAI RAO SAHIB. 14 I.C. 374 = 22 M.L.J. 45.

———*Joint family — Manager — Decree against.*

Whether the other members of the joint family are impleaded or not, a decree against the manager binds the other members. (*Hallifax*, A.J.C.) JIRJODHAN *v.* MADAN. 62 I.C. 610 = 5 N.L.J. 5.

———*Joint family — Manager — Decree against — Junior members not impleaded— Rights of—Mortgage suit.*

A son or grandson cannot escape the effect of a foreclosure decree passed against his father on a mortgage executed for purposes binding upon the family estate merely because he was not

HINDU LAW — Joint family—Manager—Decree against.

impleaded by name in the suit. He is represented by his ancestor. If that ancestor has authority to execute the mortgage he equally has authority to represent his son or grandson in the litigation. The ancestor must be presumed to be the head of that branch of the family which includes his own descendants. It is open to a son who is not made a party to the suit to show that the debt in respect of which the mortgage was executed was not really antecedent in the sense accepted by the Privy Council or that if antecedent, it was for a purpose either illegal or immoral, but where the mortgage was within the scope of the father's authority the sons are bound by the decree. 23 O.C. 344 ; 24 O.C. 218 ; 38 A. 383 ; 47 C. 924, referred to. (*Dalal and Daniels*, A.J.Cs.) BHAGIRATHI *v.* PANDIT ONKAR NATH.
10 O.L.J. 185=9 O. & A.L.R. 166=1924 Oudh 17.

——*Joint family — Manager — Decree against.*

A decree against the manager of a joint Hindu family on a family debt binds the coparceners, adults and minors, and the joint family property is liable for the satisfaction thereof. 17 W.R. 113 ; 36 All. 383 (P.C.) ; 34 All. 549 ; 33 All. 272 ; 37 I.C. 833, Rel. on. (*Mullick and Atkinson*, JJ.) MOHAN KRISHNA DAR *v.* HAR PRASAD. **40 I.C. 2.**

——*Joint family — Manager — Decree against—Minor members, if bound.*

A decree passed against a Hindu father as karta of the joint family binds his sons as members of the family. (*Jwala Prasad*, J.) SAKAL SINGH *v.* EHANDERDIP LAL.
49 I.C. 627.

Joint Family—Manager—De facto.

——*Joint family—Manager*—De facto—*Mortgage of property by one member for satisfaction of family debt.*

Where a joint purchase of property was made in the name of one member and subsequently, a portion of the property was mortgaged by him in satisfaction of a previous joint mortgage debt, the necessary presumption is that the mortgage was executed by the single member in his capacity as the Manager that the other members were bound by the mortgage, and that the property could be sold in execution of a decree obtained on foot of that mortgage though the other members of the joint family were not parties. (*Richards and Tudball*, JJ.) CHANDRA DEO MISSER *v.* HARPA SINGH. **9 I.C. 293.**

——*Joint family—Manager*—De facto—*Suit for recovery of loan.*

A bond in the name of one incumbent o a family the consideration for which was made out of joint family funds, can be sued upon by that member alone without making the other members parties to the suit. 20 Bom. 435 ; 127 P.R. 1906, Rel. (*Scott-Smith and Broadway*, JJ.) SHER MUHAMMAD *v.* RAM CHAND.
87 P.R. 1917=170 P.W.R. 1917=42 I.C 377=8 P.L.R. 1918.

HINDU LAW — Joint family — Manager—Liability to account.

——*Joint family—Manager*—De facto—*Liability of other members.*

Endorsee of a pro-note executed by one member may sue others if the debt was for joint family purposes. (*Ayling and Seshagiri Aiyar*, JJ.) NATARAJA NAICKEN *v.* AYYASAMI PILLAI. **6 L.W. 410=32 M.L.J. 354=(1917) M.W.N. 230=38 I C 339=21 M.L.T. 405.**

Joint family—Manager—Discharge.

See also POWERS.

——*Joint family—Manager—Discharge.*

A manager cannot give a valid discharge for the decree debt due to a joint family without the consent of the other co-parceners, unless it appears, from the face of the decree or other explicit document executed thereafter that the manager was constituted as the agent of all the members of the family to receive payment. (*Oldfied and Sadasiva Iyer*, JJ.) MAHOMED SILAR SAHIB & CO. *v.* NABI KHAN.
(1916) 1 M W.N. 471=3 L W. 579=31 M.L.J. 93=35 I.C. 157=20 M.L.T. 381.

Joint family—Manager—Liability to account.

——*Joint family—Manager—Liability to account—Extent of.*

The manager of a joint family is liable to account only for what he has actually received and not for what he ought to or might have received. The rules applicable to accounts between trustees and *cestui que trust* in England do not invariably apply in India. (*Sir John Edge.*) ARUMILLI PERRAZU *v.* ARUMILLI SUBBARAYUDU. **45 Mad. 656=19 A.L.J. 621=48 I A. 280=23 Bom. L R. 920=41 M L J. 33=34 C.L.J. 56=14 L W. 270=(1921) M.W.N. 840=3 U.P.L R. (P.C.) 46=61 I.C. 690=26 C.W.N. 1 (P.C.).**

——*Joint family—Manager—Liability to account.*

A person not manager of the family cannot be asked to account for the management of another. (*Beaman*, J.) HARI DAS LALJI *v.* NAROTAM RAGHAVIJI. **16 I.C. 769=16 Bom. L R. 287.**

——*Joint family—Manager—Liability to account.*

A manager cannot be freed, from the liability of rendering accounts simply because he has said that he possesses no account books and the plaintiff has been unable to prove the existence of such. (*Broadway and Zafar Ali*, JJ.) RAM KISHAN *v.* RANSHAN. **1923 Lah. 551.**

HINDU LAW — Joint family—Manager—Liability to account.

———*Joint family—Manager—Liability to account.*

The manager is not liable to account for his management in the past but must give an account of the assets at the time of partition, and if he fails to do so the Court can order an account to be taken and if he fails to adduce such evidence as he can and ought to adduce a presumption may be drawn against him in respect of joint properties traced in his possession prior to the date of partition. (*Phillips and Krishnan*, JJ.) KODALI KRISHNAYYA *v.* GURAVAYYA. **14 L.W. 668=41 M.L.J. 503=70 I.C. 146=(1921) M.W.N. 742.**

———*Joint family—Manager—Liability to account—Personal decree against manager.*

A junior member has no right to relief against the manager personally simply on the ground that he could have collected the arrears had he minded to do so unless the failure to make collections is due to the manager's negligence or misconduct and the loss has resulted to the family therefrom. (*Benson and Sundara Aiyar*, JJ.) RAYA *v.* GOPAL MALLAN. **11 I.C. 666.**

———*Joint family—Manager—Liability to account.*

The manager is not bound to account for the family income previous to a separation or suit for partition unless he has been proved to be guilty of fraud, or other improper conduct. (*Stuart and Kanhaiya Lal*, A.J.Cs.) SUBAJ NARAIN *v.* IQBAL NARAIN. **48 I.C. 543=5 O.L.J. 676.**

———*Joint family—Manager—Liability to account*—Mitakshara *and* Dayabhaga.

A member of a joint family has a right to ask for a statement of account from the manager. But he is not entitled to sue the manager for any money relief on account of his share. 13 W.R. 75 (F.B.), Ref. On this point there is no difference between the *Mitakshara* and *Dayabhaga* schools of law. (*Stuart*, A.J.C.) SARAT KUMARI DEBI *v.* BHOLA NATH BANERJI. **15 I.C. 616=15 C.C. 245.**

———*Joint family—Manager—Liability to account—Accounts suppressed—Effect—Mitakshara.*

Under Mitakshara, the manager need not account for the profits and rents but he must keep correct accounts and show the savings. He is not a trustee or agent, but as he is bound to disclose the property to the members at the time of partition there is no reason why he should not be treated as such. If he has suppressed accounts so as to render impossible the discovery of the assets, the only way is to see the income and expenses incurred year by year. (*Das and Ross*, JJ.) GOBIND DUBEY *v.* PARMESHWAR DUBEY, **62 I.C. 89=2 P.L.T. 865.**

HINDU LAW — Joint family — Manager—Powers of.

Joint family—Manager—Loan.

———*Joint family—Manager—Loan—Insolvency of manager—Official Assignee.*

On the insolvency of the manager of a joint Hindu family the Official Assignee succeeds to,—(*a*) the undivided interest of the insolvent in the joint property and (*b*) his rights as managing member, so far as they can be exercised for his benefit but he is not entitled to have vested in him the shares of other members. (*Schwabe*, C.J. *and Coutts-Trotter*, J.) THE OFFICIAL ASSIGNEE OF MADRAS *v.* RAMCHANDRA AIYAR. **16 L.W. 559=(1922) M.W.N. 653=43 M.L.J. 369=46 M. 84=1923 Mad. 55.**

Joint family—Manager—Minor.

———*Joint family—Manager—Minor younger brother—Elder brother mortgaging as absolute owner—Effect.*

A mortgage by the elder of two brothers not as representing the younger brother but in his assumed position as absolute owner is void as against the minor younger brother even though the mortgage was for discharging the father's debts. Such mortgage, even though the younger brother was made a party to it, must be regarded as one to which he was not even an assenting party and which therefore does not affect his estate. (*Sir John Edge.*) BALWANT SINGH *v.* REV. ROOKWELL-CLANCY. **34 All. 296=(1912) M.W.N. 462=11 M.L.T. 344=9 A.L.J. 509=15 C.L.J. 475=16 C.W.N. 577=23 M.L.J. 16=14 Bom. L.R. 422=14 I.C. 629=39 I.A. 109 (P.C.).**

[On Appeal from 28 All. 808=1916 A.W.N. 117=3 A.L.J. 274.]

———*Joint family—Manager—Minor.*

Per *Sadasiva Iyer*, J.—A minor cannot be the manager of a Hindu family or guardian of the property or person of his minor wife or child. (*Sadasiva Iyer and Napier*, JJ.) MOHIDEEN IBRAHIM NACHI *v.* MAHOMED IBRAHIM SAHIB. **39 Mad. 608=33 I.C. 895=30 M.L.J. 21.**

Joint family—Manager—Powers of.

See also DISCHARGE.

———*Joint family—Manager—Powers of—Family property under the Court of Wards.*

A manager would be acting within his powers and authority as manager of the family, if in order to save the heavily encumbered joint family estate, he places the same under the charge of the Court of Wards and the Court of Wards can assume management of the whole of the joint family property under S. 6 of the Central Provinces Court of Wards Act (XVII of 1865.) (*Sir John Edge.*) GULAB SINGH *v.* RAJA SETH GOKULDAS. **40 Cal. 784=40 I.A. 117=17 C.L.J. 619=17 C.W.N. 918=15 Bom. L.R. 613=(1913) M.W.N. 542=14 M.L.T. 55=9 N.L.R. 117=19 I.C. 521=23 M.L.J. 173 (P.C.).**

HINDU LAW — Joint family — Manager— Powers of.

——*Joint family—Manager—Powers of—Acts binding on other members.*

The acts of a *kartha* are binding on the other members of the family if they are done for legal necessity and for the benefit of the family. (*Knox and Rafique*, JJ.) PRAGLAL *v.* RAMESWAR. **20 I.C. 921.**

——*Joint family—Manager—Powers of—Discharge.*

A manager can give a valid discharge in satisfaction of a decree passed in favour of the joint family if there are circumstances indicating that he received payment on behalf of the family. (*Griffin and Chamier*, JJ.) SARNAM SINGH *v.* BISRAM SINGH. **18 I.C. 723.**

——*Joint family—Manager— Powers of—Manager appointed as guardian by Court.*

If the *kartha* of a joint Hindu family chooses to apply under the Guardians and Wards Act for being appointed the guardian, he comes under the control of the Court and cannot exercise the power of a karta to mortgage without the previous sanction of the Court. 24 W.R. 46 ; 15 Cal. 627 and 9 C.W.N. 923, Foll ; 7 C. W.N. 681, Dist. The adult male members of a joint Hindu family were entitled to borrow what they considered necessary for joint family expenses provided the minors had been actually benefited by the money borrowed. (*N.R. Chatterjea and Newbould*, JJ.) UPENDRA NATH BISWAS *v.* SHIB KUMARI DEBI.
52 I.C. 616=28 C.W.N. 634.

——*Joint family—Manager — Powers of —Transfer of holding.*

The *kartha* has power to consent to transfer of occupancy any holding of which the family are the landlords and which is not transferable without their consent. (*Richardson and Walmsley*, JJ.) GOLAPDI MEAH *v.* PURNA CHANDRA DUTTA. **41 I.C. 87=21 C.W.N. 774.**

——*Joint family—Manager—Powers of.*

The father as *Karta* is entitled to the management of the whole property including the interests of minor co-parceners. On his death the management passes to the eldest son as *Karta*. Where all the sons are minors the Court can appoint a guardian of the whole property but this appointment lasts only until the eldest attains majority, after which it comes to an end and the Court is bound to hand over the property to him. (*Broadway and Abdul Raoof*, JJ.) GOBIND SAHAI *v.* BALKAUR.
63 I.C. 559.

——*Joint family—Manager—Powers of.*

The manager can represent the co-parcenary in all suits affecting its interests, can make contracts, refer to arbitration and compromise any claim and can do all acts which he thinks necessary or beneficial to the estate. (*Scott-Smith*, J.) MITHAMAL *v.* SHIVRAM.
60 I.C. 485.

HINDU LAW — Joint family — Manager— Powers of.

——*Joint family—Manager —Powers of —Discharge—Other members, when bound.*

Where the managing member of a joint Hindu family is on bad terms with the other members and the debtor's conduct has been dishonest and fraudulent and he is colluding with the manager to defraud the other members of the family, the members are not bound by the acts of the managing member. (*Rattigan*, J.) RAMSINGH *v.* NANUKCHAND.
10 P.W.R. 1915=27 I.C. 603= 60 P.L.R. 1915.

——*Joint family—Manager—Powers of—Collection of rent.*

A lessee from a Hindu father is bound to pay rent to the Hindu father and is not concerned with any dispute between the latter and his sons *inter se*. (*Kensington*, J.) NARPAT RAI *v.* NAUSHARIA MAL. **17 P.W R. 1913= 18 I.C. 592=15 P.L.R. 1912 (Supp.)**

——*Joint family— Manager — Powers of —No right to start new business—Liability to interest.*

As between the members of a joint family *inter se*, whatever may be the powers of the manager as regards the minor members of the family, there is no authority for holding that he can start a new venture without the concurrence of the adult co-parceners; at least there must be evidence of acquiescence. The immunity of a manager to account for past transactions does not entitle him to enter into illegal transactions and use joint family property for the purpose. It will be gross misconduct sufficient to entitle the others to require the manager to suffer the loss personally and to put back any money that he may have taken out of the family for such transactions. When the manager is made to account for moneys expended by him, there is no general rule that he should pay interest on the sum to be made good. (*Spencer and Kumaraswamy Sastry*, JJ.) TADI BULLI TEMIREDDI *v.* GANGIREDDY.
45 Mad. 281=42 M.L J. 570= 30 M.L.T. (H.C.) 323=16 L.W. 55= 1922 Mad. 226 (2).

——*Joint family—Manager—Powers of—Mortgage by manager.*

A *de facto* manager can deal with the family property for proper family purposes, and a mortgage by him of such property for such a purpose is binding on the family. (*Abdur Rahim*, O.C.J. *and Odgers*, J.) SADAYAPPA ASARI *v.* RAGHAVA ASARI.
62 I.C. 220=27 M.L.T. 325.

——*Joint family—Manager—Powers of—Leasing land.*

In an undivided Hindu family all the members need not join in granting *Pattas*. The manager of the family can grant *Pattas* and sue for rents on behalf of the family. 15 Mad. 484, Foll. (*Seshagiri Aiyar and Srinivasa Iyengar*, JJ.) PARTHASARATHI AIYANGAR *v.* RANGASWAMI AIYANGAR. **38 I.C. 645= 4 L.W. 654.**

HINDU LAW — Joint family—Manager—Powers of.

———*Joint family—Manager—Powers of—Promissory note executed by managing member—Renewal after executant ceases to be Manager—Whether binds others.*

A promissory-note executed by a managing member of a joint Hindu family on behalf of himself and his brothers cant be renewed by him after he ceases to be the manager of the family and an acknowledgment by him will not bind the other members of the family so as to save limitation against them. 17 Bom. 512, Dis (*Srinivasa Aiyangar*, J.) KOTHANDA RAMA IYER *v.* ARUNACHALLA AIYER.
32 I.C. 997.

———*Joint family—Manager—Powers of—Gift.*

A recital that properties gifted away to a female member by the manager were self-acquisitions may not negative the intention of exercising powers of disposition which the executant may have as manager. 23 M.L.J. 18, Dist.; 42 Cal. 56, Foll. (*Wallis*, C.J. *and Hannay*, J.) SABAPATHY CHETTY *v.* PONNUSWAMY CHETTI. **28 I.C. 363.**

———*Joint family—Manager—Powers of—Execution of decree.*

The managing member of a joint Hindu family has the right to execute a decree in favour of the joint family. Security should be asked from the managing member only where there is collusion between the manager and the judgment-debtor. 21 M.L.J. 1088; 19 M.L.J. 4, Ref. Payment to the junior members of the family is not valid but a payment to the managing member is. (*Benson and Sundara Aiyar*, JJ.) KRISHNA HANDE *v.* PADMANABHA HANDE AND SUBBANA HANDE.
28 M.L.J. 442 = (1913) M.W.N. 602 = 21 I.C. 177 = 14 M L.T. 283.

———*Joint family—Manager—Powers of—Discharge.*

The managing member of a Hindu family can receive moneys of the family from debtors and give a discharge which will bind the whole family. No section in the C.P. Code restricts the manager's power to receive such money. (*Sundara Iyer and Phillips*, JJ.) DURAISAWMY SASTRIAL *v.* VENKATARAMA IYER.
21 M L.J. 1088 = 10 M L.T. 370 = 12 I C. 603 = (1911) 2 M.W.N. 420.

———*Joint family—Manager—Powers of—Endorsing a Hundi payable to the family.*

The manager of a Hindu family has a right in due course of management to endorse a *Hundi* made payable to the family. (*Abdur Rahim and Phillips*, JJ.) NARAYANAN CHETTY *v.* CHIDAMBARAM CHETTY.
12 I.C. 410.

———*Joint family—Manager—Power to give discharge.*

A mortgage executed in favour of the manager and a minor member of the joint family can validly be discharged by the manager alone to the debtor on receiving the mortgage money. (*Kanhaiya Lal*, J.C.) SHEO CHARAN DAS *v.* BRIJ BAHADUR SINGH. **26 O C. 286 = 1924 Oudh 161.**

HINDU LAW — Joint family — Manager—Representation.

———*Joint family—Manager—Powers of—Discharge by payment.*

The manager of a family carrying on business in the interest of the family as a whole can give receipts and compromise or discharge claims ordinarily incidental to the business, and this power can be exercised even after a decree in favour of himself and other members of his family has been passed. 33 All. 272 (P C.), Ref. (*Kanhaiyalal*, A.J.C.) AJUDHIYA PRASAD *v.* YASEIN ALI KHAN. **20 I C 457 = 16 O C. 146.**

Joint family—Manager—Representation.

———*Joint family— Manager —Representation in suits.*

In cases like a foreclosure suit, the Manager of a joint Hindu family so effectively represents the other members that the family as a whole is bound by the result of the litigation. (*Lord Moulton*). SHEO SHANKAR RAM *v* JALDO KUNWAR. **36 All. 383 = 18 C.W.N 968 = 16 M L.T. 178 = (1914) M W.N. 698 = 1 L.W. 615 = 20 C.L J. 282 = 13 A L.J 1173 = 16 Bom. L R. 810 = 24 I C. 804 = 41 I A. 216 (P.C.).**
[On Appeal from 33 All. 71 = 7 I.C 902 = 7 A.L.J. 945.

———*Joint family — Manager—Representation—Acts of manager when binding on.*

If a Manager acts in his own individual capacity and not *qua* Manager, the minor members are not liable nor is their share of the family property liable. (*Sir John Edge*). BALWANT SINGH *v.* REV. ROCKWELL CLANCY. **35 All 296 = 39 I.A. 109 = (1912) M.W N 462 = 11 M L T. 344 = 9 A L.J. 509 = 15 C.L J. 478 = 16 C W.N. 577 = 23 M L J. 18 = 14 I C 629 = 14 B m L.R. 422 (P C.).**
[On Appeal from 28 All. 508 = (1906) A.W.N 117 = 3 A.L.J. 274.]

———*Joint family—Manager— Representation — Negotiable instrument — Liability of other members of the family.*

The manager of a joint Hindu family is not its agent but represents the family in all dealings with outsiders and on a negotiable instrument drawn by the manager, the other members of the family would be liable even though he did not sign the instrument. 46 C. 669, Dist; 28 M. 597, Foll. (*Piggott and Walsh*, JJ). KRISHNANAND NATH KHARE *v* RAJA RAM. **20 A.L J. 233 = 1922 All. 116.**

———*Joint family—Manager—Representation in suit—Minors when bound.*

A suit was brought against the adult male members of a Hindu joint family on the basis of a mortgage deed executed by them and a

HINDU LAW — Joint family — Manager— Representation.

decree was obtained. The mortgaged property was foreclosed and the decree-holder obtained possession of it. In a suit by a minor member of the family to set aside the decree on the ground that he was not a party to the prior suit. *Held*, that he was fully represented in the former litigation: and that he was not entitled to any relief on the mere ground that he was no party to the former suit unless he proved that the loan was not taken for a family necessity. (*Tudball*, J.) KATWAROO SINGH *v.* DHARAM DEO SINGH. **29 I.C. 926.**

———*—Joint family—Manager—Representation of other members.*

Under ordinary circumstances and in the absence of fraud or collusion, the managing member of a joint Hindu family is entitled to transact the business of the joint family and represent the members of it. (*Richards*, C.J. *and Banerji*, J.) DAYA SHANKAR *v.* HUBLAL. **37 All. 105 = 27 I.C. 497 = 13 A.L.J. 21.**

———*—Joint family—Manager—Representation in suit—Minor.*

A decree passed against two Hindu brothers, the elder being the Manager of the family and the other a minor, on a mortgage executed by their father for a just debt is binding on both and the minor brother was properly represented in the suit. (*Banerjee and Rafique*, JJ.) LACHHMI SHANKAR *v.* RAM AGYAN MISSIR. **21 I.C. 192.**

———*—Joint family—Manager—Representation is suit.*

Where the adult members of a joint Hindu family appear as plffs. or defts. the presumption is that they are acting as Managers on behalf of themselves and of the minor members of the family who had not joined in the suit. 34 All. 549; 34 All. 572, Ref. (*Piggott and Rafique*, JJ.) KRISHNA JIVA TEWARI *v.* BISHNATH. **34 All. 615 = 16 I C. 392 = 10 A.L.J. 217.**

———*—Joint family—Manager—Representation in suits—Other members if necessary parties.*

The tendency of modern decisions especially those of the Judicial Committee is in favour of recognition of the representative character of the manager of a joint Hindu family governed by the Mitakshara law, though the question must be decided in each individual case or special class of cases, subject to the operation of relevant statutory provisions. (*Mookerjee and Chotzner*, JJ.) KALIPADA DAS *v.* RAJA SATI PRASAD. **36 C.L J. 234 = 27 C.W.N. 372 = 1922 Cal. 468.**

———*Joint Family — Manager—Representation in suit—Liability of co-parcener not impleaded.*

The Manager in a suit against him on a mortgage clearly represents the interests of minor members impleaded in the suit and where the plaintiff creditor is not aware of the existence of any co-parcener interested in the

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equity of redemption the minor co-parceners are bound by the decree passed therein. (*Mookerjee and Beachcroft*, JJ.) RAGHORAM SINGH *v.* RAJANI KANTA BANERJEE. **29 I.C. 752 = 21 C L.J. 452.**

———*—Joint family—Manager—Representation in suits.*

The Manager can alone sue in respect of a debt due to the family. (*Jenkins*, C.J. *and Mookerjee*, J.) BHOLA ROY *v.* JUNG BAHADUR SINGH. **22 I.C. 798 = 19 C.L.J. 5.**

———*—Joint family — Manager—Representation in suit—*Ex parte *decree against son—Subsequent suit by son to set aside decree—Effect—Redemption—Right of.*

Although a Mitakshara son born after the execution of the mortgage of the family property by his father for a legal purpose is bound by the transaction yet the effect of his birth is to vest in him a part of the equity of redemption, and so he too is a necessary party to a suit by the mortgagee. In such a case the father should not be appointed as the guardian *ad litem* of the minor son as there is a conflict of interest between them. A decree got *ex parte* against the minor son who is not properly represented when the suit by the mortgagee can be set aside by him and he is entitled to get a decree for redemption. (*Mookerjee and Carnduff*, JJ.) BALKISHAN LAL *v.* TOPESWAR SINGH. **15 C.L J. 445 = 14 I C. 845 = 17 C W.N 219.**

———*—Joint family—Manager—Representation in suits—Suit on mortgage in which he and other members of family interested.*

After the death of a Hindu in whose favour, a mortgage bond was executed one of the heirs, who was the managing member could sue on the bond without joining the other members as plffs. (*Spencer and Phillips*, JJ.) ANNAMALAI PATHAN *v.* VANGAMUDI. **39 I.C. 427 = 5 L.W. 120.**

———*—Joint family—Manager—Representation of minor members—Mortgage suit.*

Where a Hindu father executes a mortgage under circumstances that will bind his own share, the creditor is not disentitled from bringing a suit merely by reason of the fact that he purports to execute the document also as guardian for his minor sons. 41 Cal. 727, Dis. (*Sadasiva Aiyar and Napier*, JJ.) SUBRAHMANIA AIYAR *v.* SIVASUBRAHMANIA AIYER. **(1919) M.W.N. 537 = 52 I C 931 = 10 L.W. 180.**

———*—Joint family—Manager—Representation in suits.*

In suits by or against managing members of joint families, it is not necessary to state in distinct terms that he is suing or is being sued as Manager or karta. 34 All. 549, 22 M.L.J. 45, Ref. A managing member of a joint Hindu family can sue and be sued on be half of the family and can also enter into a compromise in

HINDU LAW — Joint family—Manager—Representation.

the course of the suit relating to a joint family transaction if is in the interest of the family to do so. 36 All. 383; 17 W.R. 104; 33 All. 272, Ref. to. (*Stuart*, J.C. *and Kendall*, A.J.C.) SHEO DULARE MISRA *v.* BRIJ BHUKHEN LAL. 25 I.C. 849=1 O L J. 455.

——*Joint family—Manager—Representation in suit—Family debt—Other members not necessary parties.*

The head of the family is competent to maintain a suit for a debt due by the deft. to the money lending business, belonging to the family, on a pro-note executed by the deft. in favour of the plff.'s uncle, who at the time was the head of the family, and the other members of the family need not be joined as plffs., although the Court had a discretion to add them as defts., to enable it completely and effectively to adjudicate upon all the questions involved in the case. 9 I.C. 739 P.C., Fol. (*Piggott*, A.J.C.) BISHAMBAR NATH *v.* INDAR BASA. 10 I C. 200=14 O.C. 127.

——*Joint family—Manager—Representation in suit.*

In a mortgage suit the interests of the members of the family are effectively represented by their joint Managers. (*Coutts and Das*, JJ.) BAIJ NATH GORNKA *v.* DALIP NARAYAN SINGH. 1 P.L.T. 382=58 I C. 489=1920 Pat. 261.

——*Joint family—Manager—Representation in suit.*

All members who at the time of suit represent a joint family must be joined as plaintiff in a suit on a debt due to joint family. (*Mullick and Atkinson*, JJ.) ROMESH CHANDRA *v.* BHUYAN BHASKER. 39 I C. 226=1 P.L.W. 346.

——*Joint family—Manager—Representation in suits.*

The manager of a joint Hindu family represents the joint family including minor members in suits by the family against a trespasser. But it is doubtful whether he so represents in a suit under Bengal Tenancy Act. (*Sharfuddin and Roe*, JJ.) MUHAMMAD SADIQ *v.* KHEDAN LAL. 1 P.L.J. 154=36 I.C 197=2 P.L.W. 366.

Joint family—Manager—Right to exclusive Possession.

——*Joint family— Manager— Right to exclusive possession.*

Where a certain property mortgaged to plff. by the managing member was in his possession, the deft. another member of the family, who had acquiesced in the action of plff. ousted a tenant put in by the plff. and took forcible and exclusive possession of the property. The plff. sued for possession and ejectment. The lower Courts gave a decree for joint possession. *Held*, that plff. could not eject deft. and obtain exclusive possession. (*Batten*, O.J.C.) RAGHOBA *v.* ZIBOO. 11 I.C. 687=7 N.L.R. 82.

HINDU LAW—Joint family—Partnership.

Joint family—Manager—Right to Sue.

——*Joint family—Manager—Right to sue—Parties—C.P. Code, O. I, r. 1.*

Where the deft. passed a promissory note in favour of plff., who was the eldest member of the joint family for money due to the joint family and the plff. sued as the manager, *held* that as the deft. dealt with the plff. alone though he knew that the loan was from joint family funds the other members of the family will not be necessary parties 36 All. 383 (P.C.) and 33 All. 272 (P.C.) Expl. (*Fawcett*, J.) RAMNATH *v.* RAMRAO. 66 I.C. 966=23 Bom. L R. 1135.

——*Joint family—Manager—Right to sue for a debt due to the family.*

The managing member of a joint Hindu family can maintain a suit for a debt due to the joint family. 35 Mad. 695; 36 All. 383, Rel. on. (*Krishnan*, J.) SUBRAMANIA GURUKKAL *v.* RAMAKRISHNA AIYAR. 15 L W. 31=1922 Mad. 407 (1).

——*Joint family—Manager—Right to sue.*

Manager alone can sue for debts due to the family and need not implead other members as parties. (*Benson and Sundara Aiyar*, JJ.) SHEIKH IBRAHIM *v* RAMA IYER. 35 Mad. 681=21 M.L.J 508=10 I C 874=(1911) 1 M.W.N. 442.

Joint family—Partnership.

——*Joint family— Partnership—Manager—Family, if liable.*

The members of a joint family and their joint property are not liable on the death of their managing member for the debts incurred by him in a partnership business which he did not enter into, in a representative capacity or show himself to be the head of the joint family. (*Piggott and Ryves*, JJ.) KHARIDAR KAPRA CO., LTD. *v.* DAYA KISHAN. 43 All. 116=58 I C. 768=18 A.L.J. 937.

——*Joint family—Partnership—Death of one member—Contract Act, S. 253 (10).*

Joint ownership in a trading business, through the operation of Hindu Law between the members of a joint Hindu family is not exactly the same as an ordinary partnership arising out of contract. The rights and liabilities of co-parceners in a joint Hindu family firm must be determined with reference to the Contract Act, and the general rules of Hindu Law which governs the family and therefore the death of one of the co-parceners does not dissolve a family partnership. 5 Bom. 38; 26 Cal. 349; 27 Bom. 157. Ref. (*Sanderson*, C.J., *Woodroffe and Mookerjee*, JJ.) RAGHUMALL *v.* LACHMAN DAS. 38 I.C 278=20 C.W N. 708.

——*Joint family—Partnership—Assets.*

Held, that the immoveable property of the joint family had no connection with the

HINDU LAW—Joint family—Partnership.

partnership business carried on by the members and the same was not liable in execution of a decree against the partnership. (*Scott-Smith and Wilberforce*, JJ.) RAJDULARI *v.* PALA MAL. **50 I.C. 132=44 P.W.R. 1919.**

———*Joint family—Partnership—Death of manager of Hindu family—Effect.*

Where a father, as manager of a joint Hindu family is partner in a firm his death will not dissolve the partnership as the family, as a *persona*, continues to be a partner. (*Shadi Lal and Le Rossignol*, JJ.) NARAIN DAS *v.* RALLI BROTHERS. **61 P R 1915= 31 I.C. 45=136 P.W.R. 1915.**

———*Joint family—Partnership—Each can exist independently of the other.*

There may be a family trading partnership independently of a joint family in Hindu Law, and in a suit against the former evidence of the existence of a joint family ought not to be allowed to be given. (*Shah and Beadon*, JJ.) AMAR NATH *v.* GURDAS MAL **94 P L.R. 1914=22 I.C. 716= 63 P.W.R. 1914.**

———*Joint family—Partnership—Death of member.*

A Hindu joint family firm is not exclusively governed by the Contract Act but is subject to the general rules of Hindu Law according to which death of one does not dissolve family partnership. (*Coutts Trotter and Srinivasa Aiyangar*, JJ.) RAMNATHAM CHETTY *v.* YEGAPPA CHETTY. **19 M L T. 66= (1916) M.W.N. 81=32 I.C 427= 30 M.L.J. 241.**

———*Joint family—Partnership—Liability of son on death of partner.*

Where a Hindu son already liable for the father's debts under the Hindu Law succeeds his father as a partner of a firm the presumption is that he makes himself liable for the previous debts of the firm. (*Wallis and Sadasiva Aiyar*, JJ.) SUBRAMANIA CHETTY *v.* SOMASUNDARAM CHETTY. **24 I.C 86.**

Joint family—Presumption.

——*Joint family—Presumption—Entry of widow's name in revenue papers.*

The mere fact that a widow's name was entered in the revenue papers does not necessarily raise the presumption that she is the widow of a separated Hindu. (*Lindsay and Sulaiman*, JJ.) UMAN SHANKER *v.* MT. AISHA KHATUN. **43 A. 729=1924 All. 88.**

——*Joint family—Presumption—Property.*

So long as a family is joint, every portion of the family property is joint family property it is immaterial in whose name, the property stands in Revenue papers. When the brothers are joint, their widows are presumed to be joint. (*Griffin*, J.) SHRI CHAND *v.* SURAJ KUVAR. **9 I.C. 146.**

HINDU LAW—Joint family—Presumption.

——*Joint family—Presumption.*

Where property stands in the name of a female member of a joint Hindu family, there is no presumption that it is joint family property and not her absolute property. Where title deed is in her name, the person who sets up that the apparent is not the real state of things must prove. (*Mookerjee and Chotzner*, JJ.) BHUBANMOHINI DARI *v.* KUMUDBALA DASI. **28 C.W.N. 131=39 C.L.J. 140=1924 Cal. 467.**

———*Joint family—Presumption—Jointness—Property in the name of son-in-law.*

The presumption of jointness of the family property does not stand, if the property stands in the name of a non-co-parcener, such as a son-in-law. (*Mookerjee*, A.C.J. *and Fletcher*, J.) PROTAP CHANDRA *v.* SARAT CHANDRA. **33 C.L.J. 201=62 I.C. 348=25 C.W.N. 645.**

——*Joint family—Presumption—When cannot be relied upon.*

The presumption of jointness of a Hindu family cannot be relied upon where the disputed property was in the possession of the person under whom the defendant claimed and was ostensibly his property at the time of his death. (*Holmwood and Chapman*, JJ.) PROTAB CHANDRA *v.* SARAT KAMINI DEBYA. **24 I C. 90.**

——*Joint family—Presumption—Jointness.*

In cases of joint Mitakshara families there is a presumption of jointess of their property, as well as of the business which they carry on. The onus is on the person setting up a property as his own to prove it. (*Fletcher*, J.) C.E. GREY *v.* WALKER GOWARD & CO. **18 I C. 753= 40 Cal. 523.**

——*Joint family—Presumption of jointness.*

The presumption in the case of Hindu families is in favour of jointness. Where a guardian was appointed for three minors who constituted a joint family, and after each one attained majority his share was given to him and during their minority as well as afterwards the accounts of the income were kept separate in the name of each minor and after all the brothers attained majority the income was divided among them and one of them admitted that he had no concern in the property of another brother, *held*, that the presumption of jointness was rebutted. (*Broadway and Abdul Raoof*, JJ.) GOBIND SAHAI *v.* BAL KAUR. **63 I C. 559.**

———*Joint family—Presumption of jointness.*

The presumption is that every Hindu family is joint. Admissions by members as to the succession of widow in the family are inconsistent with the theory of jointness. (*Reid*, C.J. *and Beadon*, J.) MUSAMMAT RUKMAN *v.* MUSSAMMAT KIRPA DEVI. **338 P.L.R. 1913= 22 I.C. 134=209 P.W.R. 1913.**

HINDU LAW—Joint family—Presumption.

——*Joint family—Presumption—Jointness—Onus.*

There is an initial presumption that the property of every Hindu family is joint, and this presumption is not rebutted by showing that the members dealt with certain paternal property as their own and that in a will by the head of the family the members were mentioned as having been divided. (*Robertson*, J.) RAMU LAL *v.* HARCHARAN DAS.
152 P.W.R. 1913=20 I.C. 562=297 P.L.R. 1913

——*Joint family—Presumption—Jointness—Separate living and dealing.*

Where two Hindu brothers have long been living separately and dealing with their individual acquisitions separately and without reference to the other, the presumption as to jointness in a Hindu family loses much of its force. (*Dhobley*, A.J.C.) LAXMAN BHAT *v.* BANABAI. **64 I.C. 906.**

——*Joint family—Presumption—Separation—Proof.*

The ordinary presumption of jointness of a Hindu family is displaced by the presumption from the admitted separation of certain members of the family and a person alleging jointness must prove it by other means. Separate messing and living does not necessarily indicate separation in estate especially where the members cultivate jointly and that they divided only so much produce as was necessary for household purposes and kept the rest for purposes of *len den*. (*Kotval*, A.J.C.) SUA *v.* DUKALU. **59 I.C. 499.**

——*Joint family—Presumption—Rebuttal.*

Mere definition of shares in revenue and village records is not sufficient to rebut the presumption of jointness and union in a Hindu family. (*Lord Shah.*) NAGESHAR *v.* GANESH.
7 O.L.J. 48=32 A. 368=38 M.L.J 521=18 A.L.J. 533=56 I.C. 306=23 O.C. 1=22 Bom. L.R. 595=28 M.L.J. 5 (P.C.).
[On appeal from 3 O L J. 454=36 I C 780.]

——*Joint family—Presumption—Father—Transfer of property—Minor sons joining in alienation.*

Where a brother and his two minor brothers under the guardianship of their mother execute a transfer of joint family property, it may be presumed that the manager (brother) was not acting as the Kartha or manager of the family. But where a father makes a transfer and his minor sons are nominally joined, the presumption that may be raised is that the transfer has been made by the father in his capacity as manager. (*Dalal*, J.C.) JANG BAHADUR SINGH *v.* RANJIT SINGH. **10 O.L.J. 283=1924 Oudh 141.**

——*Joint family—Presumption—None as to existence of property.*

There is a presumption that a Hindu son and his father are joint in estate, but there is no presumption that the joint family which they constitute possessed any property at all. (*Dalal and Simpson*, JJ.) RAM RAJ SINGH *v.* AVADH BEHARI LAL. **10 O L J. 235=1924 Oudh 28.**

HINDU LAW—Joint family—Rights of Members.

——*Joint family—Presumption—Minor.*

A very strong presumption arises that possession is taken on behalf of the wards but it is not an irrebuttable presumption. (*Ashworth and Simpson*, A.J.Cs.) THAKUR RUDRA PRATAB NARAIN SINGH *v.* THAKUR NIRMAN PRASAD SINGH. **9 O L J. 552=1923 Oudh 61.**

——*Joint family—Presumption—Father and son.*

There is an initial presumption in favour of jointness in a Hindu family and his presumption is particularly strong in the case of a father and his only son. (*Daniels and Lyle*, A J.Cs.) MT. PARBATI *v.* SAIYED MAHOMMAD HADI.
9 O.L.J. 304=1923 Oudh 31.

——*Joint family—Presumption—Evidence.*

The jointness of estate is the principal thing to be looked into to determine the jointness of the family. (*Lindsay* A.J.C.) BINDA PRASAD *v.* GAYA PRASAD SINGH. **18 I.C. 547.**

——*Joint family—Presumption.*

A Hindu family is presumed to be joint unless the contrary is proved. (*Miller*, C.J. *and Ali Imam*, J.) RAMDAYAL MAHTO *v.* UTTIM MAHTO. **46 I.C. 255=5 P.L.W. 122.**

Joint family—Rights of Co-parceners.

——*Joint family—Rights of co parceners—Mitakshara.*

The interest of a member of an undivided Mitakshara family in the family property is not individual property. (*Sir John Edge*), GULAB SINGH *v.* RAJA SETH GOKULDAS.
40 Cal 785=40 I.A. 117=17 C.L.J. 619=17 C.W.N. 918=15 Bom. L.R. 618=(1913) M.W N. 552=14 M.L.T. 55=9 N.L.R. 117=19 I C. 521=25 M L J. 179 (P.C.).

——*Joint family—Rights of co-parcener—Ancestral property.*

A son has from his birth an indefeasible right in the joint family property and mere unfriendliness on his part does not put an end to this right. (*Johnstone and Rattigan*, JJ.) SHIB NATH *v.* ALLIANCE BANK OF SIMLA, LTD, LAHORE. **110 P.W.R. 1914=218 P.L.R. 1914=25 I C. 480=3 P.R. 1915.**

Joint family—Rights of Members.

——*Joint family—Rights of members—Mortgage suit.*

Where in a suit on a mortgage of joint family property all the members of the family were not made parties *held*, that as no portion of the mortgaged property can be said to belong to any particular member of the family,

HINDU LAW — Joint family—Rights of Members.

a decree in respect of the interest of the mortgagor who was made a party cannot be given. (*Banerjea and Chamier, JJ.*) SHIAM SUNDAR LAL *v.* BUDDHU LAL.
24 I.C. 252=12 A.L.J. 794.

———*Joint family—Rights of members—Redemption suit by manager in personal capacity.*

No legal proceedings in a mortgage suit not filed by the manager of a joint Hindu family expressly in his capacity as manager, short of actual redemption will deprive his co-parceners of their right to redeem. (*Scott, C.J. and Shah, J.*) RAMCHANDRA NARAYAN *v.* SHRIPAT RAO TUKOJI RAO. 40 Bom. 248=
33 I.C. 771=18 Bom. L.R. 33.

———*Joint family—Rights of members.*

A son born in a joint family takes an interest in the family property by reason of his birth, and his claim to interest in that property is based on his own rights as he becomes a co-parcener in that family at his birth. (*Davar and Robertson, JJ.*) AHMEDBHAI HABIBHOY *v.* DINSHAW MANEKJI PATIT.
12 I.C. 813=18 Bom. L.R. 1061.

———*Joint family—Rights of members—Right of one to build.*

Where the portion of the land on which the building by one member was erected was such that neither party could have exclusive use of it without injury to the other, the other members, should have joint use of the building with the deft. though the strict right of the plaintiff would have been to have the building demolished and to have the land restored to its original condition as it was before the deft. put up the building. (*Fletcher and Newbould, JJ.*) ATINDRA MOHAN RAY *v.* RAMESH CHANDRA ROY. 40 I.C. 504.

———*Joint family—Rights of members—Mortgage by some brothers of whole of family property—Suit on mortgage—Whether share of non-executant affected.*

Where some of the individual Hindu brothers mortgaged the whole property, a decree obtained in a suit on the mortgage and the sale in execution thereof will only pass the interest of the mortgagor brothers and not of those who did not join the mortgage. (*Mookerjee and Roe, JJ.*) GIRIJA KANTA CHAKRABATTY *v.* MOHERIM CHANDRA ACHARJYA. 20 C.W N 675=
36 I.C. 294=23 C.L.J. 587.

———*Joint family—Rights of members—Declaration of their title—Decree for possession—Court-fee.*

The plaintiffs governed as they are by Hindu Law are co-parceners and are not competent to sue only for a declaration of their title, but must sue for possession. Nevertheless, although declaratory decrees were asked for, the plaintiffs can be given decrees for possession of the land if they pay the Court-fees required

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for possessory suits. (*Martineau and Harrison, JJ.*) AMIR AND PAULAT *v.* KHAN CHAND.
1923 Lah. 255.

———*Joint family—Rights of members—Decree against family property.*

Where there is a decree against the joint family property, including the separate property of a certain member of the joint family, it follows that when that member quits the family all of his property that remains liable for the satisfaction of the decree is (1) his share in the joint family (2) his separate property such as it was up to the date when he quitted the family. Separate property acquired after he quitted the family is not, and never could have been joint family property. (*Le Rossignol and Campbell, JJ.*) GOKUL CHAND *v.* FIRM OF HUKAM CHAND NATHUMAL.
3 Lah. 14=1922 Lah. 84.

———*Joint family—Rights of members—Injunction to one member against others.*

An injunction cannot be granted to one member of a joint Hindu family in possession of joint family property against others. (*Oldfield and Seshagiri Aiyar, JJ.*) SRINIVASA IYENGAR *v.* NARAYAN AIYANGAR.
11 L.W. 606=36 I.C. 608=
(1920) M.W.N. 364.

———*Joint family—Rights of members—Suit between members of the same family—Personal interest of members.*

In suits between members of a family to which no strangers are parties, each member must be considered to be litigating for his own benefit and not for the benefit of the estate. 33 Cal. 556 (P. C.), Foll. (*Sankaran Nair and Spencer, JJ.*) GOTEPATI SUBBAMMA *v.* GOTEPATI NARASAMMA. 26 I.C 16=
27 M L.J. 486.

———*Joint family—Rights of members—Pro-note in favour of a person—Survivors can sue—Principle of partnership.*

The survivors in a Hindu family can sue on a promissory note on the death of the member in whose name it was taken. The suit is maintainable not on the principle of a family corporation but of a partnership. (*Sadasiva Aiyar, J.*) GOPALA IYENGAR *v.* VENKATAKRISHNA IYENGAR.
17 I.C. 748=(1912) M.W.N. 1227.

———*Joint family—Rights of members—One member, tenant of holding—Other members if also tenants.*

Where one member of a joint family is tenant of a holding his becoming such tenant does not make all the members of the family his co-tenants. (*Drake-Brockman, J.C.*) JAGANNATH *v.* BEHARI. 69 I.C. 419.

———*Joint family—Rights of members—Contract by a member of the family—Liability of other members.*

Where a contract is made by a member of a joint Hindu family, unless it is shown

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that that member was the manager of the family or that the contract was entered into in the course of the family business or that the other members derived a benefit from it the other members are not liable on the contract. (*Lyle*, A.J.C.) RAMDHIR SINGH *v.* MATA PRASAD. 69 I.C. 846 = 8 O.L.J. 617.

———*Joint family—Rights of members—Mortgage for defending criminal case—Validity.*

The rule of Hindu Law which makes the acts of the manager binding on the family is wide enough to authorise any member of the family to deal with the family property for the purpose of incurring debts for the family necessity. (*Jwala Prasad and Ross*, JJ.) DHANUKDHARI SINGH *v.* RAMBIROH SINGH.

1 P. 171 = 1922 P. 553.

Joint family—Self-acquisitions.

———*Joint family—Self-acquisition—Blending of separate property with joint property makes property joint.*

When members of a joint family, who have control over the joint estate, blend that estate with property in which they have separate interest, the whole property becomes joint. Whether separate estate is brought into a joint family account or the joint family property is brought into the separate accounts, the result is the same. The real question for determination is what is the conclusion to be drawn when people united, by bonds of close relationship and living as a joint family, draw for the joint family expenses out of a fund enriched by other contributions. If the members of a joint Hindu family confuse the income of their joint properties with their separate properties, their intention presumably is that the properties acquired with such mixed-up funds are for the joint family. (*Lord Buckmaster.*) RAJANIKANTA PAL *v.* JAGAMOHAN PAL.

50 Cal. 439 = 44 M.L.J. 561 =
28 Bom. L.R. 688 = 37 C.L.J. 515 =
(1923) M.W.N. 438 = 27 C.W.N. 997 =
18 L.W. 887 = 9 O. & A.L.R. 805 =
50 I.A. 173 =
32 M.L.T. 149 =
L.R. 4 P.C. 70 = 1923 P.C. 57 (P.C.).

———*Joint family — Self-acquisition—Burden of proof—Existence of nucleus.*

Where the existence of a nucleus of ancestral property is admitted the onus of proving that any of the family properties is the self-acquisition of a particular member lies on him. (*Mr. Ameer Ali*). RAJANGAM AIYAR *v.* RAJANGAM AIYAR. 31 M.L.T. 136 (P.C.) =
16 L.W. 615 = (1922) P.C. 266 =
4 U.P.L.R. (P.C.) 85 = 27 C.W.N. 561 =
44 M.L.J. 753 = 37 C.L.J. 435 = 21 A.L.J. 460.

———*Joint family—Self-acquisition—Earnings of an I.C.S.*

In the present case the earnings of an Indian civil servant were held to be partible property and liable for family debts. Gains of science

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made without any detriment to the father's estate are not partible. Originally, to make such gains partible it was sufficient that the earner was maintained out of the family funds during his education. The rule is now narrowed down to the specialised education only. The partibility of such gains does not depend upon *causa pronima* nor is it negatived by the intervention of the personal elements of the individual co-parcener's character. Once a member is originally found to be equipped for the calling by a special training at the family expense his earnings remain partible throughout his life. He can, however, sever at any time from the family on the footing of bringing his acquisitions into hotchpot without any liability as to future earnings. The burden of proving that the gains are acquired without detriment to the family is on the acquirer. (*Lord Sumner*). AMAR NATH *v.* FIRM OF HUKAM CHAND NATHU MAL. 2 Lah 40 =
48 I.A. 162 = 23 Bom. L.R. 671 =
19 A.L.J. 249 = 40 M.L.J. 327 =
2 Pat L.T. 201 = 33 C.L.J. 285 =
29 M.L.T. 258 = (1921) M.W.N. 175 =
25 C.W.N. 534 = 3 U.P.L.R. (P.C.) 12 =
14 L.W. 435 = 60 I.C. 379 =
42 P.W.R. 1921 (P.C.).

[On Appeal from 70 71 P.R. 1917 =
34 I.C. 714 = 2 P.L.T. 208.]

———*Joint family—Self-acquisition—Ghatwali tenure—Enfranchisement*

Where lands forming a ghatwali tenure are enfranchised from service and granted to the Ghatwal, the properties so granted are the self-acquisition of the grantee. The other coparceners are not entitled to any interest in it. (*Lord Phillimore.*) DURGA PRASAD SINGH *v.* TREBINI SINGH. 46 Cal. 862 =
46 I.A. 251 = 21 M.L.T. 407 =
28 C.L.J. 508 = 9 L.W. 60 =
48 I.C. 527 = 21 Bom. L.R. 569 (P.C.).

———*Joint family—Self-acquisition—Gains of learning or science.*

There is no authority in the Mitakshara that the gains made as a pleader's clerk or broker or money-lender personally, and without the aid of the joint funds, by a member of a joint family who received an ordinary education suitable to his position as a member of the family to which he belonged, should in law be regarded as partible, and not as his self acquired property. The expression "gains of science" does not apply to gains which are the result not of the education received at the expense of the joint family but of the peculiar skill, mental abilities and individual effort in applying and improving such education exercised by the person educated at the expense of the family. A mere general education preliminary to the acquisition of a specialised education does not constitute the earnings of joint family property. The question whether a member of a joint Hindu family carried on his business personally for his own benefit

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without detriment to joint funds or for the benefit of the joint family is one of fact to be determined on the evidence. Authorities on the subject reviewed. (*Sir John Edge*) METHE RAM RAM RAKHIOMAL *v.* RAMCHAND RAM RAKHIOMAL. 45 Cal. 666=45 I A. 41= 7 L.W. 381=22 C W.N. 377= 4 P.L.W. 197=34 M L.J. 327= 20 Bom. L R. 566=28 M.L T 218= 16 A L J. 281=27 C L J 348= (1918) M.W N. 537=44 I C. 269= 12 S L.R. 116 (P C.)

[See the whole question elaborately dealt with in 60 I C. 379= (1921) M.W.N. 173 (P.C.).]

———*Joint family—Self-acquisition—Government grant.*

The Government in making a grant of an estate can determine the nature of the grant but if there are no specific terms in the grant the surrounding circumstances may be taken into consideration. Where Government after confiscation of joint family property on representation by a member of the family being made makes a grant of the property, without any special conditions in the grant, the property continues to be joint family property in the hands of that person. (*Richards*, C.J. *and Rafique*, J.) BAIJNATH PRASAD SINGH *v.* TEG BALI SINGH. 38 All 590= 38 I.C. 894=14 A.L.J. 913.

———*Joint family—Self-acquisitions—Gift.*

Property acquired by gift by one member must be presumed to belong exclusively to him even though the expenses of the marriage of that member were met out of the family funds. (*Tudball and Rafique*, JJ.) GHASI RAM *v.* DEBI. 29 I C. 190.

———*Joint family — Self-acquisition — Nucleus — Acquisition by a member — Presumption.*

There is no presumption that a family has any joint property or that property, found in the possession of any one member of a family is joint family property unless it is shown that the family as such possessed at least some property which could serve as a nucleus for the acquisition. (*Karamat Hussain and Chamier*, JJ.) RAM KISHEN DAS *v.* TANDA MAL. 33 All. 677=10 I C. 543=8 A.L.J. 723.

———*Joint family—Self-acquisition—Onus of proof.*

Certain members of a joint Hindu family who acquired property while the family was joint sued for a declaration that the property so acquired was their self-acquired property. *Held*, further more it is clear that if there was no presumption, that the property was self-acquired and the plffs. must show that it was their self-acquired property. (*Richards*, J.) SARDHAR SINGH *v.* BHOPAT SINGH. 10 I.C 125.

———*Joint family—Self-acquisition—Purchase at revenue sale.*

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Purchase of joint family property at a sale by the Revenue authorities for arrears of revenue by a member of the family out of his self-acquired funds is not joint family property but is the self-acquired property of the member. (*Macleod*, C.J. *and Fawcett*, J.) CHOKHU *v.* TATYA. 59 I.C. 869=22 Bom. L.R. 1297.

———*Joint family — Self-acquisition—Nucleus—Onus of proof.*

Onus as to proof that property is self-acquisition may be shifted to person so alleging by existence of nucleus. 33 All. 677, Foll. (*Beaman*, J.) DWARKA PRASAD *v.* JAMNADAS. 9 I.C. 948=12 Bom. L.R. 133.

———*Joint family—Self-acquisition.*

Where the family is joint and there was a nucleus of joint property the burden lies on the person setting up a case of separate estate. (*Mookerjee and Panton*, JJ.) NIBARAN CHANDRA *v.* NIRUPAMA. 34 C L J. 569= 69 I C. 476=26 C.W.N. 570.

———*Joint family—Self-acquisition—Dayabhaga school.*

Under Dayabhaga, if one member acquires property during his father's life-time, the onus of proving that the property is not his self-acquisition but a joint family property lies on the person asserting it. (*Newbould and Abdul Majid*, JJ.) NIBRAN CHANDRASEN *v.* SASI BHUSAN SEN. 50 I.C. 729.

———*Joint family — Self-acquisition—Common stock.*

Where two brothers of a *Mitakshara* family coming to Calcutta worked as coolies and out of the earnings purchased a house, no conclusion that the house was acquired out of a joint family fund can be drawn in the absence of any evidence that the money earned was put into a common purse or treated as money belonging to the two brothers as members of a joint Hindu family. (*Fletcher and Teunon*, JJ.) MOTI BOULI *v.* BHAGAWAN MISRI. 35 I C. 655.

———*Joint family—Self-acquisition—Gains made by a member—Separate amounts.*

When the uncle at the time of his death was a Tahsildar under the Punjab Government, and the plaintiff, was living with his father-in-law in Ludhiana and was carrying on a money lending business there and he and his uncle were therefore living apart, and there was no commensality. *Held*, there would, therefore be no strong presumption that they were joint. The acquisition of distinct property, by a member of an undivided Hindu family without the aid of joint funds is his self-acquired property, and is not subject to partition. Hindu Law texts regarding gains of science establish it as a rule of Hindu Law that the ordinary gains of science are divisible, when such science has been imparted at the family expense, and acquired while receiving a family maintenance; but that it is otherwise

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when the science has been imparted at the expense of persons who are not members of the acquirer's family. Acquisition, made as a Government servant, which is kept quite separate from the joint family funds, is impartible and he would deal with it has he chosen. When a person made deposits out of his separate acquisition in the Alliance Bank of Simla in the joint names of himself and of his wife and made them payable to either or to the survivor he intended that there should be a provision for his widow in case he died before her. (*Scott-Smith and Moti Sagar*, JJ.) MT. UTTAM DEVI *v.* DINA NATH. 1923 Lah. 359.

———*Joint family — Self-acquisition—Bequest.*

In a case of a joint Hindu family formed of father and his only minor son, the initial presumption of the jointness of the property is rebutted by proof of the fact that the father's property is all self acquired. Property devised by will over which the testator had complete powers of disposal is self-acquired property in the hands of the devisee. (*Shadi Lal and Le Rossignol*, JJ.) AMAR NATH *v.* GURAN DITTA MAL. 15 P.R. 1918 = 43 I.C. 117 = 16 P.W.R. 1918.

———*Joint family—Self-acquisition—Onus—Presumption—Joint family with a nucleus—Acquisition by a member of a family.*

When the parties once formed a joint Hindu family the presumption of law is that the family continued joint unless it is shown to have become divided. Where a family is joint and there is *nucleus* from which property may be acquired, presumption is that property acquired by any member is joint property and the *onus* lies on those who allege that it is self-acquired. The mere fact that any particular acquisition is in the name of one or more of the members does not warrant the assumption that it is the exclusive acquisition of the person or persons named and not of the whole of the joint family (*Scott-Smith and Broadway*, JJ.) NANAK CHAND *v.* LACHMAN DAS. 62 P.R. 1917 = 40 I.C. 775 = 97 P.W.R. 1917.

———*Joint family—Self-acquisition—Education.*

Gains of special education obtained at the expense of a joint family are joint family property. Such education must be presumed to have been obtained out of a joint family fund unless shown to be otherwise. (*Rattigan, Shah Din and Le Rossignol*, JJ.) GOKAL CHAND *v.* HUKAM CHAND NATHUMAL. 109 P.W.R. 1916 = 70 and 71 P.R. 1917 = 34 I.C. 715 = 155 P.L.R. 1916.

———*Joint family—Self-acquisition—Grant by Government.*

When a Jagirdar was granted a Rakh and his name was entered in the Revenue Papers as proprietor, the Rakh becomes the self-acquired property and a bequest of it to the wife of the Jagirdar could not be questioned by the reversioners. (*Kensington and Rattigan*, JJ.) MAYA DAS *v.* GURDIT SINGH. 116 P.W.R 1912 = 16 I.C. 855 = 167 P.L.R. 1912.

———*Joint family—Self-acquisition—Ancestral property.*

Acquired property, moveable or immoveable, is ordinarily alienable according to the will and pleasure of the last full owner. Property purchased out of the income of father's estate or with one's own earnings independently of that estate, is not ancestral. (*Kensington and Johnstone*, JJ.) KARM BAKSH *v* CHIRAGH DIN. 66 P.R 1911 = 104 P L R. 1912 = 12 I.C. 862 = 190 P.W.R. 1911.

———*Joint family — Self-acquisition — Nattukottai Chetty—Money received for giving son in adoption—Enures to family.*

In the absence of a custom, money paid to a Nattukottai Chetty for giving his son in adoption enures to the benefit of the whole family and is not the self-acquired property of the father. (*Ayling and Odgers*, JJ.) RAMASWAMY CHETTY *v.* PALANIAPPA. 18 L.W. 636 = (1923) M W N. 841 = 1925 Mad. 854.

———*Joint family—Self-acquisition — Repurchase of property which has passed out of the family.*

Where a member of a joint Hindu family purchases with his own funds property which has validly and voluntarily passed out of the family by a conveyance, the property so purchased is the absolute and self-acquired property of the member. 5 M.H.C.R. 156, Ref. (*Schwabe, C.J. and Wallace*, J.) MAGDOON MUHAMMAD MARKAYAR *v.* MARLAYAN BANSILAL. (1922) M.W.N. 824 = 1923 M. 248.

———*Joint family — Self-acquisition — Blending of.*

It is open to the owner of an impartible estate, to incorporate his self-acquisitions in the Zemindary. (*Wallis, C.J. and Krishnan*, J.) GURUSAMI PANDIYAN *v.* PANDIA CHINNA THAMBIAR. 44 Mad. 1 = 39 M L.J. 529 = (1920) M.W.N. 660 = 61 I C. 242. 28 M L.T. 365.

———*Joint family—Self-acquisitions—Inam—Enfranchisement.*

Where lands comprising the Inam held by a member of a Hindu family are enfranchised, from the condition of service, they do not become partible amongst all the persons having hereditary interest in the office through descent from the original grantee, but is partible only among those who belong to the joint family of the holder of the office at the time of enfranchisement. 26 Mad. 399; 42 Cal. 1179, Foll. (*Spencer and Krishnan*, JJ.) PYRAPPA *v.* SYAMA RAO. 25 M L T. 177 = (1918) M.W.N. 849 = 49 I.C. 250 = 8 L.W. 614.

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———*Joint family — Self-acquisition — Presumption.*

In joint Hindu families the presumption is that certain property in question is not the self-acquired property of a particular member where he had no separate fund and the acquisition was not made with money belonging to himself. 26 M.L.J. 248, Ref. (*Wallis*, C.J. *and Burn*, J.) DHARNU SHETTI *v.* DEJAMMA.
5 L.W. 269=38 I.C. 292=(1917) M.W.N. 535.

———*Joint family—Self-acquisitions—Conversion of, into family assets—Intention.*

Unless the father is proved deliberately to have intended to give up his full power of ownership over his acquisitions, the property cannot be treated as joint family property. The following facts generally prove the conversion. (*a*) A clear declaration by the father. (*b*) A substantial contribution to the self-acquisitions having been made by the sons. (*c*) Unequivocal conduct on the father's part showing that the son was treated as an equal owner along with him. 14 Bom. L.R. 237, Ref. Where a father and son trade together the son does not become partner with his father in the business, but the business becomes joint family property of the father and the son, and even the sons who do not take a prominent part in the transaction are entitled as members of a joint family. (*Sadasiva Iyer and Napier*, JJ.) NARASIMHAPPA *v.* CHINNA KENCHAPPA.
38 I.C. 244.

———*Joint family—Self-acquisition—Presumption—Separate property—Burden of proof.*

When there is no nucleus of joint property, property acquired by a member of a joint Hindu family is presumed to be his separate property and the plea that he threw it into the common stock must be proved by him who makes it. The mere fact that he lived with his son in the same house and carried on business with him or even raised money for the purposes of the business by mortgaging that very property does not suffice to discharge the onus. (*Wallis*, C.J., *Seshagiri Iyer and Phillips*, JJ.) ETHIRAJULU NAIDU *v.* GOVINDARAJULU NAIDU.
32 I.C. 12.

———*Joint family—Self-acquisition—Prescription by one member.*

It must not be presumed that one member of a joint undivided family prescribes also for the benefit of the other co-parceners. *Prima facie* he gets an absolute title. 8 Mad. 214; 15 M.L.J. 66; 18 C.W.N. 428, Dist. (*Oldfield and Napier*, JJ.) VENKATACHELAPATHI RAO *v.* JAYARAMAYYA.
29 I.C. 455.

———*Joint family—Self-acquisition — Onus of proof.*

If a co-parcener, asserts that a particular property in his self-acquisition he must affirmatively prove that the property was acquired with the fruits of his own exertions, unaided by family property. (*Ayling and Tyabji*, JJ.) MALAYAPPIER *v.* PICHAI ASARI.
(1915) M.W.N. 208=28 I.C. 195=2 L.W. 236.

———*Joint family—Self-acquisition — Presumption—Nucleus.*

The acquisition of an individual member of a joint family cannot be considered to be the joint family property unless there has been a nucleus of ancestral property which was utilised for such acquisition or the members have all thrown their joint earnings into the hotchpot with the intention of giving up their individual rights in them. Mere living together of the members of a family will not make the joint owners of properties acquired by each individual member. A Hindu joint family presupposes the possession of common property. 33 All. 677; 6 W.R. (P.C.) 43; 2 Mad. 19, Foll. (*Wallis*, C.J. *and Seshagiri Aiyar*, J.) AKKARAJU NARAYANA RAO *v.* AKKARAJU SESHAMMA.
26 I.C. 33=27 M.L.J. 677.

———*Joint family—Self-acquisition—Proof of—Sale in the name of a member.*

Because title-deeds stand in the plff 's name, the presumption is that they are his own acquisitions unless and until it is rebutted. (*Sankaran Nair and Tyabji*, JJ.) GURUSWAMI IYER *v.* MARI CHETTY.
22 I.C. 852.

———*Joint family—Self-acquisition—Gift to a member by stranger—Presumption.*

No presumption is legally recognised that a gift by a stranger to one individual member of a joint family is in reality a gift to the family. (*Ismay*, A.J.C.) BATTOOLAL *v.* HIMMAT SINGH.
49 I.C. 912.

———*Joint family — Self-acquisition—Endowments of office—Income—Savings from—Berar Patels and Patwaris Law—Property purchased out of savings of emoluments of Patwari's office under.*

Under the Hindu Law property allotted by the State to a person in consideration of the discharge of particular duties or as payment for an office is *prima facie* impartible, even though the duties of office may become hereditary in a particular family. Property purchased out of the savings of the income of a patwari is *prima facie* self-acquired property, and in the absence of any intention on the part of the acquirer to treat it as joint family property his co-parcener cannot claim a partition of the same. Fields purchased by a Hindu patwari out of the savings of the emoluments of his office under the Berar Patels and Patwaris Law, 1900, are his self-acquired property, and on a partition of the joint family property, in the absence of any indication that he agreed to allow the fields to be treated as joint family property, his son has no right to claim a partition of such fields. (*Mitra*, A.J.C.) SHEORAM *v.* SHRIDHAR.
43 I.C. 137=17 N.L.R. 97.

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———*Joint family—Self-acquisition—Gift of—Ancestral property.*

In the absence of any express limitation or condition to the contrary all property obtained by gift or devise bscomes self-acquired property in the hands of the donee or devisee. Consequently any property obtained by virtue of a gift from the father, grandfather or great-grantfather would be self-acquired property in the hands of the donee if it was not ancestral property in the hands of donor or was acquired by him without any detriment to the joint estate. 26 B. 445 ; 33 A. 665. Rel. (*Kanhaiya Lal*, J.C.) KANHAI LAL *v.* RAM RATAN.
25 O.C. 80=(1922) Oudh 138.

———*Joint family—Self-acquisition—Grant to manager.*

A grant made to the head of joint family is not necessarily a grant to the family. The onus is on the person alleging to be so. (*Kanhaiya Lal and Daniels*, A.J.Cs.) MAHADEI KUNWAR *v.* BAHU RANI. 50 I.C 180=
6 O.L.J. 53.

———*Joint family—Self-acquisitions—Blending with family property—Proceeding against the hypotheca.*

Where the ancestral property of a joint Hindu family and some other property acquired at the expense of the former property are both mortgaged by the manager, the Court in equity may not allow the mortgagee to proceed against the former property so long as the latter is not exhausted if the latter is available and adequate to satisfy the debt. (*Stuart*, J.C. *and Kanhaiya Lal*, A.J.C.) MUNESHWAR BAKSH SINGH *v.* ARJUN SINGH. 3 O L J. 237=34 I.C. 738=
19 O.C. 100.

———*Joint family—Self-acquisition—Proof of—Nucleus.*

If certain property is to be regarded as joint family property, it must fall under one or other of three classes (1) ancestral property (*i.e.*), property inherited from a direct male ancestor, (2) property acquired by members of a joint family with the assistance of joint funds or by joint labour and (3) property originally self acquired but afterwards voluntarily thrown by the acquirer into the joint stock with the intention of abandoning all separate claims upon it. Very strong evidence is required to prove that the property falls under class (3) and the mere fact that the acquirer and the other members of the family live together is not sufficient to prove that the acquisition is joint family property. (*Lindsay*, J.C. *and Kanhaiya Lal*, A.J.C.) NARENDRA BAHADUR *v.* ABDUL HAQ.
30 I.C. 216=2 O.L J. 237.

———*Joint family—Self-acquisition — Common stock—Presumption.*

Where the joint family property was very small and the income insufficient and where the members earned their living separately and dealt with each separately there is no question of throwing into common stock or of abandoning their separate rights. (*Kanhaiya Lal and Sabonadiere*, JJ.) LACHMI NARAIN *v.* RAM DAYAL. 22 I.C. 887.

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———*Joint family — Self-acquisition—Bequest by father—Survivorship.*

Where self-acquired property is bequeathed to sons, it should be held by the sons subject to the incident of survivorship, and each son takes an interest which passes to his heirs at his death unless otherwise indicated by the bequest. Because a Hindu family is joint it does not necessarily mean that it is possessed of joint property also. The person who alleges that property is joint must show that there was a nucleus around which the property accumulated. (*Evans*, J.C. *and Lindsay*, A.J.C.) RAMESWAR *v.* RUKMIN. 12 I C. 770=
14 O.C. 245.

———*Joint family—Self-acquisition — Presumption.*

Property purchased by a member of a joint family is joint family property, if it was acquired from the common funds of the family of which the purchaser as a member possessed a share. Without such proof of the presumption that the property is joint family property cannot arise. (*Evans*, A.J.C.) GOPAL *v.* BISHUNNATH. 10 I.C. 64.

———*Joint family—Self-acquisition—Fees for officiating as priest—Nature of.*

Fees obtained by officiating as priests are the self-acquisitions of the member to whom they are paid. (*Coutts and Ross*, JJ.) TARA PRASAD JHA BALISEY *v* MAYA DEBYA.
(1922) Pat. 91=4 U.P.L.R. (P.) 18=
1922 P. 30.

———*Joint family—Self-acquisition—Presumption—Onus.*

Where a member of a joint family was living separate from his family, had a large fortune of his own and had been carrying on a business on his own account for many years although he had originally some ancestral property it is impossible to say that the proceeds of the business presumably belong to the joint family. (*Miller*, C.J. *and Mullick*, J.) ADWAT PRASAD *v.* RADHIKA RAMAN PRASAD SINGH. 48 I C. 695.

———*Joint family — Self-acquisitions — Father—Sale in execution of mortgage decree—Power of sons to redeem.*

Under the Mitakshara Law sons have no right to redeem the self-acquired property of their father sold in execution of a mortgage decree obtained against him. 20 All. 267, Ref. to. (*Mullick and Kingsford*, JJ.) JAHNAVI PRASAD SINGH *v.* CHARBERAM DUBEY.
38 I.C. 404.

———*Joint family—Self-acquisition—Grant to a member.*

An ancient grant made to a member of a joint Hindu family must be taken to be a

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grant to the family and not to the individual. 9 W.R. 558, Ref. (*Roe and Jwala Prasad*, JJ.) DURGA BAI *v.* SOBHA SINGH. **34 I.C. 821.**

———*Joint family—Self-acquisition—Bairagis—Property acquired by—'Gadisar'—Nature of.*

Any property acquired by a *Gadisar* of a '*Bairagi Mandir*' must be regarded as the property of the *Mandir* and not as his private property unless there is evidence that he had any source of wealth apart from the funds of, and contributions to, the *Mathi* which came to him as '*Gadisar*', (*Fawcett and Raymond*, A.J.Cs.) RAMDA *v.* AJUDHIADASS. **63 I.C. 688=14 S.L.R. 137.**

Joint family—Separate property.

———*Joint family—Separate property.*

The presumption of law is that each member retains for himself whatever he earns and that consequently when it is found that properties have been acquired in the name of an individual member such properties are presumably their separate properties. (*Mookerjee and Carnduff*, JJ.) NARAYAN LAL GUPTA *v.* CHULHAN LAL GUPTA. **14 I C. 677= 15 C.L J. 376.**

———*Joint family—Separate property—Inheritance by collateral succession—Nature of.*

If a person claims that he has inherited a certain property by right of collateral succession, then such property does not form joint family property and in respect thereof its manager, as such, can neither sue nor be sued so as to bind the other members of the family. (*Kanhaiya Lal*, J.C.) HAUSLA BAKHSH SINGH *v.* RAJ BAKHSH SINGH AND ANOTHER. **4 U.P.L.R. (O.C.) 47.**

Joint family—Surrender.

———*Joint family—Surrender—Relinquishment by co-parcener—Consideration.*

To validate a relinquishment by a co-parcener of his interest in the joint family property it is not necessary that it should be supported by consideration however trifling it may be. Nor is it necessary that the relinquishing co-parcener should be able to support himself otherwise by his own exertions. (*Sadasiva Iyer and Napier*, JJ.) VEERAMAL *v.* KAMU AMMAL. **30 I C. 815=2 L W. 860.**

[Also 26 I.C. 211=27 M.L.J. 262.]

———*Joint family—Surrender—Gift by a father—Consideration.*

A gift by a father of all his interest in the family property in favour of his only son being a relinquishment is valid and binding as it is supported by the consideration of natural love and affection. (*Sadasiva Iyer and Napier*, JJ.) THANGAVELU PILLAI *v.* DORAISWAMY PILLAI. **27 M.L.J. 272=26 I.C. 211= 16 M.L.T. 393.**

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———*Joint family—Surrender—Relinquishment—Effect of.*

A relinquishment of his share by a co-parcener in a joint Hindu family in favour of some members of the body does not enure to the benefit of those members only but enures to that of entire co-parcenary body. (*Drake-Brockman*, J.C.) RAO VINAYAK *v.* LAKMAN. **44 I.C. 51=14 N.L.R. 56.**

———*Joint family—Surrender—Gift by one member of his share in favour of another—Effect.*

A deed of gift executed by one of the two members forming a joint Hindu family in favour of the other, in respect of his share of the property or even the whole property only amounts to a surrender by the former of his entire interest in the family property in favour of the latter. 16 All. 369, Ref. (*Stuart and Kanhaiya Lal*, A.J.Cs.) BAKHTAWAR SINGH *v.* RAM SINGH. **36 I C. 45= 3 O.L J. 289.**

Joint family—Survivorship.

———*Joint family—Survivorship—Death of one member.*

Where one member of a joint Hindu family which has acquired an occupancy tenure dies the tenure devolves on the remaining members and therefore S. 22 of the Agra Tenancy Act does not apply to the case. (*Tudball and Sulaiman*, JJ.) MENDYA *v.* JHURYA. **42 All. 668=18 A.L J. 769=37 I C 272= 2 U P.L.R. (A.) 257.**

———*Joint family—Survivorship—Death of one representative.*

If one of the many representatives appointed by a joint Hindu family dies, the surviving representatives continue to represent the family. Where a bond is executed in favour of three members of a joint Hindu family and one of them dies the survivors can sue a bond as they sufficiently represent the family. (*Richards*, C.J. *and Rafique*, J.) RAM KISHORE *v.* PARMESHRI. **33 I.C. 123=14 A L J. 255.**

———*Joint family—Survivorship—Applicability.*

The principle of joint tenancy is unknown to Hindu Law except in the case of co-parcenary between members of a joint family. (*Karamat Hussain and Chamier*, JJ.) KISORI DUHIAN *v.* MUNDRA DUHIAN. **33 All. 665= 10 I.C. 565=8 A.L.J. 757.**

———*Joint family—Survivorship—Co-parcener—Attachment of share—Before judgment—Judgment-debtor dying before execution.*

Where a co-parcener's share in joint family property has been attached before judgment and he dies after decree but before the execution-application, the right of survivorship is not defeated. The right will be defeated only by an attachment effected in his lifetime under a decree against him for his separate debt and a sale subsequently held under the attachment.

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though he dies before the execution sale. (*Batchelor and Shah*, JJ.) SUBRAO MANGESH OHANDARVAKAR *v.* MAHADEVI MANJI BHATTA. 38 Bom. 105=21 I.C. 330=16 Bom. L.R. 648.

———*Joint family — Survivorship—Death of co-parcener.*

A member of a joint Hindu family, leaves no estate when he dies and the surviving co-parceners do not inherit any estate as his heirs. They become owners in their own right and by the extinction of the interest of the deceased. (*Davar*, J.,) JANKIBAI *v.* SHRINIVAS GANESH VALSANKAR. 38 Bom. 120=20 I.C. 633=15 Bom. L R. 684.

———*Joint family—Survivorship — Interest at birth and interest acquired by survivorship.*

After the death of the grandfather and the father, there remains no distinction between property vesting by birth and by survivorship so as to necessitate the decree-holder proceeding first against the interest of the grandfather and the father at the time of the death and then against the interest of the grandson. 34 Cal. 735, Dist. (*Cox and Chatterjee*, JJ.) RAMDEO PRASAD *v.* GOPI KORRI.
16 C.W N. 383=15 O.L J. 253=13 I.C. 349.

———*Joint family—Survivorship—Succession certificate.*

A succession certificate is not necessary to enable survivors to sue for debts due to a deceased member. (*Johnstone*, C.J.) GURDITTA MAL *v.* DHARIMAL. 31 I.C. 904.

———*Joint family—Survivorship—Attachment before judgment.*

Attachment before judgment followed by decree precludes the accrual of title by survivorship as against the attaching creditor. 17 Mad. 144 ; 4 Mad. 304, Ref. (*Sankaran Nair and Ayling*, JJ.) MUTHUSWAMI CHETTI *v* OHUNAMMAL. 24 I.C. 320=26 M.L J. 517.

———*Joint family—Survivorship—Money advanced—Presumption — Succession Certificate Act, S. 4.*

The Succession Certificate Act does not apply to the collection of debts advanced from joint family funds there being in such cases no claim to property by succession but by survivorship. (*Lindsay*, J.C.) SYED MOHAMMAD NADI *v.* MUSAMAT PARBATI. 18 I C. 228.

Joint family—Trade.

———*Joint family—Trade—Business not of the joint family minor not liable—Others liable if parties to contract.*

If it were the law that some members of a joint family could escape from liability to perform contracts entered into by them on the ground that their contracts were not such as would bind the joint family and that they had no property other than that which was the property of the joint family, it would be necessary for every person with whom they sought to make a contract to assure himself that the business to which the proposed contract would relate was business of the joint family, and that no member of the joint family was a minor. Under such circumstances, it would be difficult to carry on business with persons who happened to be members of a joint family of the Province of Madras. But the minor's interest in the joint property of the family will not be affected by any decree against the other members in transactions which are in the course of any family business. (*Sir John Edge.*) SADASIVA MUDALIAR *v.* HAJEE FAKER MAHOMED SAIT. 44 M L.J. 396=17 L W. 288=37 O L J. 569=32 M.L T. 99=27 O.W N. 617=1922 P.C. 397.

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———*Joint family—Trade—Starting of a new trade—Ancestral trade—Liability of minor members.*

The distinction between an ancestral business and one started after the death of the ancestor, as a source of partnership relations is patent. In the one case these relations result by operation of law from a succession on the death of an ancestor to an established business with the benefits and obligations. In the other, they rest ultimately on contractual arrangements between the parties. It is not competent to the Karta to impose on a minor co-parcener the risks and liabilities of a new business started by himself: consequently a creditor of the new business cannot make the minor's share of the family properties or in the ancestral business liable for the debts of the new business. (*Sir Lawrence Jenkins.*) SANYASI CHARAN MANDAL *v.* KRISHNADHA BANERJI.
43 M.L J 41=20 A L J. 409=24 Bom. L R. 700=49 Cal. 560=16 L W 536=30 M L.T. 228=(1922) M W N. 364=26 C.W.N. 864=35 C.L J. 498=L R. 3 P.C. 139=49 I.A 109=(1922) P.C. 287.

———*Joint family—Trade—Manager—Representation in suits—Other members, if necessary parties—Addition of junior members—Limitation Act, S. 22.*

Members of a joint Hindu family who are the sole managers of the family business are competent to enter into contracts in their own names and sue on the said contracts, and it is not necessary that in those suits they should join the other members of the family as co-plffs. Where in such a suit the other members who were unnecessary parties are added after the period of limitation, the suit is not liable to be dismissed as barred under S. 22 of the Limitation Act, 6 Mad. 27 ; Appr ; 6 Cal. 815 ; 8 Mad. 294 ; 14 All. 524 and 18 Mad. 33, Dist. (*Lord Robson.*) KISHEN PRASHAD *v.* HAR NARAIN SINGH. 33 All 272=38 I.A. 46=16 C.W N. 321=8 A.L J 256=9 M L.T. 348=13 C.L J. 345=21 M.L.J. 378=13 Bom. L R. 359=9 I.C. 739=(1911) 2 M.W.N. 393 (P.C.).

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———*Joint family—Trade—New business by manager—Liability of minor members.*

If the manager of a joint Hindu family opens a new business at the cost of family property, a minor member is not liable in respect of his share for debts incurred in the business. (*Richards*, C. J. *and Rafique*, J.) HAR BILAS *v.* SHANKER LAL. **36 I.C. 402 = 14 A.L.J. 821.**

———*Joint family — Trade — Manager — Contracts — Liability of others — Starting of new business — Profits — Self-acquisition — Rights of others.*

A joint family firm must be regarded like any other joint family asset. If a business is carried on by any one or more members of a joint Hindu family for the benefit of the entire family, and there are other members who do not actively participate in the conduct of the business or are minors and such business had been originally established to the detriment of the family property and handed down hereditarily then the resultant liability of all the members of the family would be referable to the notion of managership by one or more members for the benefit of the rest in the usual sense in which the relation of the manager and other members of the family have often been accepted and defined in the Courts; the liability of the members not actively concerned in the conduct of the business would be restricted to the share of each such member in the joint family property. It might be doubted whether any personal liability beyond that, can attach to members of the family not actively carrying on the business, not in the commercial sense of partners, and, therefore, not parties to any contracts made with the firm as a firm. If one or more members of a joint Hindu family start a business of their own not at the expense of the Hindu family nor with the intention of sharing its profits and losses with the other members, the position of the members so carrying on joint family business and their liabilities to the other members have to be regulated with reference to the extent to which the conduct of such a firm and the resulting profits fall within the legal notion of self-acquisition. (*Beaman*, J.) JOHARMAL LADHOORAM *v.* CHETRAM HARI SINGH. **39 Bom. 716 = 28 I.C 938 = 17 Bom. L.R. 293.**

———*Joint family — Trade — Contract — Necessary parties.*

The only necessary parties to a suit on a joint family business contract are the actual contracting members. Minor members who take no share in the business are not necessary parties. (*Scott*, C.J. *and Russell*, J.) LALJI NENSEY *v.* KESHOWJI. **37 Bom. 340 = 17 I.C. 193 = 14 Bom. L.R 840**

———*Joint family — Trade—Guardian — Powers of guardian—Trading family.*

A guardian cannot embark on a new trade at any rate without the sanction of the Court, so as to make the minor liable for debts. A karta of a joint Hindu family has power to manage a trade started by his ancestor, like any other family property which has descended from the ancestor. The powers of a guardian are more limited than those of a karta of a joint Hindu family. If the karta of a joint Hindu family chooses to apply under the Guardians and Wards Act, for being appointed a guardian of the minor and has been appointed as such guardian he comes under the control of the Court and can no longer exercise the power of a karta. A distinction is to be drawn between an ancestral trade and a new trade started after the death of the ancestor by the Manager of the family, and not one between the same line of business and a new line of business. (*N. R. Chatterjee and Newbould*, JJ.). KRISHNADHAN BANERJI *v.* SANYASI CHARAN MANDAL. **23 C.W.N. 500 = 51 I.C. 567 = 29 C L.J. 280.**

———*Joint family—Trade—Minor members—Liability.*

A minor member of a joint Hindu family carrying on an ancestral trade is not personally liable for partnership debts. His liability is limited to his share in the trade assets. (*Chatterjee and Smither*, JJ.) KHETRA MOHANPODDAR *v.* ASWANI KUMAR SHAH. **45 I.C. 667 = 22 C.W.N. 488.**

———*Joint family—Trade—Minor members—Position of.*

A Hindu infant who on the death of his father became entitled to an interest in joint family business does not necessarily become a partner on the business. His liability should be limited to his share in the assets of the business. 26 Cal. 349, Foll. (*Holmwood and Chapman*, JJ.) ANATH BANDHU *v.* BIPIN BEHARI. **19 I.C. 6.**

———*Joint family — Trade—Manager—Powers of.*

A person carrying on a family banking business as Manager can not only enter into contracts and give discharge so as to bind his co-parceners but may also sue and be sued in his own name without the others being made parties to the suit. (*Carnduff*, J.) GANPAT *v.* BALAMUKUND. **13 I.C. 206.**

———*Joint family—Trade—New business started by Karta—Right of Karta to raise money on joint property.*

Where a new business is started by the Karta of a family and it is for the benefit of the members of the family the joint property is liable for the payment of any money that has been borrowed by the Karta for such business. (*Broadway and Zafar Ali*, JJ.) CHALA RAM *v.* KISHEN CHAND. **1923 Lah. 462 (2).**

———*Joint family—Trade—Presumption—Business of a member.*

There is no presumption that a business carried on by a member of the joint Hindu family is a joint family business. The onus is upon the plff. to prove that the Manager of is joint Hindu family was a partner not in his

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individual capacity, but as a representative of the whole joint Hindu family. (*Scott-Smith and Abdul Raoof, JJ.*) SANT RAM *v.* KEDAR NATH. 56 I.C. 469=2 Lah L.J. 747.

———*Joint family—Trade—Minor members—Liability.*

Debt contracted by adult members of a joint Hindu family which carried on a trade does not bind the minor members unless it is shown to be for the benefit. (*Rattigan, C.J.*) RAM DHAN DAS *v* RAMJI DAS. 50 I.C. 218.

———*Joint family—Trade—Minors—Liability of—Assets of business.*

The presumption was that the two brothers were both partners in the firm which was carried on by the adult brother and in such cases the presumption is that they are members of a joint Hindu family. There was nothing in the circumstances of the case to draw a distinction between the assets of the firm and the other property of the family so far as the liability of the minor deft. was concerned. (*Rattigan and Chevis, JJ.*) WADHAWA SHAH *v.* RATTAN CHAND 189 P L R 1915= 30 I.C. 813=126 P.W.R. 1915.

———*Joint family—Trade—Shop in name of two brothers.*

It does not follow from the presumption of jointness in Hindu families that all the properties owned or shops started by individual members of the family belong to the whole family jointly. (*Scott-Smith, J.*) HARISHANKER *v.* BABU RAM. 241 P.W.R. 1913= 18 I.C. 756=78 P.L.R. 1913.

———*Joint family—Trade—Shop in name of individual member—Liability of others.*

Where two out of five members of a joint Hindu family exclusively started a shop in their individual names in a village other than the ancestral one. *Held*, that the other members are not liable to pay the price of goods supplied to that shop. (*Robertson and Beadon, JJ.*) SURAJ KUMAR *v.* BALDEO DAS. 48 P.R 1913=23 P.W.R. 1913= 18 I.C, 701=60 P.L.R. 1913.

———*Joint family—Trade—Contract with managing members — Suit by whom to be brought—Parties, other members if necessary.*

The managing members of a trading firm with whom the contract is made are entitled to sue for compensation for breach of contract without joining other members in the suit. (*Rattigan and Chevis, JJ.*) BADRIDAS *v.* SANTA SINGH. 3 P R 1912=41 P.W R. 1912= 18 I.C. 873=87 P L R. 1912.

———*Joint family — Trade — Liability of minors.*

Where monies are borrowed for the purpose of an ancestral business carried on by the members of the joint family, all the members of the family, including minors are liable for the repayment of such sums, to the extent of their share in the whole family property as distinguished from their shares in the assets of the business. (*Abdur Rahim, O.C.J. and Odgers, J.*) THAMMANINA CHINA LAKSHMINARASIMHAM *v.* AKARAPU VENKANNA CINNAH.

38 M.L.J. 55=11 L.W. 55=27 M L.T. 83= 33 I.C. 64=(1920) M.W.N. 112.

———*Joint family — Trade — Liability of members.*

Semble.—In a suit by a creditor to recover a debt contracted by the Manager of a joint Hindu family carrying on a trade, the onus is on the member of the family to show the debt is not binding on them. 34 Bom. 72, Ref. (*Wallis, C.J. and Ayling, J.*) GURUSWAMI NADAN *v.* GOPALASWAMI ODYAR.

42 Mad. 629=36 M L.J. 563=9 L.W. 547= 60 I.C. 775=(1919) M.W.N. 301.

———*Joint family—Trade — Liability of minor son for debts contracted during his minority—Contract Act, Ss. 247 and 248.*

Chief Justice and Spencer, J. (*Sadasiva Aiyar, J., dissenting*) :—If in a joint Hindu family having trade for its occupation, the father starts a business and incurs debts for the conduct of such business during his son's minority, the son is not personally liable for such debts though he continued to take an active part in the business after he became a major. The son on attaining majority, cannot be adjudicated an insolvent in respect of such debts. The rights of the minor do not depend on any agreement on his part or on his admission by the other members of the family to the benefits of the partnership and Ss. 247 and 248 of the Contract Act are not applicable. Per *Sadasiva Aiyar, J.* :—Both under the Hindu Law and under S. 248 of the Contract Act, the son on attaining majority became personally liable for the debts in question. (*Wallis, C J., Sadasiva Aiyar and Spencer, JJ.*) THE OFFICIAL ASSIGNEE OF MADRAS *v.* PALANIAPPA CHETTY. 41 Mad. 824= 35 M L J 473=8 L W 880= (1918) M.W.N. 721=49 I.C. 220= 24 M L T. 216.

[On Appeal from 20 M.L.T. 565= 36 I.C. 787=(1917) M.W.N. 160.]

———*Joint family—Trade—Minors - Liability for debts of manager.*

Debts contracted by the Manager of a joint Hindu family for the purpose of a trade carried on by him for the benefit of the family in partnership with a stranger are payable out of a minor's interest in the joint family property. The liability of the minor member is not restricted to his share in the partnership assets under S 247 of the Contract Act but arises under the Hindu Law and the joint family property is liable for the debt. 35 Mad. 692, Dist. (*Seshagiri Aiyar and Napier, JJ.*) DHULIPALLAH KANAKAM *v* NANDIPALLI VENKATARAJU. (1918) M W.N. 45= 43 I C. 76=7 L.W. 218

———*Joint family—Trade—Manager—Power to continue a joint family trade—Trading case*

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—Trade debts—Liability of minors—Ancestral family property and trade assets.

The managing member of a joint family whose members belong to a caste whose caste-calling is trade in certain articles is justified in continuing that caste-calling for the benefit of the family. The mother who is also guardian of a minor can continue such joint family business in which the minor was already interested. In the case of a trading caste or family the ordinary presumption is that the entire family credit and all the joint family properties are embarked in the business. 5 L.W. 341, Foll; 35 Mad. 692, Dist. There is distinction in principle between an ancestral trade carried on by the father and that carried on by the managing member. (*Ayling and Sadasiva Iyer*, JJ.) MALAIPERUMAL CHETTIAR *v.* ARUNACHALA CHETTIAR. **41 I C 224 = 6 L.W. 417.**

———*Joint family—Trade — Liability of minor members.*

If money was borrowed for an ancestral business carried on by the members of a joint family all the members of the family including the minors are liable for such money to the extent of their share in the family property and not to the extent of their share in the assets of the business because the family property is swelled by the profits of the business carried on the credit of the entire property of the family. 35 Mad. 692; 34 Bom. 72, Rel; 22 Mad. 166, Dist. (*Abdur Rahim and Srinivasa Iyengar*, JJ.) MUTHAYA PILLAI *v* TINNEVELLY SOUTH INDIAN BANK. **37 I.C. 230 = 5 L W. 341.**

———*Joint family—Trade.*

Minor is liable to the extent of his share in the family property. 5 L.W. 341; 37 I.C. 230. Per *Phillips*, J.—The minor is personally liable for the trade debts incurred since he became a partner. (*Abdur Rahim and Phillips*, JJ.) PALANIAPPA CHETTY *v.* OFFICIAL ASSIGNEE OF MADRAS. **20 M.L T. 565 = 36 I C. 787 = (1917) M.W.N. 160.**

———*Joint family—Trade — Liability of members.*

All the members of a joint Hindu family carrying on a trade in the family name are liable on a promissory note executed by the manager of the business for a debt due by it to the promisee or his assignee. (*Coutts Trotter*, J.) AYYASAWMI PILLAI *v.* GURUSAWMI NAICKEN. **33 I.C. 691 = 3 L W 468.**

[Also 28 I.C 345.]

———*Joint family—Trade—Widow's power to conduct.*

A trade and its goodwill are valuable property and a widow is not bound to wind up a family trade in all cases without regard to circumstances. Debts incurred to carry on the family business are debts of necessity binding a reversioner. (*Sadasiva Aiyar and Napier*, JJ.) THE SOUTH INDIAN EXPORT CO., LTD. *v.* T. SUBBIER. **28 M.L.J. 696 = 29 I C. 957 = (1915) M W.N. 488.**

———*Joint family—Trade—Presumption—Assets—Nattukottai Chetti.*

The presumption among the Nattukkottai Chettis is that they make no distinction between trade assets and joint family properties. It may, however, be rebutted by showing that proprietary rights of individual members have been kept distinct from the common trade assets. 27 M.L.J. 631; 27 M L.J. 654, Foll. (*Spencer and Seshagiri Iyer*, JJ.) BANK OF BENGAL *v.* RAMANADHAN CHETTY. **28 I.C. 260 = (1915) M.W.N. 180.**

——*Joint family—Trade—Minor—Liability of—Assets of the minor.*

Unlike the case of the minor who is a member of the joint family carrying on business, a minor who is the sole proprietor is not bound by the acts of his guardian unless they are done for his benefit, where the business of a minor is carried on by his mother as guardian through an agent. The creditors have no direct recourse against the minor or his estate and can proceed against the assets only in so far as the guardian is entitled to indemnity out of the assets and even here only where the guardian acted properly and not otherwise. The creditor cannot recover if the guardian has given power to an agent to draw bills in favour of this agent and is deceived by the fraud of the agent and has to account to the minor himself. 3 Cal. 738; 5 W. R. 797, Rel. *Wallis and Munro*, JJ.) SANKA KRISHNA MURTHI *v.* BANK OF BURMAH LTD **35 Mad. 692 = (1911) 1 M W N 385 = 21 M.L.J. 620 = 11 I C. 79 = 11 M.L.T. 56.**

———*Joint family—Trade—Minor—Liability of.*

A minor member of a joint family upon whom an ancestral trade has descended is bound by all acts of the manager of the adult members acting as managers which are necessary to carry on that trade. But where a business is not ancestral a minor member is not necessarily interested in a business carried on by the major members of the joint family of which he is a member. A minor member of a joint family cannot become a partner in an ancestral business unless he takes active steps to be recognised as such after attaining majority. A minor member of a joint family firm can only be liable to the extent of the assets and income of the business. (*Drake-Brockman*, J.C. *and Findlay*, A J.C.) PADAMRAJ *v.* GOPIKISEN. **55 I C. 129.**

———*Joint family—Trade—Presumption.*

There is no presumption that a joint family has capital for money-lending and no presumption that a business carried on by a co-parcener family business. (*Drake-Brockman*, J.C.) VITHAL *v.* SIVA. **15 I.C. 933 = 8 N.L.R. 82.**

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———*Joint family — Trade—Debts—Creditor's rights.*

The debt incurred by a manager of the joint family is binding on all the members when it is contracted for carrying on business or trade on which the family exists, as he has got an implied authority and the creditors are not bound to inquire into its necessity. (*Lindsay*, J.C.) GHANSHYAM DAS *v.* HARDEI.
32 I.C. 880=2 O.L.J. 562.

———*Joint family — Trade— Manager—Power to borrow—Necessity.*

Where a joint Hindu family carries on a business or profession and maintains itself by means of it the manager has an implied authority to contract debts for its purposes. The creditor is not bound to inquire into the finances of the business as long as the debts are required for the business. The power to contract debts is incidental to the carrying on of the business from which the family derives its means of subsistence and support and the whole family property will be liable for the debts. (*Kanhaiya Lal*, A.J.C.) BABA DIN *v.* HANSRAJ. 2 O.L.J. 85=27 I.C. 567=18 O.C. 84.

———*Joint family—Trade — Liability of other members.*

The manager of a joint family has an implied authority to do whatever is best for all concerned and the test in each case is to see whether it was a transaction into which a prudent owner would enter in order to benefit the estate. The manager of a joint Hindu family may embark in money lending business in the ordinary course of management and for that purpose sell a property which brings no income to the family. But the shebait of an idol may not do so, for it is not in the ordinary course of management of the debutter property, and must therefore, amount to a breach of trust. 39 All. 437; 40 Mad. 709; 48 Cal. 797, Ref. (*Das and Adami*, JJ.) SHEOTHAL SINGH *v.* ARJUN DAS. 1 P.L.T. 136=56 I.C. 879=1920 Pat. 165.

———*Joint family—Trade—Assets.*

Joint family property is not part of the assets of the joint family firm. 8 L.B.R. 112. (*Ormond*, J.) O. A. M. K. CHETTY FIRM *v.* K. P. CHETTY FIRM. 31 I.C. 271=8 L.B.R. 112.

———*Joint family—Trade — Liability of co-parceners.*

In case of a joint Hindu family firm, rights of co-parceners cannot be dealt with exclusively with reference to the Contract Act. 5 All. 38, Foll. (*Pratt*, J.C. *and Hayward*, A.J.C.) TAPOO MAL *v.* MENGU MAL. 10 I.C. 978=4 S.L.R. 260.

Joint family business.

See CONTRACT ACT, SS. 239—261.

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Legal Necessity.

See HINDU LAW.
(1) ALIENATION.
(2) DEBTS.
(3) JOINT FAMILY.

Legitimacy.

See HINDU LAW—SUCCESSION—ILLEGITIMATE SON.

———*Legitimacy—Connection between man and woman, nature of—Burden of proof.*

Where the connection between a man and a woman is permanent, it is presumed to be not adulterous, and the burden of proving that the connection is adulterous and involves criminal offence lies on him who raises the contention. (*Sadasiva Aiyar and Napier*, JJ.) PALANI AMMAL *v.* KUPPUSWAMI GOUNDAN.
62 I.C. 769=13 L.W. 511.

Limited owner.

———*Limited owner—Compromise—Antecedent title, recognition of—Compromise not an alienation.*

A compromise of disputed claim to property arrived at with a limited owner is not an alienation by her. The compromise recognises and gives effect to the antecedent title of the parties and is binding on them. (*Ameer Ali.*) KHUNNI LAL *v.* GOBIND KRISHNA NARAIN.
33 All. 356=38 I.A. 57=15 C.W.N. 545=8 A.L.J. 552=13 C.L.J. 575=13 Bom. L.R. 427=10 M.L.T. 25=(1911) 1 M.W.N. 432=10 I.C. 477=21 M.L.J. 645 (P.C.).
(On Appeal from 29 All. 487).

———*Limited owner— Compromise—Effect on reversioner.*

Where a Hindu lady in possession of her father's estate as limited owner compromises a suit instituted by the next reversioner without raising any defence and even before a guardian ad-litem of her minor son was appointed, and as a result of that compromise gives away half of the estate absolutely to the plff., in the suit, the compromise can in no sense be said to be a settlement of a *bona fide* family suit and it is not binding on the ultimate reversioner. (*Ryves and Gokul Prasad*, JJ.) NARAIN SINGH *v.* RAJKUMAR SINGH.
20 A.L.J. 251=44 A. 428=L.R. 3 A. 229=1922 All. 217.

———*Limited owner—Execution of decree—Invalid surrender.*

Where a surrender by a limited owner in favour of the reversioner is found fictitious or ineffectual, her life interest could be sold in execution of a decree against her. (*Gokul Prasad and Stuart*, JJ.) BHUP SINGH *v.* JHAMMAN SINGH. 4 U.P.L.R. (All.) 21=1922 All. 169

———*Limited owner.— Woman's estate—Power to bind the estate.*

Where a Hindu widow or other female limited owner borrows money for the purpose

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of the estate on a simple bond and subsequently executes a mortgage, giving the security of estate, for the payment of the debt, it is within her power to bind the estate in this way. (*Tudball and Sulaiman, JJ.*) BHUP SINGH *v.* JHAMMAN. **64 I C. 630=19 A.L J. 881.**

———*Limited owner—Powers of—Lease of land.*

A Hindu female limited owner cannot give permission to plant groves on a piece of land without fixing the rent so as to make it binding on the reversioners. (*Rafique, J.*) JUGAL KISHORE *v.* GOMTI KUAR. **25 I.C. 280.**

———*Limited owner—Nature of estate—Daughter dying after decree—Right to execute.*

There is no distinction between a daughter in possession of her father's estate and widow in possession of her husband's estate; where a daughter obtains a decree for possession of her father's estate and dies before execution the next heir of her father can execute it. (*Richards, C.J. and Banerji, J.*) MAHADEO SINGH *v.* SHEO KARAN SINGH.
35 All. 481=21 I C. 464=11 A L J. 796.

———*Limited owner—Decree against.*

Whether a decree against limited owner binds the estate or not, depends on the frame of the suit, the judgment and the decree. (*Mookerjee and Newbould, JJ.*) PUNIT NARAYAN SINGH *v.* RAJ KUNARI GODAVARI KOERI. **32 I.C. 580= 22 C.L J. 400.**

———*Limited owner—Compromise—Alienation—Widow—Necessity—Perpetual lease.*

In suits to set aside alienation for want of legal necessity the test is, whether the purpose for which the alienation was made was proper or legitimate. The propriety of the transaction depends on the circumstances of each case and necessity is only one of the tests of propriety. The validity of a lease by way of family settlement is not affected by the circumstances that the grantor of the lease was a limited owner in possession with qualified powers of alienation. (*Jenkins, C.J., Mookerji and Holmwood, JJ.*) UPENDRA NATH BOSE *v.* BINDESHRI PRASAD. **20 C.W.N. 210=32 I.C. 468= 22 C.L.J. 452.**

———*Limited owner—Waste—Relinquishment.*

A relinquishment by daughters of their rights of inheritance to their father's estate does not amount to waste of the original estate to justify the Court in considering whether the estate should be taken out of their hands. A Hindu lady has an absolute right to alienate the estate for her life to an outsider. That will not entitle the reversioner to come in and plead waste and insist on the estate being brought into possession by the Court. (*Chitty and Walmsley, JJ.*) SARABJIT PRATAB BAHADUR *v.* BHAGWAT KOERI. **30 I C. 578.**

———*Limited owner—Decree against—Execution against whole estate—Necessity—Proof of.*

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In execution of a personal decree against a Hindu woman with a limited interest in the estate obtained upon allegations that the debt was incurred for legal necessities, the decree-holder in order to make the estate liable is entitled to adduce evidence to prove the necessities for which the debt was contracted. (*Sharfuddin and Coxe, JJ.*) GAJADHAR PERSHAD SAHU *v.* BINDU BASHANI PERSHAD. **29 I.C. 181.**

———*Limited owner—Gift—What passes.*

A limited owner such as a widow or daughter cannot by any act of gift confer greater rights than she herself possesses. (*Kensington and Rattigan, JJ.*) KISHUN DEVI *v.* SHIB SARAN. **77 P R. 1914=25 I.C. 697=217 P.L.R. 1915.**

———*Limited owner—Mother inheriting to son—Surrender to her grandsons on latter undertaking to discharge debts—Two distinct partial surrenders—Validity.*

Where a mother inheriting to her son transferred in 1870 a portion of the estate to her two daughters and in 1890 transferred the other portion to her daughter's sons on the latter undertaking to discharge her debts, *held*, that as the mother had parted with the whole of the interest, the surrender, being *bona fide* one and not a device to partition the estate, is good though it was effected by two distinct acts. *Quære.*—Whether the alienations made by a widow for purposes not binding on the estate are affected by the surrender. (*Wallis, C.J. and Oldfield, J.*) VENKATA RAJAGOPALA SURYA RAO *v.* VENKATA SURYANARAYANA. **14 L.W. 29=41 M.L J 208=64 I.C. 488= (1921) M.W.N. 431.**

———*Limited owner—Partition—Daughters—Rights of survivorship if extinguished.*

Where daughters succeeding to the father's estate, partition the properties among themselves they must be deemed to have given up their right to succeed by survivorship to the estate of the sister who may die subsequently. (*Sadasiva Iyer and Napier, JJ.*) ALAMELU AMMAL *v.* BALU AMMAL. **16 M.L.T. 592= (1915) M.W.N. 26=26 I.C. 455=28 M.L.J. 685.**

———*Limited owner—Partition—Effect.*

Partition between limited owners consisting of mutual relinquishment of their respective life interests in portions of the estate is valid to prevent the survivor from claiming the properties relinquished. 23 M.L.J. 355=22 Mad. 522, Fol. Such relinquishment is not bad under S. 5. of the T. P. Act. (*Sadasiva Iyer and Spencer, JJ.*) SUBBAMMAL *v.* KRISHNA IYER. **22 I.C. 399=26 M.L.J. 479.**

———*Limited owner—Acquisition—Prescription—Woman's estate.*

When a Hindu woman's possession is adverse, the question of her *animus possidendi* must be either in her own right or as heir to some one else. The latter is the ordinary presumption. The stridhan heirs must specially show that

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she acquired the title by prescription and therefore it must descend to them. (*Sundara Iyer*, J.) *In re*, PRATTIPATI SESAYYA. 11 M.L.T. 261 = 15 I.C. 403 = (1912) M.W.N. 515.

———*Limited owner — Nature of estate—Woman's estate—Creation of, by agreement.*

A woman's estate can be created in favour of a female quite as much by contract of parties or by grant as by inheritance It is competent in an undivided Hindu family for a co-parcener to grant to a deceased brother's widow the share of her husband which the latter would have obtained on partition. Such an estate would be held as an ordinary widow's estate by the grantee. (*Benson and Sundara Iyer*, JJ.) MEDA VENKAMMA *v.* MITTA CHELAMIAH.
36 Mad. 494 = 12 M.L.T. 233 = 15 I.C. 17 = 23 M.L.J. 168.

———*Limited owner—Debts — Extent of liability—Decree against—Compromise decree—How far binds the reversioners.*

A limited owner is not entitled to incur debts for an object which may be beneficial but which are in its character risky. She cannot therefore force a transaction on the reversioners at the risk of the estate itself being sold for discharge of the debt. A decree compromised by a limited owner is binding on the reversioners to the same extent to which a contract of compromise by him would be binding on them. (*Benson and Sundara Iyer*, JJ.) BHOARAJA *v.* ADAPALLI SESHAYYA.
35 Mad. 550 = 12 I.C. 123 = 10 M.L.T. 179.

———*Limited owner—Acquisition — Prescription—Limited right.*

The possession of a female member of a Hindu family not entitled to take possession as heir is not necessarily the possession of a qualified owner but might confer an absolute title. (*Sankaran Nair and Ayling*, JJ.) KUPPUSWAMY *v.* SRINIVASA IYENGAR.
9 M.L.T. 445 = 10 I.C. 63 = (1911) 1 M.W.N. 315.

———*Limited owner—Acquisition—Female entitled to maintenance only—Possession long—Mutation in her name—Adverse possession—Daughter, right of, to inherit.*

Where a Hindu female though entitled to maintenance only was in possession of a share of property for a long time of forty years, mutation also being in her name and there being nothing to show that she held the property in lieu of maintenance it was held that she acquired title to it by adverse possession and after her, her daughter would inherit it. (*Macnair*, A.J.C.) KASTURI *v.* LOTE MAJOR.
56 I.C. 952 = 16 N.L.R. 221.

———*Limited owner—Survivorship—Joint limited owner—Alienation—Agreement.*

Joint limited owners may by agreement between themselves alienate the property inherited so as to defeat the right of survivorship. (*Stanyon*, A.J.C.) BALU BAI *v.* TANU BAI.
24 I.C. 808 = 10 N.L.R. 51.

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———*Limited owner—Lease by—Termination of.*

There are more ways than one by which a tenancy may determine. The limited owner has no power to grant a tenancy beyond his own life as against the reversioner and once the reversioner elects to treat the interest granted to the tenant as an interest extending only for the life-time of the grantor, then in such a case it terminates upon the death of the grantor and there is therefore nothing more to be done to terminate the tenancy. The defendant becomes a trespasser if he refuses to turn out and the reversioner is entitled to bring a suit in ejectment without giving any notice whatever. (*Dawson Miller*, C.J. *and Mullick*, J.) RAGHUBIR SINGH *v.* JETHU MAHTON.
2 P. 171 = 1922 Pat. 353 = 4 P.L.T. 396 = 1923 P. 130.

———*Limited owner—Life-tenant—Alienation by—Mortgage.*

A mortgagee from a life-tenant must prove beyond doubt that there existed necessity for the loan, and that it was of such a nature that unless the mortgage was executed grave injury would have resulted to the property. A mere mention of the existence of necessity is not conclusive. (*Das and Bucknill*, JJ). BRIJKISHORE NARAYAN *v.* HARBANS NARAYAN.
62 I.C. 611 = 2 P.L.T. 729.

———*Limited owner—Powers of—Conduct of business.*

A limited owner can alienate property for discharging debts incurred for business forming part of the estate inherited by her. (*Sharfuddin and Mullick*, JJ.) JAGARNATH PRASAD *v.* JAIKSHUN PRASAD. 3 P.L.W. 164 = 34 I.C. 378 = 1 P.L.J. 16.

Mahant.

See HINDU LAW—RELIGIOUS ENDOWMENT.

Mahant.

See HINDU LAW
(1) RELIGIOUS OFFICE.
(2) RELIGIOUS AND CHARITABLE ENDOWMENTS.

Maintenance.

ARREARS.
CHARGE.
CONCUBINE.
CO-PARCENER.
DAUGHTER.
DAUGHTER IN LAW.
DISQUALIFIED HEIR.
ILLEGITIMATE SON.
IMPARTIBLE ESTATE.
MOTHER.
PROVISION FOR.
RATE OF.

HINDU LAW—Maintenance arrears.

RIGHT TO.
SISTER.
SUIT.
WIDOW.
WIFE.

Maintenance—Arrears.

———*Maintenance—Arrears—Discretion—Demand.*

The Courts, in dealing with claims for arrears of maintenance, possess a very large discretion to grant or to withold those arrears with special reference to the urgent need and necessities of the widow. As soon as the widow satisfied the Court that she was in want at the time at which she was entitled to maintenance provided that the time is within the period of limitation, the Court might in any given case award her, arrears to that extent and that would be quite independent of any demand on her part. In other words, while a demand is allowed to be *prima facie* evidence of need on the widow's part, it is not in a demand that the right to obtain for arrears of maintenance is rooted, Nor indeed is any demand necessary. (*Beaman and Heaton*, JJ.) KARBASAPPA *v.* KALLAVA. **43 Bom. 66=47 I.C. 623=20 Bom. L.R. 823.**

———*Maintenance — Arrears — Claim for amount how determined.*

The right of Hindu widow to maintenance is one accruing from time to time according to her wants and exigencies. A widow's claim for maintenance should be regulated with reference *inter alia* to the amount of Stridhanam property which she has got. In awarding arrears of maintenance the wants and exigencies of the widow in the particular case should be considered in fixing the amount. 15 Bom. 236, Dist.; 3 Bom. 415, Foll. 2 Bom. 573: 29 I.C. 557, Rel. on. (*Scott*, C.J. *and Russel*, J.) RANGU BOI *v.* SINHAJI RAMACHANDRA KULKARNI. **36 Bom. 383=14 I.C. 821=14 Bom. L.R. 267.**

———*Maintenance—Arrears—Right to.*

A Hindu widow in order to establish her right to arrears of maintenance need not prove demand and refusal. (*Beaman and Hayward*, JJ.) PARVATHI BAI BHAGIRATH *v.* CHATRU LIMBAYI. **36 Bom. 131=12 I.C. 708=13 Bom. L.R. 1023.**

———*Maintenance — Arrears — Delay in suing—Demand.*

A Hindu widow can claim arrears of maintenance at a reasonable rate, regard being had to the status of her deceased husband and to the value of the property left by him and a demand for such arrears and refusal to pay need not be proved to sustain a suit. (*Rattigan*, C.J. *and Abdul Raoof*, J.) MUSSAMMAT BHOLI BAI *v* MUSSAMMAT CHIMNI BAI. **147 P.R. 1919=55 I.C. 2=83 P.W.R. 1920.**

———*Maintenance — Arrears — Widow's right to.*

HINDU LAW—Maintenance—Charge.

A widow is entitled to claim arrears of maintenance. The maintenance awarded need not be a charge on the whole family property, and a personal decree should not ordinarily be passed against the defendants. (*Sankaran Nair and Spencer*, JJ.) MANICKA MUDALIAR *v.* SOUBAGIA AMMAL. **28 I.C. 897=27 M.L.J. 291.**

———*Maintenance — Arrears — Right of widow.*

Neither wrongful withholding nor demand is necessary for a widow to claim arrears. Arrears will be refused only where the persons liable had justifiable ground for inferring that the claim had been abandoned and had in consequence not set aside, any portion of the income to meet the claim. 24 Mad. 197, Foll. (*Wallis*, J.) PUSHPAVALI THAYARAMMAL *v.* RAGHAVIAH CHETTY. **23 I.C. 413=16 M.L.T. 95.**

———*Maintenance — Arrears — Waiver of right to arrears of maintenance.*

Waiver of right to arrears of maintenance cannot be inferred from separate residences. There must be justifiable grounds for the deft's belief that the plff. had abandoned her right to have maintenance and the deft, must in consequence have not set aside any portion of the income to meet such claim, Removal of the widow from the husband's home by her relations is not by itself sufficient to establish waiver. (*Benson and Sundara Aiyar*, JJ.) RANGATHAI *v.* NELLI MUNUSWAMI. **(1911) 1 M.W.N. 322=9 M.L.T. 461=10 I.C. 110=21 M.L.J. 706.**

———*Maintenance — Arrears — Right to—Demand unnecessary—Waiver of right—Burden of proof.*

To entitle a widow to arrears of maintenance no demand is necessary. Where deft, pleads waiver of a widow's right to arrears of maintenance he must show that the plff. agreed to waive her right or led the debtor to believe as a reasonable man that she would not claim arrears. 24 Mad 147, Ref. (*Benson and Sundara Aiyar*, JJ.) SUBRAMANIA AIYER *v.* MUTHAMMAL. **21 M.L.J. 482=(1911) 1 M.W.N. 200=9 I.C. 614=9 M.L.T. 316.**

Maintenance—Charge.

———*Maintenance—Charge — Co-parceners widows in possession—Suit by surviving member without offer of maintenance—Mesne profits disallowance of—Fixing of maintenance by Court—Charge on properties decreed.*

Under the family custom of the Dharbanga Raj, babuana (maintenance) grants made by the Raja do not descend to female heirs of the descendants of the grantee. Where such a grantee died leaving two sons who divided the properties granted and subsequently one of the sons died leaving his own widow, whereupon the other son claimed the properties of the deceased to the exclusion of the widow. *Held*, that the properties granted vested in the sur-

HINDU LAW—Maintenance—Charge.

viving son, the widow being excluded under the family custom and he was entitled to recover possession. The widow was however entitled to suitable maintenance and the plff. not having made an offer of a substantial maintenance to the widow, was not entitled to the mesne profits for the period she was in possession. The Privy Council fixed the amount of maintenance and charged it on the properties decreed to plaintiff. (*John Edge.*) EKRADESHWAR SINGH *v.* GANESHWARI BAHUASIN. **42 Cal. 582 = 41 I.A. 275 = 18 C.W.N. 1249 = 27 M L J. 373 = 18 M.L.T. 382 = 1 L W. 863 = (1914) M.W N. 807 = 12 A L J. 1217 = 21 C.L.J. 9 = 17 Bom L R 18 = 25 I.C. 417 (P.C.).**

[On Appeal from 3 I.C. 207]

———*Maintenance—Charge—Widow's right—Decree—Arrangement—Liability of heirs.*

A claim for maintenance by a female member of a joint family is a personal claim against members of the family. It can only be made a charge on the family property by an order of the Court or by a properly executed document. A transferee of joint property from the properly authorised member of a joint family takes that property free of any claims to maintenance by family. When a person who is personally bound as heir to maintain a widow is allowed by the Court to recover property from the widow he must in equity secure the widow's right to maintenance. 18 Bom. 452, Rel. (*Macleod*, J.C.) PARVATI DEVANNA *v.* SRINIVAS. **55 I.C. 531 = 22 Bom. L.R. 110.**

———*Maintenance—Charge—Widow—Alienation by husband for his maintenance during illness.*

The right of a Hindu widow to maintenance by her husband in his lifetime or to a charge upon his property depends on his power of alienation for a family necessity. A gift by a deceased Hindu of his property to another who has been maintaining and nursing him, in consideration of past and future services is an alienation for family necessity and his widow cannot claim to charge that property for her maintenance. (*Sanderson*, C.J. *and Newbould*, J.) KANTA MOHINI DASI *v.* NANDCHORA SOBA. **35 I.C. 566.**

———*Maintenance—Charge on husband's estate—Bona fide purchaser for value.*

The right of a Hindu widow to a charge on her husband's estate in respect of her maintenance may be lost by a transfer made for legal necessity or for a purpose binding upon the family. In that case the question of notice to the purchaser is immaterial. Even a transferee who takes with a notice of the claim would hold it free from it. Where the property is limited the transferee is bound to enquire whether there is any claim for maintenance or residence, and his failure to do so would be

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notice of the claim. 2 B. 494, Rel. (*Abdul Raoof and Martineau*, JJ.) BHAGAT RAM *v.* MT. SAHIB DEVI. **3 Lah. 55 = 21 P.W.R. 1922 = 1922 Lah. 278.**

———*Maintenance—Charge—Widow's right—Bona fide purchaser for value.*

The right of a Hindu widow to maintenance is not a charge upon the estate of her deceased husband unless and until it is fixed and charged upon the estate by a decree or by agreement. If such estate has been alienated and is in the hands of a *bona fide* transferee, the widow cannot follow the property even though the transferee had notice of the widow's claim for maintenance. 4 All. 296 : 22 All. 326 ; 24 All. 160, Foll. (*Scott-Smith*, J.) DAULAT RAM *v.* CHAMPA. **2 U.P.L.R (Lah.) 50 = 85 I.C. 28 = 32 P.W.R. 1920.**

———*Maintenance—Charge—Simple money decree against husband's estate—Priority.*

Generally, in the administration of a Hindu's estate binding debts would take precedence over mere claims for maintenance or residence on the part of the female members of the family, but if by the time a debt is sought to be recovered from a family property a claim for maintenance has by decree of Court been made a charge on that property, the charge will take precedence over the debt. 27 Mad. 45 ; 22 Mad. 305 ; 25 I.C. 759 ; 4 All. 296 and 5 All. 367, Ref. (*Oldfield and Seshagiri Aiyar*, JJ). SOMASUNDARAM CHETTY *v.* UNNAMALAI AMMAL. **43 Mad. 800 = 28 M L T. 317 = 39 M L J. 179 = (1920) M.W N. 458 = 59 I.C 898 = 12 L.W. 163.**

———*Maintenance — Charge — Decree — Charging specified items of family property.*

A widow has no charge on the whole or any specified item of the property till the decree declares it. Where however a decree makes it a charge on the joint family property and confines the charge to certain items of such property she can realise the arrears of maintenance due to her by attachment and the sale of the properties so charged in execution of the decree. (*Abdur Rahim and Kumaraswami Sastri*, JJ.) SOWBAGIA AMMAL *v.* MANICKA MUDALIAR. **33 M.L.J. 601 = (1917) M.W.N. 782 = 22 M.L.T 386 = 42 I.C. 975 = 6 L.W. 701.**

———*Maintenance — Charge — Widow — Charge on property.*

A Hindu widow can get her husband's estate charged with her maintenance, but she must make an assertion of her right. This right can be exercised against persons other than the husband or son, if they are possessed of family property in which her husband has a share. 12 W. R. (O.C.) 95 ; 17 W.R. 488, Note ; 1 All. 262 ; 28 All. 655 ; 27 Cal. 194 ; 4 All. 296 ; All. 367 ; 2 Bom. 494 ; 10 Cal. 1095 ; 12 Bom. H.C.R. 69 at 71 ; 2 Agra Rep. 42 ; 4 B.H.C.R. (A.C.J.) 78 ; 9 B.H.C.R. 116. Foll. In a suit by a Hindu widow for a declaration that she

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has a charge for maintenance on certain property, the co-widow is not a necessary party. A purchaser joining in the effort of defeating the maintenance right of a widow ie, under certain circumstances, himself liable to the charge. 3 Cal 198. (P.C.), Ref. to. (*Tyabji and Spencer*, JJ.) KRISHNA PATTER *v.* SINNAPONNU. **25 I.C. 759=16 M.L.T. 551.**

———*Maintenance — Charge — Decree in terms of award—Award creating charge—Execution personally against judgment-debtor.*

Where a maintenance decree was passed in terms of an award which created a charge upon immoveable property for the payment of maintenance the decree can be executed personally against the judgment-debtors without seeking to bring the property charged to sale. (*Mulick and Thornhill*, JJ.) MAHAMAYYA PRASAD SINHA *v.* SAKHDAI KOER. **46 I.C. 169.**

Maintenance—Concubine.

———*Maintenance — Concubine—Right to avaruddha Stree—Continuous keeping.*

A continuously kept concubine of a deceased Hindu is entitled to claim maintenance from his estate, even though she had, prior to her cohabitation with the deceased, been living with another and had several children. 10 B. H.C.R. 381 ; 12 Bom. H.C.R. 229 ; 12 B. 26 ; 26 B. 163 Ref. (*Shah*, A.C.J. *and Crump*, J.) BAI MONGHIBAI *v* BAI NAGUBAI.
47 Bom. 403=24 Bom. L.R. 1009=1923 Bom. 130.

———*Maintenance — Concubine—Brahmin woman marrying sudra.*

A Brahmin woman marrying a *sudra* is not entitled to maintenance as *dasi* or kept mistress of her husband unless her connection with him has been continuous. 1 Bom. 97 ; 26 Bom. 163. Rel. A contract to pay maintence to such wife is unlawful and opposed to public policy and thus cannot be enforced, according to Hindu Law. (*Chandavarkar and Batchelor*, JJ.) BAI CASHI *v.* JAMNADAS MANSUKH.
16 I.C. 133=14 Bom. L.R. 547.

———*Maintenance—Concubine.*

A permanently kept conbubine is entitled to maintenance from the family property of the person keeping her after the death of her paramour. 20 M.L.J. 350 ; 10 B.H.C.R. 381 ; 12 B.H.C.R. 229 ; 12 Bom. 26 ; 26 Bom. 163 ; 23 Mad. 282, Foll. (*Abdur Rahim and Srinivasa Aiyangar*, JJ.) PANCHAPAKESA ODAYAN *v.* KANAKA AMMAL. **6 L.W. 408=42 I.C. 344=33 M.L.J. 455.**

———*Maintenance—Concubine of deceased co-parcener.*

The concubine of a deceased co-parcener has no right of residence in the family house though she may have a right to be maintained out of assets of the deceased co-parcener. 26 B. 163 ; 12 B.H.C.R. 229, Ref. (*Batten*, J.C.) LALA BEHARI LAL *v.* MT. ACHRAJ KUNWAR.
68 I.C. 395 (1).

HINDU LAW—Maintenance—Daughter-in-law.

———*Maintenance—Concubine — Rights of —Agreement by widow—Consideration.*

Under the Hindu Law a concubine who had lived up to the time of his death with a Hindu is entitled to maintenance from his estate in the hands of his widow. This right however does not extend to the case of an adulterous connection 10 Bom. H.C.R. 381; 26 Bom. 163, referred. If the widow agrees to maintain a woman whose connection with her husband was being adulterous, it is a promise unsupported by consideration. (*Daniels*, A.J.C.) MUSSAMMAT CHANDRA KUNWAR *v.* MUSSAMMAT RUKMIN. **9 O.L.J. 60=(1922) Oudh 27.**

Maintenance—Co-parcener.

———*Maintenance — Co-parcener — Joint family—Rights of members to—Limit of.*

In a Mitakshara Hindu family junior members down to the third generation from the head of the family have a co-parcenary right by birth in the ancestral property and this co-parcenary right carries with it the inchoate right to raise an action of partition and until partition a right to maintenance. The right to maintenance begins when co-parcenary begins and ends where co-parcenary ceases. (*Lord Dunedn*) GANGADHAR RAM RAO *v.* RAJA OF PITHAPUR. **41 Mad. 778=35 M.L.J. 392=24 M.L.T. 276=16 A.L.J. 833=28 C.L.J. 428=5 Pat. L.W. 227=20 Bom. L.R. 1056=23 C.W.N. 173=(1918) M.W.N. 922=47 I.C. 354=45 I.A. 148 (P.C.)=[On Appeal from 39 Mad. 396=28 M.L.J. 624=29 I.C. 356=(1915) M.W.N. 869.]**

Maintenance—Daughter.

———*Maintenance—Daughter—Charge.*

A married but unprovided—for daughter, succeeding as heir to her father can charge her father's property for her maintenance and she is not bound to hand over the property undivided, after her death. Evidently the rule applies if she has been kept out of possession. 23 Bom. 291, Diss. (*Miller and Sadasiva Iyer*, JJ.) GUDIMITLA VENKATARAZU *v* BOLLOZU KOTTAYA. **23 M.L.J. 228=12 M.L.T. 280=16 I.C. 139=(1912) M.W.N. 861.**

———*Maintenance — Daughter — Granddaughter.*

A daughter's daughter in a Mitakshara family has not any legal claim for maintenance from the estate left by her maternal grandfather. (*Sharfuddin and Roe*, JJ.) NARAIN BATI KUNWARI *v.* RAMDHARI SINGH.
20 C.W.N. 734=1 Pat. L.J. 81=34 I.C. 277=3 Pat. L.W. 377.

Maintenance—Daughter-in-law.

———*Maintenance—Daughter-in-law—Right to get maintenance, from husband's family—extent of.*

A widowed daughter-in-law has no legal right to maintenance as against the self-acquired

HINDU LAW—Maintenance — Daughter-in-law.

property of her father-in-law, if her husband died during the lifetime of her father-in-law. 2 Beng. L. R. (A. C. J.) 15; 37 M. 396 Ref. But although the obligation of the father-in-law to maintain his widowed daughter.in-law is only moral and not legal, when he has no ancestral assets in his hands, the position of the heir who takes his estate by inheritance is different. What was a moral obligation in respect of the father ripens into a legal obligation when the estate passes into the hands of his heirs. 11 A. 194; 29 C. 557. Ref. The plaintiff is not entitled to evade liability merely because he received the estate of his father not by inheritance but by way of gift during his lifetime. (*Mookerjee and Chotzner*, JJ.) GOPAL CHANDRA PAL *v.* KADAMBINI DASI.
73 I C. 235.

———*Maintenance — Daughter-in-law — Right, if enforceable against devisee.*

Upon the death of a son, the father has no legal obligation to maintain his daughter-in-law execept under certain circumstances. His obligation has been held to be a merely moral or an imperfect obligation which, however, ripens into a legal obligation on the part of the heir who gets his estate after his death. The daughter-in-law can legally enforce her right to maintenance as against the heir in possession of the estate of the father-in-law. *Quære*: Whether such right to maintenance can be enforced as against the devisee in possession of the estate of the father-in-law. 25 Bom. 269; 22 Mad. 305, Ref. (*N. R. Chatterjee and Beachcroft*, JJ.) INDUBALA DASI *v.* PANCHU-MANI DASI. 19 C.W.N. 1169=28 I.C. 678=
21 C.L.J. 292.

———*Maintenance—Daughter-in-law.*

The plff. sued her father-in-law for maintenance for herself and her minor son. Deft. and his deceased son (Plff's. late husband) were co-parceners in the family; there had been considerable ancestral property in the hands of deft., and the deceased, would have been entitled until partition to live with the deft., and enjoy the family income with him. *Held*, that under these circumstances the plff. was entitled to maintenance. (*Johnstone and Rattigan*, JJ.) BUDHAN *v.* RADHA KISHEN.
108 P.R. 1916=32 I.C. 33=168 P.W.R.1916.

———*Maintenance—Daughter-in-law—Joint family.*

A widowed daughter-in-law is entitled to be maintained by the father-in-law out of the joint property of her husband and the father-in-law. (*Coutts Trotter and Srinivasa Iyengar*, JJ.) THAYLAMBAL *v.* KRISHNA PATTER.
32 I.C. 955.

———*Maintenance—Daughter-in-law.*

A daughter-in-law, though not entitled to claim maintenance out of the self-acquired property of her father-in-law, is entitled to claim it after the property descends to her brother-in-law as ancestral property. (*Sankaran Nair and Spencer*, JJ.) MANIKKA MUDALIAR *v.* SOUBAGIA AMMAL. 25 I.C. 697=
27 M.L.J 291.

HINDU LAW — Maintenance—Impartibl Estate.

———*Maintenance—Daughter in-law.*

A person having no ancestral assets is not legally bound to maintain his widowed daughter-in-law. 22 Mad. 305, Ref. Where maintenance is claimed against a person not on the ground of his having got property burdened with maintenance the Court has to decide according to justice, equity and good conscience. (*Benson and Sundara Iyer*, JJ.) MEENAKSHI AMMAL *v.* P. RAMA IYER. 37 Mad. 396=
(1913) M.W.N. 40=18 M.L.T. 97=
18 I.C. 84=24 M.L.J 105.

Maintenance—Disqualified heir.

———*Maintenance — Disqualified heir — Rights of issue.*

Disqualified persons (*e.g.*,) the idiot, the blind from birth, the madman, etc., are debarred from rights of co-parcenary but are entitled to maintenance. The disqualification is a personal one preventing enjoyment and does not affect their right by birth. Children of such disqualified persons, being within the allowed degrees and not themselves stigmatised with personal defects, get by their birth the full status of co-parceners. (*Lord Dunedin.*) GANGADHARA RAMRAO *v.* RAJA OF PITTAPUR. 41 Mad. 778=45 I A. 148=
35 M.L J. 392=24 M.L T 276=
16 A.L J. 833=28 C.L J. 428=
5 Pat. L.W. 267=20 Bom L R. 1056=
33 C.W.N. 178=(1918 M.W N. 922=
47 I.C. 354 (P.C.)

[On Appeal from 39 Mad. 396=
28 M.L.J. 624=29 I C. 356=
(1915) M.W.N. 369.]

———*Maintenance — Disqualified heir — Right of patricide—Wife.*

A patricide after serving his term of punishment is entitled to be maintained out of his father's estate and his wife if chaste and his son born after the murder of his father are also entitled to maintenance. (*Imam*, J.) NILA-MADHAB MITRA *v.* JOTINDRANATH MITRA.
18 I.C. 764=17 C.W.N. 841.

Maintenance—Illegitimate son.

———*Maintenance—Illegitimate son.*

Maintenance is not a recurring right. Custom to be legally binding must be ancient certain and constant. Illegitimate children of Mahomedan concubine of Hindu father are not entitled to maintenance under Hindu Law. There is no right to maintenance from legitimate sons. (*Chevis and Le Rossignol*, JJ.) CHARANJIT SINGH *v.* AMIR ALI KHAN.
64 I.C. 892=2 Lah. 243.

Maintenance—Impartible Estate.

See HINDU LAW—IMPARTIBLE ESTATE, MAINTENANCE.

HINDU LAW—Maintenance—Mother.

Maintenance—Mother.

———*Maintenance—Mother—Step-mother.*

When there has been partition between the son and the step-son, both under Mitakshara and Dayabaga Laws the step-son is not bound to contribute for the maintenance of the step-mother. *Aliter* if both are joint. (*Rattigan and Beadon, JJ.*) BISHEN DASS *v.* MUNSA DEVI. **60 P.L.R. 1914=23 I.C. 536=47 P.R. 1914.**

———*Maintenance—Mother—Step-sons.*

Under the Mitakshara Law the right to maintenance of a mother is enforceable not against her son alone, but against the estate possessed by her husband and which is the subject of partition amongst his sons and a decree for maintenance passed both against the son and step son is proper. (*Wallis, C.J. and Seshagiri Iyer, J.*) BALATRIPURASUNDARAMMA *v.* SURYANARAYANA. **28 I.C. 849=17 M.L.T. 188.**

———*Maintenance—Mother.*

In making provision for maintenance of Hindu mother at partition maintenance ought to be provided out of the general funds and not out of the share of the sons only. (*Sundara Iyer and Sadasiva Iyer, JJ.*) SRINIVASA AIYENGAR *v.* THIRUVENGADATHAIYENGAR. **38 Mad. 556=(1913) M.W.N. 1034=15 M.L.T. 307=(1914) M.W.N. 283=23 I.C. 264=26 M.L.J. 644.**

Maintenance—Provision for.

———*Maintenance—Provision for—Annuity—Grant of.*

A grant of an annuity *Santhathi paramparyamai* does not exclude the right of the grantee's collateral heirs to succeed. It is permissible under the Hindu Law to create a charge on the property for the payment of the annual maintenances. It is called a "Nibandh or Corrody." (*Lord Phillimore, J.*) RAJA RAJESHWAR DORAI *v.* SUNDARA PANDYASAMI THEVAR. **42 Mad. 581=17 A.L.J. 153=36 M.L.J. 164=23 C.W.N. 849=29 C.L.J. 651=25 M.L.T. 409=21 Bom. L.R. 585=(1919) M.W.N. 511=49 I.C. 704=10 L.W. 322 (P.C.) [On Appeal from 27 I.C. 283=27 M.L.J. 694].**

———*Maintenance—Provision for—Incidents of—Darbhanga Raj.*

Babuana and Sobag grants are grants made by the Raja of Dharbhanga to younger sons and daughters of the Raja. Reverter to the grantor on failure of male issue in the male line of the grantee and exclusion of widows and daughters attach to the grant by family custom. The sons of the grantee are entitled to partition of the properties granted. (*Sir John Edge.*) EKRADESHWAR SINGH *v.* JANESHWARI BAHUASAIN. **42 Cal. 882=41 I.A. 275=18 C.W.N. 1249=27 M.L.J. 373=16 M.L.T. 382=1 L.W. 863=(1914) M.W.N. 807=13 A.L.J. 1217=21 C.L.J. 9=25 I.C. 417=17 Bom. L.R. 18 (P.C.) [On Appeal from 3 I.C. 207].**

HINDU LAW—Maintenance—Provision for.

———*Maintenance—Provision for — Partition of joint family properties.*

When joint property is partitioned, provision may be made for the maintenance of such female members of the family as are entitled to maintenance from the estate. (*Mookerjee and Chotzner, JJ.*) GOPAL CHANDRA PAL *v.* KADAMBINI DASI. **73 I.C. 235.**

———*Maintenance—Provision for — Malikana—Burden of proof—Assets.*

In a suit for recovery of a sum of money claimed as *Malikana* the burden lies upon the plff. in the first instance to prove the amount of the net assets of the estate, with reference to which *Malikana* is to be calculated. The burden is discharged on the production by the plff. of a judgment in a previous litigation between the parties in which it was determined that the net assets amounted approximately to a certain sum. The onus then shifts to deft., to establish that since the date of the decision in question the condition of the property had deteriorated and that the assets at the present time are smaller than at the time of the previous litigation. (*Mookerjee and Teunon, JJ*). SURENDRA NATH ROY *v.* GIRIJI NATH ROY. **15 I.C. 910=15 C.L.J. 658.**

———*Maintenance—Provision for—Grant to two widows jointly.*

An *ekrarnamah* of maintenance for two ladies provided a sum for them and after their death, half of it was to go to a son of one of them if any. *Held*, that after the death of one of them the other lady was entitled to the whole amount by survivorship, no succession certificate being needed. Even if the bond was silent on the point of interest the Court allowed it as damages for detention of money. (*Mookerjee and Carnduff, JJ.*) MATHURA PRASAD *v.* RUKMINI KOER. **13 I.C. 148=17 C.L.J. 87.**

———*Maintenance—Provision for — Husband's liability—Future maintenance.*

A provision for the future maintenance of his wife by a husband is not illegal under the Hindu Law. (*Schwabe, C.J., Coutts-Trotter and Kumaraswami Sastri, JJ.*) MADAM PILLAI *v.* BADRAKALI AMMAL. **43 Mad. 612=42 M.L.J. 410=15 L.W. 461=30 M.L.T. 274=(1922) M.W.N. 343=1922 Mad. 311 (F.B.)**

———*Maintenance — Provision for—Unambiguous language.*

Prima facie, a provision for maintenance by a grant for money allowance is temporary. Grants to be construed as permanent provisions must be supported by unambiguous language or by a course of conduct that is enjoyment by a branch for a very long time. (*Sankaran Nair and Oldfield, JJ.*) GANGADHAR RAO BAHADUR *v.* RAJA OF PITTAPUR. **(1915) M.W.N. 369=28 M.L.J. 625=29 I.C. 355=39 M. 396.**

HINDU LAW—Maintenance—Provision for.

———*Maintenance—Provision for—Absolute grant.*

An absolute alienation of joint family in lieu of maintenance is not illegal. (*Ayling and Tyabji*, JJ.) SUNDARAM AIYAR v. SUBBAMMAL. 29 I.C. 23.

———*Maintenance—Provision for—Grant to widow—Nature of estate.*

Immoveable property given for the maintenance of a widow is *prima facie* resumable on the death of the grantee. (*Spencer and Hannay* JJ.) GOVINDAMMAL v. MARIMUTHU PILLAI. 25 I.C. 582=(1914) M.W.N. 782.

———*Maintenance—Provision for.*

Compromise by a brother with his brother's widow in a suit for maintenance brought by her to the effect that she will give up her claim for maintenance if her husband's relations will give up their rights in certain villages is valid even though the lady was no party thereto. (*Wallis and Sadasiva Aiyar*, JJ.) VENKATAGIRI NAYANI VARU v. SUBBARAYALU NAYANI. 24 I.C. 491.

———*Maintenance—Provision for—Gift of limited estate in lieu.*

Property given to the widow in lieu of maintenance vests in the widow only for her lifetime and after her death devolves on husband's heirs. Property may be given to a Hindu widow as for a widow's estate by grant, or by conduct. (*Benson and Sundara Iyer*, JJ.) MEDA VENGAMMA v. MITTA CHELAMIAH. 36 Mad. 484=12 M.L.T. 393=15 I.C. 17=23 M.L.J. 168.

Maintenance—Rate of.

———*Maintenance—Rate of.*

In fixing the amount of maintenance of a Hindu widow, the circumstances of each case must be considered: such as the value of the estate and its income, the status of the deceased husband and his widow, the expenses involved by the duties which she has to discharge and the value of any separate property given to her. (*Woodroffe and Walmsley*, JJ.) KRISHNA BHAMINI v. BROJA MOHINI. 66 I.C. 38=25 C.W.N. 403.

———*Maintenance — Rate of — Circumstances.*

The amount of maintenance does not depend on the value of the family properties at the time of the death of the husband but upon the extent of the property, the position of the family, the nature of the claim alleged, the number of members of the family, and other special circumstances of each individual case and it may be varied from time to time. (*Mookerjee and Carnduff*, JJ.) SUKANSAHU v. GANGAJALI. 18 I.C. 136.

———*Maintenance—Rate of—Widow.*

A widow is entitled to suitable residence and reasonable maintenance. In fixing the rate, regard must be had for reasonable wants and her position. (*Shadi Lal and Le-Rossignol*, JJ.) KEWATI v. CHANDULAL. 36 I.C. 983=123 P.R 1916.

———*Maintenance—Rate of—Widow.*

A Hindu widow is not entitled for her maintenance to an amount equal to her husband's share in the income of the family unless the amount is so small that it would just suffice for her maintenance. (*Sadasiva Aiyar and Burn*, JJ.) VISALAKSHI AMMAL v. NARAYANASWAMI AIYER. 10 L.W. 540=53 I.C. 796=(1919) M.W.N. 878.

———*Maintenance—Rate of—Payment for a long time—Presumption.*

In fixing the amount of maintenance what is to be regarded is the condition of the estate and the number of people who have claims upon it for maintenance. Remote relations are entitled to smaller amounts of maintenance than their predecessors. 4 I. C. 302, Foll. *Semble*:—Where the same rate of maintenance has been paid for a long time in a particular family, the presumption is that it is the rate to which the members of the family are entitled. (*Wallis*, C.J. *and Seshagiri Iyer*, J.) SUGUTUR IMMIDY PEDDA CHIKKA v. SUGUTUR SAMBASADASIVA CHIKKA. 43 I.C. 655.

———*Maintenance — Rate of — If can be varied.*

An amount provided as maintenance for a member of a family is subject to be increased or decreased according to change of circumstances even though an instrument or decree is drawn embodying the arrangement 24 Bom. 386; 14 M.L.J. 389; 5 W.R. 98, *Ref.* (*Sankaran Nair and Spencer*, JJ.) VENKATAPPA NAYANIM v. THIMMA NAYANIM VARU. (1914) M.W.N. 900=27 I.C. 879=27 M.L.J. 656.

———*Maintenance—Rate of—Widow—Right of widow of co parcener.*

The amount of the widow's maintenance would be fixed by reference to the income of the family as it stood at the date of her husband's death. But the basis of calculation is the share of the husband as at the date of the suit if he were then alive and not as it was at the date of his death. (*Sankaran Nair and Spencer*, JJ.) MANIKKA MUDALIAR v. SOBAGIA AMMAL. 25 I.C. 897=27 M.L.J. 291.

———*Maintenance—Rate of—Widow.*

The principle on which the rate of maintenance for a widow is to be fixed is to see the mode of living of the family during her husband's lifetime, and the extent of the estate and then to award such sum as will enable her to live in the same degree of comfort suited to her position as widow without doing injustice to the other members of the family. So in a Vysya trading family consisting of father and son and their wives having an annual income of Rs. 12,000 and family property worth 4 lakhs, a sum of Rs. 140 a month was awarded as maintenance of the son's widow seeing such

HINDU LAW—Maintenance—Rate of.

families are disposed to save much. (*Wallis, J.*) PUSHPA VALLI THAYARAMMAL *v.* RAGHAVIAH CHETTY. 28 I.C. 413= 18 M.L.T. 98.

———*Maintenance — Rate of—Widow — Amount.*

No hard and fast rule can be laid down that a widow is entitled to a particular fraction of the income although she can in no event claim more than the income of the share which the husband would have been entitled to if a division had taken place during his lifetime. (*Benson and Sundara Aiyar, JJ.*) RANGATHAYEE *v* NELLI MUNUSWAMY. (1911) 1 M W.N. 322=9 M.L.T 461= 10 I.C. 110=21 M.L.J. 706.

———*Maintenance—Rate of—Widow*—Stridhanam.

A widow's *Stridhanam* must be considered in awarding her the amount of maintenance which is liable to be forfeited on her turning unchaste even after she has obtained a decree for the same. But the case is different with one repenting for her misdeeds, when she may be given starving maintenance as a safeguard against her leading an immoral life. In order to succeed in a case against a widow for the discontinuance of her allowance on the ground of her unchastity, plff. must not only prove unchastity, at the time but for a considerable period. (*Mitra, A. J. C.*) LAXAM BAI *v.* VISHWANATHA ROY. 58 I.C 860= 16 N.L.R. 140.

———*Maintenance—Rate of.*

The husband's will indicating his wish is a good basis for determining the amount of maintenance. 5 I.A. 55, Foll. (*Coutts and Ross, JJ.*) SRIMATI SABITRI THAKURAIN *v.* FREDRIC AMMIE SAVE. 1922 P. 38.

Maintenance—Right to.

———*Maintenance—Right to—Limits of.*

The wife, the parent and the infant child (but a grandson) are entitled to maintenance and the obligation to maintain them is an obligation attaching to the individual and is independent of there being ancestral or joint family property. (*Lord Dunedin*) GANGADAR RAMBAO *v.* RAJA OF PITTAPUR. 41 Mad. 778=33 M.L J. 392= 24 M.L T. 276=16 A L.J. 833= 26 C L.J. 428=6 Pat. L.W. 267= 20 Bom. L.R. 1056=23 C.W.N. 173= (1918) M.W.N. 922=47 I.C 854= 45 I.A. 148 (P C) [On appeal 39 Mad. 396=28 M.L J. 624= 29 I.C. 356=(1915) M.W.N. 369]

———*Maintenance—Right to.*

A member of a joint family who cannot file a suit for partition without the consent of certain members of the family is incompetent under the Hindu Law to claim maintenance out of the family property. (*Macleod, C.J. and Shah, J.*) BHUPAL *v.* TAVANAPPA. 64 I.C. 568=23 Bom. L.R. 1236.

HINDU LAW—Maintenance—Suit.

———*Maintenance—Right to—Claim under will—Liability of step-son.*

Where a Hindu lady claims maintenance under the will of her deceased husband, she can enforce the claim against the son as well as the step-son. 16 C. 758, Dist. (*Mookerjee and Chotzner, JJ.*) PULIN BEHARI DEY *v.* SATYA CHARAN DEY. 36 C L.J. 367=1923 Cal. 79.

———*Maintenance—Right to—Fluctuation.*

A right to maintenance is a recurring right, accruing from day to day. It may be extinguished or modified by a change of circumstances. (*Mookerjee and Panton, JJ.*) RATNAMALA DASI *v.* KAMAKSHYA NATHA SEN. 57 I.C. 9=31 C.L J. 351.

———*Maintenance—Right to—Co parcenary interest—Community of interest.*

Though an impartible estate may be for some purposes spoken of as joint family property, the co-parcenary in it, which under the Mitakshara Law is created by birth, does not exist. The right to maintenance cannot be a right which arises out of the co-parcenary interest of the property or which arises out of any community of interest acquired by birth. (*Sankaran Nair and Oldfield, JJ.*) GANGADHAR RAO BAHADUR *v.* RAJA OF PITTAPUR. (1915) M. W. N. 369=28 M.L.J. 624= 29 I.C. 356=39 M. 396.

Maintenance—Sister.

———*Maintenance—Sisters — Unmarried—Right of residence in family house.*

Under Hindu Law unmarried sisters have a right to residence in the family dwelling-house until they are married and if the house be sold in execution of a decree for debts incurred by the last male holder or his legal representatives they can resist the auction-purchaser from ousting them out of the portions in their actual occupations till suitable arrangement is made for them. (*Wallis, C.J. and Sadasiva Iyer, J.*) SURIA NARAYANA RAO NAIDU *v.* BALASUBRAMANIA MUDALI. 43 Mad. 635= 38 M.L J. 433=11 L W. 409=56 I C. 524= (1920) M.W.N. 267.

Maintenance—Suit.

———*Maintenance—Suit—Form of decree—Decision as to who should pay.*

In a suit by a Hindu widow for maintenance against several defendants in possession of her husband's estate, the Court should direct that the amount should be paid by one or more of them on particular dates, but it need not decide as to who is legally entitled to the estate. (*Tudball and Sulaiman, JJ.*) SARASUTTI TEWARIN *v.* NANDAN. 18 A.L.J. 828= 60 I.C. 99=2 U.P.L.R. (All) 280.

———*Maintenance—Suit for*—Quantum.

In all cases where a right to maintenance has been allowed the quantum of maintenance should be decided in the suit itself even though the parties may not have in the first instance provided the Court with the materials. The

HINDU LAW—Maintenance—Suit.

parties entitled to maintenance who are generally females should not be left to separate proceedings. (*Macleod*, C.J. *and Crump*, J.) NILAWA IRAYA *v.* REVANSHIDAYA. 1923 Bom. 419.

———*Maintenance — Suit — Order under S. 488, Cr. P. C.—Effect of.*

The Civil Court has power to order an additional maintenance if in its opinion the amount awarded by the Magistrate is insufficient. (*Chitty and Teunon*, JJ.) TRINYANI DASSEE *v.* SRICHANDAN BHUYA. 18 I.C. 603.

———*Maintenance—Suit—Costs of.*

The object of such a suit is to ascertain the liability of the family estate and the costs of doing it should be ordinarily defrayed from the estate and therefore the deft. should not ordinarily be allowed to any costs on the amount disallowed to the plff. unless the claim be an exorbitant one. (*Benson and Sundara Aiyar*, JJ.) RANGATHAI *v* NELLI MUNUSWAMI. (1911) 1 M.W.N. 322 = 9 M.L.T. 461 = 10 I.C. 110. = 21 M.L.J. 706.

———*Maintenance — Suit — Claim for, as defendant.*

Where plaintiff sued by survivorship the defendant, widow of a deceased co parcener and the widow claimed partition which was negatived, the Court is not bound to grant her maintenance in that suit as a defendant. (*Stuart and Kanhaiya Lal*, A.J.Cs.) SUBAJ BAKSH *v.* SUKHDEV. 32 I.C. 291 = 2 O.L.J. 802.

Maintenance—Widow.

———*Maintenance — Widow — Right to separate maintenance — Living away from family house for good cause—Right not affected —Custom.*

The plea set up in defence to a suit for maintenance by a widow who had ceased to reside in the family dwelling house was a family custom under which, it was alleged, a widow, unless she resided at the place appointed for her residence, forfeited her right to maintenance. *Held* that such a custom, even if proved, did not affect the case of an absence from the appointed residence due to just and reasonable causes and that the widow was entitled to claim maintenance. (*Lord Buckmaster*, J.) RAJA BRAJA SUNDAR DEB *v.* SRIMATI SWARANA MANJARI DEBI. 22 C.W.N. 433 = 37 I.C. 36 = (1918) M.W.N. 313 (P.C.),

———*Maintenance—Widow — Allotment of large properties—Nature of estate.*

Where on a partition between surviving brothers, properties are allotted to their predeceased brother's widow corresponding to the share which that brother would have taken had he lived at the date of partition, it must be taken that the widow was intended to take a limited estate in the properties allowed to her with

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reversion on her death to the donors or their heirs. 34 A. 234; 6 M.I.A. 1 Ref. (*Piggott and Walsh*, JJ.) JHABBU LAL *v.* JWALA PRASAD. 4 U.P.L.R (A) 106 = 1922 All 631.

———*Maintenance—Widow—Right of residence.*

The right of residence of a widow cannot prevail against alienation during husband's lifetime. (*Rafique and Piggott*, JJ.) RAMZAN *v.* RAM DAIYA. 40 All. 96 = 42 I.C. 944 = 15 A.L.J. 922.

———*Maintenance — Widow— Residence— Family house—Disagreement.*

A Hindu widow and her mother-in-law were ordered to reside in the same family house, with liberty to the former to apply, so that in future if the family disagreements became so acute that it really would not be desirable that she and her mother-in-law should be living under the same roof it should be possible for her to come to the Court and ask that residence should be provided elsewhere for her mother-in-law. The order though unusual was warranted by the circumstances of the case. (*Macleod*, C.J. *and Shah*, J.) LAKSHMIBAI NARAYAN RANGO *v.* NARBADABAI RANGO. 24 Bom.L.R 235 = 1922 Bom. 28.

———*Maintenance—Widow—Right of residence.*

A widow cannot enforce her right of residence in a house sold by her husband. (*Shah and Crump*, JJ.) GANGABAI *v.* JANKIBAI. 22 Bom. L.R. 1309 = 69 I.C. 683 = 44 B. 337.

———*Maintenance—Widow—Claim against surviving co-parceners personally and against properties.*

A relief claimed by a widow for maintenance from the co-parceners of her deceased husband is not a claim against them personally but as heirs of her husband and so can be joined with a claim against them for her *stridhanam* improperly detained by them. (*Davar*, J.) JANKIBAI *v.* SRINIWASH GANESH. 38 Bom. 120 = 20 I.C. 533 = 15 Bom. L.R. 684

———*Maintenance—Widow—Residence.*

A Hindu widow does not forfeit her right to maintenance by going to reside elsewhere, unless she goes for an improper purpose. (*Beaman and Hayward*, JJ.) PARVATI BAI BHAGIRATH *v.* CHATRU LIMBAJI. 36 Bom. 131 = 12 I.C. 708 = 13 Bom. L.R. 1023.

———*Maintenance—Widow—Right to separate maintenance.*

A Hindu widow is not bound to reside in her deceased husband's family house and does not forfeit her right to maintenance by going to reside elsewhere unless she leaves the house for an improper purpose. (*Mookerjee and Carnduff*, JJ.) SUKANSAHU *v.* GANGAJALI. 18 I.C. 138.

HINDU LAW—Maintenance—Widow.

———*Maintenance — Widow — Right of residence in husband's house—Purchaser for value.*

Ordinarily, a Hindu widow has a right of residence in the family house from which she may not be ousted except to satisfy claims which are paramount to her right of residence, as it forms a part of her right to maintenance. The widow of an undivided member of a Hindu family can set up her right of residence against a purchaser for value, unless the alienation was for family purposes but the widow of a divided member must liquidate any debt which was binding on her husband unless it was incurred in fraud of her right. When, however, the husband loses the property in his lifetime, there is nothing left to the widow, from which she can derive maintenance. (*Le Rossignol*, J.) ASSA DEBI *v.* BASHI RAM. **56 I.C. 198=2 U.P.L.R. 98.**

———*Maintenance—Widow — Unchastity—Agreement.*

An agreement with the reversioner by a widow was that the widow should lead a chaste life and take her residence in her deceased husband's house, and receive maintenance so long as she remains chaste. *Held*, chastity was a condition defeasant and if she took an immoral life there was forfeiture of the right of maintenance. (*Shah Din*, J.) TARA DEVI *v.* DHANPAT RAI. **31 I.C. 797= 150 P.W.R. 1915.**

———*Maintenance—Widow— Share allotted in lieu of maintenance—Nature of estate.*

A widow who is allotted a share in lieu of maintenance has only a woman's estate in it. Mutation in favour of a widow jointly with the surviving co-parceners indicates allotment of share in lieu of maintenance. (*Rattigan and Leslie Jones*, JJ.) CHANDAN MAL *v.* MUSAMMAT WASINDI BAI. **92 P.R. 1915= 31 I.C. 511=168 P.W.R. 1915.**

———*Maintenance—Widow—Right of.*

A person is bound to maintain the widow of his deceased grandson so long as she does not re-marry and continues to live in the house of her deceased husband. 115 P. R. 1893, Rel. on. (*Shah Din and Scott-Smith*, JJ.) LADHA *v.* KARIM BIBI. **269 P.L.R. 1913= 20 I.C. 297=168 P.W.R. 1913**

———*Maintenance—Widow—Chastity if a condition.*

Where there is an agreement for maintenance so long as the widow leads chaste life and she leads an unchaste life, *whether* the agreement will be revived if she gives up her present way of living. (*Scott-Smith*, J.) TIKA RAM *v.* WASANDI BAI. **9 I.C. 926= 19 P.W.R. 1911.**

———*Maintenance—Widow — Right to—Other means.*

A plea that a Hindu widow has another means of support ought not to be allowed to be raised in a suit by her for maintenance out of

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joint family property. 28 Mad. 183, Foll. (*Sadasiva Iyer and Bakewell*, JJ.) KALINI UTHARANKANT PURAKKAL *v.* EAZUVAN RAMAN. **30 I.C. 897.**

———*Maintenance—Widow— Unchastity—Effect—Agreement for maintenance.*

Where maintenance is secured by an instrument in writing it is only evidence of the amount payable and subsequent unchastity of the widow puts an end to her right though secured by writing. (*Ayling and Seshagiri Iyer*, JJ.) SATHYABHAMA *v.* KESVACHARYA. **39 Mad. 658=29 M.L.J. 87= 29 I.C. 397=18 M.L.T. 28.**

[Also (*Scott-Smith*, J.) TIKA RAM *v* WASANDI BAI. **9 I.C. 926=19 P.W.R. 1911.**]

———*Maintenance—Widow — Right to—Family properties—Subsequent adoption—Charge.*

The widow of an undivided co-parcener was allowed a certain maintenance from the common funds in the hands of the surviving co-parceners. She adopted a boy subsequently and a partition of all interests including those of the adopted boy was made, *held*, that the adopted boy alone was liable to maintain his adoptive mother out of his share in the absence of any agreement to the contrary at the time of partition. (*Wallis*, C.J. *and Ayling*, J) VENKATARAMAN *v.* SUBRAMANIA IYER. **28 I.C. 240=(1915) M.W.N. 187.**

———*Maintenance— Widow—Deceased co-parcener.*

Right of widows of deceased co-parceners to be maintained out of family properties is an absolute right due to their being members of the family and does not depend on their not possessing other means of support. The fact that family property was small is no ground for altogether disallowing the claim of maintenance. 4 C.L.J. 74, Dist. (*Benson and Sundara Iyer*, JJ.) DARMA LINGAYYA *v.* DARBHA KANAKAMMA. **38 Mad. 153= 28 I.C. 200=28 M.L.J. 260.**

———*Maintenance—Widow—Co-parcener.*

The right of a widow of a deceased co-parcener to maintenance is not affected by a subsequent partition and can be enforced against the whole undivided family, (*i.e.*), all the co-parceners who can be traced to a common ancestor and not against the branch of the family only to which the plff's. husband belonged. 16 Cal. 25, Dist; 27 Mad. 45, Expl. (*White*, C.J. *and Munro*, J.) SUBBARAYUDU CHETTY *v.* KAMALAVALLI THAYARAMMA. **35 Mad. 147=21 M.L.J. 493= 10 M.L.T. 1=10 I.C. 347= (1911) 2 M.W.N. 148.**

———*Maintenance— Widow— Unchastity—Decree—Agreement for maintenance—Starving maintenance.*

A Hindu widow's right to claim maintenance is forfeited upon her unchastity. 5 Cal. 776; 17 Cal. 674, Ref. Where in a suit for

HINDU LAW—Maintenance—Widow.

maintenance a compromise is arrived at fixing a maintenance allowance and a decree is passed in the terms of the compromise, the allowance is liable to resumption or forfeiture on proof of subsequent unchastity on her part. 15 All. 382; 26 All. 321; 17 Mad, 342; 34 Mad. 653, Foll. An unchaste widow is entitled at least to a starving maintenance, 34 Bom. 278, Ref. (*Mitra*, J.C.) MUSSAMMAT LAXMI BAI *v.* PANDIT YISHWAN RAO. 53 I.C. 860= 16 N.L.R. 140.

———*Maintenance—Widow—Unchastity—Returning to virtue—Right of.*

An unchaste widow who returns to a life of virtue upon the general principles of the Hindu Law, can get bare maintenance from her deceased husband's family. (*Stuart*, J.C.) DWARKA PRASAD *v.* MAHADEI. 51 I.C. 388=8 O.L.J. 166.

———*Maintenance—Widow—Right to possession—Separate share—Partition.*

A widow cannot ordinarily have separate possession of a portion of the estate for the maintenance so long as the family is joint but if the male members of the family effect a partition, the widow is entitled to have a separate share. (*Lindsay*, A.J.C.) CHANDIKA SINGH *v.* RAM DULARI. 12 I.C. 403.

———*Maintenance—Widow—Daughter.*

Under the Hindu Law, a widow and daughter have a right to be maintained out of the property of the husband or father and the right can be enforced against the transferee. (*Sharfuddin and Chapman*, JJ.) BRAJSUNDER DEB *v.* SARAT KUMARI. 2 Pat. L.J 65= (1917) Pat. 67=38 I.C. 791= 3 P.L.W. 202.

———*Maintenance—Widow—Residence—Right of—Purchaser of property—Right if enforceable against him.*

A Hindu widow is entitled to reside in the family house and this right cannot be denied to her by a purchaser of the house with notice of her right. Even a purchaser without notice cannot eviot her unless she is provided with another residence. But where the sale is effected by her husband or is for discharging a debt due by him, she has no such right. (*Pipon*, J.C.) BHAGAT SINGH *v.* RAM PRAKASH. 69 I.C. 602.

———*Maintenance—Widow—Right of residence.*

A right of residence of a Hindu widow is only an equitable and not a legal right, and means a right to the provision of residence and is included in the right to maintenance. A widow's residence does not imply a right of possession of the house or the part of the house that she occupies. For the co-parceners may from time to time alter the provision for residence in accordance with any change in the fortunes of the family and may require her to reside in another house or another part of the same house. The right of maintenance of a

HINDU LAW—Maintenance—Wife.

Hindu widow is an equity binding on the conscience of the co-parceners but it may be defeated by *bona fide* alienation i.e., an alienation made for proper purposes as for the discharge of family debts or to satisfy claims enforceable against the whole family. It cannot be defeated by an alienation which is not so justified or which is merely a pretext to shuffle off the obligation of maintenance. In the case of an improper alienation the equity is enforceable against the alienee under the same conditions that apply to any other equity. That means the transferee takes subject to the equity unless he has taken for value and without notice of the right. (*Pratt and Hayward*, JJ.) THAWAR DAS MANGHUMAL *v.* MST. VANI, WIFE OF GULABSINGH. 10 I.C. 985= 4 S.L.R. 276.

———*Maintenance—Widow—Right of.*

A widow is not bound to accept the charity of collateral relations for her maintenance or the payment of debts incurred for maintenance. She is entitled to reasonable maintenance including the provision for religious observances of annual *shradhs* and the payment of reasonable maintenance debts out of the immoveable property. (*Hayward*, A.J.C.) RATAUSI *v.* UMREBAI. 9 I.C. 997.

Maintenance—Wife.

———*Maintenance—Wife—Unchastity.*

An unchaste wife at date of suit is disqualified even for bare maintenance. *Quaere*:—Whether a previously unchaste widow who turned chaste at the time of suit is entitled to maintenance. (*Banerji and Walsh*, JJ.) DEBI SARAN SHUKUL *v.* DAULATA SHUNKLAIN. 39 All. 284=39 I.C. 10=15 A.L.J. 169.

———*Maintenance—Wife—Separate maintenance—Second marriage of husband—Cruelty.*

The fact that a Hindu husband takes a second wife and neglects the first wife is not legal cruelty justifying a claim by the latter for separate maintenance. (*Rafique*, J.) ADLI *v.* MUSAMMAT PERSOMI. 18 I.C. 713= 11 A.L.J. 161.

———*Maintenance—Wife—Unchastity—Wife deserting husband.*

A Court should not impute unchastity to a married woman on mere suspicion but only on strong and sure grounds. 32 All. 410 (P.C.), Foll. To support a wife's claim for separate maintenance from her husband she must show that he abandoned, deserted or expelled her without justifying cause. A wife by voluntarily deserting her husband loses her right to separate maintenance from him. (*Batchelor and Hayward*, JJ.) YESUBAI BHARTER *v.* SADASIV GANESH DESHPANDE. 30 I.C. 934.

———*Maintenance—Wife—Refusal to live with husband—Leprosy.*

Under the Hindu law, a wife is entitled to get maintenance from her husband when she declines to live with him on account of his being

HINDU LAW—Maintenance—Wife.

a leper. 5 B. H. C.R. 209, Rel. (*Spencer and Venkatasubba Rao*, JJ.) SHENAPPAYA *v.* RAJAMMA. **44 Mad. 812=43 M.L.J. 174=16 L.W. 139=(1922) M.W.N. 459=31 M.L.T. 412=1922 Mad. 399 (H.C.)**

———*Maintenance—Wife—Unchastity.*

An unchaste Hindu wife is not entitled to maintenance from her husband. But if she subsequently repents and leads a moral life at the date of suit she is entitled to bare maintenance. 17 Cal. 674; 34 Bom. 278; 17 Mad. 392; 19 Mad. 6; 5 M.H.C R. 150; 23 M.L.J. 289, Dist. (*Ayling and Seshagiri Aiyar*, JJ.) SATHYABHAMA *v.* KESAVACHARYA. **39 Mad. 658=29 M.L.J. 87=29 I.C. 397=18 M.L.T. 28.**

———*Maintenance—Wife—Adultery.*

No maintenance can be claimed by a wife from her husband if at the time of the suit she is living in adultery and persists in that course. 19 Mad. 6; 34 Bom. 278, Foll. (*Miller and Sankaran Nair*, JJ.) SUBBAYYA *v.* BHAWANI, **24 I.C. 390.**

———*Maintenance—Wife—Unchastity.*

Under the Hindu Law unless a wife's unchastity is condoned by her husband or there is proof of her reformed character, she cannot claim any maintenance from him. (*Benson, O.C.J. and Napier*, J.) CHIRUKALA NAGALAKSHAMMA *v.* CHIRUKALA VISWANATHA SASTRY. **16 I.C. 389=23 M.L.J. 289.**

———*Maintenance — Wife — Residence—Right in husband's house.*

A wife has no right of residence in the family house and her husband can therefore dispose of the family dwelling house even though it has the effect of depriving the wife of her residence therein. The text of the Katyayana cannot be taken literally so as to debar the husband from alienating the family residence to the detriment of his wife's residence in it. 12 Mad. 60, Ref. (*Abdur Rahim and Ayling*, JJ.) OLAGAYEE *v.* PICHAMMAL. **21 M.L.J. 303=(1911) 1 M.W.N. 179=9 I.C. 524=9 M.L.T. 311.**

Manager.

See HINDU LAW—
(1) ALIENATION BY MANAGER.
(2) JOINT FAMILY—MANAGER.

Marriage.

CAPACITY TO GIVE.
CEREMONIES.
DISSOLUTION.
DIVORCE.
ELIGIBILITY FOR.
EVIDENCE OF.
EXPENSES.
FACTUM VALET.
FORM OF.
RE-MARRIAGE.
WIDOW.

HINDU LAW—Marriage—Capacity to give.

Marriage—Capacity to give.

———*Marriage—Capacity to give—Guardian of marriage—Maternal and paternal relatives—Injunction—Reasonable and probable.*

According to the Hindu Law, in the presence of competent paternal relatives, the maternal relatives of a girl cannot give her in marriage except where the paternal relatives refuse to act or have disqualified themselves from acting. A Hindu girl living with her paternal aunt and paternal uncle was made over to her maternal uncle under an agreement between the parties. Subsequently the paternal aunt's application to be appointed guardian was dismissed. Afterwards, the maternal uncle of the girl arranged for her marriage with a certain person. The paternal aunt then obtained a temporary injunction and got the wedding put off. The marriage, however, took place with the person selected by the maternal uncle, the maternal uncle sued for damages for the loss caused by the wrongful injunction and the postponement of the wedding. *Held*, that the maternal uncle could enter into a contract of marriage for the girl. (*Piggott and Lindsay*, JJ.) KASTURI *v.* PANNA LAL. **38 All. 520=36 I.C. 245=14 A.L.J. 754.**

———*Marriage—Capacity to give—Mother—Paternal uncle—Will—Construction.*

The paternal uncle of a girl cannot betroth or give her in marriage without the concurrence of the mother, who after the father, is the legal guardian of the girl. This is so even where the paternal uncle is authorised to conduct the marriage by the father's will. (*Chandavarkar, A.C.J. and Batchelor*, J.) BAI RAMTORE *v.* JAMNADAS. **37 Bom. 18=17 I.C. 95=14 Bom. L.R. 766.**

———*Marriage—Capacity to give—Mother's rights—Absence of consent of father.*

The rules as to the duty of giving a girl in marriage are directory and not mandatory, and in the absence of force or fraud, the marriage of a girl performed by the mother without the consent of the father is perfectly valid. (*Moti Sagar*, J.) JAGANNATH *v.* BASANT RAM, **1923 Lah. 95 (2).**

———*Marriage—Capacity to give—Mother—Consent of uncle.*

Under the Hindu Law, the mother is, after the father, the guardian of her minor daughter, and her right to select a husband for her daughter is not fettered by any necessity to consult or obtain the consent of the girl's paternal uncle. (*Abdul Raoof and Martineau*, JJ.) MT. JIWANI *v.* MULA RAM. **3 Lah. 29=1922 Lah. 112.**

———*Marriage—Capacity to give—Mother.*

In the absence of paternal relations and father through death or waiver, the right of mother to select the husband is recognised in the Hindu Law. (*Shadi Lal and Le-Rossignol*, JJ.) MAYA DEVI *v.* RAM CHAND. **20 P.R. 1916=31 I.C. 186=177 P.W.R 1915.**

HINDU LAW—Marriage—Capacity to give.

———*Marriage—Capacity to give—Texts.*

The texts relating to the marriage of a girl deal only with religious rites of making the gift of the bride and are only directory and not mandatory and even from the religious point of view create no legal right or obligation (*Benson and Sundara Iyer*, JJ.) ACHA RANGANAIKAMMAL *v.* ACHA RAMANUJA AIYANGAR. 35 Mad. 728=21 M L.J. 600= 10 M.L.T. 57=11 I C 570= (1911) 2 M W.N. 285.

Marriage—Ceremonies.

———*Marriage—Ceremonies—Marriage fees.*

If the ceremony of marriage is taken as a whole and performed in the Hindu form, the Joshi is entitled to his fee, but if it is found that the form is in the *Pancha Kalas Lingayat*, then he is not entitled to his fee. The marriage ceremony is to be taken as a whole to decide whether it is in the Hindu form or in the *Pancha Kalas Lingayat*. 14 Bom. 167, Expl. (*Scott*, C.J. *and Batchelor*, J.) RANGAPPA NINGAPPA IMMADI *v.* VENKAT BHAT LINGAM BHAT JOSHI. 40 Bom. 112= 31 I.C. 448=17 Bom. L.R. 950.

———*Marriage—Ceremonies.*

The rules of Hindu Law as to the obligation of giving girls in marriage are directory and not mandatory and if the marriage is otherwise valid, in the absence of force or fraud, it will not be invalidated owing to the absence of consent of the proper guardian. 14 Mad. 316; 19 All. 515; 22 Bom. 812, Rel. on. (*Shadi Lal and Le-Rossignol*, JJ.) MAYA DEVI *v.* RAM CHAND. 20 P.R. 1916=31 I C. 186= 177 P.W.R. 1915.

———*Marriage—Ceremonies—Necessity for.*

Where there were no ceremonies performed in a caste in which ceremonies ordinarily are in use or where marriage is not performe din any customary form, no marriage by mere mutual consent alone is valid unless a custom to that effect is proved. (*Miller and Abdur Rahim*, JJ.) VISVANATHASWAMY NAICKER *v.* KAMU AMMAL. 21 I.C. 724= 24 M.L.J. 271.

———*Marriage—Ceremonies—Necessary to constitute valid marriage.*

No prescribed ceremony is necessary to constitute marriage provided that if any ceremony is customary and regarded by the caste as essential then it must be performed. The ceremony of is *saptapade* necessary to complete a marriage performed according to the orthodox rights and that of Vivah Hom is also usually performed but their non-performance does not invalidate a marriage if otherwise completed. (*Mc Coll*, J.) RAMPIAYER *v.* DEVA RAMA. 1 R. 129=1923 Rang. 202.

Marriage—Dissolution.

———*Marriage—Dissolution—Minor—Right to repudiate on attaining majority—Restitution of conjugal rights.*

HINDU LAW—Marriage—Divorce.

Underthe Hindu Law a marriage once performed cannot be dissolved for any reasons whatsoever, even though the parties were minors and a Hindu wife cannot repudiate her marriage as soon as she comes of age or before consummation takes place merely on the ground that the marriage has been performed during her minority. If the girl purports to repudiate the marriage it is not a sufficient ground for refusing a decree for restitution of conjugal rights. (*Abdul Raoof and Moti Sagar*, JJ.) MUNSHI *v.* MT. BHAGWANI 13 P.L.R. 1922=1922 Lah. 79.

———*Marriage—Dissolution.*

Marriage is not severed by mere desertion. (*Kumarswami Sastri and Odgers*, JJ.) PACHAI PILLAI *v.* C. GOPAL PILLAI, 15 L.W. 16=70 I.C. 122=42 M L.J. 276.

———*Marriage — Dissolution — Power of Court.*

No Court has jurisdiction to grant a decree for dissolution of marriage in a suit for that purpose by the wife, except in a case under the Native Converts Marriage Act. (*Stanyon*, A.J. C.) CHANDRABHAGA *v.* VIVANATH, 20 I.C. 667=9 N.L.R. 102.

Marriage—Divorce.

———*Marriage—Divorce—Custom — When valid.*

A custom by which marriage-tie can be dissolved by either husband or wife against the wish of the divorced party and for no reason but out of mere caprice, the sole condition attached being a payment of a sum of money fixed by the caste, is opposed to public policy within the meaning of S. 23 and is also repugnant to Hindu Law and therefore cannot be judicially recognised. (*Scott*, C.J. *and Batchelor*, J.) KESMAY BHARGONAN *v.* BAI GANDI, 39 Bom. 536=29 I.C. 952= 17 Bom. L.R. 885.

———*Marriage—Divorce—Re-marriage.*

Re-marriage of a divorced *Koli* woman is valid and is not regarded with any social censure or disapproval. The distinctive mark of the *asura* form of marriage is the payment of money for the bride, and absence of such payment of a bride-price is a distinctive mark of the approved form. The marriage of a divorced *Koli* woman should not be regarded as marriage in an unapproved form when the father giving the woman away receives no pecuniary benefit from the marriage. (*Batchelor and Rao*, JJ.) HIRA *v* HANSJI PRMA. 37 Bom. 295=17 I.C 959= 15 Bom. L.R 1162.

———*Marriage—Divorce*—Kunbis of Mauza Bichwa Bagu.

Among *Kunbis* of *Bichwa Bagu* in the Chhindwara District, the formal relinquishment by a husband of all claim to his wife and

HINDU LAW—Marriage—Divorce.

the latter's consent thereto constitute a valid divorce. (*Hallifax and Macnair*, A.J.Cs.) JANGLA *v.* JHINGRYA. **63 I C. 594.**

———*Marriage—Divorce—Validity of custom—Change of religion.*

The Hindu Law does not recognise divorce though the Courts do recognize it upon proof of custom. A change of religion does not dissolve the marriage tie. (*Lindsay*, J.C.) ABDUL KARIM *v.* ABDUL RAZAK. **28 I.C. 201=2 O.L.J. 101.**

Marriage—Eligibility for.

———*Marriage—Eligibility for Banya and the illegitimate daughter of a Brahmin.*

A marriage between a Banya and the illegitimate daughter of a Brahmin father and Banya mother is valid according to Hindu Law especially when the marriage was recognised by the caste to which the husband belonged. 28 All. 458 ; 16 Cal. 264, Ref. Illegitimacy is no disqualification for marriage. (*Chamier*, J.) MADAN GOPAL *v.* EMPEROR. **34 All. 589= 16 I.C. 513=13 Cr. L.J. 705=10 A.L.J. 82.**

———*Marriage—Eligibility—Brahmin and Sudra — Children of marriage* — Nihang Goshian—*Custom.*

A marriage between a man of a lower caste (*i.e.*) a *Thakur* and woman of a higher caste (*i.e.*) a *Brahmin* is not lawful and the issue of such marriage is not legitimate. The fact that both the man and woman had, previous to their marriage, became *Nihang Goshains*, a celibate order, would not, in the absence of a custom to the contrary, render the union valid. 28 All. 458, Foll. (*Piggott*, J.) SESPURI *v.* DWARKA PRASAD. **16 I.C. 222 (1)= 10 A.L J. 181.**

———*Marriage— Eligibility for— Vaishya male and daughter of Sudra woman.*

According to Hindu Law, the marriage between a Vaishya male and the illegitimate daughter of a Vaishya born of a Sudra woman is valid. (*Macleod*, C. J. *and Shah*, J.) BAI GULAB *v.* JIVANLAL HARILAL. **24 Bom. L.R 5=1922 Bom. 32.**

———*Marriage — Eligibility — Intercaste Brahmin and Sudra — Marriage invalid—Estoppel.*

The marriage between a Brahmin woman and a Sudra is illegal and void under the Hindu Law and the woman is not entitled to maintenance unless her connection with him has been of a continuous character. There is no estoppel against the validity of a marriage from the mere fact that the parties who are legally incompetent to marry each other went through the Hindu ceremony of marriage and thereafter lived together for several years as husband and wife. (*Chandavarkar and Batchelor*, JJ.) BAI KASTURI *v.* JAMANDAS. **16 I.C. 133=14 Bom. L.R. 517.**

———*Marriage — Eligibility for — Intermarriage between sub-divisions of Sudra caste —Custom.*

According to law and custom in Bengal, a marriage between a Kayastha and a Tanti both belonging to sub-divisions of the Sudra caste is valid in the absence of special custom to the contrary. (*Sanderson*, C.J. *and Richardson*, J.) BISHWANATH DAS *v.* SARASIBALA DASI. **48 Cal. 926=66 I.C. 590=25 C.W.N. 639.**

———*Marriage—Eligibility for—Brahmins and Khatris.*

By custom, general or special, a marriage between a Khatri male and a Brahmin woman may be valid, but it is void under the Hindu Law. (*Broadway*, J) PARS RAM *v.* HUKMAN SINGH. **73 I.C. 289.**

———*Marriage — Eligibility* — Sagotras—*Custom—Sudras.*

The prohibition of marriage between Sagotras applies only to the twice born classes. When a marriage among sudras between Sagotras is recognised as valid by custom the onus of proving that it is invalid lies on the person alleging it. (*Shadi Lal and Le-Rossignol*, JJ.) AMAR SINGH *v.* JAI SINGH.. **80 P.R. 1917= 42 I.C. 351=188 P.W.R. 1917.**

———*Marriage — Eligibility — Different castes—Custom—Burden of proof.*

Jhabra Rajputs are not Kshatriyas and not being in any way above the Sudras, the marriage between them and Tarkhani women is not a marriage between a higher caste and lower, It is valid and the issues are legitimate. The burden of proving its invalidity by a special custom is on the contesting party. *Obiter.*—A girl cannot now be taken into a different caste by marriage, unless by a special local custom. (*Jhonstone and Chevis*, JJ.) HAR DAYAL *v.* KALI RAM, **66 P.R. 1911= 188 P.W.R. 1911=10 I.C. 152= 145 P.L.R. 1911.**

———*Marriage—Eligibility—Wife's sister's daughter—Telugu country.*

The marriage of a Hindu with his wife's sister's daughter is not illegal. The custom of allowing a Brahmin to marry his wife's sister's daughter has been recognised by judicial decisions ; that custom applies especially in the case of Sudras, such as Telugu Velamas who generally follow the Brahmin custom. The rule in *Grihya Parisishta* prohibiting such a marriage among the twice-born classes is merely directory and not mandatory. (*Wallis*, C.J. *and Krishnan*, J.) RAMAKRISHNA RAO *v.* SUBBANA RAO GARU. **43 Mad. 830= 39 M L.J. 183=(1920) M.W.N. 474= 59 I.C. 268=12 L.W. 155.**

HINDU LAW—Marriage—Eligibility for.

———*Marriage — Eligibility — Sudras—Marriage of different sects,*

There is nothing in Hindu Law prohibiting marriages between persons belonging to different sections or sub-divisions of the Sudra caste, 15 Cal. 708, Foll. Ahirs whether of the *Nandvansi* or any other sub-castes, are Sudras and the *Dauwa* Ahirs are a lower caste than the pure Ahirs and the *Churi* form of marriage is in vogue among them. (*Mittra*, A.J.C.) DOMAR SINGH *v.* HIRONDI BAI. 55 I.C 294.

———*Marriage— Eligibility—Sikhs—Inter-caste.*

Among Sikhs marriage between members of different castes is valid, provided both of them have adopted the Sikh religion. (*Lyle and Ashworth*, A.J. Cs.) CHANDIKA BAKSH SINGH *v.* WIDOW OF JAGAN SINGH.
52 I.C. 449=6 O.L.J. 331.

———*Marriage—Eligibility — Sub-castes—Kayasthas.*

Inter-marriages between the sub-divisions of Kayasthas are not against the Hindu Law, though not common in daily life. (*Stuart and Kanhaiya Lal*, A.J. Cs.) HAR BAHADUR LAL *v.* CHAND RAJ BAHADUR.
5 O.L.J. 655=48 I.C. 400=21 O.C. 298.

———*Marriage — Eligibility for — Inter-castes.*

Inter-caste marriages pre obsolete and considered invalid under Hindu Law. The prohibition, however, does not apply to marriages with a person of hybrid caste of a Brahmin or Kshatriya or Vaishya or Sudra or where such marriages are recognised by the family. The offspring of a Kshatriya is Ugra. (*Chamier*, J.C. *and Evans*, A.J.C.) DARYAI SINGH *v.* NARPAT SINGH. 9 I.C. 71=13 O.C. 375.

———*Marriage — Eligibility — Sagotras—Baisi Chowrasi Gaddidars.*

The rule against marrying in the same gotra is not a universal rule among Hindus but it is recognised by the Baisi Chowrasi Gaddidars who though originally Non Hindu have adopted Hinduism. (*Chapman and Atkinson*, JJ.) SHAH DEO NARAIN DEO *v.* KUSUM KUMARI.
46 I.C. 929.

Marriage—Evidence of.

———*Marriage—Evidence of—Mental incapacity—Effect of—Presumption in favour of marriage and legitimacy and due performance of ceremonies.*

The objection to a marriage on the ground of mental incapacity depends on a question of decree. *Held*, that in the case before the Board, the evidence of mental incapacity was wholly insufficient to establish a decree of that defect as to rebut the extremely strong presumption in favour of the validity of the marriage. Where a man and a woman were proved to have been recognised by all persons concerned as man and wife, so described in important documents on important occasions and their daughters were respectably married

HINDU LAW—Marriage—Evidence of.

as would be natural in the case of legitimate children; *held*, that these facts, following upon a ceremony of marriage which undoubtedly took place, though its validity attacked, afforded an extremely strong presumption in favour of the validity of the marriage and legitimacy of its offspring. The like presumption applies to the question whether the formal requisites of a valid marriage ceremony were satisfied. (*Sir Arthur Wilson.*) MONJI LAL *v.* CHANDRABATI KUMARI. 38 Cal. 700=38 I.A 122=15 C.W.N. 790=(1911) 2 M.W.N. 91=13 Bom. L.R. 634=14 C.L.J. 72=10 M.L.T. 53=11 I.C. 502=21 M.L.J. 933 (P.C.).

———*Marriage—Evidence of—Presumption.*

When a marriage in fact is once established a presumption will arise in favour of a marriage in law, especially where it is celebrated long ago. 13 M.I.A. 141, Ref. The presumption may be rebutted by strong, satisfactory and conclusive evidence. *Morris* v. *Davies*, 5 Cl. and F. 163, Rel. (*Chanduvarkar and Batchelor*, JJ.) BAI KASHI *v.* JAMNADAS MANSUKH RAICHAND. 16 I.C. 133=14 Bom. L.R. 547.

———*Marriage—Evidence of—Presumption from cohabitation.*

The presumption in cases of long and continuous co-habitation is in favour of marriage, though the proof of direct evidence of marriage is unsatisfactory. The presumption can be rebutted only by strong, distinct and conclusive evidence and does not arise if the connection is illicit in its origin. Habit and repute may evidence but never can constitute marriage. A connection by adultery may be evidenced, after the adultery ceases, by habit and repute, to be a marriage, where marriage is possible between the parties. But where no valid marriage is possible, no amount of evidence as to habit and repute can establish a marriage. (*Leslie Jones and Broadway*, JJ.) INDAR SINGH *v.* THAKAR SINGH. 2 Lah. 207=63 I.C. 387=3 U.P.L.R. (L.) 82.

———*Marriage—Evidence of—Sikhs.*

Where a Sikh of position has apparently made a woman his lawful wife the presumption is that all formalities in his power have been gone through. The form of marriage among the Sikhs differs from those of the Hindus. Among Jats marriage laws are lax. Where there is a marriage in fact, the presumption is that there was a marriage in law. (*Reid*, C.J. *and Rattigan*, J.) DHALIPKUR *v.* FATTI. 99 P.R. 1913=41 P.W.R. 1913=18 I.C. 930=100 P.L.R. 1913.

———*Marriage—Evidence of—Treatment.*

When it is known there was no marriage in due form evidence of treatment has no great value. (*Miller and Abdur Rahim*, JJ.) VISHVANATHASWAMI NAICKER *v.* KAMU AMMAL.
21 I.C. 725=25 M.L.J. 271.

———*Marriage—Evidence of.*

Where a man acknowledges the children of a woman living with him as his own and treats

HINDU LAW—Marriage—Expenses.

them as such in public, the presumption is that the woman is his wife, but this presumption may be rebutted by showing that no marriage could take place between the man and the woman and that the relatives and the castemen who are likely to be invited for marriage were not invited. (*White*, C.J. *and Sankaran Nair*, J.) CHELLAMMAL *v.* RANGANATHAN PILLAI.
13 I C. 247 = 31 Mad. 277.

Marriage—Expenses.

See also HINDU LAW—
(1) ALIENATION.
(2) DEBTS.
(3) JOINT FAMILY.

———*Marriage—Expenses—Marriage is an obligatory samskara and expenses bind joint family.*

Marriage is an obligatory samskara. The reasonable expenses of performing the marriage of a co-parcener if already incurred out of family funds are necessary expenses and are binding upon the other co-parceners. (*Sundara Iyer and Sadasiva Iyer*, JJ.) SRINIVASA AIYANGAR *v.* THIRUVENGADATHAIYANGAR.
38 Mad. 556 = (1913) M.W.N. 1034 = 15 M.L.T. 307 = (1914) M.W.N. 282 = 23 I.C. 264 = 25 M.L.J. 644.

———*Marriage—Expenses of co-parcener.*

Marriage in Hindu Law is a *samskara* and hence the marriage of a co-parcener is a necessity. The texts relating to the marriage of brothers should be construed as illustrative of the general rule. (*Pratt*, J.C. *and Crouch*, A.J.C.) POHUMAL *v.* NAROOMAL.
19 I.C. 835 = 6 S.L.R. 246.

Marriage—Factum valet.

———*Marriage—Factum valet.*

The marriage of a Hindu girl effected without force or fraud by her relatives even though they are not her natural guardians cannot after it has taken place be declared invalid, for want of consent of the legal guardian on the principle of *factum valet*. (*Griffin and Chamier*, JJ.) KASTURI *v.* CHIRANJI LAL. **35 All. 265 = 18 I.C. 927 = 11 A.L.J. 272.**

———*Marriage—Factum valet—Consent of father.*

A marriage, duly solemnised and is otherwise valid, is not rendered void, because it was brought about without the consent of the guardian in marriage or was in contravention of an express order of the Court. (*Shadi Lal*, C.J.) GAJJANAND *v.* CROWN. **64 I C. 500 = 2 Lah. 288.**

———*Marriage — Factum valet — Person giving in marriage incompetent factum valet.*

It is established that when a person not strictly entitled to do so gives a girl in marriage the doctrine of factum valet prevails. (*Mccoll*, J.) RAMPIAYAR *v.* DEVA RAMA.
1 R. 129 = 1923 Rang. 202.

HINDU LAW—Marriage—Form of.

Marriage—Form of.

———*Marriage—Forms of—Presumption.*

The presumption in cases of Hindu marriages is that they took place in the Brahma form. (*Banerjee*, J.) MAGHLI *v.* LADHI.
13 I.C. 644.

———*Marriage—Forms of—Vaishnabs—Kanti form.*

The petitioner, a Vaishnab, applied for letters of administration to the estate of the deceased who was after the death of her husband married to him in Kanti form. *Held*, that marriage by Kantibadal (exchange of garlands) among Vaishnabs is valid. (*Ghose*, J.) BENODE BEHARY AUDIKARY *v.* SHASHI BHUSAN BHUR. **59 I.C. 882 = 24 C.W.N. 958.**

———*Marriage—Forms of—Cost of marriage paid by bridegroom.*

According to the *Brahma* form of marriage the cost of marriage must be paid by the bride's parents. If it is paid to them by the bridegroom the marriage is in the *Asura* form. (*Spencer and Ramesam*, JJ.) RATNATHANNI *v.* SOMASUNDARA MUDALIAR.
(1921) M.W.N 635 = 41 M.L.J. 76 = 62 I.C. 931 = 13 L.W. 582.

———*Marriage—Forms of—Brahma form—Payment of Parisam—Effect of.*

Whatever may be the caste to which the parties belong, ordinarily the presumption under the Hindu Law is that a marriage should be regarded as being in the Brahma form unless it can be shown that it was in the Asura form. 32 Mad. 72; 33 Bom. 493; 37 Bom. 295, Rel. The mere payment of *Parisu Panam* by the bridegroom to the bride's parents does not render a marriage one in the Asura form unless in the community to which the parties belong, the payment of *Parisam* is equivalent to the payment of bride-price and the parties in the particular case also regarded it as such. (*Seshagiri Iyer and Phillips*, JJ.) REV. GABRIEL NATHA SWAMI *v.* VALLI AMMAIAMMAL.
26 M.L.T. 348 = (1920) M.W.N. 168 = 53 I.C. 423 = 10 L.W. 491.

———*Marriage—Forms of—Presumption as to the form—Gandharva.*

Where a caste has given up an irregular form of marriage and adopted another regular form, there is no presumption in favour of the old form and hence marriage according to the old form need not be held as valid. Per *Abdur Rahim*, J.—Among Kambala caste the marriage in Gandharva form is not valid. Even among Hindus the form is now obsolete. Per *Miller*, J.—It is doubtful whether the marriage in that form is legal in the present day. (*Abdur Rahim and Miller*, JJ.) VISWANATHASWAMY NAICKER *v.* KAMULU AMMAL.
21 I.C. 724 = 24 M.L.J. 271.

———*Marriage—Forms of—Presumption.*

Every Hindu marriage will be presumed to have taken place in the *Brahma* or approved

HINDU LAW—Marriage—Form of.

form in the absence of evidence to the contrary. (*Stanyon*, A.J.C.) MT. CHANDRABHAGA *v.* VISHWANATH. 20 I.C. 557=9 N.L.R. 102.

———*Marriage—Forms of*—Asura.

The *asura* form of marriage not being illegal or immoral the money paid to the bride's parents is not unlawful consideration. (*Lindsay*, J.C.) SHAMBHU *v.* NAND KUMAR. 58 I.C. 963=23 O.C. 285.

Marriage—Remarriage.

———*Marriage — Re-marriage — Married woman—Re-marriage during life of husband.*

In the absence of the custom to the contrary a married woman cannot contract a second marriage during her husband's lifetime. (*Richards*, C.J. *and Banerji*, J.) SBI RAM *v.* MUSAMMAT INCHI. 21 I C. 313= 11 A.L.J. 711.

———*Marriage—Re-marriage—Berar Kunbis.*

Among Kunbis of Berar, widow's re-marriage by Pat form is permitted. (*Stanyon*, A.J.C.) SITARAM *v.* LAXMAN. 17 I.C. 138= 8 N.L.R. 128.

Marriage—Widow.

———*Marriage — Widow — Re-marriage—Custom—Bissa Jaga Brahmins.*

The marriage of a widow of the caste of Bissa Jaga Brahmins is invalid by custom. And a widow of that class on her re-marriage loses her rights in the husband's estate. (*Tudball*, J.) MUSAMMAT ASHARFI *v.* ISARI. 20 I.C. 398=11 A.L.J. 683.

———*Marriage—Widow—Pregnant widow.*

A pregnant widow may re-marry immediately after her first husband's death. Cohabitation is not essential to validate a marriage. (*Shadi Lal*, J.) BHAGAT SINGH *v.* SANTI. 102 P.R. 1919=5 P.W.R. 1919= 50 I.C. 651=32 P.L.R. 1919.

Migrating Family.

See HINDU LAW—APPLICABILITY.

Migration.

See HINDU LAW—APPLICABILITY.

Minor.

See HINDU LAW—MINORITY AND GUARDIANSHIP.

Minority and Guardianship.

See also (1) HINDU LAW—(i) ALIENATION. (ii) JOINT FAMILY.
(2) MINOR.

ACTS OF GUARDIAN.
AGE OF MAJORITY.
APPOINTMENT BY COURT.
CO PARCENER.

HINDU LAW—Minority and Guardianship—Acts of guardian.

DE FACTO GUARDIAN.
DISPOSITION OF PROPERTY.
JOINT HINDU FAMILY.
LIABILITY OF MINOR.
MARRIAGE.
MOTHER.
NATURAL GUARDIAN.
PROMISSORY NOTE.
RIGHT TO GUARDIANSHIP.
TESTAMENTARY GUARDIAN.

Minority and Guardianship—Acts of guardian.

———*Minority and guardianship—Acts of guardian.*

A guardian or manager of a Hindu family is not empowered to start a new trade so as to bind minor or his interest in family property. Distinction between new trade and ancestral business. (*Sir Lawrence Jenkins.*) SANYASICHARAN MANDAL *v.* KRISHNADHAN BANERJI (1922) M.W.N. 361=16 L.W. 536= 49 I.A. 108=49 C. 860=26 C.W.N. 994= 20 A.L.J. 409=24 B.L.R. 700= 35 C.L.J. 498=43 M.L.J. 41= 30 M.L.T. 228=1922 P.C. 237 (P.C.)

———*Minority and guardianship—Acts of guardian—Trade—Partnership.*

A guardian cannot carry on a trade implicating the minor's property therein to liquidate family debts as this does not amount to necessity or benefit to the minor. (*Abdur Rahim and Sadasiva Aiyar*, JJ.) KAKUMANU VENKATA SURYANA *v.* AKUTHOTA RAMAYYA. (1921) M.W.N. 100=40 M.L.J. 153= 13 L.W. 551=62 I.C. 802=29 M.L.T. 115.

———*Minority and guardianship—Acts of guardian—Alienation of property.*

The guardian of a minor can exercise all the powers which a minor has. Where the guardian of minor widow alienates property he can convey not only the ordinary limited interest possessed by the widow but also the absolute interest which under certain circumstances she can convey. (*Seshagiri Iyer and Burn*, JJ.) SRINIVASA AIYAR *v.* THIRUVENGADA MAISTRY. 26 M.L.T. 350=55 I.C. 688= 10 L.W. 594.

———*Minority and guardianship—Acts of guardian—Acknowledgment on behalf of minor.*

A guardian of a minor cannot renew or acknowledge debts unless it is for the benefit of his ward or unless the document appointing him guardian expressly gives him such power. (*Sadasiva Aiyar and Spencer*, JJ.) CHIDAMBARAM PILLAI *v.* VEERAPPA CHETTIAR. (1917) M.W.N. 744=22 M.L.T. 380= 43 I.C. 866=6 L.W. 640.

———*Minority and guardianship—Acts of guardian—Settlement of accounts.*

A guardian of a minor is entitled to accept accounts on the basis of a mutual open and

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current account. (*Benson*, O.C.J., *Sankaran Nair and Sundara Aiyar*, JJ.) SUBBA NAIDU *v.* ETHIRAJAMMAL. **28 I.C. 640 (F.B.).**

——— *Minority and guardianship—Acts of guardian—Settlement of property.*

The guardian of a minor co-parcener may bind the minor by consent given to an alienation by his undivided grandfather of a portion of the family property for the purpose of avoiding the eventuality of the latter effecting a partition and alienating his share. (*Wallis and Miller*, JJ.) ARUNACHALA PILLAI *v.* SAMPURNATHACHI. **26 I C. 208 = 27 M.L.J. 485.**

——— *Minority and guardianship—Acts of guardian—Alienation—Absence of* bona fide *enquiry by purchaser—Improvements — Good faith.*

The title of the purchaser from the guardian of a minor may be effected by the absence on his part of due and sufficient enquiries. But it does not follow that he did not believe in good faith that he was the full owner at the time he effected improvements on the property. (*Sadasiva Iyer and Seshagiri Iyar*, JJ.) NARAYANA IYER *v.* SANKARANARAYANA IYER. **24 I.C. 940 = 1 L.W. 369.**

——— *Minority and guardianship—Acts of guardian.*

A Hindu mother purchased certain immoveable property in her name with money belonging to her major and two minor sons, *held*, the sale was not void as being in favour of minor sons. 30 Cal. 539 (P.C.) and 4 I.C. 583, Dist. (*White*, C.J. *and Oldfield*, J.) ANDALAMMAL *v.* NARASIMAHACHARIAR. **24 I.C. 927 = 1 L.W. 379.**

———*Minority and guardianship—Acts of guardian—Alienation—Onus as to necessity.*

Where an alienation by a guardian is questioned by a minor after attaining majority the onus of proving necessity is not always on the defence and if it is shown that the consideration for the alienation went in discharge of previous debts some of which is proved to have been contracted to save the minor's estate the onus is shifted to the minors of showing that the alienation was not for the purpose binding on him. Whether the onus has been shifted in a particular case is a question of fact. 6 M.I.A. 393; 40 Cal. 288, (P.C.), Ref. (*Tyabji and Spencer*, JJ.) KRISHNA RAO *v.* AYYASWAMI PADAYACHI. **(1914) M.W.N. 490 = 24 I.C. 426 = 27 M.L.J. 138.**

———*Minority and guardianship—Acts of guardian—Lease—Long term.*

A lease by guardian beyond his powers is not void but only voidable by the minor. Where the guardian appointed under a settlement deed executes a lease in excess of his powers, a natural guardian cannot set aside the lease by mere repudiation but could only do so by getting a decree of the Court. (*Sadasiva Aiyar and Spencer*, JJ.) MUTHUKUMARA CHETTY *v.* ANTHONY UDAYAN. **38 Mad. 867 = 15 M.L.T. 361 = 24 I.C. 120 = 29 M.L.J. 617.**

HINDU LAW—Minority and Guardianship —Acts of guardian.

———*Minority and guardianship—Acts of guardian—Alienation by.*

Per *Sundara Iyer*, J.—The duties of a natural guardian of a minor must be regulated by considerations of what amounts to the interests of the minor. The discretion in the duty of discharging the debts binding on the minor rests on the guardian. The question would be whether that discretion had been properly exercised. The Court should consider whether in the circumstances that existed at the time of alienation the act would be considered as a prudent one by men of ordinary prudence. To constitute pressure or necessity demand by the creditor is not necessary. Considerable latitude must be allowed to the guardian in the exercise of its discretion. Per *Sadasiva Iyer*, J.—If the guardian of a Hindu minor's property after weighing all the then existing circumstances, acts in the best interests of the minor, it is binding on the minor even if the guardian acted wrongly. The alienee is protected, if he acts in good faith after making due enquiry that the guardian's acts appeared for the benefit of the minor. (*Sundara Aiyar and Sadasiva Iyer*, JJ.) VEMBU IYER *v.* SRINIVASA IYENGAR. **23 M.L.J. 638 = 17 I.C. 609 = 12 M.L.T. 547.**

———*Minority and guardianship—Acts of guardian—Debts—Necessity.*

Where the guardian of a minor mortgages the minor's property for purchase of jewels for the minor's wife at the time of his mortgage, the debt is for necessary purpose and binds the interest of the minor in the property mortgaged. (*Wallis and Munro*, JJ.) JANKIPATHI MUNUSAWMI CHETTY *v.* PARTHASARATHY NAIDU. **12 I.C. 708 = (1911) 2 M.W.N. 477.**

———*Minority and guardianship—Acts of guardian — Settlement of disputes—Minor bound.*

A minor is bound by an honest settlement of disputes the merits of which were doubtful, and which a settlement enabled the minor legitimately to avoid. Honest belief is not conclusive of its binding character. Where the guardian did not make due enquiry into certain circumstances forming the basis of settlement, but the settlement was "fair and prudent" the settlement is binding on the minor and could not be avoided by him. (*White*, C.J. *and Munro*, J.) NATESA IYER *v.* RAMA IYER. **9 M.L.T. 498 = 10 I.C. 221 = (1911) 2 M.W.N. 146.**

———*Minority and guardianship—Acts of the guardian—How far binding.*

A Hindu minor is bound by all acts of his guardian if done *bona fide* and for the benefit of the minor's estate. (*Drake Brockman*, J.C.) MANGULAL *v.* MT. NANHI. **5 N.L.J. 1 = 1922 Nag. 104.**

HINDU LAW—Minority and Guardianship —Acts o uardian.

———*Minority and guardianship—Acts of guardian.*

Manager of a joint family represents the minor members in suits although he is not formally appointed as the guardian *ad litem*. (*Kanhaiya Lal*, J.C.) SAT DEO *v.* JAI NATH.

9 O L.J. 141=1922 Oudh 75.

Minority and Guardianship— Age of Majority.

———*Minority and guardianship—Age of majority—Guardian of person appointed.*

The age of majority of a minor for whose person a guardian is appointed becomes fixed by law at 21 and nothing which subsequently happens can reduce it. (*Spencer and Bakewell*, JJ.) JAMBAGULACHI *v* RAJAMANNARSWAMI 57 I.C. 678=11 L.W. 596.

———*Minority and guardianship—Age of majority.*

The age of majority for both males and females under the Hindu Law commences on the completion of the 15th year. (*Oldfield and Sadasiva Iyer*, JJ.) KOVVIDI SATI RAJU *v.* PATAMSETTY VENKATASWAMI.

40 Mad. 925=32 M.L.J. 119=40 I.C. 518= 5 L.W. 603.

Minority and Guardianship— Appointment by Court.

———*Minority and guardianship—Appointment by Court—Mother—Supersession of.*

A false charge of immorality made against the (widowed) mother of infants by the brother of the deceased husband in his application for guardianship of the infants must necessarily be considered in any order which might be made by the Court regarding the guardianship, as the mother cannot be expected to live with the family who have made such a charge against her owing to estrangement. (*Woodroffe and Richardson*, JJ.) DWIJAPADA KARMKAR *v.* MISS BAILEAN. 34 I.C 632= 20 C.W.N. 608.

———*Minority and guardianship—Appointment by Court—Rights of parties.*

No person other than the father or the mother has an absolute right to the guardianship of a minor. Among other relations the nearer one should be preferred. In this case the maternal uncle was preferred to the aunt's son and father's brother's grandson. (*Chapman and Roe*, JJ). LACHMI NARAIN *v.* BALARAM SAHAI. 2 P.L.J. 190=39 I C. 667= 3 P.L.W. 426.

Minority and Guardianship— Co-parcener.

———*Minority and guardianship—Co-parcener—Guardianship of property.*

A Court cannot appoint a guardian of the property of an infant co-parcener under the Mitakshara Law. (*Fletcher and Chatterjee*, JJ.) JANKI NATH SINGH ROY *v.* JA MINI KANTA SINGH ROY. 22 I.C. 612.

HINDU LAW—Minority and Guardianship —Joint Hindu family.

Minority and Guardianship— De facto guardian.

———*Minority and guardianship*—De facto *guardian—Alienation—Validity.*

An alienation by *de facto* guardian of a minor cannot bind the minor unless it is proved to be for his benefit or for family necessity. 23 M.L.J. 244, Foll. (*Sadasiva Iyer and Seshagiri Iyer*, JJ.) KOPPARA KANDIYIL *v.* ANTHALATHIL. 24 I.C. 871.

———*Minority and guardianship*—De facto *guardian— Step-mother—Power to bind the minor's estate.*

A step-mother, no doubt, is not *de jure* guardian of a minor step-son but she may be his *de facto* guardian and the law is that when the transactions entered into by such *de facto* guardian or such as a prudent manager of the property would have made and are covered by legal necessity or benefit to the minor they can be upheld. (*Prideaux*, A.J.C.) GANPAT *v.* FIRM OF BISSESSARLAL. 1923 Nag. 230.

———*Minority and guardianship*—De facto *guardian—Alienation—Benefit or necessity.*

A *de facto* Manager of a Hindu minor's estate can, in the case of necessity or for the benefit of the minor, alienate the minor's property. 26 Cal. 820 and 13. I.C. 1125, Foll. Under Hindu Law, the king and no one else is the guardian of minors. (*Stanyon*, A J.C.) SOMWAR PURI GURU CHANDAN PURI *v*, GOPAL SINGH. 49 I.C. 246.

Minority and Guardianship—Disposition of Property.

———*Minority and guardianship—Disposition of property.*

A minor cannot make a disposition of property *inter vivos* much less by bequest. (*White*, C.J. *and Tyabji*, J). KRISHNAMA CHARIAR *v.* VEERAVALLI KRISHNAMA CHARI.

38 Mad. 166=24 M L.J. 517= 13 M.L.T. 385=19 I.C. 482= (1913) M.W.N 355.

Minority and Guardianship—Joint Hindu Family.

———*Minority and guardianship — Joint Hindu family.*

Where an application was made by the managing member of a joint Hindu family governded by the Mitakshara Law for being appointed guardian of his minor son and for leave to sell the minor's undivided share in the ancestral property ; *held*, that the High Court could under its general powers and apart from the provisions of the Guardians and Wards Act appoint a guardian of the minor's property. 25 B. 353, Foll. (*Greaves*, J.) HARINARAIN DAS, *In re*. 50 C. 151= 1923 Cal. 409.

HINDU LAW—Minority and Guardianship—Joint Hindu family.

———*Minority aud guardianship—Joint Hindu family—One member of age—Certificate of guardianship of minor members.*

If all the members of a joint *mitakshara* family are minors, an order appointing a guardian of the minors, is a good one. But when one of them comes of age the guardianship ceases *ipso facto*, as regards him, and as there cannot be a guardianship of minors in a joint *mitakshara* family, in which there are also adults, the guardianship ceases also as regards the other minors and the member attaining majority bring rent suits on behalf of himself and the minor members. (*Woodroffe and Richardson*, JJ.) SAMDANI *v.* KAMALA KANTHA. **16 I.C. 424.**

———*Minority and guardianship—Joint Hindu family—Appointment of guardian of person.*

Though a guardian of the ancestral property of a minor member of a joint Hindu family cannot be appointed, a guardian of the person of such minor can be appointed by the Court. 21 I.C. 848; 5 L.W. 374; 41 Mad. 561; 30 Bom. 152; 46 I.C. 815, Dist. (*Spencer and Bakewell*, JJ.) JAMBAGUTHACHI *v.* RAJAMANNARSAMI NADALWAR. **57 I.C. 678= 11 L.W. 596.**

———*Minority and guardianship—Joint Hindu family—Manager—Minor.*

If the Manager of a joint family is a minor and all the other members too are minors the natural guardian of the manager takes the place of the manager and fully represents the joint family. (*Batten*, A.J.C.) BAJI RAO *v.* GULAB SINGH. **17 I.C. 141=8 N.L.R. 136.**

———*Minority and guardianship — Joint Hindu family—Member becoming a lunatic—Appointment of guardian.*

A guardian of the property of a lunatic cannot be properly appointed in respect of the lunatic's interest in the property of an undivided Mitakshara family for no outsider can intermeddle with the property and affairs of a joint Hindu family merely by being appointed the guardian of an incompetent member of that family. Where the members of the joint Hindu family consist of a lunatic father and an adult son, the son must be presumed to be in fact the *karta* or manager of the joint family. (*Atkinson and Manuk*, JJ.) PARAMADUBE *v.* MAHADEO SINGH. **49 I C. 907.**

Minority and Guardianship—Liability of Minor.

———*Minority and guardianship—Liability of minor—Sale of property alleged to belong to minor—Covenant for title—Breach—Liability.*

A guardian of a minor cannot personally bind the minor of covenants entered into on his behalf. The 2nd deft. as guardian sold properties alleged to belong to the minor 1st deft. The vendee was subsequently dispossessed as 1st deft. had no right to the property. In a suit by the vendee for the damages, *held*, that the minor was not liable but that the guardian must be deemed to have entered into the covenant personally and hence liable. 19 Cal. 507, Foll. (*Seshagiri Iyer and Moore*, JJ.) SRINIVASA THATACHARLU *v.* NOOLAMMA. **11 L.W. 246=53 I.C. 486=(1920) M.W.N. 310.**

———*Minority and guardianship—Liability of minor—Contract on behalf of minor and for his benefit—Personal liability of minor.*

Per *Ayling and Seshagiri Aiyar*, JJ.—No decree should be passed against a minor or his estate on a contract entered into on his behalf by a guardian, under which no charge is created on the estate, except in cases in which the minor's estate would have been liable for the obligation incurred by the guardian under the personal law to which the minor is subject. Per *Chief Justice*,—A decree cannot be passed against a minor or his estate on a contract entered into on his behalf by a guardian for his benefit. 11 Bom. 551, Foll. (*Wallis*, C.J. *Ayling and Seshagiri Aiyar*, JJ.) BATCHU *v.* VAJJULA JAGANNADHAM. **42 Mad. 185= 36 M.L J. 29=25 M.L T. 23=9 L W 229= 49 I.C. 872=(1919) M.W.N. 148 (F.B.)**

———*Minority and guardianship—Liability of minor—Contracts of guardian.*

A Hindu guardian cannot by his acts, bind the minor with personal liability. The minor's liability, however, for debts properly incurred on his behalf by his guardian can be charged against his estate. (*Seshagiri Iyer and Napier*, JJ.) VENKATASAMI NAICKER *v.* MUTHUSAMI PILLAI. **34 M L J 177= 45 I.C. 949=23 M L T. 280.**

———*Minority and guardianship—Liability of minor—Promissory note.*

The estate of a minor is liable for a promissory note debt executed by his mother as guardian even though the mother did not sign the promissory note as guardian. Ss. 28 and 30 of the Negotiable Instruments Act do not cover all cases of representative and cannot therefore be applied to guardians. (*Seshagiri Aiyar and Napier*, JJ.) PADMA KRISHNA CHETTIAR *v.* NAGAMANI AMMAL. **39 Mad. 915= 30 I.C. 574=18 M.L.T. 216.**

———*Minority and guardianship—Liability of minor.*

A minor is not bound by the execution of the deed by his guardian on his behalf and he can contest the binding nature of the debt. (*Benson and Sundara Iyer*, JJ.) BHOGARAJI *v.* ADAPALLI SESHAYYA. **38 Mad. 560= 12 I.C. 128=10 M.L.T. 179.**

———*Minority and guardianship—Liability of minor—Trade by guardian.*

Where a minor inherits a family business, it is open to his mother as guardian to carry on the business through a manager, if necessary. But the guardian and not the minor is the person personally liable on contracts entered.

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into in the course of the business. The creditors have only an indirect right of recourse against the assets of the business in so far as the guardian himself has a right of indemnity against such assets. If, however, the guardian has no such right and is himself accountable to the minor the creditor's remedies are only against the guardian. It is improper for a guardian of a minor's business to empower an agent to draw bills in favour of himself or his firm and if the guardian suffers loss by the fraud of the agent, he and not the minor nor his assets are liable. (*Wallis and Munro*, JJ.) SANKA KRISHNAMURTHI *v.* BANK OF BURMAH, LTD. 35 Mad. 692= (1911) 1 M W.N. 385=14 I C. 389= 21 M.L.J. 620=11 I.C. 79=11 M.L.T. 53.

——*Minority and guardianship—Liability of minor—Contract by guardian.*

On a contract entered into by a guardian on behalf of a minor in which the minor's estate would have been liable for the obligation incurred by the guardian under the personal law of the minor a decree might be passed against the estate of the minor. (*Macnair*, A.J.C.) CHHOGALAL MEGHRAJ *v.* KANHAIYALAL TARACHAND. 56 I C. 740

——*Minority and guardianship—Liability of minor—Contract—Want of mutuality.*

A guardian of a minor cannot bind the minor's estate by a contract for the purchase of immoveable property, and as the minor is not bound by such contract there is no mutuality and consequently the minor cannot obtain specific performance of the contract. (*Stanyon*, A.J.C.) SURAJMAL *v.* PANDHARI. 41 I.C. 45=13 N.L.R. 98.

——*Minority and guardianship—Liability of minor—Guardian carrying on business on behalf of minor proprietor—Debts of trade—Whether assets liable.*

Where a Hindu family maintains itself by trade, and a minor becomes by inheritance the sole owner of such business, if the trade is carried on thereafter by the guardian the assets of such business will be liable for such debts contracted by the guardian as are necessarily incidental to or flow out of the carrying on of the trade along its normal course. 20 Bom. 767 Foll.; 26 Bom. 206 and 34 Bom. 72, Ref. (*Stanyon*, A.J.C.) JHITIBAI *v.* TEJMAL. 41 I.C. 35=13 N.L R. 109.

——*Minority and guardianship—Liability of minor—Personal covenant.*

A guardian cannot bind the estate of the ward except by an agreement clearly purporting to do so and that only in certain cases. A guardian cannot bind his minor ward by an agreement to make the latter personally liable for future maintenance although he can bind the estate if it is subject to a future liability and the covenant be for the benefit of the

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estate of the minor. (*Miller*, C.J. *and Coutts*, J.) RAJ KUMAR JAGANNATH PRASAD SINGH *v.* MIRZA EKBAL BAHADUR. 5 P.L J. 289= 33 I.C. 214=1 P.L.T. 65.

——*Minority and guardianship—Liability of minor—Mortgage by guardian.*

A mortgage of a minor's property by his guardian is binding on the minor only to the extent by which he was benefited. The omission in the document of any reference to the minor does not render the document ineffectual if it is proved that the guardian intended to act only as guardian of the minor. (*Chapman and Jwala Prasad*, JJ.) KALI RAI *v.* KABU SINGH. 3 P.L.W. 210=42 I.C. 462=4 P.L.J. 78.

Minority and Guardianship—Marriage.

——*Minority and guardianship—Marriage —Right of mother to select bridegroom for daughter.*

A mother is entitled to select a bridegroom for her daughter and this right of hers should not be interfered with by the Court except in very exceptional circumstances. (*Wallis*, J.) *In the matter of*, MANI BAI. 22 I.C. 831= 13 M.L.T. 146.

Minority and Guardianship—Mother.

——*Minority and guardianship—Mother—Conversion.*

Though an undivorced mother of Hindu infant becomes a Christian, she can still be appointed the guardian of the infants if she be in a position to satisfy the Court that she will be able to carry out the obligation of bringing up her children in the faith of her husband. (*Woodroffe and Richardson*, JJ.) DWIJAPADA KARMAKAR *v.* MISS BAILEAN. 34 I C. 632=20 C.W.N. 603.

Minority and Guardianship—Natural Guardian.

——*Minority and guardianship—Natural guardian—Father—Delegation of functions—Revocation—Interest of minors.*

As in England, so among the Hindus the father is the natural guardian of his children during their minorities, but their guardianship is in the nature of a sacred trust and he cannot therefore during his lifetime substitute another person as guardian in his place. He may in the exercise of his discretion as guardian entrust the custody and education of his children to another, but the authority is revocable and if the interests of the children require it, the father can resume the custody and education of his children in spite of any contract to the contrary. If, however, the authority has been acted upon in such a way as, in the opinion of the Court exercising the jurisdiction of the crown over infants, to create expectations on the part of the minor and it is undesirable in the interests of the minor to revoke the authority, then the Court will place the minor under

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the custody of the delegated guardian. (*Lord Parker.*) MRS. ANNIE BESANT *v.* NARAYANIAH. 38 Mad. 807=41 I.A. 214= 27 M.L.J. 30=18 C.W.N. 1089= 1 L W. 520=(1914) M.W.N. 585= 16 M L T. 165=20 C L.J 253= 24 I C. 290=16 Bom. L.R. 625= 12 A.L.J. 1165 (P.C.)

[On appeal from 25 M.L.J. 661= 15 M L T. 1=(1914) M W N 1 (Suppl)= 21 I.C. 789 which itself was an appeal from 25 M L J. 550=(1913) M.W.N. 868.

———*Minority and guardianship—Natural guardian—Mother.*

Under the Hindu Law after the father the mother is the preferential guardian of minors and not their brother. A payment by him will not save limitation under S. 21, Lim. Act. (*Mookerjee and Walmsley, JJ.*) BIRESWAR MOOKERJEE *v.* AMBIKA CHARAN BATTACHARJEE. 42 I.C. 472=45 Cal. 630.

———*Minority and guardianship—Natural guardian—Step mother.*

In the absence of nearer relations, a step-mother is under the Hindu Law, entitled to act as the guardian of her step-son. (*Seshagiri Aiyar and Napier, JJ.*) VENKATASAMI NAICKER *v.* MUTHUSAMI PILLAI, 34 M L J 177=45 I C. 949=23 M.L.T. 280.

———*Minority and guardianship—Natural guardian—Who is.*

Per *Sadasiva Iyer*, J:—Nobody other than the father and mother of a minor with the probable exceptions of the elder brother and the direct male and female ancestors, is entitled to be the natural guardian of the minor. 2 C W. N. 191, Foll; 39 Cal. 232 (P.C.), Ref. The paternal aunt is not a natural guardian. (*Sadasiva Aiyar and Tyabji, JJ.*) THAYAMMAL *v* KUPPANNA KOUNDAN.

38 Mad 1125=26 I.C. 179=27 M.L.J. 285.

———*Minority and guardianship—Natural guardian—Father—Father's right to appoint.*

A Hindu father can appoint a guardian of his child orally or by will to the exclusion of the mother. (*Sundara Aiyar and Spencer, JJ.*) ANANTHANARAYANA IYER *v.* SAVITRI AMMAL. 36 Mad 151=(1912) M.W N. 59= 11 M L T. 63=13 I.C. 488=22 M.L.J. 231.

———*Minority and guardianship—Natural guardian—Step-mother.*

Under the Hindu Law the step-mother is not the natural guardian of her minor step-son. She is not therefore, a guardian within Art. 44 of the Limitation Act so that Article does not apply to an alienation by her. (*Mitra, A.J.C.*) VITHU v. DEVIDASS. 51 I.C. 943= 18 N.L.R. 55.

———*Minority and guardianship—Natural guardian—Father—Delegation of right.*

The father as natural guardian, may delegate his authority to others but such delegation is

HINDU LAW—Minority and Guardianship —Right to guardianship.

revocable. Guardianship being a sacred trust, the father cannot substitute another guardian, 38 Mad. 807, Foll. (*Drake-Brockman, J.C.*) HANUMAN SINGH *v.* GANESH PRASAD.

50 I.C. 580.

———*Minority and guardianship—Natural guardian—Delegation by father—Resumption.*

A Hindu father may in his discretion entrust the custody and education of his children to another but by so doing he does not cease to be the guardian, that being an office which he cannot permanently part with in favour of a third person. (*Lindsay, J.C.*) MUSHAF HUSAIN *v.* MOHAMMAD JAWAD.

21 O.C. 194=48 I.C. 60=5 O L.J. 616.

———*Minority and guardianship—Natural guardian—Mother.*

Under the Hindu Law the mother is the natural guardian of a minor after the death of the father, irrespective of whether the family be joint or separate. (*Jwala Prasad, J.*) BHAIRS PRASAD SAHU *v.* RAM CHANDRA PRASAD.

45 I.C. 253=4 Pat. L.W. 373.

———*Minority and guardianship—Natural guardian.*

Father's brother's wife is not a natural guardian. (*Sharfuddin and Roe, JJ.*) SUBA MAHTON *v.* MUNSHI MAHTON. 40 I.C 625.

Minority and Guardianship— Promissory Note.

———*Minority and guardianship— Promissory note—Liability of minor.*

The executant of a promissory note was described in the body of the note as the guardian of a minor and the necessity for borrowing was stated in the note as arising from the minor's father's debt. *Held*, that the minor was still not liable on the promissory note. (*Oldfield and Sadasiva Iyer, JJ.*) RAMASWAMI MUDALIAR *v.* MUTHUSWAMI IYER. 30 I.C. 481.

Minority and Guardianship— Right to guardianship.

———*Minority and guardianship—Right to guardianship—Son by first husband.*

The mother continues to be the natural guardian of her infant son, even after her remarriage with second husband, if the infant son lived with her. (*Shah and Crump, JJ.*) RAOJI THAKARAM *v.* PREMRAJ SADARAM.

1923 Bom. 213.

———*Minority and guardianship—Right to guardianship.*

The guardian of a minor widow is her husband's kin and it is only when the husband's family becomes extinct that the heirs of her own father are entitled to be her guardian. (*Mookerjee and Buckland, JJ.*) SATIS *v.* KALIDASI. 68 I.C. 877=34 C.L.J. 629.

HINDU LAW—Minority and Guardianship —Right to guardianship.

——*Minority and guardianship—Right to guardianship—Paternal relations.*

On the death of the parent of a child the paternal relations of the minor have no legal right of guardianship of the child. (*Mookerjee and Beachcroft, JJ.*) NIRODE BARANI DEBYA *v.* BHOLANATH SARKAR. **26 I.C. 300.**

——*Minority and guardianship—Right to guardianship—Re-marriage—Paternal grandfather—Right to give minor in marriage.*

Under the Hindu Law the mother is, after the father, the natural legal guardian of her minor daughter and she does not lose her right by re-marriage in any case when such re-marriage is recognised as valid by custom. Where the welfare of a female minor is not being neglected by the mother, it is not proper to appoint the paternal grandfather as guardian of the person of the minor and to allow him to remove the girl from the custody of the mother. A Hindu mother can effect a valid marriage for her daughter even in the presence of the paternal grandfather. (*Dundas, J.*) MUSSAMMAT INDI *v.* GHANIA.

58 I.C. 783.

——*Minority and guardianship—Right to guardianship—Minor widow.*

The guardians of a minor widow are the husband's relations within the decree of a Sapinda, in preference, to her father and his relations. (*Johnstone, C.J. and Rattigan, J.*) EMPEROR *v.* TEK CHAND.

27 P.R. Cr. 1915=16 Cr. L.J. 760=31 I.C. 360=43 P.W.R. Cr. 1915.

——*Minority and guardianship—Right to guardianship—Conversion—Effect.*

A Hindu father does not lose his right to appoint any one as guardian for his child by becoming a Christian. (*Wallis and Abdur Rahim, JJ.*) ALBRECHT *v.* BATHEE JELLAMMA. **11 M.L.T. 63=(1912) M.W.N. 63=13 I.C. 453=22 M.L.J. 247.**

——*Minority and guardianship—Right to guardianship—Mother.*

The mother is entitled to the guardianship of a minor boy or girl after the father and the paternal kindred is postponed to her. But in respect of property the surviving co-parceners would be entitled to hold possession of the family estate till partition. 4 M.H.C.R. 399; 8 M.H.C.R. 116, Foll. (*Benson and Sundara Aiyar, JJ.*) ACHA RANGANAIKAMMAL *v.* ACHA RAMANUJA AIYANGAR. **35 Mad. 728=21 M.L.J. 600=10 M.L.T. 57=11 I.C. 570=(1911) 2 M.W.N. 285.**

——*Minority and guardianship—Right to guardianship—Not lost by re-marriage of mother.*

A Hindu widow, who is allowed to re-marry by the custom of her caste, does not, on re-marriage, lose her right of guardianship of her minor son. (*Prideaux, J.C.*) SHAHU *v.* MOHIDIN. **53 I.C. 897=4 N.L.J. 80.**

HINDU LAW—Minority and Guardianship —Testamentary guardian.

——*Minority and guardianship—Right to guardianship—Re-marriage.*

A Hindu mother loses her natural right of being a preferential guardian of her minor son's persons by reason of her re-marriage. She may be appointed a guardian as a stranger. (*Mitra, A.J.C.*) CHIRONIJI KASAR *v.* PUNAM CHAND.

48 I.C. 75.

Minority and Guardianship—Testamentary Guardian.

——*Minority and guardianship—Testamentary guardian.*

A Hindu father has, under the Hindu Law, power to appoint by will a guardian of the property of his minor son. (*Mears, C.J. and Sulaiman, J.*) DUBANAND *v.* ANANDMANI.

18 A.L.J. 1127=59 I.C. 909=2 U.P.L.R. All. 431=43 All. 213.

——*Minority and guardianship — Testamentary guardian—Father's power — Minor sons—Alienation by guardian—Limitation.*

It is competent to a Hindu father to appoint a testamentary guardian for the management of the family properties during the minority of his sons. If the mother of the nephews of the minor sons, acquiesces in the arrangement, it will be good against all. An alienation by such guardian would be binding on the minor sons unless set aside within the period under Art. 44 of the Limitation Act. (*Scott, C.J. and Beaman, J.*) MAHABLESHWAR KRISHNAPPA *v.* RAMCHANDRA MANGESH KULKARNI.

38 Bom. 94=21 I.C. 360=16 Bom. L.R. 862.

——*Minority and guardianship—Testamentary guardian.*

Under Hindu Law a man cannot appoint a guardian of his minor nephew. Any provision in a Will of a Hindu testator appointing a guardian of his nephew does not bind the Courts under S. 7 (3) of the Guardians and Wards Act. (*Chevis, J.*) DHANPAT RAM *v.* PREM SINGH **220 P.L.R. 1911=12 I.C. 852=220 P.W.R. 1911.**

——*Minority and guardianship — Testamentary guardian—Hindu father.*

Under the Hindu Law it is open to a father to appoint a testamentary guardian for his minor son. 41 M. 561 Referred to. Whatever doubts may exist as regards the power of the father to appoint a testamentary guardian for his minor son as regards ancestral property, it is open to him to appoint such a guardian as regards his separate or self-acquired property. A bequest by a Hindu father of his separate property to his minor daughter coupled with the appointment of a testamentary guardian for the minor's property would be valid. (*Oldfield and Devadoss, JJ.*) KONTHALATHAMMAL *v.* SOUNDARATHACHI.

46 Mad. 873=43 M.L.J. 481=18 L.W. 356=(1923) M.W.N. 902=74 I.C. 896=33 M.L.T. (H.C.) 80.

HINDU LAW—Minority and Guardianship—Testamentary guardian.

——*Minority and guardianship—Testamentary guardian—Father's power to appoint.*

Per *Sadasiva Iyer*, J.—A Hindu cannot by will appoint a guardian to the ancestral property of his minor sons who take such property by survivorship and not by succession. 30 M.L.J. 504; 21 I.C. 848; 29 I.C. 475, Foll; 7 W.R. 71; 13 M.I.A. 209, Dist.; 38 Bom. 94, Dist. An executor cannot be appointed as guardian for purposes of binding his estate. *Spencer*, J. *Semble.*—There may be exceptional cases in which a Hindu father may validly appoint by will a guardian to manage his undivided son's estate during their minority, when there is an adult co-parcener to do so. (*Sadasiva Iyer and Spencer*, JJ.) CHIDAMBARAM PILLAI *v.* VEERAPPA CHETTIAR.

22 M.L.T. 380=6 L.W. 640=(1917) M.W.N. 744=43 I.C. 865.

——*Minority and guardianship—Testamentary guardian.*

It is not competent to the only adult co-parcener of a Mitakshara family consisting of himself and his minor co-parceners, to appoint a testamentary guardian to the co-parcenary properties of the minor co-parceners. 41 M. 561 and other cases followed. Consequently it is not open to a father to appoint a testamentary guardian for the properties in the hands of his minor sons in supersession of the mother. (*Kotwal*, A.J.C.) JIWANDAS *v.* RAJRANI.

64 I.C. 433.

Mitakshara.

See HINDU LAW—TEXTS.

Mortgage.

See HINDU LAW—ALIENATION.

Mutt.

See HINDU LAW—(1) RELIGIOUS OFFICE.
(2) RELIGIOUS AND CHARITABLE ENDOWMENTS.

Nattu Kottai Chetties.

See HINDU LAW—APPLICABILITY.

Obstructed Heritage.

See HINDU LAW—INHERITANCE.

Partible Property.

See HINDU LAW—PARTITION.

Partition.

ACCOUNTS.
AGREEMENT.
ALIENATION.
AWARD.
BURDEN OF PROOF.
CO-WIDOWS.
DAUGHTER.
DECLARATION OF INTENTION.
DIVISION IN STATUS.
EFFECT OF.
EQUITIES.

HINDU LAW—Partition—Accounts.

EVIDENCE OF.
FATHER.
FEMALE SHARER.
ILLEGITIMATE SON.
INSTITUTION OF SUIT.
MINOR.
ONUS OF PROOF.
ORAL.
PARTIAL PARTITION.
PROVISION.
RE-OPENING OF.
RE-UNION.
RIGHT TO.
SHARES.
SUBJECT-MATTER.
SUIT FOR.

Partition—Accounts.

——*Partition — Accounts — Marriage expenses incurred after suit but before actual partition.*

Under the Hindu Law, the manager of a joint family is not obliged to keep accounts while the family remains joint. When a partition is asked for, partition takes place of the property as it exists in the hands of the manager. From the date of the suit there is a severance of interest and for purposes of succession the family members are no longer considered joint; but it does not follow that thereafter until the joint family property is actually divided it does not remain joint. If pending such division there are many expenses which should be properly incurred by the joint family purse, (*e.g.*, marriage expenses) those expenses are taken out of the family property, and they cannot be debited to any particular co-parcener. (*Macleod*, C.J. *and Heaton*, J.) RAMNATH *v.* GOTURAM. **54 I.C. 116=21 Bom. L.R. 1179.**

——*Partition — Accounts — Liability of manager.*

The manager cannot be called on to defend past transactions. The account which has to be taken is merely an enquiry into existing assets. This general rule, however, has one exception. *viz.*, in the case of minors for they cannot be deemed to acquiesce in the management of the estate. (*Beaman*, J.) HARI DAS LALJI *v.* NAROTAM RAGHAVJI. **14 I.C. 769=14 Bom. L.R. 237.**

——*Partition—Accounts—Manager's duty to account.*

The only account that the *karta* is liable to submit in a suit for partition is as to the existing state of the property divisible. The parties have no right to look back and claim relief against past in equalities of enjoyments of members or other matters. (*Mookerjee and Panton*, JJ.) NIBARAN *v.* NIRUPAMA.

26 C.W.N. 570=69 I.C. 476=34 C.L.J. 563.

——*Partition — Accounts — Liability of manager.*

The manager is liable to account only according to the existing state of the family. But

HINDU LAW—Partition—Accounts.

the statement of the manager as to the properties existing is not conclusive and the other members can show assets other than those admitted. (*Fletcher and Richardson*, JJ.) PORMESHWAR DUBEY *v.* GOBIND DUBEY.
43 Cal. 459=33 I.C. 190=20 C.W.N. 25.

———*Partition — Accounts — Purchase of property.*

In a partition suit the Court will not, except in special circumstances. Order an account to be taken of past transactions. Where it is impossible to predicate how much will ultimately be realized out of the outstanding debts, it is sufficient to give the plaintiff a declaration that he is entitled to his proportionate share of whatever may be recovered. Any property acquired by a member with his own money after the passing of the preliminary decree for partition would not be liable to partition, but when, it is shown that he possessed ancestral funds from which such property could be acquired, it lies on him to show that those funds were not employed for the purpose. If he fails to discharge this burden, it must be presumed, that the property was acquired with money belonging to the joint family and it is therefore, liable to partition. (*Broadway and Brasher*, JJ.) LACHHMAN DAS *v.* NANAK CHAND.
23 P.W.R. 1923=1923 Lah. 20.

———*Partition—Accounts — Manager's liability to account.*

Where an account has to be taken with a view to make a partition of joint family properties, the account is merely an enquiry into the existing assets and the head of the family cannot in general be called upon to defend the propriety of his past transactions except in cases of fraud, misappropriation or gross reckless waste. The manager being the accounting party has to file an account as to the properties available for partition but the other members are not bound to accept it. The enquiry directed by the Court should be conducted in the usual manner to find out what the property consists of. The manager should be directed to file his accounts and the other members given opportunity to verify the same, The mere fact that account books were not kept would not in the absence of evidence to show that the accounts produced are false in any particular render him liable. (*Spencer, and Kumaraswami Sastry*, JJ.) TADA BULLI TAMMIREDDI *v* TADA BULLI GANGIREDDI.
45 Mad. 281=42 M.L.J. 670=
30 M.L.T. 323 (H.C.)=16 L.W. 55=
1922 Mad. 236 (2).

———*Partition — Accounts — Set-off—Deb due to one member.*

When taking accounts in a partition suit, a time-barred claim by one co-parcener against the joint family, cannot be allowed as equitable set-off. (*Spencer and Ramesam*, JJ.) SUBRAYA BHANDARY *v*, JANARDANA BHANDARY.
41 M.L.J. 870=
62 I.C. 952=16 L.W. 585.

HINDU LAW—Partition—Agreement.

———*Partition—Accounts, method of taking —Custom among Vaisyas.*

The account to be taken in a partition suit is an account of the assets and liabilities of the family on the date of the plaint. Jewels given to the wives of co-parceners cannot be made available for partition. There is no custom among *Vaisyas* whereby the value of the jewels is to be debited against the husband's share. (*Wallis*, C.J. *Hughes*, J.) LINGAMALLU VARADA RAGHAVIAH *v.* LINGAMALLU VENKATARAMANIAH. 61 I.C. 772=13 L.W. 262.

———*Partition—Accounts— Partnership consisting of some of the members of the joint family—Suit by or against family for debt due.*

Where an action for the recovery of sums advanced by a partnership consisting of some of the members of a joint Hindu family against the family is barred, the claim cannot be enforced in an action for partition after it has become barred either by way of equitable set-off or as an item in the partnership accounts with the family. (*Sadasiva Aiyar and Phillips*, JJ.) VELLAYAPPA MOOTHAN *v.* KRISHNA MOOTHAN. 44 I.C. 428=34 M.L.J. 32.

———*Partition—Accounts—Mesne profits—Infant member.*

A minor member living separately of his own accord and not because of the manager is not entitled to mesne profits at the partition of the property. (*Sundara Iyer and Sadasiva Iyer*, JJ.) SRINIVASA IYENGAR *v* THIRUVENJADATHA IYENGAR. 38 Mad. 556=
28 M.L.J. 644=(1914) M.W.N. 282=
(1913) M.W.N. 1034=23 I.C. 264=
15 M.L.T. 307.

———*Partition— Accounts— Liability of manager—Division in status.*

There may be a division in status as distinguished from a division of property. The former is a matter of individual decision while the latter is the resultant from that decision. A separation of one branch of the family does not necessarily put an end to the joint management of the estate by the manager. In an ordinary partition suit where there is no previous separation the enquiry is in the absence of fraud or other improper conduct directed to ascertain the divisible assets, the manager not being liable to account for his past dealings with the family property. (*Stuart and Kanhaiya Lal*, A.J.Cs.) SURAJ NARAYAN *v.* IQBAL NARAYAN. 48 I.C. 513=5 O.L.J. 676.

Partition—Agreement.

———*Partition—Agreement against.*

Any member of the joint family after its disintegration cannot bring a suit for separate possession of the joint property if he joined the others to refer their matters to arbitration and an award is made thereon precluding themselves during their lifetime from claiming separate possession of it by means of a partition by metes and bounds as the award is binding

HINDU LAW—Partition—Agreement.

on them. (*Knox*. A.C.J. *and Piggott*, J.) RUP SINGH *v*. BHABATHI SINGH. **42 All. 30 = 58 I.C. 632 = 17 A.L.J. 916**

———*Partition—Agreement against.*

The fact that the tenants-in-common of the village are jointly responsible to the Government for the land revenue will not make the village impartible. Nor can the compromise among the parties that the lands should not be divided, impart the character of impartibility to the estate. Impartibility arises out of some special enure or some general family or local custom. Parties cannot render an estate impartible which is partible. (*Chandavarkar and Hayward*, JJ.) PRIOJSHAH BHIKAJI VANDRIVALLAH *v*. MANIBHAI NICHHABAI. **36 Bom. 53 = 12 I C. 543 = 13 Bom. L R. 963.**

———*Partition—Agreement against.*

Agreement not to partition is binding on the parties thereto provided no equitable ground is made out for not giving effect to the agreement. (*Chatterjee and Richardson*, JJ.) CHAITA DASSY *v*. MADAN CHANDRA DAS. **38 I.C. 33.**

———*Partition — Agreement against — Devolution of share of childless sharer on his brother—Validity of.*

A clause in a partition deed that in the event of the death of any one of them without male issue his share after dedicating alienations by him should be divided among the survivors is valid and does not contravene the provisions of S. 6 of T.P. Act, or Hindu Law. 39 All 414, Foll. (*Wallis*, C.J. *and Seshagiri Aiyar*, J.) MUTHU RAMAN CHITTIAR *v* PONNUSWAMY UDYAR. **29 M.L.J 214 = 18 M.L.T. 124 = (1915) M.W.N. 405 = 29 I.C. 849 = 2 L.W. 533.**

Partition—Alienation.

———*Partition—Alienation of share.*

If the members of Hindu co-parcenary, deal with their shares with the concurrence of the others, the family should be deemed to have separated. (*Chitty and Teunon*, JJ.) SAKHI LAL CHOWDHURY *v*. WAJID ALI, **50 I.C. 91 = 29 C.L.J. 207.**

———*Partition — Alienation of share—Release for consideration.*

A release for consideration by co-parcener effects a severance as between him and the other members of the joint family. (*Abdur Rahim and Spencer*, JJ.) INDOJI JITHAJI *v*. KOTTAPALLI RAMA CHARLU. **54 I C. 146 = 10 L W. 498.**

———*Partition — Alienation of share—Unilateral declaration—Effect of.*

Where a member of the joint Hindu family transferred his share in the family property to another member for consideration the transaction amounts to a renunciation of the transferer's share for a consideration and does not effect a partition among all the members of the joint family. 5 Mad. 196; 15 All. 339, Ref.; 11 Mad. 304, Dist. An alienation by a co-parcener is not an unilateral declaration of intention to effect a partition in the family. (*Ayling and Seshagiri Aiyar*, JJ.) KAVERAMMA *v*. VISHNU KUNKRILAYYA. **49 I.C. 263.**

HINDU LAW—Partition—Alienation.

———*Partition — Alienation of share—Alienee from co-parcener—Mesne profits.*

Where the family has become divided in status an alienee from a co-parcener who has not been in enjoyment of his share is entitled to his share of the profits from the date of the purchase, in a suit for partition. But when the family has not become divided before alienation, profits can be claimed only from the date to the decree 39 Mad 265; 31 M.L.J. 275; 14 Cal. 493; 16 Cal. 397, Dist. (*Spencer and Krishnan*, JJ.) VANJAPURI GOUNDAN *v*. PACHAMUTU GOUNDAN. **7 L.W. 225 = 45 I.C. 62 = 35 M.L.J. 609.**

———*Partition—Alienation of share—Effect of.*

Per *Sadasiva Aiyar*, J.—A member of a joint Hindu family who sells away his share in all the co-parcenary property becomes severed from the joint family and the alienee becomes a tenant-in-common with the co-parceners in respect of the share so alienated. (*Wallis*, C.J., *Sadasiva Aiyar and Seshagiri Iyer*, JJ.) SUNDARA RAJAM *v*. ARUNACHELAM CHETTY. **39 Mad 136, 169 = 29 M L J. 793, 816 = 2 L W. 1247, 1266 = 18 M.L.T 852, 868 = 33 I C. 858 = (1916) 1 M.W.N. 31.**

———*Partition—Alienation of share—Decree at the instance of stranger—Effect of.*

A holding belonged to two brothers forming a joint Hindu family. The elder executed a *muchilika* in favour of the plff. acknowledging that the land was *Kambatham*. Plff. instituted a suit under the Rent Recovery Act to compel him to exchange *patta* and *muchilika*, treating him alone as the owner and on his failure an order of ejectment was passed under S. 10 of Rent Recovery Act. No dispossession took place in pursuance of the said order. The judgment-debtor died and the plff. instituted the present suit to recover possession of the holding from his judgment-debtor's son and brother. *Held*, assuming that the plff. acquired by reason of the judgment the share of his judgment-debtor that share could not be awarded to him without a suit for general partition. A decree for joint possession also could not be made as the Court would not in the exercise of its discretion pass a decree for joint possession in favour of an alienee from one of the members of joint Hindu family. Per *Sundara Aiyar*, J.—The decree has not the effect of conveying the interest of the judgment-debtor or in any way affecting the right of survivorship of the other members of the family. 29 All. 215, Dist. Per *Sadasiva Aiyar*, J.—The decree operated to serve the joint tenancy and to convey to the plff. the

HINDU LAW—Partition—Alienation,

rights of the judgment-debtor. 29 All. 215, Foll. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) NARAYANSWAMI NAIDU *v.* THIRUMULASETTI SUBBAYA.
24 M.L.J. 79=16 I.C. 698=(1913) M.W.N. 96.

———*Partition — Alienation of share—Survivorship or inheritance.*

When a co-parcener alienates his interest in a co-parcenary property, the joint tenancy in respect thereof is thereby put an end to, and the other co-parceners become tenants-in-common. 35 Mad. 47, Ref. *Quære*—In what capacity does a co-parcener, who alienate his interest in part of the co-parcenary property take the share of another co-parcener who dies subsequent to the alienation whether by a survivorship or inheritance. 20 Mad. 690, 717, Ref. (*Benson and Miller*, JJ.) SRINIVASA SUNDARA THATHACHARIAR *v.* KRISHNASWAMY IYENGAR 11 M.L.T. 312=15 I.C. 334=(1912) M.W.N. 379.

[This is no longer law. See 25 I.C. 585=39 Mad. 265 (F.B.) also 31 M.L.J. 278 (F.B.]).

Partition—Award.

———*Partition — Award — Conditions annexed to devolution of property allotted to each sharer.*

Where certain arbitrators are appointed to make a revision of all the moveable and immoveable property among certain brothers it is open to the arbitrators to allot a definite share of the estate to each of the referring parties and is also open to them to make the allotment subject to conditions which affect its tenure or devolution. Where the arbitrators annexed a condition to their award that property allotted to respective co-parceners is to be theirs but if any of them die without male issue, that person's share was to go to the other co-parceners *held* that the insertion of the conditions was valid and did not vitiate the award. The arbitrators did not alter the course of legal devolution in a mode at variance with the ordinary principles of Hindu Law, for according to Hindu Law the co-parceners could have validly agreed amongst themselves to exclude the widows from succession as the arbitrators han done. 29 M.L.J. 214, Ref. to. (*Kotwal*, A.J.C.) MT. PHULA *v.* KUSAM SINGH.
1923 Nag. 70.

Partition—Burden of Proof.

———*Partition—Burden of proof.*

There is no presumption, when one co-parcener separates from the others, that the latter remain united. (*Lord Buckmaster*) MT. JATTI *v.* BANWARI LAL. 18 L W 273=45 M L J. 355=(1923) M.W.N. 687=25 Bom. L.R. 1236=4 Lah 350=50 I.A. 192=21 A L J 582=L.R. 4 (P.C.) 135=1923 P.C. 136.

———*Partition—Burden of proof.*

The burden of proof, where a Hindu family is joint and a nucleus of joint family property

HINDU LAW—Partition—Burden of proof.

exists, is on the party setting up a case of separate estate. (*Jenkins*, C.J. *and Mookerjee*, J.) GANPAT MARWARI *v.* BAL MUKUND.
22 I.C. 27=18 C.L.J. 548.

———*Partition—Burden of proof.*

Where one co-parcener separates from others there is no presumption that the rest remain united. (*Scott-Smith and Leslie Jones*, JJ.) NILKANTH *v.* JAI GOPAL. 60 I.C. 690.

———*Partition—Burden of proof—Shifting of.*

A Hindu family is presumed to be joint till the contrary is proved. But where the father is actually found to have been selling properties to his son himself, the inference is clear that some sort of partition must previously have taken place. Then the burden of proof as to jointness is shifted to the party alleging jointness. (*Rattigan and Scott-Smith*, JJ.) SUKH DIAL *v.* MANI RAM. 29 P.R. 1918=27 I.C. 489=29 P.L.R. 1916.

———*Partition—Burden of proof.*

The presumption is that a Hindu family is joint but there is no presumption of separation taking place before or after a particular year. Onus as to time of separation lies on the person setting it up. (*Reid*, C.J. *and Beadon*, J.) MUSSAMAT RUKHMAN *v.* MUSSAMAT KIRPA DEVI. 338 P.L.R. 1913=22 I C. 134=209 P.W.R 1913.

———*Partition—Burden of proof—Partial partition.*

Where it is once admitted by the plaintiffs that there had been a partition before the date of their suit for partition the burden of proof lies upon them to prove that the properties in suit were joint family property and were undivided at the partition, that is, continued to be kept joint, till the date of suit the presumption being, that all property that belonged to the joint family was divided at the partition. Whether the property in suit was joint at the date of the partition and continued to be joint thereafter depends upon the questions, when was the property acquired and when did the partition take place. (*Kotwal*, A.J.C.) ANAND RAO *v.* DADA. 71 I.C. 43.

———*Partition—Burden of proof—Separation of members on a particular occasion.*

To establish separation of members of a joint Hindu family, it need not be proved that the members separated on a particular occasion. It is sufficient if it proved that they have separated. (*Hallifax and Prideaux* A.J. Cs.) MURLIDAR *v.* HARIDAS. 62 I.C. 246.

———*Partition—Burden of proof—Presumption.*

There is no presumption as to time of partition though partition is admitted. (*Kanhaiya Lal and Kendall*, A.J.Cs.) TIKA *v.* MAHABIR PRASAD. 36 I.C. 629=19 O.C. 92.

HINDU LAW—Partition—Burden of proof.

———*Partition—Burden of proof—Allowance out of joint funds given by sons to mother, effect of—Lease executed by all members and not by managing member alone—Effect of.*

The burden of proving alleged partition lies upon him who alleges separation. The mere fact that sons in a joint Hindu family gave their mother a small separated allowance out of the joint family funds for her private use especially to be expended on religious purposes, does not show separation of the family; nor does the fact that a lease is executed by all the family members, and not by the managing member alone, establish such separation. (*Stuart and Kanhaiya Lal*, A.J.Cs.) SURAJ BAKSH *v.* SUKHDEI. 32 I C 291 = 2 O.L.J. 502.

———*Partition—Burden of proof—Date.*

Once a disruption is proved to have taken place there is no presumption as to the date of the disruption. (*Kanhaiya Lal*, A.J.C.) MUSSAMMAT MENDANA *v* JAGANATH BAKHSH. 17 O.C. 285 = 25 I.C, 689

———*Partition—Burden of proof.*

The onus of proving an alleged separation as well as the date thereof lies on those alleging separation. To constitute a partition, there must be some evidence, that the parties agreed to separate and held their shares, as tenants-in-common and not as joint tenants. (*Lindsay*, J.C.) KANDHAIYYA BUKH SINGH *v* SHEO BUKH SINGH. 20 I.C. 861.

———*Partition—Burden of proof.*

In the case of a Hindu Mitakshara family, there is no doubt a presumption of jointness and anyone who pleads disruption must prove it. Failure to prove when exactly disruption took place, does not conclusively show that no partition took place at all. The circumstances under which separation may be deduced are all set out in Trevelyan on Hindu Law, p. 349. *Held* on the facts, absence of commensality, separate transactions, separate entry of shares in revenue records and other similar circumstances, clearly indicate separation in status. (*Coutts and Ross*, JJ.) TARA PRASAD JHA BALISEY *v.* MAYA DEBYA. 1912 Pat. 91 = 4 U.P.L.R. (Pat.) 18 = 1922 P. 30.

——*Partition—Burden of proof—Separation prior to the date of suit.*

If one party admits separation prior to the date of suit, the burden of establishing that the separation did take place before the date of that transaction lies on him. (*Das*, J.) GOBIND PERSHAD *v.* CHATURBHUJ. 60 I.C. 482.

——*Partition—Burden of proof—Division in status.*

In a suit for partition by a member of joint family, the initial burden is on the defendant to prove a prior separation. (*Roe and Coutts*, JJ.) NARSING MISSER *v.* BIRJU MISSER. 48 I.C. 755.

HINDU LAW—Partition—Co-widows.

——*Partition—Burden of proof.*

The presumption is that ancestral joint estate continues joint and he who alleges division must prove it. 11 M.I.A. 369, Foll. (*Leggatt*, A.J.C.) GOKEL DAS *v.* CHANDI BAI. 10 I.C. 967 = 4 S.L.R. 225.

Partition—Co-widows.

——*Partition—Co-widows—Daughters.*

Arrangement between joint limited owners such as widows or daughters for separate possession will subsist only during their joint lives. A title conferred on a third party by such arrangement will terminate with the life of the surviving limited owner. It is binding, however, on the contracting parties. (*Richards*, C. J. *and Rafique*, J.) BALDEO PRASAD *v.* BHAGAVANTI. 33 I.C. 259.

——*Partition—Co-widows.*

A Hindu co-widow is entitled to have her husband's property partitioned. 1 Mad. 290 (P.C.); 9 W.R. (P.C.) 23, Ref. to. (*Richards*, C.J, *and Banerjee*. J.) CHITTAR KAUR *v.* GOURA KUAR. 34 All. 189 = 13 I C. 920 = 9 A L J. 105.

———*Partition — Co-widows — Right of alienee from co-widow.*

A decree from co-widow can obtain a decree for partition which will have effect during the lives of the widows. 7 All. 114; 11 M.I.A. 487; 1 Mad. 290; 21 All 51; 23 Mad. 564, Ref. (*Stanley*, C.J. *and Griffin*, J.) DURGA DUTT *v.* GITA. 33 All. 448 = 9 I.C. 498 = 8 A.L.J. 220.

——*Partition—Co-widows—Death of one—Survivorship.*

If two widows or two daughters taking jointly the estate of their husband or father make an arrangement for separate possession and enjoyment, the arrangement will not ordinarily deprive the survivor of the right to the whole estate or enable the ladies to confer a title on a third party which will not terminate at the latest with the life of that survivor. There can be no relinquishment by a Hindu female heiress of anything less than the entire interest. (*Richardson and Walmsley*, JJ.) SHYAMADAS ROY CHOWDHURY *v.* RADHIKA PRASAD CHATTERJEE. 22 C.W.N. 846 = 47 I.C. 853 = 29 C.L.J. 24.

——*Partition—Co-widows— Survivorship.*

Two Hindu co-widows may make a partition of their husband's estate so as to deprive either of them of the right to succeed by the survivorship to the property allotted to the other. (*Sundara Aiyar and Sadasiva Aiyar*, JJ.) SUDALAI AMMAL *v.* GOMATI AMMAL. 23 M.L.J 355 = (1912) M.W N 908 = 16 I.C. 428 = 12 M.L.T. 238.

HINDU LAW—Partition—Co-widows.

———*Partition—Co-widows.*

Two co-widows are entitled to partition their husbands' estate and one co widow can alienate for her life her share whether before or after partition, though the alienation will be binding on the other so as to defeat her right of survivorship if the other consented to it. 7 C.P L.R. 153, Dist. (*Drake Brockman*, J.C. and *Prideaux*, O.A.J.C.) GOVIND v. CHANDRA BHAGA. 34 I.C. 675=12 N.L.R. 100.

———*Partition—Co-widows—Duty of Court to safeguard interest of reversioner—Debts due to husband.*

Where the reversioner is a party to a suit for partition between co-widows he is entitled to ask the Court to safeguard his interest against possible acts of waste by the widow, provided he can show reasonable grounds for apprehending the same. 31 Cal. 214, Ref. The principal of debts due to the husband and inherited by the widow is part of the corpus of the estate over which the widow's power of disposal is not unlimited. (*Piggott and Rafique*, A.J.Cs.) KAILASHA v. BITTO. 16 I.C. 471= 15 O C. 223.

Partition—Daughter.

———*Partition—Daughters.*

Daughters have a right to partition their life-interest on the father's property. A status of division will be effected thereby. Such partition will not affect the status of reversioners or their right of survivorship on the death of the other. (*Sundara Iyer and Sadasiva Iyer*, JJ.) KADUNGOTH PURAKKAL AMMALU v. KADUNGOTH PURAKKAL MEENAKSHI. 16 I.C. 433=12 M.L.T. 301.

———*Partition—Daughters—Agreement.*

Limited owners inheriting property jointly may by agreement effect a partition of the property inherited so as to defeat the right of survivorship between them. (*Stanyon*, A.J.C.) BALU BAI v. TANU BAI. 24 I.C. 808= 10 N.L.R. 51.

Partition—Declaration of intention.

———*Partition—Declaration of intention—Agreement to an arbitrator to effect a partition—Effect of.*

It is settled law in the case of a joint Hindu family governed by the Mitakshara law, that a severance of estate is effected by an unequivocal declaration on the part of one of the joint holders of his intention to hold his share separately even though no actual division takes place; and the commencement of a suit for partition is sufficient to effect a severance in interest even before decree. 11 M. I. A. 75; 5 I. A. 228; 43 C. 1031; 39 A. 496, Foll. An agreement among all the joint holders to constitute a particular person to partition the joint property coupled with an undertaking to accept whatever partition he might make, is quite sufficient to effect a severance in interest and to put an end to survivorship on the death of one of them. (*Viscount Cave.*) SYED KASAM v. JORAWAR SINGH. 31 M.L.T. (P.C.) 46= 16 L W. 223=5 N.L J. 209= 18 N L R. 127=21 A.L.J. 57= 28 Bom. L.R. 1=49 I.A. 358= 1922 P.C. 353 (P.C.).

HINDU LAW — Partition—Declaration of intention.

———*Partition—Declaration of intention—Service of notice by a co-parcener.*

According to Mitakshara an unambiguous and definite intimation of intention on the part of one member of the family to separate himself and to enjoy his share in severalty creates a division of the interest which until then, was held in jointness. This intention may be intimated by the sending of notice. (*Mr. Ameer Ali*). RAMALINGA ANNAVI v. NARAYANA ANNAVI. 45 Mad. 489= 43 M.L.J. 426=(1922) M.W.N. 399= 26 C.W N. 929=16 L.W. 639= 30 M L T. 255=20 A.L J. 889= 24 Bom. L.R. 1209=49 I.A. 168= 1922 P.C. 201 (P.C.).

———*Partition—Declaration of intention—Onus on person asserting.*

A disruption of the status of jointness of a Hindu family may take place by agreement without the division of the estate by metes and bounds. Even an unambiguous expression of an intention by one member of the family to separate and hold his share separately is sufficient. But the question is one of fact and the onus is on the party alleging separation of interest or the intention to separate to establish it affirmatively. (*Mr. Ameer Ali*). GIRDHAR DAS v. SRI KRISHNA DUTT. 18 A L.J. 345= 39 M L.J. 18=29 M L T. 71= 23 Bom. L.R. 1348=56 I.C. 293= 12 L.W. 759 (P.C.).

———*Partition—Declaration of intention—Unilateral declaration by member—Acceptance of less than his share—Effect.*

The unequivocal and unmistakable manifestation by a member of joint Hindu family by his words or conduct of a fixed or determined intention to become separate is sufficient to effect the separation of his title and the severance of his interest although division of possession or partition by metes and bounds has not taken place, or though there be no separation in food and dwelling. A separating member of such family may of his own free-will accept as his share as small a portion of the joint property as seems good to him, and renounce all claims to the rest. *Held*, on the evidence that the appellant had separated in interest and title before the acquisition of the property in suit and that it was therefore his self-acquired property. (*Lord Atkinson*) AMRIT RAO v. MUKUND RAO. 53 I.C. 868= 16 N.L.R. 165 (P.C.)

HINDU LAW — Partition—Declaration of intention.

———*Partition—Declaration of intention—Filing of suit—Severance in status—Intimation.*

In Hindu Law " partition " does not mean simply division into specific shares, it covers both division of title and division of property. It is not the law that an agreement between all the co-parceners is essential to the disruption of the joint status or that the severance of the rights can only be brought about by the actual division and distribution of the property held jointly. " Separation " in the sense of the severance of the status of jointness is a matter of individual volition. 35 All. 80, Foll.; 8 W.R. (P.C.) 1, Expl. Once an individual co-parcener has unequivocally expressed and clearly intimated to his co-sharers his decision to sever himself from the joint family his right to obtain and possess the share to which he admittedly has a title is unimpeachable. Neither the co-sharers can question it, nor can the Court examine his conscience to find out whether his reasons were well-founded or sufficient. There is an immediate severance of the joint status and the Court has simply to give effect to his right to have his share allocated separately from the others. The intention to separate may be evinced in different ways, either by explicit declaration or by conduct. If it is an inference derivable from conduct, it will be for the Court to determine whether it was unequivocal and explicit. 8 W.R. (P.C.) 1, Expl. 4 Cal. 434; 18 Cal. 157, Ref.; 8 W.R. 82, Appr. If, therefore, a member of a joint family intimates to his co-parceners his desire to become divided and institutes a suit for partition, but dies before the preliminary decree, his widow is entitled to inherit his share in the joint property and to continue the suit as his legal representative. 40 I.A. 40; 11 M.I.A. 71, 76; 17 I.A 194 and 10 W.R. 273, Ref. (*Mr. Ameer Ali*) GIRJA BAI *v.* SADASIVA DHUNDIRAJ

43 Cal. 1031 = 43 I.A. 151 =
20 C.W.N 1085 = 14 A L.J. 822 =
20 M L T. 78 = 12 N.L.R. 113 =
(1916) 2 M.W N. 65 = 18 Bom L.R. 621 =
4 L.W. 114 = 24 C L.J. 207 =
37 I C. 321 = 31 M L J 455 (P.C.).

———*Partition—Declaration of intention—Separation from commensality and joint worship—Unilateral declaration.*

Separation from commensality and joint worship which may be due to various causes does not necessarily effect a division of the joint undivided estate. What may amount to a separation or what conduct on the part of the members may lead to a disruption of the joint undivided family and convert a joint tenancy into a tenancy-in-common must depend on the facts of each case. A definite and unambiguous declaration by one member of a joint Hindu family of his intention to separate himself and enjoy his share in severalty amounts to separation, if it is unequivocally and clearly expressed. Where it was shown that separation from commensality and joint worship between two brothers arose from a difference in their religious opinions and there was evidence of conduct inconsistent with partition or exclusion from enjoyment, *held*, that severance was not proved. (*Mr. Ameer Ali*) SURAJ NARAIN *v.* IQBAL NARAIN.

35 All. 80 = 40 I A. 40 =
13 M.L.T. 194 = 17 C.W.N. 833 =
11 A L.J. 172 = (1913) M W N. 183 =
17 C.L.J. 288 = 24 M.L J. 345 =
15 Bom. L.R. 456 = 18 I.C. 30 =
16 O.C 129 (P.C.).

———*Partition—Declaration of intention—Advance of money—Liability of other members.*

Although at the time of the advance of money the subject-matter of dispute, the family had expressed the intention to separate, and in the eyes of the law, they were no longer members of a joint Hindu family, yet if there had been no partition of the joint property, the onus, would be upon the defendants to show that the advance made to their father, was made after the actual division of that property so that they would no longer be liable for such advance. (*Macleod*, C J. *and Kanga*, J.) MOTI CHAND RAOJI RAMCHAND *v.* MANECKCHAND GOJAR. 1923 Bom 147.

———*Partition—Declaration of intention—Expression in will—Communication to others.*

In a Mitakshara family a member may exercise his intention without the assent of the other members to go out of the family and to have his share of the property; and if at any rate that intention is communicated to the other members of the family there is a good separation. A member of a joint Hindu family executed a Will which was admitted to probate but his brother claimed his properties by survivorship. *Held*, that the will having been admitted to probate must be taken to be a valid document and that the statement in the will that there had been a separation was a sufficient evidence of intention to separate and to go out of the family. (*Fletcher and Huda*, JJ.) SASHI BHUSAN PANIGNABI *v* LABANYABATI DEBYA. 43 I C 981.

———*Partition—Declaration of intention—Execution of a will.*

An unequivocal declaration by a member of the co-parcenary body of his intention to be divided in status is sufficient to effect a severance without an agreement between all the co-parceners being required. 40 I.C, 36; 43 C. 1031; 35 A. 80; 12 N L.R. 165; 45 M L.J. 609, Ref. Where a Hindu co-parcener specifies his share as one-third in his will and thereafter purports to dispose of it, there is a division in status created by the will and the provisions of the will are valid and operative. (*Broadway and Martineau*, JJ.) JUMMA RAM *v.* MUNSAB RAI. 1922 Lah. 473.

———*Partition—Declaration of intention.*

To constitute a severance in status, a declaration of intention by a member of a joint Hindu

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family must be absolutely unequivocal. 35 All. 81; 24 M.L.J. 345 and 33 M.L.J. 746, Rel. (*Napier and Odgers*, JJ.) KRISHNASWAMI BATTER v. SREENIVASA BATTAR.
42 M L J. 124=30 M L.T. (H.C.) 168=
1922 Mad. 341.

———*Partition—Declaration of intention—Expression of intention to sue for partition in an application for withdrawal of suit—Effect on strangers.*

Where in a suit to set aside a mortgage by his father, plff. applied for amendment of the plaint by inserting a prayer for partition and plaintiff afterwards applied for leave to withdraw the suit with liberty to file a fresh suit for partition which petition was allowed. The conduct of the plaintiff did not constitute such an unambiguous expression of intention as to effect a severance of status between him and his father the first defendant. If a person is a *bona fide* purchaser from the father of a Hindu family for value having no notice of the unilateral declaration by the son of an intention to divide from his father he would be entitled to treat the father as having the power to sell the family property for the antecedent debts of the father and other lawful purposes as to bind the son. (*Sadasiva Aiyar and Spencer*, JJ.) VEMI REDDI v. NALLAPA REDDI.
57 I.C. 800=11 L.W. 611.

———*Partition—Declaration of intention—Communication.*

In order that a unilateral declaration of intention may effect the declarant's severance of status from a Hindu joint family, there must be some unequivocal and definite expression of intention on his part to the effect that in future he would regard himself as a separated member and the expression of such intention should be communicated to the other members or to the manager of the family. The mere fact that a member of a joint family asks for partition does not necessarily lead to the inference that he intended a separation of status before partition is effected. 41 Cal. 1031 (P.C.), Foll. (*Abdur Rahim and Spencer*, JJ.) INDOJI JITHJI v. KOTHAPALLI RAMA CHARLU.
54 I.C. 146=10 L.W. 498.

———*Partition—Declaration of intention—Demand—Suit.*

A definite demand by a member of the joint family for partition and delivery of his share effects a division in status. The filing of a plaint is also such an indication. 35 All. 80 (P.C.); 39 Mad. 159 (F.B.), Ref. (*Spencer and Krishnan*, JJ.) VANJAPURI GOUNDAN v. PACHAMUTHU GOUNDAN. 7 L.W. 225=
45 I.C. 62=35 M.L.J. 609.

———*Partition—Declaration of intention—Regn. Act, Ss. 17 and 49.*

A unilateral declaration of intention by a member of an undivided family to get divided

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is sufficient to effect a partition. Such a declaration embodied in an instrument in writing prior to the division by metes and bounds does not amount to a 'transaction' within the meaning of S. 49 of the Registration Act and is hence admissible in evidence without registration. 35 All. 90 (P.C.); 43 Cal. 1031 (P.C.), Foll.; 30 M L.J. 62, Expl. (*Sadasiva Aiyar and Spencer*, JJ.) SIKHAMANI PANDITHAR v. AMMANI AMMAL. 40 I.C. 36.

———*Partition—Declaration of intention.*

A unilateral declaration of intention to separate constitutes partition. The filing of a plaint for partition operates as a severance of the joint status. (*Wallis*, C J., *Sadasiva Aiyar and Seshagiri Aiyar*, JJ.) SUNDARARAJAM v. ARUNACHALAM CHETTY.
39 Mad. 136, 159=29 M.L J. 793, 816=
2 L.W. 1247, 1266=18 M.L.T. 552, 568=
33 I.C. 858=(1916) 1 M.W.N. 31 (F.B.).

———*Partition—Declaration of intention—Separation of one co-parcener.*

If the male members of a joint Hindu family wish to become divided in status they are at liberty to agree to do so and on their so agreeing they become divided in status even though the properties are not actually divided between them by metes and bounds. A definite and unambiguous indication even by one member of his intention to separate himself and enjoy his share in severalty may amount to separation. A definite partition of properties by metes and bounds is not essential to constitute a definite division in status between co-parceners. The presumption when one of several co-parceners becomes divided, is that the others also have become divided in status. (*Sadasiva Iyer and Napier*, JJ.) BALAKRISHNA MUDALIAR v. RAJU MUDALIAR.
16 M.L.T. 610=27 I C. 736=
(1916) M.W.N. 17.

———*Partition—Declaration of intention.*

Per *Sankaran Nair*, J.—A member of an undivided Mitakshara family can effect his separation by a declaration of the same to other members. But the declaration must be so clearly made that he should not be able to profess to continue to be member of the joint family. (*Sankaran Nair and Oldfield*, JJ.) POTHI NAICKEN v. NAICKER
(1915) M.W.N. 803=17 M.L.T.800=
28 I.C. 625=28 M L.J. 428.

———*Partition—Declaration of intention.*

The presumption of division in status is raised where a member of a joint family separates or shows his intention to separate. Division by metes and bounds is not necessary. (*Wasir Hasan*, A.J.C.) MAHABIR PRASAD v. SURAJPAL SINGH. 10 O L.J. 250=
1923 Oudh 46.

HINDU LAW — Partition—Declaration of intention.

———*Partition—Declaration of intention—Effects of severance.*

It is quite settled that unequivocal and manifest declaration of an intention to become divided in estate amounts to a valid separation and a disruption of the joint family. 8 W.R. 82; 35 All. 80; 43 Cal. 1031 F. (*Jwala Prasad and Adami*, JJ.) RAMJATAN RAI *v.* BALIRAM PRASAD. **1923 P. 23.**

Partition—Division in status.

———*Partition—Division in status—Enjoyment in specified shares—Agreement.*

Where the co-parceners of a joint Hindu family, entered into a written agreement by which they consented to hold the family property in separate defined and specific shares and this agreement was acted upon for a considerable number of years: *Held*, that the family property must be deemed to have been partitioned from the date of the agreement, although there was no actual division by metes and bounds and that from that date the status of the family ceased to be joint. (*Lord Macnaghten*) RAGHUBIR SINGH *v.* MOTI KUNWAR. **35 All. 41=13 M L.T. 162=(1913) M.W.N. 127=11 A.L J. 146=17 C.W.N. 453=17 C.L.J. 306=15 Bom. L.R. 426=17 I.C. 766=25 M.L.J. 28 (P.C.)**

———*Partition — Division in status—Profits divided in specific share—Suit by co-parceners for joint possession to the extent of his share.*

Where plff. alleged that after separation of the family certain property remained to be divided by metes and bounds and prayed for joint possession on the ground of exclusion sometime before the suit and where he proves that the profits of the land which were to be divided by metes and bounds used to be distributed according to shares, that plff. was entitled to joint possession to the extent of his share. (*Banerji, Piggott and Walsh*, JJ.) SHEODAN *v.* BALKARAN. **18 A.L J. 1033=43 A. 193=59 I.C. 116=2 U.P.L.R. (All) 392 (F.B.).**

———*Partition—Division in status—Partition of even moveables only effects change in status.*

Where two brothers divided the outstandings and moveables among themselves but left the immoveable property unpartitioned, *held* that the two brothers held the immoveable property after the partition as tenants-in-common and the widow of one could enforce partition thereof as against the other. (*Scott-Smith and Martineau*, JJ.) MT. BHOLA DEVI *v.* MOHKAM CHAND. **48 I.C. 784=121 P.R. 1918.**

HINDU LAW — Partition — Division in status.

———*Partition—Division in status—Court declaring partition.*

On a Hindu, who had four sons, becoming insolvent, the Court ordered partition and directed delivery of the father's share to the Official Assignee. After the order but before actual partition one son died issueless. *Held*, that the Court's order severed the family status, sons on the one hand and father on the other and therefore the share of the deceased does not pass to the father by survivorship. (*Kumaraswami Sastri*, J.) MASILAMANY MUDALI, *In the matter of.* **13 L.W. 332=(1921) M.W.N. 168=62 I.C. 376=29 M L T. 139,**

———*Partition—Division in status—Agreement to divide.*

An agreement between the members of a joint family provided that all the moveable and immoveable properties of the family were to be divided as from the date of the agreement and that from that time forward, separate accounts were to be kept by the co-parceners and the gain or loss subsequent thereto was on no account to be binding on other co-parceners. *Held*, that the agreement effected a division in status, though there was no actual division of properties by metes and bounds. (*Wallis*, C.J. *and Hannay*, J.) UMAYAORAPAGAM *v.* PALANARAYANA **28 I C. 908.**

———*Partition—Division in status—Deed of partition—Whether required to be registered—Essentials of a deed of partition.*

Per *Sankaran Nair*, J. (*Oldfield*, J. *contra*). A deed of partition need not be registered as no interests are created by it and if any interests are created they are created not by the instrument but by Hindu Law. Per *Oldfield*, J.—An unregistered deed of severance in status can be admitted as an evidence of partition of moveable property, but it cannot be admitted in case of immoveable property, if it is not registered. (*Sankaran Nair and Oldfield*, JJ.) POTHI NICKEN *v.* NAICKAR. **(1915) M.W.N. 303=17 M.L.T. 300=28 I C. 625=28 M.L J. 423.**

———*Partition—Division in status—Document effecting.*

Where a deed recites that there is no community of property or interest between the members of a family it is a final decision binding on the parties and those claiming under them. (*Wallis*, C. J. *and Seshagiri Aiyar*, J.) MUTTUSWAMI NAICKER *v.* MUTTUSWAMI NAICKER. **27 I.C. 3.**

———*Partition—Division in status—Right of co parceners—Redemption.*

When a joint family has become divided, the co-parceners become tenants-in-common and

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one co-parcener is entitled to redeem his unascertained share of his property mortgaged by the manager before partition and to see to its ascertainment and his possession thereof. (*White*, C.J. *and Oldfield*, J.) KURUCHA GANGU NAIDU *v.* KOVVURI BASAVA REDDY.
13 M.L.T. 146=18 I.C. 691=(1913) M.W.N. 821.

———*Partition—Division in status.*

Members can have completely divided status though only a certain portion of the property is actually divided. (*Abdur Rahim and Spencer*, JJ.) SEGU CHIDAMBARAMMA *v.* SEGU BALAYYA. **12 I.C. 704=(1911) 2 M.W.N. 467.**

———*Partition—Division in status—Deed—Construction.*

When a deed of partition provided that that property should be divided into three parts one to the eldest and two to the other two, and that any property left undivided into three parts and that in future the parties shall have no relation in respect of property except connection by blood, a severance was effected between the two younger sons though the property was kept together without division. (*Munro and Sankaran Nair*, JJ.) KONNHAMBAL AMMAL *v.* KRISHNASWAMI BHATTAR. **10 I C. 885=(1911) 1 M.W.N. 310.**

———*Partition—Division in status—Widow.*

A Hindu widow who inherits her husband's share in joint property is entitled to obtain partition of the share in her name. 30 All. 400, Foll. (*Kanhaiya Lal*, J. C.) RAGHUBIR SINGH *v.* JANKI KUAR. **52 I C. 11=6 O.L.J. 282.**

———*Partition—Division in status—Agreement to separate—Tenancy-in-common.*

Once the members of a joint Hindu family have agreed and declared their intention to hold the joint family property in definite shares, the family is no longer a joint family. It may be that no actual division of the property takes place, but the result of such agreement and the declaration is that from the time it is made the parties thenceforth hold the property not as joint tenants but as tenants-in-common. (*Lindsay*, J.C. *and Daniels*, A.J.C.) CHAUBAR SINGH *v.* BAKHTAWAR SINGH. **47 I.C. 897=6 O.L.J. 486.**

———*Partition — Division in status — Separation of one member—Effect.*

If once the shares of the family in the property are defined the family ceases to be a joint family in spite of there being no division by metes and bounds. Such definition of shares and such intention of separation may be evi-

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denced by deed or by conduct. In either case it will be the intention that is the determining factor. After the separation of one of the members of a joint family, the presumption of jointness is destroyed and the fact that the rest of the members continued to remain united must be proved by the party who sets up reunion. (*Jwala Prasad and Ross*, JJ.) SADANANDA BARPANDA *v.* BAIKUNTH NATH. **68 I.C. 833=2 P.L.T. 299.**

Partition—Effect of.

———*Partition—Effect of—Infant son.*

The estate had not been partitioned though the decree in favour of an infant son against father for partition had been made. *Held*, the later decree declaring certain alienation by father void cannot reasonably be intended as a decree to put the plaintiff into physical possession of that which still remains one undivided half of the whole. It only means that he has been excluded from his proper share of the property jointly held and that he is entitled to possession for the purpose of securing his position. (*Lord Buckmaster.*) NARAIN DAS *v.* ABINASH CHANDAR.
45 M.L.J. 728=33 M L.T. 182 (P.C.)=18 L.W. 743=1922 P.C. 347 (P.C.)

———*Partition—Effect of—Survivorship put an end to.*

A separation between members of a joint Hindu family followed by a partition between them of the ancestral property which would not put an end to their co-parcenary rights in the property, is unknown to the law. (*Sir John Edge.*) EKRADESHWAR SINGH *v.* JANESHWARI BAHUASIN. **42 Cal 582=1 L.W. 863=41 I A. 275=18 C.W.N. 1249=27 M.L J. 373=16 M.L.T. 383=(1914) M.W.N. 807=12 A.L.J. 1217=21 C.L.J. 9=25 I.C. 417=17 Bom. L.R. 18 (P.C.)**

[On Appeal from 3 I.C. 207.]

———*Partition—Effect of—Revocation.*

Where a document makes partition in fact and is acted on by all parties for a long time without any dispute as to their rights under it, the fact that it is called a will would not invalidate the partition. A provision in such deed to the effect that in case of mismanagement or bad character of the sons among whom the property was divided the document would be cancelled is merely a threat and could not at all have been enforced. (*Lord Moulton*). BRIJ RAJ SINGH *v.* SHEODAN SINGH. **35 All. 337=25 M.L.J. 188=17 C W.N. 949=(1913) M.W.N. 515=11 A.L.J. 698=14 M.L.T. 11=18 C L J. 67=15 Bom. L.R. 652=19 I C. 826=40 I.A. 161.**

———*Partition—Effect of—Assignment of debt due to the family to one of the members—*

HINDU LAW—Partition—Effect of.

Debtor not entitled to question—Death of member pending proceedings.

The death of a member of a joint Hindu family during the pendency of the partition proceedings does not affect the validity of the final partition. Consequently where at the family partition a mortgage debt due to the family is assigned to one or some of the members of the family it is not open to the debtor to raise an objection to the validity of the partition between the members of the creditor's family. (*Rafique and Lindsay, JJ.*) ASLAH KHATUN *v.* BALDEO PRASAD.
20 A.L.J. 957=1923 All. 63.

——*Partition—Effect of—Nature of such suits.*

The object of a suit for a partition is to alter the form of enjoyment of the joint property by the co-owners. Partition signifies the surrender of a portion of a joint right in exchange for a similar right from the co-sharers. The essence of partition is that the property is transferred into estates in severalty and one of such estates is assigned to each of the former occupants for his sole use and as his sole property. There is no anology between the process thus described and the enforcement of a money claim, even though associated with land, as in the case of a *benami* mortgage or of a *benami* lease, though even as regards leases and mortgages there is apparently some divergence of judicial opinion. (*Mookerjee and Newbould, JJ.*) ATRABANNESSA BIBI *v.* TAFATULLAH MIA. **43 Cal. 504=31 I.C. 189=22 C.L.J. 259.**

——*Partition—Effect of sons remaining under custody of Father.*

Where a father has divided some property among all his sons but two of them are kept in custody, on account of their tender age, they do not get a perpetual right by way of inheritance to property retained or subsequently acquired by him. (*Chitty and Chatterjee, JJ.*) HARACHANDAR DAS *v.* RAM CHANDAR DAS.
9 I.C. 834.

——*Partition—Effect of.*

The very conception of a joint Hindu family involves joint ownership of all family property by the members and the moment a partition takes place even if it is only of a portion of the property, they cease to be members of a joint family. (*Le Rossignol and Martineau, JJ*). BENI PARSHAD *v.* MT. GUR DEVI.
4 Lah. 252=5 Lah. L.J. 185=1923 Lah. 497 (1).

——*Partition—Effect of.*

The agreement of partition converts the family into joint contractors and in the absence of express authority one contractor cannot make an acknowledgment so as to bind the others. (*Ayling and Napier, JJ.*) VUPPALA BAPANNA *v.* PABBISETTI BHEEMALINGAM.
3 L.W. 281=33 I.C. 986=(1916) 1 M.W.N. 162.

HINDU LAW—Partition—Equities.

Partition—Equities.

——*Partition—Equities—Purchaser from co-parcener—Rights of.*

A purchaser from a co-parcener of a portion of joint family property can bring a suit for partition and on partition the property which he purchased should, if possible, be given to him as his share. (*Macleod, C.J. and Shah, J.*) DHULABHAI DABHAI *v.* LALA DHULA.
23 Bom. L.R. 777=1922 Bom. 137.

——*Partition—Equities—Alienee from co-parcener.*

An alienee for value from a co-parcener of family properties cannot sue for joint possession but can sue for partition including all the co-parceners and all the family properties and obtain an allotment, if possible, of the alienated properties to the share of his vendor. (*Heaton and Hayward, JJ.*) PANDU VITHOJI LADKE *v.* GOMA RAMJI MARWADI.
43 Bom. 472=60 I.C. 765=21 Bom. L.R. 213.

——*Partition — Equities — Mortgage of undivided share of a member—Rights of mortgagee.*

Where a member of a joint Hindu family mortgages his undivided share in certain items of property and in a subsequent partition certain items are allotted to the mortgagor, the mortgagee should proceed only against the items which fell to the mortgagor on partition. 1 I.A. 106, Foll. (*Chevis and Le Rossignol, JJ.*) PREM SHAH *v.* KHAN CHAND.
48 P.L.R. 1916=30 I.C. 31=128 P.W.R. 1916.

——*Partition—Equities—Family arrangement—Allotment of property in possession.*

A family arrangement for managing the family property does not amount to partition. A suit for a share in the joint revenue paying land is practically not a suit for land, but for one for joint possession. Where one member without objection by the others spends his personal income on the joint property of which he is in possession lawfully he is entitled to be maintained in its possession at the time of partition if possible and is entitled to get reasonable compensation for the part which he is obliged to give up. (*Robertson and Beadon, JJ.*) THAKAR SINGH *v.* UJAGAR SINGH.
26 P.L.R. 1913=18 I.C. 583=8 P.W.R. 1913.

HINDU LAW—Partition—Equities.

———*Partition—Equities — Joint family—Alienation—Co-parcener—Rights of alienee from—Suit to set aside alienation.*

A purchaser from a member of a joint Hindu family has only an equity as against the other members to work out his interest by a suit for a general partition. In cases where possession of the property is claimed by co-parcener on the ground of the invalidity of the alienation as against him, the Court must decree possession and simply declare the right of the purchaser to a partition. (*Kumaraswami Sastri and Deva Doss, JJ.*) SUBBA GOUNDAN *v.* KRISHNAMACHARI. **43 Mad. 449=42 M.L J. 372=30 M.L.T 217=15 L.W, 537=(1922) M W.N. 269=1922 Mad. 112.**

———*Partition—Equities — Alienee from co-parcener—Rights of different properties allotted to alienor.*

Where a Hindu co-parcener sells specific items of the family properties and the alienee in his turn sells away the property to the plff. and subsequently at a partition, items other than those sold by the co-parcener are allotted to him, the second alienee cannot call upon the first alienee to give lands of equal extent. The principle of substituted security has no application to the case. 38 Mad. 684; 43 Mad. 309. Ref. (*Abdur Rahim and Oldfield, JJ.*) DHADA SAHIB *v.* MAHOMED SULTAN SAHIB. **12 L.W. 603=39 M.L.J. 706=(1920) M.W.N. 710=59 I.C. 311=45 M. 167.**

———*Partition—Equities—Alienee from co-parceners—Right to substituted properties.*

Where a person purchases the share of co-parcener in certain items of a joint family property and subsequently at a family partition other items are allowed to the share of that co-parcener it is open to the purchaser to compel that co-parcener to give the properties in substitution of those which had been sold. 1 I.A. 106 (P.C.), Dist.; 38 Mad. 684; 25 Mad. 690; 40 Mad. 365, Rel. The case would be different if the purchase was at an execution sale. (*Seshagiri Aiyar and Moore, JJ.*) SABAPATHI PILLAI *v.* THANDAVARAYA ODAIYAR. **37 M.L.J. 620=51 I.C. 515=11 L.W. 108.**

———*Partition — Equities — Alienee from co-parcener—Mesne profits.*

The Court will always endeavour as far as possible to allot to the purchaser the share he purchased, in a suit for partition. (*Spencer and Krishnan, JJ.*) VANJAPURI GOUNDAN *v.* PACHAMUTHU GOUNDAN. **7 L.W. 225=45 I.C. 52=35 M.L.J. 609.**

———*Partition—Equities—Building erected by one member.*

HINDU LAW—Partition—Evidence of.

Where one of the members of a co-parcenary was shown to be in possession of the house site upon which he has erected a superstructure, the proper decree to be passed is to allow him to retain the house site and direct him to pay its price to the other co-sharer who claims a share in the house site alone. (*Wallis, C.J. and Tyabji, J.*) DEVARASU VENKATACHALA DWARAKANADHA RAO *v.* DEVARASU VENKATARAO. **29 I.C. 183=17 M.L.T. 361.**

———*Partition — Equities — Expenses for marriage of unmarried co-parceners should be set apart at partition.*

As marriage is a necessary *samskara* and should be performed out of family funds the expenses for the marriage of unmarried co-parceners should be set apart at partition of joint family properties. (*Sundara Iyer and Sadasiva Iyer, JJ.*) SRINIVASA IYENGAR *v.* THIRUVENGADA IYENGAR **38 Mad. 686=(1913) M.W.N. 1034=15 M.L.T. 307=(1914) M W.N. 282=23 I.C. 264=25 M.L.J. 644.**

———*Partition—Equities—Attachment of property—Effect on.*

Where pending an attachment of the defendant's share in several items of property a partition took place and the deft. got one whole item instead of a share in all, *held*, that the order of attachment covered the property actually attached and cannot be enforced against the property received in lieu of the same. (*Piggott, J.C.*) RAM AUTAR *v.* SHEO PRASAD. **20 I.C. 43.**

Partition—Evidence of.

———*Partition—Evidence of—Entry in village and revenue records—Decree of Settlement Officer regarding superior proprietary rights.*

In a joint Hindu family, the presumption is, until the contrary is proved, that the family continues joint. That presumption is peculiarly strong in the case of the sons of one father. A definition of shares in revenue and village papers affords, by itself, but a very slight indication of an actual separation in a Hindu family and such a definition of shares standing alone is not sufficient evidence, on which to find, contrary to the presumption of law as to jointure, that the family to which such definition is referred had separated. 18 All. 176, Appr. A decree of a Settlement Court in Oudh made in 1869 in favour of the widows of two deceased Hindus for "superior proprietary rights" in property lineally descended to their husbands "the decree being subject to the rights of the other share-holders," does not affirm that a separation had taken place but, on the contrary, preserves all rights inherent in the property as

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joint family property. 12 I.A. 124, Rel. on. (*Lord Shaw.*) NAGESHAR *v.* GANESHA.
42 All. 868=47 I.A. 57=38 M.L.J. 521=
18 A.L.J. 832=22 Bom. L.R. 596=
28 M.L.T. 5=7 O L.J. 48=
2 U.P.L.R. (P.C.) 37=
36 I.C. 306=23 O.C. 1 (P.C.).

[On appeal from 36 I.C. 780=3 O.L.J. 454]

———*Partition — Evidence of—Impartible estate—Separation in estate.*

The holder of an impartible estate of a joint Hindu family, descending by primogeniture, made a *mokurari* grant to his brother for maintenance. The grantee built a separate house divided by a wall from his brother's, established a *thulsi pinda* (worship) and *thakurbari* (office) lived separately from his brother, and defrayed the expenses of the marriage of his daughter from his own pocket. *Held*, on facts, that there had been a complete separation between the brothers and that on the death of the holder of the estate without male issue his widow succeeded to the estate as his heir. (*Sir John Edge.*) TARA KUMARI *v.* CHATURBHUJ NARAYAN SINGH.
42 Cal. 1179=42 I.A. 192=19 C.W.N. 1119=
29 M.L.J. 371=18 M.L.T. 228=
2 L.W. 843=13 A.L.J. 1034=
17 Bom. L.R. 1012=22 C.L.J. 498=
30 I.C. 833=(1915) M.W.N. 717 (P.C.).

———*Partition—Evidence of—Presumption of jointness—Separate entries in Revenue records—Inferences from the acts of the members of the family.*

Separate entries in the Revenue records standing by themselves were not sufficient to rebut the presumption of Hindu Law relating to jointness or to prove separate possession by different members of a family which in its inception was admittedly joint. Such entries together with the inference drawn from the said facts, which tended to show a separation and were consistent only with the hypothesis of separation, left no doubt that at the time of his death the deceased half brother was separate from his brothers the plaintiffs. (*Mr. Ameer Ali.*) NET RAM SINGH *v.* TURSA KUNWAR,
17 C.W.N. 1085=(1913) M.W.N. 658=
14 M.L.T. 173=18 C.L.J. 234=
16 Bom. L.R. 363=25 M.L.J. 489=
20 I.C. 967=11 A.L.J. 861 (P.C.).

———*Partition—Evidence of—Acquisition of property in the name of several members—Transfer of property* inter se.

It is by no means an unusual thing for members of a joint family when acquiring landed property by purchase to cause to be specified in their documents of title the shares which they would respectively take upon a partition. Where this is not done the ordinary inference from the document on the face of it would be that the vendees are taking in equal shares and the members of the family way will think it convenient that such a presumption where it is not in accordance with the facts, should be rebutted by a specification of shares; no clear inference in favour of separation or the break up of the joint family can be drawn from a transaction of this sort. It is quite conceivable that a deed of transfer might be executed as between members of a joint family merely in order that there might be clear evidence in existence as to their respective rights in the event of any future difference or separation. (*Piggott and Walsh*, JJ.) MT. JAIRAJI *v.* BHAGWAT PRASAD PANDE.
L.R. 3 All. 154=1923 All. 225.

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———*Partition—Evidence of — Separate enjoyment of portion for maintenance.*

Separation in estate and from the joint family does not follow as a necessary consequence from the receipt of a maintenance grant by one of the members of the family. (*Banerjee and Ryves*, JJ.) GANESH LAL *v.* BASANTI LAL. 20 I.C. 29.

——— *Partition—Evidence of.*

Separate enjoyment in shares of the income of the property does not necessarily cause severance of the joint family property. (*Richards*, C. J. *and Banerjee*, J.) BUDHA-SINGH *v.* KAWALNAIM. 19 I.C. 430.

———*Partition—Evidence of--Separateness.*

The mere fact that co-parceners are messing separately does not mean that the possession of one co-parcener of joint family property is adverse to the other co-parceners. 33 C. L. J. 344 Rel. (*Greaves and Panton*, JJ.) HEMANGINI DASI *v.* SITAL MONDAL.
1923 Cal. 310 (1).

———*Partition — Evidence of — Separate possession—Property excluded from partition.*

There is no presumption that certain properties were excluded from partition in a joint family and the burden of proof is on the person who alleges such exclusion. Separate possession of certain properties is not conclusive evidence of partition and must be interpreted in the light or all the other circumstances of the case. (*Mookerjee and Cuming*, JJ.) KAILAS CHANDRA NAG *v.* BIJAY CHANDRA NAG. 36 C.L.J. 434=1923 Cal. 218.

———*Partition—Evidence of.*

If a property stood in the name of K, one of the four brothers, this is not even *prima facie* evidence that the property was obtained by K, for himself if at the time of acquisition, the family was still joint. There is no presumption with regard to any other property that it was excluded from the partition, and the

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burden lies upon him who alleged exclusion, to establish his assertion. Separate possession is not conclusive evidence of partition and must be interpreted in the light of all the circumstances of the case. The sole occupation by one co-sharer, of a portion of joint property does not constitute an ouster of the other co-sharers; and a co-sharer in possession of a portion of the common land, with the tacit or express consent of his co-sharers, cannot change the nature of that possession. (*Mookerjee and Cuming*, JJ.) KAILASH CHANDRA NAG *v.* BEJOY CHANDRA NAG. 36 C L J. 484 = 1923 Cal. 18.

———*Partition—Evidence of—Proof—Separate enjoyment—Inference.*

Under the Hindu Law, a partition is effected between members of a joint family if there is a division of their rights; an actual distribution of the property by metes and bounds is not necessary. To determine whether two persons, members of a joint Mitakshara family, have separated so as to make the principle of survivorship no longer applicable between them, the Court must find whether they had an intention to separate, and, whether as a result of such intention, there has been severance of title and interest. To prove a partition there must be evidence of a complete separation in interest, a total disruption of the tie of joint family. A partition may occasionally be established by oral evidence, which though not directly proving the factum of partition, may be of such a character as to justify the inference that a partition must have been made between the parties or their predecessors. There may be a mutual arrangement for the management and enjoyment of separate portions of joint property which does not amount to partition. On the other hand the inference in favour of a theory of a partition would be strengthened if it was proved not only that the parties enjoyed separate and distinct portions of the family property for many years, but dealt with the separate portions in every respect as their own property, for instance, carried out improvements on them or effected alienations to strangers or to members of the family. (*Mookerjee and Beachcroft*, JJ.) ANAND KISHORE CHOWDHURY *v.* DAIJI THAKURIAN. 28 I.C. 680 = 21 C.L.J. 296.

———*Partition—Evidence of.*

Where a family continued joint till a very recent date, the person pleading separation must prove it and he cannot plead limitation to a suit by any other member without proof of separation; possession of one is possession of all. (*Tottenham and Norris*, JJ.) PARAMANUND *v.* KRISHNA CHARAN. 12 I C. 6 = 15 C.L.J. 183.

———*Partition—Evidence of—Separation in food, worship and residence.*

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From the separation of the members of the family in food, residence and worship it does not follow that the family had divided, for it might well be that in order to manage the family business and property at different places the members had to go to and live in those places separately. When a member of a Hindu family who is divided in status from others is in enjoyment of a portion of the family properties while the others enjoy other portions, he is not in law excluded or ousted from those other portions, so as to disentitle him to his share of those portions, however long their enjoyment by others. (*Broadway, and Zafar Ali*, JJ.) BHAGWAN DAS *v.* MT. PARBATI. 1923 Lah. 569.

———*Partition—Evidence of—Admissions in litigation—Effect of.*

A definition of shares in revenue papers is not, standing alone, sufficient evidence of a separation between the members of a Hindu family. But where in addition to the entry in the Revenue records, there is the clear admission of the plaintiffs in a suit to contest an alienation that they and their brothers owned the land in equal shares there is sufficient evidence of partition. 18 A. 176; 42 A. 368 Ref. (*Martineau*, J.) DATA RAM *v.* BADLU. 4 U.P.L.R. (L.) 62 = 1922 Lah. 450.

———*Partition—Evidence of—Assignment of property.*

Mere assignment by father of certain property to sons to enable them to start on business does not amount to partition. (*Scott-Smith*, J.) NANAK CHAND *v.* LACHMAN DAS. 82 P.R. 1917 = 40 I.C. 775 = 97 P.W.R. 1917.

———*Partition—Evidence of.*

Cesser of commensality does not by itself amount to partition, especially when it is a mere accident brought about by force of circumstances. (*Rattigan, Shah Din and Le Rossignol*, JJ.) GOKAL CHAND *v.* HUKUM CHAND NATHUMAL. 70 and 71 P.R.1917 = 184 P.L.R. 1916 = 34 I.C. 714 = 109 P.W.R. 1916.

———*Partition—Evidence of.*

Evidence of alienation by members of portions of family property is enough to show disruption of the joint family. (*Shah Din and Chevis*, JJ.) MATHRA DAS *v.* GOPALDAS. 33 I.C. 526 = 69 P.W.R. 1916.

———*Partition—Evidence of—History of family—Money-dealings.*

Mere absence of a formal partition among the members of a Hindu family is not in itself conclusive on the question of the status of the family but the matter has to be decided on an

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examination of the history of the family of mutual dealings and dealings with outsiders and on admissions, if any, of the members of the family. 11 M.I.A. 75, Foll. Money transactions between the members of a Hindu family, the one lending and the other borrowing and showing corresponding debts and credits in their books, are important proof of partition. (*Johnstone and Shadi Lal*, JJ.) MUNSHI RAM *v.* GINDAMAL. **123 P.L.R. 1915 = 26 I.C. 390 = 45 P.W.R. 1915.**

———*Partition—Evidence of—Hostility.*

Mere unfriendliness on the part of a son does not effect a severance. Separate living is not sufficient to prove partition when the parties are maintained out of joint funds. (*Johnstone and Rattigan*, JJ.) SHIB NATH *v.* ALLIANCE BANK OF SIMLA, LTD., LAHORE. **3 P.R. 1915 = 110 P.W.R. 1914 = 25 I.C. 480 = 215 P.L.R. 1914.**

———*Partition—Evidence of.*

Where it is shown that for many years past the brothers had nothing in common except the ancestral house wherein they lived separately and had remained separate in food, expenditure, income and worship, the presumption of jointness is rebutted. (*Shah Din and Chevis*, JJ.) SHAM LAL *v.* CHHAJJU MAL. **31 P.W.R. 1913 = 19 I.C. 51 = 76 P.L.R. 1913.**

———*Partition—Evidence of.*

Separation in food and worship for 40 years, enjoyment of portions of the properties separately, treatment of them as exclusive property by alienation and other ways shows disruption of the family and separation in interest. (*Johnstone and Shah Din*, JJ.) MEHR SINGH *v.* DEVIDYAL. **38 P.R 1912 = 32 P.W.R. 1912 = 13 I.C. 50 = 19 P.L.R. 1912.**

———*Partition — Evidence of — Separate living—Separate transaction—Effect of.*

The mere fact that the members of a joint family live separately or have separate dealings or execute documents in favour of each other does not conclusively prove a divided status but may be consistent with an undivided status. Nor does a document between the members of the joint family taking in a stranger as a co-parcener effect a severance between them. (*Krishnan and Ramesam*, JJ.) VENKATACHELA PILLAI *v.* ARUNTHAVATHACHI. **(1923) M.W.N. 225 = 17 L.W. 755 = 1923 Mad. 568.**

———*Partition — Evidence of—Agreement for maintenance—Severance of joint family—Suit for partition by one member against—Other co parceners not parties—Decree for plff.'s share—Severance of other co-parcener's shares*

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—Provision in a partition for a stranger—Invalid.

Where in compromise of an appeal against a partition decree the junior member agreed to receive a monthly maintenance from the manager for the reason that a partition of the Zemindari which would if left intact be a source of protection to the family, will endanger the status of the Zemindari. *Held*, that it was with a view to prevent a division of the Zamindari and to keep it as an impartible estate, that the agreement was come to and that it did not on its true construction effect a severance of the joint family but only provided for a convenient mode of enjoying the joint family properties. 20 Mad. 256 (P C.) 1, Foll. (*Wallis*, C.J. *and Kumaraswami Sastri*, J.) PALANIAMMAL *v.* MUTHU VENKATACHALA. **48 I.C. 833 = 33 M.L.J. 759.**

———*Partition—Evidence of—Unregistered deed.*

Unequivocal declaration contained in a document cannot effect a severance where there was no intention to divide without the deed itself simultaneously taking effect. If the deed is unregistered it is inadmissible to prove a division in status. (*Wallis*, C.J., *Sadasiva Iyer and Seshagiri Iyer*, JJ.) POTHI NAICKEN *v.* NAGANNA NAICKEN. **30 M.L.J. 62 = 19 M.L.T. 50 = (1916) 1 M.W.N. 79 = 32 I.C. 486 = 3 L.W. 115 (F.B.).**

———*Partition — Evidence of — Separate residence.*

Separate residence by several branches of a family in the same compound is no evidence of partition of family nor does discontinuance of allowance to several members raise that presumption. (*Wallis*, C.J. *and Srinivasa Iyengar*, J.) VISVANATHASAMY NAICKER *v.* KAMULU AMMAL. **(1915) M.W.N. 963 = 2 L.W. 1214 = 19 M.L.T. 296 = 31 I.C. 833 = 30 M.L.J. 481.**

———*Partition—Evidence of.*

Where a partition is alleged and has to be proved by oral evidence, and no occasion for such partition is proved, the Court will not find partition unless proved by clear and satisfactory evidence. The onus is on the party relying on the partition. (*Wallis*, C.J. *and Hannay*, J.) PILLADY VENKANNA *v.* PILLADY GANAGAMMA. **28 I.C. 817.**

———*Partition—Evidence of—One member separating from others—Indications showing separation of interest.*

Where subsequent to the separation of one member, the other members take separate meals, acquire property in their own names, make

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separate payments of kists in equal or proportional parts to their shares, all these things certainly point to a separation of interest between the members of the family. The fact that instead of the management of the family income by one member of the family, there is a division of the produce into shares, gives rise to the inference that the parties were separate in interest. (*Miller and Tyabji, JJ.*) GADIAN CHETTIAR *v.* GADIAN CHETTIAR. 26 I.C. 43=1 L.W. 799.

———*Partition — Evidence of—Separate living.*

Seizure of some part of the family property by a member of a joint Hindu family, quarrelling with his family in order to provide himself with a living does not lead to forfeiture of his right to obtain a formal partition in which he would get his proper share. (*Simpson, A.J.C.*) CHAUDHURI JANGI SINGH *v.* CHAUDHARI GANGA SINGH. 10 O. L.J. 393= 1924 Oudh 115.

———*Partition—Evidence of—Severance in interest—Inference from conduct.*

In view of the circumstances that there was a quarrel between the brothers and that the plff. resented the reckless conduct of his step-brother, the separate living between the parties for the last nine years, the application made by the plff. to have his name recorded in the *khewat* in respect of an eight anna share; *held*, that the condition of things was consistent with a tenancy-in-common resulting from an expression of intention to separate in an unambiguous language on the part of either of them. (*Wasir Hassan, A.J.C.*) SHEO DAYAL *v.* LALTA PRASAD. 7 O.L.J. 555=68 I.C. 608= 23 O.C. 181.

———*Partition—Evidence of.*

Entry of the name of a widow of a deceased member of a joint Hindu family disputed without delay cannot be taken as conclusive evidence of the fact that the family had separated even though there was no actual separation. (*Lindsay, J C.*) SUNDARA DEBIA *v.* SHEO RAM. 48 I.C. 153=5 O L.J. 597.

———*Partition—Evidence of separate residence—Onus.*

The mere fact that during the absence of a co-parcener his wife owing to the quarrels with the rest of the family resided separately from the other members is not proof of a severance in status. (*Lindsay, J.C.*) GOBINDAY *v.* ADHIN. 45 I.C. 78=20 O.C. 398.

———*Partition—Evidence of—Entries in revenue papers.*

Entries in revenue papers defining shares, separate residence, institutions of suit

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altogether go to prove division. (*Kanhaiya Lal and Kendall, A. J. Cs.*) BRIJ MOHAN SINGH *v.* RAM MILAN SINGH. 39 I. C. 433= 4 O L J 124.

———*Partition— Evidence of—Entries in revenue papers.*

Entry in revenue papers of the name of the widow does not establish separation. (*Stuart and Kanhaiya Lal, A. J. Cs.*) BAKHTAWAR SINGH *v.* RAM SINGH. 36 I.C. 44= 3 O.L J. 289.

———*Partition—Evidence of—Entries in revenue papers.*

Entries in revenue papers resulting from order passed by Revenue Courts do not confer any title or constitute strong evidence of partition. (*Lindsay, J. C.*) KANDHAIYA BUX SINGH *v.* SHEO BUX SINGH. 20 I C. 861.

———*Partition—Evidence of—Proof.*

Where a Hindu family is once proved to be joint there is a presumption in favour of the continuance of such jointness till the contrary is proved. (*Piggott, J. C.*) GAYA KUNWAR *v.* DAL SINGH. 17 I.C. 295.

———*Partition — Evidence of — Common living—Joint purse—Effect of.*

It is not necessary that definite evidence should be given of a formal agreement between the parties to enable a Court to hold that a separation had taken place. An inference of separation having previously taken place may be drawn from the subsequent acts of the parties without any proof of a formal agreement. But where the parties are found living together in the same house and meeting their expenses out of a common fund, it would require much stronger evidence than anything which was produced in the case to lead to the conclusion that they had put an end to their state of jointness. (*Miller, C.J. and Foster, J.*) TARINI PRASHAD SINGH *v.* NUNU PRASAD SINGH. 72 I.C. 1006.

———*Partition — Evidence of — Mutation entries—Value of.*

Statements in Mutation Petitions and Land Registration Records, giving the shares of each member of a joint family, will not suffice to establish a partition of the joint family, unless they show a clear and unequivocal intention to separate. (*Mullick and Bucknill, JJ.*) GOBIND PERSHAD *v.* BRIJ RAJKUMAR. 61 I.C. 369.

———*Partition—Evidence of—Mortgage—Intention of partition.*

Intention to partition cannot be inferred from a mortgage-bond hypothecating the

HINDU LAW—Partition—Evidence of.

mortgagor's interest in the family property. (*Miller*, C.J. *and Mullick*, J.) AMAR DAYAL SINGH *v.* HAR PERSHAD SAHU.
5 P.L.J. 605=58 I.C. 72=1 P.L.T. 511.

———*Partition — Evidence of — Family arrangement—Appeal—Finding of—Partition accepted—Family arrangement set aside—Procedure—Legality of.*

Where the trial Court found in a partition suit that there was a partition as a family arrangement and the Appellate Court accepted the finding on partition but set aside the family arrangement; *held* the finding as to partition having been accepted, the decision against the family arrangement was unsupportable. (*Coutts and Sultan Ahmed*, JJ.) DAL BHANJAN SINGH *v.* KARIMAN SINGH.
57 I.C. 413=1 P.L.T. 463.

———*Partition—Evidence of.*

An order passed by a settlement officer in preparing a record of rights does not raise a presumption of separation in status, his decision being on factum of possession without any reference to the rights of a co-parcener in such possession. (*Miller*, C.J. *and Imam*, J.) RAM DAYAL MAHTO *v.* UTTIM MAHTO.
46 I.C. 266=6 P.L.W. 122.

———*Partition—Evidence of.*

To find out whether there has been a partition or not, the whole circumstances of each particular case must be investigated and the intention of the parties ascertained. (*Roe and Coutts*, JJ.) RAMESWAR MISSER *v.* SURESHWAR MISSER. 46 I.C. 252.

———*Partition—Evidence of.*

Alteration of the mode of enjoyment is not sufficient to effect a partition. There must be an alteration and intention to alter the title. 21 W.R. 214 (P.C), Foll. (*Pratt*, J.C., *Crouch and Fawcett*, A.J. Cs.) MANGHIRMAL *v.* VITHAL RAM. 13 I.C. 225=6 S.L.R. 107.

Partition—Father.

———*Partition — Father's power — Sons, when bound—Allotment to a stranger.*

Although a partition made by a Hindu father, may, under some circumstances bind his minor sons, yet, if on the partition a share is given to an absolute stranger, the partition may be impeached as a dispossession of property made without consideration, unless it can be supported as a *bona fide* compromise of a disputed claim. 30 I.A. 189, 150, Dist. (*Sir Samuel Griffith*). RAMKISHORE KEDARNATH *v.* JAINARAYAN RAMRACHPAL. 40 Cal. 966=(1913) M.W.N. 661=14 M.L.T. 163=17 C.W.N. 1189=18 C.L.J. 237=15 Bom. L.R. 867=11 A.L.J. 865=28 M.L.J. 512=10 N.L.R. 1=20 I.C. 958=40 I.A. 218 (P.C.).

HINDU LAW—Partition—Father.

———*Partition—Father — Consent of co-parceners—Effect.*

Consent by the members to a partition by the father binds not only the consenting members but also their sons as they represent their respective branches of the family. (*Lord Moulton.*) BRIJ RAJ SINGH *v.* SHEO DAN SINGH. 35 All. 337=25 M.L.J. 188=17 C.W.N. 949=(1913) M.W.N. 515=11 A.L.J. 698=14 M.L.T. 11=18 C.L.J. 57=15 Bom. L.R. 652=19 I.C. 826=40 I.A. 161 (P.C.).

———*Partition—Father—Father's power to effect—Will.*

The father or manager of a joint Hindu family cannot effect a partition by will of ancestral property. 2 Mad. 317, Dist. (*Le-Rossignol and Wilberforce*, JJ.) NAND LAL *v.* DEWAN CHAND. 78 P.W.R. 1918=76 P.L.R. 1918=45 I.C. 162=86 P.R. 1918.

———*Partition—Father—Represents sons—Preliminary decree—Effect of.*

A preliminary decree passed against a Hindu father for partition is presumably passed against him as representing his undivided family and binds his sons. On his death the plff. is entitled to add his sons as his legal representatives or even as parties whose names should be deemed to be already on the record as representing their father till his death and which names are merely sought to be inscribed on the record openly after his death. (*Sadasiva Aiyar and Spencer*, JJ.) ALUR LAKSHMI NARASIMHA SASTRULU *v.* VENKATA NARASAMMA.
52 I.C. 614.

———*Partition—Father—Power of—Objection by sons—Devise of father's share.*

A Hindu father can effect partition against the will of his sons. 2 Mad. 317; 31 M.L.J. 147; 32 M.L.J. 439, Foll. Where a Hindu father effects a division with the consent of one of his sons but against the wishes of others he must be deemed to have exercised his power as father and effected the partition. If the father registers the partition deed and subsequently devised the items falling to his share to one of his sons the bequest is valid. Where there is a power conferred on the father to divide the mortgaged property if purchased by him in execution and the father purchases the property in the name of a junior co-parcener there is a fraud on the power and the properties are available for division. (*Ayling and Seshagiri Iyer*, JJ.) NATESA IYER *v.* SUBRMANIA IYER. 23 M.L.T. 307=45 I.C. 635=(1918) M.W.N. 703.

HINDU LAW—Partition—Father.

———*Partition — Father — Grandfather's power—Deed of gift.*

Grandfather can effect a partition between himself and his grandsons and make a gift of his share by the same instrument. The partition is valid if it is equal and fair. (*Abdur Rahim and Oldfield, JJ.*) AIYAVIER *v.* SUBRAMANIA IYER. 32 M.L.J. 439 = 40 I.C. 205 = 6 L.W. 22.

———*Partition—Father—Right of.*

A Mitakshara father can effect a partition of the family properties among his sons without their consent. (*Abdur Rahim and Phillips, JJ.*) MURUGAYYA *v.* PALANIYANDI. 31 M.L.J. 147 = 36 I.C. 507 = (1916) 2 M.W.N. 284.

———*Partition—Father — Power to effect partition.*

Under Hindu Law, a father can separate one or more of his sons from himself, in which case there is no presumption of division between the father and the other sons by another wife and in such a case a decree passed against the separated sons cannot be executed against the whole property. (*Napier and Srinivasa Iyengar, JJ.*) RANGASWAMI NAIDU *v.* SUNDARARAJULU NAIDU. 35 I.C. 32 = 31 M.L.J. 472.

———*Partition—Father—After-born sons—Right of.*

When a compromise by a father on behalf of himself and his son is set aside, it is nevertheless binding on the father's share as it stood at the date of the compromise. The remaining portion continues to be joint and after-born sons can participate therein. (*Wallis, J.*) GANESH ROW *v.* TULJA RAM RAO. 24 I.C. 696 = 26 M.L.J. 460.

———*Partition—Father—Power to effect—Self-acquired property—Registration.*

Under the Mitakshara a father can make a partition of his self-acquired properties for the benefit of his sons. Such a partition is not a gift and can be effected without a registered deed. (*Batten, A.J.C.*) LAXMAN *v.* TAYYA. 31 I.C. 93 = 15 N.L.R. 93.

———*Partition—Father—Effect on son of co-parcener.*

A partition is binding on a son unless he can show some legal ground for setting it aside as fraud, or that the amount received by his father was not a fair equivalent of his share. A separation of Hindu father leaving his sons joint is an unusual thing. (*Sabanadiere and Kanhaiya Lal, A.J.Cs.*) CHHOTE LAL *v.* BADRI SINGH. 22 I.C. 129.

HINDU LAW—Partition—Female sharers.

Partition—Female Sharers.

———*Partition—Female sharer—Share of a grand mother.*

A Grandmother is entitled a grand son's share in partition with her grand sons. (*Gokul Prasad, J.*) KANHAIYALAL *v* GERA. 1923 All. 486.

———*Partition — Female sharers— Step-mother—Share of.*

A step-mother is entitled upon partition of joint family property to share equal to that of a son. (*Richards, C.J. and Rafique, J.*) HAR NARAIN *v.* BISHANBHAR NATH. 38 All. 83 = 31 I.C. 907 = 13 A.L.J. 1129.

———*Partition—Female sharers — Grandmother—Share of.*

The Mitakshara Law does not enable a grandmother to claim a share at the time of the partition between a father and his sons. 34 All. 505, Ref. (*Richards, C.J. and Banerji, J.*) CHUMMUN PRASAD CHOUBE *v.* PRANPAT CHOUBE. 29 I.C. 166.

———*Partition — Female sharer — Grandmother—Benares School.*

On a partition between a father and his sons, the father's mother does not get a share according to the Benares School. 3 All. 118, Foll.; 8 Cal. 649, Diss.; 7 Cal. 191; 9 W.R. 61, Dist. and Not Appl. Works of Yagnavalkya and Mitakshara make a distinction between partition during lifetime of the father and partition after his death. In the former case, a share is allotted to the father's wife in the latter, to the mother of the sons affecting partition. (*Richards, C.J., Banerji and Tudball, JJ.*) SHEO NARAIN *v.* JANKI PRASAD. 34 All. 505 = 16 I.C. 68 = 9 A.L.J. 749.

———*Partition—Female sharers—Mother's share—Legitimate and illegitimate sons—Lewa Kunbis.*

Under Hindu Law, among Sudras, a mother is entitled to a share when the property is divided between the legitimate as well as the illegitimate sons of the deceased. (*Macleod, C.J. and Shah, J.*) MANOHARAM BHIKU *v.* DATTU. 34 I.C. 110 = 21 Bom. L.R. 1172.

———*Partition—Female sharers—Right of mother to a share.*

The mother's right to a share on partition accrues only on the final decree. 9 W.R. 61; 38 All. 118; 34 All. 234 (P.C.); 43 Cal. 1031 (P.C.), Ref. (*Batchelor A.C.J. and Shah, J.*) RAOJI BHIKAJI *v.* ANANT LAXMAN. 42 Bom. 525 = 45 I.C. 750 = 20 Bom. L.R. 671.

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———*—Partition—Female sharers — Grandmother — Step-grandmother entitled to a share.*

Under the Mitakshara School a step-grandmother is entitled to a share of the family estate when it is partitioned among her grandsons. (*Heaton and Shah*, JJ.) VITHAL *v.* PRAHLAD. **39 Bom. 373 = 28 I C. 967 = 17 Bom. L.R. 361.**

———*—Partition—Female sharer—Mother—Rights of—Maintenance.*

Under the Hindu law it is only in the event of a partition among her sons that a mother becomes entitled to a share in lieu of her maintenance. 16 C. 758; 31 C. 262, Rel. (*Mookerjee and Chotzner*, JJ.) JADU NATH SIRKAR *v.* HARAN CHANDRA SARKAR. **36 C.L J. 217 = 49 I.C. 1053 = 1923 Cal. 221.**

———*—Partition — Female sharers— Bengal school—Mother's share—Nature of.*

The share obtained by a mother in Bengal on partition among her sons is in lieu of her right to maintenance; it is covered out of the sons' shares and on her death becomes part of the shares out of which it came. (*Rankin*, J.) SHASHI BHUSAN SHAW *v.* HARI NARAIN SHAW. **48 Cal. 1059 = 66 I C. 705 = 25 C.W.N. 990.**

———*—Partition—Female sharers — Dayabhaga—Mother.*

A Dayabhaga Hindu mother cannot compel a partition among her sons but is entitled to an equal share, if a partition takes place. She gets her share even in a partition between the sons and an alienee of the shares of one or more of the sons. The stridhan received by her from her husband or father-in-law and not that from her father, must be deducted from that share. (*Mookerjee and Buckland*, JJ.) JOGOBHANDU *v.* RAJENDRA NATH. **66 I.C. 121 = 34 C.L.J. 29.**

———*Partition— Female sharers—Mother's share—Absolute right—Special agreement.*

By special agreement or agreement with her sons, a Hindu widow can get on partition with her sons, absolute right to the portion of her husband's estate, allowed to her. (*Newbould*, J.) DUKHIL RAM MALI *v.* NEWAJ ALI. **53 I C. 426.**

———*—Partition—Female sharers—Mother—Maintenance.*

Under the Mitakshara Law a mother has a right only to maintenance until partition; she can never hereself demand a partition. But if a partition takes place she will be entitled to receive a share if the effect of that partition is to break up or diminish the estate which was the source of her maintenance. Where a co-sharer in a joint estate having applied for partition, the widow of the last male owner sued for a declaration of her title to a share in the estate: *Held*, she was entitled to a share equal to that of the co-sharers and the suit was maintainable. 60 P.R. 1895, Foll. (*Shadi Lal and Broadway*, JJ.) MUSSAMAT GANESH DEVI *v.* DARSAN SINGH. **2 U P.L.R. (Lah.) 100 = 56 I.C. 478 = 2 Lah. L.J. 377.**

HINDU LAW — Partition — Institution of suits.

———*—Partition—Female sharers—Partition between one brother and auction-purchaser of the other brother—Mother entitled to an equal share.*

Where the share of one of the two joint brothers is transferred, at a partition between the other brother and the transferee, the mother is entitled to a share equal to that of each of the sons and after her death half of her share will go to his transferee. (*Kotval*, A.J.C.) RAMANATH *v.* SITARAMA. **19 N.L.R. 147 = 1923 Nag. 288.**

———*—Partition—Female sharers—Mother's right to share.*

On a partition between sons and step-sons, under the Mitakshara, a mother is entitled to a share equal to that of her son. The possession of separate property as *stridhan* by the mother might have the effect of reducing *pro tanto* the share to which she may be entitled on partition. (*Kanhaiya Lal and Kendall*, A.J.Cs.) SARUB CHAND *v.* MUSSAMMAT PANI. **37 I.C. 198 = 19 C.C. 240.**

———*—Partition— Female sharers— Step-mother.*

Under the Mitakshara Law in a partition between sons, the step-mother is entitled to a share equal to that of a son. (*Jwala Prasad and Coutts*, JJ.) SUBBA RAUT *v.* MANLA RAUTAIN. **47 I.C. 205.**

Partition—Illegitimate son.

———*—Partition—Illegitimate son—Share of — One half of share allotted to legitimate son.*

In a partition after father's death the illegitimate son gets half of the share actually allotted to his legtimate brother and not one-half of what a legitimate son would get in his place. (*White*, C.J. *and Sankaran Nair*, J.) CHELLAMMAL *v.* RANGANATHAM PILLAI. **12 I.C. 247 = 34 Mad. 277.**

Partition—Institution of suits.

———*—Partition—Institution of suit—Dismissal of—Effect.*

The institution of a suit for partition by a member of a joint Hindu family governed by

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the Mitakshara Law is an unequivocal intimation of his intention to separate and there is a severance of the joint status from the date of the institution of the suit. The fact that the Court dismissed the suit on the ground that there was no justification for the same would not prevent the disruption of the joint status. A decree of Court is necessary only for working out the result of the severance and allotting definite shares. (*Viscount Haldane*). KAWAL NAIN *v.* BUDH SINGH. 39 All. 498 = 18 A.L.J. 581 = 2 Pat L.W. 67 = 21 C.W.N. 986 = 33 M.L.J. 42 = 19 Bom. L.R. 642 = 26 C.L.J. 101 = (1917) M.W.N. 511 = 6 L.W. 330 = 40 I.C. 286 = 44 I.A. 159 (P.C.).

[On Appeal from 19 I.C. 430.].

———*Partition—Institution of suit—Division in status.*

Once a member of a joint Hindu family governed by the Mitakshara clearly and unequivocally intimates either by express declaration or by his conduct to his co-sharers his desire to sever himself from the joint family, his right to obtain and possess his share, is unimpeachable, whether or not the co-sharers agree to a separation and there is an immediate severance of the joint status. 35 All. 80 (P.C.); 11 M.I.A. 75; 18 Cal. 157; 10 W.R. 273; 6 I.A. 228; 8 W.R. 82, Ref. If a member so intimates his desire and institutes a suit for partition, but dies before obtaining a decree, his widow is entitled to continue the suit and to inherit her deceased husband's share in the joint property. (*Mr. Ameer Ali.*) MUSSAMMAT GIRIJA BAI *v.* SADASIV DHUNDHIRAJ. 43 Cal. 1031 = 31 M.L.J. 455 = 20 C.W.N. 1086 = 14 A.L.J. 822 = 20 M.L.T. 76 = 12 N.L.R. 113 = 18 Bom. L.R. 621 = (1916) 2 M.W.N. 65 = 4 L.W. 114 = 24 C.L.J. 207 = 37 I.C. 321 = 43 I.A. 151 (P.C.).

———*Partition—Institution of suit—Minor—Civ. Pro. Code, O. 32, R. 12.*

A minor's suit for partition through his next friend cannot affect the status of the joint family as the minor has no right to demand separation. But the case is different, if the minor attains majority during the pendency of the suit, and elects to proceed with it under O. 32, R. 12, because he at once acquires the rights of the grown up person, dissolving the jointness of the family. (*Mears, C. J. and Banerjee and Piggott, JJ.*) LALTA PRASAD *v.* SHEAM SINGH. 43 All. 461 = 2 U.P.L.R. (All.) 137 = 58 I.C. 667 = 18 A.L.J. 503 (F.B.).

———*Partition—Institution of suit—Declaration of plaintiff's share of a revenue paying estate.*

The presentation of a plaint by which the Court is asked to ascertain and to delegate the share of the plaintiff in property which had formerly belonged to a joint family of which the plaintiffs and defendants were members, dissolves the status of joint family as between the parties to the litigation. (*Rafique and Piggott, JJ.*) RUPAN RAI *v.* SUBKARAN RAI. 41 All. 207 = 49 I.C. 367 = 17 A.L.J. 112.

———*Partition—Institution of suit—Effect on defts. inter se—Separation of one member.*

The filing of suit by one member of the joint Hindu family declaring his desire for partition and specific share, amounts to separation amongst all. But if one member of joint Hindu family separates himself without suit and relinquishes his rights either taking no share, less share or greater share, it does not follow that the surviving members cannot remain united as before. Though separation of one member would involve the ascertainment of the shares of others and is a virtual separation of all it does not alter the ordinary devolution of joint Hindu family property if there never was a break in the jointness between surviving members. (*Richards, C.J. and Banerji, J.*) PURSOTAM DAS *v.* JAGANNATH. 41 All. 261 = 50 I.C. 357 = 17 A.L.J. 347.

———*Partition—Institution of suit.*

A decree declaring a right to partition is insufficient to change the character of the property and it continues to be joint until an actual partition takes place. (*Batchelor and Rao, JJ.*) JAGU BABAJI VARANG *v.* BALU LAXMAN VARANG. 37 Bom. 307 = 17 I.C. 955 = 14 Bom. L.R. 1198.

[This is no longer law. See 37 I.C. 321 = 43 Cal. 1031 (P.C.).]

———*Partition—Institution of suit.*

Per *Chandavarkar, J.*—The judgment to operate as a severance of interest must contain a clear adjudication that each co-parcener is entitled to a share definitely fixed. (*Chandavarkar and Batchelor, JJ.*) BABABJI AKOBA *v.* DATTU LAXMAN. 37 Bom. 64 = 17 I.C. 652 = 14 Bom. L.R. 923.

[This is no longer law, See 43 Cal. 1031 (P.C.)].

———*Partition—Institution of suit—Preliminary decree—Severance in status.*

Although the trial Court's decree in a partition suit was under appeal, yet it was still a final decree of a competent Court, as soon as that decree was made, it determined the legal status or relation of the parties, and the severance of interest so effected by the decree, at the moment it was pronounced could be displaced only by a legal decision in appeal. The mere pendency of an undecided appeal

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does not in any way mar the validity or the force of an existing decree. (*Batchelor*, J.) MAHADEOLAXMAN *v.* GOVIND PARASHRAM.
36 Bom. 550=16 I.C. 991=14 Bom. L R. 783.

———*Partition—Institution of suit—Withdrawal.*

Where a junior member sues the manager for partition of his share not making the other coparceners parties, the decree in the suit which merely allots his share of the properties does not affect a division as between the other members and the manager. It is open to a coparcener who has filed a suit for partition to abandon that intention before the suit proceeds to a decree and to continue in a state of jointness. In such a case the filing of the plaint does not effect a severance. Where a partition takes place under a decree of Court whereby one member claims his share and obtains it, the effect of the decree on the remaining coparceners must be determined by the terms of the decree or where it is ambiguous by the scope of the suit. 25 Mad. 149; 30 Cal. 725 (P.C.); 31 Mad. 482; 29 All. 93; 31 M.L.J. 472, Rel,; 33 M.L.J. 759. *Ref.* (*Wallis*, C.J. and *Kumaraswami Sastri*, J.) PALANIAMMAL *v.* MUTHUVENKATACHALA MANIGARAR.
43 I.C. 883=33 M.L J. 759.

———*Partition—Institution of suit—Effect of—Alienation of his share by one member if effects severance.*

An unambiguous declaration of his intention to divide, by a member of a joint Hindu family, is enough to effect a severance of the joint status so far as he is concerned. 35 All. 80, (P.C.), Foll. Consequently, a member of a joint Hindu family becomes separated from the other member by the mere fact of suing them for partition. Per *Sadasiva Aiyar*, J.—A member of a joint Hindu family who sells away his share in all co-parcenary property becomes severed from the joint family and the alienee becomes a tenant-in-common with the other coparceners in respect of the share so alienated. 25 Mad. 690; 35 Mad. 47; 21 M.L.J. 1041; 23 M.L.J. 64, Foll.; 26 M.L.J. 576; 26 M.L J. 460; 37 M.L.J. 409, Diss. (*Wallis*, C.J., *Sadasiva Aiyar and Seshagiri Aiyar*, JJ.) SUNDARA RAJAM *v.* ARUNACHELLAM CHETTY.
39 Mad. 136, 159=(1916) 1 M.W.N. 81=29 M.L J. 793, 816=18 M.L.T. 552, 568=33 I.C. 858=2 L.W. 1247, 1266.

———*Partition — Institution of suit—Preliminary decree—Effect—Legal representative.*

A preliminary decree for partition effects the severance of the members of a joint Hindu family. If the plff. dies issueless after the passing of such decree, his proper legal representative is his widow. (*Hannay*, J.) MAMMA REDDI SATTIRAJU MAMMA REDDI *v.* MAMMA REDDI AMMAYI. 28 I.C. 543=2 L.W. 325.

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———*Partition — Institution of suit — Decree.*

The decree for partition effects a complete division of the joint family property. The fact that certain property was left out being unknown at the time would make no difference. (*Abdur Rahim and Spencer*, JJ.) SEGU CHIDAMBARAMMA *v.* SEGU BALAYA.
12 I.C. 704=(1911) 2 M.W.N. 467.

———*Partition—Institution of suit—Decree—Appeal—Subsequent event, effect on decree.*

That the decree of the Court of first instance effected severance there appears to be no reason why the subsequent filing of appeal should be held to effect reunion and justify Appellate Court in making fresh distribution of share according to the condition of the family at the date of the decision of appeal and no depriving parties or their representatives of their original shares. (*Wallis and Sankaran Nair*, JJ.) THANDAYUTHAPANI *v.* RAGUNATHA. 35 M. 239=21 M.L.J. 240=9 M.L.T. 421=10 I.C 660=(1911) M.W.N 223.

———*Partition — Institution of suit by minor.*

The institution of a suit for partition of joint family property by a minor does not effect severance of the interests of the parties. (*Hallifax and Macnair*, A.J.Cs.) GANGLA *v.* GHINGRYA. 63 I.C. 595.

———*Partition—Institution of suit—Preliminary decree.*

A decree in a partition suit effects a severance of joint status and persons who were joint before, are not entitled to any increment of their share by reason of subsequent death of a party as the widow of the deceased person is preferential heir. 35 Mad. 239, Foll. (*Mitra and Prideaux*, A.J.Cs.) RUSTOM RAO *v.* DINKAR RAO. 55 I.C. 38.

———*Partition—Institution of suit.*

Unequivocal intimation, either by express declaration or by conduct of intention to sever, effects partition. The institution of a suit, therefore effects severence of the plaintiff before decree and the widow can continue the suit. 43 Cal. 1031, Ref. A division of rights is sufficient to constitute partition. (*Lindsay*. J.C.) RAMADHIN *v.* BISHESHAR DAYAL.
37 I.C 111=3 O.L.J. 508.

———*Partition — Institution of suit — Minor.*

The institution of a suit for partition is sufficient indication of an intention to separate and the birth of a co-parcener subsequent to that date does not affect the share of the plff.

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The institution of a suit by a minor member of a joint Hindu family for partition of the family property may amount to a separation though the minor acts through his guardian. (*Miller*, C.J. *and Mullick*, J.) KRISHNA LAL JHA *v.* NANDESHWAR JHA. 4 P.L.J. 38 = 44 I.C. 146.

Partition—Minor.

———*Partition—Minor—Partition decree—Effect of.*

Where the estate had not been partitioned though the decree in favour of an infant son against father for partition has been made, *held*, the decree declaring certain alienation by father void cannot reasonably be intended as a decree to put the plaintiff into physical possession of that which still remains one undivided half of the whole. It only means that he has been excluded from his proper share of the property jointly held and that he is entitled to possession for the purpose of securing his position. (*Lord Buckmaster*). NARAIN DAS *v.* ABINASH CHANDER. L.R. 3 (P.C.) 129 = 31 M.L.T. (P.C.) 217 = 16 L.W. 780 = (1922) M.W.N. 791 = 4 U.P.L.R. (P.C.) 111 = 27 C.W.N. 299 = 21 A.L.J. 201 = 44 M.L.J. 728 = 37 C.L.J. 467 = 1922 P.C. 347 (P.C.).

———*Partition—Minor—When bound.*

Partition fairly and honestly obtained against the managing member of a Hindu family, is binding on a minor member though no guardian had formally been appointed for such minor during the partition proceedings. (*Tudball and Rafique*, JJ.) BHAGWATI PRASAD *v.* BHAGWATI PRASAD. 38 All. 126 = 17 I.C. 816 = 11 A.L.J. 76.

———*Partition—Minors—Agreement to remain united.*

The absence of contractual capacity in minor does not mean that after a partition in a Hindu family minors have no option but to remain divided. In all such cases it is the duty of the guardian to make as good and beneficial arrangement as he possibly can. An arrangement fair in method and result will bind the minor's estate. (*Rankin*, J.) SHASHI BHUSAN SHAW *v.* HARINARAIN SHAW. 48 Cal. 1059 = 66 I.C. 705 = 25 C.W.N. 990.

———*Partition—Minor—Malversation.*

Actual malversation of property by father need not be proved to enable a minor son to claim partition; if the property is shown to be in danger, it is sufficient. The possibility of future birth in the family is not a ground for partition by the minor nor the fact that the minor's father has married a second wife and the minor's mother is living apart. Court

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should not allow partition unless the minor's interests are likely to be advanced or protected. 4 Bom. L.R. 889, Expl.; 29 All. 373; 14 Bom. 99; 41 Mad. 442; 31 Bom. 373, Ref. (*Abdur Rahim and Napier*, JJ.) PALANI GOUNDAN *v.* KASI GOUNDAN. 50 I.C. 552.

———*Partition—Minor—Allotment of extra share to one member—Minors not bound—Mother acting as guardian—Share to one member—Relinquishment of share—How effected—Mother's right to act as guardian.*

The claim of the eldest son under the Hindu Law to Jyeshtabhagam (or extra share) having long become obsolete, the act of the guardian of the plffs. (minor members) in assenting to such a share being given was not binding on them and that plffs., subject to the law of Limitation, were entitled to claim a fourth of the extra share given to the deft's. branch. The giving up of the extra share by the senior branch can only be by a registered deed and mere joint living, joint managements, failure to maintain accounts, incurring expenditure in common and joint acquisitions would not render the extra share co-parcenary property. Under the Hindu Law, the mother has no right to represent her sons in respect of joint family property except in case of a partition between her sons and the other members of the family. (*Abdur Rahim and Sesshagiri Aiyar*, JJ.) VENKATA REDDI *v.* KUPPA REDDI. (1918) M.W.N. 680 = 47 I.C. 716 = 8 L.W. 400.

———*Partition—Minor—Not bound, if property allotted to stranger.*

Per *Kumaraswami Sastri*, J.:—An agreement whereby a considerable portion of joint family property has been excluded from partition and given to persons who have no legal claim whatever cannot be binding upon the minor sons simply because their father is a party to it unless it can be supported as a *bona fide* compromise of a disputed claim. 40 Cal. 966, Foll. (*Wallis*, C.J. *and Kumaraswamy Sastri*, J.) PALANIAMMAL *v.* MUTHUVENKATAHALA MANIGARAR. 48 I.C. 833 = 33 M.L.J. 789.

———*Partition—Minor—Intention to separate must be informed to guardian.*

In the case where there are minor co-parceners, the intention to separate by one member must be communicated to the natural guardian of the minor. A recital in a sale-deed by the elder of two brothers that he was divided was held insufficient to effect a division as it was not communicated to the mother of the younger brother, a minor. 39 All. 496 P.C.; 43 Cal. 1031, P.C., Ref. and Dist. (*Wallis*, C.J. *and Kumaraswami Sastri*, J.) KAMEPELLI AYILAMMA *v.* VENKATASWAMY. 33 M.L.J. 746 = 22 M.L.T. 503 = (1918) M.W.N. 136 = 43 I.C. 130 = 8 L.W. 24.

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———*Partition—Minor—Institution of suit—Effect.*

Filing of a plaint by a minor for partition does not *ipso facto* effect a severance of joint status since adults only can declare their intention to partition. In such a suit the Court may or may not decree partition. On the minor's death his legal representative cannot as of right claim to be substituted. (*Abdur Rahim and Oldfield, JJ.*) CHELLMI CHETTY *v.* SUBBANNA. **41 Mad. 442 = (1917) M.W.N. 792 = 22 M.L.T. 432 = 42 I.C 860 = 34 M.L J 213.**

———*Partition—Minor—Partition against father—Malversation.*

A minor plff. can file a suit for partition if there are circumstances showing that it would be for his interest to separate his share, and it is not necessary to prove malversation on the part of the adult members. 19 Bom. 39, Foll. Where a father sets up a hostile right and denies the rights of a minor son to any share of the joint family properties and the father was living apart from his wife with a concubine. *Held*, that a suit for partition would lie and it was the duty of the Court to safeguard the minor's interest by declaring his rights and giving effect to such a declaration. 3 M.H.C. R. 94; 12 Mad. 401, Ref. (*Kumaraswami Sastri, J.*) SADAGOPA NAIDU *v.* THIRUMALAISWAMI NAIDU. **30 I.C. 272 = 18 M.L T. 129.**

———*Partition—Minor— Suit to set aside by member who was minor at the time and was represented by a natural guardian—Onus.*

A partition of the property of a joint Hindu family, some of the members of which are minors at the time and are represented by their natural guardians is as binding on them as on the adult members, provided there is no negligence or fraud on the part of the guardian, the onus of proving which lies on the minor. (*Coutts Trotter and Srinivasa Iyengar, JJ.*) YECHURI RAMA MURTHI *v.* YECHURI RAMAMMA. **30 M,L.J. 308 = 33 I C. 961 = 3 L.W. 322.**

———*Partition—Minor—Consent to partition by mother on behalf of her minor son.*

In case of a joint family consisting of an uncle, his minor nephew and the latter's mother, the mother can give consent to a partition, on behalf of the minor and the mere fact that the uncle was at such time dangerously ill will not vitiate the consent inasmuch as the law takes no notice of the probability of a person's death as a cause for refusing consent to a partition which a member has right to demand at any time. (*Sankaran Nair and Oldfield, JJ.*) POTHI NAICKEN *v.* NAIKER. **(1915) M.W.N. 803 = 17 M L.T. 300 = 28 I.C. 625 = 28 M.L J. 423.**

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———*Partition—Minor—Right of co-parcener.*

The existence of minor co-parcener is no bar to the right of a co-parcener to claim partition. 30 Cal. 738, Foll. (*Drake Brockman, J.C.*) BALI *v.* GIRJI. **20 I.C. 563 = 9 N L.R. 111.**

———*Partition—Minor—Re-opening of.*

Where a minor's father's step-mother represents him at a partition of the family properties, the minor having no other competitive guardian, the partition is binding on the minor until set aside. (*Lindsay, J. C. and Kanhaiya Lal, A.J.C.*) KALI PRASAD *v.* RAM RATAN. **49 I.C. 67 = 5 O L.J. 747.**

———*Partition—Minor—When bound.*

A Mitakshara son can sue for partition of ancestral property in the lifetime of his father. The partition decree binds a minor though he is unrepresented in a partition suit, in the absence of prejudice. (*Mullick and Atkinson, JJ.*) AJODHYA PRASAD *v.* MANOHAR PRASAD. **40 I.C. 131 = 3 P.L.W. 366.**

Partition—Onus of proof.

———*Partition—Onus of proof.*

According to *Mitakshara*, when a son is born to a man governed by Hindu Law he and that son at once form a joint undivided Hindu family, and anybody later on asserting that they were not at any given time such a family must prove disruption before that time. 5 P. R. 1913, Expl. (*Johnstone, C. J. and Le Rossignol, J.*) NARPAT RAI *v.* DEVI DAS. **85 P.R. 1915 = 31 I.C 634 = 358 P.W.R. 1915.**

Partition—Oral.

———*Partition—Oral—Validity.*

A partition of immoveable property not being either an 'exchange', 'sale', 'mortgage' or 'lease' can be effected by oral arrangement and need not be in writing and registered. The fact that the rights relinquished mutually, under an oral partition, are to continue for periods of long duration does not effect the question whether partition should be effected by written instruments. (*Dalton and Fitzgerald,* (1897) 2 Ch. D. 86, Dist.; 7 W. R. 35 (P.C.), Ref. 4 M. L. T. 354; 35 Mad. 423; 13 M. L. J. 500; 22 Mad. 522, Foll. (*Sadasiva Iyer and Napier, JJ.*) ALAMELU AMMAL *v.* BALU AMMAL. **16 M L T. 592 = (1915) M.W.N. 26 = 26 I.C. 455 = 28 M.L.J. 685.**

———*Partition—Oral.*

The provisions of the T. P. Act do not apply to a partition of joint family property by private arrangement which does not require an instrument of writting. (*Twomey, J.*) MA SHEIN NYUN *v.* MAUNG YU. **25 I.C. 498.**

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———*Partition—Partial partition—Competency of members to enter into.*

Members of a joint Hindu family may make a division and severance of interest in respect of a part of the joint estate whilst retaining their status as a joint family and holding the rest as the properties of a joint undivided family. 11 M. I. A. 75 P. C. Ref. (*Mr. Ameer Ali.*) RAMALINGA ANNAVI *v.* NARAYANA ANNAVI.

43 M. L. J. 428 = 30 M. L. T. 255 (P. C.) = 45 Mad. 489 = (1922) M. W. N. 399 = 26 C. W. N. 929 = 16 L. W. 639 = 20 A. L J. 839 = 24 Bom. L. R. 1209 = 49 I. A. 168 = 1922 P. C. 201 (P. C.)

———*Partition— Partial partition—One co-parcener separating—Remainder remain joint or not depends on agreement.*

Whether the remaining co-parceners remain joint or not after one of them has separated depends on the agreement between them, and this being a question of fact requires to be proved as such. (*Wallis, J.*) KUNDAN *v.* MOHANI KUNWAR.

3 U. P. L. R. (All.) 69.

———*Partition—Partial partition—Proof.*

The filling of a partition suit, amounts to separation but where one member separates himself from the family without a suit, either by taking no share or less share, the other members can remain united. If it is necessary to fix the shares of all the members, when only one member separates his separation means virtually separation of all. But this principle does not affect the ordinary devolution of joint property when there is no break in the jointness of the family. (*Richards, C. J. and Banerji, J.*) PARSHOTAM DAS *v.* JAGANNATH.

41 All. 361 = 50 I. C. 357 = 17 A. L. J. 347.

———*Partition—Partial partition—Presumption—Property kept joint—Status of co-parceners.*

Once there is evidence sufficient to satisfy the court that the parties intended to sever, then the joint family status is put an end to, and with regard to any of the property which had hitherto been joint and has not been divided by metes and bounds there will have to be an express agreement between the parties that they should treat that property as belonging to them as joint tenants. They will then be joint tenants not as members of the joint family which no longer exists but under a special agreement made after the severance. 48 I. A. 151; 18 B. 611 Ref. (*Macleod, C. J. and Crump, J.*) DAGADU GOVINDA *v.* SAKUBAI.

47 Bom. 773 = 25 Bom. L. R. 806 = 1924 Bom. 31.

———*Partition—Partial partition—Portion left undivided—Presumption as to.*

When members of a joint family divide portion of the family property, a state of severance would in all probability result though it depends upon the circumstances in each case, and the facts provide, whether family still remained joint, each member holding his share of the property divided as his own separate property, and all the

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members holding the undivided property as members of a joint Hindu family. Where it was found that a very large portion of the family property was divided in 1889 amongst the members and from that date they began to separate, and had separate business and enjoyment in respect of their respective properties, it would be a legitimate presumption that they intended from that date to live divided and consequently they would own the property still remaining undivided as tenants-in-common and therefore a widow of one of the members is entitled to a formal partition of the property left undivided. (*Macleod, C. J. and Crump, J.*) KASTURIBAI MANIBAI *v.* BAI MAHALAXMI

1923 Bom. 464.

———*Partition — Partial partition—Alienees from co-parceners—Rights of—Suit for general partition.*

Per Macleod, C.J.—There may be cases in which one co-parcener purports to convey his interest in a particular item of family property to a stranger, while the other co-parcener (taking the simplest case of two co-parceners) sells his interest in the same property to another stranger. In such a case a suit might lie by one stranger against the other for partition of that item of the family property which had been wholly disposed of by the persons who were entitled to it. But such an action between strangers should only be allowed in the very plainest of cases, when it has been proved that the whole of the family interest in the property has been disposed of either by joint action between the members of the family or by separate action against which no dispute has been raised.

Per Coyajee, J.—The purchaser of an unascertained share in a joint family property cannot insist upon the possession of any definite piece of property. The remedy of the purchaser lies in a suit to have that share and interest ascertained by instituting a suit for general partition in which the whole of the joint family property should be included and all necessary parties joined. In a suit of that nature the court, in making the partition, would endeavour to give effect to the alienation and "so to marshal the family property amongst the co-parceners as to allot that portion of the family estate or so much of it as may be just" to the purchaser.

A purchaser from a co-parcener of his share of an item of joint family property can work out his rights only by a suit for general partition. (*Macleod, C. J. and Coyajee, J.*) ISHRAPPA *v.* KRISHNA PUTTA.

46 Bom. 925 = 24 Bom. L. R. 428 = 1922 Bom. 413

———*Partition—Partial partition.*

Where the members of a joint family separate they are to be considered as holding the joint family property as tenants in common and the burden is on the person who alleges that any portion of the family property is being held as joint tenants. (*Macleod, C. J. and Fawcett, J.*) RAMACHANDRA *v.* TUKARAM.

45 Bom. 914 = 61 I. C. 761 = 23 Bom. L. R. 311.

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———*Partition—Partial partition—One property left joint—Tenancy-in-common.*

Where at a partition, a portion of the joint family property is left joint in the hands of one member it continues to belong to all the members as tenants-in-common and the member in whose possession it is left holds it as an agent of the others. (*Macleod, C. J. and Fawcett, J.*) GABU NAROBA *v.* ZIPRU RAMSINGH.
45 Bom. 313=59 I. C. 357=22 Bom. L. R. 1289.

———*Partition—Partial partition—Suit for alienee.*

A suit for partial partition as against the alienee from a co-parcener is maintainable at the instance of the other co-parceners. 8 W. R. 1 (P. C.); 3 Cal. 198 (P. C.); 10 Cal. 626 (P. C.) Ref. to. (*Batchelor, C. J. and Kemp, J.*) HANUMANDAS RAMDAYAL *v.* VALABHADAS SANKARDAS. 43 Bom. 17=46 I. C. 133=20 Bom. L. R. 472.

———*Partition—Partial partition—Presumption.*

A party alleging partition must prove it. Once a breach in the state of union is proved the law presumes there has been complete partition both as to parties and to property. Such presumption may be rebutted by proof of intention on the part of some to remain united or of re-union. (*Chandavarkar and Heaton, JJ.*) AMANDI BAI *v.* HARI SUBA PAI.
35 Bom. 293=10 I. C. 911=13 Bom. L. R. 287.

———*Partition—Partial partition—Presumption—Re-union.*

A partition by one member does not mean that the other co-parceners are *ipso facto* divided as between themselves and by arrangement the partition may be partial as regards the person separating. 30 Cal. 725 Dist. *Held*, that in this case there was no question of an agreement to reunite as all the parties were not divided. (*Rankin, J.*) SASHI BHUSHAN SHAW *v.* HARI NARAYAN.
48 Cal. 1059=66 I. C. 705=25 C. W. N. 990.

———*Partition—Partial partition—Rule against—Convenience.*

The rule that there cannot be a partial partition is elastic. When it is not inconvenient a partition of a dwelling house can be separately decreed. (*Chanduri and Newbould, JJ.*) KALI CHARAN SINGHA *v.* KIRAN BALA DEBI.
51 I. C. 948=29 C. L. J. 494.

———*Partition—Partial partition—Transferee of co-parcener.*

Where one of several co-owners who are in possession of different parcels of land by mutual arrangement transfers his share in a parcel which is in the possession of his co-sharers the transferee can sue for partition of that parcel as against them. (*Mookerjee and Roe, JJ.*) SRISH CHANDRA *v.* MAIMA CHANDRA. 33 I. C. 17=23 C. L. J. 231.

———*Partition—Partial partition—Suit for—Objectionable.*

A suit for partial partition is not maintainable. The objection is vital and will prevail though not raised in the court below or in the grounds

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of appeal to the High Court. (*Harrington and Carnduff, JJ.*) DOMAN LAL *v.* PROKASH LAL.
18 I. C. 866.

———*Partition—Partial partition—Separation of one member—Effect on the family.*

There can be no presumption when one co-parcener separates from the others that the latter remain united and unless it is shown that the rest of the members of the family agreed to remain joint it cannot be held that the minor was a member of the joint family to which the adult members belonged. (*Abdul Raoof, J.*) BASHESHAR NATH GOELA *v.* GANGA RAM. 1923 Lah. 572.

———*Partition—Partial partition.*

A family may remain joint in regard to some properties after a separation in regard to the others. The mere fact that there had been a partial partition of the family property does not affect the rights of the parties to sue for partition in regard to the other properties which remained undivided. (*Broadway and Zafar Ali, JJ.*) BHAGWAN DAS *v.* MT. PARBATI.
29 P. W. R. 1923=1923 Lah. 569.

———*Partition—Partial partition—Presumption.*

When partial partition of the property has been admitted the presumption is that there was a complete partition of all the properties. (*Scott-Smith and Abdul Raoof, JJ.*) KISHEN CHAND *v.* BEHARI LAL. 68 I. C. 297=2 Lah. L. J. 570.

———*Partition—Partial partition—Suit for.*

A suit for partition of property though it does not include lands in Patiala State over which the court has no jurisdiction can be maintained and a court need not take into consideration the property is in Patiala State. (*Le Rossignol and Broadway, JJ.*) MOTI RAM *v.* KANHAIYA LAL.
2 Lah. L. J. 514.

———*Partition — Partial partition—Presumption.*

If a partition takes place between members of joint family, the presumption is that the partition is in status and of all properties. If some properties are left undivided there is no presumption that the co-parcenary right subsists in those properties. (*Scott-Smith and Martineau, JJ.*) BOLA DEVI *v.* MOKHAM CHAND. 44 I. C. 561=12 P. R. 1918.

———*Partition—Partial partition—Suit for.*

No suit lies for partition of a portion of a joint family property. 17 P. R. 1893, Dist.; 77 P. R. 1887.; 85 P. L. R. 1912; 7 Cal. 577; 70 P. R. 1912, Ref. (*Scott-Smith and Broadway, JJ.*) RANKU *v.* MT. HUKMI. 156 P.W.R. 1916=35 I.C. 545=2 P. L. R. 1917.

———*Partition—Partial partition—Presumption.*

The presumption from a partial partition that the whole was divided is not a strong one where there is no evidence as to what property was previously divided. (*Shah Din and Scott-Smith, JJ.*) SHAM DAS *v.* POHLO RAM.
18 P. W. R. 1913=18 I. C. 604=16 P. L. R. 1912 Supp.

———*Partition—Partial partition—Effect—Adverse possession.*

Where after a partial partition some lands are still left in the possession of one member, his

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possession is not adverse to the others till he does an overt act repudiating the title of the other or some acts of exclusive ownership which can be taken as notice to the others of such claim. (*Ayling and Odgers, JJ.*) RAJAGOPALA IYENGAR *v.* SOUNDRA RAJA IYENGAR. 45 M. L. J. 476 = (1923) M. W. N. 636 = 1924 Mad. 113.

———*Partition—Partial partition—Presumption—Rebuttal—Evidence—Ambiguous statements of members in prior litigation—Effect of.*

There is no doubt a presumption that where there is a partition in a family, there is a total partition and not merely a partial partition; but this is a presumption which can be rebutted and the circumstances in each case will show how much importance is to be attached to the presumption and what amount of evidence would be necessary to rebut it. Where a partition was effected between a father and his sons for a special reason, namely, that his sons by his first wife were not getting on well with him and his second wife, there is no separation as between the father and his sons by his second wife especially when the latter were minors at the time. The recital in the partition that there was a division into six shares of the family properties was only made for the purpose of fixing and ascertaining the shares of the outgoing co-parceners and did not effect a severance between the father and his sons by his second wife. An incorrect recital in a suit filed by members of a Hindu family against strangers that they were divided does not amount to a declaration of intention to divide. 35 A. 80; 43 C. 1031 Rel. (*Phillips and Devadoss, JJ.*) CHELASANI ATCHAMMA *v.* CHELASANI VENKATASUBBAYYA. 16 L. W. 268 = (1922) M. W. N. 487 = 1922 Mad. 423.

———*Partition—Partial partition—Father—Separation of, leaving son, joint with the other members.*

It is competent to a son to become separated to leave his own father and his own son as members of a joint Hindu family. *Held*, that the object of the partition deed in question was to cut off the son who was a profligate, leaving the father and grandson joint. 1 M. H. C. R. 77, Foll. *Per Seshagiri Aiyar, J.*—There is no rule of Hindu Law, that one co-parcener cannot separate from the joint family without at the same time disrupting the joint family. (*Oldfield, Seshagiri Aiyar and Bakewell, JJ.*) RAJAGOPALA AIYANGAR *v.* SINGARAVELU THEVAN. (1919) M. W. N. 800 = 53 I. C. 590 = 10 L. W. 438.

———*Partition—Partial partition—Separation of one member—Effect of.*

Where one member of a joint family relinquishes his share or separates himself from the family the others might continue to remain undivided as before. 25 Mad. 149; 30 Cal. 725: 32 All. 415, Ref. (*Ayling and Seshagiri Aiyar, JJ.*) KAVERAMMA *v.* VISHNU KANKULLAYYA. 49 I. C. 263.

———*Partition—Partial partition—Award.*

A partial partition made by arbitrators of joint Hindu family properties if accepted will be binding on the parties. (*Wallis, C. J. and Spencer, J.*) KUPPUSWAMY CHETTY *v.* KUSALA RAMIAH. (1918) M. W. N. 683 = 8 L. W. 551 = 49 I. C. 89 = 24 M. L. T. 424.

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———*Partition—Partial partition—Partition-deed—Construction of some items of property not divided—Effect of.*

If a deed of partition states that properties mentioned in it are divided, without mentioning the outstanding due to the family, the family becomes divided even in respect of the outstanding.

Per Wallis, C. J.—A document dividing a particular item of property does not give rise to a presumption that there is a division in status. To lead to such an inference, there must be something more in the document.

Per Seshagiri Aiyar, J.—Where an intention to separate is expressed and a partition is effected, not specifically dealing with some items of property the status of jointness does not continue in respect of the property not divided. (*Wallis, C. J. and Seshagiri Aiyar J.*) SUBBA REDDI *v.* ALAGAMUMAL. 34 M. L. J. 596 = 47 I. C. 552 = 8 L. W. 84.

———*Partition—Partial partition—Suit for.*

Plaintiff, an alienee, from an undivided Hindu co-parcener, who was entitled to a fourth of the joint family properties sued the other members of the joint family for partition and obtained a decree for possession, of certain specific properties including the suit properties. While executing the decree for possession, the plaintiff was obstructed by the defendant, who had, prior to the plaintiff's partition suit purchased the suit properties in execution of a decree against the other co-parceners. Plff. thereupon sued the deft. for a fourth share of the properties in his hands, reserving his right to sue for a share of the other items in the hands of other persons; *Held*, plff.'s suit cannot stand being one for partial partition. 26 M. L. J. 576; 13 Mad. 275 Ref. (*Wallis, C. J. and Coutts-Trotter, J.*) SUNDARESA IYER *v.* KRISHNAMURTHI IYER. 31 M. L. J. 317 = (1916) 2 M. W. N. 156 = 35 I. C. 677 = 4 L. W. 238.

———*Partition—Partial partition—Presumption.*

When a partition has been proved, it is presumed to be complete both as regards the property and the members. The presumption may be rebutted without proof *aliunde*, by the terms of the partition-deed, or a decree for partition and in the absence of written evidence of the separation by the nature and mode of separation and circumstances attending it. (*Napier and Srinivasa Iyengar, JJ.*) RANGASWAMI NAIDU *v.* SUNDARARAJALU NAIDU. 35 I. C. 52 = 31 M. L. J. 472.

———*Partition—Partial partition—Presumption.*

Where a partition between the father and son recited that they had lived hitherto as members of a joint family, that owing to difference among females it had become necessary to effect a partition and that therefore they effected a partition and the partition-deed included expressly all the joint properties except the outstandings which were considerable and not mentioned in the deed; *Held*, on the construction of the document, that the father and son became divided in status and the status of co-parcenary ceased to exist even with regard to outstandings dealt with by the

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partition-deed. Per *Chief Justice.*—Mere execution of a document by co-parceners dividing a particular item of property is not enough to raise a presumption that they intended to become divided in status. If such a presumption is to be raised there must be something else in the document to raise it. Per *Seshagiri Aiyar, J.*—When once a partition is made, the presumption is that it effected a complete severance of interest. 32 Mad. 191 ; 35 Bom. 293, Foll. (*Wallis, C. J. and Seshagiri Aiyar, J.*) SUBBA REDDI *v.* ALAGAMMAL.
31 I. C. 674=18 M. L. T. 545.
[The same case is again reported in 47 I. C. 552.].

———*Partition—Partial partition—Presumption—Certain properties left quiet—Whether co-parcenary detained in those properties.*

When there is a partition in a joint Hindu family the presumption is that it is complete partition in status and of all the properties. If certain properties were left undivided there is no presumption that the co-parcenary right is retained in those properties. (*Sankaran Nair and Tyabji, JJ.*) SUNDARAMMA *v.* KAMAKOTIAH.
26 I. C. 514.

———*Partition—Partial partition—One member separating—Presumption.*

Where one co-parcener separates from the rest, there is no presumption that the latter remain united. (*Miller and Tyabji, JJ.*) GADIAN CHETTIAR *v.* GADIAN CHETTIAR.
26 I. C. 43=
1 L. W. 799.

———*Partition—Partial partition—Father and minor son—Two other sons by first wife—Status after partition.*

When by a partition-deed a father and his minor son by his second wife were to enjoy certain immoveable properties and certain other properties were to be enjoyed by his two other sons by the first wife, the former still constituted a joint family and in a sale by the father, the interest of the minor son would pass. (*Miller and Tyabji, JJ.*) SINGA IYER *v.* VENKATARAMANA IYER.
(1913) M. W. N. 1016=
23 I. C. 6=14 M. L. T. 555.

———*Partition—Partial partition—Suit for.*

A suit by a purchaser of a portion of the rights of one of the co-parceners for partition and allotment to him of that portion cannot be dismissed on the mere ground that the plaintiff had not included all the properties of the family. The defendants can only claim a general partition. The equities in their favour must be worked out. The rule applicable is that governing tenants-in-common and not that regarding partition between members *inter se.* 24 Bom. 128 ; 13 Mad. 275 ; 20 Mad. 243, Expl. (*Benson and Sundara Iyer, JJ.*) SUBBA RAO *v.* ANANTANARYANA IYER.
11 M. L. T. 393=
14 I. C. 524=23 M. L. J. 64.

———*Partition—Partial partition.*

An alienee of the share of a member of a joint Hindu family cannot demand partial partition of the family property against the other members. (*Abdur Rahim, J.*) PADALA CHEKKYA *v.* VETHAGIRI SARUVUDU GARU.
12 I. C. 408=(1911) 2 M. W. N. 382.

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———*Partition—Partial partition—Branches—Effect.*

A partition between branches of an undivided family in the absence of provision for enjoyment by the individual members of each branch does not effect severance among them *inter se.* 30 Cal. 725 ; 31 Mad. 482 Cons. (*Munro and Abdur Rahim, JJ.*) RAJARATNA SAMI *v.* ANJI LATCHI.
10 I. C. 103=
10 M. L. T. 529.

———*Partition—Partial partition—Suit for.*

Though a suit for partial partition does not lie the court may decide such a suit if the deft. is willing that the rights of the parties in respect of the property be decided in that suit. (*Benson and Sundara Aiyar, JJ.*) BURAGAPALLI SRIRAMULU *v.* NANDIGAM SUBBARAYADU.
10 I. C. 57=10 M. L. T. 313.

———*Partition—Partial partition—Suit—Alienee from some co-parceners suing alienee from others.*

A suit by an alienee from some co-parceners for his possession of the shares of his alienors against an alienee from the remaining co-parceners is a suit for partial partition and is sustainable. (*Mittra, A. J. C.*) AMRITRAO *v.* GOVIND.
21 I. C. 590=9 N. L. R. 145.

———*Partition—Partial partition—Separation of one member—Presumption.*

Where one member of a joint Hindu family separates the presumption of jointness as regards the remaining members is destroyed and an agreement amongst the remaining members of the family to remain united or to re-unite must be proved like any other fact. 30 Cal. 725 Ref. (*Lindsay, J. C.*) MAHABIR SINGH *v.* SANT BAKSH.
7 O. L. J. 13=55 I. C. 495=
2 U. P. L. R. (J. C.) 29.

———*Partition—Partial partition—Separation of one member—Jointness of remaining ones—Burden of proof.*

Under Hindu Law when one member of a joint family separates, the presumption is that there is a complete partition between all members and the person who alleges that the remaining members remained joint after separation must prove that fact. (*Lindsay, J. C.*) SURAJPAL SINGH *v.* GAJRAJ SINGH.
26 I. C. 600=
1 O. L. J. 698.

———*Partition—Partial partition—Presumption.*

A separation by one co-parcener raises no presumption that the others remain united. 30 O. C. 725 ; 3 Cal. 315 ; 9 Cal. 237 ; 18 All. 90 Foll. (*Kanhaiya Lal, A. J. C.*) MUSSAMMAT MENDANA *v.* JAGANNATH BAKHSH.
25 I. C. 689=
17 O. C. 235.

———*Partition—Partial partition—Presumption.*

There is no presumption of continuance of jointness when at the time of the separation of one member the other members have received their shares too. (*Evans, J. C.*) RAMADHAR *v.* SHEO NARAIN.
13 I. C. 717.

———*Partition—Partial partition—Effect of.*

Separation by one member does not effect a severance as between all. Mere specification of

shares does not amount to severance. 30 Cal. 725 (P. C.) Rel on. 8 W. R. 1 (P. C.); 21 W. R. 214 Ref. to. (*Roe and Coutts, JJ.*) RAMESWAR MISSER *v.* SURESHWAR MISSER. 46 I. C. 252.

———*Partition—Partial partition—Effect of—Possession of undivided property by one member—Right of others.*

Where there has been only a partial partition of the family property the possession of one member of the family, of the undivided properties continues to be the possession of the other members, though they may be divided, till some event happens which renders his possession exclusive. (*Chapman and Atkinson, JJ.*) JAGDAMB LAL *v.* BIKU LAL. 40 I. C. 115.

———*Partition—Partial partition—Burden of proof.*

In a suit for partition when it is clear that there has been a partial partition, the burden of proof is on the plaintiff to show the specific items, of which he claims partition. (*Sharfuddin and Roe, JJ.*) SINGHESWAR MISSIR *v.* RAMESHWAR JHA. 34 I. C. 466.

———*Partition—Partial partition—Effect of.*

A joint family can effect partition of part only of the property and remain united with respect to the remainder. 18 Mad. 418; 18 Bom. 611, Rel. 32 Mad. 191; 19 M. L. J. 94, Dist. (*Leggatt, A. J. C.*) GOKAL DAS *v.* CHANDI BAI. 10 I. C. 967=4 S. L. R. 225.

Partition—Provision.

———*Partition—Provision—Marriage expenses of co-parcener.*

The rule of Hindu Law authorising the making of provision at partition for subsequent marriages applies to the brothers who are parties to the division and does not extend to persons who are not in the same degree of relationship as those who have been married at the family expense. 38 Mad. 556; 40 Mad. 632 and 31 Bom. 54 Ref. (*Schwabe, C. J., Ayling, Coutts-Trotter, Kumaraswami Sastri and Devadoss, JJ.*) YERUKOLA *v.* YERUKOLA. 45 Mad. 648=42 M. L. J. 507= 30 M. L. T. 279 (H. C.)=15 L. W. 595= (1922) M. W. N. 215= 1922 Mad. 150 (F. B.)

———*Partition—Provision—Divesting estate.*

A clause in a partition deed that if a particular event shall happen, *e.g.*, default in making certain payments, the interest of the defaulter shall pass to another person, is not repugnant to any principle of Hindu Law. (*Oldfield and Seshagiri Aiyar, JJ.*) KRISHNASWAMY AIYAR *v.* APPAVIER. 39 M. L. J. 498=(1920) M. W. N. 691= 60 I. C. 802=28 M. L. T. 430= 12 L. W. 519.

———*Partition — Provision for marriage—Co-parcener—Provision for expenses—Expenses subsequent to suit but before decree—Decree in partition suit—Effect.*

An unmarried co-parcener cannot make an anticipatory provision at partition for the expenses of his future marriage. 38 Mad. 556.

Ref. Where the expenses of marriage of a co-parcener were incurred after the institution of a partition suit but before the decree of the court of first instance. *Held*, that the joint family breaks only by the decree and that the expenses should be credited to him in the account to be taken in the suit. (*Sankaran Nair and Oldfield, JJ.*) NARAYANA ANNAVI *v.* RAMALINGA ANNAVI. 36 I. C. 428= 39 Mad. 587.

———*Partition — Provision for expenses — Marriage.*

In a partition decree provision can be made for marriage expenses of the unmarried members of the same degree of relationship as those married at the expense of the family. 38 Mad. 556; 31 Bom. 54 Foll. (*Wallis, C. J. and Seshagiri Iyer, J.*) KARUTHURI GOPALAN *v.* KARITHURI VENKATARAGHAVALU. 40 Mad. 632=31 I. C. 574= 29 M. L. J. 710.

Partition—Re-opening of.

———*Partition—Re-opening of—Father—Powers of—Family arrangement—Document styled a will—Father's power to effect a partition—Assent of sons—Acting of the parties—Mutation of names—Reservation of right to cancel—Construction.*

It is not competent to the father in a joint Hindu family to make a division of ancestral property by will amongst his sons, except with their consent. The father and managing member of a joint Hindu family consisting of himself and his three sons, divided substantially the whole of the joint family property between his three sons and his wife, reserving nothing to himself, and put them in possession of their respective shares. Two months later, the father executed a document styled a Will, in which he stated that he had made the division as aforesaid and the document ended with this clause: "If I at any time come back from pilgrimages and find mismanagement or character of any one bad, that I shall have power to cancel this Will which shall be enforced from the date of its execution." In pursuance of this arrangement mutation of names was effected and suits for rent brought by the sons severally in their own names. The division was unequal in that the eldest son was given a larger share than the two others. The arrangement was acted on for 10 years, after which period the younger sons sued for partition. *Held*, that though described as a Will, the document intended to take effect in *praesenti* and not from the death of the testator; that it embodied a family arrangement contemporaneously made and acted upon by all the parties for 10 years; that the sons were also adults, representing their respective branches of the family, accepted the partition and such acceptance not only bound them but also their sons; and that the last clause as to the cancellation being merely put in as a threat to keep the sons in good behaviour could not have been enforced specifically or at all, and did not prevent the partition from taking in effect in *praesenti*. (*Lord Moulton.*) BRIJ RAJ SINGH *v.* SHEODAN SINGH. 35 All. 337=40 I. A. 161=17 C. W. N. 949= 11 A. L. J. 698=14 M. L. T. 11=18 C. L. J. 57= 25 M. L. J 188=(1913) M. W. N. 516= 19 I. C. 826=15 Bom. L. R. 652 (P. C.).

HINDU LAW—Partition—Re-opening of.

———*Partition—Re-opening of—Mistake.*

Where parties arrive at a partition either by agreement or by decree there is an implied and mutual right of indemnity in respect of any paramount claim by third parties which throws the burden of the loss on one of the parties unfairly and in a manner not contemplated by them. If the original decision is made by a common mistake it can be set right. (*Piggott and Walsh, JJ.*) GANESH LAL *v.* BABU LAL.
40 All. 374=45 I. C. 4=16 A. L. J. 339.

———*Partition—Re-opening of—Mistake.*

Where parties arrive at a partition either by agreement or by decree, there is an implied and mutual right of indemnity in respect of any paramount claim by third parties which throws the burden of the loss on one of the parties unfairly and in a manner not contemplated by them. If the original decision is made by a common mistake it can be set right *pro tanto*. 40 All. 374; 45 I. C. 7. (*Richardson and Beachcroft, JJ.*) KHETRA MOHAN KUNDU *v.* JOGENDRA CHANDRA KUNDU. 45 I. C. 7.

———*Partition—Re-opening of—Family arrangements.*

Principles applicable to family arrangements are applicable to partition among members of joint Hindu family and they should not be rightly reopened. (*Coutts-Trotter and Srinivasa Iyengar, JJ.*) YEECHURI RAMAMURTHY *v.* YEECHURI RAMMAMA. 30 M. L. J. 308=33 I. C. 961=3 L. W. 322.

———*Partition—Re-opening of—Error of law—Fraud.*

A partition which took place more than 50 years ago and acted on by the members of the family cannot be reopened on the ground that one of the parties was allotted a larger share under a mistaken view of the law. (*Coutts and Sultan Ahmed, JJ.*) DAL BHAJAN SINGH *v.* KARIMAN SINGH. 57 I. C. 413=1 P. L. T. 465.

Partition—Re-union.

———*Partition—Re-union—Presumption.*

There was a partition of joint family property among the members but two of them subsequently lived together. One of them sued as survivor of the other on a bond executed jointly to them both, *Held*, that the presumption was that the whole family became separate. Mere living together would not constitute them a joint Hindu family and the bare fact of a document executed to them both without specification of the share of each was insufficient to show that they constituted a joint family allegation. (*Karamat Hussain and Tudball, JJ.*) NAND KISHORE *v.* BHORA NATHRAM. 14 I. C. 237.

———*Partition—Re-union—Question of law.*

The question of the re-union of a Hindu family and the facts relevant to prove such re-union is a matter of law. (*Wilberforce, J.*). NARAINDAS *v.* MAHNGA RAM. 59 I. C. 706=45 P. W. R. 1921.

———*Partition—Re-union — Onus — Pleadings—Contradictory statements.*

The onus of establishing a re-union after partition lies on the person setting it up. (*Robertson and Beadon, JJ.*) RAM DIWAYA RAM *v.* MILKHIE RAM. 8 P. L. R. 1913=18 I. C. 553=220 P. W. R. 1913.

HINDU LAW—Partition—Right to.

———*Partition—Re-union—Shares of members.*

Per Phillips, J.—In re-union the members are re-united to their original joint status and on a subsequent partition their shares are the same as they would be at the original partition irrespective of the capital contributed by each co-parcener. (*Phillips and Krishnan, JJ.*) KODALI KRISHNAYYA *v.* GURAVAYYA. 14 L. W. 668=41 M.L.J. 503=70 I.C. 146=(1921) M.W.N. 742.

———*Partition—Re-union—Proof of.*

Mere living together in commensality and incurring marriage expenses indiscriminately after partition cannot constitute re-union. 30 Cal. 231 Foll. Nor does the fact of making acquisitions jointly or the throwing in of an extra share by the eldest member of the family constitute re-union. (*Abdur Rahim and Seshagiri Aiyar, JJ.*) REDDI *v.* REDDI. 8 L. W. 400=47 I. C. 716=(1918) M. W. N. 680.

———*Partition—Re-union—Evidence.*

Where after a partition two brothers lived together, traded together and executed joint bonds and after the death of one the other paid the debts of the deceased. *Held*, it was not obligatory on the part of the court to infer re-union. (*Sadasiva Aiyar and Napier, JJ.*) KANNU CHETTY *v.* AMIRTHAMMAL. 26 I. C. 418=1 L. W. 877.

———*Partition—Re-union—Effect.*

After re-union the subsequent interest of the members in the re-united family would not be the same as if this had continued undivided. It would depend on the properties brought into the common stock. (*Sankaran Nair, J.*) ALAMELUMANGATHAYARAMMAL *v.* NUMBERUMAL CHETTY. 23 I. C. 824=15 M. L. T. 352.

———*Partition—Re-union—Essentials of.*

Mere joint living and trading is not sufficient to constitute re-union. An intention to alter the status must be established. 8 W. R. P. C. 1; 21 W. R. 214 (P. C.); 30 Cal. 738 (P. C.), Ref. to. (*Roe and Coutts, JJ.*) NAND LAL SINGH *v.* BHAGWATH KOER. 46 I. C. 529=5 P. L. W. 127.

Partition—Right to.

———*Partition—Right to—Defence to suit.*

In a suit for partition by an adult son against his father in a joint Hindu family the fact that the father might have other children in future is no ground for refusing a decree to the plaintiff. (*Viscount Haldane.*) KAWAL NAIN *v.* BUDH SINGH. 39 All. 496=40 I. C. 286=15 A. L. J. 581=2 Pat. L. W. 57=21 C. W. N. 986=33 M. L. J. 42=19 Bom. L. R. 642=26 C. L. J. 101=(1917) M. W. N. 514=6 L. W. 330=44 I. A. 156 (P. C.).

[On appeal from 19 I. C. 430.]

———*Partition—Right to—Babuana and Sohag grants for maintenance.*

The right of Mitakshara co-parceners to have their ancestral property partitioned is unquestionable unless the property is held under a grant or is subject to a custom which expressly or impliedly prohibited any partition of the property which would have the effect of defeating the object of the grant or custom. Babuana and Sohag grants given to junior members of the family of Raj of

HINDU LAW—Partition—Right to.

Darbhanga for maintenance, descend, not to one male heir only but to all the existing male heirs in the male line of the grantees as co-parceners. Consequently the properties are subject to partition at the instance of such male heirs though on default of male issue the properties will revert to the Raj. *(Sir John Edge.)* EKRADESHWAR SINGH *v.* JANESHWARI BAHUASIN. 42 Cal. 582 = 25 I. C. 417 = 41 I. A. 275 = 18 C. W. N. 1249 = 27 M. L. J. 373 = 16 M. L. T. 382 = 1 L. W. 863 = (1914) M. W. N. 807 = 12 A. L. J. 1217 = 21 C. L. J. 9 = 17 Bom. L. R. 18 (P. C.). [On appeal from 3 I. C. 207.]

———*Partition—Right to.*

Insanity operates as a claim for partition. *(Prideaux, A. J. C.)* VITHOBA *v.* WAMAN. 18 N. L. R. 80 = 1922 N. 161.

———*Partition—Right to—Presumption.*

There is a strong presumption that persons related to Pathidari body through males are themselves pathidars. *(Baillie, S. M. and Tweedy, J. M.)* RAGHUNATHA KUER *v.* COURT OF WARDS, SAIFABAD. 26 I. C. 683 = 1 O. L. J. 587.

———*Partition—Right to—Grandson.*

Under the Hindu Law grandsons are entitled to bring a suit for partition against their grandfather. 5 A. 430; 38 Cal. 111 Foll.; 16 Bom. 29 not Foll. *(Das and Adami, JJ.)* DIGAMBAR MAHTON *v.* DANRAJ MAHTON. 1 P. 361 = 3 Pat L. T. 238 = 1922 P. 96.

———*Partition—Right to—Lunatic.*

Per *Crouch, A. J. C.*—A lunatic co-parcener whose lunacy was not congenital but subsequently sued for joint family property and was held to be entitled to his share there being nothing against it in Mitakshara. Per *Pratt, J. C.*—The disqualifications must apply at the time of the birth. Holding otherwise is divestment of right, which is contrary to Hindu Law. *(Pratt, J.C., Fawcett and Crouch, A. J. Cs.)* HOTEHAND GULABRAI *v.* MANCHANMAL GULABRAI. 29 I. C. 42 = 8 S. L. R. 279.

Partition—Shares.

———*Partition—Shares—Adopted son.*

As regards the distribution of family property by partition an adopted son stands exactly in the same position as he would stand if he were a naturally born son of an adoptive father subject to the qualification that if there be a competition between an adopted son and a subsequently born legitimate son of the same father, the adopted son takes a less share than he would take if he had been a naturally born legitimate son. In a suit for partition of the family property between the adopted son of one brother and the natural son of the other that the former was entitled to share equally with the latter. 4 Cal. 425, Overruled; 9 W.R. 423; 8 C.L.R. 57; 7 Mad. 253; 8 I. A. 229 Ref. *(Sir John Edge.)* NAGINDAS BHAGWANDAS *v.* BACHOO HURKISSONDAS. 40 Bom. 270 = 30 M.L.J. 193 = 19 M.L.T. 193 = (1916) 1 M.W.N. 258 = 3 L. W. 259 = 14 A.L.J. 185 = 20 C.W.N. 702 = 23 C.L.J. 395 = 18 Bom. L.R. 172 = 32 I.C. 403 = 43 I. A. 56. (P. C.)

HINDU LAW—Partition—Subject-matter.

———*Partition—Shares—Shares taken by members separated before partition.*

The plff.'s branch of the family sued the other two branches to recover one-third share by partition. The plff. had two brothers, one of whom had separated from the whole family in 1892 on receipt of one-twelfth share. *Held*, that the plff.'s share in the property was one-third, for partition must be made *rebus sic stantibus* as on the date of suit. 5 Mad. 362 not Foll. *(Batchelor and Hayward, JJ.)* PRANJIVAN DAS *v.* ICHARAM. 39 Bom. 734 = 30 I. C. 918 = 17 Bom. L. R. 712.

———*Partition—Shares—Jyeshtabhagam.*

The award of *jyeshtabhagam* is not authorised by Hindu Law as administered in this Presidency. 39 M. L. J. 382 and 8 L. W. 400 Foll. *(Schwabe, C. J., Ayling, Coutts-Trotter, Kumaraswami Sastri and Devadass, JJ.)* YERUKOLA *v.* YERUKOLA. 45 Mad. 648 = 42 M.L.J. 507 = 30 M. L. T. 279 (H. C.) = 15 L. W. 595 = (1922) M.W.N. 215 = 1922 Mad. 150 (F. B.).

———*Partition—Shares—Share of eldest brother.*

The old practice of giving the eldest brother and manager a *jyeshtabhagam* is now obsolete. *(Wallis, C. J. and Krishnan, J.)* RAJANGAM AIYAR *v.* RAJANGAM AIYAR. 39 M. L. J. 382 = 57 I. C. 18 = 12 L. W. 435.

———*Partition—Shares—Eldest son.*

The claim of the eldest son under the Hindu Law to *jyeshtabhagam* (extra share) has long become obsolete and an allotment of such extra share will not bind the minors. *(Abdur Rahim and Seshagiri Iyer, JJ.)* VENKATA REDDI *v.* KUPPA REDDI. (1918) M.W.N. 680 = 47 I. C. 716 = 8 L. W. 400.

———*Partition—Shares—Sons, share of, whether included in share of father.*

In a partition among the members of a joint Hindu family each member represents his sons, if any, and the rule applies also to where the sons are minors. *(Daniels and Wazir Hasan, A. J. Cs.)* RAM BAHADUR SINGH *v.* NIRBHAI SINGH. 59 I. C. 564 = 23 O. C. 339.

Partition—Subject-matter.

———*Partition—Joint business—Dissolution—Cause of action.*

Where a separation is effected between brothers but a business is carried on by them, the business becomes an ordinary partnership subject to the Partnership Act. On the death of one brother the partnership is dissolved and a right to an accounting arises. If, however, on the brother's death the widow of the deceased brother is admitted as a partner to a new partnership, then the date of dissolution would only be the raising of the suit and no limitation can apply. The fact that the brother's share still continued to be dealt with in the books is no evidence of a partnership with his widow. *(Lord Buckmaster.)* MT. JATTI *v.* BANWARI LAL. 18 L. W. 273 = 45 M. L. J. 355 = (1923) M. W. N. 687 = 25 Bom. L. R. 1256 = 4 Lah. 350 = 50 I. A. 192 = 21 A. L. J. 582 = 33 M. L. T. 283 (P. C.) = L. R. 4 (P. C.) 135 = 1923 P. C. 136 (P. C.).

HINDU LAW—Partition—Subject-matter.

———*Partition—Subject-matter—Religious office and perquisites—Birt Jigmani—Mode of partition.*

Rights in Birt Jigmani are heritable and some times transferable. Where the Birt Jigmani consists of offerings given to a pragwal by pilgrims coming to bathe in the Ganges, it is impossible to effect a partition of the right by allotting clients to one party or the other but only a division of books in which pilgrims enter their names can be made. In the case of things which are incapable of division, *e. g.*, flag, it will be open to each party to use a similar flag. 43 A. 35 Ref. (*Ryves and Daniels, JJ.*) RAMACHANDER *v.* CHHABBU LAL. **45 A. 445 = 21 A. L. J. 358 = L. R. 4 A. 200 = 1923 A. 350.**

———*Partition—Subject-matter of—Occupancy holding—Agra Tenancy Act, S. 32.*

A suit for partition of joint family property is not bad because it includes an occupancy holding The court need not sub-divide the holding against the provisions of the Tenancy Act, but it can allot the occupancy holding to one party or can leave the same undivided with a declaration that the parties are jointly entitled thereto. (*Richards, C. J. and Tudball, J.*) DWARKA *v.* RAMPAT. **36 A. 461 = 24 I. C. 235 = 12 A. L. J. 696.**

———*Partition — Subject-matter — Property set apart for trust acquired by one member—Claim of the other.*

Where a Hindu father set apart some family property for a religious purpose and the same was bought by one of his sons from the trustees, the other son cannot claim partition of the same in the hands of his brother. (*Shah, A. C. J. and Crump, J.*) JAMNADAS KASHIDAS *v.* VALLABHDAS KASHIDAS. **25 Bom. L. R. 1340 = 1924 Bom. 239.**

———*Partition — Subject-matter — Common property set apart at prior partition—Subsequent suit for partition—Maintainability of.*

It is an unabrogated rule of Hindu law that a common way or a road of ingress and egress reserved as common property between the various sharers at a previous partition cannot be the subject of a partition. The expression "common way" referred to in Mitakshara Ch. I. S. IV. paras. 16 and 25 is not confined to "common ways" existing prior to partition and is applicable to common passages created for the first time and reserved by agreement between the parties at the time of the partition. 36 B. 379, 382 Ref. *Per Crump, J.*—Where there has been a complete partition under a decree of court and under that decree a passage is reserved for common use between the sharers, a fresh suit for partition of the common passage does not lie. (*Shah, A. C. J. and Crump, J.*) SHANTARAM BALKRISHNA *v.* WAMAN GOPAL WADEKAR. **47 Bom. 389 = 24 Bom. L. R. 1029 = 1923 B. 85.**

———*Partition — Subject-matter — Well — Right of way.*

Both according to the *mitakshara and mayukha* rights of ways and rights to well and water belonging to a joint family are indivisible. If there is no evidence that at a partition of the family estate, such rights were divided, the law will hold that they continued to retain their indivisible

HINDU LAW—Partition—Subject-matter.

character having regard to the nature of the rights in question. (*Chandavarkar and Batchelor, JJ.*) NATHUBAI *v.* BAI HANSGAVRI. **36 Bom. 379 = 15 I. C. 818 = 14 Bom. L. R. 418.**

———*Partition — Subject-matter — Division in status.*

Property given by a grandfather to his grandsons out of affection does not vest in them as joint tenants with rights of survivorship. The donees take as tenants-in-common. (*Mookerjee and Cuming, JJ.*) SARADA PRASANNA ROY *v.* UMA KANTA HAZARI. **50 Cal. 370 = 37 C. L. J. 233 = 1923 Cal. 485.**

———*Partition—Subject-matter.*

The liability of a joint family to individual members is not assets or property to be brought into hotchpot at division. Observations of *Sadasiva Aiyar, J.* in 34 M. L. J. 32 at 38 Ref. (*Spencer and Ramesam, JJ.*) SUBROYA BHANDARY *v.* JANARDANA BHANDARY. **41 M. L. J. 370 = 62 I. C. 852 = 14 L. W. 534.**

———*Partition—Subject-matter — Charity by joint family—Agreement for management—Intention.*

Where on division of the joint family properties the members agreed that the charities should be managed by the head of the family in each for the time being; *Held* that the intention of the parties was that the management should be in the hands of the male heads and not in the hands of the females. (*Wallis C. J. and Srinivasa Aiyangar, J.*) KRISHNASWAMI PILLAI *v.* MOOKAYI AMMAL. **31 I. C. 35.**

———*Partition — Subject-matter — Partnership with stranger.*

A co-parcener cannot sue for dissolution of partnership of a firm of which the manager as representing the family is a partner. He can call on the manager to get on the assets and if he refuses to do so enforce partition. (*Wallis C. J. and Bakewell and Kumaraswami Sastri, JJ.*) GANGAYYA *v.* VENKATARAMIAH. **41 Mad. 454 = 34 M. L. J. 271 = 6 L. W. 708 = 22 M. L. T. 527 = 43 I. C. 9 = (1917) M. W. N. 805.**

———*Partition—Subject matter—Family temple.*

Under Hindu Law a place of worship such as a private temple of a family cannot be divided by metes and bound so long as some of the family members want its continuance. 8 W. R. 193, Ref. A common family temple has become the subject of partition by having the right of management enjoyed in turns by each member, all the members of the family are entitled to perform ordinary worship in the temple at any time though it may not be their turn. 17 Bom. 271 at 288 Ref. Owners of a family temple under Hindu Law are in the same position as the holders of an hereditary office and the only way of subjecting such property to partition is by means of the system of management of each member in rotation. 6 Bom. 298; 34 Mad. 470; 27 Mad. 192 Ref. (*Pratt, J. C. and Boyd, A. J. C.*) SAKHAWATRAI *v.* PARTABRAI, **34 I. C. 909 = 9 S. L. R. 209.**

HINDU LAW—Partition—Subject-matter.

———*Partition—Subject-matter of—Vritti.*

Per *Crouch, A. J. C.*—Yajman Vritti as a general rule impartible and inalienable on grounds of public policy and because it includes a right of personal service. But by custom a distribution of duties by a system of rotation and relinquishment of rights by one in favour of other members has been recognised as permissible. Such custom must be proved. 23 Bom. 131 Foll. 1 S. S. Sel D. 353 ; 2 S. S. Sel D. 413 overruled ; 6 Bom. 298 ; 6 B. H C. R. 250 ; 22 W. R. 437 Dist. Per *Fawcett, A.J.C.*—The Courts should lean against the partibility and alienability of Vrittis (1) because it is uncommon with Hindu Law ; (2) though from the point of view of the Brahmin it may be merely money, from the point of view of *Yajman* it connotes priestly service ; (3) because the process of partition might go with each generation frittering away the income and rendering the service wholly ineffective. 20 Bom. 495, Appr. Per *Pratt C. J.*—The object of the rule of impartibility is to maintain the dignity of the office. Once that has been encroached upon the reason of the rule ceases. (*Pratt, J. C., Crouch and Fawcett, A. J. Cs.*) MUGHIRMAL *v.* VITHALRAM.
13 I. C. 225=5 S. L. R. 107.

Partition—Suit for.

———*Partition—Suit for—Decree in suit by one member—Subsequent suit—Bar.*

If a member of a joint Hindu family sues and obtains a decree for partition, a subsequent suit by another sharer who was defendant in the former suit and was allotted a share is barred by *res judicata*. (*Lord Moulton.*) NALINI KANTA LAHINI *v.* SAMAMOYA DEBYA.
1 L. W. 607=27 M. L. J. 76=16 M. L T. 544=
(1914) M. W. N 948=21 C. L. J. 23=
24 I. C. 294=17 Bom. L. R. 1=
19 C. W. N. 531 (P. C.).

———*Partition—Suit for—Omission of small item—Effect—Amendment.*

In a suit for partition of the whole family property the plaintiff need not file with the plaint a complete and exhaustive list of all properties. If any defendant wishes to raise the plea that any part of the joint family property has been excluded, he must specify such properties and show that they belong to the family and have been wrongly excluded. A suit should not be dismissed on such a technical ground but to leave to amend should be given. (*Mears, C. J. and Sulaiman, J.*) AMIR CHAND *v.* LAKHMI CHAND. 2 U. P. L. R.(All.) 290=58 I. C. 275=
18 A. L. J. 869.

———*Partition—Suit for—Occupancy holding—Agra Tenancy Act, S. 32.*

A suit for partition of joint family property is not bad because it includes an occupancy holding. The court need not sub-divide the holding against the provisions of the Tenancy Act, but it can allot the occupancy holding to one party or can leave the same undivided with a declaration that the parties are jointly entitled thereto. (*Richards, C. J. and Tudball, J.*) DWARKA *v.* RAMPAT. 36 All. 461=24 I. C. 235=
12 A. L. J. 696.

HINDU LAW—Partition—Suit for.

———*Partition—Suit for—Parties.*

A widow in possession of properties in lieu of maintenance is not a necessary party to suit for partition. (*Richards, C. J. and Banerji, J.*) SABTA PRASAD *v.* DHARAM KIRTISARAN.
35 All. 107=18 I. C. 609=11 A. L. J. 66.

———*Partition—Suit for—Purchaser from Hindu co-parcener of share in family property.*

Under Hindu Law the purchaser from a Hindu co-parcener of his undivided joint family property can recover the share by partition but cannot recover past profits before the date of the suit. (*Macleod, C. J.*) TRIMBAK GANESH KARAMBARKAR *v.* PANDURANG GHAROJEE.
44 Bom. 621=57 I. C. 582=
22 Bom. L. R. 812.

———*Partition—Suit for—Well—Right of way.*

In the absence of anything to show that on the partition of a joint estate a certain passage was allotted to either one party or the other exclusively, the presumption is that it continued to be joint and undivided even after the partition. This is presumption of Hindu Law and can only be rebutted by clear proof that the passage was not reserved as joint but was divided and allotted to one of the parties exclusively as his share. (*Chandavarkar and Batchelor, JJ.*) NATHUBAI *v.* BAI HANS GAVRI. 36 Bom. 379=
15 I. C. 818=14 Bom. L. R. 418.

———*Partition — Suit for — Subject-matter—Property not included in previous partition suit, if can be partitioned afterwards—Texts.*

The Mitakshara refers to cases where property not partitioned is discovered after the partition in which case it allows a fresh partition. The provision in S. 9, Cl. (1) paras. 1 and 2 are not rules of substantive law and only rules of procedure. (*Woodroffe and Smither, JJ.*) HARIHAR DUTTA TEWARI *v.* BHIM SAMSKAR DUTTA TEWARI.
46 I. C. 226.

———*Partition—Suit for—Joint lessees.*

When permanent lessees in joint possession with other lessees sue for partition of their shares, the latter, *i. e.*, their joint lessees cannot object to the partition on the ground that the permanent leases granted were granted by the lessor in excess of his powers and are therefore liable to be set aside by the lessor's reversioner. (*Chatterjee and Richardson, JJ.*) SALIMULLAH BAHADUR *v.* PROVAT CHANDRA. 43 Cal. 1118=33 I. C. 129=
24 C. L. J. 26.

———*Partition—Suit—Consent decree—Effect.*

A consent decree among some only of the parties is untenable even as regards the consenting parties. (*Mookerjee and Carnduff, JJ.*) BASIR GAJI *v.* GRIJA MATH. 9 I. C. 211=13 C. L. J. 18.

———*Partition—Suit for—Dismissal—Effect of.*

On the dismissal of a suit for partition the members are still joint and can demand partition. (*Chevis and Shadilal, JJ.*) GULAB SHAH *v.* HAVELI SHAH. 87 P. R. 1915=31 I. C. 463=
181 P. W. R. 1915.

———*Partition—Suit for—Mesne profits—Right of co-parcener—Accounts—Manager—Liability of property subject to mortgage.*

HINDU LAW—Partition—Suit for.

A member of a joint Hindu family suing for partition and for the profits on his share is really suing for an account of the profits received by the manager of the portion in his possession so that the proceeds so received by the latter which are also divisible property may be divided and his share therein also given to him. His right to such profits is not as mesne profits received by a person in wrongful possession but as appurtenant to his right in his share of the lands. In a suit for partition by a member of a joint Hindu family, the plaintiff is not ordinarily entitled to claim past mesne profits. He is not entitled to interest on his share of the profits realised by the defendant who was in possession subsequently. The plaintiff is not disentitled to his share of the profits realised by the said defendant from family properties which were subject to mortgages and which were redeemed by the said defendant with family funds. In that case plaintiff is entitled to the profits only from the date of redemption. The defendant is not entitled to interest on the amounts paid by him for redemption. (*Oldfield, Sadasiva Aiyar, Napier and Venkatasubba Rao, JJ.*) T. RAMASAMI AIYAR *v.* T. SUBRAMANIA AIYAR.

46 Mad. 47=43 M. L. J. 406=16 L W 297=1923 Mad. 147.

———*Partition — Suit for—Procedure — Deft. offering to pay the court-fee on his share—Suit to set aside alienation by widow.*

In a suit for recovery of possession of his share of property alienated by a widow, by one reversioner, another reversioner added as deft. cannot be allowed to pay the court-fee and claim a decree for recovery of his share as it virtually converts a suit for recovery of possession into one of the partition. (*Olafield and Bakewell, JJ.*) ADHIKARI VISHNU MURTIAIYA *v.* AUTHAIYA.

47 I. C. 533=35 M. L. J. 153.

———*Partition—Suit for—Subject-matter.*

Partition suit need not include all properties situated in different jurisdictions. (*Seshagiri Aiyar, J. and Wallis, C. J.*) MAHALINGAM *v.* NATESAN AIYAR. 3 L. W. 107=32 I. C. 423=(1916) 1 M. W. N. 146.

———*Partition—Suit for—Debt left out of account in partition suit as valueless—Subsequent suit to enforce the debt—Joinder of parties.*

Per *Sadasiva Iyer, J.*—A co-parcener who wishes to partition family properties has only a single cause of action in respect of all the joint properties and therefore no suit lies for partial partition. After partition none of the parties to it holds any of the properties jointly with any other party unless the partition agreement or partition award or decree itself provides for such joint holding or unless there has been accident, mistake or fraud in the non-inclusion of some of the property at the division. In a suit for partition by a son against his father, a mortgagee debt due to the family was left out of account in arriving at the amount decreed to the son for his share as the mortgage was considered to be valueless. *Held*, the son cannot subsequently claim partition of the mortgage deed in a second suit and therefore a subsequent suit to enforce the mortgage by father alone is not bad for non-joinder of parties. *Per Napier, J.*—

HINDU LAW—Partition—Suit for.

A decree in a partition suit only operates as a mutual release of the parties. Any property left undivided for any reason as in a case where it is considered valueless and so not taken into account continues to be joint. Hence the suit to enforce the mortgage left out of account the son is a necessary party and the suit instituted by the father alone should be dismissed for non-joinder. (*Sadasiva Iyer and Napier, JJ.*) KANDUM VENKATASWAMI *v.* BALIGADU.

19 M. L. T. 43=32 I. C. 179=3 L. W. 74.

———*Partition—Suit for—Portions of family properties in foreign territory whether can be included in the partition.*

In a partition suit, the court has no power to order the partition of immoveable property outside British India. But the court should take such properties outside British India, into consideration in adjusting the equities prevailing between the parties. (*Sadasiva Iyer and Spencer, JJ.*) SUBBIYA MUDALIAR *v.* THULASI MUDALIAR. 14 M. L. T. 537=22 I. C. 44=1 L. W. 65=(1914) M. W. N. 16.

———*Partition—Suit for—Defence—Unregistered prior partition.*

Even though there is a partition deed, if such deed was not registered, then the suit for partition will lie. A suit for partition will also lie to enforce a regular registered partition deed, if no completed agreement of partition apart from and previous to the instrument is set up. Even if a state of division is created, the plaintiffs are entitled to sue for actual division. If a partition deed is suppressed, there is breach of contract by one party and the other party is entitled to put an end to it and fall back on his rights prior to the contract. 20 Mad. 19; 16 Mad. 341 Dist. (*Sundara Aiyar and Sadasiva Iyer, JJ.*) KODUNGOTH PURAKKAL AMMALU *v.* KODUNGOTH PURAKKAL MEENAKSI. 16 I. C. 433=12 M. L. T. 301.

———*Partition—Suit for—Claim for partition of property in the hands of stranger—Omission to prove possession by the family within 12 years.*

Where partition was claimed in respect of a certain item of property which had been sold without the document being registered and not proved to have been within 12 years prior to the suit, the title of the transferee must be held to have been perfected by limitation. (*Benson and Sundara Aiyar, JJ.*) SUBRAMANIA REDDI *v.* RAMACHANDRA REDDI.

10 I. C. 498=9 M. L. T. 476.

———*Partition—Suit for—Mesne profits.*

In a suit for partition between one brother and auction-purchaser in a decree against another brother, the auction-purchaser will not get mesne profits unless it is shown that he was obstructed in taking possession of any part of the joint property. (*Kotval, A. J. C.*) RAMANATH *v.* SITARAM.

19 N. L. R. 147=1923 Nag. 288.

———*Partition—Suit for—Defendant's right to share.*

In a partition suit, a defendant has a right to have his share partitioned from the share of the other defendants and this rule is not confined to Hindu co-parceners. (*Macnair, A. J. C.*) ANWAR KHAN *v.* YAKUBKHAN. 61 I. C. 596

HINDU LAW—Partition—Suit for.

———*Partition—Suit for—Prior separation—Effect of.*

When the disruption of the family is proved in a suit the plaintiff has to prove that it took place within twelve years prior to the suit or that during that period was in possession. (*Kanhaiya Lal, J. C.*) AJUDHIA *v.* BADAL. 53 I. C. 928.

———*Partition—Suit for—Parties—Mortgagees.*

To a suit for a joint family property where plaintiff admits his liability for family debts, the impleading of the mortgagees is unnecessary. (*Kanhaiya Lal, A. J. C.*) RAM SAMUGH SINGH *v.* BIKRAMAJIT SINGH. 50 I. C. 876= 6 O. L. J. 142.

———*Partition—Suit for—Scope of—Parties.*

The object of a suit for partition is to determine the share of the joint family property due to each co-sharer and for that purpose all the libilities of the family should be taken into account. If the liabilities bind the whole family the debts should be distributed at the time of partition. The debts of one member which are personal to him and not binding on the others, must be charged against his share. The alienee from the father is a necessary party to a suit for partition by the son. 16 Bom. 608 Rel. on. The nature of the alienation and the son's liability thereunder may be determined in such suit. (*Lindsay, J. C.*) MAHADEO SINGH *v.* BHAWANI BHIK SINGH. 46 I. C. 281=5 O. L. J. 193.

———*Partition—Suit for—Subject-matter—Non-inclusion of some items—Fresh suit.*

Where in a suit for partition certain items held jointly with a stranger were excluded a second suit with respect to them is not barred. (*Lindsay and Rafique, A. J. Cs.*) DEBI SAHAI *v.* GOURI SHANKAR SAHAI. 15 I. C. 214=15 O. C. 81.

———*Partition—Suit for—Temporary partition.*

Where the plaintiff in a partition suit asks for temporary partition of his half share, and the court grants his prayer, he is presumed to have relinquished his claim in respect of the remaining half. (*Miller, C. J., Mullick and Bucknill, JJ.*) HARI KRISHNA SEN *v.* UMESH CHANDRA DUTT. 2 P. L. T. 528=62 I. C. 962= 1921 Pat. 209=3 U. P. L. R. (P) 57= 6 P. L. J. 373 (F. B.).

———*Partition—Suit for—Death of co-parcener after preliminary decree, effect of—Jurisdiction of court passing final decree.*

A partition action is not ended by a preliminary decree but continues till a final decree is made and the shares to be decreed to the parties are those at the time of the final decree. The court passing the final decree is competent to consider the effect of the death on the shares of the other coparceners. (*Das and Adami, JJ.*) KRISHNALAL JHA *v.* MANDESHWAR JHA. 2 P. L. T. 215= 59 I. C. 872=3 U. P. L. R. (P.) 17.

———*Partition—Suit for—Subject-matter.*

The plaintiff in a suit for partition is not bound to include properties held by the family jointly with strangers. Only those properties belonging in common to all the sha ers need be included.

HINDU LAW—Partition—Religious Endowment

(*Miller, C. J. and Imam, J.*) RAMDAYAL MAHTO *v.* UTTIM MAHTO. 46 I. C. 255 =5 P. L. W. 122

———*Partition—Suit for—Declaration.*

A suit by some members of a Mitakshara joint Hindu family for a declaration of their share in the joint family property without a prayer for partition by metes and bounds is maintainable and not barred by S. 42. 45 I. A. 15, Ref. (*Chamier, C. J. and Sharfuddin, J.*) ASMANSINGH *v.* TULSI SINGH. 1 P. L. W. 335=2 P. L. J. 221= 39 I. C. 173=1917 Pat. 131.

———*Partition—Suit for—Duty of Courts.*

Per *Crouch, A. J. C.*—The principle underlying 'partial partition' is that in all suits for partition the court considers not merely the equal rights of the plaintiff but also the legal and equitable rights of all other parties interested, and where a particular part has been alienated, the court will ordinarily allot such part to the alienee and grant him possession, provided this can be done without unfairness to other parties. (*Pratt J. C. and Crouch, A. J. C.*) DULARAM PINIOMAL *v.* BADALDAS JAMIATRAJ. 35 I. C. 478=10 S. L. R. 34.

———*Partition—Suit for—Omission to specify, some properties—Course to be adopted.*

Where in the plaint in a Hindu family partition suit, some properties are omitted by inadvertance or mistake or fraud, the suit should not be dismissed but the plaint must be allowed to be amended by supplying the omission. 28 Cal. 769 Foll.; 14 Cal. 122 and 35 Cal. 961 Ref. to. (*Atkinson and Jwala Prasad, JJ.*) MUKUNDA LAL *v.* JOGESH CHANDRA. 20 C. W. N. 1276=35 I. C. 370= 1 P. L. J. 393.

———*Partition—Suit for—Subject-matter of.*

A partition suit can include no property wherein each party does not claim an interest. 23 C. L. J. 231; 23 I. C 17. (*Pratt, J. C. and Boyd, A. J. C.*) SAKAWATRAI *v.* PARTABRAI. 34 I. C. 909=9 S. L. R. 209.

Perpetuities.

See HINDU LAW
(1) GIFT.
(2) Will.

Possession.

See HINDU LAW—JOINT FAMILY.

Primogeniture.

See (1) CUSTOM.
(2) HINDU LAW—CUSTOM.

Religious Endowment.

See ALSO HINDU LAW—RELIGIOUS OFFICE.

Religious Endowment—Alienation of Property.

See HINDU LAW,—ALIENATION BY MANAGER OF RELIGIOUS ENDOWMENT.

Dedication.
Idol.
Managment.
Matt.
Shebait.
Temple.
Trustee.
Trusteeship.

HINDU LAW—Religious Endowment—Dedication.

———*Religious endowment—Dedication—Onus of proof—Head calling himself owner.*

The mere fact that the heads of a religious institution call themselves as owners of the foundation is no evidence that any particular property is the personal property of the Acharya. Any person contending that the property is not a part of the endowment must show that it was acquired by the Acharya with funds belonging exclusively to him or which may be regarded as his official perquisite. The expression "Shri" attached to a particular property in the books of account denotes its sacred or endowed character. (*Mr. Ameer Ali.*) MUSSAMMAT KAMLA LACHMI *v.* MAHANT BASDEO PRASAD. 23 O. C. 171= (1920) M. W. N. 553=13 L. W. 156= 7 O. L. J. 434=2 U. P. L. R. (P. C.) 130= 58 I. C. 900=25 C. W. N. 217= 28 M. L. J. 404 (P. C.).

———*Religious endowment—Dedication—Idol—Shebait permitted to reside in house.*

A provision in a will permitting the Shebait to reside with his family in a part of a house specially put apart for the accommodation of the idols is a perfectly valid and reasonable provision. (*Lord Buckmaster.*) GNANENDRA NATH DAS *v.* SUNDARA NATH DAS. 24 C. W. N. 1026= 28 M. L. T. 453=61 I C. 323= (1920) M. W. N. 550 (P. C.)

———*Religious endowment—Dedication—Validity of—Benefit to donee's family—Effect of deed.*

By a deed of gift duly executed and registered a Hindu dedicated the whole of his property to a temple. The idol was to take the property and the donor's family who were to be the administrators and managers of the temple were to be remunerated with half the income of the property without any power of alienation. Upon the death ol the managers named in the deed, the Government was to be the manager and the whole net income was to be applied to the expenses of the temple. *Held*, that the deed was a valid endowment of the whole property to the temple and there was nothing improper in ear-marking a certain part of the income (which was limited) to remunerate the managers so long as they should continue. 39 All. 353; 42 I. C. 225 (P. C.) Ref. (*Viscount Haldane.*) JADU NATH SINGH *v.* SITARAMJI. 39 All. 553=21 C. W. N. 953= 22 M. L. T. 52=20 O. C. 200= 26 C. L J. 309=19 Bom. L. R. 687= (1917) M. W. N. 605=4 O. L. J. 586= 42 I. C. 225=44 I. A. 187 (P. C.) [On Appeal from 1 O. L. J. 204=24 I.C. 72.]

———*Religious endowment—Dedication—Proof of—Performance of worship.*

The performance of the worship in accordance with the rites of sect for whose benefits the endowment is held, is good evidence of dedication. (*Mr. Ameer Ali.*) MOHAN LALJI *v.* TIKAIT SRI GORDHAN LALJI. 35 All. 283=40. I. A. 97=17 C. W. N. 741= 11 A. L. J. 548=17 C. L. J. 612= 15 Bom. L. R. 606=(1913) M. W. N. 536= 19 I. C. 337=14 M. L. T. 27 (P. C.) [On Appeal from 32. All. 461=6 I. C. 77= 7 A. L. J. 430.]

HINDU LAW—Religious Endowment—Dedication.

———*Religious endowment—Dedication — Endowment-deed treated as nullity by the creator.*

A Hindu executed and got registered a deed endowing certain property to charity but he treated it as his own, got his son's name in the Revenue papers, and executed a deed of gift in favour of the son. The son also treated the property as private, and mortgaged it. The income of the property was not devoted to charity: *Held*, that mere execution and registration of endowment deed did not make the property an endowed one, where there was no transfer of ownership from donor to donee. (*Mears, C. J. and Bannerji, J.*) RAM DHAN *v.* PRAG NARAIN. 43 All. 503= 19 A. L. J. 447=62 I. C. 862= 3 U. P. L. R. (All.) 161.

———*Religious endowment — Dedication — Reservation of benefit to donor—Illusory endowment.*

By a deed of endowment so-called the donor purported to dedicate practically the whole of his property to an idol just before his death. He was to be the manager during his life and after him his widow, thereafter his daughter's sons and their descendants. He undertook to effect mutation of names in favour of the idol, to use the income of the endowed property in meeting the expenses of *Puja*, *Rajbhag* and repair of temple and to keep a separate and regular account of the income and expenditure. About 16 months later the donor died and was succeeded by his widow. The donor had never applied for mutation of names and not more than a tenth part of the income had ever been spent upon the purposes of the endowment and no account books showing the income and expenditure were produced. *Held*, that all these circumstances showed that the donor did not really intend to create a religious endowment and that there was no real dedication to the idol. The creditors were allowed to attach property in execution of decree. (*Mears, C-J., Walsh and Banerji, JJ.*) SRI THAKURJI *v.* SUKHDEO SINGH 42 All. 395 = 18 A. L. J. 390=58 I. C. 583= 2 U. P. L. R. (All.) 91 (F. B.)

———*Religious endowment—Dedication—Public purpose.*

Where a will directed the erection of temples, *dharmashala* and a bathing *ghat*, feeding and clothing of the poor who visit the *dharmashala* and free distribution of medicine. *Held*, that the trust created is a public trust. (*Rafique and Piggott, JJ.*) JAI NARAYAN *v.* BANKEY LAL. 58 I. C. 566=17 A. L. J. 957.

———*Religious endowment—Dedication—Grant to mahant and heirs—Whether grant to idol or temple.*

A grant to mahant and his heirs for services rendered to the temple is not a grant made to the temple or its idol, but it is the private property of the mahant. (*Piggott and Walsh, JJ*) BANARSI DAS *v.* SHEODERSHAN DAS SHASTRI. 45 I. C. 451=16 A. L. J. 394.

———*Religious endowment—Dedication—Revocation.*

Where there is an absolute dedication of property to a deity a subsequent deed cannot affect it nor can the donor as owner revoke the

HINDU LAW—Religious Endowment—Dedication.

dedication. (*Chatterjea and Cuming, JJ.*) SASI BHUSAN BAHADUR *v.* BASANTA LAL BHAR.
51 I. C. 518.

———*Religious endowment—Dedication—General endowment—Worship of God—Deity not named—Void.*

Under the Hindu Law, a general endowment for the worship of God, without giving the name of the deity, for whose benefit the endowment is to operate is void for uncertainty, 11 I. C. 266; 37 Cal. 128; 32 All. 337; 33 All. 253 dist. If such a deed of endowment is not rectified within three years from the date of the execution a shebait named in the deed, can transfer without legal necessity, property comprised in the deed. (*Fletcher and Cuming, JJ.*) CHANDI CHARAN MITRA *v.* HARIBOLA DAS. 46 Cal. 951=
23 C. W. N. 645=51 I. C. 215=29 C. L. J. 366.

———*Religious endowment—Dedication—Proof of.*

Obiter: Dedication will not be proved by mere purchase of an estate in the name of a *thakur* deity. For dedicating property to a thakur a permanent image is not necessary. (*Chaudhury and Newbould, JJ.*) ASITA MOHAN GHOSE *v.* NIRODE MOHAN GHOSE.
35 I. C. 127=20 C. W. N. 901.

———*Religious endowment—Dedication—Accumulation.*

Accumulations from bequests according to testator's directions of surplus income from the debutter estate, may create a religious and charitable trust. (*Sanderson, C. J., Woodroffe and Mookerjee, JJ.*) SAROJINI DASSI *v.* GNANENDRA NATH DAS. 33 I. C. 102=23 C. L. J. 241.

———*Religious endowment—Dedication—Object vague—Charity—Void gift.*

Where the trust was for supporting the destitute, imparting education, marrying daughters of poor people and similar objects and discretion was given to trustees to select the object of bounty. *Held*, that the trust was inoperative being vague and uncertain. (*Chaudhuri, J.*) SARAT CHANDRA GHOSE *v.* PRATAP CHANDRA GHOSE.
21 I. C. 194=40 Cal. 232.

———*Religious endowment—Dedication—Debutter property—Partition by shebaits, if changes its character.*

A mere partition of debutter property by the shebaits will not make it secular; the partition may after all be for convenient user for the purposes of the deity. (*Jenkins, C. J. and Chatterjee, J.*) DHARMADAS MANDAL *v.* BEHARY MANDAL. 11 I. C. 947=16 C. W. N. 29.

———*Religious endowment—Dedication—Debutter land—Treating as secular property—Effect of.*

If a certain piece of land is really absolute debutter, the mere fact that the *shebaits* have chosen to divide it as if it was secular, does not alter the true character of the land. (*Mookerjee and Caspersz, JJ.*) BHABATARAM ROY *v.* BEHARI LAL. 10 I. C. 399.

———*Religious endowment—Dedication—Revocation.*

Consent of the family may enable the change of debutter property into a secular one to be made.

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If the property is dealt with as private property the court may find as to whether it is really debutter. 12 C. W. N. 98 Foll. (*Coxe, J.*) TULSIDAS *v.* SIDDHI. 9 I C 650=
20 C. L. J. 315 (Note).

———*Religious endowment — Dedication —Evidence of.*

Properties dedicated to the office of granthi of the darbar sahib are inherited by the person who succeeds the office. But properties acquired by the granthi out of his own income and which are not dedicated to the office descend to his natural heirs. Where properties descend from one granthi to another to the exclusion of natural heirs the presumption is that they were dedicated to religious uses. (*Scott-Smith and Abdul Raoof, JJ.*) INDAR SINGH *v.* FATEH SINGH.
59 I. C. 734=1 Lah 540.

———*Religious endowment—Dedication—Temple—Public or private—Test.*

When it is in question as to whether a temple founded by a Hindu is private or public, the general circumstances and any other document as the will and its terms are a better guide than the opinion of certain witnesses. The mere fact that the property was held chargeable with the maintenance of the testator's widow does not render it an imperfect trust. (*Chevis, J.*) LAL CHAND *v.* NAND LAL. 171 P. L. R. 1912=16 I. C 838=
263 P. W. R. 1912.

———*Religious endowment—Dedication—Charity—Bequest to—Void—Estoppel.*

There is no difference between *Dharm* and *Dharmath* and a trust or bequest for *dharmath* is void for vegueness. The property so bequeathed remains undisposed of. An heir of the testator who did some charity out of the property for six years is not estopped from giving it up and questioning the validity of the bequest. (*Robertson and Rattigan, JJ.*) GURDIT SINGH *v.* SHER SINGH.
78 P. R. 1912=63 P. W. R. 1912=
14 I. C. 247=106 P. L. R. 1912.

———*Religious endowment—Dedication—Object of—Note to be extended by subsequent conduct of trustees*—Cypres.

Where the terms of a charitable and religious grant are unambiguous its construction cannot be extended on inferences drawn from subsequent use of the endowment. It is not competent to the trustees of an endowment to alter the original object of the trust purporting to apply the doctrine of *cypres*. 43 Cal. 1085 (P. C.) Foll. The fact that substantial contributions have been made by another class or the public will not justify the application of the *cypres* doctrine by a trustee. (*Abdur Rahim, O. C. J. and Moore, J.*) LODD GOVIND DOSS *v.* GOVIND DOSS. 10 L. W. 559=
53 I. C. 661=(1920) M. W. N. 168.

———*Religious endowment—Dedication—Appointment of vars to carry on charities at temples—Complete dedication—Vague and indefinite—Public trust.*

A Hindu by his will appointed his brother's son as his *vars* to conduct charities at the temples of Tiruvedenthai, Tirukkadaimalai and Tirupathi with the help of his properties. The charity was specified as the giving of thaligais (meals) in the

temples on the Tirunakshatram day but no special allotments were made for the purpose. At the time of the registration of the will before the Registrar the testator stated that he intended by the will to bequeath the property to charities. In a subsequent suit the testator stated that he acquired properties for charity and intended to make a testamentary disposition in that behalf. *Held*, that the dedication was definite and not void for vagueness or uncertainty. 23 Bom. 725 ; 30 Mad. 540 dist. The mention of the word *vars* in the will did not make him the sole owners of the properties subject to the carrying out of the directions relating to charity but constituted him trustee for the charities. 24 Bom. 420 Dist. ; 37 Mad. 199, Foll. (*Abdur Rahim and Seshagiri Aiyar, JJ.*) MUTHUKRISHNA NAICKEN *v.* RAMACHANDRA NAICKEN. 47 I. C. 611=37 M. L. J. 489.

———*Religious endowment — Dedication—Inference from circumstances.*

A dedication to the public may be inferred from a long course of conduct on the part of the founder and his descendants on the one and the public on the other. The appointment of a person as *dharmakarta* in his will is strong indication of the public character of the institution. So also the presence of the stone idols, the employment of archakas to worship, the attendance of worshippers from all castes, etc. (*Wallis, C. J. and Srinivasa Iyengar, J.*) SITARAMANUJACHARI *v.* KANDURI VULLAMMA. (1915) M. W. N. 842= 30 I. C. 822=2 L. W. 858=18 M. L. T. 543.

———*Religious endowment — Dedication — Void —Gift of immoveable properties to a* Chatram *not in existence—Construction—General charitable intention —Cypres doctrine.*

An Indian Christian executed a document whereby he dovoted certain properties of his as endowment for a *Chatram* or *Choultry* purported to have been built at a particular spot for the feeding of *Paradesis*, providing that he should manage it during his lifetime and that after his death those members of his family who were competent to manage should do so. Subsequently he made a further grant of money in the shape of Government securities to the fund, so created but varied the provisions as regards management contained in the previous deeds by vesting the same in the settlor and his daughter for their lives. The *Chatram* in question was never built and the Government securities given to the said *Chatram* under the second deed were even during the lifetime of the settlor, transferred to a different charity the lands beings reserved for the maintenance of the family. *Held*, that as the *Chatram* never came into existence the gift failed. A resulting trust accrued in favour of the settlor and his heirs. There was no general charitable intention clearly made out, and the trust could not be executed *Cypres*. The term reserving the right of management to those members of the family who were competent to manage was void for uncertainty. (*Wallis, C. J. and Coutts-Trotter, J.*) DORAISWAMY PILLAI *v.* SANDANATHAMMAL. 2 L. W. 577= 30 I. C. 225=(1915) M. W. N. 478.

———*Religious endowment— Dedication—Grant.*

The mere fact that certain officers of the temple (grantees of an inam) spent a portion of the

income derived from the grant for performing certain festivals in the temple. does not show that the original grant was made for the benefit of the grantee as well as the temple. (*Wallis, C. J. and Srinivasa Iyengar, J.*) SRIRANGACHARIAR *v.* PRANATHARTHIHARACHARIAR. (1915) M. W. N. 531= 30 I. C. 74=2 L. W. 632=18 M. L. T. 122.

———*Religious endowment—Dedication—Share of income—Charge.*

A share of the income from the family properties may be dedicated to a trust and the whole family properties then remain charged with the payment of the amount. (*Sankaran Nair and Spencer, JJ.*) NAGAR DAMODHARA SHANGHOG *v.* RAMAPPAYA. 25 I. C. 399.

———*Religious endowment — Dedication — Presumption.*

In the absence of clear proof of dedication the facts that a village belonged to one Asthan, was held by its Mahant from time to time and was treated as part of the Asthan properties. raise a presumption of dedication either by the original Mahant to whom it was granted or by his successors. (*Stuart and Kanhaiya Lal, A.J.Cs.*) BASDEO BAN *v.* RAM SARAN. 45 I. C. 292= 5 O. L. J. 38.

———*Religious endowment — Dedication—Proof of—Portion of income dedicated to worship of public temple.*

The mere fact that the founder of a temple intended for public worship is spending a portion of his income derived from a certain property for conducting the temple is insufficient to establish that the corpus of the property is dedicated to the use of the temple. 2 Cal. 341 Ref. (*Lindsay, J. C. and Kanhaiya Lal, A. J. C.*) PARAMESHRI DASS *v.* GIRDHARI LAL. 30 I. C. 240= 2 O. L. J. 259.

———*Religious endowment—Dedication—Evidence —Subsequent treatment of property—Effect of.*

Where there was no sufficient evidence that the particular property in dispute was purchased from the income of the Sangah or was dedicated by the founder of the Sangah after the purchase and the succession to it was not consistent with its being endowed property. *Held*, that the land was not part of the endowed property. (*Kanhaiya Lal, A. J. C.*) RAJMAN *v.* BRAHAM SURAT. 26 I. C. 621=17 O. C. 336.

———*Religious endowment— Dedication—Proof of.*

Mere appropriation of the rents and profits to the upkeep of a religious institution is not sufficient proof that the property is endowed. 2 Cal. 311, Foll. (*Lindsay, J. C. and Stuart, A, J. C.*) ABDUL GHAFUR *v.* SHIAM SUNDAR DAS. 17 I. C. 303=16 O. C. 76.

———*Religious endowment—Dedication—Illusory dedication.*

To establish that certain lands are the subject of a valid endowment, public or private, it must be shown that an absolute grant of the lands was made with the intention that the properties should be applied to the purposes of the endowment, that the properties have since the grant been so applied and that the members of the family of the settlor have not treated the property as one the

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profits of which were mainly intended to be applied for their own benefit. 15 C. W. N. 125. Foll. The dedication is nominal when there is no proof of the application of the income of the property for the purposes of the endowment and when the whole conduct of the parties is inconsistent with the hypothesis of a valid trust. (*Atkinson and Dass, JJ.*) SIRI THAKUR PARMOD *v.* ATKINS. 53 I. C. 106=4 P. L. J. 533.

Religious Endowment—Idol.

———*Religious endowment—Idol—Party to suit.*

Where property is endowed to an idol, the idol is a necessary party to a suit for pre-emption. Otherwise the suit must fail, a decree cannot be given against a party who is not actually before the court. (*Richards, C. J. and Rafique, J.*) MADHO RAM *v.* JAGAT SINGH. 52 I. C. 18= 1 U. P. L. R. (H. C) 7.

———*Religious endowment—Idol—Ballavachariya Goswamis.*

A Ballavachariya Goswami has a specific interest in the temple idol and other property held by him which is capable of being partitioned and transferred. A gift by the Goswami to another Goswami or his successor-in-office is not invalid or contrary to customs and usage of the cult. (*Richards, C. J. and Banerjee, J.*) GOPAL LALJI *v.* GIRDHAR LALJI. 28 I. C. 715.

———*Religious endowment—Idol—Right to worship—Idol belonging to another.*

A customary right to worship an idol belonging to another or a tree standing in a private premises cannot be acquired by the public or any group of the individuals by the mere circumstance of facts of worship being performed by persons who see in that object the abode of deity. No interest or right of management in the property of another be acquired by continued acts of worship being shown to that property. (*Sadasiva Iyer and Spencer, JJ.*) THE SUPERINTENDING ENGINEER, II CIRCLE *v.* RAMAKRISHNA IYER. 39 M. L. J. 151=12 L. W. 193= (1920) M. W. N. 495=58 I. C. 885= 28 M. L. T. 163

———*Religious endowment—Idol—Suit—Wrong description of person representing idol—Effect on limitation.*

A wrong description in a suit of the person repesenting an idol is a mere irregularity or misdescription which can be amended without affecting the limitation for the suit. (*Banerjee, Karamat Hussain and Chamier, JJ.*) JODHI RAI *v.* BASDEO PRASAD. 8 A. L. J. 817= 11 I. C. 47=33 All. 735.

———*Religious endowment—Idol—Bequest.*

A bequest to an idol to be established in future is not invalid in Hindu Law. 37 Cal. 120 (P. B.) Foll. (*Greaves and Panton, JJ.*) SARADINDU MUKHERJEE *v.* CHARU CHANDRA DUTT. 53 I. C. 885=23 C. W. N. 872.

———*Religious endowment — Idol—Shebait—Rights of.*

A *Shebait* has every right to litigate for the protection of property dedicated to an idol. It is not necessary to join the idol as party in any suit which the Shebait may launch. 32 Cal. 129 and

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31 I. A. 203 Foll. (*Chatterjee and Richardson, JJ.*) DINA BANDHU NANDI *v.* CHAMI JADDI MIJI. 34 I. C. 548.

———*Religious endowment-Idol—Property held by—Nature of—Gift to—Provision for maintenance.*

An idol is a juridical person capable of taking and holding property and the nature of the title is not in any way different from that of a living individual. There is no distinction in this respect between a family idol and an idol in a public temple. 32 Cal. 129 (P. C.); 2 Cal. 341 (P. C.) Ref. to. A gift in favour of a consecrated idol is recognised to the same extent as a gift in favour of a deity in the abstract and can be given effect to even if the gifted property is charged with the maintenance of certain members of the family or of the manager of the trust. The property gifted must, however, be vested in the idol or diety as the case may be, though the donor may retain the management of the same in his own hands. The property gifted to an idol vests in it on the date of the gift even if the donor omits to get mutation names in its favour in his life time. Where an idol is duly consecrated for public worship the invisible deity is considered to reside in it. (*Stuart and Kanhaiya Lal, A. J. Cs.*) SITHA RAMJI *v.* JADUNATH SINGH. 24 I. C. 72= 10. L, J. 204.

Religious Endowment—Management.

———*Religious endowment—Management*—Shebaits *and* Pujaris—*Rights.*

Shebaits of a *Thakur* appointed defts. *pujaris* and gave certain properties for maintenance and worship on condition of forfeiture in case of misconduct to be determined by a special tribunal. Defts. were found guilty of misconduct and were deprived of the properties which were retained by the tribunal. The *Shebaits* sued for possession: *Held*, that the agreement was not affected by the rule against perpetuities nor was it void for remoteness. Though there is no State Church or Ecclesiastical Court under Hindu law, a Civil Court may hold that a *pujari* has been removed from office on valid grounds. (*Mookerjee, A.C.J. and Fletcher, J.*) NAPAR CHANDRA *v.* KAILASH CHANDRA. 62 I. C. 510=25 C. W. N. 201.

———*Religious and charitable endowment—Management—Partition—Turns.*

Where at a family partition it was agreed that the charity was to be managed by the eldest members of the various branches, by annual turns. *Held*, that it was a lawful agreement which the courts would recognise and enforce. (*Wallis, C. J. and Hannay, J.*) UMATYORUPAGAM PILLAI *v.* PALANARAYANA PILLAI. 28 I. C. 908.

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———*Religious endowment — Mutt—Disciples—Permanent lease by trustee—Suit for declaration by—Disciple of Mutt.*

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A permanent lease of temple properties granted by the trustee of the temple is invalid, unless it has been granted on account of necessity. 34 Mad 535 Foll. A disciple of a *Mutt*, managing the affairs of the temple, can sue for cancellation of the permanent lease on behalf of the temple. (*Miller and Abdur Rahim, JJ.*) KASI CHETTY *v.* SRIMATHU DEVASIKAMANI NATARAJA.

16 I. C. 622 = (1913) M. W N. 181.

Religious Endowment—Mutt—Head of.

———*Religious endowment—Mutt—Head of—Rights of appointment of successor—Trustee of endowment—Removal—Misconduct.*

The head of a mutt holding certain Davastanams and the properties attached thereto as a trustee is liable to removal for proper cause according to Ss. 92 and 93, C. P. C. (S. 539) old code. If the appointment of a successor to the headship of a mutt is not *bona fide* in the interest of the *Mutt* but is in furtherance of the interest of the appointer, such appointment will not be made in the *bona fide* exercise of the powers of the head of a Mutt and is invalid. (*Sir John Edge.*) NATARAJA TAMBIRAN *v.* KAILASAM PILLAI.

44 Mad. 283 = 48 I. A. 1 = 39 M. L. J. 98 = (1920) M. W. N. 371 = 25 C. W. N. 145 = L. R. 2 P. C. 5 = 13 L. W. 301 = 57 I. C. 564 = 18 A. L. J. 1041 (P. C.)

———*Religious endowment—Mutt—Head of—Position of—Succession to office—Custom—Collusive appointment of disqualified person—Vacancy—Appointment of senior disciple.*

A mutt or asthal is an institution of a monastic nature. It is established for the service of a particular cult, the instruction in its tenets and the observance of its rights. The followers of the cult and disciples in the institution are known as chelas; the chelas are of two classes celebite and non-celebite. The mahant is the head of the institution. The property of a mutt or asthal is held by the mahant as its owner in trust for the mutt or institution itself. Although large administrative powers are undoubtedly vested in the reigning mahant the trust exists and must be respected. Succession to the mahant in such property follows the succession to the office. As the mahant is not merely a spiritual preceptor but also a trustee for the asthal, the Courts will be justified in ignoring a collusive or fraudulent appointment of a successor by the reigning mahant and fill up the vacancy according to the rules of the institution. Questions of succession to the office of mahant or head of a mutt are not settled by an appeal to the general customary law. It must depend on the custom or usage of the particular mutt or asthal. 2. Mad. 179; 11 M. I. A. 428 Ref. Without determining whether the custom of the mutt was for the senior chela to succeed as of right or for the mahant to appoint his successor from among his chelas, the Privy Council held that the mahant had abdicated his office which could not revert to him having regard to his gross breach of trust in making a collusive and corrupt nomination as regards his successor that the appointment itself was invalid and that the senior chela was entitled to possession of the office of mahant and the properties appertaining thereto, as on a vacancy. Where the

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person chosen by a mahant as his successor is disqualified by reason of bodily infirmity of loathsome disease, or of the leading of a life which is immoral or inconsistent with the religious vows of the brotherhood, the nomination is void and there is a vacancy in the office. (*Lord Shaw*). RAM PRAKASH *v.* ANAND DAS.

43 Cal. 707 = 43 I. A. 73 = 20 C. W. N. 802 = 14 A. L. J. 621 = (1916) 1 M. W. N. 406 = 31 M. L. J. 1 = 18 Bom. L. R. 490 = 3 L. W. 556 = 24 C. L. J. 116 = 33 I. C. 583 = 20 M. L. T. 267 (P. C.)

———*Religious endowment—Mutt—Head—Position of, that of a trustee—Right to management vested in other persons—Acquisition of trusteeship by prescription—Suit for recovery of property—Limitation.*

Generally in the case of mutts the rule is that the mahant or spiritual head is the owner. But this is not an invariable rule and by the usage and custom of the institution, the properties might vest in trustees other than its spiritual head. In any case the property is held solely in trust for the purposes of the institution and it is the duty of the manager of such a mutt to refrain from the personal enjoyment of surplus income and to add it to capital. 43 Cal. 707; 41 Mad. 296; 2 Mad. 175, Ref. In a suit by the head of a mutt to recover a village forming part of its endowment, it was found that for a period of 80 years before suit, trustees represented by defendants were in possession and managing the village and had applied the income for the purposes of the institution In the Inam Register they were recorded as trustees with the assent of the original donor's representatives. *Held*, that the plaintiff had no right to village as the defendants were the managers of the endowment according to the usage of the institution; and further the defendants' possession, though as trustees, was adverse to the plaintiff for more than the statutory period. In suits to obtain control or management of a religious institution, when no misapplication is proved, and the defendant admits himself a trustee for the institution, the ordinary limitation of 12 years applies. Great weight is due to the entries in the Inam Register, in the absence of actual and authentic evidence of the history of a mutt. (*Lord Shaw*). ARUNACHALLAM CHETTY *v.* VENKATACHALLAPATHI GURUSWAMI.

43 Mad. 253 = (1919) M. W. N. 850 = 24 C. W. N. 249 = 46 I. A. 204 = 22 Bom. L. R. 457 = 37 M. L. J. 460 = 17 A. L. J. 1097 = 10 L. W. 642 = 53 I. C. 288 = 26 M. L. T. 479 (P. C.).

[Reversing 33 I. C. 216 = (1915) M. W. N. 850.]

———*Religious endowment—Mutt—Head of—Private property and that of an institution.*

The *pronami* offered by the faithful to the mohant is his private property. Such property does not become a part of the endowment property. There is no rule to determine whether on a particular occasion the offering was made to a deity or to the mohant. An order that *pronami* is not to be considered as the property of the endowment is binding on the parties. The dwelling house of a mohant is a part of the

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religious endowment and must be maintained out of the income of the endowment. (*Mookerjee, A. C. J. and Fletcher, J.*) KUMUD BAN *v.* TRIPURA CHARAN. 60 I. C. 464.

———*Religious endowment—Mutt—Head of—Right of suit—Mohant of an Asthal—Ejectment of a trespasser.*

A *mohant* of an *Asthal* though he be not a proprietor but merely a manager of the goddess who is the proprietor, has a right, to turn out a trespasser occupying any portion of the *Asthal* buildings. (*Harrington and Carnduff, JJ.*) MOHUNT SEARAM DAS *v.* MOHABIR DAS. 19 I. C. 240.

———*Religious endowment—Mutt—Head of—Position of—Letters of Administration.*

A *mohant* is not the owner of the property of the mutt. On his death it is not open to a person claiming to be his successor in office to apply under the Probate Act for Letters of Administration in respect of the mutt property. 16 C. W. N. 798, Rel. (*Mookerjee and Beachcroft, JJ.*) PARSANIA *v.* HARI CHARAN DAS. 16 I. C. 538= 17 C. L. J. 65.
[Also 16 I. C. 453 (1)=16 C. W. N. 798.]

———*Religious endowment—Mutt—Head of—Alienation of property.*

The *nai* community made a trust for the maintenance of a *samadh* and a *shiwala*. Other houses and shops subsequently built in one enclosure constituted one tenement. The entire property passed from *Guru* to *Chela*. *Held*, (1) that the trust was a religious trust, and that the property alienated, *viz.*, shops being a part and parcel of the institution, representatives of the community were entitled to restrain the trustee from making an improper disposal thereof; (2) that alienation for the building of house was not binding on them. (*Rattigan and Shadi Lal, JJ.*) HAR PRASAD *v.* SADHU. 32 I. C. 504=31 P. W. R. 1916.

———*Religious endowment—Mutt—Head of—Money borrowed for necessary purpose of—Remedy of creditor—Decree against trust.*

Where the head of a *mutt* borrows money for necessary purposes binding on the trust, the creditor is entitled to a decree against the properties of the *mutt* even though the debt was not charged on the properties of the *mutt*. The case of a head of *mutt* who is a *sanyasi* stands in this respect on a different footing from that of a trustee or executor where in the absence of a charge created on the trust the creditor has to look to the personal liability of the trustee or executor. 32 M. L. J. 259. 6 L. W. 640, Rel. (*Sadasiva Iyer and Spencer, JJ.*) RAJAGOPALACHARY *v.* RAGAVENDRA RAO. 43 Mad. 795=(1920) M. W. N. 568= 28 M. L. T. 269= 59 I. C. 287=12 L. W. 139=39 M. L. J. 174.

———*Religious endowment—Mutt—Head of—Trustee.*

The Mahant of a *Mutt* is a trustee in law of the *Mutt* properties. (*Sadasiva Iyer and Spencer, JJ.*) DEVASIKAMANI NATARAJA DESIKAR *v.* VALLIAMMI ACHI. 52 I. C. 914=37 M. L. J. 231.

———*Religious endowment—Mutt—Head of—Trustee.*

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A matadhipathi holds the endowed properties as trust properties. (*Abdur Rahim and Srinivasa Iyengar, JJ.*) DOST MUHAMMAD KHAN *v.* NAZIR ALI SAHIB. 42 I. C. 474=6 L. W. 134.

———*Religious endowment—Mutt—Head of—Portion of.*

Ordinarily the head of a *Mutt* has no beneficial interest in the surplus income of the mutt properties in the absence of a valid custom to that effect. 43 Cal. 707 (P. C.); 40 Mad. 745; 27 Mad 435 Ref. (*Seshagiri Aiyar and Bakewell, JJ.*) OBLA VENKATACHALAPATHI AIYAR *v.* THIRUGNANA SAMBANDA PANDARA SANNADHI. 42 I. C. 273= 6 L. W. 637=33 M. L. J. 297.

———*Religious endowment—Mutt—Head of—Powers—Alienation by head of Mutt—Validity.*

The law with regard to *Mutt* is governed by the sages of each *Mutt*, but the general usage to be presumed in the absence of contrary evidence is that the head of a *Mutt*, nominated his *Chela* during his lifetime to succeed him on his death. The head of a *Mutt* cannot alienate the whole corpus of *Mutt* property or part of it, except for necessity. 27 Mad. 435 Ref. (*Wallis, C. J. and Burn, J.*) RAJA RAM DAS *v.* BHARATA DAS. 38 I. C. 221

———*Religious endowment—Mutt—Head of—Qualifications of.*

In the case of Madhava Mutt and the qualifications of the head of the Mutt are (1) the person to be appointed must be a sanyasi, *i. e.*, one who has renounced all worldly ties and has been initiated into the brotherhood and a person competent to make the nomination; (2) he must be initiated into sanyasam when he is a bala brahmachari, *i. e.*, batchelor below the age of 16; (3) the initiation into sanyasi and ordination to the Mutt must be contemporaneous. (*Abdur Rahim and Phillips, J.*) RAGHUBUSHANA *v.* VIDIAVARIDHI. 34 I. C. 875.

———*Religious endowment—Mutt—Head of—Properties in the possession of.*

There is no presumption with regard to the properties in the possession of a head of the Mutt that they are not Mutt properties. The custom of the election for the office of head of the Mutt must be established before the plaintiff can succeed in ejecting an alienee. (*Wallis, C. J. and Hannay, J.*) PARAMAHAMSA PARASAMAYA *v.* YAVADRAKSHAKI AMMAL. 28 I. C. 829.

———*Religious endowment—Mutt—Head of—Position of—Compromises—Effect of.*

A Pandarasannadhi has powers to compromise suits affecting trust properties equal to those of a trustee. They are not necessarily void. But where it appears that a decree was passed on compromise the onus lies on the decree-holders to show that the compromise was lawful and *bona fide*. If the compromise is entered with a desire to escape the necessity of having to attend and be examined as a witness by the Pandarasannadhi, the same amount to a breach of duty and cannot be regarded as *bona fide*. A Pandarasannadhi is not accountable for the expenditure of the income of the Mutt properties but is under a moral if not a legal obligation to apply the

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surplus for purposes of a religious or philanthropic nature and cannot apply it to the satisfaction of debts found to be not binding on the Mutt. The position of a Pandarasannadhi is not analogous to a widow and a decree passed against him for debts not binding upon the mutt cannot be treated as an alienation binding on his life interest as in the case of a decree passed in similar circumstances against a widow. (*Wallis, C. J. and Hannay, J.*) ARUNACHALAM CHETTIAR *v.* VELLAPA THAMBIRAN.

28 M. L. J. 410=28 I. C. 337=18 M. L. T. 135.

———*Religious endowment—Mutt—Head of—Powers of necessity—Financial necessity—Liability of successor.*

Debts may be contracted for a mutt by its head and debts so contracted may be recovered from the mutt property and the successor is bound to pay them to the extent of the assets received by him. The head of a mutt, however, cannot pledge the credit of the mutt for debts contracted for mutt purposes even if they could be met from the current income. The head of a mutt has no larger authority to incur debts than the heads of other religious institutions or the guardian of infant heir. He can pledge the credit of the mutt only for financial necessity. The conduct of festivals usually conducted in the mutt is a necessity. 2 Mad. 175; 2 I. A. 145, Ref. (*Wallis and Munro, JJ.*) PANDARASANNATHI *v.* KARUTHA RAVUTHAN.

21 M. L. J. 129=9 I. C. 150= 9 M. L. T. 327.

———*Religious endowment—Mutt—Head of—Offerings—Private property.*

The head of an asthan has no property other than asthan property and his income consists of the profits of the property and offerings made to him in the character of trustee of the institution. It follows that his subsequent acquisitions must be presumed to have been made with the aid of such income and consequently will follow the same character as the nucleus. But the law does not disable him from owning property of his own, and those who allege the separate and personal character of property found in his possession must discharge the onus that lies on them to prove their case. (*Daniels and Wazir Hassan, A. J. Cs.*) RAMPAT *v.* DURGA DHARATHI MAHANT.

60 I. C. 440=23 O. C. 303.

———*Religious endowment—Mutt—Head of—Position of.*

The mahant of an Asthan is in the position of a trustee and is not at liberty to borrow money at any rate of interest. 11 Cal. 379; 18 Cal. 311 Rel. (*Lindsay, J. C.*) DURGA BHARATI *v.* GUPTAR PRASAD. **42 I. C. 406=4 O. L. J. 547.**

———*Religious endowment—Mutt—Head of—Right to acquire property.*

A Mahant though required to observe celebacy can acquire property for his personal benefit if he has funds of his own. (*Kanhaiya Lal, A. J. C.*) RAJMAN *v.* BRAHM SURAT.

26 I. C. 621=17 O. C. 336.

HINDU LAW—Religious Endowment—Mutt—Succession.

———*Religious endowment—Mutt—Head of—Removal of—Power in whom vested—Alienation of office.*

The head of a religious or charitable institution cannot bargain away his office or alter the constitution of the institution of which he is in charge. Where the right to remove a mahant had never rested with the plff. in the past he could not acquire that right or take it out of the hands of the court or other lawful authority by persuading the mahant for the time-being to agree to surrender that right to him. (*Chamier, C, J. and Jwala Prasad, J.*) KAISHNA DAYAL GIR *v.* LALDARI GIR.

40 I. C. 276.

Religious Endowment—Mutt—Junior Head.

———*Religious endowment—Mutt—Junior head—Chinnapatam—Nature of office.*

The office of Chinnapatam is inferior to the head of mutt; he has only a *spes successionis* in the mutt property till the death of the head. (*Wallis, C. J. and Napier, J.*) KAILASAM PILLAI *v.* NATARAJA TAMBIRAN.

40 I. C. 627=32 M. L. J. 271.

———*Religious endowment—Mutt—Junior head—Nomination.*

The nomination and ordination of a junior Pandarasannadhi is the customary manner of providing for the line of succession. (*Wallis, C. J. and Seshagiri Aiyar, J.*) THIRUVAMBALA DESIKAR *v.* CHINNA PANDARAM.

40 Mad. 177=(1916) 2 M. W. N. 43= 34 I. C. 57=4 L. W. 306= 30 M. L. J. 274.

Religious Endowment—Mutt—Management.

———*Religious endowment—Mutt—Management—Right of—Acquisition by adverse possession.*

Where properties are dedicated to an idol the office of Dharmakartha may be acquired by adverse possession; but where properties are given to the head of the Mutt and vest in him absolutely subject to the application of the income to certain purposes, the person who manages the properties on behalf of the mutt manages it on behalf of the Matadhipathi. (*Wallis, C. J. and Kumaraswami Sastri, J.*) ARUNACHALLAM CHETTY *v.* VENKATACHELAPATHI GURUSWAMIGAL.

33 I. C. 216=(1915) M. W. N. 650.
[Overruled by the Privy Council *see* 53 I.C. 288= 43 Mad. 253.]

Religious Endowment—Mutt—Succession.

———*Religious endowment—Mutt—Succession—Rule of—Election—Validity of.*

Where the founder of a mutt has not prescribed any rules to be followed in the selection and appointment of succeeding mahants the method of their selection and appointment depends on the custom or usage which has prevailed in the Mutt in the past. An election of a mahant to fill a vacancy in order to be valid, must be by a majority of the persons qualified to elect and duly assembled for that purpose; a separate election by a fraction of the qualified persons is not a valid election. Where on the occurrence of a vacancy in the headship of the Mutt two persons, one as

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Sadak or disciple and the other as *Gurubhai* or co-disciple of the deceased claimed to have been elected by the *dasnambik* or ten classes of mendicants as mahant of the temple. *Held*, that the deft. being in possession of the temple and the properties annexed to it, it was for the plaintiff to prove his own right to the Mahantship before he could recover. (*Sir John Edge.*) LAHAR PURI *v.* PURAN NATH. 37 All. 298=29 I. C. 724= 19 C. W. N. 718=21 C. L. J. 499= 17 Bom. L. R. 475=18 M. L. T. 39= 29 M. L. J. 75=2 L. W. 589= (1915) M. W. N. 526=42 I. A. 115 (P. C.).

———*Religious endowment—Mutt—Succession.*

Mutts are of three descriptions, *viz.*, *maurusi*, *Panchayati*, and *hakini*. (1) In maurusi mutts, the office of chief *mahant* is hereditary and devolves upon the chief disciple of the existing *mahant* who moreover usually nominates him as successor. (2) In *Panchayati* mutts, the office is elective, the presiding *mahant* being selected by an assembly of *mohunts*. (3) In *hakini* mutts, the appointment of the presiding *mahant* is vested in the ruling power or in the party who has endowed the temple. In No. 1, the *chela* succeeds and in default of a chela, the *Gurubhai* succeeds; where there are more *chelas* than one, the oldest generally succeeds but a junior *chela* may succeed if he be found capable and if he be selected by the last *mahant* as his successor. (*Mookerjee and Beachcroft, JJ.*) ACHYUTANANDA DAS *v.* JAGANNATH DAS. 21 C. L. J, 96=27 I C. 739= 20 C. W. N. 122.

———*Religious endowment—Mutt—Succession—Mode of appointment—Selection by the mahant for the time being.*

Among Nanak Shahi Udasi Sadhus, Benares, as regards the appointment of a new mahant the custom is for the mahant for the time being to appoint a chosen disciple or chela, to succeed him on his death. (*Piggott and Walsh, JJ.*) DHARAM DASS *v.* SADHO PRAKASH. 40 I. C. 177.

———*Religious endowment—Mutt—Succession.*

The succession to the gadi of a mutt is governed by a custom and rules of the mutt which has to be proved in each case unless it is admitted by the opposite party. (*Richards, C. J. and Sundar Lal, J.*) GANGA RAM *v.* RAMSARAN. 34 I. C. 502.

———*Religious endowment—Mutt—Succession—Rule of—Jurisdiction of Court—Successors.*

Nomination of a mahant must be made during the lifetime of the former mahant. In the absence of nomination an election must be held and confirmed by the neighbouring mahants and sectarians. A claimant failing to prove his installation and confirmation is not entitled to a decree against a chela in possession with or without title. The court cannot set aside the election made according to custom and has no right to nominate a successor to his successor. (*Stanley, C. J. and Burkitt, J.*) RAJBANS BHARTHI *v.* KARYA PHARTHI 10 I. C. 824=8 A. L. J. 286.

———*Religious endowment—Mutt—Succession.*

Only a person with a superior right can disturb another in possession of property. So where two

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Chelas are found equally entitled, the suit by one on a superior title will fail for want of proof. (*Kensington and Chevis, JJ.*) MANGAL DAS *v.* RALLA RAM. 83 P. W. R. 1912=15 I. C. 721= 152 P. L. R. 1912.

———*Religious endowment—Mutt—Succession—Appointment by head.*

An appointment by the head of his successor though made according to usage is invalid if made as a compromise to gain a benefit or avoid a danger. Per *Wallis, J.*—Principles relating to family settlements do not govern cases like the appointment of head of mutt. Per *Napier, J.*—The appointment under a compromise is not necessarily bad but little defects in it may be cured if the appointment as a whole is in the interests of the institution. But where the appointment is made to avert a criminal prosecution of the head, it is bad. (*Wallis, C. J. and Napier, J.*) KAILASAM PILLAI *v.* NATARAJA TAMBIRAN. 40 I. C. 627= 32 M. L. J. 271. [Affirmed on appeal 57 I.C. 564=39 M. L. J. 98.]

———*Religious endowment—Mutt—Succession—West Coast mutts.*

Succession in the case of mutt is governed by the usage of the particular institution. Unlike the cast coast mutt the rule of succession in the west coast mutts, is generally based on the injunctions contained in the Smritis, *i. e.*, to title to headship does not depend upon nomination by the head, nor on selection by the disciples but solely upon the length of the period during which a person has been a sanyasin. According to the established usage of the Naduvilai Mutt in Malabar, a sanyasi can become a member of the Mutt by the ordination of the head of the Mutt only which a junior swami cannot do. (*Ayling and Napier, JJ.*) NARAYANA BARATHIGAL *v.* ITTULUI AMMA. 39 I. C. 893.

———*Religious endowment—Mutt—Succession.*

There is no rule of law of succession to headships of mutts. A rule must be made out in each particular case. Where two mutts are affiliated to each other, the swami of one may have the right to appoint a successor if the swami of the latter dies without making the appointment himself. Such mutts are called *dwandwa* mutts and numerous instances of such appointment cannot be expected from the nature of things. In a mutt the existence of a custom regarding succession is rendered probable by the adoption of the same custom in similar matters in neighbouring mutts. (*Abdur Rahim and Phillips, JJ.*) RAGHUBHUSHANA *v.* VIDIBARIDHI. 34 I. C. 875.

———*Religious endowment—Mutt—Succession—Election.*

Where the plaintiff seeks the headship of a mutt as having been properly elected, he must definitely establish that it was the custom to elect for such office. The dictum in 27 Mad. 435 that in default of nomination, election falls to the disciples, applies only to Sanyas Mutts and not to the Parasamya Kolam Mutt of the Panch Brahmans. (*Wallis, C. J. and Hannay, J.*) PRAMAHAMSA PARASAMAYA *v.* YAVADRAKHAKSHAKI AMMAL. 28 I. C. 829.

HINDU LAW—Religious Endowment—Mutt—Succession.

———*Religious endowment—Mutt—Succession—Right of trustee to appoint successor from his disciples—Appointment made by will—Power to revoke.*

A trustee of a mutt who has the power of appointing a successor from his disciples, has, when he makes such an appointment by will, the power to revoke the same and cancel the appointment so made. (*Benson and Sundara Aiyar, JJ.*) SELLAPASWAMY *v.* MANIKKASWAMY. 11 I. C. 336 = (1911) 1 M. W. N. 359.

Religious Endowment—Shebait.

———*Religious endowment—Shebait—Properties acquired with income of debutter properties—Gir Gossains—Custom of removal by Punch.*

Properties acquired by the *shebait* from the income of *debutter* properties and treated by the *shebait* as belonging to the idol become part of the *debutter* properties. According to the custom of *Gir Gossains* the *Punch* can dismiss any *Gir Gossain* for drinking wine or marrying or becoming addicted to vice, and appoint another in his place. A *chela* may, during the lifetime of his *Guru*, become a member of the Punch. Succession amongst *Gir Gossains* is governed by *Gotia* relationship and in the absence of a *chela* the nearest Gotia succeeds. (*Richardson and Huda, JJ.*) KARTIC CHANDRA *v.* GOSSAIN PROTAP GIR. 66 I. C. 894 = 25 C. W. N. 908.

———*Religious endowment—Shebait—Suit by manager in his own name.*

The manager of a temple or the *shebait* of *debutter* property can sue in his own name and there is nothing to require such a suit being brought in a representative capacity. (*Chaudhuri and Cuming, JJ.*) JOYNATH SARKAR *v.* HARI MOHAN DAS. 59 I. C. 469.

———*Religious endowment—Shebait—Succession to office—Gossains—Custom—Panch—Nomination.*

Succession to the office of shebait among Dasmani gossains governed by the rules of the community to which they belong. The ordinary rules of inheritance in their entirety could not apply to such persons, for although the succession is through Chelas, any question as to preference between Chelas (when it was not provided for by the Guru) might be decided by the usages of community and the representatives of the community were the proper persons to decide such matters. Although the secular property of a Guru might be inherited by the Chela succession to the office of shebait would be governed by the rites laid down by the erector of the endowment and in their absence by the Panch of the community who would naturally be the proper persons to decide the question what constituted grave offence or acts contrary to custom or usages of the family. If a member of the Panch is unable to attend on account of his illness or being on pilgrimage, the other members of the Panch could act. Amongst Gossains, if one dies, leaving no Chela, his nearest gotia succeeds him, the ascendant being preferred to descendant and if there are more than one gotia of the same class the guddinashi gotia is entitled to preference. Where the shebait was once removed from office the plff. gotia stepped into his place by virtue of his being nearest preferential gotia according to the rules of order and did not require the appointment by the Panch to the office of shebait. (*N. R. Chatterjee and Sheep Shanks, JJ.*) AMRIT LAL SHAHA *v.* GOSSAIN GANAPAT GIR. 51 I. C. 884 = 23 C. W. N. 401.

HINDU LAW—Religious Endowment—Temple.

———*Religious endowment—Shebait—Position of—Co-shebaits—Right of individual to his share of the rent.*

Co-shebaits are not co-sharers but co-worshippers and a family arrangement arrived at between them cannot entitle them to treat the debutter property as their personal property and to sue personally for their share of the rent payable to the idol. Joint shebaits are for many purposes joint trustees. 34 Mad. 406; 5 C. L. J. 527 Foll. (*Mookerjee and Walmsley, JJ.*) NORENDRA NATH KUMAR *v.* ATUL CHANDRA BANDOPTHYA. 41 I. C. 837 = 27 C. L. J. 605.

———*Religious endowment—Shebait—Succession—Rights of founder and his heirs—Shebait, position of.*

A shebait holds his office for life, but the entire estate is vested in him, though his power of alienation are qualified and restricted. The rule in the Tagore case is applicable to an hereditary endowment and the Hindu law of inheritance does not permit the creation of successive life estates in an endowment. When the founder has given valid directions as to the devolution of the *shebaitship* upon the death of the last *shebait*, the office vests in persons who at the time constitute the heirs of the founder provided the last *shebait* has not taken it absolutely. The rule that when a worship of thakoor has been founded the *shebaitship* vests in the heirs of the founders in default of evidence that he had disposed of it otherwise or of there being some evidence of usage, course of dealing or circumstances to show a different mode of devolution cannot be applied so as to vest the *shebaitship* in persons, who according to the usages of worship, cannot perform the rights of the office. 35 All. 283 (P. C.), Exl. (*Mookerjee and Richardson, JJ.*) KUNJAMANI DASI *v.* NIKUNJA BEHARI. 20 C. W. N. 314 = 32 I. C. 823 = 22 C. L. J. 404.

———*Religious endowment—Shebait—Succession—Deed of endowment—Sishya Sishyanukarma, meaning of.*

A deed establishing an idol directed that the shebaitship should follow on the death of first shebait, *Sishyashishyanukarma*. It was held that the meaning was that one disciple of the shebait was to succeed the other in the line of the original shebait and not that one disciple should be succeeded by his own disciple. ((*Jenkins, C. J. and Chatterjee, J.*) GOPAL CHANDRA *v.* RADHORAMAN DAS. 13 I.C. 329 = 16 C.W.N. 108.

Religious Endowment—Temple.

———*Religious endowment—Temple Pujaree Mahomedan.*

HINDU LAW—Religious Endowment—Temple.

Held, the Mahomedan male who was also one of the pujarees was entitled to continue his right acquired by custom. The rights of receiving offerings and performing the duties of pujaree which were very simple were connected and the Mahomedan pujaree was entitled to both. (*Stuart, J.*) BABU v. SUKKHA. 1923 All. 165.

———*Religious endowment—Temple—Bhallavacharya Goswamis.*

A Ballavacharya Goswami has a specific interest in temple, idol and other property held by him capable of being partitioned or transferred. A gift by the Goswami of his interest to another Goswami is lawful and not contrary to the usages of the cult. (*Richards, C. J. and Banerjee, J.*) GOPAL LALJEE v. GIRDHAR LALJI. 23 I. C. 715.

———*Religious endowment—Temple—Right to worship—Jains.*

Das Jains are *khatuli* and are not entitled to perform poojas and *parikshal* in the Jain temple there. (*Richards, C. J. and Tudball, J.*) MOTI RAM v. MANDAY LAL. 16 I. C. 356.

———*Religious endowment—Temple—Removal of image to a new building on the ground that the old temple was out of repair.*

Under Hindu Law the manager of a public temple has no right to remove the image from a dilapidated temple and instal it in another new building much less of course when the removal is objected to by the majority of the worshippers. (*Shah and Crump, JJ.*) HARI RAGUNATH v. ANTAJI BHIKAJI. 44 Bom. 466 = 56 I. C. 459 = 22 Bom. L. R. 334.

———*Religious endowment—Temple—Right to worship—Admission in sanctuary—Levy of fees from devotees.*

The *shewaks* of a public temple are its trustees and managers and not its owners, that cannot levy fees on devotees going into the inner sanctuary; where the *shewaks* made rules fixing a graduated scale of fees for those worshippers who went inside the sanctuary. *Held*, that the rules prescribing the pass system were illegal and *ultra vires* in so far as they imposed fixed fees whether upon the *gors* or the general public who were freely entitled to worship in the temple at Dakor. Rules can be made and enforced by the *shewaks* to ensure good order and decency of worship and to prevent overcrowding in the temple but not for restricting the free right of the public to worship. (*Scott, C.J. and Hayward, J.*) ASHARAM GANPATRAM GOR v. THE DAKORE TEMPLE COMMITTEE. 44 Bom. 151 = 55 I. C. 956 = 22 Bom. L. R. 232.

———*Religious endowment—Temple—Idol—Suit—Parties.*

In a suit against one of the shebaits to set aside a claim preferred by him on behalf of an idol and allowed under O. 21, R. 58 neither the idol nor the other shebaits are necessary parties. (*Fletcher and Cuming, JJ.*) BIDHU SEKKAR v. KULODA PRASAD. 50 I. C. 525 = 46 Cal. 877.

———*Religious endowment—Temple—Shebaits—Co-shebaits.*

Co-shebaits are in some respects joint trastees; they form a corporate body and they must execute the duties of their office in their joint capacity. 8 Cal. 44; 11 Cal 333; 5 C. L. J. 527; 26 Mad. 461; 27 Mad. 192; 13 M.L.J. 341. Cons (*Mookerji and Bachcroft, JJ.*) ABDUL GAFFUR MANDAL v. UMA KANTA PANDIT. 24 I. C. 266 = 19 C.W.N. 260.

———*Religious endowment—Temple—Idol—Mutilation of—Effect.*

An endowment for the worship of an idol is not affected by the destruction or mutilation of the image; the religious purpose still survives and a new image may be established or consecrated in order that it may be worshipped as intended by the original founder. 37 Cal. 128; 8 C.L.J. 369 Foll. (*Jenkins, C.J. and Mookerji, J.*) BIJAO CHAND MOHATAP v. KALI PADE CHATTERJI. 41 Cal. 57 = 17 C.W.N. 1013 = 20 I.C. 78 = 18 C.L.J. 347.

———*Religious endowment—Temple—Servants—Archaka—Right to offerings—Wrongful dismissal by trustee.*

An archaka of a temple wrongfully kept out of the office by the trustee is entitled to compensation for loss of offerings during the period of his exclusion though the offerings are of a purely voluntary nature. A temple trustee who has wrongly excluded an archaka from the temple cannot plead that the archaka should mitigate his claim to damages by promptly challenging its propriety in court. (*Oldfield and Phillips, JJ.*) BALA SUBRAMANIA SASTRI v. PONNUSWAMI AIYAR. 26 M. L. T. 259 = 10 L. W. 305 = 54 I. C. 721 = (1919) M. W. N. 707.

———*Religious endowment—Temple—Servants—Archakas—Position of.*

A temple archaka is not justified in disobeying the orders of the trustee regarding the showing of honours to the Ubayakars of the temple on the ground that he has not been paid his usual perquisites. (*Bakewell and Odgers, JJ.*) NILI RANGASWAMI MUDALIAR v. KARI KRISHNAN BATTACHARIAR. 54 I. C. 281 = 10 L. W. 616.

———*Religious endowment—Temple—Communal temple—Majority—Decision.*

Where a village temple is owned in common by the villagers, the right of management of the temple and its properties vests in the inhabitants of the village as a corporation. The decision of a majority of the villagers in a meeting duly convened, binds the minority in all matters connected with the management of the temple. (1918) M. W. N. 595 Rel. (*Seshagiri Iyer and Moore, JJ.*) VENKATASUBBAN PATTER v. AYYATHURAI. 37 M. L. J. 554 = 54 I. C. 202 = 26 M. L. T. 364.

———*Religious endowment—Temple—Public or private—Dedication—How proved.*

Worship by the public, contributions by the public for temple buildings, installation of stone idol by the founder, conducting of regular processions of images in public streets and recognition by public servants as a public temple indicate dedication and the temple is a public religious endowment. Founding by a private individual, uncontrolled management in the family of the founder, existence of a tomb of the founder in the vicinity of the shrine, performance

of puja to the image of the founder or his descendants, the founder's family members being pujaris restrictions on promiscuous entrance into the shrine and contributions by the members of the family do not necessarily militate against a public dedication. (*Sadasiva Iyer, Seshagiri Iyer and Burn, JJ.*) SUBRAMANYA IYER *v.* LAKSHMANA GOUNDAN.

(1919) M. W. N. 899=54 I. C. 177=
27 M. L. T. 11.

———*Religious endowment—Temple—Servan—Trustee's authority—Suspension of Archaka for an unreasonably long period*—Interim *order treated punitive without notice to archaka—Damages for wrongful suspension—Liability of temple funds.*

Trustees of a temple are entitled to make an *interim* order suspending a hereditary archaka pending enquiry into his conduct (even though no notice is given to him) if such action is urgently required in the interests of the temple. But if the inquiry is not held within a reasonable time after the *interim* order or if the *interim* order is converted into a punitive order without notice to the archaka it becomes illegal and invalid and the archaka can sue for damages. *Held*, that the trustees in suspending the archaka having acted on behalf of the temple and in what they conceived to be the best interests of the institution, the plff. was entitled to recover the damage decreed to him from the funds of the temple. 35 Mad. 731 ; 40 Mad. 177 ; 41 Mad. 357 Ref. (*Phillips and Krishnan, JJ.*) CHAKRAVARTHI JAGANNATHACHARIAR *v.* SEENU BHATTACHARIAR.

42 Mad. 618=36 M.L. J. 361=
51 I. C. 869=(1919) M. W. N. 240.

———*Religious endowment—Temple—Right to worship—Persons interested—C. P. Code, S. 92.*

Per *Abdur Rahim, J.*—(*the majority contra.*) In the case of a temple or mosque persons entitled to attend there for purposes of worship and devotion are presumably the beneficiaries intended by the founder. A mere right to worship is an interest sufficient for a relator under S. 92, C.P.C. (*Abdur Rahim, Oldfield and Coutts-Trotter, JJ.*) RAMACHANDRA IYER *v.* PARAMESHWARAN MUNBU.

42 Mad. 360=36 M.L.J. 396=9 L.W. 492=
(1919) M.W.N. 370=50 I.C. 693=25 M.L. T. 304.

———*Religious endowment — Temple — Village temple—Temple properties owned by villagers—Award on the scheme of management—Decree, whether alterable by majority—Position of managers.*

The law regulating members of a *chit* fund does not apply to a community who own the properties of a village temple, since it more resembles corporations whose law applies to it. Where a corporation consists of an indefinite number, the decision of the majority of the persons present binds the minority but where the number is definite only the major part of the whole number can bind the minority. This rule applies in India to fluctuating communities like the caste of a village. (*Abdur Rahim and Napier, JJ.*) YEGNARAMA DIKSHITAR *v.* GOPAL PATTAR.

41 I.C. 738=(1917) M.W.N. 595.

———*Religious endowment—Temple—Trustee—Duty of.*

The trustee of a temple is bound to receive the money to perform a festival from whomsoever it may come. 6 Mad. 151, Foll. (*Ayling and Seshagiri Aiyar, JJ.*) PUNKAJAMMAL *v.* SECRETARY OF STATE. 40 Mad. 1108=
32 M. L. J. 237=5 L. W. 346=40 I. C. 516=
21 M. L. T. 411.

———*Religious endowment—Temple Trustee—Powers of.*

A trustee has freehold in his office and the temple property is vested in him. He must manage the estates and control the Devasthanam. He can be removed from office for good and sufficient cause. He is responsible for the beneficiaries for its money and is liable for loss from neglect of trust. He is not bound to invest the funds of the temple at the direction of the Committee. (*Sadasiva Aiyar and Napier, JJ.*) SUNDARA RAMA SASTRI *v.* ANANTHA KRISHNA NAIDU, 38 I. C. 695=5 L. W. 672.

———*Religious endowment— Temple—Public or private—Tests,*

The facts that a temple is (1) open for public worship, (2) that the rites and ceremonies are such as are observed in public temples, (3) that inam lands have been granted to the temple constitute strong evidence fits public character. 24 Mad. 243 ; 30 I. C. 822 Foll. The facts that a temple is used for caste meetings and that monies of the temple have been spent on various objects tending to promote the benefit of the caste, does not of itself prove the temple to be the private property of the caste. (*Wallis, C. J. and Phillips, J.*) MUTHIAH CHETTY *v.* PERIANNAN CHETTY.

34 I. C. 551=4 L. W. 228.

———*Religious endowment—Temple — Temple Committee—Powers of—Trustee—Government control—Value of.*

The temple committee must show that the right of appointing trustees in respect of a particular temple vests in them. Evidence that the Government officials exercised supreme control over the management of the temple is not enough. Nor is the fact that the Government have often appointed trustees as representing the sovereign power enough to clothe that temple committee with the power to appoint trustees. (*Sankaran Nair and Oldfield, JJ.*) PARAMANAYAGAM PILLAI *v.* AMBALAVANA PANDARA SANNADHI. 28 I. C. 833.
2 L. W. 371=

———*Religious endowment—Temple—Mode of worship — Right of worshippers — Recitations—Conjeeveram temple.*

Only one *manthram* can be recited in a temple on all occasions when *puja* is performed and that by the mirasidars and the recital of a different *manthram* by others during worship will be an unlawful interference. But any sect of worshippers may consistently with the equal right of other worshippers repeat any appropriate *manthrams* out of personal devotion. In the Conjeeveram temple during procession sect otherthan the Vadagalai mirasidars are not entitled to interfere with it and form a Goshti in front of the idol. (*Sankaran Nair and Oldfield, JJ.*) TIRUMALAI EECHAMBADAI *v.* RAYADURGAM KRISHNASWAMI.

28 I. C. 604=(1915) M. W. N. 281.

———*Religious endowment—Temple—Duty of trustee to receive offerings from worshippers.*

HINDU LAW—Religious Endowment—Temple.

Trustees of Hindu temples will be acting contrary to their duty if they refuse to accept voluntary contributions offered by devotees for performance of new *pujas* and festivals, provided they are not inconsistent with the object of the institution and the requisite funds are forthcoming from the devotees. 23 Mad. 298 Foll. (*Sadasiva Aiyer and Hannay, JJ.*) AMRITHESWARA PANDITHAR *v.* MURUGAPPA CHETTIAR. 27 I. C. 886=2 L. W. 127.

———*Religious endowment—Temple—Right of worship in—Sudras—Burden of proof.*

Temples are intended for the worship of all castes of the Hindu religion. A person wishing to restrict a Sudra from proceeding beyond Dwajhasthambham must prove the usage of that temple that a particular individual or a community is prohibited from going beyond Dhwaj Rastham-ba. (*Sadasiva Iyer and Tyabji, JJ.*) GOPALA MOOPA *v.* NARA SUBRAMANIA IYER.
27 M. L. J. 253=1 L. W. 675=
26 I. C. 7=(1914) M. W. N. 822.

———*Religious endowment—Temple—Trustees—Power of Temple Committee to appoint—Additional trustees—Civil Court—Jurisdiction—Trusts Act, S. 49.*

A power to appoint an additional trustee, if not in variation of the scheme of management of the temple, is vested in the Temple Committee as the successor of Board of Revenue and is inherent in their power of general superintendence. Where no person is deprived of his freehold office a Temple Committee is not bound to show that the appointment was for just and sufficient cause. The only limit to their discretion is by an analogy to S. 49 of the Trusts Act. A civil court has jurisdiction to decide if this discretionary power has been properly exercised. 3 M. H. C. R. 334; 21 Mad. 179; 17 Mad. 212; 5 M. H. C. R. 53; 6 Mad. 54 Foll.; 34 Mad. 375; 34 Mad. 333; 29 Mad. 534 Dist. (*Sadasiva Iyer and Napier, JJ.*) THIRUVENGADATHA IYENGAR *v.* PONNAPPA IYENGAR.
38 Mad. 1176=25 I. C. 965=
28 M. L. J. 209.

———*Religious endowment—Temple—Honours—Infringement—Injunction.*

Civil Courts have jurisdiction to determine the order of precedence in the distribution of honours in a temple and to protect by an injunction persons having a right to the first honours from such right being infringed by others entitled to the honours subsequently. The Civil Courts will respect the long established usage of the institution though it may be an innovation on the established usage. (*Sundara Iyer and Ayling, JJ.*) SOMA BALLA CHARIAR *v.* THIRUVENKATACHARIAR. 15 I. C. 409.

———*Religious endowment—Temple — Servant—Trustee's right—Interim suspension of archaka pending inquiry into misconduct—Suspension without notice, if valid—Jurisdiction of Civil Court.*

The position of an hereditary *archaka* who is merely servant of a temple in relation to the trustee, that is representative of the temple is different from the position in which the trustee stands to the Temple Committee. A hereditary *archaka* can be dismissed by the trustee, but only for good reasons which are liable to examination by a Court of Justice. No notice is required for an *ad interim* suspension pending enquiry into a complaint against a servant entitled to hold office during good behaviour or for life. Where the order of suspension passed on an *archaka* by the trustee is not passed as a punishment for an offence of which he is found guilty but was *ad interim* preventing him from performing his office pending the investigation of the charges of misconduct against him, the order of suspension is not invalid simply because it was passed without notice to the *archaka*. 21 Mad. 179 Expl. and Dist. In any event the court will not set aside the order of suspension, where after inquiry, it has been found that it was proper and justifiable under the circumstances. (*Benson and Sundara Aiyar, JJ.*) SESHADRI AIYANGAR *v.* RANGA BHATTAR.
35 Mad. 631=21 M. L. J. 580=
10 I. C. 548=10 M. L. T. 14.

———*Religious endowment—Temple—Manager—Powers of mohunt.*

If a temple is built for public worship and is used as such, the facts, that the worship is performed by a member of the public and it has received further grants from the public and it has been declared as waqf in previous litigation, sufficiently indicate that the temple was a public dedication. The mohunt is not therefore the absolute owner thereof and cannot alienate the property but for necessity. The surplus income must be used as accretion to the trust property. (*Kanhaiya Lal, A. J. C.*) GAURI NATH KAKAJI *v.* RAM NARAIN. 60 I. C. 467=7 O. L. J. 643

———*Religious endowment—Temple—Shebait—Position of—Transfer of office—Void.*

The trustee of a public religious endowment cannot alienate his office and duties or the annexed trust property by sale or gift so as to create a valid title in the transferee. He cannot also create life-interest in favour of the donee in respect of the *shebati* right. He has no beneficial interest beyond what may be expressed in the trust and has no powers of alienation beyond what may be necessary or beneficial for the purposes of the trust. (*Miller, C. J. and Mullick, J.*) NATHE PUJARI *v.* RADHA BENODE NAICK.
3 P. L. J. 327=4 P. L. W. 283=47 I. C. 290=
1918 Pat. 247.

———*Religious endowment—Temple—Transfer of worship—Public policy.*

In the case of every ancient temples the presumption is that the founder in making his delegation of the powers of worship to certain persons intended that the powers should remain in their hands for the good of the temple and the public convenience and that the delegation by such persons of their powers to others is against public policy. (*Sharfuddin and Roe, JJ.*) PUNCHA *v.* BINDESWARI. 37 I. C. 960.

———*Religious endowments—Temple—Public and Private temple—Distinction.*

Where the idol is an ancient one established for public worship and the offerings generally of a more or less permanent character, the temple is a public temple. Where half the plot of land was given to a priest and the other half was bought and a temple built out of public subscriptions it was a public temple. The

adverse acts of the priest of a temple cannot alter the real nature of the property attached to it. (*Hayward, A. J. C.*) OSERI *v.* BAVA BALAMUKANDAS. 24 I. C. 712=7 S. L. R. 129.

Religious Endowment—Trustee.

———*Religious endowment—Trustee—Temple—Rights of—General and particular trustees—Limitation—Adverse possession.*

The endowment property may consist partly or wholly of a right to enjoy the revenues of property in the possession of the persons who have the right and the duty to manage such property, collect the income and hand it over when collected to be used in the proper manner for the purposes of the endowment. Such persons may even have certain rights of apportionment of the revenue so handed over by them. There may be a general trustee of the whole endowment including the revenues when so collected and handed over. But in such a case the general trustee is not entitled to possession of properties out of which that portion of the revenue came. His rights do not commence until after the collection of the revenues by those who are in possession. An idol may have not merely a general trustee but also other subordinate representatives having the right to manage certain special portions of the property and pay over the income so collected to the endowment and even to some degree control its use. Such rights are not inconsistent with the existence of a general trustee but they are fatal to his claim to possession of properties from which those revenues were derived. For purposes of limitation the possession of such subordinate representatives will be held to be adverse to that of the general trustee. (*Lord Moulton*). AMBALAVANA PANDARA SANNIDHI AVARGAL *v.* SRI MEENAKHSI SUNDARESWARAR DEVASTHANAM OF MADURA.

43 Mad. 665=47 I. A. 191=18 A. L. J. 594=
2 U. P. L. R (P. C.) 95=39 M. L. J. 50=
28 M. L. T. 83=12 L. W. 212=56 I. C. 730=
(1921) M. W. N. 11 (P. C.)
[Affirming on appeal 26 I. C. 841=
28 M. L. J. 217.]

———*Religious endowment—Trustee—Powers of—Leasing—Law applicable to—Usage—Not repugnant to purpose of endowment.*

Where there is no deed of endowment for the coming the rules according to which the endowed property and its income are to be dealt with in order to carry out the intention of the original donor can only be ascertained by inference from the practice proved by the evidence to have been followed in the particular case. 43 Cal. 707 Rel. But the rules must not be inconsistent with or repugnant to the purpose of the endowment. Presumably the founder of an idol intends it and its worship to be perpetual. A rule therefore which authorised the shebait at his will and pleasure to alienate the dedicated property so as to starve the idol and its worship would be so repugnant to the whole purpose and object of the endowment that it could not be held to embody the original endower's intention. A permanent lease of temple properties by the trustee of a

temple is in the absence of unavoidable necessity not binding on the temple or the successors of the trustee even though the rent reserved was adequate at the time. (*Lord Atkinson.*) PALANIAPPA CHETTY *v.* SREEMATH DEVASIKAMANI PANDARA.

40 Mad. 709=21 C.W.N. 729=
15 A.L.J. 485=1 P.L.W. 697=33 M.L.J. 1=
19 Bom. L.R. 567=22 M.L.T. 1=
(1917) M.W.N. 507=26 C.L.J. 153=
6 L.W. 222=39 I.C. 722=44 I.A. 147 (P.C.)

———*Religious endowment—Trustee*—De facto *manager—Mortgage by, when binding on successor.*

On the death of a mahant of a math two chelas disputed the succession and one of them executed a mortgage of the math properties to the plaintiff. Afterwards they effected a compromise which did not refer to the payment of this mortgage debt. The mortgagor died and the plaintiff brought a suit on the mortgage against the other chela who had succeeded to the math. *Held* that as the plaintiff was aware that the property which the mortgage bond purported to charge belonged to the math and also that the mortgagor had not succeeded in establishing his title as mahant, his suit on the mortgage could not stand. (*Lord Macnaughten.*) MADHO PRASAD *v.* RAMRATAN GIR.

15 C. W. N. 833=(1911) 2 M. W. N. 66=
14 C. L. J. 264=13 Bom. L. R. 780=
21 M. L. J. 933=11 I. C. 507=
10 M. L. T. 481 (P. C.).

———*Religious endowment — Trustee — Powers of—Commutation of services into money rent—When subsequent manager can interfere with it.*

Where the defendant held lands belonging to a temple at half the Government rate and was also liable to render certain personal services and a manager commuted the rendering of personal services to payment of a rent of 1 rupee in a suit by the subsequent manager to cancel the commutation. *Held* that the power of the manager of a temple being similar to that of a manager of an infant heir, it was incumbent upon the defendant to show the existence of some special circumstances of necessity justifying the arrangement which was made between him and the former manager. (*Chatterjee and Newbould, JJ.*) SURAJ DATTA SARMA BOLAI *v.* EKADAHIA KOCH. 39 I. C. 522.

———*Religious endowment — Trustee — Decree against—No personal liability.*

Where a decree has been passed against a person in his capacity as shebait execution can be taken out only against the property of the endowment in his hands. (*Mookerjee and Beachcroft, JJ*) UPENDRANATH *v.* KUSUM KUMARI DASI.

42 Cal. 440=20 C. L. J. 485=
27 I. C. 328=19 C. W. N. 520.

———*Religious endowment—Trustee—Mahant—Denial of*—Wakf *nature of the property attached to temples unfit to continue in the office—Removal.*

If a *mahant* denies the wakf nature of the property attached to the temples and sets up an adverse title to it, this alone is sufficient to render him an unfit person to continue in the office of the *mahant*, and liable to removal on institution of

proper proceedings for the same. (*Broadway and Brasher, JJ.*) BAWA AJUDHIA DAS *v.* JOKHU MALIK. 1923 L. 131.

———*Religious endowment—Trustee—Transfer of right.*

In the absence of a custom, a gift of the right of management of a *Bunga* for the personal gain of the donor is invalid. 27 Mad. 192 Dist. (*Scott-Smith and Broadway, JJ.*) GHAL SINGH *v.* SURJAN SINGH. 54 I. C. 955=146 P. R. 1919.

———*Religious endowment—Trustee—Removal—Grounds.*

When a person has been managing a public temple and its properties after his father for a long time, the inference is that the community has accepted him as his successor. Unless he is guilty of misconduct, he cannot be evicted from the temple or the management of its properties, (*Ratligan, C. J.*) GHUNGAR MAL *v.* CHANDAR SHANKAR. 50 I. C. 523.

———*Religious endowment—Trustee—Debts—If a charge on income of the temple.*

If a debt is incurred by the manager of a temple personally for a temple necessity, it does not create a charge on the temple revenues nor does it bind his successor in office. (*Le Rossignol, J.*) FAKIRA SHAH *v.* BRIJ LAL. 6 P. W. R. 1917=39 I. C. 381=20 P. L. R. 1917.

———*Religious endowment—Trustee—Pronote by—Personal liability.*

A person drawing a bill or making a note as trustee of a charity or a temple, is not acting on behalf of a principal and is personally liable on such bill or note. 32 M. L. J. 259: 17 M. L. J. 615; 26. I. C. 356 Foll. (*Wallis, C. J. and Spencer, J.*) PALANIAPPA CHETTIAR *v.* SHANMUGAM CHETTIAR. 41 Mad. 815=8 L. W. 317=35 M. L. J. 90=49 I. C. 23=24 M. L. T. 51.

———*Religious endowment—Trustee—Accounts—Duty to keep separate accounts for trust funds and private property—Mixing up—Onus.*

Trustees are bound to keep separate accounts of their dealings with the trust property and with their private property and to maintain accounts of all loans taken from one property for the benefit of the other. Where the question is as to the ownership of the properties purchased by the trustee, and it is not known that the purchase-money came from private funds, the properties will be held to belong to the trust. Where it is clear that the funds of the trust and private funds of the trustee have not been kept distinct in the accounts but have been mixed up together, the onus is upon the trustee to prove that the property purchased by him belongs to him and not to the trust. (*Wallis, C. J. and Spencer, J.*) SUBBARAYA CHETTY *v.* SUBRAMANIA IYER. 48 I. C. 833=(1918) M. W. N. 786.

———*Religious endowment—Trustee—Permanent tenancy—Occupancy rights—Creation of.*

In the case of ryotwari lands owned by a Hindu temple, its trustees have no power to confer occupancy rights upon tenants of the temple and there can be no presumption in favour of a permanent tenancy from the mere length of possession, hereditary succession and transfers of the holding without any objection by the trustees. (*Wallis, C. J. and Sadasiva Aiyar, J.*) MUNAI MUHAMMAD *v.* MUTHU ALAGAPPA CHETTIAR. 23 M. L. T. 161=7 L. W. 380=44 I. C. 894=34 M. L. J. 234.

———*Religious endowment—Trustee—Debts of—Rights of creditors.*

A temple is a permanent religious charity, carried on for the benefit of the present and future worshippers and its property should be preserved intact in order that the existence of the charity may be continued and its income alone should be applied by the Manager or Dharmakarta in the administration of the charity. 40 Mad. 709 Rel. A creditor who has sold certain fire-works to the trustee for the purposes of the temple cannot obtain a decree against the temple funds. A purchase of fire-works is not necessary for the performance of the trusts. (*Bakewell and Kumaraswamy Sastri, JJ.*) ADIRAJA ARSU *v.* SHEIK BUDAN SAHEB. 34 M. L. J, 358=44 I. C. 815=23 M. L. T. 278=(1918) M. W. N. 331.

———*Religious endowment—Trustee—Co-trustees—Delegation of management.*

Where, in accordance with the usual practice of a temple, the managing trustee in his turn leases out temple properties in the name of both trustees and the other trustee does not object to the arrangement, the lease is binding on the temple. (*Spencer and Krishnan, JJ.*) MANICKAM PILLAI *v.* RATNASWAMI NADAR. (1917) M. W. N. 837=43 I. C. 210=6 L. W. 689=33 M. L. J. 684.

———*Religious endowment — Trustee— Debts—Personal liability.*

A succeeding trustee should not be held responsible for antecedent mismanagement and he would be justified in charging the temple with the debts incurred by his predecessors; where the income of the temple was sufficient to meet the current expenses the trustee is personally liable for debts incurred during his term of office. (*Ayling and Seshagiri Aiyar, JJ.*) VISVANATHA PANDARA SANNADHI *v.* SOUTH INDIAN BANK, TINNEVELLY. 42 I. C. 609=6 L. W. 712=(1917) M. W. N. 879.

———*Religious endowment—Trustee—Compromise—Duty of Court—Private* Devaswom—*Mortgage—Modification of terms—If creates new mortgage.*

The trustee of a private *devaswom* sued to set aside a mortgage created by his predecessor and effected an unregistered compromise deed reducing the mortgage amount and releasing certain items of the mortgaged property from liability, some of the junior members of the *kovilagom* subsequently brought a suit for possession of the mortgage properties on the ground that the mortgage did not bind the *devaswom*. *Held*, that the plaintiff's suit was maintainable, that the compromise in the prior litigation was not binding on the *devaswom* in the absence of proof that it was effected *bona fide* and for necessity; and that the mere fact that the mortgagee withdrew a large portion of his original claim would not validate the compromise

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unless the prospects of the contest regarding the balance were shown to be unfavourable to the *devaswom*. The compromise did not extinguish the original mortgage but was merely an arrrangement whereby the mortgagee released certain rights in favour of the *devaswom* and as such need not be registered. (*Oldfield and Sadasiva Iyer, JJ.*) RAVI VARMA RAJAH *v.* RAMASUBRAMANIA PATTAR. **4 L. W. 576 = 31 M. L. J. 733 = 37 I. C. 692 = (1916) 2 M. W. N. 312.**

———*Religious endowment—Trustee—Powers of.*

Though there are no statutory provisions dealing with charitable trusts in India, the rules laid down in the Trusts Act may be followed as a guide. (*Abdur Rahim and Phillips, JJ.*) SUBRAMANIA IYER *v.* PRAYAG DOSJEE VARU. **33 I. C. 677.**

———*Religious endowment—Trustee—Dismissal—Sanction of Committee.*

If the manager of the Temple Committee sent proposals to dismiss trustee to the other members and even before receiving replies thereto, he informed the trustee that he had been dismissed, it does not operate as a dismissal. Such a matter cannot be done merely by the circulation of papers without giving the trustee an opportunity to explain his conduct, and without enquiry. (*Wallis, C. J. and Phillips, J.*) PONNAMBALA PILLAI *v.* MUTHU CHETTIAR. **(1916) 1 M. W. N. 181 = 33 I. C. 52 = 30 M. L. J. 619.**

———*Religious endowment—Trustee—Co-trustees—Majority—Powers of.*

The majority of a body of charitable trustees can legally bind the whole body. A few only of the trustees without any authority from the entire body cannot discharge third parties from payment of their dues to the trust. (*Spencer and Coutts-Trotter, JJ.*) NETHIRI MENON *v.* GOPALAN NAIR. **39 Mad. 597 = 2 L. W. 714 = 29 M. L. J. 291 = (1915) M. W. N. 586 = 30 I. C. 713 = 18 M. L. T. 220.**

———*Religious endowment—Trustee—Reimbursement—Lien for out-of-pocket expenses*—De facto *trustee—Trusts Act, S. 32.*

Trustees of public charitable endowments have no larger rights against the trust property for expenses incurred in connection with the trust than are recognised in the case of private trustees by S. 32 of the Trusts Act. In the case of either private or public trusts, the court is not bound to leave the trust estate in possession of a person not entitled to the character of a trustee, merely because he has expended money on it while acting as a trustee. Where possession is attempted to be retained by such a person on the pretext of improvements, the court should direct him to deliver possession directing compensation to be determined on taking accounts. (*Wallis, C. J. avd Coutts-Trotter, J.*) NARAYANAN *v.* LAKSHMANAN. **39 Mad. 456 = 29 I.C. 1 = 23 M.L.J. 571.**

———*Religious endowment—Trustee—Re-imbursement—Out-of-pocket expenses—Money spent on litigation—Right to re-imbursement—Nature of right—Limitation Act, Art. 120.*

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A trustee of a public trust has a first charge on the trust properties for the purpose of reimbursing himself for advances properly made for the trust. Art. 120 of the Limitation Act is the article applicable for the recovery of monies spent. His right to sue for such monies does not accrue before the date on which he is judicially declared to be no longer a lawful trustee or perhaps till he is dispossessed of the trust estate in pursuance of the judicial declaration. The expenses of a suit in which a person posing himself to be a trustee unsuccessfully resists another's right to be the trustee cannot be allowed as a proper charge on the trust property. Per *Sadasiva Iyer, J.*—A trustee has not only got a right to reimburse himself out of the rents and profits of the trust property, but has also a charge thereon including the corpus which can be enforced only by an order prohibiting any disposition of the trust property without previous payment of out of pocket expenses properly incurred by him. A person who is *de facto* trustee, but who *bona fide* thinks himself to be *de jure* trustee, is entitled to reimbursement of all expenses properly incurred by him just like a trustee *de jure*. Even a *de facto* trustee or a trustee *de son tort* is entitled to be reimbursed for all the necessary expenses. Of course, the accounts of such a trustee *de son tort* may be liable to be subjected to a more severe scrutiny than those of a lawful trustee. A trustee is entitled to remain in possession till he is reimbursed in respect of all proper charges incurred by him. (*Miller and Sadasiva Iyer, JJ.*) KALIBA MAVEILVIJA *v.* SORAN BIBI. **38 Mad. 260 = 23 I. C. 290 = 28 M. L. J. 347.**

———*Religious and charitable endowment—Trustee—Promissory note—Personal liability.*

Where in a promissory-note the makers described themselves in the body as the manager and agent respectively of *Abhisheka Kattalai* and executed the note also in their character as such manager and agent, they are not personally liable thereon. 25 M. L. J. 425. *Chapman* v. *Smethurst*, (1909) K. B. 927 Foll. (*Sadasiva Aiyar, J.*) SUNDARESA GURUKKAL *v.* SAMBASIVA IYER. **28 I. C. 93 = 2 L. W. 188.**

———*Religious endowment—Trustee—Reimbursement—Out-of-pocket expenses—Right to.*

A trustee is entitled to be reimbursed for the moneys spent on litigation *bona fide* believed to be in the interests of the trust, provided the trustee has not been guilty of laches or misconduct. He can take out of the trust-funds whatever he has been obliged to spend to defend or establish his right as trustee, but a trustee not entitled to the office cannot claim that right. (*Benson and Sadasiva Aiyar, JJ.*) SUBRAMANIA AIYAR *alias* PICHU AIYAR *v.* M SUBBA NAIDU. **25 M. L. J. 452 = 21 I. C. 421 = 14 M. L. T. 437.**

———*Religious endowment—Trustee—Co trustees.*

Co-trustees can so arrange amongst themselves as to enjoy different portions of the trust property subject to accounting for the income for purposes of the trust. The obligation to discharge duties of the trust will, however, remain jointly on all of

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them. (*Benson and Sundara Aiyar, JJ.*) RAJA RAM *v.* RAM BOY. 24 M. L. J. 75 = 13 M. L. T. 106 = 18 I. C. 77 = (1913) M. W. N. 176.

———*Religious endowment—Trustee—Permanent lease—Presumption.*

A presumption cannot be drawn in favour of what offends against legal principles; so a presumption of permanent tenancy cannot be applied to debutter property because the creation of a fixed rent would be a breach of duty in a *shebait*. 13 W. R. 28 P. C. Rel. on. (*Jenkins, C. J. and Chatterjee, J.*) SATYASRI GHOSAL *v.* KARTIK CHANDRA DAS. 15 C. L J. 227 = 13. I. C. 596 = 16 C. W. N. 418.

Also *see* (1) 44 I. C. 894.
(2) 41 I. C. 788.
(3) 45 I. C. 942 = 41 Mad. 709 (P. C.).
(4) 59 I. C. 241 = (1920) M. W. N. 532.

———*Religious endowment—Trustee—Removal—Hereditary trustee.*

Removal of one trustee from a hereditary trusteeship, does not act as a forfeiture and his heir will come in his place personally, if major or through a substitute, if a minor, as long as his minority lasts. (*Benson and Sundara Iyer, JJ.*) VENKATACHALA PILLAI *v.* TALUK BOARD, SAIDAPET. 34 Mad. 375 = (1911) 1 M. W. N. 304 = 10 I. C. 301 = 21 M. L. J, 305.

———*Religious endowment—Trustee—Alienation by manager—Duty of alienee—Necessity—Burden of proof.*

A mortgage of trust property by the mahant effected after the creditor had satisfied himself as to the existence of necessity is enforceable, and the creditor need not show that the money was actually applied for the purpose for which it was borrowed. (*Daniels and Wazir Hassan, A. J. Cs.*) DUROA BHARATI *v.* NAGESWAR NATH. 60 I. C. 544 = 23 O. C. 320.

———*Religious endowment—Trustee—Powers of.*

A trustee of property devoted absolutely and in perpetuity to religious purposes, has no beneficial interest in it beyond what he is given by the express terms of the trustee. (*Stuart and Kanhaiya Lal, A. J. Cs.*) SITARAMJI *v.* JADUNATH SINGH. 24 I. C. 72 = 1 O. L. J. 204.

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———*Religious endowment—Trusteeship—Right to private and public trusts—Intention of donor—Inam grants—Evidence.*

With regard to private charities such as endowments for the support of the family idol, the law is that if there is no contrary provision in the original grant, the right of management passes to the natural heirs of the original grantee and if there be no other arrangement or usage and no scheme settled by the court, will be exercised by the managing member of the family before partition or in turns by the several heirs after partition. L. R. 33 I. A. 139 Ref. *Quaere.*—Whether the same rule applies to public charities such as lands endowed for charitable purposes by a sovereign ruler. Certain lands had been granted in inam (by the Rajah of Tanjore) to the royal priest for

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the purpose of conducting the charities of a food chatram near the tomb of the first priest and for an agraharam by building houses round about the holy place. The grant was confirmed by the British Government by a title-deed to the manager for the time being of the charity and his successors without any mention of his personal name. *Held*, that there was sufficient indication in the documents and the surrounding circumstances of the case that a devolution of the management of the heirs of the original donee was inconsistent with the purposes of the founder when he created the endowments; (2) and that the management would therefore vest only in the person who for the time held the office of royal priest and head of the mutt. 2 M. H. C. R. 19; 20 Bom. 495 Appr. (*Sir Walter Phillimore.*) SRI SETHURAMASWAMIAR *v.* SRI MERUSWAMIAR. 41 Mad. 296 = 7 L. W. 22 = 43 I. C. 806 = 4 P. L. W. 91 = 34 M. L. J. 130 = 16 A.L.J. 113 = 27 C. L. J. 231 = 22 C. W. N. 457 = 20 Bom. L. R. 514 = 45 I. A. 1 (P. C.). [On appeal from 34 Mad. 470 = 20 M. L. J. 108 = 4 I. C. 76 = 6 M. L. T. 319].

———*Religious endowment—Trusteeship—Devolution—No provision for—Right to nominate trustees—Revocation of appointment.*

When a Hindu creates an endowment of a temple but does not provide for the management of the property after him the right to nominate trustees is vested in him until his death and continues to his heirs after him. A valid appointment of trustees cannot be subsequently revoked. (*Richards and Banerji, JJ.*) SUKHBIR SINGH *v.* NIHAL SINGH. 18 I. C. 232.

———*Religious endowment—Trusteeship—Devolution of—Founder's heirs.*

Where a Hindu testator has named certain trustees to carry out the trust and they have all died before the creation and completion of trust in the absence of any provision made by the testator to meet such a contingency, the right to do that, which those persons would have done, devolved according to Hindu Law, on the heir of the testator. 17 Cal. 3 Foll. (*Chandavarkar and Hayward, JJ.*) CHELLABHAI *v.* UDERAM. 36 Bom. 29 = 12 I. C. 577 = 13 Bom. L. R. 989.

———*Religious endowment—Trusteeship—Succession—Right to—Appointment by predecessor.*

A trusteeship with power to appoint a successor is well-known and recognised by law, and may be prescribed for. When title is acquired by statutory operation, the title of the true owner is not revived by his re-entry; in other words, even if the lawful owner should acquire possession he is not thereby remitted to his original rights. (*Mookerjee, A. C. J. and Fletcher, J.*) KASSIM HASSAN *v.* HAZRA BEGAM. 60 I. C. 165 = 32 C. L. J. 151.

———*Religious endowment—Trusteeship—Right to appoint—Founder's right.*

Where a private endowment is of quite recent date affording no time for growth of a usage or a custom and the founder has made no express provisions for the devolution of the office of a *shebait* it is vested in the founder or

his representative. 11 C. L. J. 2; 22 C. L. J. 404 Ref. (*Mookerjee and Panton, JJ.*) BARANASHI MAZUMDAR *v.* SUDARASAN DAS MANTHA.
55 I. C. 784=31 C. L. J. 174.

———*Religious endowment—Trusteeship—Vacancy—No provision in deed of endowment as to appointment of successor—Founder's heirs—Court's powers—Receiver, appointment of.*

Where the *shebait* of an idol is dead and the deed of endowment does not provide for filling up the office, the management reverts to the founder's representatives even though the endowment has assumed a public character. But an appointment by the majority of the representatives is not valid in the absence of a provision in the deed of endowment to that effect. If they are not unanimous, the trust will not be allowed to fail, but the court will appoint a *shebait* having regard to the wishes of the founder. A court has, however, no authority to place the endowed properties permanently in the hands of a Receiver. (*Mookerjee and Beachcroft, JJ.*) RAJ KRISHNA DEY *v.* BIPIN BIHARI DEY.
40 Cal. 251=
18 I. C. 961=17 C. L. J. 189.

———*Religious endowment—Trusteeship—Founder's heirs—Rights of.*

In the absence of a duly appointed *mahant* the founder of a Dharmasala can eject a trespasser. (*Chevis, J.*) PREM SINGH *v.* MUKUND SINGH.
151 P. W. R. 1914=26 I. C. 345=
231 P. L. R. 1914.

———*Religious endowment—Trusteeship—Right to—Founder's heirs—Exclusive management by one member—Prescription—Exclusion of females.*

Under the law prevailing in the Madras Presidency the management of a public trust may be hereditary in the founder's family and in such a case it devolves upon a general body of the founder's heirs. There is no rule that females are excluded from such management. 29 Mad. 283; 41 Mad. 296 (P. C.), Ref. Where the management is carried by one of the members of a joint family on account of his better business capacity or otherwise, it does not amount to an ouster of the other members from management entitling the member in possession to prescribe for the trusteeship. (*Wallis, C. J. and Seshagiri Iyer, J.*) MEENAKSHI ACHI *v.* SOMASUNDARAM PILLAI.
12 L. W. 232=(1920) M. W. N. 507=
39 M. L. J. 403=59 I. C. 464=44 M. 205.

———*Religious endowment—Trusteeship—Temple—Village temple—Scheme framed by award made on submission by all villagers—Award—Alteration of—Power of majority of villagers.*

A dispute regarding the management of a private village temple was referred to arbitration, and the award in pursuance thereof was embodied as a decree of court. *Held*, a majority of the villagers cannot, sometime later and without the aid of the court, set aside the provisions of the award with regard to management. A consent decree cannot be set aside by the consent of the parties without the aid of the court. The proper course to have the seheme remodified in such a case is to bring a suit for

the same. Per *Spencer, J.*—As against the parties the decree will be *res-judicata*. Per *Sadasiva Aiyar J.*:—Where a temple is alleged to belong to a fluctuating body of persons like a caste and not to the public, it should be strictly proved. (*Wallis, C. J., Sadasiva Aiyar and Spencer, JJ.*) YEGNARAMA DIKSHIDAR *v.* GOPALA PATTAR.
(1918) M. W. N. 595=
47 I. C. 548=8 L. W. 357 (F. B.)

———*Religious endowment—Trusteeship—Extinction of line—Founder's heirs—Right to create a new line of trustees.*

Per *Wallis, C. J. and Abdur Rahim, J.* (*Srinivasa Iyengar, J. dissenting*): Under the Hindu Law, the heirs of the founder of a religious endowment can create a fresh line of trustees on failure of the original line of trustees provided by the founder himself. Authorities on the point discussed. (*Wallis, C. J., Abdur Rahim and Srinivasu Iyengar, JJ.*) BOIDYO GAUANGA *v.* SUDEVI MATA.
40 Mad. 612=
32 M. L. J. 597=
41 I. C, 589=(1917) M. W. N. 429.

———*Religious endowment—Trusteeship—Devolution of.*

Where there is no evidence regarding the devolution of management at the time of the grant, the usage of the institution must be the guide. 14 Mad. 153; 18 Mad. 1 Foll. (*Wallis, O. C. J. and Seshagiri Aiyar, J.*) AMBALAVANA PANDARASANNADHI AVARGAL *v.* MINAKSHY SUNDARESWARAR DEVASTANAM.
(1915) M. W. N. 76=28 M. L. J. 217=
26 I. C. 841=17 M. L. T. 271.

———*Religious endowment—Trusteeship—Trust created by foreigner—Succession.*

A person though residing outside British India can succeed under a deed of trust created by a non-resident foreigner of property situated in British India. (*Wallis, O. C. J. and Kumaraswami Sastri, J.*) VENKATACHALA MUDALY *v.* ARUNACHALA MUDALY.
1 L. W. 574=
25 I. C. 80=16 M. L. T, 104.

———*Religious endowment—Trusteeship—Hereditary—Evidence of descent.*

Where there is corroborative evidence supporting the descent of a temple trusteeship from father to son it establishes the claim to an hereditary right in the office. (*Wallis and Sadasiva Iyer, JJ.*) ANANTHANARAYANA IYER *v.* ATHIMUTHU IYER.
25 I. C. 74=(1914) M. W. N, 385.

See also RELIGIOUS ENDOWMENT.

Religious Office.

See also HINDU LAW—RELIGIOUS ENDOWMENT.

Adverse possession.
Alienation.
Archaka.
Contract.
Disqualification.
Fees.
Females.
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HINDU LAW—Religious Office—Adverse possession.

Mahant.
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Religious Office—Adverse possession

———*Religious office—Adverse possession—Receipt of profits.*

The mere receipt of the endowments of a religious office by a stranger incompetent to be *shebait* and to perform the duties of the office does not confer title to the office on the stranger. The right of the *shebait* lawfully entitled is not lost. (*Sir John Edge,*) BHAIJI THAKUR *v.* JHARULA DAS.
42 Cal. 244=1 L. W. 549=
18 C. W. N. 1029=27 M. L. J. 100=
16 M. L. T. 210=(1914) M. W. N. 636=
12 A. L. J. 1176=20 C. L. J. 360=24 I. C. 501=
16 Bom. L. R. 845=41 I. A. 267 (P. C.)

[On Appeal from 14 I. C. 142=39 Cal. 887.]

Religious Office—Alienation.

———*Religious office—Alienation*—Vrittis.

The general rule is that *vrittis* cannot be alienated. They may be alienated in special cases and under special conditions provided that such alienations can be supported by local usage or custom. (*Beaman and Heaton, JJ.*) MANJUNATH BHUTT *v.* SHANKER MANJAYA. 39 Bom. 26=28 I. C. 139=
16 Bom. L. R. 593.

———*Religious office — Alienation — Right of management—Right of service—Distinction.*

In connection with temples and private alienations the right of management is different from the right of service. Private alienations are not absolutely prohibited but alienations to strangers have not been favoured. In private alienations, the prohibition is of general application and custom and usage govern and prevail over the texts which prohibit partition and alienation. (*Chaudhuri and Cuming, JJ.*) NITYA GOPAL BANERJEE *v.* PROVAS CHANDRA MUKHERJI.
24 C. W. N. 309=56 I. C. 19=31 C. L. J. 37.

———*Religious office—Alienation of—Validity.*

An agreement for transfer by the executors of a will authorising the *shebaits* of the debutter created by the will to transfer the *shebait's* rights is not illegal and is binding on the executors. *Woodroffe and Smither, JJ.*) MOHENDRA NATH *v.* GOUR CHANDRA. 46 I. C. 867=
22 C. W. N. 860.

———*Religious office—Alienation—Custom—Palas of the Kalighat shrine—Transferability—Essentials of a valid custom.*

According to a valid custom, the *palas* or turns of worship of the Kalighat shrine are transferable in the limited market of hereditary *shebaits* by blood or marriage. A *palas* of the Kalighat temple is heritable and it is immaterial whether the heir is a male or a female. It is also partible and divisible. In the absence of a custom, a religious trust is

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inalienable by its holder except to one in the line of succession and not disqualified by personal unfitness. Authorities on the subject reviewed. (*Mookerjee and Beacheroft, JJ.*) MAHAMAYA DEBI *v.* HARIDAS HALDAR.
42 Cal. 455=19 C. W. N. 208=27 I. C. 400=
20 C. L. J. 183.

———*Religious office—Alienation of—Offerings.*

A retransfer of a right to share in the offerings at a shrine in favour of a person who had lost his right by abandonment is not invalid if the alienation in no way contravenes any principles which can be necessary to the harmonious management of the shrine. (*Leslie Jones, J.*) INAYAT SHAH *v.* KADIR BAKSH.
43 P. L. R. 1918=46 I. C. 422=94 P. W. R. 1918.

———*Religious office — Alienation — Bungas attached to golden temple at Amritsar.*

The bungas attached to the golden temple at Amritsar are partly charitable and partly religious institutions, and the office of the manager being in the nature of a religious office cannot be alienated for the manager's personal gain. 17 Cal. 3; 17 Cal. 557; 36 Cal. 975 Dist.; 1 Cal. 226; 5 Mad. 89; 26 Mad. 31 Foll. (*Scott-Smith, J.*) MEHR SINGH *v.* SOCHET SINGH.
9 P. R. 1917=151 P. W. R. 1916=35 I. C. 620=
17 P. L. R. 1917

———*Religious office—Alienation—Paricharaka — Alienation to stranger—Void.*

A sale of the office of paricharaka to a stranger where it is clear that the office is a religious one is invalid. 1 Mad. 235 Foll. (*Phillips and Kumarasami Sastri, JJ.*) RAJAM BHATTAR *v.* SINGARAMMAL. 51 I. C. 979=36 M. L. J. 355.

———*Religious office—Alienation of.*

Obiter:—The weight of authority is against the view that no custom of alienability of a religious office should be recognised. (*Coutts-Trotter and Srinivasa Iyengar, JJ.*) SUPPA BHATTAR *v.* SUPPA SOKKAYA BHATTAR. 2 L. W. 1005=
29 M. L. J. 558=18 M. L. T. 402=30 I. C. 962=
(1915) M. W. N. 829.

———*Religious office—Alienation of—Purchaser of land—Whether purchaser of office also—Injunction, if allowed.*

A purchaser of land attached to a religious office as emolument acquires no right to the office itself and is not entitled to an injunction to protect his possession of it. 26 Mad 31 Foll.; 6 Mad. 76; 4 Mad. 391, 1 Mad. 235 Foll. (*Oldfield and Tyabji, JJ.*) KARAGA *v.* DEVAPPA.
26 I. C. 442

———*Religious office—Alienation—If valid—Custom—Effect of.*

The alienation of a religious office for pecuniary benefit is invalid and a custom sanctioning it would be illegal. (*Sadasiva Aiyar and Tyabji, JJ.*) SUNDARAMBAL AMMAL *v.* YOGAVANAGURUKKAL.
1 L. W. 276=26 M. L. J. 315=
23 I. C. 72=(1914) M. W. N. 286.

———*Religious office—Alienation—Right of worship in temple carrying emoluments.*

An alienation of the right to perform a certain worship in a temple, which has certain emoluments is invalid in law; but the right can be acquired by prescription. Where the right

of worship is divisible into separate parts the acquisition of a prescriptive right to perform a minor worship will not carry with it the right to perfom the major worship. (*Sankaran Nair and Oldfield, JJ.*) AYYADURAI GURUKKAL *v.* RAMASWAMY GURUKKAL. 18 I. C. 475.

———*Religious office—Alienation—Transfer of endowments—Void—Custom.*

The transfer of a right to receive gifts made by the worshippers at a temple to one of the officiating priests is usually void as being against public policy unless sanctioned by custom. (*Stuart, J. C.*) PARAGI *v.* GAURI SHANKER. 51 I. C. 86=6 O. L. J. 157.

Religious Office—Archaka.

———*Religious office — Archaka — Worship—Modes of Pujanam—"Archana and Navavarana".*

Archana is not different from *Puja* and is a portion of it, the latter is a general term meaning ceremonial worship, the former term being applied to the placing of pure leaves or flowers on the idol during the course of recitation of the names of the God or Goddess. *Archana* is connected more with vocal respect and praise and *pujanam* with mental attitude. *Navavarana Puja* is one in which the *Saktis* of the five ordinary aspects and four higher of the God are worshipped. *Non-Muraikar* (non-turnholder) archakas are entitled to perform of their clients special acts of worship such as *Navavarana* pujas without perjudice to the *mamool* worship being performed in the usual hours by the *muraikars* (turn-holders) (*Sadasiva Aiyar and Hannay, JJ.*) AMRITHESVAR PANDITHAR *v.* MURUGAPPA CHETTIAR. 27 I. C. 886=2 L. W. 127.

———*Religious office—Archaka— Ordinary competency.*

A claimant to the Archaka Office must prove ordinary competency in reciting manthrams in the temple. (*Miller and Sadasiva Iyer, JJ.*) NORI LAKSHMINARASIMHAM *v.* PRATIPATHI LAKSHMINARAYANA. 24 I. C. 825.

Religious Office—Contract.

———*Religious office—Contract for—Division of offerings.*

A contract for the division of money of articles received as charity by Maha Brahmins can be enforced only between the immediate parties to the agreement. 20 O. C. 265 Dist. (*Lindsay, J. C.*) MAHESH PRASAD *v.* BHARATH. 59 I. C. 677=23 O. C. 252.

Religious Office—Disqualification.

———*Religious office— Disqualification— Sex—Temple—'Fanning' service—Dancing girls.*

A Hindu male is disqualified by his sex from performing the fanning services in a temple which can only be performed by dancing girls. (*Ayling and Napier, JJ.*) VUSA CHANDRA KANTHAM *v.* VUSA SUBBARAYADU. 1 L. W. 827= 16 M. L. T. 347=25 I. C. 685= (1914) M. W. N. 745.

———*Religious office—Disqualification.*

Per Tyabji, J.—Question as to whether it is against public policy to provide that religious office should devolve by inheritance even where

heir is not qualified to perform duties should be decided with reference to facts of each case. (*Sadasiva Aiyer and Tyabji, JJ.*) SUNDERAMBAL AMMAL *v.* YOGAVANA GURUKKAL. 1 L. W. 276= 26 M. L. J. 315=23 I. C. 72= (1914) M. W. N. 286.

Religious Office—Fees.

———*Religous office—Fees—Joshi—Rights of.*

It is not the law that whatever be the personal conviction of a Hindu villager, he is bound to employ the village Joshi at obsequial ceremonies or to fee him even though no Brahminical ceremony be performed. 3 Bom 232 Rel. on. (*Batchelor, C. J. and Kemp, J.*) BALA GANUJI *v.* BAL BANT LAXMAN SINGH. 42 Bom. 613=46 I. C. 140=20 Bom. L. R. 454.

Religious Office—Females.

———*Religious office—Females—Right of, to hold.*

The right of females to hold the office of *shebait* is recognised by custom among Bhallavacharya Gossains. (*Mr. Ameer Ali.*) MOHAN LALJI *v.* TIKAIT SREE GOVARDHAN LALJI. 35 All. 283=40 I. A. 97=17 C. W. N. 741= 11 A. L. J. 548= 17 C. L. J. 612= 15 Bom. L. R. 606=(1913) M. W. N. 536= 19 I. C. 337=14 M. L. T. 27 (P. C.). [On appeal from 32 All. 461=6 I. C. 77= 7 A. L. J. 430.]

———*Religious office—Females—Proxy—Right to select.*

A woman who has a right to have the puja performed in a temple by proxy need not limit the choice to the other sharers who are entitled to perform puja in their turn. ((*Ayling and Krishnan, JJ.*) BHEEMAPPA *v,* TIMMAKKA. 51 I. C. 221=25 M. L. T. 139.

———*Religious office—Females—Right to succeed to the office and emoluments.*

A Hindu female is not debarred by reason of her sex from inheriting the service and emoluments of an archaka office in a temple. 38 Mad. 850 Not foll. ; 35 All. 283 Foll. Per *Wallis, C. J.* Succession to temple offices is governed by usage, which is taken to represent the wishes of the founder and in Southern India the usage is that succession to temple archakaship devolver on women who can perform the duties of their office by proxy. (*Wallis, C. J., Sadasiva Aiyar and Spencer, JJ.*) ANNYA TANTRI *v.* AMMAKKA HENGSU. 41 Mad. 886=8 L. W. 301= 35 M. L. J. 196=24 M. L. T. 163= 47 I. C. 341=(1918) M. W. N. 569 (F. B.)

———*Religious office—Females—Right to hold—*Ubhayam—*Daughter as heir—Marriage in other family—Nobar—Onus.*

The right to perform a festival is a secular privilege and the daughter of an *ubhayakar* is *prima facie* entitled to perform a festival in a temple and her marriage in another family will be no bar. 27 M. L. J. 179 ; 30 M. L. J. 222, Foll. There is no analogy between the holding of a subordinate trusteeship like *kattalai dharmakartaship* and the performance of a festival. The *onus* of proving that males only could by custom perform it is on the party setting it up. (*Ayling*

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and Seshagiri Iyer, JJ.) PANKAJAMMAL *v.* SECRETARY OF STATE FOR INDIA.
40 Mad. 1108=32 M. L. J. 237=
5 L. W. 346=40 I. C. 516=
21 M. L. T. 411.

———*Religious office—Females—Not disqualified from inheriting—Hindu Law and custom—Performance of duties by proxy.*

A female is not under Hindu Law or custom disqualified from succeeding to a hereditary religious office and getting such duties performed by proxy. 27 I. C. 440; 27 M. L. J. 179; Foll. 38 Mad. 850, Diss. *(Kumaraswami Sastri and Phillips, JJ.)* RAJA RAJESWARI AMMAL *v.* SUBRAMANIA ARCHAKAR. 40 Mad. 105=32 I. C. 975=
30 M. L. J. 222.

———*Religious office—Females—Right to custom—Validity.*

A custom allowing women to succeed as heir to a religious office and getting the duties thereof performed by proxy is not illegal. 8 M. L. T. 325; 21 M. L. J. 490; 27 M. L. J. 100; 20 C. L. J. 813; Foll. *(Ayling and Hannay, JJ.)* RAMASUNDARAM PILLAI *v.* SAVUNDARATHA AMMAL.
(1914) M. W. N. 919=I. L. W. 900=
27 I. C. 440=16 M. L. T 423.

———*Religious office—Females—When duties can be performed by a male proxy.*

A personally disqualified heir such as a woman cannot inherit a religious office and perform the duties thereof through a male proxy. *Per Tyabji, J.* That a religious office should devolve hereditarily even on persons not themselves qualified to discharge the duties thereof, is not in every case opposed to public policy. The question must in each case be decided with reference to the facts of the case such as, the nature of the duties, the remuneration provided therefor, and the like circumstances. The duties of the archaka office being more important than the rights of the office-holder, the rights of the deity to have the office performed are entitled to greater consideration than the hereditary rights of any particular person to hold it. *(Sadasiva Aiyar and Tyabji, JJ.)* SUNDARAMBAL AMMAL *v.* YOGAVANA GURUKKAL.
1 L. W. 276=(1914) M. W. N. 286=
23 I. C. 72=26 M. L. J. 315.
[This is no longer law see 47 I. C. 341=
41 Mad. 886.]

Religious Office—Hereditary Office.

———*Religious office—Hereditary office—Birt Jajmani—Jajmani birts—Suit for possession of—Proof of grant or custom necessary.*

A suit for possession of a *birt* (a right to sweep a particular locality) will lie only on strict proof of a grant or custom, a long continued possession raising the presumption of a lost grant. *(Ryves, J.)* KHUSHYA *v.* MANGALA.
22 I. C. 957=12 A. L. J. 267.

———*Religious office—Hereditary office—Succession is based on heredity and qualification to perform services.*

Mere heredity is not sufficient for an heir to succeed to a hereditary religious office, A permanent disqualification to perform the services

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of the office *e.g.* female sex will stand in the way of a person inheriting the office though he or she may be the heir to the last holder. *(Sadasiva Iyer and Tyabji, JJ.)* SUNDARAMBAL AMMAL *v.* YOGAVANA GURUKKAL. 1 L. W. 276=26 M. L. J. 315=
23 I. C. 72=(1914) M. W. N. 286.

———*Religious office—Hereditary office*—Shebait *of a temple—Office, when hereditary.*

Strong proof is required to show that the office of manager of a temple is hereditary; the mere fact that a certain *pasa* was looking after the temple properties, collected subscriptions for their upkeep and managed the funds till his death without any control from the community would not be evidence of the hereditary character of the office. 17 Cal. 3 Ref. *(Twomey, J.)* SHOROLA BALA NANDY *v.* HEERALAL CHATTERJEE.
11 I. C. 859=4 Bur. L. T. 193.

Religious Office—Hereditary Rights.

———*Religious office—Hereditary right.*

A hereditary right cannot be recognised in spiritual offices except where the offices are attached to temples, mosques, etc. 10 I. C. 41, Foll. *(Sadasiva Iyer and Seshagiri Iyer, JJ.)* SARIPAKA CHINA MAHADEVA VAZULU *v.* MATHURA SURYA PRAKASAM. 1 L. W. 389=
26 M. L. J. 482=24 I. C. 204=
(1914) M. W. N. 379.

———*Religious office—Hereditary right—Proof of—Long possession.*

In a claim for a hereditary right, the court can infer such right from proof of long possession which though not creating a hereditary right might not improperly give rise to such presumption. *(Sundara Iyer and Sadasiva Iyer, JJ.)* ITTICHERI EDATHIS SAMANTHAM *v.* ANANDA PISHAROTI. 17 I. C. 179.

———*Religious office—Hereditary right.*

Holding of the office of *Dharmakarta* continuously for over 100 years by the plff.'s family is enough to prove the hereditary right of the family to the office. *(White, C. J. and Phillips, J.)* RAMA DAS *v.* HANUMANTHA RAO.
36 Mad. 364=21 M L. J. 952=
10 M. L. T. 356=12 I. C. 449=
(1911) 2 M. W. N. 387.

Religious Office—Interference.

———*Religious office—Interference—Upadhyaya of caste—*Vritti*—Injunction.*

The hereditary office of Upadhyaya of a caste and the right to officiate in the *Vritti* and receive the perquisites thereof is property and the incumbent is entitled to an injunction restraining intermeddlers with his right. 36 Bom. 94, Expl, *(Macleod, C. J. and Fawcett, J.)* GIRIJASHANKAR *v.* MURLIDHAR. 22 Bom. L. R. 1202=59 I. C. 271=
45 Bom. 234.

Religious Office—Mahant.

———*Religious office — Mahant — Power to appoint.*

In the absence of any provision to the contrary, the power to appoint a Mahant vests in the

founder and his successors. (*Richards, C. J. and Banerji, J.*) BALDEO DAS *v.* GOBIND DAS.
36 All. 161=23 I. C. 18=12 A. L. J. 179.

———*Religious office — Mahant —Power of appointment.*

In the absence of valid nomination by the Mahant of his successor, the power of appointment reverts to the author of the trust or to his successor. (*Tweedy, J. M.*) SHIAM BIHARI *v.* BHAGWATI SINGH. 25 I. C. 758=1 O. L. J. 440.

Religious Office—Monopoly.

———*Religious office—Monopoly—Monopoly to act as Purohit—Public policy.*

A monopoly to officiate as Purohit to an indefinite class is against public policy. 21 M. L. J. 57, Foll. A sale of such an office should not be recognised. The right to exclude the people from following a legitimate calling cannot be countenanced by the courts. 30 Mad. 185 (P. C.), Foll. (*Sadasiva Iyer and Seshagiri Iyer, JJ.*) SARIPAKA CHINA MAHADEVA VAZULU *v.* MATHURA SURYA PRAKASAM. 1 L. W. 389=
26 M. L. J. 482=24 I. C. 204=
(1914) M. W. N. 379.

Religious Office—Nature of Right.

———*Religious office—Nature of right*—Yajman Vritti.

Under Hindu Law the office of hereditary priest (*yajman vritti*) is a *nibandha* and is the hereditary right of immoveable property. The office of hereditary priest held in relation to a family, owes its origin, continuance and binding character to custom and not to a grant or agreement between the parties. In the case of the office of hereditary family priest, the mere fact that it had been created originally by the caste for the families belonging to it cannot affect it, as the office carries with it a hereditary right in the nature of property and the incumbent cannot be deprived of it by any one, if he has not become a *Patita* (outcaste) or has not declined to officiate. The caste makes a selection for the families of its members and when any family accepts the officiator as its hereditary family priest, custom annexes to the offices certain incidents in the nature of Civil rights as against the family, which cannot be annulled either by family or caste except for some offence under the Hindu Law committed by the officiator, or for refusal by officiator to discharge his duty as family priest. (*Chandavarkar and Hayward, JJ.*) CHELABHAI GAURISHANKAR *v.* HARGOWAN RAMJI.
36 Bom. 94=12 I. C. 928=
13 Bom. L. R. 1171.

———*Religious office—Nature of right*—Yajman Vritti—Nature.

Yajman Vritti is a religious office having fees attached. If one priest performs the required ceremonies of *yajman* and takes all the fees, the co-owners of the priest can sue him for their share as well as one co-owner can sue another co-owner if his act amounts to an ouster but in any case *yajman* cannot oust the priest from *vritti* unless the latter is guilty of misconduct or has been outcasted. (*Pratt, J.C., Crouch and Powell, A. J. Cs.*) MONGIR MAL *v.* ZEL NAND.
56 I. C. 683=13 S. L. R. 56.

Religious Office—Partition.

———*Religious office— Partition — Right of worship—Nature.*

Right of worship is property but has not all the incidents of property. The *shebait* is a manager or a quasi trustee for the benefit of the idol. As the office enures only for the life, he has no right of disposal by will as his will comes into operation on his death when there is nothing for him to alienate. The transfer of a *pala* or turn of worshlp to a stranger not for pecuniary gain but to provide for the due performance of the pooja in the absence of a near heir, is the gift of the right and is valid. The transfer of offerings apart from immoveable property, is not valid and effective. Division of inheritance of a *pala* is on a different basis from division by a transaction *inter vivos* or by device. (*Chaudhuri and Cuming, JJ.*) NITYA GOPAL BANERJEE *v.* PROVAS CHANDRA MUKHERJI.
24 C. W. N. 309=56 I. C. 19=31 C. L. J. 37.

Religious Office—Right of holder.

———*Religious office—Rights of holder—Exclusive rights connected with.*

An office requiring the holder to perform duties in connection with an institution would ordinarily carry with it rights of an exclusive character and does not interfere with the right of all persons to exercise any profession or calling they chose. (*Sundara Iyer and Spencer, JJ.*) KATEL SHEIK KUMAR SAHEB *v.* BHAZI BUDAN KHAN SAHEB.
25 I. C. 898=37 Mad. 228.

Religious Office—Succession.

———*Religious office— Succession—Brit Jajmani right—Inheritance.*

Brit jajmani right is an heritable and transferable right. The daughter of such a holder can succeed to the father's share. (*Tudball and Kanhaiya Lal, JJ.*) LOKIYA *v.* SULLY.
18 A. L. J. 835=57 I. C. 315=
2 U. P. L. R. (A.) 278=43 All. 35.

———*Religious office — Succession — Custom — Religious institution—Darbar Sahib (golden temple) at Amritsar — Succession to office of* granthi—*Whether an infant can become a chela.*

The plff. sued for a declaration that he was the son of the late granthi of the Darbar Sahib, Amritsar and as such was entitled to succeed to the office in preference to the brother of the late granthi who claimed to have been appointed as a chela and nominated by the deceased as the successor and duly elected and installed. *Held*, that the office was of a religious character and that the question of succession must be decided by the custom and practice of the institution and that the plff. merely as a son had no right to succeed. *Held*, further, that the first qualification for the office was that the candidate must be a good and a properly initiated Singh and that he must become a chela and must be nominated by his predecessor and this nomination must be followed by an election and installation. *Held* also that though there is no clear rule laid down as to the initiation or nomination or election of a *granthi* still a person cannot be created except by the ceremony called Kandaka Pahul or baptism by sword and the candidate must have reached an age of discretion and capacity to remember

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obligations for the purpose. (*Scott-Smith and Abdul Raoof, JJ.*) INDAR SINGH *v.* FATEH SINGH.
1 Lah. 511=59 I. C. 721=63 P. W. R. 1921.

———*Religious Office—Succession—Temporary disqualifications are no bar.*

Temporary disqualifications such as minority or curable insanity, death and birth pollutions, etc., do not prevent a person from inheriting a religious office. But permanent personal disqualifications such as conversion to another religion or female sex constitute a bar against devolution of a religious office by inheritance. (*Sadasiva Iyer and Tyabji, JJ.*) SUNDARAMBAL AMMAL *v.* YOGAVANA GURUKKAL.
1 L. W. 276=23 M L. J. 315=23 I. C. 72=
(1914) M. W. N. 286.

Religious Office—Temple.

———*Religious office—Temple—Right to go in procession—Mirasi right—Rights of one sect against another in worship—Interference—Vaishnavas.*

The mirasi right in the Conjeevaram temple consists in reciting *manthrams* during puja and to receive emoluments. Any interference in the puja from its commencement to its close would be a violation of this right. One sect may worship the deity consistently with the equal rights of other worshippers. A worshipper can repeat any *Prabhandam* separately as an act of personal devotion. The right to worship the deity without interfering with others by the recital of *Prabhandams* is different from the right to form *goshti* and recite anything different from the *Prabhandam* recited by Mirasidars. Rights of Thengalais and Vadagalais, etc., in the Conjeevaram temple discussed. (*Sankaran Nair and Oldfield, JJ.*) TIRUMALA ECHAMBADI *v.* RAYADURGAM KRISHNASWAMI.
28 I. C. 604=
(1915) M. W. N. 281.

Religious Office—Use of.

———*Religious office—Use of—Gayawal—Business name.*

A Gayawal can sue for possession of the gaddi and its books and for a declaration that he is the lawful holder of the gaddi. A Gayawal keeps books in which the names and addresses of those who came to him are entered but he cannot compel descendants or families of the visitors to accept his ministrations. He has a business which is properly capable of being inherited and, attached to the business, is a goodwill. The books are important stock in trade. Per *Mullick, J.*:—The gaddi of a gayawal is not an office but is a business. (*Chamier, C. J. and Mullick, J.*) LALHAMA LAL PATAK *v.* BALDEO LAL THATWARI.
3 P. L. W. 136=2 P. L. J. 705=
42 I. C. 478=1918 Pat 50.

Religious Office—Voluntary offerings.

———*Religious office—Voluntary offerings—Right to—Mahabrahmin family.*

A donor made a gift personally to the deft. Mahabrahmin on a day which belonged to the plff. *Held* the plff. cannot recover the gift made to the deft. as it was distinctly made to the latter in his individual capacity. Per *Richards, C.J.* (dissenting.) If the offering was of the nature which was included in the agreement between the parties, the deft. was bound to make over the gift made on plff.'s day even against the donor's wish. (*Richards, C. J., Bannerji and Lyle, JJ.*) SONA DEI *v.* FAKIR CHAND.
35 All. 412=19 I. C. 990=
11 A. L. J. 563.

HINDU LAW—Reversioner—Consent to lie nation.

———*Religious office—Voluntary offerings—Rights to.*

Unless there is an express contract to make a refund, no suit lies for the recovery of a voluntary offering. if that suit is based on mere custom. 2 W. R, 69 Foll. and 20 All. 334 Ref. (*Roe and Jwala Prasad, JJ.*) HIRA PANDEY *v.* BACHU PANDEY.
1 P. L. J. 381=35 I. C. 345=
2 P. L. W. 390.

Re-marriage.

See (1) HINDU LAW—MARRIAGE.
(2) HINDU LAW—SUCCESSION.
(3) HINDU LAW—WIDOW.
(4) HINDU WIDOWS.

Restitution of Conjugal Rights.

See HINDU LAW—MARRIAGE.

Re-union.

See also HINDU LAW—PARTITION.

———*Re-union.*

An agreement amongst the remaining members of a joint family to remain united or to reunite must be proved like any other fact. (*Lord Buckmaster.*) MT. JATTI *v.* BANWARI LAL.
18 L. W. 273=45 M. L. J. 355=
(1923) M. W. N. 687=25 Bom. L. R, 1256=
4 Lah. 350=50 I. A. 192=
21 A. L. J. 582=L. R. 4 (P. C.) 135=
1923 P. C. 136 (P. C.).

———*Re-union.*

An agreement by separated coparceners to remain united or to reunite must be proved by the persons alleging it. (*Scott-Smith and Leslie Jones, JJ.*) NIL KANTH *v.* JAI GOPAL.
60 I. C. 696.

———*Re-union—Re-united co-parcener, rights of.*

A re-united co-parcener takes the heritage in preference to and in utter exclusion of a separated claimant but of an equal degree whether brothers of the whole or half-blood or sons of such brothers or uncles. (*Jwala Prasad and Ross, JJ.*) SADANANDA BARPANDA *v.* BAIKUNTHA NATH.
63 I. C. 833=2 P. L. T. 299.

Reversioner.
Consent to alienation.
Estoppel.
Liability of.
Proof of title.
Remote reversioner.
Right of.
Suit by.

Reversioner—Consent to alienation.

———*Reversioner—Consent to alienation.*

Where a reversioner consents to an alienation by way of gift by a Hindu widow, his consent does not estop him from subsequently impeaching the alienation. The consent of the body of the

HINDU LAW—Reversioner — Consent to alienation.

reversioners would not validate a gift which is a transfer without a consideration. Nor could the transaction be viewed as a relinquishment by the reversioner for he had no vested interest which he could validly relinquish. 42 M. 523 referred to. (*Gokul Prasad, J.*) RAM DAYAL *v.* MITHOO LAL.
1923 A. 410.

———*Reversioner—Consent to alienation—Presumption.*

Consent of presumptive reversioners to a later sale of property by the widow does not preclude the reversioners who are alive when the reversion falls in, though they may be the sons of the reversioners, from disputing the want of legal necessity for the prior sale of the property by the widow. (*Macleod, C. J. and Shah, J.*) TUKARAM *v.* GANPAT. 1922 Bom. 346.

———*Reversioner—Consent to alienation—Gift by widow.*

Where a Hindu widow makes a gift of a portion of her husband's property, to her husband's brother's grandson, with the consent of another brother, the next reversioner, the gift is valid and cannot be impeached by the latter. (*Macleod C. J. and Shah, J.*) BASAPPA *v.* FAKIRAPPA.
64 I. C. 214=23 Bom. L. R. 1040.

———*Reversioner—Consent to alienation.*

A Hindu widow and her presumptive reversioners granted a lease of the estate jointly and subsequently one of them predeceased the widow. In a suit by the surviving reversioners after the death of the widow *held* that the deceased reversioner had merely a contingent interest, that he had no interest at the time of the death of the widow and that his heirs were not necessary parties to the suit. (*Chatterjee and Cuming, JJ.*) MAHENDRA NATH BOSE *v.* ABINAS CHANDRA.
27 C. W. N. 521=1923 Cal. 615.

———*Reversioner—Consent to alienation—Suit by reversioner—Minor—Collusion in sale with mother etc.*

A minor incompetent to enter into a contract of sale of land, is equally incapable of colluding with his mother or grandmother or of concurring in their act of alienation. Hence the next reversioner after the minor cannot sue. (*Shah Din, J.*) KANSHI RAM *v.* SARADA NAND. 60 P. R. 1916=33 I. C. 763=
88 P. W. R. 1916.

———*Reversioner—Consent to alienation.*

Where a presumptive reversioner joins in an alienation by the female and gets full benefit of the transaction, he cannot, when the property falls to him, claim the property on the plea that he could not on the date of alienation, deal with the property himself. (*Abdur Rahim and Moore, JJ.*) SHANMUGA VELAYUDHAM CHETTY *v.* KOYAPPA CHETTIAR.
60 I. C. 635=(1920) M. W. N. 679.

———*Reversioner — Consent to alienation—Effect.*

Where a limited owner of properties makes a mortgage and the whole body of reversioners

HINDU LAW—Reversioner—Estoppel.

join in the execution and consent to it they cannot afterwards attack its validity. (*Miller, C. J. and Adami, J.*) RAGHUNATH PRASAD *v.* BANK OF BENGAL. 69 I. C. 212.

Reversioner—Estoppel.

———*Reversioner—Estoppel—Consent of, to alienation by widow.*

The consent of a reversioner to an alienation by a Hindu widow is mere proof of necessity. A reversioner taking a mortgage of portion of property alienated by widow from her alienee is not estopped from impeaching the alienation on the death of widow. (*Lord Dunedin.*) RANGASWAMI GOUNDAN *v.* NACHIAPPA GOUNDAN.
42 Mad. 523=36 M. L. J. 493=
17 A. L. J. 536=29 C. L. J. 539=
21 Bom. L. R. 640=23 C. W. N. 777=
(1919) M. W. N. 262=50 I. C. 498=
10 L. W. 105=46 I. A. 72=26 M. L. T. 5 (P. C.).
[Reversing 28 M. L. J. 1=26 I. C. 757=
(1915) M. W. N. 53 (F. B.).]

———*Reversioner—Estoppel—Conduct.*

Where in a family dispute a compromise with the widow is arrived at and the reversioners take the benefit of the compromise, their reversionary claim is barred. (*Sir John Edge.*) KANHAYA LAL *v.* BIRIJ LAL. 40 All. 487=
22 C. W. N. 914=8 L. W. 212=24 M. L. T. 23=
35 M. L. J. 459=16 A. L. J. 825=
(1918) M. W. N. 709=28 C. L. J. 394=
5 Pat. L. W. 294=20 Bom. L. R. 1048=
47 I. C. 207 (1)=45 I. A. 118 (P. C.).

———*Reversioner—Estoppel—Affecting widow.*

A reversioner is not bound by an estoppel affecting the widow and he can challenge a widow's adoption falsely alleging authority from husband, though she might be estopped. (*Lord Robson.*) DHARAM KUNWAR *v.* BULWANT SINGH.
34 All. 398=39 I. A. 142=
16 C. W. N. 675=9 A. L. J. 730=
14 Bom. L. R. 485=(1912) M. W. N. 64=
12 M. L. T. 95=15 I. C. 673=
23 M. L. J. 200=16 C. L. J. 60 (P. C.).
[On appeal from 30 All. 549=5 A. L. J. 568=
(1908) A. W. N. 231=4 M. L. T. 385]

———*Reversioner—Estoppel—Election to abide by transfers—Effect of.*

Where a widow makes a transfer without justifying necessity, it is open to a reversioner to elect to hold good the deed of alienation even before the succession has opened. Once having made an election, he cannot afterwards make a claim inconsistent with his own solemn act. (*Mears, C. J., Banerji, Piggott, Walsh and Ryves, JJ.*) FATEH SINGH *v.* RUKMINI RAWANJI.
45 A. 339=21 A. L. J. 235=
L. R. 4 A. 392=1923 A. 387 (F. B.).

———*Reversioner—Estoppel—Consent to gift.*

The immediate reversioner of a widow's estate and persons claiming through him are estopped from challenging a gift made by the widow in which he has joined. (*Tudball and Sulaiman, JJ.*) MAHDEO PRASAD *v.* MATA PRASAD.
19 A. L. J. 799=63 I. C. 721=
3 U. P. L. R. (A.) 134.

HINDU LAW—Reversioner—Estoppel.

———*Reversioner—Estoppel—Consent to gift by widow.*

A gift by a widow with the consent of the reversioner, is not a valid gift and cannot have any effect beyond the lifetime of the widow. Since reversioners do not claim through one another but to the last male owner? the reversioner at the time when the succession opens is not estopped by the consent given by his father. (*Richards, C. J. and Banerjee, J.*) SARNAM KUNWARI *v.* RAGHUNATH KUNWARI. 16 I. C. 187.

———*Reversioner—Estoppel—Joining in conveyance by widow.*

The mere fact of a reversioner joining in a conveyance by a Hindu widow does not give the vendee an indefeasible title, but is evidence of the propriety of the alienation. A reversioner does not claim through his father but directly to the last male owner and is not estopped by the consent given by his father. Nor is he estopped from questioning the alienation by the fact he took a gift of a portion of the property alienated. (*Mookerjee and Panton, JJ.*) CHAKRABARTI *v.* SASI BHUSAN UPADHAY. 30 C. L. J. 56= 53 I. C. 654=23 C. W. N. 1025.

———*Reversioner—Estoppel.*

Reversioners knowing recitals in deed of alienation by the widow as to necessity to be false, nevertheless consented to the sale and induced the purchasers to believe the recitals to be true and to act on them. *Held*, they were estopped. (*Fletcher and Teunon, JJ.*) BUBANESHWARI DEBI *v.* HARADHAN BATTACHARYA. 40 I. C. 669=21 C. W. N. 728.

———*Reversioner — Estoppel — Right to sue—Starting point—Estoppel.*

A reversioner's right to sue for possession accrues on the death of the Hindu female. Absence of vested interest which cannot be effectively dealt with, does not prevent the application of the rule of estoppel so as to prevent the reversioner from challenging his own representations. (*Abdur Rahim and Moore, JJ.*) SHANMUGA VELAYUDHAN CHETTY *v.* KOYAPPA CHETTIAR. 60 I. C. 635=(1920) M. W. N. 679.

———*Reversioner—Estoppel—Consent to alienation by widow.*

There is no distinction in the applicability of the rule of estoppel to a reversioner by reason of his consent to alienations for consideration and without consideration. (1912) M. W. N. 758, Foll. Nor is there any distinction between alienation of a part and alienation of the whole estate. 30 All. 1 Rel. (*Sundara Iyer and Sadasiva Iyer, JJ.*) KATTAMODU RAGHUPATHY *v.* KATTAMODU KAMAMMA. 23 M. L. J. 363= 16 I. C. 710=12 M. L. T. 325= (1912) M. W. N. 1223.
[But see 50 I. C. 498=42 Mad. 523 (P. C.)]

———*Reversioner — Estoppel — Alienation by widow.*

Where the reversioner affirmed an alienation of a widow by electing to do so when he brought a rent suit on the basis of the alienation after the widow's death for rent for a period subsequent to her death he cannot question the validity of a subsequent transaction of the widow which was but a substitution for the earlier transaction. (*Das and Bucknill, JJ.*) JITAN MAHTON *v.* LALA BHAGWAN SAHAY. 64 I. C. 262=2 P. L. T. 780.

Reversioner—Liability of.

———*Reversioners—Liability of—Charges binding on estate.*

Reversioners are liable to pay the reasonable expenses of the *sradh* of a widow and if one of them spends the amount, the others are liable to contribute. (*Chatterjee and Walmsley, JJ.*) RAMDHARI SINGH *v.* PARAMANAND SINGH. 21 I. C. 716=19 C. W. N. 1183.

———*Reversioners—Liability of.*

Reversioners not being the legal representatives of the widow are not bound by her claim before Land Acquisition Officer. (*Spencer and Kumaraswami Sastri, JJ.*) GATTINENI PEDA GOPAYYA *v.* DEPUTY COLLECTOR OF TENALI. 42 M.L.J. 298= 45 M. 421=15 L. W. 366= (1922) M. W. N. 188=1922 M. 100 (2).

Reversioner—Proof of title.

———*Reversioner—Proof of title—Onus—Suit for declaration of heirship—Frame of, as to parties—All possible claimants, joined in one action.*

In a suit for a declaration of the plaintiff's right as reversionary heir, the burden of proving the relationship which would make the plaintiff a reversioner to the last male owner is on the plaintiff. In such a suit, the plaintiff must prove not only that he is the next heir but that he is also near enough, (*i. e.,*) within fourteen degrees. Where there were fifty-nine plaintiffs, and nearly twenty other parties, in addition to the person in possession of the property left by a separated Hindu, were joined as *pro forma* defts. as being members of the family though they advanced no claim, and the scheme of the action had been to bring into court a large number of persons, more or less remotely akin in blood, in the hope of ousting the defendants in possession by a mass attack, and afterwards to assign the fruits of victory to the parties entitled by further litigation, *inter se*, the Privy Council condemned the course. (*Lord Sumner,*) MEWA SINGH *v.* BASANT SINGH. 9 L. W. 416=24 M. L. T. 429= 28 C. L. J. 530= 1 P. W. R. 1919=21 Bom. L. R. 232= 48 I. C. 540=28 P. L. R. 1919 (P. C.)

———*Reversioner—Proof of title.*

When the plaintiff sues for recovery of property on the ground of his being the nearest reversioner and he is unable to prove that he is the nearest reversioner, the suit ought to be dismissed. (*Mr. Ameer Ali.*) PRATHIVIDA BHAYANKARAM *v.* RANGAYYA APPA RAO. 15 Bom. L. R. 463=17 C. L. J. 295= (1913) M. W. N. 191=18 I. C. 13= 13 M. L. T. 198 (P. C.)

———*Reversioner—Proof of title—Presumption.*

The fact that no other reversioner comes forward and shows a superior claim over the plaintiff within 12 years of the death of the widow does not raise a presumption that he is the reversioner and his claim as a reversioner must be decided

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on its merits. (1899) A. W. N. 191 distinguished. (*Gokul Prasad, J.*) JAGANNATH PRASAD *v.* RAM LAL. 1922 All. 412.

———*Reversioner—Proof of title—Onus.*

Plaintiff's suit was for the possession of certain property as the reversioner of the last male owner who left a widow and a daughter who was married to the defendant and gave birth to a son. He survived both and the defendant was in possession of the property as his son's heir. The death of the son in the lifetime of the widow being an essential element to plaintiff's title, the burden of proof lies on him, (*Karamat Husain and Chamier, JJ.*) DILGAMJAN SINGH *v.* PARSIDH NARAIN SINGH. 11 I. C. 202.

———*Reversioner—Proof of title.*

In a suit to establish title as reversionary heir plaintiff must show that he is the nearest reversionary heir. The onus is wholly on the plaintiff and the defendant need not set up any nearer heirs. (*Chaudhuri and Cuming, JJ.*) HARI PADA MOOKERJEE *v.* RADHA BULHARI PAL. 53 I. C. 1007=23 C. W. N. 1048.

———*Reversioner—Proof of title.*

Reversioner seeking to succeed to property as such, must affirmatively establish the particular relationship, he put forward and also that there are no nearer heirs to his knowledge. Where a person claims as reversioner to succeed to property it is for those who claim, that their kinship is nearer than that of the plaintiff to prove that relationship. (*Coutts Trotter and Seshagiri Iyer, JJ.*) RAMA RAO *v*, KUTTIYA GOUNDAN. 40 Mad. 654=3 L. W. 331= 19 M. L. T. 275=34 I. C. 294= 30 M. L. J. 514.

———*Reversioner—Proof of title.*

In a suit for possession of a deceased Hindu's property by the reversioners, they have to satisfy that there are no nearer heirs in addition to proving they are heirs. (*Kotwal and Findley, A. J. Cs.*) HAZARI LAL *v.* HAR GOVIND. 48 I. C. 375.

———*Reversioner—Proof of title—Onus.*

In order that a reversioner may succeed to the property of the last male owner he must prove not merely that he was a reversioner but that he was the nearest reversioner. (*Lyle, A. J. C.*) BHIMMA SINGH *v.* MT. SUNDER. 9 O. L. J. 186= 4 U. P. L. R. (O. C.) 79=26 O. C. 109= 1922 Oudh 218.

———*Reversioner—Proof of title.*

The burden of proving that there is no better and nearer claimant to the property of the deceased lies on him who claims to be the nearest reversioner, and where descent and legitimacy is an essential element the burden of proving the same lies on the so-called nearest reversioner. (*Stuart, A. J. C.*) CHANDAN SINGH *v.* BHABATI SINGH. 30 I. C. 220=2 O. L. J. 246.

———*Reversioner—Proof of title.*

To establish a right to succeed as reversioners, their relationship to the deceased must be proved, and also that they are the nearest reversioners to

HINDU LAW—Reversioner—Remote Reversioner.

him. (*Stuart, J. C. and Kendall, A. J. C.*) RAM DIN *v.* KAISETH PATHASALA, ALLAHABAD. 25 I. C. 823=1 O. L. J. 447.

———*Reversioner—Proof of title.*

When the plaintiff sues to recover possession of property from the defendant as the nearest reversioner, to the last male owner and denies the deft.'s legitimacy, the plaintiff must prove strictly his own title and legitimacy before the defts. can be called upon to rebut it. (*Piggott, J. C. and Lindsay, A. J. C.*) BHABUTI SINGH *v.* KHETAL SINGH. 21 I. C. 274

———*Reversioner—Proof of title.*

Reversioners claiming the estate of the husband of a Hindu widow must prove not only their descent from the common ancestor of themselves and the last male-holder but also that there is no other intermediate heir having a better title. (*Piggott, J. C.*) MATHURA PRASAD SINGH *v.* BHULAN SINGH. 14 I. C. 339=15 O. C. 364.

Reversioner—Remote Reversioner.

———*Reversioner — Remote reversioner — Execution sale—What passes—Purchaser in possession.*

Assuming that in a sale for arrears of revenue due by a Hindu widow, it is the widow's interest alone that passes to the purchaser. It is not open to a remote reversioner while nearer reversioner is alive to take possession of the property from the purchaser after the death of the widow. It is only the nearest reversioner, male or female, that can claim possession on the death of the widow. 45 Bom. 105; 2 Pat. 217 Rel. (*Ryves and Daniels, JJ.*) JHARI KOERI *v* BIJAI SINGH. 45 A. 613=21 A. L. J. 563=1924 A. 109.

———*Reversioners—Remote reversioners—Omission of nearer reversioners to assert title.*

Where the nearest male reversioners of a deceased Hindu, do not choose to avail themselves of their right to possession of the property on the death of the limited owner, it is not open to the remoter reversioners to sue for possession. (*Mears, C. J. and Gokul Prasad, J.*) BIND BAHADUR SINGH *v.* MT. RITURAJI. 20 A. L. J. 702= L. R. 3 A. 380=1922 All 420

———*Reversioner—Remote reversioner—Suit.*

A remote reversioner can sue for a declaration that a transfer was invalid when the nearest reversioner is a female entitled to a life interest only. (*Karamat Husain and Chamier, JJ.*) RAJA DEI *v.* UMED SINGH. 34 All. 207=13 I. C. 632= 9 A. L. J. 158.

———*Reversioner—Remote reversioner—Collusion between widow and near reversioner.*

Caveat may be entered by remote reversioner if the immediate reversioner has done something which would render it impossible for him to Successfully challenge the will propounded by the widow. (*Sanderson, C. J. and Woodroffe, J.*) SATINDRA MOHAN TAGORE *v.* SARALA SUNDARI DEBI. 45 I. C. 59=27 C. L. J. 320.

———*Reversioner—Remote reversioner—Estoppel—Knowledge and silence.*

Knowledge and silence on the part of reversioners would not estop them from challenging the alienation where they could not file a suit to

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recover the property. (*Walmsley and Greaves, JJ.*) CHAIRMAN, BALLY MUNICIPALITY *v.* PRAMATHA NATH MOOKERJEE. 41 I. C. 775.

———*Reversioner—Remote reversioner.*

Remote reversioner does not derive title through nearer one and therefore adverse possession against the nearer one, is not adverse against the remote ones. (*Scott Smith, J.*) HASTI *v.* HIRA. 4 Lah. L. J. 201=1922 L. 37.

———*Reversioner—Remote reversioner—Alienation by widow, setting aside—Reversioner—Daughter—Agnate.*

The nearest male reversioner can sue for a declaration that an alienation of the estate by the widow is not binding, even though there is a daughter in existence as nearer reversioner. 27 P. R. 1916 Foll. (*Abdul Raoof and Martineau, JJ.*) BALLA SINGH *v.* GURDIT SINGH. 3 Lah. L. J. 484.

———*Reversioner—Remote reversioner—Right to sue—Setting aside a will.*

Where a will alleged to have been made by the last owner is impugned, the suit to set it aside must be brought by the presumptive reversionary heir, but if the nearest heir had refused, without sufficient cause, to institute proceedings or had precluded himself by his own act or conduct from suing or had colluded with the widow or had concurred in the act alleged to be wrongful and, if the next presumptive reversioner stated in the plaint the circumstances under which he claimed to sue, a court would exercise a judicial discretion in determining whether he was or was not competent to sue. 6 C. 764 Ref. (*Abdul Raoof and Campbell, JJ.*) SUNDAR LAL *v.* KULLA RAM. 65 I C. 820.

———*Reversioner — Remote reversioner—Remote and proximate.*

A remote reversioner can sue only when proximate reversioner has precluded himself from suing. When the remote reversioner sues, he must state the circumstances under which he has instituted the suit and the court will consider his chances of succession to the estate and may refuse relief, if the chance is very remote. (*Shah Din, J.*) KANSHI RAM *v.* SARADANAND. 60 P. R. 1916= 33 I. C. 763=88 P. W. R. 1916.

———*Reversioner — Remote reversioner—Suit—Collusion.*

A remote reversioner can sue for a declaration that an alienation by the widow is not valid when the presumptive reversioner is either colluding with the alienee or is not interested in seeking to set aside the unlawful dealings of the widow in possession. (*Ayling and Seshagiri Aiyar, JJ.*) RATNA CHETTIAR *v.* NARAYANASWAMI CHETTIAR. 24. I. C. 796=26 M. L. J. 616. [Also 18 I. C. 212=(1913) M. W. N. 383.]

———*Reversioner — Remote reversioner — Suit—Adoption by a widow.*

A remote reversioner is entitled to impeach the validity of an adoption by the widow of the deceased, if the next reversioner either refuses to or precludes himself from suing or has colluded with the widow or concurred in the act alleged to be wrongful, the court must exercise a judicial

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discretion in determining whether he is entitled to sue and would probably require the next reversioner to be made a party. The plaint must state the circumstances entitling the plaintiff, a remote reversioner, to sue and in the absence thereof leave to amend will not be granted at a late stage of the trial. (*White and Tyabji, JJ.*) AVULA GURUVAYA *v.* AVULA VENKANNA. 18 I. C. 212= (1913) M. W. N. 383.

———*Reversioner — Remote reversioner—Suit by.*

Where the immediate reversioner colludes with the widow, the next reversioner can sue. He sues in a representative capacity. (*Batten and Stanyon, A. J. Cs.*) PARWATI *v.* GOVIND PRASAD. 42 I. C. 737=13 N. L. R. 187.

———*Reversioner—Remote reversioner—Right to sue for declaration—Existence of immediate female reversioner.*

A reversioner who is not the immediate reversioner but who is the immediate male reversioner can sue for a declaration of the invalidity of transfers made by the widow of the male owner notwithstanding that there may be other female lives between him and the estate. 6 All. 428; 6 All. 431; 13 Mad. 195 and 32 Cal. 62, Foll.; 34 All. 207 and 38 Mad. 466, 321, Ref. (*Miller, C. J. and Foster, J.*) RAMVAD PANDEY *v.* RAMBIHARA PANDEY. 4 P. L. J. 734=54 I. C. 357= (1920) Pat. 33.

Reversioner—Rights of.

———*Reversioner—Rights of*—Spes successionis—*Joining in conveyance by widow—Effect of.*

The interest of a Hindu reversioner, is a mere *spes successionis*. A reversioner's joining a conveyance by a Hindu widow is futile and the duty of the purchaser to enquire into necessity is not in any way lessened. Where there has been no misleading of the purchaser, the reversioner is not estopped from claiming properties as heir on the death of the widow. The doctrine of title feeding the estoppel is not applicable to the case. (*Mr. Ameer Ali.*) GUR NARAIN *v.* SHEO LAL SINGH. 46 Cal. 566=17 A. L. J. 66=36 M.L.J. 68= 9 L. W. 335=49 I. C. 1= 1 U. P. L. R. (P. C.) 1=28 C. W. N. 521 (P. C.) [On appeal from 7 I. C. 218.]

———*Reversioner—Rights of*—Spes Successionis—*Relinquishment, if invalid.*

The presumptive reversioner of a deceased Hindu has, during the lifetime of his widow, no interest *in praesenti* in the property; until it vests in him he has no interest which he or his guardian (if a minor) can assign or relinquish. Even if the reversioner or his guardian (if he is a minor) affects to relinquish the reversionary estate, it will not debar him from claiming the properties when the succession opens. (*Mr. Ameer Ali.*) AMRIT NARAYAN SINGH *v.* GAYA SINGH. 45 Cal. 590=23 M. L. T. 142= 22 C. W. N. 409=27 C L. J. 296= 34 M. L. J. 298=4 P. L. W. 221= 16 A. L. J. 265=(1918) M. W. N. 306= 7 L. W. 581=20 Bom. L. R. 546=44 I. C. 408= 45 I. A. 35. (P. C.)

HINDU LAW—Reversioner—Rights of.

———*Reversioner—Rights of—Alienation or adoption by widow—Suit for declaration of invalidity—Death of plaintiff—Addition of next reversioner—C. P. Code, S. 2 (11), O. 1, R. 1; O. 22, Rr. 1 and 3 (1).*

Under the Hindu law, till the female owner dies, the reversionary right is a mere possibility or *spes successionis*. This possibility common to all the reversioners for it cannot be predicated who would be the nearest at the time of her death. A suit by a reversioner for a declaration of the invalidity of an alienation or adoption by a widow, has for its object the removal of a common apprehended injury to the interests of all the reversioners, presumptive and contingent alike. As a general rule, such a suit must be brought by the presumptive reversioner (*i.e.*,) the person who would succeed if the widow were to die that moment. There is nothing to preclude a remote reversioner from joining or asking to be joined in the action brought by the presumptive reversioner or even obtaining the conduct of the suit on proof of laches on the part of the plaintiff, or collusion between him and the widow or other female whose acts are impeached. It is the common injury to the reversionary rights which entitles the reversioners to sue. If in a suit therefore by the next presumptive reversioner for a declaration that an alienation or adoption by the widow is invalid, the sole plaintiff dies, the next presumable reversioner is entitled to be substituted for him and continue the suit. The decisions of the Madras High Court drawing a distinction between a suit to set aside an alienation, in this respect are incorrect. (*Mr. Ameer Ali.*) VENKATANARAYANA PILLAI *v.* SUBBAMMAL.
38 Mad. 406=
17 M. L. T. 435=28 M. L. J. 535=
17 Bom. L. R. 468=19 C. W. N. 641=
2 L W. 596=(1915) M. W. N. 555=
21 C. L. J. 515=29 I. C. 298=
42 I. A. 125 (P. C.)

———*Reversioner — Rights of Independent of limited owner.*

The title of a Hindu reversioner to the property of the last male owner is not derived through the limited female owner, *e.g.*, widow or daughter. Therefore an acknowledgment by a limited owner does not extend time against the reversioner. (*Sir John Edge.*) SONILAL *v.* KANHAIYA LAL.
35 All. 227=19 I. C. 291. =40 I. A. 74=
25 M. L. J. 131=13 M. L. T. 437=
17 C. W. N. 605=11 A. L. J. 389=
(1913) M. W. N. 470=17 C. L. J. 488=
15 Bom. L. R. 489 (P. C.)
[On appeal from 32 All. 33=6 A. L. J. 931=
3 I. C. 725=6 M. L. T. 348.]

———*Reversioner—Rights of—Adverse possession against life tenants, if adverse against reversioners.*

Adverse possession against life tenants is not adverse to the reversioners, as the latter do not claim through the life estate holder but from the last full owner, and as their interest is only contingent as long as the life estate holder is alive. (*Knox, J.*) BANSIDHAR *v.* LACHMI NARAIN.
11 I. C. 981=8 A. L. J. 849.

HINDU LAW—Reversioner—Rights of.

———*Reversioner—Rights of.*

Interest of a reversioner is not transferable, nor capable of relinquishment in favour of widow. (*Macleod, Kt. C. J. and Coyajee, J.*) DAYARAM PREMJEE *v.* BEACHARDAS DOONGARSING.
24 Bom. L. R. 351=1922 B. 437.

———*Reversioner—Rights of—Surrender—Enlargement of widow's estate.*

A Hindu widow adopted the deft. who was then major. Before adoption he executed an agreement to the effect, that on his being adopted he would claim no right in the suit property. After his adoption he ratified the same agreement: *Held*, that the deft. became a near reversioner after adoption and as such had no present right whatever in the suit property and hence he could not surrender the same so as to enlarge the widow's limited estate into an absolute one. (*Macleod, C. J. and Shah, J.*) GANGABAI *v.* HARI GANESH.
45 Bom. 1167=62 I. C. 680=
23 Bom. L. R. 500.

———*Reversioner—Rights of—Not claiming under widow—Widow's suit for cancellation, on ground of fraud—Dismissal—Effect on reversioners.*

The dismissal of a suit for cancellation of a conveyance by a Hindu widow on the ground of fraud will not affect the Reversioners who are entitled to impeach it as not binding on the inheritance in their hands. (*Mookerjee and Beacheroft, JJ.*) SECRETARY OF STATE *v.* BANSIRAM.
35 I. C. 284=20. C. W. N. 638.
[But see 48 I. C. 553=36 M. L. J. 557=
23 C. W. N. 326 (P. C.)]

———*Reversioner—Rights of*—Spes successionis.

A reversioner has no present alienable interest in the property of the deceased. (*Mookerjee and Chapman JJ.*) SHYAMA CHARAN BAISYA *v.* PRAFULLA SUNDARI.
19 C. W. N. 882=
30 I. C. 161=21 C. L. J. 557.

———*Reversioner—Rights of—Right to avoid alienation by widow—Not personal to reversioner.*

The right to avoid an alienation effected by a Hindu widow is not personal to the reversionary heirs and a transferee from them may exercise it. (*Mookerjee and Beacheroft, JJ.*) NISHAKAR CHAKRAVARTI *v.* RAM KUMARI TEWARI.
16 I. C. 634.

———*Reversioners—Rights of—Limited owner—Prospective heirs.*

Prospective heirs can restrict the enjoyment of a limited interest within proper limits. (*Leslie Jones and Broadway, JJ.*) DIAL KUAR *v.* MAHTAB KUAR.
74 I. C. 639=3 L. L. J. 458.

———*Reversioner—Rights of—Purchasing ancestral property—Waiver.*

A reversioner does not waive his rights as such by purchasing ancestral property. (*Johnstone and Shah Din, JJ.*) KURA *v.* MADHO.
68 P. R. 1915=31 I. C. 159=
151 P. W. R. 1915.

———*Reversioner—Rights of—Suit for possession during life-time of widow.*

Where A first mortgaged and then made a gift of his property to B and died thereafter leaving a widow, *Held* that the reversioner cannot sue

for possession during the life-time of the widow. (*Kensington, C. J. and Shah Din, J.*) YARAN *v.* GULRANG. 164 P. W. R. 1914=26 I. C. 882= 197 P. L. R. 1915.

———*Reversioner—Rights of—Nature of interest during widow's life-time—Relinquishment.*

The interest of a reversioner in an estate in the hands of a widow is not a mere *spes successionis* but at the least a 'contingent' interest which can validly form the subject of a relinquishment; such an interest cannot be defeated except in special cases by sale for justifying necessity. (*Johnstone, J.*) KHAIRTI *v.* MAULA. 135 P. W. R. 1911= 11 I. C. 211=214 P. L. R. 1911.

———*Reversioner—Rights of—Daughter's estate—Rights of daughters—Partition—Effect of—Survivorship.*

Where two daughters who succeed jointly to the estate of their father effect an absolute partition amongst themselves and one of them dies, though it is not open to the reversioner to sue for possession of the share of the deceased daughter it is open to him to sue for declaration of the invalidity of the alienation made by the deceased daughter. The deed of partition operates as a transfer by way of relinquishment of her estate by each of the daughters to the other in case she predeceased her sister. 24 C. 339; 42 M. 855; 22 M. 522 followed. (*Oldfield and Venkatasubba Rao, JJ.*) AMMANI AMMAL *v.* PERIA SAMI UDAYAN. 45 M. L. J. 1.=(1923) M. W. N. 652= 32 M. L. T. 323 (H. C.)=1924 Mad. 75.

———*Reversioner—Rights of—Adverse possession when begins against—Ultimate reversioners.*

Adverse possession against reversioners begins only from the time they become entitled to it. Even against the ultimate reversioners, the same principle applies. (*Ayling and Srinivasa Iyengar, JJ.*) NILA KANTA RAO *v.* NARAYANASWAMI IYER. 20 M. L. T. 526=37 I. C. 733=31 M. L. J. 847.

———*Reversioner—Rights of—Rival claim under relinquishment in consideration of a sum—Valid transfer.*

Where an heir of a deceased person gave away his claim in consideration of receiving a certain sum from another person and the deed of relinquishment stated that there was a question as to who out of the two persons was the next reversioner and that the executant of the deed renounced his right for the sum and that the property was to be enjoyed by the transferee in full ownership against which the relinquisher or his heirs can have no claim. *Held* that it was a valid transfer of rights and the transferee was entitled to enjoy the property transferred. 27 I. C. 284. (*Wallis, O. C. J. and Seshagiri Aiyar, J.*) RAJARAJESWARA DORAI *v.* SUNDARAPANDIYASWAMI. 27 I. C. 283= 27 M. L. J. 694.

———*Reversioner—Rights of—Suit for declaration of invalidity of adoption—Further relief.*

Where plaintiff is a reversioner and if the adoption is declared to have not taken place the second defendant, adoptive father's widow would be entitled to immediate possessions and not the plaintiff, he could not have well asked for possession, it is unnecessary to ask for further relief, for example injunction, plaintiff's object being attained by a declaration that the adoption had never taken place. (*Kotwal and Prideaux A. J. Cs.*) DEORAO *v.* MT. ANNAPURANABAI. 1922 Nag. 185.

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———*Reversioner—Rights of.*

One reversioner should not be regarded as deriving his interest from another in whom no interest ever vested, even though that other was his own father. 22 A. 33; 28 M. 57 Ref. (*Drake Brockman, J. C.*) GULAB THAKUR *v* FADALI. 68 I. C. 566.

———*Reversioner—Right of.*

The right of the reversioner to challenge the validity of the alienation by a widow is a permanent factor of his title to the property which develops from a bare *spes successionis* into a vested interest on the death of the widow. The reversioner's right to challenge the validity of one alienation is different from his right of impeaching the validity of a separate and independent alienation though both the rights may arise out of one and the same title. He has a right of election; he may choose to challenge one alienation and assent to another or he may challenge both or assent to both. He may exercise his right of election in regard to one alienation at one time and in regard to another alienation at another time. Nothing is a surer indication of election than a challenge in the suit. 34 C. 329 P. C. Ref. (*Wazir Hasan, A. J. C.*) BAHADUR SINGH *v.* SULTAN HUSAIN KHAN. 8 O. L. J. 535= 3 U.P.L.R.(J. C.) 83=1922 Oudh 171.

———*Reversioners—Rights of—Agreement inter se as to their future rights—Is valid.*

A reversioner cannot assign or relinquish his *spes successionis*, but it is open to him to enter into an agreement with reference to his future rights with the other reversioners in order to settle disputes among themselves. (*Kanhaiya Lal, A. J. C.*) WAZAN SINGH *v.* RATAN SINGH. 8 O. L. J. 120=61 I. C 940=24 O. C. 151.

———*Reversioner—Rights of*—Spes succession is *Alienation—Minor—Guardian's powers.*

To test the binding nature of alienation on reversioners we have to see by whom the alienation is made whether it is made by a life-tenant or a person having contingent interest. If by the former, the title derived is that of the life-tenant, if by the latter, the alienee derives no title, as the vendor cannot assign what he does not own. A Hindu reversioner has no right or interest *in presents* till the death of the female owner. It becomes complete only on her death; till then it is a mere *spes successionis*. The guardian of a minor reversioner cannot contract for him and thus bind him. (*Stuart and Kanhaiya Lal, A.J. Cs.*) BISRAM SINGH *v.* SANWAL SINGH. 23 O. C. 238= 7 O. L. J. 342=57 I. C. 541= 2 U. P. L. R. (J. C.) 123.

———*Reversioner—Rights of—Right to redeem during lifetime of limited owners—T. P. Act, S. 91.*

During the lifetime of a limited owner the reversioner has no more than a mere *spes successionis* and has not a sufficient interest in the property within S. 91 of the T. P. Act to enable him to redeem the mortgage of that

property. 8. O. C. 349. Overruled. *Daniels and Lyle, A. J. Cs.)* BASANT SINGH *v.* RAMPAL SINGH. 6 O. L. J. 248=51 I. C. 985= 1 U. P. L. R. (J. C.) 45.

———*—Reversioners—Rights of—Nature of right—* Spes successionis—*Bargain in respect of right by guardian.*

Apart from any binding agreement having the force of a decree or operating as an estoppel, a Hindu reversioner holds no interest in the property held by a female which he can assign or transmit to his heirs. If he is a minor, the guardian cannot bargain on his behalf or bind him by any contractual engagement in respect thereto. 45 Cal. 590, Foll. *(Kanhaiya Lal, A. J. C.)* SANKATA PRASAD *v.* KALI PRASAD. 51 I. C. 545=22 O. C. 48.

———*Reversioner—Rights of—*Spes successionis *—Alienation.*

A mortgage by reversioner is not valid even though the estate subsequently devolved on mortgagor. A decree cannot be obtained on a personal covenant since part of the consideration is contrary to S. 6 of T. P. Act and so the whole mortgage is void. *(Lindsay, J. C.)* SHIAM SUNDAR *v.* DILGANJAN SINGH. 20 O. C. 155= 39 I. C. 540=4 O. L. J. 380.

——*—Reversioners—Rights of—Representation.*

Reversioners do not claim through each other but independently as heirs of the last male owners. *(Lindsay and Rafique, JJ.)* MATHURA PRASAD *v.* JAGAT BAHADUR SINGH. 18 I. C. 289.

———*Reversioner—Rights of—Partition between co-widows.*

Though in a suit for partition to which the co-widows alone are parties the court might reasonably refuse to concern itself with the interests of the reversioners beyond seeing that there was nothing in the decree prejudicially affecting their rights, yet if they are parties, they are entitled to ask for provision safeguarding their interests against possible acts of waste provided they can show reasonable grounds for apprehending the same. 31 Cal. 214 Ref. *(Piggott and Rafique, A. J. Cs.)* KAILASHA *v.* BITTO. 16 I. C. 471. 15 O. C. 223=

———*Reversioner—Rights of.*

During the tenure of a widow's estate, a Hindu reversioner has a mere *spes successionis* which he cannot sell, assign or surrender or make the subject of a settlement. In the case of a minor reversioner, his guardian cannot in any way bargain away with his rights to his prejudice. *(Bucknill and Ross, JJ.)* RAM BAHADUR SEN *v.* GANESH BAGAT. 2 Pat. 554=1924 P. 49.

——*—Reversioner—Rights of — One reversioner does not claim through another.*

Alienation by widow is valid against every one, except the reversioners and unless the reversioners choose to treat it as a nullity, it subsists as against every one else. A Hindu widow is not a tenant for life, but owner of her husband's property subject to certain restrictions on alienation and

subject to its devolving upon her husband's heir upon her death. But she may alienate it subject to certain conditions being complied with; her alienation is not, therefore absolutely void but is voidable at the option of the reversioner. He may think fit to affirm it, or he may at his pleasure, treat it as a nullity without the intervention of any court, and he might show his election to do the latter by commencing an action to recover possession of the property. Consequently a gift of the whole of her husband's property made by a Hindu widow not challenged by the reversioner during her lifetime and acquiesced in by those who would take a vested interest after her death cannot be challenged by any one else. The reversioners alone can dispute the gift. If they choose to allow the property to which they are entitled, to remain in possession of the donee, that is their affair and no one else can object. If the donee remains in possession under a claim of right for 12 years he will acquire an indefeasible title even against the reversioner. *(Miller, C. J. and Mullick, J.)* MAHARAJAH KESHO PRASAD SINGH *v.* CHANDRIKA PRASAD SINGH. 3 Pat. L. T. 797=1923 P. 122.

———*—Reversioner — Rights of — Contract to relinquish.*

A reversioner cannot convey or agree to convey or relinquish any future right or expectancy; if he is a minor, his guardian cannot deal with his reversionary right or bind him by any contractual engagement thereof. The right of reversioner is a naked possibility which cannot form the basis of a claim. *(Das and Adami, JJ.)* BHAGWATI KUER *v.* JEGDAN SAHAY. 62. I. C. 933= 2 P. L. T. 471.

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———*Reversioner—Suit—Right to sue for declaration.*

Where there is a conveyance of an absolute estate by widow purporting to claim absolutely in favour of one of three equal reversioners, it is open to the other to sue for a declaration that it is not binding on the estate. *(Lord Parker of Waddington.)* SADAGAR SINGH *v.* PARDIP NARAYAN SINGH. 45 Cal. 510=45 I. A. 21= 4 Pat. L. W. 52=34 M. L. J. 67= 23 M. L. T. 31=16 A. L. J. 61= 7 L. W. 146=27 C. L. J. 186= 22 C. W. N. 436=(1918) M. W. N, 323= 43 I. C. 484=20 Bom. L. R. 509 (P. C.).

———*Reversioner—Suit by—Suit for declaration of his title as such, not maintainable—Waste—Presumption of.*

It is impossible to predicate during the life-time of the limited owner *e.g.*, widow or mother who will be the reversionary heir of the deceased proprietor. Consequently, a court will not grant the declaration that a person is the next reversioner, as it will be a *brutum fulmen.* 31 I. A. 67, Ref. But a reversionary heir though having a *spes successionis* has a right to demand that the estate be kept free from waste and from danger during its enjoyment by the limited owner and can sue as representing the whole body of reversioners to

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prevent such waste, etc., by the limited owner. 42 I. A. 129, Ref. (*Lord Shaw.*) JANAKI AMMAL *v.* NARAYANASAMI AIYER. 39 Mad. 634= 43 I. A. 207=20 M. L. T. 168= 31 M. L. J. 225=14 A. L. J. 997= (1916) 2 M. W. N. 188=20 C. W. N. 1323= 18 Bom. L. R. 856=24 C. L. J. 309= 37 I. C. 161=4 L. W. 530 (P. C.) [On Appeal from 17 I. C. 261= (1912) M. W. N. 904.]

———*Reversioner—Suit—Delay.*

Delay in bringing the suit if explained would not operate to the prejudice of the plaintiff if it is brought within time and the delay is explained. (*Lord Moulton*). SREEMUTTY MANOKARANI DEBI *v.* HARIPADA MITTER. 24 I. C. 311= 18 C. W. N. 718 (P. C.).

———*Reversioner—Suit by—Right to sue for declaration during widow's life—Alienation by prior owner.*

Where a Hindu widow during the period when the estate is vested in her deliberately refuses to impeach a transaction made by the prior estate-holder or makes it impossible for her to do so, the reversioners without waiting for her death can sue for declaration that the transaction was not binding on the estate. (*Stuart and Ryves, JJ.*) SURAJ MAL *v.* NATHWA. 45 A. 255=21 A. L. J. 50= L. R. 4 A. 66=4 L. R. All. (Civ.) 66= 1923 A. 161 (2).

———*Reversioner—Suit by.*

A suit for mere declaration of reversionary title during life-time of widow or other heiress cannot be entertained. (*Lindsay and Ryves, JJ.*) MUNNULAL *v.* RAJARAM. 20 A. L. J. 282=1922 A. 100.

———*Reversioners—Suit by—Decision in favour of one, if* res judicata *against others.*

One reversioner does not derive his title from another reversioner and therefore a decision in favour of or against one reversioner cannot operate as *res judicata* in favour of or against another. (*Rafique and Stuart, JJ.*) DARBARI LAL *v.* GOBIND RAM. 43 All. 558= 63 I. C. 524=19 A. L. J. 514.

———*Reversioner—Suit—Declaratory suit—Will by widow.*

A Hindu widow executed a Will purporting to do so under an oral direction from her husband. The reversioner sued for a declaration that the Will was void. *Held*, the suit was not maintainable as there was no alienation. 1 A. L. J. 468, Foll. (*Chamier and Piggott, JJ.*) UMRAO KUNWAR *v.* BADRI. 37 All. 422= 29 I. C. 302=13 A. L. J. 551.

———*Reversioner—Suit—Will by widow—Declaratory suit.*

Where the reversionary heirs of one R. sued for a declaration that a will executed by M., widow of R., was null and void as against them, and in the pleadings the deft. set up a title in the widow wholly inconsistent with the rights of the reversioners, the suit was maintainable. (*Griffin and Chamier, JJ.*) RAM AUTAR DUBE *v.* BAHAL PANDEY. 17 I. C. 586.

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———*Reversioner—Suit by—Not barred by suit by widow.*

A suit for possession by a Hindu widow in her own right does not operate as *res judicata* in a subsequent suit for possession by the reversioner. (*Greaves and Cuming, JJ.*) SASHI KUMAR SARKHEL *v.* CHANDRA KUMAR SAMADDAR CHOWDHURI. 68 I. C. 322=35 C. L. J. 348.

———*Reversioner—Suit by.*

The institution of suit by the reversioner for possession of the property alienated by the widow, shows his election to treat the alienation as nullity, and he need not, in such suit, ask for a declaration that the alienation is inoperative nor should he take steps, before the institution of suit, to avoid the alienation. (*Mukerji, A. C. J. and Fletcher, J.*) SULIN MOHAN BANERJI *v.* RAJKRISHNA GHOSH. 60 I. C. 826= 25 C. W. N. 420=33 C. L. J. 193.

———*Reversioner—Suit.*

A reversioner bringing a suit must prove that to the best of his knowledge there are no nearer reversioners or must show circumstances under which though they are remote reversioners they are entitled to sue. (*Shah Din, J.*) KANSHI RAM *v.* SARADA NAND. 33 I. C. 763= 60 P. R. 1916=88 P. W. R. 1916.

———*Reversioner—Suit—Bandhus.*

The father's sister of the deceased last male owner and her sons are entitled to inherit as bandhus under *Mitakshara* and hence could contest alienation made by the deceased's mother. 13 Mad. 10; 15 Mad. 421; 28 All. 187, Ref. (*Rattigan and Shadi Lal, JJ.*) SUNDER SINGH *v.* MUSSAMMAT GURDEVI. 31 I. C. 27=163 P. W. R. 1915.

———*Reversioner—Suit—Alienation—Form of decree.*

In a suit by reversionary heirs for a declaration that a certain sale is not binding on them the court has to determine whether the sale is binding as such. A purchaser who has paid off a prior mortgage cannot claim to be in possession till he has been redeemed. (*Rattigan, J.*) PARTAP *v.* ATTAR SINGH. 262 P. L. R. 1913=20 I. C. 289= 37 P. R. 1913.

———*Reversioner—Suit by—Suit during life-time of widow for declaration, nearest reversioner—Maintainability.*

A suit during the life-time of a widow, for a declaration that plaintiff is the nearest reversioner entitled to succeed to the estate in her hands on her death, is not maintainable. (*Wallis, C. J. and Krishnan, J.*) GURUSAMI PANDIYA *v.* PANDIA CHINNA THAMBIA. 44 Mad. 1=39 M. L. J. 529= (1920) M. W. N. 660= 61 I. C. 242=28 M. L. T. 365.

———*Reversioner—Suit—Declaratory relief.*

When the plffs. sued for a bare declaration that they were the next reversioners of a deceased Hindu and that the deft. was not entitled to usurp the character of the next reversioner. *Held*, that the suit was not maintainable. 45 Cal. 510 (P. C.) Rel. (*Wallis, C. J. and Sivhagiri*

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Aiyar, J.) GANGADHARA RAMA RAO *v.* SURYA RAO. 42 Mad. 219=36 M. L. J. 169= 25 M. L. T. 184=49 I. C. 835=9 L. W. 329.

———*Reversioner—Suit—Death of plff.—Next reversioner—Right to continue.*

A suit by a reversioner is one brought on behalf of the entire body of reversioners and if the plff. conducting the suit dies it is open to the next reversioner to continue the suit ignoring an order of abatement made behind his back. 38 Mad. 408, Foll. *(Sadasiva Aiyar and Spencer, JJ.)* KRISHNASWAMI IYER *v.* SEETHALAKSHMI AMMAL. 25 M. L. T. 116=9 L. W. 166= 49 I. C. 268=(1918) M. W. N. 888.

———*Reversioner—Suit to set aside alienation—Withdrawal—Effect of.*

The dismissal for default or non-prosecution of a suit by one reversioner does not bar another suit by another reversioner and the withdrawal of his suit by one reversioner without obtaining permission to institute another, does not bind the succeeding reversioner and bar him from bringing another suit. 38 Mad. 406 (P.C.) Expl. *(Abdur Rahim and Kumaraswami Sastri, JJ.)* AIYA RAMALINGA MUDALI *v.* ARUMUGA MUDALI. 42 I. C. 512=33 M. L. J. 471.

———*Reversioner—Suit—Adoption—Alienation.*

Per *Wallis, J.*—A reversioner who has allowed his right of suit todeclare an adoption invalid to be barred, is not entitled to sue for declaration that an alienation by the adopted son is invalid. There may be a fresh cause of action against the alienee alone by reason of the alienation to him denying the next reversioner's title but so long as no declaration could be made so as to be binding on the adopted son, the court will be well-advised in refusing to grant the discretionary remedy. Per *Coutts-Trotter, J., contra.*—A reversioner is entitled to sue for declaration that an alienation by the widow and adopted son is not binding on him even if a suit to declare the adoption invalid is barred. A reversioner has one remedy while the adoption is made which is mere possibility of danger and another when the damage takes a concrete form. *(Wallis, C. J. and Coutts-Trotter, J.)* KODALI BAPAYA *v.* AKAMMA. 36 I. C. 255.

———*Reversioner—Suit.*

Suit to set aside adoption on the part of nearest reversioners after six years of the knowledge of adoption on the part of nearest reversioners is barred. *(Wallis and Coutts-Trotter, JJ.)* CHIT REDDI SUBBAMMA *v.* CHIT REDDI MZADI REDDI. 23 I. C. 632=2 L. W. 337.

———*Reversioner—Suit—Set aside alienations—Cause of action.*

Every reversioner has a separate cause of action and right to sue in respect of setting aside alienations by a widow. 29 Mad. 390 (F. B.) Dist. 23 M. L. J. 269; 32 Cal. 62; 24 M. L. J. 62; Rel. on. *(Sankaran Nair and Sadasiva Iyer, JJ.)* NARAYANA IYER *v.* RAMA IYER. 38 Mad. 396= 20 I. C. 625=(1913) M. W. N. 588= 14 M. L. T. 89=25 M. L. J. 219.
[This is no longer law *See* 46 I. C. 202= 38 Mad. 406 (P. C.); 41 Mad. 659. (F. B.)]

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———*Reversioner — Suit — Declaratory suit—Relief.*

The uncertainty regarding the person who would be entitled to succeed is no ground for refusing a declaration regarding the character of the alienation. When the alienation is declared invalid, a charge may also be declared in favour of the alienee for the amount for which necessity has been proved. It is not necessary that there should be an offer in the plaint before a conditional decree can be passed and the alienee given a charge for the amount. *(Sundara Iyer and Sadasiva Iyer, JJ.)* GANIKIPATI PAPARAYADU *v.* GANIKIPATI RATTAMMA. 37 Mad. 275= 17 I. C. 508=24 M. L. J. 62=13 M. L. T. 110= (1912) M. W. N. 1176.

———*Reversioner—Suit—Alienation by widow—Death of reversioner—Suit, if abates.*

In a suit by a reversioner for a declaration that an alienation by a Hindu female, having only a woman's estate, was invalid, the cause of action does not pass to the next reversioner upon the death of the plff. 22 M. L. J. 375; 12 M. L. T. 199, Rel. *(Sundara Aiyar and Sadasiva Aiyar, JJ.)* RAMACHANDRA NAIDU *v.* SUBBAYA PILLAI. 16 I. C. 865=12 M. L. T. 664.
[This is no longer law *See* 38 Mad. 406 (P. C.)= 46 I. C. 202; 41 Mad. 659 (F. B.)]

———*Reversioner—Suit—Nature of.*

A suit by a Hindu widow to declare an adoption by her son's widow as invalid, abates on the plff.'s death as the right of suit does not survive. For this question no distinction is made between suits of setting aside an adoption or an alienation. *Obiter*:—Even if it is held that the cause of action survives, the reversioners of the last male owner are not the plff's. legal representatives. *(White, C. J. and Benson, J.)* ARUNACHELLAM PILLAY *v.* VELLAYA PILLAI. 12 M. L. T. 199= (1912) M. W. N. 897=15 I. C. 461= 23 M. L. J. 719.

———*Reversioners—Suit by—Transfer by widow—Oral transfer.*

Where a Hindu widow transfers possession without a written instrument, a reversioner should not be given a declaratory decree, unless there is strong evidence that the conduct and declarations accompanying the transfer clearly constitute an injury, and it is necessary to perpetuate testimony in favour of such reversioner. *(Mitra, A. J. C.)* UJARIA *v.* KISHAN LAL. 60 I. C. 343= 16 N. L. R. 209.

———*Reversioners—Suit by—Suit for declaration.*

A suit under S. 42 of the Specific Relief Act lies by a reversioner, irrespective of the fact whether he has a present interest in the reversion, when his reversionary rights are denied. *(Stuart, A. J. C.)* MUNNU SINGH *v.* BACHCHU SINGH. 33 I. C. 183.

———*Reversioners—Suit—Right of suit to set aside an adoption.*

The next reversioners have a right to sue to have the adoption set aside or declared invalid during her life-time, when out of collusion or connivance she fails to have an adoption set aside. *(Roe and Jwala Prasad, JJ.)* SUNDER PRASAD SINGH *v.* RAM BATI KUAR. 40 I. C. 150

HINDU LAW—Reversioner—Suit by.

———*Reversioners—Suit — Right of suit—Alienation.*

A suit to restrain all alienations is not unsustainable. It must be founded on a specific alienation. (*Hayward, A. J. C.*) RATANSI *v.* UMERBAI. 9 I. C. 997.

Sanyasi.

See HINDU LAW—SUCCESSION.

Schools of law.

———*Schools of law—Migrating family—Law applicable—Law at the time of migration.*

The law of succession is the personal law of the individual whose succession is in question. If it is known that he lived in a certain place, it will be assumed that his personal law is the law that prevails in that place. But if it is known that he originally belonged to some other place from whence he has migrated to another place, his personal law would be the law of the place of his original residence as it was when he left, unless it can be shown that he has renounced his original law in favour of the law of the place to which he migrated. According to the Hindu Law as expounded by the Mayukha School in the Bombay Presidency and applied to Maharashtra Brahmins in Central Provinces the daughter succeeding to her father takes an absolute estate. (*Lord Dunedin*). BALWANT RAO *v.* BAJI RAO.

48 Cal. 30=47 I. A. 213=18 A. L. J. 1049=
28 M. L. T. 157=12 L. W. 679=
16 N. L. R. 187=25 C. W. N. 243=
22 Bom. L. R. 1070=39 M. L. J. 166=
57 I. C. 545=(1920) M. W. N. 483 (P. C.)

———*Schools of law—Mitakshara and Mayukha—Superiority.*

The Mitakshara, is an authority superior to Mayukha, in the town of Mahad in the Kolaba District. (*Batchelor and Shah, JJ.*) NARHAR *v.* BHAU. 40 Bom. 621=36 I. C. 539=
18 Bom. L. R. 744.

———*Schools of law—Family in Bengal claiming to follow Mitakshara—What to prove.*

Where a family in Bengal claimed to be governed by the Mitakshara school and proved its immigration from a Province where such law prevails and also a practice consistent with such law, the proof is sufficient. Proof is not necessary of immigration after the establishment of the Dayabhaga system. (*Walmsley and Suhrawardy, JJ.*) RAMESH CHANDRA SINHA *v.* MAHOMED ELAHI BUKSH. 50 Cal. 898=1924 C. 383.

———*Schools of law—Bombay school—Parbhus—Migration from Bombay—Law applicable.*

The parbhus of the Central Provinces who originally immigrated from the Bombay Presidency are governed by the Bombay School of Hindu Law as known and judicially ascertained at the present date and not in the past. (*Batten, A. J. C.*) MADHO RAO *v.* KESHEO RAO. 56 I. C. 175.

———*Schools of law—Mithila school—Mitakshara.*

The Mithila school is a branch of the Mitakshara school, the Mitakshara being the basis of works which set out the law of the Mithila country. It lies on those who allege to the contrary to prove that there is something in the Hindu Law as interpreted by the Mithila school to justify their contention that a woman succeeds absolutely to the properties of her deceased husband. (*Batten and Findlay, Offg. A. J. Cs.*) TORTANBAI *v.* BALLABHJI OJHA. 48 I. C. 956.

HINDU LAW—Stridhanam—Succession.

———*Schools of law—Central Provinces—Lex loci—Law of Benares School.*

The Benares School of Hindu Law is *lex loci* of the Central Provinces, that of the Bombay School being applied only to Mahratta Brahmins in Nagpur and other cases where it is specially found to be applicable. (*Stanyon, A. J. C.*) GANNO *v.* BENI. 43 I. C. 943=14 N. L. R. 82.

———*Schools of law—Mitakshara—Applicability—Berar.*

Mitakshara as interpreted in Western India is applicable to Berar. (*Mitra, A, J. C.*) BHADIA *v.* MUSSAMMAT BHAGI. 23 I. C. 229=
10 N. L. R. 24.

———*Schools of law—Mitakshara—Personal law—Berar Kunbis.*

The personal law of the Berar Kunbis is the Mitakshara as interpreted by the Mayukha. (*Stanyon, A. J. C.*) SITARAM *v.* LAXMAN. 17 I. C. 133=8 N. L. R. 128.

Self-acquisition.

See HINDU LAW—JOINT FAMILY.

Separate Property.

See HINDU LAW—JOINT FAMILY.

Shebait.

See HINDU LAW—RELIGIOUS ENDOWMENT.

Sikh.

See HINDU LAW—APPLICABILITY OF.

Son's Liability.

See HINDU LAW—DEBT.

Son's Obligation.

See HINDU LAW—DEBT.

Spes successionis.

See HINDU LAW—REVERSIONER.

Spiritual Office,

See HINDU LAW—RELIGIOUS ENDOWMENT.

Stridhanam.

Succession.

What is.

What is not.

Stridhanam—Succession.

———*Stridhanam—Succession—Daughter's son or daughter's daughter.*

Under the Mitakshara school of law the daughter's daughter has the preference over the daughter's son in the matter of succession to stridhanam. It is only the *Stridhan* heirs of the female in whose hands the property was held as *Stridhan* that have to be ascertained. (*Mears. C. J. and Piggott, J.*) SHAM BEHARI LAL *v.* RAM KALI.

45 A. 715=L. R. 4 A. 601=21 A. L. J. 656=
1924 A. 15.

HINDU LAW—Stridhanam—Succession.

———*Stridhanam — Succession — Unmarried woman—Prostitution—Effect of.*

The Mitakshara law recognises two forms of descent to a Hindu woman's self-acquired property according as whether she is married or unmarried. It is not the law that when an unmarried woman has fallen from chastity no one can succeed to her property except the Crown. The mother of the woman would be an heir. In the case of Hindu widows who have become prostitutes, the succession to their stridhanam is regulated by the same rules as those which apply to the succession of married women. (*Stuart, J.*) MUSSAMMAT BHANGA *v.* SHEIK DIN MAHOMED.

4 U. P. L. R. (A.) 8=1923 A. 233.

———*Stridhanam — Succession—Blood relatives preferred to Crown.*

On failure of husband's heirs, the *stridhan* would pass to the widow's blood relatives in preference to the Crown. (*Macleod, C. J. and Shah, J.*) GANPAT RAM *v.* SECY. OF STATE.

45 Bom. 1106=62 I. C. 109= 23 Bom. L. R. 462.

———*Stridhanam—Succession —Mayukha—Non-technical stridhanam—Son takes priority to son's son.*

Among Hindus governed by the *Vyavahara Mayukha* the non-technical stridhana of a woman desends to her son in preference to her son's son. (*Scott, C. J. and Heaton, J.*) BAI RAMAN *v.* JAGJIVANDAS KASHIDAS. **41 Bom. 618= 41 I. C. 277=19 Bom. L. R. 629.**

———*Stridhanam — Succession — Mayukha — Joint tenancy—Tenancy-in-common.*

Under the law of the *Vyavahara Mayukha* as also under that of the Mitakshara, property inherited by sons from their mother descends to them not as a joint tenancy, but a tenancy-in-common. 27 Mad. 300, Foll. (*Chandavarkar and Russell, JJ.*) BAI PARSON *v.* BAI SOMLI.

36 Bom. 424=15 I. C. 774= 14 Bom. L. R. 400.

———*Stridhanam—Succession—Father's sister.*

A Hindu maiden dying without leaving children, mother or father, as heirs must for purposes of succession to her stridhanam be treated as a woman married in the unapproved form. 17 Bom 114; 32 Bom. 409; 3 Bom. 369; 4 Bom. 188; 32 Bom. 300, Rel. on. Both under *mitakshara* and *mayukha* in the case of a deceased Hindu maiden leaving surviving her father's sister and her father's male *gotraja sapindas* 5 or 6 degrees removed, her stridhanam goes to the father's sister and not to father's male sapindas. (*Scott C. J., Chandavarkar, Batchelor and Heaton, JJ.*) THUKARAM *v.* NARAIN. **36 Bom. 339= 14 I.C. 438=14 Bom. L. R. 89. (F. B.)**

———*Stridhanam—Succession—Husband's brother and step-brother.*

The claim of the husband's brother to succeed in preference to the deceased woman's step-brother in respect of her separate property is recognised in text books and has received judicial confirmation. (*Walmsley and Huda, JJ.*) SRIMATHI GUNAMANI DASI *v.* DEVI PRASANNA RAI CHOWDHURI. **54 I. C. 897=23 C. W. N. 1038.**

HINDU LAW—Stridhanam—Succession.

———*Stridhanam — Succession — Order of — Dayabhaga.*

Sons and maiden daughters take equally Ayauthaka Stridhanam. Married daughters are postponed. The burden of proving that property purchased by a Hindu lady long after her marriage was her Ayauthaka property as having been purchased out of a special fund obtained during her nuptial ceremony is on the person asserting it. (*Richardson and Beachcroft, JJ.*) DELAUNEY *v.* PRANHARI GUHA.

45 I. C. 879=22 C. W. N. 990.

———*Stridhanam—Succession—Sons of one wife —Rival wife.*

The son by one wife of the husband does not become the issue of the rival wife for purposes of succession to her stridhanam and it does not follow from the text of Manu which says "if any wives of the same man becomes mother of a son all of them become mothers of the male children." The adoptive and natural step-sons of a Hindu widow have equal rights of succession to her stridhan as sapindas of her husband. (*Sanderson, C. J., Woodroffe and Mookerjee, JJ.*) GANGADHAR BOGLA *v.* HIRA LAL BHOGLA.

43 Cal. 944=34 I. C. 10= 20 C. W. N. 489=23 C. L. J. 372.

———*Stridhanam—Succession—Female heirs.*

Stridhan inherited by female heirs do not become the latter's Stridhan. The female heirs take only a Hindu woman's estate in the property. 24 All. 468 (P. C.); 5 Cal. 222; 17 Cal. 911, Foll. (*Fletcher and Teunon, JJ.*) JOGENDRA CHANDRA BANERJEE *v.* PHANI BHUSHAN MOOKERJEE. **33 I. C. 810=43 Cal. 64.**

———*Stridhanam—Succession—Brother.*

The brother succeeds to the Ayauthaka stridhanam property of a Hindu married woman governed by the Dayabhaga Law in preference to the husband irrespective of the form of the marriage. (*Fletcher and Roe, JJ.*) MAHENDRA NATH MAITY *v.* GIRISH CHANDRA MAITY. **31. I. C. 561= 19 C. W. N. 1287.**

———*Stridhanam — Succession — Principle of.*

Succession must be traced from the last owner and not from last holder. (*Carnduff and Richardson, JJ.*) MADHUMALA DASI *v.* LAXMAN.

22 I. C. 518=20 C. W. N. 627.

———*Stridhanam—Succession—Prostitute—Bengal School.*

Under the Bengal School of Hindu Law the stridhanam property of a prostitute will pass to her brother's son in the absence of nearer heirs. Prostitution does not sever the tie of kindred completely. (*Jenkins, C. J., Stephen, Mookerjee and Holmwood, JJ.*) HARI LAL SINGH *v.* TRIPURA CHARAN ROY. **40 Cal. 650=17 C. L. J. 438= 19 I. C. 129=17 C. W. N. 679 (F. B.)**

———*Stridhanam—Succession—Ayauthaka—Inheritance—Father—Husband—Son of co-wife.*

The father of a Hindu lady governed by the *Dayabhaga* succeeds to her *ayauthaka* stridhanam property, prior to the husband or the son of a co-wife. (*Mookerjee and Beachcroft, JJ.*) BAIKUNTA NATH CHAKRAVARTI *v.* KASI NATH PANDIT.

16 I. C. 553.

HINDU LAW—Stridhanam—Succession.

———*Stridhanam — Succession — Dayabhaga— Half sister's son—Daughter's son of great grandson of great grandfather of woman's husband.*

Under the Dayabhaga school a woman's half sister's son is entitled to succeed to her stridhan in preference to the daughter's son of the great-grandson of the grand-father of the woman's husband. (*Brett and N. R. Chatterjee, JJ.*) SASHI BHUSAN LAHIRI *v.* RAJENDRA NATH JOARDAR.
40 Cal. 82=15 I. C. 225=16 C. W. N. 1094.

———*Stridhanam—Succession—Preference.*

Under the Mitakshara Law a woman's father's brother's sons are not entitled to claim her stridhanam property in preference to her father's daughter's son. (*Chitty and Chatterjee, JJ.*) DWARKA NATH RAY *v.* SARAT CHANDRA SINGH RAY. 39 Cal. 319=15 C. W. N. 1036=11 I. C. 872=15 C. L. J. 23.

———*Stridhanam—Succession—Prostitution.*

Though property held absolutely by a prostitute is not stridhanam in the exact contemplation of the Dayabhaga, the operation of which is confined to married women, it must be treated as Stridhan for purposes of succession. Prostitution severs a woman so far as inheritance is concerned from all her relations at the moment she becomes degraded and necessarily also from all persons claiming through them. Sons and chaste daughters born after degradation are not affected by this rule and inherit her absolute property according to general rules of Hindu Law. (*Stephen, J.*) TRIPURA CHARAN *v.* HARI MATI DAS.
38 Cal. 493=9 I. C. 657=15 C. W. N. 807.

———*Stridhanam— Succession— Sister's son v. Husband's daughter's son's son.*

The word "sapinda" in chapter II, *placitum* 11 of the *Mitakshara* is not confined to *gotraja* sapindas but is used in the generic sense of relationship by blood. Under the Mitakshara Law the sister's son of a woman married in the orthodox form who dies leaving no issue cannot claim the stridhanam property in preference to the husband's daughter's son's son. The persons entitled to succeed are those who would succeed to the property if the property belonged to the husband. 36 Mad. 116; 37 Mad. 293; 36 Mad. 45, Rel. (*Abdur Rahim and Moore, JJ.*) MATHOSRI RAMABOI AMMANI *v.* SIVAJI RAJA SAHIB. 12 L. W. 171=59 I. C. 265=(1920) M. W. N. 501.

———*Stridhanam—Succession—Maiden's property —Father's paternal uncle's son and father's sister.*

A father's paternal uncle's son is entitled to succeed in preference to a father's sister to the stridhanam property of a maiden. 38 Mad. 45; 32 Bom. 409; 39 Cal. 319, Ref. (*Phillips and Napier, JJ.*) SUNDARAM PILLAI *v.* RAMASAMI PILLAI. 43 Mad. 32=26 M. L. T. 115=(1919) M. W. N. 615=52 I. C. 821=10 L. W. 664.

———*Stridhanam — Succession — Crown, when succeeds.*

The *stridhanam* of a Hindu woman, married in the approved form, and dying issueless, devolves on her husband and failing him, on his *sapindas* according to the rule of succession to the property of a male. On failure of the husband's *sapindas* the widow's blood relations would succeed to the exclusion of the crown. As between the mother and brother, the mother is the preferential heir. A brother's widow, though a *gotraja sapinda* is not entitled to succeed as heir under the Madras system of inheritance. (*White, C. J. and Sankaran Nair, J.*) KANAKAMMAL *v.* ANANTHAMATHI AMMAL. 25 I. C. 901=37 Mad. 293.

———*Stridhanam —Succession—Custom — Agambadia caste.*

According to custom in Agambadia caste the stridhanam property of a widow without issue, goes to her parents in preference to the husband's kindred. (*Sankaran Nair and Ayling, JJ.*) VELLAICHAMI SERVAI *v.* MAMUNDI SERVAI. 23 I. C. 124.

———*Stridhanam— Succession—Married woman deserting husband—Daughter's daughter and illegitimate son.*

A daughter of a married woman born before her desertion of her husband does not cease to be so after the mother's degradation and expulsion from caste. The daughter of such a daughter is entitled to succeed to the stridhanam of the degraded woman in preference to her illegitimate sons. Illegitimacy or degradation cannot be treated as a ground of preference. Nor can legitimacy place a person in a worse position. (*Benson and Sankaran Nair, JJ.*) MANDARAM NAMMAIYYA CHETTY *v.* MANDARAM THIRUVENGADATHAN CHETTY. 13 M. L. T. 88=18 I. C. 601=24 M. L. J. 223.

———*Stridhanam—Succession—Maiden's property —Step brother and maternal aunt—Preferential heir —"Sapinda", meaning of.*

A step mother is entitled to succeed to a maiden's stridhanam in preference to the maternal aunt. The sapindas both of the father and the mother in the text of the *Mitakshara* refer to the same persons as the mother becomes a member of the father's family on marriage. 36 Bom. 339; 32 Bom. 490; 39 Cal. 319, Foll. The rule that *Gotraja sapindas* do not inherit as agnate relations taking the rank which they would be entitled to if their claims were based on *Sapinda* relationship has been enforced with regard to succession to male's property, 18 Mad. 168; 19 Mad. 35, Ref. The rule that in *Stridhanam* succession a daughter inherits as *Sapinda* where the succession has to be traced through the father or the husband applies also to the case of a wife or widow. 21 M. L. J. 851, Ref. (*Sundara Iyer and Sadasiva Iyer, JJ.*) KAMAL BAI *v.* BAGIRATHI BAI. 38 Mad. 45=23 M. L. J. 618=12 M. L. T. 499=16 I. C. 939=(1912) M. W. N. 1166.

———*Stridhanam—Succession—Daughter of co-wife.*

As compared with the collateral Sapindas of the woman's husband, a co-wife's daughter is a preferential heir to a woman's stridhanam. (*Abdur Rahim and Ayling, JJ.*) MARYA PILLAI *v.* SIVABHAGYATHACHI.
36 Mad. 116=(1911) 2 M. W. N. 168=21 M. L. J. 850=12 I. C. 128=10 M. L. T. 494.

HINDU LAW—Stridhanam—Succession.

———*Stridhanam—Succession—Daughter — Post-nuptial gift—Devolution—Mitakshara—Mayukha.*

In a post-nuptial gift made by a father to a daughter in Berar, the property gifted with its accretion becomes her anvadheyak stridhanam and on her death her son and daughter surviving her inherit equally. In Berar wherever the *Mitakshara and Mayukha* differ, the latter predominates. 4 N. L. R. 31; 5 N. L. R. 13; 9 N. L. R. 102; 10 N. L. R. 24 followed (*Kotval, A. J. C.*) SHRIRAM *v.* RAJA RAM.
19 N. L. R. 193=1924 Nag. 83.

———*Stridhanam — Succession — Unmarried female—Sister.*

An unmarried woman is treated as analogous to a childless woman married in a disapproved form and the succession in both cases is confined to the father's family. Consequently a sister has a preference to inherit, to any descendant of a paternal ancestor. 36 B. 339; 43 M. 32; 14 N. L. R. 84 Ref. (*Drake Brockman, J. C.*) MADHO *v.* SAMPAT. 69 I. C. 758 (2)=5 N. L. J. 249.

———*Stridhanam—Succession—Daughter's estate—Mode of devolution—Berar—Mitakshara.*

In Berar a Hindu daughter inheriting from her father takes an absolute estate. In Maharashtra and Berar where the Mitakshara is paramount and the Mayukha of secondary importance, the inheritance to non-techical stridhan would devolve on the death of the daughter on (1) Unmarried daughter, (2) Married Daughter who is "unprovided for" (3) Married daughter who is "provided for" (4) Daughter's daughter, (5) Daughter's son, (6) son, (7) Son's son. 14 B. 612; 31 B 453; 6 B. H. C. R. I.; 6 B. 85: 17 B. 758 Ref. (*Prideaux, A. J. C.*) GOVINDA *v.* DOOMI.
65 I. C. 671: 5 N. L. J. 187.

———*Stridhanam — Succession — Rights of daughter.*

In the Bombay school of Hindu Law applicable to Bombay and Berar, a daughter succeeding to her mother's stridhanam takes absolute interest. (*Drake Brockman, J. C.*) LAXMAN RAO *v.* BHAU SAHEB. 48 I. C. 116.

———*Stridhanam—Succession—Form of marriage—Gains of prostitution.*

In the absence of all male gotrajas belonging to a childless widow's deceased husband's line his son's widow inherits the childless widow's stridhanam. A woman whose issue predeceased her is in the same category, so far as devolution of property is concerned, as one who never bore a child. A husband and his heirs cannot inherit property obtained by his wife by means of prostitution. The succession to the stridhanam of a childless Hindu married woman depends on the form of the woman's marriage. If the marriage was on the *Brahma* form the husband and his heirs completely exclude the blood relations but if it was in the Asura form he and they are as completely excluded by the latter. (*Stanyon, A. J. C.*) CHANDRA BHAGA *v.* VISWANATH. 20 I. C. 557=9 N. L. R. 102.

———*Stridhanam—Succession—Prostitution.*

Property acquired by a Hindu widow by prostitution descends to her illegitimate child and not to the members of her husband's family upon whom the widow had no claims whatever after she began to live with her paramour. (*Lindsay, J. C. and Rafique, A. J. C.*) MAHARANA *v.* THAKUR PERSHAD. 12 I. C. 778=14 O. C. 234.

HINDU LAW—Stridhanam—What is.

———*Stridhanam — Succession — Gift from husband.*

It is doubtful as to who succeeds to the immoveable property of a woman, acquired by her by gift from her husband whether her heirs or her husband's heirs. (*Chapman and Roe, JJ.*) SASIMAN CHOUDRI *v.* SIBNARAYAN CHOUDRI.
39 I. C. 755=1 P. L. W. 375.

———*Stridhanam—Succession—Son and son's son.*

The son is a preferential heir to a son's son in respect of the non-technical *stridhan* of a Hindu female governed by Mayukha. A Hindu female inheriting her father's estate gets an absolute estate and the estate descends to her son in preference to a grandson by a pre-deceased son. (*Fawcett, J. C. and Kemp, A. J. C.*) DOWLATT RAM *v.* NARAIN DAS. 60 I. C. 929=14 S. L. R. 231.

———*Stridhanam—Succession—Step son.*

A step-son has no claim to stridhanam as under Mayukha and Mitakshara, the succession is confined to the issue of the female who has the stridhanam. (*Fawcett, J. C. and Kennedy, A. J. C.*) LALSINGMAL SINGH *v.* GIRDHARIDAS.
60 I. C. 263=14 S. L. R. 224.

Stridhanam—What is.

———*Stridhanam—What is—Savings from income.*

Where the widow acquired property out of the income of the husband's property which she treated as her own, her daughters would succeed to such property. (*Banerjee and Ryves, JJ.*) VENKA KUNWAR *v.* JAMA KUNWAR.
42 I. C. 846=15 A. L. J. 798.

———*Stridhanam—What is—Property obtained by adverse possession.*

The property obtained by a female by adverse possession is her stridhanam and on her death descends to her stridhanam heirs. (*Banerjee, J.*) MAGHLI *v.* LADHI. 13 I. C. 644.

———*Stidhanam—What is—Gift by brother.*

Property given by brother to sister 7 years afterwards in fulfilment of promise at the time of marriage to give dowry is stridhanam. (*Fleetcher and Roe, JJ.*) MAHENDRA NATH MAITY *v.* GIRISH CHANDR MAITY. 31 I. C. 561=19 C. W. N. 1287.

———*Stridhanam — What is — Acquisitions—Enfranchisement of inam—Absolute estate—Reversioners not entitled.*

When service inam is enfranchised in favour of a Hindu female who is the last registered holder of the office and the title deed granted to her is in terms of absolute grant the estate conferred upon her is an absolute one and not that of a Hindu female. (*Spencer and Devadoss, JJ.*) ANDUKURI *v.* PACHIGOLLA.
(1922) M. W. N. 305=31 M. L. T. 154=16 M. L. W. 228=43 M. L. J. 153=1922 M. 173.

HINDU LAW– Stridhanam—What is.

———*Stridhanam—What is—Property standing in the name of a female.*

Under Hindu law, there is no presumption that property standing in the name of a female is not her *stridhan* but joint family property. (*Abdur (Rahim, C. J. and Odgers, J.)* SADAYAPPA ASARI *v.* RAGHAVA ASARI. 62 I. C. 220 = 27 M. L. T. 325.

———*Stridhanam—What is—Acquisition out of income.*

Property purchased by a limited owner out of the savings from income belong to her absolutely. 28 Mad. 1 Foll. *Quaere.*—Whether property belonging absolutely to a limited owner can be incorporated with property in which she holds a limited interest without transfer *inter vivos* or by will. (*Abdur Rahim and Srinivasa Iyengar, JJ.*) VEERARAGHAVA REDDI *v* KOTA REDDI. 3 L. W. 422 = 31 M. L. J. 465 = 33 I. C. 532 = 20 M. L. T. 345.

———*Stridhanam—What is—Wedding presents.*

Jewels and cloths given as wedding presents to Hindu woman at the time of her marriage are her separate property intended to be enjoyed by herself and there is no presumption that they form part of the family property. (*Coutts-Trotter and Srinivasa Aiyangar, JJ.*) THAYARAMMAL *v.* KRISHNA PATTAR. 32 I. C. 955.

———*Stridhanam—What is-*

Property acquired by a woman by her wits without any aid from any property inherited from males is stridhanam and devolves on her daughter in preference to her sons. 28 Mad. I, Foll, 34 All. 234, Dist. (*Ayling and Tyabji, JJ.*) TAD. IBOYINA PEDA PUNNAYYA *v.* DEBBAKUTTI KATTAMMA. 23 M. L. J. 495 = 17 M. L. T. 363 = 29. I. C. 184. 2 L.W. 415.

———*Stridhanam—What is—Saudayaka—Acquisition.*

A Hindu woman has absolute control over the Saudhayaka. Gifts from strangers not given at the nuptials fire or during marriage processions and acquisitions made by means of mechanical arts are subject to the control of her husband. 34 All. 234 (P. C.); 10 W. R. (P. C.); 17; 19 W. R. 284 30 Bom. 229; 2 M. H. C. R. 350, Foll. Per *Seshagiri Iyer, J.*—Stridhanam is divided into Yautaka and Ayauthaka. Yauthaka includes all gifts made during the marriage ceremonies. Ayauthaka is that which is given before or after the marriage. Saudhayaka is that which is given by affectionate kindred and includes both Yauthaka and Ayauthaka not received from strangers. The view of the author of the Smrithi Chandrika restricting Saudhayaka to gifts made between betrothal and the time of entering her husband's house ought not to be accepted. (*Wallis, O. C. J. and Seshagiri Iyer, J.*) MUTHUKARUPPA PILLAI *v.* SELLATHAMMAL. 39 Mad. 298 = 16 M. L. T. 587 = 2 L. W. 38 = 26 I. C. 785 = (1915) M. W. N. 48.

———*Stridhanam—What is—Share given to brother's widow on partition.*

Where a widow at a partition by her husband's undivided brothers was given a share and it was agreed that the share so allotted may be alienated by her without any kind of objection on the part of the co-parceners, the widow takes it as her absolute property. 19 Mad. 107, Foll. (*Miller and Sadasiva Iyer, JJ.*) SUBBAYYA *v.* CHIRUMAMELLA LAKSHMIDEVAMMA. 16 M. L. T. 297 = 25 I. C. 412 = (1914) M. W. N. 875.

HINDU LAW—Stridhanam—What is not.

———*Stridhanam—What is—Husband and wife—Acquisitions.*

Acquisitions by the joint exertions of both husband and wife are their joint property and on death of the wife her stridhanam heirs get her share. The acquisitions of a woman, during coverture from her own exertions is her own separate property, which she can hold independently of her husband, and it devolves on her heir. (*Sankaran Nair and Ayling, JJ.*) MUTHU-RAMAKRISHNA NAICKEN *v.* MARI MUTHU GOUNDAN. 38 Mad. 1036 = 24. I. C. 363 = 26 M. L. J. 532.

———*Stridhanam — What is—Jewels made for ladies.*

Jewels made for ladies from family funds for the use of the lady and exclusively used by her belongs to her as her absolute property. (*Sankaran Nair, J.*) ALAMELU MANGTHAYARAMMAL NUMBERUMAL CHETTY. 23. I. C. 824 = 15 M. L. T. 352.

———*Stridhanam—What is— Widow—Acquisition of occupancy holding—Right to.*

Where a Hindu widow sets aside a surrender of the occupancy holding made by her son by payment of her own money, the interest of the widow in the holding is in the nature of stridhanam property. Consequently on the death of the widow the holding passes to her heir. (*Kotwal, A. J. C.*) PREMLAL *v.* BHAG CHAND. 19 N. L. R. 4 = 1923 Nag. 34.

———*Stridhanam—What is—Maintenance grant—Nature of.*

In a compromise for a partition between coparceners certain property was given to a widow absolutely in the same manner as if the property had been partitioned under a decree. *Held* the widow took an absolute interest. (*Pratt, J. C. and Cohen, A. J. C.*) AMIBAI *v.* MUSSO RAHIMUTULLA. 10 I. C. 933 = 4 S. L. R. 271.

Stridhanam—What is not.

———*Stridhanam—What is not—Share allotted to mother on partition—Mitakshara—Succession.*

Property allotted to a Hindu mother for her share on a partition of an ancestral property among her sons does not under the Mithakshara Law become her stridhanam descendible to her stridhanam heirs but reverts on her death to the next heirs of her husband, in the absence of an agreement to the contrary among the coparceners at the time of the partition. The Hindu Law Texts on the subject examined. 11 M. I. A. 139; 11 M. I. A. 487; 6 I. A. 15; 25 All. 468 (P. C.), Ref. to. 24 All. 67; 32 All. 253; Overruled. (*Lord Robson.*) DEBI MANGAL PRASAD SINGH *v.* MAHADEO PRASAD SINGH. 34 All. 234 = 39 I. A. 121 = 9 A. L. J. 263 = 11 M.L.T. 217 = 15 C L.J. 344 = 22 M.L.J. 462 = 16 C. W. N. 409 = (1912) M. W. N. 324 = 14 I. C. 1000 = 14 Bom. L. R. 220 (P. C.) [Overruling on appeal 5 I. C. 208 = 32 All. 253.]

HINDU LAW—Stridhanam—What is not.

———*Stridhanam—What is not—Daughter's estate—Income of.*

The income of the estate in possession of daughters is not necessarily joint property, nor stridhanam, but it will go to the natural heirs of the daughters under Hindu Law. (*Piggott and Walsh, JJ.*) SITHARAM *v.* DULAM KUAR. 41 All 350=50 I. C. 372=17 A. L. J. 337.

———*Stridhanam—What is not—Savings by a Hindu widow—Whether part of estate of the husband.*

Savings by a Hindu widow from her husband's estate are regarded as a part of such estate if they are not disposed of in any way by the widow. The nature of the savings and the intention of the widow should be taken into consideration in deciding whether such savings will follow the estate of the husband. The true test is to determine whether the savings were treated by the widow as a temporary saving to be applied at a subsequent time for her own use or whether she treated the same as a part of estate; whether the sum could be regarded as an accumulation or a mere saving for personal use. Where a *Howdah* which was a part of a widow's husband's estate, was sold and repurchased by her, the inference must be that she treated it as a part of her husband's estate. Rents not realised from tenants by a widow are not in the nature of savings for personal use but form part of the estate of the husband. (*Mookerjee and Caspersz, JJ.*) BHAGABATI KOER V. SOHODRA KOER. 13 I. C. 691=16 C W. N. 834.

———*Stridhanam — What is not — Property inherited from father.*

Property inherited by a Hindu widow from her father is not her stridhanam and it goes on her death to her father's heirs. (*Shah Din, C. J. and Le Rossignol J.*) RAMJI DAS *v.* DURGA PARSHAD. 45 I. C. 90=6 P. R. 1918.

———*Stridhanam — What is not —Mother's share on partition.*

A share taken by a mother on a partition of the family property between her sons is not her stridhanam but will devolve after her death upon her husband's shares, 34 All. 231, Foll. (*Drake-Brockman, J. C.*) RAO VINAYAK *v.* LAXMAN. 44 I. C. 51=14 N. L. R. 56.

———*Stridhanam — What is not — Property obtained by wife by prostitution—Succession.*

The husband and his heirs cannot inherit the property obtained by his wife by means of prostitution. (*Stanyon, A. J. C.*) CHANDRABHAGA *v.* VISHWANATH. 20 I. C. 557=9 N. L. R. 102.

———*Stridhanam—What is not—Acquisitions—Prostitution.*

Property acquired by a Hindu widow by prostitution is not her *stridhanam.* (*Lindsay, J. C. and Rafique, A. C. J.*) MAHARANA *v.* THAKUR PERSHAD. 12 I.C. 778=14 O. C. 234.

———*Stridhanam — What is not—Partition—Share allotted to mother or grandmother.*

According to the Mithila Law, a grandmother is entitled to a share on partition of the joint property between her son and grandson. The share is not her stridhanam but is taken in lieu of maintenance and on her death reverts to the general estate and becomes ancestral property. (*Miller, C. J. and Mullick, J.*) KRISHNA LAL JHA *v.* NANDESHWAR JHA. 44 I. C. 146=4 P. L. J. 38.

HINDU LAW—Succession—Ascetics.

———*Stridhanam—What is not—Savings from life-estate.*

A woman's life-estate whether taken by will, gift or inheritance is never stridhanam. Also savings from life-estate, not kept separate, go to the estate and are not stridhanam. (*Chapman and Roe, JJ.*) SASIMAN CHUDRY *v.* SIBNARAYANA. 39 I. C. 755=1 P. L. W. 375.

———Succession.

After-born-son.
Ascetics.
Bandhus.
Brother.
Co-heirs.
Converts.
Crown.
Dancing girls.
Daughter.
Daughter's son.
Degradation.
Exclusion from.
Female heirs.
Half blood.
Illegitimate children.
Mother.
Mother and Father.
Primogeniture.
Rights of.
Rules of.
Samanodakas.
Sapindas.
Sister.
Sister's daughter.
Sister's son.
Son.
Survivorship.
Widow.

Succession—After-born-Son.

———*Succession— After-born son—Child in the womb.*

Under Hindu Law a child begotten has, if subsequently born, all the rights of a child in existence at the time of the death of the last owner. (*Rattigan and Beadon, JJ.*) MANGH *v.* SOBHA SINGH. 1 P. L. R. 1914=20 I. C. 272=218 P. W. R. 1913.

Succession—Ascetics.

———*Succession—Ascetics—Sanyasis — Guru and chela—Initiation—Kaka guru— Rights of.*

As regards succession to a mahant, in the presence of a lawfully appointed *chela* the guru is not a preferable heir. If the preliminary ceremonies of initiation of a person as *chela* are done by one *mahant* and the viyaja homa by another after the death of the former mahant the position of the latter is stronger than that of an ordinary *acharya guru* and he succeeds to the chela in the absence of nearer claimants. A *kakaguru* is one standing in the line of spiritual relationship in a position analogous to that of the nearest male agnate in a

HINDU LAW—Succession—Ascetics.

case of ordinary succession to the estate of a deceased Hindu. (*Rafiq and Piggott, JJ.*) SWARTH GIR *v.* JAGANNATH. L. R. 3 A. 583.

———*Succession—Ascetics—Nihang Goshain—Marriage not allowed—Sons, not heirs.*

An ascetic of Nihang order among whom marriage is not allowed, cannot marry and a son born of marriage is no heir and cannot succeed to the goods and properties. (*Rafique, J.*) RAM KISHORE *v.* JAGANNATH PURI.
21 I. C. 85=11 A. L. J. 738.

———*Succession—Ascetics—Sudra ascetic.*

As a Sudra cannot enter the order of Yathi or Sanyasi, devolution of property left by a deceased Sudra who has purported to become an ascetic and renounced the world is regulated by the ordinary law of inheritance in the absence of proof of any general or special usage to the contrary. 22 Mad. 302 followed. (*Macleod and Kanga, JJ.*) MAHANT NARASINGHDAS GURU SITARAM DAS *v.* KHANDE RAO VINAYAK JOSHI. 1922 Bom. 295.

———*Succession— Ascetics —Disciple—Mithakshara—Sanyasi.*

A virtuous pupil is a declared heir to the sanyasi under Mitakshara Hindu Law. (*Scott, C. J. and Hayward, J.*) RAMDAS GOPALDAS *v.* BALDEODAS KAUSHALYADAS. 39 Bom. 168=
26 I. C. 607=16 Bom. L. R. 757.

———*Succession—Ascetics—Custom.*

A Byragi mahant by reverting to worldly affairs does not cease to be a sanyasi. Succession in such orders is based on custom. A Sudra cannot become a sanyasi or yati according to the Smritis. (*Chatterjee and Newbould, JJ.*) LOCHAN BHINNALI *v.* ADHAR CHANDRA MAHANT.
35 I. C. 630.

———*Succession —Ascetics —Yati— Chela— Sat-Sishya—Meaning of.*

A *yathi* is a Bikshu, a sanyasi, an ascetic of anchorite so that a Brahmin living in the very heart of Calcutta and earning money by pujas not taking up the *danda* or wearing red cloths but wearing leather shoes and depositing money in Marwari firms for interest and purchasing porperties in his village is not a *yathi*. The virtuous pupil or *sat-sishya* takes the property of a *yati* or ascetic. A *chela* is a personal attendant who may be raised to the rank of a *sishya*. A *sat-sishya* is one who is assiduous in the study of theology in relation to the holy science and practising its ordinances. A person though always with a certain sadhu cannot inherit that sadhus property, if he lives with his mother and brother. (*Chaudhuri J.*) GOWRI SHANKAR BYAS *v.* NIADAR SINGH. 23 I. C. 287=18 C. W. N. 59.

———*Succession—Ascetics—Sudras—Usage.*

A Sudra cannot enter the order of *yati* or sanyasi and one who becomes such is not excluded from inheritance to his family estate unless there is some usage to the contrary. (*Holmwood and Chapman, JJ.*) HARISH CHANDRA ROY *v.* ATIR MAHUMMED. 40 Cal. 545=18 I. C. 474=
17 C. W. N. 517.

HINDU LAW—Succession—Bandhus.

———*Succession — Ascetics — Renunciation of rights—Proof—Onus.*

Ordinarily it should be presumed that an Agarwala Bania on becoming a Sudra *faquir* has renounced the world and abandoned all his rights in ancestral property, Onus is on the party who sets up, he has not so relinquished his rights (*Chevis, J.*) LACHMAN DAS *v.* RALIA.
106 P. L. R. 1911=11 I. C. 378=
237 P. W. R. 1911.

———*Succession—Ascetics—Right of mahant.*

A mahant does not lose his right to share in the family property unless he becomes a sanyasi. (*Shah Din and Chevis, JJ.*) LOK NATH *v.* AMAR NATH. 24 P. L. R. 1911=9 I. C. 541=
129 P. W. R. 1911.

———*Succession—Ascetics—Sudras.*

The texts as to disinheritance applicable to a Yathi and sanyasi do not apply to a Sudra ascetic unless a usage to that effect is established. (*Wallis, C. J. and Burn, J.*) SOMASUNDARAM CHETTY *v.* VAITHILINGA MUDALIAR.
40 Mad. 846=41 I. C. 546=6 L. W. 253.

———*Succession—Ascetics—A grahast or gharbari Gosain or Bairagi—Special custom.*

A *grahast* or *gharbari* Gosain or Bairagi is governed in all matters by the ordinary rules of Hindu Law, in the absence of coming under some special custom. (*Hallifax and Macnair, A. J. Cs.*) ITWARIDAS *v.* BODHAN. 17 N. L. R. 29.

———*Succession— Ascetics— Disciple — Mandit Chela—Adoption of.*

There is no custom authorizing succession of a Mundit Chela to the estate of the person making him a Chela. The Mundit Chela does not become an adopted son and the mere fact that his father was present at the ceremony of his initiation as a Chela does not convert the ceremony into one of adoption. (*Mitra and Prideaux A. J. Cs.*) GULABDAS *v.* DHARMI BARIL.
56 I. C. 996.

Succession—Bandhus.

———*Succession — Bandhus — Maternal aunt's grandson and maternal uncle.*

The enumeration of bandhus in the Mitakshara is merely illustrative of what the three classes (Atma bandhus, Pithru bandhus and Matru bandhus) severally mean as several important bandhus as the maternal uncle and sister's son are omitted. The Atma bandhus come first, the Pithru bandhus come next and the Matru bandhus come last. In the absence of any express authority varying the rule the propositions enunciated in *Mullusami v. Muttukumarasami*, (1893) 16 Mad. 23, at p. 30 which on appeal was affirmed by the judicial committee in (1896) 19 Mad. 405, furnish a safe guide. The rule that bandhus *ex-parte paterna* succeed in preference to those *ex-parte materna* has nothing to do with the members of the same class *inter se*. It only explains why pithru bandhus are to be preferred to matru bandhus. Amongst bandhus of the same class nearness

of degree and capacity to confer spiritual benefit upon the deceased and his ancestors determine the preferential right to succeed. Where on the death of a Hindu governed by the Mitakshara school, the contesting claimants to his estates were the deceased paternal aunt's grandson and his maternal uncle, the maternal uncle has a preferential right to succeed as against the paternal aunt's grandson on the ground that although both are atma bandhus the maternal uncle is nearer in degree to the deceased and offers oblations to his own father and grandfather to whom it was the duty of the deceased to offer pinda. The paternal aunt's grandson cannot offer any pinda to the deceased's ancestors. (*Mr. Ameer Ali.*) VEDACHALA MUDALIAR *v.* SUBRAMANIA MUDALIAR.

26 C. W. N. 159 = 24 Bom. L. R. 649 = 2 P. L. T. 707 = 30 M. L. T. 198 = 1922 P. C. 33 (P. C).

———*Succession—Bandhus—Order of succession.*

In Mitakshara, there are three kinds of Bandhus —Atma bandhus, Pitru bandhus and Matru bandhus and they succeed in the order given above. A bandhu, in order to be heritable in a female line, must fall within fifth degree from the common male ancestor and he and the deceased must be Sapindas of each other. A mother's sister's grandson being an atma bandhu is preferred to a mother's paternal aunt's son being a matru bandhu. (*Sir John Edge.*) ADIT NARAYAN SINGH *v.* MAHABIR PRASAD TIWARI.

48 I. A. 86 = 40 M. L. J. 270 = (1921) M. W. N. 153 = 19 A. L. J. 208 = 23 Bom. L. R. 692 = 25 C. W. N. 842 = 33 C. L. J. 263 = 2 P. L. T. 97 = 29 M. L. T. 240 = 6 P. L. J. 140 = 60 I. C. 251 = 14 L. W. 20 (P. C.) [On appeal from 35 I. C. 687.]

———*Succession — Bandhus — Mitakshara — Limits of heritable bandhus.*

The word "bandhu" in the Mitakshara system has a distinct and technical meaning and signifies the bhinna ghotra sapindas. The limitation of sapinda relationship laid down in the Achara Kanda of the Mitakshara is not confined to prohibition in respect of marriage impurity and exequial rites only but applies also to inheritance. 2 Bom. 388, 426; 6 Cal. 199 and 22 Cal. 339, Ref. The sapinda relationship on which the heritable right of collaterals is founded, cases in the case of bhinna gotra sapindas with the fifth degree from the common ancestor. Besides being within the fifth degree from the propositus, a *bhandu* to be entitled to succeed to the inheritance must be so related to the propositus that they are mutually sapindas of each other. 12 M. I. A. 448, Dist. and Expl. *Held*, that the plffs. who were the grandfather's son's son's daughter's daughter's sons of the deceased owner were not his heirs both because they were *bhinna ghotra* sapindas beyond the fifth degree and also because the element of mutuality of sapindaship was wanting between them and the deceased. (*Mr. Ameer Ali.*) RAMA CHANDRA MARTAND WAIKAR *v.* VINAYAK VENKATESH KOTHEKAR. 42 Cal. 384 = 18 C. W. N. 1154 = 27 M. L. J. 333 = 1 L. W. 831 = 10 N. L. R. 112 =

16 M. L. T. 447 = (1914) M. W. N. 835 = 16 Bom. L.R 863 = 12 A.L.J. 1281 = 25 I.C. 290 = 20 C. L. J. 573 = 41 I. A. 290 (P. C.).

———*Succession — Bandhus — Father's sister's great-grandson.*

A father's sister's great-grandson is not entitled to succeed to the estate of a deceased Hindu as a bhinna gotra sapinda. (*Ryves and Gokul Prasad, JJ.*) SHEO NANDAN *v.* MUNNI.

21 A. L. J. 288 = 1923 All 398 (1).

———*Succession—Bandhus—Atma bandhus.*

The father's father's daughter's son's son is a preferential heir to the father's daughter's daughter's son. (*Rafique and Stuart, JJ.*) SHAM DEVI *v.* BIRBHANDRA. 43 All. 463 = 62 I. C. 432 = 19 A. L. J. 312.

———*Succession—Bandhus— Mother's sister's son and mother' brother's son.*

Under Hindu Law a mother's brother's son has priority over a mother's sister's son. (*Bannerji and Piggott, JJ.*) RAMCHARANLAL *v.* RAHIMBUX. 38 All. 416 = 34 I. C. 103 = 14 A. L. J. 538.

———*Succession — Bandhus — Grand father's daughter's daughter's son—Mitakshara.*

A grandfather's daughter's daughter's son is a *Bandhu ex parte paternal* and can inherit. (*Richards, C. J. and Banerjee, J.*) MUKHA *v.* QABZA. 31 I. C. 553.

———*Succession Bandhus—Grandfather's great. grandson's daughter's son.*

"Bandhu" means a sapinda who belongs to a different Gotra (*i, e.*) a Bhinna Gotra sapinda. It is essential that a person claiming to be the *Bandhu* and the last male owner must have been the *sapindas* of each other *i. e.*, within seven degrees on the father's or five degrees on the mother's side including the last owner. A grandfather's great-grandson's daughter's son is not a *bandhu*. 41 I. A. 290, Foll. (*Richards, C. J. and Banerjee, J.*) SHIB SAHAI *v.* SARASWATI.

37 All. 583 = 30 I. C. 903 = 13 A. L. J. 786.

———*Succession — Bhandus — Father's mother's sister's son is a bandhu—Mithakshara.*

Under the Mitakshara, a father's mother's sister's son is a heritable bandhu. (*Karamat Hussain and Chamier, JJ.*) RAM SARUP *v.* NAIDAR MAL. 14. I. C. 55 (2).

———*Succession—Bandhus — Mother's brother's son—Mother's sister's son.*

Under the Mitakshara school of Hindu Law a mother's sister's son and a mother's brother's son are entitled to succeed equally to the property of the propositus. They are both *atma bandhus* and it is difficult to find any legitimate ground of preference between them. (*Macleod, C. J. and Shah, J.*) RAJEPPA RANAPPA *v.* GANGAPPA JOTAPPA.

47 Bom. 48. = 24 Bom. L. R. 789 = 1922 Bom. 420.

———*Succession—Bandhus—Sister's daughter—Son's daughter's son—Priority—Bombay school.*

According to Hindu law, among bandhus, the son's daughter's son is entitled to succeed in

preference to the sister's daughter. Per *Macleod, C. J.*—Though it may be thought that the Bombay High Court in deciding that all male bandhus should be preferred to female bandhus without regard to propinquity has gone too far, still there is no authority for the proposition that bandhus of different sex but of equal propinquity should take equally. Per *Shah, J.*—The list of bandhus given in the Mitakshara is merely illustrative and not exhaustive; nor does the list necessarily indicate anything more than this that the *atma bandhus* have to be preferred to pitri bandhus and that the pitri bandhus are to be preferred to the matri bandhus. Among bandhus, a sister's daughter is entitled to preference over the sister's son's son for the purposes of inheritance. In the Bombay Presidency a sister would be perferred to a son's daughter.

Though Balambhatti is useful as aiding the interpretation of the Mitakshara the views propounded therein cannot be accepted without due caution and examination. (*Macleod, C.J. and Shah, J.*) DATTATRAYA BHIMRAO SABNIS *v.* GANGABAI GANESHBHAT. 46 Bom. 541=24 Bom. L. R. 69= 1922 Bom. 321.

———*Succession—Bandhus—Male or female.*

Under the Mitakshara, all male Bandhus are to be preferred to female bandhus whatever their degree of propinquity. A father's sister's son is entitled to succeed in preference to a father's brother's daughter. (*Macleod, C. J. and Fawcett, J.*) CHANAPPA *v.* YELLAPPA. 45 Bom. 768= 61 I. C. 294=23 Bom. L. R. 213.

———*Succession—Bandhus— Mitakshara females.*

Under the Mitakshara, the mother's sister's son is entitled to succeed in priority to the brother's daughter. For purposes of succession the female bandhus are excluded by the nine classes of bandhus mentioned in the Mitakshara. (*Macleod C. J. and Fawcett, J.*) BALAKRISHNA BHIMAJI MOKASHI *v.* RAMKRISHNA GANGADHAR DIXIT INAMDAR. 22 Bom. L. R. 1442=59 I. C. 771= 45 Bom. 353.

———*Succession—Bandhus—Son's daughter's son.*

A son's daughter's son is a bandhu and succeeds as heir. (*Macleod, C. J. and Heaton, J.*) NATWAR LAL GIRDARI LAL *v.* RANCHOD BHAGWAN DAS. 55 I. C. 313=22 Bom. L. R. 71.

———*Succession—Bandhus—Sister and paternal step-grandmother—Preference.*

Under the Hindu Law, the sister can succeed because she has preference over the paternal step-grandmother. (*Scott, C. J. and Batchelor, J.*) LINGANGOWDA *v.* TULSAWA. 28 I. C. 688= 17 Bom. L. R. 315.

———*Succession— Bandhus— Mathri Bandhus— Daughter of paternal uncle—Children of grand uncle.*

A daughter of the paternal uncle of the propositus, not being closer than a mathri bandhu must

be postponed to the son and daughter of the daughter of the paternal grand uncle of the propositus. 26 Bom. 710 Ref. (*Beaman, J.*) PARAMANAND DAS *v.* PARBHU DAS. 16 I. C. 591= 14 Bom. L. R. 630.

———*Succession — Bandhus—Sister's son—Wife's sister.*

Under the Bengal School of Hindu Law a sister's son is an heir unless there is a custom to the contrary. A wife's sister cannotbe an heir under the Hindu Law but unless a custom to that effect is proved. (*N. R. Chatterjee and Pearson, JJ.*) NEARAM KACHARI *v.* ARDARAM KACHARI. 64 I. C. 145=35 C. L. J. 34

———*Succession—Bandhus—Dayabhaga.*

Great grandfather's son's daughter's son is preferred to the maternal uncle under the Dayabhaga school. (*Jenkins, C. J. and N. Chatterjee, J.*) KEDAR NATH *v.* HARIDAS. 43 Cal. 1= 29. I. C. 790=19 C. W. N. 1181.

———*Succession—Bandhus—Dayabhaga—Order.*

Under the Dayabhaga school, the paternal great grandfather's son's daughter's son is preferable to the maternal uncle though the latter is specifically mentioned in the dayabhaga as heir and the former is not and his precise position is not laid down in the cases. 13 W. R. 49; 26 Cal. 285, Ref. (*Chatterjee and Walmsley, JJ.*) KAILASH CHANDRA ADHIKARY *v.* KARUNA KANTHA CHOWDHURY. 19 I. C. 677= 18 C. W. N. 477.

———*Succession—Bandhus—Order.*

A father's brother's daughter's son is preferred to a great great grandfather's great grandson. (*Mookerjee and Carnduff, JJ.*) KEDAR NATH *v.* AMRITA LAL MOOKERJEE. 16 C. L. J. 342= 17 I. C. 283=17 C. W. N. 492.

———*Succession—Bandhus—Dayabaga— Scheme of.*

The scheme of the Dayabaga is entirely distinct from, and to some extent incompatible with the scheme of the Mitakshara and the one cannot well be made to supplement the other so far as the law of inheritance is concerned. Although the Dayabaga may be silent so far as express in numeration goes, it is not silent so far as the indication of the general principle according to which heirship is to be determined is concerned, there being no question as to that principle being that of spiritual benefit. Under the Dayabaga Law, a father's maternal grandfather's great great grandson is no heir. (*Banerjee J.*) DINO NATH MOHUNTO *v.* CHUNDI KOCH. 16 I. C. 349=16 C. L. J. 14.

———*Succession—Bandhus.*

In the absence of agnate collaterals and the daughters' son's, daughters and daughters' sons are bandhus and heirs if they survive and succeed, and they succeed to an absolute estate. (*Leslie Jones and Broadway, JJ.*) DIAL KUAR *v.* MEHTAB KUAR. 74 I. C. 639=3 L. L. J. 458.

HINDU LAW—Succession—Bandhus.

———*Succession — Bandhus — Daughters of a collateral.*

Daughters of a collateral in the fifth degree of the last male holder are bandhus and heirs when there are no agnate collaterals. (*Leslie Jones and Broadway, JJ.*) DIYAL KUAR *v.* MAHTAB SINGH.
3 Lah. L. J. 458.

———*Succession—Bandhu—Brother's daughter.*

A brother's daughter is not a bandhu so she has no right of inheritance under the Mitakshara. 161 P. R. 1919 diss. (*Leslie Jones and Wilberforce, JJ.*) SAUJAN DEVI *v.* JAGIRI MAL.
1 Lah. 608=59 I. C. 124=3 Lah. L J. 32.

———*Succession — Bandhus — Father's father's son's daughter's son.*

Father's father's son's daughter's son is a bandhu and succeeds in preference to a sister, in any case a sister is a total stranger as compared with him. (*Broadway and Abdul Raoof, JJ.*) TIRATH RAM *v.* MUSSAMMAT KHAN DEVI. 60 I. C. 101=1 Lah. 588.

———*Succession—Bandhus—Father's sister's son.*

Father's sister's son is an heir under the Mithakshara system. (*Scott-Smith and Leslie Jones, JJ.*) TANI *v.* RIAKHI RAM. 1 Lah. 554=
2 Lah. L. J. 481=56 I. C. 742=
114 P. L. R. 1920.

———*Succession — Bandhus—Sister's son and grandson.*

Under the Mithakshara law both sister's sons and grandson are bandhus and entitled to succeed. 20 P. R. 1906; 51 P. R. 1916, Dist. (*Scott-Smith and Jones, JJ.*) BHAG MAL *v.* BHAGWAN DAS.
125 P. W. R. 1917=41 I. C. 636=
11 P. R. 1918.

———*Succession—Bandhus—Females.*

A daughter of the uncle of the last male owner has no right to inherit the property even in absence of any other heirs. (*Rattigan, J.*) BIBI SODHAN *v.* HAROSA SINGH. 51 P. R. 1916=
138 P. W. R. 1916=34 I. C. 585=
155 P. L. R. 1916.

———*Succession—Bandhus—Step-sister's step-son—Not an heir—Mitakshara.*

Mitakshara School does not recognise the stepson of a step sister as an heir. 6 C. 119; 22 C. 339; 42 C. 384; 8 M. 107; 37 M. 286; 18 M. 168; 2 B. 388; 16 M. 716; 23 M. I, (P. C.) 12 M. I. A. 448; 43 C. 944; Ref. (*Spencer and Ramesam, JJ.*) C. SAMINATHA CHETTY *v.* ANGAMMAL.
45 Mad. 257=42 M. L. J. 4=15 L. W. 48=
30 M. L. T. 242=1922 Mad. 46.

———*Succession—Bandhu—Last male owner, paternal grandfather's mother's brother's grandson of claimant.*

A person is not a bandhu of his paternal grandfather's mother's brother's grandson and cannot succeed to the latter's estate, (*Sadasiva Aiyar and Napier, JJ.*) CHINNA PICHU AIYANGAR *v.* PADMANABHA AIYANGAR.
44 Mad. 121=12 L. W. 397=
(1920) M. W. N. 609=39 M. L. J. 417=
59 I. C. 690=28 M. L. T. 303.

HINDU LAW—Succession—Bandhus.

———*Succession — Bandhus — Father's sister's grandson—Maternal uncle.*

The father's sister's son's son and the maternal uncle of the propositus are both *atma bandhus* under the Mitakshara and the former as belonging to *atma bandhus ex parte paterna* succeeds in preference to the maternal uncle who belongs to the class *ex parte materna*. 18 Mad. 193; 20 Mad. 342, Foll. (*Miller and Sadasiva Aiyar, JJ.*) SUBRAMANIA MUDALIAR *v.* RANGANATHAN CHETTIAR.
13 M. L. T. 213=24 M. L. J. 301=
18 I. C. 506=(1913) M. W. N. 202.

———*Succession—Bandhus—Priority—Test.*

It may be that other tests being equal, the superior efficacy of oblation would be a legitimate ground for giving preference though it is difficult to conceive of a case among Sapindas in which nearness of line would not be present as a determining factor. The question may arise only among bandhus of the same class and then the quality or quantity of spiritual benefit may be a good ground for preference. (*Benson and Abdur Rahim, JJ.*) CHINNASWAMI *v.* KUNJU. 10 M. L. T. 226=
21 M. L. J. 856=11 I. C. 885=
35 Mad. 152

———*Succession — Bandhus — Benares School—Sister's son and father's sister's son.*

The general principle about the succession of the bandhus under the Benares School of Hindu Law is that the nearer in consanguinity excludes the more remote and that under the Mitakshara at least, the order of succession does not follow religious efficacy. A sister's son therefore is superior to the father's sister's son though both are *atma bandhus* or cognates of the propositus. The position of a step-sister's son cannot be distinguished from that of a sister's son in the line of heirs. A father's daughter's son being nearer in consanguinity that the son of the grandfather's daughter the former succeeds in preference to the latter. 3 Bom. 353 and 36 Bom. 120, Rel. (*Stanyon, A. J. C.*) GANNO *v.* BENI.
43 I. C 943=14 N. L. R. 82

———*Succession—Bandhus — Father's sister and maternal grandfather.*

Under the Hindu Law, as applied in Berar, the father's sister is preferred to the maternal grandfather in matters of succession. 26 Bom. 710, Foll. (*Mitra, Offg. A. J. C.*) MADHO *v.* JANKI.
36 I. C. 514=12 N. L. R. 148.

———*Succession—Bandhus—Maternal uncle and sister's son—Preference—Mitakshara.*

Held, by the Full Bench (*Miller, C. J. and Imam, J. dissenting.*)—Under the Mitakshara Law the maternal uncle of the last male owner is preferred to the sister's daughter's son as heir to the estate. Texts of the Hindu Law examined and cases reviewed. Both the Mitakshara and Dayabhaga recognise the principle of religious efficacy. Under the Mitakshara nearness of blood determines the heritable right while the doctrine of spiritual efficacy determines the preferential rights under the Dayabhaga. (*Miller, C. J. and Mullick, Jwala Prasad, Imam and Thornhill, JJ.*)

HINDU LAW—Succession—Bandhus.

UMASHANKAR PRASAD PARASARI *v.* MUSSAMMAT NAGESWARI KOERI. (1919) Pat. 162= 3 P. L. J. 663=48 I. C. 625=7 P. L. W. 1.

———*Succession—Bandhus—Priority—Order.*

A sister's son and maternal uncles being nearer to the propositus succeed in preference to mother's sister's son. (*Sharfuddin and Roe, JJ.*) GAURI SHANKAR JOSHI *v.* MANRAJ SHUKAL. 41 I.C. 705= 3 P. L. W. 198.

———*Succession—Bandhus—Mother's sister's son and mother's paternal aunt's son.*

Under Mitakshara the mother's paternal aunt's son is a nearer *sapinda* than the mother's sister's son's son. If they both stand in the same degree of propinquity, the mother's paternal aunt's son must be preferred on account of capacity to make offerings to ancestors of the deceased. 42 Cal. 384 (P. C.); 12 M. I. A. 448; 19 Mad. 405; 9 Bom. L. R. 1129; 29 Mad. 115; 37 All. 604 (P. C.); 13 M. I. A. 373, Ref. (*Chamier, C. J. and Jwala Prasad, J.*) ADIT NARAYAN SINGH *v.* MAHABIR PRASAD TEWARI. 1 P. L. J. 324= 2 P. L. W. 317=35 I. C. 687=1917 Pat. 12.

——— *Succession — Bandhus — Grandfather's daughter's son's son.*

Under Mitakshara the grandfather's daughter's son's son is a legal heir. 22 Cal. 339; 37 All. 604, Ref. (Per *Roe, J.*)—Though the position of a bandhu under the Mitakshara Law is based on consanguinity, it must be supported by the right to offer oblations to a common ancestor. (*Sharfuddin and Roe, JJ.*) HARI HAR CHARAN *v.* JANO BAHADUR. 34 I. C. 189.

Succession—Brother.

———*Succession—Brothers and nephew.*

Under the Vyavahara Mayukha a brother's son takes with the brother when the inheritance to another deceased brother opens. But the same analogy is inapplicable in the case of distant Sapindas. (*Shah, C. J. and Kemp, J.*) HARI-BHAI GULAB *v.* MATHUR LALLU. 47 Bom. 940= 25 Bom. L. R. 929=1924 Bom. 140.

———*Succession—Brothers — Consanguine brother preferred to uterine brother.*

Under the Hindu law, a brother by the same father though by different mothers is entitled to succeed in preference to a brother by the same mother but by different fathers. For the purpose of inheritance sons of the same father are brothers; and there is a distinction made between sons by different mothers. But the sons of the same mother by a different father though born of the same womb belong to a different family and as such are entirely outside the category of the class of heirs under the heading of "brothers." (*Macleod, C. J., and Shah, J.*) EKOBA PARASHRAM *v.* KASHI RAM TOTA RAM. 24 Bom. L. R. 229=1922 Bom. 27.

Succession—Co-heirs.

———*Succession—Co-heirs.*

The rule as to the several heirs of a deceased owner taking as one heir known to English Law is not followed in either the Mahomedan or Hindu system of law. (*Sadasiva Iyer and Bakewell, JJ.*) SELAMBAYI *v.* SANGU PANDITHAN. 35 I. C. 147=3 L. W. 542.

HINDU LAW—Succession—Dancing girls.

Succession—Converts.

———*Succession—Convert—Succession Act X of 1865, S. 2.*

A person who ceases to be a Hindu in religion and becomes a Christian cannot elect to be bound by the Hindu Law in the matter of succession, after the passing of the Indian Succession Act. A Hindu convert to Christianity is now governed solely by the Succession Act. (*Lord Shaw.*) KAMAWATI *v.* DIGBIJAI SINGH. 30 M. L. T. 47=(1922) M.W.N. 336= 15 L.W. 1=42 M.L.J. 87=24 Bom.L.R. 626= L. R. 3 (P. C.) 65=4 U. P. L. R. (P. C.) 32= 26 C. W. N. 490=48 I. A. 381= 1922 P. C. 14 (P. C.).

Succession—Crown.

———*Succession—Crown—Claim by escheat—Burden of proof.*

Where on the death of a Hindu widow, the crown claims the property by escheat, owing to the failure of husband's heirs, the crown must show that the property had vested in her husband. There is no presumption of law to that effect resulting from the husband's estate at his death being shown to be considerable and the widow's title not being shown to have otherwise accrued. 26 Cal. 871, Ref. (*Macleod, C. J. and Shah, J.*) GANPAT RAMA *v.* SECY. OF STATE. 45 Bom. 1106= 62 I. C. 109=23 Bom. L. R. 462.

Succession—Dancing Girls.

———*Succession—Dancing girls—Priority between sons and daughters.*

Property left by a Naikin or prostitute dancing girl descends to her daughter in preference to her son. 5 M. H. C. R. 161, Foll. (*Batchelor and Shah, JJ.*) JAYA MADHAV KALAVANT *v.* MANJUNATH. 40 I. C. 78=19 Bom. L. R. 320.

———*Succession—Dancing girl's sons and daughters get equal shares.*

There is a custom in the caste of dancing girls by which sons and daughters share the inheritance equally, contrary to ordinary Hindu Law. (*Schwabe, C. J. and Coleridge, JJ.*) BERA CHANDRAMMA *v.* CHANDRAM NAGANNA. (1923) M. W. N. 567=18 L. W. 309= 45 M. L. J. 228=1924 Mad. 94.

———*Succession—Dancing girls—Preference of daughters to sons.*

Among dancing girls it is a settled rule of law that daughters succeed in preference to sons. The property of a dancing girl goes to the daughter's daughter in preference to the son, its devolution being similar to that of Stridhanam. (*Bakewell and Phillips, JJ.*) NAGALINGAM PILLAI *v.* VADUGANATHA. 45 I. C. 672=24 M. L. T. 81.

———*Succession—Dancing girls—Preference.*

According to the caste custom among the dancing girls, females are preferred to males. Hence mother's father's brother's daughter is a preferable heir to the mother's father's brother's daughter's son. 5 M. H. C. R. 161; 11 Mad. 393;

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2 M.H.C.R. 56; 13 Mad. 133 Foll.; 12 Mad. 277; 23 Mad. 171; 24 M. L. J. 223; 38 Mad. 114, Dist. (*Abdur Rahim and Srinivasa Iyengar, JJ.*) SUBBARATNA MUDALI *v.* BALAKRISHNASWAMI NAIDU.
22 M. L. T. 91=6 L. W. 184=33 M. L. J. 207=41 I. C. 408=(1917) M. W. N. 569.

———*Succession—Dancing girls—Prostitution—Effect.*

Succession among dancing girls is regulated by custom. Such custom is not immoral because it regulates the rights of property among dancing girls. Prostitution does not sever the tie of kinship and the Hindu Law does not become inapplicable to her. Per *Seshagiri Iyer, J.*—7 Ben. Sud. Diw. Ada. Rep. 273; 2 M. H. C. R. 196, Dist.; 31 Cal. 11 (P. C.) Ref. to. A woman taking to bad ways does not thereby become a dancing girl so as to exercise the rights which by custom and precedent are allowed to that class. A legitimate son of a dancing girl is preferable to her illegitimate daughter as regards succession to her stridhanam property. (*Oldfield and Seshagiri Iyer, JJ.*) MEENAKSHI *v.* MUNIANDI PANIKKAN.
38 Mad. 1144=1 L. W. 704=(1914) M. W. N. 672=16 M. L. T. 270=25 I. C. 957=27 M. L. J. 353.

Succession—Daughter.

———*Succession—Daughter—Dayabhaga law.*

A childless widowed daughter is not preferred to the sons of another daughter in the matter of obtaining the succession certificate although the widow was likely to re-marry under the Hindu Widows Re-marriage Act. (*Piggott and Walsh, JJ.*) PRAMILLA DEVI *v.* CHANDER SHAKHER CHATTERJI.
43 All. 450=60 I. C. 777=19 A. L. J. 272.

———*Succession—Daughter—Order.*

Unmarried daughters are preferred to married daughters in case of succession to males. (*Banerjee, and Ryves, JJ.*) RANIKA KUNWAR *v.* JAWNA KUNWAR. 42 I. C. 846=15 A. L. J. 798.

———*Succession—Daughter—Widow—Custom of caste wherein re-marriage is permitted.*

When widow re-marriage is allowed by caste custom a widowed daughter of a child bearing age and belonging to such caste cannot succeed to her father's property along with a married daughter having children in absence of proof of a custom that she can so succeed. The mere fact that widow re-marriage is a custom does not itself predicate the later custom also. (*Teunon and Chaudhuri, JJ.*) BENODIN HAZRONI *v.* SUSTHU HAZRANI.
57 I. C. 740=48 Cal. 300=26 C. W. N. 29.

———*Succession—Daughter—Survivorship.*

Where title by adverse possession had been acquired against the estate in the joint possession of two daughters, the death of one of them will not give a cause of action to the other, to recover possession as heir of the deceased under Art. 141. Limitation Act (1908.) (*Jenkins and N. Chatterjea, JJ.*) SACHINDRU KISHORE DEY *v.* RAJANIKANT CHUCKERBUTTY.
27 I. C. 250=18 C. W. N. 904.

HINDU LAW—Succession—Daughter's son.

———*Succession—Daughter—Conditions.*

A sonless widowed daughter is not an heiress under the Bengal school. (*Fletcher and Richardson, JJ.*) MUKUNDA LAL CHAKURBUTTY *v.* MANMOHINI DEBI.
26 I. C. 903=19 C. W. N. 472.

———*Succession—Daughter—Child bearing—Capacity.*

It may be difficult to lay down any general rule as to when a woman's capacity for bearing children can be said to cease. A woman of 63 who has been living with her husband for 43 years without having a child cannot be regarded as capable of bearing children. (*Cox and Imam, JJ.*) ICHHA MOYI DABI *v.* NILMONI MUKHERJ.
15 I. C. 169.

———*Succession—Daughter not a fresh stock of descent.*

A daughter succeeding as heir to her father cannot form a fresh stock of descent and the *sapindas* of her father would be entitled to succeed in preference to her daughters who can claim only as *bandhus* of their deceased grandfather. (*Kensington, C. J. and Rattigan, J.*) KISHEN DEVI *v.* SHAIB SARAN.
77 P. R. 1914=25 I. C. 697=217 P. L. R. 1915.

———*Succession—Daughter—When entitled.*

Daughter can succeed to father's estate only if separation has taken place before his death. (*Reid, C. J. and Beadon, J.*) MUSAMMAT RUKMAN *v.* MUSSAMMAT KIRPA DEVI. 338 P. L. R. 1913=22 I. C. 134=209 P. W. R. 1913.

———*Succession—Daughter—Nature of estate—Bombay Presidency.*

In those parts of the Bombay Presidency where the Mayukha Law is paramount as well as in those parts governed by Mitakshara daughters take an absolute estate. (*Batten, A. J. C.*) MADHU RAO *v.* KESHEO RAO. 56 I. C. 175.

Succession—Daughter's Son.

———*Succession—Daughter's son.*

Daughter's sons inherit the property *per capita* and not *per stirpes*. (*Griffin, J.*) LALOO *v.* LALOO.
10 I. C. 448.

———*Succession—Daughter's son — Maternal Grandfather—Nature of estate.*

Where certain property is inherited by two brothers from their maternal grandfather they hold it as joint tenants, and not as tenants-in-common. 25 Mad. 678, Ref.; 27 Mad. 382, Diss.; 29 All. 667, Foll. (*Kensington, C. J. and Shah Din, J.*) KARAM CHAND *v.* JAI RAM.
92 P. R. 1914=124 P. W. R. 1914=24 I. C. 928=224 P. L. R. 1914.

———*Succession—Daughter's son—Right of representation—Daughter's son's son.*

On the death of a Hindu dying intestate leaving a daughter's son and a daughter's son's son, the former succeeds to the estate to the exclusion of

HINDU LAW—Succession—Daughter's son.

the latter. 27 Mad. 382 Ref. (*Napier and Odgers, JJ.*) KRISHNASWAMI BATTAR *v.* SRINIVASA BATTAR. 42 M. L J. 124= 30 M. L. T. (H. C.) 168= 1922 Mad. 341.

———*Succession—Daughter's sons—Custom.*

Among Jadubaushi Ahirs of village Dharamkhera in Dt. Khera daughters and their issues are postponed to collaterals. (*Kanhaiya Lal, A. J. C.*) TIKA *v.* RAM KUAR. 23 O. C. 106= 56 I. C. 696=7 O. L. J. 234.

———*Succession—Daughter's sons—Estate taken.*

Where the estate of the maternal grandfather passes on his death to the sons of a daughter living as a joint family, there is no right of survivorship as between them; so that on the death of one, his heirs take his share of the estate. (*Das and Kulwant Sahay, JJ.*) RAO BAHADUR MAN SINGH *v.* MAHARANI NAWALKHBATI. 2 P. 607=4 P. L. T. 335=1923 P. 492.

———*Succession—Daughter's son—Property of maternal grandmother.*

A daughter's son is equivalent to a son and a member of a mother's father's family, but a daughter's son's son is not in any practical sense regarded as a member of any family but his own. Ahy property inherited by any man from his maternal grandfather is not ancestral property so far as his sons are concerned, and his assets in the hands of his sons could be proceeded against in execution of a decree obtained against him. 25 Mad. 678; 27 Mad. 382, Rel. (*Chapman and Jwala Prasad, JJ.*) BISHWANATH PRASAD SAHU *v.* GAJADHAR PRASAD SAHU. 3 P. L. W. 286=1917 Pat. 356= 43 I. C. 370=3 P. L. J. 168.

———*Succession—Daughter's son.*

Daughter's son occupies a higher position than a cognate. (2 B. L. R. 28; 27 Mad. 200, Ref. (*Atkinson, J.*) CHANDI MISSER *v.* NARSINGH ROY. 39 I. C. 26.

Succession—Degradation.

———*Succession— Degradation — Prostitution—Tie of kinship—Severence.*

When a Hindu woman lapses into prostitution the tie of her relationship with her kindred is not severed so as to render it impossible for the kindred to claim her Stridhana estate by inheritance. (*Jenkins, C. J., Harrington, Stephen, Mookerjee and Holmwood, JJ.*) HARI LAL SINGH *v.* TRIPURA CHARAN. 40 Cal 650= 17 C. L. J. 438=19 I. C. 129= 17 C. W. N. 679 (F. B.).

———*Succession—Degradation—Degraded woman—Right of.*

There is some divergence of judicial opinion as to the right of an undegraded relation of a degraded woman to succeed to the latter. 11 C. L. J. 124 (F. B.) Ref. (*Harrington and Mookerjee, JJ.*) HARILAL SINGHA *v.* RUR MANJORI. 15 I. C. 187=17 C. L. J. 459.

HINDU LAW—Succession—Exclusion from.

———*Succession — Degradation — Prostitution—Effect.*

A Hindu woman though she is degraded by prostitution does not therefore cease to be a Hindu. (*Stephen, J.*) TRIPURA CHARAN *v.* HARI MATI DASI. 38 Cal. 493=9 I. C. 657.= 15 C. W. N. 807.

———*Succession—Degradation—Prostitute.*

The legitimate son of a degraded woman is preferable to her illegitimate daughter as regards her *Stridhanam* property. 23 W. R. 409, Foll. The illegitimate children of a postitute have no rights of inheritance under Hindu Law, in the Madras Presidency. (*Oldfield and Seshagiri Iyer, JJ.*) MEENAKSHI *v.* MUNIANDI PANNIKKAN. 38 Mad. 1144=27 M. L. J. 353= 16 M. L. T. 270=(1914) M. W. N. 672= 25 I. C. 957=1 L. W. 704.

———*Succession — Degradation — Prostitution—Effect.*

Prostitution and exclusion from caste do not sever the legal relation which existed between the outcaste and those who remained in caste. (*Benson and Sankaran Nair, JJ.*) MANDARAM NAMMIYA CHETTY *v.* MANDARAM THIRUVENGADATHAN CHETTY. 24 M. L. J. 223=18 I. C. 601= 13 M. L. T. 88.

———*Succession — Degradation — Prostitute woman.*

Immorality on the part of a Hindu woman does not sever the tie of blood relationship and there is no rule of Hindu Law which would prevent the blood relations succeeding to her property on her death. This mode of succession is also consonant with justice, equity and good conscience. (*Lindsay, J. C.*) SATISH CHANDER MUKERJI *v.* PANDIT MAHA BALI PRASAD. 48 I. C. 750= 21 O. C. 272.

Succession—Exclusion from.

———*Succession—Exclusion from—Blindness.*

Blindness to cause exclusion of a person in inheritance or partition must be congenital. Supervening blindness though incurable, is not a disqualification for claiming a partition of the joint family estate. 14 B. L. R. 273; 1 Bom. 177, Rel. (*Sir John Edge.*) GUNGHESWAR *v.* DURGA PRASAD SINGH. 45. Cal. 17=22 M. L. T. 403= 22 C. W. N. 74=26 C. L. J. 557= 16 A. L. J. 1=34 M. L. J. 1= 20 Bom. L. R. 38=(1918) M. W. N. 16= 7 L. W. 94=4 Pat. L. W. 1=42 I. C. 849= 44 I. A. 229 (P. C.).

———*Succession—Exclusion from — Females—Custom.*

In the case of Babuana and Sohag grants made by the Darbhanga Raj for maintenance of the junior members, reverter to the grantor on failure of male issue in the male line of the grantee and the exclusion of the widow of a divided member from inheritance are incidents attached by a well-recognised family custom. (*Sir John Edge.*) EKRADRSHWARI SINGH *v.* JANESHWARI BAHUSAIN. 42 Cal. 582=41. I. A. 275=18 C. W. N. 1249= 27 M. L. J. 373=16 M. L. T. 382= 1 L. W. 868=(1914) M. W. N. 807= 12 A. L. J. 1217=21 C. L. J. 9= 25 I. C. 417=17 Bom. L. R. 18 (P. C.). [On appeal from 3 I. C. 207.]

HINDU LAW—Succession—Exclusion from.

———*Succession—Exclusion from—Unchastity—Condonation.*

A Hindu widow who had been living in peace and harmony with her husband at the time of his death and obtained possession of his estate, is not to be divested of the estate on the evidence of a spiteful servant on the strength of acts alleged to have been committed by her many years prior to her husband's death. (*Piggott and Walsh, JJ.*) RADHEY LAL *v.* BHAWANI RAM.
40 All. 178=43 I. C. 553=16 A. L. J. 91.

———*Succession—Exclusion from—Insanity congenital or not—Exclusion of the heir of such person.*

A person who is insane when the succession opens is disqualified under the Hindu law from succeeding to his property whether his insanity is curable or incurable. His daughter has no title to the estate of her grandfather. (*Tudball and Walsh, JJ.*) RAM SINGH *v.* MUSSAMMAT BHANI.
38 All. 117=32 I. C. 127=
14 A. L. J. 11.

———*Succession—Exclusion from—Leprosy.*

Only leprosy of a virulent type is a ground for exclusion from inheritance. (*Richards and Banerje, JJ.*) SRIPATMAL *v.* HARDUAR MAL. 18 I. C. 490.

———*Succession—Exclusion from—Unchastity—Mother.*

A Hindu mother does not by reason of unchastity forfeit her right to inherit to her son. (1 All. 46; 32 All. 55; 31 Mad. 100; 18 M. L. J. 70, Foll. (*Richards, C. J. and Banerjee, J.*) BALDEO SINGH *v.* MATHURA KUARI. 33 All. 702=11 I. C. 43=
8 A. L. J. 811.

———*Succession — Exclusion from— Insanity—Congenital insanity.*

Insanity to be a ground of exclusion from inheritance under the Hindu Law need not be congenital. It is enough, if there is insanity at the time when the succession opens. 1 B. 177 not foll.; 5 A. 509; 38 A. 117; 43 M. 464 Foll, (*Macleod. C. J. and Crump, J.*) BAPUJI NARSO *v.* DATTU ANTAJI. 47 Bom. 707=
25 Bom. L. R. 404=1923 Bom. 425.

———*Succession— Exclusion from— Congenital dumbness.*

A person suffering from congenital and incurable dumbness is excluded from inheritance under the Hindu Law. (*Macleod, C. J. and Shah, J.*) BHARMAPPA *v.* UJJANGAUDA.
23 Bom. L. R. 1320=46 B. 455=
1922 Bom. 173.

———*Succession—Exclusion from—Murderer.*

A person who is a party to a murder is absolutely disqualified from inheriting the estate of the person murdered. (*Macleod, C. J. and Fawcett, J.*) CHANAPPA *v.* YELLAPPA.
45 Bom. 768=61 I. C. 294=
23 Bom. L. R. 213.

———*Succession — Exclusion from— Burden of proof—Leprosy.*

Leprosy of the sanious or ulcerous type is a ground of disqualification for inheritance under the Hindu Law. The person who sets it up must give strict proof of his allegations. (*C. C. Ghose and Panton, JJ.*) KARALI CHARAN PAL *v.* ASHUTOSH NANDI. 50 Cal. 604=1923 Cal. 331.

HINDU LAW—Succession—Exclusion from.

———*Succession—Exclusion from—Unchastity of mother before death of son.*

Under the Dayabhaga school of Hindu Law a mother guilty of unchastity before the death of her son is precluded from inheriting his property. 4 Cal. 550, Foll. (*Mookerjee and Walmsley, JJ.*) TAILOKRYANATH *v.* RADHASUNDARI.
23 C. W. N. 970=55 I. C. 704=
30 C. L. J. 235.

———*Succession—Exclusion from—Unchastity—Female—Assam—Dayabhaga.*

In the absence of evidence of local custom in Assam to the contrary, the plff. was disqualified when the succession opened out, from inheriting her father' properties by reason of her unchastity during his lifetime and the disability was not removed by subsequent marriage. (*Chatterjea and Duval, JJ.*) AITI KOCHUNI *v.* AIDEW KOCHUNI.
54 I. C. 695=24 C. W. N. 173.

———*Succession—Exclusion from—Unchastity of females.*

Under the Bengal school of Hindu Law, any female heiress whose unchastity commenced before the succession opened is excluded from inheritance. (*Fletcher and Huda, JJ.*) RAJABALA DASSI *v.* SHYAMA CHARAN BANERJEE.
45 I. C. 714=22 C. W. N. 566.

———*Succession—Exclusion from — Patricide—Wife—Son born after murder of father—Maintenance.*

A patricide, under Hindu Law, takes no share of the inheritance, but after serving out his punishment, he, his wife, and his son born after the murder are entitled to maintenance from the paternal estate, and one suit therefore by all the three is not bad for misjoinder of parties and causes of action. The neglect to maintain gives a cause of action from day to day. (*Imam, J.*) NILMADHAB MITRA *v.* JOTINDRANATH MITRA.
18 I. C. 764=17 C. W. N. 341.

———*Succession—Exclusion from — Unchastity of females—Refusal to live with husband.*

It is only physical unchastity that disqualifies a widow from inheriting to her husband. The mere fact that she refused to live with her husband and her co-wife, during his lifetime is no bar to inheritance. (*Chaudhuri, J.*) KHETTERMONI DASSI *v.* KADAMBINI DASSI. 17 I. C. 83=
16 C. W. N. 964.

———*Succession—Exclusion from—Ground of—Party to murder—Descendants of—Rights of.*

Under the Hindu Law a person who has been a party to a murder is prevented from succeeding to the estate of the person murdered on the principal that no one shall be allowed to benefit by his own wrongful act. It is compatible with justice, equity and good conscience that the exclusion of a murderer from the inheritance of the man whom he had murdered must be taken to include his direct lineal descendants also. 41 P. R. 1906 Foll.; 15 W. R. 70; 17 C. W. N. 341;

HINDU LAW—Succession—Exclusion from.

27 Mad. 591; 31 Mad. 100 Ref. (*Broadway and Abdul Qadir, JJ.*) HAR BHAGWAN *v.* HUKAM SINGH.
3 Lah. 242=4 Lah. L. J. 245=
1922 Lah. 243.

———*Succession—Exclusion from—Grounds for—Lameness—Relationship with murderer of deceased.*

To disqualify the heir by reason of lameness, it must be shown that the lameness is congenital and complete. An heir is not disqualified from succeeding to the property of his cousins by reason of his brother having been their murderer notwithstanding that he and his brother constituted a joint Hindu family; particularly where the heir was a minor at the time of the murder. The maxim "*Nemo ex suo delicto meliorem suam conditionem facere potest*" is not applicable to such a case. (*Shadi Lal and Le Rossignol, JJ.*) ROWELL SINGH *v.* JAI RAM. 52 I. C. 919=
69 P. R. 1919.

———*Succession — Exclusion from — Congenital blindness—Rule of obsolete.*

The rule of Hindu Law excluding a congenitally blind Hindu from inheritance is not obsolete. Texts and cases reviewed. (*Schwabe, C. J., Oldfield and Coutts Trotter, JJ.*) PUDIAVA NADAN *v.* PAVANASA NADAN. 43 M. L. J. 596=
16 L. W. 563=31 M. L. T. 320 (H. C.)=
(1922) M. W. N. 693=45 M. 949=
1923 M. 215 (F. B.).

———*Succession—Exclusion from—Co-parcener—Excluded co-parcener, rights of.*

Where a member of a joint family is excluded from common enjoyment for the statutory period, he cannot, on the death of a co-parcener having no direct heirs, claim to succeed with the other co-parceners, as the right of survivorship is incident to the right of joint possession and enjoyment and cannot exist separately when the right of joint possession and enjoyment has been lost. (*Wallis, C. J. and Seshagiri Aiyar, J.*) IVATURI ATCHAMMA *v.* IVATURI PAPIAH.
44 Mad. 131=(1920) M. W. N. 761=
40 M. L. J. 83=60 I. C. 583=
13 L. W. 407.

———*Succession—Exclusion from — Insanity—Joint family—Insane member—Survivorship.*

A father becoming insane after his son attained majority, survived his son and died without recovering sanity. *Held*, that the father did not lose his right in the family property by becoming insane and took the whole property by survivorship on the death of his son and that the father's heirs were entitled to the same in preference to those of the son. Insanity to be a ground of exclusion from inheritance need not be congenital. The right of a member of a joint Hindu family to share in family property comes into existence at birth and subsists all through, although it is incapable of enforcement at the time of partition because of the disqualification then existing. (*Seshagiri Aiyar and Moore, JJ.*) MUTHUSAMI GURUKKAL *v.* MEENAMMAL. 43 Mad. 464=
38 M. L. J. 291=55 I. C. 576=
(1920) M. W. N. 253.

HINDU LAW—Succession—Exclusion from.

———*Succession—Exclusion from — Blindness—Effect.*

The rule preventing a Hindu, born blind, from claiming interest along with his brothers as a co-owner in ancestral properties has now become obsolete. Per *Sadasiva Aiyar, J.*—Courts can develop Hindu Law and reject archaic rules opposed to the progressive needs of society. (*Sadasiva Aiyar and Napier, JJ.*) YELLAVAJKULA SURAYYA *v.* YELLAVAJKULA SUBBAMMA.
43 Mad. 4=37 M. L. J. 405=
26 M. L. T. 154=53 I. C. 498=
(1919) M. W. N. 580.

———*Succession—Exclusion from—Leprosy.*

Leprosy if not of a virulent type is not a ground of exclusion from inheritance. Incurable tumour in the nasal cavity is not a ground of exclusion. It is only the agonising, sanious or ulcerous type of leprosy that can be regarded as a ground of exclusion. The test is whether the disease is incurable or not but whether the deformity is such that the person is unfit for the social intercourse by reason of the virulent and disgusting nature of the disease. (*Wallis, C. J. and Seshagiri Aiyar, J.*) RAJU *v.* RAMASWAMI NAICKEN.
1 L. W. 715=25 I. C. 968=16 M. L. T. 254.

———*Succession—Exclusion from—Incurable tumour in the nose.*

Under Hindu Law an incurable tumour in the nasal cavity is no disqualification for inheritance. (*Sadasiva Aiyar and Seshagiri Aiyar, JJ.*) SUBBA NAIDU *v.* VENKATARAMA NAIDU. 23 I. C. 528=
15 M. L. T. 418.

———*Succession—Exclusion from—Leprosy.*

Anaesthetic leprosy though incurable is no ground for exclusion. Deformity and unfitness for social intercourse are the tests for exclusion. (5 B. H. C. R 145; 1 Bom. 554; 19 Mad. 74; 4 C. L. J. 323, Foll.) Only the agonising, sanious, or ulcerous form of leprosy forms a disqualification. Many of the grounds of exclusion referred to in texts are now obsolete. *Quaere*:—Whether in a case of inheritance as opposed to a case of partition even leprosy of sanious kind would now be recognised as a bar. Texts discussed. (*Benson and Sundara Aiyar, JJ.*) KAYAROHAN PATHAN *v.* SUBBARAYA THEVAN.
38 Mad. 250=25 M. L. J. 251=
13 M. L. T. 460=19 I. C. 690=
(1913) M. W. N. 642.

———*Succession—Exclusion from—Congenitally blind person.*

A congenitally blind son is excluded from inheritance under the Hindu Law and the rule of exclusion has not become obsolete. 43 M. 464 dissented from. The disqualified member is however entitled to suitable residence in the family house and maintenance, (*Batten, A, J, C.*) NANA *v.* JOGILAL. 6 N. L. J. 81=19 N. L. R, 69=
1923 Nag. 151.

———*Succession—Exclusion from—Insanity.*

Insanity as a ground of exclusion from inheritance under the Hindu Law need not be congenital. 43 Mad. 464 Ref. Insanity at the

time when the succession opens is sufficient to disqualify under the Mitakshara Law, a person who is at the time insane is not entitled to share upon a partition in a joint family; if he is not entitled to share, he is not entitled to demand partition. 8 Cal. 149; 8 Cal. 919; 10 Cal. 639; 38 All. 117 Ref to. (*Prideaux, A. J. C.*) VITHOBA *v.* WAMAN. 18 N. L. R. 80=1922 Nag. 161.

———*Succession—Exclusion from — Daughter—Custom.*

There is a custom among Talukdars of Oudh excluding daughters and their sons from succession. A family custom overriding Hindu Law must be established by evidence of members of the family. (*Lindsay, J. C.*) BANDI DIN *v.* DHARAMMANGAL SINGH. 22 I. C. 138.

———*Succession—Exclusion from—Daughter—Custom.*

In the absence of very strict proof, the exclusion of a daughter necessarily implies the exclusion of her son. (*Evans, J. C.*) GANESH DAT SINGH *v.* SURHRAJ SINGH. 14 I. C. 12.

———*Succession—Exclusion from—Unchastity—Hostility.*

Under the Hindu Law, unchastity disqualifies a Hindu wife from succeeding to her husband's estate but it must be physical unchastity which occurred during the lifetime of the husband. In the absence of unchastity there must be malignant or unjustified hostility on the part of the wife to exclude her. (*Pipon, J. C.*) MT. MUKANDI BAI *v.* JAMNI BAI. 73 I. C. 875.

———*Succession—Exclusion from—Obstructed and unobstructed heritage.*

Under the *Mitakshara* (which is the paramount Hindu Law authority in Sind) the disqualifications relating to 'exclusion from heritance' apply both to cases of obstructed and unobstructed heritage. In the case of the latter, in joint family property, they must apply at the time of birth, for that is the time when the rights would accrue, if there were no disabilities. Otherwise there would be a divestment of rights already vested, which is contrary to the general principles of Hindu Law. Subsequent lunacy could not divest the plaintiff of his right to the joint family property. (*Fawcett, Crouch and Pratt, A. J. Cs.*) HOTCHAND *v.* MANGHANMAL. 29 I. C. 42=8 S. L. R. 279.

Succession—Female heirs.

———*Succession—Female heirs—Daughters and other females—Vatan family in Bombay—Rights of.*

According to the Vatan Act neither the daughters of the deceased last male Vatan holder, nor his brother's widow can claim priority over male members of the same Vatan family. 19 B. L. R. 730 Dist. (*Macleod, C. J. and Crump, J.*) GAVARA WAKOM GAUDAPPA *v.* MALLANGOWDA CHANGOWDA PATIL. 1923 Bom. 382.

———*Succession—Female heirs—Absolute estate—Rule in Bombay Presidency.*

The rule as to females inheriting property in the Bombay Presidency is that they take it

absolutely, and that the limited estate is an exception to cases of females entering the family by marriage and inheriting the family from a male and not a female. A widow inheriting as *gotraja sapinda* from a female takes an absolute estate. (*Macleod, C. J. and Shah J.*) NARAIN MORESHWAR *v.* WELANKAR WAMAN MAHADEV. 63 I. C. 1001=23 Bom. L. R. 587.

———*Succession—Female heirs.*

A paternal uncle's daugther is not a *gotraja sapinda.* Hindu Law is opposed to succession of females and therefore female heirs recognised by law are only exceptions to the general rule. (*Heaton and Crump, JJ.*) KRISHNA BAI GOVIND JOSHI *v.* KESHEV GAJANAN POTBHRE. 59 I. C. 511=22 Bom. L. R. 1162.

———*Succession—Female heirs*—Gotraja sapinda—*Brother's widow—First cousin—Bombay.*

Under the Mitakshara school of Hindu Law, the widow of a brother would be the next reversioner in preference to the first cousin. (*Scott, C. J., Beaman and Hayward, JJ.*) BASANGAUDA NAGANGAUDA *v.* BASANGAUDA DODANGAUDA. 39 Bom. 87=27 I. C. 167=16 Bom. L. R. 699.

———*Succession—Female heirs—Female's paternal grandmother—Nature of estate—Females born in the family and females married.*

Under Hindu law, the paternal grandmother inheriting to her grandson takes a limited estate for life. All women who belong to a family by marriage, not by birth, take a limited estate in the property which they inherit from any male member of that family. (*Chandavarkar and Batchelor, JJ.*) DHONDI MAHIPATHY *v.* RADHABAI SHABJI. 36 Bom. 546=16 I. C. 343=14 Bom. L. R. 569.

———*Succession—Female heir.*—Gotraja sapindas—*Remote agnate no widow of near agnate.*

Under the Mayukha Law, a remoter male collateral in a particular line, collateral to that of the propositus is to be preferred, for purpose of succession to the widow of a nearer collateral in the same collateral line. 35 Bom. 389; 16 Bom. 716, Rel. on. (*Scott, C. J. and Batchelor, J.*) AMBAIDAS PARAG *v.* JIJIBHAI RAIJI. 14 I. C. 979=14 Bom. L. R. 261.

———*Succession—Female heirs—Express text.*

In Bengal women succeed only under express texts. Daughter's daughter is no heir to grandmother's stridhanam, Yauthaka or Ayauthaka. (*Carnduff and Richardson, JJ.*) MADHUMLA DASI *v.* LAXMAN CHANDRA PAL. 22 I. C. 518=20 C. W. N. 627.

———*Succession — Female heirs* — Bandhu—*Brother's daughter.*

The only females entitled to inherit under the Hindu Law are the widow, the daughter, the mother, the father's mother and the father's father's mother. A brother's daughter is not a heritable *bandhu.* 53 I. C. 815, Not Foll. (*Leslie Jones and Wilberforce, JJ.*) SUJAN DEVI *v.* JAGIRI MAL. 1 Lah. 608=59 I. C. 124=8 P. W. R. 1921.

HINDU LAW—Succession—Female heirs.

———*Succession—Female heirs*—Gotraja sapinda—*Limits of relationship—Widow of* Gotraja—*Right to inherit—Berar.*

Under the Bombay School of Hindu Law which is also the Hindu *lex loci* in Berar, the widow of gotraja is herself a gotraja. In the order of succession a female *gotraja sapinda* is postponed to all male *gotraja sapindas* in the same line as her husband but she has precedence over a male in a remoter line. Each line of *sapindas* leaving aside lineal descendants of the *propositus* includes all males within the limits of gotraja relationship lineally descended from the same ancestor common to them and the *propositus*, *e.g.*, the grandfather's line and the great-grandfather's line. (*Stanyon, A. J. C.*) SADASHEO *v.* JAIKRISHNA.
43 I. C. 475=14 N. L. R. 6.

———*Succession—Female heirs—Father's brother's daughter.*

It is a well-established rule of the *mitakshara*, that a female cannot succeed unless supported by a special text. 2 C. P. L. R. 178, Rel. Even according to the *mitakshara* as interpreted in Bombay and Berar, a father's brother's daughter is not an heir of the *propositus* as his *Gotraja sapinda or Bandhu ex parte Paterna*. She cannot, therefore, succeed to the estate of her father's brother's son. (*Stanyon, A. J. C.*) RAMJI *v.* NURSHA. 11 I. C. 907=7 N. L. R 116.

Succession—Half-blood.

———*Succession—Half blood—Whole blood—Preference of*—Mitakshara—*Son of uncle of whole blood and uncle of half blood.*

Under the *Mitakshara* Law the preference given to the whole blood over the half blood in matters of succession is confined to the members of the same class, that is to say to *sapindas* of the same degree from the common ancestor. 19 All. 215, Rel. on. Consequently a paternal uncle of the half blood is entitled to inherit in preference to the sons of a paternal uncle of the whole blood. (*Mr. Ameer Ali.*) GANGA SHAI *v.* KESRI. 37 All. 545=42 I. A. 177=19 C. W. N. 1175=18 M. L. T. 203=29 M. L. J. 329=2 L. W. 837=13 A. L. J. 999=17 Bom. L. R. 998=30 I. C. 265=22 C. L. J. 508=(1915) M. W. N. 713 (P.C)
[On appeal from 6 I. C. 364=32 All. 541=7 A. L. J. 560.]

———*Succession—Half blood.*

Where the parties are governed by Hindu Law, the brother and nephews of the whole blood exclude those of the half blood in the absence of proof of a custom to the contrary. (*Broadway and Abdul Qadir, JJ.*) HAR BHUGWAN *v.* HUKAM SINGH. 3 Lah. 242=4 Lah. L. J. 245=1922 Lah. 243.

———*Succession—Half blood—Whole blood.*

The rule of *Mitakshara* preferring the full blood to the half extends to all *sapinda* relations and not merely to the brother 19 All. 215; 30 Bom. 431; 19 Mad. 405, Ref. (*Wallis, Offg. C. J.*, *Seshagiri Aiyar and Kumaraswami Sastri, JJ.*) NACHIAPPA GOUNDAN *v.* RANGASWAMI GOUNDAN.
17 M. L. T. 87=2 L. W. 69=28 M. L. J. 1=26 I. C. 757=(1915) M. W. N. 53 (F. B.).
[On appeal from 20 I. C. 304=25 M. L. J. 8.]

HINDU LAW—Succession—Illegitimate children.

Succession—Illegitimate children.

———*Succession — Illegitimate son — Sudra—Shares of.*

An illegitimate son of a Sudra takes half the estate of his putative father in competition with the widow, on the principle of the *Mitakshara* that an illegitimate son takes half of what he would have taken had he been legitimately born. Texts considered. (*Sir Lawrence Jenkins.*) KAMALAMMAL *v.* VISVANATHASWAMI NAICKER.
46 Mad. 167=44 M. L. J. 465=37 C. L. J. 363=25 Bom. L. R. 577=27 C. W. N. 1021=50 I. A. 32=32 M. L. T. (P. C.) 48=17 L. W. 298=1923 P. C. 8 (P. C.).

———*Succession—Illegitimate son—Kshatriya by a Sudra woman—No right.*

The son of a Kshatriya by a Sudra woman, belongs to a higher caste than that of a Sudra called ugra, and his illegitimate sons, therefore, cannot succeed to his. 12 Mad. 72, Ref. (*Knox, A. C. J. and Banerjee, J.*) JWALA SINGH *v.* SARDAR. 41 All. 629=17 A. L. J. 734=51 I. C. 216=1 U. P. L. R. (H. C.) 67.

———*Succession—Illegitimate daughter.*

Under Hindu Law, an illegitimate daughter cannot succeed to her father's property as against the legitimate daughter by a lawful wife. (*Tudball and Walsh, JJ.*) RAM SINGH *v.* MUSSAMAT BHANI. 38 All. 117=32 I. C. 127=14 A. L. J. 11.

———*Succession—Illegitimate son—Thakurs.*

Among Thakurs, illegitimate son cannot inherit as against the illegitimate nephews. (*Richards, C. J. and Banerji, J.*) PANCHAM *v.* HAZARI. 19 I. C. 634.

———*Succession — Illegitimate son—Offspring of Hindu by Mahomedan mistress.*

An illegitimate offspring of a Hindu by a Mahomedan mistress is not a Hindu and cannot succeed to his property on his death. 27 M. 13 Foll. (*Macleod, C. J. and Crump, J.*) SITARAM PANDURANG *v.* GANPAT. 25 Bom. L. R. 429=1923 Bom. 384.

———*Succession — Illegitimate son — Collateral succession.*

It is established under Hindu Law, the legitimate son of a Sudra cannot inherit the separate property of his father's illegitimate son. (*Macleod, C. J. and Shah, J.*) ZIPRU *v.* BOMTYA.
46 B. 424=23 Bom. L. R. 1195=1922 B. 176.

———*Succession—Illegitimate children—Sudras.*

Among Sudras, an illegitimate daughter succeeds as heir to her mother if there is no other nearer heir. (*Macleod, C. J. and Fawcett, J.*) DUNDAPPA *v.* BHIMAVA, 22 Bom. L. R. 1306=59 I. C. 561=45 B. 557.

HINDU LAW—Succession—Illegitimate children.

———*Succession—Illegitimate son—No collateral succession.*

Under Hindu Law the illegitimate son of a Sudra cannot inherit the separate property of his father's legitimate son as a brother. 34 Bom. 321 ; 21 All. 99 ; 25 Mad. 519 ; Foll. 41 Mad. 44 (F. B.) Dist. (*Shah and Hayward, JJ.*) DHARMA LAKSHMAN *v.* SAKARAM. **44 Bom. 185 = 55 I. C. 306 = 22 Bom. L. R. 52.**

———*Succession — Illegitimate son — Extent of share.*

Under Hindu Law, among Sudras, an illegitimate son is entitled to inherit along with the legitimate daughter and takes a share, one half of the share taken by the daughter, that is, one-third share in the whole property. (*Scott, C. J. and Shah, J.*) GANGABHAI *v.* BANDU.
40 Bom. 369 = 32 I. C. 986 = 18 Bom. L. R. 70.

———*Succession—Illegitimate son—Bengal school—Dasi, meaning—Dayabhaga, Chap. IX, para 29.*

Per curiam (*Chatterjee, J., contra.*)—Under the Bengal School, an illegitimate son has a right to inherit as *Dasiputra* provided his mother was in the absolute keeping of his father and the son was not the fruit of adulterous or incestuous intercourse. His mother need not be a 'slave woman' in the true sense of the term nor need there be a marriage between the parties. 1 Cal. 1 and 19 Cal. 91 dissented from. 'Dasi' does not necessarily mean a slave woman but includes a Sudra woman kept as concubine. According to the correct interpretation of Chap. IX, para 29 of the Dayabhaga, a 'daryadi Sudra putra' includes a son of a dasa and not necessarily the son of a 'dasi' (wife of a slave). The term 'Aparinita' in Chap IX para. 29 of the Dayabhaga means not 'a maiden' but 'not married to the Sudra to whom she bears a son.' *Per Chatterjee, J.*—The right of an illegitimate son to inherit which has not been recognised in Bengal for more than a century should not be revived though it is deducible from the texts of *Jimutavahana* or any other authority, as it is opposed to usage and the sentiments of the people of Bengal. (*Mookerjee, A. C. J., Fletcher, N. R. Chatterjee, Teunon and Richardson, JJ.*) RAJANI NATH DAS *v.* NATAICHANDRA DE. **48 Cal. 643 = 32 C. L. J. 333 = 63 I. C. 50 = 25 C. W. N. 433 (F. B.).**

———*Succession—Illegitimate son—Sudra.*

An illegitimate son of a Sudra has in his father's lifetime no right to his property. The father may give him if he likes, an equal share with his son, but he will get a moiety of the son's share on his father's death. A Sudra father need not recognise an illegitimate son. A son to a Sudra by a female slave is not legitimate. He has no status unless given by the father. (*Chaudhuri and Newbould, JJ.*) ASITA MOHAN GHOSE *v.* NERODE MOHAN GHOSE.
35 I. C. 127 = 20 C. W. N. 901.

———*Succession—Illegitimate son—Dasiputra—Who is.*

The son of a permanent continuous and exclusive concubine of a Sudra living as a member of his family is a dasiputra. 18 Cal. 151, Foll. ; 28 Cal. 194, Dist. (*Mookerjee and Beachcroft, JJ.*) CHATTURBHUJ PATNAIK *v.* KRISHNA CHANDRA PATNAIK. **16 C. L. J. 335 = 17 I. C. 276 = 17 C. W. N. 442.**

———*Succession—Illegitimate sons.*

Illegitimate sons of a Sudra can succeed only if connection between their parents is not adulterous. (*Kumaraswami Sastri and Odgers, JJ.*) PACHAI PILLAI *v.* C. GOPAL PILLAI.
15 L. W. 15 = 70 I. C. 122 = 42 M. L. J. 276.

———*Succession — Illegitimate son — Putative father.*

The putative father of a Sudra succeeds to his illegitimate son by reason of propinquity in the absence of nearer heirs. 18 Cal. 151 ; 4 Bom. 37, Rel. Texts and Cases reviewed. (*Wallis, Oldfield and Kumaraswami Sastri, JJ.*) SUBRAMANIA AIYAR *v.* RATHNAVELU CHETTY. **41 Mad. 44 = 22 M. L. T. 94 = 6 L. W. 149 = (1917) M. W. N. 688 = 42 I. C. 556 = 33 M. L. J. 224 (F. B.)**

———*Succession—Illegitimate son—Sudras.*

A Sudra father can give a full share or less to an illegitimate son in a partition during lifetime. But after death of the father the illegitimate son gets half the share of a legitimate son. 28 Cal. 194, Foll. Illegitimate son does not acquire by birth, right to share in property of a father. (*Ayling and Napier, JJ.*) NATHAMUNI MUDALI *v.* PARTHASARATHY MUDALI. **22 M. L. T. 39 = 6 L. W. 188 = 40 I. C. 830 = 33 M. L. J. 203.**

———*Succession— Illegitimate son of Sudra by dancing girl—Right to succeed.*

The illegitimate son of a Sudra by a dancing girl who followed the profession of prostitution before she came into his keeping, but who was kept continuously and exclusively by him thereafter, is entitled to succeed to the property of his father along with the legitimate son. The meaning of the term "dasi" explained. (*Wallis, C. J., Sadasiva Aiyar and Ayling, JJ.*) SOUNDARARAJAM *v.* ARUNACHALAM CHETTY. **39 Mad. 136, 159 = 29 M. L. J. 793, 816 = 18 M. L. T. 552, 568 = 2 L. W. 1247, 1266 = 33 I. C. 858 = (1916) 1 M. W. N. 31.**

———*Succession—Illegitimate son.*

After the death of the zemindar the zemindari would go to his brother but his separate property should be equally shared by his widow and illegitimate son. In the Kumbala caste there is no special rule of succession as regards illegitimate son. (*Wallis, C. J. and Srinivasa Aiyangar, J.*) VISVANATHASWAMY NAICKER *v.* KAMALAMMAL. **(1915) M. W. N. 968 = 2 L. W. 1214 = 19 M. L. T 296 = 31 I. C. 833 = 30 M. L. J. 451.**

———*Succession—Illegitimate son.*

The ancient lawgiver did not contemplate rights of succession in favour of illegitimate children except among Sudras—Per *Seshagiri*

HINDU LAW—Succession—Illegitimate children.

Aiyar, J. (Oldfield and Sesbagiri Aiyar, JJ.) MEENAKSHI *v.* MUNIANDI PANIKKAN.
38 Mad. 1144=1 L. W. 704=
(1914) M. W. N. 672=16 M. L. T. 270=
25 I. C. 957=27 M. L. J. 353.

——*Succession—Illegitimate son—Rights of—Impartible estate—Custom—Kumbala caste.*

The illegitimate son of a Sudra is not a co-parcener with collaterals of his putative father. 27 Mad. 23, Foll. With regard to an impartible estate, an illegitimate son is excluded by the widow of his putative father, if the zemindari is separate property and the undivided co-parceners of his putative father of the zemindari is joint property. With regard to separate partible property he succeeds along with the widow. An illegitimate son succeeding to his deceased father leaving a widow is entitled to half the properties and not merely to a third. There is no custom in the Kumbala caste of exclusion of illegitimate sons from inheriting to their putative father. Text of the *Mitakshara* relating to illegitimate sons of Sudras, applies only to separate property and not to co-parcenary property. *(Miller and Abdur Rahim, JJ.)* VISHVANATHASWAMI NAICKER *v.* KAMU AMMAL.
21 I. C. 724=24 M. L. J. 271.

——*Succession—Illegitimate son—Dancing girl.*

Illegitimate son of a Sudra begotten of a concubine who was a *temple dasi* bound to do dancing services to the temple cannot inherit his father's property though the concubinage has been continuous and the concubine when she was taken in concubinage was a virgin. It is doubtful whether the children of a dancing girl who had given up her profession may not be illegitimate children within the meaning of *Mitakshara* Law. 12 Mad. 72, Ref. *(Sankaran Nair and Ayling, JJ.)* SUNDARAM *v.* MINAKSHI ACHI. 16 I. C. 787.

——*Succession—Illegitimate son of concubine previously married to another.*

For an illegitimate son to succeed to his father he must have been born of a woman who was never married to any one before she came under the keeping of the person whose son the claimant is. 33 Mad. 366, Ref. *(Sundara Aiyar and Ayling, JJ.)* PADALA KRISHNA RAO *v.* PADALA KUMARA JAMMA. 15 I. C. 340.

——*Succession—Illegitimate son—Sudras.*

An illegitimate son among Sudras is entitled to a share of the joint family property, his share being half that of a legitimate son. *(Mitra A. J. C.)* MARUTI *v.* TUKARAM.
76 I. C. 984=19 N. L. R. 99.

——*Succession—Illegitimate son—Adulterous union—Offspring of—No rights—Marriage—Abandonment—Proof.*

For an illegitmate son, among Sudras, to succeed to the property of his putative father, he must show that the union between his parents was continuous and lawful. The offspring of an adulterous or incestuous connection cannot inherit. 33 M. 366; 1 B. 97 Foll. The mere fact that a husband leaves his wife and goes abroad for a long time and on his return does not take back his wife from the company of a stranger

HINDU LAW—Succession—Mother.

with whom she had contracted a *churi* marriage and had long been living, does not constitute an abandonment of the wife nor does it effect a severance of the marriage tie. The illegitimate offspring of the *churi* marriage cannot inherit. *(Dhobley, A. J. C.)* SHEONANDAN SINGH *v.* PRAN SINGH. 18 N. L. R. 115=1922 Nag. 244.

——*Succession—Illegitimate son—Sudras—Survivorship—Other castes—Distinction—Succession certificate—Necessity.*

Illegitimate sons in the three higher classes never take by inheritance but are only entitled to maintenance from the estate of their father. An illegitimate son of a Sudra takes his father's property by survivorship and consequently no succession certificate is necessary to enable him to recover his debts. 18 C. 151, Ref. *(Prideaux, A. J. C.)* GANULAL *v.* KASHIRAM.
68 I. C. 417.

——*Succession — Illegitimate son — Sudras—Kunbis—Mahrattas.*

Mahratta Kunbis of the Central Provinces are Sudras and an illegitimate son of a kunbi would get a half share of what he would have got of his father's property had he been legitimate. *(Prideaux, A. J. C.)* GOPAL RAO *v.* SITARAM RAO.
64 I. C. 863.

——*Succession—Illegitimate daughter—Sudras.*

An illegitimate daughter not born of adulterous intercourse inherits the property of her mother if there are no preferential heirs. This rule applies whether the mother is twice-born or a Sudra. An illegitimate Hindu daughter even among twice-born classes, inherits property of her mother in preference to trespassers. *(Macnair, A. J. C.)* KASTURI *v.* KOTE MAJOR. 56 I. C. 952=
16 N. L. R. 221.

——*Succession—Illegitimate children—Brother—Sudras.*

The rule that one illegitimate brother can succeed to another is not confined to the persons of the Sudra caste only. The principle underlying the rule applies to other castes also. *(Evans, J. C. and Lindsay, A. J. C.)* SITLA BAKSH SINGH *v.* GAJARAJ SINGH. 12 I. C. 767=
14 O. C. 227.

——*Succession—Illegitimate children.*

Under the Hindu Law, the illegitimate children of a Sudra are entitled to succeed to him as his heirs. 13 M. I. A. 141, Foll. *(Parlett, J.)* VASA NARAYANASWAMI *v.* ANANTHAYEE. 26 I. C. 272.

Succession—Mother.

——*Succession—Mother—Remarriage— Succession to estate of son by former marriage.*

A Hindu widow is not disentitled from inheriting to her son by a former marriage, though she had remarried at the time of her son's death. 11 W. R. 82; 29 B. 91 Ref. *(Woodroffe and Ghose, JJ.)* HAR KISHORE SEAL *v.* THAKUR DHAN BAISHNUB. 26 C. W. N. 925=
1922 Cal. 140.

HINDU LAW—Succession—Mother.

——— *Succession—Mother—Step-mother.*

Under the *Mitakshara* school of Hindu Law, a step-mother is not the heir of her step-son. W. R. 173 (F. B.); 37 Cal, 214; 16 All. 221, Rel. (*Mookerjee and Beacheroft, JJ.*) SUNDAR MONI DAI *v.* BANG SIDHAR PATANIK.
18 C. W. N. 160=16 I. C. 900=17 C. L. J. 405.

——— *Succession—Mother—Step-mother.*

According to *Mitakshara* a step-mother cannot succeed to the property to her step-son either as *gotraja sapinda* or as a relation. Apart from usage she is not in the line of heirs at all. (*Miller and Abdur Rahim, JJ.*) SEETHAI AMMAL *v.* NACHIAR AMMAL. 37 Mad. 286=26 M. L. J. 10=14 M. L. T. 596=(1914) M. W. N. 28=22 I. C. 18=1 L. W. 11.

———*Succession—Mother—Limited estate—Benares and Mithila Schools.*

Under the *Mitakshara* Law when a mother succeeds to the estate of her son the heirs of the son and not the heirs of the husband of the mother succeed on her death. There is no difference in this respect between the Benares and the Mithila schools. (*Batten and Findlay, A. J. Cs.*) TORTAN BAI *v.* BULLABAIJI OJHA.
48 I. C. 956.

———*Succession—Mother—Nature of estate.*

A widow as mother of the last male holder acquires a widow's estate. (*Hayward, A. J. C.*) RATANSI *v.* UMERBAI BAI. 9 I. C. 997.

Succession—Mother and Father.

———*Succession—Mother and father—Preference.*

Under the *Mitakshara* Law the mother is a preferential heir to the father in the case of succession to the property of their son. (*Ashworth, A. J. C.*) SUBEDAR SINGH *v.* BHIKHAM SINGH.
9 O. L. J. 435=26 O. C. 52=1922 Oudh 277.

Succession—Primogeniture.

———*Succession—Primogeniture.*

Among the Chophow family of Peopie, the most ancient of the Rajputs, migrated and settled in Nimar, the custom of primogeniture prevails and thereby, the eldest son only succeeds to the "gaddi" and estate and the title of 'Rana' and the younger have a right to maintenance only and not to any share in the property. (*Mr. Ameer Ali.*) RANA MAHATAB SINGH *v.* BADAN SINGH. 17 N. L. R. 128=48 I. A. 446=64 I. C. 144=4 N. L. J. 89 (P. C.).

———*Succession—Primogeniture.*

Where the collaterals were not co-parceners with the propositus the rule of primogeniture does not regulate succession to separate property, especially when the property in question was not family property since its grant by British Government made after its annexation. (*Lindsay, J. C. and Stuart, A. J. C.*) GHISA SINGH *v.* GAJRAJ SINGH. 18 O. C. 289=33 I. C. 371=3 O. L. J. 45.

HINDU LAW—Succession—Rules of.

Succession—Rights of.

———*Succession — Rights of—Ghats of Benares—Whether heritable property.*

Under Hindu Law, the right to build platforms on certain portions of the *Ghats* of Benares and to use it for helping bathers in their religious rites, is a right to property and is heritable. (*Mears, C. J. and Banerji, J.*) PANDIT SURAJ PROSAD *v.* PANDIT GANESH RAM JAINI. 43 All. 581=63 I. C. 94=19 A. L. J. 516.

———*Succession—Rights of—Copyright.*

A copyright in a book, owned by a person, passes after his death to his sons who are entitled to maintain an action for damages for infringement of that copyright. (*Banerji and Gokul Prasad, JJ.*) FIRM OF SHEIKH GHAGOOR BAKSH AND SONS *v.* JWALA PRASAD.
43 All. 412=61 I. C. 394=19 A. L. J. 180.

———*Succession — Rights of — First Cousins—Succeed* per stirpes.

Where the first cousins of the deceased succeed to him as his nearest heirs, they take *per stirpes*. (*Shah and Crump, JJ.*) NARSAPPA NINGAPPA *v.* BHARMAPPA RAJAPPA. 45 Bom. 296=59 I. C. 251=22 Bom. L. R. 1196.

———*Succession—Rights of.*

An unmarried female is succeeded by the nearest *Sapindas* of her father. (*Drake Brockman, J. C.*) MADHO *v.* SAMPAT. 69 I. C. 758 (2).

———*Succession—Rights of—Acceleration.*

Succession of the next reversioner can be accclerated only when a limited owner makes a surrenders or relinquishes her rights in the property. (*Mitra, A. J. C.*) UDEBHAN *v.* RANGA RAO.
59 I. C. 451.

Succession—Rules of.

———*Succession—Rule of — Binding on subject.*

A subject cannot make his property discendible in a manner not recognised by the ordinary law. (*Sir John Edge.*) RAJENDRA BAHADUR SINGH *v.* RAGHUBAUS KUNWAR.
40 All. 470=45 I. A. 134=21 O. C. 106=24 M. L. T. 282=5 O. L. J. 401=8 L. W. 570=(1918) M. W. N. 831=28 C. L. J. 456=23 C. W. N. 101=48 I. C. 213=20 Bom. L. R. 1075 (P. C.).

———*Succession—Rule of—Deed prescribing a different rule—Invalidity of gift.*

Two brothers, Hindus, subject to the Dayabhaga Law, executed a document by which they purported to provide for the permanent devolution of their respective properties in the direct male line including adopted sons, with the condition that in case of failure of lineal male heirs in one branch, the properties belonging to that branch should go to the other, subject to the same rule, and only in the absence of male descendants in the direct line in either branch were the properties to go to the female heirs or their descendants. *Held*, the document could not be construed as a gift to the son of the executant defeasible in the event of his death

HINDU LAW—Succession—Rules of.

without male issue; that the sole intention of the executants was to alter the rule of succession in their family which they had no power to do; that the instrument was consequently void. The Tagore case L. R. I. A. Supp. Vol. 47; 6 M. I. A. 555, Ref. (*Mr. Ameer Ali.*) PURNA SASHI *v.* KALIDHAN RAI.
38 Cal. 603=15 C. W. N. 693=
8 A. L. J. 681=13 Bom. L. R. 451=
14 C. L. J. 1=(1911) 2 M. W. N. 403=
10 M. L. T. 361=11 I. C. 412=
21 M. L. J. 1119 (P. C.).

———*Succession—Rules of—Legislation.*

When a Hindu dies, succession to his property is regulated by the ordinary rules of Hindu Law save so far as their rules have been modified by the provisions of some Act. (*Richards, C. J. and Banerjee, J.*) BHUP SINGH *v.* JAI RAM.
46 I. C. 387=16 A. L. J. 459.

———*Succession—Rules of—Not to be altered by agreement—Successive life-estates.*

An agreement between a grantor and a grantee cannot alter the line of succession according to law. The Hindu Law does not permit the creation of successive life-estates in favour of unborn persons, the estate itself remaining undisposed of. A rule of succession laid down in a grant creating successive life-estates in the property granted to certain female members of a Hindu family cannot be binding upon the family even though it has been actually followed in the family for a long time, unless it has ripened into family custom. (*Chatterjee and Walmsley, JJ.*) AMBALIKA DASI *v.* ARPANA DASI.
45 Cal. 835=23 C. W. N 160=
47 I. C. 402=29 C. L. J. 264.

———*Succession—Rules of—Exception.*

Where the plaintiff claims to succeed under an exceptional rule of succession he must show that the requirements have been fulfilled. (*Chaudhuri, J.*) GAURI SHANKAR BYAS *v.* NAIDAR SINGH.
23 I. C. 287=18 C. W. N. 59.

———*Succession—Rules of—Not to be altered.*

A deed providing for succession not according to Hindu Law by excluding females and collaterals is invalid. (*Sankaran Nair and Spencer, JJ.*) VENKATAPPANAYANIM VARU *v.* THIMMANAYANIM VARU. (1914) M. W. N. 900=27 I. C. 379=
27 M. L. J. 656.

———*Succession—Rules of.*

In the case of Hindus, courts should, in dealing with agricultural land, follow the Hindu Law of Inheritance so far as it may be consistent with the principles of a statute such as the Central Provinces Tenancy Act. 4 N. L. R. 9, Rel. (*Skinner, A. J. C.*) ATMARAM *v.* LALA.
10 I. C. 733=7 N. L. R. 36.

Succession—Samanodakas.

———*Succession—Samanodakas—Strict proof.*

The agnatic relations of a deceased Hindu even beyond the seventh degree may be regarded as his samanodakas provided the agnatic relationship is clearly established. 32 All. 534, Dist. It is only on strict proof of such relationship that a near bandhu like the sister's son will be excluded.

HINDU LAW—Succession—Sapindas.

(*Rattigan, C. J. and Shah Din, J.*) HIRA SINGH *v.* VIR SINGH. 47 P. R. 1918=20 P. W. R. 1918=
43 I. C. 460=111 P. L. R. 1918.

———*Succession—Samanodakas.*

Relationship of Samanodaka extends only to the 14th degree and it is not advisable both on authority and on expediency to extend the meaning to persons beyond the 14th degree of relationship. (*Coutts Trotter and Seshagiri Aiyer, JJ.*) RAMA RAO *v.* KUTTIYA GOUNDAN.
40 Mad. 654=3 L. W. 331=19 M. L. T 275=
34 I. C. 294=30 M. L. J. 514.

Succession—Sapindas.

———*Succession—Sapindas — Preference—Collaterals—Grandson of great-grandfather and great grandson of grandfather—Preference*—Mitakshara—Smriti Chandrika.

Under the *Mitakshara* Ch. II, S. 5, Cls. 4 and 5 the great grandson of the grandfather of a deceased person, is entitled to inherit in preference to the grandson of the great-grandfather. The word "putra" used in connection with brothers and uncles in Ch. II, S. 5 of the *Mitakshara* must be understood in generic sense (as in the case of lineal descendants of the deceased) and the three successive descendants in each ascending line up to the fixed limit, should be exhausted before making the ascent into the line next in order of succession. Under the *Mitakshara* while the right of inheritance arises from *sapinda* relationship or community of blood (in contradistinction to the Dayabhaga notion of community in the offering of religious oblations) in judging the nearness of blood relationship, or propinquity among the *gotrajas*, the test to be applied is the capacity to offer funeral oblations. 41 I. A. 290; 7 I. A. 212; 16 Bom. 716; 2 M. I. A. 132; 13 M. I. A. 373; 24 All. 128; 16 Bom. 716, Ref. to. 5 Mad. 291; 35 Mad. 152 Disappr. The opinions of Devanna Bhatta and Viswesvara Bhatta in the *Smriti Chandrika* and *Subodhini* respectively, that the *Mitakshara* must be taken to limit collateral descent to two degrees in each line, are against the preponderance of authority and cannot be accepted. According to the scheme of succession propounded by the *Mitakshara*, the lineal descendants of the deceased owner down to and including the third degree who constitute the first class of near relations (the nearest *sapindas*) inherit in succession in the first instance. In their default, the widow and daughter take by express provision of the law. Similarly the daughter's son comes next. In their absence the inheritance ascends; each ascending line begins with a female and each has to be exhausted in accordance with the rule of nearness of *sapinda* relationship before the next in order can take; so that the parents "their three successive descendants" take first, then parental grandfather and parental grandmother and the parental grandfather and their three successive descendants come next and so on. (*Mr. Ameer Ali.*) BUDHA SINGH *v.* LALTU SINGH. 37 All. 604=
42 I. A. 208=29 M. L. J. 434=
2 L. W. 897=13 A. L. J. 1007=
18 M. L. T. 409=17 Bom. L. R. 1022=
20 C. W. N. 1=22 C. L. J. 481=
30 I. C. 529=(1915) M. W. N. 772 (P. C.).

HINDU LAW—Succession—Sapindas.

———*Succession*—Sapindas—Mitakshara.

Sapinda relationship according to the *Mitakshara* is not based on the presentation of funeral oblations but on descent from a common ancestor, and in the case of females, also on marriage with descendants from a common ancestor. There is a limitation to this relationship laid down by the *Mitakshara* (*Achara Kanda*) (*i.e.*,) it ceases after the seventh ancestor on the father's side and the fifth ancestor on the mother's side. This limitation is not confined to prohibition in respect of marriage, impurity and exequial rites only but applies also to inheritance. (*Mr. Ameer Ali.*) RAM CHANDRA MARTAND WAIKAR *v.* VINAYAK VENKATESH KOTHEKAR. 42 Cal. 384 = 41 I. A. 290 = 18 C. W. N. 1154 = 27 M. L. J. 333 = 1 L. W. 831 = 10 N. L. R. 112 = 16 M. L. T. 447 = (1914) M. W. N. 835 = 16 Bom. L. R. 863 = 12 A. L. J. 1281 = 25 I. C. 290 = 20 C. L. J. 573 (P. C.)

———*Succession*—Sapindas—*Great grandson of grandfather—Grandson of great grandfather—Preference of former*—Mitakshara.

According to the *Mitakshara* Law the three immediate descendants of the grandfather succeeded in preference to the great grandfather and his descendants and the great-grandson of the grandfather is a preferential heir as against the grandson of the great grandfather. 24 All. 128; 2 M. I. A. 132; 13 Bom. L. R. 552; 16 Bom. 716; 6 W. R. 158, Rel.; 35 Mad. 152; 13 M. I. A. 373; 5 Mad. 221, Ref. (*Banerjee and Piggott, JJ.*) BUDA SINGH *v.* LALTU SINGH. 34 All. 663 = 16 I. C. 529 (2). = 10 A. L. J. 303 = [Affirmed by the Privy Council. 37 All. 604 = 30 I. C. 529 = 29 M. L. J. 434 (P. C.)].

———*Succession*—Sapindas—*Paternal uncle's grandson* versus *sister's son.*

The paternal uncle's son's son is a *gotraja sapinda* and succeeds in preference to the sister's son who is only a bandhu. (*Macleod, C. J. and Heaton, J.*) ANNAYA MADVALYA *v.* SIDAYA MURGAYYA. 59 I. C. 125 = 22 Bom L. R. 1092.

———*Succession*—Sapindas—*Brother's widow—Paternal grand uncle's grandson—Priority.*

A brother's widow is preferential heir as compared with the grandson of the brother of the paternal grandfather of the *propositus*. In dealing with the line of *gotraja* sapindaship the descendants must be exhausted at each step of ascent before proceeding higher to bring other heirs into competition. So long as there are survivors in the direct line there is no need to go further. (*Beaman and Hayward, JJ.*) KHANDACHARYA *v.* GOVINDA CHARYA. 12 I. C. 566 = 13 Bom. L. R. 1005.

———*Succession*—Sapindas—Mitakshara—*Order.*

Under the *Mitakshara* paternal uncle's grandson is to be preferred to paternal uncle's widow as heir of the *propositus* for the purpose of grant of letters of administration. 2 Bom. 388; 10 Bom. 716; 13 M. I. A. 373; 24 All. 128, Rel. (*Scott, C. J. and Batchelor, J.*) KASHIBHAI GANESH *v.* SITABAI RAGHUNATH. 11 I. C 560 = 35 Bom. 389 = 13 Bom. L. R. 552.

HINDU LAW—Succession—Sister.

———*Succession*—Sapindas—*Priority—Right to perform* Shradh.

The order in which the right to perform *Shradh* accrues has nothing to do with order of succession. (*Richardson and Huda, JJ.*) BIJOY SINGH *v.* MATHURIYA DEBYA. 56 I. C. 97.

———*Succession*—Sapinda—*Bandhu.*

A *gotraja sapinda* will not be preferred to a bandhu if he is not able to trace his descent from a common ancestor. (*Coutts Trotter and Seshagiri Aiyar, JJ.*) RAMA RAO *v.* KUTTIYA GOUNDAN. 40 Mad. 654 = 3 L. W. 331 = 19 M. L. T. 275 = 34 I. C. 294 = 30 M. L. J. 514.

———*Succession* — Sapindas — Mitakshara—*Spiritual benefit.*

Under the Mitakshara, spiritual benefit is no index to rights of property or preference. Per. *Seshagiri Aiyar. J.* (*Oldfield and Seshagiri Aiyar, JJ.*) MINAKSHI *v.* MUNIANDI PANNIKKAN. 38 Mad. 1144 = 1 L. W. 704 = (1914) M. W. N. 672 = 16 M. L. T. 270 = 25 I. C. 957 = 27 M. L. J. 353.

———*Succession*— Sapindas—Mitakshara— *Test of preference—Consanguinity—Spiritual benefit.*

Under the Mitakshara as interpreted in Southern India the tests of heirship are consanguinity and propinquity and not the capacity to offer spiritual benefit. In a competition between two collateral *sapindas* preference is to be given to the nearer line. (*Benson and Abdur Rahim, JJ.*) CHINNASWAMI PILLAI *v.* KUNJA PILLAI. 35 Mad. 152 = 10 M. L. T. 226 = 11 I. C. 885 = 21 M. L. J 856.

———*Succession*—Sapindas—*Order of preference*—Mitakshara.

Under the *Mitakshara* Law, the line of each paternal ancestor in turn should be exhausted as far as the third descendant in the direct male line before going a step higher to find out other heirs. Accordingly the great-grandson of the great-grandfather of the last owner is a nearer heir than the great-great-grandosn of the grandfather. 34 All. 663; 24 All. 128, Foll.; 35 Mad. 152, Dist. (*Piggott, J. C. and Lindsay, A. J. C.*) HAR NANDAN *v.* RACHPAL. 20 I. C. 32 = 16 O. C. 122.

Succession—Sister.

———*Succession—Sister — Full and half-sister—Priority*—Mitakshara.

Under the *Mitakshara*, a full sister is entitled to succeed in preference to the half sister of the propositus. (*Shah, J.*) JANA *v.* RAKHMA. 43 Bom. 461 = 52 I. C. 8 = 21 Bom L. R. 208.

———*Succession—Sister—Position of.*

Under the *Mitakshara* a full sister comes in only after the grandmother and hence after the half-brother's son. (*Heaton and Shah, JJ.*) HARI ANNAJI DESHPAND *v.* VASUDEV JANARDAN SATUBHAI. 38 Bom. 438 = 23 I. C. 944 = 16 Bom. L. R. 283

———*Succession— Sister — Half-sister—Paternal uncle.*

Under the *vyavahara mayukha*, a half-sister of the *propositus* is to be preferred as his heir to his

paternal uncle. (*Chandavarkar and Hayward, JJ.*) THRIKAN *v.* NATHA DAJI. 36 Bom. 120 = 12 I. C. 359 = 13 Bom. L. R. 863.

———*Succession—Sister—Mitakshara law.*

A sister cannot under Mitakshara succeed to her deceased brother. (*Broadway and Abdul Raoof, JJ.*) TIRATH RAM *v.* KAHAN DEVI. 1 Lah. 588 = 60 I. C. 101 = 3 Lah. L. J. 35.

———*Succession—Sister.*

Under Hindu Law sisters can succeed as bandhus. 20 All. 181, 14 Mad. 149, Ref. (*Broadway and Abdul Raoof, JJ.*) NANKAK GIR *v.* MUSSAMMAT KISHEN KAUR. 53 I. C. 815 = 161 P. R. 1919.

———*Succession—Sister—Bandhus.*

Under the Mitakshara a sister is not an heir to her brother and cannot be brought on the record as the legal representatives of the deceased brother in a suit or appeal. (*Chevis and Abdul Raoof, JJ.*) SHAMBHU NATH *v.* MUSSAMMAT RALLI. 52 I. C. 591 = 25 P. W. R. 1919.

———*Succession—Sister—Half-sister.*

According to the *Mitakshara* school of Hindu Law only females expressly named in the text can inherit. The half-sister being not so named is not entitled to succeed. (*Shah Din, J.*) MALAN *v.* JIWAN. 32 I. C. 916 = 47 P. W. R. 1916.

———*Succession—Sister—Right of.*

A sister is preferred to any descendant of a paternal ancestor as she comes in next after the paternal grandmother and before the paternal grand-father according to *lex loci* of the Central Provinces the sister is no heir. (*Drake Brockman, J. C.*) MADHO *v.* SAMPAT. 69 I. C. 758 (2).

———*Succession—Sister — Step-sister — Benares school.*

The special rule under which the females succeed in Bombay has no application to a case governed by the Mitakshara as interpreted by the Benares school where the principle is that a female does not inherit unless her claim is supported by a special rule or she is expressly placed in the table of succession. Under the Benares School of Law neither a sister, nor a step-mother is an heir. (*Stanyon, A. J. C.*) GANUO *v.* BENI. 43 I. C. 943 = 14 N. L. R. 82.

———*Succession—Sister — Paternal uncle's son—Preferential heir.*

Under the Mitakshara Law as followed in Berar a sister comes after the paternal grandmother but before the paternal grandfather and his descendant so that she comes before a paternal uncle's son. 2 Berar L. J. 135; 32 Bom. 300 (Dissented from.) (*Mitra, Offg. A. J. C.*) BHADIA *v.* MUSAMMAT BHAGI. 23 I. C. 229 = 10 N. L. R. 24.

———*Succession — Sister's daughter — Bombay school.*

According to Bombay school, as prevalent in Berar, a sister's daughter has no right to succeed. (*Macnair, A. J. C.*) SAROO *v.* BANI. 62 I. C. 257.

Succession—Sister's Son.

———*Succession—Sister's son—Bandhus— Order.*

Sister's son is preferable to the daughter's son of the paternal uncle under the Mitakshara. (*Griffin, J.*) KHARGAI *v.* DEBI. 9 I. C. 339.

———*Succession—Sister's son*—Cacharies *of Assam—Wife's sister—Custom.*

In the absence of a custom to the contrary, the Bengal school of Hindu Law applies to the aborigines (*Cacharies*) of Assam and under it the sister's son is an heir. A wife's sister is not an heir under Hindu Law but she can be an heir under custom, if proved. (*Chatterjea and Pearson, JJ.*) NEARAM KACHARI *v.* ARDARAM KACHARI. 64 I. C. 145 = 35 C. L. J. 34.

———*Succession—Sister's son.*

A sister's son is a bhinna gotra sapinda and is, therefore, a bandhu. The term 'Bandhu' has been defined in the Mitakshara as a bhinna gotra sapinda that is to say, sprung from a different family but connected by common corporeal particles, or by consanguinity. (*Roe and Coutts, JJ.*) BABU BISHENDAYAL SINGH *v.* MUSST. JEISERI KUER. 48 I. C. 746 = 1918 Pat. 323.

Succession—Son.

———*Succession—Son—Son ship— Twelve kinds, obsolete.*

Whatever may have been the position and rights between themselves of the twelve kinds of sons possible to a Hindu in the days of Manu and other ancient writers, all of these twelve sons, except the legitimately born and the adopted, are long since obsolete. A discussion as to their rights and interest, even if they could now be ascertained, would throw no light on the position and rights of an adopted son. (*Sir John Edge.*) NAGIN DAS BHAGWAN DAS *v.* BACHOO HURKISSON DAS. 40 Bom. 270 = 43 I. A. 56 = 30 M. L. J. 193 = 14 A. L. J. 185 = 3 L. W. 259 = 19 M. L. T. 193 = 18 Bom. L. R. 172 = (1916) 1 M. W. N. 258 = 23 C. L. J. 395 = 32 I. C. 403 = 20 C. W. N. 702 (P. C.).

———*Succession—Son — Separate and divided sons—No priority.*

In the self-acquired property of a Hindu father sons who are living separate from him will be entitled to share along with sons who may be living jointly with him. (*Richards, C. J. and Banerji, J.*) KUNWAR BAHADUR *v.* MADHO PRASAD. 49 I. C. 620 = 17 A. L. J. 151.

———*Succession—Sons and grandsons — Separated members—Succession* per stirpes.

On the death of a Hindu governed by the Mitakshara Law, his separated sons and grandsons succeed *per stirpes* to the estate. 30 M. 348, Foll. (*Macleod, C, J. and Crump, J.*) GANGADHAR NARAYAN *v.* IBRAHIM BAVA. 47 Bom. 556 = 25 Bom. L. R. 197 = 1923 Bom. 265 (1).

———*Succession—Son—Right of, to property, when commences.*

Under Hindu Law son's right to property left by his father, commences from his birth and not

before. (*Smith and Martineau, JJ.*) HIRA *v* BUTA. 49 P. W. R. 1920 = 56 I. C. 256 = 1 Lah. 128.

———*Succession — Sons — Father's self-acquired property.*

A son becomes the owner of the self-acquired property of his deceased father by inheritance and not by survivorship. (*Wallis, C. J., Oldfield and Kumaraswami Sastri, JJ.*) VAIRAVAN CHETTI *v.* SRINIVASACHARIAR. 44 Mad. 499 = 40 M. L. J. 481 = 29 M. L. T. 294 = 13 L. W. 475 = 62 I. C. 944 = (1921) M. W. N. 290.

———*Succession—Son—Adopted son — Share of adopted son.*

Under Hindu Law among *Sudras* an adopted son in competition with subsequently born sons takes one-fourth share of an *aurasa* son, *i. e.*, one-fifth of the estate. 7 Mad. 253, Foll.; 4 Cal. 425; 17 Bom. 100 Diss. (*Wallis, C. J. and Seshagiri Iyer, J.*) KARUTURI GOPALAN *v.* KARUTURI VENKATA RAGHAVALU. 40 Mad. 632 = 31 I. C. 574 = 29 M. L. J. 710.

———*Succession—Son—Son resigning in favour of mother—No bar to succession on mother's death.*

The plff. an *archaka* resigned his office and was succeeded by his mother. *Held*, that on the mother's death the plff. was the proper heir to the office and not his (plff.'s) son in the absence of any disqualifying circumstance. (*Abdur Rahim and Ayling, JJ.*) MITTEVI PATTABHI RAMANUJACHARYULU *v.* PEDUTI ALAGASINGRA CHARYULU. 21 M. L. J. 490 = (1911) 1 M. W. N. 145 = 9 I. C. 496 = 9 M. L. T. 352

———*Succession—Sons—Re-united son preferred to one who remains separate.*

According to the Mitakshara the reunion is a ground of preference between brothers of equal merits as to blood. (*Drake Brockman, J. C.*) JENKA *v.* DHARMA. 21 I. C. 597 = 9 N. L. R. 150.

———*Succession—Sons—Custom—Order.*

Where a custom has been proved by which property was distributed between sons according to the number of their mother's descendants, by the same father the sons and their mother form one stock so that persons descended from a different mother though nearer in degree are postponed. (*Kanhaiya Lal, A, J. C.*) LAXMAN PRASAD *v.* DURGA PRASAD. 19 O. C. 165 = 37 I. C. 14 = 3 O. L. J. 727.

Succession—Survivorship.

———*Succession—Survivorship—Joint family constituting one tenant.*

When a joint Hindu family constituted one tenant and one of the members dies, the surviving members continue to be the tenant and such member has no interest as devolves after him on any one in particular. (*Richards, C. J. and Rafique, J.*) MAHABIR NINGH *v.* BHAGWATI. 38 All. 325 = 33 I. C. 110 = 14 A. L. J. 278.

———*Succession—Survivorship.*

In a separated family holding joint family property brothers succeed to the property of a

deceased brother, a nephew is not entitled to inherit with the brother of a deceased brother. (*Anderson and Robertson, JJ.*) RALLA RAM *v.* MALAWA RAM. 12 I. C. 308 = 123 P. W. R. 1911.

———*Succession—Survivorship—Nature of.*

The estate acquired by survivorship is subject to defeasance on the coming into existence by adoption or otherwise of a new co-parcener. (*White, C. J. and Seshagiri Iyer, J.*) MADANA MOHANA ANANGA BHIMA DEO KASARI *v.* PURSHOTHAMA ANANGA BHIMA DEO. 38 Mad. 1105 = 27 M. L. J. 306 = 24 I. C. 999 = 16 M. L. T. 413.

———*Succession — Survivorship — Collaterals—Effect.*

Succession to collaterals by brothers forming a joint family does not impose the incident of survivorship on such property, since they become tenants-in-common. (*Lindsay, J. C. and Kanhaiya Lal, A. J. C.*) HARDWAR *v.* RAM MILLAN. 20 O. C. 271 = 42 I. C. 812 = 4 O. L. J. 565.

———*Succession—Survivorship—Joint family—Benares school.*

Under the Benares school of Hindu law, the rule of succession in a joint family is one of survivorship where no member has any definite or defined share and therefore cannot transmit it to his heirs. But a member, who dies or ceases to be a member of the family, causes no change in the status of the family. The properties owned by the joint family continue to be owned by the surviving members thereof after the extinction of one member of it. (*Jwala Prasad and Ross, JJ.*) SADANANDA BARPANDA *v.* BAIKUNTHA NATH. 63 I. C. 833 = 2 P. L. T. 299.

———*Succession—Survivorship—Essentials.*

A person succeeds to another by survivorship only when there is community of interest between him and the deceased and not when he has only a right to maintenance. (*Chamier, C. J., Chapman and Roe, JJ.*) SHYAM LAL SINGH *v.* BYAJ NARAYAN KUNDU. 1917 Pat. 121 = 2 P. L. J. 136 = 39 I. C. 36 = 1 P. L. W. 140.

Succession—Widow.

———*Succession—Widow—Nature of estate.*

Succession to the estate of a deceased Hindu whose estate had passed to his widow opens out on death of the widow and the person who would have succeeded to the estate of the deceased had he died on the date of widow's death takes the estate. (*Banerji and Ryves, JJ.*) RANIKA KUNWAR *v.* JANINA KUNWAR. 42 I. C. 846 = 15 A. L. J. 798.

———*Succession—Widow—Jains—Custom.*

There is the custom of the Jain community of Mangrole and Uplata whereby a widow on the death of her husband succeeds absolutely to the property left by him and can dispose of the property either *inter vivos* or by will. (*Scott, C. J. and Batchelor, J.*) MADAUJI DEVCHAND *v.* TRIBHOWAN VIRCHAND, 36 Bom. 396 = 12 I. C. 892 = 13 Bom. L. R. 1121

———*Succession—Widow—Unchastity.*

A Hindu widow does not forfeit her right of succession to her husband on the score of

unchastity committed during the husband's lifetime and was condoned by him. (*Beaman and Hayward, JJ.*) GANGADHAR *v.* YELLU VIRASWAMI SHIRAVALE. 36 Bom. 138=12 I. C. 714= 13 Bom. L. R. 1038.

———*Succession — Widow— Temple — Turn of worship.*

A sonless widow sued to establish her right to the worship of the family deities and claimed a right to a turn of worship acquired by purchase by her husband's grandfather: *Held*, that the right to worship was not freed from the inherent restriction attaching to it, namely, that it could not devolve upon a sonless widow, and this custom of exclusion affected a share whether acquired by inheritance, transfer *inter vivos* or a testamentary devise. (*Mookerjee and Chaudhuri, JJ.*) RADHA RANI DASI *v.* DOYAL CHAND MULLIK. 62 I. C. 222= 33 C. L. J. 141.

———*Succession — Widow — Childless — Dayabhagha.*

Under the Dayabhaga Law, a childless widow cannot inherit. 19 W. R. 189, Overruled. (*Jackson and Glover, JJ.*) BIMOLA *v.* DANGOO KANSARI. 30 I. C. 567.

———*Succession—Widow of predeceased son—Nephew—Preference—Custom.*

Neither under Hindu Law nor under the custom of the Punjab is the widow of a predeceased son a preferential heir to the nephew of the last male owner. (*Broadway and Moti Sagar, JJ.*) CHINT RAM *v.* SHIB DEVI. 4 Lah. L. J. 10= 1922 Lah. 207.

———*Succession—Widow—Rights of.*

A widow can only succeed to property vested in the husband at the time of his death. No fresh right can accrue to her by reason of the subsequent death of a person to whom he would have been heir had he been alive. 18 Mad. 168, Foll.; 7 W. R. 35 (P. C.); 18 W. R. (P. C.) Dist. (*Shah Din and Chevis, JJ.*) DULLA SINGH *v.* KHAZANA. 61 P. R. 1914= 25 I. C. 542=267 P. L. R. 1914.

———*Succession — Widow — Re-marriage — Effect of.*

A re-married Hindu widow is entitled to succeed to the property left by her son born of her marriage, the son having died after the re-marriage. (*Drake-Brockman, J. C.*) APA *v.* DAMDIA. 47 I. C. 647 = 14 N. L. R. 149.

———*Succession—Widow—Principle.*

A widow succeeds to her husband's estate as the surviving portion of her husband. (*Stanyon, A. J. C.*) SITARAM *v.* LAXMAN. 17 I. C. 133=8 N. L. R. 128.

———*Succession—Widow—Nature of estate.*

When on a sale of full proprietary rights in estate by a widow a right of occupancy is created, succession to such right is governed by the personal law. A Hindu widow has no higher title in respect of ex-proprietary rights than in full proprietary rights, the former not being her stridhanam. (*Stuart, A. J. C.*) GENDA SINGH *v.* FATEH SINGH. 18 O. C. 377=33 I. C. 258=3 O. L. J. 135.

———*Succession—Widow— Co-widows— Nature of estate.*

Co-widows succeed jointly to the estate of their husband. While they may during their lifetime enjoy their shares separately they cannot so deal with property as to destroy the incident of survivorship attaching to the estate. (*Lindsay, J. C.*) DILIPAT SINGH *v.* KASHI NATH. 24 I. C. 542=17 O. C. 108.

Suretyship.

See HINDU LAW—DEBT.

Surrender.

See HINDU LAW—(1) WIDOW.
(2) REVERSIONER.

Survivorship.

See HINDU LAW—JOINT FAMILY—SUCCESSION.

Texts.

———*Texts—Dattaka Chandrika.*

The Dattaka Chandrika has been long accepted in Southern India as a high authority on the law of adoption, but where its propositions are not based upon authentic texts it should be enquired whether they have in fact been acted upon as law. (*Sir John Edge.*) ARUMILLI PERRAZU *v.* ARUMILLI SUBARAYUDU. 44 Mad. 656=19 A. L. J. 621= 48 I. A. 280=23 Bom. L. R. 920= 41 M. L. J. 33=34 C. L. J. 56=14 L. W. 270= (1921) M. W. N. 540=3 U. P. L. R. (P. C.) 46= 61 I. C. 690=26 C. W. N. 1 (P. C.).

———*Texts—Smriti Chandrika—Subhodhini.*

Limitation of collateral descent to two degrees in each line by the author of Smriti Chandrika and Subhodhini being against the weight of the authorities in the Mitakshara School need not be considered as binding. (*Mr. Ameer Ali.*) BUDHA SINGH *v.* LALTU SINGH. 37 All. 604= 42 I. A. 208=17 Bom. L. R. 1022= 20 C. W. N. 1=22 C. L. J. 481= (1915) M. W. N. 772=29 M. L. J. 434= 2 L. W. 897=13 A. L. J. 1007=30 I. C. 529= 18 M. L. T. 409 (P. C.).

———*Texts—Dattaka Mimamsa—Authority of.*

The Dattaka Mimamsa is a work of high authority and has become embodied in Hindu Law but caution is required in accepting the glosses of its author where they deviate from or add to the Smritis. 26 I. A. 113=26 I. A. 153, Ref. (*Sir John Edge.*) PUTTU LAL *v.* PARBATI KUNWAR. 37 All. 359=42 I. A. 155=19 C. W. N. 841= 13 A. L. J. 721=17 Bom. L. R. 549= 18 M. L. T. 61=29 M. L. J. 63= 22 C. L. J. 190=2 L. W. 881= 29 I. C. 617=(1915) M. W. N. 514 (P. C.).

———*Texts—Interpretation of—"Bandhus"—Mitakshara—Meaning of.*

The Hindu Law contains its own principles of exposition and questions arising under it cannot be determined on abstract reasoning or analogies

borrowed from other systems of law, but must depend for their decision on the rules and doctrines enunciated by its own law-givers and recognised expounders. The word "bandhu" has in the system of Mitakshara a distinctive and technical meaning and signifies a *bhinna gotra sapinda*. (*Mr. Ameer Ali.*) RAMCHANDRA MART. AND WAIKAR *v.* VINAYAK VENKATESH KOTHEKAR. 42 Cal. 384=41 I. A. 290= 18 C. W. N. 1154=27 M. L. J. 333= 1 L. W. 831=10 N. L. R. 112= 16 M. L. T. 447=(1914) M. W. N. 835= 16 Bom. L. R. 863=12 A. L. J. 1281= 25 I. C. 290=20 C. L. J. 573 (P. C.).

———*Texts—Balambhatta's Commentary—Value of.*

Shah, J.—Though Balambhatta is useful as aiding the interpretation of the Mitakshara the views propounded therein cannot be accepted without due caution and examination. (*Macleod, C. J. and Shah, J.*) DATTATRAYA *v.* GANGABAI. 46 Bom. 541=24 Bom. L. R. 69= 1922 Bom. 321.

———*Texts—Bombay.*

In Bombay, Courts have to be guided by Mitakshara, Vyavahara Mayuka supplemented by Dattaka, Chandrika and Dattaka Mimamsa. *Batchelor and Shah, JJ.*) LAXMIPATIRAO SRINIVAS *v.* VENKATESH TIRMAL. 41 Bom. 315=38 I. C. 552= 19 Bom. L. R. 23.

———*Texts—Dattaka Mimamsa.*

Dattaka Mimamsa is the leading authority on adoption in the Bombay High Court. (*Scott, C. J. and Batchelor, J.*) BACHOO *v.* NAGINDAS BHAGWANDAS. 23 I. C. 912= 16 Bom. L. R. 263.

———*Texts—Interpretation.*

Where two cases are mentioned together one of which is leading and the other subordinate, the same *nyaya* or law must apply to the latter unless the rule otherwise directs. When the same word is used of two or more objects and in the same connection it must bear the same meaning in the absence of express direction to the contrary. (*Scott, C. J., Chandavarkar, Batchelor and Heaton, JJ.*) TUKARAM *v.* NARAYAN. 36 Bom. 339= 14 I. C. 438=14 Bom. L. R. 89 (F. B.).

———*Texts—Dattaka Chandrika—Authority of*

Dattaka Chandrika is the prevailing authority on 'adoption' in Bengal. (*Chaudhuri and Newbould, JJ.*) ASITA MOHAN GHOSE *v.* NERODE MOHAN GHOSE. 35 I. C. 127=20 C. W. N. 901.

———*Texts—Interpretation of.*

Special texts of Hindu Law, forming an exception to general rule must be construed strictly and applied only to the cases falling clearly within it. An argument from analogy involving a fiction upon a fiction an *atidesa* upon an *atidesa*, is repugnant to Hindu Law. (*Sanderson, C. J., Woodroffe and Mookerjee, JJ.*) KUMAR GANGADHAR BOGLA *v.* KUMAR HIRALAL BOGLA. 43 Cal. 944=20 C. W. N. 489= 34 I. C. 10=23 C. L. J. 382 (F. B.).

———*Texts—Value of.*

A rule of Hindu Law cannot be said to be obsolete merely because there is no occasion for its

application or because there is no judicial decision exactly in point. 43 M. 4 doubted. (*Ayling and Odgers, JJ.*) SAMBASIVAN PILLAI *v.* SECRETARY OF STATE. 44 Mad. 704=13 L. W. 638= 41 M. L. J. 109=63 I. C. 659= (1921) M. W. N. 481.

———*Texts—Interpretation.*

Where a text expressly declares one person as the par of the another there is, in the absence of anything to the contrary in the texts nothing to prevent the converse rule from being applied as a rule of equity and good conscience even though the case is not specially provided in the texts. (*Wallis, Oldfield and Kumaraswami Sastry, JJ.*) SUBRAMANIA AIYAR *v.* RATHNAVELU CHETTY. 41 Mad. 44=22 M. L. T. 94= 6 L. W. 149=33 M. L. J. 224= 42 I. C. 556=(1917) M. W. N. 688. (F. B.).

———*Texts—Interpretation.*

It is not the literal meaning of the original text that has to be looked in the administration of Hindu Law. Though commentators may have been wrong in their interpretation of original texts their opinion should be enforced as having the sanction of the usage. (*Wallis, Offg. C. J. and Seshagiri Iyer, J.*) MUTHUKARUPPA PILLAI *v.* SEETHAMMAL. 39 Mad. 298=16 M.L.T. 587= 2 L. W. 38=26 I. C. 785=(1915) M. W. N. 48.

———*Texts—Southern India—Commentaries—, Relative, value of.*

Both Aparak's commentary and Varadoraja's Vyavahara Nirnaya may usefully be consulted on points on which the Mitakshara is silent but should not be accepted if their opinion is clearly opposed to the Mitakshara. (*Benson and Abdur Rahim, JJ.*) CHINNASWAMI PILLAI *v.* KUNJA PILLAI. 35 Mad. 152=10 M. L. T. 226= 11 I. C. 885=21 M. L. J. 856.

———*Texts—Dattaka Mimamsa.*

Dattaka Mimamsa has been judicially recognised as part of general Hindu Law of adoption and must be accepted as authority except where it deviates from or adds to the Smritis or is opposed to established and recognised customs. 17 All. 294; 21 All. 412; 32 Bom. 619; 36 Bom. 533. Ref. (*Stanyon, A. J. C.*) PRALHAD *v.* MAHADEO. 21 I. C. 266=9 N. L. R. 130

Unchastity.

See HINDU LAW—(1) MAINTENANCE.
(2) SUCCESSION.
(3) WIDOW.

Unobstructed Heritage.

See HINDU LAW—SUCCESSION.

Usury.

See DAMDUPAT.

Widow.

See also HINDU LAW—(1) REVERSIONER.
(2) SUCCESSION.

HINDU LAW—Widow—Accumulations.

———Widow.

Accumulations.
Acknowledgment of debts.
Acquisitions
Administratrix.
Adverse possession.
Alienation.
Compromise.
Conversion.
Co-widows.
Debts.
Decree for or against.
Powers of.
Re-marriage.
Representation of estate.
Surrender.
Unchastity.
Waste.
Widow's estate.
Will.

Widow—Accumulations.

———*Widow—Accumulations—Arrears of maintenance—Presumption.*

A Hindu widow may so dispose of the income of her husband's estate as to make it an accretion to the corpus. It may be there is a presumption against her so dealing with it. It is a question of fact if there is a dispute, whether she has or has not dealt with her property. If she has so dealt with it, her husband's reversioner is her legal representative. (*Lord Phillimore.*) RAJA RAJESWARI DIRA *v.* SUNDARA PANDYA SWAMI TEVAR. 10 L. W. 322=42 Mad. 58=17 A. L. J. 153=36 M. L. J. 164=23 C. W. N. 549=29 C. L. J. 551=25 M. L. T. 400=21 Bom. L. R. 885=49 I. C. 704=(1919) M. W. N. 511 (P.C.).

———*Widow—Accumulations — Savings from income and purchases from savings.*

It is always a question of fact whether the purchases from savings from income are accretions to the estate. If out of the savings, the widow purchases in her own name the property of her own brothers which was sold in execution, and soon after reconveys it to them, there is no doubt that there is no intention on the part of the widow that the property should be an accretion to the ancestral property, 10 Cal. 324; 20 Cal. 433 (P.C.) and 25 Mad. 351 Ref. to. (*Macleod, C. J. and Shah, J.*) KESHAV PANDURANG LOKHANDE *v.* MARUTI KRISHNA. 62 I. C. 954=23 Bom. L. R. 803.

———*Widow—Accumulations—Nature of.*

Money belonging to a Hindu were after his death invested by his relations on *thavanai* with a direction to pay the widow of the deceased a sum of Rs. 50 a year for her maintenance. The money together with the accumulated interest was intended to go to the boy to be adopted by the widow. The widow made no adoption nor did she object to the deposit and lay any claim to the money or to the whole of the interest payable each year. *Held*, that the accumulated interest formed part of the estate of the deceased and that the principal together with the interest passed on the widow's death to the reversioners of her deceased husband. (*Wallis, C. J. and Krishnan, J.*) NARAYANAN CHETTI *v.* SUPIAH CHETTI. 43 Mad. 629=38 M. L. J. 437=11 L. W. 418=58 I. C. 639=(1920) M. W. N. 248.

HINDU LAW—Widow—Acquisitions.

———*Widow—Accumulations—Debts not collected by widow.*

Where a Hindu widow in possession of her husband's estate does not collect a mortgage debt due to her during her life-time, it becomes an accretion to the estate. (*Daniels and Lyle, A. J. Cs.*). SAIYED MAHOMED HADI *v.* MT. PARBATI. 9 O. L. J. 312=25 O. C. 2=1922 Oudh 91.

———*Widow—Accumulations—Accretion—Assets.*

The question whether a Hindu widow dealt with the accumulated income of her deceased husband's estate so as to make it a part of the *corpus* depends on the circumstances of each case. Where a Hindu widow had mortgaged with possession her husband's estate but on her death her reversioners took possession of the properties and realised the rents that had accrued due during the widow's lifetime, the moneys so realised are assets of the widow in the hands of the reversioners and are liable to satisfy the claim of the mortgagees. (*Dalal, A. J. C.*) CHHANNU LAL *v.* MT. RAJ KUAR. 9 O. L. J. 24=1922 Oudh 48.

Widow—Acknowledgment of debts.

———*Widow—Acknowledgment of debts.*

An acknowledgment of liability by a Hindu widow does not extend the period of limitation as against reversioners. (*Sir John Edge.*) SONILAL *v.* KANHAIYA LAL. 35 All. 227=40 I. A. 74=25 M. L. J. 131=13 M. L. T. 437=17 C. W. N. 605=11 A. L. J. 389=(1913) M. W. N. 470=17 C. L. J. 488=19 I. C. 291=15 Bom. L. R. 489 (P. C.).

———*Widow—Acknowledgment of debts.*

A widow cannot bind the reversioner by a written acknowledgment of a debt due from her husband. (*Kanhaiya Lal and Sabonadiere, A.J.Cs.*) BHAGWANT SINGH *v.* DAULAT SINGH. 21 I. C. 757=16 O. C. 272.

Widow—Acquisitions.

———*Widow—Acquisitions—Accretion to estate—Onus.*

Where a Hindu widow effects savings from the income of her husband's property and with it acquires other property, unless it is shown that she dealt with it in such a manner as to indicate it was her absolute property, it must be deemed to have become part of the husband's property. (*Lord Buckmaster.*) NABAKISHORE MANDAL *v.* UPENRA KISHORE DANDAL. 20 A. L. J. 22=26 C. W. N. 322=35 C. L. J. 116=42 M. L. J. 253=(1922) M. W. N. 95=24 Bom. L. R. 346=15 L. W. 417=L. R. 3 P. C. 77=30 M. L. T. 234=3 P. L. T. 311=1922 P. C. 39 (P. C.).

———*Widow—Acquisitions—Adverse possession—Nature of interest acquired—Assertion of absolute ownership.*

On the death of the survivor of two brothers who formed a joint Hindu family, the widow of

the predeceased brother applied for mutation of names in respect of family property of which she had taken possession, alleging that she was owner of it as heir to her husband's separate property; subsequently she put forward the same claim in written statements in suits. She also made a gift of the property to religious purposes. *Held*, that the aforesaid acts were public assertions by the widow of a right to exclusive possession and ownership and made her title absolute. (*Viscount Haldane.*) CHOUDHRI SATGUR PERSHAD *v.* KRISHNA LAL. 42 All. 152=38. M L. J. 259= 11 L. W. 384=46 I A. 197= (1920) M. W. N. 3=24 C. W. N. 394= 18 A. L. J. 235=2 U. P. L. R. (P. C.) 55= 55 I. C. 486=22 Bom. L. R. 451 (P. C.).

———*Widow—Acquisition — Property in wife's name—Presumption.*

There is no presumption that property standing in the name of a Hindu widow, even though purchased in her name, belongs to her husband. (*Lindsay and Sulaiman, JJ.*) MAHRANA *v.* DAVID. 21 A. L. J. 737=L. R. 4 A. Civ. 483= 46 A. 16=1924 All. 40

———*Widow—Acquisition—Whether devisable by will.*

Property acquired by a Hindu widow, in possession of her husband's estate, but without the aid of, or detriment to the estate, is not part of her husband's estate and can be disposed of by will. (*Banerjee, Tudball and Gokul Prasad, JJ.*) SRI RAM JANKIJI *v.* JAGDAMBA PRASAD. 43 All. 374=19 A. L. J. 129= 61 I. C. 3=3 U. P. L. R. (All.) 33 (F. B.).

———*Widow—Acquisitions—Savings of maintenance allowance.*

If a Hindu widow in possession in lieu of maintenance saves a portion of the profits which she could have spent on her maintenance, the savings are her personal property and in the absence of a clear indication of intention to the contrary the savings would go to her legal representatives. The mere fact that the money might have come out of the estate of her husband would not make it part of his estate. (*Banerji and Sulaiman, JJ.*) JWALA PRASAD *v.* SUKHDEI. 57 I. C. 59=2 U. P. L. R (All.) 171.

———*Widow—Acquisitions—Property acquired from savings.*

Property acquired by a widow out of the savings of the husband's estate would form part of the husband's estate if she intended it to do so and treated it as an accretion. (*Banerjee and Ryves, JJ.*) RANIKA KUNWAR *v.* JAMNA KUNWAR. 42 I. C. 846=15 A. L. J. 798.

———*Widow—Acquisitions—Stridhanam.*

If a Hindu widow invests the income of the estate in such a way as to indicate her intention it was not to form part of her husband's estate but to remain at her disposal even though the investment be of a temporary nature, it is her separate property. The fact that she first mortgaged and then gifted the acquisition would show she intended to deal with it as her own. (*Richards, C. J. and Tudball, J.*) WAHID ALI KHAN *v.* TORI RAM. 21 I. C. 91= 35 All. 551=11 A. L. J. 856.

———*Widow — Acquisitions — Presumptions — Purchase in the name of daughter—Intention —Suit by reversioner—Onus.*

Where a limited owner like a widow acquires properties out of the income of her husband's estate, the presumption is that the acquisitions are impressed with the same character as the funds employed for their acquisition. The mere fact that the acquisition is made by the widow in the name of her daughter does not rebut the presumption. In considering whether the acquisition was intended to be a gift to the daughter, one important test is the character of the possession of the properties (*i. e.*) whether they were in the possession of the widow or in the exclusive possession of her daughter. 6 M. I. A. 35; 13 M. I. A. 232; 6 I. A. 233; 9 M. I. A. 123; 26 C. 227 Ref. (*Mookerjee and Buckland, JJ.*) SRIMATI CHARUSILA DASI *v.* SRIMATI MRINALINI DASI. 64 I. C. 531.

———*Widow—Acquisitions—Income—Intention.*

Property acquired by a widow out of the income of the estate where it appeared that her intention was to treat the purchased property as part of the original estate is not her stridhan. 10 Cal. 324; 14, Cal. 387, Ref. (*N. R. Chatterjee and Smither, JJ.*) UPENDRA KISHORE MANDAL *v.* NOBO KISHORE MANDAL. 48 I. C. 993=23 C. W. N. 64.

———*Widow—Acquisitions—Presumption.*

Although in ordinary cases there is no presumption that purchases by a widow out of the income from her husband's estate form part of the estate yet where husband's property is brought to sale in execution of decree against the widow and re-purchased by the widow herself such presumption would arise when the husband's property yields a substantial income. (*Fletcher and Smither, JJ.*) NIRANJAN *v.* SHIB PRASAD. 41 I. C. 370.

———*Widow—Acquisitions.*

Acquisitions by a Hindu widow with the accumulations of the income of her husband's estate do not constitute stridhan but forms part of the corpus of the estate and so alienable only for necessity. 2 L. W. R. 16; 8 I. C. 104; 2 I. A. 256; 10. I. A. 150; 10 Cal 324, Rel. (*Imam and Chapman, JJ.*) KULA CHANDRA CHAKRAVARTI *v.* BAMA SUNDARI DASYA. 22 I. C. 701=41 Cal. 870.

———*Widow—Acquisitions from income.*

Where a Hindu widow has made no attempt to dispose of her savings in her lifetime there is no dispute but that they follow the estate from which they arose and this rule applies also to profits which have not reached her hands at all but are in the possession of her agent. The manager of the property left by the husband and in possession of the widow must give an account to the heir of her husband after her death and not to her heir. 10 Cal. 324; 10 Bom. 478, Ref. (*Coxe and Tennon, JJ.*) SRIDHAR *v.* KALI PADA. 16 C. W. N. 106= 11 I. C. 971=15 C. L. J. 12.

———*Widow—Acquisitions—No account given of acquisition—Presumption that property was husband's if arises.*

There is no presumption in law that property found in the possession of a widow was her

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husband's even when she is unable to explain how she came by it and even again when it is known that he died leaving considerable property. (*Chitty and N. Chatterjee, JJ.*) JADU NATH *v.* RAM NARAIN.
11 I. C. 434.

———*Widow—Acquisitions—Nature of.*

As pointed out in 28 Mad. 1 there is no necessary connection between the limited nature of the estate which a widow takes in her husband's property and the interest accruing to her in the income derived by her as such limited owner. That which becomes vested in her own right and which she can dispose of at pleasure is her own property, not limited but absolute, exclusive and separate in every sense of the term and devolves as such. There is no presumption that savings or purchases with savings effected by a widow are increments to the corpus of the husband's estate and pass together with it. (*Scott Smith and Brasher, JJ.*) MT. MALAN *v.* KISHORE CHAND.
1923 Lah. 17.

———*Widow—Acquisitions—Property acquired by widow.*

Intention of the widow is the test to determine whether the property brought from the income of her husband's estate is her absolute estate or an accretion to her husband's property. (*Shadi Lal, J.*) CHELA RAM *v.* ISHAR DAS. 32 I. C. 831=
41 P. W. R. 1916.

———*Widow—Acquisitions—Accretion to estate—Income of property.*

A Hindu widow has absolute control over the income of the property which she inherits from her husband subject of course to the payment of the debts left by him and unless it can be shown that she intended to make the savings part of the estate of her husband, she would have full power of disposal over it. Where the estate is under litigation and the income of the estate is being deposited in court subject to the result of the suit which the widow has filed, there is nothing to raise any presumption that she intended the income to be an accretion to the estate. If she clearly wants to treat the property as property over which she had absolute dominion the fact that she purported to deal with properties to which she had no such right along with properties over which she had a right of disposal, would not indicate an intention on her part to treat one as an accretion to the other. That she purported to act beyond her powers as regards some of the items cannot defeat her right to dispose of items over which she had absolute disposing power. (*Schwabe, C. J., Coutts-Trotter and Kumaraswami Sastri, JJ.*) ZAMINDAR OF BHADRACHALAM *v.* RAJA VENKATADRI APPA RAO.
43 M. L. J. 486=16 L. W. 369=
(1922) M. W. N. 532=46 M. 190=
31 M. L. T. 221 (H. C)=1922 Mad. 457 (F.B.).

———*Widow—Acquisitions—Presumption.*

There is no presumption that any properties bought by a widow with the surplus income are accretions to her husband's estate; she has absolute power of disposal over the surplus income. (*Abdur Rahim, O. C. J. and Odgers, J.*) RAMAKRISHNA PRABHU *v.* NARAINA.
62 I. C. 215=11 L. W. 112.

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———*Widow—Acquisitions—Money paid for maintenance.*

The next reversioner of a Hindu can successfully bring a suit against a trustee to recover a certain sum with interest deposited with him for the deceased widow's maintenance, by the family members of the deceased; even if the widow did not claim it. The widow's silence amounts to an acquiescence in the interest being treated as part of her husband's estate. The suit is governed by Art. 60 of the Limitation Act, as the interest is an increment to the deposit according to the agreement of the parties. (*Wallis, C. J. and Krisnan, J.*) NARAYANAN CHETTY *v.* SUPIAH CHETTY. 43 Mad. 629=11 L. W. 418=
(1920) M. W. N. 248=58 I. C. 639=
38 M. L. J. 437.

———*Widow—Acquisitions—Income—Nature of estate.*

The ordinary presumption that a person in possession of property is the owner and absolute owner thereof applies to Hindu woman also. Where a Hindu widow purchases property out of the savings from the income of certain properties granted to her for life in lieu of maintenance she has absolute powers of disposition *inter vivos* or by will over the property so purchased. (*Spencer and Srinivasa Aiyangar, JJ.*) VIKRAMA DEO GARU *v.* VIKRAMA DEO MAHASRAJULU GARU.
(1918) M. W. N. 69=43 I. C. 679=
33 M. L. J. 665.

———*Widow—Acquisition—Property taken from husband—Presumption.*

Where a widow takes property from her husband under a document which is not produced, and there is no evidence to show the terms of the document, it must be held that the widow had only a life-estate in the property. (*Sankaran Nair and Oldfield, JJ.*) NATARAJA SARMA *v.* RAMABHADRA NAIDU. 28 I. C. 859.

———*Widow—Acquisitions with her own money.*

Where the husband's estate has been sold in execution of a decree and was afterwards purchased by the widow with her own money and she disposed it of by will. *Held*, that the widow did not intend it to form part of her husband's estate. (*Wallis O. C. J. and Seshagiri Aiyar, J.*) KUMARASWAMI PILLAI *v.* VAIRAVANATHA PILLAI. 26 I. C. 14.

———*Widow—Acquisitions — Adverse possession.*

Where a widow took possession of property without legal title, and remained in possession for more than the statutory period, the reversioners must show that she was in possession only as a limited owner. 9 M. L. J. 33; 9 M. L. T. 445, Foll. (*Wallis and Ayling, JJ.*) VENGUDISAMI AIYER *v.* NARAYANASWAMI AIYER. 24 I. C. 880.

———*Widow—Acquisition—Prescription.*

A Hindu widow in possession of her father-in-law's property without any title or right acquires an absolute interest therein at the end of 12 years of such possession. (*Sadasiva Aiyar and Seshagiri Aiyar, JJ.*) MUTHAYYA *v.* KOTHANDARAMAYYA.
23 I. C. 594=(1914) M. W. N. 887.

HINDU LAW—Widow—Acquisitions.

———*Widow—Acquisitions—Burden of proof.*

The burden of proof lies on the person who alleges that the widow has an absolute interest in the property acquired after her husband's death. (*Prideaux, A. J. C.*) KALIRAM *v.* GANESH PRASAD. 58 I. C 32.

———*Widow—Acquisitions—Nature of the property purchased by mother.*

Where a Hindu female purchases property from the income of the estate inherited from her son and makes it a part of the estate, this estate, if not disposed of before her death, goes to the son's heir and is not stridhan. (*Batten and Findley, A. J. Cs.*) TORTEN BAI *v.* BILLABHJI OJHA. 48 I. C. 956.

———*Widow — Acquisitions — Adverse possession—Interest acquired by.*

A person entitled to only a limited interest such as a Hindu widow can acquire by prescription no better interest than that. (*Mithra, Offg. C. J.*) SHEO LAL *v.* SHEO RAJIA. 23 I. C. 719=10 N. L. R. 35.

———*Widow—Acquisitions—Widow's estate and absolute estate—Presumption as to accretion.*

Where there is no evidence that certain property was purchased by the widow out of the income of the estate held by her as a Hindu widow, no presumption, that the property purchased forms an accretion to the estate held as a Hindu, can be made where she is in possession of other property with an absolute title. (*Daniels and Lylel, A. J. Cs.*) KUAR NAGESHAR SAHAI *v.* SHIAM BAHADUR 1922 Oudh 231.

———*Widow — Acquisitions — Income of her husband's estate—Accretion.*

A Hindu widow has full power to dispose of the income of her husband's estate as it accrues. A widow has full power during her lifetime to invest or otherwise dispose of accumulated income accruing during her possession of a widow's estate there is no reason why a widow should be precluded from exercising an act of appropriation with regard to property to which she has established her title and which is being wrongfully withheld with her by a person in unlawful possession of it. Where there is a manifestation of the widow's intention to appropriate the income from her husband's estate it is sufficient to prevent its passing as part of her husband's estate. 10 I. A. 150; 20 Cal. 433 Ref. (*Daniels, J. C.*) SHYAM NARAIN *v.* JADUNATH SINGH. 25 O. C. 41= 1922 Oudh 118.

———*Widow—Acquisitions—Nature of acquisition.*

In the absence of anything to the contrary a house belonging to her husband but rebuilt by the widow with her own money is not a part of her husband's estate specially where she herself sold it. (*Lindsay, J. C.*) RAM DAYAL *v.* SURMER SINGH. 32 I. C. 356=2 O. L. J. 466.

———*Widow—Acquisitions—Pre-emption—Nature of estate.*

Property acquired out of the income of the husband's estate is in the absence of evidence to the contrary her exclusive property over which she has absolute control. 10 Cal. 310 and 25 Mad. 351, Foll. The test is the intention of the widow in determining which her conduct may be taken into consideration. The fact that the new properties were acquired by right of pre-emption possessed by the widow as possessor of her husband's estate is no indication that the acquisitions were for the benefit of such estate. (*Lindsay, J. C.*) LAL BAHADUR *v.* SHEO NARAIN LAL. 22 I. C. 702=16 O. C. 359.

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———*Widow — Acquisitions — Savings from income.*

The presumption that property brought by a Hindu widow out of the savings made by her from the income of her husband's estate, belongs to that estate does not apply to savings by a tenant for life. (*Chamier, C. J. and Sharfuddin, J.*) SHIV HARAM LAL *v.* KESHO PRASAD SINGH. 3 P. L. W. 302=42 I. C. 122= 1918 Pat. 86.

———*Widow—Acquisition — Occupancy rights in an estate—Right of reversioners to question.*

Where an estate is in the hands of a Hindu widow, she can acquire occupancy rights which cannot be questioned by the reversioners after her death. (*Roe and Jwala Prasad, JJ.*) HARMANOJE NARAIN *v.* GANOUR SINGH. 37 I. C. 360.

Widow—Administratrix.

———*Widow—Administratrix—Letters of Administration.*

Widow is entitled in preference to reversioner for the letters of administration. (*Buckland and Cuming, JJ.*) LAKSHMI SUNDARI *v.* NITYANANDA DHUPI. 64 I. C. 61.

———*Widow—Administratrix—Duties.*

Where a widow has claimed letters of administration to her husband's estate she becomes liable independently of her position as widow to account for failure to get in the estate. (*Wallis, J.*) RAGHAWA CHETTY *v.* THAYAMMAL. 10 I. C. 670=9 M. L. T. 296.

Widow—Adverse Possession.

———*Widow—Adverse possession.*

Where the widow of a member of a joint family is in possession of family property, her possession is adverse and she will acquire an absolute title after 12 years, unless it is shown she entered into possession as limited owner. (*Lindsay and Sulaiman, JJ.*) UMAN SHANKAR *v.* MT. AISHA KHATUN. 45 A. 729= 1924 A. 88.

———*Widow—Adverse possession.*

Adverse possession against a widow does not constitute adverse possession against the reversioner. (*Scott-Smith and Dundas, JJ.*) NAND SINGH *v.* MUSSAMMAT DHAN KUAR. 2 Lah. L. J. 573.

———*Widow—Adverse possession.*

Possession which commences during the life time of a Hindu widow with a limited interest cannot be adverse to the reversioners. (*Daniels and Lyle, A. J. Cs.*) MT. PARBATI *v.* SAIYED MOHAMED. 1923 Oudh 31.

Widow—Alienation.

See also HINDU LAW—(1) ALIENATION, (2) REVERSIONER, (3) SUCCESSION.

———*Widow—Alienation—Declaration — Alienation by a widow partly valid.*

A decree, declaring that an alienation by a Hindu widow is partially valid and partially void as against the reversioners is valid. (*Mookerjee and Buckland, JJ.*) PRAMATHANATH *v.* BHUBAN.
25 C. W. N. 585=64 I. C. 980=33 C. L. J. 421

Widow—Compromise.

———*Widow—Compromise—Powers of—Necessity—Test of.*

A compromise made *bonafie* for the benefit of the estate and not for the personal advantage of the limited owner will bind the reversioner quite as much as a decree on contest. 21 C. L. J. 157 approved; 33 A. 357; 9 M. I. A. 539, 604 Ref. 6 C. L. R. 76 dist. (*Lord Phillimore.*) RAMSUMRAN PRASAD *v.* MT. SHYAM KUMARI.
31 M. L. T. 200 (P. C.)=3 P. L. T. 749=
1 P. 741=16 L. W. 956=49 I. A. 342 (P. C.)=
90. and A. L R. 175=21 A. L. J. 18=
44 M. L. J. 751=27 C. W. N. 269=
37 C. L. J. 356=1922 P. C. 356.

———*Widow — Compromise—Disputed litigation with reversioner—Surrender—Partial—Moveables—Mithila Law.*

A Hindu died leaving a widow, four daughters and a son who also died. A litigation that ensued between the widow and the daughters and the nearest male reversioners was compromised, the widow surrendering all right over the immoveable property, half of it being given to the daughters who were to abandon their rights under the will of their father, the other half of it going to the reversioner, the widow getting absolutely all the moveable property and small portions of land for maintenance. After the death of that reversioner who was a party to the compromise the other reversioners instituted a suit to have the compromise declared invalid and ineffectual on the ground that the surrender by the widow was a partial one and a device to divide the estate with the reversioners. *Held*, that the arrangements were not a device to divide the estate as they were in pursuance of a *bona fide* compromise in respect of rights sought to be litigated in the prior suit. The surrender merely recognised the widow's absolute right over moveables conferred on her by the Mithila Law was not bad as being partial one. The conveyance of small portions ol land to the widow for maintenance is unobjectionable. (*Lord Dunedin*). CHOUDHURY DURESHWAR MISSER *v.* MUSSAMMAT MAHESHRAMI MISRAIN.
39 M. L. J. 161=2 U. P. L. R. (P. C.). 128=
48 Cal. 100=(1920) M. W. N. 472=
18 A. L. J. 1069=12 L. W. 461=
28 M. L. T. 154=47 I. A. 283=
57 I. C. 325=25 C. W. N. 194 (P. C.).

———*Widow — Compromise — Decree against—Reversioner when bound.*

A compromise and an award thereon with a Hindu widow is not binding on the reversioner unless it is fairly and properly obtained. (*Mr. Ameer Ali.*) AMIRTHA NARAYAN SINGH *v.* GAYA SINGH.
45 Cal. 590=45 I.A. 35=
23 M. L. T. 142=22 C. W. N. 409=
27 C. L. J. 296=34 M. L. J. 298=
4 Pat. L. W. 221=16 A. L. J. 265=
(1918) M. W. N. 306=7 L. W. 581=
44 I. C. 408=20 Bom. L. R. 546 (P. C.).

———*Widow — Compromise — Suit against a widow holding life-interest—Possession sued for, on the ground of waste—Effect of compromise on a third party.*

Where a widow holding a life-estate is sued for possession on the ground of waste by remote reversioners and the suit ends in a compromise, the compromise is not binding on a third party who is the next reversioner. (*Ryves and Gokul Prasad, JJ.*) SITA RAI *v.* RAMADAS SINGH.
57 I. C. 711=2 U. P. L. R. (A) 371.

———*Widow—Compromise—Decree against a widow.*

A compromise decree against a Hindu widow binds the reversioners if it is shown that alienation was made for purposes justifying sale by Hindu widow. (*Piggott and Lindsay, JJ.*) KANHAIYA LAL *v.* KISHON.
38 All. 679=
35 I. C. 683=14 A. L. J. 881.

———*Widow—Compromise—If binds reversioner.*

A compromise by a widow and her husband's relations whereby the former surrenders some property to the latter and puts an end to litigation binding on the next reversioner can be upheld on the ground that it is a reasonable settlement. (*Griffin and Chamier, JJ.*) BEHARI LAL *v.* DAUD HUSAIN.
35 All. 240=18 I. C. 721=
11 A. L. J. 352.

———*Widow—Compromise—Nature of estate.*

A widow entered into a compromise with the presumptive reversioners by which she surrendered the zemindari to them but kept possession of the *sir* like her husband and her name was to appear as the owner in the Revenue Papers. It was also agreed that she should have no right to encumber the property and that the *sir* lands were to devolve on her death on the reversioners. *Held*, this amounted to a surrender of the entire interest of the widow in the zemindari lands but a retention of the widow's interest in the *sir* land. 29 Cal. 36; 22 Cal. 355. Ref. (*Karamat Husain, J.*) RAMBARAN RAI *v.* BAUSU RAI.
9 I C. 26,

———*Widow—Compromise—How far binding on daughter.*

A Hindu widow who had a daughter, sued to recover husband's share in the joint family property from her husband's brother's son. The suit was compromised and on the deft. getting the whole of the property and the widow getting a certain maintenance allowance for her life, and her daughter receiving it after her mother's death at a reduced rate. The decree was passedin terms of the compromise. The daughter, who was not a party to the suit or compromises

was held not bound by either the compromise or the decree. (*Macleod, C. J. and Heaton, J.*) NATVARLAL MANEK LAL *v.* BAICHANCHAL.
57 I. C. 443=22 Bom. L. R. 768.

———*Widow — Compromise binding on reversioner.*

Where a compromise amounting to a *bona fide* settlement of disputes is made for the benefit of the estate and not for the personal advantage of the limited owner it binds the reversioner quite as much as a decree on contest. (*Mookerjee and Beachcroft, JJ.*) MOHENDRANATH BISWAS *v.* SHAMSUNNESSA KHATUN. 21 C. L. J. 157=
27 I. C. 954=19 C. W. N. 1280.

———*Widow—Compromise—Legal necessity.*

A Hindu widow cannot enter into a compromise affecting the property beyond her life-interest unless it is for legal necessity. (*Woodroffe and Carnduff, JJ.*) SHAIKH RAFIQ *v.* BHAGWAN CHANDRA DHAR. 25 I. C. 377.

———*Widow—Compromise—Decree.*

A consent decree by a Hindu widow binds the parties to it only as an ordinary decree does. 6 C. L. J. 490; 13 C. W. N. 147; 9 M. I. A. 539; 8 All. 365; 5 Bom. L. R. 885; 29 All. 487; 30 All. 75, Ref. It does not affect reversioners. (*Mookerjee and Carnduff, JJ.*) RAJALAKSHIMI DASEE *v.* KATAYANI DASEE. 12 I. C. 464=38 Cal. 639.

———*Widow—Compromise—Restraint on alienation.*

A compromise with the reversioners by which the properties were to vest in them but which restrained them from alienating the properties during lifetime of widow is bad so far as the restraint is concerned. (*Mookerjee and Carnduff, JJ.*) CHAMARU SHAHU *v.* SONA KOER.
14 C. L. J. 303=11 I. C. 301=
16 C. W. N, 99.

———*Widow— Compromise— Award—How far binding on reversioners.*

A decree obtained after a fair contest in a *bona fide* litigation, against a widow relating to the estate represented by her, is binding on reversioners unless that decree can be impeached on some special ground. But where the decree is obtained against the widow through the compromise the principle is subject to the qualification that the compromise was for the benefit of the estate and not for the personal advantage of the widow. 33 All. 356 (P. C.) Foll. The principle applicable to a case decided after a fair contest in ordinary *bona fide* litigation would apply to decrees obtained after an award. (*Shadi Lal and Wilberforce, JJ.*) DHAN DEVI *v.* GIAN CHAND. 49 I. C. 177=
9 P. R. 1919.

———*Widow — Compromise — When binding on reversion—Onus of proof—Suit to enforce mortgage—Conveyance of property.*

Where a Hindu widow who inherited her husband's properties executed a mortgage of some of them and when the mortgagee sued to enforce the mortgage entered into a compromise by which she conveyed the properties to the mortgagee, in a subsequent suit by the reversioner to recover the

properties, the burden of proving that the compromise as well as the mortgage are binding on the reversion lies on the alienee.

In an action against the widow on a contract made by her a compromise by which she makes over the estate stands on no different footing from a conveyance by her of the property. 35 M. 560; 10 L. W. 594; 38 C. 639; 8 A. 369 followed; 31 M. L. J. 87; (1921) M. W. N. 312 distinguished. (*Schwabe, C. J. Coutts-Trotter and Kumaraswami Sastri, JJ.*) NALLA TIRUPATHIRAJU *v.* NANDIKOLLA VENKAYYA. 45 Mad. 504=42 M. L J. 392=
15 L. W. 395=30 M. L. T. 181=
(1922) M. W. N. 207=1922 Mad. 131 (F. B.)

———*Widow—Compromise — Binding effect on reversion.*

A compromise of litigation effected by widow, in the belief that it would benefit the estate binds the reversioner who can avoid it only by showing that it was not entered into with due care and attention, and that it showed negligence on the part of the widow. In the case of compromise no necessity need be proved. 33 All. 356 (P. C.) Ref. (*Abdur Rahim and Oldfield, JJ.*) KADAKKARAI NADAN *v.* NADAKKANNU NADAN. 13 L. W. 533=
62 I. C. 752=(1921) M. W. N. 342.

———*Widow — Compromise — Decree against when binding on reversioner.*

A compromise entered into by limited owner, such as a Hindu widow does not stand on the same footing as a decree obtained on contest; unless it is shown that a compromise has the elements of a valid alienation by a limited owner, it is not enforceable against the reversioner. 9 M. I. A. 539; 40 All. 487 (P. C.); 10 C. L. R. 337; 38 Cal. 639; 35 Mad. 560, Ref. (*Seshagiri Iyer and Burn, JJ.*) SRINIVASA AIYER *v.* THIRUVENGADA MAISTRI.
26 M. L. T. 350=55 I. C. 588=10 L. W. 594.

———*Widow—Compromise — Reversioners, when bound.*

A compromise effected by a widow to be binding on the reversioners must be shown to have been made with due care and caution. Where a widow entered into a compromise with her husband's relations as regards his self-acquisitions by which she obtained a lump sum and a family residence. *Held*, that this compromise was not binding on the reversioners, as it was not made with due care and caution to protect the reversioner's interests nor did the widow represent any interest other than her own. (*Abdur Rahim and Spencer, JJ.*) GANGAMIRTHAM PILLAI *v.* RAJAMANIKATHAMMAL. 26 M.L.T. 354=
53 I. C. 555=(1919) M. W. N. 658.

———*Widow—Compromise— Reversioners bound by it—Compromise in second appeal.*

A widow can validly enter into a compromise in a suit, if it is in the best interests of the estate and the reversioners are bound by it unless they prove want of care and caution on the part of the widow. On the same principle a compromise by a widow in second appeal having failed in both the lower courts and made with consent of her pleader was held

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binding on the reversioners. (*Abdur Rahim and Srinivasa Aiyangar, JJ.*) MUTHUKUMARASAMI *v.* SUBRAMANIA IYER. 33 I. C. 687=31 M. L. J. 87.

———*Widow—Compromise between reversioner and Hindu widow.*

A compromise between a Hindu widow and next reversioner, as to their claim does not bind the actual reversioner at the time succession opens. (*Wallis, C. J.*) DORAISWAMI REDDI *v.* MUTHU LINGA REDDI. 32 I. C. 50=19 M. L. T. 1.

———*Widow—Compromise — Estate got by compromise—Limited grant to widow—Abutted property far in excess of maintenance.*

The presumption of a limited interest being granted in transfer to woman has no application in cases where by a compromise one-fourth of the disputed property is given to widow which was far in excess of what she would have got as her maintenance. (*Ayling and Tyabjee, JJ.*) SANKARAVELU PILLAI *v.* MUTHUSWAMI PILLAI. 18 M. L. T. 497=(1915) M. W. N. 956=31 I. C. 260=29 M. L. J. 779.

———*Widow—Compromise—Consent of reversioner.*

Where a compromise by a Hindu widow of a litigation has the effect of alienating her husband's estate and the reversioners' consent to such compromise they are bound by it and estopped from questioning them. 35 Mad. 560; 38 Cal. 639; 33 Mad. 473; 27 M. L. J. 149, Foll. (*Spencer and Seshagiri Aiyar, JJ.*) BANGARAYUDU *v.* PERAYYU SASTRI 2 L. W. 1025=30 I. C. 927=(1915) M. W. N. 810.

———*Widow—Compromise— Suit by widow for recovery of part of estate of husband—Death during pendency of suit—Daughters brought on record—Compromise between them and deft. — Nature of estate acquired.*

Where a Hindu widow, who had inherited the property of her husband, sued a third party for the recovery of the property and died pending the suit and the daughters of the last male owner were brought on record and were allotted certain properties under a compromise entered into by them with the deft. *Held*, that they obtained the properties as daughters of their father and not as heirs of their mother and that the same were not therefore liable to be attached and sold in execution of a decree obtained against their mother. 18 C. W. N. 929 (P. C.), Foll. (*Stanyon, A. J. C.*) GANESH PRASAD *v.* REWA BAI. 41 I. C. 883=13 N. L. R. 116.

———*Widow—Compromise—Settlement of family dispute—Binding on reversioners.*

A genuine family settlement entered into for the purpose of avoiding litigation on doubtful claims is binding on the reversioners even though one of the parties to that compromise was a female with a limited estate. Such a compromise is based on the assumption that there was an antecedent title of some kind on the parties and the agreement acknowledges and defines what that title is. 33 A. 356; L.R. 1 I.A. 157, Ref. (*Daniels and Lyles, A. J. C.*) KUAR NAGESHAR SAHAI *v.* KUARMATA PRASAD. 25 O. C. 189=9 O. L. J. 235=1922 Oudh 236.

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———*Widow—Compromise—Binding on reversioners.*

Compromise of a *bona fide* dispute between the limited owner and next reversioner binds all the reversioners as the estate would otherwise have suffered the expense of long litigation. 33 All. 356 (P. C.); Foll. *Kanhaiya Lal, A. J. C.*) HARDAYAL *v.* SHYAM NARAIN. 41 I. C. 126=40 L. J. 376.

———*Widow—Compromise—When binding on the estate.*

An alienation by a limited owner does not bind the reversionary heir, but a limited owner can bind the reversionary heir by a compromise, in which party takes a share of the family property by existence of the independent title, which is to that extent and by way of compromise admitted by other parties, if it appeared that the compromise was a fair and a *bona fide* compromise and that the limited owner enters into the compromise as representing the estate which was for the time being vested in her and acted for the protection and preservation of that estate. (*Das and Bucknell, JJ.*) BHAGWATI KUAR *v.* JAGDAM SAHAY. 62 I. C. 933=2 P. L. T. 471.

———*Widow—Compromise—Estate conferred.*

A compromise entered into between a Hindu widow and her husband's reversioners which provided that if the widow made any transfer or created any incumbrance, it would be null and void and that there would be no injury to the title of the reversioners was construed to give the widow the rights of a Hindu widow in her husband's estate. (*Jwala Prasad and Coutts, JJ.*) RAMA SINGH *v.* HARAKHDHARI SINGH. 47 I. C. 710.

———*Widow—Compromise—Binding on reversion—Collusion—Onus.*

A Hindu is entitled to avoid the expenses of litigation and to compromise a *bona fide* claim against the estate if the compromise is made for the benefit of the estate and not for the personal advantage of the widow. If the reversioners seek to set aside such a compromise, the burden is on them to show that the compromise was entered into by the widow collusively for the purpose of conferring upon herself a benefit at the expense of the estate. (*Roe and Jwala Prasad, JJ.*) RAM SUMRAN PRASAD *v.* SHYAM KUMARI. 47 I. C. 697.

———*Widow—Compromise—Family arrangement.*

A compromise by a limited owner, not based on any claim of *bona fide* title amounts to an alienation and is not binding on the reversioners as a family arrangement. (*Chapman and Atkinson, JJ.*) ANUP NARAIN SINGH *v.* PRASAD SINGH. 42 I. C. 95=3 P. L. W. 295=4 P. L. J. 83.

———*Widow— Compromise— When binding on reversioner.*

A Hindu widow can compromise a suit so as to bind all the reversioners, if the compromise was entered into by her for the benefit of the estate. (*Roe and Jwala Prasad, JJ.*) SUNDAR PRASAD SINGH *v.* RAM BATI KUAR. 40 I. C. 150.

HINDU LAW—Widow—Compromise.

———*Widow — Compromise — Reversioners not bound.*

Compromise by widow claiming absolute estate under a will does not bind the reversioners because the widow cannot be said to represent the interests of reversioners. (*Chamier and Sharfuddin, JJ.*) JANAK KISHRI KUER *v.* DEVI PRASAD.
1 P. L. W 476=39 I. C. 750=
2 P. L. J. 370.

Widow—Conversion.

———*Widow — Conversion — Caste Disabilities Removal Act—If divest husband's estate vested in her.*

Neither the conversion of a widow into Mahomedanism nor her marriage with a Mahomedan husband after conversion could divest her of her interest in her deceased Hindu husband's estate. 33 All. 356, Ref.; 19 Cal. 289, Foll. (*Richards, C. J, and Banerji, J.*) ABDUL AZIZ KHAN *v.* NIRMA.
35 All. 466=20 I. C. 335=
11 A. L. J. 678.

Widow—Co-widows.

———*Widow—Co-widows—Rights of.*

A co-widow has a right to demand partition of her husband's estate. But neither by agreement nor by recourse to law can they obtain a partition prejudicing the right of survivorship of either of them or the right of the reversioner after the death of the survivor. (*Stanley, C. J. and Griffin, J.*) DURGA DUTT *v.* GITA.
33 All. 443=
9 I. C. 498=8 A. L. J. 220.

———*Widow—Co-widows—Form of decree.*

Where a co-widow who is a deft. is willing to be made a co-plff. a decree for the whole property belonging to both the widows should be passed though the suit is by one widow on behalf of herself and her co-widow and though the deft. co-widow said in her written statement that a separate suit for her half share will have to be brought. (*Sadasiva Iyer and Spencer, JJ.*) RAMACHARI *v.* SARASWATI AMMAL.
(1920) M. W. N. 721=60 I. C. 246=
12 L. W. 544.

———*Widow—Co-widows—Interest of.*

According to the Mitakshara, co-widows take a joint interest in the estate of their husband with rights of survivorship. On partition, each gives up her right of enjoyment of the properties allotted to another widow during the lifetime of the latter. A widow may relinquish her interest during the whole of her own life time and not merely during the lifetime of another widow to whom property may be allotted. There would be consideration for such an agreement, *viz.*, the right to enjoy some of the properties during her own lifetime 22 Mad. 522; 14 M. L. J. 175; 24 Cal. 339, Foll., 3 M. H. C. R. 424; 33 All. 443, Dist, (*Sundara Aiyar and Sadasiva Aiyar, JJ.*) SUDALAI AMMAL *v.* GOMATI AMMAL.
12 M. L. T. 288=23 M. L. J. 355=
16 I. C. 428=(1912) M. W. N. 908.

———*Widow — Co-widows — Nature of estate —Suit for possession.*

A Hindu co-widow's estate is a joint tenancy and goes by survivorship to the others but each can get her half share as against the other and can alienate her life-estate. If a co-widow sues a trespasser on behalf of herself as well as of the other widow or if she had possession but is dispossessd then she can sue to recover the whole estate, otherwise only for her share. 9 C. L. J. 623 at 626 Con. (*Abdur Rahim and Sundara Aiyar, JJ.*) KOLA NAICKEN *v.* MUTHAMMAL.
10 M. L. T, 265=12 I. C. 76=
21 M. L. J. 997.

HINDU LAW—Widow—Debts.

———*Widow — Co-widows — Gift to two — Tenancy-in-common.*

Property given to two widows for their maintenance is held by them as tenants-in-common and not as joint-tenants. (*Sultan Ahmed, J.*) SASIBALA DASI *v.* CHANDRA MOHAN DUTTA.
56 I. C. 937.

Widow—Debts.

———*Widow—Debts—Liability of widow—Barred debts.*

A widow is under a pious obligation to pay the debts of her husband though "time-barred" but she is under no such obligation when her husband had repudiated the debts during his lifetime. (*Beaman and Hayward, JJ.*) BHAGAWAT BHASKAR *v.* NIVRITTI SAKHARAM.
39 Bom. 113=
27 I. C. 356=16 Bom. L. R. 738.

———*Widow—Debts—Reversioner's liability.*

A tenure or holding in the hands of the reversionary heirs after the death of a Hindu widow remains liable in respect of decrees for arrears of rent obtained against the widow as heiress of her husband. (*Tennon and Sheepshanks, JJ.*) ASHUTOSH MOOKERJEE *v.* AKOY KUMRI DEBI.
34 I. C. 581.

———*Widow—Debts—Binding nature—Necessity —High rate of interest.*

Although a loan incurred by a widow may be necessary it should also be shown that the rate of interest was also necessary to enforce it as against the reversioners. 18 Cal. 311, Foll. The question whether the salary of a manager of the estate is a personal debt or not would depend on whether the profits were or were not sufficient to meet all her charges and maintenance. She could not appropriate all the profits and throw the liability of the costs of management on the reversioners by charging the estate. (*Chatterjee and Walmsley, JJ.*) STEVENS, E. H. *v.* JANKI BALHAB PRASAD.
22 I.C. 304=19 C. W. N. 80.

———*Widow—Debts— Necessity — Proof—Recitals in document.*

Recitals as to necessity in the documents of alienation by a widow are not themselves evidence of necessity. 36 All. 187 (P. C.) Foll. (*Kumaraswami Sastri and Phillips, JJ.*) MARIMUTHU PILLAY *v.* VELU PILLAY.
32 I. C. 908.

———*Widow — Debts — Liability on husband's estate—Extortionate interest—Interest if allowable— Reversioners.*

Where a Hindu widow to discharge her husband's debt borrowed at 18 per cent. compound interest such extortionate interest could not be allowed in the absence of proof as to the necessity

HINDU LAW—Widow—Debts.

of the loan and want of better terms. (*Kanhaiya Lal and Sabonandiere, A. J. Cs.*) BHAGWANT SINGH *v.* DAULAT SINGH. 21 I. C. 757 = 16 O. C. 272.

———*Widow—Debts—Cesses, payment of, whether legal necessity—Reversioners whether bound by.*

A debt incurred by a Hindu widow for the payment of cess is not for legal necessity and is not binding on the reversioners. (*Das and Adami, JJ.*) JAG SAHU *v.* RADHA KISHAN. 1 Pat. L. T. 209 = 5 Pat. L. J. 287 = 2 U. P. L. R. (Pat.) 127 = 56 I. C. 867 = 1920 Pat. 211.

———*Widow—Debts—Necessity.*

A widow cannot charge marriage expenses of her daughter's daughter on the estate as the latter individual (*i. e.* daughter's daughter) comes from a different family. (*Sharfuddin and Roe, JJ.*) NARAINBATI KUNWARI *v.* RAMDHARI SINGH. 20 C. W. N. 734 = 1 P. L. J. 81 = 34 I. C. 277 = 3 P. L. W. 377.

Widow—Decree for or against.

———*Widow—Decree against—Reversioner when bound—Estoppel.*

Where there is a decree against a Hindu widow affected by an estoppel arising from her own conduct, the decision against widow is binding on the reversioners nevertheless. (*Sir John Edge.*) RISAL SINGH *v.* BALWANT SINGH, 40 All. 593 = 45 I. A. 168 = 28 C. L. J. 519 = 24 M. L. T. 361 = 9 L. W. 52 = 23 C. W. N. 326 = (1919) M. W. N. 155 = 36 M. L. J. 597 = 48 I. C. 553 = 21 Bom L. R. 511. (P. C).

———*Widow—Decree against.*

Adverse possession cannot run against reversioners until after the death of the widow. The possession of the defendant must be by force of the decree which is binding against the widow and not in spite of the decree. (*Lindsay, J.*) JAGANNATH SINGH *v.* SADAR SINGH. 1923 All. 448.

———*Widow—Decree against—Binding on reversion—Fraud—Collusion.*

In the absence of fraud or collusion a decree obtained against a Hindu widow has binding effect on all the reversioners 2 W. R. 31 ; 40 A. 593. Where there is absolutely nothing to suggest that the trial in a suit against the widow was not a fair one and that there was any special ground which was not urged at that time, the reversioner is bound by the decree. (*Stuart and Sulaiman, JJ.*) JAI NARAIN SINGH *v.* GITA PRASAD. L. R. 3 A. 447 = 1922 All. 473.

———*Widow—Decree against—Sale in execution—Interest of reversioners if affected.*

A tort decree against a Hindu widow for trespassing on her neighbour's lands does not bind the reversion, and the sale of the widow's fixed rate tenancy, in execution of a tort decree obtained by the zemindar for trespassing on his lands, is not binding on her. (*Mears, C. J. and Gokul Prasad, J.*) ARJUN SINGH *v.* BINDESHRI PRASAD. L. R. 3 A. 361.

HINDU LAW—Widow—Decree for or against.

———*Widow—Decree against—Power to represent estate contracts by her husband.*

A Hindu widow in the absence of male heirs represents her husband in a suit for special performance of contract made with him. This is so even if the husband was a member of a joint family. (*Richards, C. J. and Banerji, J.*) JAI KALI *v.* BALDEO SINGH. 17 A. L. J. 576 = 50 I. C. 883 = 1 U. P. L. R. (H. C.) 56.

———*Widow—Decree against*—Ex-parte—*How far binding on the reversioners.*

A decree fairly and properly obtained against a widow is binding on the reversioners, even though the suit was not contested by the widow. There is no law by which a plaintiff can force a widow to contest his claim. Therefore to hold that a decree fairly and honestly obtained by a plaintiff is not binding on a reversioner unless it was actually contested by the widow, is to cast upon the plaintiff a duty impossible to perform. (*Karamat Hussain and Tudball, JJ.*) GURU NAIK PRASAD *v.* JAINARAIN LAL. 34 All. 385 = 14 I. C. 814 = 9 A. L. J. 375.

———*Widow——Decree against——Arbitrati on reference to—Award—Whether binding on reversioners who are not parties.*

Though a decree fairly and properly obtained against a widow in possession of her husband's estate binds the reversioners a decree following an award in which the widow did not properly represent the estate but was looking after her own interest, would not bind them. (*Richards C. J. and Banerji, J.*) BALAKDHAR DUBE *v.* RAMANAND SHUKAL. 14 I. C. 125 = 9 A. L. J. 778.

———*Widow—Decree against—Mortgage right—Usufructuary Mortgage—Execution sale—Rights of reversioner.*

An usufructuary mortgage right vested in a Hindu widow as heir of her husband is not immoveable property. If the mortgage is redeemed during the widow's life time and the widow spent the money, as she would be entitled to do, the reversioner could not claim against the party redeeming to be again put in possession of the property until redeemed a second time. The mere fact that the widow was in possession as mortgagee would not cause those mortgage rights to be treated in law as immoveable property, as all that the widow was entitled to was to retain possession of the property as security for the debt until she was redeemed. Consequently mortgage rights vested in the widow represent movable property and could be sold in execution of a decree against her irrespective of any question of legal necessity. (*Macleod, C. J. and Coyajee, J.*) BAI JADI *v.* PURSHOTTAM NAROTTAM DAVE. 24 Bom. L. R. 729 = 1922 Bom. 387.

———*Widow—Decree for or against.*

A suit by a widow to enforce a personal claim does not bar a suit for possession as reversioners. (*Greaves and Cuming, JJ.*) SHASHI KUMAR *v.* CHANDRA KUMAR SARMADDAR. 35 C. L. J. 348 = 1923 C. 204.

HINDU LAW—Widow—Decree for or against.

———*Widow—Decree against—Execution sale—Rights of purchaser.*

It is for an auction purchaser of the right, title and interest of a Hindu widow to prove that he purchased the property absolutely, in a suit by a reversioner to recover possession. (*Chaudhuri and Cuming, JJ.*) BHOLANATH *v.* HARI MANI DASI. 53 I. C. 42=30 C. L. J. 6.

———*Widow — Decree against — Reversioner bound.*

A decree passed by a competent court in a suit on a mortgage executed by the widow and the then reversioner binds the entire inheritance. The actual reversioner cannot sue for possession from the auction purchaser a third party in execution of that decree. (*Sanderson, C. J. and Mookerjee, J.*) GANGA NARAYAN DUTTA *v.* INDRA NARAYAN SHAH. 25 C. L. J. 391=35 I. C. 49= 22 C. W. N. 350.

———*Widow—Decree against—When binding on reversioner.*

A decree against a widow should state specifically whether the decree is a personal decree or one against the estate. In interpreting the decree the frame of the plaint ought to be gone into. If the suit is brought against the widow on a cause of action personal to herself then the decree and the execution sale will pass only the right, title and interest of the widow. (*Holmwood and Mullick, JJ.*) KIRANBALA DEBI *v.* KALI CHARAN SINGHA. 32 I. C. 587.

———*Widow—Decree against widow.*

In a suit against a widow in her personal capacity the decree binds her interest only but if sued as representative of the estate the article is bound by the decree. (*Mookerjee and Newbould, JJ.*) PUNNIT NARAYAN SINGH *v.* RAJKUMARI GODAHARI. 32 I. C. 580=22 C. L. J. 400.

———*Widow—Decree against—When binding on estate.*

Where the suit is founded upon a purely personal debt or contract of a Hindu woman with a limited interest in the estate, the estate is not bound to satisfy that debt. The suit to bind the estate should be so framed as to show that it is not merely a personal demand on the female in possession but that it is intended to bind the entire estate and the interest of all those who come after her. The decree-holder can prove necessity in execution proceedings so as to bind the whole estate by the sale. (*Sharfuddin and Coxe, JJ.*) GAJADHAR PERSHAD SAHU *v.* BINDUBASHINI PERSHAD. 29 I. C. 181.

———*Widow—Decree against—Execution sale—What passes.*

The test to see what passes on a sale in execution of a decree against a widow is to see from the records the amount of the purchase money and the conduct of the parties and whether the proceedings were directed against the widow personally or against the whole reversion. The joining of the reversioner as a party is a clear indication of the intention to bind the estate. (*Mookerjee and Beachcroft, JJ.*) RAMESWAR MANDAL *v.* PROVABATI DEBI. 20 C. L. J. 23= 25 I. C. 84=19 C. W. N. 313.

HINDU LAW—Widow—Decree for or against.

———*Widow — Decree against — Power to represent.*

A decree fairly and properly obtained against the widow binds the reversioners. Where the widow herself had been barred the reversioners too are barred. (*Holmwood and Chapman, JJ.*) GOBIND NATH *v.* MOHINI MOHUN. 23 I. C. 931.

———*Widow —Decree against — Execution sale, when binds reversioner.*

A sale in execution of a decree obtained against a widow in a suit to enforce a personal claim against her passes only the widow's qualified interest in the estate. 10 Cal. 985, Foll. (*Stephen and Mullick, JJ.*) NAHIN CHANDRA SHAH *v.* HEM CHANDRA RAY. 20 I. C. 248=19 C. W. N. 265.

———*Widow—Decree against—Rent—Administratrix of husband's estate—Reversioner.*

A decree for rent of a temporary tenure was obtained against the widow of the tenure-holder in her capacity as administratix of her husband's estate. The decree was not specially made against the estate of her husband. *Held*, that the description of the widow as administratix cannot be regarded as establishing conclusively against the reversionery heir that the estate in his hands is bound by the decree and that the decree was a personal decree, against the widow. 16 Cal. 511; 26 Cal. 285; 30 Cal. 550, Foll. (*Mookerjee and Beachcroft, JJ.*) BIRESWAR DAS DEY *v.* KAMAL KUMAR DUTT. 16 I. C. 437=17 C. W. N. 337.

———*Widow—Decree against—Rent — Execution Sale—What passes.*

Unless and until a landlord brings the holding itself to sale for arrears accrued after the death of its full owner who is succeeded by a widow in enjoyment, the liability for rent is personal to her and not attaching to the reversion. Although the original liability is for rent arrears yet the decree for contribution against a female heir arising directly to liquidate the same has not the same effect and only the female's interest only passes and not the tenure itself. (*Carnduff and Chapman, JJ.*) MAHOMED SADUT ALI *v.* HARA. 15 I. C. 351= 16 C. W. N. 1070.

———*Widow—Decree against—Execution sale—What interest passes—Test.*

The test to be applied for determining the exact interest which passes at a sale in execution of a decree against a Hindu widow or any qualified owner is to find out whether the suit is one brought against the widow upon a cause of action personal to herself or one which affects the whole inheritance. 6 C. L. J. 490, Ref. on. (*Mookerjee and Carnduff, JJ.*) TRILOCHAN HAZRA *v.* BAKKESWAR. 14 I.C. 839=15 C.L.J. 423.

———*Widow—Decree against—Legal representative—Liability of reversioner.*

A decree against the legal representative of the widow does not bind the estate. (*Jenkins, C. J. and Chatterjee, J.*) KAILASA CHANDRA BASU *v.* GIRIJA SUNDARI DEBI. 39 Cal. 925= 14 I. C. 299=16 C. W. N. 658.

HINDU LAW—Widow—Decree for or against.

———*Widow—Decree against — How far binds reversioner.*

A decision in a suit fairly and honestly obtained against a widow, in the absence of fraud or collusion, binds the reversioner. The fact that the widow is a *shebait*, her sex would make no difference. 28 Mad. 197; 6 C. L. J. 621, Ref. (*Coxe and Imam, JJ.*) JHARULA DAS *v* JALANDHAR.
14 I. C. 142=39 Cal. 887.
[Reversed on appeal See 24 I. C. 501=42 Cal. 244(P. C.)]

———*Widow—Decree against—Tort—Trespass—Liability of reversioner.*

A widow in possession of her husband's estate is not entitled to commit trespass and thereby impose a liability on the estate binding on the reversion. Therefore a decree against the widow for mesne profits cannot be executed against the estate of the husband in the hands of the reversionary heir. Even assuming a decree against a widow on the basis of a transaction beneficial to the estate can be enforced against the inheritance, a personal degree against her on a liability which cannot be directly or indirectly imposed by her on the inheritance, as being neither for legal necessity nor for the benefit of the estate cannot be executed against the estate in the hands of the reversioner. (*Mookerjee, and Caspersz, JJ.*) SADASI KOER *v.* RAM GOVINDA SINGH. 15 C. W. N. 857=11 I. C. 90=14 C. L. J. 91.

———*Widow—Decree against—When binding on reversion—Fair trial and contest.*

A decree obtained against a widow on a mortgage for legal necessity after fair contest and trial binds the reversioners. (*Coxe, J.*) GIRIJA SUNDARI DEBI *v.* KAILASH CHANDRA BOSE.
10 I. C. 32.

———*Widow—Decree against—Representation of estate.*

Held that the widow represented the estate fully and that a decree against a person claiming that estate, as the adopted son of her deceased husband is, in the absence of fraud or collusion and of any unfairness or irregularity in the proceedings, binding upon the reversioners of the deceased. (*Oldfield and Venkatsubba Rao, JJ.*) NACHIKALAI *v.* CHELLAIYA. 43 M. L. J. 95=16 L. W. 94=1922 M. W. N. 418=31 M. L. T. 129=1922 M. 233.

———*Widow—Decree against—Decree under—Limitation Act of 1871—Effect.*

A decree against a Hindu widow in a suit instituted under the Limitation Act of 1871, on the ground of limitation is not *res judicata* as against the reversioners as to their right to sue. 21 Cal. 8 Dis. (*Wallis, C. J. and Burn, J.*) SOMASUNDARAM *v.* VAITHIALINGA. 41 I. C. 546=40 Mad. 846=6 L. W. 253.

———*Widow—Decree against—Exparte decree.*

An *exparte* decree against the widow is binding on the reversioners if it is clear it would be waste of money to set aside the *ex parte* decree. (*Coutts-Trotter and Moore, JJ.*) RANGASWAMI PILLAI *v.* VAIDYALINGA MUDALIAR. 33 I. C. 446.

HINDU LAW—Widow—Powers of.

——*Widow—Decree against—Binding nature.*

Property assigned to the female members of a *zemindar's* household for their enjoyment in common, is a life-estate and the property cannot be attached in execution of a decree against her personally unless she was sued as representing the estate for a debt alleged to be due by the estate and not by her. (*Sadasiva Aiyar and Moore, JJ.*) NARAYANASWAMY NAIDU *v.* MATHURSRI. 33 I. C. 83.

———*Widow—Decree against—Nature of debt.*

In a suit against a widow, evidence should be taken as to whether the debt was contracted by her as representing her husband's estate. (*Benson, J.*) TADIKONDA *v.* KOOALI VENKATA SUBBAMMA. 13 I. C. 486=1912 M. W. N. 49.

———*Widow—Decree against—Omission to raise plea.*

A decree fairly obtained against a female restricted owner representing the estate is binding on the reversioners if it can be shown that there was not a fair trial of the right in the suit. If she had pleaded owing to a misconception as to her *locus standi* to raise it, the decree would have been binding on the reversioners. (*Batten, A. J. C.*) SHESHRAO *v.* MAROTI.
55 I. C. 407.

———*Widow — Decree in favour — Binding co-widow.*

An adjudication in favour of a Hindu widow claiming to represent the estate of her husband against an alleged adopted son enures for the benefit of her co-widow even if the latter disclaims all interest in the estate and supports the adoption in that litigation in her capacity as guardian of the adopted son. (*Mittra, A. J. C.*) SUKHDEO *v.* BHULAI. 42 I. C. 657.

———*Widow—Decree against.*

A decree for maintenance in favour of the daughter against the widow is binding upon the estate of her husband. (*Mullick and Atkinson, JJ.*) ABUT CHANDRA MITRA *v.* MIRTUNJOY BOSE.
46 I. C. 162=3 P. L. J. 426.

———*Widow—Decree against—Execution sale—What passes.*

A sale in execution of a decree against a widow on a binding family debt passes the entire estate to the auction purchaser. (*Roe and Jwala Prasad, JJ.*) JAGER NATH *v.* KUARA KUARI.
37 I. C. 403=1 P. L. W. 77.

Widow—Powers of.

———*Widow—Powers of—Life tenant.*

It is not accurate to describe a Hindu widow's interest in the immoveable property of her husband inherited by her as one for life; within the limits imposed by law she is the owner of the estate. (*Lord Atkinson,*) THAKUR VASONJI *v.* CHANDA BIBI. 37 All. 369=29 I. C. 781=18 M. L. T. 31=(1915) M. W. N. 449=19 C. W. N. 873=17 Bom. L. R. 556=2 L. W. 676=22 C. L. J. 180=29 M. L. J. 130=(P. C.),

HINDU LAW—Widow—Powers of.

———*Widow—Powers of—Gift to daughters and daughter's son—Reversioner's rights.*

Where a reversioner sues for a declaration that a gift by a widow in favour of her daughter and daughter's son is invalid, a decree can be given declaring that the gift to the daughter's son, as a gift, will not bind the plaintiff but no such decree can be given as against the daughter as she would be entitled to succeed to the property on the death of the mother. (*Richards, C. J., and Banerjee, J.*) JAINT SINGH *v.* GOSAIN.
46 I. C. 85=16 A. L. J. 493.

———*Widow—Powers of—Gift with consent of next reversioner—Effect.*

A gift by a Hindu widow even with the consent of the next reversioner is void. 30 All. 1 P. C., Dist. (*Richards, C. J. and Tudball, J.*) UMRAO KUNWARI *v.* SHEO MANGAL SINGH. 24 I. C. 435.

———*Widow—Powers of—Power to collect debts—Mortgage debts.*

The estate of a Hindu widow is more than a mere life-interest; she is an owner whose powers of alienation are restricted. The transferee from a Hindu widow of her right to recover a mortgage debt due to her husband can sue to recover the debt during her life-time even though the transfer is without legal necessity. (*Knox, Chamier and Tudball, JJ.*) DURGA KUNWAR *v.* MATRAMAL. 35 All. 311=19 I. C. 138=11 A. L. J. 317.

———*Widow—Powers of—Gift—Payment of debts by donee—Right of donee.*

A gift of a portion of the properties to the defendant who paid certain debts of the husband, does not by itself, if the gift is declared invalid, create a charge on the property to the extent of the debts paid by him. If the deft. is declared entitled to retain the properties after the death of the widow it will not be because of any title under the deed of gift but because being lawfully in possession during the widow's life-time, he discharged a debt binding on the reversionary heirs. 22 W. R. 409, Dist. (*Karamat Husain and Chamier, JJ.*) GHANSHAM SINGH *v.* TEJ BAHADUR SINGH. 13 I. C. 191=9 A. L. J. 496.

———*Widow—Powers of—Letters of Administration granted—Lender—Enquiry as to necessity for alienation.*

Where a Hindu widow to whom letters of administration have been granted, mortgages properties, it is not a case of advancing money having regard to legal necessity but merely upon the leave granted by the court to mortgage the property. Having regard to the sanction granted by the Probate Court a person has not to enquire as regards the necessity for such advance. If he *bona fide* relied upon the order and made an advance, there is no onus on him to make enquiries about the truth of the allegations on which sanction was given. (*Chaudhuri and Cuming, JJ.*) ANNADA CHARAN MONDAL *v.* ATUL CHANDRA MALIC. 23 C. W. N. 1045=54 I. C. 197=31 C. L. J. 3.

———*Widow—Powers of—Power to reduce rent.*

A reduction of rent in favour of a tenant by a widow for services rendered does not bind the reversioner. (*Mookerjee and Beachcroft, JJ.*) LACHMI PROSAD *v.* JAGMOHANLAL CHAUBEY.
22 I. C. 594=18 C. L. J. 633.

HINDU LAW—Widow—Powers of.

———*Widow—Powers of—Disposition by will—Moveables.*

A Hindu widow can, with the consent of the next reversioners, transfer *inter vivos* the estate inherited by her giving an absolute title to the transferee; she cannot even with their consent bequeath the estate by a will, 2 M. L. T. 1; 12 C. W. N. 74; 5 A. L. J. 1, Ref. In Bombay the current of decisions is in favour of the Hindu widow's absolute power of disposal over moveables inherited by her, but in Bengal the widow's power of disposal of moveable and immoveable properties inherited by her is the same. (*N. Chatterjea, J.*) DURGA SUNDARI SEN GUPTA *v.* RAM KRISANA PODDAR.
12 I. C. 591.
[Affirmed on appeal. 21 I. C. 714=18 C.L.J. 162.]

———*Widow—Powers of—Powers of disposition—Absence of reversioners.*

The mere fact that there are no reversioners or that the Crown or other reversioner does not claim the estate does not confer on the widow an absolute interest which she can bequeath by will. 8 M. I. A. 500, Ref. (*Coxe, J.*) JANARDAN *v.* ANU RAM. 10 I. C. 51.

———*Widow—Powers of.*

A widow who became absolute owner of the property under her husband's will has pawer to dispose of it as she pleased as she was not restricted by what was stated about her selling it and having a *dharmsala* built, which was nothing more than the expression of a wish on the part of her husband which she was not under any legal obligation to carry out. It is not correct to say that because by the will the widow was authorised to adopt a son she would take the property as absolute owner only in the contingency of her not adopting. (*Martineau and Campbell, J. C.*) SHEO NARAIN *v.* SHRIMATI ARYAVAIT SARB.
5 L. L. J. 214=1923 Lah. 398.

———*Widow—Powres of—Gift to charity.*

Consent of the reversioners to application of funds by widow for a charity is sufficient to validate the application of such funds for another charity on the failure of the particular charity as such consent denotes a general intention to give to charity. (*Rattigan and Shadi Lal, JJ.*) BHIWANI ORPHANAGE ASSOCIATION *v.* PARMANAND.
7 P. W. R. 1916=31 I. C. 737=43 P. L. R. 1916.

———*Widow—Powers of—Power to collect debts—Mortgage.*

Payment on redemption to a widow for her share of the mortgage money as one of the heirs of the mortgagee is valid. (*Kensington and Beadon, JJ.*) FATTEH MAHAMMAD *v.* SULTAN MAHAMMAD. 97 P. W. R. 1913=19 I. C. 122=137 P. L. R. 1913.

———*Widow—Powers of—Power to collect debts—Mortgage—Redemption.*

A widow holding a life estate in her husband's property is entitled to receive the mortgage money

HINDU LAW—Widow—Powers of.

due to her husband's estate. The allowing of a redemption is not a voluntary alienation. (*Chevis, J.*) DAL SINGH *v.* BAKHSHISH SINGH.
7 P. R. 1913=19 I. C. 8=
136 P. L. R. 1913.

———*Widow—Powers of — Stridhanam—Possession of assets of husband—Recoupment.*

The widow's possession of her husband's assets did not amount to a payment of her stridhanam debt, there being no analogy between executors who are creditors to the estate paying their debts out of the estate and a widow who is entitled to enjoy the whole of the income of the estate. (*Spencer, J.*) CHIDAMBARAM *v.* MEENAKSHI AMMAL.
52 I. C. 842.

———*Widow—Powers of—Gift to daughters.*

A widow cannot give the entire property to her daughter and daughter's children so as to bind the reversioners. It does not make any difference if the alienations are made at intervals. (*Abdur Rahim and Srinivasa Aiyangar, JJ.*) SONAKKAYALA VIRASWAMY *v.* BOMMADEVARA PICHAYYA NAIDU. 33 M. L. J. 536=
43 I. C. 167=6 L. W. 758.

———*Widow—Powers of—Business of her husband—Alienation—Necessity.*

A widow succeeding to the business of her husband, can in proper cases, carry on the business, and alienations by her in respect thereto must, like other alienations by her, be shown to be made for a necessary purpose. 21 All. 71, Expl.; 14 All. 420 (P. C.); 26 Bom. 206 Ref. to. (*Wallis, J.*) SOUTH INDIAN EXPORT CO. *v.* VISVANATHA. 24 I. C. 398=15 M. L. T. 323.
[Recently affirmed on appeal.]

———*Widow—Powers of—Dealings with Estate Reversioners.*

A Hindu widow has no power to deal with the rights in the reversion so as to affect the reversion when it actually falls in. (*Sadasiva Aiyar and Spencer, JJ.*) PALLA KANAKAMMA *v.* CHALLA RAMASWAMY. 23 I. C. 98=1. L. W. 237.

———*Widow—Powers of—Nature of estate.*

The estate of a Hindu widow is not a life-estate. She is a proprietor of the estate with a right of alienation subject to certain qualifications. Each alienation by the widows in the exercise of that right must be judged by the circumstances in which it was made. 8 M. I. A. 529 Ref. (*Wazir Hasan, A. J. C.*) BAHADUR SINGH *v.* SULTAN HUSAIN KHAN. 8 O. L. J. 535=
3 U. P. L. R. (J. C.) 83=1922 Oudh 171.

———*Widow — Powers of — Debts due to husband.*

The principal of debts due to the husband and inherited by the widow is part of the corpus over which her disposing power is limited. (*Piggott and Rafique, A. J. C.*) KAILASHA *v.* BITTO. 16 I. C. 471=15 O. C. 223.

———*Widow— Powers of—Sradha ceremony—Son too young—Widow, if can do.*

Where the son is too young to perform the Sradha ceremony the widow may perform it. A boy of seven is too young to do it. (*Coutts*

HINDU LAW—Widow—Re-marriage.

and Macpherson, JJ.) SAMARENDRA *v.* MAHADEO. 63 I. C. 296.

———*Widow—Powers of.*

A Hindu widow can incur expenses for the well being of the estate and borrow money for the purpose, and such debt binds the reversioner (*Das and Adami, JJ.*) RADAKISHUN *v.* JAGSAHU.
60 I. C. 173=3 U. P. L. R. (P.) 14.

———*Widow—Powers of—Gift.*

The gift of property not excessive or exorbitant for benefit of husband's soul is within the widow's powers and is valid and binding on reversioners. The burden of proof that the property alienated was excessive is on the objecting reversioner. (*Miller, C. J. and Foster, J.*) GOPAULJI SAH'*v.* MANBIRTI KUERI. 52 I. C. 996=(1919) Pat. 396.

———*Widow—Powers of.*

A Hindu widow is not merely a life tenant. The full estate is vested in her for some purposes and the succeeding heirs were not bound by a decree fairly and properly against the widow. 2 W. R, 31 (P. C.), Ref. (*Mullick and Atkinson, JJ.*) ALUL CHANDRA MITHRA *v.* MIRTHUNJOY BOSE.
46 I. C. 162=3 P. L. J. 426.

Widow—Re-marriage.

———*Widow—Re-marriage—Divesting of estate.*

A remarriage of a Hindu widow, allowed by estate rules does not divest her of the property of her first husband in the absence of a contract to the contrary. (*Chamier, J.*) MUSSAMMAT NIHALI *v.* KANAK SINGH. 25 I. C. 617.

———*Widow— Re-marriage — Inheritance— Forfeiture Act XV of* 1856.

A Hindu female does not necessarily forfeit her right to the property of her first husband by remarriage. That would depend on whether remarriage of a widow is permitted by custom of the caste to which the woman belongs independently of the Act XV of 1856. (*Piggott, J.*) SOHAN LAL *v.* MT. DURGA. 24 I. C. 691.

———*Widow—Re-marriage —After conversion—Divesting of husband's estate — Caste Disabilities Removal Act.*

Neither the conversion of a Hindu widow into Mahomedanism, nor her remarriage with a Muhammadan after such conversion, will divest her of her deceasad Hindu husband's property. 19 Cal. 289, Not foll. 33 All. 356, Ref. (*Richards, C. J. and Banerjee, J.*) ABDUL AZIZ KHAN *v.* NIRMA. 35 All. 466=20 I. C. 335=
11 A. L. J. 678.

———*Widow—Re-marriage—Effect on guardian's wife.*

There is nothing in Hindu Law or in statute compelling a court to remove a widow from the office of guardian her infant children on re-marriage. Though it is discretionary with the court to remove a Hindu mother from guardianship on re-marriage the exercise of such discretion must be exercised from the point of view of the welfare of the infant concerned. 38 Cal. 862. (*Mukerjee and Caspersz, JJ.*) GANGA PRASAD SAHU *v.* RAMASRE SAHU. 38 Cal. 862=15 C. W. N. 579=
10 I. C. 69=13 C. L. J. 568.

HINDU LAW—Widow—Re-marriage.

———*Widow—Re-marriage—Unchastity.*

In the case of forfeiture by re-marriage the woman ceases to be the widow of her husband, loses all her right and interest therein and becomes a member of a different family. But in the case of forfeiture by unchastity the woman does not cease to be the widow of her husband nor does she become a member of a different family. By custom she forfeits possession for life of her husband's estate. (*Robertson, Johnstone, Rattigan and Chevis, JJ.*) RAMDEVI *v.* SHIB DARI. 108 P. R. 1913 = 13 I. C. 290 = 1 P. W. R. 1912.

———*Widow — Re-marriage — Effect of—Husband's property.*

A widow on re-marriage forfeits all her rights to her husband's property. A decree obtained against a Hindu widow by consent at a time when she had re-married is not binding on the estate. 41 Mad. 1078, Foll. (*Wallis, C. J. and Spencer, J.*) VENKATACHELLAM CHETTY *v.* RAMA MUDALI. 59 I. C. 91 = 12 L. W. 322.

———*Widow — Re-marriage—Conversion — Re-marriage thereafter—Effect.*

A Hindu widow who is converted to Mahomedanism and is married to a Mahomedan, loses by her re-marriage all interest in the estate of her first husband under general principles of Hindu Law. (*Wallis, C.J., Oldfield and Seshagiri Aiyar, JJ.*) VITTA TAYARAMMA *v.* CHATAKONDU SIVAYYA. 41 Mad. 1078 = 35 M. L. J 317 = 24 M. L. T. 183 = (1918) M. W. N. 625 = 48 I. C. 50 = 8 L. W. 480 (F. B.).

———*Widow—Re-marriage.*

In the case of a Hindu widow she has only a limited power of disposal over the property and has only a life interest in her husband's estate. Consequently, on her re-marriage or conversion the property is divested. (*Dhobley, A. J. C.*) MAROTI *v.* LAXMAN. 5 N. L. J. 58 = 1922 Nag. 16.

———*Widow—Re-marriage—Effect of.*

A Hindu widow contracting a valid marriage in accordance with the rules of her caste is thereby transferred from the gotra of her deceased husband to that of her new husband and is divested of any estate inherited from her former husband. By re-marriage a Hindu widow becomes incapable of giving in adoption a son of her deceased husband or of being the guardian of her minor children by her former husband. (*Stanyon, A. J. C.*) SITARAM *v.* LAXMAN. 17 I. C. 133 = 8 N. L. R. 128.

———*Widow—Re-marriage — Alienation — Validity of.*

An outcaste Hindu widow does not cease to be a Hindu and if she re-marries the provisions of the Hindu Widow's Re-marriage Act would apply. An alienation by her of her first husband's property after her re-marriage would be invalid. (*Coutts and Adami, JJ.*) MUSSAMMAT SOMARIA *v.* BHULARYA. 54 I. C. 820.

———*Widow—Re-marriage—Forfeiture.*

A Hindu widow on re-marriage forfeits the estate which she holds as the mother of a deceased son who survived her husband. (*Roe and Coutts, JJ.*) SHEOBARAN MAHTO *v.* BHOGEA. 46 I. C. 884 = 3 P. L. J. 639.

HINDU LAW—Widow—Surrender.

Widow—Representation of Estate.

———*Widow—Representation of estate.*

In land acquisition proceedings the reversioners are not bound by acts or claim of a widow before Collector. (*Spencer and Kumarswami Sastri, JJ.*) GALLINENI PEDA GOPAYYA *v.* DEPUTY COLLECTOR OF TENALI. 42 M.L J. 298 = 45 M.421 = 15 L.W. 366 = (1922) M. W. N. 188 = 1922 Mad. 100 (2).

———*Widow—Representation of estate—Death—Reversioner's right to continue.*

A suit for possession brought by a Hindu widow in a representative capacity as representing the estate does not abate on her death. The right to sue survives to the reversioners of the last male owner who are her legal representatives under S. 2 (11), C. P. C. (1908), and as such they are entitled to be brought on record. (*Ayling and Hannay, JJ.*) GANDI RAMASWAMI *v.* PURAMSETTI PADMUNAYA. 39 Mad. 382 = 27 I. C. 1001 = 17 M. L. J. 186.

———*Widow—Representation of estate—Right to obtain a partition.*

A Hindu widow inheriting a share in her husband's property is for the time-being regarded a co-sharer of that property, because she represents the estate as against the other co-sharer, though her interest is limited to one for life and she has no power to alienate when necessary. She can obtain a partition of the share which is recorded in her name. (*Kanhaiya Lal, J. C.*) RAGHUBIR SINGH *v.* JANKI KUAR. 52 I. C. 11 = 6 O. L. J. 282.

———*Widow—Representation of estate—Succession of daughters.*

A widow, with two daughters, mortgaged the house of her husband. After her death one of the daughters sued for her half share and got possession of it. The other daughter who had attested the mortgage, then sued for her half share; but died during the pendency of the litigation. Then the surviving sister applied as her representative. *Held*, that the applicant acquired the right to sue on the death of the deceased plff.; and when she sued for her half share, she did not represent the whole estate. (*Lindsay, J. C.*) BUDHU CHAUDHURI *v.* HARDEI. 15 I. C. 833.

Widow—Surrender.

———*Widow—Surrender—Receipt of maintenance in lieu of estate—Effect.*

A Hindu widow can renounce her estate in favour of the next reversioner and voluntarily efface herself from the succession as effectually as if she had then died, and this voluntary self-effacement may be effected by any process having the effect of a surrender, relinquishment or abandonment provided it is a *bona fide* and is of the whole property. The receipt of maintenance in lieu of her estate amounts to a complete renunciation of the estate, (*Viscount Cave.*) BHAGWAT KOER *v.* DHANUKDHARI PRASAD SINGH. 59 I. C. 445 = 12 L. W. 105 (P.C.)

HINDU LAW—Widow—Surrender.

———*Widow—Surrender—Provision for maintenance—Effect of—Form of surrender, immaterial—Effect of.*

A Hindu widow can renounce or relinquish her interest in her husband's estate and by this voluntary act efface herself from the succession as effectively as if she had then died. Such effacement can be effected by any process whereby there is a *bona fide* and total renunciation of the widow's right to hold the property. The stipulation of a provision for the future maintenance of the widow does not vitiate the surrender. 46 I. A. 72, Ref. Where, therefore, a widow and her husband's brother's son disputed the right to succeed to the properties of her husband, the one asserting and the other denying a division in status, a compromise was arrived at on the footing not that the widow had any right and surrendered it, but on the footing that she had no right to the properties. The widow was given a sum of money for her future maintenance. The arrangement was acted upon by the parties for 30 years. *Held* that the effect of the transaction was a complete relinquishment by the widow of the estate to the nephew then the next reversioner and that it was valid. (*Viscount Cave.*) BHAGWATKOER *v.* DHANUKDHARI PERSHAD. 46 I. A. 259= 37 M. L. J. 513=17 A. L. J. 1036= (1919) M. W. N. 860=1 Pat. L. T. 1= 53 I. C. 347=2 U. P. L. R. (P. C.) 27.

———*Widow—Surrender — Reservation of the moveables—Maintenance provision.*

The reservation of the moveables to which the widow is absolutely entitled under the Mithila Law does not detract from the validity of a surrender of the estate by the widow. Nor does the conveyance to the widow of small portions of land for her maintenance invalidate the surrender. 46 I. A. 72 (P. C.), Ref. (*Lord Dunedin*). CHOWDHURY SURESHWAR MISSER *v.* MAHESHRANI MISRAIN. 48 Cal. 100= 39 M. L. J. 161=47 I. A. 233= 18 A. L. J. 1069=25 C. W. N. 194= 12 L. W. 461=(1920) M. W. N. 472= 2 U. P. L. R. (P. C.) 128=57 I. C. 325= 28 M. L. T. 154 (P. C.). [On Appeal from 31 I. C. 983=20 C. W. N. 112].

———*Widow—Surrender—Provision for maintenance.*

A provision for the maintenance of the widow does not affect the validity of a gift of an estate by a widow in possession in favour of the next reversioner which operates as an acceleration of the estate to the latter. 46 I. A. 259; 42 M. 523 Ref. (*Ryves and Daniels, JJ.*) RAM ADHAR SINGH *v.* RAM MANOHAR SINGH. 45 A. 610= 21 A. L. J. 548=L. R. 4 A. 289=1924 All. 114.

———*Widow—Surrender—Validity—Acceleration in favour of next reversioner—Declaration of right by a remote reversioner.*

Where the widow holding a life-interest and her daughter together give their estate to the daughter's son and accelerate his estate, a remote reversioner cannot sue for a declaration of his rights. (*Ryves and Gokul Prasad, JJ.*) SITA RAO *v.* RAMDEO SINGH. 57 I. C. 711= 2 U. P. L. R. (A.) 371.

HINDU LAW—Widow—Surrender.

———*Widow—Surrender—Validity.*

A surrender by a Hindu widow of the whole of her husband's estate in favour of the presumptive reversioners without any consideration whatever is valid under the Hindu Law. (*Tudball and Rafiq, JJ.*) SHAM RATHI RAI *v.* JAICHHA KUNWAR. 39 All. 520=40 I. C. 117=15 A. L. J. 364.

———*Widow—Surrender—Relinquishment by—Acceleration—Consent of nearest reversioner to alienation by widow—Evidence of necessity.*

There must be complete surrender of the widow's estate in order to accelerate the vesting of the estate in the nearest reversioners. The rule laid down in 30 All. 1 applies to transfers for consideration but does not extend to a transfer by way of gift. If the transfer be with the consent of the nearest reversioner, it takes effect because it affords evidence of the propriety, *i.e.*, it justifies the transaction on the ground of legal necessity. (*Piggott and Lindsay, JJ.*) KHAWANI SINGH *v.* CHET RAM. 39 All. 1=37 I. C. 86= 14 A. L. J. 972.

———*Widow—Surrender—Partial.*

Surrender of portion of the estate, (*e.g.*, the zemindari lands) to the next reversioners is valid and they become the absolute owners thereof. 29 Cal. 236; 22 Cal. 355; 3 A. L. J. 785, Ref. (*Karamat Hussain, A. C. J.*) RAMBARAN RAI *v.* BAUSU RAI. 9 I. C. 26.

———*Widow—Surrender—Validity of—Widow's surrender to her daughter—Right of reversioner to question surrender.*

Where a Hindu widow surrenders her whole estate *bona fide* to her only daughter the surrender is valid and the daughter gets an absolute estate. It is not open to the reversioners next to the daughter to sue for possession of the estate after the death of the daughter. 46 I. A. 72; 47 I. A. 233, Ref. (*Shah, A. C. J. and Crump, J.*) BAI PARVATHI *v.* THE NADIAD MUNICIPALITY. 47 Bom. 315=25 Bom. L. R. 63= 1923 Bom. 459.

———*Widow—Surrender—Validity of—Reservation of provision for maintenance—Effect of—Subsequent adoption—Rights of adoptee.*

Where a Hindu widow surrenders her whole estate in favour of her daughter, who was her next reversioner at the time in consideration of the daughter's husband undertaking to maintain her, the surrender is good. A person who is adopted by the widow after surrendering her estate is not entitled to question the surrender. 47 I. A. 233; 44 B. 255, Ref. *Per Macleod, C. J.*—The surrender by a Hindu widow of her life-estate to the next reversioner gives him a title which is not dependent on the continuance of the life-estate but results from its extinction and cannot be questioned by the subsequently adopted son. It follows that the title of one claiming either by purchase or by inheritance from the next reversioner is equally indefeasible. (*Macleod, C. J. and Crump, J.*) RAMA NANA BABAR *v.* DHONDI MURARI. 47 Bom. 678= 25 Bom. L. R. 361=1923 Bom. 432.

HINDU LAW—Widow—Surrender.

———*Widow—Surrender—Consideration —Reservation of small benefit.*

A Hindu widow made a gift of her husband's property in favour of her only daughter on condition that the widow was to be maintained till her death. *Held*, that there was no valid acceleration of the widow's estate by the gift as she had not disposed of her entire life-estate by the gift. For an acceleration by a Hindu widow of her life estate it is necessary that the widow must withdraw her own life-estate so that the whole can get vested at once in the grantee. Where there is any consideration for the gift by a Hindu widow of her life-estate that will prevent it taking effect as an acceleration, and turn the transaction into an alienation. (*Macleod, C. J. and Heaton, J.*) ADIVEPPA NAGAPPA *v.* TOUTAPPA. 44 Bom. 255 = 55 I. C. 369 = 22 Bom. L. R. 94.
[But see 53 I. C. 347 (P. C.)].

———*Widow—Surrender— Validity —Surrender to one reversioner.*

A surrender by a Hindu widow to one of several reversioners constituting the next reversion without the consent of the others, is invalid. 30 All. 1 (P. C.), Ref. to. (*Shah and Martin, JJ.*) DODBASAPPA RAMALINGAPPA NARGUND *v.* BASAWANEPPA SHIVLINGAPPA. 42 B. 719 = 46 I. C. 239 = 20 Bom. L. R. 783.

———*Widow — Surrender — Alienation and acceleration of estate—Distinction.*

A widow can convey a greater interest than she has in two cases: one, by acceleration and the other by alienation for legal necessity. The two terms are contradictory of each other as no alienation can be an acceleration and *vice versa*. The doctrine of acceleration amounts in law, to the same thing as though the widow had died a natural death. It is essential, therefore, that the life-estate should be entirely withdrawn and not merely a fractional part of it. 19 Cal. 236 (P. C.), Ref. to. (*Beaman and Heaton, JJ.*) MOTI RAIJI *v.* LALDAS JIBHAI. 41 Bom. 93 = 37 I. C. 945 = 18 Bom. L. R. 954.

———*Widow — Surrender— Acceleration of estate —Essentials.*

For a good legal acceleration it must be to the next reversioner and comprise the whole estate. It is not an alienation but obliteration of a bar caused by the withdrawal and extinction of the life-estate. Neither consent of the reversioner nor necessity need be proved. (*Scott, C. J., Beaman and Hayward, JJ.*) BASANGAUDA NAGANGAUDA *v.* BASANGAUDA DODANGAUDA. 39 Bom. 87 = 27 I. C. 167 = 16 Bom. L. R. 699 (F. B.).

———*Widow —Surrender.*

A deed of release in favour of a reversioner mentioned that all immoveable properties were released. With reference to the moveable properties the widow declared that she would retain the same in her possession and that after her demise the said release would be the owner of the same. *Held*, the terms of the deed of release were not sufficient to pass the entirety of the estate left by the last male owner, to release and that being so the surrender is not valid. (*Ghose and Panton. JJ.*) JARI LAL PAL *v.* LAL BEHARI HAZRA. 1923 Cal. 499.

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———*Widow—Surrender—Essentials of.*

There can be no relinquishment by a Hindu female heiress of anything less than the entire estate. The surrender must be to the next reversioner or with his consent to a third party. (*Richardson and Walmsley, JJ.*) SHYAM DAS ROY RADHIKA PROSAD. 22 C. W. N. 846 = 47 I. C. 853 = 29 C. L. J. 24.

———*Widow—Surrender—Partial—If valid.*

A surrender by a Hindu widow to be valid must be of her whole estate in favour of all the next reversioners. (*Fletcher and Huda, JJ.*) MOHAMONDA DUTTA CHOUDHRI *v.* BAIKANTHA NATH DUTTA. 45 I. C. 872.

———*Widow—Surrender—Family settlement.*

Where under a compromise between the mother, the sisters and the immediate male reversioner, the whole of the immoveable property was relinquished by the mother to M who gave half of them to the sisters, and the moveable properties were given to the mother who besides got a life-estate in a portion of the immoveable properties from M and the sisters, such arrangement is a family settlement and also a valid surrender. (*Richardson and Fletcher, JJ.*) SURRESSUR MISSER *v.* MOHESH RANI MESRAIN. 31 I. C. 983 = 20 C. W. N. 142.
[Affirmed on appeal 57 I. C. 325 = 39 M. L. J. 161.]

———*Widow — Surrender — Relinquishment — Alienation—Distinction between.*

The estate of a Hindu widow or daughter might be determined in various ways. An alienation in favour of a third party does not have the effect of accelerating estate and entitling the next reversioner to immediate possession. (*Chitty and Walmsley, JJ.*) SARABJET PRATAB BAHADUR *v.* BAGHWAT KOERI. 30 I. C. 578 (Cal.).

———*Widow—Surrender— Alienation — Distinction between.*

Surrenders of life estates under Hindu Law are simply cases of accelerating succession to the next heir which means that the female life-tenant effaces herself and succession of the whole estate goes on to the next heir just as if the life-tenant had died. A surrender can only be in favour of the nearest reversioners. Transfer in favour of remote reversioners can only be regarded as alienations of the estate. Such alienations can be made only subject to certain conditions being complied with, but, even if the alienation be made without necessity, it is not absolutely void but merely voidable at the election of the heir, who may think fit to affirm it or may at his pleasure treat it as a nullity and may take action to recover it on the death of the female life tenant. 34 C. 329 : 31 C. 698 ; 14 P. R. 1902 ; 159 P. W. R. 1910 referred to. (*Chevis and Harrison, JJ.*) WAZIRI MAL *v.* GANGA RAM. 69 I. C. 573.

———*Widow— Surrender—Gift to next reversioner—Acceleration.*

A gift by a widow of the husband's separate moveable and immoveable properties to the daughter is only an acceleration of succession and so

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cannot be challenged. (*Clarke, C. J. and Reid, J.*) KAROLI PAL *v.* JWALA DEVI. 17 I. C. 510 = 258 P. W. R. 1912.

———*Widow—Surrender—Validity of—Reservation of absolute estate in a portion in lieu of maintenance.*

A *bona fide* surrender of her husband's estate by a Hindu widow in favour of her reversioner is not invalidated by the fact that she got an absolute right in a small portion of the estate in lieu of her maintenance, where the portion so allowed is not in excess of her reasonable requirements. (*Kumaraswami Sastri and Devadoss, JJ.*) KARUPPA GOUNDAN *v.* MUDALI GOUNDAN. 43 M. L. J. 36 = 67 I. C. 397 = (1922) M. W. N. 259.

———*Widow —Surrender— Valid and binding alienation.*

A limited owner such as widow or a daughter can make a valid and binding alienation for necessity and can also surrender the estate in favour of the nearest reversioner. (*Abdur Rahim and Moore, JJ.*) SHUNMOOGA VELAYUDHAM CHETTY *v.* KOYAPPA CHETTIAR. 60 I. C. 635 = (1920) M. W. N. 679.

———*Widow—Surrender in favour of a widow—No acceleration.*

Surrender by a widow in favour of a co-widow does not accelerate the succession of the reversioner. (*Sadasiva Aiyar and Napier, JJ.*) MUTHIYALU CHENGAPPA *v.* BURDA GUNTA. 43 Mad. 855 = 39 M. L. J. 567 = 12 L. W. 656 = 28 M. L. T. 272 = 60 I. C. 135 = (1921) M. W. N. 29.

———*Widow—Surrender—Provision for maintenance of widow—Propriety of.*

A provision for the maintenance of widow is consistent with the validity of a surrender of her husband's estate to the nearest reversioner. 42 Mad. 523; 40 Cal. 721; 42 Mad. 25; 31 M. L. J. 406, Rel. The surrender is invalid if by the provision for maintenance in fact division of the property with the reversioner is intended for securing large benefits to herself quite out of proportion to the maintenance that is legitimately awardable to her compatibly with her position and status in life. (*Abdur Rahim and Oldfield, JJ.*) RAMACHANDRA THEVAR *v.* NAGAMUTHU NACHIAR. 53 I. C. 785.

———*Widow—Surrender—Validity of—Provision for residence and maintenance.*

A reasonable stipulation for the maintenance and residence of a Hindu widow does not affect the validity of a surrender by her provided it is a *bona fide* surrender of the entire interest of the widow in the whole estate and is not a mere device to divide the estate with the next reversioner. 42 Mad. 523 (P. C.), Expl. (*Abdur Rahim, C. J., Oldfield and Sesbagiri Aiyar, JJ.*) ANGAMUTHU CHETTY *v.* VARATHARAJULU. 42 Mad. 854 = 37 M. L. J. 384 = 26 M. L. T. 301 = (1919) M. W. N. 716 = 53 I. C. 386 = 11 L. W. 11 (F. B.)

———*Widow—Surrender—Consideration for—Omission of a small portion of the estate.*

A surrender by a Hindu widow to her reversioners of practically the whole of her husband's estate is valid, though the actual consideration paid is small and very much below the value of the estate and though a part of the consideration is an agreement to reconvey the property to third parties. 31 Mad. 446; 24 M. L. J. 533, Foll. The fact that a small and inappreciable portion of the estate is not included in the deed of surrender will not invalidate it. (*Abdur Rahim and Srinivasa Aiyangar, JJ.*) VADLAMUDI GOPALAKRISHNAYYA *v.* VADLAMUDI GANGAYYA. 52 I. C. 749.

———*Widow—Surrender—Validity—Surrender by widow and daughter in favour of next reversioner—Provision for maintenance.*

A Hindu widow and her daughter surrendered all their rights in the estate of the last male owner, in favour of the next reversioner, *viz.*, the daughter's son with a condition that the latter should maintain the widow and the daughter. *Held*, that the surrender was valid and operative to vest the estate absolutely in the daughter's son. (*Sadasiva Aiyar and Napier, JJ.*) CHENNASWAMI *v.* APPASWAMI. 42 Mad. 25 = 8 L. W. 512 = (1918) M. W. N. 756 = 35 M. L. J. 512 = 48 I. C. 147 = 24 M. L. T. 403.

———*Widow—Surrender—Essentials.*

Surrender must be of whole life-estate though gift of portion of the estate to a daughter would not invalidate the surrender. Surrender to a daughter's son with consent of daughters is valid. A surrender is not a conveyance but extinguishment of widow's rights. It need not be written but if in writing it must be registered. (*Spencer and Krishnan, JJ.*) SATYALAXMI NARAYANA *v.* JAGANNATHAM. 6 L. W. 765 = (1917) M. W. N. 854 = 22 M. L. T. 498 = 42 I. C. 939 = 34 M. L. J. 229.

———*Widow—Surrender—Validity of—Surrender of whole estate in favour of one of two reversioners without the consent of the other.*

An alienation by a Hindu widow of the whole of her husband's estate in favour of one of her two grand-sons (the only reversioners to the estate), without the consent of the other, is invalid as a surrender. (*Coutts-Trotter and Seshagiri Aiyar, JJ.*) MALLA SURIAH *v.* CHOUDHURI SURAN NAIDU. 19 M. L. T. 239 = 32 I. C. 993 = 3 L. W. 278.

———*Widow—Surrender—Reservation of a portion of moveables and house—Effect on surrender.*

The retention of a house and some moveables does not vitiate a surrender of the rest of the estate by a Hindu widow in favour of her daughter. 48 C. 100 P. C. Ref. (*Prideaux A. J. C.*) MT. SUPDI *v.* MARUTI. 1922 Nag. 187.

———*Widow—Surrender — Re-marriage—Effect on succession.*

Where a Hindu widow surrenders or remarries the estate passes to the next heir by inheritance under the law and not under any transfer. An ordinary tenancy right held by the widow also passes in this way. (*Hallifax, A. J. C.*) SUNDAR LAL *v.* BISAMBHAR. 1922 Nag. 24.

HINDU LAW—Widow—Surrender.

———*Widow—Surrender—Validity—Essentials.*

To constitute a valid surreder or renunciation by a Hindu widow, she must have parted with the whole of the estate which descended from her husband. (*Wazir Hasan, A. J. C.*) RAM BODH SINGH *v.* RAM NARAYAN SINGH.
4 U. P. L. R. (J. C.) 3=65 I. C. 776=
8 O. L. J. 512.

———*Widow — Surrender — Validity—Remote male reversioner with consent of presumptive female reversioner—Validity.*

A Hindu widow can renounce in favour of the nearest reversioner if there is only one, and in favour of all the reversioners nearest in degree if more than one exist at the moment. The mere fact that a daughter is in existence is not an impediment to the surrender because a surrender by a widow with the consent of her nearest female heir to the secondary male heir can be treated as a joint surrender by both, the result being to vest an absolute title in the secondary male heir. 42 Mad. 25; 42 Mad. 523 (P. C.) Foll. (*Kanhaiya Lal, J. C.*) JANKI *v.* SUNDAR LAL.
22 O. C. 166=
53 I. C. 462=6 O. L. J. 466.

——*Widow—Surrender—Remainderman.*

A transfer of the entire interest effected by the holder of a life estate in favour of the remainderman operates as a surrender accelerating the devolution of the estate in favour of the latter. (*Lindsay, J. C. and Kanhaiya Lal, A. J. C.*) RUDRA PRATAB SINGH *v.* UMARI KUNWAR.
47 I. C. 912=5 O. L. J. 505.

——*Widow— Surrender — Acceleration — Consent of interposing heir.*

No question of acceleration of estate can arise when the person to whom the property has come is not the next heir though the interposing heir consents to such arrangements. (*Lindsay, J. C.*) SURAJ BALI *v.* RILOK CHAND.
36 I. C. 66=
3 O. L. J. 327.

——*Widow — Surrender — Release — Acceleration.*

Where a Hindu widow executes a release deed in favour of the nearest reversioners of the deceased the vesting of the estate in the reversioners is accelerated. Even otherwise the reversioners take the widow's life interest also. (*Stuart and Kanhaiya Lal, A. J. Cs.*) JANGI RAM *v.* SHEORAJ.
30 I. C. 234=2 O. L. J. 338.

——*Widow—Surrender—Essentials.*

A surrender by a widow in favour of the nearest reversioner must be of the entire interest of her husband's property. (*Lindsay, J, C.*) DILIPAT SINGH *v.* KASHI NATH.
24 I. C. 542=
17 O. C. 108.

——*Widow—Surrender—Validity.*

A relinquishment by a Hindu widow become operative only when the widow acts upon her declaration and withdraws herself from the estates. If notwithstanding her declaration, she continues to be in possession, there is no effacement founded on fact and she is free to resile from it. (*Das and Kulwant Sahay, JJ.*) RAO BAHADUR MAN SINGH *v.* MAHARANI NAWALAKHBATI.
2 P. 607=4 P. L. T. 335=
1923 P. 492.

HINDU LAW—Widow—Surrender.

——*Widow—Surrender—Effect of.*

The doctrine of surrender by a widow is based on complete effacement. She retains no interest in the estate after the surrender and cannot maintain an action in respect of rent accrued due prior to the surrender. (*Jwala Prasad, A. C. J. and Das, J.*) PHULBATI KUER *v.* FARMAN.
2 P. L. T. 606=63 I. C. 448=
(1921) Pat. 292.

———*Widow—Surrender—Raiyati holding—B. T. Act, S. 89.*

A surrender is an act of transfer which has to be justified by legal necessity. A Hindu widow can abandon a raiyati holding. (*Ross, J.*) DEO NARAYAN SAHU *v.* RAMANAND SAHU.
63 I. C. 211.

——*Widow—Surrender—Raiyati interest.*

A surrender by a Hindu widow of her entire interest in a raiyati holding of which she is for the time being in occupation to her landlords, is a transfer by such widow of her limited interest in such holding for her life which the law allows, irrespective of the provisions of B. T. Act. 35 All. 311, Rel. on. (*Atkinson and Coutts, JJ.*) JUMRA PRASAD *v.* BASDEO SINGH.
(1919) Pat. 245=50 I. C. 872=
4 P. L. J. 548.

———*Widow—Surrender—Co-widows—Surrender by one—Reservation of maintenance.*

Surrender by a widow after division of the property with the co-widow, with consent of daughter to daughter's son who agreed to give the widow maintenance and in lieu thereof allowed her to retain possession of some villages belonging to her husband effects a valid acceleration. A widow must surrender her entire interest in her husband's property in order to effect a valid acceleration in favour of the next reversioner. 31 Mad. 366; 40 Cal. 721, Foll. (*Chamier, C. J. and Jwala Prasad, J.*) DITTAR KOER *v.* HARKU SINGH.
1 P. L. W. 760=
2 P. L. J. 578=41 I. C. 631=
(1917) Pat. 225.

———*Widow—Surrender—Essentials of.*

Surrender will not operate unless it is to the whole body of reversioners of the whole life estate. A surrender by a Hindu widow cannot affect the succession after death unless it is made with the consent of all the presumptive reversioners, at the time of the surrender. (*Roe and Jwala Prasad, JJ.*) RAMESHWAR PRASAD *v.* BARNASHI PRASAD.
38 I. C. 532=1 P. L. W. 38.

———*Widow — Surrender — Effect of—T. P. Act, S. 39.*

Surrender by widow to reversioners does not extinguish the liability to maintenance. It is doubtful whether S. 39 of the T. P. Act applies to the present case. (*Chapman and Roe, JJ.*) RAGHUNATH SINGH *v.* KURA KUMARI.
1 P. L. W. 453=38 I. C. 167=(1917) Pat. 94.

———*Widow—Surrender—Alienation.*

A widow can convey a greater interest than she has in 2 ways.—(1) acceleration, (2) alienation for

necessity. Acceleration consists in surrender of entire life-estate to next reversioner. Consent of reversioners is only proof of necessity. 18 Bom. L. R. 952; 41 Bom. 93. (*Pratt, J. C. and Couch, A. J. C.*) JIWATMAL *v.* GIANIBAI.
35 I. C. 681=10 S. L. R. 49.

Widow—Unchastity.

———*Widow —Unchastity—Effect of.*

A Hindu widow becoming unchaste after inheriting the property of her husband does not by reason of such unchastity forfeit the interest which has become vested in her by right of inheritance. 5 Cal. 76 (P. C.) Foll. (*Banerjee and Piggott, JJ.*) RAM DEI *v.* KISHEN DEI.
32 I. C. 338.

———*Widow—Unchastity—Shebaitship.*

A Hindu widow after becoming a *shebait* does not forfeit her right as such *shebait* by becoming unchaste. (*Mookerjee and Beachcroft, JJ.*) ABDUL GAFUR MANDAL *v.* UMAKANTA PANDIT.
24 I. C. 266=19 C. W. N. 260.

———*Widow—Unchastity—Effect.*

Unchastity by a widow after the vesting of the estate in her, will not divest the estate, though unchastity in a wife will prevent her from taking an estate of inheritance from her husband. (*Stanyon, A. J. C.*) SITARAM *v.* LAXMAN.
17 I. C. 133=8 N. L. R. 128.

———*Widow— Unchastity—Subsequent unchastity, if a bar to.*

Subsequent unchastity of a widow is not a ground of her exclusion from the inheritance already vested. (*Chamier, J. C.*) NAGESHAR *v.* PURAN DEVI.
11 I. C. 279.

Widow—Waste.

———*Widow—Waste — Mismanagement—Reversioner's right to prevent.*

The widow's right is of the nature of a right of property; her position is that of owner; her powers in that character are however limited. But so long as she is alive no one has any vested right in the succession. If, however, she commits waste or is guilty of mismanagement it is open to the reversioners though they have a mere *spes successionis*, to prevent such a danger to the inheritance by a suit against her. (*Lord Shaw.*) JANAKI AMMAL *v.* NARAYANASAMI AIYAR.
39 Mad. 634=43 I. A. 207=4 L. W. 530=
20 M. L. T. 168=31 M. L J. 225=
14 A. L. J. 997=(1916) 2 M. W. N. 188=
20 C. W. N. 1323=18 Bom. L. R. 856=
37 I. C. 161=24 C. L. J. 309 (P. C.).

———*Widow—Waste—Receiver when appointed.*

A Hindu widow in possession of her husband's estate is not liable to account to any one, but is at liberty to do what she pleases with the property during her lifetime provided only that she does not injure the reversion. A receiver cannot be appointed to the properties in the possession of the widow in absence of waste. Mere alienation of immoveable property is not enough. (*Richards, C. J. and Banerji, J.*) RENKA *v.* BHOLA NATH.
28 I. C. 896=87 All. 177.

———*Widow—Waste of moveables—Transferees—Suit by reversioners.*

A widow is under a duty to abstain from wasting the moveable property of her husband's estate which has come into her hands just as a tenant-in-tail or for life and is accountable for any breach of that duty and a transferee from her, for no consideration, may be made to replace or account for any part of the moveable property which can be traced into his hands. (*Wallis, C. J, and Krishnan, J.*) VENKANNA *v* NARASIMHAM.
44 Mad. 984=(1921) M. W. N. 590=
66 I. C. 10=41 M. L. J. 279=14 L. W. 193.

———*Widow — Waste — What amounts to — Business.*

Where the estate of the deceased Hindu, who is a partner in a firm is administered by the Administrator-General and where the partnership was dissolved and the good will of the business was purchased by the Administrator-General himself and where the widow having got moneys from the Administrator-General carried on the business with the help of three partners giving them 9/16 of the profits, it was held that though the mere carrying on of the business was not an act of waste her conduct in admitting 3 persons as partners and alienating to them 9/16 of the share in the good-will was detrimental to the estate. A receiver was appointed for the business. (*Sankaran Nair, J.*) TANIKACHALA *v.* ALAMELU AMMAL.
25 I.C. 153=16 M. L. T. 26.

———*Widow—Waste—Effect.*

A widow can be removed from the management of her husband's estate if waste is apprehended from her conduct and management. (*Wallis, J.*) RAGHAVA CHETTY *v*, THOYAMMAL.
10 I. C. 670=9 M. L. T. 296.

Widow—Widow's estate.

———*Widow—Widow's estate—Nature of—Alienation of life-interest—Attachment of—Residue.*

The position of a widow under the Hindu Law is this: The full estate of her husband is vested in her and yet owing to restrictions she can convey only an interest to last during her lifetime by a conveyance not for legal necessity. The effect of an alienation by her without necessity is that there is a division of the estate into two: (1) a life-estate enjoyable by the purchaser during her lifetime, (2) a reversionary estate to be enjoyed after her lifetime, both of which estates belonged to her husband at his death. So far as her life-interest is concerned, owing to her alienation it is not available to the creditors of her husband; but the remaining reversionary estate continues in her as part of the estate which she inherited from her husband. That residue of interest is available in her hands to her husband's creditors. The widow represents her husband's estate fully and the transfer which would be made by the attachment and court-sale of the reversionary interest is not made by any contingent reversioner or of the rights of the contingent reversioner in execution of a decree against him, and is therefore not obnoxious to S 60 (*m*), C. P. C., or S. 6 (*a*) of the T.P. Act. *Tyabji, J* :—The widow has a life-interest in her own absolute right and is also the representative of the deceased husband's estate which is to

devolve on the reversioners. (*Sadasiva Iyer and Tyabji, JJ.*) SEGU CHIDAMBARAM *v.* SARREDDI HUSAINA NAMMA. 39 Mad. 565=30 I. C. 101= 29 M. L. J. 546=18 M. L. T. 394= 2 L. W. 952=(1915) M. W. N. 577.

———*Widow—Widow's estate—Nature of—Alienation—Rights of reversioners.*

The estate which a Hindu widow has in property inherited by her from her husband is neither a life-estate nor an estate held in lieu of maintenance. She is the owner of her husband's property subject to certain restrictions on alienation and subject to its devolution on her husband's heirs after her death. But she may alienate it subject to certain conditions as to necessity or propriety. Her alienation in excess of her powers is not void but voidable at the election of the reversionary heirs. The reversioner may either affirm it or treat it as a nullity at his option. 34 C. 329 Ref. (*Simpson and Wazir Hasan, A. J. Cs.*) MIRZA SADIQ HUSAIN *v.* MAHOMED KARIM. 9 O. L. J. 456= 25 O. C. 319=1922 Oudh 289.

———*Widow—Widow's estate—Nature of.*

A widow's estate though a limited one is to be distinguished from a life estate as understood in English Law; yet there are some points of resemblance between them. Hence the Legislature has assimilated the two for purposes of limitation. (*Lindsay, J. C. and Stuart, A. J. C.*) GHISA SINGH *v.* GAJRAJ SINGH. 18 O. C. 289=33 I. C. 371= 3 O. L. J. 45.

———*Widow—Widow's estate—Creation of by will.*

A widow's estate may be created by will. Where a mere contingent remainder is created after the woman's estate, this is an indication that the estate was a woman's estate in the technical sense. (*Chapman, Atkinson and Imam, JJ.*) RAM BAHADUR *v.* JAGANNATH PRASAD. (1918) Pat. 181=3 P. L. J. 199=45 I. C. 749= 4 P. L. W. 377 (F. B.).

Widow—Will.

———*Widow—Will—Powers of—Fund in court.*

There is no authority for holding that a fund in court to which the testatrix has laid a claim and to which she will be entitled if successful, cannot be disposed of by will. (*Schwabe, C. J., Coutts-Trotter and Kumaraswami Sastri, JJ.*) ZAMINDAR OF BHADRACHALAM *v.* SRI RAJAH VENKATADRI APPA RAO. 43 M. L. J. 486= 16 L. W. 369=(1922) M. W. N. 532= 31 M. L. T. 221 (H. C.)=46 M. 190= 1922 Mad. 457.

———*Widow—Will—Affirmation by reversioner, effect of.*

A Will by a Hindu widow is absolutely void and affirmation by a reversioner unless it amounts to a renunciation by him of his reversionary interest, can validate it. (*Kanhaiya Lal, A. J. C.*) DHAMSA BAKSH *v.* JAGMOHAN SINGH. 32 I. C. 209=2 O. L. J. 491.

Widow's Estate.

See HINDU LAW—SUCCESSION.

Wife.

See HINDU LAW—MARRIAGE.

Will.

Absolute estate.
Authority to adopt.
Charity.
Construction.
Contingent bequest.
Executory devise.
Gift.
Joint Tenancy.
Life estate.
Partition by father.
Persona designata.
Revocation.
Setting aside.
Testamentary capacity.
Testamentary declaration.
Testamentary guardian.
Unborn child.
Validity of bequest.
Vested interest.

Will—Absolute Estate.

———*Will—Absolute estate—Successive estates in tail male.*

A series of absolute estates defeasible in succession on the happening of an uncertain event is not a succession of life-estates. It is at the most an attempt to create a state of inheritance not recognised by Hindu Law. If an attempt to create a succession of estates in tail male is made, the first donee takes absolutely and the remaining estates fail. A Hindu may create a life-estate or successive life-estates. (*Macleod, C. J. and Fawcett, J.*) BAI DHANLAXMI *v.* HARI PRASAD 45 Bom. 1038=62 I. C. 37=23 Bom. L. R. 433.

———*Will—Absolute estate.*

Under a will, a Hindu can give an absolute estate in his property to his wife. (*Lord Atkinson.*) SUDHAMANI DAS *v.* SURAT LAL DAS. 18 L. W. 86=45 M. L. J. 247= (1923) M. W. N. 601=38 C. L. J 253= 1923 P. C. 65 (P. C.).

———*Will—Absolute estate—Widow made absolute owner—Direction as to whatever property remains after widow's death—Trust—Daughters—Malik—Ownership.*

Where words are used conferring absolute ownership upon the wife, the wife enjoys the rights of ownership, without their being conferred by express and additional terms, unless the circumstances or the context show the contrary. *Held*, further that the will created no trust in favour, for to create a trust the subject-matter on which the trust is to operate must be certain to enable the court to give it administration. A Hindu governed by the Mayukha law executed a will by which he constituted his wife as owner and directed that "whatever property there may remain after her death, my wife shall leave the said property to my two daughters in such manner as she may like." *Held*, that the wife was absolute owner of

the estate. (*Lord Buckmaster.*) BHAIDAS SHIVDAS *v.* BAI GULAB. 46 Bom. 153=42 M. L. J. 385= 15 L. W. 412=30 M. L. T. 149 (P. C.)= 20 A. L. J. 289=L. R. 3 P. C. 16= 35 C. L. J. 315=24 Bom. L. R. 551= (1922) P. C. 193=26 C. W. N. 129= 49 I. A. 1 (P. C.).

———*Will—Absolute estate—Malik.*

A Hindu governed by the Mithila school of Hindu Law made a will by which he directed that after his death his widows should be maliks and heirs to all his immoveable properties and should have in every way full power and all proprietary rights over all the moveable and immoveable properties. *Held*, that the widows took an absolute estate with full powers of alienation. 2 I. A. 7; 24 Cal. 342, 24 I. A. 76; 35 I. A. 17, 43 I. A. 188; 49 I. A. 1 Ref. (*Sir John Edge.*) MUSSAMMAT SASIMAN CHOWDHURAIN *v.* SHIB NARAYAN CHOWDHURY. 35 C. L. J. 427= 15 L. W. 434=26 C. W. N. 425=3 P. L. T. 133= (1922) M. W. N. 368=42 M. L. J. 492= 30 M. L. T. 242=20 A. L. J. 362= 24 Bom. L. R. 576=L. R. 3 P. C. 97= 49 I. A. 25=1922 P. C. 63 (P. C.)

———*Will—Absolute estate.*

A will stated that the testator's moveable and immoveable property "shall be considered to be the property" of a certain idol and concluded with the words 'whatever may be saved after defraying the expenses and the pay of the servant shall be used by our legal heirs to meet their own expenses' *held* that there was not an absolute gift in favour of the idol. (*Lord Shaw.*) HAR NARAYAN *v.* SURJA KUNWARI. 43 All. 291=25 C. W. N. 961=14 L. W. 633= 63 I. C. 34=48 I. A. 143 (P. C.).

———*Will—Absolute estate — Gift to female "heirs"—Limited estate.*

A direction by a Hindu testator that his daughter-in-law should remain in possession and occupation of his estate with the power of appointing "an heir." either in her life-time or by will does not amount to an absolute gift of the property. (*Lord Macnaughten*). BRIJ LAL *v.* SURAJ BIKRAM SINGH. 34 All. 405=39 I. A. 150= 16 C. W. N. 745=9 A. L. J. 802= (1912) M. W. N. 646=23 M. L. J. 38= 12 M. L. T. 101=16 C. L. J. 47= 14 Bom. L. R. 827=16 I. C. 92= 15 O. C. 270 (P. C.).

———*Will—Absolute estate—Devise to testator's daughter—Gift to children.*

A Hindu testator, devised a portion of his property to his daughter by his will as follows:— "The said Mani daughter and her husband should live in my house and maintain themselves and use and enjoy it but her Sasaria (*i.e.*, the relations of her husband) or her creditors, etc., have got no right of any kind to take it, and if any issue is born to her, it (*i. e.*, the issue) is the owner thereof, but if there be no issue born to her or if she were to die without leaving any issue the whole estate should be used for some religious objects." *Held*, that the daughter Mani took absolutely under the will. The provision

that the issue of Mani should be the owner of the property was designed merely to emphasise the absolute gift already made to Mani. (*Batchelor, A. C. J. and Shah, J.*) CHUNILAL *v.* BHOGI LAL. 43 I. C. 468=19 Bom. L. R. 930.

———*Will—Absolute estate—'Malik,' meaning of.*

In construing a will, regard must be had to the intentions of the testator as expressed in the will itself and not to mere speculation as to his probable intentions. The word 'Malik' in a will may be by itself sufficient to give an absolute estate to a widow but then in construing the will as a whole the knowledge of the testator as to the incidence of a widow's estate, and the ordinary notions and customs of Hindus have also to be considered to find whether an absolute estate or only a widow's estate was intended to be conveyed. (*Robertson, J.*) MOTILAL *v.* A.G. OF BOMBAY. 35 Bom. 279=11 I. C. 547= 13 Bom. L. R. 471.

———*Will—Absolute estate — Grant of absolute estate to sons and grandsons.*

Under a will a testator gave full *Malik* rights in his estate to his sons and grandsons but placed certain restrictions on their powers of alienation. *Held*, that he intended to grant an absolute interest to the sons and grandsons. (*Chatterjee and Panton, JJ.*) GIRENDRA CHANDRA *v.* MAHESHRAM DEB. 56 I. C. 170.

———*Will—Absolute estate—Hindu widow—Gift to—Gift over—Intention to cut down absolute estate—Malik.*

The effect of the word "Malik" is to confer on the donee a heritable and alienable estate. But the context may qualify or cut down full proprietary rights that the word *prima facie* imports. The expression full proprietary right implied absolute power of alienation. 24 W. R. 305; 24 Cal. 831; 30 All. 84 (P. C.), Ref. If a widow takes an absolute interest in the estate devised, a gift over of what might remain undisposed of by her, is inoperative in law. 20 C. W. N. 463, Ref. Although it is not improper to take into consideration what are known to be the ordinary notions and wishes of the Hindus with respect to the devolution of the property, a court cannot override the plain language used by the testator. The duty of the court is to discover what was the intention of the testator and the court must take that discovery from the words he has used. 2 I. A. 7 Ref. Intention and expression of intention are two different things. Those who take under the will are bound by the expressed intention of the testator, though different from the real intention. (*Mookerjee and Panton, JJ.*) SULOCHANA DEBI *v.* JAGATTARANI DEBI. 53 I. C. 602= 30 C. L. J. 51.

———*Will—Absolute estate—Condition subsequent—Gift to woman.*

A will provided: "On my said daughter attaining her majority. . . . . the executor. . . . . will give her my estate and make over the accounts. . . . . (*God forbid*) if my daughter should die childless then my full brother. . . . . will get the properties." The daughter survived her father, attained majority but died childless.

HINDU LAW—Will—Absolute estate.

Held, the daughter took an absolute estate liable to be defeated either by death during the testator's lifetime or during her own minority: so that the gift over, in favour of the full brother could not take effect on the daughter's death without issue after her attaining majority. (*Fletcher and Newbould, JJ.*) KUMUD KRISHNA MANDAL *v.* JOGENDRA NATH. 21 C. W. N, 854 = 41 I. C, 511 = 26 C. L. J. 250.

———*Will—Absolute estate—'Malik'—Meaning of—Gift over, after absolute interest.*

Where the will gives the power of absolute disposition the widow legatee takes an absolute estate though there may be cases where all the provisions of a will taken together may indicate only a life-estate with power of sale, gift, etc., Whatever the word 'malik' may mean, the words 'Nirbuyadha malik' mean absolute owner. Where an absolute estate is given the court will not cut it down by subsequent words, unless very clear; the creation of further interests after the termination of the donee's interest which is absolute does not cut down the absolute estate. (*Mookerjee and Roe, JJ.*) SURES CHANDRA *v.* LALIT MOHAN. 20 C. W. N. 463 = 31 I. C. 405 = 22 C. L. J. 316.

———*Will— Absolute estate—Condition—Condition of residence—Validity of—Succession Act, Ss. 82 and 121.*

Where a will purports to give an absolute interest with a condition that the devisee should have an interest so long as he resided in the house of the testator, the condition is valid under S. 121 of the Succession Act. 1 I. A. 387; 24 Cal. 646; 17 C. W. N. 39, Ref. Where the terms of a will of a Hindu testator clearly indicate that an absolute interest subject to a condition was intended to be granted to a grandson by a daughter it would be wrong to interpret its provisions on the assumption that a Hindu does not desire that any portion of his property should pass beyond his own family and to cut down the interest of the grandson. 2 I. A. 7; 30 All. 84; 35 Cal. 859, Ref. (*Mookerjee and Newbould, JJ.*) AMBIKA CHARAN *v.* SASITARA DEBI. 30 I. C. 868 = 22 C. L. J. 61.

———*Will—Absolute estate— Devise to widow—Gift over to daughter—Life-interest—Absolute gift—Power of appointment—Alienation by gift or sale—Administration suit.*

The will of a Hindu after providing for the performance of a certain religious ceremonies contained a devise of all his moveable and immoveable properties to his wife with power to alienate by gift or sale. He also by the same will made a gift over to his daughter. "My daughter Hara Kumari shall become entitled to and possessor of whatever property will remain after your (widow's) death and she shall enjoy the same keeping up and maintaining the aforesaid *sheba*, etc. The said daughter shall have the same rights as you have and to whom my said daughter may willingly give away those properties shall, while possessing the same and keeping up and maintaining the *Sheba*, enjoy them". *Held*, the testator could make an absolute gift to his daughter who was his reversionary heir in absolute estate and that she took under the father's will an absolute gift.

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There was no power of appointment to the daughter enjoining her to nominate as heir or successor to her father's estate and the provision for keeping up the *Sheba* was merely a collateral charge on the property in whosoever's hands it might be and did not affect the absolute character of the gift. The widow had absolute power of alienation in derogation of the rights of the sole reversioner, her daughter, who was only entitled to the residue, and a gift by the widow was valid. The power of alienation which though perhaps analogous to what was known as power of appointment in English Law relating to such appointments. 21 Bom. 709, Ref. (*Holmwood and Chapman, JJ.*) MAHIMA CHANDRA SARKAR *v.* HARA KUMARI DASEE. 30 I. C. 798 = 42 Cal. 561.

———*Will—Absolute estate—Gift to widow.*

Where the will read as a whole gives the widow absolute rights over the properties of the testator, the widow takes the properties absolutely. A simple gift by a Hindu to his widow by will, no doubt, gives her a widow's estate in the property that is bequeathed. (*Chitty and Teunon, JJ.*) JITENDRA KUMAR *v.* NRITYA GOPAL. 16 I C. 831 = 18 C. W. N. 140.

———*Will—Absolute estate—Bequest to widow and on her death to daughters with power of sale, etc.*

Where the provision in the will is that the property should remain in the possession of the testator's widows and on their death with the daughter with power to make a gift and sale according to their wishes. *Held*, the testator intended to create an absolute interest in favour of the widows and the daughter and according to S. 111 of the Succession Act the gift over to the daughter could take effect only in the event of the death of the widows during the lifetime of the testator. 23 Cal 563, Foll.; 22 Bom. 409; 24 Bom. 420, Dist. Courts will not hold that the daughter takes an absolute estate unless there are clear words indicating such intention. A gift over in favour of one, after the bequest of an absolute estate in favour of another, is bad in law. (*Mookerjee and Beachcroft, JJ.*) MAHENDRA LAL NANDY *v.* RAKHAL DAS BISHAI. 16 I. C. 809 = 17 C. L. J. 630.

———*Will — Absolute estate — Further gift to descendants.*

A will provided for absolute estate to the testator's widow, with power of alienation and further gift to the grandsons of whatever remained after the widow. *Held*, the widow obtained an absolute estate and the gift in favour of the grandsons was void for uncertainty. (*Broadway and Abdul Raoof, JJ.*) MOHAN LAL *v.* NIRANJAN DAS. 60 I. C. 619.

———*Will—Absolute estate—Gift to female.*

A Will by a Hindu in favour of a female must be interpreted in the same way as if it was in favour of a male and the words '*milkiat*' implies an absolute estate unless there is something in the context to qualify it. 30 All. 84; 30 C. L. J. 51; 53 I. C. 195, Foll.; 27 P. R. 1898, Diss. (*Chevis, A. C. J. and Dundas, J.*) MUSSAMMAT WAZIR DEVI *v.* RAM CHAND. 58 I. C. 988 = 1 Lah. 415.

HINDU LAW—Will—Absolute estate.

———*Will—Absolute estate—Power to dispose of will.*

A Hindu female can will away properties to a female, if the properties had been granted to the testatrix under a family arrangement. (*Kensington and Rattigan, JJ.*) CHEMBELLI *v.* NATIONAL BANK OF INDIA, LTD. 10 I. C. 647=62 P. L. R. 1911.

———*Will—Absolute estate—Bequest to mother and sister—"Enjoy with all proprietary rights"—Gift over to* dayathies.

A testator by his will provided as follows:—"My mother and sister shall both enjoy with all proprietary rights (*Sarwahswatantrathudan*) after my death the properties belonging to my family. It is only my mother and sister that shall be entitled to the whole of the matter mentioned in the will and none else shall be entitled to them.....If there be no issue to my sister that property should go to my *dayathies* (agnates) after her death." *Held*, that the mother and sister took absolute estates under the will and that the bequest in favour of the *dayathies* (agnates) was contingent on the sister dying without issue. *Per Spencer, J.*—The contingency on the happening of which the *dayathies* (agnates) would get the property, namely, the death of the sister during the lifetime of the testator without issue never happened (the sister having survived the testator) and the sister took an absolute estate. *Per Krishnan, J.*—The presumption as regards bequests in favour of a Hindu woman being only a life-estate, is no longer applicable in this Presidency. (*Spencer and Krishnan, JJ.*) CHIDAMBARANATHA GOUNDAN *v.* SELLAPPA REDDI. 10 L. W. 620=54 I. C. 524=27 M. L. T. 37.

———*Will—Absolute estate—Bequest to wife—Unexecuted draft wills, effect in India—Transfer of Registry.*

Per Sankaran Nair and Coutts-Trotter, JJ.—A childless Hindu bequeathed by his last will certain immoveable properties to his wife "for her maintenance and other absolute use" and provided that she was "at liberty to enjoy the same with powers of alienation by sale, etc." *Held*, that the estate conferred was absolute and not merely a life-interest for maintenance. *Per Coutts-Trotter, J.*—In India executed or draft wills may be properly treated, as valid testamentary dispositions. A transfer of registry in the Collector's Register is also evidence of a transfer of ownership. (*Sankaran Nair and Coutts-Trotter, JJ.*) JEEVARATHNAMMAL *v.* VARADA PILLAI. 19 M. L. T. 52=3 L. W. 1=32 I. C. 111=(1916) 1 M. W. N. 17 (F. B.).

———*Will—Absolute estate—Females.*

Where the will read as a whole clearly expresses the testator's intention that the donee should take an absolute estate, the usual rule that females take limited estate, does not apply. (*Wallis, C. J. and Seshagiri Aiyar, J.*) GOMATTAM RAMANUJA *v.* SATAGOPA CHAR. 24 I. C. 20=27 M. L. J. 329.

———*Will—Absolute estate—Female donee—No power of disposition—"Malik"—Effect of such description.*

Where a Hindu testator disposes of his estate in favour of his daughter and grand-daughter to be taken by them as "*malik war waris*", each of them takes an absolute estate in a moiety of the properties and this right is not affected by a provision in the will that on the death of the daughter, the granddaughter was to take the entire property. 30 A. 84; 38 A. 446 Rel.; 23 C. 670; 37 M. 199; 35 C. 896; 2 I. A. 7 Ref.; 12 B. 122 Foll.; 41 B. 70 Dist. (*Drake Brockman, J. C. and Hallifax A. J. C.*) MANGALJI *v.* RAMBHAOO. 1922 Nag. 73.

HINDU LAW—Will—Authority to adopt.

———*Will—Absolute estate — Gift to widow—Nature of estate.*

Where a Hindu testator bequeathed the whole of his self-acquired property in favour of his wife describing her as his *Waris* and *qabiz* and conferring upon her the same rights over the property as he himself had, *held*, that the wife took an absolute estate in the property. 30 All. 84; 42 Mad. 283; 2 Lah. 175; 1 Lah. 415 Ref. (*Wazir Hasan, A. J. C.*) MAHOMED HAMIDULLAH KHAN *v.* FAKHR-JAHAN BEGAM. 8 O. L. J. 650=1922 Oudh 109.

———*Will—Absolute estate—Successive legacies.*

Held, on the construction of the will that it did not confer life estates on any of the legatees or even successive estates on the several legatees but it conferred an absolute estate on the eventual legatee alive at the death of the testator. (*Kanhaiya Lal and Daniels, A. J. Cs.*) SHEV SHANKAR BAKHSH *v.* MITHANA KUAR. 48 I. C. 177=5 O. L. J. 606.

———*Will—Absolute estate—Gift to a female.*

A will by the husband in favour of his wife provided that as long as she was alive she should manage and have absolute right in the properties. *Held, Per Coutts, J.* (*Roe, J., Diss.*) that the clause gave the wife a life-estate. (*Roe and Coutts, JJ.*) RANI KESHOBATI KUMARI *v.* KUMAR SATYA NARAYAN SINHA. 5 P. L. W. 167=47 I. C. 55=(1918) Pat. 294.

———*Will—Absolute estate—Widow's estate—Contingent remainder—Possession under will.*

An estate of the kind taken by inheritance by a Hindu woman can be created by a will. The creation of a mere contingent remainder, after a woman's estate and not a more vested remainder is an indication that a woman's estate as distinguished from a life-estate was created. The English rules of construction are not applicable to the case of Hindu Wills. Hindu Law measures estates by use and not by time. A Hindu can create an estate for life in the English sense if the words of the will are clear. (*Chapman, Atkinson and Ali Imam, JJ.*) RAM BAHADUR *v.* JAGER NATH PRASAD. (1918) Pat. 181=3 P. L. J. 199=45 I. C. 749=4 P. L. W. 377 (F. B.).

Will—Authority to adopt.

———*Will—Authority to adopt, if no child male or female were born.*

Where a Hindu testator gives authority to his widow to adopt if no child male or female were born, the birth of a posthumous daughter who died after a short interval puts an end to the

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authority to adopt. (*Viscount Cave*.) BHAGWAT KOER *v.* DHANUKDHARI PERSHAD. 46 I. A. 259 = 37 M. L. J. 513 = 17 A. L. J. 1036 = (1919) M. W. N. 860 = 1 P. L. T. 1 = 53 I. C. 347 = 2 U. P. L. R. (P. C.) 27.

———*Will — Authority to adopt — Contingent interest given to son's daughter if daughter-in-law died without adopting—Prohibition of adoption.*

A Hindu died in 1875 leaving him surviving a daughter-in-law A and a daughter B of his predeceased son. He made a will whereby he left all his property to A for life but permitted her to adopt a son. The boy if adopted was to be the owner of the property. If B had a son A was prohibited from taking a boy in adoption. *Held*, that whatever powers of adoption A had under Hindu Law, the testator had no power to control them by his will but he could leave his property to A's adopted son as a *persona designata*, provided the adopted son was born in his life-time. As deft. was adopted after B had a son he could not take as *persona designata* under the will. On A's death there was an intestacy. Inasmuch as there was on the death of the testator no direct gift of the remainder to B but a gift contingent on the happening of an uncertain event, *viz.*, the dying of A without having taken a boy in adoption, the contingency could not be regarded as having occurred in view of the fact that A did adopt. (*Macleod, C. J. and Heaton, J.*) NATVARLAL GIRDHARLAL *v.* RANCHHOD.
55 I. C. 313 = 22 Bom. L. R. 71.

Will—Charity.

———*Will—Charity— Charge for temple expenses.*

A Hindu created by will an endowment but provided (i) that the surplus left after meeting the expenses of the idols, should go to the heirs of the testator, generation after generation for their own maintenance; (ii) and be spent, on his *riasat* (family property); (iii) that his heirs may effect mortgages in certain events, and also provided for the marriage expenses of female members. It was found that only a small portion of the income was left for the expenses of the idols. *Held*, that a charge on the estate was created for the expenses of the idols and that subject to that charge the property should go to the testator's heirs. (*Richards, C. J. and Banerji, J.*) SURJA KUNWARI *v.* HAR NARAIN RAM.
39 All. 311 = 38 I. C. 166 = 15 A. L. J. 182.

———*Will — Charity — Character of property —Provision that profits of balance should go to heirs for help in sheba.*

Where a Hindu testator by his will dedicated all his properties to a deity and stated that his heir should have no right of ownership, but in the next clause of the will, he directed that one-fourth of the profits should be devoted to the worship of the deity and the remaining moiety his heirs should get from the manager "for the purpose of rendering help in the *sheba* of the deity" and further provided that an heir who goes away is not thereby to lose his share in the profits. *Held*, that there was no complete dedication of the properties to the deity, hat there was a gift of a moiety of the properties to the testator's heirs, and that moiety was liable for their debts: *Held*, further, that the words "for the purpose of rendering help in the *sheba*" imposed no condition but merely stated a purpose or object which the heirs might observe or neglect. (*Chitty and Chatterjea, JJ.*) AKHIL CHANDRASEN *v.* REBATI MOHAN.
11 I. C. 625 = 14 C. L. J. 618.

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———*Will—Charity—Gift to charities—Certainty of bequest—Trustee—Appointment of.*

A Hindu testator appointed his nephew as his *vars* to conduct charities by the giving of *thaligais* (meals) in the temple on a particular day out of his properties. At the time of the registration of the will the testator declared that he intended to bequeath his properties to charities. *Held*, that the dedication was definite and not void for uncertainty and that the mention of the word *vars* did not make the nephew owner of the property but only a trustee. (*Abdur Rahim and Seshagiri Aiyar, JJ.*) MUTHUKRISHNA NAICKEN *v.* RAMACHENDRA NAICKEN. 47 I. C. 611 = 37 M. L. J. 489.

Will—Construction.

———*Will—Construction—Provision for idols—Absence of gift—Effect—Scheme.*

A Hindu testatrix addressed her will to her grandson and directed him to perform the worship of some family idols out of the income of specified properties. There was no gift of any property to the idols nor any provision made for worship after his death: *Held*, (1) no heritable shebaitship had been created; (2) the properties were conferred on the grandson subject to the maintenance of the worship; and (3) the trust treated being a private one, a scheme under S. 92, C. P. Code, was not proper. (*Lord Buckmaster.*) GOPAL LAL SETT *v.* PURNA CHANDAR BASAK.
43 M. L. J. 116 = 20 A. L. J. 625 = 36 C. L. J. 57 = 49 C. 459 = 24 Bom. L. R. 937 = 16 L. W. 963 = 49 I. A. 100 = 1922 P. C. 253 (P. C.).

———*Will — Construction —General principles— "Malik," meaning of.*

It is always dangerous to construe the words of one will by the construction of more or less similar words in a different will, which was adopted by a court in another case. The meaning of every word in an Indian will must always depend upon the setting in which it is placed, the subject to which it is related and the locality of the testator from which it may receive its true shade of meaning. "Malik" when used in a will or other document as descriptive of the position which a devisee or donee is intended to hold, has been held apt to describe an owner possessed of full proprietary rights including a full right of alienation, unless there is something in the context or in the surrounding circumstances to indicate that snch full proprietary rights are not intended to be conferred.

Where a Hindu gave all his moveable and immoveable properties with full rights of alienation

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to his wives. *Held*, that the ladies took as absolute owners. (*Sir John Edge.*) Mr. SASIMAN CHOWDHURAIN *v.* SHIB NARAYAN CHOWDHURY.
42 M. L. J. 492=30 M. L. T. 242=
(1922) M. W. N. 363=35 C. L. J. 427=
20 A. L. J. 362=24 Bom. L. R. 576=
L. R. 3 P. C. 97=49 I. A. 25=
26 C. W. N. 425=15 L. W. 434=
3 P. L. T. 133=1922 P. C. 63 (P. C.).

———*Will—Construction—Bequest under certain events—If deed necessary.*

Under a Hindu will, one brother was to give certain properties to another if the latter resided respectably with the former. He did so and then transferred his share. *Held*, even in the absence of a deed of transfer of share among the brothers, title passed to the vendee, though it is open to the joint brother to show that the event contemplated in the will had not happened. (*Macleod, C. J. and Crump, J.*) SHANKAR MAHABLESHWAR BHATT *v.* MANJUNATH SUBBA BALGYA. 1924 Bom. 298.

———*Will—Construction—Devise to wife — Absolute estate—Gift over to son—Nature of estate taken.*

A Hindu by his will bequeathed his property as follows: "After my death my wife is to take my property into her possession with full authority and is to perform the funeral and obsequial ceremonies with respect to my death. And after doing the same my wife is to consume, enjoy or do what she likes with respect to what remains out of my property and after the death of my wife, my son is the owner of my estate, the said son may do what he likes with respect to my property." The son predeceased the widow who continued in possession. The reversioners sued to restrain the widow from wasting the estate. *Held* granting the injunction that the will did not confer an absolute estate on the widow. (*Macleod, C. J. and Crump, J.*) MULCHAND JEKI SONDAS *v.* BAI RUKHMANI. 25 Bom. L. R. 189=
1923 Bom. 216 (2).

———*Will — Construction — "Malik", meaning of—Power of disposal inter vivos.*

Where a will recited as follows:—"She shall during her life-time apply and spend same in a good way that she shall be the (Malik) of whatever surplus may remain and whatever will remain after her funeral and subsequent ceremony shall be used for good purpose. Except my executrix no one else nor my heirs or representatives whatever shall have any right to or interest in my property." *Held*, that the words 'during her life-time she shall apply the same and spend in a good way' restricted the absolute estate created by the words Malik and the widow took a limited estate. Further, the words directing the widow to spend her residue in a good way gave the widow a life estate with uncontrolled powers of disposition by acts *inter vivos*. (*Kanga, J.*) MITHIBAI *v.* MEHERBAI. 23 Bom. L. R. 858=
1922 Bom. 179.

———*Will—Construction—Widow—Maintenance.*

Where a will directed that the second wife of testator will be maintained out of the estate and will have the right to reside in his house.

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Held, that this is not a mere enunciation of the rights of maintenance and residence of the widow under the Hindu Law. In such a case, the lady claims maintenance under the terms of the will as the widow of the deceased testator, and not a right of maintenance as against her step son or even against her own son under the rules of Hindu Law. (*Mookerjee and Chotzner, JJ.*, PULIN BEHARI DEY *v.* SATYA CHARAN. 36 C. L. J. 367=
1923 Cal. 79.

———*Will—Construction—Prior estate for life—Creation of subsequent estates—Period of ascertainment.*

Where a Hindu testator after providing for a life-estate for the maintenance of his widowed daughter gives over the property on her death to his son or grandson or any other heirs then living the properties would pass to the person who was the testator's heir on the death of the tenant for life, and not to the person who was the heir of the testator at the date of his death. (*Waimsley and Greaves, JJ.*) RAJANI KANT MANDAL *v.* KANTI CHANDRA MANDAL. 64 I. C. 237.

———*Will—Construction.*

There is no reason why an incident which would attach to property when the son takes it *ab intestatio* or on a partition between himself and his brethren should not be attachable to the same property when he takes it by will. (*Richardson and Huda, JJ.*) MUKTI PRAKASH NANDE *v.* ISWARI DEI DEBI. 57 I. C. 858=
24 C. W. N. 938.

———*Will—Construction—Accumulation.*

R, in his will devised the residue of his property to B, his widow and executrix for life and thereafter to his five sons in equal shares. He further directed the testatrix to make certain payments and to accumulate the surplus income during the lifetime of the widow for the benefit of the sons. *Held*, that the provisions for accumulation of the surplus income is not invalid as a direction to accumulate with a gift of the accumulation is not bad in itself; it fails only if it offends against some independent rule of Hindu Law. (*Greaves, J.*) RAM LAL SEN *v.* BIDHUMUKHI DASI.
56 I. C. 373=47 Cal. 76.

———*Will—Construction—Female donee—Absolute estate—Wife or daughter.*

A Hindu testator made a will leaving his property to his widow Khusali and after her death to one Musammat Parvati, brother's granddaughter, whom he had brought up. The operative portion of the will was in these words; "After my death Musammat Khusali will be the owner (malik) of the property and after her death Musammat Parvati will be the owner (malik) of the property." Privy Council ruling is clear that a deed in favour of a Hindu female has to be interpreted in the same way as any other deed; under the will Musammat Khusali had inherited an absolute right in the property. 61 P. R. 1911; 30 A. 84 P. C.; 38 A. 446 P. C.; 40 A. 575; 53 I. C. 602; 54 I. C. 524, Foll. 27 P. R. 1898, Diss.; 65 P. R. 1912; 2 I. A. 7 Ref.; 35 C. 896; 49 I. C. 755, Dist. *Held*, also that even without the assistance of previous authorities the only

possible interpretation of the will would be that the testator intended to give an absolute estate to his widow and to Musammat Parvati. (*Wilberforce, J.*) DHANPAT RAI *v.* BADRI DAS.
65 I. C. 455=3 Lah. L. J. 1.

——*Will—Construction—'Malik.'*

A will by a Hindu in favour of a female must be construed in the same way as if it were in favour of a male. The use of the word 'Malik' implies absolute ownership unless there is anything in the context to the contrary. (*Broadway and Abdul Raoof, JJ.*) MOHAN LAL *v.* NIRANJAN DAS. 60 I. C. 619=2 Lah. 175.

——*Will—Construction—In favour of widow.*

Where in a will in favour of a Hindu widow expressions indicating the creation of a full proprietary right are found, the widow must be treated as taking an absolute estate. (*Abdul Raoof, J.*) MOHAN LAL *v.* MAYA MAL.
18 P. L. R. 1921=11 P. W. R. 1921=
59 I. C. 231=3 Lah. L. J. 132.

——*Will—Construction—Will in favour of a Hindu female—Whether absolute or limited estate.*

A will in favour of a Hindu female must be interpreted like any deed and where the word malik is used the will passes an absolute right. 65 P. R. 1912, dissented from. (*Wilberforce, J.*) DHANPAT RAI *v.* BADRI DAS. 3 Lah. L. J. 1.

——*Will—Construction—Bequest to Hindu widow—Limited or absolute estate—Presumption against intestacy.*

A Hindu testator directed the residue of his estate after payment of certain legacies to be delivered over to his wife P. after she attained the age of 20 years, *Held*, that there was a valid disposition of the property after the payment of legacies and that the wife took an absolute estate under the will, 42 M. 283; 44 M. 447; 30 A. 84 Rel. There is a presumption against intestacy. Courts are not to presume that a testator who set up to write a will has not cared to say what is to become of the bulk of the property. (*Coutts Trotter and Ramesam, JJ.*) KANAKAMMAL *v.* BAKTAVATSULU NAIDU, 44 M. L. J. 23=
(1923) M. W. N. 70=16 L. W. 970=
31 M. L. T. 459=1923 Mad. 207.

——*Will—Construction—Adoption.*

A Hindu left a will authorising his widow to adopt a certain person and directing that the natural father of the adoptee should manage his estate as executor and act as guardian during the minority of the adopted son. *Held*, that the direction was not illegal. (*Ayling and Odgers, JJ.*) MOOSALAKANTI *v.* KOTAMARTI RAMAYAMMA.
44 Mad. 189=40 M. L. J. 46=13 L. W. 91=
62 I. C. 437=29 M. L. T. 193.

——*Will—Construction—Bequest by implication—English and Indian Law.*

In England as well as in India where there are no express words of gift but the gift can be implied from the language used in the will, courts should have regard to the dominating intention of the testator and effectuate that intention. *Held*, on a construction of the will of the testator in favour of his daughters that there was a bequest

by implication in favour of the daughter's son. (*Abdur Rahim and Oldfield, JJ.*) KOMANDUR SRINIVASA SESHACHARLU *v.* SESHAMMA.
47 I. C. 758=34 M. L. J. 479.

——*Will—Construction—Intention.*

A will should be construed according to its terms and no intention can be ascribed without express words. (*Coutts-Trotter and Srinivasa Aiyangar, JJ.*) THIRUGANA NAPAL *v.* PONA MAI NADATHI. 32 I. C. 569.

——*Will—Construction—Bequest by father to son—Co-parcenary property—Self-acquisition.*

Where a Hindu father bequeaths property to his son, whether the property is taken absolutely or with the incidents of ancestral property, is a question to be determined by ascertaining the intention of the testator from the words of the will. In the absence of an intention to the contrary the natural inference is that the father intended his son to take the property as ancestral property. 24 Mad. 429, Foll. *Held*, on the construction of the will that the father intended his sons to take the properties as members of an undivided Hindu family with rights of survivorship *inter se*. (*Kumaraswami Sastri, JJ.*) SHADAGOPA NAIDU *v.* THIRUMALAI SWAMI. 30 I. C. 272=18 M. L. T. 129.

——*Will—Construction—Annuity to wife for maintenance.*

There is no certain and necessary implication that a Hindu who provides for the maintenance of his wife after his death intends to deprive her of it should she become unchaste. (*Sadasiva Aiyar and Spencer, JJ.*) BOMMAYA HEGADA *v.* SRINAVASA HEBBARA. 25 I. C. 900=
27 M. L. J. 305.

——*Will—Construction—Legacy—Vesting.*

Under the will of a Hindu lady made in favour of her two minor great-grandsons, the interest on the two mortgages bequeathed, after the death of the testatrix until both the legatees attained majority was to be taken by them, their father being expressly disinherited: *Held*, (1) that these facts indicated that the amount due on the mortgages was to vest in the legatees immediately on the death of the testatrix; that the expression in the will after "the younger attaining majority" referred only to the time when they were to take possession of the legacy, (2) that in a suit for interest by the minor legatees, a decree for the money due should be passed but the amount should be kept in court or invested by the court in Government securities till the younger legatee attained majority. (*Benson and Sundara Iyer JJ.*) NARAYANA AIYAR *v.* ANAI AIYAR.
23 M. L. J. 649=17 I. C. 754=
(1913) M. W. N. 189.

——*Will—Construction — Principles — Estates given to sister—Malik—Meaning of.*

The will of a Hindu provided that his properties should go to his only heir, his sister as *malik* and provided that in case she predeceased him a trust should be created in favour of a temple; but if she survived him she could use the income for life and dispose of the corpus at her pleasure. Nobody could sell or mortgage the property. *Held*,

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there was nothing to indicate she got a limited estate under Hindu Law and the use of the word *malik* indicated the conferring of an absolute estate. Principles of construing Hindu wills referred to. (*Hallifax, A, J. C.*) SUNDARA BAI *v.* JAGANNATH. 1923 Nag. 56.

———*Will—Construction—Ordinary motives and wishes of Hindus.*

In construing the will of a Hjndu it ts not improper to take into consideration what are known to be the ordinary notions and wishes of Hindus with respect to the devolution of property. But it was held that the wife took an absolute estate in the properties bequeathed by her husband the terms of the will being clear to that effect. (*Mittra, A. J. C.*) DEO RAO *v.* BAPUJI. 53 I. C. 195.

———*Will—Construction—Undisposed of property—Devolution.*

If a will fails to make any effectual and complete disposition of the whole of the testator's real and personal estate, of course the undisposed of interest, whether legal or equitable, devolves to the person or persons on whom the law, in the absence of disposition, casts that species of property. Wherever there is a partial intestacy either on account of no person being alive to claim under the will or by reason of a bequest being void or otherwise ineffectual, there is always a resulting trust in favour of the heir-at-law. No person can prevent his property or any part of it or any interest in it from devolving upon the heirs constituted by law after his death, except by a valid disposition giving it to some other person. He can only defeat the rights of his natural heirs by making a valid device in favour of some person, but not otherwise, for he cannot make if the property of no one, the property must vest in some one and cannot remain in abeyance or suspense without an owner. (*Dalal and Simpson, A. J. Cs.*) RUP KISHORE *v.* KANHAIYA LAL. 26 O. C. 266=9. O. & A. L. R. 384= 10 O. L. J. 141=1923 Oudh 227.

———*Will — Construction — Gift to widows—Restriction on alienation—Nature of estate taken.*

A Hindu testator died leaving a Will whereby he bequeathed his property to his three widows, declaring that they should have the same powers over the property as he had, but imposing some further conditions. If any one of the widows wished to transfer any portion of the property she should do so only with the consent of the other widow. On the death of any one of the widows her share was to go to the surviving lady and that if any one of the ladies did any act which would bring disgrace on the family, the others were to be entitled to deprive her of her share. *Held*, that the Will gave a limited estate which on the death of two of the widows would ripen into an absolute estate for the last surviving widows. (*Lyle, A, J. C.*) MAKHANA *v.* BINDESHRI PRASAD. 8 O. L. J. 656=1922 Oudh 168.

———*Will—Construction—Essentials of.*

Replies sent by *talukdars* or grantees to enquiries made by the Government as to their wishes in regard to the devolution of the estate,

HINDU LAW—Will—Executory devise.

amount to testamentary dispositions enforceable under Hindu Law. 31 I. A. 359; 18 I. C. 1; 11 O. C. 102, Foll. (*Lindsay and Kanhaiya Lal, A. J. Cs.*) BHARAT SINGH *v.* BALBHADHAR SINGH. 20 I. C. 429.

———*Will—Construction—Intention.*

A document containing a disposition of property and an intention that it should have taken effect after the executant's death operates as a will. (*Atkinson and Kingsford, JJ.*) MAHASUNDAR KOER *v.* RAM RATAN PRASAD. 35 I. C. 416=1 P. L. W. 370.

Will—Contingent bequest.

———*Will—Contingent bequest—Uncertain event—Marriage.*

A bequest by way of maintenance for the daughters with a direction that the property is to be made over to them "when they will be married" is not a contingent bequest. (*Lord Mersey.*) CHANDRA KISHORE ROY *v.* PRASANNA KUMARI DASI. 38 Cal. 327= 38 I. A. 7=9 I. C 122=15 C. W. N. 121= 9 M. L. T. 71=(1911) 2 M. W. N. 30= 13 C. L. J. 58=8 A. L. J. 96= 13 Bom. L. R. 67=21 M. L. J. 116= 4 Bur. L. T. 65 (P. C.).

Will—Executory devise.

———*Will—Executory devise—Widow appointed executrix—Gift over on default of adopted son—Vesting of estate—Succession Act, S. 111—Scope of.*

A Hindu testator governed by the Dayabhaga Law appointed his wife sole executrix and authorised her to adopt a son. The will proceeded, "in case of the death of an adopted son, my wife shall adopt one after another five sons in succession. If my wife dies without adopting son, or if such adpoted son predeceases her without leaving any male issue, my estate after the death of my said wife shall pass to the sons of my sister Srimati Benodini Dasi who may be living at my death." The wife survived the testator, adopted a son who died without issue and then herself died without making a further adoption. *Held*, on a construction of the will, that the estate vested in the widow during her life, and that the gift over to the nephews took effect on the death of the widow. The devise to the nephews was not affected by S. 111 of the Succession Act, since the event on which the distribution was to take place, was distinctly mentioned in the will as the death of the widow. S. 111 of the Succession Act embodies the rules as laid down in *Edwards* v. *Edwards*, 15 Beav. 361, unaffected by later decisions, and should be applied only to cases strictly coming within its scope. (*Mr. Ameer Ali.*) BHUPENDRA KRISHNA GHOSE *v.* AMARENDRA NATH DEY. 43 Cal. 432=43 I. A. 12=19 M L. T. 97= 20 C. W. N. 169=30 M. L. J. 110= (1916) 1 M. W. N. 73=34 I. C. 892= 18 Bom. L. R. 347=23 C. L. J. 169= 14 A. L J. 167=3 L. W. 252 (P. C.).

———*Will—Executory devise—Survivorship.*

A will must be so construed as most fully to effectuate the intention expressed by the words used by the testator. If the words employed are *voces signatae*, they must be so accepted, whatever

suspiclon might exist as to whether the testator had in his mind that particular view of his own language. But in ordinary circumstances ordinary words must receive their ordinary construction and the whole will, that is the whole of the words employed by the testator, must be looked at tsgether so as to determine his whole intention. Words which have a general meaning ought not to be subjected to limitations not necessarily implied by them. It is a settled principle that in a will the term "should either of these two sons die without having had (leaving) any male issue" should not be limited to a death occurring before the death of the testator himself but must receive their full meaning. The surviving son was entitled to the estate conveyed by the will. (*Lord Shaw.*) CHUNNILAL PARVATI SHANKAR *v.* BAI SAMRATH.
38 Bom. 399=1 L. W. 762=
26 M. L. J. 647=18 C. W. N. 844=
19 C. L. J. 563=16 Bom. L. R. 366=
12 A. L. J. 742=16 M. L. T. 59=
23 I. C. 645=(1914) M. W. N. 441 (P. C.).

——*Will—Executory devise.*

An absolute gift of the shebaitship to the testator's son on his attaining majority is not cut down by anything that follows unless the subsequent words clearly have that effect. A gift over on the death of the son as a minor will not have that effect. (*Lord Macnaghten.*) TRIPURARI PAL *v.* JAGAT TARINI DASI. 40 Cal. 274=
40 I. A. 37=17 C. W. N. 145=
13 M.L.T. 1=17 C. L. J. 159=15 Bom.L. R. 72=
17 I.C. 696=(1913) M. W. N. 34 (P. C.)

Will—Gift.

——*Will—Gift to a class—After born children—Rule in* Leake v. Robinson—*Vested interest.*

A childless Hindu testator directed after the lifetime of his mother and wife, the sons of his two sisters "that is to say their sons who are now in existence as also those who may be born hereafter shall in equal shares hold the said properties in possession and enjoyment by right of inheritance." The testator died the next day, and on a question arising as to the construction of the will. *Held*, (1) that the bequest was confined to such of the sister's children as were alive at the death of the testator and (2) that the children were not intended to take by right of inheritance, but by testamentary gift of shares which vested at the testator's death, though possession and enjoyment were postponed. When children are mentioned in a will that means, *prima facie*, if no intervening interest be given, that which is considered to be the testamentary meaning in the case of a gift to individuals, *viz.*, those who may be living at the death of the testator. If the gift be not immediate, it may be that he intends to include all those children who may be living at the time of distribution and the court judges of the intention in this respect from the whole scope of the will. The rule is not altered by the addition of words of futurity as if the gift be "to children born and to be born or to children begotten and to be begotten." 5 App. Cases 123, Ref. The rule in *Leake* v. *Robinson* is not applicable in the construction of Hindu wills. Where there is a gift to a class, some of whom are or may be incapacitated from taking because not

born at the date of the gift or the death of the testator as the case may be, and where there is no other objection to the gift, it should enure for the benefit of those members of the class who are capable of taking, 19 Cal. 683, Ref. (*Lord Macnaghten*) BHAGABATI RARMANYA *v.* KALI CHARAN SINGH. 38 Cal. 468=38 I. A. 54=
15 C. W. N. 393=9 M. L. T. 411=
13 C. L. J. 434=21 M. L. J. 387=
8 A. L. J. 433=13 Rom. L. R. 375=
10 I. C. 641=(1911) 2 M. W. N. 295 (P. C.).

——*Will—Gift over—Widow—Daughter.*

A Hindu can validly will away his property to his widow absolutely and after her death to his daughter absolutely, whatever remains after the widow's death. (*Stuart, J. C.*) INDAR KUAR *v.* CHHEDA SINGH. 6 O. L. J. 88=
50 I. C. 197=22 O. C. 7.

Will—Joint tenancy.

——*Will—Joint tenancy—Tenancy-in-common—Bequest to two brothers—Equal shares—Tenancy in-common.*

Where a Hindu testator made a will authorising his wife to make an adoption and if she failed to do so before her death, directing the property to go to his two brothers in "equal shares," *Held*, that the brothers took as tenants-in-common and not as joint tenants. 33 All. 41, Foll.; 28 All. 38 Dist. (*Tudball and Rafique, JJ.*) HAR PRASAD *v.* SUKDEVI KUAR. 37 All. 241=
28 I. C. 561=13 A. L. J. 263.

——*Will — Joint tenancy — Tenancy-in-common.*

Where a Hindu will gave certain property to the daughter and daughter's son saying that they should be owners in possession of the property without a right of transfer and gave certain other properties to the son of another daughter. *Held*, that the will created a joint tenancy in respect of the former. 23 Cal. 670; 26 Bom. 445, Dist. (*Ryves and Lyle, JJ.*) BITTI BIBI *v.* JAI GOPAL SINGH. 20 I. C. 756.

——*Will—Joint tenancy — Tenancy-in-common—Bequest in favour of brothers living jointly.*

Where there is a bequest in favour of two brothers living jointly as co-parceners and where there is nothing in the will to indicate whether the testator intended them to hold as undivided co-parceners or as tenants in common with separate interests and the father of the donees was also living with them jointly. *Held*, that the will conveyed separate interests to the donees. (*Karamat Hussain and Chamier, JJ.*) KISORI DUBIAN *v.* MUNDRA DUBIAN. 33 All. 665=10 I. C. 565=
8 A. L. J. 757.

——*Will—Joint tenancy— Tenancy-in-common—Bequest to widows.*

Where a testator bequeathed half of his land to his two daughters, stating that after the death of the widows their half also should go to his daughters and after the death of the daughters to their descendants or if one daughter left no issue to the children of the other daughter, it was held that the widows took as tenants-in-common without right of survivorship and

HINDU LAW—Will—Joint tenancy.

with reversion to the daughters and that the share of either widow passed on her death to the daughters. (*Chevis, J.*) NIHAL KAUR *v.* SECRETARY OF STATE. 13 I. C. 550 = 237 P. W. R 1912.

———*Will—Joint tenancy—Devise to two co-parceners.*

A devise to two or more Hindu co-parceners is held by them as joint property, though there is no presumption in India, in favour of joint tenancy under a will. (*Wallis, C. J. and Oldfield, J.*) MAHALAKSHMI AMMA *v.* NAGAPPAYA. 62 I. C. 814.

———*Will—Joint tenancy— Tenancy-in-common —Bequest to sons.*

Bequests by father to sons create tenancy-in-common between them. (*Stuart, A. J. C.*) JADUNATH SINGH *v.* BHABHUTA PRASAD. 33 I. C. 785 = 3 O. L. J. 29.

Will—Life-estate.

———*Will—Life-estate—Gift to daughters and their respective sons—Survivorship between daughters —Remainder.*

A Hindu by his will directed his executors "make over and divide the whole of my estate, unto and between my daughters in equal shares, to whom and their respective sons I give, devise and bequeath, the same, but should either of my said daughters die without leaving any male issue surviving, but leaving other daughter surviving her, then the surviving daughter and her sons will be entitled to the share of the deceased daughter, or in the case of the death of either daughter leaving sons the share of such daughter is to be paid to such of her son or sons, share and share alike." The testator died in 1875 leaving two daughters one of whom had sons. In 1904 when both the daughters were alive, in a suit by one of the daughters for the construction of the will, the Privy Council held that each daughter was entitled to a moiety of the estate for life with benefit of survivorship and to a moiety absolutely. Subsequently one of the daughters died leaving several sons whereupon the other daughter claimed the whole by survivorship for her life. *Held*, then the intention of the testator was that the sons of a daughter should take her share on her death and that the former decision of the Privy Council, which was given on the then existing state of affairs did not decide against the rights of the daughter's sons in reference to a subsequent event. (*Lord Moulton.*) SRIMUTTY RANIMONI DASS *v.* RADHA-PRASAD MULLICK. 41 Cal. 1007 = 41 I. A. 176 = 26 M. L. J. 653 = 18 C. W. N. 873 = (1914) M. W. N. 624 = 16 M. L. T. 217 = 1 L. W. 731 = 16 Bom. L. R. 787 = 23 I. C. 713 = 20 C. L. J. 348 (P. C.).

———*Will—Life-estate—Bequest to widow.*

A bequest of immoveable property by a husband to his wife in the absence of words giving an absolute estate with power of alienation confers only a limited estate upon her. (*Ghose and Panton, JJ.*) BANKU BEHARY DE *v.* BISSESWAR LAL MARWARI. 1923 Cal. 575.

HINDU LAW—Will—Life-estate.

———*Will—Life-estate—Grant of annuity.*

A Hindu directed by his Will that his second son was to pay a certain sum annually to the fourth son, out of the property bequeathed to the second son:—*Held*, that the grant was perpetual and heritable and not merely a life-grant. (*Sanderson, C. J. and Richardson, J.*) NILADRINATH MUKERJI *v.* SAROJNATH MUKERJI. 62 I. C. 681.

———*Will—Life-estate—Daughter-in-law — Gift over to the male issue—Vested estate.*

The only safe rule of construing a will is to try to find out the meaning of the testator taking the whole of the document together and give effect to the meaning. A Hindu testator bequeathed a property to the plaintiff his daughter-in-law and provided that her husband "should receive one half of the income accruing from the property during his life-time"; that after his death, the gift of the income accruing from immoveable property shall devolve upon his male issue if any and that after plff.'s death the property shall devolve upon male issue if any of the plff. and her husband. *Held*, that the testator intended that his estate should vest in his daughter-in-law for her life-time and that his son (plff.'s husband) and, after his death, his male issue should receive a moiety of the income accruing therefrom. During the life-time of the plff. her son had no right whatsoever in the estate and was not consequently entitled to dispose of either temporarily or permanently. (*Shadi Lal and Scott-Smith, JJ.*) JASODHAN *v.* BISHAN SINGH. 44 I. C. 209.

———*Will—Life-estate—Gift to female—Bequest to grand-daughter—Limited estate.*

When a person bequeaths self-acquired property to his granddaughter there is no presumption that the testator desired to limit his estate (*Robertson, J.*) BHAG BHARI *v.* SADIQ. 70 P. W. R. 1913 = 18 I. C. 534 = 102 P. L. R. 1913.

———*Will—Life-estate—Grant of — Remainder on attaining majority—Hindu Wills, Act, S. 3—Succession Act, S. 101—Madras Hindu Transfers and Bequests Act, S. 2, Sub-S. (2).*

When by a disposition a previous life-estate is created, and the ulterior estate is bequeathed to a person on his attaining age, such disposition is valid. Having regard to the terms of Section 3 of the Hindu Wills Act, Ss. 101 and 102 of the Succession Act which are applicable to Hindus must be read as if they contained a proviso that the disposition must be of such a character as could have been made before the passing of the Hindu Wills Act, but this provision can be availed of only if the person who invokes its aid is not precluded by any law to which he is subject from availing himself of it. The expression "at a time which is subsequent to such date" in S. 2 (2) of the Madras Hindu Transfers and Bequests Act, 1914, does not refer to any fixed period, and if the final vesting is to take place after passing of the Act, the Act would validate such disposition. (*Seshagiri Aiyar and Phillips, JJ.*) P. SHANMUGA DEVAR *v.* T. SHANMUGA DEVAR. 53 I. C. 203.

HINDU LAW—Will—Life-estate.

———*Will—Life-estate—Gift to widow.*

A will provided a bequest of the title deeds of two houses to the widows but there was no distinct statement that the property was to be taken by the widows. In the same will another house was made over to another in full ownership and words were used for the purpose and besides the widows had already been residing under an agreement which gave them the right to have the houses for their life-time. *Held*, the widows took not an absolute estate but only a life-estate. 33 Mad. 91 Ref. (*White and Tyabji, JJ.*) DHANAPALA CHETTY *v.* ANANTHA CHETTY. **24 M. L. J. 418 = 13 M. L. T. 305 = 18 I. C. 973 = (1913) M. W. N. 322.**

———*Will—Life estate—Gift subject to—Maintenance out of remainder.*

A Hindu testator, devised a life-estate in favour of his widow, and on her death, a remainder in favour of his grandson subject to certain devises for maintenance in favour of the plffs. who were also his grandsons by another daughter. *Held*, that the intention of the testator was to provide immediate means for the maintenance of the plff. after his death and they became entitled to the properties devised to them immediately on that event. (*Lindsay, C. J. and Kanhaiya Lal, A. J. C.*) RUDRA PRATAP SINGH *v.* UMRAI KUNWAR. **47 I. C. 912 = 5 O. L. J. 505.**

———*Will — Life-estate — Daughters—Widow—Bequest to.*

Where a Hindu bequeathed half his land to his widows and half to his daughters and provided that on the death of the widows their half should go to the daughters. *Held* the widows took only a life interest but the daughters took an absolute estate as their interest was not curtailed by express words or necessary implication. (*Evans, J. C. and Lindsay, A.J.C.*) RAGHU BIR SINGH *v.* UMRAO SINGH. **13 I. C. 500.**

Will—Partition by father.

———*Will—Partition by father.*

A Hindu father is not empowered to effect a partition by will of ancestral property among his sons at any rate except with their consent. (*Lord Moulton, J.*) BRIJRAJ SINGH *v.* SHEADAN SINGH. **35 All. 337 = 40 I. A. 161 = 17 C. W. N. 949 = 11 A. L. J. 698 = 14 M. L. T. 11 = 18 C. L. J. 57 = 25 M. L. J. 188 = (1913) M. W. N. 515 = 19 I. C. 826 = 15 Bom. L. R. 652 (P. C.)**

Will—Persona Designata.

———*Will*—Persona designata—*Gift to adopted son by name—Adoption invalid.*

A Hindu adopted his daughter's son out of affection and hoped his family would recognise the adoption. The boy was adopted in 1892 and since then brought up by the adoptive father. In 1912 he made a will giving a life-interest in his properties to his widow and the remainder to his "adopted son, Janardhan." Subsequently the adoption was found to be invalid. *Held* that it was not clear from the words of the will that the testator intended to make the gift to Janardan conditional on the adoption being valid and that

HINDU LAW—Will—Revocation.

Janardan took as *persona designata* under the will. In such cases the court should not strain to adopt a construction which would defeat the intention of the testator. 12 I. A. 72; 31 A, 5 Rel. (*Macleod, C. J. and Shah, J.*) BAI DHONDUBAI *v.* LAXMANRAO TRIMBAC RAO. **24 Bom. L. R. 794 = 1922 Bom. 352.**

———*Will*—Persona designata — *Condition of adoption.*

When a man is named in the will to succeed as adopted son, he cannot take as a *persona designata* when there is no reference to him individually except as an adopted son. 8 I. C. 517; 19 Cal. 452 (P. C.); 26 W. R. 91 (P. C.); 23 Bom. 271; 28 All. 488 (P. C); 11 Cal. 463 (P. C.); 34 All. 405 (P. C.), Ref. (*Trotter, J.*) THIRUGNANAPAL *v.* PONNAMMAL. **32 I. C. 569.**

Will—Revocation.

———*Will — Revocation — Dependent relative revocation—Authority to adopt—Later invalid will—Effect on authority.*

In 1889 a Hindu made a will disposing of his ancestral property in respect of which he was the sole surviving co-parcener and authorising his widow to adopt. In 1890 the testator made another will containing dispositions of the property inconsistent with the will, but containing no express revocation of the earlier will or of the authority to adopt thereby given. The later will of 1890 was found to be invalid, the testator not having the power to dispose of the properties owing to his having ceased to be the sole co-parcener. *Held*, that the second invalid will did not revoke the power to adopt contained in the first will. L. R. 2 Hl. Sc. 397, Appl. (*Lord Wrenbury.*) VENKATANARAYANA PILLLAI *v.* SUBBAMMAL. **39 Mad. 107 = 43 I. A. 20 = 20 C. W. N. 234 = 3 L. W. 177 = 19 M. L. T. 147 = 14 A. L. J. 178 = (1916) 1 M. W. N. 97 = 23 C. L. J. 366 = 18 Bom. L. R. 372 = 32 I. C. 373 = 29 M. L. J. 851 (P. C.).**

———*Will—Revocation—Subsequent birth of a son.*

A son was born to a Hindu after he had made a will of his ancestral property but he predeceased the testator held that the subsequent birth of the son had not the effect of revoking the will. (*Benson and Sundara Aiyar, JJ.*) BODI *alias* LAKSHMAKKA *v.* VENKATASWAMI NAIDU. **38 Mad. 369 = 14 M. L. T. 181 = 25 M. L. J. 363 = 21 I. C. 73 = (1913) M. W. N. 779.**

———*Will—Revocation—Earlier and later wills—Invalidity of later will.*

There is a distinction between cases where the infirmity of the second will is apparent on the face of the will and the defect is intrinsic and cases where the will is inoperative for reasons outside the instrument, *i.e.*, where the defect is extrinsic. In the former case, the second devise would not operate as a revocation of earlier devise, in the latter case it will. (*White, C, J. and Sankaran Nair, J.*) PILLAI *v.* SUBAMMAH. **(1912) M. W. N. 519 = 11 M. L. T. 307 = 14 I. C. 209 = 22 M. L. J. 395.**

HINDU LAW—Will—Setting aside.

Will—Setting aside.

———*Will—Setting aside—Suit by daughters, if maintainable.*

A Hindu daughter can sue to set aside a will executed by her father and in such a suit the issue whether or not a custom exists excluding her from inheritance, is not a proper issue to be tried. (*Richards, C. J. and Banerjee, J.*) RISALI *v.* BALAK RAM. 34 All. 351=14 I. C. 639= 9 A. L. J. 367.

Will—Testamentary capacity.

———*Will—Testamentary capacity.*

A person on his death, left a widow but no children and no near relatives except such as were relations of his wife. The appellants, who successfully opposed the registration of the will of the deceased, brought a suit against the widow and Respondent—sister's son of the widow—in whose favour the will was made, for a declaration that they had the position of the nearest agnates of the deceased and that the so-called will was not executed in fact and was, if executed, executed by the testator while in an unsound state of mind. The appellants failed to prove their agnacy; but they alleged that the deceased had an intention to make a will, but a will in favour of charity. The lower courts first approached the question of genuineness of the will. *Held*: (1) The natural order was first to take up the question whether the persons who were attacking the will had any title to raise the question. (2) Upon the admission of the appellants, whose right to prevail was only upon intestacy, that the deceased had an intention to make a will, raised a presumption of the genuineness of the will. (3) The conduct of the widow in admitting the genuineness of the will but trying to resile from the admission, when the second respondent, who took the properties under the will, would not go along with her, also proved its genuineness. (*Lord Dunedin*). PALCHUR SANKARA REDDI *v.* PALCHUR MAHALAKSHMAMA. 31 M. L. T. 307=17 L. W. 1= 27 C. W. N. 414=1922 P. C. 315 (P. C.).

———*Will—Testamentary capacity—Minor.*

A Hindu is not competent to make a will unless he has attained majority under the Majority Act. (*Chandavarkar, A. J. C. and Batchelor, J.*) BAI GOLAB *v.* THAKORLAL. 36 Bom. 622=17 I. C. 86=14 Bom. L. R. 748.

———*Will—Testamentary capacity.*

Much technical proof may not be necessary for a Hindu will but there must be some evidence to say that a document purporting to be a Will by a Hindu was executed by him. (*Broadway and Abdul Qadir, JJ.*) HAR BHAGWAN *v.* HUKHAM SINGH. 3 Lah. 242=4 Lah. L. J. 245= 1922 Lah. 243.

———*Will—Testamentary capacity—Minority—Onus.*

When the defence of minority is raised to invalidate a will the onus is on the party setting up the will to show that he was of full age when he made it, as minority and testamentary incapacity stand on the same footing. (*White, C. J.*

HINDU LAW—Will—Testamentary guardian.

and Tyabji, J.) KRISANAMA CHARIAR *v.* VEERAVELLI KRISHAMA. 38 Mad. 166= 19 I. C. 452=24 M. L. J. 517= 13 M. L. T. 385=(1913) M. W. N. 355.

———*Will—Testamentary capacity—Minor.*

A Hindu minor cannot make a Will. (*Benson and Sundara Aiyar, JJ.*) DETERAM BULLEYA *v.* SOMANCHI SEETA RAMAYYA. 12 I. C. 551= (1911) 2 M. W. N. 383.

———*Will—Testamentary capacity—Act I of 1869.*

A Hindu has the power to make a valid bequest independently of Act 1 of 1869. (*Lindsay and Kanhaiya Lal, A. J. Cs.*) BHARATH SINGH *v.* BALBHADHAR SINGH. 20 I. C. 429.

Will—Testamentary Declaration.

———*Will—Testamentary declaration—Alienation by widow contrary to intention of testator.*

According to the Will the income of a shop was set apart or ear-marked to be paid after the expiration of each month to a *Thakardawara*. No *Thakardawara* was specified in it and the provision that the rent was to be paid after the expiration of each month clearly signified the object of the testator to be that the shop should remain under the management and under control of his successors. The alienation of the shop by the widow of the testator in favour of the charity funds was challenged by reversioners. *Held* the widows had to carry out the wishes of the testator in the way ordained by him and not in contravention of it. (*Broadway and Jafar Ali, JJ.*) BHAGAT RAM *v.* RAM SARUP CHELA. 5 Lah. L. J. 332= 1923 Lah. 352.

———*Will—Testamentary declaration—What is.*

A document sent by a person containing the relevant particulars relating to the history of his estate and declaration as to who was to be his successor in pursuance of an advertisement appearing in a paper announcing the intention of the advertiser to prepare a complaint showing the family history of the talukdars of Oudh can be treated as testamentary declaration by him of his intention with respect to his property, which he desired to be carried into effect after his death. (*Lindsay, J. C. and Kanhaiya Lal, A. J. C.*) BALRAJ KUAR *v.* MAHDEO PAL SINGH. 20 O. C. 360= 44 I. C. 59=4 O. L. J. 589.

Will—Testamentary Guardian.

———*Will—Testamentary guardian—Joint family.*

It is not competent to the father or manager of a joint Hindu family to appoint a guardian by will for the properties of the minor coparceners in the family. 40 Mad. 672; 29 I. C. 475; 21 I. C. 845 Foll.; 38 Bom. 94 Dist. (*Ayling, Coutts-Trotter and Seshagiri Iyer, JJ.*) CHIDAMBARA PILLAI *v.* RANGASWAMI NAICKER. 41 Mad. 561=7 L. W. 454=34 M. L. J. 381= 23 M. L. T. 266=45 I. C. 905= (1918) M. W. N. 265 (F. B.)

———*Will—Testamentary guardian.*

A Hindu father has power to appoint by will a guardian of the person of his minor child

HINDU LAW—Will—Unborn child.

but he cannot appoint such guardian for the property which survive to the minor son as ancestral or which is dedicated to trust. 13 I. C. 453, Foll, (*Sadasiva Iyer and Moore, JJ.*) ALAGAPPA IYENGAR *v.* MANGATHAI AMMANGAR.
40 Mad. 672=34 I. C. 766=
30 M. L. J. 504.

Will—Unborn Child.

———*Will—Unborn child—Bequest to—Tagore case—Life-estate to daughter—Gift over to cousins.*

A testator devised to his daughter a life-estate of Rs. 150 and the rent of a house and her son or sons, if any were to take his whole estate on attaining majority and bearing a good character. If the daughter had no male issue then on her death the whole of the testator's estate was to go to his cousins who were appointed executors of the will. The daughter had no son at the time of the testator's death but had a son born to her after the father's death. She and her son brought a suit for the construction of the will and for administration for the testator's estate. *Held*, that the dominant intention of the testator was to give the whole of his property to his grandson but as no grandson was in existence at his death, that intention was defeated; and that his intention next was that his estate should be retained in his family, (*i.e.*) with his cousins. (*Beaman and Hayward, JJ.*) NARAYAN DAS VRIJBHUKANDAS *v.* BAI SARASWATI.
38 Bom. 697=
28 I. C. 130=16 Bom. L. R. 577.

———*Will—Unborn child—Power of appointment—Rule in the Tagore case.*

There can be no question that in a case to which the rule in the Tagore Case applies, a gift which cannot be made directly cannot be made indirectly by means of a power conferred by the testator on his executor. 24 I. A. 93 followed. The rule in the Tagore case is a general rule to which there may be exceptions. Property cannot be made inheritable otherwise than as the law allows, but there may be exceptional cases in which Hindu Law sanctions a departure from the rule that the donee must be in existence. The Hindu Law allows the founder of a religious trust or institution to lay down a general rule of succession to the managership and a power given by the founder to his widow to appoint a successor to the shebaitship cannot be said to be improperly or invalidly exercised if the widow appoints a person who was not in existence at the date of the death of the testator, as shebait. A trusteeship with power to appoint a successor is well known to and recognised by Hindu Law. (*Sanderson, C. J. and Richardson, J.*) MATHURANATH MUKERJEE *v.* LAKHI NARAIN GANGULY.
50 C. 426=1924 Cal. 68.

———*Will—Unborn child—Gift to—Validity—Hindu Transfers and Bequests Act (VIII of 1921), Ss. 2 and 3—Effect of.*

A Hindu testator who died in 1912 left a will containing the following provision in favour of his descendants:—"The building valued at Rs. 2,000 shall be taken by my third daughter and the rental income derived therefrom shall be enjoyed by her. She has no power to make sale, gift, mortgage, etc. After her issue shall use and enjoy it from son to grandson with power of gift, mortgage and sale." The testator's daughter had a son born in September 1918 but he died the next day after his birth and the daughter herself died a few days later. She left her surviving her husband and two sisters. On a question arising as to the rights of the parties under the will held that the daughter took only a life-estate in the property bequeathed and that she did not acquire an absolute interest by reason of her son having predeceased her. The Hindu Transfers and Bequests Act operates retrospectively and therefore applied to the case and the property became vested in the son as soon as he was born, Consequently the succession was to be traced to the son, though he was not born at the period of distribution. 31 M. L. J. 33; 40 M. 818 followed. (*Kumaraswami Sastri, J.*) PERIANAYAGI AMMAL *v.* RATNAVELU MUDALIAR.
18 L. W. 625=32 M. L. T. 137 (H. C.)=
1924 Mad. 316.

HINDU LAW—Will—Validity of bequest.

———*Will—Unborn child—Bequest.*

A Hindu will is to be interpreted with reference to its terms having regard to general rules bearing on it. Bequests to persons who are not born at the testator's death are void; but persons born after the testator but before the life-estate treated by the will is terminated has a vested interest in the property. If he dies during the continuance of the life-estate his heirs will get it. (*Abdur Rahim and Srinivasa Iyengar, JJ.*) KUDAPA VENKAYAMMA *v.* KAKARLA NARASAMMA.
40 Mad. 510=31 M. L. J. 33=
20 M. L. T. 221=35 I. C. 150=4 L. W. 189.

———*Will—Unborn child—Bequest to—Gift over, invalidity of—Effect on prior bequest.*

A bequest to persons who are not born at the date of testator's death is invalid. Where a gift made in favour of the daughter also provides that after her, the property should be enjoyed by her descendants, the fact that the gift over is invalid does not defeat the estate given to her. (*Kumaraswami Sastri, J.*) VARADARAJA MUDALIAR *v.* NARAYANSWAMI MUDALIAR.
27 I. C. 298=
27 M. L. J. 681.

Will—Validity of bequest.

———*Will—Validity of bequest—Joint family—Brothers sole surviving co-parceners—Powers of.*

If a Hindu is the absolute owner of property whether ancestral or self-acquired he can bequeath it by will and in principle there is no objection to some power being given to two Hindu brothers, provided they together have the entire ownership of the whole co-parcenary property. Such a document can also be looked upon as embodying a mutual bargain, consideration being such party giving up the possibility of gaining by survivorship. (*Mears, C. J. and Banerjea, J.*) LAKSHMI CHAND *v.* ANANDI.
45 A. 245=L. R. 4 A. 306=21 A. L. J. 73=
1923 A. 109.

———*Will—Validity of bequest—Power of father to give legacy.*

A Hindu father has no power to dispose of ancestral property though not immoveable, by

HINDU LAW—Will—Validity of bequest.

will and so has no power to direct legacies to be given out of such properties. (*Scott, C. J. and Shah, J.*) PARVATI BAI SHANKAR *v.* BHAGWANT PANDHARINATH PATHAK. 39 Bom. 593= 31 I. C. 280=17 Bom. L. R. 646.

———*Will—Validity of bequest—Perpetuities—Gift of life-estate to grandsons, one of whom only in existence—Remainder to brother and nephew—Bequest, if bad for remoteness—Perpetuities—Hindu Wills Act.*

A Hindu testator who died in 1868, gave life-estate in succession to his wife and two daughters and directed that "after the death of my daughters, my grandson or grandsons whoever among them may be alive shall possess my properties but not by right of inheritance" for enjoyment during their life-time, and "that after the death of my grandsons all my properties will go to my brother and my nephew." At the date of his death he had living one grandson and no other grandson was born during the lives of his widow and daughters. *Held*, that although the grandson was not mentioned in the will there was a valid bequest in his favour of a life-estate with a valid remainder in favour of the brother and nephew. The latter bequest was not affected by the rule of remoteness as applied in England and it did not offend against the law as to perpetuities. 38 Cal. 468; 32 Cal. 992. Rel. (*Chaudhuri and Cuming, JJ.*) DAKSHAYANI DASSI *v.* AMRITA LAL GHOSE SARKAR. 53 I. C. 779=23 C. W. N. 826.

———*Will—Validity of bequest—Heir-at-law excluded by will.*

An heir-at-law though excluded from benefit under a will cannot be excluded from his general right of inheritance without a valid devise to some one. (*Mookerjee and Richardson, JJ.*) KUNJAMANI DASI *v.* NIKUNJA BEHARY DAS. 22 C. L. J. 404=32 I. C. 823= 20 C. W. N. 1914.

———*Will—Validity of bequest—Gift to wife—Malik—Absolute owner.*

The fact that the beneficiary under a will is a female in no way affects the interpretation to be put upon the words used by the testator, but every case of this sort has to be decided on its own merits and its peculiar circumstances. The mere use of the word, "Malik" qualified by the surrounding contexts does not preclude the possibility of merely a life-estate being conferred. A Hindu testator bequeathed his property to his widow and provided that she would be malik and that after her death her two daughters were to inherit in equal shares. *Held* that the intention of the testator was that his widow should have a life-estate and that after her death the two daughters should succeed. 2 Lah 175; 30 A. 84; 65 P. R. 1917 referred to. (*Harrison, J.*) RAMKISHEN *v.* MT. BHAGIRATHI. 1923 Lah. 304.

———*Will—Validity of bequest—Devise of ancestral property.*

A will by a member of a joint Hindu family bequeathing joint as well as his self-acquired property is invalid *qua* the joint property though it will be valid *qua* his separate property. (*Shadi Lal, C. J. and Le-Rossignol, J.*) PARAMANAND *v.* SHEO CHARANDAS. 2 Lah. 69=59 I. C. 256= 21 P. L. R. 1921=15 P. W. R. 1921.

HINDU LAW—Will—Validity of bequest.

———*Will—Validity of bequest—Joint family property.*

A Hindu father under a will devised in favour of his wife certain joint family properties belonging to him and his minor son. The provision made by the testator would have been a proper provision for him to make during his life-time and such a disposition of joint family properties during his life-time would have been good: *Held*, that the disposition in the will is inoperative as against the minor son and cannot prevail against the right of survivorship which takes effect the moment the testator dies. 8 M. H. C. R. 6, Foll.; 40 Mad. 1122, Dist. (*Wallis, C. J. and Krishnan, J.*) PANDIPATI SUBBARAMI REDDI *v.* PANDIPATI RAMAMMA. 43 Mad. 824=59 I. C. 681= 12 L. W. 249=(1920) M. W. N. 529

———*Will—Validity of bequest—Bequest of ancestral and self-acquired properties.*

Where a will deals with both joint family and self-acquired properties, so far as the former is concerned it is bad and so far as the latter is concerned it is good. (*Sadasiva Aiyar and Napier, JJ.*) AIYASAMI UDAYAN *v.* APPASWAMI UDAYAN. 1 L. W. 983=26 I. C. 249= (1914) M. W. N. 889=28 M. L. J. 542.

———*Will—Validity of bequest—Bequest to relative's prospective wife.*

There is nothing in Hindu Law to invalidate a legacy to the prospective wife of a relation, if she was in existence at the time of the testator's death. (*Batten, O. J. C.*) MT. RAMDULARI *v.* BISHESHWAR DAYAL. 18 N. L. R. 143=1923 Nag. 105.

———*Will—Validity of bequest.*

The divesting of the estate is not repugnant to Hindu Law provided the event upon the happening of which the estate is to be divested happens, if at all, immediately on the close of a life in being at the time of death of the testator and that the gift over be in favour of a person living at the time of the gift. (*Drake-Brockman, J. C. and Hallifax, A.J.C.*) MANGALJI *v.* RAMBHAOO. 4 N. L. J. 253=1922 Nag. 73.

———*Will—Validity of bequest—Perpetuity.*

A bequest only of the income of a property creating something in the nature of a perpetuity is void under the Hindu Law. 11 Cal. 684, Foll. Where the main purpose of a will is to bequeath an absolute estate of inheritance to a Hindu woman, terms which purport to create a perpetuity or to impose restraints on alienation repugnant to the estate created are inoperative and the will is otherwise valid. (*Sharfuddin and Mullick, JJ.*) JAGAN NATH PRASAD *v.* JAIKISHUN PRASAD 1 P. L. J. 16= 34 I. C. 375=3 P. L. W. 164.

HINDU LAW—Will—Vested interest.

Will—Vested Interest.

———*Will—Vested interest.*

If a Hindu testator provides that his widow and his son's widow are to remain in possession without power of alienation, maintaining his grandsons out of the income and after the death of the widows, the grandsons are to be the owners, the grandsons take a vested estate. (*Atkinson and Manuk, JJ.*) DHUNUN MISRAIN *v.* NIRSUOJHA. 50 I. C. 104.

HINDU TEMPLE.

See HINDU LAW—RELIGIOUS ENDOWMENT.

HINDU TRANSFERS AND BEQUESTS ACT (VIII of 1921.)

———Ss. 2 and 3—*Applicability of—Retrospective operation.*

Ss. 2 and 3 have retrospective operation. (*Kumaraswami Sastri, J.*) PERIANAYAGI AMMAL *v.* RATNAVELU MUDALIAR. 32 M. L. T. 137 (H. C.) = 1924 M. 316.

HINDU TRANSFERS AND BEQUESTS ACT (MAD. ACT I of 1914).

———*Retrospective operation—Extent of.*

The Hindu Transfers and Bequests Act (I of 1914) has no application where the testator died before the Act came into force. It is retrospective only in so far as it applies to wills made before the passing of the Act where the dispositions made are intended to come into operation after the Act. (*Kumaraswami Sastri, J.*) VARADARAJA MUDALIAR *v.* NARAYANASWAMI MUDALIAR. 27 I. C. 298 = 27 M. L. J. 681.

———S. 2—*Whether retrospective — Unborn persons, transfers in favour of.*

The Act acts retrospectively and validates dispositions in favour of unborn persons made before the Act but intended to take effect after such date. 31 M. L. J. 33, Ref. (*Spencer and Phillips, JJ.*) MUTHUSWAMI AIYAR *v.* KALYANI AMMAL. 40 Mad. 818 = 21 M. L. T. 93 = 38 I. C. 223 = 5 L. W. 334.

HINDU WIDOWS' REMARRIAGE ACT (XV of 1856).

———*Remarriage after conversion—If divests husband's estate vested in her.*

Neither the conversion of a widow into Mahomedanism nor her marriage with a Mahomedan husband after conversion could divest her of her interest in her deceased Hindu husband's estate. (*Richards, C.J. and Banerji, J.*) ABDUL AZIZ KHAN *v.* NIRMA. 35 All. 466 = 20 I. C. 335 = 11 A. L. J. 678.

———*Scope.*

All cases of the remarriage of Hindu widows are governed by Act (XV of 1856). Custom can only take effect within the four walls of that Act. (*Robertson, J.*) RAMAN *v.* CHINTO. 9 P. L. R. 1912 = 12 I. C. 623 = 247 P. W. R. 1911.

———*Scope.*

The Act applies to all Hindu widows irrespective of caste regulations concerning remarriage. (*Stanyon, A. J. C.*) SITARAM *v.* LEXMAN. 17 I. C. 133 = 8 N. L. R. 128.

HINDU WIDOWS' REMARRIAGE ACT (XV of 1856), S. 2.

———*Scope of.*

It is not the object of the Act to deprive a Hindu widow upon her remarriage of any right or interest which she had not at the time of her remarriage. When after the remarriage of a widow her son dies and the question is of her right of succeeding to him, the Act must be held not to affect her rights. (*Das and Ross, JJ.*) MT. PALTI *v.* NIRDHAN GOPE. 1 P. L. R. 390 = 4 P. L. T. 650 = 1924 P. 233.

———S. 1.—*Remarriage does not affect right of inheritance to son.*

A Hindu widow can inherit from her son by a former marriage, though she had remarried at the date of her son's death. 11 W. R. 82 Rel. 29 B. 91. Ref. (*Woodroffe and Ghose, JJ.*) HAR KISHORE SEAL *v.* THAKUR DHAN BAISHNUB. 26 C. W. N. 925 = 1922 Cal. 140.

———S 1—*Applicability of — Remarriage of Hindu widow permitted by custom.*

Act XV of 1856 does not apply where by custom a widow is permitted to remarry and does not forfeit the property inherited by her from her former husband. (*Daniels and Dalal*) *A. J. Cs.*) BHAGWAN DIN *v.* INDRANI. 65 I. C. 117 = 24 O. C. 297.

———S. 2—*Applicability*—Grihast Gosains.

A valid remarriage according to the custom of her caste, does not deprive a widow of her right to the estate of her deceased husband. 11 All. 330; 31 All. 161; 32 All. 489, Foll. (*Bannerjee and Piggott, JJ.*) RAM DEI *v.* KISHEN DEI. 32 I. C. 338.

———S. 2—*Hindu widow — Remarriage after conversion.*

A re-marriage of a Hindu widow after conversion to Mahomedanism does not divest her of her deceased husband's property. (*Richards, C. J. and Bannerjee, J.*) ABDUL AZIZ KHAN *v.* MUSSAMMAT NIRMA. 35 All. 466 = 20 I. C. 335 = 11 A. L. J. 678.

———S. 2—*Scope of — Remarriage works forfeiture.*

S. 2 of Act XV of 1856 applies not only to widows who could not remarry before the passing of the Act, but also to those who were not so precluded from remarrying either by law or custom. In either case, the widow forfeits the estate inherited by her from her former husband. (*Ghose and Panton, JJ.*) SANTALA BEWA *v.* BADASWARI DASI. 50 Cal. 727 = 27 C. W. N. 669 = 1924 Cal. 98.

———S. 2—*Conversion.*

A Hindu widow loses all rights in the property of her first husband if she is converted and married to a person of another religion. (*Wallis, C. J., Oldfield and Seshagiri Iyer, JJ.*) QITTA THAYARAMMA *v* CHATAKONDI SIVAYYA. 41 Mad. 1078 = 35 M.L. J. 317 = 24 M.L.T. 183 = (1918) M.W.N. 625 = 48 I.C. 50 = 8 L.W. 480 (F.B.) [Overruling 44 I. C. 299.]

HINDU WIDOWS' REMARRIAGE ACT (XV of 1856), S. 2.

———S. 2—*Hindu widow — Conversion to Mahomedanism—Marriage to a Mahomedan—Rights in property.*

The Hindu Widows Remarriage Act is confined to a Hindu widow marrying as such. It does not apply to a Hindu widow who becomes a convert to another religion and then remarries. Where a Hindu widow becomes a convert to Mahomedanism and then remarries Mahomedan husband, she cannot be deprived of the estate which she has inherited from the Hindu husband. 35 All. 466, Foll. (*Seshagiri Iyer and Napier, JJ.*) KARNAM CHOWDAPPA *v.* KARNAM NARASAMMA. 23 M. L. T. 81=7 L. W. 411=44 I. C. 299=(1918) M. W. N. 274.
[Overruled by 48 I. C. 50=41 Mad. 1078 (F. B.)]

———S. 2—*Widow — Remarriage — Whether entitled to retain husband's estate—Custom.*

A Hindu widow's right to retain property inherited from her husband ceases on her remarriage, and the reversioners have a right to immediate possession of the properties on her remarriage. 1 Mad. 226; 22 Cal. 589; 22 Bom. 321; 24 Bom. 89, Foll.; 31 All. 161; 1 I. C. 761; 32 All. 489, Not foll. *Quaere*:—Whether a custom according to which a remarrying widow is entitled to retain property inherited from her husband even after her remarriage, can be given effect to. (*Sundara Aiyar, J.*) DORAISWAMY THEVAN, *In re.* 15 I. C. 602=12 M. L. T. 158.

———S. 2—*Its scope and its effect on property as regards forfeiture.*

This Act applies even to widows among whom there is a caste custom permitting remarriage. This Act operates as a forfeiture not only of property inherited from her former husband but that of all existing rights at the time of remarriage, without impairing her right to future interests of inheritance as of succession to her son by first marriage after his death. (*Stanyon, A. J. C.*) KASHI RAO *v.* UKARDA. 31 I. C. 290=11 N. L. R. 116.

———S. 2—*Alienation—Effect of remarriage on.*

The remarriage of a Hindu widow extinguishes her estate in the property of her deceased husband and the presumptive interest of the reversioner vests under S. 2. (*Stanyon, A. J. C.*) NATHU *v.* NAI BAHU. 29 I. C. 612=11 N. L. R. 86.

———S. 2—*Act does not apply to remarriage by custom.*

The Act merely enables widows of those castes to remarry, who by their custom are prevented from doing so and declares the consequences entailed thereon it does not alter any customs relating to remarriage or its legal incidents. S. 2 of the Act does not apply to a case where a Hindu widow remarries according to a custom and such custom allows her to retain the property inherited from her first husband. (*Kanhaiya Lal, A. J. C.*) NARPAT *v.* JANAKA. 61 I. C. 303=24 O. C. 11.

HINDU WIDOWS' REMARRIAGE ACT (XV of 1856), S. 5.

———S. 2—*Remarriage after conversion works forfeiture.*

A Hindu widow who becomes a Mahomedan and remarries loses her right to her husband's property. S. 2 of the Hindu Widows' Remarriage Act includes all persons who being Hindus become widows and any such widow, if she remarries, loses the estate which she inherited from her deceased husband. Apart from the Act, under the Hindu Law a widow's right to succession is based on the ground that she is half of the body of her deceased husband and that she is capable of conferring spiritual benefits on him. When she remarries she ceases to be half of the body of her late husband or to be able to confer spiritual benefits on him and she becomes the wife and half of the body of her new husband. The reason therefore for her keeping the estate of her deceased husband disappears. 11 A. 330; 31 A. 161; 32 A. 489 Diss. 1 M. 226: 41 M. 1078; 21 C. W. N. 906; 22 C. 589; 14 C. W. N. 346; 8 C. L. J. 542, Rel. (*Coutts and Adami, JJ.*) MT. SURAJ JOTE KUER *v.* MT. ATTAR KUMARI. (1922) Pat. 235=3 P. L. T. 551=1922 P. 378.

———S. 2.—*Out-caste widow — Remarriage — Alienation—Effect of.*

An out-caste Hindu widow does not cease to be a Hindu and if she remarries the provisions of the Hindu Widows' Remarriage Act would apply. An alienation by her of her first husband's property after her remarriage would be invalid. (*Coutts and Adami, JJ.*) MUSSAMMAT SOMARIA *v.* BULARYA. 54 I. C. 820.

———S. 2 (2)—*Custom.*

The widow by her remarriage forfeits all her interest in the estate though she may belong to a caste which by custom allowed the remarriage of a widow. She will forfeit her right to maintenance out of the deceased husband's property. (*Sanderson, C. J. and N. R. Chatterjee, J.*) MAHOMED UMAR *v.* MT. MAN KUAR. 40 I. C. 783=21 C. W. N. 906.

———S. 3—*Minor sons—Guardianship.*

There is nothing in the provisions of the Hindu Widows Remarriage Act that renders obligatory for the court to remove a remarried widow from the guardianship of her minor sons. (*Mukerjee and Caspersz, JJ.*) GANGA PRASAD *v.* RAMSHREY SHAHU. 38 Cal. 862=10 I. C. 69=15 C. W. N. 579=13 C. L. J. 558.

———S. 5—*Object of Act—Remarried widow if can succeed as gotraja sapinda of first husband.*

The object of the Act is to remove all legal obstacles to Hindu Widow Remarriages. S. 5 of the Act never intended to lay down any proposition regarding the inheritance by a Hindu widow. A remarried Hindu widow is not entitled to inherit as a *gotraja sapinda* to the relations of her first husband. (*Macleod, C. J. and Shah, J.*) PRANJIVAN HARGOVAN *v.* BAI BHIKHI. 45 Bom. 1247=63 I. C. 947=23 Bom. L. R. 553

HINDU WIDOWS' REMARRIAGE ACT (XV of 1856), S. 5.

———S. 5—*Remarriage—Testamentary guardianship.*

A widow does not cease to be a testamentary guardian of a minor son by remarriage (*Kensington, J.*) MAYA DEVI *v.* GOPAL. 47 P. L. R. 1913= 18 I. C. 133=32 P. W. R. 1913.

———S. 7—*Minor widow—Consent not required.*

The marriage of a minor widow is not valid unless consented to by the persons enumerated in S. 7 of the Act. But if the first marriage has been consummated, the consent of the minor widow herself is enough. (*Robertson, J.*) RAMAN *v.* CHINTO. 9 P. L. R. 1912=12 I. C. 623= 247 P. W. R. 1911.

HINDU WILLS ACT (XXI of 1870).

———*Succession Act, S. 187—Applicability of—Khojas—Will—Document of title.*

Neither the Hindu Wills Act (1870) nor the Succession Act. S. 187, apply to the will of Khoja Mahomedan and title under the will can be established without probate, and the will stands on the same footing as any other deed of right. (*Crump, J.*) ABDUL KARIM *v.* KARMALI. 58 I. C. 270= 22 Bom. L. R. 708.

———S. 2—*Admissibility of a will not proved in probate.*

A will not proved in the probate court may be cited in evidence if it is for a purpose other than to establish a right as executor or legatee notwithstanding S. 187 of the Succession Act. (*Mookerjee and Beachcroft, JJ.*) ACHYUTANANDA DAS *v.* JAGANATHA DAS. 21 C. L. J. 96= 27 I. C. 739=20 C. W. N. 122.

———S. 2—*Proof of terms of will.*

In cases to which the Hindu Wills Act applies, the terms of a will can only be proved by reference to the Probate or Letters of Administrations as the case may be. (*Mookerjee and Beacheroft, JJ.*) SUKU MARI GUPTA *v.* BARAT MANDAL. 26 I. C. 980=20 C. L. J. 148.

———S. 216—*Will—Executor—Power to carry on business—No direction in will—Discretion of court—Debts incurred in carrying on business—Indemnity.*

A died leaving a will dated the 11th December, 1904, whereby he appointed his wife B and another person executors and gave B power to adopt a son to him, and made the adopted son proprietor of his estate. His estate consisted *inter alia* of banking businesses at C and D. The banking businesses were the ancestral business and the backbone of the firm, although they were to a great extent hazardous and the credit of the estate rested entirely on the businesses which were carried on by borrowing money and were without capital. On the 24th May, 1905, after discharging a *caveat*, a probate was issued to the executors. When the *caveat* was entered on the 5th April, 1905, administrators *pendente lite* were appointed. The plaintiff was adopted on the 26th April, 1906. The executors after the issue to them of probate, without obtaining the leave or directions of the court continued the testator's businesses though no power was given to them by the will, down to the 19th April, 1912, when they stopped payment at C and D. The claimant during the period the executors were carrying on the business, lent money on hatchittas to the business, the account being a running one and all the sums now claimed by the claimants were in respect of liabilities incurred by the executors during their conduct of the business: *Held*, that when probate was granted to the executors, the whole of the testator's estate including the businesses vested in them and that they held it from that time not as managers but as executors and subject to their rights and liabilities as such. Under S. 216 of the Hindu Wills Act, their duties were to collect with reasonable diligence the property of the testator and the debts due to him. Their right was not to carry on the business for an indefinite period but only for the purpose of realisation as one of the assets of the estate. The executors were personally liable for the debts and had no general rights of indemnity out of the estate. *Re Evans* 34 Ch. D. 597; *Strickland v. Symens* 26 Ch. D. 245, Ref. If the assets had accrued to the business and through it to the estate during the trading, the executors would have been entitled to the indemnity from the estate for what it had cost them to obtain such assets if they were not indebted to the estate, and the creditors could stand in their shoes to the extent of the executor's rights. Mere delay in filing accounts does not destroy any right of indemnity that may exist; for such right to exist, the executors must show that they are not indebted to the estate. (*Greaves, J.*) SUDHIR CHANDRA DAS *v.* RASSESWARI CHAUDHURI. 35 C. L. J. 46.

HIRE.

See CONTRACT ACT, CH. IX.

HIRE PURCHASE AGREEMENT.

———*Failure to keep terms—Owner if can recover full amount from hirer and guarantor—Vendee from hirer, title.*

In a contract of hiring and letting of a machine, the plff. is entitled to recover from the hirer and the guarantor jointly and severally the full amount which the hirer had agreed to pay for the monthly hire of the machine. A purchaser from the hirer while he is still so, does not acquire a good title to the machine against the owner. (*Rattigan, C. J.*) SINGER MANUFACTURING COMPANY OF LAHORE *v.* NAIZ ALI. 144 P. W. R. 1918= 46 I. C. 888=54 P. R. 1919.

———*Property in goods when passes—Alienation by purchaser—Attachment—Stipulation for return of article—Penalty.*

Property in goods purchased under the hire purchase system does not pass to the vendee on the execution of the document. S. 78, para. 3 of the Contract Act does not apply to such a case. Where an article purchased under the hire purchase system was before the completion of payments and contrary to agreement pledged and the creditor attaches and sells the article and the property is purchased by a third person, the latter cannot claim the benefit of S. 178 of the Contract Act. Exception I to S. 108 does not extend to cases of court sales of properties attached in execution of money decrees. A clause in the hire purchase

HIRE PURCHASE AGREEMENT.

agreement providing that on breach of stipulations the article or its value should be returned, is penal and will be relieved against. (*Ayling and Tyabjee, JJ.*) BALASUNDARAM *v.* KRISHNA IYER.
28 I. C. 633=2 L. W. 339.

———*Nature of—Contract Act, S. 78.*

In a hire purchase agreement, the hirer has an option to return the article hired or to become its owner on full payment. It is not a sale within S. 78 of the Act, the hirer being merely a bailee. (*Hartnoll. Offg. C. J. and Twomey, J.*) MAUNG MYA GYI *v.* MG. PO SHWE. 7 Bur. L. T. 222=15 Cr. L. J. 425=24 I. C. 161=7 L. B. R 298.

———*Conditions not fulfilled—Whether can be treated as sale.*

A hire purchase agreement is not agreement of sale until the conditions thereof are fulfilled. (*Pratt, J. C. and Hayward, A. J. C.*) SINGER MANUFACTURING CO., LD *v.* GOBIND.
23 I. C. 801=7 S. L. R. 103.

HIRE PURCHASE CONTRACTS.

See (1) CONTRACT—HIRE PURCHASE.
(2) CONTRACT ACT, SS. 78, 178 AND 179.

HOLDER FOR VALUE.

See NEG. INST. ACT, SS. 9, 15, 17, ETC.

HOLDER IN DUE COURSE.

See NEG. INST. ACT.

HOLDING.

See (1) LANDLORD AND TENANT.
(2) LEASE.
(3) OCCUPANCY HOLDING.
(4) T. P. ACT, SS. 105—117.

HOLIDAYS.

See NEG. INST. ACT.

HOMICIDE.

See (1) HINDU LAW—SUCCESSION.
(2) MAHOMEDAN LAW—SUCCESSION.

HONORARY MUNSIFF'S ACT (U. P. ACT II of 1896.)

———S. 8 (2)—*C. P. Code* (1908), *S. 24—Transfer of Small Cause suit to another Court—Right of appeal.*

If a suit originally filed in the court of the Subordinate Judge, sitting as a Small Cause Court Judge, was transferred to the Court of an Honorary Munsiff, and subsequently to the Court of a Probationary Munsiff. *Held*, that the suit having in view of S. 8 (2) of the Honorary Munsiff's Act which excludes the operation of S. 24, C. P. C., once lost the character of a Small Cause suit, an appeal lay against the decree passed by the Probationary Munsiff. (*Lindsay, J. C.*) NAYZBIR BIBI *v.* DAYA SHANKER.
39 I. C. 340=4 O. L. J. 71.

HOROSCOPE.

See (1) EVIDENCE.
(2) EVIDENCE ACT, S. 32.

HOTCH POT RULE.

See HINDU LAW—PARTITION.

HUSBAND AND WIFE.

HUNDI.

See also (1) NEG. INST. ACT, S. 5.
(2) PROMISSORY NOTE.

———*Insufficiently stamped—Falling back on original consideration.*

Where a *hundi* which is a renewal of a prior hundi is insufficiently stamped, the plaintiff can fall back on the prior hundi. (*Richards, C. J. and Bannerjee, J.*) JAGAN PRASAD *v.* INDER MALL.
36 All. 259=23 I. C. 589=12 A. L. J. 361.

———*Arrangements between drawer and acceptor.*

The right of the holder of a *hundi* to demand payment from the acceptor is not affected by any arrangement between the drawer and acceptor that the latter should honour the *hundi* and if the former kept him supplied with funds, unless he had knowledge of that arrangement. (*Lindsay, J.*) JIWAN LAL DEOSAY *v.* OUDH C. M. BANK, LTD., LUCKNOW.
34 I. C. 191=3 O. L. J. 132.

———*Signature of drawer — Whether should appear at a particular place.*

The name of the drawer of *hundi* need not be separately entered on a document at any specific place but it is sufficient if it is introduced in a document to show the person addressed, that it has been made by a third person who purports to be bound thereby. (*Mullick and Bucknill, JJ.*) SURAJ MULLA HAR PRASAD *v.* BANK OF BEHAR.
60 I. C. 746=3 U. P. L. R. (P.) 46.

HUNTER'S STATISTICAL ACCOUNT.

See EVIDENCE ACT, SS. 48 and 87.

HUSBAND AND WIFE.

See also DIVORCE ACT, RESTITUTION OF CONJUGAL RIGHTS.

———*Costs—Practice as to.*

The rule in divorce cases is that even though a wife's defence fails or her counter-charges break down or she has been proved guilty of adultery, the husband has to pay her costs. The policy of the matrimonial law in England and among Christians in India, has always demanded that the husband shall always be responsible for his wife's costs. Indeed the usual practice in every husband's petition is to require him to deposit a sum for the wife's costs before the petition is allowed to proceed. (*Walsh and Stuart, JJ.*) DWYR *v.* H. M. C. DWYR.
1922 All. 243.

———*Divorce—Adultery—Proof of—Corroboration—Necessity for.*

In a divorce case the uncorroborated testimony of a single witness is insufficient to prove a charge of adultery. If however there is evidence of a similar character in regard to other offences which can be treated as corroboration, then the testimony of a single witness as to adultery is sufficient to justify a decree for divorce. (*Mears, C. J. and Banerji, J.*) COLLARD *v.* MARIE AGNES COLLARD.
44 A. 854=20 A. L. J. 82=1922 All. 7.

HUSBAND AND WIFE.

———*Misappropriation by wife — Husband's liability.*

A husband cannot be made liable for acts of misappropriation of his wife which she commits during the course of her service simply because he has allowed her to take up service. (*Rafique, J.*) C. SIMPSON *v.* BACHMAN. 27 I C. 622= 13 A. L. J. 55.

———*Suit against, for ejectment.*

In a suit by a person against his wife for ejectment from his house the question of immorality or unchastity does not arise. 1 All. 77 Ref. (*Sunder Lal, J.*) GANPAT MALLAH *v.* SUNDRI. 25 I. C. 192=12 A. L. J. 1039.

———*Divorce — Delay — Suit — Unexplained— Suit to be dismissed.*

In a divorce case, if there is gross delay in instituting proceedings, the suit will have to be dismissed unless the delay is satisfactorily explained. (*Richards, C. J., Tudball and Chamier, JJ.*) H. W. G. *v.* MRS. H. W. G. 13 I. C. 617 (F. B.).

———*Divorce—Adultery—Proof.*

Per Macleod, C. J.:—The mere fact that two people of opposite sexes are together under the same roof is not sufficient proof of adultery from the reports of divorce cases, it has always been considered that there must be some evidence that they occupied the same room. (*Macleod, C. J., Marten and Crump, J.*) ALFRED WILKNSON *v.* WILKINSON. 47 Bom. 843=25 Bom. L. R. 945= 1923 Bom. 321 (F. B.).

———*Divorce—Costs—Deposit for petitioner wife's attorneys—If affected by result of suit.*

The petitioner wife is entitled under the Divorce Act (1869) to have the deposit made by the husband for the benefit of her attorney, so applied irrespective of the result of the petition provided the attorney is in no way to blame. (*Scott, C. J. and Chandavarkar, J.*) NUSSERWANJI PESTONJI WADIA *v.* ELEONORA WADIA. 38 Bom. 125=20 I. C. 492=15 Bom. L. R. 593.

———*Strangers—Unchastity.*

Where the husband and wife lived together without any open breach of martial relations up to the husband's death, outsiders would not be allowed to impute acts of unchastity to the wife during the period of her coverture. (*Beaman and Hayward, JJ.*) GANGADHAR *v.* YELLU VIRASWAMI SHRIVALA. 36 Bom. 138= 12 I. C. 714=13 Bom. L. R. 1038.

———*Divorce—Custody of children—Welfare of children on dissolution of marriage.*

On a decree for dissolution of marriage the court should be guided by considerations of the children's welfare in giving either parent, the custody of the children. (*Sanderson, C. J.*) CROX DE STE, B. A. *v.* CROIXE PHILLIPS, DE STE. 44 Cal. 35=24 C. L. J. 226=37 I. C. 216= 21 C. W. N. 711.

———*Divorce—Costs—Dissolution of marriage— Security for costs of wife—Succession Act (X of 1865), S. 4.*

Where the parties to a divorce proceeding are of Indian domicile and so subject to S. 4 of the Succession Act and the wife has no separate property, the court can order the husband to give security for his wife's costs. (*Chitty, J.*) BATEMAN *v.* BATEMAN. 26 I. C. 488=41 Cal. 963.

———*Adultery—Condonation — Subsequent conduct—Injury to wife's health—Revival.*

Where a wife condoned her husband's incestuous adultery with her sister, which resulted in silent indifference on his part and in consequence her health suffered. *Held*, that inasmuch as the husband's conduct amounted to cruelty the wife was entitled to a divorce. 1 Hag. Eccl. Rep. 733; *Bramwell* v. *Bramwell*, 3 Hag. Eccl. Rep. 618; *Brohe* v. *Broke*, 3 Sw. and Tr. 126; *Ridgway* v. *Ridgway*, 29 W. R. Eng. 612, Foll. (*Fletcher, J.*) THOMPSON FLORENCE AMBLIA *v.* THOMPSON GEORGES. 15 I. C. 886=39 Cal 395.

———*Divorce—Duty of court—Petition of wife— Admission by husband.*

In a divorce suit where there is no collusion, the court must act on the admissions made by parties especially when those admissions are corroborated by evidence. (*Woodroffe and Carnduff, JJ.*) ARNOLD *v.* ARNOLD. 13 I. C. 491=38 Cal. 907.

———*Divorce—Costs — Practice — Liability of husband—Rule as to—Exceptions—Appeal.*

A wife who is charged in a Divorce Court, is entitled to be provided with funds by her husband for purposes of her defence and the only exceptions are (1) where she has ample means of her own and (2) the solicitor who is employed is guilty of misconduct. But when a decree *nisi* is passed and she appeals but fails, the husband is entitled to his costs. (*Schwabe, C. J. and Ramesam, J.*) PRITCHARD *v.* PRITCHARD. 45 M. L. J. 327=18 L. W. 354=1924 M. 150.

———*Divorce—Practice — Evidence of adultery, etc.—Corroboration.*

In cases of divorce, the evidence of the husband or wife alone should never be accepted without some corroboration either by a witness or by strong surrounding circumstances, as otherwise collusion will become easy. (*Schwabe, C.J., Coutts Trotter and Ramesam, JJ.*) ARULANANDAN *v.* ARUL PAKKIAM. 44 M. L. J. 385=17 L. W. 235= 32 M. L. T. (H. C.) 245=1923 Mad. 375 (2).

———*Divorce— Adultery—Proof— Co-respondent.*

Where charges of adultery are made against a known person he must be made a co-respondent and proof of adultery by uncorroborated testimony of husband or wife is not sufficient. (*Schwabe, C. J., Coutts Trotter and Kumarasami Sastri, JJ.*) PENDURTI JOSEPH *v.* PENDURTI RAMAMMA. 16 L W. 689=(1922) M. W. N. 637= 31 M. L. T. 416=45 M. 982=43 M. L. J. 441= 1923 Mad. 9.

———*Divorce—Grounds for—Cruelty and adultery — Uncorroborated testimony of petitioner insufficient to prove charge.*

It is quite contrary to practice to act on the uncorroborated testimony of a petitioner either to establish adultery or to establish cruelty, on these grounds we cannot see

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our way to confirm the decree. (*Schwabe, C. J. Oldfield and Phillips, JJ.*) PAYNE *v.* PAYNE.
16 L. W. 16=42 M. L. J. 562=1922 M. 350.

———*Contract Act (IX of 1872), S. 227—Purchases by wife.*

The general principle that a wife is the agent of the husband in purchasing the household necessities and the husband is liable to pay for price thereof is subject to the condition that the goods so purchased are suitable to his degree and state that she is implicitly and expressly authorised to buy them and the supplier does not intentionally deceive or connive at deceiving the husband. (*Sundar Lal, A. J. C.*) RAMACHARAN *v.* VANHALTEREN.
10 I. C. 9.

———*Divorce— Cruelty— Adultery — Assault—Revival—Condonement— Judicial separation—Proof of adultery—Venereal disease.*

Mere adultery is not sufficient for a decree for dissolution of marriage, but it is sufficient for judicial separation. A single assault, on provocation, does not sufficiently prove legal cruelty. The offence of cruelty may revive after condonement on proof of adultery. Adultery is sufficiently proved if the husband had contracted some venereal disease and which he did not allege he had contracted from his wife. (*Hartnoll, O. C. J. and Twomey, J.*) MATILDA HINDLE *v.* RICHARD JAMES HINDLE.
24 I. C. 710=7 Bur. L. T. 294

———*Marriage—Co-habitation, if enough to constitute.*

Where a man and a woman, without actual marriage, co-habitated together and considered themselves as partners in life. *Held*, that the tie of marriage did not exist between them. (*Hartnoll, O. C. J. and Twomey, J.*) RATNA PILLAI *v.* N. P. FIRM.
7 Bur. L. T. 88=24 I. C. 60=7 L. B. R. 301.

———*Agency.*

The wife alone executed a mortgage deed to secure a debt due from both husband and wife and the husband ratified or acquiesced in the mortgage by his conduct, the wife must be deemed to have acted as her husband's agent. 8 Bom. L. R. 319, Foll. (*Hartnoll, Offg. C. J. and Ormond, J.*) MG. SIN *v.* MG. PO.
12 I. C. 28=4 Bur. L. T. 224.

———*Divorce—Cruelty, what is.*

The cruelty alleged in a suit for divorce was that the husband visited the petitioner, who was living apart from him, on several occasions drunk; he had abused her once in the public street and once about 4 years ago he took her by the throat, threw her down and caused bruises on her body by pushing her against a chair: *Held*, no legal cruelty has been proved. (*Fox, C. J. and Hartnoll, J.*) JOSEPHINE HENRIETTA ALEXANDER *v.* EDWARD PHILLIP ALEXANDER.
14 I. C. 784=4 Bur. L. T. 168.

———*Divorce — Connivance — Presumption — Volunti non fit injuria.*

Connivance amounts to a willing consent to conjugal offence or a culpable acquiescence in a course of conduct likely to lead to the offence being committed. It is covered by the principle *volunti non fit injuria*. The court will not on presumption impute connivance nor will it do so unless there is strong evidence to support it. (*Fox, C. J. and Hartnoll, J.*) BENNETT *v.* BENNETT.
11 I. C. 779=4 Bur. L. T. 161.

ILLEGALITY.

———*Contract Act, S. 186—Husband acting on behalf of wife.*

If a married couple live together and the husband acts alone in dealing with the joint property, he is said to act as the wife's agent in respect of her interest as well as his own. But the presumption is rebuttable. 3 L. B. R. 66, Rel. (*Parlett, J.*) MA LON MA *v.* MG SHWE BYE.
10 I. C. 919=4 Bur. L. T. 115.

HYDERABAD ASSIGNED DISTRICTS COURTS LAW of 1889.

———Ss. 57 (2) (d), 9 (1) (a)—*Guardian and Wards Act, 1 of 1890, Ss. 52 and 53—Majority Act, S. 3.*

An Assistant Commissioner invested with some of the powers of a District Court for the trial of suits above a certain valuation is not the District Court for any other purpose and therefore if acting as a District Court; he appoints a guardian, the order is *ultra vires*, and need not be set aside. (*Mitra, Offg. A. J. C.*) BAPU *v.* BHIVAJI.
26 I. C. 709=10 N. L. R. 161.

HYDERABAD ASSIGNED DISTRICTS LAND REVENUE CODE, 1896.

See also BERAR LAND REVENUE CODE.

———Ss 78 (4), 72 (2)—*Scope of.*

S. 78 (4) of the Code is general in its application to tenants and is not confined to cases falling under S. 72 (2) alone, (*Kotwal, A. J. C.*) DATTATRAYA *v.* RAJAY.
59 I. C. 711.

HYPOTHECATION.

See (1) CONTRACT ACT, Ss. 172—179.
(2) T. P. ACT, Ss. 58 AND 100.

IDDAT.

See MAHOMEDAN LAW—DIVORCE.

IDIOT.

See HINDU LAW—SUCCESSION.

IDOL.

See HINDU LAW—RELIGIOUS ENDOWMENT.

IGNORANCE of LAW.

See (1) LIMITATION ACT, S. 5.
(2) MAXIMS.

ILLATOM.

See HINDU LAW,—ADOPTION.

ILLEGAL CONSIDERATION.

See CONTRACT ACT, S. 23.

ILLEGAL CONTRACT.

See CONTRACT ACT, S. 23.

ILLEGALITY.

See C. P. CODE, S. 115.

ILLEGITIMACY.

See (1) EVIDENCE ACT, S. 112.
(2) HINDU LAW—(a) LEGITIMACY.
(b) SUCCESSION.
(3) LEGITIMACY.
(4) MAHOMEDAN LAW—LEGITIMACY.

IMAGE.

See HINDU LAW—RELIGIOUS ENDOWMENT.

IMMORAL CONTRACT.

See (1) CONTRACT ACT, S. 23.
(2) HINDU LAW—DEBT.

IMMORAL CUSTOMS.

See CUSTOM.

IMMORAL DEBT.

See HINDU LAW—(1) DEBT.
(2) JOINT FAMILY.

IMMOVEABLE PROPERTY.

See (1) GENERAL CLAUSES ACT, S. 3 (25).
(2) REGISTRATION ACT, S. 2 (6).
(3) T. P. ACT, S. 3.

IMPARTIBILITY.

See IMPARTIBLE ESTATE.

IMPARTIBLE ESTATE.

See HINDU LAW—IMPARTIBLE ESTATE.

IMPARTIBLE PROPERTY.

See (1) HINDU LAW—PARTITION.
(2) IMPARTIBLE ESTATE.

IMPLIED AUTHORITY.

See (1) CONTRACT ACT, CH. X.
(2) PRINCIPAL AND AGENT.

IMPLIED CONTRACT.

See CONTRACT ACT, SS. 9, 69 AND 70.

IMPLIED DEDICATION.

See (1) DEDICATION.
(2) HINDU LAW—RELIGIOUS ENDOWMENT.
(3) MAHOMEDAN LAW—WAQF.

IMPLIED WARRANTY.

See CONTRACT ACT, S. 113.

IMPROVEMENTS.

See T. P. ACT, SS. 51, 72, 76 AND 108.

INADEQUACY OF CONSIDERATION.

See CONTRACT ACT.

INAM.

See GRANT—INAM.

INCOME-TAX ACT (II of 1886).

———S. 3 (5)—*Liability to tax—Annuity received in British India but enjoyed in Mysore.*

A lady enjoying an annuity in Mysore State and receiving instalments through her agent while in British India, is liable to be taxed under S. 3 (5), Income-Tax Act, as receiving an income in British India. (*Spencer and Phillips JJ.*) NARASAMMAL *v.* SECRETARY OF STATE.
39 Mad. 885=31 I. C. 404=18 M. L. T. 524=
2 L. W. 1124=(1916) 1 M. W. N. 122.

INCOME-TAX ACT (II of 1886), S. 25.

———S. 3 (5)—*Income, meaning.*

Income signifies what comes in; the entire income of land is 'income' within S. 3 (5). (*Ross, J.*) SECRETARY OF STATE *v.* FORBES.
62 I. C. 394.

———S. 9—*Net profits—Interest on money invested in the venture.*

A capitalist is not entitled to interest on the money invested for arriving at the net profits of a venture since he must be deemed to have embarked upon the venture expecting a larger profit than by any other investment. (*Hartnoll, O. C. J. and Twomey, J.*) MATILDA BROWN *v.* FRANCIS. 14 I. C. 628=5 Bur. L. T. 15.

———S. 11, Sch. II, Part II—*Liability to tax—Preference—Ordinary shareholders—Shareholders.*

As between preference and ordinary shareholders, the former are not entitled to have their preference dividends paid free of income tax, in the absence of express words to that effect in the contract regulating the rights of the parties. (*Marten, J.*) PURSHOTAMDAS HARKISONDAS *v.* THE C. I. SPINNING AND WEAVING AND MANUFACTURING COMPANY, LIMITED. 42 Bom. 579=41 I. C. 968=
19 Bom. L. R. 665.

———S. 14—*Fresh assessment in the same year.*

The Collector has power under S. 14 of the Income-Tax Act (1886) to proceed to make a fresh assessment for income-tax if he finds the first assessment made by him is low. (*Macleod, C. J. and Heaton, J.*) REVANSIDDAPPA *v.* THE SECRETARY OF STATE FOR INDIA. 44 Bom. 234=
55 I. C. 334=22 Bom. L. R. 38.

———Ss. 14, 15—*Suit for declaration against Collector—When maintainable.*

In order to succeed in a suit against the Collector for a declaration that he had acted without jurisdiction in realising sums from the plff. it must be shown that he paid the sum under coercion. Income accruing to an executor under a will is liable to be taxed and the Collector acts within the limits of his jurisdiction in determining such person to be chargeable. (*Jenkins, C. J. and N. R. Chatterjee, J.*) FORBES, A. D. *v.* SECRETARY OF STATE. 42 Cal. 151=26 I. C. 893=
19 C. W. N. 138.

———S. 25—*Prosecution—Petition, false statement in—No verification verified as plaint—Statute, interpretation of—Penal Code, S. 193—False statement.*

The Collector and not the District Magistrate can direct proceedings to be taken for an offence under the Income-tax Act. Where a person was charged with making false statements in his petition of objection to the assessment of Income-tax and the petition was not signed or verified as required by S. 25 of the Income-Tax Act, and the order to prosecute him did not disclose what particular statement was false and fell within S. 193 of the Penal Code, *Held*, that the conviction was bad (*Knox, J.*) JAGDEO SAHU *v.* EMPEROR.
38 I. C. 993=18 Cr. L. J. 433=15 A. L. J. 169.

INCOME-TAX ACT (II of 1886), S. 31.

———S. 31 (3) as amended by Act V of 1916—*Effect of amendment—Re-assessment after composition—Legality of "As regards any tax not already due thereunder," meaning of.*

Under Act V of 1916, a re-assessment of income may be made. The effect of the addition of S. 21 sub-section (3) is that a subsisting agreement for composition is put an end to on that date and any future agreement is put an end to when any further change in the rate of tax is made. The agreement still subsists as to sums which have become payable but have not been actually paid at the date of the change of rate. The words "as regards any tax already due thereunder" limit the operation of the section to sums which have not become actually payable. (*Bakewell, J.*) ABDUL SUKUR SAHIB *v.* SECRETARY OF STATE FOR INDIA. 7 L. W. 326 = 23 M. L. T. 159 = 46 I. C. 235 = 34 M. L. J. 210.

———Ss. 34 (b) and 46—*Notice—Service of—Letter sent by unregistered post—Conviction bad.*

A conviction under S. 34 (b) of the Indian Income-Tax Act could not be maintained if there is no formal service of notice as required by S. 46, the letter having been sent by ordinary post unregistered. (*Knox, J.*) EMPEROR *v.* RAM CHARAN. 17 A. L. J. 146 = 49 I. C. 781 = 20 Cr. L. J. 221 = 1 U. P. L. R. (H. C.) 88.

———Ss. 35 and 36—*Prosecution — Who should direct.*

No one can be prosecuted under S. 25 of the Act except at the instance of the Collector under S. 36, (*Ryves, J.*) BANKAT LAL *v.* EMPEROR. 23 I. C. 504 = 15 Cr. L. J. 296 = 12 A. L. J. 258.

———S. 39—*Executor—If can sue for declaration of non-liability to pay.*

A suit by an executor of a deceased for a declaration that he is not liable to pay income-tax is barred by S. 39. (*Jenkins, C.J. and Chatterjee J.*) FORBES, A. D. *v.* SECRETARY OF STATE. 42 Cal. 151 = 26 I. C. 893 = 19 C. W. N. 138.

———S. 39—*Assessment—Civil Court has no jurisdiction.*

In assessing income-tax, the Collector has to determine, what is the income and what is the outgoing which ought to be legitimately deducted. A mistake by the Collector in his decision cannot be rectified by a Civil Court in a suit brought before it for the purpose. When a statute confers exclusive powers over a subject-matter on an authority, the Civil Court cannot interfere; but it will interfere if the authority purports to exercise those powers on what is not the subject-matter. (*Ross, J.*) SECY. OF STATE *v.* FORBES. 62 I. C. 394.

———Ss. 46 and 34 (b)—*Delivery by unregistered post.*

Delivery by unregistered post does not amount to the service required by Section 46 of the Income-Tax Act. Therefore a conviction under S. 34 (b) based on such a notice is liable to be set aside. (*Knox, J.*) EMPEROR *v.* RAMCHARAN. 17 A. L. J. 146 = 20 Cr. L. J. 221 = 49 I. C. 781 (1) = 1 U. P. L. R. 88 (H. C.).

INCOME-TAX ACT (VII of 1918), S. 2.

INCOME-TAX ACT (VII of 1918).

———*Interpretation—English decisions.*

English decisions are not decisions of "foreign courts" and the decisions of English Courts in the English Income-Tax Act are the best guides to the interpretation of the Indian Act. (*Wallis, C.J. and Oldfield, J.*) THE CHIEF COMMISSIONER OF INCOME-TAX, MADRAS *v.* THE NORTH ANANTAPUR GOLD MINES, LTD. 44 Mad. 718 = 41 M. L. J. 177 = (1921) M. W. N. 502 = 64 I. C. 682 = 41 L. W. 108.

———S. 2—*Income—Income of Mutual Benefit Societies.*

Interest paid by share-holders of a Mutual Benefit Fund on loans advanced by them or on subscriptions overdue is not liable to income-tax as Income of the fund. Income, to be taxable, must come in from outside and not from within. (*Ayling, Coutts-Trotter and Ramesam, JJ.*) THE SECRETARY, BOARD OF REVENUE, INCOME-TAX, MADRAS *v.* THE MYLAPORE HINDU PERMANENT FUND, MYLAPORE. (1923) M. W. N. 409 = 1923 Mad. 684.

———S. 2—*Forest income is agricultural income.*

Semble.—Forest income is "agricultural income" within the meaning of S. 2 of the Income-Tax Act. (*Ayling, Coutts Trotter and Ramesam, JJ.*) SECRETARY TO THE CHIEF COMMISSIONER OF INCOME-TAX *v.* ZEMINDAR OF SINGAMPATTI. 45 Mad. 518 = (1922) M. W. N. 353 = 31 M. L. T. 21 (H. C.) = 15 L. W. 496 = 1922 Mad. 325.

———S. 2 (1)—"*Uttarayan*"—*Whether assessable—'Selami' or premium—When exempt from assessment.*

"*Uttarayan*", being a voluntary payment made by tenants at a particular season of the year for a particular purpose, the income derived therefrom is not exempt from assessment to income-tax. "Selami" or premium when paid for recognition of a transfer of a holding from one tenant to another is not agricultural income and is not exempt from assessment. (*Mookerjee, A. C. J., Fletcher and Walmsley, JJ.*) BIRENDRA KISHORE *v.* SECRETARY OF STATE. 25 C. W. N. 80 = 61 I. C. 112 = 32 C. L. J. 433.

———Ss. 2 (1) (b), 4 and 5—*Sugar factory, Income of—Agricultural income.*

A sugar manufacturer is liable to pay income-tax in respect of the portion of his profits derived from the sale of sugar manufactured from sugar-cane grown on his own land and such income is not "agricultural income." In so far as the assessees carry on the business of sugar manufacturers, the processes used by them for the purpose are not those ordinarily employed by cultivators for the purpose of rendering the produce fit to be taken to market, within S. 2 (1) (b) of the Act. *Per Atkinson J.*—Sec. 4 read with S. 2 of the Income-Tax Act, 1918, is a section designed to protect the producer by giving him exemption from liability from income-tax as a *bona fide* agriculturist carrying on the business of a farmer in the ordinary course of good husbandry. (*Miller, C. J., Atkinson and Adami, JJ.*) THE BIKANPUR SUGAR CONCERN, *In the matter of.* 53 I. C. 801 = 1919 Pat. 377 (F. B.).

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———S. 2 (12)—*Joint Hindu family—Members of a joint Hindu family registered as a firm under S 4 (12) of the Income-Tax Act VII of 1918—In what cases assessable as an undivided family to supertax on the income of the firm.*

The registration of the brothers, the members of a joint family as from defined under S. 2 (12) of Act VII of 1918 precludes the assessment of the family as an undivided family to supertax on the income derived from the business of that firm, unless the firm so registered has been shown to carry on its business on behalf of and for the benefit of the joint family. Mere constitution of the partnership between some members of the family will not preclude the assessment in cases where the partnership is carried on behalf of and for the benefit of the joint family. (*Ayling, Coutts-Trotter and Ramesam, JJ.*) SECRETARY TO THE CHIEF COMMISSIONER OF THE INCOME-TAX, MADRAS *v.* DURAISWAMI AIYANGAR. 45 M. L. J. 150 = 18 L. W. 96 = (1923) M. W. N. 413 = 46 Mad. 673 = 1923 Mad. 682.

———Ss. 3, 5 and 8—*Club is liable to assessment—Subscriptions, are not 'income.'*

A club is liable under S. 8 of the Act to pay income-tax in respect of its house property. Subscriptions received from the members are not 'income' within Ss. 3 and 5 of the Act and is therefore not liable to income-tax under the Act. (*Martineau, J.*) THE UNITED SERVICE CLUB, SIMLA *v.* EMPEROR. 61 I. C. 886 = 2 Lah. 109.

———Ss. 3 and 10—*Income—Interest not realised is not taxable.*

Where compound interest is payable by a debtor to his creditor with yearly rests and the creditor adds to the principal amount, the interest which has accrued due at the end of the year, but does not receive payment either in cash or by counter-credit in the debtor's accounts, such interest is not taxable income within the meaning of S. 3 of the Income-Tax Act. (*Ayling, Krishnan and Ramesam, JJ.*) BOARD OF REVENUE, MADRAS *v.* PYDAH VENCATACHALAPATHY GARU. 16 L. W. 174 = (1922) M. W. N. 480 = 31 M. L. T. 255 (H. C.) = 1922 Mad. 426.

———Ss. 3 and 9—*Business outside British India—Profits not remitted to British India—Tax.*

A resident of British India carried on money-lending business by agents in various places beyond British India. The income of the business was not received in British India and it was found that the agents were appointed for fixed periods and used their own discretion in lending money to customers and the only part taken by the proprietor in connection with the business was to acquaint himself with the state of the business abroad and occasionally to issue general instructions. *Held* on these facts that the business was not carried on in British India within S. 9. The income of the business did not accrue or arise in British India within S. 3 (1) and was not taxable. (*Abdur Rahim, O. C. J., Oldfiled and Seshagiri Aiyar, JJ.*) THE SECRETARY TO THE COMMISSIONER *v.* RAMANATHAN CHETTY. 43 Mad. 75 = 37 M. L. J. 663 = 26 M. L. T. 447 = 10 L. W. 570 = 53 I. C. 976 = (1919) M. W. N. 826 (F. B.)

INCOME-TAX ACT (VII of 1918), S. 3.

———S. 3 (1)—*Company—Profits — Place of accrual.*

The profits arising out of the mangacturies of a company carrying on its business and distributing a large part of the manufacture outside British India cannot be said to accrue or be received in British India simply because the head office in British India and the Directors control the business of British India. (*Macleod, C. J. and Shah, J.*) AURANGABAD MILLS, LTD, *In re.* 45 B. 1286 = 64 I. C. 9 = 23 Bom. L. R. 570.

———S. 3 (1) and (2)—*Tea, preparation and manufacture of, profits liable to assessment.*

In the process of preparing tea for the market, the part when the tea is planted and plucked is agriculture, and the part when the leaf is dried, rolled and stored, is manufacture. For assessing income-tax, the profits from the agricultural process are exempt and only that from the manufacture is liable to assessment. (*Mookerjee, A. C. J., Fletcher and Chaudhuri, JJ.*) KILLING VALLEY TEA COMPANY *v.* SECRETARY OF STATE. 48 Cal. 161 = 61 I. C. 107 = 32 C. L. J. 421.

———S. 3 (1)—*Income received in British India—What constitutes—Liability to tax.*

Where the assessee was a contractor who did extensive work for the Government in British Baluchistan and received large profits there which was exempted from the operation of the Indian Income-Tax Act, 1918. *Held* the money was received in Baluchistan and by whatever process that may have been transmitted into the Punjab, it cannot be said to have been received a second time in the Punjab, and therefore it is exempt from income-tax. 43 M. 75 Dist. (*Shadi Lal, C. J., Scott-Smith, Broadway, Abdul Raoof and Martineau, JJ.*) SUNDAR DAS *v.* COLLECTOR OF GUJRAT. 3 Lah. 349 = 1923 Lah. 14 (F. B.).

———S. 3 (1)—*Profits earned outside British India—Liability to assessment—Same sum of money cannot be received* qua *income twice over once outside British India and once inside it.*

A company carried on a factory at Raichur in the territory of the Nizam of Hyderabad. At that factory material was pressed. Against persons who brought the material to the factory a charge was made, and the charge was received wholly in Hyderabad. The company's head office was in Bellary. There were Directors there and they controlled the business carried on at Raichur by directing its policy, fixing the rates to be charged for the work done there, examining its accounts and issuing dividend warrants in respect of the profits earned. The only other thing done in British India was the receipt of some money for the purpose of the office expenditure at Bellary, and possibly, the receipt of some money which was, occasionally used for the payment of dividend warrant at Bellary, though by the terms of the dividend warrants, they were payable only at the office of the treasury at Raichur. *Held*, that the Company could not be assessed to income-tax under the Income Tax Act VII of 1918 on the whole of its profits for the year. There was no income which accrued, or arose or was received in British India or which could be deemed to have

accrued or arisen or to have been received in British India within the meaning of S. 3 (1) of the Act.

The Chief Justice:—*Semble*:—Even the small amounts received by the Company as stated above in Bellary are not themselves liable to taxation.

Per Coutts-Trotter, J.:—The same sum of money cannot be received *qua* income twice over once outside British India and once inside it. (*Schwabe, C. J., Oldfield and Coutts-Trotter, JJ.*) THE SECRETARY, BOARD OF REVENUE (INCOME-TAX), MADRAS *v.* RIPON PRESS AND SUGAR MILLS COMPANY, LTD.
46 Mad. 706=44 M. L. J. 523=
17 L. W. 584=(1923) M. W. N. 321=
32 M. L. T. 306 (H. C.)=1923 Mad. 574.

———Ss. 3 (1), 5, 9 and 51—*Income—Interest which became due but not actually realised in cash or by adjustment—Not liable to tax.*

Money which became due to a money-lending firm in the course of its business by way of interest in the year of account is not income on which the tax is to be assessed and ought not to be treated as part of the assessable income for that year of account, if it was not recovered or realised by the firm in cash or by adjustment of accounts. (*Wallis. C. J., Ayling, Sadasiva Aiyar, Napier and Krishnan, JJ.*) SECRETARY TO BOARD OF REV. *v.* ARUNACHELLAM.
44 M. 65=
59 I. C. 482=39 M. L. J. 649=
29 M. L. T. 16=(1920) M. W. N. 789=
13 L. W. 336 (F. B.).

———S. 3 (2) viii—*Profits made by money-lender out of exchange fluctuations—If assessable.*

A money-lender in Madras by sending money to Penang to purchase dollars and reconverting them into rupees whenever exchange fluctuated favourably to him earned large profits. *Held*, the receipt were not of a casual and non-recurring nature and as they arose during the course of business as banker and money-lender they were liable to tax. (*Schwabe, C. J. and Coutts-Trotter J.*) THE SECRETARY, BOARD OF REVENUE *v.* ARUNACHALAM CHETTY.
45 M. L. J. 707=
18 L. W. 776=33 M. L. T. 119 (H. C.)=
1924 M. 208.

———S. 3 (3)—*Permanently settled estate—Exemption from further tax—Forest and fishery income—Effect of.*

The peishcush of a permanently settled estate under Madras Regn. XXV of 1802 must be deemed to have been fixed in commutation not only of the rentals of cultivated lands but also of all income which might be derived from forest or fisheries; and the sanad issued to the zemindar as well as the regulation alike make it clear that these incomes in the hands of the zemindar are exempted from further taxation by the Government. This exemption applies of taxes which might be imposed thereafter as well as to taxes then existing. Consequently income derived from forests and fisheries in a permanently settled estate are exempted from liability to income-tax. (*Ayling, Coutts Trotter and Ramesam, JJ.*) SECRETARY TO

THE CHIEF COMMISSIONER OF INCOME-TAX, MADRAS *v.* ZEMINDAR OF SINGAMPATTI.
15 L. W. 496=45 Mad. 518=
(1922) M. W. N. 353=31 M. L. T. 21 (H. C.)=
1922 Mad. 325.

———Ss. 5 (iv) and 11—"*Income*"—*Meaning—Income derived from other sources.*

The income of the royalty of a local mine received by its owner, is not an income from business but it falls under S. 5 (iv) as one derived from other sources. In such cases, no deduction can be made in respect of the amount paid as cess. The term 'income' defined. (*Miller, C. J., Mullick and Bucknill, JJ.*) JYOTI PRASAD SINGH DEO, *In the matter of.*
6 P. L. J. 62=
2 P. L. T. 188=60 I. C. 357=1921 Pat. 81.

———Ss. 8, 5 and 33—*French Resident—Profit made through branch or agent in British India—Not taxable.*

The profits made by Resident in France having a branch or agent in British India, and which are received and retained in France are not liable to income-tax in British India. (*Schwabe, C. J. and Wallace, J.*) THE SECRETARY, BOARD OF REVENUE, MADRAS *v.* THE MADRAS EXPORT COMPANY.
44 M. L. J. 290=46 Mad. 360=
32 M. L. T. (H. C.) 37=17 L. W. 161=
1923 Mad. 422.

———S. 8—*House property does not include business premises.*

Business premises such as shops, offices, godowns, etc., are not included in the terms "house property" as used in S. 8 of the Income-Tax Act, 1918, before its amendment in 1920. (*Robinson, C. J. and Maung Kin, J.*) MESSRS. ROWE & CO. *v.* GOVERNMENT.
11 L. B. R. 781=
67 I. C. 781=1 Bur. L. J. 46.

———S. 9—*Profits—Computation of—Depreciation in the value of securities held by a bank.*

A banking concern having been assessed for income-tax on profits amounting to Rs. 12,54,130 if claimed to deduct from the taxable profits a sum of Rs. 2,98,000 being the amount of depreciation on war bonds and securities belonging to the Bank, arrived at by comparing the market rates with valuations in the books of the bank. *Held*, that the deduction claimed for could not be allowed under S. 9 of the Income-Tax Act, 1918. (*Macleod, C. J. and Shah, J.*) THE TATA INDUSTRIAL BANK, LTD. *In re.*
46 Bom. 567=
24 Bom. L. R. 118=1922 Bom. 75.

———S. 9—*Firm carrying on business in partnership with other firms—Losses if a deduction—Expenses on accountants and lawyers can be deducted.*

Where a firm carrying on business in piece goods is also a major partner in another firm carrying on the same business the other partner of which was found to be only a partner with a small share as to encourage him to take a real interest in the management the share of the losses in the second concern can be taken out for purposes of assessment from the profits of the first firm. Moneys spent in engaging accountants and lawyers for representing their case before the income-tax authorities are not spent for earning

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profits and do not form a deduction. (*Schwabe, C. J. and Coutts-Trotter, J.*) THE SECRETARY, BOARD OF REVENUE *v.* MUNISAMI CHETTY & SON.
45 M. L. J. 711=18 L. W. 792=
33 M. L. T. 122 (H. C.)=1924 M. 205.

———S. 9—*Ownership of railway—Burma Railways—Secretary of State—Relationship with.*

The Burma Railways Co. are the owners for the Railway system and all its premises for the purpose of S. 9 (2) of the Income-Tax Act but they are owners not by reason of their being partners with the Secretary of State for India. (*Robinson, C. J. and Maung Kin, J.*) THE BURMA RAILWAYS COMPANY *v.* THE SEGRETARY OF STATE.
64 I. C. 801=11 L. B. R. 33.

———S. 9 (2)—*Exemption from assessment—Allowance.*

The Act exempts from the assessment the allowance made to the assessee under S. 9 (2) of the Act on account of the annual value of business premises owned and occupied by him. (*Gokul Prasad, J.*) JOHN & Co., *In the matter of.*
43 All. 139=18 A. L. J. 1017=
58 I. C. 836=2 U. P. L. R. (A.) 394 (F. B.)

———S. 9 (2) (iii)—*Business profits—Company managing railway on benalf of Secretary of State—Computation of profits—Deduction of guaranteed interest—Interest on borrowed capital.*

The Bengal Nagpur Railway Company was sought to be assessed to income-tax on a sum of Rs. 1,72,60,585 representing the earnings of the railway allocated for payment of the company's share of surplus profits under the terms of agreement with the Secretery of State namely Rs. 14,63,387 and Rs. 1,57,98,766 allocated in payment of (*a*) a sum of Rs. 1,07,59,381 being the interest debitable to the undertaking of the Secretary of State's open live capital. This sum is the interest due to the Secretary of State on 15½ million pounds capital found by him. (*b*) A sum of Rs. 13,07,440 being the payment to the Secretary of State in rupee currency of the amount of the guaranteed interest payable by him on the share of the capital of the company. This interest is paid on 3 million pounds share capital found by the Bengal-Nagpur Railway and made over to the Secretary of State to be held by the latter absolutely as his property and repayable only in the event mentioned in the agreement between the Secy. of State and the Bengal-Nagpur Railway. (*c*) A sum of Rs. 37,31,945 payable on account of interest on borrowed capital raised by issue of debenture stock and debentures. *Held* (1) that the liability of the Bengal-Nagpur Railway Company to tax must be determined with reference to the special agreement with the Secretary of State; (2) that the company was liable to pay tax on what they actually got; (3) and that the sums (*a*) and (*c*) were to be excluded in computing profits, sum (*b*) represented interest which the company got for their three million capital and which had to be deducted before surplus profits can be ascertained. This was deducted in order that the Secretary of State might meet his obligations to the company in respect of the three million pounds they had made over to him. (*Woodroffe, Greaves and Ghose, JJ.*) THE BENGAL NAGPUR RAILWAY CO., LTD *v.* THE SECRETARY OF STATE FOR INDIA.
49 Cal. 815=27 C. W. N. 34=
1922 Cal. 503.

INCOME-TAX ACT (VII of 1918), S. 31.

———S. 9 (2) (x)—*Deductions—Company raising fresh capital—Commission paid to underwriters.*

The Commission paid by a company to underwriters for raising fresh capital is not an expenditure solely incurred with the objects of earning profits of the company's business and therefore is not within the scope of Sec. 9 (2) (X) of the Income-tax Act. (*Macleod, C. J. and Shah, J.*) TATA IRON & STEEL COY., *In re* 45 B. 1306=
64 I. C. 12=23 Bom. L. R. 576.

———S. 12 (i)—*Firm—Husband and wife—Husband's option to take in fresh partner or determine the wife's share—Partnership.*

Where a husband and wife formed a partnership and the husband took some extra rights in himself of taking new partners and each of them was entitled to take in new partners after the death of the other, *held* that a partnership was legally formed. (*Shah A. C. J. and Crump, J.*) AMBALAL SARABHAI, *In re.* 25 Bom. L. R. 1225=
1924 Bom. 182.

———S. 19—*Adjustments — Registered firm—Registration after the year of account—Effect of.*

An adjustment can be made during a financial year in which the Collector's certificate of Registration under S. 12 (*a*) is in force in respect of income of a firm for the previous year in which the firm was not registered. (*Schwabe, C. J., Oldfield and Coutts Trotter, JJ.*) SECRETARY TO THE BOARD OF REVENUE *v.* MESSRS. MAHOMED SHERIFF HUSSAIN MEAN SAHIB & CO, MADRAS.
45 M. 977=16 L. W. 333=33 M. L. J. 434=
(1922) M. W. N. 583=1923 Mad. 34.

———Ss. 24, 36, 39 (d) and 40—*Penal assessment, if bars subsequent prosecution under S. 39 (d).*

The prosecution of an assessee under S. 39 (*d*) of the Act for failure to produce his account books in obedience to a notice is not barred by reason of a prior order for penal assessment against him or even though the Collector had treated the non-production of account books by the assessee as evidence of the falsity of his return. The proviso to S. 24 is intended to bar a prosecution under S. 40 of the Act not one under S. 39. The only ground on which the Collector can direct a penal assessment under S. 24 of the Act is that the assessee has made a false return. The Collector cannot do so on the ground of non-production of account books by the assessee. (*Ayling and Coutts-Trotter, JJ.*) EMPEROR *v.* HUSSAIN ALLY & Co. 43 Mad. 498=
55 I. C. 1003=38 M. L. J. 333=
11 L. W. 425=21 Cr. L. J. 395=
(1920) M. W. N. 250.

———Ss. 31, 33 and 34 — *Scope of — Agent—Assessment of, on behalf of non-resident principal—Receipt of income.*

Held by the majority (*Ghose J.*, contra) that S. 34 of the Income-tax Act merely defines who may be included as an agent under S. 31 and the agent under the section must be in receipt of the income under the latter section. Where an Indian

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Company distributes its Indian profits to shareholders outside British India, the Company cannot be deemed to be the agent of the foreign shareholders and assessed as such to supertax in British India. (*Woodroffe, Greaves and Ghose, JJ.*) THE IMPERIAL TOBACCO COMPANY OF INDIA *v.* THE SECRETARY OF STATE FOR INDIA.
49 Cal. 721=26 C. W. N. 745=1922 Cal. 454.

———Ss. 33, 43 (2) (c)—*Company incorporated in England—Branches in India and elsewhere—Taxable profits in British India.*

A company incorporated in England and having branches in India and elsewhere, is not entitled under S. 33 of the Act, and the rules thereunder, to deduct from the assessable 'profits," excess profits duty and income tax payable in England and stations out side British India. (*Wallis,C.J, Oldfield and Kumarasami Sastri, JJ.*) COMMISSIONER OF INCOME-TAX *v.* EASTERN EXTENSION TELEGRAPH COMPANY. 44 Mad. 489= 13 L.W. 468=(1921) M. W. N. 296=63 I. C. 485= 40 M. L. J. 560 (F. B.).

———S. 33 (1)—*Non-resident foreigner having business connection in British India is liable to income-tax in British India.*

A person who is not a resident in British India, but to whom income arises or accrues through business conection in British India is assessable to income-tax under Ss. 3 and 33 (1) of the Act whether he is a British subject or a foreigner. The provision in the latter section that such income shall be taxable in the name of the agent of any such person does not mean that it is not chargeable unless assessed in the name of an agent. (*Wallis, C. J., Ayling and Krishnan, JJ.*) CHIEF COMMISSIONER OF INCOME-TAX *v.* BHANJEE RAMJEE AND CO.
44 Mad. 773= (1921) M. W. N. 531=41 M. L. J. 191= 64 I. C. 239=14 L. W. 75.

———S. 46—*Notice under—Method of service.*

S. 46 of the Income-Tax Act does not require that service of a notice must be by its being placed in the hands of person named therein by the officer of the court himself and does not exclude other forms of service permitted by Order 5 of the C. P. Code. (*Hallifax, A. J. C.*) THE LOCAL GOVERNMENT *v.* ISMAIL BHAI. 23 Cr. L J. 591 = 1922. N. 187.

———S. 46, Cls. 3 and 4—*Arrears of Income-tax —Mode of realisation—Distress warrant.*

Arrears of Income-tax can be realised like an arrear of land revenue under S. 46 of Income-tax Act and if orders are passed by the Commissioner, like an arrear of Municipal tax of local rate. In the absence of the Commissioner's order under S. 46 Cl. 3 & 4 of the Income-tax Act the Collector has no power to issue a distress warrant for realisation of arrears of Income-tax. Moreover the Collector has no authority to issue such a distress warrant to an officer of the police nor is a police officer executing such a warrant acting in execution of his duty as a police officer: consequently resistance to him does not constitute an offence under, S. 353 I. P. C. (*Ross, J.*) JAIRAM SAHU *v.* EMPEROR.
4 Pat. L. T. 171= 1923 Pat. 111=1 P. L. R. (Cr.) 68.= 24 Cr. L. J. 490=1923 P. 338

INCOME-TAX ACT (VII of 1918), S. 51.

———S. 51—*Appeal to Privy Council—General right discussed.*

No statute, Imperial or Indian, is to be found giving expressly, or by implication, a right of appeal either with or without the leave of the High Court to His Majesty in Council from a decision or order made, or judgment given under S. 51 of the Indian Income-Tax Act of 1918. Neither can any such statute be found giving a general right of appeal to His Majesty in Council from the Orders or judgments of any class of courts as the 3rd Section of the English Appellate Jurisdiction Act, 1876, gives a general right of appeal to the House of Lords from the judgments or orders of the courts therein mentioned. Clause 39 of the Letters Patent of the High Court of Bombay considered. The words 'original jurisdiction" are only used in contra-distinction to the words 'made on appeal" mentioned earlier in the clause. A decision under S. 51 of the Income Tax Act to be appealable must be either a final judgment or final decree or a final order. A final judgment as understood in English litigation is nothing more than that there should be a proper *litis contestatio* and a final adjudication between the parties to it on the merits. The fact that the functionary who states a special case for the opinion of the court is or is not bound to act upon it does not necessarily determine whether the order and decision of the court is or is not merely advisory. In order to determine whether an order made by a court on a case stated is final or merely advisory, it is necessary to examine closely the language of the enactment, whether statute rule or order, giving the power to state a case. When a case is stated for the "opinion" of the court, that word would serve *prima facie* to indicate that the order made by the court was only advisory. Where the case is referred for the "decision",or "determination" of a question, there is a *prima facie* difficulty in holding that the order embodying this determination or decision is advisory but the use of these words or one of them is not decisive. A decision, judgment or order made by the High Court under S. 51 of the Income-Tax Act is merely advisory and not in the proper and legal sense of the term final and the appeal is incompetent. (*Lord Atkinson.*) TATA IRON AND STEEL CO., LTD. *v.* THE CHIEF REVENUE AUTHORITY OF BOMBAY.
45 M. L. J. 295=25 Bom. L. R. 908= 21 A. L. J. 675=18 L. W. 372= (1923) M. W. N. 603=33 M. L. T. 301 (P. C.)= 47 Bom. 724=9 O & A. L. R. 783= L. R. 4 P. C. 170=50 I. A. 212= 1923 P. C. 148 (P.C.).

———S. 51 — *Chief Revenue Authority can be compelled to state a case.*

If an assessee applies for a case, the Revenue authority must state it, unless he can say that it is frivolous or unnecessary. He is not to wait for the court to order him to do it; it will be a misfeasance and a breach of the statutory duty if he does not do it. The word, "may" in the section does not mean "shall." Neither are the words "it shall be lawful" those of compulsion. Only the capacity or power is given to the authority. But when a capacity or power is given to public authority there may be circumstances which

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couple with the power a duty to exercise it. *Julius* v. *Bishop of Oxford*, 5 A. C. 214, 222, Foll. Always supposing that there is a serious point of law to be considered, there does lie a duty upon the Chief Revenue Authority to state a case for the opinion of the court; and if he does not appreciate that there is such a serious point, it is in the power of the court to control him and to order him to state a case. If there is a point of law it ought to be decided in a regular manner and upon proper materials. Ordering a case to be stated does not depend upon the question whether the Chief Revenue Authority had reasonable grounds for being satisfied that a reference was unnecessary. The question whether capital placed in a particular investment was capital employed in the business or not was not a pure question of fact, upon which the decision of the Income Tax Commissioners would be conclusive but was a question of law or of mixed law and fact, the decision of the Revenue Authority upon which would be open to review. An important question of law upon the construction of the statute is involved. This may be most tersely expressed by asking the question what are interest bearing securities which form part of the assets of the business and are therefore to be treated as part of the capital and one guide in arriving at this conclusion may well be the difference of language between the later Indian and the earlier English Act. (*Lord Phillimore.*) ALCOCK ASHDOWN & CO., LTD. *v.* THE CHIEF REVENUE AUTHORITY OF BOMBAY.

25 Bom. L. R. 920=33 M. L. T. 267=
45 M. L. J. 592=47 Bom. 742=
L. R. 4 P. C. 188=18 L. W. 918=
21 A. L. J. 689=(1923) M. W. N. 557=
50 I. A. 227=1923 P. C. 133 (P. C.).

———S. 51—*Decision of High Court on reference —Appeal lies.*

The decision of a High Court on a reference from the Chief Revenue Authority under S. 51 of the Income-tax Act, 1918, is a judgment within cl. 9 of the Letters Patent, Bombay, and an appeal lies to the Privy Council from the same. (*Macleod. C. J. and Shah, J.*) TATA IRON AND STEEL CO. *v.* CHIEF REVENUE AUTHORITY, BOMBAY.

64 I. C. 931=23 Bom. L. R. 1102.

———S. 51—*Reference when permissible.*

An application by assessee for reference must be made before the case is disposed of by the Chief Revenue authority. (*Macleod, C. J. and Shah, J.*) PANNALAL GANESHDAS, *In re.*

64 I. C. 610=
23 Bom. L. R. 1267.

———S. 51—*Chief Revenue Authority—Reference to High Court, if compulsory.*

Under S. 51 of the Act, it is not incumbent upon the Chief Revenue Authority to make a reference to the High Court, whenever an application for a reference is made. (*Macleod, C. J. and Fawcett, J.*) DORAISWAMI AIYAR & CO., *In the matter of.*

45 Bom. 1064=63 I. C. 775=
23 Bom. L. R. 609.

———S. 51—*Specific Relief Act, S. 45.*

Chief Revenue Authority is not bound, under S. 45, Specific Relief Act, to make reference to the High Court under S. 51 of the Income-tax Act.

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(*Macleod, C. J. and Fawcett, J.*) BOMBAY AND PERSIA STEAM NAVIGATION CO., *In the matter of.*

45 B. 881=60 I. C. 964=
23 B. L. R. 139.

———S. 51—*Appeal lies to Privy Council.*

Subject to the provisions of Ss. 109 & 110, Civil Procedure Code, there is a right of appeal to His Majesty in Council against the decision of the High Court, on a reference to it under S. 51 of the Indian Income-Tax Act. 40 Cal. 21, Dist. (*Schwabe, C. J. and Coutts-Trotter, J.*) THE SECRETARY, BOARD OF REVENUE *v.* MADRAS EXPORT COMPANY.

18 L. W. 392=1924 Mad. 63.
[This view is no longer law. See 1923 P. C. 148.]

———S. 51—*Reference under—Subsequent objection does not lie.*

Where in pursuance of an order under S. 45 of the Specific Relief Act by the High Court, the Board of Revenue, instead of appealing against the order, made a reference to the High Court under S. 51 of the Income-tax Act' it is not open to them afterwards to object to the reference on the ground that the order was without jurisdiction. (*Wallis, C. J., Ayling and Krishnan, JJ.*) DY. COMMR., INCOME-TAX, MADRAS *v.* HAJEE ABDULLA.

70 I. C. 30=
14 L. W. 413 (F.B.).

———S. 51—*High Court cannot compell reference by Revenue Board—Government of India Act, S. 106 (2)—Specific Relief Act, S. 45.*

S. 106 (2) of the Government of India Act and S. 52 of the Income-tax Act prohibits the High Court from entertaining any application under S. 45 of the Specific Relief Act for compelling the Revenue Board to refer the matter to the High Court under S. 51 of the Income-tax Act. Issuing an order under S. 45 of the Specific Relief Act is an exercise of original jurisdiction under S. 106 (2) of the Government of India Act. (*Wallis, C. J. and Oldfield, J.*) THE CHIEF COMMISSIONER OF INCOME-TAX *v.* THE NORTH ANANTAPUR GOLD MINES, LTD.

44 Mad. 718=41 M. L. J. 177=
(1921) M. W. N. 502=64 I. C. 682=14 L.W. 108.

———S. 51—*Reference—Right to begin.*

Where, on the motion of an assessee, the Board of Revenue made a reference to the High Court under S. 51 of the Income-Tax Act the assessee's pleader is entitled to be heard first. (*Abdur Rahim, O. C. J. Oldfield and Seshagiri Aiyar, JJ.*) SECRETARY TO THE COMMISSIONER *v.* RAMANATHAN CHETTI.

43 Mad. 75=
37 M. L. J. 663=(1919) M. W. N. 828=
10 L. W 570=53 I. C. 976=
26 M. L. T. 447 (F.B.).

———S. 51—*Question of fact—High Court cannot deal with.*

The question whether the purchase and sale of landed property is one of the objects with which a company was formed or whether the development of the property in order to earn a continuing profit year by year was its real object, is one of fact with which the High Court on a reference under S. 51 is incompetent to deal. (*Robinson, C. J., Maung Kin and Pratt, JJ.*) AHLONE LAND CO., LTD. *v.* GOVERNMENT.

1 Bur. L. J. 53=
11 L. B. R. 309=1922 L. B. 35 (F.B.),

INCOME-TAX ACT (VII of 1918), S. 52.

———S. 52— *Proceeding — Application under Specific Relief Act, S. 45 (b).*

An application under S. 45 of the Specific Relief Act against the Board is a proceeding within S. 52 of the Income-tax Act. 'Anything done' in S. 52 includes "anything omitted to be done." *(Wallis, C. J. and Oldfield, J.)* THE CHIEF COMMISSIONER OF INCOME-TAX, MADRAS *v.* THE NORTH ANANTAPUR GOLD MINES, LTD.

44 Mad. 718=41 M. L. J. 177=
(1921) M. W. N. 502=64 I. C. 682=14 L. W. 108.

INCOME-TAX ACT (XI of 1922).

———S. 2—*Registered firm—Assessment—Mode of —Registration in the year.*

Where the partners had lost their right to be dealt with as a "registered firm" for the financial year 1922-1923, for the simple reason that they had failed even to provide themselves with an instrument of partnership within the extended period allowed them for the presentation of their return of income, they could not be dealt with as such retrospectively the next year. The obvious intention of the rules, as shown by the wording of the prescribed form of certificate, is that such applications for registration should ordinarily be presented in the month of April, the first month of the financial year. Where the period for making a return of income has been extended, there can be no objection to a certificate being issued bearing the correct date of some other month. It will take effect from the date specified therein. When the assessment comes to be made, the officer charged with that duty will have to determine simply whether the firm with whose return or with whose accounts he is dealing, is or is not a "registered firm" within the meaning of the definition. Where the objectors had been plainly told that they would be dealt with for the year 1922-1923 as an "unregistered firm" their attempt to escape from this position by going to the Income-Tax Officer at the beginning of January, 1923 is wholly futile. *(Banerji and Piggott, JJ.)* LALLA MAL HARDEO DAS COTTON SPINNING MILLS, *In the matter of.*

21 A. L. J. 703=1924 A. 137=
L. R. 4 A. 451.

———Ss. 3 and 18—*Rate of Income-tax on salaries is on estimated income per year of payment.*

Income-tax leviable in advance under S. 18 by deduction at the time of payment in respect of income chargeable under "salaries" should be levied, in respect of any particular payment of salary at the rate applicable to the estimated income under "salaries" for the year in which payment is made. The provisions of S. 3 are subject to provisions of S. 18. *(Robinson, C. J. and May Oung, J.)* CHALMERS D. F. *v.* EMPEROR.

1 Rang. 335=1924 Rang. 30.

———S. 10 (2) (iii) — *Business profits — Deductions—Interest taken by partners.*

The objectors were being assessed to income-tax for the financial year 1922, 1923 on the basis of the profits disclosed by their accounts for the calendar year 1921. In those accounts a total sum of Rs. 42,882 was shown as interest paid on account of money advanced during the year by the partners in the firm for the purpose of carrying on business. The objectors claimed that this interest should be treated as an allowance admissible under S. 10 (2) (iii) of the Indian Income-Tax Act, and should therefore be deducted from the net profits of the year before these are assessed to Income-Tax. *Held* that such interest represented merely an assignment of a part of the net profits for the year in favour of partners who were regarded as persons having a right to such assignment by reason of special advances of capital made by them in the course of the year. The question whether there has been an advance of capital by particular partners, or *bona fide* borrowing of money by the firm in which the lender happens to be a partner must be treated as one of fact in each case. *(Banerji and Piggott, JJ.)* LALLA MAL HARDEO DAS COTTON SPINNING MILLS, *In the matter of.*

21 A. L. J. 703=
4 L. R. A. (Civ.) 451=46 All. 1=1924 All. 137.

INDEMNITY.

———S. 22 (2) — *Verified statement denying income—Onus on Income-Tax authorities to rebut.*

Where an assessee in a verified return under S. 22 (2) of the I. T. Act declared he had no income from a particular source, if the authorities disbelive it, the onus lies on them to prove there was income from that source and what it was. *(Sanderson, C. J. and Richardson, J.)* BISHNU PRIYA CHOWDHURANI, *In the matter of.*

50 Cal. 907=1924 Cal. 337.

INCONSISTENT CLAIMS.

See (1) CIVIL PRO. CODE, O. 6.
(2) PRACTICE.

INCORPORATED SOCIETY.

See (1) COMPANY.
(2) CORPORATION.

INCORPOREAL RIGHTS.

See (1) EASEMENTS.
(2) EASEMENTS ACT.

INDEMNITY.

See, also, CONTRACT ACT, SS. 124—133.

———*Breach—Cause of action — Covenant to discharge mortgage by vendee—Default—Damages—Liability.*

The plaintiff who owned a house and certain lands mortgaged it to the first defendant. Subsequently the plaintiff sold the lands to the 2nd defendant, the arrangement being that the 2nd defendant should pay the consideration money for the sale to the first defendant and thus discharge the mortgage. The plaintiff also executed a mortgage on the house to the 2nd defendant for the purpose of securing the addtional amount required to discharge the mortgage due to the first defendant. The 2nd defendant failed to discharge the mortgage with the result that the first defendant obtained a decree on the mortgage and brought the properties to sale. At this stage the 2nd defendant paid a portion of the mortgage decree and by an arrangement with the mortgagee got the lands alone released. The house was brought to sale and was purchased by the 2nd defendant himself in the name of another person who ejected the plaintiff therefrom. Plaintiff brought a suit for possession of the house and damages. *Held*, that the cause of action for the

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suit for damages arose on the date when he suffered a loss by being ejected from the house. Second defendant was in a fiduciary position of relationship to the plaintiff and having purchased the house as a result of his own breach of duty, was bound to convey the house to the plaintiff with mesne profits, subject however to the mortgage in his favour for Rs. 1,000, 29 M. L. J. 551; 44 Cal. 573, referred to. (*Schwabe, C. J. and Wallace, J.*) VENKATANARAYANIAH *v.* SUBRAMANI AIYAR. 17 L. W. 453 = 1923 Mad. 492.

INDEPENDENT ADVICE.

See CONTRACT ACT, S. 16.

INDIAN SOLDIERS LITIGATION ACT (IX of 1918).

———*Deliberate omission to implead as defendant, cannot defeat law.*

The fact, that a person has not been joined as a defendant deliberately, does not defeat the provisions of the Soldiers' Litigation Act. (*Kanhaiya Lal, J. C.*) HAUSLA BUKHSH SINGH *v.* RAJ BAKHSH SINGH. 4 U. P. L. R. (O. C.) 47.

———S. 5—*Decree-holder joining army after decree—Extension of time cannot be allowed.*

The court may under S. 5 of Act IX of 1918 postpone any proceedings which may be pending but it cannot interfere with the operation of any decree or alter the condition prescribed by it so as to permit a suspension of its operation or a postponement of the condition till the expiry of six months after the close of the war. Where a decree had been passed before a person joined the army the grant of a certificate, under S. 5 of Act, IX of 1918, does not extend the period allowed by the decree for payment of the money directed to be paid under it. (*Kanhaiya Lal, J. C.*) BADAL *v.* CHHATTAR SINGH. 25 O.C. 74 = 1922 Oudh 131.

———S. 10—*Compromise—Signed by some of the agents—Application to set aside—C. P. Code, O. 47, R. 1.*

An Indian soldier before going abroad to serve in the war executed a power of attorney to his four brothers. A partition suit filed against him was compromised by one of the brothers without the knowledge and consent of the others. On his return the soldier made an application to set aside the compromise decree. *Held*, that the High Court had power to do so under O. 47, R. 1, C. P. Code or S. 10 of Act IX of 1918. (*Chatterjee and Chotzner, JJ.*) S. M. HAIMABATI DEVI *v.* PRAN KRISHNA BANERJEE. 75 I. C. 262 = 27 C. W. N. 193.

———S. 11—*Applicability of.*

S. 11 of the Act IX of 1918 applies only where the plaintiff is an Indian Soldier and it does not become applicable by the mere fact that he was a soldier at the time when the cause of action arose. (*Martineau, J.*) MULA MAL *v.* PIARA SINGH. 1924 Lah. 395.

——S. 11—*Applies only where the plaintiff is an Indian Soldier at the time of action.*

S. 11 of Act IX of 1918 under which the period during which a plaintiff has been serving under war conditions is to be excluded, applies only where the plaintiff is an Indian Soldier at the time when the action was brought. The section has no application to the case of a plaintiff who was a soldier before the date of suit but who has ceased to be such on that date. (*Martineau J.*) BARKHURAR *v.* KARAM DIN. 1923 Lah. 465.

INDIAN TARIFF ACT (VIII of 1894) AS AMENDED BY ACT (IV of 1916).

——S. 11—*Applicability of—Only to soldier on active service.*

S. 11 of Act IX of 1918 does not apply to the case of a plaintiff who was formerly been a soldier but has ceased to be one at the time when he brings his suit. The time during which the plaintiff was serving under war conditions cannot be excluded. (*Martineau, J.*) MAHOMED DIN *v.* ILAM DIN. 5 Lah. L. J. 174 = 1923 Lah. 455.

——S. 11—*Applicability of—Service under war conditions.*

To attract the operation of S. 11 of Act IX of 1918 the plaintiff must show that he was serving abroad on war conditions before the expiry of the period of limitation. (*Broadway, J.*) FEROZ *v* GHULAM SARWAR. 67 I. C. 379.

INDIAN TARIFF ACT (VIII of 1894) AS AMENDED BY ACT (IV of 1916).

———S. 10—*Tariff duty—Sale of goods ex-godown—Reduction of tariff value by Government notification—Consequent reduction of duty—Whether buyer entitled to deduct from the contract price—Duty in S. 10 of the Tariff Act, meaning of—Payment under duress—Recovery of.*

The plaintiff entered into a contract in December 1922 for the purchase by him from the defendant of certain Java sugar to arrive by a named ship due about the end of the year at about Rs. 20 to cwt. "ex-godown." Duty was payable on sugar at 25 per cent. On the 'tariff value" which was fixed annually at the average of the market prices ruling during the previous 12 months ending with September, the practice being to bring the new tariff valuation into operation from the beginning of January. When the goods in the case arrived the tariff valuation was reduced and the amount of duty payable was consequently less. In a suit by the plaintiff to recover the excess, where he had paid the full contract amount in order to get the goods, *held*, that the plaintiff was entitled to succeed. The purchaser is entitled under the circumstances to deduct from the cost price so much as will be equivalent to the decrease of duty consequent on the reduction of tariff value under Section. 10 of the Tariff Act (VIII of 1894) as amended by Act. IV of 1916. The word 'duty' in Section. 10 refers to the amount payable and arrived at by taking into account the tariff value and the rate of duty. The excess payment made by the plaintiff as a condition of his getting the goods is a payment made under duress and not a voluntary payment and can therefore be regained. (*Schwabe, C. J. and Krishnan, J.*) HAJEE SHAKOOR GANI *v.* SABAPATHY PILLAI. 45 M. L. J. 749 = 18 L. W. 796 = 33 M. L. T. (H.C.) 152 = 1924 M. 236.

INDORSEE.

INDORSEE.

See NEG. INST. ACT.

INDORSEE FOR COLLECTION.

See NEG. INST. ACT.

INDORSEMENT.

See NEG. INST. ACT.

INDORSEMENT IN BLANK.

See NEG. INS, ACT, S. 16.

INFANT.

See (1) CONTRACT
(2) CONTRACT ACT.
(3) MINORITY.

INFLUENCE, UNDUE.

See CONTRACT ACT, S. 16.

INFRINGEMENT—of Copyright.

See COPYRIGHT ACT.

—Of Trade Mark.

See TRADE MARK.

INHERENT JURISDICTION.

See CIVL. PRO. CODE, SS. 151—153.

INHERENT POWER.

See C. P. CODE, SS. 151-153.

INHERITANCE.

See (1) BUDDHIST LAW, BURMESE, SUCCESSION.
(2) HINDU LAW, SUCCESSION.
(3) MAHOMEDAN LAW, SUCCESSION.
(4) SUCCESSION ACT.

INJUNCTION.

See, also (1) C. P. CODE, O. 39.
(2) SP. REL. ACT, SS. 52 TO 57.

———*Execution sale—No notice—Effect.*

In case of Execution Sale when a notice restraining the sale is not served to the decree-holder or the sale officer it has no effect and the sale is valid. (*Stuart, J.*) RAMJI DAS *v.* CHHAGAL LAL.
1922 All. 282.

———*Absence of reasonable grounds—Right of aggrieved party to sue for damages—Proof of malice.*

Malice can properly be inferred on proof that there were no sufficient and reasonable grounds for the application for the injunction and that the plaintiff has sustained some substantial injury. (*Abdul Raoof and Abdul Quadir, JJ.*) EANS *v.* ARTHUMINCK. 45 P. L. R. 1922=
1922 L. 303.

———*Principles.*

Injunction is granted when the plaintiff has a fair question to raise as to the extent of the right and defendant has infringed or threatened to infringe the right the owner can do what he likes with his property without interfering with the rights of worship of others. (*Miller and Ross, JJ.*) MAHARAJA BAHADUR SINGH *v.* MUKHUM CHAND.
4 P. L. T. 48=1923 P. 209.

———*Sale in contravention of—Not illegal.*

In contravention of the injunction by inferior court restraining decree-holder from execution of decree by sale of the property the execution sale held by superior court was held legal. (*Miller, and Mullick, JJ.*) MAHARAJA BAHADUR SINGH *v.* A. H. FORBES.
1922 Pat. 225=
3 P. L. T. 645=1 P. 662=1922 P. 382.

INSOLVENCY.

INJURY.

See TORT.

INSANITY.

See C. P. CODE, O. 32, R. 15.

INSOLVENCY.

See, also (1) INSOLVENCY ACT.
(2) PRES. TOWNS INS. ACT.
(3) PROV. INS. ACT.

———*Effect of adjudication on decree-holder's rights—Execution proceedings— Want of sufficient proof—Procedure.*

An adjudication of a judgment-debtor as an insolvent divests the rights of the decree-holder and remits him to the position of an ordinary creditor. In the court of first instance no plea as to insolvency of the judgment-debtor was made by the heirs of the judgment-debtor who applied to the High Court where some made both the High Court and in the petition for leave to appeal to Privy Council. No notice was given to the Insolvency Court or to the receiver. It was not known whether the adjudication was annulled. The Privy Council made a declaration while dismissing the appeal that if the insolvency had not been annulled or otherwise terminated on or before the date of order of the court of first instance, the order would owing to the absence of the receiver or other representative of the Insolvency Court, be inoperative except in so far as it decided against any asserted interest of the sons and heirs of insolvent, who were parties to the proceedings. (*Lord Phillimore.*) SHRIPAT SINGH DUGAR *v.* RAI HARIRAM GOENK.
31 M. L. T. (P. C.) 38=26 C. W. N. 739=
16 L. W. 447=4 U. P. L. R. (P. C.) 68=
(1922) M. W. N. 671=1922 P. C. 51.

———*Insolvency—Questions of title— Decision bad on, to be arrived at.*

In deciding questions of title, the claimant must be heard on merits, though his title appears to be weak. (*Walsh and Ryves, JJ.*) MISRI LAL *v.* KANHAIYA LAL SHARMA.
L. R. 3 A. 285=1922 A. 128.

———*Fraud against, law of.*

When a man reaches the stage of insolvency, he commits an offence against the insolvency laws unless he winds up his affairs, that is to say, he goes on incurring liabilities and incurring losses when he is unable to pay his debts. (*Walsh and Ryves, JJ*). FIRM KIRPA RAM SITA RAM *v.* FIRM MANGAL SEN BISHAN MAL.
3 U. P. L. R. (All.) 18=65 I. C. 93=
19 A. L. J. 696.

———*After acquired property—Rights of stranger.*

A stranger cannot dispute as against an undischarged bankrupt, has title to after-acquired property unless he proves that the Official Assignee has intervened. (*Rankin, J.*) DASARATI SINHA *v.* MAHANULYA ASH. 60 I. C. 977=47 Cal. 961.

———*If can be declared insolvent.*

No infant can be adjudged insolvent under any circumstances. (*Greaves, J.*) SITA LAL PRASAD *In re.*
43 Cal. 1167=37 I. C. 663=20 C. W. N. 1065.

INSOLVENCY.

———*Benamidar, if can figure as creditor in Insolvency proceedings.*

A benamidar cannot figure as creditor in insolvency proceedings. (*Sanderson, C. J.*) KETOCKEY CHARAN *v.* SART KAMARJ DABEE.
37 I. C. 71=20 C. W. N. 995.

———*Adjudication—Claim against insolvent—Leave of court.*

After an adjudication order, no creditor of an insolvent, can enforce any claim against him or his property without leave of court. (*Fletcher and Richardson, JJ.*) BAMACHARAN BHATTACHARAYYA. *v.* BOGALA CHARAN KUNDU. 23 I. C. 755.

———*Claim of a person to property of insolvent disallowed by Insolvency Court—Suit.*

A person who claims rights to property taken possession of by the official receiver as belonging to an insolvent and whose claim has been disallowed by the insolvency court may bring a regular suit to establish his rights. (*Martineau, J.*) SHANCHI KHAN *v.* KARAM CHAND.
1923 Lah. 150 (2).

———*Secured Creditor—Powers of.*

A secured creditor in the case of liquidation is on the same footing as in that of insolvency proceedings. He may, if he choses, disregard the liquidation proceedings and proceed against his security. (*Broadway and Martineau, JJ.*) RAM CHAND *v.* BANK OF UPPER INDIA LTD., DELHI.
3 L. 59=24 P. W. R. 1922=5 L. L. J. 558=
1922 L. 281.

———*Principle of—Agricultural tribe, application to.*

The underlying principle of the law of insolvency, is that an insolvent shall be freed from his indebtedness and shall obtain a discharge within a reasonable time. In execution of decrees against land of indebted members of an agricultural tribe, the debts should be liquidated by a form or mortgage for a reasonable time not exceeding 20 years. (*Shadilal, C. J. and Wilberforce, J.*) MANJI *v.* GIRDHARI LAL.
61 I. C. 664=2 Lah. 78.

———*Receiver—Appointment by partners under agreement—Effect—Suit by Receiver.*

Where the partners of a firm and the creditors agreed by deed and appointed a Receiver, *held*, that the property of the insolvent firm vested in the Receiver, that the insolvent had nothing whatever to do with it; and that the Receiver was the only man who could sue the debtors of the firm. (*Johnstone, C. J. and Shadi Lal, J.*) PANNA LAL *v.* DHUMI MAL. 95 P. W. R. 1916=
34 I. C. 156=59 P. L. R. 1917.

———*Offcial Receiver—Duties of—Challenging alienation in fraud of creditors.*

When a creditor challenges an alienation as being in fraud of creditors, it is the Official Receiver's duty to give notice to such creditor and ask him to substantiate his allegation. A general notice asking creditors to prove their claim is not sufficient. A date should be fixed for inquiring into the *bona fides* of the transactions impugned, and notice of the same given to creditors to come and object. There must be an examination of the insolvent and creditors if any, and if he finds an alienation to be fraudulent, he must move the court to set it aside. Even if he finds it not fraudulent, but a creditor wants it to be taken to court, he must do so taking an indemnity for costs if necessary. (*Spencer and Devadoss, J.*) PANNAI ANANTANARAYANA AIYAR *v.* RAMASUBBA AIYAR. 18 L. W. 857=
1924 M. 345.

INSOLVENCY ACT—(11 and 12 Vict. C. 21), S. 3.

———*Application by Official Assignee to set aside transaction—Procedure—Burden of proof.*

Where an Official Assignee applies against a garnishee to set aside a transaction as a fraudulent preference it should be tried practically as if it were an action. The case should be opened on behalf of the Official Assignee and his report read as if it were a pleading. He must then call in his evidence, and make out his case like any plaintiff. Then the case for the other side should be opened and the matter tried. The court cannot call upon the garnishee before he knows what is the case he has to meet. (*Schwabe, C. J. and Wallace, J.*) SAMU PATTAR *v.* WILSON.
18 L. W. 696=1924 M. 180.

———*Insolvent creditor—Purchaser of due to—Rights of.*

A purchaser of a judgment debt due to an insolvent creditor can have his name entered in the schedule of the creditors. (*Wallis and Sadasiva Aiyar, JJ.*) VAIDYANATHA AIYAR *v.* P. S. RAMASAMI AIYAR. 23 I. C. 815=16 M. L. T. 58.

———*Employee of Bank—Deposit by, for security—Rights and position of employee.*

An employee who has deposited security for the performance of his duties in a Banking firm which kept it in fixed deposit and allowed interest, can only be treated as an ordinary creditor when the firm became insolvent though the employee had no knowledge of the way in which the deposit was treated by the Bank. (*Wallis and Ayling, JJ.*) OFFICIAL ASSIGNEE OF MADRAS *v.* SABAPATHY MUDALIAR. 12 M. L. T. 169=14 I. C. 579=
23 M. L. J. 221.

———*Father Insolvent—Son's interest—Illegal and immoral debts of father—Duty of Judge—Practice—Objection by son of insolvent—Court to decide.*

When on the insolvency of a Hindu father, all the family properties are taken possession of by the Receiver and the minor son objects to their interest being taken on the ground the father's debts were illegal and immoral the judge ought to decide such questions himself and not merely call for a report from the Receiver. (*Das and Kulwant Sahay, JJ.*) SANT PRASAD SINGH *v.* SHEODUT SINGH. 2 P. 724=1924 P. 259.

INSOLVENCY ACT—(11 and 12 Vict. C. 21).

———S. 3—*Attorneys—Right of audience.*

The words "in the way of his profession in S. 3 of the Insolvency Act are sufficiently wide to cover the exercise by attorneys in matters of insolvency except before Courts of Review or in jury trial, of the functions ordinarily assigned in litigation to advocates." (*Scott, C. J. and*

INSOLVENCY ACT—(11 & 12 Vict. C. 21), S. 5.

Chandavarkar, J.) ADVOCATE-GENERAL OF BOMBAY, *In re.* 37 Bom. 464=19 I. C. 421=15 Bom. L. R 217.

——S. 5—*" Residence "—Jurisdiction.*

The Respondent presented his petition at Rangoon for the benefit of the Insolvency Act describing himself as residing at No. 45 in 38th Street in Rangoon. Six out of his 12 creditors were residents of places outside Rangoon and all his debtors resided either at Letpadan or Thrawa. The property in his possession was in Letpadan Township and he admitted that he had been living and carrying on business at Letpadan for the past fifteen years and had come to file his Schedule to Rangoon. *Held*, that the Insolvency Commissioner at Rangoon cannot entertain the petition, 8 C. L. R. 14, Rel. If none of the partners carry on business at Rangoon the petition of a partner asking relief from partnership debts cannot be entertained by Rangoon Court. 11 B. L. R. 254, Dist. (*Fox, C. J.* and *Hartnoll, J.*) SUBRAMANIAN CHETTY *v.* PICHAI ROWTHER. 10 I. C. 786=4 Bur. L. T. 81.

——S. 7—*After acquired property—Alienation by insolvent* bona fide *and for value—Validity.*

The property moveable or immoveable, acquired by an inselvent after the adjudication order but before the final discharge, can be transferred by him, provided that the transaction is *bona fide* and for value and is completed before the intervention of the Official Assignee. Cases reviewed. (*Heaton and Shah, JJ.*) ALIM AT AMAD ABDUL HUSAIN *v.* VEDITAL DEVCHAND. 43 Bom. 890=53 I. C. 197=21 Bom. L. R. 849.

——S. 7—*After acquired property—Right of insolvent to—Adverse possession.*

After acquired immoveable property of the insolvent belongs to the Official Assignee and so the insolvent's possession of the same is adverse to him. If the insolvent is in possession of it for 12 years he acquires a perfect title to the property, 8 C. 556, F. (*Bakewell, J.*) BALAKRISHNA PILLAI *v.* NARAINSWAMY NAIDU. 17 I. C. 14=12 M. L. T. 215.

——S. 24—*Voluntary payment—Meaning of.*

Payment made on demand although it is not a spontaneous payment may be a perfectly voluntary payment. A demand unaccompanied by threat would not take a case out of the operation of Section 24. To bring Section 24 into operation it is enough to prove that payment was voluntary and was made when the insolvent was in insolvent circumstances and within two months of adjudication. (*Beaman, J.*) R. D. SETHNA *v.* KALLIANJI SANOJIBHAI. 19 I. C. 57=15 Bom. L. R. 113.

——S. 24—*Fraudulent preference—Mortgage without consideration.*

A mortgage by deposit of title deeds where the full consideration of the pro-note had not passed, is voluntary and fraudulent within S. 24. (*Benson, C. J. and Sankaran Nair, J.*) GOLLAPUDI *v.* LAKSHMI NARASIMHAM. 17 I. C. 393=(1912) M. W. N. 1001.

INSOLVENT DEBTORS ACT (11 and 12 Vict. C. 12), S. 49.

——S. 31—*Auction Sale by Official Assignee—Offer not disclosed to avoid competition—High Court, when can interfere.*

Where the price offered at an auction sale held by the Official Assignee is not disclosed to avoid competition, the sale, though made by the Official Assignee and confirmed by the Commissioner is liable to be set aside at the instance of persons offering higher price. The High Court can interfere and cancel such a sale only when it has not become complete. (*Munro and Abdur Rahim, JJ.*) THE SOUTH INDIA INDUSTRIAL, LTD. *v.* THE OFFICIAL ASSIGNEE OF MADRAS. 11 I. C. 379=(1911) 1 M. W. N. 367.

——S. 73—*Appeal—Limitation—Expiry of time during vacation—Effect.*

An appeal against an order in Insolvency proceedings filed on the reopening day of the High Court is not barred if the month's time fixed in Section 73 had expired within the vacation. 21 M. 385; 22 M. 179; 23 M. 389, foll. (*Wallis and Ayling, JJ.*) OFFICIAL ASSIGNEE OF MADRAS *v.* SABAPATHY MUDALIAR. 12 M. L. T. 169=14 I. C. 579=23 M. L. J. 221.

——S. 86—*Insolvent absent—Judgment.*

In spite of due notice being served by the Official Assignee, an insolvent refused to appear at the hearing. *Held*, that judgment could be entered against the insolvent under S. 86 of the Insolvents' Act. (*Chaudhuri, J.*) BALCHAND SURANA, *In re.* 23 I. C. 623=19 C. W. N. 433.

INSOLVENT DEBTORS ACT (11 and 12 Vict. C. 12.)

——*Insolvency Court—Powers of, to deal with questions relating to Insolvency—Submission to jurisdiction—Effect.*

An Insolvency Court in British India can deal with questions relating to Insolvency proceedings including the question whether there was a fraudulent transfer of any property and a party who has submitted to the jurisdiction of any such court cannot raise a plea in another court that the transfer was fraudulent and void especially when there has been an adjudication by another court to whose jurisdiction he has submitted. 37 C, 418; 21 B. 205; 9 I. C. 344; Rel. on. (*Reid, C. J. and Rattigan, J.*) RAMNARAIN *v.* DUROA DAT. 55 P. R. 1912=13 I. C. 568=242 P. W. R. 1912.

——S. 39—*Mutual credit—Costs due by Insolvent—Set off.*

A petitioning creditor cannot set off costs due by him to the insolvent against his debt as this is not a case of mutual credit. (*Benson, O. C. J. and Sankaran Nair J.*) KARRY MANGIAH *v.* KANACHI RAMIAH. 17 I. C. 164.

——S. 49—*Arbitration — Submission — Subsequent Insolvency of party — Effect — Proceedings to enforce award — Official Assignee, if a necessary party—Insolvency petition made before* 1910—*Power to stay proceedings.*

The mere failure to pay a claim is a matter of difference between the parties to a submission

INSOLVENT DEBTORS ACT (11 and 12 Vict. C. 12), S. 50.

and the insolvency of a party or the issue of a vesting order does not revoke the submission. In such a case the Official Assignee is not a necessary party. The institution of proceedings for the enforcement of an award subsequent to the passing of the vesting order is not barred when the claim of the appellant is not included in the debtor's schedule. (*Crouch, A. J. C.*) JAMES FINILAY & CO. *v.* JESHANMAL.
12. I. C. 188=5 S. L. R. 4.

——Ss. 50 and 51—*Court's power to make order to apply to particular debts.*

The court passed an order under S. 51 adjudging that the insolvent be entitled to his personal discharge except for two specified sums and that for those debts he be discharged when he shall have been in custody of each of the respective creditors for 6 months. It was contended that he must be dealt with under S. 50. *Held* that there were grounds for passing an order under S. 51 and the court could make an order to apply to such debts as it thought fit. (*Hartnoll, O. C. J. and Twomey, J.*) GRAHAM & CO. *v.* AHMED ISMAIL.
12 I. C. 24=4 Bur. L. T. 218.

INSPECTION—Of documents.

See C. P. CODE, O. 11.

INSTALMENT BOND.

See (1) DEED, CONSTRUCTION.
(2) LIM. ACT, ART. 74.

INSTALMENT DECREE.

See (1) C. P. CODE, O. 20, R. 11.
(2) LIM. ACT ART, 182.

INSTROKE.

See (1) LANDLORD AND TENANT—MINES AND MINERALS.
(2) MINES AND MINERALS.

INSTRUCTIONS.

See LEGAL PRACTITIONER.

INSTRUMENT.

See DEED.

INSTRUMENTS OF TITLE.

See CONTRACT ACT, SS. 108, 130, ETC.

INSURANCE.

——*Damage— Increase during possession of Insurer—Liability of Insurance Company.*

A provision in a policy of Fire insurance in virtue of which the Company takes and holds possession of premises damaged by fire is for the purpose of enabling it to minimise the damage. It does so in its own interest in order to minimise its loss and not because it is under a duty to the assured. Its powers are of the nature of a privelege to do that which is most for its benefit under the circumstances so as to reduce the loss. When the Company has thus taken possession and done what in its own opinion was wisest to minimise the damage it cannot say that the actual damage shown at the date of giving up possession to the owner is not the consequence of the fire, Damage

INSURANCE.

done by the water employed to extinguish the fire being within the loss insured, any increase to that damage by reason of injury to machinery by water being allowed to remain in the premises, while the property is under the care of the insurer must be borne by them. (*Lord Moulton.*) AHMED BHOY *v.* BOMBAY FIRE AND MARINE INSURANCE CO., LTD.
37 Bom. 183=40 I. A. 10=13 M, L. T. 11=
11 A. L. J. 42=15 Bom. L. R. 19=
(1913) M. W. N. 64=17 C. W. N. 269=
17 C. L. J. 154=17 I. C. 755=
24 M. L. J. 328 (P. C.).

——*Under-writer — Duty of Policy-holder—Right of.*

Where the money is in the hands of a third person, the assured must be paid the total loss. The under-writers must pay the total loss and they will then take all such steps to get all proceeds from the hands of third parties, as the assured himself could have taken, In case of total loss the policy-holder has only to give intimation of the loss at the earliest possible opportunity to the insurer and then he can claim money payable under the policy. When an insurance policy is entered into according to the local custom prevailing in the sea port town of Cutch Mandvi and the cargo insured is totally lost on a foreign coast, a claim on the policy can be established without producing a 'Mahajans Majur." The custom requiring the production of a Mahajans Majur as a condition precedent to making a claim under a policy is vague, indefinite and unreasonable and cannot therefore be binding. (*Davar, J.*) KANJI DWARAKDAS *v.* HARIDAS PURUSHOTAM.
36 Bom. 484=12 I. C. 897=
13 Bom. L. R. 1211.

——*Condition in policy that if claim is not brought within a certain time policy would be forfeited is valid.*

A clause in a policy of insurance that if on a claim being rejected, a suit is not filed within 3 months, the benefit under the policy would be lost does not offend against Ss. 28 and 23 of the Contract Act and hence is perfectly valid. (*Greaves and Buckland, JJ.*) GIRIDHARILAL HANUMANBUX *v.* EAGLE STAR AND BRITISH DOMINIONS INSURANCE CO. LTD.
27 C. W. N. 955=
1924 Cal. 186.

——*Contract—Good faith—Disclosure of material fact necessary.*

As insurance contracts are based on utmost good faith there is a duty to disclose to the insurer all facts known to the assured and likely to influence him in fixing premium. Where the assured had information at the time of application for insurance that his stock of jute may be set fire to, by an incendiary but did not inform the insurers the reason of the insurance, this non-disclosure discharges the liability of the insurers. There is no obligation to disclose facts known to the insurer or which he might know on slight enquiry. (*Chaudhuri, J.*) IMPERIAL PRESSING COMPANY *v.* BRITISH CROWN ASSURANCE CORPORATION, LD.
21 I. C. 836=41 Cal. 581.

INSURANCE.

———*Damage—Reduction of—Insurer paying full indemnities—Right to benefit accruing subsequently to the assured—Suit, form of.*

The general principle is that anything by which the loss sustained by the assured is reduced or diminished, reduces the amount, which the insurer is to pay. If the insurer has paid the full amount and anything which diminishes the loss afterwards comes to the hands of the person to whom he has paid it, the insurer is in equity entitled to be recouped by having that amount paid to him. So a suit to enforce such benefit ought to be in name of assured. (*Jenkins, C. J. and Woodroffe, J.*) BRITISH FIRE AND MARINE INSURANCE CO. *v.* INDIA GENERAL NAVIGATION AND RY. CO., LD. 33 Cal. 28=9 I. C. 364=15 C. W. N. 226.

———*Naming of beneficiary in the policy—Effect of.*

Where the husband of a lady supplied the premia but the name of the step-son of the lady was put as the person to whom the insurance amount was to be given, the amount belongs to the son and not to the husband even assuming that the principle of *benami* transactions were applicable to such a case. (*Shadi Lal, C. J. and Martineau, J.*) MATIN *v.* MAHOMED MATIN. 1922 Lah. 145.

———*Lapse of policy—Suit for refund of premia paid, if lies.*

Where under the rules of an Insurance Co., a policy lapses on default of payment of premia, it is not open to a defaulting policy-holder to recover the premia actually paid. But if such a rule is made after the policy-holder's assurance was effected and completed, the rule will not affect that insurance, and the policy-holder might recover the premia paid by him. Cases discussed. (*Seshagiri Aiyar and Moore, JJ.*) THE TANJORE LIFE ASSURANCE CO., LTD. *v.* KUPPANNA RAO.
43 Mad. 333=38 M. L. J. 135=11 L. W. 584=55 I. C. 660=(1920) M. W. N. 441.

———*Contract—Condition precedent—Non-fulfilment—Liability—Contractual limitations—Extension of.*

Where the conditions printed on the back of a policy of fire insurance, are conditions precedent to the attaching of any liability of the company, and are lawful, a claim under the policy without fulfilling those conditions must fail. The contractual limitation in an insurance policy will not be extended on the ground that the assured was in prison and unable to perform the conditions. (*Robinson, J.*) HING NAM HIP KEE *v.* THE BATAVIA SEA AND FIRE INSURANCE COMPANY.
6 L. B. R. 123=18 I. C. 476=5 Bur. L. T. 298.

Fire.

———*Arbitration clause—Condition precedent to suit—Rejection of claim by Insurance company—Right to sue.*

A policy of fire-insurance provided that if a claim was made under the policy and rejected by the insurance company and a suit was not commenced within three months after such rejection all benefit under the policy would be forfeited.

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There was also a clause to the effect that if any difference arose as to the amount of any loss or damage such difference should independently of all other questions be referred to arbitration and that it should be a condition precedent to any right of action upon the policy. Plaintiffs sued for damages from the insurance company in respect of the destruction of their goods by fire, The trial court found that the deft company had rejected the claim and that the suit was therefore competent. The court also stayed the suit and referred the parties to arbitration. *Held* that the rejection of the claim by the company gave the plaintiffs a right of action within three months after the date of rejection. The plaintiffs had a right to sue to have the question of the propriety of the rejection decided and it was only in the event of that question being decided in favour of the plaintiffs that the amount of loss or damage should be ascertained. The suit should therefore be heard in the ordinary course. (*Macleod, C. J. and Crump, J.*) THE EAGLE STAR AND BRITISH DOMINIONS INSURANCE CO. *v.* DINANATH.
47 Bom 503=25 Bom. L. R. 164=1923 Bom. 249.

———*Insurance—Mortgage of insured property—Liability of insurer to mortgagee—Notice.*

Where the owner of a mill insures it against fire, and subsequently mortgages it to a third person and the mill and the premises are destroyed by fire, the insurance company is not liable to indemnify the mortgagees against the loss. The contract is one to indemnify the insured and not any other person between whom and the company there was no privity of contract. To entitle the mortgagees to any claim on the policy there must be a covenant not only to insure but to insure for the benefit of the mortgagees or to apply the policy money in reinstatement or otherwise for the benefit of the mortgage or an assignment of the policy taken. In the absence of any such covenant or assignment of the policy the mortgagee cannot claim anything against the insurer. The right of the mortgagee was to bring the mortgaged property to sale or in the event of its alienation by the mortgagor to follow it into the hands of a purchaser. If the insurance company sold the remnants of the machinery, etc. after the fire under the terms of the policy, then, the contract of insurance being one of indemnity, any salvage belonging to the insurers is presumed under such circumstances, to have been abandoned any anything that remains of the property belonging to the insurers to reimburse themselves so far as they can by selling the salvage for what it will fetch. (*Robinson, C. J. and Maung Kin, J.*) P. V. CHETTY FIRM *v.* MOTOR UNION INSURANCE COMPANY.
1 L. B. R. 294=1 Bur. L. J. 28=1923 Rang. 9.

Life.

———*Agent has no rights to receive commission after dismissal from service.*

An agent of life assurance company cannot after he is dismissed from service claim commission for subsequent premia paid by customers secured by him. (*Sadasiva Aiyar and Napier, JJ.*) EMPIRE OF INDIA LIFE ASSURANCE CO., LTD. BOMBAY *v.* NANU AIYAR. 44 Mad. 170=39 M. L. J. 577=12 L. W. 616=(1920) M. W. N. 770=60 I. C. 69=29 M. L. T. 49.

INSURANCE—Life.

———*Doctrine of — Advancement — Policy for benefit of wife and children.*

Where a policy of insurance by a person purports to be for the benefit of his wife and children, the presumption of advancement by way of gift in favour of the daughter cannot arise. (*White, C. J., Sankaran Nair and Tyabji, JJ.*) POKKUNURI *v.* KAKARAPARTI.
37 Mad. 483=25 M. L. J. 65=
(1913) M. W. N. 697=20 I. C. 934=
14 M. L. T. 363 (F. B.)

———*Contract — Refusal to accept premium— Remedy of insured.*

Once the insurer refuses to accept the premium the insured can sue him for damages or can dissolve the contract as the refusal is a continuing one. (*Twomey and Ormond, JJ.*) SHANGHAI LIFE INSURANCE CO., LTD. *v.* MRS. HELLEN CONSTANCE BROWN.
32 I. C. 534=
9 Bur. L. T. 43.

Marine.

———"*Perils of the Sea*", *meaning of.*

'Perils of sea' refers only to fortuitous accidents or casualties of the sea. They do not include the action of the wind and the waves. (*Chaudhuri, J.*) STEWART *v.* NEW ZEALAND INSURANCE CO., LTD.
17 I. C. 188=
16 C. W. N. 991.

———*Warranty—Construction of—"Warranted no recourse against carriers"—Meaning of.*

Held that these words were inserted to affect the insurance Co. with notice of any contract limiting the liability of the carriers and does not amount to relinquishment of claims even in respect of risks not exempted according to the contract of carriage. (*Jenkins, C. J. and Woodroffe, J.*) BRITISH AND FOREIGN MARINE INSURANCE CO. *v.* INDIA GENERAL NAVIGATION AND RY. CO., LD.
38 Cal. 28=9 I. C. 364=
15 C. W. N. 226.

———*Risk Note—Construction of—Company, liability of.*

A clause in a marine insurance policy for insurance of goods until landed includes the risk of craft to and from the ship and therefore impliedly excludes risk to such craft when employed in a voyage other than one either to or from the ship. (*Fawcett, A. J. C.*) TYABJI *v.* SOUTH BRITISH INSURANCE CO.
42 I. C. 636=11 S. L. R. 1.

———*Covering note.*

A covering note by an Insurance agent is a mere contract to issue policy on receipt of premium before the vessel leaves the harbour. If goods are lost the owner should at once pay the premium and demand the policy. There is no local trading custom in Karachi that after loss of goods on the return journey the shipper can, by paying a special premium, demand a policy covering such journey. (*Crouch, A. J. C.*) LATIF ALI FADOO ALIDINA *v.* ROYAL EXCHANGE CORPORATION.
32 I. C. 540=9 S. L. R. 116.

INTEREST—Arrears of rent.

INSURANCE COMPANY.

———*Liability.*

An Insurance company is liable to pay to an incumbrancer by deposit of the policy and a company who have issued policy containing the condition as to liability for payment on proof of title to policy can refuse to make payment if the policy is not produced except on a complete indemnity. (*Scott, C. J. and Batchelor, J.*) VISWANATH *v.* MULRAJ.
11 I. C. 964=
13 Bom. L. R. 590.

———*Incorporation—Act V of* 1912.

An insurance company incorporated under the Companies Act with a share capital divided into shares is not a provident insurance society under Act V of 1912. (*Fletcher, J.*) ORIENTAL GOVERNMENT SECURITY LIFE ASSURANCE CO., LTD. *v.* ORIENTAL ASSURANCE CO., LTD.
21 I. C. 258=40 Cal. 570.

INTENTION.

See (1) CONTRACT.
(2) DEED—CONSTRUCTION.
(3) INTERPRETATION OF STATUTES.
(4) TORT.

INTEREST.

See also (1) C. P. CODE, S. 34, O. 34, RR. 2 TO 7.
(2) CONTRACT ACT, SS. 73 AND 94.
(3) DAMAGES.

———Arrears of rent.
Basis of claim.
Cessation of.
Compound interest.
Contract to pay.
Damages for Breach of contract.
Damdupat.
Delay in suit.
Execution proceedings.
Mercantile dealings.
Money claim.
Money detained wrongfully.
Money not accounted for.
Partnership.
Period for which payable.
Post diem.
Rate of.
Suspension of.
Unliquidated sums.

Arrears of rent.

———*Arrears of rent.*

The rate of interest on a stale claim for arrears of rent is only 6 per cent. When there is no period fixed for payment nor a demand for the payment of interest nor any definite or specific contract to the effect that interest should be paid on arrears of rent it is not rightful to claim the same. 26 A. 299; 20 M. 481; 26 C. 955, Foll. (*Spencer and Seshagiri Aiyar, JJ.*) NANU NAIR *v.* KANTAN ASHTA MOORTHI.
29 M. L. J. 772=
29 I. C. 386=2 L. W. 509.

———*Arrears of rent—Contract Act, S. 73.*

Interest may be awarded on arrears of rent as damages under S. 73 of the Contract Act. (*Kanhaiya Lal, A. J. C.*) SHEIKH KIFAYAT ULLAH *v.* KAJA PROTAS.
21 I. C. 82.

INTEREST—Basis of claim.

Basis of claim.

———*Basis of claim—Contract or Statute.*

The right to interest depends on contract express or implied or on some rule of law allowing it. (*Lord Sumner.*) LALA KALYAN DAS *v.* SHEIKH MAQBUL AHMAD. 40 All. 497 = 46 I. C. 548 = 22 C. W. N 866 = 35 M. L. J. 169 = 20 Bom. L. R. 864 = 16 A. L. J. 693 = 5 P. L. W. 159 = 28 C. L. J. 181 = 8 L. W. 179 = (1918) M. W. N. 535 = 24 M. L. T. 110 (P. C.).

———*Basis of claim—Interest by way of damages.*

Interest could not be awarded by way of damages leaving the special provisions of the Interest Act. (*Fawcett, J.*) ALICE M. CAMPBELL *v.* WILLIAMS CHARD AND CO. 25 Bom. L. R. 837 = 1924 Bom. 131.

———*Basis of claim—Unpaid purchase-money—Purchaser taking possession of property sold—Purchaser bound to pay interest on unpaid purchase-money from the date he takes possession.*

It is a principle of equity, quite independent of the provisions of the Transfer of Property Act, 1882, that where one party to a contract of sale enters into possession of the property before the whole price has been paid, he is ordinarily liable to pay interest on the unpaid purchase-money from the date when he enters into possession. (*Macleod, C. J. and Shah, J.*) PANDURANG *v.* MAHADEO. 64 I. C. 492 = 23 Bom. L. R. 1000.

———*Basis of claim—Interest not to be allowed if no demand made.*

In the absence of an express agreement to pay interest or a written demand or notice that interest would be charged under the provisions of Act XXXII of 1839, the claim as to interest cannot be entertained. (*Moti Sagar, J.*) DES RAJ SAWHUNY *v.* FRAYS MOTOR WORKS. 1923 Lah. 302 (1).

———*Basis of claim—Power of High Court to give relief—English Law.*

Indian Law does not recognise the English principle of equity which gives relief to a debtor whenever a court considers a rate of interest unduly high. For obtaining relief the debtor must bring himself within the four corners of S. 16 of the Contract Act. (*Das and Adami, JJ.*) CHOTA NAGPUR BANKING ASSOCIATION LTD. *v.* BHAGWAT BUNRAI. 1 P. 263 = 1922 P. 491.

———*Basis of claim — Mining venture — Net profits—Interest on money invested in the venture.*

Where net profits of a venture are to be found a capitalist is not entitled to interest on the money invested as he must be taken to have embarked upon the venture expecting a larger profit than by any other investment. (*Hartnoll, O. C. J.*) *and Twomey, J.*) MATILDA BROWN *v.* FRANCIS. 14 I. C. 628 = 5 Bur. L. T. 15.

Cessation of.

———*Cessation of—Creditor's act—Effect of.*

No interest can be recovered for the period, the debtor was unable to pay on account of creditor's act. (*Mookerjee and Newbould, JJ.*) GOPESHWAR SHAH *v.* JADAP CHANDRA. 43 Cal. 632 = 22 C. L. J. 352 = 32 I. C. 537 = 20 C. W. N. 689.

INTEREST—Compound interest.

———*Cessation of—Legal tender.*

Interest payable by terms of a contract, runs up to the date of payment or legal tender. (*White, C. J. and Ayling, J.*) LAL BATCHA SAHIB *v.* ARCOT NARAYANASWAMY MUDALIAR. 12 I. C. 502 = 34 Mad. 320.

———*Cessation of — Money borrowed left in deposit with lender—Effect— Interest if payable.*

If a person takes a loan on interest and leaves the amount borrowed with the lender as a deposit without interest, to be drawn on as he may require, the interest payable on the agreement of loan does not cease to run. The mere fact that a borrower does not require the money and, therefore, does not demand it for a long time and that the lender is himself able to use it during that time can make no difference on the lender's right to charge interest on the loan. (*Kotwal, A. J. C.*) BAPU LINGHAPPA *v.* RATAN LAL. 1923 Nag. 85.

Compound Interest.

———*Compound interest — Contract to pay—Inference from accounts.*

An agreement to pay compound interest can be reasonably inferred from the fact that the debtor has accepted without any objection, accounts which contain clear entries of compound interest. (*Mears, C. J. and Banerjee, J.*) BHAGWAN BAKSH *v.* DAMODARJI JOSHI. 42 All. 230 = 59 I. C. 20 = 18 A. L. J. 100.

———*Compound interest—Stipulation for.*

Where a bond contained a provision for payment of interest at Rs. 1-9-0 per month every six months and there was a further provision for compound interest once every 6 months if default was made in the payment of interest, it was held that the rate was Rs. 1-9-0 per cent. per month. (*Stephen and Richardson, JJ.*) INDRO DEB DAS *v.* AZIZUR RAHAMAN SARKAR. 17 I. C. 9 = 16 C. W. N. 957.

———*Compound interest—What is.*

A compound interest is not interest on interest but it is interest on a sum or sums which were interest, but which on default at once became capital. (*Johnstone and Shah Din, JJ.*) SHAM SUNDAR *v.* HARBANS SINGH. 71 P. R. 1915 = 13 P. L. R. 1916 = 30 I. C. 517 = 109 P. W. R. 1915.

———*Compound interest—Presumption.*

There is no presumption that a person owing money must be deemed to have consented to pay compound interest as it is not the ordinary incident of borrowing. (*Wallis, Offg. C. J. and Seshagiri Iyer, J.*) THAITHOTTATHIL *v.* RAMACHANDRA. 26 I. C. 124 = 16 M. L. T. 478.

———*Compound interest—Agreement to pay, if can be implied in case of—Further charge.*

Agreement to pay compound interest in the mortgage deed is not necessarily implied in

case of a further charge. (*Kanhaiya Lal, A.J.C.*) HARIHAR DUTT *v.* MAHWA PRASAD.
7 O. L. J. 467=57 I. C. 599=
2 U. P. L. R. (J. C.) 143.

Contract to pay.

——*Contract to pay—Absence of.*

Where no interest is stipulated for in a mortgage document no interest is recoverable. (*Holmwood and Chapman, JJ.*) MAKBUL ALI *v.* ALI AHMAD. 18 I. C. 80=40 Cal. 514.

——*Contract to pay—Absence of—Effect.*

Where money has been advanced without an express agreement to pay interest, the creditor can claim damages in lieu of interest. 18 A. 240; 5 C. W. N. 356; 23 C. 955; 17 A. 511; 26 A. 299; 15 C. L. J. 684. If a debtor voluntarily agrees to pay interest or damages on sums used or retained, he cannot contend that the agreement to pay such interest was without consideration. (*Mookerjee and Beachcroft, JJ.*) RAMJIBAN *v.* DHIKU SINGH. 16 I. C. 246=
16 C. L. J. 264.

——*Contract to pay—Suit on accounts.*

In a suit on accounts where there is no agreement relating to interest and where no notice had been given that interest would be charged no interest is chargeable either under the Interest Act or as damages under S. 73 of the Contract Act. (*Abdul Raoof and Harrison, JJ.*) RANJIT SINGH *v.* KARIM BAKSH. 1922 L. 475.

——*Contract to pay—Absence of—Delay in bringing suit—Effect of.*

In the absence of an agreement to pay interest, a creditor is entitled to a reasonable rate of interest and delay in bringing a suit is no ground for refusing interest. (*Wilberforce, J.*) LADHA RAM WADHAWA RAM *v.* MUHAMMAD.
59 I. C. 708.

——*Contract to pay—Mortgagee given choice to claim interest or to enter into possession.*

A mortgage-deed definitely provided that interest shall be payable to the mortgagee until he obtained possession of the property and that he may instead of taking possession when his right to demand possession accrues, continue to charge interest. *Held*, the mortgagee can claim interest until he obtains possession or realises the sums due to him from the mortgagor. 54 W. R. 293 Foll. (*Reid, C. J. and Rattigan, J.*) NANAK CHAND *v.* MUHAMMAD AFZAL.
33 P. R. 1913=11 P. L. R. 1913=
16 I. C. 950=279 P. W. R. 1912.

——*Contract to pay—Evidence.*

An entry in the books of *Sahaukar* and the broker would not be sufficient evidence of a written agreement between the parties as to interest. (*Rattigan and Shah Din, JJ.*) KISHORE CHAND *v.* GUDATTE MAL.
52 P. R. 1911=165 P. L. R. 1911=
10 I. C. 315=162 P. W. R. 1911.

——*Contract to pay—Absence of—Effect.*

There being no stipulation for payment of interest after due date, interest can only be

given as damages for the period of six years preceding the suit. 19 A. 39, P. C., Dist. 17 A. 511, P. C., Foll. (*Sharfuddin and Roe, JJ.*) GITA PRASAD SINGH *v.* RAGHO SINGH.
40 I. C. 809=1 P. L. W. 777.

Damages.

——*Damages for breach of contract.*

The award of interest on the amount of damages so calculated for breach of contract from the date of breach is illegal. 31 M. 250; 21 I. C. 543; 32 M. 95 Foll. (*Ayling and Hannay, JJ.*) KAVUTU PURANANANDAM. *v.* LAKSHMINARASIMHA CHARYALU. 26 I. C. 429.

Damdupat.

——*Damdupat—Capitalisation of interest.*

The rule of damdupat requires that the interest in the course of one transaction shall not exceed the principal. But it does not prevent an agreement between the debtor and the creditor to capitalize interest at a stage when the interest does not exceed the principal, *e. g.*, at the end of every 3 years. (*Scott, C. J. and Shah, J.*) KHIMJI *v.* CHUNILAL. 51 I. C. 353=
21 Bom. L. R. 419.

——*Damdupat — Applicability to mortgages under the T. P. Act.*

The rule of Damdupat applies to mortgages under the Transfer of Property Act. The Calcutta High Court has uniformly applied the rule of Damdupat as between Hindus in mortgage cases. (*Chaudhuri J.*) KUNJA LAL BANERJI *v.* NARSAMBA DABI. 42 Cal 826=31 I. C. 6=
20 C. W. N. 110

——*Damdupat—Rule of— Contract — Applicability of the rule.*

The rule of damdupat applies as a matter of contract between Hindus and has nothing to do with decree of court after the matter has passed from the realm of contract to that of judgment. The rule is not applicable if default is made by the mortgagor in payment of the principal, interest and costs after the day appointed for payment by the court. 33 C. 1269, Rel.; 21 C. 840 Not Foll. (*Fletcher, J.*) NANDA LAL ROY *v.* DHIRENDRA NATH. 21 I. C. 974=40 Cal. 710.

——*Damdupat—Rule of—Decree on mortgage.*

The rule of damdupat applies so long as the relation of debtor and creditor exists but not when the contractual relation has come to an end by reason of a decree. 40 Cal. 710 : 33 Cal. 1269, Foll. (*Kotval, A. J. C.*) NARAYAN *v.* NATHMAL.
17 N. L R. 200=1922 Nag. 155.

——*Damdupat—Applicability to mortgage contracts—Berar.*

In Berar the rule of damdupat applies to all debt cases including mortgage contracts. (*Stanyon, A. J. C.*) JAIRAM *v.* DEBIDAYAL SURAJ PRASAD. 46 I. C. 789.

——*Damdupat, rule of—Applicability — Usufructuary mortgage.*

The principle of damdupat does not apply when once the usufructuary mortgagee has been put in

possession even as regards interest between the date of the mortgage and the date of possession given to him. 24 B. 114, Foll. (*Prideaux, O. A. J. C.*) PANDURI *v.* PANDIJI 32 I. C. 231 = 12 N. L. R. 1.

———*Damdupat — Mortgage — Interest after decree.*

The rule of damdupat, which is nothing more than a rule of limitation having a religious origin, is not abrogated by the T. P. Act or by C. P. Code, O. 34, Rr. 2 and 4. A mortgagor is, therefore, entitled to the benefit of the rule. 26 M. 662 Diss. The words "interest on mortgage" refer to the rate of interest provided by the mortgage if it be a rate to which a valid legal objection cannot be taken. The rule of damdupat applies to interest after decree. 1 B. 577; 21 C. 840 Foll. (*Crouch, A. J. C.*) ASANAND *v.* TULSANBAI. 15 I. C. 824 = 5 S. L. R. 245.

Delay in Suit.

———*Delay in suit.*

Delay in filing suit is by itself not sufficient to disentitle a party to interest on a barred debt acknowledged under S. 25, Contract Act. (*Scott Smith and Broadway, JJ.*) BHAGWAN SINGH *v.* MUNSHI RAM. 66 P. R. 1917 = 41 I. C. 915 = 135 P. W. R. 1917.

———*Delay in suit—If ground for refusal.*

Mere delay in suing is not a sufficient reason for not allowing a mortgagee, interest at the stipulated rate. (*Johnstone and Ratligan, JJ.*) AHMED KHAN *v.* RATAN CHAND. 50 P. R. 1912 = 13 I. C. 639 = 53 P. W. R. 1912 = 100 P. L. R. 1912.

———*Delay in suit.*

Where the document was silent as to interest and B waited for several years without taking steps to recover the amount of his advance on the failure of defendant to carry out the contract and so he was not equitably entitled to interest. (*Kensington, J.*) DHARAM SINGH *v.* ALI MARD. 6 P. L. R. 1912 = 12 I. C. 616 = 219 P. W. R. 1911.

Execution Proceedings.

———*Execution proceedings—Decree silent as to interest.*

Where a decree grants mesne profits but is silent as to the interest the executing court has power to award interest at court rate of 6 per cent. (*Walsh and Stuart, JJ.*) LALTA PRASAD *v.* SHRI GANESHJI. 20 A. L. J. 348 = 1922 A. 117.

Mercantile Dealings.

———*Mercantile dealings.*

Mercantile dealings carry interest generally. (*Sundara Aiyar, J.*) KADAR ROWTHER *v.* VENKATACHALLAPATHY. 14 I. C. 573.

Money Claim.

———*Money claim—Forbearance to sue.*

Where in respect of a money claim (*e. g.* dower), there has been a forbearance to sue,

compensation by way of interest can be allowed. (*Lord Parker.*) HAMIRA BIBI *v.* ZUHAIDA BIBI. 38 All. 581 = 36 I. C. 87 = 14 A. L. J. 1055 = 21 C. W. N. 1 = 18 Bom. L. R. 999 = 31 M. L. J. 799 = 20 M. L. T. 505 = 4 L. W. 602 = (1916) 2 M. W. N. 551 = 1 P. L. W. 57 = 25 C. L. J. 517 = 43 I. A. 294 (P. C.).

———*Money claim.*

On a mere money claim interest cannot be allowed by way of damages in the absence of demand or a provision in the contract of the parties. 38 A. 581 (P. C.) Dist. (*Sadasiva Aiyar and Phillips, JJ.*) VASUDEVA MUDALIAR *v.* VELAPPA NADAR. (1917) M. W. N. 779 = 45 I. C. 401 = 6 L. W. 717 = 22 M. L. T. 512.

Money Detained Wrongfully.

———*Moneys detained wrongfully — Money received by agent.*

A principal is not entitled to interest on moneys received by an agent from customers in the absence of a contract to the contrary. Such interest cannot be awarded under the general law under the Interest Act or as damages. (*Piggott and Walsh, JJ.*) LALMA *v.* CHINTAMANI. 41 All. 254 = 49 I. C. 696 = 17 A. L. J. 169.

———*Moneys detained wrongfully—Suit by co-sharer against Lambardar for profits.*

In a suit by a co-sharer against a lambardar for profits the plff. would ordinarily be entitled to interest and the burden is on the lambardar to prove extemption from liability to pay interest. (*Richards, C. J. and Banerji, J.*) ABDUL GHANI *v.* ABDUL MAJID 13 I. C. 116.

———*Moneys detained wrongfully — Contract Act, S. 73.*

A creditor, if not entitled to any interest under the Interest Act, is not debarred from claiming interest by way of damages under S. 73 of the Contract Act if the creditor proves actual loss. 26 Cal. 955 (965) Foll. Interest by way of damages is not recoverable for a mere wrongful detention of an ordinary debt. 27. Cal. 814, Foll. (*Walmsley and Shamsul Huda, JJ.*) PRASUNNA *v.* GOPAL LAL. 55 I. C. 737 = 31 C. L. J. 348.

———*Money detained wrongfully.*

It is open to a court to award damages for money wrongfully detained though interest is not claimable either under the Contract Act or the Interest Act. (*Chatterjee and Smither, JJ.*) KHETRA MOHANPODDAR *v.* ASWANI KUMAR SHAH. 45 I. C. 667 = 22 C. W. N. 488.

———*Moneys detained wrongfully — Arrears of malikana.*

Although interest on arrears of *malikana* cannot be claimed under the provisions of the Interest Act, because the sum which the plff. seeks to recover is not due under a written instrument nor has there been a demand of payment in writing, yet it is open to the court to make a decree for damages, for wrongful detention of the plff.'s money. 22 I. A. 199; 17 A. 511; 10 A. 85;

INTEREST—Money detained wrongfully.

19. C. 19; 24 C. 639, Rel. (*Mookerjee and Carnduff, JJ.*) MOHAMAYA PROSAD *v.* RAM KHELAWAN.
15 I. C. 911=15 C. L. J. 684.

———*Moneys detained wrongfully — Overdue payments.*

Where there is no promise to pay interest on overdue payments and no indication can be found in the evidence that any such promise is implied and no notices sent demanding interest, interest will not be allowed. (*Johnstone and Shadi Lal, JJ.*) VINKLEY *v.* WASAVA SINGH.
55 P. L. R. 1915=28 I. C. 926=
50 P. W. R. 1915.

———*Money detained wrongfully—Interest Act not applicable—Court's power to award interest—Equity.*

Apart from contract and the provisions of the Interest Act the court can decree interest by way of equitable relief in a proper case where justice, equity and good conscience require it. Where money belonging to the plaintiff is retained by the defendant wrongfully and the former sues to recover the sum so retained on the basis of money had and received by the latter to the former's use, the plaintiff is entitled in equity to interest thereon. *Per Oldfield, J.*—The plaintiff's claim is sustainable under Ch. IX of the Trusts Act and under S. 95 of the Trusts Act the defendant remains subject to the same liabilities including the liability to pay interest as if he were a trustee of the money retained by him. (*Oldfield and Krishnan, JJ.*) ARUNACHALLAM CHETTIAR *v.* B. RAJA RAJESWARA SETUPATI.
42 M. L. J. 74=(1921) M. W. N. 873=
30 M. L. T. 84=15 L. W. 63=
1922 Mad. 55.

———*Moneys detained wrongfully—Non-payment on due date.*

Interest by way of damages may be awarded in a proper case. Non-payment on due date does not of itself justify such an award. (*Spencer and Krishnan, JJ.*) SINGARAVELU VENKATASUBBA RAMANIAN *v.* RAJAH OF VENKATAGIRI.
56 I. C. 552=11 L. W. 523.

———*Moneys detained wrongfully— Case not within Interest Act* (*XXXII of* 1839).

The Interest Act is not exhaustive of all claims to interest and it is open to the court in India to award interest, in a proper case, independently of the provisions of that Act. (Cases discussed). Where a Mahomedan minor sues for the recovery of her share of her father's assets from her co-heirs who had utilised them to their own advantage, the plff. is entitled to simple interest at the ordinary rate of six per cent. per annum on the amount of her share of the assets from the date of her father's death. (*Ayling and Seshagiri Aiyar, JJ.*) ABDUL *v.* HAMIDA BEEVI.
42 Mad. 661=36 M. L. J. 456=
25 M. L. T. 242=52 I. C. 505=
(1919) M. W. N. 484.

———*Moneys detained wrongfully— Moneys received by agent—Demand.*

An agent is not liable for interest on moneys of principal received and retained by him in the absence of a demand. (*Spencer and Seshagiri Aiyar, JJ.*) GANESA SETHURAM *v.* RAMASWAM SERVAI.
33 M. L. J. 463=6 L. W. 520=
42 I. C. 219=(1918) M. W. N. I.

INTEREST—Period for which payable.

———*Moneys detained wrongfully—Mahomedan heir—Share of inheritance.*

The heir is entitled to interest on the property of his inheritance since the moment his demand is refused. (*Sankaran Nair and Oldfield, JJ.*) MARIAN BEEVIAMMAL *v.* KADIR MEERA SAHIB.
29 I. C. 275.

Money not accounted for.

———*Moneys not accounted for.*

A party to a suit for accounts must pay interest on sums collected but not accounted for. (*Chatterji and Panton, JJ.*) GOVINDA CHANDRA *v.* NIRRI KUMAR.
50 I. C. 747.

Partnership.

———*Partnership.*

Partners retaining and using assets after dissolution are liable for interest. (*Lord Sumner.*) AHMED MUSAHI *v.* HASHIM EBRAHIM.
42 Cal. 914=42 I. A. 91=19 C. W. N. 449=
17 M. L. T. 312=2 L. W. 377=
21 C. L. J. 419=13 A. L. J. 540=
17 Bom. L. R. 432=29 M. L J. 70=
28 I. C. 710=(1915) M. W. N. 485 (P. C.).

———*Partnership—Right of partners.*

No interest is generally allowed between partners without an express stipulation to that effect or custom allowing it. If a partner advances money beyond what he has promised, he is entitled to interest subject to any agreement between them. (*Mookerjee and Roe, JJ.*) GOVINDA CHANDRA BASAK *v.* HIRIDAS BASAK.
23 C. L. J. 148=35 I. C. 48=
20 C. W. N. 634.

———*Partnership—Dealing with assets by surviving partners—Accounts.*

If on the death of a partner his representative-in-interest claims his share of the profits accrued after his death in respect of his capital and where an enquiry into the sales would lead to a complicated examination of the accounts, the court has a discretion to allow reasonable interest in lieu of profits. 4 L. W. 521 Foll. (*Kumaraswami Sastri, J.*) RAMACHANDRA NAIDU *v.* MALANG HYATH.
43 I. C. 661=22 M. L. T. 225.

———*Partnership.*

In the absence of an express or implied stipulation or trade custom to the contrary, interest is payable to the partner for money paid or advanced by him to the firm, beyond his contribution the payment being treated not as an increase of capital but rather as a loan. (*Halifax, A. J. C.*) GOVIND *v.* THAKUR GAJRA SINGH.
64 I. C. 183=4 N. L. J. 39.

Period for which payable.

———*Period for which payable—Mortgage—Demand for payment within term.*

If the mortgagee makes a demand for payment within the term and the mortgagor complies therewith, the mortgagee cannot insist

INTEREST—Period for which payable.

upon payment of interest for the whole of the term. (*Mookerjee and Beachcroft, JJ.*) PROKASH CHANDRA GHOSE *v.* HASAN BANU BIBI.
42 Cal. 1146=28 I. C. 450=19 C. W. N. 389.

———*—Period for which payable — Redemption suit — Limitation — Whether applicable in fixing interest.*

The law of limitation is not applicable to fix the period for which interest on mortgage debt is payable. In a redemption suit, therefore, the mortgagee is entitled to interest for the whole of the period of mortgage. (*Shadi Lal and Broadway, JJ.*) AKBAR HUSSAIN *v.* RAGUNANDAN DASS. 57 I. C. 348=2 U. P. L. R. (L.) 130.

———*Period for which payable — Provision for compound interest till a certain date.*

Where there is a provision for compound interest till a certain period and no provision for any interest after that date the creditor is entitled only to simple interest after that date. 17 A. 511 Foll. (*Wallis, Offg. C. J. and Seshagiri Aiyar, J.*) THAITHOTTATHIL *v.* RAMACHANDRA. 26 I. C. 124=16 M. L. T. 478.

———*Period for which payable —Pro-note payable on demand.*

In the case of pro-note payable on demand, interest should be calculated from the date of demand and not the date of making the note. (*Miltra, A. J. C.*) PENTAYA *v.* KESHEORAO.
56 I. C. 249=16 N. L. R. 68.

Post Diem.

———*Post diem.*

In a case of mortgage where post diem interest is fixed and where no express stipulation for payment of interest after due date is laid down, *held* that the general tenor implied obligation.
20 A. L. J. 752=44 A. 772=1923 A. 7.

———*Post diem—Mortgage by conditional sale—Stipulation for payment on a fixed day.*

Held, that the intention of the parties to the mortgage was that interest at the stipulated rate should continue to run until actual payment was made. 19 A. 39 Ref. In construing a mortgage-deed, the court must consider the terms of the contract entered into by the parties as a whole, without laying any undue stress on any particular portion of the contract and bearing in mind the ordinary expectations of persons entering into mortgage transactions. (*Piggott and Rafique, JJ.*) KALIKA PRASAD TEWARI *v.* INAYAT HUSAIN.
16 I. C. 216.

———*Post diem—Mortgage by conditional sale.*

In the case of mortgages comprising a stipulation of conditional sale, a covenant to pay post diem interest up to the date of redemption must be implied unless there are very strong reasons to the contrary. (*Shadi Lal, C.J. and Lumsden, J.*) RAM SARAN DASS *v.* MULAI. 4 Lah. 346=
5 L. L. J. 513=1923 Lah. 648.

———*Post diem.*

Post diem interest is a right of mortgagee as damages at contract rate. (*Shadi Lal, C. J.,*

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Chevis, Scott Smith, Le Rossignol and Broadway, JJ.) MOTAN MAL *v.* MUHAMMAD BAKSH.
4 U. P. L. R. (Lah). 55=3 Lah. 200=
42 P. L. R. 1922=1922 Lah. 254.

———*Post diem—Intention of parties—Damages.*

To ascertain whether a mortgagor on redemption is bound to pay post diem interest for the whole term during which the mortgage has been in existence, the instrument must be looked at as a whole and the intention of the parties gathered from the deed. The court held on the mortgage bond in question that the mortgagor would be allowed redemption on payment of principal and interest by way of damages for six years prior to suit. 95 P. R. 1902, Foll. (*Scott Smith and Dundas, JJ.*) GHUMANDI LAL *v.* KANHAIYA LAL. 52 I. C. 320.

———*Post diem—Damages — Period for which payable.*

Where there was mortgage deed which stated that it was to run for four years, but was allowed to go on without repayment of the loan thereunder, the court is entitled to award reasonable interest by way of compensation or damages for at least six years after the expiry of the term of the mortgage. 19 A. 39 (P. C.) Foll. (*Rattigan and Le Rossignol JJ.*) MUHAMMAD ISMAIL *v.* GAURI PRASAD. 34 I. C. 916=24 P. R. 1916.

———*Post diem—Whether payable when no agreement.*

Interest should be paid at the rate specified in the deed up to the date of the payment on the mortgage debt except in a case of a contract to the contrary. 77 P. R. 1898, Foll; 114 P. R. 1901, Dist. (*Rattigan and Shadi Lal, JJ.*) MOTA SINGH *v.* BISHEN SINGH. 5 P. R. 1916=
32 I. C. 821=23 P. W. R. 1916.

———*Post diem—Mortgage—Contract rate.*

A mortgagee is entitled to get interest post diem for the whole period at the stipulated rate if there is a provision in the deed that he is to get full interest at the stipulated rate till redemption. (*Shah Dim, J.*) THAKAR DAS *v.* NANDI BAI.
105 P. L. R. 1915=28 I. C. 375=
39 P. W. R. 1915.

———*Post diem — Whether payable when no agreement—Mortgage by condi ional sale.*

In the absence of any stipulation as to post-diem interest after the date fixed for payment, such interest is not recoverable. (*Shadi Lal, J.*) KRISHNA MAL *v.* MUHAMMED BAKSH.
131 P. W. R. 1915=27 I. C. 616=
52 P. L. R. 1915.

———*Post diem—When allowed.*

Post diem interest will not be allowed where the mortgagee had enjoyed large profits for a small outlay. (*Kensington, C. J. and Beadon, J.*) BULANDA *v.* FATEH DIN. 57 P. R. 1914=
25 I. C. 504=256 P. L. R. 1914.

———*Post diem—Mortgage—Principal and interest payable on fixed date—Interest on.*

Interest is payable on a mortgage bond on the general promise by the debtor to be liable

INTEREST—Post diem.

for interest though a definite term is fixed in the bond for repayment of the principal and interest. If the liability under the general undertaking to pay interest is further extended by what may be styled an appurtenant undertaking to pay interest upon arrears of interest and the further undertaking is found in the same document following the provisions for payment of interest, it might be assumed that the parties intended that both the principal and the appurtenant undertaking should apply to the question of liability for *post diem* interest. 19 A. 39; 20 All. 171; 23 M. 453; 11 M. L. J. 188, Foll. (*Sadasiva Iyer and Spencer, JJ.*) NARASIMHAYYA *v.* SRINIVASAYYA.
52 I. C. 313=36 M. L. J. 118.

———*Post diem—Mortgage.*

The mere fact that *post diem* interest is not specifically mentioned in an instrument of mortgage is no reason for refusing to award the same or to set aside a decree awarding it, as it is more reasonable to ascribe to the parties the intention of making a perfect contract, especially when such a contract is of a very common kind and suitable to the ordinary expectations of persons entering into the transaction. 19 All. 39 Foll. (*Ayling and Tyabji, JJ.*) MALAYAPPIER *v.* PITCHAI ASARI. (1915) M. W. N. 208=
28 I. C. 195=2 L. W. 236.

———*Post diem—Mortgage—No provision for payment of interest after due date—Effect of.*

In the mortgage sued no mention was made about the payment of interest year by year but after the clause relating to the payment of principal and interest after due date there was no stipulation that interest should be payable at the contract rate. The penalty of not paying at the end of two years was stated to be the right of the mortgagee to recover principal and interest when he liked. There was no stipulation that if the money was not paid on the due date interest at the contract rate would continue to run. *Held*, that the contract was so onerous that the deed should be read as far as possible to favour the mortgagor, that there was no reason shown, such as insufficiency of security, why such an exorbitant rate of interest should be agreed upon and that the court should fix a reasonable rate as payable after the due date. (*Dalal, A. J. C.*) RAZA HUSAIN KHAN *v.* GANESH PRASAD.
10 O. L. J. 390=1924 Oudh 118.

———*Post diem—Mortgage by conditional sale.*

A mortgage by conditional sale contained a stipulation that if the principal and interest were not paid by the expiry of the mortgage period, the mortgage was to be foreclosed in lieu of the sum so due. On a construction of the document *post diem* interest was allowed. (*Lindsay, J. C. and Kanhaiya Lal, A. J. C.*) RAHAS BEHARI LAL *v.* BACHCHU SINGH. 23 I. C. 871=1 O. L. J. 50.

———*Post diem—When can be allowed—Rate of interest—Interest allowed as damages when can be charged on the land.*

A stipulation for payment of a high rate of interest such as for instance 25 per cent. is a ground for allowing *post diem* interest at 6 per

INTEREST—Rate of.

cent. per annum. Interest allowed as damages can be charged on the land and included in a decree for sale only in cases where there is an express stipulation for payment of interest till the principal amount becomes due and payable. (*Piggott, A. J. C.*) RAMADHIN *v.* DEBI SAHAI.
11 I. C. 342=14 O. C. 106.

Rate of.

———*Rate of—Discretion of court.*

In awarding interest up to the date of the decree the court has no discretion in the matter of the rate which must be the contract rate. After decree the rate is in the discretion of the court. (*Lord Dunedin.*) TEEKAM CHAND *v.* RADHA KISHEN.
26 C. W. N. 153=(1921) M. W. N. 411=
14 L. W. 391=63 I. C. 901=30 M. L. T. 39 (P.C.).

———*Rate of—Discretion of court—Suit for profits.*

Allowing a certain rate of interest is at the discretion of the court in cases of suits for profits against lambardar. (*Richards, C. J. and Banerjee, J.*) MD. ABDUL AZIZ *v.* RAFI-UN-NISSA BIBI.
17 I. C. 833=10 A. L. J. 469.

———*Rate of—Money paid by mistake.*

Where 9 per cent interest was claimed on money paid by mistake, only 6 per cent was allowed. (*Beaman, J.*) JAYANTILAL *v.* NAGNATH.
19 I. C. 95=15 Bom. L. R. 126.

———*Rate of—High rate—Absence of undue influence—If cannot be given effect to.*

The mere fact that the rate of interest agreed upon is high is not sufficient without evidence of undue influence, for not giving effect to the contract which provided for such interest. (*Teunon and Majid, JJ.*) MANI TARA BOSE *v.* DALIUDDI SHEIKH. 61 I. C. 335.

———*Rate of—12 per cent per annum if excessive.*

Interest at 12 per cent. per annum is not excessive. (*Robertson and Chevis. JJ.*) YAKUB KHAN *v.* RAGHAT RAI. 165 P. W. R. 1912=
17 I. C. 235=192 P. L. R. 1912.

———*Rate of—Unconscionable rate—Court's duty.*

The defendant borrowed grain valued at Rs. 99 which he promised to pay after 16 years and the rate of interest charged was 25 per cent compound interest. The plaintiff claimed Rs. 1,000 as value of grains, principal and interest included. *Held*: A court is competent to grant relief whenever the rate of interest appears to the court to be of a penal character, that is, so unconscionable and extravagant that no court shall allow it. The mortgagors could not possibly have realized the real effect of the stipulations as to interest. (*Batten, J. C.*) HOOKUMCHAND *v.* NIDHAN SINGH.
5 N. L. J. 256=1922 Nag. 124.

———*Rate of—Discretion of court—Mortgage suits—C. P. C., S. 34.*

The court has power under S. 34 of the C. P. C. to award interest at the contract rate even after the date fixed for payment, up to the date of realisation, provided the rate is reasonable. 7½ per cent. was held to be reasonable in this case. (*Lindsay, J. C.*) ALLAHABAD BANK *v.* SURAJ KUAR.
26 I. C. 177=1 O. L. J. 544.

INTEREST—Suspension of.

Suspension of.

———*Suspension of—War—Creditor and debtor residing in same country.*

The existence of a state of war between the respective countries of the debtor and creditor suspends the accrual of interest even when the (enemy) creditor remains in the country of the debtor when it would ordinarily be recoverable as damages and not as substantive part of the debt. (*Macleod, J.*) WILFRED R. PADGETT *v.* JAMSHETJI HORMUSJI. 41 Bom. 390 = 33 I. C. 724 = 18 Bom. L. R. 190.

Unliquidated sums.

———*Unliquidated sums.*

Interest is not legally allowable on unliquidated damages. (*Sadasiva Aiyar and Tyabji, JJ.*) BODDU SANYASIRAJU *v.* KOTRA RAMAMURTHI. 21 I. C. 543 = (1913) M. W. N. 874.

INTEREST ACT (XXXII of 1839).

———*Money obtained by fraud—Interest irrecoverable.*

The Interest Act of 1839 expressly provides interest in all cases where money is payable by law including money obtained by fraud. (*Sadasiva Aiyar and Tyabji, JJ.*) AVANCHA LAKSHMI NARASAMMA *v.* AVANCHA LAKSHAMMA. 14 M. L. T. 325 = (1913) M. W. N. 836 = 21 I. C. 394 = 25 M. L. J. 531.

———*Interest not to be allowed if no demand made.*

In the absence of an express agreement to pay interest on a written demand or notice that interest would be changed under the provisions of Act 32 of 1839, the claim as to interest cannot be entertained. (*Moti Sagar, J.*) DES RAJ SAWHUNY *v.* TRAYS MOTOR WORKS. 1923 Lah. 302.

———S. 1—*Sale of property—Consideration unpaid—Interest.*

If in a sale the agreement is that the vendee shall pay a certain sum to the vendor if the latter furnished a registered receipt, the vendee must first tender the amount and so long as he does not do this the vendor is not bound to give a receipt and is entitled to get interest on the amount at the current rate. (*Stuart, J.*) BIDHI CHAND *v.* SAT NARAIN. L. R. 3 A. 163.

———S. 1—*No contract to pay interest—Effect—Goods sold—Notice to claim interest.*

In the absence of any agreement to pay interest on a particular transaction, or of any notice of the vendor's intention to claim interest if debt is not paid within a certain time, a claim for interest cannot be decreed under the Act. (*Lindsay, J. C.*) PURSHOTTAM DAS *v.* BETTHAL DAS. 54 I. C. 431.

———3. 1—*Moneys detained by agent.*

A principal is not entitled to interest on moneys received and detained by the agent on behalf of the principal, in the absence of a contract to the contrary. (*Piggott and Walsh, JJ.*) LALMAN *v.* CHINTAMANI. 41 All. 254 = 49 I. C. 696 = 17 A. L. J. 169.

———S. 1—*Mortgage—Interest—Charge.*

Even if interest could be awarded on a stale claim on a mortgage, it would not constitute a charge on the property. (*Richards, C. J. and Piggott, J.*) BALWANT SINGH *v.* GAYAN SINGH. 35 All. 534 = 21 I. C. 253 = 11 A. L. J. 829.

INTEREST ACT (XXXII of 1839), S. 1.

———S. 1—*No contract to pay interest—Contract Act, S. 73.*

Where an agreement to pay a sum of money does not provide for interest and no interest is demanded before suit it is not awardable either under the Interest Act or as damages under S. 73 of the Contract Act. (*Rattigan, J.*) ARJAN DAS *v.* HAKIM RAI. 39 P. R. 1913 = 20 I. C. 299 = 263 P. L. R. 1913.

———S. 1—*No contract to pay interest—Effect.*

In the absence of a contract to pay interest and the fulfilment of the conditions of the Interest Act, interest cannot be allowed on the ground of delay in payment of the debt. (*Agnew and Shadi Lal, JJ.*) FILLING HAM G. T CAPTAIN C. L. *v.* DUNN. 266 P. L. R. 1913 = 20 I. C. 194 = 8 P. R. 1914.

———S. 1—*Sum certain—Contract to pay on completion and approval of the building.*

A contract provided for payment on the completion of a building and its approval by the deft. Plff. the contractor submitted his bill immediately on the completion of the building and claimed interest on the sum: *Held*, that no interest can be claimed as there was no provision for payment of a sum certain or on a certain day and the claim was not covered by the proviso. 17 All. 511 (P. C.); 3 Cal. 654 (P. C.); 42 Mad. 661, Dist. (*Wallis, C. J. and Seshagiri Aiyar, J.*) RAJA OF PITTAPUR *v.* BALLAPRAGADA PALLAM RAJU. 12 L. W. 567 = (1920) M. W. N. 717 = 60 I. C. 353 = 40 M. L. J. 18.

———S. 1—*Applicability—Unascertained sum.*

The Interest Act is not exhaustive of all claims as to interest and it is open to the courts in India to award interest in cases not coming within the purview of the Act, on principles of equity. The Interest Act does not apply to an unascertained sum such as the profits of a trade. (*Ayling and Seshagiri Aiyar, JJ.*) MUHAMMAD ABDUL GAFFUR *v.* HAMIDA BEEVI AMMAL. 42 Mad. 661 = 25 M. L. T. 242 = 36 M. L. J. 456 = 52 I. C. 505 = (1919) M. W. N. 484.

———S. 1—*Debt—Payment in kind.*

A debt expressed to be payable in kind is a debt under the Act and interest is allowable on it. 12 Bom. L. R. 831, Diss. (*Ayling and Sadasiva Iyer, JJ.*) GOVINDAN NAIR *v.* CHERAL. 30 I. C. 432 = 38 Mad. 464.

———S. 1—*Sum payable under written instrument—Interest.*

Where a certain sum of money is payable by virtue of a written instrument at a certain time the court can, under the Interest Act, allow interest if it thinks fit, at a rate not exceeding the current rate of interest, from the time when the money is payable. Where there is no security a rate of one per cent. per mensem is not unreasonable. (*Drake-Brockman, J. C.*) MURLIDHAR *v.* MULCHAND. 52 I. C. 953.

———S. 1—*Debt—Sum certain—Meaning.*

In a suit for recovery of money representing the depreciation in the value of goods supplied, no interest can be claimed during the pendency

INTEREST ACT (XXXII of 1839), S. 1.

of the suit, as the amount is neither 'debt' nor 'sum certain' within S. 1 but only unliquidated damages. (*Mookerji and Fletcher, JJ.*) CREWDSON *v.* GANESH DAS HARI BUX.
60 I. C. 288 = 32 C. L. J. 239.

——— S. 1.—*Right to interest—Suit for damages for—Use and occupation.*

No interest can be allowed in a suit to recover money for use and occupation because the compensation payable was not payable by an instrument in writing at a certain time. (*Chamier, J. C.*) MUHMAMAD HUSAIN *v.* DEPUTY COMMISSIONER, BAHRAICH.
9 I. C. 221.

——— S. 14—*Penal interest—36 per cent.*

Agreement to pay interest at 36 per cent. is not penal. (*White, C. J.*) ANNAMALAI CHETTIAR *v.* SELLAPPA GOUNDAN. 10 M. L. T. 77 = 12 I. C. 78 = (1911) 2 M. W. N. 367.

INTERLOCUTORY APPLICATION.

See C. P. CODE. S. 115.

INTERLOCUTORY. JUDGMENT.

See C. P. CODE, S. 115.

INTERLOCUTORY ORDER.

See C. P. CODE, SS. 104 AND 115.

INTERNATIONAL LAW.

——— *Prize Court—Duties of—Hague Convention—Sixth Article—Interpretation of.*

A court of prize is only entitled to deal with the conduct of a belligerent only in connection with the particular matters before it and has no general censorship of the conduct of belligerents. Consequently considerations arising out of the general conduct of the war by a belligerent ought not to influence a prize court in determining a dispute forming on the interpretation of a single and separable compact like the 6th article of the Hague Convention. The rules of municipal law regulating the formation, the interpretation and discharge of contracts cannot be said to be within the construction of international compacts. (*Lord Sumner.*) STEAMSHIPS BLONDE ETC., *In the matter of.* 31 M. L. T. 260 (P. C.).

——— *Proceedings for criminal breach of trust in French territory—Execution of in French Territory of a promissory note payable in British India—Dropping of criminal proceedings—Enforceability of the promissory note in British India.*

Where a principal served in French territory on his agent a process charging him with an offence corresponding to a criminal breach of trust under the Indian Penal Code for which under the French Law the accused had the option of meeting the demand thereby putting an end to the prosecution, though under the law of British India it is a non-compoundable offence, and certain relations of the agent executed in the French territory a promissory note payable at Madras and the proceedings were consequently dropped, such a promissory note is one enforceable in British India and the consideration for it is not founded on a violation of the rule of the public policy or of natural justice. 4 M. H. C. R. 14 Foll. The uncertainty of the law as laid down in the English cases pointed out and the case-law on the subject reviewed. (*Coutts-Trotter, J.*) VENKATASUBRAMANIA AIYAR *v.* SYED USUFF.
45 M. L. J. 59 = 18 L. W. 314 = 1923 Mad. 708.

——— *Failure to conform to stamp law of place where document is executed.*

Quaere: Whether a suit could be maintained in British india on a document executed in a Native State and not conforming with the stamp law in that place? (*Wallis, J.*) LAKSHMAMMAL *v.* NARASIMHA. 17 I.C. 281 = 12 M. L. T. 333.

INTERPLEADER.

See C. P. CODE, O. 35.

INTERPLEADER SUIT.

See C. P. CODE, O. 35.

INTERPRETATION OF DEEDS.

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INTERPRETATION OF STATUTES

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Alteration of law.

———*Alteration of law—Duty of court.*

A court cannot alter the law or read into a statute, words which it thinks, should have been there. (*Tudball and Rafique, JJ.*) DAMODAR DAS *v.* JHAOO SINGH. 39 I.C. 87=15 A.L.J. 319.

———*Alteration of law — New Act — Express alteration—Interpretation of old Act.*

When a new Act superseding an old one, contains an express alteration in respect of certain points in the old Act, the former cannot be of any help in interpreting such points in the latter. (*Hallifax, J.*) SAKHUBAI *v.* HARI. 67 I. C. 229.

———*Alteration of law—Vested rights—Effect on.*

There is a presumption, that vested rights are not taken away by fresh legislation and when the terms of a statute are ambiguous, it ought not to be construed as taking away any vested right, if it is open to any other construction. There is no such presumption where the language is clear and free from ambiguity. (*Lindsay, J. C.*) MUNICIPAL BOARD, FYZABAD *v.* VIDYA DHARI.
63 I. C. 334=22 Cr. L. J. 638=24 O. C. 157.

———*Alteration in law—Presumption.*

It must be presumed that the legislature does not intend to make any alteration in the law beyond what it explicitly declares or by necessary implication. It is improbable that the Legislature would overthrow fundamental principles or depart from the general system of law. (*Crouch and Hayward, A. J. Cs.*) SOBARAJ DWARKADAS *v.* EMPEROR. 45 I. C. 399=19 Cr. L. J. 691=11 S. L. R. 128.

Ambiguity.

———*Ambiguity—Language obscure—Inference.*

Where the language is obscure, the Judge may infer that no change in the existing law is intended unless contrary inference is necessary to be drawn owing to expediency or convenience. (*Heaton, J.*) HARGOVIND *v.* BAI HIRBAI.
22 Bom. L. R. 619=58 I. C. 205=44 B. 986.

———*Ambiguity — Words plain but anomalous.*

If the words of an Act are plain but anomalous, no other construction can be put upon the words by courts. (*Chatterjee and Richardson, JJ.*) KASIM ALI *v.* CHAIRMAN OF MUNICIPAL COMMISSIONERS, CHITTAGONG.
21 C. W. N. 601=35 I. C. 782=25 C. L. J. 639.

INTERPRETATION OF STATUTES—Application by Courts.

———*Ambiguity.*

Where an enactment is capable of two interpretations, that construction should be adopted which avoids consequences presumably not intended by the legislature. (*Miller, C. J. Mullick and Ali Imam, JJ.*) SHEO NANDAN PRASAD *v.* EMPEROR.
3 P. L. J. 581=46 I. C. 977=5 P. L. W. 324=19 Cr. L. J. 833=(1919) Pat. 1 (F. B.).

———*Ambiguity — Construction in favour of subject.*

Where the meaning of the statute is not clear, the Act must be construed in favour of the subject. (*Hartnoll and Ormond JJ.*) CHIN AH. YAING, *In re.* 7 Bur. L. T. 275=24 I. C. 823=7 L. B. R. 359.

Amending Acts.

———*Amending Acts — Vested right — Not affected.*

If the application of the provisions of an Amending Act makes it impossible to exercise a vested right of suit, the Act should be construed as not applicable to such cases. 41 C. 1125; 17 C. L. J. 316, Rel. (*Mookerjee and Chotzner, JJ.*) AJIT SINGH *v.* BHAGABATI CHARAN MUKERJEE.
36 C. L. J. 263=1923 Cal. 491.

———*Amending Acts—Court Fees Act.*

The true mode of interpreting a statute like the Court Fees Act repeatedly amended is to take the sections as a whole and then to give effect to the legislative intent on a particular matter. (*Mookerjee, J.*) HARRIETT TEVIOT KERR *In the Goods of.*
18 C. L. J. 308=21 I. C. 502=18 C. W. N. 121.

Analogy.

———*Analogy—Decisions under other Acts, value of.*

Where a question arises under a particular Act the decisions, in such case must depend upon the provisions of the particular Act and not upon the construction of other Acts. (*Macleod, C. J. and Fawcett, J.*) KANDARAO VITHOBA KORE *v.* THE MUNICIPAL CORPORATION OF BOMBAY.
63 I. C. 581=23 Bom. L. R. 361.

———*Analogy.*

An argument from analogy may arise where a principle of law is involved, but not where positive enactment is to be construed. (*Jenkins, C. J. Mookerjee and Holmwood, JJ.*) HAMENDRA NATH *v.* UPENDRA NARAIN. 20 C. W. N. 446=32 I. C. 437=22 C. L. J. 419.

———*Also* 19 W. R. 353, Foll. (*Jenkins, C. J. and Chatterjee, J.*) GURU DAS *v.* KALIDAS CHANGA.
24 I. C. 287=18 C. W. N. 882.

Application by Courts.

———*Application by Courts.*

Courts cannot read into statutes provisions which are not there even if they think that

INTERPRETATION OF STATUTES—Application by courts.

anomalies cannot be avoided otherwise. (*Campbell, J.*) HADAYAT ULLAH *v.* GHULAM MAHOMED BEG.
1923 Lah. 529.

———*Application by courts.*

Courts should not take two different views of law in different stages of the same case. The same Appellate Court cannot pronounce (except on an application for review) a different opinion as to a relevant question of law from that which it held, in previous stages of the same case and on which it remanded the suit to the lower court. 32 Mad. 318, Foll; 41 Mad. 1078 (F.B.), Ref. (*Sadasiva Aiyar and Napier, JJ.*) VASTAD MUSHKIN SAIB *v.* CHOWDAPPA. 40 M. L. J. 528=62 I. C. 703=
14 L. W. 236.

———*Application by courts—Exceptions.*

Provisions of law, which are exceptions to the general law of evidence, must be applied only to those cases, to which it is confined by the Legislature. (*Maung Kin, J.*) EMPEROR *v.* PYU ZIN.
62 I. C. 188=22 Cr. L. J. 492=
13 Bur. L. T. 157.

Bye-law.

———*Bye-law — Tramway Company—Sanction of—Governor-in-Council essential.*

A bye-law of a Tramway Co. unless sanctioned by the Governor-in-Council as required by the statute incorporating the company is invalid and disobedience to it is not an offence. (*Shah and Hayward, JJ.*) SORAB MERWANJI ALPAIVALLU *v.* EMPEROR. 21 Bom. L. R. 1103=
54 I. C. 488=21 Cr. L. J. 88.

———*Bye-law must conform with statute.*

A bye-law must conform with the provisions of the enactment under which it purports to be made. A bye-law which is unreasonable is *ultra vires*. (*Abdul Qadir, J.*) JOTI PERSHAD *v.* EMPEROR. 64 I. C. 129=22 Cr. L. J. 739=
2 Lah. 239.

———*Bye-law—Rules framed by the Governor-in Council—Validity of—Construction.*

Rules framed by the Governor-in-Council under bye-laws are valid. (*Krishnan, J.*) SECRETARY OF STATE FOR INDIA *v.* APPA RAO. 45 M. L. J. 156=
1924 Mad. 92.

———*Bye-laws—Representative bodies.*

Courts give a wide scope to the bye-laws of public representative bodies like Universities, which are created by the Legislature for public purposes. Courts are reluctant to hold such bye-laws as *ultra vires* or invalid. (*Coutts-Trotter and Kumaraswami Sastri, JJ.*) G. A. NATESAN, *In re.*
40 Mad. 125=38 I. C. 847=
31 M. L. J. 634.

———*Bye-law — Abridgment of right under statute.*

Where a power to make regulations is given by a statute, no regulations so made can abridge a right conferred by the statute itself. But if, by statutory enactment a power is given to a rule-making authority to make rules, the rules if they are within the power given, would be

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good even if they have the effect of abridging the right given by the statute. (*White, C. J., Sankaran Nair and Oldfield, JJ.*) MADURAI PILLAI *v.* MUTHU CHETTY. 38 Mad. 823=
15 M. L. T. 156=(1914) M. W. N. 216=
26 M. L. J. 227=22 I. C. 775=
1 L. W. 172.

———*Bye-laws—Construction.*

The validity of bye-laws made by public representative bodies under statutory powers must be approached from a different standpoint from bye-laws of Railway or other companies carrying on business for their own profit. Courts of Justice are slow to condemn Municipal bye-laws as invalid on the ground of unreasonableness and support them if possible by a benevolent interpretation. But if a bye-law necessarily involves that which is unreasonable it is the duty of the court to declare it as invalid. (*Robinson, J.*) P. S. PILLAI *v.* MOULMEIN MUNICIPAL COMMITTEE.
59 I. C. 545=22 Cr. L. J. 113=
13 Bur. L. T. 107.

Codification.

———*Codification—Effect.*

The essence of a code is to be exhaustive on the matters dealt with by it and a Judge cannot disregard or go outside the letter of enactment according to its true construction. 29 C. 707 P. C., Rel. on. (*Jenkins, C. J. and Mookerjee, J.*) PEARY MOHAN SHAHA *v.* DURLAVI DASSYA.
19 C. L. J. 441=20 I. C. 815=
18 C. W. N. 954.

Common Law Rights.

———*Common law rights — New enactment—Effect on rights under the previous law—Common law.*

It is a general rule of construction that statutes limiting or extending the common law rights must be expressed in clear and unambiguous language, and that general words are not to be so construed as to alter the common law, or the previous policy of the law, if a sense or meaning can be applied to them consistent with the intention of preserving the existing policy untouched. (*Fawcett, J.*) NADERSHAW *v.* SHIRINBAI.
25 Bom. L. R. 839=1924 Bom. 264.

———*Common law rights—Extinguishment of.*

A common law right can only be extinguished by an Act by express or implied provisions. (*Chandavarkar and Hayward, JJ.*) NAGINLAL *v.* OFFICIAL ASSIGNEE. 35 Bom. 473=
12 I. C. 391=13 Bom. L. R. 900.

Consolidating Statutes.

———*Consolidating Statutes — Contract Act (IX of 1872).*

The Contract Act is an amending as well as a consolidating Act, and beyond the reasonable interpretations of its provisions there is no means of determining whether any particular section is intended to reproduce or amend the pre-existing law. There is no improbability in the Indian legislature having taken the lead of the English in a matter of legal reform. (*Lord*

INTERPRETATION OF STATUTES—Consolidating Statutes.

Parker.) RAMADAS NITHALDAS DARUAR *v.* AMEERCHAND & Co. 40 Bom. 630=20 C. W. N. 1182=(1916) 2 M. W. N. 110=18 Bom L. R. 670=20 M. L. T. 194=31 M. L. J. 541—4 L. W. 342=14 A. L J. 1045—85 L. J. P. C. 214=21 C. L. J. 320=43 I A 161=35 I. C. 954=32 T. L. R. 594 (P.C.).

———*Consolidating Statutes — Reference to earlier enactment.*

The effect of the clear words of a consolidating statute cannot be cut down by a comparison with the language of the earlier statute. (*Benson and Sundara Aiyar, JJ.*) BALASUBRAMANIA CHETTY *v.* SWARNAMMAL.

33 Mad. 199=(1913) M. W. N. 685=14 M.L.T. 196=21 I. C. 32=25 M.L J. 367.

Construction nullifying statute.

———*Construction nullifying statute.*

A statute must be so interpreted as to defeat all attempts to nullify it in a circuitous manner. (*Drake Brockman, J. C.*) MADHO *v.* UMRO.

17 I. C. 370=8 N. L. R. 147.

Contract, Canon of construction of.

———*Contract, canon of construction of—How far applicable to statutes.*

The canons of construction applicable to contracts are out of place in considering a statutory rule. (*Pratt, J. C.* and *Hayward, A. J. C.*) AJUMAL *v.* SECRETARY OF STATE.

17 I. C. 37=6 S. L. R. 103.

Custom inconsistent with Statute.

———*Custom inconsistent with statute — Succession Act.*

After the customary law has been made into statute, which contains no provision saving custom, the court cannot give effect to such a custom, much less to a custom inconsistent with the statute. As the Succession Act contains no clause saving custom, the court cannot accept custom as a reason for deviating from the provisions of the Act. (*Mullick, J.*) TUNI ORAIN *v.* LEDA ORAIN.

1 P. L. J. 225=36 I. C. 206=20 C. W. N. 1082.

Definition of legal expression.

———*Definition of legal expression—Duty of court.*

It would be clearly wrong for a court to lay down a rigid definition of a legal expression and thereby to crystallise the law when the legislature for the best of reasons, has not reduced the expression to a definition. (*Sanderson, C. J. and Mookerjee, J.*) KRISHNACHARAN BARMAN *v.* SANAT KUMAR DAS.

44 Cal. 162=25 C. L. J. 24=34 I. C. 609=21 C. W. N. 740.

Directory and Mandatory Provisions.

———*Directory and mandatory provisions—Principles to find out.*

Though no universal rule can be laid down for the construction of statutes, it is the duty of courts of justice to try to get at the real intention of the Legislature by carefully considering

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the whole scope and extent of the statute in trying to construe whether a mandatory enactment is directory only or obligatory with an implied nullification for disobedience, and in such cases courts will give due weight to the interpretation put on the statute at the time of its enactment, and since those whose duty it has been to construe, execute and apply it, such interpretation is not binding on the courts which may disregard them for cogent and persuasive reasons. (*Mookerjee and Chatterjee, JJ.*) MATHURA MOHAN SAHA *v.* RAMAKUMAR SAHA.

43 Cal. 790=23 C. L. J. 26=35 I. C. 305=20 C. W. N. 370.

———*Directory and mandatory provisions—Non-compliance—Effect of.*

Where there are provisions in an Act which are only directory and not mandatory, any disregard of these provisions will not make the transaction void altogether. (*Spencer and Seshagiri Aiyar, JJ.*) NAGAR DAMODAR *v.* GUDLIMAR RAMA RAO.

39 Mad. 101=28 M. L. J. 444=17 M.L.T. 326=29 I. C. 192=(1915) M. W. N. 316.

———*Directory and mandatory provisions.*

Where a public officer is directed by a statute to perform a duty within a specified time the provisions as to time are only directory. In deciding whether a rule is mandatory or directory, the possibility of justice suffering from a too rigid application of the time limit should be taken into account. Cases examined. (*Seshagiri Aiyar and Napier, JJ.*) VELLIAPPA CHETTIAR *v.* SUBRAMANIYAM CHETTY.

39 Mad. 485=23 I. C. 119=29 M. L. T. 172.

Ejusdem Generis.

———Ejusdem generis — *Applicability of principle.*

Before putting any construction on the expressions used in a section of a statute, it must first be ascertained from the language of the section the class of cases which were intended to be affected. If the intention is clear the occasion for the introduction of the *Ejusdem Generis* rule of interpretation would not arise. (*Seshagiri Aiyar and Bakewell, JJ.*) HALLINGAL MOOSA *v.* SECRETARY OF STATE FOR INDIA. 43 Mad. 65=53 I. C. 345=37 M. L. J. 332.

———Ejusde generis—*Applicability of principle.*

Where there are general words following particular and specific words in a section of a statute, the general words must be confined to things of the same kind as those specified. (*Das, J.*) KALICHARAN ROY *v.* KESHO PRASAD SINGH. 51 I. C. 15=4 Pat. L. J. 561.

English Decisions.

———*English decisions—Value of.*

In considering the construction of a section in an Indian Act professedly based on and reproducing the language of an English enactment, the courts in India are in practice, if not in theory bound by the decision of the English Court of

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appeal. (*Sanderson, C. J. and Mookerjee, J.*) PREMSUK DAS ASSARAM *v.* UDAIRAM GUNGA BUX.
45 Cal. 138=22 C. W. N. 204=44 I. C. 233=28 C. L J. 498.

———*English decisions—Acts in* pari materia.

When the Indian statute is not at variance with the law obtaining in England the decisions of English courts may be consulted and followed to interpret the Companies Act. (*Shadi Lal, J.*) PLARASING *v.* PESHAWAR BANK, LTD. IN LIQUIDATION. 22 P. L. R. 1915=54 P. R. 1915=28 I. C. 53=235 P. W. R. 1915.

———*English decisions—Applicability to India—Contract.*

English decisions are not precedents which govern us but are only referred to to find out principles underlying the decisions and to explain Indian Statutes which are usually framed with reference to those decisions. (*White, C. J., Sankaran Nair and Sadasiva Aiyar, JJ.*) MANNAVA ANNAPURANAMMA *v.* UPPALA AKKAYYA.
36 Mad. 544=24 M. L. J 333=13 M. L. T. 268=19 I. C. 12=(1913) M. W. N. 328 (F. B.)

———*English decisions—Value of.*

In construing a section of an Indian Act professedly based on an English statute and relating to a branch of law entirely English, the courts in India are in practice, if not in theory bound by the English decisions. (*White and Tyabji, JJ.*) MESSRS. LOVELOCK AND JEWES *v.* THE MALABAR TIMBER AND SAW MILLS, LTD. 18 I. C. 997=13 M L T. 282.

Equity.

———*Equity—If can modify plain words of statute.*

The express words of an Indian statute are not to be overriden by reference to equitable principles which may have been adopted in the English Courts. (*Batchelor, J.*) TIWAN GOUDA BENAPGOUDA. 39 Bom. 472=28 I. C. 946=17 Bom. L. R. 335.

———*Equity—Specific rule of law.*

Where there is a specific rule of law, general principles of equity are out of place. (*Richardson and Beachcroft, JJ.*) DHANANJOY MANJHI *v.* UPENDRA NATH DEB. 46 I. C. 428=22 C. W. N. 685.

———*Equity—If can defeat plain provision of Statute.*

Per Stanyon, A. J. C.—Equity cannot be applied to defeat the plain provisions of a law. Where the whole law has been codified and definitely enacted that law must govern the proceedings of courts and not what the courts think are the principles of equity. (*Drake-Brockman, J. C., Stanyon and Mittra, A. J. Cs.*) SALU BAI *v.* BAJAT KHAN. 42 I. C. 200=13 N. L. R. 130 (F. B.).

Estoppel against Statute.

———*Estoppel against statute.*

Against the express provisions of a statute there can be no estoppel. (*D. Chatterjea, J.*) KALA CHAND SHAHA *v.* SECRETARY OF STATE.
38 I. C. 844=21 C. W. N. 751.

INTERPRETATION OF STATUTES—Expropriating Statutes.

Express powers.

———*Express powers—Whether limits other extensive powers.*

Where certain powers are conferred by a statute upon a company which the company can use even without statute, the powers expressly given should be treated as restricting the use of other general powers by the company by virtue of its being the owner of property. (*Fawcett, A. J. C.*) MATHRA DAS *v.* SECRETARY OF STATE FOR INDIA.
13 I. C. 237=5 S. L. R. 140.

Express words.

———*Express words—Policy of legislature.*

Express words of a section dealing with a specific matter prevail against the general policy of the Act. (*White, C. J., Sankaran Nair and Tyabji, JJ.*) ABDUL KHADIR *v.* A. AHAMMAD SHAIWA. 30 I. C. 423=38 Mad. 419.

Expropriating Statutes.

———*Expropriating statute—Strict construction.*

Where the terms of a statute constitute an invasion of the rights of a subject, to sustain a plea of the bar of the statute to a claim by the owner of property in a civil court, strict proof of compliance with all provisions of statute is essential. (*Lord Dunedin*). SECRETARY OF STATE *v.* RADHAKISHORE MANIKYA. 44 Cal. 328=(1917) M. W. N. 25=14 A. L. J. 1205=18 Bom. L. R. 1037=21 C. W. N. 291=5 L. W. 570=25 C. L. J. 425=38 I. C. 379=43 I. A. 303 (P. C.).

———*Expropriating statutes — Restriction on rights of the subjects—Strict interpretation.*

A statute imposing restrictions upon the rights of the subjects should be strictly construed and such restriction should not be extended beyond what the words used actually cover. (*Abdul Raoof and Moti Sagar, JJ.*) THE ZAMINDARA BANK SHERPUR KALAN *v.* SUBA. 1924 Lah. 418.

———*Expropriating statutes—Strict construction.*

Any statute which enables a public body to interfere with private rights of ownership must, as against the public body be strictly construed. (*Das and Adami, JJ.*) PARDIP SINGH *v.* THE SECRETARY OF STATE FOR INDIA. 1 P. L. T. 395=5 P. L. J. 500=(1920) Pat. 297=57 I. C. 516=2 U. P. L. R. (P.) 181.

———*Expropriating statutes—Strict construction.*

If a regulation is to be construed as taking away anybody's property that intention to take away ought to be expressed in very plain words or be made out very plain and necessary implication. (*Das and Adami, JJ.*) BARU BRAHMANAND SINGH *v.* DAUD BAHADUR SINGH.
(1920) Pat. 245=56 I. C. 344=1 P. L. T. 229=2 U. P. L. R. (P.) 111.

———*Expropriating statutes.*

The language of Acts, which deprive the subject of a right of recourse to ordinary courts of law, must not be extended beyond its least onerous meaning and the same word, occurring twice in the same context, in the same Act will

INTERPRETATION OF STATUTES—Fiscal Act.

be used in the same sense. (*Heald, A. J. C.*) BURMA OIL COMPANY, LTD. *v.* BAIJNATH SINGH.
59 I. C. 960 = (1920) 3 U. B. R. 212.

Fiscal Act.

———*Fiscal Act—Construction in favour of subject—Income Tax Act*, 1886.

The Act must be construed in favour of the subject as it is a special enactment. (*Knox, J.*) JAGDEO SAHU *v.* EMPEROR. 15 A. L. J. 163 = 38 I. C. 993 = 18 Cr. L. J. 433.

———*Fiscal Act—Strict construction — Bicycle with autowheel.*

Enactments demanding taxes from public must be strictly construed. Unless the language is clear the charging authorities cannot assess a charge, as the public have a right to know what are the charges imposed upon them. An ordinary bicycle worked by the autowheel, a mechanical contrivance which may be attached or detached should not be taxed as a motor bicycle or car. (*Walsh, J.*) EMPEROR *v.* GEORGE BANERJI.
36 I. C. 877 = 18 Cr. L. J. 45 = 14 A. L. J. 850.

———*Fiscal Act — Construction in favour of subject.*

A fiscal enactment like the Stamp Act should be construed in favour of the subject. (*Knox, Rafique and Piggott, JJ.*) SHAMBHU DIYAL, *In the matter of.* 37 All. 159 = 27 I. C. 731 = 13 A. L. J. 96.

———*Fiscal Act—Strict construction.*

The fact that a mistaken interpretation has been put upon a statute will not be disregarded by a court of law but that interpretation cannot alter the law. There can be no equitable construction admissible in a fiscal statute. The benefit of the doubt is the right of the subject. (*Mookerjee, Fletcher and Chaudhuri, JJ.*) KILLING VALLEY TEA COMPANY *v.* SECRETARY OF STATE.
48 Cal. 161 = 61 I. C. 107 = 32 C. L. J. 421.

———*Fiscal Act.*

One Fiscal Act cannot be construed by another Fiscal Act. (*Fletcher and Teunon, JJ.*) SARAJ BASHINI DEBI, *In re* 36 I. C. 125 = 20 C. W. N. 1125.

———*Fiscal Act—Strict construction.*

It is a sound principle that the subject is not to be taxed without clear words to that effect; and in dubis, one has always to lean against the construction which imposes a burden on the subject. (*Shadi Lal, C. J., Scott Smith, Broadway, Abdul Raoof and Martineau, JJ.*) SUNDAR DAS *v.* COLLECTOR OF GUJRAT. 3 Lah. 349 = 1923 Lah. 14 (F. B.)

———*Fiscal Act—Stamp Act—Strict construction.*

The Stamp Act is a Fiscal Act and must be rigorously construed in favour of the public whenever an ambiguity arises. (*Rattigan, Le Rossignol and Leslie Jones, JJ.*) RUSTOMJI *v.* EMPEROR. 115 P. R. 1918 = 1 P. W. R. 1918 = 44 I. C. 361 = 151 P. L. R. 1917 (F. B.)

INTERPRETATION OF STATUTES—General and special provisions.

———*Fiscal Act—Doubtful case.*

In case of doubt, a taxing statute should be construed in favour of the subject. The principle is that if the person to be taxed comes within the letter of the law, he must be taxed, however great the hardship may be. But if he is not within the letter he is free however within spirit of law he may appear to be. (*Dass and Ross, JJ.*) DEPUTY COMMISSIONER OF SINGHBHUM *v.* JAGADISH CHANDRA DEO. 2 P. L. T. 683 = 62 I. C. 513 = 6 P. L. J. 411.

———*Fiscal Act—Construction in favour of.*

A fiscal enactment should, as far as possible, be construed in favour of the subject and the construction most beneficial to the subject should be adopted in cases of doubt. (*Das, J.*) KALICHARAN ROY *v.* KESHO PRASAD SINGH.
51 I. C. 15 = 4 P. L. J. 561.

———*Fiscal Act—Stamp Act—Construction in favour of subject.*

Where a provision is capable of two constructions the construction favourable to executant will be preferred. (*Chamier, C. J., Chapman and Jwala Prasad, JJ.*) MAHOMED SADIK *v.* AMIA NATH DUTT. 2 P. L. W. 225 = (1917) Pat. 345 = 41 I. C. 693 = 2 P. L. J. 686.

———*Fiscal Act.*

Fiscal enactments should, in cases of doubt, be construed in favour of the subject. (*Saunders, J. C.*) JAGNATH KAHAR *v.* EMPEROR.
2 Cr. L. J. 120 = 1922 U. B. 14.

———*Fiscal Act—Strict construction.*

In statutes of taxation the imposition of a duty must be in plain terms and such statutes must be construed strictly. The onus lies on the Crown to show that the person whom it is sought to tax fall clearly within its operation. (*Robinson, C. J. and Maung Kin, J.*) MESSRS. ROWE AND CO. *v.* GOVERNMENT. 11 L. B. R. 299 = 67 I. C. 781 = 1 Bur L. J. 46.

General and Special Provisions.

———*General and special provisions—Lim. Act.*

It is a rule of construction that a general article does not apply when the case is governed by a particular article. (*Jenkins, C. J. and Stephen, J.*) MADRAS STEAM NAVIGATION CO., LTD. *v.* SHALIMAR.
28 I. C. 463 = 42 Cal. 85.

———*General and special provisions—Rule of construction.*

A general statute must yield to a special Act which applies to a particular locality. A general statute is presumed to have general cases only in view and not particular cases which have already otherwise been provided for by a special or a local Act. (*Shadi Lal, C. J. and Abdul Qadir, JJ.*) SIBA SINGH *v.* SUNDAR SINGH.
3 Lah. L. J. 522.

———*General and special provisions.*

A general Act should not be construed as repealing a special one, which is directed towards

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a special object or special class of objects. (*Kumaraswami Sastri, J.*) CHIDAMBARA CHETTY, *In re* 29 M. L. T. 112 = 13 L. W. 374 = 61 I. C. 991 = (1921) M. W. N. 188.

———*General and special provisions—Principles of construction.*

When there is a specific provision in one of the Acts, it would not be in consonance with the ordinary rules of interpretation of statutes to regard a specific provision in one of the Articles of an Act as containing a general view of law applicable to claims under other Articles but the proper view is to limit the restrictive period to the particular claim provided for and to construe the language of the other articles in their actual sense. (*Seshagiri Iyer and Napier, JJ.*) NARNA *v.* AMMANI. 39 Mad. 981 = 4 L. W. 77 = 20 M. L. T. 174 = (1916) 2 M. W. N. 125 = 35 I. C. 418 = 31 M. L. J. 865.

———*General and special provisions—How construed.*

According to ordinary canons of construction, a special provision should ordinarily receive effect unqualified by the general provisions. (*Oldfield and Napier, JJ.*) KRISHNAMACHARI *v.* SHAW WALLACE & Co. 39 Mad. 576 = 18 M. L T. 25 = (1915) M. W. N. 418 = 29 M. L. J. 178 = 29 I. C. 331 = 16 Cr. L. J. 491.

———*General and special provisions- Common law rights.*

Where a statute provides a special remedy for a liability or right already existing, unless the statute contains words which either expressly or by necessary implication exclude the common law remedy, the person suing has his election to pursue either that or the statutory remedy. (*Drake Brockman, J. C.*) BALA *v.* VITHU. 44 I. C. 237.

Hardship.

———*Hardship—Consideration of.*

In interpreting the plain words of a statute any suggestion of hardship is out of place. (*Richardson and Walmsley, JJ.*) THE SECRETARY OF STATE FOR INDIA *v.* SHIB NARAIN HAZRA. 46 Cal. 199 = 47 I. C. 502 = 22 C. W. N. 802.

———*Hardship—Court cannot cut down the language—Consolidation of suits—Court, power of—Consolidation in Appellate Court.*

The court cannot cut down the clear words of a statute to avoid hardship to one party. The court would proceed to consolidate suits, if at all, only where the consolidation is asked for before the trial of the suit begins and the evidence to be given is common to both. Appeal should not be consolidated so as to use the evidence in one as the evidence in another, if the two cases were separately tried in the lower courts. (*Fletcher and Teunon, JJ.*) JANARDHAN KISHORE LAL SINGH DEO *v.* SIR PRASAD RAM. 43 Cal. 95 = 36 I. C. 179 = 20 C. W. N. 475.

——*Hardship—Consideration of.*

The courts are constrained to administer the law as they find it without reference to hard cases. (*Kensington and Beadon, JJ.*) SAGHAR *v.* NUR AHMAD. 59 P.W.R. 1913 = 110 P.L.R. 1913 = 19 I. C. 239 = 79 P. R. 1913.

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——*Hardship—Consideration of.*

Per Coutts-Trotter and Srinivasa Iyengar JJ :—Hardship or no hardship if the language of the statute is plain, courts are not entitled to take liberties with it under the guise of construing it. (*Wallis, C. J., Abdur Rahim, Coutts-Trotter, Seshagiri Aiyar and Srinivasa Aiyangar JJ.*) MULLA VITTIL SEETI *v.* KUNHI PATHUMMA. 40 Mad. 1040 = 33 M. L. J. 320 = 22 M. L. T. 236 = (1917) M. W. N. 609 = 43 I. C. 31 = 6 L. W. 464 (F. B.).

——*Hardship—If limits plain meaning section.*

Where a plain interpretation of a statute is possible without its being unjust, inconsistent or unreasonable, that should not be departed from, simply because it may cause hardship in some particular case. The language of a codifying enactment must receive its natural meaning without any assumption as to its having probably been the intention to leave unaltered the law as it existed before. 23 C. 563, Foll. (*Fawcett, A. J. C.*) MANSOOR *v.* MINO SAHEBDIN. 13 I. C. 234 = 5 S. L. R. 125.

——*Hardship—Consideration of.*

Where the meaning of words used in a statute is clear and unambiguous, it is not open to the court to speculate as to the intention and decline to give effect to the strict sense because of some apparent or supposed hardship. (*Hayward, J. C. and Cohen, A. J. C.*) EMPEROR *v.* HATIMATI. 9 I. C. 720 = 12 Cr. L. J. 122 = 4 S. L. R. 214.

Harmonious Construction.

——*Harmonious construction.*

One section cannot be used to defeat another unless it is impossible to effect a reconciliation between them. (*Sir Lawrence Jenkins.*) MOHAMMAD SHER *v.* SWAMI DAYAL. 20 A. L. J. 476 = 44 A. 185 = 49 I. A. 60 = 9 O. L. J. 81 = 42 M. L. J. 584 = 25 O. C. 8 = 35 C. L. J. 468 = (1922) M. W. N. 378 = 24 Bom. L. R. 695 = 30 M. L. T. 220 = 1922 P. C. 17 (P. C.).

——*Harmonious construction—All provisions to be taken into account—Inconvenience—Absurdity.*

A construction which leads to absurdity or inconvenience should be avoided, unless express words of a statute compel the court to hold otherwise. Construction is to be made of all the parts together and not of one part only by itself. (*Shadi Lal, J.*) DAULAT RAI *v.* WAZIR CHAND. 20 P. R. 1915 = 29 I. C. 272 = 35 P. L. R. 1916.

——*Harmonious construction.*

Per Abdur Rahim, J.—The well-established principle of interpretation is, that of two possible constructions, the one which gives a consistent meaning to the different parts of an enactment should be preferred. (*Wallis, C. J., Abdur Rahim and Srinivasa Iyengar, JJ.*) SANKARA VENKATRATNAM *v.* VARADARAJULU APPA RAO. 40 Mad. 529 = 35 I.C. 213 = (1916) 2 M. W. N. 7 = 3 L. W. 592 = 31 M. L. J. 123 = 20 M. L. T. 118.

INTERPRETATION OF STATUTES—Harmonious Construction.

———*Harmonious construction.*

In construing a statute care must be taken to see that no inconsistency results from such construction. (*Benson and Sundara Iyer, JJ.*) KAMBAM BALI REDDI *v.* EMPEROR. 22 I. C. 756= 15 Cr. L. J. 180=37 Mad. 119.

———*Harmonious construction.*

The court ought not to construe a section without considering the whole Act and also the other portion of the section of that statute and the general law. (*Stanyon, A. J. C.*) SUKHANDAN *v.* LAKHMICHAND. 12 I. C. 364=7 N. L. R. 136.

———*Harmonious construction.*

The construction of a statute is to be made of all the parts together and not of one part only by itself. (*Drake-Brockman, J. C.*) MAHADEO *v.* NAGO. 12 I. C. 357=7 N. L. R. 130.

———*Harmonious construction.*

A section of an Act should not be interpreted so as to conflict with other established principles of law. (*Stuart and Kanhaiya Lal, A. J. Cs.*) WASI ALI *v.* JANG BAHADUR SINGH. 34 I. C. 48=2 O. L. J. 614.

———*Harmonious construction—Statute not repealed or modified.*

Every enactment must be so construed as to be consistent with every other one not expressly repealed or modified unless they are in conflict. (*Lindsay, J. C. and Kanhaiya Lal, A. J. C.*) PRINS *v.* MURRAY AND CO. 17 O. C. 99=23 I. C. 935=1 O. L. J. 127.

———*Harmonious construction.*

Laws have to be interpreted in such a way as to avoid a conflict. (*Kanhaiya Lal, A. J. C.*) BACCHULAL *v.* RAJA RAM. 19 I. C. 347=16 O. C. 5.

———*Harmonious construction.*

It is well-known rule of construction that each part of a statute must expound every other part. (*Das, J.*) LALJI TEWARI *v.* EMPEROR. 54 I. C. 894=1 P. L. T. 147.

Headings.

———*Headings, if limit express words of section.*

The heading to a group of sections in a statute ought not to be pressed in, to a constructive limitation upon the exercise of the powers given by the express words of the Act. (*Lord Sumner.*) ABDUL RAHIM *v.* MUNICIPAL COMMISSIONER OF BOMBAY. 42 Bom. 462=(1918) M. W. N. 840= 23 C. W. N. 110=24 M. L. T. 297= 20 Bom. L. R. 937=48 I. C. 63= 8 L. W. 548 (P. C.).

———*Headings—Marginal notes, value of.*

Reliance could not be placed on the headings of chapters or descriptions of sections in the margin of the same, especially in the case of Agra Tenancy Act, which is not a model of good drafting. (*Knox, J.*) AJNASI KUAR *v.* PAYAG SINGH. 45 I. C. 534.

———*Headings—Value of.*

The heading of a chapter may be looked to in interpreting but neither the preamble nor the heading can be referred to for controlling the

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plain meaning of the enacting portion. (*Mitra, Offg. A. J. C.*) JANU *v.* FAKIRA. 42 I. C. 694= 13 N. L. R. 181

———*Headings—Value of.*

The headings prefixed to sections of a statute may be used for the purpose of an interpretation of the meaning, scope and intention of the statute. *Per Mullick, J.* contra. (*Chamier, C. J., Chapman, Mullick, Roe and Jwala Prasad, JJ.*) JANKI SINGH *v.* JAGANNATH DAS. 44 I. C. 94=3 P. L. J. 1 (F. B.).

———*Headings—Value of.*

The headings prefixed to the sections or sets of sections can be used for the purpose of interpreting the meaning and scope of the statute. (*Chamier, C. J.*) JANKI SINGH *v.* JAGARNATH DASS. 3 P. L. W. 105=42 I. C. 177= (1917) Pat. 318.

Health Statutes.

———*Health statutes—How construed.*

Statutes passed for the benefit of the public health and sanitation are construed in the same way as licensing Acts. (*Stanyon, A. J. C.*) SAIYYAD RAHIM *v.* EMPEROR. 29 I. C. 325=16 Cr. L. J. 485=11 N. L. R. 76.

History of Legislation.

———*History of legislation.*

When the meaning of an enactment is to be ascertained, it is necessary to refer to the events which led to the passing of the Act (VII of 1865). (*Sankaran Nair and Sadasiva Aiyar, JJ.*) SRIRAJA VENKATA RANGAYYA APPA RAO BAHADUR *v.* SECRETARY OF STATE. 13 M. L. T. 330= (1913) M. W. N. 417=19 I. C. 227= 24 M. L. J. 680.

———*History of legislation — Previous Act—Reference to.*

In construing the provisions of an Act in force which in themselves are perfectly clear no reference should be made to a former Act on the subject which the Act in force has superceded. (*Lindsay, J. C.*) RUDRA PARTAP SINGH *v.* SIKANDAR KHAN. 39 I. C. 598=20 O. C. 104.

———*History of legislation—Reference to.*

In construing a statute courts are entitled to look at the course of legislation up to the date of the statute and if the words of a previous statute are re-enacted it may be assumed that the law was intended to continue as before. (*Dawson Miller, C. J. and Mullick, J.*) NARAYAN SINGH *v.* BABA. 4 P. L. W. 189=44 I. C. 262= (1918) Pat. 131.

———*History of legislation—Prior Act—Reference to.*

The court can look into a prior legislation in order to find the scope, object and intention of an amending Act. (*Mullick and Atkinson, JJ.*) RAM SHAI *v.* KHEMON MAHTO. 1 P. L. W. 571= 38 I. C. 59=(1917) Pat. 63.

———*History of legislation — Natural meaning to be taken.*

The words of a statute must be given their natural meaning without reference to the previ-

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ous law or previous history of legislation. (*Maung Kin, J.*) KYANKSEMA *v.* APARNA CHARAN.
62 I. C. 342=10 L. B. R. 326.

Illustrations.

———*Illustrations—Part of statute.*

Illustrations to an Indian statute are to be considered as part of the statute itself. (*Lord Atkinson.*) LALA BALA MAL *v.* AHAD SHAH.
35 M. L. J. 614=25 M. L. T. 55=
16 A. L. J. 905=23 C. W. N. 233=
124 P. R. 1918=180 P. W. R. 1918=
29 C.L.J. 165=1 U.P.L.R (P.C.) 25=
48 I. C. 1=21 Bom. L. R. 558 (P.C.).

———*Illustrations—Value of.*

Illustrations appended to a statute are very useful in interpreting the meaning of the sections. It is the duty of a court of law to accept, if that can be done, the illustrations given as being of relevance and value in the construction of the text; they should be rejected as repugnant to the section only as the last resort of construction. (*Lord Shaw*). MAHOMED SYCDOL HUFFIN *v.* YEHOOL GARK.
(1916) 2 A. C. 575=
21 C. W. N. 257=(1917) M. W. N. 162=
19 Bom. L. R. 157=86 L. J. P. C. 15=
115 L. T. 564=32 T. L. R. 678=39 I. C. 401=
43 I. A. 256 (P.C.).

———*Illustrations—If control section.*

An illustration to a section ought never to be allowed to control the plain meaning of the section itself and certainly it ought not to do so when the effect would be to curtail a right which the section in its ordinary sense would give. (*Macleod, J.*) SHIVLAL MOTILAL *v.* BIRDICHAND JIVRAJ.
40 I. C. 194=19 Bom. L. R. 370.

———*Illustrations—Value of.*

Although illustrations lack the force of law they go a great way to explain the intention of the legislature. (*Sharfuddin, J.*) RAM SUBHAG SINGH *v.* EMPEROR.
30 I. C. 465=
16 Cr. L. J. 641=19 C. W. N. 972.

———*Illustrations—Value of.*

"Illustrations" appended to sections of an Act are not to be taken as express provisions of the law or as binding on the court. (*Johnstone and Rattigan, JJ.*) BALMOOCAND *v.* EMPEROR.
11 P. W. R. 1915 Cr.=17 P. R. 1915 Cr.=
16 Cr. L. J. 354=28 I. C. 738=
246 P. L. R. 1915.

———*Illustrations—Value of.*

The illustrations to a section are a guide to the intent of the legislature. 39 I. C. 401 (P.C.) Foll. (*Seshagiri Aiyar and Napier, JJ.*) KUNCHITHAPATHAM PILLAI *v.* PALAMALAI PILLAI.
(1917) M. W. N. 166=39 I. C. 405=
32 M. L. J 347.

———*Illustrations—Value of.*

Illustrations to a section are both relevant and valuable in the construction of the text. 39 I. C. 401 P. C. Ref. to. (*Young, J.*) JANOO AND CO. *v.* JOSEPH HRAP AND SONS, LTD.
46 I. C. 497=11 Bur. L. T. 9.

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———*Illustrations—Value of.*

Illustrations do not lay down substantive law and may be useful if correct. (*Fox, Twomey, Ormond, Parlett and Robinson, JJ.*) NAGA MYA *v.* EMPEROR.
8 Bur. L. T. 220=17 Cr. L. J. 49=
32 I. C. 641=8 L. B. R. 306 (F. B.).

Indian Enactments.

———*Indian Enactments when* ultra vires.

The enactments of the Indian Legislature are null and void when they exceed the limitations prescribed by the Imperial Parliament to which the Indian Legislature is subordinate. 40 C. 391 Ref. to. (*Abdur Rahim, A. C. J. and Ayling and Seshagiri Iyer, JJ.*) ANNIE BESANT *v.* GOVT. OF MADRAS.
39 Mad. 1085=
5 L. W. 1=(1916) 2 M. W. N. 385=
18 Cr. L. J. 157=37 I. C. 525=
21 M. L. T. 124
[On appeal see 52 I. C. 209=43 Mad. 146 (P. C.)].

Intention of Legislature.

———*Intention of legislature.*

The courts in the interpretation of Acts encroaching rights of subjects, do rightfully expect the legislature to manifest its intention plainly or by implication and beyond reasonable doubt. (*Knox, C. J. and Banerjee, J.*) IMAMI *v.* EMPEROR.
35 All. 24=16 I. C. 333=
13 Cr. L. J. 685=10 A. L. J. 426.

———*Intention of legislature—Plain meaning of words to be given effect to.*

The proper course in the construction of a statute is to examine the language and find its natural meaning uninfluenced by considerations derived from the previous state of the law and not to start with enquiring how the law previously stood and assuming that it was probably intended to have it unaltered, to see if the words will bear an interpretation in conformity with this view. (*Macleod, J.*) SHIVLAL MOTILAL *v.* BIRDICHAND JIVRAI.
40 I. C. 194=19 Bom. L. R. 370.

———*Intention of legislature — Vested right taking away of — Presumption.*

An intention to take away vested right withou compensation or saving cannot be imputed to the legislature unless expressed in clear terms. (1903) A. C. 355; (1905) A. C. 369: 6 W. R. 686 Foll. (*Jenkins, C. J., Stephen, Woodroffe, Holmwood and Chatterjee, JJ.*) GOPESHWAR PAL *v.* JIBAN CHANDRA.
41 Cal. 1125=
24 I. C. 37=18 C. W. N. 804=
19 C. L. J. 549 (F. B.).

———*Intention of legislature—Meaning of words used—Plain construction.*

A court is not at liberty to speculate on the intention of the Legislature, and to construe them according to its own notions of what ought to have been enacted. Nothing could be more dangerous than to make such considerations the ground for construing an enactment that is unambiguous in itself. To depart from the meaning on account of such view is, in truth, not to construe the Act, but to alter it. But the businesses of the interpreter is not to improve the statute, it is to expound it. The interpretation of law must be according to what the words

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mean and not when the legislature meant. (*Shadi Lal, C.J. and Martineau, J.*) GOBIND DAS *v.* RUP KISHORE. 4 Lah. 367=6 L. L. J. 25=1924 Lah. 65.

———*Intention of legislature—Language plain.*

If the language of a statute is clear and unambiguous the court must give effect to it and has no right to extend its operation in order to carry out the real or supposed intention of the legislature. It matters not in such a case, what the consequences may be. Where by the use of clear and unequivocal language capable of only one meaning anything is enacted by a legislature it must be enforced even though it must be absurd or mischievous. (*Shadi Lal, C. J. and Le Rossignol, J.*) PIARA SINGH *v.* MULAMAL.
4 Lah. 323=5 L. L. J. 551=1923 Lah. 655.

———*Intention of legislature—Evidence.*

A statute clear and unambiguous should be strictly construed. No evidence of its intention should be allowed. (*Fenton, J. C.*) GHULAM MUHAMMAD *v.* ZEWARD. 5 P. R. 1912 (Rev.)=17 I. C. 979=35 P. L. R. 1913.

———*Intention of legislature—Speculation.*

The phrase "intention of the Legislature" cannot be intended to cover a speculative opinion as to what the legislature would have probably meant, although there has been an omission to enact it. (*Stanyon, A. J. C.*) SAIYYAD RAHIM *v.* EMPEROR. 29 I. C. 325=16 Cr. L. J. 485=11 N. L. R. 76.

———*Intention of legislature—Words to be looked to.*

When the terms of a statute are clear, it is contrary to all principles of interpretation to first conceive the intention of the legislature in enacting the statute and then to construe the language in accordance with that intention. (*Simpson aun Wazir Hasan, A. J. Cs.*) MIRZA SADIQ HUSAIN *v.* MAHOMED KARIM.
9 O. L. J. 456=25 O. C. 319=1922 Oudh 289.

———*Intention of legislature.*

Whatever may have been the intention of the legislature in passing an Amending Act Courts must give the provision of the Act their literal construction. It is not proper to approach the statute by assuming an intention apart from the language of the statute, and having made that fallacious assumption, to bend the language in favour of the assumption, so made. 13 A. C. 294; (1891) A.C. 107; 23 C. 563 Foll. (*Daniels and Lyle, A. J. Cs.*) KUAR NAGSHAR SAHAI *v.* KUAR MATHURA PRASAD. 25 O. C. 189=9 O. L. J. 235=1922 Oudh 236.

———*Intention of legislature when to be discussed.*

The intention of the legislature can be discussed only when there is any ambiguity in the words of the law. (*Baillie and Tweedy, JJ.*) GHULAM SARVAR *v.* MUHAMMUD AMBAR ALI KHAN.
25 I. C. 594=1 O. L. J. 325.

———*Intention of legislature—Rent Acts—Limitation.*

INTERPRETATION OF STATUTES—Judgment, statement in.

Per Mullick, J.—The policy of legislature since 1885, is to provide special rules of limitation in Rent Acts in place of general rules in the statutes of limitation. (*Chamier, C.J. and Mullick, J.*) KUNTI DAI *v.* JHARU LAL DAS.
2 P. L. W. 16=(1917) Pat. 247=40 I. C. 907=2 P. L. J. 567.

———*Intention of legislature—Language of Act.*

If the natural and ordinary meaning imported by the words of the Act give out a result consistent with the Act, it matters not that it may be in excess of what the legislature had in view. (*Pratt, J. C. and Boyd, A. J. C.*) MUNICIPALITY OF KARACHI *v.* MAHOMED ALI ESSAJI.
33 I. C. 675=9 S. L. R. 126.

———*Intention of legislature.*

The legislature never intends to make any alteration in law beyond what it explicitly declares. (*Crouch, A. J. C.*) MAHOMED ALI ESSAJI *v.* KARACHI MUNICIPALITY. 20 I.C. 572=7 S.L.R. 31.

———*Intention of legislature—Speculation as to.*

Where the meaning of a Statute is clear and unambiguous, it is idle to speculate upon the intention of the legislature. (*Pratt, J. C. and Crouch, A. J. C.*) DOULATRAM *v.* HALO KANYA.
13 I. C. 244=5 S. L. R. 155.

———*Intention of legislature—When to be looked into—'District'—Meaning of.*

Statutes ought to be strictly construed from the language thereof. The court should not inquire into the intention of the Legislature unless an ambiguity exists. The word 'District' means a Taluka and not a Collectorate. (*Pratt J. C. and Crouch, A. J. C.*) IMPERATOR *v.* JARO.
12 I. C. 646=12 Cr. L. J. 558=5 S. L. R. 54.

Interpretation Clause.

———*Interpretation clause—Comprehensive nature of.*

In case of comprehensive defining clauses, such as those defining a term as including something, the rule is that they are not to be taken as strictly defining what the meaning of the word must be under all circumstances but merely as declaring what thing may be comprehended within it, where the circumstances require that they should. (*Scott, C. J., Chandavarkar and Heaton, JJ.*) EMPEROR *v.* BRAZ H. DE SOUZA. 35 Bom. 412=11 I. C. 610=12 Cr. L. J. 426=13 Bom. L. R. 494.

———*Interpretation clause—When to be used.*

The interpretation clause present in most modern statutes should only be used for interpreting words having ambiguous or equivocal meaning and should not be used to disturb the meaning of plain words. (*Chapman, Mullick and Atkinson, JJ.*) MANIKRAM *v.* EMPEROR.
2 P. L. J. 91=18 Cr. L. J. 404=2 P. L. W. 357=38 I. C. 964=(1917) Pat. 89.

Judgment, Statement in.

———*Judgment, statement in—Value of.*

Per Sadasiva Iyer, J.—A statement in a judgment about an admission made before the first

INTERPRETATION OF STATUTES—Jurisdiction.

Court should not be doubted lightly by the appellate court especially when there is no affidavit by the vakil who appeared in the lower court. (*Oldfield and Sadasiva Iyer, JJ.*) NELLAVADIVU AMMAL *v.* SUBRAMANIA PILLAI.
40 Mad. 687=38 I. C. 617=31 M. L. J. 269.

Jurisdiction.

———*Jurisdiction—Statute conferring—Means of exercising jurisdiction impliedly conferred.*

It is a well-known rule of interpretation of statutes that where a statute confers jurisdiction, it impliedly grants also the power to do such acts, adopt such measures, and employ such means as are essentially necessary to its execution. 23 C. 514; 24 C. 754, Ref. (*Mookerjee and Panton, JJ.*) YASIN ALI MIRDHA *v.* RADHAGOBINDA CHOWDHURI. 26 C. W. N. 381=1922 Cal. 118=47 Cal. 354=55 I. C. 180=30 C. L. J. 489.

———*Jurisdiction—Punjab Alienation of Land Act.*

Provisions, which trench on the usual jurisdiction of a Civil Court to execute its decree or order, must be strictly construed. Although agricultural land is exempt under the Punjab Alienation of Land Act, yet an Insolvency Court is competent to proceed against such land by means of a temporary alienation. (*Shadi Lal, C. J. and Wilberforce, J.*) MANJI *v.* GIRDHARI LAL. 61 I. C. 664=2 Lah. 78.

———*Jurisdiction—Extension of, to new matters—Incidents of ordinary jurisdiction apply.*

Where the jurisdiction of a court is extended by a statute to matters which would not ordinarily come within its purview that extension of jurisdiction makes the new matters, subject to all the machinery provided by law, for the regulating of its ordinary jurisdiction as a Court of record. (*Schwabe, C. J. and Coutts-Trotter, J.*) THE SECRETARY, BOARD of REVENUE *v.* MADRAS EXPORT COMPANY. 18 L. W. 392=1924 Mad. 63.
[This view is no longer law, See 1923 P. C. 148.]

———*Jurisdiction—Act creating, if affects previously existing jurisdiction.*

Obiter.—The creation of a new jurisdiction does not affect previously existing jurisdiction in the absence of express provision to that effect. (*Wallis, C. J., Sadasiva Aiyar and Srinivasa Aiyangar, JJ.*) NARAINSWAMI AIYAR *v.* VENKATARAMANA AIYAR. 39 Mad. 239=29 M. L. J. 607=18 L. T. 426=2 L. W. 1037=31 I. C. 326=(1915) M. W. N. 921 (F. B.)

———*Jurisdiction—Ouster in special cases—Other cases.*

Where the general jurisdiction of Civil Courts is specially taken away in particular cases by an Act, the Civil Courts retain their ordinary jurisdiction in all other classes of cases unless it is acquired by the Revenue Courts. (*Sadasiva Aiyar and Tyabji, JJ.*) RAJAH OF VENKATAGIRI *v.* JAYAMPA AYAPPA REDDY.
38 Mad. 738=14 M. L. T. 405=(1913) M. W. N. 919=21 I. C. 532=25 M. L. J. 578.

INTERPRETATION OF STATUTES—Jurisdiction.

———*Jurisdiction—Act ousting—Strict constructions.*

Enactments taking away the jurisdiction of Civil Court must be strictly construed. (*White, C. J. and Tyabji, J.*) MUTHAMMAL *v.* SECRETARY OF STATE. 13 M. L. T. 293=(1913) M. W. N. 307=19 I. C. 68=24 M. L. J. 405.

———*Jurisdiction—Act conferring.*

The general principle of construction applicable to an enactment conferring jurisdiction is that it must clearly appear that a particular case falls within its jurisdiction and the jurisdiction should not be extended by implication. (*Bakewell, J.*) OFFICIAL ASSIGNEE OF MADRAS *v.* RAMASWAMY IYENGAR. 12 M. L. T. 229=(1912) M.W.N. 974=17 I. C. 342=23 M. L. J. 726.

———*Jurisdiction—Statute ousting—Strict construction.*

An Act by which the jurisdiction of the ordinary courts of judicature is taken away must be construed strictly. 8 W. R. 428 Foll. (*Drake-Brockman, J. C.*) KAMA *v.* BHAJANLAL.
45 I. C. 654.

———*Jurisdiction—Act ousting—Strict construction.*

It is a rule of construction that an Act by which the jurisdiction of ordinary courts is taken away must be construed strictly. (*Drake-Brockman, J. C.*) GANPAT *v.* TRIBAK. 19 I. C. 759=9 N. L. R. 54.

———*Jurisdiction.*

Where an Act lays down that no suit shall lie in a civil Court, it means that no suit shall lie even on the ground of fraud. (*Miller, C. J., Mullick and Bucknill, JJ.*) HERE KRISHNA SEN *v.* UMESH CHANDRA DUTT. 2 P. L. T. 528=3 U. P. L. R. (P.) 57=6 P. L. J. 373=62 I. C. 962=(1921) Pat. 209 (F. B.).

———*Jurisdiction—Statute ousting—Strict construction.*

Statutes ousting the jurisdiction of Civil Courts must be strictly construed, so as not to allow the Civil Court's jurisdiction to be lightly interfered with. (*Atkinson and Das, JJ.*) SHAIBA PRASAD *v.* GOLAM MANJHI. 50 I. C. 454=(1919) Pat. 147.

———*Jurisdiction—Equitable jurisdiction, if can be invoked to override Act.*

Courts in India cannot invoke the equitable jurisdiction of the Court of Chancery to override the law as enacted by an Act of Indian Legislature. (*Pratt, J. C. and Crouch, A. J. C.*) ABDUL WAHID *v.* MANAGER, ENCUMBERED ESTATES.
19 I. C. 838=6 S. L. R. 250.

———*Jurisdiction—When taken away.*

The jurisdiction of a superior court cannot be taken away except by express orders or by

INTERPRETATION OF STATUTES—Language.

necessary implication. 4 Bom. 634 Foll. (*Pratt, J. C. and Crouch, A. J. C.*) KARAM BAHADUR *v.* EMPEROR. 13 I. C. 223=13 Cr. L. J. 31=5 S. L. R. 179.

Language.

———*Language—Plain meaning.*

Per Crump, J.—Courts are bound to construe a section of an Act according to the plain meaning of the language unless either in the section itself, or in any part of the Act anything is found to modify, qualify or alter the statutory language even if absurdity or anomaly be the result of such interpretation. The proper course in interpreting an Act intended to codify a particular branch of the law is first to examine its language for its natural meaning uninfluenced by any considerations derived from the previous state of the law and to start with enquiring how the law previously stood and then assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view. (*Macleod, C. J. and Crump, J.*) ALFRED WILKINSON *v.* WILKINSON. 47 Bom. 843=25 Bom. L. R. 945=1923 Bom. 321.

———*Language—Same words to be construed in same sense.*

Where in a statute the same word is used in different sections it ought to be interpreted in the same sense throughout unless the context in any particular section plainly requires that it should be understood in a different sense. (*Chandavarkar and Heaton, JJ.*) BABA YESHVANT DESAI, *In re.* 35 Bom. 401=13 Bom. L. R. 505=11 I. C. 614=12 Cr. L. J. 430.

———*Language—How to be construed.*

Words of an Act should be construed so as to further and not to restrict the purpose of the Act. (*Teunon and Newbould, JJ.*) MOLLA ATAUL HUQ *v.* CHAIRMAN OF MANIKTOLLA MUNICIPALITY. 48 Cal. 378=57 I. C. 960=24 C. W. N. 969.

———*Language—Date of coming into force of statute—Date of publication—If to be included or excluded—Rule of construction.*

Under a rule framed by the Madras High Court the institution fee for plaints on the Original Side was raised by a notification in the Gazette and they were to come into force from the date of publication. The notification reached the High Court at 5 P. M. on a certain day when the offices had just closed. *Held* by the majority of the Special Bench that the new rules applied to all plaints filed on that day. *Per Schwabe, C.J.*—The word "from" preceding a date may mean "or and after" or after. The context and circumstances of each case should be looked at to arrive at the true construction. Unless there are valid reasons to the contrary if the named date is at the beginning of a definite limited period, *i.e.* where there is a *terminus ad quem* as well as *a quo*, then *prima facie* the first day is excluded. If the named date is at the beginning of an indefinite period the first day is included.

Per Coutts-Trotter, J.:—Where a statute fixes only the *terminus a quo* of a state of things which is envisaged as to last indefinitely, the common law rule is that portions of a day ought to be neglected and the order takes effect from the first moment of the day on which it is enacted or passed; when the order limits the period marked both by a *terminus a quo* and a *terminus ad quem*, the former is to be excluded and the latter to be included in the reckoning.

Per Kumaraswami Sastri, J.:—There is no hard and fast rule in construing the significance of the word "from." Each case must depend on its own facts. Justice and equity require that the date of notification ought to be excluded. (*Schwabe, C. J., Coutts-Trotter and Kumaraswami Sastry, JJ.*) COURT FEES, *In re* 45 M. L. J. 557=46 Mad. 685=(1923) M. W. N. 883=1924 Mad. 257.

———*Language—Affirmation—Negative implication.*

Although a statutory enactment expressed in affirmative languages, may sometimes be construed as having a negative implication; such implication must be a necessary and reasonable one. (*Abdur Rahim, O. C. J., Oldfield and Seshagiri Aiyar, JJ.*) GADI NEELAVENI *v.* MARAPPAREDDI GARI NARAYANA REDDI. 43 Mad. 94=37 M. L. J. 599=26 M. L. T. 377=10 L. W. 606=53 I. C. 847=(1920) M. W. N. 19 (F. B.).

———*Language—"and"—"or".*

It is well-settled that the word "and" may be read as "or" where it is necessary in order to carry out the obvious intention of the Legislature. (Maxwell on Statutes P. 33, 1 edition 3). (*Wallis, C. J., Abdur Rahim, Oldfield, Srinivasa Aiyangar and Phillips, JJ.*) KUNHALOOR PUTHIA VEETIL RAYARAPPA *v.* PARKUM PUNNISSERI KELAPPA. 40 Mad. 594=32 M. L. J. 110=(1917) M. W. N. 195=21 M. L. T. 245=39 I. C. 741=5 L. W. 617 (F. B.).

———*Language—Not clear—Alteration of law—Intention of Legislature.*

Though the first rule of construction is to give the words their ordinary and natural meaning it is also a recognised rule of construction that when the language is not clear the legislature did not mean any substantial alteration of the old law by doubtful words ordinarily when several specific instances precede a general term with the word "other" prefixed to it and where the rule of *ejusdem generis* is applied, the meaning of the general term is determined with reference to all the instances mentioned. (*Abdur Rahim, O. C. J. and Krishnan, J.*) GADIGI MAREPPA *v.* FIRM OF MARWADI YAHNAJEE. 20 M. L. T. 303=(1916) 2 M. W. N 280=38 I. C. 823=31 M. L. J. 772.

———*Language.*

Words ought to be construed in their primary sense, and not to be attributed to a multiplicity of senses. (*Oldfield and Seshagiri Iyer, JJ.*) MEENAKSHI *v.* MUNIANDI PANNIKKAN. 38 Mad. 1144=1 L. W. 704=(1914) M. W. N. 672=16 M. L. T. 270=25 I. C. 957=27 M. L. J. 353.

INTERPRETATION OF STATUTES—Language.

———*Language of words—Grammatical meaning—Marginal note.*

The most elementary canon of construction is that the words and phrases of a technical legislation are used in a technical sense if they have acquired one and otherwise in their ordinary meaning. The phrases and sentences are to be construed according to the rules of grammar. It must be presumed unless there is anything in the subject or context that the legislature uses the same word or phrase in the same sense. A marginal note cannot be called in aid to interpret the section. (*Brockman, J. C., Stanyon and Mittra, A. J. Cs.*) SALU BAI *v.* BAJAT KAN.
42 I. C. 200=13 N. L. R. 130 (F. B.).

———*Language—Intention of legislature.*

We are bound to look at the language used in the Act, construing it with reference to the object with respect to which the legislature has used that language but construing it in its ordinary grammatical sense, unless there is something in the subject-matter or context to show that it is to be understood in some other sense and doing all this we are to say what is the intention of the legislature expressed by that language. In other words the golden rule of construction is to declare that to be the intention of the legislature which appears to be expressed by the words used and understood in their ordinary sense with reference to the subject-matter and context unless that is manifestly absurd or unjust. *Per Blackburn, J.* in the House of Lords, 9 H. L. C. 32 Eastern Counties and London and Blackwell Ry. Co. *v.* Marriage. (*Brockman, J. C. and Stanyon, A. J. C.*) BALAJI *v.* GOPALA RAO. 33 I. C. 489=12 N. L. R. 51.

———*Language.*

Where language of statute is clear and unambiguous, courts should give effect to it, without regarding the question whether it has the effect of divesting a vested right or not. (*Mittra, Offg. A. J. C.*) MIYA SAHEB *v.* CHAMPA LAL.
23 I. C. 888=10 N. L. R. 42.

———*Language—Words, same meaning throughout an Act.*

Ordinarily a word keeps the same meaning at least throughout any one Act. (*Hallifax, A. J. C.*) KEKRA *v.* SADHU. 23 I. C. 238=10 N. L. R. 28.

———*Language.*

A phrase used in several codified laws, all emanating from the same source, one and the same significance must be attributed to it wherever it occurs provided it is not repugnant to the context. (*Stanyon, A. J. C.*) G. I. P. Ry. COMPANY *v.* AMRAOTI MUNICIPALITY.
16 I. C. 449=8 N. L. R. 107.

———*Language—Legal term—Meaning.*

In interpreting a statute, the settled rule of construction is that where the legislature uses a legal term which has a known significance, it must be assumed that the term has been used in that sense only and in no other. (*Das, J.*) JHARI SINGH *v.* EMPEROR. 56 I. C. 235=21 Cr. L. J. 443.

INTERPRETATION OF STATUTES—Liability.

———*Language—Simplicity.*

Statutes should be interpreted as simply as possible. When a document is stamped, though wrongly and inadequately, it must be taken to be insufficiently stamped and not unstamped. (*Pratt, J.*) THE COLLECTOR OF RANGOON *v.* ABDUL RAHMAN SIRCAR. 11 L. B. R. 316=1922 L. B. 27.

———*Language—Not clear context.*

Where the language of a statute is not clear the cause or necessity of the law being made should be considered; and every clause should be construed with reference to the context and other clauses of the Act so as to make a consistent enactment of the whole statute. (*Hartnoll, Offg. C. J. and Ormond, J.*) SEENA M. HANNIFF & Co. *v.* LIPTONS, LTD. 15 Cr. L. J. 337=7 Bur. L. T. 116=23 I. C. 689=7 L. B. R. 306.

———*Language — Inconsistent with purpose of enactment—Modification of meaning of words used.*

When the language of a statute in its ordinary meaning and grammatical construction leads to a manifest contradiction of the apparent purpose of the enactment, a construction may be put upon it which modifies the meaning of the words or even the structure of the sentence. (*Twomey, J.*) MUHAMMAD JEWA *v.* WILSON. 4 Bur. L. T. 83=10 I. C. 787=12 Cr. L. J. 246.

———*Language—Ordinary meaning to be given.*

It is to be assumed that words are used in their popular meaning unless they have acquired a technical meaning and legislature must be intended to mean what it has plainly expressed and consequently there is no reason for construction. (*Kennedy, J. C., Raymond and Kemp, A. J. C.*) MT. HURI *v.* ROSHAN KHUDABUX.
16 S. L. R. 112=1923 S. 5 (F. B.).

———*Language—Technical meaning of words.*

It is an elementary rule of construction that words and phrases are used in a statute, in their technical meaning if they have acquired one. (*Pratt, J. C. and Crouch, A. J. C.*) JEEWANJEE *v.* GULAM HUSSAIN. 47 I. C. 771=12 S. L. R. 20.

———*Language—Words, meaning of.*

If the natural and ordinary meaning imported by the words of the Act give out a result consistent with the Act it matters not that it may be in excess of what the legislature had in view. (*Pratt, J. C. and Boyd, A. J. C.*). MUNICIPALITY OF KARACHI *v.* MAHOMEDALI ISAJI. 33 I. C. 675=9 S. L. R. 126.

———*Language—Change of presumption.*

It is an ordinary rule of construction of statutes that a change in the language of a Code or an Act may be presumed to indicate a change of intention on the part of the legislature. (*Fawcett, J. C. and Crouch, A. J. C.*) FARID *v.* PIRU.
28 I. C. 105=16 Cr. L. J. 249=8 S. L. R. 215.

Liability.

———*Liability — Exemption from—Arms Act—Search for arms—Suit for damages for trespass.*

The protection of an exempting statute does not avail unless the statutory formalities had been

strictly complied with before search. (*Lord Macnaghten*). CLARKE *v.* BROJENDRA KISHORE ROY. 39 Cal. 953=39 I. A. 163=(1912) M. W. N. 760=12 M. L. T. 171=10 A. L. J. 193=16 C. L. J. 231=16 C. W. N. 865=23 M. L. J. 32=16 I. C. 501=13 Cr. L. J. 693=14 Bom. L. R. 717 (P. C.).

———*Liability—New—Imposition of—Effect on old contracts.*

When a new liability is imposed by newly enacted provisions of law, it has the effect of annulling all contracts made prior to the enactment. (*Sadasiva Iyer and Spencer, JJ.*) MUNICIPAL COUNCIL OF CONJEEVARAM. *v.* KUMARA VENKATACHARIAR. 39 M. L. J. 58=11 L. W. 574=57 I. C. 718=(1920) M. W. N. 469.

Liberal Construction.

———*Liberal construction—Meaning by implication and reference.*

Where the interpretation sought to be put upon the words is arrived at by implication and by reference, the court ought not to put a restricting and penalising construction. (*Piggott and Walsh, JJ.*) ABDUL KARIM *v.* ISLAMUNNISA BIBI. 38 All. 339=34 I. C. 231=14 A. L. J. 401.

———*Liberal construction.*

It is the duty of a court of law specially in a matter which is after all a matter of settlement of revenue than strict law in the sense of the determination of the rights of litigants redress of wrongs to take a broad and liberal view if it is possible. (*Walsh, J.*) DAYALPURI *v.* NARAYAN DUTT. 34 I. C. 26=14 A. L. J. 878.

———*Liberal construction.*

A court should lean in favour of that view of the law which enable a party to get the fruits of an order in his favour, and not in favour of highly technical objections which would render the court's order a mere piece of waste paper. (*Sadasiva Aiyar and Spencer, JJ.*) SUBBIAH SERVAI *v.* CHOKKALINGA THEVAN. 16 M. L. T. 248=27 M. L. J. 613=25 I. C. 1004=15 Cr. L. J. 676=(1914) M. W. N. 790.

Liberal Interpretation.

———*Liberal interpretation—Invasion of rights—Not to be imputed.*

In a technical matter where the language of the statute does not expressly cover the case and where the interpretation sought to be put upon the words is arrived at by implication and reference, the court ought not to adopt a construction having a restricting and penalising operation unless driven to do so by the force of language. (*Saunders, J. C.*) MAUNG THA *v.* MAPYU. 46 I. C. 323=(1918) 3 U. B. R. 79.

Limitation Statutes.

———*Limitation statutes—Strict construction.*

It is contrary to sound canons of construction to enlarge the scope of the provisions of a statute of limitation, by importing into it words which are not to be found there. (*Mookerjee and Panton, JJ.*) H. H. MAHARAJH OF COOCH BEHAR *v.* RAJA MAHENDRA RANJAN. 66 I. C. 923=34 C. L. J. 465.

———*Limitation statutes — Law governing at time of suit.*

The statute of limitation applicable to a suit is not the one which was in force when the cause of action accrued, but the one in force at the time of institution of suit except in cases when the effect of enforcing the rule would be to take away plff's. right of suit altogether. (*Fletcher, and Richardson, JJ.*) BADIAL ALAM *v.* ABDUL HAKIM. 38 I. C. 609.

———*Limitation statutes—Strict construction.*

The interpretation of statutes of limitation must be strict. 156 P. R. 1903 Ref. (*Reid, Kensington and Rattigan, JJ.*) SUNDAR *v.* SALIG RAM. 34 P. L. R. 1911=26 P. R. 1911=9 I. C. 300=33 P. W. R. 1911.

———*Limitation statutes—Applicability.*

New rules of limitation which are merely procedural, apply to causes of action arising before their enactment. (*Wallis, C. J. and Oldfield, J.*) VAITHYANATHA AIYAR *v.* GOVINDASWAMI ODAYAR. 41 M. L. J. 65 =13 L. W. 522=62 I. C. 795=(1921) M. W. N. 338.

Marginal Notes.

———*Marginal notes—Value of.*

The marginal notes to a section cannot be relied upon in clearing up the ambiguity in the text of the written law but it may with advantage be referred to when it confirms the conclusion warranted by the language of the section. (*Rattigan and Shadi Lal, JJ.*) LAHORE BANK *v.* KIDAR NATH. 36 P. R. 1916=45 P. L R. 1916=31 I. C. 746=4 P. W. R. 1916.

———*Marginal notes—When can be used.*

When the language of a section is ambiguous, it is legitimate to look at the marginal note to see what the draft of the section is. (*Krishnan, J.*) SMITH, *In re.* 45 M. L. J. 731=18 L. W. 879=33 M. L. T. 185=1924 Mad. 389.

———*Marginal notes — Railways Act, S. 75, Sch. II, cls. (m) and (s)—'Shawls,' meaning of.*

S. 75 applies to all articles specified in Sch. II whether they are of any special or exceptional value or not. 'Shawls' in cl. (*m*) of Sch. II should not be interpreted in a restricted sense by reference to the use of the phrase 'article of special value' in the marginal note to S. 75. (*Spencer and Ramesam, JJ.*) THE G. I. P. RAILWAY CO. *v.* CHELLA RAM GIANCHAND. 14 L. W. 614=41 M. L. J. 603=65 I. C. 99=(1921) M. W. N. 852.

———*Marginal notes—Value of.*

Marginal notes to sections of an Act of the Indian legislature cannot be referred to for the purpose of construing the Act. 26 All. 393 Foll. (*Coutts-Trotter and Kumaraswami Sastri, JJ.*) AIULAM KESAWA CHETTY *v.* THE SECRETARY OF STATE FOR INDIA. 42 Mad. 451=51 I. C. 46=36 M. L. J. 222.

INTERPRETATION OF STATUTES—Marginal Notes.

———*Marginal notes.*

The marginal note forms no part of the statute itself and is not binding as an explanation or construction of the section. (*Das, J.*) SHEIKH CHAMMAN *v.* EMPEROR. (1919) Pat. 468 = 21 Cr. L. J. 143 = 54 I. C. 623 = 1 Pat. 11 = 2 U. P. L. R. (P.) 24.

Maxim.

———*Maxim — 'Expressio unius exclusio alterius'—Scope of the rule in modern legislation.*

A general rule of construction of Acts of the legislature is *expressio unius exclusio alterius* (The express mention of one thing implies exclusion of another.) But the method of construction summarised in the maxim cannot be applied without limitation; for a failure to make an expression complete may easily arise from the accidents of legislative procedure, and it is common to find provisions put into statutes *ex abundanti cautela* and at the instance of parties interested. Consequently provisions sometimes found in statutes, enacting imperfectly or for particular cases only, that which was already and more widely the law have occasionally furnished ground for argument based on the maxim, that an intention to alter the general law was to be inferred from the partial or limited enactment. But the maxim is plainly inapplicable to such cases. The only inference which a court can draw from such superfluous provisions (which often find a place in Acts to meet unfounded objections and idle doubts) is that the legislature was either ignorant or unmindful of the real state of the law or that it acted under the influence of excessive caution. (*Mookerjee and Rankin, JJ.*) KRISHNA KAMINI DASI *v.* NIL MADHAB SAHA. 36 C. L. J. 382 = 1923 Cal. 66.

———*Maxim — 'Expressio unius exclusio alterius.'*

The maxim *expressio unius exclusio alterius* is at best an uncertain guide to the true meaning of a statute. (*Jenkins, C. J., Stephen, Woodroffe, Holmwood and Chatterjee, JJ.*) MIDNAPORE ZAMINDARI CO., LTD. *v.* HRISHI KESH GHOSH. 41 Cal. 1108 = 18 C. W. N. 828 = 25 I. C. 562 = 19 C. L. J. 505.

Penal Act.

———*Penal Act—Strict construction.*

A penal enactment should be construed strictly. (*Rafique, J.*) SAT NARAIN PRASAD *v.* EMPEROR. 23 I. C. 499 = 15 Cr. L. J. 291 = 12 A. L. J. 288.

———*Penal Act—Strict construction.*

Provisions which impose a penalty or disability require to be strictly interpreted. (*Chamier and Piggott, JJ.*) COLLECTOR OF GAZIPUR *v.* BALBHADAR SINGH. 17 I. C. 25 = 10 A. L. J. 234.

———*Penal Act—Intention of Legislature.*

A penal statute must be construed strictly; the intention of the Legislature is to be gathered from the language which the Legislature has used. (*Batchelor and Rao, JJ.*) EMPEROR *v.* JAFFAR MOHOMED. 37 Bom. 402 = 19 I. C. 204 = 14 Cr L. J. 204 = 15 Bom. L. R. 106.

INTERPRETATION OF STATUTES—Penal Act.

———*Penal Act—Penal sections.*

Penal sections affecting the liberty of the subject must be construed strictly. (*Chandavarkar and Batchelor, JJ.*) EMPEROR *v.* DATTATREYA LAXAMAN SARPAT DAS. 14 I. C. 974 = 13 Cr. L. J. 430 = 14 Bom. L. R. 158.

———*Penal Act—Court Fees Act—Strict interpretation.*

A penal enactment such as the Court Fees Act has to be construed strictly and in favour of the subject. (*Scott-Smith and Leslie Jones, JJ.*) RUSTAMJI *v.* KALA SINGH. 136 P. W. R. 1917 = 43 I. C. 383 = 9 P. R. 1918.

———*Penal Act—Strict construction.*

Strict construction of the law is required in the case of a penal statute. (*Oldfield and Krishnan, JJ.*) SESHA PRABHU *In re.* 42 M. L. J. 149 = (1922) M. W. N. 79 = 66 I. C. 429 = 23 Cr. L. J. 285 = 31 M. L. T. 314 (H. C.)

———*Penal Act—Strict construction.*

Nothing is to be regarded as coming within a Penal Statute which is not clearly and intelligibly described in the very words of the Statute itself. (*Stanyon, A. J. C.*) SAIYYAD RAHIM *v.* EMPEROR. 29 I. C. 325 = 16 Cr. L. J. 485 = 11 N. L. R. 76.

———*Penal Act—Omissions.*

Where the words in a statute used in connection with an offence or a civil wrong refer to acts done they must be held to extend also to illegal omissions. (*Miller, C. J. and Adami, J.*) ALLAN MATHEWSON *v.* DISTRICT BOARD, MANTHUM. (1920) Pat. 193 = 1 P. L. T. 269 = 58 I. C. 749 = 5 P. L. J. 359.

———*Penal Act—Strict construction.*

It is not within the province of Judges to make laws. If the law is not wide or general enough to cope with a gross evil, then it is within the Province of those who make the laws to amend the existing law so that the evil, aimed at may be constituted a crime and become punishable under the law.....Penal statutes and taxing statutes must be construed strictly and in aid of the subject and not against him,.....In construing a criminal statute the guiding principle is to construe the words used in their ordinary grammatical and natural sense, and not in a forced and artificial sense, unless such a conclusion would give rise to an obvious absurdity which could never have been intended. (1913) A. C. 107 Ref. (*Atkinson, Coutts and Manuk, JJ.*) KESAR *v.* EMPEROR. (1919) Pat. 33 = 49 I. C. 481 = 20 Cr. L. J. 161 (F. B.) = 4 P. L. J. 74.

———*Penal Act—Criminal statute—Strict construction.*

Criminal statutes ought to be strictly construed and it is unjust to read words and inter-meanings that are not found in the text. (*Eales, Offg. J. C.*) NGA PO CHIN *v.* EMPEROR. 13 I. C. 390 = 13 Cr. L. J. 54 = 4 Bur. L. T. 261.

INTERPRETATION OF STATUTES—Penal Act.

———*Penal Act—Strict construction—Object of rule.*

The object of construing penal as well as other statutes is to ascertain the legislative intent and the rule of strict construction is not violated by permitting words to have their full meaning, or the more extensive of two meanings when best effectuating the intention. (*Pratt, J. C. and Fawcett, A. J. C.*) HARUMAL *v.* THE CROWN.
9 S. L. R. 43=30 I. C. 456=16 Cr. L. J. 632.

Power of Alienation and Testation.

———*Power of alienation and testation.*

The power of alienation *inter vivos* and the power of testation go together and if in a particular case the former is proved to be governed by custom, the latter is presumed to do the same. (*Shadi Lal and Rossignol JJ.*) TAJ MUHAMMAD *v.* SAYAD MUHAMMAD. 94 P. W. R. 1916= 122 P. R. 1916=34 I. C. 126= 48 P. L. R. 1917.

Power of dismissal.

———*Power of dismissal—If includes power of suspension.*

Power of dismissal does not include a power of suspension. (*Wallis, J.*) A. M. ROSS *v.* SECRETARY OF STATE. 37 Mad. 55= 24 M. L. J. 429=19 I. C. 353= (1913) M. W. N. 758.

Preamble.

———*Preamble — Operative Sections — Madras Irrigation Cess Act.*

S. 1 of the Madras Irrigation Cess Act makes operative provisions somewhat in excess of the apparent ambit of the preamble. If so, the section must govern. 44 I. A. 166 Ref. (*Lord Shaw.*) SECRETARY OF STATE *v.* MAHARAJA OF BOBBILI.
(1919) M. W. N. 775=37 M. L. J. 724= 18 A. L. J. 1=11 L. W. 204= 2 U. P. L. R. (P. C.) 33=54 I. C. 154= 24 C. W. N. 446=46 I. A. 302 (P. C.).

———*Preamble—Value of.*

The preamble cannot restrict the enacting part of an Act although it may be referred to for the purpose of solving an ambiguity. (*Fletcher, Chatterjee, Teunon, Richardson and Choudhuri, JJ.*)
45 Cal. 343=22 C. W. N. 1=44 I. C. 770= 27 C. L. J 1 (F. B.)

———*Preamble—Useful guide.*

The preamble of an Act does not control the enactment, but it may be a most useful guide when doubt arises upon the construction of a particular provision and considerations involving the scope of the Act. (*Chatterjee and Richardson, JJ.*) SITAL CHANDRA *v.* ALLEN J. DELLANEY.
34 I. C. 450=20 C. W. N. 1158.

———*Preamble—Enacting part if controlled by.*

The preamble of an Act cannot govern the clear expression in the enacting part. (*Jenkins, C. J. and Mukerjee, J.*) KESHAL PANDA *v.* BHOBANI PANDA. 21 I. C. 538=18 C. L. J. 187.

INTERPRETATION OF STATUTES—Proceedings in Legislative Council.

———*Preamble — Legislative proceedings — Reference to—Reasonableness or unreasonableness—Question of when relevant.*

Per Sadasiva Aiyar, J.—The question of unreasonableness of construction is relevant in considering the meaning of the statutory provision only where the language is reasonably capable of two constructions, one reasonable and the other unreasonable and not where it is quite plain. Where there is some ambiguity in an Act the preamble and the object of the Act can be referred to. Reference may also be made to the proceedings connected with the Act in the passage through the legislature. But if the language of the Act is quite plain reference cannot be made to such proceedings. 22 C. 788 Dist. (*Sadasiva Aiyar and Phillips, JJ.*) PARAMESWARA AIYYAN *v.* KITTUNNI VALIA MANNADIAR.
43 I. C. 173=33 M. L. J. 591.

Precedents.

———*Precedents—Value of.*

No decision can cut down the express and clear words used by the legislature. (*Fletcher and Smither, JJ.*) SURENDRA NATH GOSWAMI *v.* RAJANANI KANTA DAS. 41 I. C. 446.

Privies.

———*Privies—Liability of.*

Right conferred or liability imposed by a statute on a person applies to his legal representative, and if the statute confers the right or imposes the liability on that person as the owner of specific property such right or liability is conferred or imposed on the assignee of such ownership right, *unless* the reason of the rule of Law cannot clearly apply to anybody but the original owner, of the property or the original obligor. (*Sadasiva Aiyar and Napier, JJ.*) RAMAKRISHNA CHETTY *v.* VUWATI CHANGU IYER.
33 I. C. 321=27 M. L. J. 494.

———*Privies—Rights and liabilities of.*

Unless a statute expressly or by implication precludes the application of provisions awarding rights to or imposing civil liabilities on the privies of the person to whom the rights are given or on whom the liabilities are imposed, the privies are entitled or bound as the case may be, to the extent to which the original parties are so entitled or are so bound. The extent of the privy's liability however is not always co-equal with the extent of the liability of the person through whom he claims. (*Ormond, J.*) MA SHAWE ME *v.* P. A. R. M. CHETTY. 27 I. C. 788=8 Bur. L. T. 97.

Proceedings in Legislative Council.

———*Proceedings of the Legislative Council—Interpretation according to natural meaning.*

To ascertain the meaning of the words used in a section of a statute, reference to the proceedings in the Legislative Council upon its enactment is not permissible. The construction of a section of a statute must depend on its terms, and no theory of its purposes (*viz.*, that it was introduced to reproduce the then existing state of the English law) could be entertained unless it is to be inferred

INTERPRETATION OF STATUTES—Proceedings in Legislative Council.

from the language used. (*Viscount Finlay*) KRISHNA *v.* NALLAPERUMAL. 43 Mad. 550 = 38 M. L. J. 444 = 22 Bom. L. R. 568 = 28 M. L. T. 28 = 12 L. W. 92 = (1920) M. W. N. 419 = 2 U. P. L. R. (P. C.) 118 = 56 I. C. 163 = 18 A. L. J. 489 (P. C.).

———*Proceedings in Legislative Council.*

In interpreting the meaning of a word in a legislative enactment it is the duty of the court to refrain from examining the discussion and the views of the legislative authority which enacted the Statute. It has to look at the meaning of the word only. (*Stuart, J.*) SHUDARSHAN *v.* EAST INDIAN RAILWAY COMPANY. 42 All. 76 = 52 I. C. 644 = 17 A. L. J. 1031.

———*Proceedings in Legislative Council—Reference to, not permissible.*

In interpreting a statute reference is not permissible to the proceedings of the legislature which result in the provisions of an Act. 22 C. 788; 21 C. Ref. (*Mookerjee and Chotzner, JJ.*) DINA NATH PAL *v.* RAJA SATI PRASAD. 36 C. L. J. 220 = 27 C. W. N. 115 = 1923 Cal. 74.

———*Proceedings in Legislative Council.*

Proceedings of the Legislature in passing a statute are excluded from consideration of the judicial construction of Indian, as well as of British Statutes. (*Brasher and Scott-Smith, JJ.*) GHULAM MAHOMED *v.* PANNA RAM. 72 I. C. 433.

———*Proceedings in Legislative Council.*

Per Ayling, J.:—While construing the plain words of an enactment the view of Govt. and the debates in the Legislative Council should not be referred. (*Ayling and Sadasiva Aiyar, JJ.*) KANDALAM RAJAGOPALA CHARLU *v.* SECY. OF STATE. 38 Mad. 997 = 14 M. L. T. 454 = 22 I. C. 107 = (1913) M. W. N. 937.

———*Proceedings of the Legislative Council—Reference to.*

Proceedings of the Legislature ought not to be referred to in aid to the construction of the Act. (*Mc Coll, A. J. C.*) BHAI KHAN *v.* DES RAJ. 25 I. C. 771 = (1914) II U. B. R. 16.

———*Proceedings of the Legislative Council—Reference to.*

Proceedings of the Legislative Council cannot be referred to to help to construct a particular section of a statute, but they may be referred to for making sure of the object of the statute. (*Pratt, J. C., Crouch and Hayward, A. J. Cs.*) FIRM OF RATAMCHAND RAMKISHANDAS *v.* SAHIRAM DUNICHAND. 52 I. C. 139 = 13 S. L. R. 23.

Procedure.

———*Procedure—No vested right.*

No vested right exists in any one's favour in a matter of procedure. (*Tudball, J.*) PAYNE AND CO. *v.* BRAHMA DEO. 9 I. C. 800.

———*Procedure—Vested right in.*

There is no vested right in procedure and the rules relating to procedure must be strictly followed. (*Lindsay, J. C.*) SANKATHA PRASAD *v.* RAJA KRISHNA DAT SINGH. 25 I. C. 668.

INTERPRETATION OF STATUTES—Punctuation Marks.

Proviso to section.

———*Proviso to section—Condition precedent.*

Per Seshagiri Aiyar, J.—A proviso is often a condition precedent to the enforcement of the operative clause and can never enlarge the scope of the section itself and therefore it would be incongruous to hold that an answer which necessitated the recording of reasons at its inception was intended to be capriciously set aside the next moment. (*Abdur Rahim, Offg. C. J., Ayling and Seshagiri Aiyar, JJ.*) ANNIE BESANT *v.* EMPEROR. 39 Mad. 1164 = 4 L. W. 625 = (1916) 2 M. W. N. 497 = 18 Cr. L. J. 239 = 31 M. L. J. 151 = 37 I. C. 607 = 21 M. L. T. 190.

———*Proviso to section.*

A proviso to a section is not to be imported by implication into the main clause of the section. (*Abdur Rahim, C. J., Ayling and Seshagiri Aiyar, JJ.*) MRS. ANNIE BESANT *v.* GOVT. OF MADRAS. 39 Mad. 1085 = (1916) 2 M. W. N. 385 = 5 L. W. 1 = 18 Cr. L. J. 157 = 37 I. C. 525 = 21 M. L. T. 124.

Public policy.

———*Public policy—Considerations of facility and practical importance—No arguments to the judge.*

Considerations founded on views as to business which are obviously of the practical importance, would be rather arguments for the invocation of the legislature than an incentive to the putting of a forced construction on sections of an Act which, in themselves, are capable of only one interpretation. (*Lord Dunedin.*) THE IMPERIAL BANK OF INDIA *v.* U. RAIGYAW THU & CO., LTD. 1 Rang. 637 = 21 A. L. R 784 = 25 Bom. L. R. 1279 = 9 O. & A. L. R. 937 = 33 M. L. T. 395 (P. C) = 2 Bur. L. J. 254 = 50 I. A. 283 = 45 M. L. J 505 = (1923) M. W. N. 609. = 1923 P. C. 211 (P. C.)

Punctuation Marks.

———*Punctuation marks—Value of.*

There can be no reason for refusing the assistance of the punctuation, where the sense might otherwise be doubtful in Acts of the regularly constituted legislatures of India. (*Scott, C. J. and Hayward, J.*) BLANCHE SOMERSET TAYLOR *v.* CHARLES GEORCE BLEACH. 39 Bom. 182 = 27 I. C. 494 = 17 Bom. L. R 56.

———*Punctuation marks—Value of.*

Per N. R. Chatterjee, J.—It is an error to rely on punctuation in construing Acts of the legislature. (*Fletcher, Teunon, Richardson, Chowdhury and N. R. Chatterjee, JJ.*) MAIN LALL *v.* TRUSTEES FOR THE IMPROVEMENT OF CALCUTTA. 45 Cal. 343 = 22 C. W. N. 1 = 44 I. C. 770 = 27 C. L. J. 1 (F. B.)

INTERPRETATION OF STATUTES—Punctuation Marks.

———*Punctuation marks.*

Quaere: *Per Sundara Aiyar, J.*:—Whether the English rule that punctuation cannot be taken account of in the interpretation of statutes should be applied to Indian Statutes? (*Sundara Aiyar and Sadasiva Aiyar, JJ.*) SECRETARY OF STATE *v.* KALEKKAN.
37 Mad. 113=23 M. L. J. 181=
(1912) M. W. N. 786=
16 I. C. 947=12 M. L. T. 224.

Re-enactment.

———*Re-enactment — Prior judicial interpretation.*

Where an Act is amended and the amendment does not expressly show that the law as interpreted by the decision previously existing, is altered, the rule as laid down by the decision is to be adhered to. (*Richards, C. J. and Banerji, J.*) MOHAMMUD ISHAQ KHAN *v.* RUSTOM ALI KHAN.
40 All. 292=
44 I. C. 88=16 All. L. J. 182.

———*Re-enactment—Interpretation of statutes—Words judicially construed re-enacted in statutes* pari materia.

Where an Act has received a judicial construction, putting a certain meaning on its words, and the legislature in a subsequent Act *in pari materia* uses the same words, there is a presumption that the legislature used those words intending to express the meaning which it knew had been put upon the same words before, and unless there is something to rebut that presumption, the Act should be so construed, even if they were such that might originally have been construed, otherwise. (*Mookerjee and Panton, JJ.*) ISAN CHANDRA *v.* SAFATULLA. 26 C. W. N. 703=35 C. L. J. 36=
1922 Cal. 331.

———*Re-enactment—Prior judicial interpretation—Effect on.*

The legislature is presumed to know, not only the general principles of law but the construction which the courts have put upon particular statutes; where a section of an Act, which has received a judicial construction is re-enacted in the same words, such re-enactment must be treated as a legislative recognition of that construction. (*Mookerjee and Chapman, JJ.*) NAGENDRA MOHAN ROY *v.* PYARI MOHAN SAHA.
43 Cal. 103=20 C. W. N. 319=30 I. C. 420=
21 C. L. J. 605.

———*Re-enactment—Prior judicial interpretation—Presumption as to meaning.*

Where words have been given a judicial construction the same words used later in a subsequent Act are presumed to have the same meaning and construction as formerly they were given. (*Mookerjee and Carnduff, JJ.*) GOKUL BAGDI *v.* DEBENDRA NATH SEN.
11 I. C. 453=
14 C. L. J. 136.

———*Re-enactment—Prior judicial construction.*

When words in a statute have been judicially construed to have a certain meaning, and have been adopted by the Legislature in a subsequent Act. *in pari materia* they must be construed according to the sense in which they have been previously used although that sense may vary from their strict literal meaning. (*Mookerjee and Caspersz, JJ.*) KAMINI DEBI *v.* PROPOTHO NATH MOOKERJEE. 39 Cal. 33=10 I. C. 491=13 C. L. J. 597.

INTERPRETATION OF STATUTES—Repealing Act.

———*Re-enactment—Alteration of law.*

When sections are repealed and re-enacted with slight difference, the presumption is against implied alterations. (*Wallis, C. J., Ayling and Kumaraswami Sastri, JJ.*) GOVINDA IYER *v.* REX.
42 Mad. 540=9 L. W. 422=
36 M. L. J. 448=20 Cr. L. J. 344=
(1919) M. W. N. 459=50 I. C. 824=
26 M. L. T. 92 (F. B.)

Repealing Act.

———*Repealing Act—Old provisions re-enacted—Presumption as to.*

Where provisions of the old Act are not substantially replaced or verbally changed the presumption is that the decisions of the High Court in those provisions are sanctioned by the legislature. (*Batchelor and Hayward, JJ.*) CURSETJI DINSHAW BOLTON *v.* GANGARAM LIMBAJI GAIKWAD.
30 I. C. 545=17 Bom. L. R. 680.

———*Repealing Act—Repeal by implication.*

Where a later Act does not purport or affect to supersede an earlier Act the court will endeavour to read the two enactments together and to avoid conflict if possible. (*Batchelor and Rao, JJ.*) RANGACHARYA APPACHARYA *v.* DASA CHARYA SANKHALPA CHARYA.
37 Bom. 231=
19 I. C. 387=15 Bom. L. R. 178.

———*Repaeling Act—Repeal by implication—Test for—Repugnancy.*

The test as to whether a rule repeals a by-law is to see whether they are repugnant to each other. If the by-law and the rule can be read together, one supplementing the other, there is no repugnancy and therefore no repeal by implication. S. 11 (2) (*f*) of the Motor Vehicles Act does not repeal by implication the by-law 18 under the Calcutta Municipal Act. (*Mookerjee, A. C. J. and Fletcher, J.*) MANAGER, INDIAN MOTOR TAXI COMPANY, LTD., *v.* CALCUTTA CORPORATION.
25 C. W. N. 21=
61 I. C. 641=22 Cr. L. J. 401=
33 C. L. J. 19.

———*Repealing Act—Retrospective operation.*

A repealing enactment cannot be given a retrospective operation so as to impose an impossible condition on pain of forfeiture of a vested right. 17 C. L. J. 316; 18 C. L. J. 274; 39 M. 645 Rel. (*Mookerjee and Chotzner, JJ.*) MAKAR ALI *v.* SARF-UDDIN.
36 C. L. J. 132=
27 C. W. N. 183=5 O. C. 115=1923 C. 85.

———*Repealing Act—Vested rights—Limitation—Implied exception.*

A repealing enactment should not be construed so as to impose an impossible condition on pain of forfeiture of a vested right or applied to cases where its provisions cannot be obeyed. A new rule of limitation must be taken subject to an implied exception in cases where its provisions

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would absolutely destroy the right of suit in existence when that rule came into force. (*Oldfield and Phillips, JJ.*) TIRUMALAI SWAMI NAIDU *v.* SUBRAMANIA CHETTIAR. 45 I. C. 109 = 40 Mad. 1009.

———*Repealing Act—Omission of section in new Act—Effect of.*

Where the legislature has specially omitted a certain section providing for appeals, the court cannot allow an appeal from that section by giving a wide effect to the general words in another section, or because appeals have been allowed from certain minor matters. (*Oldfield and Napier, JJ.*) GOPAMMAL *v.* B. SRINIVASA IYENGAR. 27. I. C. 921 = 28 M. L. J. 996.

———*Repealing Act—Rules made under repealed Act.*

Where an Act repeals a previous Act and provides that all orders issued under the repealed Act shall, so far as may be deemed to have been issued under the new Act, the provision is designed to safeguard the validity of orders, appointments, etc., issued under the Repealed Act, and not to give retrospective effect to the new Act. (*Daniels and Lyle, A. J. Cs.*) BASA BASANT SINGH *v.* RAMPAL SINGH. 6 O. L. J. 248 = 51 I. C. 985 = 1 U. P. L. R. (J. C.) 45.

Res Judicata.

———Res judicata — *Provisions as to, must be strictly construed.*

Legal provisions in bar of any suit must be strictly construed in favour of the suit. (*Chevis and Rossignol, JJ.*) DALIPA *v.* SURAJ KUAR. 48 P. R. 1916 = 34 I. C. 581 = 142 P. W. R. 1916.

———Res judicata — *Plea of—To be strictly construed.*

The plea of *res judicata*, being one in restraint of the right of a litigant to have his case fully tried and determined, the judgment which is pleaded in bar of this right must be strictly construed. (*Seshagiri Aiyar and Phillips, JJ.*) LAXMIPATHAYA *v.* RAMA CHANDRA. 31 M. L. J. 311 = (1916) 2 M. W. N. 133 = 35 I. C. 421 = 20 M. L. T. 228.

Retrospective effect.

———*Retrospective effect—Vested right.*

A legislative enactment which repeals a previous law, either partially or wholly cannot prejudice vested rights acquired under decrees. Explicit language on the part of the Legislature is necessary to warrant a court in holding that a legislative body intended not only to change the law, but to alter it so as to deprive a litigant of a judgment rightly given and still continuing. (1912) A. C. 400 Foll. (*Chandavarkar, Ag. C. J. and Batchelor, J.*) LAKSHMAN KRISHNAJI *v.* BALKRISHNA RANGANATH. 36 Bom. 617 = 16 I. C. 1002 (2) = 14 Bom. L. R. 744.

INTERPRETATION OF STATUTES—Retrospective effect.

———*Retrospective effect—Act creating new duty.*

A statute which impairs or destroys an existing vested right and creates a new duty, is never retrospective. A statute, in absence of clear words to the contrary is prospective in its operation. (*Mookerjee, A. C. J., Fletcher and Richardson, JJ.*) PROMOTHA NATH *v.* SORAR DASI. 24 C. W. N. 1011 = 31 C. L. J. 463 = 58 I. C. 327 = 47 C. 1108.

———*Retrospective effect—Declaratory enactment—Mussalman Waqf Validating Act (VI of 1913).*

Statutes which are properly of a merely declaratory character have a retrospective effect. The nature of a statute must be determined from its provisions and the mere fact that the expression, "if it is declared" has been used is by no means conclusive as to the true character of the legislation. (1898) A. C. 769, Foll (*Mookerjee and Walmsley, JJ.*) NAWAB KHAJAH HABIBULA SAHEB *v.* KHAJAH SULEMAN QUADER. 30 C. L. J. 102 = 53 I. C. 764 = 24 C. W. N. 18.

———*Retrospective effect.*

A statute is *prima facie* prospective and existing rights are not disturbed thereby unless it contains clear words to that effect or unless having regard to its object it necessarily does so. *Held*, thus with reference to S. 66, C. P. C. of 1908. (*Teunon and Greaves, JJ.*) PROMONATH PAL *v.* SOURAV DASI. 50 I. C. 335 = 23 C. W. N. 604.

———*Retrospective effect—Declaratory statute.*

A declaratory statute is retrospective. To determine whether it is declaratory, its provisions must be looked to. Mere use of the words "It is declared" does not make it of a declaratory character. (*Mookerjee and Beachcroft, JJ.*) JOTIRAM KHAN *v.* JONAKI NATH GHOSE. 33 I. C. 54 = 20 C. W. N. 258.

———*Retrospective effect.*

A statute is not retrospective simply because a part of the requisites for its action is drawn from a time antecedent to the passing of the law. (*Chatterjee and Beachcroft, JJ.*) ANAND KUMAR *v.* SECRETARY OF STATE. 40 Cal. 973 = 32 I. C. 774 = 20 C. W. N. 573.

———*Retrospective effect—Limitation Act (1908).*

The Limitation Act gives no right of action, but relates to procedure; hence it should be given retrospective effect. (*Carnduff, J.*) Limitation Acts and other procedural statutes though usually are used retrospectively, should not be so construed, when hardship or injustice might result from such retrospective construction. But the rule does not apply when the operation of an Act is postponed for sometime after it is passed. (*Chatterjee, J.*) A new Act of procedure would not apply where its application would prejudice rights established under the old one. (*Mookerjee, Carnduff and Chatterjee, JJ.*) MANJURI BIBI *v.* AKKEL MAHMUD. 17 C. L. J. 316 = 19 I. C. 793 = 17 C. W. N. 889.

———*Retrospective effect.*

Advantage cannot be taken by the plff. whose right was limited at the date of the suit in a

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particular way, of the removal of the limitation by subsequent enactment. (*Woodroffe and Carnduff, JJ.*) KALANAND SINGH *v.* BHEKH DHARI SINGH. 9 I. C. 805.

———*Retrospective effect—Postponement of Act—Effect.*

The postponement of an Act has a retrospective effect and the people are warned by it of the change in law in good time. The Acts regulating procedure are generally retrospective in their effect. They should not be interpreted in a way to affect the vested rights. Right of appeal already accrued is such a vested right. (*Johnstone, C. J.*) ASARAM *v.* BUDHU MAL. 43 P. W. R. 1916=83 P. R. 1916= 35 I. C. 67=132 P. L. R. 1916.

———*Retrospective effect—Procedure.*

Acts of the legislature which regulate procedure, though in general retrospective in their effect, must not be interpreted so as to affect prejudicially the vested rights of the parties, to appeal. (*Rattigan and Shadi Lal, JJ.*) MESSRS. MEUGENS *v.* SUTLEJ FLOUER MILLS, FEROZEPORE. 42 P. L. R. 1915= 25 P. W. R. 1915=27 I. C. 625=30 P. R. 1915.

———*Retrospective effect—Pensions Act, XXIII of 1871.*

A legislative enactment is prospective and not retrospective in its operation except (1) when the Act only affects the procedure of the court or (2) when the intention of the Legislature is to give a retrospective effect. (*Scott-Smith and Shadi Lal, JJ.*) KARAR HASSAN *v.* MUSTAFA HASSAN. 83 P. R. 1914= 26 I. C. 743=233 P. L. R. 1915.

———*Retrospective effect—Vested right—Right of appeal.*

The right of appeal in a pending action is not a matter of procedure and the repeal of a statute, which was in force at the time when the action was instituted and which regulated the course of appeal, does not affect the right of appeal acquired or enjoyed under the statute unless the repealing statute expressly or by necessary implication takes away that right. (*Johnstone and Shahdin, JJ.*) GANDA MAL *v.* PIRAN DITTA. 84 P. W. R. 1912= 156 P. L. R. 1912=15 I. C. 725=1 P. R. 1913.

———*Retrospective effect.*

An Act which deliberately withdraws certain class of cases from the jurisdiction of particular courts cannot be said to declare the law and does not have a retrospective effect. A right to treat a decree as final and not open to appeal is as much a vested right as a right of appeal and cannot be taken away by new legislation. (1905) A. C. 369; 24 Q. B. D. 557; 31 B. 545 Ref. (*Seshagiri Aiyar and Napier, JJ.*) SUBRAMANIA AIYAR *v.* NAMASIVAYA ASARI. 23 M. L. T. 255=(1918) M. W. N. 238= 35 M. L. J. 377=45 I. C. 11=8 L. W. 374.

———*Retrospective effect — Right of appeal—Vested right.*

Per Seshagiri Aiyar, J.—A right of appeal granted under a repealed Act is not affected by

INTERPRETATION OF STATUTES—Retrospective effect.

the new Act. A vested right is not ordinarily taken away by a new Act. (*Wallis, C. J. and Seshagiri Aiyar, J.*) DORAISWAMI PADAYACHI *v.* VAITHILINGA PADAYACHI. 41 I. C. 581= 33 M. L. J. 46.

———*Retrospective effect—Adjective law.*

In the matters of adjective law, the rules of procedure which are in force at the date on which the right to make the application accrues, govern the application. (*Ayling and Seshagiri Aiyar, JJ.*) NIMMALA MAHAN KALI *v.* KALLAKURI SUBBA RAO. 41 I. C. 268=32 M. L. J. 455.

———*Retrospective effect—Penal Acts.*

Unless the Legislature makes a specific mention, a penal statute has no retrospective effect. (*Wallis, C. J. and Coutts-Trotter, J.*) FREDERICK EDNAD HOOPER *v.* EMPEROR. 40 Mad. 34= 4 L. W. 82=20 M. L. T. 180= (1916) 2 M. W. N. 161=17 Cr. L. J. 321= 35 I. C. 497=31 M. L. J. 178.

———*Retrospective effect—Substantive rights.*

An Act is not to be retrospectively applied so as to take away the substantive right of appeal except when it does so expressly or by necessary implication. (*Spencer and Coutts-Trotter, JJ.*) RAJAH OF KALAHASTI *v.* SWARNAM KAMAKHSAMMA. 31 I. C. 214=29 M. L. J. 535.

———*Retrospective effect—When given.*

A statute shall not be construed so as to have retrospective operation or to interfere with vested rights unless its language is plain and unambiguous. 31 Ch. D. 402; 3 Ch. D. 402; 26 A. 119, Ref. (*Sadasiva Aiyar, Napier and Kumaraswami Sastri, JJ.*) VENKATA PERUMAL *v.* RAMUDU. 39 Mad. 84=17 M. L. T. 129= 28 M. L. J. 81=27 I. C. 688= (1915) M. W. N. 132.

———*Retrospective effect — Processual law — Change in law—Effect.*

A statute will not be construed so as to affect substantive rights acquired or transactions completed before its passing. But the mode in which a right is to be enforced is determined by the law as it stands at the time of the suit. (*Per Sundara Aiyar, J.*)—The right of a deft. to raise technical pleas, *e. g.* as to court-fee or want of notice, is not a material right and it could be affected by a new statute making changes in the processual law. (*Sadasiva Aiyar and Sundara Aiyar, JJ.*) MUTHIAH CHETTIAR *v.* RAMASWAMI CHETTIAR. 14 M. L. T. 70=25 M. L. J. 205=20 I. C. 689= (1913) M. W. N. 618.

———*Retrospective effect—Vested right.*

Retrospective operation will not be given to a statute so as to affect any vested right unless the terms of the statute expressly so provide or necessarily require it. This qualification applies both to statutes relating to processual law and those relating to substantive law. (*Benson and Sundara Aiyar, JJ.*) (RAMAKRISHNA *v.* SUBARAYA.) 38 Mad. 101=24 M. L. J. 54=18 I. C. 64= (1913) M. W. N. 303.

INTERPRETATION OF STATUTES—Retrospective effect.

———*Retrospective effect.*

Statutes which take away or impair vested rights under existing laws or attach a new disability in respect of transactions or considerations already passed must be presumed to have a retrospective operation. (*Dhobley, A. J. C.*) LAKHMICHAND *v.* BAJIRAO. 69 I. C. 870.

———*Retrospective effect—When given.*

It is a general rule that all statutes are to be construed to operate in future, unless from the language a retrospective effect is clearly intended. It is chiefly when the enactment would prejudicially affect vested rights or the legal character of the past transactions that the rule in question operates. Every statute which takes away or impairs vested right acquired under existing laws, or creates a new obligation or imposes a new duty or attaches a new disability in respect of transactions or considerations already passed, must be presumed out of respect to Legislature to be intended not to have a retrospective operation. As a general rule, mere alterations in forms of procedure are retrospective in effect and apply to pending proceedings, but where a change in procedure is complicated with a change of existing rights the rule could not be held to apply. (*Batten, J. C.*) HINDU SINGH *v.* MANGAL.
19 N. L. R 110=6 N. L. J. 227=
1923 Nag. 227.

———*Retrospective effect—Statutes taking away vested right.*

No statute shall be construed to have a retrospective operation, unless such construction appears very clearly from the terms of the Act. (*Mittra, O. A. J. C.*) MT. LAHINI *v.* BALA.
18 N. L. R. 85=1922 Nag. 227.

———*Retrsopective effect—Vested rights not to be affected.*

When the law is altered by statute pending an action, the law as it existed when the action was commenced, must decide the rights of the parties to the suit in the absence of the intention of legislature to the contrary. (*Dhobley, A. J. C.*) SETH LAKHMICHAND *v.* BAJIRAO. 5 N. L. J. 251.

———*Retrospective effect—Vested rights—Private rights—Restrictions on.*

When the very purpose of the Act is to impose restriction on a particular class of owners it is no argument against the application of it that such a restriction will in particular case be effectual and defeat the wishes of some of the owners. The rule that an Act is ordinarily not taken to be retrospective applies chiefly when the enactment would prejudicially affect vested rights or legal rights of the parties. (*Drake-Brockman, J. C.*) NILKANT *v.* GHULYA. 42 I. C. 384=
13 N. L. R. 165.

———*Retrospective effect—Procedure.*

It is a general principle that the presumption against a retrospective construction of a statute has no application to enactments which affect only the procedure and practice of courts, even where the alteration which the statute makes, has been disadvantageous to one of the parties.

INTERPRETATION OF STATUTES—Right and Remedy.

(*Drake-Brockman, J. C.*) SHANKAR GIR *v.* RAMCHANDRA. 11 I. C. 912=7 N. L. R. 125.

———*Retrospective effect—Intention to take away vested rights.*

It is an established axiom of construction that though procedure may be regulated by the Act for the time-being in force, still the intention to take away a vested right, without compensation or any saving is not to be imputed to the Legislature unless it is expressed in unequivocal terms. It is not a fair reading of an enactment to hold that it was intended to impose an impossible condition under pain of the forfeiture of a vested right and an amending Act should be construed as not applying to cases where its provisions cannot be obeyed. The law, as amended, may regulate the procedure in suits in which the plaintiff could comply with its provision but cannot govern suits where such compliance was from the first impossible. 41 C. 1125, Rel. (*Ross, J.*) GOKARAN PRASAD SINGH *v.* WARIS ALI. 1 P. L. R. 285=
1924 P. 183.

———*Retrospective effect—Procedure.*

Alterations in the form of procedure are always retrospective unless there is some good reason or other why they should not be. (*Das and Ross, JJ.*) KEDAR NATH GOENKA *v.* TARINI PRASAD SINGH.
2 P. L. T. 245=61 I. C. 4=
1921 Pat. 158.

———*Retrospective effect—Amending Act.*

In the absence of express terms the promulgation of an amending Act cannot take away from the party, any right which may be vested in him by the prior Act. (*Mullick and Jwala Prasad, JJ.*) BRAJA LAL DUTTA *v.* KENARAM PAL.
50 I. C. 515=4 P. L. J. 411.

———*Retrospective effect.*

An Act cannot by its own operation defeat the rights of a person which came into existence prior to its operation under a contract sanctioned by the court. (*Chapman and Atkinson, JJ.*) GANPAT MAHTO *v.* CHOTAN RAM. 42 I. C. 387=
2 P. L. W. 149.

———*Retrospective effect—Presumption.*

If a provision in an enactment is declaratory in its nature the presumption always is that it is retrospective in its operation. Where the legislature allows a certain time between the passing and commencement of an Act to avoid hardships arising from change of law the inference is that the enactment is to have retrospective effect. (*Fawcett, A. J. C.*) MEHMANDAS *v.* CHETTARAM. 13 I. C. 264=5 S. L. R. 184.

Right and Remedy.

———*Right and remedy.*

Where an Act creates a new jurisdiction, a new procedure, new forms or new remedies the procedure, forms and remedies prescribed therein and no others must be followed. (*Sanderson, C. J. and Mookerjee, J.*) BUDHU LAL *v.* CHATTU GOPE.
44 Cal. 816=21 C. W. N. 269=
25 C. L. J. 193=39 I. C. 465=
18 Cr. L. J. 497.

INTERPRETATION OF STATUTES—Right and Remedy.

———*Right and remedy—Applicability of rule.*

The rule that when a statute creates a right and provides a remedy, that remedy and no other is available, does not apply to a case where a right was not created by the Act but exists independently of it. (*Shadi Lal and Broadway, JJ.*) DUNI CHAND *v.* MUHAMMAD HUSSAIN. 22 P. R. 1917 = 40 I. C. 220 = 14 P. W. R. 1917.

———*Right and remedy.*

When a right, obligation or duty has also a special and exclusive remedy, other remedies are barred. (*Drake-Brockman, J. C.*) BASODI *v.* MAHANAD ROY. 42 I. C. 799 = 13 N. L. R. 210.

———*Right and remedy—Remedy in ordinary Civil Courts when barred—Special tribunal.*

When an Act of the Legislature gives power to any person for a public purpose from which an individual may receive an injury, if the mode of redressing the injury is pointed out by the Statute, the jurisdiction of the ordinary Court is sometimes ousted, and in case of injury the party cannot proceed by action. But it must be ascertained from the Statute itself whether it is intended to be conclusive and to bar all other remedies. (*Mullick and Sultan Ahmad, JJ.*) THE SECRETARY OF STATE FOR INDIA *v.* LOWN KARAN MARWARI. 5 P. L. J. 321 = 1 P. L. T. 451 = 56 I. C. 507 = 21 Cr. L. J. 475 = (1920) Pat. 253.

———*Rights and remedies — Adjective law—Operation of.*

The right to relief arising from a certain relation existing between parties is a matter of adjective law and consequently the parties are entitled, where a new remedy has been provided by a new Act at the time when the relation subsists, to take advantage of that remedy, in a court of law. (*Sharfuddin and Mullick, JJ.*) JAGANNATH PRASAD *v.* JAIKISHUN PRASAD. 1 P. L. J. 16 = 34 I. C. 375 = 3 P. L. W. 164.

Rules framed under sections.

———*Rules framed under sections—Effect of rules.*

The rules made under a power conferred by a section should be read as part of the section itself. (*Sadasiva Aiyar and Napier, JJ.*) *In re* KANDASWAMY PILLAI. 42 Mad. 69 = 20 Cr. L. J. 129 = 35 M. L. J. 736 = 24 M. L. T. 505 = (1918) M. W. N. 856 = 49 I. C. 161.

Sanction of court.

———*Sanction of court—Compliance with.*

Where the sanction of a court or other authority is necessary to a transaction and sanction is given to the transaction, generally it is a sufficient compliance with statutory requirement. Sanction for details and to the particular instrument carrying out the transaction is not necessary. (*Lord Shaw.*) RAMKANAI SINGH *v.* MATHEWSON. 42 Cal. 1029 = 42 I. A. 97 = 19 C. W. N. 585 = 17 M. L. T. 377 = 13 A. L. J. 534 = 21 C. L. J. 446 = 17 Bom. L. R. 449 = 2 L. W. 555 = 30 I. C. 55 = 29 M. L. J. 80 (P. C.)

INTERPRETATION OF STATUTES—Statement of Objects and Reasons.

Special powers.

———*Special powers—Special jurisdiction.*

It is necessary that a special jurisdiction should be strictly construed and especially so when it takes away a common law right.

A body while acting under the authority of a special law cannot go beyond the jurisdiction conferred by such special law. (*Stanyon, A. J. C.*) G. I. P. Ry. COMPANY *v.* AMRAOTI MUNICIPALITY. 16 I. C. 449 = 8 N. L. R. 107.

Stare Decisis.

———Stare decisis—*Matters of procedure.*

In a statute dealing with procedure, the principle of *stare decisis* might well govern its interpretation. (*Lord Dunedin.*) BRIJ INDAR SINGH *v.* KAUSHI RAM. 45 Cal. 94 = 33 M. L. J. 486 = 22 M. L. T. 362 = 6 L. W. 592 = 126 P. W. R. 1917 = 15 A. L. J. 777 = 19 Bom. L. R. 866 = 3 P. L. W. 313 = 26 C. L. J. 572 = 104 P. R. 1917 = (1917) M. W. N. 811 = 22 C. W. N. 169 = 127 P. L. R. 1917 = 42 I. C. 43 = 44 I. A. 218 (P.C.).

———Stare decisis—*Scope of rule.*

Where the terms of a statute are clear, even a long and uniform course of judicial interpretation of it may be overruled, if it is contrary to the meaning of the enactment. 1915 A. C. 1100, Ref. But where the provisions of the Statute were ambiguous or open to argument, the Judicial Committee accepted the interpretation "so often and so long put upon the statute by the courts in India." (*Lord Sumner.*) TRICOMBAS COOVERJU BHOJA *v.* GOPI NATHJI THAKUR. 44 Cal. 759 = 1 P. L. J. 262 = 15 A. L. J. 217 = 25 C. L. J. 279 = 32 M. L. J. 357 = 21 M. L. T. 262 = 21 C. W. N. 577 = (1917) M. W. N. 363 = 5 L. W. 654 = 19 Bom. L. R. 450 = 39 I. C. 156 = 44 I. A. 65 (P.C.)

———Stare decisis—*Practice.*

Practice is a useful guide, where a statute uses language of doubtful import, but a practice in contravention of the law cannot make lawful which is unlawful. (*Pratt, J.*) MURADALLY SHAMJI *v.* LANG. 53 I. C. 627 = 21 Bom. L. R. 980.

Statement of Objects and Reasons.

———*Statement of objects and reasons—Cannot be referred to.*

The rule of interpretation of statutes is that where the wording of an Act is absolutely clear and unambiguous, a court cannot look to the statement of objects and reasons of the Act or try to discover whether the words used mean something above and beyond what they clearly say. (*Harrison, J.*) RUP KISHORE *v.* BHAGAT GOVIND DAS. 1922 Lah. 211.

———*Statement of objects and reasons—Reference to, not permissible.*

It is not permissible to refer to the statement of objects and reasons of a statute. (*Wallis, C. J.*,

INTERPRETATION OF STATUTES—Statement of Objects and Reasons.

Ayling, and Coutts Trotter, JJ.) ZEMINDAR OF ETTIYAPURAM *v.* CHIDAMBARAM CHETTY.
39 M. L. J. 203=28 M. L. T. 75=(1920) M. W. N. 460=12 L. W. 217=58 I. C. 871=43 M. 675 (F. B.).

———*Statement of objects and reasons—Reference to.*

The intention of the legislature is primarily to be ascertained from the words of enactment while construing a statute. The statements of objects and reasons or the report of the Select Committee on a bill can only be referred to, if the object of an Act or the meaning of a clause is in any way obscure or doubtful. 3 N. L. R. 40, Ref. *(Batten, A. J. C.)* SHEOCHARAN *v.* PIARELAL. 12 I. C. 799=7 N. L. R. 165.

Statutory power.

———*Statutory power—Strict compliance.*

Railway servants are public servants and must act strictly within their statutory powers. *(Choudhury and Newbould, JJ.)* MOHAMUD HUSSAIN *v.* FARLEY. 44 Cal. 279=40 I. C. 295=18 Cr. L. J. 647=25 C. L. J. 610.

———*Statutory power — Exercise of—Conditions—Strict compliance with.*

Where powers or rights are granted with a direction that certain regulations and formalities shall be complied with, it is neither unjust nor inconvenient to exact a rigorous observance of them as essential to the acquisition of the right or authority conferred but where a public duty is imposed and the statute requires that it shall be performed in a certain manner or within a certain time or under other specified conditions, such prescriptions may well be regarded as intended to be directory only when injustice or inconvenience to others who have no control over those exercising the duty, would result, if such requirements were deemed essential and imperative. *(Mookerjee and Chatterjee, JJ.)* MATHURA MOHAN SAHA *v.* RAM KUMAR SAHA.
43 Cal. 790=23 C. L. J. 26=35 I. C. 305=20 C. W. N. 370.

———*Statutory power — Should be strictly followed.*

A Statutory authority should be strictly followed to claim immunity under it, for an act causing nuisance. *(Stanyon, A. J. C.)* MUNICIPAL COMMITTEE OF SAUGOR *v.* NILKANT.
31 I. C. 62=11 N. L. R. 132.

———*Statutory power—Limits of.*

In dealing with a statutory person, the statute must be examined to see what powers he can properly exercise under the Statute and to regard that as impliedly prohibited which is not conferred on him expressly or by necessary implication. 38 Cal. 53 Rel. *(Das and Adami, JJ.)* BABU BHAOWATI KUER *v.* BAHURIA RAM SAKHI KUER.
1 P. L. T. 304=1920 Pat. 187=57 I. C. 583=5 P. L. J. 347.

IRREGULARITY.

Surplusage.

———*Surplusage—Later enactment.*

It is not a conclusive argument as to the construction of an earlier Act to say that unless it be construed in a particular way, a later enactment would be surplusage. *(Lord Chancellor.)* SIR STUART SAMUEL, *in the matter of.*
19 I. C. 765=17 C. W. N. 735 (P. C.).

———*Surplusage.*

Per Oldfield, J.—Statutes should not be construed so as to make a certain provision in a statute superfluous, when other interpretation is possible. 40 I. C. 811. *(Oldfield and Krishnan, JJ.)* SHRINIVASA RANGA ROW *v.* RAJAH OF KARVETINAGAR.
40 I. C. 811=5 L. W. 725.

———*Surplusage—Presumption.*

Statutes that impose restrictions on the right of suit should be construed strictly. The presumption is always against superfluity in a statute. *(Drake-Brockman, J. C.)* GANESHLAL *v.* DHANDIBA.
17 I. C. 621=8 N. L. R. 169.

Technicality.

———*Technicality—Modern legislation—Cr. P. Code—Repugnancy in record if justifies interference with conviction.*

The tendency of modern legislation in general and of the Cr. P. C. in particular is to do away with technicalities: there is no provision in that Code which would justify interference with a conviction on the ground of repugnancy in the record. *(Woodroffe and Beachcroft, JJ.)* ROMESH CHANDRA *v.* EMPEROR. 41 Cal. 754=23 I. C. 985=15 Cr. L. J. 385=18 C. W. N. 498.

INTERROGATORIES.

See C. P. CODE, O. 4.

INVENTIONS AND DESIGNS ACT (V of 1888).

———Ss. 20 and 29 (4) — *Infringement—Defence—Want of subject-matter—Novelty.*

Under the Act of 1888 a defendant in an action for infringement is allowed to set up by way of defence all the grounds in which the grant of a patent could be opposed, grounds which are to be found in S. 20. Under S. 29 (4) it is for the defendant to show that either he or some other person through whom he claims has, before the date of delivery or receipt of the application for leave to file the specification publicly or actually used in some parts of India or of the United Kingdom the invention with respect to which the privilege is alleged to have been infringed. The two Indian Acts do not intend to follow the English practice that there should be any separate defence to the grant of a patent on the ground of want of subject-matter as distinguished from want of novelty. Grounds that can be pleaded as defence under the Act of 1911, cannot be pleaded in a suit instituted before the Act. *(Wallis and Hannay, JJ.)* BHATHAY SUNDARARAYAN *v.* KUPPUSAMI IYER.
(1914) M. W. N. 817=27 I. C. 996=27 M. L. J. 573.

IRREGULARITY.

See C. P. CODE, Ss. 99—115.

ISLANDS.

See CROWN.

ISSUE.

See C. P. CODE, O. 14.

JAGIR.

See GRANT.

JAIL CODE.

———*Rules how far have the force of law.*

Rules in the jail code are framed by the Local Government and come to have the force of law when they are sanctioned by the Governor-General. (*Fletcher, J.*) PEARY MOHAN DAS *v.* WESTON. 13 Cr. L. J. 65 = 13 I. C. 721 = 16 C. W. N. 145.

JAINS.

See HINDU LAW.
(1) ADOPTION.
(2) APPLICABILITY.
(3) SUCCESSION, ETC. ETC.

JALKAR.

See ALSO FISHERY.

———*Right of fishery—Grant of a sheet of water.*

A jalkar may mean either a grant of a mere right of fishery or it may mean the grant of a sheet of water together with the subsoil. 1 W. R. 78; 31 C. 937. The question whether what was intended to be granted in a particular case was restricted to a right of fishery or included in a grant of a sheet of water together with the subsoil must depend on the construction of the original grant if available or must be determined with regard to the subsequent history of the property. (*Mukerjee and Cholzner, JJ.*) PRAN KISHORE TARAFDAR *v.* SARODA PRASAD PAKRASI. 37 C. L. J. 580 = 1923 Cal. 358.

———*Fishery — Right of — In sheets of water adjacent to river.*

The owner of a fishing right in a river has no right to fish in sheets of water adjacent to the river with which the river communicates only in the time of flood, unless these sheets are part of land in the bed of the river itself. (*N. R. Chatterjee and Smither, JJ.*) SASI KANTA ACHARJEE *v.* KUNA MOHAN MOITRA. 41 I. C. 425 = 22 C. W. N. 63.

———*Fishery—Limitation Act, Art. 142.*

Art. 142 of the Limitation Act applies to a suit for recovery of possession of a *jalkar* or declaration of plaintiff's title thereto, where the question is whether the *jalkar* belongs to the plff. or defendant as persons claiming to receive rent in respect thereof and which of them is entitled to collect the rent, there having been no grant or completed easement, etc. in either party's favour. (*Woodroffe and Chaudhuri, JJ.*) MADHAB CHANDRA MANDAL *v.* NAGENDRA NATH SEN. 34 I. C. 841.

———*Fishery—Suit for rent—Bengal Tenancy Act, Sch. III Art. 2 Cl. (b)—Limitation.*

A suit for rent of a *jalkar* right of fishery is governed by Sch. III, Art. 2, Cl. (b), 27 I. C. 614

JOINT OWNERSHIP.

Foll. (*Chatterjee and Richardson, JJ.*) SHEKARESHWAR ROY *v.* NANDA LAL MANDAL. 33 I. C. 110.

———*Meaning of—Right to snare water fowl.*

The term jalkar does not rightly include a right to snare water-fowl. (*Coxe and Chatterjee, JJ.*) ANDERSON *v.* DR. JAMES HENRY GEORGE HILL. 22 I. C. 844.

———*Exclusive right.*

Exclusive right to fishery does not give right to occupancy right; acquisition can be had by adverse possession for 12 years under Art. 144, of the Limitation Act. (*B. K. Mullick and Ross, JJ.*) MESSRS. HENRY HILL & COY *v.* SHEORAJ RAY, 3 P. L. J. 53 = 1922 Pat. 195 = 1922 P. 9.

JATS.

See CUSTOM (PUNJAB).

JEWISH LAW.

———*Marriage— Ketuba— Legal Consequences from.*

Though a Ketuba is a necessary incident of a marriage contract in Calcutta between persons of the Jewish caste, it is a mere formality and not intended to operate as an effective legal instrument. A Jewish widow cannot sue for Ketuba. (*Jenkins and Woodroffe, JJ.*) MOZELLE JOSHUA *v.* SOPHIE ARAKIE. 40 Cal. 266 = 18 I. C. 132 = 17 C. W. N. 472.

———*Marriage—Ketuba rights under.*

Ketuba gives a right enforceable by an innocent wife when she is divorced by her husband, but does not give her any right against her deceased husband's estate. (*Harrington, J.*) MOZELLE JOSHUA *v.* SOPHIE ARAKIE. 12 I. C. 485 = 38 Cal. 708.

JIVAI.

See GRANT.

JODI.

See MAD. EST. LANDS ACT, S. 3.

JOINDER.

Of Causes of Action.

See C. P. CODE, S. 99, O. 1 AND O. 2, R. 3.

Of Parties.

See C. P. CODE, O. 1, RR. 1, 2 AND 3.

JOINT CONTRACT.

See CONTRACT ACT, SS. 43 AND 45.

JOINT DECREE-HOLDERS.

See C. P. CODE, O. 21, R. 16.

JOINT FAMILY.

See HINDU LAW, JOINT FAMILY.

JOINT LIABILITY.

See TORT.

JOINT MORTGAGORS.

See (1) CONTRACT ACT, SS. 38 AND 45.
(2) T. P. ACT, SS. 60 AND 91.

JOINT OWNERSHIP.

See CO-SHARERS.

JOINT POWER.

See HINDU LAW—ADOPTION—POWERS.

JOINT PROMISORS.

See CONTRACT ACT, S. 43.

JOINT TENANTS.

See CO-SHARERS.

JOINT TORT.

See TORT.

JOINT TORT-FEASORS.

See (1) TORT.

(2) CONTRIBUTION.

JOINT TRUSTEE.

See (1) HINDU LAW—REL. ENDOWMENT.
(2) TRUST ACT, SS. 31 AND 45.

JUDGE.

See also PRACTICE.

———*Public acts—Free comment.*

No privilege or protection attaches to the public acts of a Judge which protects him, in regard to these, from free and adverse criticism. (*Lord Shaw.*) CHANNING ARNOLD *v.* EMPEROR.

41 Cal. 1023=1 L. W. 461=41 I. A. 149=
18 C. W. N. 785=26 M. L. J. 621=
15 Cr. L. J. 309=7 Bur. L. T. 167=
(1914) M. W. N. 506=16 M. L. T. 79=
12 A. L. J. 1042=20 C. L. J. 161=
16 Bom. L. R. 544=23 I. C. 661=
8 L. B. R. 16 (P. C.).

JUDGMENT.

See also (1) C. P. CODE, O. 20 AND O. 41, R. 31.

(2) PRACTICE.

———*Expunging remark—High Court's power.*

The High Court has no power for expunging any remarks in the judgment of a lower court, when the latter is not made the subject of appeal or revision. (*Gokul Prasad and Stuart, JJ.*) C. DUNN *v.* EMPEROR. 20 A. L. J. 261=23 Cr. L. J. 349=
44 A. 409=1922 A. 107.

———*Duty of Court—Reckless remarks.*

While writing judgment, the court must avoid unnecessary repetition and must not misrepresent the evidence before him, or its effects. The court must not indulge in reckless, unfair and unfounded criticisms. For it is in the nature of man to believe readily what he wishes. He confounds his belief with the thing he hears and sees a thing within his remembrance which is nothing more than a purely imaginary thing, and he does so without any deliberate intention on his part to falsify the facts. (*Daniels and Lyle, A. J. Cs.*) ANJUMUN-UN-NISSA *v.* SHAIKH ASHIQ ALI.
3 U. P. L. R. (J. C.) 65.

———*Suit on — Maintainability of—Principles governing.*

A suit on a judgment obtained against the ostensible representatives can be maintained against the real representatives. The principle on which an action is allowed to be maintained on a judgment is that where a court of competent jurisdiction had adjudiciated a certain sum to be due from one person to another, a legal obligation arises to pay that sum on which an action of debt to enforce the judgment may be maintained. This principle is subject to the qualification that an action is permissible only where the judgment cannot be enforced in some other way. There is some divergence of judicial opinion on this matter. (*Mookerjee and Beachcroft, JJ.*) KALI CHARAN *v.* SUKHADA SUNDARI.
20 C. W. N. 58=30 I. C. 824=
22 C. L. J. 272.

JUDICIAL COMMITTEE.

———*To be based on pleadings.*

The judgment in a case should be founded on the pleadings or on points involved in or consistent with the case set up in the pleadings. (*Mookerjee and Buckland, JJ.*) SATIS *v.* KALIDASI.
68 I. C. 577=34 C. L. J. 529.

———*Admissibility of— Judgment vacated by subsequent order consequent on non-payment of court fee—Admissibility.*

A judgment declared plaintiff's right to a certain share of the property and further directed that on his paying up the deficient court-fee, a decree should be drawn up and on his failure so to do, the suit should stand dismissed. The plaintiff defaulted to pay the court fee as directed and by a subsequent order the suit was dismissed. *Held* that the order virtually vacated the judgment in the case which should thereafter be treated as non-existing. The judgment should not be used as evidence in a subsequent suit. 35 B. 38 Rel. (*Suhrawardy and Cuming, JJ.*) SASIMUKHI CHOWDHURANI *v.* SARASWATI SEN. 65 I. C. 522.

———*Language of — Pillorying or pouring ridicule to be restrained—Humorous judgment not necessarily bad.*

A humorous judgment is not necessarily a bad judgment. Facetious comment, not contributing to the disposal of the case and calculated to wound the feelings of persons not parties to the proceedings, should not find place in a judgment. The immunity of Judges carries with it the duty of circumspection. Any temptation to pillory or pour ridicule on strangers should be restrained and comments on the conduct of parties and witnesses should not go beyond what is really necessary for the elucidation of the case. (*Twomey, J.*) MA KYA *v.* KIN LAUGY.
11 I. C. 1000=12 Cr. L. J. 464=
4 Bur. L. T. 173.

JUDGMENT-DEBTOR.

See C. P. CODE, SS. 2, 47 AND O. 21.

JUDGMENT-IN-REM.

See EVIDENCE ACT, S. 44.

JUDICIAL ACTS.

See EVIDENCE ACT, S. 114.

JUDICIAL COMMIITEE.

See (1) APPEAL.
(2) CIVIL P. C., SS. 109, 110.
(3) PRIVY COUNCIL.

JUDICIAL DECISION.

———*Grounds—Suspicion.*

The decision of a court must rest on a legal testimony. Suspicion though a ground for scrutiny is not a ground for decision. (*Sir Lawrence Jenkins.*) MINA KUMARI BIBI *v.* BIJOY SINGH.
44 Cal. 662=1 Pat. L. W. 425=5 L. W. 711=
32 M.L.J. 425=21 C.W.N. 585=21 M.L.T. 344=
15 A. L. J. 382=25 C. L. J. 508=
19 Bom. L. R. 424=(1917) M. W. N. 473=
40 I. C. 242=44 I. A. 172 (P. C.).

———*Grounds—Suspicion.*

Suspicion is not a ground for judicial decision though it might lead to a careful scrutiny of the evidence. (*Ameer Ali.*) MOHAMMAD MEHDI HASAN KHAN *v.* MANDIR DAS. 34 All. 511=
17 I. C. 396=39 I. A. 68=12 M. L. T. 392=
15 O.C. 278=14 Bom. L.R. 1073=10 A.L J. 373=
17 C. W. N. 49=16 C. L. J. 629=
(1912) M. W. N. 1052=23 M. L. J. 741 (P. C.).

———*Effect of—Declaratory of law.*

The effect of the Full Bench decision in 37 Cal. 128 (F. B.) was not to make a new law but to declare the law as it stood and has always stood. (*Greaves and Panton, JJ.*) SARADINDU MUKERJEE *v.* CHARU CHANDRA DUTTA. 53 I. C. 885=
23 C. W. N. 872.

———*Grounds—Conjecture.*

A judgment based on conjecture is unsustainable. (*Jenkins, C. J. and Mookerjee, J.*) NILMADHAB MAHTA *v.* RAJ KISHORE DAS.
21 I. C. 413=18 C. L. J. 220.

JUDICIAL DISCRETION.

See (1) DISCRETION.
(2) PRACTICE.

JUDICIAL NOTICE.

See EVIDENCE ACT, S. 56.

JUDICIAL OFFICER.

———*Conduct—Inquiry.*

Where a judicial officer purporting to conduct a judicial inquiry has the time and opportunity to reduce into writing, complaints or statements made to him, those statements only should substantially be looked at when considering the subsequent conduct of that officer. (*Bucknill, J.*) GRANT *v.* EMPEROR. 64 I. C. 137=
22 Cr. L. J. 745=2 P. L. T. 669.

JUDICIAL OFFICERS' PROTECTION ACT (XVIII OF 1850.)

———S. 1—*Protection—Search of house in view of enquiry.*

Obiter:—When a Magistrate directs a general search of house in view of an enquiry under the Cr. P. Code in discharge of his judicial functions, he may well appeal for protection under Act XVIII of 1850. (*Lord Macnaghten.*) CLARKE *v.* BROJENDRA KISHORE ROY.
39 Cal. 953=16 I. C. 501=39 I. A. 163=
(1912) M. W. N. 760=12 M. L. T. 171=
10 A. L. J. 193=16 C. L. J. 231=
16 C. W. N. 865=23 M. L. J. 32=
13 Cr. L. J. 693=14 Bom. L. R. 717 (P. C.).

JUDICIAL ORDER.

———S. 1—*Suit against Judicial Officer—Enquiry—Evidence.*

Plaintiffs sued a Magistrate on the allegation that the latter took him into custody and brought a false charge against him. The trial court dismissed the suit as barred by the Judicial Officer's Protection Act. *Held*, that the allegation in the plaint disclosed a cause of action to which the Act referred to, did not apply. The defence under the Judicial Officers Protection Act is as much a defence on the merits as any other defence such as Limitation, etc., and the Judge must before dismissing the suit take such evidence in a case as is necessary to bring the case within the Act. Because that is a matter of defence and not a matter which arises on plaintiff's plaint. (*Piggott and Walsh, JJ.*) IZZAT ALI *v.* MUHAMMAD SHARFATULLA KHAN. 39 All. 516=
39 I. C. 553=15 A. L. J. 541.

———S. 1—*Protection—Extent of—Magistrate acting within laws.*

Where a Magistrate acting in his judicial capacity takes in good faith all the proceedings which the law permits him to take, he is protected. (*Stanley, C.J. and Banerji, J.*) MADHO PERSHAD *v.* ALI HUSSAIN. 9 I. C. 535.

———S. 1—*Defamatory statements contained in a notice served upon a pleader by a judicial officer.*

Defendant, a Subordinate Judge, called upon a pleader to withdraw certain statements made by him in an application and to apologise. The pleader refused and the defendant served a notice upon him and reported the matter to the District Judge. The pleader then sued the defendant for libellous matter contained in the notice. *Held*, the suit is not maintainable as the defendant was protected by S. 1 of the Act. (*Macleod, C. J. and Shah, J.*) VITHAL RAMCHANDRA *v.* RAGHAVENDRA RAMRAO.
45 Bom. 1089=62 I. C. 93=
23 Bom. L. R. 447.

JUDICIAL ORDER.

———*Collateral attack—Judicial order.*

The validity of an order by a District Judge granting leave to an administrator to sell property cannot be challenged collaterally in Land Acquisition proceedings. (*Chitty and Panton, JJ.*) CHUNNI LAL HALDAR *v.* MAKSHADA DEBI.
52 I. C. 309=23 C. W. N. 652.

———*Collateral attack—Jurisdiction—Error of law—Illegality of order appointing Receiver if can be pleaded as a defence to a suit by him.*

The propriety of an order or decree made in a cause in which the court has jurisdiction cannot be challenged collaterally. The jurisdiction may be taken to be the power of the court to hear and determine cases and to adjudicate to or exercise any judicial power with reference to them. In the exercise of its jurisdiction the court may commit an error of law but the fact that such an error has been committed does not oust the court of its jurisdiction. An order which is erroneous in law is not necessarily an order made without jurisdiction. In a suit brought by a Receiver for the recovery of a property claimed by him deft. cannot be permitted to question the

JUDICIAL ORDER.

propriety, regularity or necessity of his appointment. (*Mookerjee, and Beachcroft, JJ.*) BHAIRAB CHANDRA DUTTA *v.* BENOY CHANDRA DUTTA.
46 Cal. 70=22 C. W. N. 520=
43 I. C. 804=27 C. L. J. 395.

———*Jurisdiction—Defect of—Remedy.*

An order which was passed without jurisdiction is a nullity, which may be disregarded and need to be set aside. 32 Cal. 286 Dist. But an erroneous order made by a court having jurisdiction can only be set aside by review or appeal. An order having been made in execution proceedings an application does not lie to set aside the order on the ground that at the time the order was made, the execution was barred. Such an order can only be set aside by review or appeal. (*Sanderson, C.J., and Woodroffe, J.*) CHUTTERPUT SINGH *v.* SADASOOK KOTARY.
42 I. C. 623=21 C. W. N. 1052.

———*Notice to parties—Necessity of.*

No judicial order can be made so as to affect the interest of a party to the proceedings till he has been afforded a reasonable opportunity of being heard in support of his case. (*Mookerjee and Beachcroft, JJ.*) RAM NATH MAITY *v.* RUDRA MAHANTI.
21 I. C. 409=
18 C. L. J. 142.

———*Notice to parties—Ex-parte order—Inherent power to set aside.*

A judicial order which may possibly affect or prejudice any party cannot be made final unless the party affected has had an opportunity of being heard. If it is made *ex-parte* then it could be re-opened at the instance of the parties affected, for such an order is subject to the implication that it would be so re-opened. (*Mookerjee and Beachcroft, JJ.*) AJANT SINGH *v.* SUNDAR MALL.
16 I. C. 567=
17 C. W. N. 862.

———*Construction—Ambiguity.*

The terms of a judicial order though ambiguous will be construed to be in accordance with law, for the court will not presume that a judicial order has been erroneously made in contravention of statutory provisions on the subject. 21 A. 361; 19 A. 174 Ref. (*Mookerjee and Carnduff, JJ.*) HARI KISHEN BHAGAT *v.* KAMALESHUR PRASAD SINGH. 16 I. C. 374.

———*Construction—Principles.*

In construing a judicial order such construction must, if possible, be adopted as would make the order one in accordance with law and not an order such as the court making it had no power to pass. (*Sadasiva Aiyar and Odgers, JJ.*) PONNAPPA AIYANGAR *v.* SRI VANAMAMALAI.
(1919) M. W. N. 872=53 I. C. 483=
20 Cr. L. J. 755=10 L. W. 480.

———*Nullity—Distinguished from irregularity.*

When a court has jurisdiction over the parties and the subject matter, an order in violation of law is not a nullity. (*Abdur Rahim and Srinivasa Iyengar, JJ.*) THULJA RAM ROW *v.* GOPAL AIYAR. (1917) M. W. N. 234=
21 M. L. T. 229=40 I. C. 611=32 M. L. J. 434.

JUDICIAL SEPARATION.

———*Construction "Recorded" means granted.*

The action of the court endorsing, on an application for postponement of a decree signed by all parties, the expression "recorded" amounts to an order granting the application and amending the decree in the terms of the prayer. 14 Cal. 348, 11 C. 143, 7 Mad. 152, Foll and Dist. (*Sadasiva Aiyar and Moore, JJ.*) PERUMAL DAVOOD ROWTHER. 34 I. C. 393.

———*Time fixed—Construction of.*

When the time is given for the performance of any act till a certain date, it includes that date also and the court has no jurisdiction to dismiss an application for non-compliance before the expiry of the date. (*Oldfield and Seshagiri Iyer, JJ.*) SUDALA YADUM PERUMAL NADAN *v.* SIVANANJI NADACHI. 39 Mad. 583=18 M. L. T. 199=
30 I. C. 544=2 L. W. 729.

———*Construction—Conformity with law.*

In the absence of a distinct order to the contrary, the court must be taken to follow the ordinary rule of law. (*Benson and Sundara Iyer, JJ.*) SABAPATHI PILLAI *v.* CHOKKALINGAM PILLAI
21 I. C. 691=25 M. L. J. 552.

———*Construction—Conformity with law.*

If a judicial order can be construed as either legal or illegal, the construction that legalises it must prevail. (*Pratt, J. C. and Hayward, A. J. C.*) GAJI *v.* JUMANSHAH. 17 I. C. 61=
13 Cr. L. J. 749=6 S. L. R. 83.

JUDICIAL PROCEEDINGS.

———*Publication—Privilege.*

All proceedings in cases pending before a court of Justice are privileged, and they must not be published until the case comes on for hearing before the court. (*Macleod, C. J. and Heaton, J.*) NAICKER *v.* KALIDAS JHAVERI, *In re*:
44 Bom. 443= 22 Bom. L. R. 31=58 I. C. 462=
24 C. L. J. 722.

——— *Fraudulent or collusion proceeding—Suit on basis of maintainability—Effect of.*

A court of justice should not be permitted to be utilised for creating fictitious titles and a person cannot maintain a suit on the basis of a fraudulent and collusive proceeding obtained by him. (*Mookerjee and Walmsley, JJ.*) SUNDARNATA GHOSE *v.* KALI GOPAL MAZOOMDAR.
45 Cal. 920=26 C. L. J. 333=42 I. C. 431=
22 C. W. N. 367.

———*Filing of plaint—Time priority.*

Fractions of a day are recognised by the law and they will be taken into consideration for deciding which of the events happened first. The filing of a plaint is not a judicial proceeding which may be considered as taking place at the earliest period of the day on which it is done. (*Mittra, A. J. C.*) RAFIUDDIN *v.* BRIJMOHAN.
21 I. C. 602=9 N. L. R. 155.

JUDICIAL SEPARATION.

See—(1) DIVORCE.
(2) DIVORCE ACT.

JURISDICTION—Absence of.

JURISDICTION.

See also—C. P. Code Ss. 19, 20 and 115.

Absence of.
Appellate Court.
Bar of.
Civil Court.
Civil and Revenue Courts.
Civil and Criminal Courts.
Consent.
Excess of.
Exercise of.
Hereditary Office.
High Court.
Investment of.
Irregularity.
Matrimonial.
Meaning of.
Nationality of Parties
Objection to.
Pecuniary.
Personal.
Practice.
Presumption.
Private International Law.
Probate.
Procedure.
Small Cause and Original.
Special.
Venue.
What determines.

Absence of.

———*Absence of—Irregularity—Distinction.*

A decree can be set aside in an independent proceeding if there was absolute want of jurisdiction in the court passing it but not for any irregularities in the exercise of jurisdiction. (*Lord Shaw.*) Rajwant Prasad Pandey *v.* Ram Ratan Gir. 37 All. 485=42 I A. 171=13 A. L. J. 937=29 M. L. J. 165=2 L. W. 671=18 M. L. T. 173=17 Bom. L. R. 754=20 C. W. N. 35=(1915) M W. N. 736=30 I. C. 849=23 C. L. J. 55 (P.C).

———*Absence of—Irregularity in the exercise of—Distinction.*

There is a clear distinction between jurisdiction' and "exercise of jurisdiction." Since jurisdiction is the power to hear and determine a case, it does not depend either upon the regularity of the exercise of that power or upon the correctness of the decision pronounced; for the power to decide necessarily carries with it the power to do wrongly as well as rightly. The boundary between an error of judgment and the usurpation of power is this; the former is reversible by an appellate court within a certain fixed time and is therefore only voidable, the latter is an absolute nullity. So far as the jurisdiction itself is concerned, it is wholly immaterial whether the decision upon the particular question be correct or incorrect. Where it held that a court had jurisdiction to render only correct decisions, then each time it made an erroneous ruling or decision, the court would be without jurisdiction and the ruling itself void. (*Mookerjee and Cholsner, JJ.*) Kumar Arun Chandra Sinha Bahadur *v.* Manmohan Sinha Roy.
37 C. L. J. 585=1924 Cal. 154.

JURISDICTION—Absence of.

———*Absence of—Transfer of pending suit or proceeding—Effect of—Decision if a nullity.*

In cases of local jurisdiction the principle applies that the state of things existing at the time of the institution of the suit is sufficient to determine the jurisdiction on the theory that the progress of a suit once validly commenced in any court is not affected by change of residence or country by the defendant. (1870) L. R. 6 Q. B. 161; (1899). 1 Ch. 792; 22 C. 222 Ref. But this doctrine has no application where the question is one of jurisdiction over the subject-matter. Such jurisdiction must exist throughout the proceedings. jurisdiction has reference to the power of the court over the parties, over the subject matter, over the rest of property in contest and to the authority of the court to render the judgment or decree which it assumes to make. For the validity of a judgment in a suit the jurisdiction over the subject matter must exist throughout the proceedings, as well at the time of its institution as at the time of its disposal. A court may lose its jurisdiction during the pendency of a proceeding and in such an event if it proceeds to pronounce judgment, such judgment must be regarded as void because made without jurisdiction. Jurisdiction of the subject matter is given only by law and cannot be conferred by consent. The objection that a court is not given such jurisdiction by law cannot be waived by the parties. Cases reviewed. (*Mookerjee and Chotsner, JJ.*) Jyoti Prakas Chattoraj *v* Bagala Kanta Chowdhury.
36 C. L. J. 124=1922 Cal. 274.

———*Absence of—Ouster—Incorrect statement in sale proclamation—Effect of.*

Where the court has jurisdiction to sell a property, an incorrect statement in the sale proclamation, as to the amount due to the decree-holder, does not oust that jurisdiction. (*Mookerjee and Buckland, JJ.*) Pramatha *v.* Bhuban.
25 C. W. N. 585=64 I. C. 930=33 C. L. J. 421.

———*Absence of—Sale of property—Not parties to suit—Court, power of.*

A court has no jurisdiction to sell the property of persons, not parties to the proceedings before it or properly represented on the record. As to such persons a decree or sale under it would be a nullity and might be disregarded without any proceedings to set it aside. (*Chatterjee and Panton, JJ.*) Rohini Nandan Ghosb *v.* Rajendra Nath Ghosb. 61. I. C. 291.

———*Absence of — Irregularity — Distinction—Waiver.*

If the Act of the court was without jurisdiction or infringed a prescribed rule on grounds of public policy the proceeding is a nullity. If it was on the other hand, only an irregular exercise of jurisdiction, a contravention of rules framed by the Legislature with a view to afford protection to the individual litigant he might waive the benefit thereof and could not be entitled to obtain a reversal of the decree except on proof that the merits had been affected. (*Mookerjee and Walmsley, JJ.*) Fort Gloster Jute Manufacturing Co. *v.* Chandra Kumar Das.
46 Cal. 979=51 I. C. 405=29 C. L. J. 438.

JURISDICTION—Absence of.

———*Absence of—Irregularity—Distinction.*

No hard and fast line can be drawn between a nullity and an irregularity, and when the provision of a statute has been contravened, if a question arises as to how far the proceedings are affected thereby, it must be determined with regard to the nature, scope and object of the particular provision violated. (*Mookerjee and Beachcroft, JJ.*) SYED MOHIUDDIN *v.* PIRTHICHAND LAL CHOWDHURY. 31 I. C. 664= 19 C. W. N. 1159.

———*Absence of—Court having no jurisdiction—Institution of suit—Transfer.*

The institution of a proceeding in a court having no jurisdiction to entertain it, is not a valid institution capable of being continued on transfer in a competent court. The presentation of a plaint in a court of competent jurisdiction must be deemed to be the institution of a new suit. (*Mookerjee and Beachcroft, JJ.*) BHUPENDRA KUMAR *v.* PURNA CHANDRA. 24 I. C. 232.

———*Absence of—Nullity of acts.*

Acts done in contravention of statutory provisions are mere nullities. (*Brett, Mookerjee and Vincent, JJ.*) MAHOMED MEHDI WASANKHAN *v.* SHIVSHANKER PRASAD SINGH. 39 Cal. 353=14 C. L. J. 552= 13 I. C. 353=16 C. W. N. 817.

———*Absence of—Material irregularity—Distinction between—Omission to decide material point.*

When a court of law has taken up a point of fact or law for decision and has decided that point wrongly it has acted with full jurisdiction and regularly and legally and no revision lies unless. that decision itself affects the court's own jurisdiction but when having jurisdiction, the court has failed or refused to take up the point for decision, it has exercised jurisdiction irregularly and the more the failure or refusal affects the exercise of its jurisdiction, the greater the irregularity will be. Authorities reviewed. (*Wallace, J.*) AHMED THAMBI MARACAIR *v.* BASAVA MARACAIR. 46 Mad. 123=44 M. L. J. 69= 1923 Mad. 254.

———*Absence of—Proceedings a nullity.*

Proceedings by court without jurisdiction are nullity so far as strangers are concerned. (*Sadasiva Iyer and Napier, JJ.*) SESHAGIRI RAO *v.* TANGATURI JAGANNADHAM. 39 Mad. 1031= 32 I. C. 391=19 M. L. T. 93.

———*Absence of — Evidence recorded by court incompetent to try—Validity of judgment—Evidence Act, Ss. 33 and 165—Evidence given in previous case —Admission of, by consent.*

Where the Judge disposed of a suit with the parties' consent on the evidence recorded in another case, the judgment is valid though the other court was incompetent to entertain the prior suit. The consent of the parties to the suit can make the evidence in the previous case admissible if it is relevant to the issues in the second case. Facts admitted in evidence being themselves relevant, rules of evidence as to testing credibility of witnesses and others are so unimportant that parties can waive their benefit. (*Benson and Sundara Aiyar, JJ.*) SRI RAJA NUGUNTI PRAKASA RAJANNIGARU *v.* YERANKI PEDA VENKATA RAO. 38 Mad. 160=25 M. L. J. 360= 21 I. C. 319=(1913) M. W. N. 800.

JURISDICTION—Bar of.

———*Absence of—Right of party.*

The court in seisin of a particular action has no jurisdiction to deal with a fund lying to the credit of another suit. (*Das and Adami, JJ.*) BENODE BEHARY *v.* HIRA SINGH. 64 I. C. 303= (1923) Pat. 133.

———*Absence of—Nullity of decree passed.*

Where a court has no inherent jurisdiction to try a case, it cannot pronounce. any decree and if it does pronounce a decree, that decree is null and void. (*Chapman and Atkinson, JJ.*) RAGHU SINGH *v.* YUSUF ALI. 4 P. L. W. 445= 45 I. C. 920=4 P. L. J. 202.

———*Absence of—Proceedings instituted in a court having no jurisdiction—Transfer to a court having Jurisdiction—Defect not cured.*

If a proceeding is instituted in a court which has not got jurisdiction to entertain it, the transfer of such proceeding to a court which has jurisdiction will not cure the defect. (*Lentaigne and Carr, JJ.*) THE JUPITER GENERAL INSURANCE COMPANY *v.* ABDUL AZIZ. 1 R. 226=1923 R. 185.

Appellate Court.

———*Appellate court—Stay of execution.*

An Appellate Court has no jurisdiction to order the stay of a sale unless it has seisin of the case and where there is no appeal before the Appellate Court, the order staying execution is *ultra vires* and is a nullity. (*Mears, C. J. and Banerji, J.*) PURSHOTTAM SARAN *v.* HARGU LAL. 43 All. 513= 63 I. C. 837=19 A. L. J. 462.

———*Appellate court—Order of lower court as to costs—Power to set aside.*

Though the appellate court could come to a different decision on a certain point, it should not disturb the order of the first court as regards costs, unless it is clearly wrong or unjust. (*Sanderson, C. J., Woodroffe and Mookerjee, JJ.*) KALI DASSE *v.* NOBO KUMARI DASSE. 20 C. W. N. 929=36 I. C. 655=23 C. L. J. 606.

Bar of.

———*Bar of—Government—Administrative Acts.*

The withdrawal of administrative functions delegated by Government to a subject in the legitimate exercise of its sovereign power is not actionable in a Civil Court. (*Lord Macnaghten.*) BIR BIKRAM DEO *v.* SECRETARY OF STATE. 39 Cal. 615=13 I. C. 965=39 I. A. 31= 16 C. W. N. 362=9 A. L. J. 585= 15 C. L. J. 633=(1912) M. W. N. 657= 14 Bom. L. R. 812. (P. C.).

———*Bar of — Poona Cantonment Magistrate increasing tax—Payment under protest—Suit to recover money.*

Monies paid by a club under protest but demanded by a contonment Magistrate as increased tax in disregard of the Cantonment regulations, may be recovered in Civil Court as the money was claimed and received without a shadow of right. (*Scott, C. J. and Batchelor, J.*) SECRETARY OF STATE *v.* MAJOR J. E. HUGHES. 38 Bom. 293=23 I. C. 779=16 Bom. L. R. 121.

JURISDICTION—Bar of.

———*Bar of— Ghatwal dismissed by Police authority—Interference by Civil Court,*

The dismissal of a Ghatwal by the Police authorities cannot be interfered with by Civil Courts. 1. W. R. 321 Foll. (*Fletcher and Richardson*, JJ.) DEBAKAR SINGH *v.* RADHAGOBINDO SINGH. 24 I. C. 527.

———*Bar of—Act of State—Secretary of State guaranteeing the performance of private decree.*

When the Secretary of State chooses to give a guarantee for the due performance of a decree obtained by a private individual against another, it cannot be called an Act of State. Though an Act of State cannot be interfered with by the Municipal Courts, the courts must decide whether a particular Act is in truth an Act of State. (*Mookerjee and Teunon*, JJ.) SRINIVAS PRASAD SINGH *v.* KESHO PRASAD SINGH.
38 Cal. 754=13 C. L. J. 365=
9 I. C. 862=15 C. W. N. 475.

———*Bar of—Onus of proof.*

If a person seeks to oust the jurisdiction of the Civil Court, it is for him to show the existence facts of which oust the jurisdiction. 26 R. L. J. 99; 27 M. L. J. 233 Dist.; 8 L. C. 365; 24 M. L. J. 659 Foll. (*Kumaraswami Sastri*, J.) RAMALA VENKATASWAMI *v.* KANUMALLA NARASIMMAYYA.
26 I. C. 357=16 M. L. T. 596.

———*Bar of—Civil Court.*

The jurisdiction of a Civil Court cannot be excluded in any case unless clearly expressed by the legislature. (*Drake-Brochman J. C.*) GANESH. LAL *v.* DHONDIBA. 171. C. 621=8 N. L. R. 169.

———*Bar of—Courts of co-ordinate jurisdiction—If one can restrain the action of the other.*

One Subordinate Court has no right to restrain the action of another Subordinate Court of co-ordinate jurisdiction by any order. (*Jwala Prasad and Adami*, JJ.) KEDAR NATH *v.* MOHMOOD ALI KHAN.
6 P. L. J. 268=63 I. C. 465=2 P. L. T. 716.

———*Bar of—Lower Burma Court's Act, Ss. 15 (2) and 41 (a).*

Ss. 41 (a) and 15 (2) of the Lower Burma Courts Act do not prevent a civil court from adjudicating on rights of two persons litigating over land at the disposal of Government. (*Hartnoll, Offg. C. J., and Ormond*, J.) NALLAN CHETTY *v.* MUTHUSWAMY PILLAI. 23 I. C. 961.

Civil Court.

See also C. P. CODE, S. 9.

———*Civil Court—Saranjam grant—Resumption.*

Right of the Government to resume the subject of a Saranjam grant cannot be questioned in the Civil Court. (*Lord Salvesen.*) THE SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* LAXMI BAI.
47 Bom. 327=44 M. L. J. 471=17 L. W. 405=
28 C. W. N. 449=32 M. L. T. (P. C.) 111=
37 C. L. J. 464=25 Bom. L. R. 527=
50 I. A. 49=1923 P. C. 6.

———*Civil Court—Declaration of title—Trees on grove land,*

In a dispute for the ownership of the grove it is within the jurisdiction of the Civil Court to say that though the plaintiff is not in possession of the land yet he owns the trees of the grove. (*Lindsay and Daniels*, JJ.) RAJA LALITA PRASAD *v.* RAM BAHADUR. L. R. 4 A. 159 (Rev.)=
1923 A. 540.

JURISDICTION—Civil Court.

———*Civil Court—Fraudulent decree of Revenue Court—If can be set aside—Remedies.*

Per Walsh, J.—A Civil Court has authority to declare an order or decree of a Revenue Court to have been obtained in a fraudulent manner or that a party is entitled to possession. It can also award damages for deceit or fraud but it has no authority to set aside the Revenue Court's proceedings. (*Walsh and Ryves*, JJ.) JAMMAR *v.* MAHADEO PRASAD. L. R. 3. A 195=1922 All. 294.

———*Civil Court—Corporation—Meeting—Resolution—Invalid votes—Suit by minority—Powers of Civil Court.*

The question of the validity of votes being a question of law, a civil court can entertain a suit instituted by the minority, on the ground that the votes obtained by the majority at a Corporation meeting were invalid votes. (*Mulla*, J.) NARIMAN *v.* MUNICIPAL CORPORATION OF BOMBAY.
25 Bom. L. R. 689=47 B. 809=1923 B. 305.

———*Civil Court—Partition.*

An order for partition can be made by Civil Court if the plaintiff's title is not made precarious by the Revenue settlement by the revenue authorities and the title is not affected merely because the property is held under a periodical settlement from the crown. (*Mookerjee and Buckland*, JJ.) MIDNAPORE ZEMINDARI CO. *v.* NARESH.
65 I. C. 833=33 C. L. J. 497.

———*Civil Court—Suit for partition and ejectment.*

A suit by a tenant-in-common in a Civil Court for ascertainment by division of his share and for ejectment of the tenant, is not without the jurisdiction, so far as the prayer for the partition is concerned and the plaintiff may be asked to withdraw his prayer for ejectment. (*Oldfield and Ramesam*, JJ.) RAMAMURTHY *v.* BULLI RAJU,
68 I. C. 907 (1)=14 L. W. 500.

———*Civil Court.*

A suit for recovery of municipal tax illegally levied is cognizable by a Civil Court. (*Dhobley, A. J. C.*) MUNICIPAL COMMITTEE, MALKAPUR *v.* AMRIT WAMAN DALAL. 1922 N. 10.

———*Civil Court—Construction of decree of Revenue Court.*

A Civil Court cannot grant a declaration that under a decree of a Revenue Court such and such rights passed to the parties. Case law reviewed. (*Dalal, J. C. and Wasir Hasan, A. J. C.*) BISHUNATH SARAN SINGH *v.* SIDLA BAKSH SINGH.
10 O. L. J. 315=1924 Oudh 69.

———*Civil Court—Partition of dwelling house and a* chabutra*—Division of ground site.*

A Civil Court can partition a dwelling-house and a *chabutra* attached to it as the latter is only appurtenant to a dwelling-house and as no question of division of ground site arises. (*Lindsay, J. C.*) TAJAMUL HUSSAIN *v.* BANDI RAJU. 7 O. L. J. 538=60 I. C. 433=23 O. C. 281.

JURISDICTION—Civil Court.

———*Civil Court—Adverse proprietary possession pleaded.*

When a person claims adverse possession as against the landlord of a land cultivated by his tenants and he seems to be probably justifiable in his allegations he cannot be dealt with as a tenant under S. 127 of the Oudh Rent Act and a notice of ejectment issued against him ought to be cancelled. It is the jurisdiction of a Civil Court to decide the case. (*Baillie, S. M.*) RAJA BHAGWAN BAKHSH SINGH *v.* SHAFIQ-UZ-ZAMAN.
26 I. C. 709 (1)=1 O. L. J. 707.

Civil and Revenue Courts.

———*Civil and Revenue Courts—Suit for declaration of title and joint possession.*

A suit for a declaration that plaintiff is a joint tenant with defendant and authorized to possession is cognisable exclusively by a civil court. As to whether the relation of landlord and tenant exists, the revenue court is a proper tribunal and if it is decided one way or the other, a civil court cannot go behind it. (*Sulaiman, J.*) NOHAR AHIR *v.* PARTAB AHIR. 21 A. L. J. 899
L. R. 5 A. (Cr.)1=1924 All. 231=

———*Civil and Revenue Courts—Splitting up of relief.*

It is open to a court to split up the relief claimed and hold one relief is triable by a civil court and the other not. (*Daniels, J.*) GHISWA *v.* DEO NARAIN. L. R. 4 A. 450 (Rev.)=
1923 A. 568.

———*Civil and Revenue Courts—Suit for profits—Portion of—Land compensation claims.*

A lambardar had received a certain sum from Government as compensation for a small area acquired under the Land Acquisition Act. The amount instead of being paid to all the proprietors was for some reason paid to the lambardar who apparently had not given the plaintiff, a co-sharer, his share. *Held* that this could not properly be treated as *sewai* income recoverable in profits suit under the Tenancy Act. (*Ryves and Daniels, JJ.*) CHHAMMI LAL *v.* MT. SUKHRANI KUNWAR. 1923 A. 537.

———*Civil and Revenue Courts—Occupancy holding—Suit for possession.*

A suit for possession of an occupancy holding on the ground that the defendant who had been entrusted with the same refused to return it on demand, is not cognisable by a civil court. (*Ryves, J.*) JOKHU GODARIA *v.* DEOKINANDAN PANDEY. 1923 All. 489.

———*Civil and Revenue Courts—Appeal—Forum.*

An ejectment suit was filed in a Revenue Court which declined jurisdiction. In appeal the District Judge reversed the decision and remanded the suit for disposal. *Held,* the forum of appeal after the case has been disposed of on the merits is the District Court and not the appellate Revenue Court. (*Rafique, J.*) ELAHI BAKSH *v.* LALA SURAJ NARAYAN. 1923 All. 464 (1).

———*Civil and Revenue Courts—Decree for profits granted by Revenue Court—Power of Civil Court to set aside.*

A person sued for pre-emption and obtained a decree. He deposited the decree amount and took

JURISDICTION—Civil and Revenue Courts.

possession privately without reference to court. The vendee continued to be recorded in the khewat and no mutation was effected. The vendee taking advantage of this sued in the Revenue court for profits from the vendor and obtained a decree, subsequently the pre-emptor brought a suit for a declaration that the decree of the revenue court was based on a mistake and that it did not bind the parties. *Held,* that the decree for profits was only solely within the cognizance of the revenue court and having been made by a competent court of exclusive jurisdiction could not be set aside by the civil court. (*Gokul Prasad, J.*) SYED SHABBIR HUSAIN *v.* GHULAM HUSAIN.
9 O. & A. L. R. 498=1923 A. 437.

———*Civil and Revenue Courts—Suit for crops raised by third person introduced into land by the landlord.*

Where a landlord dispossessed the defendant, a tenant and put the plaintiff in possession who raised crops on the land, *Held,* that the plff. was entitled to the crop and a suit for the recovery of the same could be brought in a civil court. (*Banerji and Gokul Prasad, JJ.*) MIR SINGH *v.* MAKKHAN. 45 A. 404=21 A. L. J. 300=
L. R. 4 A. 134 (Rev.)=1923 A. 421.

———*Civil and Revenue Courts—Occupancy holding—Rival claimants—Usufructuary mortgage.*

Where the successors of the mortgagor who mortgaged an occupancy holding under a usufructuary mortgage sought to redeem the mortgaged property from the successors of the mortgagee who somehow got their names entered in the revenue papers as occupancy tenants and set up adverse possession, *Held,* no question of jurisdictionarises because thesuit so far as the defendants appellants are concerned is virtually between rival claimants to an occupancy holding. (*Kanhaiya Lal, J.*) MT. DURGA DEVI *v.* GIRWAR SINGH.
1923 A. 11 (2).

———*Civil and Revenue Courts—Agra Tenancy Act—Recovery of money advanced on mortgages and profits.*

A suit to recover money advanced for investment by way of mortgages and profits taken up from the mortgages is cognizable by civil court. Such a suit is nowhere provided for under the Agra Tenancy Act. (*Piggott and Walsh, JJ.*) GHANASHAM DASS *v.* KALYAN MAL.
62 I. C. 82=2 U. P. L. R. (All) 422.

———*Civil and Revenue Courts—Rent free grant—Question of status.*

The civil court can entertain a suit by a rent free grantee to recover the amount of rent wrongfully realised by the Zemindar, though in such suit, it is necessary to determine the status of the grantee in relation to the land. (*Rafique and Ryves, JJ.*) SHIAMDAS *v.* BAHADUR SINGH. 43 All. 325=60 I. C. 831=19 A. L. J. 89.

———*Civil and Revenue Courts.*

A suit for possession of land used for grazing cattle and for arrears of rent is in fact one for ejectment and is cognizable by revenue courts. (*Piggott and Walsh, JJ.*). PARAM HANSMAN *v.* DASRATHMAN. 43 All. 445=60 I. C. 770=
19 A. L. J. 292.

———*Civil and Revenue Courts—Denial by sub-tenant of his tenancy—Ejectment—Form of decree.*

The civil court can eject a trespasser but a mere denial by the sub-tenant of his tenant does not make him a trespasser. Where in an ejectment suit, the defendant is described as sub-tenant but he denies the sub-tenancy and set up as tenant-in-chief, either party may sue for a declaration that he is the tenant-in-chief, and if in such case the court finds that the defendant is a sub-tenant, the proper decree is for a declaration that the plaintiff is the tenant-in-chief. (*Kanhaiya Lal, J.*) HARBERAN LAL *v.* NAURANGI KUNWAR. 60 I. C. 613= 2 U. P. L. R. (All.) 302.

———*Civil and Revenue Courts—Trees—Suit for partition.*

The plaintiff purchased a one-fourth share in certain trees of a village, but did not purchase any share in the zemindari. A suit for partition of his share in those trees is cognizable by civil and not by Revenue Courts. (*Mears, C. J. and Banerjee, J.*) SHEO SAMPAT PANDE *v.* THAKUR PRASAD. 18 A. L. J. 739=2 U.P.L.R. (A) 235= 57 I. C. 128=42 A. 574.

———*Civil and Revenue Courts—Partition—Punjab Land Revenue Act (1887), S. 158 (2) (17).*

A civil court cannot entertain a suit for partition of agricultural land, brought by a fixed term tenant. The revenue court can entertain the suit. (*Scott Smith and Martineau, JJ.*) BHAN SINGH *v.* JAGAT SINGH. 51 I.C. 501=16 A.L.J. 669.

———*Civil and Revenue Courts—Suit to declare invalidity of lease.*

A suit for declaring the invalidity of a lease does not lie in a civil court. (*Knox, J.*) POORAN SINGH *v.* HAIDRI. 37 I. C. 358.

———*Civil and Revenue Courts—Decision of Revenue Court between rival tenants—Suit for ejectment as a trespasser.*

Where the revenue court decided against a tenant, and a suit was brought by him to eject an alleged sub-tenant on the ground that there was no sub-tenancy, *held*, in that suit by the plff. tenant for the ejectment of the defendant as trespasser, that the suit was cognisable by the civil court, and that a revenue court had no jurisdiction to decide finally a dispute between a tenant and another who alleges himself to be a co-tenant, except suits between landlord and tenant. (*Sunder Lal and Walsh, JJ.*) TURSI *v.* MOHAN. 35 I. C. 302.

———*Civil and Revenue Courts—Occupancy holding—Suit for declaration among rival tenants.*

A suit between rival claimants to an occupancy holding to which the landlord is no party, for a declaration of title or in the alternative for possession, is cognizable by a civil court. (*Chamier and Piggott, JJ.*) INAYAT-UN-NISSA *v.* SALIM-UN-NISSA. 29 I. C. 568.

———*Civil and Revenue Courts—Suit for declaration between rival claimants to a tenancy.*

The plaintiff, formerly members of a joint family with the defts. sued for declaration that

they had some interest in the occupancy holding belonging to the family. The defendants contended that it was divided. *Held* that the claim was one between rival claimants and cognisable by the Civil Court. (*Richards, C. J. and P. C. Banerjee, J.*) GANGA PRASAD *v.* RAM PRASAD. 26 I. C. 862.

———*Civil and Revenue Courts—Right to hold land rent-free—Declaration of.*

A Civil Court cannot make a declaration that a person not a proprietor of the land is entitled to hold it rent-free. (*Chamier, J.*) MAHOMED ABDUL GAFOOR *v.* ARTHUR BARBER. 25 I. C. 206= 12 A. L. J. 805.

———*Civil and Revenue Courts—Decree of Revenue Court—Impeachment of.*

A suit for a declaration that a Revenue Court's decree is inoperative for want of jurisdiction or error of law cannot be entertained by a Civil Court. (*Piggott, J.*) UMRAO SINGH *v.* UMRAO SINGH. 25 I. C. 61.

———*Civil and Revenue Courts—Suit for profits of sir land.*

A suit by an exproprietary tenant of a *sir* land for recovery of his share of the profits of the land jointly agreed to be enjoyed by himself and the landlord, is a suit for the profits of immoveable property wrongfully withheld from him and is cognisable by a Civil Court. (*Banerjee, J.*) BHOLANATH *v.* GHURE. 22 I. C. 816=12 A. L. J. 44.

———*Civil and Revenue Courts—Ouster of Civil Court's Jurisdiction—Agra Tenancy Act.*

The jurisdiction of a civil court is only ousted if the relief, which the plaintiff seeks could be granted to the plaintiff by a court of revenue jurisdiction in a suit which could be brought under the provisions of the Tenancy Act. (*Banerjee and Ryves, JJ.*) INAYAT HUSAIN *v.* MUHAMMAD ASKARI. 20 I. C. 421=11 A. L. J. 542.

———*Civil and Revenue Courts—Compromise, in suit triable by Revenue Court—Suit to set aside.*

A suit to have a compromise, filed in a suit exclusively triable by a revenue court, and dismissed on the ground of fraud, is cognizable by a civil court. (*Rafique, J.*) RAM NANDAN SINGH *v.* PARBHU NARAIN SINGH. 19 I. C. 666.

———*Civil and Revenue Courts—Suit for possession of holding against rival claimants.*

Plaintiffs sued to recover possession of their holding from certain persons who claimed it under the right of alluvial accretion. One of the zemindars also was impleaded. *Held*, that the suit lies in civil court. (*Rafique, J.*) NAKCHEDI AHIR *v.* RAM DAS RAI. 19 I. C. 247=11 A. L. J. 447.

———*Civil and Revenue Courts—Suit against non-agricultural tenant in ejectment.*

A suit in ejectment against a person whom the revenue court has held not to be an agricultural tenants is properly instituted in a civil court and the defendant cannot be allowed to plead that he is an agricultural tenant. (*Tudball and Rafique, JJ.*) RAJAMANGAL SAHU *v.* MACKINON. 18 I. C. 875.

———*Civil and Revenue Courts—Partition—Suit to disturb order passed in partition proceedings—U.P. Land Revenue Act, Ss.* 111 *and* 233.

An order relating to title passed during the pendency of a partition proceeding cannot be disturbed by a suit in a civil court. (*Chamier, J.*) BANDEY ALY *v.* MOHAMMAD IBRAHIM.
18 I. C. 769=11 A. L. J. 191.

———*Civil and Revenue Courts—Ejectment—Tenancy denied.*

In a suit for ejectment of defendant in a revenue court alleging that he was a tenant from year to year, defendants replied that he had bought the property from one H. whose house stood on the plot. The Assistant Collector, not being sure that the defendant had become plaintiff's tenant, dismissed the suit. Plaintiff then sued in a civil court for ejectment. *Held*, that the suit was maintainable, 33 A. 523, Dist. (*Chamier, J.*) CHAUHARAJA SINGH *v.* SARABJIT.
15 I. C. 303=10 A. L. J. 85.

———*Civil and Revenue Courts—Groves.*

Grove land occupied by trees have been dealt with as land over which civil courts have jurisdiction, N. W. P. H. C. R. (1866) 27; N. W. P. H. C. R. (1867) 183, Rel. on. (*Knox, J.*) LACHMAN DAS *v.* MOHAN SINGH. 14 I. C. 582=9 A. L. J. 672.

———*Civil and Revenue Courts—Declaration as to—Mharki Vatan—Hereditary Officers Act, Ss.* 25, 36 *and* 64.

A civil court can grant a declaration that the plaintiffs are Vatandars of a Mharki Vatan. (*Batchelor, A. C. J. and Shah, J.*) RAOJI *v.* DAGDU. 41 Bom. 23=36 I. C. 562=18 Bom. L. R. 779.

———*Civil and Revenue Courts.*

Where the action of revenue authorities is unauthorised civil courts have jurisdiction to grant relief. (*Mookerjee and Cuming, JJ.*) PRATAP CHANDRA JANA *v.* SECRETARY OF STATE FOR INDIA.
35 C. L. J. 304=49 C. 1026=1922 C. 101.

———*Civil and Revenue Courts—Decision of Revenue Court if can be reviewed by the Civil Court.*

A civil court has no jurisdiction to review the decision of a revenue authority on the ground that the valuation had been incorrectly made or that the discretion in the imposition of a penalty had been erroneously exercised. But if the action of the revenue authority is *ultra vires* if he has not followed the procedure prescribed by the statute which is the source of his authority, there is no enforceable claim which a civil court is bound to recognise. (*Mookerjee and Newbould, JJ.*) NIKUNJARANI *v.* SECRETARY OF STATE FOR INDIA. 43 Cal. 230=31 I. C. 460=20 C. W. N. 504=22 C. L. J. 375.

———*Civil and Revenue Courts — Suit for declaration of title to immoveable property — Entry in Record of Rights erroneous.*

A suit for a declaration of title to immoveable property can be maintained in the civil court, although a subsidiary relief is sought, *i. e.*, a declaration that certain entries in the Record of Rights are wrong, 14 C. W. N. 897; 14 C. W. N. 884, Foll. (*Mookerjee and Holmwood, JJ.*) LATAFAT HOSSAIN *v.* KAMALANAND SINGH.
16 I. C. 586.

JURISDICTION—Civil and Revenue Courts.

———*Civil and Revenue Courts — Damages or Rent—Construction of plaint.*

Whether a suit is one for damages or rent depends upon the claim put forward in the plaint. So where what plff. claimed was money value of crops to be given by the tenants for use and occupation, it is a suit for rent, 12 C. L. J. 480, Relied on. (*Mookerjee and Carnduff, JJ.*) LALJI PANDEY *v.* BERHAMDEO PANDEY.
13 I. C. 29=16 C. W. N. 89.

———*Civil and Revenue Courts — Occupancy right, claim to establish—Punjab Tenancy Act, S.* 77 (3) (*d*).

A claim to establish a right of occupancy by adverse possession is governed by S. 77 (3) (*d*) of the Punjab Tenancy Act and no enquiry can be made into this question by the civil court. (*Broadway and Abdul Raoof, JJ.*) BISHEN SINGH *v.* JAFFAR.
69 P. W. R. 1921.

———*Civil and Revenue Courts—Partition—*Abadi *land.*

The revenue authorities have no jurisdiction to effect a partition of *abadi* land though they have jurisdiction with respect to agricultural land. (*Shadi Lal, C. J. and Leslie Jones, J.*) MANU *v.* GULAM MUHAMMAD. 61 I. C. 415=2 Lah. 73.

———*Civil and Revenue Courts—Test — Suit by owner for declaration of right.*

The question of jurisdiction is to be decided entirely on the allegations in the plaint. Plaintiffs sued for a declaration that they were in rightful possession of the land in suit as owners; defendant set up a rival claim as the heir of a deceased occupancy tenant, though as a matter of fact he had no title to the land. *Held*, the suit was cognizable by Civil Court and the plaintiff's right to ask for relief from a civil court was not affected by the subsequent decree obtained by the defendant in a revenue court. (*Chevis, A. C. J. and Wilberforce, J.*) KARAM DAD *v.* HUSSAIN BAKSH. 56 I. C. 458.

———*Civil and Revenue Courts—Test to find out forum.*

The question whether a case is one for a Civil or for Revenue Court should primarily be decided on the wording of the plaint, but if it is ambiguous, plaintiff should be asked to make his meaning clear and the point should be decided without regard to the possibility of plaintiff having wrongly stated facts. (*Johnstone, C. J.*) ALLAH DIA *v.* ALLAH BAKHSH.
43 P. R. 1917=41 I. C. 120=110 P. W. R. 1917.

———*Civil and Revenue Courts—Suit to recover income of* mustajri *lands—Effect of dismissal by Civil Court—Reference to Revenue Court.*

The District Judge in appeal reversed the decree of the District Munsiff in a suit to recover income of *mustajri* lands holding that a civil court had no jurisdiction to try such a suit. It was filed in a revenue court and the

Collector in appeal reversed the decision of the Assistant Collector. On reference by the Commissioner it was held, that the decree of the District Munsiff could not be restored but that the proceedings should be set aside and the plaint returned for presentation to a civil court. A suit by a mortgagee of a revenue paying land to recover its income on the ground that he gave the defendant (a representative of the mortgagor) a lease *mustajri* of the land leaving him to recover the rents is not a suit between landlord and tenant and is cognisable by a civil court. (*Chevis, J.*) SARDHAR SHER SINGH *v.* MAZRULLA. 64 P. W. R. 1916 = 35 I. C. 293 = 128 P. L. R. 1916.

———*Civil and Revenue Courts—Shamilat land—Suit for joint possession.*

A suit for joint possession of *shamilat* land made over to the defendant as *ala lambardar* and in *muafi* without deciding the question of defendant's title to occupancy rights is cognizable by the civil courts. (*Johnstone, J.*) SHAMIR KHAN *v.* GHULAM FATIMA. 44 P. R. 1915 = 100 P. W. R 1915 = 29 I. C. 655 = 5 P. L. R. 1916.

———*Civil and Revenue Courts—Trees—Suit by lambardar—Against Malikan-i-Quabza for value.*

A suit by a lambardar against *Malikan-i-Quabza* for value of trees cut by the latter standing on land in their possession is cognizable by a civil and not by Revenue Court. (*Scott-Smith, J.*) NASIB SINGH *v.* HARNAM SINGH. 18 P. L. R. 1915 = 28 I. C. 919 = 242 P. W. R. 1915.

———*Civil and Revenue Courts—Mortgage with possession—Relationship of landlord and tenant.*

The mere fact that land is mortgaged with possession and the mortgagors hold it under the mortgagee, does not create the relationship of landlord and tenant. A suit for possession of such land is cognisable by a civil and not by a Revenue Court. (*Johnstone and Shadi Lal, JJ.*) SHADI BEG *v.* AHMAD KHAN. 168 P. W. R. 1914 = 27 I. C. 446 = 211 P. L. R. 1915.

———*Civil and Revenue Courts—Mortgage with possession — Mortgagor holding the land under mortgagee — Suit for rent and ejectment against mortgagor.*

Where a mortgage is with possession till the mortgage deed provides that the mortgagor shall hold the land under the mortgagee *Misjanib-wabaijasat* for rent, a relationship of landlord and tenant is created and a suit by the mortgagee to eject the mortgagor from possession would be a revenue suit. (*Fenton, J. C.*) KISHORE CHAND *v.* BADHAVA SINGH. 9 P. R. 1913, (Rev.) = 22 I. C. 656 = 82 P. L. R. 1914.

———*Civil and Revenue Courts—Ejectment of trespasser once occupancy tenant.*

A suit for possession alleging that defendants were once occupancy tenants, but have nothing to do with the land now, is clearly a suit for ejectment cognisable in a civil court. A previous suit between the parties for cancellation of notice of ejectment in the revenue courts could not operate to make the matter in dispute of *res judicata*. (*Reid and Chevis, JJ.*) JAMAN *v.* COANDIYA RAM. 69 P. W. R. 1913 = 196 P. L. R. 1913 = 18 I. C. 918 = 83 P. R. 1913.

———*Civil and Revenue Courts — Occupancy rights—Entry into possession essential for giving jurisdiction to Revenue Courts.*

A person becomes a tenant only after he enters into possession of land in pursuance of his right and so a suit by one claiming the occupancy rights of a deceased tenant is not cognisable by the Revenue Courts, 44 P. R. 1891 (F., B.), Rel. on. (*Chevis, J.*) RIZA *v.* GIRHARI RANA. 14 I. C. 236 = 188 P. W. R. 1912.

———*Civil and Revenue Courts—Bakri Thana Patti dues—Suit for declaration of non-liability to pay—Punjab Tenancy Act (XVI of 1887), S. 77 (3) and Punjab Land Revenue Act (XVII of 1877) S. 158 (2) (VI).*

A Civil Court cannot entertain a suit by *Malikan Kabze* and non-proprietary residents of a village for a declaration that they were not liable to pay Bakri and Thana patti dues on account of the absence of such a custom for the realisation of such dues, 33 P. R. 1908, Foll.; 67 P. R. 1905, Dist. (*Reid, C. J.*) KARIM ILAHI *v.* SULTAN ALAM. 79 P. R. 1912 = 65 P. L. R. 1912 = 13 I. C. 812 = 144 P. W. R. 1912.

———*Civil and Revenue Courts—Mortgage with possession — Mortgagor undertaking to assist in collection of rent — Relationship of landlord and tenant.*

Where by a mortgage, possession is given to the mortgagee and the mortgagor undertakes to assist the mortgagee in collecting produce, a suit by the mortgagee for possession is cognisable in a civil court as the mortgagor cannot be considered a tenant for the purpose but is at most an agent, 46 P. R. 1894, Dist. (*Johnstone and Rattigan, JJ.*) AHMAD KHAN *v.* RATAN CHAND. 53 P. W. R. 1912 = 50 P. R. 1912 = 13 I. C. 539 = 100 P. L. R. 1912.

———*Civil and Revenue Courts—Suit for arrears of rents by Assignee thereof—Punjab Tenancy Act (XVI of 1887.)*

A suit for arrears of rent by the plaintiff to whom the right to recover rent had been sold by the landlord is cognisable by the civil court. (*Chevis, J.*) GANPAT RAI *v.* SARDARA. 67 P. W. R. 1912 = 13 I. C. 511 = 61 P. L. R. 1912.

———*Civil and Revenue Courts—Suit for eviction of trespasser—Test to find out what court has jurisdiction.*

A suit for eviction of a trespasser will lie in the civil court. The test to see whether the civil or revenue court has jurisdiction is to examine the plaintiff and find whether according to the plaintiff the defendant took possession as a tenant or by means of force, and in the former case the civil court has no jurisdiction. (*Chevis, J.*) BELA SINGH *v.* LABH SINGH. 48 P. W. 1912 = 13 I. C. 298 = 51 P. L. R. 1912.

———*Civil and Revenue Courts — Partition — Abadi land.*

The civil courts technically have jurisdiction to inquire into the question of partition of the village sites. Each individual proprietor is not

necessarily entitled to a portion of the abadi area. The distribution of such vacant land attached to the abadi should be left to the *Lambardars* who alone can determine whether it should be divided up or kept intact for the common purpose of the village. (*Kensington, J.*) HIRA SINGH *v.* MOHAR SINGH. 228 P. W. R. 1911 = 12 I. C. 605 = 2 P. L. R. 1912.

———*Civil and Revenue Courts—Test to determine.*

To determine whether a claim is cognisable by a Civil or Revenue Court, is one to be determined solely by the nature of the claim as lodged, and not by the defence set up or by evidence. In suits for ejectment, the court should see whether the suit is for the ejectment of a tenant or a trespasser. If for the latter, the claim is cognizable by a civil court, but if it is found that the defendant is a tenant, the suit should be dismissed, in which case the landlord can bring a fresh suit in the Revenue Court. (*Chevis, J.*) GHAZAU *v.* BAHADUR. 236 P. L. R. 1911 = 11 I. C. 639 = 152 P. W. R. 1911.

———*Civil and Revenue Courts—Suit by occupancy tenant for possession.*

The civil court will entertain a suit by occupancy tenants against their landlords to recover possession of their holding which was being cultivated by the latter on behalf of the former. (*Johnstone, J.*) AMIR DIN *v.* MEGHA. 9 I. C. 744 = 17 P. W. R. 1911.

———*Civil and Revenue Courts—Madras Estates Land Act.*

A suit for rent between a landholder and a *raiyat* falling under the Act is not cognizable by Small Cause Court. (*Sadasiva Aiyar and Napier, JJ.*) ZEMINDAR OF TARLA *v.* KANDA PARIKIVADU. 44 Mad. 697 = 40 M. L. J. 466 = 29 M. L. T. 368 = 63 I. C. 8 = (1921) M. W. N. 565.

———*Civil and Revenue Courts—Sale for arrears of rent—Setting aside.*

The civil court can set aside a sale for arrears of rent by a revenue court on the ground of fraud. (*Oldfield and Hughes, J.*) SURAYYA *v.* NARASI GADU. 29 M. L. T. 304 = 14 L. W. 232.

———*Civil and Revenue Courts—Ijara lease.*

A claim arising from an Ijara lease is within the jurisdiction of revenue courts. S. 6, cl. 6 of the Madras Estates Lands Act (1908), contemplates only the case of middle men taking Ijara and not the case of a ryot himself claiming an ijara of his holding. It is the revenue court and not the civil that can take cognisance of rent claim in respect of land in an estate so long as the plaint does not show it to be otherwise. (*Seshagiri Iyer, J.*) GOPISETTI NARAYANASWAMI *v.* GANGISETTI. (1916) 2 M. W. N. 240 = 37 I. C. 394 = 4 L. W. 371.

———*Civil and Revenue Courts—Kattubadi—Suit to recover—Madras Land Revenue Act.*

A civil court and not a revenue court has jurisdiction to maintain a suit for the recovery

of Kattubadi from an *Inamdar* who is not a cultivator. (*Seshagiri Iyer, J.*) MUDAPATY VENKATESWARA *v.* NANDUM RAJAGOPALAM. 30 I. C. 927.

———*Civil and Revenue Courts—Suit for rent by Inamdar.*

Civil courts do not lose jurisdiction over sults for rent brought by an *Inamdar* unless it is shown that the *inam* lands are 'estate' or part of an 'estate.' (*Sadasiva Iyer, J.*) MOHANAMHAL *v.* DAVODDRA ROWTHER. 23 I. C. 859.

———*Civil and Revenue Courts—Suit for interest due on arrears of rent.*

Revenue courts can entertain suits for recovery of interest due and payable on arrears of rent. (*Sundara Iyer and Phillips, JJ.*) VEDACHELLA MUDALIAR *v.* VIJAYARAGHAVA CHARIAR. 23 M. L. J. 219 = 13 I. C. 71 = (1912) 1 M. W. N. 523.

———*Civil and Revenue Courts—Suit for declaration of invalidity of patta.*

A tenant's suit for a declaration that a patta given by landlord is bad lies in civil court. (*Benson and Krishnaswami Iyer, JJ.*) SAMIASI KOUNDAN *v.* AKKULAMMAL. 9 M. L. T. 282 = 9 I. C. 278 = (1911) 2 M. W. N. 339.

———*Civil and Revenue Courts—Grant for service—Suit by grantor for ejectment of grantee.*

A contract by which a landlord gives some land rent-free to a carpenter for services to be rendered by him as carpenter without wages, is not a contract of tenancy, but one of service and a suit for ejectment of the carpenter is cognizable by a civil court, 1 C. P. L. R. 182; 3 N. L. R. 185, Rel. (*Drake-Brockman, J. C.*) RAMAKRISHNA *v.* SOMA. 20 I. C. 541 = 9 N. L. R. 97.

———*Civil and Revenue Courts.*

A suit for possession on the allegation that the possession of the landlord is due to a sale by the guardian of the tenant, if such alienation is found to be invalid, is not one between landlord and tenant and civil courts have jurisdiction to try it. A plaint, returned by Sub-Judge on the ground that it was between landlord and tenant, but decided by an E. A. C. and Additional Judge to be not so, and confirmed by District Judge to be not between landlord and tenant, should be tried by Sub-Judge according to the decision of District Judge. (*Drake-Brockman, J. C.*) GANPAT *v.* TRIMBAK. 19 I. C. 759 = 9 N. L. R. 54.

———*Civil and Revenue Courts—Partition of Mahal—Right to share in a Mahal.*

The civil court has no power to discuss the power of willingness of a revenue court to partition a Mahal. The civil court can decide that a particular person is owner of a certain share in a Mahal but cannot direct a revenue court to separate that share by partition. Similarly the civil court has no authority to prevent partition of a share even if the proceeding of the revenue court be contrary to the rules and regulations laid down for its guidance. The question of stay of partition proceedings for want of sanction by the Local Government can be agitated only in a revenue court. (*Dalal, J. C. and Neave, A. J. C.*) MAHOMED AHSAN ALI *v.* MASUDALI, 10 O. L. J. 339 = 1924 O. 149.

JURISDICTION—Civil and Revenue Courts.

———*Civil and Revenue Courts.*

In a case where the revenue courts have exclusive jurisdiction, a suit for a declaration that the decree is void and ineffectual does not lie in the civil court on the bare ground that the proceedings were contrary to law. (*Kanhaiya Lal, C. J.*) SAT DEO *v.* JAI NATH.
9 O. L. J. 141=4 U. P. L. R. (O. C.) 43=1922 Oudh 75.

———*Civil and Revenue Courts—Tenancy—Decision of Revenue Court, Civil Court, powers of.*

The decision of a revenue court is final as to the nature of a tenancy, but where tenancy is denied and a rival title is set up, the decision is not final and it can be decided by a civil court. A civil court is not debarred from entering into a question of rival claims under a title derived from a common ancestor as the question is only one of inheritance. (*Kanhaiya Lal, A. J. C.*) LACHHMINI *v.* RAM SINGH.
61 I. C. 290=24 O. C. 15.

———*Civil and Revenue Courts—Status of tenant—Duty of Court.*

On a question of the tenant's status being raised before a revenue court that court must decide it or must decide that he has under-proprietary rights, so that either party must go to a civil court to get its decision on the latter question. (*Holmes, S. M. and Ferard, J. M.*) MUKTAR-UL HUDA *v.* BAKHTHAWAR KHAN
60 I. C. 713=7 O. L. J. (B. R.) 669.

———*Civil and Revenue Courts—Decision of the Revenue Court.*

The decision of the revenue court that the tenant sought to be ejected has a status superior to that of an ordinary tenant, affords a cause of action to the land-holder to go to the civil court for a declaration that the person did not possess under-proprietary rights. In order to maintain such a suit in the Civil Court, it was not necessary that the revenue court should definitely hold such person to possess under proprietary rights. (*Stuart, A. J. C.*) BANDI BAKHSH *v.* INDER PAL.
34 I. C. 304=3 O. L. J. 191.

———*Civil and Revenue Courts—Tenancy, nature of—Proprietary or under-proprietary rights—Ejectment.*

In cases to which the U. P. Land Revenue Act applies the courts of revenue have the exclusive jurisdiction to determine the status of a tenant and the special and other terms on which such tenant holds. The civil courts can decide whether or not a person holds the proprietary or under-proprietary rights, but they cannot set aside an ejectment proceeding or determine its validity if the interest affected is not under-proprietary. (*Kanhaiya Lal, J. C.*) EWAZ ALI KHAN *v.* QUDRAT ALI.
53 I. C. 921.

———*Civil and Revenue Courts—Ejectment.*

If the revenue court finds that there is no relation of landlord and tenant between the parties, the civil court can try a suit of ejectment between them. (*Daniels, A. J. C.*) GANGA *v.* GHULAM DASTAGIR.
50 I. C. 915.

JURISDICTION—Civil and Revenue Courts.

———*Civil and Revenue Courts—Suit for declaration that defendant is not an under-proprietor—Cause of action.*

In a suit for a declaration that defendant is not an under proprietor, the civil court will not exercise its discretion in granting the relief unless it is shown that the plaintiff has exhausted his remedy in the rent court; but he cannot be said to have no cause of action unless and until he has done so. (*Lindsay, J. C.*) AMRAJ SINGH *v.* SARAH SUKH PANDE.
46 I. C. 650.

———*Civil and Revenue Courts — Validity — Documents—Decision, if final.*

The proposition that the revenue courts have no exclusive jurisdiction to decide finally upon the validity of document of title, though correct as a general statement of law, is subject to the qualification that the civil courts cannot decide any matter in which jurisdiction has been exclusively reserved to revenue courts. (*Lindsay, J. C.*) JAGANNATH *v.* DRIGBIJAY SINGH.
21 O. C. 210=48 I. C. 88=5 O. L. J. 611.

———*Civil and Revenue Courts — Once vested cannot be divested.*

Where the relationship of landlord and tenant has been denied in the pleadings and the civil court is thus given jurisdiction to try the suit it cannot be taken away by a subsequent admission of such relationship, 18 I. C. 284, Dist. (*Kanhaiya Lal, A. J. C.*) MAHADEO GIR *v.* BHAGWANT SINGH.
46 I. C. 8=5 O. L. J. 143.

———*Civil and Revenue Courts—Decision by Revenue Court—Suit for declaration in Civil Court to declare invalidity of lease.*

Where a perpetual lease was upheld by the revenue courts and a suit was then brought for cancellation of such lease; *held*, that, the decision of the civil court could not affect the validity or otherwise of the decision of the Board of Revenue in regard to a matter with which it was competent to deal and that a declaratory decree contradicting the decision of a competent court having exclusive jurisdiction to decide the matter should not be granted. (*Kanhaiya Lal, A. J. C.*) BADRI *v.* KHURSHED ALI.
41 I. C. 15=20 O. C. 182.

———*Civil and Revenue Court—Ejectment of lessee holding over.*

A lessee holding over or holding under a defective title or void lease cannot be treated as a trespasser and a suit for ejectment will lie in the Revenue Court only. (*Kanhaiya Lal and Kendall, A. J. Cs,*) SANKATA DIN *v.* GAYA DIN.
38 I. C. 399=3 O. L. J. 729.

———*Civil and Revenue Courts.*

Where a co-sharer of a village became tenant of his mortgagee and, having subsequently sold his share, left a portion of purchase money with the vendee for payment of arrears of rent due to the mortgagee and the *Lambardar*, the mortgagee cannot proceed in a civil court against the vendee for his share of the money, but only against the *Lambardar*, in a rent court, the *Lambardar* having received the whole money from the vendee. (*Stuart, J. C.*) BENI MADHO *v.* ASGHAR HUSSAIN.
37 I. C. 65=3 O. L. J. 515.

JURISDICTION—Civil and Revenue Courts.

———*Civil and Revenue Courts—Tenancy, class of—Declaration, suit for.*

Obiter: Suit for a declaration of the class of tenancy in a case in which the relationship of landlord and tenant is not disputed, is not cognizable by civil court. (*Holms, S. M. and Campbell, J. M.*) MUHAMMAD ABDUL HASAN KHAN *v.* RAM AUTAR. 36 I. C. 91=3 O. L. J. 267.

———*Civil and Revenue Courts—Suit for declaration that defendant is not a permanent lessee.*

Civil court can grant a declaration that the defendant is not a permanent lessee, on the materials before it. (*Lindsay, J. C. and Stuart, A. J. C.*) RAM AUTAR *v.* MUHAMMAD ABDUL HASAN KHAN. 36 I. C. 83=3 O. L. J. 267 (n).

———*Civil and Revenue Courts—Document, validity of.*

Revenue courts have no exclusive jurisdiction to decide finally upon the validity of a document of title; the civil courts alone have such power. (*Lindsay, J. C.*) DEBI BAKHSH *v.* RAM DHANI. 35 I. C. 446=19 O. C. 58.

———*Civil and Revenue Courts—Under-proprietors—Suit for joint possession.*

A civil court has jurisdiction to try a suit between under-proprietors for joint possession and mesne profits of Khudkasht wrongfully withheld. (*Kanhaiya Lal, A. J. C.*) SHRI RAM *v.* RAM PARGASH. 32 I. C. 732=2 O. L. J. 625.

———*Civil and Revenue Courts—Tenancy, nature of.*

The determination of the class to which a tenant belongs is exclusively within the jurisdiction of the revenue court. (*Lindsay, J. C. and Kanhaiya Lal, A.J.C.*) RAM ASRAE *v.* MUHAMMAD ABDUL HASAN KHAN. 30 I. C. 218=2 O. L. J. 241.

———*Civil and Revenue Courts—Tenancy, nature of—Suit for declaration that a defendant is not an agricultural tenant.*

A civil court has jurisdiction to declare that a person is or is not an agricultural tenant, even though the revenue court has exclusive jurisdiction to determine the nature of the tenancy and to eject that person, 31 All. 304, Ref. (*Lindsay, J. C. and Stuart, A. J. C.*) RAM AUTAR *v.* ABDUL HASAN KHAN. 28 I. C. 307=2 O. L. J. 131.

———*Civil and Revenue Courts—Ejectment—Graveyard.*

Where in a suit by plff. for ejecting the deft. from 8 biswas of land out of 13 in the civil court (the rest being decreed in his favour in the revenue court) on the ground that they were a graveyard as alleged by the deft., the deft. pleaded that he being a tenant, only the nature of the tenancy had to be determined, it was held that the court had jurisdiction, because the deft. had derived his tenancy in the revenue court and the question for decision was the existence or otherwise of a custom of burying dead bodies. (*Kendall, A. J. C.*) SAHEB DIN *v.* JANG BAHADUR SINGH. 26 I. C. 231=1 O. L. J. 557.

JURISDICTION—Civil and Revenue Courts.

———*Civil and Revenue Courts—Ejectment of lessee by landlord.*

The lessees of a village whether perpetual or otherwise, cannot be ejected through a civil court, but only by a revenue court. A civil court ought not to express its opinion on matters which can only be decided by a revenue court. (*Stuart, J. C. and Kanhaiya Lal, A. J. C.*) GUR SAHAI *v.* MUHAMMAD ABDUL HASAN KHAN. 25 I. C. 914=1 O. L. J. 512.

———*Civil and Revenue Courts—Settlement decree—Interpretation.*

A civil court has power to interpret a settlement decree so as to make it comprehensible. (*Stuart, and Kanhaiya Lal, A. J. Cs.*) LAL SRIPAT SINGH *v.* LAL BASANT SINGH. 25 I. C. 743=1 O. L. J. 421.

———*Civil and Revenue Courts—Terms of tenancy.*

A civil court can enquire into the proprietary and under-proprietary title, but not into the nature or the terms of the tenancy when the tenancy is admitted. (*Lindsay, J.C. and Kanhaiya Lal, A.J.C.*) PRAG *v.* MUHAMMAD ABDUL HUSSAIN KHAN. 25 I. C. 603=1 O. L. J. 344.

———*Civil and Revenue Courts—Suit partly cognisable by Revenue Court and partly by the Civil—Forum.*

Where a case is partly cognisable by the civil court and partly by the revenue court, the whole case must be decided by the civil court, 1 O. C. Sup. p. 1; 5 N. W. P. H. C. R. 42, Foll. (*Tweedy, J.*) UMRAO BAHADUR *v.* SECY. OF STATE. 24 I. C. 788=1 O. L. J. 124.

———*Civil and Revenue Courts—Document relied on by Revenue Courts—Suit for declaration that document is false and void.*

A suit for declaration that a document relied on by the revenue courts is false and void is triable by civil courts, 12 O. C. 164; 25 All. 1, Ref. (*Lindsay, J. C.*) DHONDEKHAN *v.* HAR NATH KUNWAR. 24 I. C. 381.

———*Civil and Revenue Courts—Partition proceedings—Revenue Court disallowing objection on a question of title.*

A complete partition vests title in the party in whose favour the partition has been carried out, and a civil court cannot go behind. Where a revenue court disallowed an objection raising a question of title, merely on the ground of the opposite party being a recorded co-sharer in possession, an appeal lies from such order to the Dt. Judge or the Judicial Commissioner. (*Kanhaiya Lal, A. J. C.*) KALI PARSHAD *v.* THAKUR DEI. 23 I. C. 965=1 O. L. J. 81.

———*Civil and Revenue Courts—Declaration—Tenancy.*

A civil court may declare that a tenant holds under a decree of court leaving the revenue courts to decide as to the rights and liabilities and other incidents of the tenancy. (*Kanhaiya Lal and Sabanadiere, A. J. Cs.*) RAM JIYAWAN *v.* MUHAMMAD ABDUL HUSSAIN KHAN. 23 I. C. 231.

———*Civil and Revenue Courts—Under-proprietary rights—Claim for.*

If persons claiming under-proprietary rights are proved to have been paying *Nazarana* and cesses to landlord, their possession cannot be regarded as adverse, but they cannot be ejected as lessees through the civil court. A claim for under-proprietary right not established before and not granted by Settlement Court having Civil Jurisdiction cannot be agitated in civil court afterwards. (*Kanhaiya Lal, A. J. C.*) TIRBHU WAN BAHADUR SINGH *v.* MUKTA PRASAD.
22 I. C. 125.

———*Civil and Revenue Courts—Declaration of title—Suit for possession.*

The exclusive jurisdiction of the revenue courts in actually ejecting lessees does not preclude a person actually affected by the lease, from suing for a declaration of his title in the civil courts, actual possession being recoverable from the revenue courts alone. (*Piggott, J. C.*) RAGHUBIR DAYAL *v.* MAHESHGIR. 20 I. C. 147.

———*Civil and Revenue Courts — Tenancy, evidence of—Co-sharers.*

A civil court can decide whether a tenancy exists or whether a lease by one co-sharer is valid and binding on others. (*Kanhaiya Lal, A. J. C.*) TAJAMMUL *v.* KANDHAI LAL.
18 I. C. 281.

———*Civil and Revenue Courts—Tenancy—Decision as to.*

Defendants got a decree in the Settlement Court with respect to the manorial dues and other products of a tank in the village. The tank dried up and defendants began to cultivate the land. Plaintiff sued defendants for arrears of rent in respect of the land in the revenue court. The defendants denied their tenancy, and the claim was dismissed. Plaintiff then sued the defendants for possession of the said land in the civil court. *Held*, that the civil court could admit the suit, the question of tenancy having been finally decided by the revenue court. (*Kanhaiya Lal, A. J. C.*) GANESH SINGH *v.* MAHARAJ SINGH. 16 I. C. 993.

———*Civil and Revenue Courts—Tenancy, class of—Declaration as Thekadar.*

A civil court cannot make a declaration that a person is a mere Thekadar as that will amount to a declaration of the class of tenancy to which the person belongs which can be done only by a revenue court. (*Piggott, J. C. and Lindsay, A. J. C.*) PARMESHWAR DAT *v.* MOHAMMED ABDUL HUSSAIN KHAN. 13 I. C. 809=14 O. C. 335.

———*Civil and Revenue Courts—Partition by Revenue Court—Interference by Civil Court.*

A civil court has no jurisdiction to interfere with a final allotment made by a revenue court, of lands at a partition even if in so allotting, any of its immediate orders are not complied with. (*Chamier, J. C.*) JAGAN NATH *v.* RAM DUTT. 11 I. C. 531=14 O. C. 153.

———*Civil and Revenue Courts—Proceedings of Revenue Court—When can be impeached for want of jurisdiction in a Civil Court.*

The exercise of jurisdiction with which we can here interfere must relate to the subject-matter, pecuniary value, locality of the parties: these are matters which form the foundation of a court's jurisdiction, and if a court wrongly assumes that the foundation exists when in fact it does not exist then and then only it is wrongly exercising jurisdiction. But jurisdiction in its wider sense is some times understood to mean the power to do certain specific things which are ordained by statute. If the court having assumed jurisdiction correctly, that is to say, if by reason of its local situation or pecuniary authority, or by reason of the subject-matter, or the portion of the parties the revenue court had power under the statute for entertaining the partition proceeding, then, every error made in carrying out the partition in accordance with the terms of the law would not necessarily invalidate the proceeding and render it null and void. As has been often observed a court has jurisdiction to decide wrongly as well as rightly. Where the foundation of jurisdiction does not exist as in cases where a revenue sale is held though there is no arrear of revenue at all, or a certificate sale is held in execution of a certificate issued without authority, a civil court has an absolute right to declare the sale to be a nullity and to restore the property to the owner. So again where a property such as a burial ground which the Estates Partition Act forbids the Deputy Collector to partition, is partitioned a suit will lie to declare that the partition so far as the burial ground is concerned is null and void; but if the Deputy Collector simply commits an error of law, it would be contrary to the principle to hold that a civil court can interfere for the purpose of readjusting the arrangement to make fresh partition. (*Mullick and Koss, JJ.*) RADHAKANTO PARHI *v.* MATHURA MOHAN PARHI. 2 P. 403=1924 P. 187.

———*Civil and Revenue Courts—Partition.*

Where a partition has been effected, the civil courts have no jurisdiction to disturb it. (*Das and Tudball, JJ.*) KESARI SAHAI SINGH *v.* HIT NARAIN SINGH. 56 I. C. 149=1 P. L. T. 507.

———*Civil and Revenue Courts—Contribution—Revenue payable by defendant paid by Plaintiff.*

A suit for contribution in respect of revenue paid by plaintiff which defendant was bound under law to pay is cognisable by the civil court, (*Chamier and Jwala Prasad, JJ.*) RAMSUMRAN PRASAD SAHU *v.* SARBRAIN CHOUDHURINI.
33 I. C. 721.

———*Civil and Revenue Courts.*

An application for declaration that the remaining co-owners' rights are not affected by the fraudulent alienation by another co-owner does not amount to an impeachment of the validity of the sale and the civil courts are therefore not barred from entertaining the application. (*Pratt, J.*) MAZA *v.* MAMI. 11 L. B. R. 313=1923 R. 17.

———*Civil and Revenue Courts—Redemption decree—Ouster from property not affected by decree—Remedy—Forum.*

A civil court has jurisdiction to grant relief in cases where under cover of a redemption decree, the decree-holder ousts a person in possession of lands not covered up by the decree. (*Twomey, J.*) THA DUN *v.* THA ZAN.
11 I. C. 808=4 Bur. L. T. 167.

Civil and Criminal Courts.

——*Civil and Criminal Courts—Power to break open door.*

Where a person who is the tenant of a house locks the same and goes away, a criminal court has no jurisdiction to direct the breaking open of the door at the instance of a person whose goods are kept locked up in the room. The remedy of the aggrieved person in such a case is by way of a civil suit and not by appealing against the order of the criminal court. (*Stuart, J.*) OVID *v.* SETH CHANDRA BHAN. 1923 All. 473 (1).

——*Civil and Criminal Courts—Civil Court, if can question order under S.* 145, *Cr. P. C.*

A civil court cannot question the order of a Magistrate under S. 145 of the Cr. P. C. made with jurisdiction. (*Kensington and Chevis, JJ.*) BAGAWAN DAS *v.* BHANA MAL.
137 P. W. R. 1912 = 14 I. C. 566 = 84 P. R. 1912.

——*Civil and Criminal Courts—Acquittal on charge of embezzlement—Effect.*

The acquittal of a person in a criminal trial on a charge of embezzlement does not prevent the civil court from trying the question whether he took the money in an action for the same. (*Miller, C. J. and Adami, J.*) RAGHUNATH PRASAD *v.* BANK OF BENGAL. 69 I. C. 212.

Consent.

——*Consent —Cannot give.*

Where a court has no jurisdiction to try a suit, by reason of a statutory prohibition, the consent of the parties cannot give its jurisdiction to try the case. (*Lord Moulton.*) MAHA PRASAD SINGH *v.* RAMANI MOHAN SINGH. 42 Cal. 116 = 41 I. A. 197 = 18 C. W. N. 994 = 16 M. L. T. 105 = (1914) M. W. N 565 = 1 L. W. 619 = 20 C. L. J. 231 = 27 M. L. J. 459 = 25 I. C. 451 = 16 Bom. L. R. 824 (P. C.).

——*Consent—Cannot create right of appeal—Appeal—Agreement between parties.*

The fact that the decree in the terms of an award does not authorise its appealability precludes an appellate court from entertaining an appeal being heard on the same merits. The said court has no jurisdiction in such case only because the parties gave their consent for the procedure. (*Knox, J.*) RAM HARAKH PATHAK *v.* RAM SARAN PATHAK. 29 I. C. 408.

——*Consent—Cannot give.*

Consent of parties cannot determine the court's jurisdiction by changing the statutory value of a suit. (*Scott, C. J. and Batchelor, J.*) FEROZSH SHAW *v.* WAGHJI KAVERAJI.
10 I. C. 746 = 13 Bom. L. R. 158.

——*Consent—When confers jurisdiction on court.*

It is an elementary principle of law that if a court has no jurisdiction over the subject matter its judgments and orders are mere nullities and may not only be set aside at any time by the court in which they are rendered but declared void by every court in which they are presented. If a court has no jurisdiction, its judgment is not merely voidable but void and it is wholly unimportant how precisely certain and technically

correct its proceedings and decisions may have been; if it has no power to hear and determine the cause, its authority is wholly usurped and its judgments and orders are the exercise of arbitrary powers under the forms but without the sanction of law. These principles apply not only to original courts but also to courts of appeal. Accordingly where an appellate court does not possess jurisdiction to review the action of the court below, jurisdiction cannot be conferred upon it by consent of the parties; and any waiver on their part cannot make up for the lack or defect of jurisdiction, 38 C. 639; 9 All 191; 11 M. 26, Ref. (*Mukerjee and Chotzner, JJ.*) KUNJA MOHAN CHAKRAVARTY *v.* MANINDRA CHANDRA ROY CHOWDHURY. 27 C. W. N. 542 = 1923 Cal. 619.

——*Consent—Cannot give—Waiver.*

When a court has no jurisdiction over the subject matter of suit in which an order is made, such order as made is wholly void and does not operate as *res judicata*. Jurisdiction cannot be conferred by consent of parties and no waiver or acquiescence on their part can make up for the lack or defect of jurisdiction. (*Mookerjee and Fletcher, JJ.*) KRISHNA KISHORE DE *v.* AMARNATH KSHETTRY.
24 C. W. N. 633 = 56 I. C. 532 = 31 C. L. J. 272.

——*Consent—Cannot give.*

Where there is an inherent incompetency in a court, consent cannot confer jurisdiction on it. (*Mookerjee and Walmsley, JJ.*) KANAI LAL *v.* JATINDRA NATH CHANDRA.
45 Cal. 519 = 26 C. L. J. 325 = 42 I. C. 711 = 22 C. W. N. 446.

——*Consent—Waiver—Effect of.*

Where there is an entire absence of jurisdiction, no action on the part of the plaintiff and no inaction on the part of the defendant can invest the court with jurisdiction, for it cannot be created by waiver or consent. (*Mookerjee and Beachcroft, JJ.*) RAM PRASAD PRAMANIK *v.* SRICHARAN MANDAL.
21 C. W. N. 1109 = 41 I. C. 276 = 27 C. L. J. 594.

——*Consent—Cannot give.*

Per Mookerjee, J.:—There can be no jurisdiction by consent of parties when there is an entire absence of jurisdiction. (*Sanderson, C. J. Woodroffe, Mookerjee, Choudhri, Newbould, JJ.*) CHARU CHANDRA MUJUMDAR *v.* EMPEROR.
44 Cal. 595 = 21 C. W. N. 320 = 37 I. C. 145 = 18 Cr. L. J. 81 = 25 C. L. J. 165 (F. B.).

——*Consent—Cannot give—Jurisdiction dependent on value of subject matter—Irregular exercise of jurisdiction—Waiver.*

The consent of the parties to a litigation cannot bestow on a court jurisdiction which it does not possess, and the agreement of parties cannot empower a superior court to revise a judgment of an inferior court when it is not invested with appellate jurisdiction over such court. This principle applies to cases wherein the jurisdiction is dependent upon the value of the subject matter in controversy. Where jurisdiction over the subject matter exists, but

the court exercises it in an irregular manner, the objection to the irregularity may be dispensed with, but where there is a total want of jurisdiction, the objection cannot be waived (*Mookerjee and Carnduff, JJ.*) RANJIT MISSER *v.* RAMUDAR SINGH. 17 C W. N. 116=16 I. C. 940= 16 C. L. J. 77.

———*Consent—Cannot create a right of appeal.*

Although parties can by consent give jurisdiction to a court with regard to the mode of determining questions, still they cannot create a right of appeal if there is none by statute. So where the parties dealt with questions as if they came under S. 47, C. P. C. in a case of partition, still they are not deprived of the right to object to the competency of the appeal even if they had taken no objection on previous occasions. (*Mookerjee and Carnduff, JJ.*) PRAYAG NARAIN SINGH *v.* SUKDEO NARAIN SINGH. 13 I. C. 170= 17 C. L. J. 605.

———*Consent or waiver—Cannot give.*

Consent of parties or waiver by them does not confer jurisdiction on a court where there is none. (*Mookerjee and Carnduff, JJ.*) RAJALAKSHMEE DASSEE *v.* KATYAYANI DASSEE. 12 I. C. 464=38 Cal. 639.

———*Consent—Cannot take away—Agreement of parties—Effect.*

It is clear that litigants cannot by agreement *inter se* divest a court of its inherent jurisdiction over the subject matter of a suit any more than they can confer jurisdiction on it by its consent where it has none. (*Shadi Lal, C.J. and Bafar Ali, J.*) KIDRI PRASAD *v.* KHOSALA. 5 L. L. J. 300= 1923 Lah. 425 (2).

———*Consent—Cannot give.*

The mere acquiescence of accused in a joint enquiry does not confer on the Magistrate a jurisdiction which he does not possess. (*Scott-Smith, J.*) LUGMAN *v.* EMPEROR. 18 Cr. L. J. 617=39 I. C. 985= 3 P. W. R. Cr. 1917.

———*Consent—Waiver—Effect.*

Neither waiver nor consent of parties can confer authority on a court to try a case beyond its pecuniary jurisdiction. (*Shadi Lal, J.*) GHULAM AKBAR KHAN *v.* BAKHAT BIBI. 229 P. W. R. 1915=29 I. C. 796= 116 P. L. R. 1915.

———*Consent—Cannot give.*

No amount of consent of parties can confer jurisdiction on a court where no jurisdiction exists. A distinction must be drawn between cases of want of jurisdiction and when having jurisdiction it passes an order which it cannot. Such an order can only be challenged by way of appeal or review. (*Kumaraswamy Sastry, J.*) ABDUL WAHAB SAHIB *v.* ROKIA BIBI SAHIBA. 73 I. C 903 (2).

———*Consent—Cannot cure.*

Consent of parties cannot cure defect of jurisdiction. (*Findlay, A. J. C.*) DALCHAND *v.* NARAYAN. 51 I. C. 237.

———*Consent—Valuations of suit—Effect.*

The parties cannot by their consent invest a court with a jurisdiction not conferred on it by

Law, yet the consent to be deduced from an admission regarding the value of the suit is not a consent given to invest jurisdiction but to the market value which decides the jurisdiction. (*Lindsay, J. C.*) ELIZAD HASAIN *v.* BENI BAHADUR. 33 I. C. 619=18 O. C. 364.

———*Consent—Cannot give.*

If a court has no jurisdiction under the law to do something, it cannot be conferred by a failure of the parties to raise an objection in bar. (*Lindsay, J. C.*) IQBAL NARAIN *v.* SURAJ NARAIN. 2 O. L. J. 51=27 I. C. 543=18 O. C. 80.

———*Consent—Submission to—Court having jurisdiction—Absence of formality immaterial.*

If there is submission to the jurisdiction of a court and if there is no inherent lack of jurisdiction in that court, the absence of formality (*e. g.*, asking leave of the High Court under Letters Patent which would confer complete jurisdiction on that court) will not render the judgment of the court null and void. (*Das and Foster, JJ.*) GANESH NARAIN SAHI DEO *v.* MANIK LAL CHANDRA. 1 P. L. R. 318=1923 P. 562.

———*Consent—Waiver—Effect.*

On a question of jurisdiction, no consent or waiver can affect the result. (*Chapman and Atkinson, JJ.*) SAHDEO NARAIN DEO *v.* KUSUM KUMARI. 46 I. C. 929.

———*Consent—Cannot give.*

In cases where there is an inherent absence of jurisdiction, no subsequent action or conduct will validate the proceedings instituted without jurisdiction. (*Chapman and Atkinson, JJ.*) THE TATA IRON AND STEEL CO *v.* RAGUNATH LAHTO, (1918) Pat. 65=45 I. C. 72=5 P. L. W. 199.

———*Consent—Cannot give.*

Consent of parties cannot give a court jurisdiction which it has not got. (*Ormond, J.*) ABDUL KAREEM *v.* SHEIK BURRAY SAHIB. 27 I. C. 803= 8 Bur. L. T. 96.

Excess of.

———*Excess of—Opportunity to be given to parties—Cr. P. C., S. 526 (8).*

After an application for transfer has been made under S. 526 (8) a Magistrate is competent to hear and record all evidence for the prosecution if, in his opinion, there is no ground for transfer; but when the prosecution evidence is completed, the Magistrate should, irrespective of the merits of the application give a fair opportunity to the accused to apply for a transfer before calling on his defence. The sufficiency or insufficiency should be decided by the High Court. If no such opportunity is given, the proceedings are void. 24 P. L. R. 1904; 31 C. 715; 33 C. 1183; 19 M. 375; 6 C. W N 717. Proceedings under S. 110 must be disposed of by the Magistrate before or by whom they were initiated. He has no jurisdiction to dispose of the case. (*Chandavarkar, A. C. J. and Batchelor, J.*) EMPEROR *v.* KISAN KEVJI. 17 I. C. 60=13 Cr. L. J. 748= 14 Bom. L. R. 713.

———*Excess of—Effect of, Cr. P. Code, S. 145.*

Excess of jurisdiction under S. 145. Cr. P. Code nullifies the whole proceeding together with the result of that excess. (*Atkinson, J.*) HAMIDUL HAQ *v.* ATAET HUSSAIN. 1 P. L. W. 81= 37 I. C. 513=18 Cr. L. J. 145=2 P. L. J. 86.

JURISDICTION—Exercise of.

Exercise of.

———*—Exercise of—Order without referring to any authorising law.*

A District Magistrate's is issuing a sweeping public prohibition without referring to any law authorising such an order, is without jurisdiction. (*Batchelor and Shah, JJ.*) MUKUNDRAI ATMARAM DASAI *In re.* 37 I. C. 489 = 18 Cr. L. J. 137 = 18 Bom. L. R. 554.

———*Exercise of—Order of competent court—Interference—Procedure.*

If an order of a competent court is not vitiated by fraud there can be no interference with such order except as provided by the Legislature. (*Oldfield and Krishnan, JJ.*) ABDUL RAHIM SAHIB *v.* GANGATHARA IYER. 37 I. C. 436 = 4 L. W. 402.

———*—Exercise of—Petition filed for action against several persons under S. 107, Cr. P. C.—Proceedings drawn up against one only—Case sent to Deputy Magistrate — Proceedings against all—Legality.*

On the complaint of N. against S. and several others, the Sub-Divisional Magistrate after getting report from the police who reported adversely against all, started proceedings under S. 107 of the Cr. P. Code against S. only and transferred the case for disposal to a Deputy Magistrate who started proceedings against all the persons reported against. *Held*, that the Deputy Magistrate's action was quite legal. (*Chapman, J.*) JAI PATTAI MAHTON *v.* NAGINA SINGH. 1 P. L. W. 610 = 43 I. C. 256 = 19 Cr. L. J. 96 = 1918 Pat. 12.

Hereditary Office.

———*Hereditary office—Claim to—Civil Court.*

A civil court can entertain a claim to the hereditary office of a family priest. (*Chandavarkar and Hayward, JJ.*) CHELABHAI GAURI SHANKAR *v.* HARGOB RAMJI. 36 Bom. 94 = 12 I. C. 928 = 13 Bom. L. R. 1171.

High Court.

———*High Court*—Certiorari—*Semble.*

The High Court has power to issue a writ of *certiorari* in cases not covered by S. 115, C.P.C. or S. 435, Cr. P. C. (*Lord Phillimore.*) ANNIE BESANT *v.* ADVOCATE-GENERAL, MADRAS.
43 Mad. 146 = 52 I. C. 209 = 46 I. A. 176 = 37 M. L.J. 139 = 17 A.L.J. 925 = 23 C,W.N. 986 = 21 Bom. L. R. 867 = (1919) M. W. N. 555 = 10 L. W. 451 = 20 Cr. L. J. 593 = 26 M.L T. 408 = 35 T. L. R. 500 = (1919) 1 U. P. L. R. 74 (P.C.). [On Appeal from 39 Mad. 1085 = 37 I. C. 525 = and 37 I. C. 607 = 39 Mad. 1164.]

———*High Court—Original Side—Territorial.*

The original jurisdiction of the High Court is a limited territorial jurisdiction and a decree of the High Court on an erroneous assumption of jurisdiction is not binding. (*Lord Moulton.*) HARENDRA LAL ROY *v.* HARI DASI DEBI.
41 Cal. 972 = 41 I. A. 910 = 1 L. W. 1050 = 27 M. L. J. 80 = (1914) M. W. N. 462 = 16 M. L. T. 6 = 18 C. W. N. 817 = 19 C. L. J. 484 = 23 I. C. 637 = 16 Bom. L. R. 400 = 12 A. L. J. 774 (P. C.)

JURISDICTION—High Court.

———*High Court—Powers of—Case in another province.*

A High Court has no power for declaring that a case which is being tried in another province is solely triable elsewhere. It has no jurisdiction to stay further proceedings pending in a court not subject to its jurisdiction. (*Walsh, J.*) RADHIKA NATHA SAHA *v.* JOTISH CHANDRA SADHU.
24 Cr. L. J. 635 (1) = 1924 A. 71.

———*High Court—Revenue case—Revision.*

The High Court cannot interfere in revision in a case cognisable by the revenue courts. (*Gokul Prasad, J.*) GANESH RAI *v.* FAIZAN. 61 I. C. 890.

———*High Court—Bombay—Trust property—Power to sanction sale—Beneficiaries—Variation of mode of investment.*

The High Court of Bombay has power in the exercise of its extraordinary civil jurisdiction for sanctioning a sale of the trust property by trustees where no power of sale is given by the trust deed. But this jurisdiction is of an extremely delicate character and has to be exercised with the greatest caution. The court will not in the exercise of its extraordinary jurisdiction sanction an unauthorised change of investment proposed on the mere ground that it will be advantageous to the beneficiaries. (1903) 1 Ch. D. 955 Ref. (*Mulla, J.*) PAULO DAVID DE SOUZA *v.* DAPHTARY. 25 Bom. L. R. 610 = 1924 B. 252.

———*High Court.*

"Any act done or writing published calculated to bring a court or judge of the court into contempt, or to lower its authority is a contempt of the court. That is one class of contempt. Further any act done or writing published calculated to obstruct or interfere with due course of justice or the lawful process of the courts is a contempt of court." The High Court has power to punish for contempt. (*Martin and Crump, JJ.*) SATYABEDH RAMACHANDRA *In re.*
24 Bom. L. R. 928 = 23 Cr. L. J. 644 = 47 B. 76 = 1922 B. 426.

———*High Court—Contempt.*

High Court has power to take proceedings in respect of contempt of subordinate court. (*Macleod and Shah, JJ.*) EMPEROR *v.* BALKRISHNA GOVIND KULKARNI. 24 Bom. L. R. 16 = 46 B. 592 = 23 Cr. L. J. 177 = 1922 B. 52.

———*High Court—Power to restrain suit in Foreign Court.*

The High Court can restrain a party residing within its jurisdiction from prosecuting a suit in foreign court, and the principle in such cases is that the court acts *in personam* and will not suffer any one within its reach to do what is contrary to its own notions of equity merely because the act to be done may be beyond its territorial jurisdiction. (*Macleod, C. J. and Fawcett, J.*) LAKSHMIRAM KEVALRAM BHATTA *v.* PUNAMCHAND PITAMBER. 45 Bom. 550 = 59 I. C. 444 = 22 Bom. L. R. 1173.

JURISDICTION—High Court.

———*High Court—Original side—Injunction not to proceed with suit in mofussil.*

A defendant in a suit before a High Court on the original side can be restrained by injunction from proceeding with a suit instituted by him in a mofussil court if it causes delay or embarrassment in the trial of the suit in the High Court. (*Heaton and Marten, JJ.*) MULCHAND RAICHAND *v.* GILL AND CO. 53 I. C. 518=21 B. L. R. 963.

———*High Court—Injunction restraining suit outside jurisdiction, when can be granted.*

The High Court can restrain a person from proceeding with a suit outside its jurisdiction only if he is within the jurisdiction of the High Court, and not merely where he has property therein. (*Stephen, J.*) JUMNA DAS *v.* HARCHARAN DAS. 38 Cal. 405=11 I.C. 416=16 C.W.N. 4.

Investment of.

———*Investment of—Notification, absence of—Effect—Reversion of a Sub-Judge.*

An Officiating Subordinate Judge can hear those cases which he has been authorised by notification to try, even after his confirmation, though he was temporarily reverted as Munsiff and no new notification came after the confirmation. (*Stuart and Kanhaiya Lal, A. J. Cs.*) GUR PRASAD SINGH *v* SANT BAKSH SINGH. 35 I. C. 759=3 O. L. J. 256.

———*Investment of—Notification, delay in does not effect.*

A Judge can exercise powers conferred on him from the date of confirmation although the notification is issued at a later date. (*Stuart, A. J. C.*) RAZA HUSSAIN *v.* GAYA PRASAD. 30 I. C. 205=2 O. L. J. 212.

Irregularity.

———*Irregularity—Commissioner for local investigation taking evidence—Judge deciding case on that evidence—Legality.*

Where a Commissioner who was appointed for making a local investigation but he took evidence on the case and the parties accepted the same as evidence taken in the cause it must be taken as evidence taken by a Commissioner appointed to examine witnesses. It is open to the parties to agree as to the materials to be placed before the Judge and if he acts on such agreement he does not thereby delegate his functions as a Judge (*Richardson and Huda, JJ.*) SHAMBHU NATH *v.* SATISH CHANDRA. 66 I. C. 49=25 C. W. N. 369.

———*Irregularity if affects—Grant of land under—Dharkhast rules—Rules not complied with.*

The contravention of certain rules framed for the guidance of a Divisional Officer does not affect his jurisdiction to cancel a grant made by a Tahsildar. (*Sadasiva Iyer and Seshagiri Iyer, JJ.*) KARIA KOWNDEN *v.* RAGHAVA REDDI. 23 I. C. 520=1 L. W. 410.

JURISDICTION—Meaning of.

Matrimonial.

———*Matrimonial—If based on domicile.*

The matrimonial jurisdiction of the Indian courts is not based on domicile. (*Scott, C. J. and Chandavarkar, J.*) NUSSERWANJI PASTONJI WADIA *v.* ELONORA WADIA. 38 Bom. 125=20 I. C. 492=15 Bom. L. R. 593.

Meaning of.

———*Meaning of—Exercise and existence of jurisdiction—Distinction.*

Jurisdiction may be defined to be the power of a court to hear and determine a cause, to adjudicate or exercise any judicial in relation to it. This jurisdiction of the court may be qualified or restricted by a variety of circumstances such as place, value and nature of the subject-matter. This classification is of a fundamental character. Given such jurisdiction, the exercise of jurisdiction must be distinguished from the existence of jurisdiction; for, fundamentally different are the consequences of failure to comply with the statutory requirement in the assumption and in the exercise of jurisdiction. The authority to decide a cause at all and not the decision rendered therein, is what makes up jurisdiction; and when there is jurisdiction of the person and subject matter, the decision of all other questions arising in the case is but an exercise of that jurisdiction. In order that jurisdiction may be exercised, there must be a case legally before the court and a hearing as well as determination. A judgment pronounced by a court without jurisdiction, is void, subject to the well-known reservation that when the jurisdiction of a court is challenged, the court is competent to determine the question of jurisdiction though the result of the enquiry may be that it has no jurisdiction to deal with the matter brought before it. 19 C. W. N. 84, Ref. Jurisdiction does not depend either upon the regularity of the exercise of that power or upon the correctness of the decision pronounced, for the power to decide, necessarily carries with it the power to decide wrongly as well as rightly. 25 Bom. 337 (347) Ref. The boundary between an error of judgment and the usurpation of a power is this: the former is reversible by an Appellate Court within a certain fixed time and is therefore only voidable, the latter is an absolute nullity. When parties are before the court and present to it a controversy, which the court has authority to decide, a decision not necessarily correct, but appropriate to that question is an exercise of judicial power or jurisdiction. So far as the jurisdiction itself is concerned, it is wholly immaterial whether the decision upon the particular question be correct or incorrect. A court may have the right and power to determine the status of a thing and yet may exercise its authority erroneously; after jurisdiction attaches in any case, all that follows is exercise of jurisdiction, and continuance of jurisdiction is not dependent upon the correctness of the determination. (*Mookerjee, A. C. J., Fletcher, N. R. Chatterjee, Teunon and Chaudhuri, JJ.*) HRIDOY NATH ROY *v.* RAM CHANDRA. 31 C. L. J. 482=24 C. W N. 723=58 I. C. 806=48 Cal. 138 (F. B.).

JURISDICTION—Nationality of parties.

Nationality of parties.

——*Nationality of parties—Civil Court's Jurisdiction.*

The nationality of the parties has nothing to do with the jurisdiction of civil courts. (*Wallis, C. J. and Hannay, J.*) AGNIHOTRAM VENKATA APPALA CHARLU *v.* KUMBAN PAKIRU.
26 I.C. 367=1 L. W. 724.

Objection to.

——*Objection to—When to be raised—Appellate stage—Want of jurisdiction.*

An objection to jurisdiction of the court can be taken at any time even on appeal, if the objection goes to the nullity of proceedings on the ground of want of jurisdiction. (*Lord Dunedin.*) SETRU CHERLA *v.* MAHARAJA OF JAIPUR.
42 Mad. 813=46 I. A. 151=17 A. L. J. 694=
37 M. L. J. 11=(1919) M. W. N. 502=
26 M. L. T. 129=21 Bom. L. R. 914=
30 C. L. J. 209=23 C. W. N. 1033=
51 I. C. 185=10 L. W. 362 (P. C.)
[On appeal from 34 I. C. 411].

——*Objection to—When to be taken—Pecuniary valuation of suit—Appellate stage.*

An objection to the jurisdiction of a court on the ground of pecuniary valuation of the claim ought not to be taken on appeal for the first time. (*Sir Lawrence Jenkins*) RACHAPPA *v.* SHIDAPPA.
43 Bom. 507=46 I. A. 24=
17 A. L. J. 418=25 M. L. T. 298=
36 M. L. J. 437=29 C. L. J. 452=
21 Bom. L. R. 489=10 L. W. 274=
50 I. C. 280=24 C. W. N. 33 (P. C.)
[On appeal from 16 I. C. 1005=36 Bom. 628.].

——*Objection to—When to be raised—Stage of appeal to Privy Council.*

An objection to the jurisdiction of the court could be taken at any stage of the case, even on appeal to the privy council, though not raised in the High Court. (*Lord Moulton.*) MAHA PRASAD SINGH *v.* RAMANI MOHAN SINGH.
42 Cal. 116=41 I. A. 197=18 C. W. N. 994=
16 M. L. T. 105=(1914) M. W. N. 565=
1. L. W. 619=20 C. L. J. 231=
27 M. L. J. 459=25 I. C. 451=
16 Bom. L. R. 824 (P. C.)

——*Objection to—When to be taken.*

An objection to jurisdiction not taken in the lower appellate court cannot be entertained in second appeal. (*Rafique and Piggott, JJ.*) LALA *v.* RAM CHANDAR. 63 I. C. 255.

——*Objection to—Taken in appeal—Duties of Appellate Court.*

Where objection is raised to the jurisdiction of the First Court in appeal, the Appellate Court should decide the case on all points and if it opines that the case was under-valued and thus the trial court should not have entertained it, it should decide whether the under-valuation has prejudicially affected the disposal of the case. If it decides that the other issues were rightly decided by the trial court, the appellate court must decide whether the under-valuation has effected the merits. (*Walsh and Ryves, JJ.*) GUMAN SINGH *v.* RAGHUNATH SINGH. 63 I. C. 107.

JURISDICTION—Objection to.

——*Objection to—Raised but negatived—Higher different view of.*

In a case where the jurisdiction of the court to try the case is questioned and the court, after giving an affirmative finding on jurisdiction, takes proceedings on the merits of the case, the latter should not be rendered abortive and all the time and labour spent thereon should not be wasted on the ground of want of jurisdiction in the trying court unless failure of justice has occurred. (*Walsh and Ryves, JJ.*) LACHA RAM *v.* VIRJI.
19 A. L. J. 305=62 I. C. 399=
3 U. P. L. R. (All.) 9 and 68.

——*Objection to—Duty of Judge.*

Where the jurisdiction of a court is attacked at the hearing, it is not the duty of the Judge to prove to the parties the foundation of his jurisdiction. The party alleging want of jurisdiction must prove his allegation by affidavit or otherwise. (*Piggott and Walsh, JJ.*) DARBARI LAL *v.* ROSHAN LAL. 52 I. C. 32=1 U. P. L. R. 18 (H. C.).

——*Objection to — Waiver—Interference by High Court.*

It is not open to the parties to waive a question of jurisdiction but the High Court may or may not interfere in a case in which jurisdiction has been waived. (*Ryves, J.*) SUKH LAL *v.* NANNOON PRASAD.
40 All. 666=46 I. C. 647=
16 A. L. J. 679.

——*Objection to—When can be raised.*

When the judge has no inherent jurisdiction over the subject matter of the suit, the parties cannot by their mutual consent convert it into a proper judicial process. It is the settled practice of the Bombay High Court to entertain objections to the jurisdiction taken for the first time even in second appeal, and even in England the court can raise the question of jurisdiction at any time in proceedings for divorce. (*Macleod, C. J., Martin and Crump, JJ.*) ALFRED WILKINSON *v.* WILKINSON.
47 Bom. 843=25 Bom. L. R. 945=
1923 Bom. 321.

——*Objection to—Duty of court—Consideration of hardship—Construction of rules relating to jurisdiction.*

Per *Mookerjee, J.*—When a court is called upon to decide a matter of jurisdiction no question of hardship and no consideration of technicality can be permitted to affect the judgment. The rules relating to jurisdiction should be strictly construed and the court should be astute not to permit litigants to circumvent such provisions of the Code. (*Sanderson, C. J., Mookerjee and Fletcher, JJ.*) LADURAM NATH MUL *v.* NANDALAL KARURI.
47 Cal. 555=55 I. C. 747=
31 C. L. J. 150.

——*Objection to— Collateral attack — When permissible—Suit by Receiver.*

The propriety of an order or decree made in a cause in which the court has jurisdiction cannot be challenged collaterally. An order erroneous in law is not necessarily one made without jurisdiction. In a suit by a receiver appointed in an action, it is not open to question the maintainability of the suit on the ground of an irregularity in

JURISDICTION—Objection to.

the appointment of the receiver. (*Mookerjee and Beachcroft, JJ.*) BHAIRAB CHANDRA DUTTA *v.* BENOY CHANDRA DUTTA. 46 Cal. 70 = 22 C. W. N. 520 = 43 I. C. 804 = 27 C. L. J. 395.

———*Objection to—Determination of—Power of court.*

Mookerjee, J.—Where the jurisdiction of a court is called in question, the court has jurisdiction to decide that it has acted in contravention of the statute and consequently without jurisdiction. 19 C. W. N. 84 Fol. (*Sanderson, C. J. Mookerjee, J.*) SETH DOOLY CHAND *v.* MAMUJI MUSAJI. 21 C. W. N. 387 = 41 I. C. 295 = 25 C. L. J. 339.

———*Objection to —Waiver — Decree beyond jurisdiction—Forum of appeal.*

Where in a suit for pre-emption the plaintiff honestly valued his suit at Rs. 4,500 but the Subordinate Judge who tried the suit found the value to be Rs. 7,000 and an appeal was preferred to the District Judge, *Held*, that the appeal to the District Judge was not incompetent, especially as no objection on this ground was taken before the District Judge, nor in the memorandum of appeal to the High Court. (*Sharfuddin and Roe, JJ.*) NURI MIAN *v.* AMBICA SINGH. 32 I. C. 893.

———*Objection to—Waiver—Effect of—Sale held without jurisdiction.*

Where jurisdiction is assumed by a court which it could not under any circumstances acquire, but objection is not taken at the proper time it must be considered to have been waived and a sale held in pursuance of such assumption of jurisdiction must not be set aside. (*Mookerjee and Carnduff, JJ.*) HEWAMMAL *v.* KARUNAMOY GUPTA. 13 I. C. 542.

———*Objection to—Waiver—Irregularity.*

Where there is a jurisdiction over the subject-matter but non-compliance with the procedure prescribed as essential for the exercise of jurisdiction, the defect might be waived. (*Scott-Smith, J.*) KISHEN LAL *v.* JAI LAL. 52 I. C. 352.

———*Objection to—Waiver — Subsequent objection—Irregularity in procedure.*

Where in a case within court's jurisdiction the parties without objection join issue and go to trial upon the merits, the deft. cannot dispute the jurisdiction of the court on the ground of irregularities in the initial procedure which if objected to at the time, would cause the suit to be dismissed. (*Shadi Lal, J.*) IMPERIAL OIL SOAP AND GENERAL MILLS CO., LTD. *v.* RAMCHAND. 36 I. C. 980 = 91 P. R. 1917.

———*Objection to—When to be taken.*

An objection as to jurisdiction can be raised even at the eleventh hour. (*Rattigan and Beadon, JJ.*) SECRETARY OF STATE *v.* HAKIM. 16 P. R. 1914 = 244 P. L. R. 1914 = 25 I. C. 448 = 158 P. W. R. 1914.

JURISDICTION—Objection to.

———*Objection to—Determination of—Claim or decision on the claim.*

The question of jurisdiction must be determined with reference to the claim made and not with regard to the decision upon the claim. (*Kensington and Beadon, JJ.*) ALLAH BAKSH *v.* RAM LAL. 274 P. W. R. 1912 = 16 I. C. 865 = 3 P. L. R. 1913.

———*Objection to—Raised in appeal.*

Objection to jurisdiction arising from wrong valuation cannot be raised in appeal unless the wrong valuation is shown to have prejudicially affected the disposal of the suit on the merits. (*Sadasiva Aiyer and Spencer, JJ.*) AMMALU AMMAL *v.* KRISHNAN NAIR. 62 I. C. 715.

———*Objection to—Revision.*

An objection as to jurisdiction of a court if not raised at the earliest opportunity, cannot be relied on in revision. (*Odgers, J.*) SANTHANA RAMA MUDALIAR *v.* SAMI KARUPPUNDAR. 14 L.W. 226 = 61 I. C. 537.

———*Objection to—Determination of—Duty of Court—Submission—Waiver.*

If the jurisdiction of a court depends upon the existence of certain facts, the Court must decide upon the evidence whether they exist or not, and if upon the facts so found a subordinate court has assumed jurisdiction, the superior court will not interfere with its decision by way of appeal. Where an inferior court has no jurisdiction *ab initio*, a party by taking a step in a cause before it does not waive his right to object to the want of jurisdiction. But if jurisdiction is contingent, the deft. waives his right to object to it by omitting to raise the objection at the proper time. (*Bakewell and Phillips, JJ.*) ANNAMMAL *v.* M. V. SAMBASIVA AIYAR. 37 M. L. J. 349 = 26 M. L. T. 186 = 10 L. W. 293 = 53 I. C. 463 = (1919) M. W. N. 636.

———*Objection to—Trial on the merits when permissible—Impeaching Collector's view of the law.*

In the absence of any allegation that the Collector acted *Mala Fide* or purported to seek the protection of the statute with the full knowledge that he was committing a mere act of aggression, it was not competent to the Court to try the suit on the merits with a view to determine whether the Collector was right in his view of the law. To uphold the objection to jurisdiction only in cases where it is proved on enquiry that the Collector acted in entire conformity with the existing laws, would be to render the statute barring jurisdiction wholly nugatory. (*Coutts-Trotter J.*) MESSRS. BEST AND CO., LTD. *v.* THE COLLECTOR OF MADRAS. 35 M. L. J. 23 = 48 I. C. 790.

———*Objection to—Dealt with in first appeal—Can be raised in second appeal.*

(*Per Oldfield J.*) A question of jurisdiction can be raised in second appeal, even though dealt with by the lower appellate court. (*Oldfield and Tyabji, JJ.*) SANKARA VENKATARATNAM *v.* VARADARAJA APPA RAO BAHADUR. 28 I. C. 252 = (1915) M. W. N. 192 = 29 M. L. J. 184.

JURISDICTION—Objection to.

———*Objection to — Estoppel from raising—Effect.*

If a court has no jurisdiction, the fact that defendant was equitably estopped from raising an objection will not confer jurisdiction. (*Ayling, J.*) G. NARAYANASWAMI NAIDU, *In re*:
27 I. C. 11.

—— ——*Objection to—Waiver—Effect of.*

A defect of jurisdiction can be relied on at any time and the defendant's waiver of objection to it can have no effect. (*White, C. J. and Oldfield, J.*) MRS. ANNIE BESANT *v.* NARAYANAIAH.
15 M. L. T. 1.=(1914) M. W. N. 1. Sup.=
25 M. L. J. 661=21 I. C. 789.
[On appeal see 24 I. C. 290=
38 Mad. 807 (P. C.)]

———*Objection to—Submission.*

When the acts complained of are committed or are to be committed within the jurisdiction of the court and the party proceeded against although he resides outside the jurisdiction has appeared in suit and submitted personally to the jurisdiction of the court, the court has jurisdiction to make the order. (*Miller C. J. and Ross, J.*)
4 P. L. T. 48=1923 P. 209.

———*Objection to—When avoids judicial proceedings—Patent and latent defect..*

Jurisdiction may be defined as the power and authority conferred on a court to pronounce the sentence of the law or to award the remedies provided by law upon a state of facts, proved or admitted referred to the court for decision and authorised by law to be the subject of investigation or action by that court, and in favour of or against persons who present themselves or who are brought before the court in some manner sanctioned by law as proper and sufficient. The rule is well-established that when the want of jurisdiction of a court is apparent on the face of the record any judgment rendered by such a court is null and void and incapable of ratification and subject to collateral impeachment. But it is equally well-established that the court has jurisdiction to decide whether it has jurisdiction to entertain the suit and that the decision of the court that it has jurisdiction is final and conclusive in all collateral enquiries. (*Das and Adami, JJ.*) DWARKA PRASAD *v.* JAI BARHAM. 1922 P. 322.

———*Objection to—Valuation of suit—Objection taken as to its correctness—Court, power of, to decide.*

Where an objection is taken as to the correctness of valuation for the purposes of jurisdiction, the court has power to decide the question. (*Coutts and Adami, JJ.*) MOHINI MOHAN *v.* GUR CHANDRA RAI. 5 P. L. J. 397=1 P. L. T. 390=
56 I. C. 762=2 U. P. L. R. (Pat.) 123=
1921 Pat 105.

———*Objection to—Waiver—Under-valuation—Whether waiver can confer—When objection should be raised.*

Jurisdiction is either territorial or pecuniary. Where a court has no jurisdiction as to the subject matter of the suit, waiver on the part of the defendant cannot confer it on the court. But where a party has undervalued his claim and brought the suit in a court which would have no jurisdiction to try the suits, had it been properly valued, the court can try the suit or any issues in the suit, if no objection is taken before the court assumes jurisdiction over it. An objection to jurisdiction, on the ground of undervaluation is capable of waiver. (*Das and Adami, JJ.*) MABOOD BUKSH *v.* MUSSAMMAT MAHMOODAN. 57 I. C. 378=1920 Pat. 360.

JURISDICTION—Pecuniary.

———*Objection to—Waiver—Effect, irregularities in procedure.*

If a court has jurisdiction and the law requires some preliminary conditions to be observed ancillary to such jurisdiction being exercised, the parties may waive these conditions and in that event the jurisdiction cannot be impeached on the ground of irregularity in the exercise of the court's jurisdiction. (*Chapman and Atkinson, JJ.*) RAGHU SINGH *v.* USUF ALI.
4 P. L. J. 202=45 I. C. 920=4 P. L. W. 445.

———*Objection to—Duty of court to decide.*

Whenever an objection to the jurisdiction of a court is taken, the court is bound to entertain it and give effect to it. (*Brown, J. C.*) MAUNG PO SAUNG *v.* MA MUN. 65 I. C. 68=
(1921) 4 U. B. R. 75.

———*Objection to—When to be taken—Plea on appeal—Defect in a suit.*

An objection of fatal defect in a suit and of want of court's jurisdiction to try the suit may be taken in appeal. (*Rigg, J.*) TRIBENI *v.* SAHU.
50 I. C 517=11 Bur. L. T. 257.

———*Objection to—When to be taken.*

The jurisdiction of a court to take the cognizance of a proceeding can be questioned at any stage of the proceeding. (*Young, J.*) ARUNACHALAM PILLAI *v.* IYAMA, 8 Bur. L. T. 128=
29 I. C. 768=8 L. B. R. 211.

Pecuniary.

——— *Pecuniary — Suit for redemption and accounts—Decree beyond pecuniary limit.*

Plaintiff brought a suit for redemption and accounts and the Munsiff passed a decree for Rs. 9,000 and odd. *Held* that the Munsiff had jurisdiction to pass such a decree. (*Karamat Husain and Chamier, JJ.*) SUDERSHAN DAS *v.* RAM PRASAD. 10 I. C. 402.

———*Pecuniary—Claim for mesne profits.*

A Munsiff cannot entertain a claim for mesne profits beyond the limits of his pecuniary jurisdiction. (*Mookerjee and Beachcroft, JJ.*) BHUPENDRA KUMAR *v.* PURNA CHANDRA. 24 I. C. 232.

JURISDICTION—Pecuniary.

———*Pecuniary—Suit by vendee for possession—Decree directing payment of sum exceeding Court's jurisdiction—Validity.*

In a suit by vendee of land against the vendor for possession, a court cannot pass a decree for possession on payment of a sum exceeding the limits of its pecuniary jurisdiction. 16 P. R. (1908) Foll. (*Robertson and Shah Din, JJ.*) DHIAN SINGH *v.* DHIAN SINGH. 51 P. W. R. 1912 = 13 I. C. 312 = 69 P. L. R. 1912.

———*Pecuniary.*

A claim for surplus profits cannot be excluded from consideration in deciding the question of jurisdiction and therefore the value of the subject matter of a suit is the aggregate value of the two heads of relief. (*Batten, A. J. C.*) CHIMNA *v.* MOTILAL. 55 I. C. 75.

———*Pecuniary — Partnership suit—Decree in excess of amount— Whether amendments can be ordered.*

Where in a partnership suit, the court finds after trial, that the amount due exceeds its pecuniary jurisdiction, it is competent to pass a decree for the full amount. After a preliminary decree and an appellate decree confirming it, have been passed, the plaint merges in the decree and the trial court is incompetent thereafter to order an amendment of valuation of the plaint in accordance with its finding as to the amount due and then to return the plaint for presentation to the proper court. (*Hallifax and Mittra, A. J. Cs.*) SHRIRAM *v.* CHUNILAL. 27 I. C. 983 = 11 N. L. R. 13.

———*Pecuniary—Suit for accounts—Valuation.*

The value of a suit for accounts both for original suit and for appeal is the value settled in the plaint by the plaintiff and the court trying such suit does not lose its jurisdiction because the amount found due on inquiry exceeds the jurisdiction of the court. (*Batten and Stanyon, A. J. Cs.*) OLPHERTS *v.* ARJUN DAS. 20 I. C. 928 = 9 N. L. R. 112.

Personal.

———*Personal—Minors in England—Whether District Court has jurisdiction —"Ordinarily resident"—Meaning of.*

Minors, who had left before the institution of the suit for England and were living there, were not "ordinarily residents" of the District and hence were beyond the jurisdiction of the District Court. (*Lord Parker.*) MRS. ANNIE BESANT *v.* NARAYANIAH. 38 Mad. 807 = 41 I. A. 314 = 27 M. L. J. 30 = 18 C. W. N. 1089 = 1 L. W. 520 = (1914) M. W. N. 585 = 16 M. L. T. 165 = 20 C. L. J. 253 = 16 Bom. L. R. 625 = 24 I. C. 290 = 12 A. L. J. 1155 (P. C.) [On appeal from 21 I. C. 789.]

Practice.

———*Practice—Cannot give—Long practice.*

No jurisdiction can be conferred by practice however long continued it may be. (*Oldfield and Krishnan, JJ.*) ABDUR RAHIM SAHIB *v.* GANGATHARA AIYAR. 37 I. C. 436 = 4 L. W. 402.

JURISDICTION—Small Cause and Original.

Presumption.

———*Presumption.*

In questions of jurisdiction the presumption is in favor of giving jurisdiction to the highest court. (*Batten, A. J. C.*) CHIMNA *v.* MOTILAL. 55 I. C. 75.

———*Presumption.*

In questions of jurisdiction the presumption is in favour of giving jurisdiction to the highest court. (*Drake Brockman, J. C.*) KOTHIRAM *v.* GANPATI. 17 I. C. 886 = 8 N. L. R. 179.

Private International Law.

———*Private International Law — Sale of pledged interest by a foreign court — Travancore Court.*

A debt contracted and payable in British India was pledged in Travancore with its receipts. A decree for sale was obtained on the pledge. *Held*, that the Travancore Court can sell the debt in pursuance of the decree. (*Abdur Rahim and Ayling, JJ.*) D'CONTHA *v.* ASSAN KUNHU. 36 Mad. 1 = (1911) 1 M. W. N. 249 = 10 M. L. T. 570 = 22 M. L. J. 149 = 10 I. C. 665.

Probate.

———*Probate—Subordinate Judge.*

A Subordinate Judge has no jurisdiction in probate matters. (*Basil Scott, C. J. and Batchelor J.*) KISHOREBHAI REVADAS *v.* RANCHODIA. 38 Bom. 427 = 25 I. C. 37 = 16 Bom. L. R. 459.

Procedure.

———*Procedure—Irregularities in effect.*

Where in a case which a court is competent to try, the parties go to trial on the merits without objections, one of the parties cannot subsequently dispute the jurisdiction of the court on the ground of irregularities in the initial procedure which if objected to at the initial stage would have led to the dismissal of the suit. 9 A. 101 Foll. (*Mullick and Atkinson, JJ.*) MOHAN KRISHNA DAR *v.* HAR PRASAD. 40 I. C. 2.

Small Cause and Original.

———*Small Cause and Original— Cause of action partly cognisable in each—Alternative reliefs.*

A suit wherein alternative reliefs are asked, one of which can be granted by the Small Cause Court, but the other only by the Original Court, the suit is triable only by the latter court. (*Rafique, J.*) DUKKI *v.* GHURHU. 33 I. C. 768.

———*Small Cause and Original—Misappropriation.*

A suit to recover money, the acts alleged in the plaint wherein amount to misappropriation, the cause of action being based on the wrong alleged against the deft. and not on a promise to make restitution, is cognizable by a Civil and not by a Small Cause Court. (*Walmsley and Pearson, JJ.*) CHERAKUDDIN *v.* RAM SIRAMAN. 62 I. C. 432 = 25 C. W. N. 256.

JURISDICTION—Small Cause and Original.

———*Small Cause and Original—Original suit decided as small cause—Effect.*

Where a suit valued at Rs. 90 was instituted in the Court of a Munsiff having small cause powers only upto Rs. 50 and it was registered as an ordinary suit but was tried subseqently as a small cause suit by his successor having small cause powers upto Rs. 100, *Held* that the merits of the case did not justify retrial. The High Court has full power in such cases to consider them on the merits and to do substantial justice without putting parties to the expenses of a fresh suit. (*Holmwood and Chapman, JJ.*) PARAMESWARI *v.* JAGAT CHANDRA DAS.
19 C. W. N. 900=27 I. C. 972=21 C. L. J. 141.

———*Small Cause and Original—Court not competent to try—If can entertain because of territorial jurisdiction.*

A Munsiff, whose court is situated within the local limits of another Munsiff, invested with Small Cause power has no jurisdiction to hear any Small Cause suit, merely because of the territorial jurisdiction of his court. (*Shah Din and Chevis, JJ.*) TABA *v.* MIHAN.
11 I. C. 410=92 P. W. R. 1911.

———*Small Cause and Original—Cause of action partly cognisable in each—Forum.*

A claim partly cognisable by a regular court and partly by a Small Cause Court, is cognisable by a regular court for the consolidated amount. (*Abdur Rahim, Offg. C. J. and Seshagiri Aiyar, J*) RAMASWAMI AIYANGAR *v.* GOVINDA AIYAR.
31 M. L. J. 839=20 M. L. T. 512=
38 I. C. 1=5 L. W. 443.

———*Small Cause and Original—Suit for money on delivery—If a suit for account.*

The existence of dealings between the plff. and the deft. in respect of which a balance is due, will take the suit out of jurisdiction of a Small Cause Court if it is otherwise competent to try it. 10 I. C. 883 Dist. (*Sundara Iyer, J.*) KADAR ROWTHER *v.* VENKATACHELLAPATHY.
14 I. C. 573.

———*Small Cause and Original—Suit for rent and cesses—Mad. Est. Land Act.*

A suit for rent including local and village cesses is not unsustainable in the Small Cause Court on the ground that there was no exchange of *Pattahs* and muchilikas. (*Sundara Aiyar, J.*) BACHU *v.* BAGHI REDDI. 36 Mad. 126=
10 M. L. T. 282=12 I. C. 171=
(1912) M. W. N. 251.

Special.

———*Special—Statutory body—Misuse of powers—Civil Court.*

Where a statutory body having power to compulsorily acquire land for specified purposes is guilty of wanton misuse of the powers, a remedy by suit is available to the subject. (*Lord Parmoor,*) TRUSTEES FOR IMPROVEMENT OF CALCUTTA *v.* CHANDRAKANTA. 47 Cal. 500=
11 L. W. 566=38 M. L. J. 511=
18 A. L. J. 521=22 Bom. L. R. 586=
32 C. L. J. 65=24 C. W. N. 881=
56 I. C. 32=2 U. P. L. R. (P. C.) 98 (P. C.)
[On appeal from 36 I. C. 749=44 Cal. 219.]

JURISDICTION—Venue.

———*Special—Conditions—Strict compliance—Irregularity and nullity—Difference.*

Where jurisdiction is given by an Act upon certain special terms, the latter must be complied with before the jurisdiction can arise. The difference between an irregularity and a nullity is that a party can waive the former, but not the latter. (*Coxe and Chatterjee, JJ.*) SURJUG SARAN LAL *v.* DUKHIT MAHTO.
18 I. C. 809=
17 C. W. N. 496.

———*Special—Land acquisition reference.*

Where a reference is made by a Collector under Land Acquisition Act, S. 18, no other civil court can determine the same rights between the same parties. (*Robertson and Beadon, JJ.*) AMOLAK SHAH *v.* CHARAN DAS. 16 P. W. R. 1913=
52 P. R. 1913=17 I. C. 684=
14 P. L. R. 1912 Supp

———*Special — Statutory conditions — Strict compliance.*

Where a statute confers jurisdiction upon a tribunal of limited authority and statutory origin the conditions and qualifications annexed to the grant must be strictly complied with. (*Lindsay J. C. and Stuart, A. J. C.*) MUKHTAR AHMED *v.* BARATI LAL.
10 O. L. J. 335=
25 I. C. 316=17 O. C. 224.

———*Special—Orders of special tribunal under special Acts, if can be questioned by—Orders declared as final.*

A civil court cannot question the orders of special tribunals created by special Acts for that purpose, and whose orders have been declared by the Legislature to be final. 33 C, 1178 (P. C.) Referred to. (*Crouch, A. J. C.*) DE VERTENIL *v.* CANTONMENT COMMITTEE, KARACHI.
37 I. C. 267=10 S. L. R. 113.

Venue.

———*Venue—Forum of appeal—Decree for less than Rs. 5,000 in a suit for over Rs. 5,000—Execution proceedings—Order in.*

Where a suit was decreed for less than Rs. 5000 though the suit was for over Rs. 5000, an appeal from an order in execution proceedings would nevertheless lie to the High court. (*Banerjee, J.*) KISWAR ALI KHAN *v.* SALIMUN-NISSA.
31 I. C. 496.

———*Venue—Offence committed in British India—Accused committed—Place of offence transferred to Native State—Effect—Cr. P. Code (Act V of 1898) S. 435.*

Where the place of offence which was once a British territory was transferred to a Native State after commitment to the Sessions in British India and the High court transferred the case to the Native State but the Sessions Judge held that he had no jurisdiction to try the case, *held* by the High court that the Sessions Judge in British India had jurisdiction, that the case, was properly transferred to the Judge of the Native State and that the High Court could interfere in revision with an order of a Sessions Judge refusing to exercise jurisdiction.

JURISDICTION—Venue.

33 A. 578, Foll.; 1 B. 367, Dist. (*Karamat Hussain and Chamier, JJ.*) EMPEROR *v.* RAM NARESH SINGH. 9 A. L. J. 51=13 I. C. 921=13 Cr. L. J. 169=34 All. 118.

———*Venue—Suit for accounts in British India—Property situate in Native State—Hindu Law—Joint family.*

When after the description of a joint Hindu family certain moveable and immoveable properties situate in a Native State (*i.e.*, within the jurisdiction of a foreign court) by agreement continued joint and this suit was instituted in a court in British India for accounts:—*Held* the British courts had jurisdiction to deal with the suit as instituted including the immoveable property situated in the Native States. (*Broadway and Zafar Ali, JJ.*) RAM KISHAN *v.* RANSHAN. 1923 Lah. 551.

———*Venue—Appeal—Forum—Valuation of suit—What determines the forum.*

The forum of appeal is determined by the value of the claim as brought and not by the decision on the claim. Where an appeal which ought to have been brought in the Divisional Court has been filed in the Chief Court, it may be entertained as transferred from the Divisional Court. 106 P. R. 1895 (F. B.), Foll. (*Shah Din and Scott Smith, JJ.*) CHUNI LAL *v.* BELI RAM. 229 P. L. R. 1913=20 I. C. 473=196 P. W. R. 1913.

———*Venue—Valuation of suit—Forum of appeal—Pre-emption suit.*

If the value of the land in a pre-emption suit for purposes of jurisdiction under the Suits Valuation Act is less than Rs. 5,000 but a decree has been passed by the court of first instance on payment of more than Rs. 5,000, the appeal from that decree will be heard by the Divisional Court and not to the Chief Court. 16 P. R. 1908; 58 P. R. 1902, Ref. (*Rattigan and Shah Din, JJ.*) IFTIKHAR ARI *v.* THAKAR SINGH. 83 P. R. 1912=15 I. C. 347=170 P. W. R. 1912.

———*Venue— Forum of appeal— Decree for redemption on payment of a sum below Rs. 5,000—Decree in appeal on payment of a sum of Rs.* 5,000.

If an appeal has once been presented and entertained in the Divisional Court, the powers of the Divisional Court on the decree to be passed are as unlimited as the powers of the Chief Court. A suit for redemption on payment of Rs. 400 was filed in a Subordinate Court having unlimited pecuniary jurisdiction. The court passed a decree for redemption on payment of Rs. 3,000 and odd. Against this, both parties appealed to the Divisional Court which decreed redemption on payment of Rs. 1,400 and odd. *Held*, the Divisional Judge had jurisdiction to entertain the appeal. (*Robertson and Shah Din, JJ.*) DAYAL SINGH *v.* RAM RAKHA. 54 P. R. 1912=14 I. C. 78=122 P. W. R. 1912.

———*Venue — Appeal — Forum — On what depends.*

The jurisdiction for appeal depends on the value of suit in the original decree. (*Kensington, J.*) THAKUR SINGH *v.* GURDIT SINGH. 12 I. C. 733=178 P. W. R. 1911.

JURISDICTION—Venue.

———*Venue—Suit to set aside award.*

A suit to set aside an award must be filed in a court which has got pecuniary jurisdiction to the extent of the liability which plaintiff is trying to set aside. (*Venkatasubba Rao, J.*) VENKATACHALAM PILLAY *v.* SRINIVASA IYER. 18 L. W. 399=(1923) M. W. N. 747=1924 M. 84.

———*Venue—Appeal to what court lies—Court passing a decree beyond its pecuniary jurisdiction—Effect.*

The value of the subject-matter of a suit is its valuation at the time of its institution and the amount or value as fixed in the plaint should determine the *forum* of appeal. In an appeal, the suit is deemed as continued in the court of appeal and re-heard there. The mere fact that a court passes a decree beyond its pecuniary jurisdiction does not affect the court to which the appeal would ordinarily lie from the decision of that court. In every case where a court has accepted a suit, it cannot and does not lose jurisdiction over it by change in the value of the subject-matter after institution or by the precise ascertainment of its value in cases which do not admit of such valuation at time of institution, except where plaint is allowed to be amended. In suits for accounts or mesne profits, the court can award such sum as it finds due to the plff:, although such sum is above its pecuniary jurisdiction. (*Abdur Rahim, Spencer and Srinivasa Iyengar, JJ.*) PUTTA KANNIA CHETTY *v.* RUDRA BHALLA VENKATANARASIAH. 40 Mad. 1=32 M. L. J. 221=5 L. W. 580=39 I. C. 439=(1917) M. W. N. 367.

———*Venue—Contract entered into in Ceylon—Suit in British India.*

A suit on a contract entered into in Ceylon and not to be performed in India cannot be maintained in British India. (*Miller and Sadasiva Iyer, JJ.*) DEIVANAYAGAM PILLAI *v.* MUTHUKUMARASWAMY PILLAI. 14 I. C. 560.

———*Venue—Determination of—Nature of claim—Defence.*

The venue in a case is determined by the nature of the claim as laid, and it is unnecessary to consider nature of the defence set up. (*Drake-Brockman, J. C.*) KAMA *v.* BHAJAN LAL CHANTAN LAL. 45 I. C. 654.

———*Venue—Nature of claim.*

The venue in the case is decided by the nature of the claim as brought. (*Drake-Brockman, J. C.*) GANPAT *v.* TRIMBAK. 19 I. C. 759=9 N. L. R. 54.

———*Venue—Transfer of case—Grounds for—Balance of convenience.*

A plaintiff has an undoubted right to bring his suit in any court which has jurisdiction but there is no particular sanctity to be attached to this right. If the defendants can show a clear balance of advantage in the way of convenience and expense they are entitled to have the case transferred. (*Ashworth and Simpson, A. J. Cs.*) THAKUR NARINDRA BIKRAM JIT SINGH *v.* SHEO RATAN THAKUR. 9 O. L. J. 413=4 U. P. L. R. (O.) 112=1923 Oudh 30.

JURISDICTION—Venue.

———*Venue—Suit for declaration—Cause of action—Jurisdiction of court.*

A suit for declaration in respect of the title to certain property must be filed in the court which would have jurisdiction to try a suit for possession in respect of the same property. (*Kanhaiya Lal, J. C.*) KANTA SIROMAN PRASAD SINGH *v.* GAYA DIN. 25 O. C. 184=1922 Oudh 249.

———*Venue — Contract — Money payable in England—King's Bench Division.*

King's Bench Division has jurisdiction if the money under the contract was payable in England and the defendant, a British subject, was properly served. (*Robinson, J.*) S. KING *v.* D. J. BUCHANAN. 9 Bur. L. T. 106=35 I. C. 741.

What determines.

———*What determines.*

The mere fact that the ancestral home of persons who have residence abroad has not the effect of giving jurisdiction. (*Walsh and Wallach, JJ.*) KISHORI LAL *v.* RAM SUNDAR. 64 I. C. 688 (1)=19 A. L. J. 822.

———*What determines—Nature of suit.*

The jurisdiction of a court depends upon the nature of the suit as framed and not upon the character which it would ultimately assume. (*Rafique, J.*) DUKKHI *v.* GHURHU. 33 I. C. 768.

———*What determines—Frame of suit.*

Whether a suit is of the nature of a Small Cause suit or not, depends upon the frame of the suit and not upon the defence that may be set up. 20 A. 480, Foll; 6 C. L. J. 218, not foll. (*Sundar Lal, J.*) LALA RAM *v.* MAN SINGH. 26 I. C. 128=12 A. L. J. 1032.

———*What determines—Frame of suit must be looked at.*

The jurisdiction of a court depends upon the frame of the suit and not upon the relief which the plaintiff might ultimately be entitled to obtain from the court. (*Banerjee and Ryves, JJ.*) INAYAT HUSSAIN *v.* MUHAMMAD ASKARI. 20 I. C. 421=11 A. L. J. 542.

———*What determines—Pleadings.*

The nature of a suit is primarily determined by the pleadings and does not depend upon the plff's. success at the trial. (*Batchelor and Rao, JJ.*) GIRDHARLAL *v.* NARANLAL. 17 I. C. 779=14 Bom. L. R. 1135.

———*What determines—Nature of plaint.*

The jurisdiction of the court does not depend upon actual facts but upon the allegations made concerning them even though they may be totally false. (*Imam, J.*) PADAMSEE NARAYANJEE *v.* LAKHAMSEE RAISEE. 33 I. C. 288=43 Cal. 144.

———*What determines—Value of claim—Defence if affects.*

The jurisdiction of a court to entertain and adjudicate upon a cause of action depends upon the nature of the claim put forward by the plff. as his cause of action and the matter involved in it, and does not depend upon what the defendant may assert in defence. 9 W. R. 598, Rel. Therefore, the jurisdiction of a Revenue Court is not put an end to by the defendants, denial of the plaintiff's title or of the relationship of landlord and tenant. (*Mookerjee and Beachcroft, JJ.*) HIRANAND OJHA *v.* RAGUBAR SINGH. 16 I. C. 904.

JURISDICTION—What determines.

———*What determines.*

The question of jurisdiction has to be determined with reference to the claim made and not to the decision on the claim. (*Martineau and Moti Sagar, JJ.*) UDHE RAM *v.* NARAIN SINGH. 1923 Lah. 284 (1).

———*What determines—Decision of Court, if affects.*

The jurisdiction of a court could not depend on the decision of the court as to whether it can or will allow some of the reliefs asked for. (*Ayling and Srinivasa Aiyangar, JJ.*) SUBRAMANIA AIYAR *v.* VENKATACHALA VADHYAR. (1916) 2 M. W. N. 351=37 I. C. 688=4 L. W. 444.

———*What determines—Allegations in plaint.*

In disposing of a question of jurisdiction, a court is confined to the allegations contained in the plaint. (*Seshagiri Iyer, J.*) KANDUKURI KOTIAH *v.* DEVINENI REDAMMA. 33 I. C. 658=(1916) 1 M. W. N. 278.

———*What determines—Cause of action—Whether affected by subsequent events.*

A plaintiff's remedy in a suit should ordinarily be restricted to the cause of action with which he comes into court and the events transpiring since the institution of the suit will not enable him to add to his reliefs nor will they cut down his rights. Jurisdiction in respect of his remedy is in the forum competent to grant appropriate relief at the time of the institution of the suit. (*Oldfield and Seshagiri Iyer, JJ.*) NARAYANASWAMI NAIDU *v.* KUMARI AND RAMAYYA. 16 M. L. T. 244=26 I. C. 475=(1914) M. W. N. 713, 870.

———*What determines—Valuation of suit—How far court is bound by.*

For the purpose of jurisdiction the plaintiff's valuation of the relief sought must be accepted only where such valuation depends upon facts constituting the cause of action and the court cannot verify it without trying the whole case, but where such valuation is obviously a fictitious averment made for the purpose of sitting the jurisdiction of the court, the court should not permit itself to be made a party to the plaintiff's fraud, but should inquire whether it really has jurisdiction. (*Bakewell, J.*) MURZA HYDER ALI SAHIB *v.* HUSSAIN RAZA SAHIB. 24 I. C. 316=1 L. W. 398.

———*What determines—Valuation of suit.*

The pecuniary jurisdiction of a court is determined not by the relief awarded, but by the valuation of the suit as per terms of the plaint. 25 M. 543; 16 A. 286; 21 C. 550, Foll. (*Sankaran Nair and Ayling, JJ.*) RATNASWAMI CHETTY *v.* RATNAMMAL. 27 M. L. J. 388=15 M. L. T. 415=24 I. C. 135=1 L. W. 446.

JURISDICTION—What determines.

———*What determines—Nature of plaint.*

The true nature of a suit is essentially a matter of substance and cannot be altered by the form in which the claim is laid in the plaint. 10 I. C. 883, Rel. The *forum* for any particular suit must be determined by the allegations in the plaint. (*Benson and Sundara Aiyar, JJ.*) VARADARAJULU CHETTIAR *v.* PATTRA NARAYANASWAMY CHETTY.
14 M. L. T. 46=24 M. L. J. 693=
20 I. C. 518=(1913) M. W. N. 879.

———*What determines—Nature of relief sought.*

It is the nature of the relief sought that determines the jurisdiction of a court. 15 B. 400; 32 B. 35, Ref. (*Drake-Brockman, J. C.*) BHANYA *v.* NAKA. 31 I. C. 5=11 N. L. R. 160.

———*What determines.*

Obiter dicta:—The question of jurisdiction is to be determined from the nature of the case and not from the truth or falsehood of a claim involved in it. Merits of a demand are immaterial to the determination of the question of jurisdiction and this determination must take place at the beginning of an enquiry and not at its end. (*Stanyon, A. J. C.*) G. I. P. Ry. COMPANY *v.* AMROATI MUNICIPALITY. 16 I. C. 449=8 N. L. R. 107.

———*What determines—Allegations in plaint to be accepted.*

It is settled law that the jurisdiction to try a suit must *prima facie* be determined with reference to the allegations contained in the plaint. (*Wazir Hasan, A. J. C.*) SHAHIDAN *v.* JAGANNATH.
4 U. P. L. R. (J. C.) 23=8 O. L. J. 594=
1922 Oudh 161.

———*What determines — Redemption suit—Allegations in the plaint.*

In a suit between persons claiming a mutually exclusive right to redeem the mortgage, and not between co-mortgagors, one of whom has succeeded in inducing the mortgagee to allow him to redeem it, and the other of whom has brought the suit seeking to enforce his right of redemption against the heirs and transferees of the original mortgagee and the persons who are said to have redeemed the mortgage without any right. The jurisdiction of the court is determined by the allegations made in the plaint, and that being so the value of the mortgaged property cannot be taken into account for determining where the suit for redemption will lie. The questions of title or adverse possession that might arise are only incidental to the main relief claimed in the plaint. (*Kanhaiya Lal, J. C.*) SHANKER *v.* RAM BAHADUR.
1922 Oudh 45.

———*What determines—Subject-matter.*

The jurisdiction of a court depends upon the nature of the subject-matter of the suit, in most cases upon the pecuniary value of the suit, and in all cases upon the local limits of their jurisdiction. (*Miller, C. J. and Das, J.*) GANPAT BUSAIN *v.* GULAM KUTUBUDDIN AHMED. 5 P. L. J. 588=
57 I. C. 522=(1920) Pat. 274=1 P. L. T. 637.

———*What determines.*

The plaint alone which should be considered to determine the question of jurisdiction. (*Chapman and Jwala Prasad, JJ.*) MAHOMED ABDUL GHAFOOR *v.* MAHTAB. 41 I. C. 231=
2 Pat. L. J. 394.

———*What determines—Value of claim—Partition suit—Waiver of objection—Effect.*

The value put upon the claim by the plaintiff determines jurisdiction, but it is not to be ousted by unwarrantable additions to the claim. In a partition suit, the value for purposes of jurisdiction will be determined upon the value of the share claimed. Accordingly where on a question of valuation of a suit for purposes of jurisdiction the parties agreed to be bound by the finding of the Commissioner, it is not open to either party to object to the reference to the Commissioner as illegal. (*Pratt, J. C. and Crouch, A. J. C.*) WADHAMMAL *v.* CHELLOMAL.
19 I. C. 870=6 S. L. R. 256.

JUS TERTII.

See (1) EJECTMENT.
(2) EVIDENCE ACT, S. 116.

JUSTICE, EQUITY & GOOD CONSCIENCE.

See (1) INTERPRETATION OF STATUTES.
(2) LETTERS PATENT.
(3) PRACTICE.

KABULIYAT.

See (1) LANDLORD AND TENANT.
(2) LEASE.

KACHIN HILL TRIBES REGULATION.

———S. 1, Cl. (3) — *Applicability — Kachins outside hill tracts.*

The Kachin Hill Tribes Regulation does not apply to Kachins outside the defined hill tracts. The Regulation is permissive and does not provide that a suit triable outside the hill district is not cognisable by the ordinary civil courts. (*Saunders, J. C.*) PANKSI HOW & Co. *v.* SIMVA NAUNG. 44 I. C. 659=
3 U. B. R. (1917) 49.

KANOM.

See MALABAR LAW.

KARACHI PORT TRUST ACT (BOM. ACT VI of 1886).

———Ss. 87 and 88—*Person—Board of Trustees—Suit against—Limitation.*

The word "person" in S. 87 of the Act technically includes the Board. Ss. 87 and 88 of the Karachi Port Trust Act do not distinguish private individuals from suits against the Board, but S. 87 deals with the institution of suits against the Board, or any servant or officer of the Board, while S. 88 defines the responsibility of the Board for acts of their officers and servants. (*Pratt, J. C. and Crouch, A. J. C.*) MOOSAGI AHMED & Co. *v.* KARACHI PORT TRUST. 45 I. C. 410=11 S. L. R. 126.

———S. 87—*Suit under—Limitation—Exclusion of holidays—Limitation Act, S. 29.*

The general provision of the Limitation Act regarding the exclusion of the holidays and vacation time, do not apply to a suit under S. 87 of the Act, against the Karachi Port Trust,

KARACHI PORT TRUST ACT (BOM. ACT VI of 1886), S. 87.

(*Hayward, A. J. C.*) CLOOSAJI AHMED *v.* ASIATIC STEAM NAVIGATION CO., LTD.
45 I. C. 168=11 S. L. R. 106.

———S. 87—*Person—Meaning of.*

The word "person" in S. 87 includes the Board, any officer or servant of the Board, and any person acting under the orders of the Board. Therefore a suit brought against the Port Trust for anything done or purporting to have been done in pursuance of the Act must be brought within six months from the accrual of the cause of action. (*Liggatt, A. J. C.*) PRAG NARAIN BARGAVA *v.* KARACHI PORT TRUST.
10 I. C. 972=4 S. L. R. 236.

KARACHI RENT ACT (WAR RESTRICTIONS No. 2) (BOM. ACT VII of 1918).

———S. 4, Cl. (6) and (b)—*Inter-dependence.*

The alteration in the standard rent can be made by the Controller only when there is a change of conditions in the premises that are leased but not otherwise. (*Kincaid and Raymond, A. J. Cs.*) VELJI HIRJI *v.* CHELLARAM COOVERJI
1923 Sind. 15.

KARAMKURI TENURE.

See MALABAR LAW—LAND TENURE.

KASAVARGAM.

See LAND TENURE.

KASBATI.

See LAND TENURE.

KATTALAI.

See HINDU LAW—RELIGIOUS ENDOWMENT.

KATTUBADI.

See MAD. EST. LAND ACT, S. 3 (11).

KEEPING ALIVE.

See T. P. ACT, S. 101.

KHASIAS.

———*Succession—Sister v. Brother.*

Among the *Synting Khasias* a sister inherits the property of her brother in preference to a brother. (*Mookerjee and Carnduff, JJ.*) HEDLOT KHASIA *v.* KARAN KHASIANI. 13 I. C. 377=15 C. L. J. 241.

KHASRA PAPERS.

See EVIDENCE ACT, S. 35.

KHAZI.

See MAHOMEDAN LAW.

KHAZIS ACT (XVI of 1880).

———Ss. 2 and 4—*Functions—Exclusive right to perform.*

The Khazis Act does not confer on the Khazi the exclusive right to perform the functions which his office requires him to discharge. 1 B. H. C. R. 18, App; 13 B. 429; 17 M. L J. 421, Dist. (*Sundara Aiyar and Spencer, JJ.*) KATEL SHEIKH UMAR SAHEB *v.* KHAZI BUDAN KHAN SAHEB.
25 I. C. 898=37 Mad. 228.

KHOJAS AND CUTCHI MEMONS.

———*Halai Memons—Law applicable—Succession and inheritance—Exclusion of females.*

The rules of succession and inheritance of Hindu Law are applicable to Halai Memons with regard to females. (*Lord Dunedin.*) KHATU BAI *v.* MAHOMED HAJI ABU.
44 M. L. J. 35=37 C. L. J. 131=
25 Bom. L. R. 127=17 L. W. 208=
32 M. L. T. 45=47 B. 146=50 I. A. 108=
27 C. W. N. 774=1922 P. C. 414 (P. C.).

———*Law applicable to—Hindu converts to Mahomedanism—Migration to Mombassa—Change of custom—Onus.*

The Memons are a sect of Mahomedans who were converted from Hinduism, some four centuries ago, but retained their Hindu Law of succession and are governed by that law throughout India, in the absence of a local custom to the contrary. Where, however, the Memons migrate from India and settle among Mahomedans in Mombassa (East Africa), the presumption that they have adopted the Mahomedan Law of succession prevailing in Mombassa, should be much more readily made. The analogy in the latter case is that a change of domicile on settling in a new country rather than the analogy of a change of custom on migration within India. *Held*, on the evidence that the Mahomedan family at Mombassa was governed by the Mahomedan Law. (*Viscount Haldane.*) ABDURAHIM HAJI *v.* HALIMABI.
43 I. A. 35=30 M. L. J. 227=
20 C. W. N. 362=(1916) 1 M. W. N. 176=
32 I. C. 413=18 Bom. L. R. 635 (P. C.).

———*Applicability of Hindu Law—Joint family—Succession and inheritance.*

The application of the rules of Hindu Law by custom to the Cutchi Memons is limited to rules of inheritance and succession and does not extend to the rules relating to the joint family property as applicable to Hindus. 16 Bom. L. R. 244; 41 B. 181, Ref. (*Shah, A. J. C. and Pratt, J.*) HAJI OSMAN HAJI ISMAIL *v.* HAROON SALLEH MAHOMED. 47 Bom. 369=24 Bom. L. R. 978=
1923 Bom. 148.

———*Will—Hindu Wills Act.*

Neither the Hindu Wills Act, 1870, nor Succession Act, S. 187 applied to the will of Khoja Mahomedan and title under the will can be established without probate and the will stands on the same footing as any other deed of right. (*Crump, J.*) ABDUL KARIM *v.* KARMALI. 58 I. C. 270=22 Bom. L. R. 708.

———*Hali Memons—Succession and inheritance—Hindu law—Custom—Change of domicile by Hindu or Mahomedan Personal Law—Effect on.*

Hali Memons of Porebunder are governed by Hindu Law into matters of succession and inheritance. Halai Memons of Porebunder residing and carrying on business in Bombay are governed by the law applicable to Porebunder Memons and not to the Memons of Bombay. The Memons of Kathiawar, of whatever group or set follow the Hindu rule of succession and this conclusion is supported as to the Porebunder Memons particularly by large number of instances. A Hindu's

or Mahomedan's possession may be distributed partly by one law and partly by another according to the locality of the possessions. They must all fall under either the law of the religion or the customary law of the community. There is no *lex loci* for the purpose of distribution. (*Scott, C. J. and Macleod, J.*) MAHOMED HAJI ABU *v.* KHATUBAI. 43 Bom. 647=51 I. C. 513= 21 Bom. L. R. 85.

———*Memons converts from Hinduism to Mahomedanism.*

As regards inheritance and succession Halai Memons settled in Porebunder in Kathiawar did not retain Hindu Law. Hindu Law at the time of their conversion to Islam nor have they by immemorial custom adopted Hindu Law. In these matters, therefore, they are governed by Mahomedan Law and not by Hindu Law. 20 B. 53; 30 M. L. J. 227 (P. C.); 29 C. 433; 13 B. 534; 33 C. 219; 38 B. 449; 41 B. 181; 23 A. 37, Ref. (*Marten, J.*) KHATUBAI *v.* MAHOMED HAJI ABU. 45 I. C. 619=20 Bom. L. R. 289.

———*Cutchi Memons.*

Cutchi Memons have by custom the power to dispose the whole of their property by will. They have not adopted the Hindu Law of joint family, and the distinction in Hindu Law between joint and self-acquired property, though they are subject by custom to the Hindu Law of succession and inheritance as supplied to an estate of separated Hindu who has left self-acquired property. *Obiter*:—Just as a custom can be adopted by volition so can it be equally abandoned by volition. Cutchi Memons are governed by Mahomedan rather than Hindu Law in respect of wills and a device should conform to the essentials of gift under that law; bequests are gifts taking effect on the death of the donor and belong properly to the law governing gifts. Where a Cutchi Memon's will recited that his "Punji" should be utilised in case there is no son or the latter dies without an heir for distribution in connection with such good works of charity as the executors may think just and proper, such as sanitarium, Suvavad Khan, Musafarkhana, schools: *Held* that the will was good and valid and not void for uncertainty and not bad as offending the radical principle that a gift should be *in presenti* and not *in futuro*. *Quaere*:—Whether the law of succession and inheritance includes the making of wills? (*Beaman, J.*) ADVOCATE-GENERAL *v.* JIMBABAI. 41 Bom. 181=31 I. C. 106=17 Bom. L. R. 799.

———*Law governing—Succession—Hindu Law—Law of joint family property.*

In matters of succession and inheritance Cutchi Memons are governed by Hindu Law, and as under Hindu Law, there is no such thing as succession to joint family property, the law of joint family property does not apply to them, so that a Cutchi Memon does not acquire by birth any interest in property inherited by his father. (*Macleod, J.*) MANGALDAS *v.* ABDUL RAZAK. 23 I. C. 565=16 Bom. L. R. 224.

———*Law governing—Succession—Hindu Law.*

Khojas and Memons of Bombay are in matters of succession governed by the Hindu Law as applied to separate and self-acquired property. The incidents of a joint family under Hindu Law and the doctrine of nucleus do not apply to them. Khoja's son cannot sue for partition during his father's lifetime and a suit for declaration of his rights as a member of a joint family is premature as he may not be alive when a partition could be effected. (*Beaman, J.*) JAN MAHOMED *v.* DATU JAFFAR. 38 Bom. 449=22 I. C. 195= 15 Bom. L. R. 1044.

———*Hindu Law—Applicability of—Will.*

Quaere:—Whether a Khoja Mahomedan should be treated for all testamentary purposes as governed by Hindu Law? (*Beaman, J.*) HASANALLI *v.* SOPATLAL SARBHUDAS. 37 B. 211=17 I. C. 17=14 Bom. L. R. 782.

———*Applicability of Hindu Law.*

When the family relations of a Mahomedan such as marriage, guardianship and maintenance, come into litigation before the High Court of Bombay, the court should be guided by the laws and usages of Mahomedans and not by the rule of English Law. The principles of Hindu law regarding inheritance and succession only apply to them. Cutchi Memons are governed by the principles of Hindu Law with regard to inheritance and succession only and not with regard to maintenance. 9 Bom. L. R. 274, not appr.; 14 B. 189, expl. and dist; 20 B. 53, rel. upon. (*Hayward, J.*) MAHOMMED JUSAB *v.* HAJI ADAM. 37 Bom. 71=15 I. C. 520=14 Bom. L. R. 336.

———*Law governing—Halai Memons.*

As regards inheritance and succession Halai Memons settled in Porebunder in Kathiawar did not retain Hindu Law at the time of their conversion to Islam, nor have they by immemorial custom adopted Hindu Law. In these matters they are governed by Mahomedan Law and not by Hindu Law. (*Shadi Lal, J.*) FATEH CHAND *v.* PARASRAM. 56 P. W. R. 1918=45 I. C. 618= 34 P. L. R. 1918.

———*Cutchi Memons—Law applicable.*

The Hindu Law as to joint family and co-parcenary is applicable to the Cutchi Memons. It is, however, open to them to prove any special custom varying any particular incidence of the joint family law. (*Kumaraswami Sastri, J.*) SIDDICK HAJEE ABOO BUCKER SAIT *v.* EBRAHIM HAJEE ABOO BUCKER SAIT. 70 I. C. 715= 31 M. L. T. 183.

———*Hindu Law—Applicability of.*

The Hindu Law of maintenance is applicable to Khojas and the widow can claim maintenance from the persons succeeding to her husband's estate. Khojas are governed by Hindu Law in matters of succession and inheritance. 38 B. 449, Dist. (*Pratt, J. C and Fawcett, A. J. C.*) ALLAHRAKHIO *v.* NANJI. 29 I. C. 928=9 S. L. R. 15.

KHORPOSH.

See GRANT.

KHUDKHAST LAND.

See (1) LANDLORD AND TENANT.
(2) TENANCY ACTS (LOCAL).

KNOWLEDGE.

See ACQUIESCENCE.

KRITIMA ADOPTION.

See HINDU LAW—ADOPTION.

KULACHAR.

See (1) CUSTOM.
(2) HINDU LAW.

KUSI.

See (1) CHIT FUND.
(2) MALABAR LAW.

LACHES.

See (1) ACQUIESCENCE.
(2) EVIDENCE ACT, S. 115

LAKHIRAJ.

See (1) BENGAL PERMANENT SETTLEMENT REGULATION.
(2) GRANT.
(3) MADRAS PERMANENT SETTLEMENT.
(4) REGULATION XXV OF 1802.

LAMBARDAR.

See (1) CO-SHARER.
(2) TENANCY ACTS (LOCAL).

LAMENESS.

See HINDU LAW—SUCCESSION.

LAND ACQUISITION.

———*Statutory power—Misuse of—Acquisition for the purpose of exacting exemption fee—Suit for declaration—Maintainability of.*

Where a public body authorised by statute to compulsorily acquire land for certain specified purposes of public utility and benefit, includes land within the area of the scheme, not because it is wanted for purposes of the Act, but in order to exact an exemption fee from the owner, it is a misuse of the powers conferred on the body and its action would be *ultra vires*; and the owner of the land so proposed to be acquired could obtain redress by a suit in a Civil Court. (*Lord Parmoor.*) TRUSTEES FOR THE IMPROVEMENT OF CALCUTTA *v.* CHANDRA KANTA. 47 Cal. 500=47 I. A. 45=11 L. W. 566=38 M. L. J. 511=18 A. L. J. 521=56 I. C. 32=22 Bom. L. R. 586=24 C. W. N. 881=2 U. P. L. R (P. C.) 98=32 C. L. J. 65 (P. C.)

———*Contract as to compensation—How far binding.*

A proposed to purchase B's property. B claimed a certain amount but not agreeing with it. A moved the Government to compulsorily acquire it. In the meantime B agreed to accept the offer of A. The Government proclaimed by notification to acquire the property under the Act, and the Collector heard the proceedings, in which B claimed a certain price and instituted suit for the same. A brought a suit for declaration that B was not entitled for the compensation as he had made an offer and entered into a binding contract. B contended it was not binding as it

was not a proposal but an invitation to make it on terms to be settled. If the invitation was construed as an offer and proposal it was void and ineffective, without binding either party. The trial court decreed A's claim. *Held*, that the decree was right that B's agreement was enforceable, before the Collector made an award, that A was entitled to enter into it, and that it could be specifically enforced. (*Heaton and Marten, JJ.*) FORT PRESS CO., LTD. *v.* MUNICIPAL CORPORATION OF BOMBAY. 44 B. 797=58 I. C. 621=21 Bom. L. R. 1014.

———*Collector staying proceedings during pendency of civil suit and appeal, not barred from proceeding afterwards.*

Where the Collector, in acquisition proceedings, desisted from proceeding with acquisition of the premises in obedience to a decision of a Civil Court and pending an appeal against the decision as regards the premises, he is not debarred from proceeding with the acquisition, after the Appellate Court has reversed the decision of the Lower Court. (*Woodroffe and Walmsley, JJ.*) R. C. SEN *v.* TRUSTEES FOR THE IMPROVEMENT OF CALCUTTA. 64 I. C. 577=33 C. L. J. 509.

———*Right to remove on improvements under lease—Acquisition by Government, if affects.*

The power reserved for the tenant to remove improvements under the lease deed was taken away by the *vis major* of land acquisition proceedings if the land was acquired before the expiry of the term. (*Tottenham and Ameer Ali, JJ.*) JOGENDRA CHANDRA *v.* RAJENDRA NATH. 9 I. C. 923=13 C. L. J. 262.

———*If contemplates acquisition of Government land.*

The Act does not contemplate acquisition of any interest belonging to Government but only of such interests as do not belong to Government. (*Wallis, J.*) DEPUTY COLLECTOR, CALICUT DIVISION *v.* AIYAVU PILLAY. 9 I. C. 341=9 M. L. T. 272.

———*Timber—Bamboos.*

By the custom of the country bamboos are used in the building and repairing of houses and therefore fall within the definition of timber. (*Das and Ross, JJ.*) MAHARAJA SIR RAMESHWAR SINGH BAHADUR *v.* BASUDEV SINGH. 3 P. L. T. 90=1923 P. 95.

THE LAND ACQUISITION ACT, 1894.

(I of 1894.)

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LAND ACQUISITION ACT (I OF 1894).

———*As amended by Calcutta Improvement Act, S. 32—Investment in the purchase of other lands.*

Some lands having been acquired by the Improvement Trust a sum of Rs. 2,24,400 was deposited with the President of the Improvement Tribunal. The trustees of the estate to which the land belonged applied for delivery of the money to them to erect building on the exempted portion. *Held*, that having regard to the definition of 'land' S. 32 includes the erection of building upon the land and hence the trustees are entitled to get the money for the purpose. (*Chatterjea and Newbould*, JJ.) *In re* GANENDRA MULLICK 67 I.C. 18= 25 C.W.N. 897.

———*One holding—One notice sufficient.*

The Land Acquisition Act refers only to one notice, one proceeding and one award given, taken and made regarding one holding and one ownership. But there is no objection to separate proceedings in respect of separate holdings. (*Woodroffe and Walmsley*, JJ.). R. C. SEN *v.* TRUSTEES FOR IMPROVEMENT OF CALCUTTA. 64 I.C. 677=33 C.L.J. 509.

———*Scope of—No provision for refund.*

There is nowhere a provision in the Act empowering the Court to order a person to refund the money awarded to him under the Act. (*Martineau*, J.) GOHAR SULTAN *v.* ALI MAHAMED. 63 I.C. 1=3 Lah. L.J. 421.

———S. 3 (a)—'*Land*,' *meaning of—Bungalow in Cantonment limits.*

Under the Act the Court can adjudicate on any question of title to the land acquired or to apportion the amount of compensation for it as between the claimant and Government. In the case of land with superstructure in which the Government have an admitted or a disputed interest, it is open to the Government to acquire that property. (*Shah, Hayward and Crump*, JJ.) MANGALDAS *v.* THE ASSISTANT COLLECTOR OF PRANTIJ PRANT AHMEDABAD. 45 Bom. 277=64 I.C. 884= 23 Bom. L.R. 158.

———S. 3 (a)—'*Land*'—*Things attached to the earth—Acquisition of.*

Things attached to the earth are included in the word "land" in S. 3 (*a*). However, things only without the land cannot be acquired. (*Mullick and Kingsford*, JJ.) DASARATH SAHU *v.* SECRETARY OF STATE. 35 I.C. 97.

———Ss. 3 (b) 11 and 31—*Person interested.*

Under S. 3 (*b*) of the Land Acquisition Act, the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of the land. A person may be interested in the compensation money without having an interest in the legal sense of the term. (*Macleod*, J.) *In re* PESTONJE JEHANGIR HOMMURJI. 37 Bom. 76= 15 I.C. 771=15 Bom. L.R. 507.

LAND ACQUISITION ACT (I of 1894), S. 6.

———S. 3 (b) — "*Person interested*"—*Meaning of.*

S. 3 (*b*) of Land Acquisition Act includes under "person interested" a party to a valid agreement for purchase of land. (*Shadi Lal and Broadway*, JJ.) CHHUTTAN LAL *v.* MULCHAND. 18 P.R. 1917=37 I.C. 822= 28 P.W.R. 1917.

———S. 3 (d)—'*Court*'—*Additional District Judge—Power to dispose of reference—B.N.W. P. and Assam Civil Courts Act*, S. 8 (2).

An Additional District Judge is competent to dispose of references under the Land Acquisition Act made over to him for disposal by the District Judge under S. 8 (2) of the Bengal N.W. P. and Assam Civil Courts Act, 1887. (*Teunon and Greaves*, JJ.) JOGESH CHANDRA SANYAL *v.* RASIKAL SAHA. 50 I.C. 690.

———S. 3 (f)—*Public purpose—Meaning of—Residence for public officers.*

Power of resumption for public purposes: (1) To constitute a public purpose, in taking land, it is not necessary that the land when taken should be made available to the public at large. It is enough, if the object or aim of the acquisition, is one in which the general interest of the community as opposed to the particular interests of individuals is directly concerned. (2) The erection of residential quarters at moderate rentals for Government officers in a very crowded city is a "public purpose" authorising the Government to resume certain lands which they had leased subject to the liability for resumption for public purposes. The Government are *prima facie* good judges of what is a public purpose, but not absolute judges. (*Lord Dunedin*, J.) HAMABAI FERAMJEE *v.* SECRETARY OF STATE. 39 Bom. 279=42 I.A. 49= 13 A.L.J. 117=17 M.L.T. 76= 19 C.W.N. 30d=17 Bom. L.R. 100= 28 M.L.J. 179=2 L.W. 191=21 C.L.J. 134= 27 I.C. 26=(1915) M.W.N. 603 (P.C.).

———Ss. 6, 16, Part VII—*Highway—Acquisition of—Compensation to the public.*

None of the provisions of the Land Acquisition Act relating to compensation cover the case of acquisition of a highway used by the public with the consequential compensation to them. (*Viscount Haldane.*) MUNICIPAL CORPORATION *v.* GREAT INDIAN PENINSULA RAILWAY CO. 41 B. 291=21 M.L.T. 1= 19 Bom. L.R. 48=16 A.L.J. 63= (1917) M.W.N. 83=21 C.W.N. 447= 25 C.L.J. 209=38 I.C. 923= 43 I.A. 310 (P.C.).

———S. 6—*Declaration of public purpose—Finality.*

The language of S. 6 of the Land Acquisition Act is perfectly plain and clearly bars the Court from enquiring into the question whether the purpose for which land in respect of which a declaration under S. 6 has been issued is public purpose or not. (*Ryves and Daniels*, JJ.) SECRETARY OF STATE FOR INDIA *v.* AKBER ALI. 45 A. 453=21 A.L.J. 336= L.R. 41 A. 193=1923 All. 528 (2).

LAND ACQUISITION ACT (I of 1894), S. 6.

———Ss. 6 and 9—*Declaration— Notice—No action taken—Suit for ejectment.*

In a land acquisition case the necessary declaration under S. 6 of the Land Acquisition Act was duly made and published and the public notice under S. 9, Cls. (1) and (2) was also duly published and the plaintiff received notice of the proceedings as required by Cls. (3) and (4) of S. 9 of the Act in reasonable time to allow him time to take any action he deemed proper. He appeared and asked for a reference under S. 18 but afterwards he brought a suit for possession. *Held*, that the defts. had acquired title to the land in suit according to Land Acquisition Act and cannot be ejected. (*Piggott and Lindsay*, JJ.) SHAHJAHAN BEGUM *v.* SECRETARY OF STATE.
36 I.C. 265.

———S. 6—*'Public purpose'—Accommodation of Government officials and Government of India Act* (21 *and* 22 *Vic*, *C.* 106), *S.* 39.

In 1854 the E. I. Company granted 99 years' lease to the deft. with a reservation of its resumption by the Government for a public purpose, *viz.*, for building accommodation for the Government officials in Bombay. *Held*, that the purpose was a public purpose within the meaning of the lease. As the term includes any object securing the good of the public by securing the efficiency of those officials of the Crown on whose service the public good materially depends. (It matters little that the Government will charge less rent than its letting value will yield in market. *Chandavarkar and Heaton*, JJ.) HAMABAI *v.* SECRETARY OF STATE. **12 I C 871= 13 Bom. L.R. 1097.**

———S. 6 (3)—*Declaration is conclusive—Evidence Act*, *S.* 4.

The effect of a declaration under S. 6 (3) is only to make it conclusive that the land is required for a public purpose. It does not debar a Court from enquiring into the validity of the steps leading to that declaration. (*Greaves*, J.) *In re* MANICK CHAND MAHATAB *v.* THE CORPORATION OF CALCUTTA AND THE CALCUTTA IMPROVEMENT TRUST.
66 I.C 600=48 Cal. 916.

———Ss. 9 and 25—*Failure to claim compensation—Effect of—Interest, right to.*

Where a person omits to make a claim under S. 9 the District Judge is justified in refusing to award anything more than the amount awarded by the Collector under S. 25 of the Act. Interest should ordinarily be allowed on compensation awarded. (*Tudball and Rafique*, JJ.) RAMPRASAD *v.* COLLECTOR OF ALIGARH. **40 I C. 274.**

———S. 9—*Object of.*

The object of calling for objections under S. 9 is to make a fair, reasonable and proper award based upon a proper and fair inquiry and the fact of previous negotiations between the claimant and the Government is no ground for not putting forward a claim. (*Tudball and Rafique*, JJ.) NARAIN DUTT *v.* SUPERINTENDENT OF DEHRA DUN.
37 A. 69=26 I.C. 795=12 A.L.J. 1319.

LAND ACQUISITION ACT (I of 1894), S. 9.

———S. 9—*Notice—Non-service—Effect.*

Although a notice under S. 9 of the Land Acquisition Act is imperative non-service of the notice is not fatal to the proceedings if the party complaining has notice of the same. 43 Mad. 280. (*Chatterjee and Pearson*, JJ.) BURN & CO., LTD *v.* SECY. OF STATE FOR INDIA. **1923 Cal. 513.**

———Ss. 9, 11, 18—*Compensation—Apportionment by Collector—Party dissatisfied—No right of suit.*

The Land Acquisition Act creates a special jurisdiction and provides a special remedy And ordinarily when jurisdiction has been conferred upon a special Court for the investigation of matters which may possibly be in controversy, such jurisdiction is exclusive. 10 C.W.N, 991 Ref. It is an established principle that where by an act of the legislature powers are given to any person for a public purpose from which an individual may receive injury if the mode of redressing the injury is pointed out by the statute the ordinary jurisdiction of the Civil Court is ousted and in the case of injury the party cannot proceed by action. Where in a land acquisition case a person is served with notice under S. 9 of the Land Acquisition Act he is bound to apply for a reference under S. 18 if he is dissatisfied with the award and he cannot maintain a suit to vindicate his rights in the ordinary Civil Court. Similarly a person who was a party to the apportionment of the compensation cannot re-open the question by a regular suit. (*Chatterjee and Panton*, JJ.) SAIBESH CHANDRA SARKAR *v.* SIR BEJOY CHAND MAHATAP. **26 C.W.N. 506= 1922 Cal. 4.**

———S. 9—*Claim for damages—When can be made in Civil Court—Market value on date of acquisition.*

In a suit for enhancement of compensation for land acquired by a public body for a public purpose, a claim for damages does not lie in the Civil Court unless originally raised before the Collector The question of market value of land on the date of acquisition does not depend on the result of the acquisition. (*Chevis*, J.) UMAR BAKSH *v.* SECRETARY OF STATE. **46 I.C. 906=145 P.W R. 1918.**

———Ss. 9 and 25 (2)—*Omission to make claim within date fixed—Jurisdiction of Collector to consider claim before award.*

In a land acquisition case the notice issued by the Collector under S. 9 of the Act directed the persons interested to appear and state their objections on the 20th July, 1912. Plaintiff failed to appear on that date, but appeared on 21st August and filed written objections, which were considered by the Collector who made his award. *Held*, that the plaintiff could not be said to have omitted to make a claim pursuant

LAND ACQUISITION ACT (I of 1894), S. 9.

to the notice given under S. 9 merely because he did not make it by the date originally fixed in the notice: and that at any time before giving his award the Collector had jurisdiction to deal with any claim made to him under S. 9 (2) of the Act. (*Scott-Smith and Shadi Lal*, JJ.) THE SECRETARY OF STATE *v.* SOHAN LAL. 60 P.R. 1918=44 I.C. 883=76 P.W R. 1918.

———Ss. 9 and 11—*Claimant- Government.*

Claimant in the Act means claimant to compensation and does not include Government as the Government does not claim compensation. (*Wallis*, J.) DEPUTY COLLECTOR, CALICUT DIVISION *v.* AIYAVU PILLAY. 9 M.L.T 272=9 I C 341=(1911) 2 M.W.N. 367.

———Ss. 9, 11 and 18—*Question of title between claimant and Government—Reference to District Judge not competent.*

If the Government claims to be the owner of some land and notice under S. 9 is issued to that effect any person claiming an interest in the land can assert the same and the Collector is bound to inquire into the extent of the interest under S. 11 of the Act. If he decides dispute against the claimant, the question cannot form the subject of reference to the District Judge under S. 18. The claimant must bring a separate suit in such a case. (*Daniels and Lyle*, A.J.Cs.,) *MAHAMMAD WAJEEH *v.* SECRETARY OF STATE. 24 O.C. 197=64 I.C. 93 (2)=8 O L.J. 426.

———Ss. 9 and 12—*Award not communicated to applicant—Effect—Limitation for filing objection.*

An award of the Collector not made in the presence of and not communicated to the applicant is no award at all and the period of limitation for filing an objection to the award can be computed only from the date when the award is made within the applicant's knowledge. 22 I.C. 652. (*Kanhaiya Lal*, A.J.C.) HARI DAS PAL *v.* MUNICIPAL BOARD, LUCKNOW. 22 I C. 652=16 O.C 374.

———S. 9 (3)—*Omission to send notice—Effect.*

Where the Collector intentionally omits to give notice to the owner of land, his proceedings cannot vest the land in Government but the proceedings are not invalid if the owner did not get the notice by mere inadvertance. (*Tudball and Abdur Raoof*, JJ.) SECRETARY OF STATE *v.* QAMAR ALI. 51 I.C 501=16 A.L J. 669.

———S. 9, Cl. (3)—'*To the same effect*' *meaning of—Notice—Time.*

The words ' to the same effect ' in Cl. (3), S. 9 mean that in the second notice the same matters should be included as in the first and hence 15 days should be allowed to the occupier so as to enable him to make his objections. (*Richards*, C.J. *and Banerji*, J.) KRISHNA SAH *v* COLLECTOR OF BAREILLY. 39 A. 835=40 I.C. 76=16 A.L J. 450.

LAND ACQUISITION ACT (I of 1894), S. 11.

———Ss. 11, 12 — *Award when becomes final — Filing of award — Acquiring officer duty of.*

Per *Macleod*, J. (*Shah*, J. *contra*):—The mere signing of an award by an acquiring officer does not amount to the making of an award within S. 11 of the Act and has no binding effect where the officer himself does not intend the document to be final. To make it binding on Government it must be filed under S. 12. Per *Shah*, J.—The filing is only a ministerial act and does not affect the conclusive nature of the award made under S. 11. The Act gives the officer wide discretion as to the scope of the inquiry but it *requires* him to make an award as to the matters mentioned in S. 11 and to have regard to Ss. 23 and 24 in determining the amount of compensation. (*Macleod*, C.J. *and Shah*, J.) PADAMSI NARAYAN *v.* THE COLLECTOR OF THANA. 23 Bom. L R. 779=1922 B. 161.

———Ss. 11, 12—*Award, is final only when filed.*

An award in land acquisition proceedings becomes final only when filed under S. 12 of the Act. Before such filing it is open to the Collector to destroy the one which he has already signed and to substitute another in its place. (*Macleod*. C.J. *and Heaton*, J.) KOOVERBAI SORABJI *v.* THE ASSISTANT COLLECTOR SURAT. 59 I C. 429=22 Bom. L.R. 1136.

———S. 11—*Inquiry—Powers and duties of Collector and Court.*

The Collector has power under S 11 to inquire into the value of the land and into the respective interests of the persons claiming the compensation and after awarding a sum for compensation, he has to apportion the compensation among all the persons known or believed to be interested in the land of whom or whose claims he has information. What the Collector and the Court have to do is to apportion the sum awarded amongst the persons interested as far as possible in proportion to the value of their interest. The market value of an interest if ascertainable, may afford some guide towards ascertaining the amount to be apportioned in respect of that interest but that can only be considered in relation to the total sum awarded as compensation. (*Macleod*, J.) *In re* PESTONJE JEHANGIR HORMUISJI. 37 Bom. 76=15 I.C. 771=14 Bom. L.R. 507.

———Ss. 11 and 29—*Apportionment of compensation—No abatement of rent—Landlord's right.*

When there is no abatement of rent by the landlord to the patnidar in respect of the land within the Patni acquired by the commissioner, the landlord is entitled to no portion of the compensation. (*Brett and Sharf-ud-din*, JJ.) RAJA RAM RANJAN CHAKRAVARTI *v.* BUNWARI LAL MITTER. 17 I C. 170 (1)=16 C.L.J. 211.

LAND ACQUISITION ACT (I of 1894), S. 11.

———**—S. 11**—*Government claiming ownership —Duty of Collector.*

When Government claiming to be owner seeks to acquire the interests of other persons and such persons deny the title of Government, the Collector should determine whether they are owners or are only entitled to the limited interest admitted by Government to belong to them. (*Wallis*, J.) DEPUTY COLLECTOR OF CALICUT DIVISION *v.* AIYAVU PILLAY.
9 M.L.T. 272=9 I.C. 341=(1911) 2 M.W.N. 367.

———**—Ss. 11 and 12**—*Compensation—Rival claimants—Person in possession for 12 years collateral heir of last male owner.*

A person in possession of land without paying rent for over 12 years prior to the compulsory acquisition by the Government has the right to receive compensation in preference to a collateral heir of the last male owner. (*Chapman and Atkinson*, JJ.) RAJBANS SAHAY *v.* MAHABIR PRASAD.
20 C.W.N. 828=1 P.L.J. 258=37 I.C. 464=3 P.L.W. 402.

———**—S. 11 (ii)**—*Compensation, principle of awarding—Probable future use.*

An owner can have the price of the land fixed with reference to its situation and the probable use, it is likely to be put to in the near future. 21 P.R. 1905; 132 P.L.R. 1905, foll. (*Rattigan and Beadon*, JJ.) SECRETARY OF STATE FOR INDIA *v.* NANAK. 61 P.W.R. 1916=35 I.C. 283=126 P.L.R. 1916.

———**Ss. 11 (iii) and 23**—*Compensation—Meaning of.*

The compensation to be allowed under S. 11 (ii) of the Act means the total amount of compensation awardable for the land including all the considerations mentioned in S. 23 of the Act. (*Abdur Rahim and Sundara Aiyar*, JJ.) GANGADHAR SASTRI *v.* DEPUTY COLLECTOR OF MADRAS. 22 M.L.J. 379=11 M.L.T. 327=14 I.C. 270=(1912) M.W.N. 712.

———**S. 11 (iii)**—*Apportionment of compensation—Landlord and tenant.*

When the State acquires the land of a tenant and awards compensation, it must be apportioned on the hypothetical basis between the landlord and the tenant according to their present interests in it. (*Mookerjee*, A.C.J. *and Patnen*, J.) NAYAN MANJURI DASI *v.* HEMILAL DUTT. 58 I.C. 417=32 C.L.J. 137.

———**—S. 12**—*Special Collector—Interference with award of.*

The Local Government has the power to appoint the special Collector; but once appointed, it has no power to interfere with his award or ask him to substitute a smaller amount. (*Batchelor and Heaton*, JJ.) DOSABHAI BEZANJI MOTIVALA *v.* THE SPECIAL OFFICER. 36 B 599=16 I.C. 549=14 Bom. L.R. 592.

LAND ACQUISITION ACT (I of 1894), S. 18.—Grounds.

———**—Ss. 12 and 18**—*Recovery of value of land—Suit, for, if lies.*

A separate suit for the recovery of the value of the land acquired is not maintainable. The only remedy of a person dissatisfied with the award of the Collector is to call on the Collector to refer the matter to the Civil Court under S. 18 of the Act. (*Fletcher and Walmsley*, JJ.) JOGESH CHANDRA ROY *v.* SECRETARY OF STATE. 48 I.C. 702=29 C.L.J. 53.

———**—Ss. 12 (1) and (2) and S. 53**—*Service of notice—Receiver of Estate.*

Notice under S. 12 (2) of the L.A. Act is not properly served on the Manager of the Office of the Receiver of an estate in the absence of the Receiver. The notice must have been served in the way provided by S. 45 (3) of the Act. *Quære.*—Whether the provisions of the C.P.C. as to service of summons apply to the Land Acquisition Act by reason of S. 53 of the Act. (*Wallis*, C.J. *and Kumaraswmai Sastri*, J.) PAPAMMA RAO GARU *v.* REVENUE DIVISIONAL OFFICER. 33 M.L.J. 472=(1917) M.W.N. 878=8 L.W. 499=42 I.C. 235=24 M.L.T. 471.

———**—S. 16**—*Incumbrance—Right of passage.*

The acquisition of land under S. 16 of Act I of 1894, vests the land in the Government free of all "incumbrances" which includes a right of passage to the public. (*Viscount Haldane*, J.) MUNICIPAL CORPORATION *v.* GREAT INDIAN PENINSULAR RY. CO. 41 B 291=21 M.L.T. 1=19 Bom. L.R. 48=18 A.L.J. 63=(1917) M.W.N. 83=21 C.W.N. 447=25 C.L.J. 209=38 I.C. 923=43 I.A. 310 (P.C.).

———**—Ss. 16, 9 (3) and 45**—*Making of award—Vests the property in Government.*

Under S. 16 the making of an award and taking possession of the land by the Collector vest the property absolutely in the Govt. and even if notice is not served on the occupier of the land in accordance with Ss. 9 (3) and 45 award or subsequent proceedings does not become void nor does it prevent the vesting of property in the Government. 30 Cal. 576, Foll. 34 Cal. 470 and 39 Mad. 494. (*Bakewell and Odgers*, JJ.) KASTURI PILLAI *v.* MUNICIPAL COUNCIL, ERODE. 37 M.L.J. 618=26 M.L.T. 268=53 I.C. 646=10 L.W. 331.

———**—S. 18.**

GROUNDS.
LIMITATION.
OMISSION TO CLAIM.
REVISION OF PROCEEDINGS UNDER.
RIGHT TO REFRRENCE.
SCOPE OF.
MISCELLANEOUS.

Grounds.

———**—S. 18**—*Grounds, if should be stated in detail.*

There is nothing in the Land Acquisition Act which requires a claimant to state the grounds

LAND ACQUISITION ACT (I of 1894), S. 18—Grounds.

in detail upon which in applying for a reference under S. 18 of the Land Acquisition Act he claims a larger sum than that awarded by the Collector. (*Choudhury and Cuming, JJ.*) MAHANANDA PAL v. THE SECRETARY OF STATE FOR INDIA. 58 I C. 631 = 24 C.W.N. 716.

——S. 18—*Grounds.*

Where the owner states "I object to the award of the Collector and I wish a reference to be made to the Court" and then adds that the compensation paid for the different classes of land and wells and other buildings is low, he does give grounds, for the reference within the meaning of S. 18 (2). (*Johnstone, C.J.*) SECRETARY OF STATE FOR INDIA v JIWAN BAKSH. 67 P.R. 1916 = 73 P.L R. 1917 = 36 I.C. 213 = 180 P.W.R. 1916.

Limitation.

——S. 18, Sub-S. (2), Cl. (b)—*Limitation—Reference beyond 6 months of order.*

The reference within 6 months of the date of the award is within time under S. 18 (2) (b) of the Land Acquisition Act. (*Chatterjee and Newbould, JJ.*) MAHENDRA CHANDRA DATTA v. ABHOY CHARAN SARMA. 40 I.C. 355.

——Ss. 18 and 19—*Limitation—Petition to Collector for review—Limitation—Jurisdiction.*

Where there was no proper application to the Collector for review of the award, and even the petitions were dismissed as time-barred and was not referred to the Divisional Judge under S. 18 the latter has no jurisdiction to deal with the petition. No extension of time is allowable on the ground of minority under S. 18 of the Act. (*Rattigan and Beadon, JJ.*) SECRETARY OF STATE v. HAKIM.
64 P.R. 1914 = 244 P.L.R. 1914 = 25 I.C. 446 = 158 P.W.R. 1914.

——Ss. 18 and 19—*Limitation—Objections on ground of—If Collector can waive—Dismissal on ground of—Appeal.*

Where an application for reference made to the Collector was time-barred but the Collector nevertheless made reference and the Court held that the application was time barred under proviso (a) of S. 18 the order of dismissal is not appealable under S. 54 of the Act. An award signed by the Collector as Land Acquisition Officer, satisfies the requirements of the law as regards signature and official designation, for the purposes of this Act. It is not open to a Collector to waive the objection of limitation and a Court can always hold that an application to a Collector for reference could not form the basis of reference under Ss. 18 and 19, inasmuch as they were barred by time. (*Rattigan and Scott-Smith, JJ.*) GHULAM MUHYUDDIN v. SECRETARY OF STATE. 48 P.R. 1914 = 208 P.L.R. 1914 = 26 I.C. 879 = 149 P.W.R. 1914.

LAND ACQUISITION ACT (I of 1894), S. 18—Omission to claim.

——S. 18 (2) (b)—*Limitation—Starting point—Collector's award—When complete.*

The actual payment of the compensation is not part of the Collector's award which is complete as soon as the Collector apportions the amount of the compensation between the parties. (*Shah Din. J.*) MIRAN BAKHSH v. FEROZE DIN. 17 I.C. 393 = 232 P.L R. 1912.

——S. 18 (2) (b)—*Limitation—Collector's award—When becomes complete.*

A Collector's award under the Act becomes complete on the very day on which it is made, not when it is afterwards directed to be paid to the claimant, so that an application to the Collector to make a reference to the Court under S. 18 would be barred if brought more than six months after the date of the award. (*Shah Din, J.*) MIRAN BAKSH v FEROZE DIN. 14 I.C. 537 = 203 P.W.R. 1912.

——S. 18—*Limitation—Exclusion of time in getting copy of award.*

Where the award of a Collector is made in the presence of the claimant, the claimant if dissatisfied therewith, cannot exclude the time spent in obtaining a copy of the award from the period of six weeks, prescribed by S. 18. The real party to the proceeding in a land acquisition case is not the Collector but the Government. A Collector's authority to make a reference as the Agent of Government is restricted by S. 18. A Collector therefore cannot make a reference on a time-barred application and if he does so, his action is illegal and does not bind the Government. No waiver on the part of a Collector can atone for a failure of the claimant in fulfilling the statutory conditions before his right to require the Collector to make a reference can come into existence. (*Skinner, A.J.C.*) COLLECTOR OF AKOLA v. ANAND RAO. 11 I.C. 690 = 7 N.L.R. 88.

Omission to Claim.

—— S. 18—*Omission to claim—Failure of landlord to demand reference—Tenant obtaining extra—Rights of party.*

Where on acquisition of land by the Government the landlord is satisfied with the award of the Collector, but the tenant gets a reference made under S. 18 and then obtains some compensation for himself, the landlord cannot claim the same. (*Mookerjee and Newbould, JJ.*) MAHARAJA SASI KANTA ACHARYA v. ABDUR RAHMAN SARKAR. 38 C.L J. 265 = 1924 Cal. 168.

——Ss. 18 and 31 (2)—*Omission to press claim—Subsequent Civil suit.*

A person, who though a party to a reference did not press his claim to any part of the compensation, is not entitled to reopen the question by a Civil suit. 10 C.W.N. 991, Foll. (*Holmwood and Imam, JJ.*) RANJIT SINHA v. SAJJAD AHMAD. 33 I.C. 922.

LAND ACQUISITION ACT (I of 1894), S. 18 —Omission to claim.

——S. 18—*Omission to press claim—Whether objector can raise a question not referred to Civil Court.*

In a land acquisition case, no question for which the objector has not asked the Collector to make a reference to the Civil Court, under S. 18 of the Act can be mooted. (*Johnstone and Chevis, JJ.*) ANWAR ALI *v.* RANI SARUP.
180 P.L.R. 1914=24 I.C. 903=
81 P.W.R. 1914.

——S. 18—*Omission to press claim—Effect —Plea affecting compensation.*

A Civil Court is justified in ignoring a circumstance which might affect compensation, if it was not put forward before the Land Acquisition Officer. (*Lindsay, J.C. and Stuart, A.J.C.*) SAJJAD ALI KHAN *v.* SECRETARY OF STATE. 25 I.C. 782=17 O.C. 284.

Revision of Proceedings under.

——S. 18—*Revision of proceedings under.*

Collector's refusal to make reference to the High Court as regards apportionment of compensation is not within the power of High Court to interfere in revision (*Macleod, C.J. and Crump, J.*) BALKRISHNA DAJI GUPTA *v.* THE COLLECTOR, BOMBAY SUBURBAN.
25 Bom. L.R. 398=47 B. 699=
1923 Bom. 290.

——S. 18—*Revision of proceedings under —Grounds.*

The Collector making a reference or refusing to make a reference under S. 18 of the Land Acquisition Act acts judicially and his proceedings are therefore subject to revision by the Chief Court. (*Johnstone, C.J.*) SECRETARY OF STATE FOR INDIA *v.* JIVAN BAKHSH.
67 P.R. 1916=180 P.W.R. 1916=
36 I.C. 213=73 P.L.R. 1917.

——S. 18—*Revision of proceedings under —"Collector not a Civil Court when acting under S. 18."*

A Collector acting under S. 18 of Land Acquisition Act is not a Civil Court and no revision lies to the Chief Court against his order refusing an application to refer the matter of the award for the determination of the Court. (*Rattigan and Chevis, JJ.*) RAFIUDDIN *v.* SECRETARY OF STATE FOR INDIA.
68 P.R. 1915=31 I.C. 76=
144 P.W.R. 1915.

——Ss. 18 and 19—*Revision of proceedings under—C. P. Code, S. 115—Sp. Rel. Act, S. 45.*

Proceedings under the Land Acquisition Act are only administrative and not judicial so far as the matter does not go to the Land Acquisition Judge. The Land Acquisition Collector exercising his power under Ss. 18 and 19 of the Acquisition Act is not a Court and is evidently not subordinate to High Court under S. 115 of the Cr. P.C. and is not amenable to the revisional jurisdiction of the High Court.

LAND ACQUISITION ACT (I of 1894), S. 18 —Right to reference.

But a mandamus may be issued in a proper case directing him to do a particular act. (*Abdur Rahim, Offg. C.J. and Seshagiri Aiyar, J.*) MESSRS BEST & CO., LTD. *v.* THE DEPUTY COLLECTOR OF MADRAS.
20 M.L.T. 388=(1916) 2 M W.N. 348=
36 I.C. 621=4 L.W. 685.

——S. 18—*Revision of proceedings under Order of the Collector under S. 18, Cl. (1).*

A Collector in rejecting an application under S. 18, Clause (1), acts judicially and his order is subject to revision by the High Court. (*Kanhaiya Lal, A. J. C.*) HARI DAS PAL *v.* MUNICIPAL BOARDS, LUCKNOW.
22 I.C. 652=16 O.C. 375.

Right to Reference.

——Ss. 18 and 31 (2)—*Right to reference —Non-adducing of evidence—Compensation—Payment to some claimants — Reference at instance of others—Award of additional amount to latter—Refusal by former to refund—Suit for refund—City of Bombay Improvement Trust Act, S. 48 (11).*

The plaintiff was the lessor of a piece of land which was later on acquired by the City of Bombay Improvement Trust. In the compensation proceedings before the Special Collector the plaintiff was silent, and the amount of compensation was amicably settled between the Improvement Trust and the lessees. The amount was apportioned among the lessees, the lessor, the mortgagee of the lessor and the Municipal Commissioner. The lessees and the mortgagee, received their amounts from the Collector; the plaintiff not satisfied with the amount given to him, applied to the Collector to make an apportionment reference under S. 18 to the Tribunal of Appeal. On reference the plaintiff was declared entitled to a certain sum out of the moneys received by the lessees; but the Tribunal could not make an order of refund against the lessees. Therefore the plaintiff filed the present suit for the amount. *Held*, (1) that the plaintiff has not accepted the award by not adducing any evidence before the Collector and by his mortgagee accepting the sum given to him; (2) that he need not deposit the amount in Court to entitle him to make a reference by the Collector under S. 18 and that the Tribunal of Appeal could entertain the reference; (3) that the suit was not premature although the plaintiff did not appeal under S. 48 (11) of the City of Bombay Improvement Trust Act, 1898; and (4) that the Court could entertain the suit by its inherent powers. (*Kajiji, J.*) GANGADAS *v.* HAJI ALI. 42 Bom. 54=36 I.C. 433=
18 Bom. L. R. 826.

——S. 18—*Right to reference—Compensation paid out—Inherent power of Court to recall.*

The jurisdiction of the Court to entertain the reference is not ousted though the compensation money awarded by the Collector has

LAND ACQUISITION ACT (I of 1894), S. 18 —Right to reference.

been paid out. The Court has inherent power to recall the money improperly paid out. 11 C. L. J. 533 ; 32 C. 921 : 35 C. 1104, Ref. (*Mookerjee and Beachcroft, JJ.*) JOGESH CHANDRA RAI *v.* YAKUB ALI. 21 I.C. 111 = 17 C.W.N. 1057.

——— S. 18 — *Right to reference — Non-giving of evidence — If takes away right.*

Proceedings under Part III amount to a new inquiry by the District Judge and not an appeal. Not giving evidence does not preclude a party from asking the Court to modify the award of the Collector although the fact should be taken into consideration in disturbing the award. *Quaere* :—Can a District Judge as the Collector revise his award after reference to him under S. 30. (*White, C.J. and Spencer, J.*) BOMMADEVARA VENKATA *v.* ATMORI SUBBARAYUDU. 36 Mad. 395 = 23 M.L.J. 17 = 10 M.L.T. 349 = 12 I C 486 = (1911) 2 M.W.N. 401.

——— Ss. 18 and 31—*Right to reference — Money taken out by opposite party if affects — Duty of Collector and District Judge.*

The right of a person to have a reference under S. 18 of the Land Acquisition Act is not affected by the opposite party having taken out the money from the Collectorate behind his back The proviso to Sub-S. 2 of S. 31 clearly provides for such an emergency and makes the person who may have received the whole or any part of any compensation under the Act to pay the same to the person lawfully entitled thereto. Sub-section 2 of section 31 requires that the Collector shall when making reference under S. 18 and when the parties to the acquisition do not receive the amount tendered by him, deposit the amount of compensation in the Court to which reference is submitted. The Collector should not permit the money to be withdrawn before the expiry of the term fixed by S. 18 for objecting to the award and applying for reference. The District Judge has a right to demand the deposit of the money in Court when the reference is made and to insist upon its being done before disposing of the reference so that the money would be ready for payment forthwith in pursuance of the decree passed by him. 35 C. 1104, Ref. (*Jwala Prasad and Dass, JJ.*) RAHMIT *v.* MAHADEO. 1 Pat. L.T. 143 = 2 U.P.L.R. (Pat.) 43 = 56 I.C. 125 = 1920 Pat. 129.

Scope of.

——— Ss. 18, 32 and 55—*Scope of — Nature of proceedings under — Area of land — Extent of compensation — Decision on — Award — Appeal — Title to compensation money — Disputes — Decision not an award.*

Under the Land Acquisition Act there are two perfectly separate and distinct forms of

LAND ACQUISITION ACT (I of 1894), S. 18 —Scope of

procedure contemplated. The first is that necessary for fixing the amount of compensation and this is an award from which a limited right of appeal to the High Court is given by S. 54 of the Land Acqn. Act. The second is when a question of title arises between conflicting claimants as regards the title to the compensation money in Court. When the Collector on such dispute arising between the parties places the money under the control of the Court and the parties proceed to litigate their right to the money, the decision of the Court on such dispute is a decree and is appealable to the High Court and the Privy Council. It is in no sense an award and the restriction on the right of appeal imposed by S. 54 does not govern the case. 40 C. 21 (P.C.), dist. ; 23 Cal. 526 ; 17 C.W.N. 935, disapproved. (*Lord Buckmaster*). RAMACHANDRA RAO *v.* RAMACHANDRA RAO.

43 Mad. 320 = 43 M.L J. 78 = 24 Bom. L. R. 963 = 16 L.W. 1 = (1922) M.W.N. 359 = 20 A L J. 684 = 35 C L.J. 545 = L.R. 3 (P.C.) 158 = 26 C.W.N. 713 = 30 M.L.T. 154 = 49 I.A. 129 = 1922 P.C. 80 (P.C.).

——— S. 18—*Scope of — Administrative proceeding.*

Proceedings under the Act resulting in an award are merely administrative and not judicial and the decision therein binds the Collector only. If the owner desires a judicial ascertainment of the value of his property he can ask the Collector to do it according to S. 18. (*Tudball and Abdul Raoof, JJ.*) SECRETARY OF STATE *v.* QAMAR ALI. 51 I.C. 801 = 16 A L.J. 669.

——— Ss. 18 and 26—*Scope of — Duty of Judge to consider question of compensation in entirety.*

A case referred under S. 18 of the Land Acquisition Act, is subject to the limitation contained in S. 26 of the Act and not merely any particular objection and the District Judge has power and is bound, to consider the question of the compensation awarded in its entirety. 22 M.L.J. 379, foll. ; 38 Cal. 239, diss. (*Shadi Lal and Broadway, JJ.*) ZIA-UD-DIN *v.* THE SECRETARY OF STATE FOR INDIA. 54 I.C. 920 = 68 P.W.R. 1921.

——— Ss. 18 and 30—*Scope of — Reference under Ss. 18 and 30 — Distinction.*

A reference under S. 30 is made solely on the question of title by the Acquisition Officer of his own motion whilst the reference under S. 18 is made in the application of person interested in the compensation money and the reference in this case must be regarded as one made under S. 18. The case was governed by Ss. 31 (2) and 33 of the Act and not by S. 32.

LAND ACQUISITION ACT (I of 1894), S. 18 —Scope of

(*Shadi Lal and Le Rossignol, JJ.*) HAZURA SINGH *v.* SUNDAR SINGH. **53 I.C. 589 = 97 P.R. 1919.**

——S. 18—*Scope of—Omission to press claim—Other remedies barred.*

Reference to Civil Court under the Act is the only remedy of the owners or claimants. (*Robertson and Beadon, JJ.*) AMOLAK SHAH *v.* CHARAN DAS. **16 P.W.R 1913 = 52 P.R. 1913 Sup. = 17 I.C. 634 = 14 P.L.R. 1912.**

——S. 18—*Scope of—Enquiry into succession and investment of money.*

Where there is a dispute as to who is the actual claimant to the compensation the Divisional Judge can decide questions of title to the money. S. 18 of the Act does not apply to the determination of the question of and the investment of money. 4 C.L.J. 256, Fol. (*Chevis, J.*) NIHALKAUR *v.* SECRETARY OF STATE. **18 I.C. 550 = 237 P.W.R. 1912.**

——S. 18 — *Scope of whole case if referred.*

The reference to the Court by the Collector relates to the total amount of compensation to be awarded by the Court and nothing in the Act prevents the Judge from awarding a less sum in every one of the items though he cannot award a less sum in total than the Collector's award. 38 C. 230, not Foll; 12 C.W.N. 98; 12 C.W.N. 985, Foll; 12 C.W.N. 987; 34 C. 451, Expl. When a case is referred by the Collector to the Court the whole case is referred and not any particular objection. 12 C.L.J. 489, approved. (*Abdul Rahim and Sundara Iyer, JJ.*) GANGADHARA SASTRI *v.* DEPUTY COLLECTOR OF MADRAS. **22 M.L.J. 379 = 11 M.L.T. 327 = 14 I.C. 270 = (1912) M.W.N. 712.**

——S. 18—*Scope of—Parties to enquire—Government claiming ownership.*

In proceedings under S. 18, wherein ownership is claimed by Government and denied by other parties having admittedly some interest, the Secretary of State need not be made a party. (*Wallis, J.*) DEPUTY COLLECTOR, CALICUT DIVISION *v.* AYAVU PILLAY. **9 M.L.T. 272 = 9 I.C. 341 = (1911) 2 M.W.N. 367.**

——S. 18—*Scope of—Conditions precedent.*

The conditions prescribed by S. 18 of the Land Acquisition Act are the conditions to which the power of the Collector to make the reference is subject and those conditions must be fulfilled before the Court can have jurisdiction to entertain the reference. (*Kanhaiya, Lal, J. C.*) SAMUEL BURGE *v.* THE IMPROVEMENT TRUST, LUCKNOW. **26 O.C. 324 = 9 O. & A.L.R. 925 = 1924 Oudh 127.**

LAND ACQUISITION ACT (I of 1894), S. 18 —Miscellaneous

Miscellaneous.

——S. 18—*Land acquired under Act—Procedure irregular—Suit for ejectment and possession.*

Necessary formalities under Ss. 6 and 9, Cls. (1) and (2), Cls. 3 and (4) were gone through. The plaintiff even appeared and asked for reference under S. 18; but did not proceed further. In a suit for possession by him subsequently it was held that defendant had acquired title to the land and that the plaintiff's suit must fail. (*Piggott and Lindsay, JJ.*) SHAHJAHAN *v.* SECRETARY OF STATE. **36 I.C. 265.**

——S. 18—*Reference to Improvement tribunal—Stay by High Court.*

An application was made to stay the proceedings before the Improvement Tribunal on the grounds that certain persons who were entitled to the compensation are parties to the suit and not to the reference and that they would not be bound thereby and that accordingly there might be conflicting decisions of the Tribunal and of the Court. It was further said that the Tribunal was wrong in holding that the reference was prior to the suit and it was urged that the suit was more comprehensive and that the Tribunal's proceedings would be useless as they will not operate between the parties as *res judicata*. *Held*, that the plaintiff having made her election under S. 18 of the Act and applied to the Tribunal for stay which had been refused cannot even assuming that a Civil suit was open to her, must fail. (*Greaves, J.*) SM. SHOSHI MUKHI DEBYA *v.* KESHAB LAL MUKERJE. **27 C.W.N. 809 = 1924 Cal. 212.**

——S. 18—*Land acquisition case—Party dissatisfied with award or with apportionment of compensation—Remedy by suit in Civil Court barred.*

In a land acquisition case party dissatisfied with award or with apportionment of compensation cannot have remedy by suit in Civil Court. (*Chatterjee and Panton, JJ.*) SAIBESH CHANDRA SARKAR *v.* SRI BEJOY CHANDRA MAHATAP. **28 C.W.N. 506 = 1923 Cal. 4.**

——S. 18—*Reference by Collector—Application for—Formalities of.*

Under S. 18 a reference can only be made by a written application to the Collector requiring that the matter be referred for the determination of the Court. Where no such demand was made but an application simply mentioned the grounds on which an objection was taken to the compensation awarded by the Land Acquisition Officer and in substance asked him either to release the property in question or award proper compensation therefor or to face a suit for a declaration in the Civil Court to have said acquisition adjudged null and void. *Held*, there was no written demand for a reference of the question of compensation to the

LAND ACQUISITION ACT (I of 1894), S. 19.

Tribunal's decision. (*Kanhaiya Lal*, J.C.) SAMUEL BURGE *v.* THE IMPROVEMENT TRUST, LUCKNOW. 26 O.C. 324 = 9 O. & A.L.R. 925 = 1924 Oudh. 127.

———S. 19 (1) (d)—*Award by Collector—Basis of—Burden of proof.*

The onus is on the claimant to show that the award is calculated on a wrong basis but if the award was made without taking any evidence, the Collector has to justify his award under S. 19 (1) (*d*). 11 C.W.N. 875 Foll. (*Tyabji and Spencer*, JJ.) MARWADI PAD MAJI MIACHAND *v.* DEPUTY COLLECTOR OF ADONI. 24 I.C. 141 = 27 M.L.J. 106.

———Ss. 20 (c), 31 (2)—*Land Acquisition case—Award of compensation—Dispute as to—Appeal—Parties.*

Under S. 20 (*c*) of the Land Acquisition Act the Secretary of State is not interested as a party in the distribution or apportionment of the compensation. If a person to whom a wrong award of compensation is alleged to have been made, is not impleaded as a party respondent to the appeal by a claimant, the Court cannot award him any relief. (*Mears, C.J. and Gokul Prasad*, J.) SANWAL DAS *v.* SECRETARY OF STATE. L.R. 3 A. 389 = 20 A.L.J. 604 = 1922 All. 438.

———S. 23.

BACK AND FRONTAGE LANDS.
BASIS OF COMPENSATION.
BAZAR.
DISTINCT INTERESTS.
FRUIT-BEARING TREES.
HOUSE PROPERTY.
INJURY TO OTHER PROPERTY.
MARKET VALUE.
ORCHARD LAND.
QUARRY.
VACANT LAND.
MISCELLANEOUS.

Back and Frontage Lands.

———S. 23—*Back and frontage lands—Existence of right of way does not destroy ownership—Construction of police lines—Superior holders interests.*

Although there might be a public right of way over a portion of land it does not follow that the claimant is entitled to no compensation at all for his rights as a proprietor. By reason of the Government acquiring a part of the frontage of the land belonging to the claimant, the land behind the plot acquired would by reason of such acquisition be injuriously affected. It is difficult to say because there will be some building occupied by the Police on that piece of land acquired by Government a purchaser wishing to buy the rest of the claimant's land would consider that the Police lines was a drawback, which would reduce its value. The value of the interest of the superior holder must be included in the award and not deducted from the value of the occupant's

LAND ACQUISITION ACT (I of 1894), S. 23—Basis of compensation.

interest. (*Macleod*, C.J. *and Crump*, J.) GAJANAND VINAYAK *v.* THE ASST. COLLECTOR OF SALSETTE. 25 Bom L.R. 480 = 1924 Bom. 64.

———S. 23 (1)—*Back and frontage lands.*

The market value of land may be arrived at by means of the average of the prices realised at previous sales of land in the more or less immediate neighbourhood ; but this is not an absolutely reliable test of arriving at the market value though it may afford a basis for calculation. It is difficult to lay down any hard and fast rule as to the proportionate value of back and frontage land ; but in seeking to fix the proportion it is reasonable to bear in mind how far the land stands back from the road. (*Macleod*, C.J., *Banerjee and Harrington*, JJ.) GURU DAS KUNDU *v.* SECRETARY OF STATE. 22 I.C. 354 = 18 C.L.J. 244.

Basis of Compensation.

———S. 23—*Basis of compensation—Toka land—Compensation for interest of tenants—How fixed.*

On a question arising as to the mode of valuation of the interest of the government in toka lands on a lease of 50 years which would expire in 1929, the Court fixed four per cent. as the rate of assessment on the present value of the land and six per cent. as the rate at which the assessment should be capitalised. (*Macleod*, C.J. *and Crump*, J.) GOVERNMENT OF BOMBAY *v.* KHANDERAO RAMACHANDRA. 25 Bom. L.R. 794 = 1923 Bom. 417.

———Ss. 23 and 24—*Basis of compensation—Quarries—Apportionment of—Interest of Government—Toka tenure.*

The mere fact that there is stone underneath the land sought to be acquired does not mean that the land should be valued on a quarrying basis, whether it would pay a purchaser to extract it would be purely problematical. Where Government has a partial interest in the land sought to be acquired, the valuation of the Government interest is a question of considerable difficulty. The total value arrived at after valuing the land as freehold, must be apportioned between the various parties who have interests in the land, because if an attempt is made to value each of these interests according to the market value the total value of those interests valued in that way would be most unlikely to correspond with the market value of the lands as a freehold. Where the Government has a right to enhance the rent on land, a method which has been generally used to arrive at the present value of that rent is to capitalize at a certain rate and then write it back to the date of acquisition, the rate of capitalisation and the rate of writing back being the same. (*Macleod*, C.J. *and Shah*, J.) GOVERNMENT OF BOMBAY *v.* N.H. MOOS. 24 Bom. L.R. 471 = 47 B. 218 = 1922 Bom 254.

LAND ACQUISITION ACT (I of 1894), S. 23 —Basis of compensation.

———S. 23 (3) (4)—*Basis of compensation—Special use of land—Principle of reinstatement.*

The special adaptability of the land acquired, for a particular purpose, cannot be ignored in determining its market value. On the principle of reinstatement such a sum must be assessed as will enable the owner to replace the premises or lands taken, by premises or lands which would be to him of the same value. (*Mookerjee and Buckland*, JJ.) BARODA PRASAD DEY *v.* SECRETARY OF STATE. **23 C.W.N. 677=1922 Cal. 886.**

———S. 23—*Basis of compensation—Chance of patni lease determining.*

It is difficult to appreciate the monetary value of the chances of the *patni* lease coming to an end by sale or forfeiture. (*Macleod*, C.J. *and Fletcher*, J.) BIHRODAS PAL CHAUDHURI *v.* SARAT CHANDRA SINGHA **17 I.C. 168=16 C.L.J 209**

———S. 23—*Basis of compensation.*

In a land acquisition case, the price of the land proposed to be acquired must be fixed in reference to the probable use which would give the owner the best return and not merely in accordance with its present use. (*Abdul Raoof*, J.) HARDWARI MAL *v.* SECRETARY OF STATE FOR INDIA **64 I.C. 146.**

———S. 23—*Basis of compensation—Test—Market value.*

Market value affords a good test for calculating the value of lands to be acquired and the calculation should be based upon a prudent business method such as the nature of the land and the purpose for which it was used and for which it is acquired. A claimant must show that it is a building land or is likely to become building land at an early date before he can claim compensation on that footing. (*Johnstone*, J.) SECRETARY OF STATE FOR INDIA *v.* GOBIND RAM. **252 P.L.R. 1911=11 I.C. 838=253 P.W.R. 1911.**

———S. 23—*Basis of compensation—Principles of assessment.*

The price should be assessed with reference to the probable use which would give the owner the best return. The Act should be expounded liberally in favour of the public and strictly against the Government or company taking the land. The rate at which nearest lands with similar advantages have been sold within a short period before and after the notification should be taken into account. An average, struck from sales during the last five years of lands situated at different parts is no criterion. (*Chatterjee and Johnstone*, JJ.) KAM SARAN DAS *v.* COLLECTOR OF LAHORE. **9 I.C. 228=9 P.W.R. 1911**

———Ss. 23 and 24 (5)—*Basis of compensation—Acquisition of land for reclamation and building purposes—Market value.*

Per *Venkatasubba Rao*, J.—Where land is acquired by Government, the owner is entitled to the value obtainable in open market for the land, if put to its most lucrative use. In assessing the compensation, the Court may take into consideration not only the present purpose to which the land is applied but also any other more beneficial purpose to which, in the course of events, it might within a reasonable period be applied. The special adaptability for building purposes can be taken into consideration, where in the case of lands which are at the time of the acquisition agricultural in character —English and Indian law considered. (*Phillips and Venkatasubba Rao*, JJ.) THAREESAMMA *v.* DEPUTY COLLECTOR, COCHIN. **46 M.L.J. 339=18 L.W. 356=(1923) M.W.N. 682=33 M.L.T. 48 (H.C.)=1924 Mad. 252.**

LAND ACQUISITION ACT (I of 1894), S. 23 —Bazar.

———Ss. 23, 11, and 19 (1) (d)—*Basis of compensation—Market value.*

Where there are two data available, one based on the market value of the neighbouring lands and the other on the classification of lands into agricultural and building sites, it is safer to adopt the former as the basis of valuation. (*Tyabji and Spencer*, JJ.) MARWADI PADAMJI MIACHAND *v.* DEPUTY COLLECTOR OF ADONI. **24 I.C. 141=27 M.L.J. 106.**

———S. 23—*Basis of compensation—Wrongful act of Municipal corporation—Owner deprived of facilities for irrigation—Land subsequently acquired by Corporation—Compensation to owner—Basis.*

Where by the wrongful Act of a Municipal Corporation an owner of land was deprived of his facilities for irrigation in the nature of an easement and subsequently the same land was acquired from him by the Corporation, the amount of compensation shall be based not merely on the market value of the land but also on the amount of damages payable to the owner for deprivation of water rights of his land. (*White*, C.J. *and Sankaran Nair*, J.) GOPALACHARIAR *v.* DEPUTY COLLECTOR OF MADRAS **22 I.C. 306.**

Bazar.

———S. 23—*Bazar—Acquisition of.*

If a *bazar* is acquired under the Act, the claim of the proprietor should not be based on rental but on the permanent rents received from the shops in the *bazar* and also on the loss of earnings in respect of profits from tolls received from people who come to the *bazar* with baskets, though such profits vary according to the number of baskets brought by the miscellaneous sellers to the *bazar*. A *bazar* was liable to competition from a rival *bazar* likely to be started in the neighbourhood and thus diminishing its income, and its profits were dependent partly upon permanent rent of the shops held in it, and partly upon the fluctuating elements of tolls raised from sellers who came to the *bazar* in varying numbers with baskets. *Held*, that the valuation at about 18 years' purchase was proper. (*Sanderson*, C.J. *and N. R. Chatterjee*, J.) OFFICIAL TRUSTEE OF BENGAL *v.* THE SECRETARY OF STATE. **39 I.C. 619.**

LAND ACQUISITION ACT (I of 1894), S 23 —Distinct Interests.

Distinct Interests.

———S. 23 (1)—*Distinct interests—Limited owner—Administratrix—Power to order distribution of costs.*

It is competent to a land aquisition judge to direct a portion of the compensation money to be paid towards the cost of the proceedings by which the money came to be awarded to an administratrix having a limited power of alienation. 39 C. 33, Rel. (*Chatterjee and Panton, JJ.*) LALIT MOHAN DEY *v.* H N. DUTTA & CO. 68 I.C. 209.

———S. 23—*Distinct interests—Apportionment—Hypothetical grounds.*

The market value of the land acquired may be determined on many hypothetical grounds. But the question of apportionment of the sum awarded as between the landlord and his tenant must be based not on hypothetical ground but on an accurate determination of the value of their respective interests in the land. The moment the land is acquired it ceases to be the property of both the landlord and the tenant, and it is consequently erroneous to bring into consideration the hypothetical assumption that the land would continue to be covered by the huts for several years and that at the end of that period would be delivered by the tenant to the landlord. (*Mookerjee and Panton, JJ.*) NAYAN MONJURI DAS *v.* HEM LAL DUTT. 68 I.C. 417=32 C. L.J. 137.

———S. 23 (1)—*Distinct interests.*

The value of land should ordinarily be determined as a whole and the question of apportionment of the compensation awarded amongst claimants of different degrees should thereafter be taken into consideration, In this case, however, interest of different degrees were valued successively and independenly of each other as convenient. The market value of land is the price when it is offered for sale by one who desires but is not obliged to sell and is bought by one who is under no necessity of having it. In the determination of the question of market value of tenancies of a precarious nature a Court has to look to the commercial value rather than to abstract legal rights. Though the interest of the tenant may be so precarious that he and his transferee may be compelled to leave the land at the will of the superior landlord, his interest cannot be said to have no market value. (*Mookerjee and Panton, JJ.*) SADHU CHARAN ROY CHOWDHURY *v.* THE SECRETARY OF STATE.
24 C.W.N. 164=55 I.C. 150=31 C.L.J. 63.

———Ss. 23, 26—*Distinct interests—Award —Validity.*

Compensation must be awarded in respect of land, acquired compulsorily under the Act, it being beyond the competence of the Collector or the Special Jugde to hold that there is no interest in the land for which compensation is payable. Where land held by a tenant under Government was acquired and there was also a *Kabuliyat* under which the tenant agreed to give up the land without compensation if the Government required it, *held*, even then, land must be assessed and compensation awarded under S. 23 read with S. 26 of the Act, apart from their respective rights under the *Kabuliyat*. (*Mookerjee and Cuming, JJ.*) BIJOY KUMAR ADDY *v.* SECRETARY OF STATE. 39 I.C. 889=25 C.L.J. 476.

———S. 23—*Distinct interests—Interest of Government in Noabad properties.*

The interest of the Government in Noabad hill lands is to be valued at 30 times the present rental. (*Mookerjee and Beachcroft, JJ.*) JOGESH CHANDRA ROY *v.* SECRETARY OF STATE. 24 I.C. 65=18 C.W.N. 831.

———S. 23—*Distinct interests—Occupancy rights—Mode of assessment.*

In ascertaining the market value of agricultural lands within a municipal area in the occupation of occupancy tenants the Court should first leave out of consideration the value of the occupancy right and ascertain the market value of the land acquired if applied to the most lucrative use having regard to its condition, local position and advantages, then the value of the occupancy rights of the tenants settled on the land and after having ascertained the two values, the balance after deducting the latter from the former would represent the landlord's interest. (*Brett and Carnduff, JJ.*) COLLECTOR OF DACCA *v.* HARI DAS BYSAK.
14 I.C. 163.

———S. 23—*Distinct interests—Tenant.*

The compensation to which the tenant is entitled is his yearly profit multiplied by a number of years which the lease had yet to run, no deduction being made as the money for the entire unexpired period was paid in a lump sum. (*Tottenham and Ameer Ali, JJ.*) JOGENDRA CHANDRA *v.* RAJENDRA NATH. 9 I.C. 923=13 C.L.J. 262.

———Ss. 23 and 24—*Distinct interests—Land acquired subject to occupancy rights of tenants—Mode of valuation.*

The proper mode of valuing lands where tenants have rights is to ascertain what would be the market value of the land if it were put to the most lucrative use having regard to its condition etc. The value of the occupancy rights of the tenants has to be ascertained afterwards. The difference between the market value and the value of the tenant's interest represents the landlord's interest. 10 Bom. L. R. 57; 33, B. 483; 14 I.C. 163, Rel. (*Wallis, C.J. and Kumaraswami Sastri, J.*) THE RAJAH OF PITTAPURAM *v.* THE REVENUE DIVISIONAL OFFICER, COCANADA, GODAVARI DISTRICT. 42 Mad. 644=
51 I.C. 656=36 M.L.J. 465.

———S. 23—*Distinct interests—Melvaram and Kudivaram.*

When there are distinct interests in the land *melvaram* and *kudivaram*, compensation

LAND ACQUISITION ACT (I of 1894), S 23 —Fruit-bearing trees.

must be awarded for both and not in respect of one alone. (*Wallis*, C.J. *and Tyabji*, J.) HOTHA VIRABHADRAYYA *v.* REVENUE DIVISIONAL OFFICER. **29 I.C. 8.**

Fruit-bearing trees.

——— S. 23—*Fruit-bearing trees—Valuation.*

Fruit-bearing trees should also be valued at twenty times the annual rental. (*Wallis*, C.J. *and Kumaraswami Sastri*, J.) RAJAMMAL *v.* HEADQUARTERS DEPUTY COLLECTOR OF VELLORE. **25 I.C. 393.**

House Property.

——— Ss. 23 and 49—*House property—Rent income—Compound appurtenant to house but in possession of cultivating tenant.*

A plot of land appurtenant to a house as compound was acquired along with the house. The land in question was let to agricultural tenants who had acquired occupancy rights. The compensation was calculated at 16 years purchase of the net income of the plot plus a sum of money paid as compensation to the tenants. *Held*, that the principle adopted for awarding compensation, was correct. (*Piggott and Walsh*, JJ.) L. W. ORDE *v.* THE SECRETARY OF STATE FOR INDIA. **40 All. 367=44 I.C. 923= 16 A.L.J. 301.**

———S. 23—*House property—Onus—Principle of assessment, when based on rental value.*

The onus of proving the value of land acquired is upon the claimant and for this purpose evidence of instances of sales of similar land used for similar purposes, is necessary. In the absence of such evidence regard should be had only to the rental value and the value should be settled at 20 years purchase on the net profit after a fair percentage is deducted for taxes and repairs. (*Holmwood and Teunon*, JJ.) BISWA RANJAN *v.* SECRETARY OF STATE. **11 I.C. 62.**

———Ss. 23] and 28—*House property—valuation.*

The value of a house in a town of growing importance should be calculated at twenty times the annual rental value and the annual rent should not be the present rent, but also likely future rent minus the cost of annual ordinary repairs. (*Wallis*, C.J. *and Kumaraswami Sastri*, J.) RAJAMMAL *v.* HEADQUARTERS DEPUTY COLLECTOR OF VELLORE. **25 I.C. 393.**

———S. 23—*House property—House sites—Compensation—Consideration.*

In valuing house sites the value of the adjoining land, which is unfit for building purposes should not be taken as the basis. The loss of earnings owing to the loss of a favourable locality is to be calculated on the basis of what would be the loss of earnings if the trade occupation were shifted to another locallty, and the Judge should not take into consideration the earnings which may accrue from the new situation. (*Abdur Rahim and Sadasiva Aiyar*, JJ.) VENKATACHARIAR *v.* DIVISIONAL OFFICER, TINNEVELLY. **14 I.C. 625= (1912) M.W.N. 460.**

LAND ACQUISITION ACT (I of 1894), S. 23 —Market value.

Injury to other property.

——— S. 23 (1)—*Injury to other property.*

Where part of a person's land is acquired for sewage depot, the close proximity of the depot. to the other adjoining land of the person would lower its value; and compensation may be awarded for damage likely to be sustained. (*Macleod*, C. J., *Banerjee and Harrington*, JJ.) GURUDAS KUNDU *v.* SECRETARY OF STATE. **22 I.C. 354=18 C.L J. 244.**

——— S. 23 (1)—*Injury to other property—Compensation.*

An owner of land, acquired for public purposes, is entitled to be compensated for injuries to other lands notwithstanding the benefits that might accrue to him from the execution of the project. He is also entitled to damages for loss of facilities in communication and access to his other lands. (*Wallis*, C.J. *and Srinivasa Aiyangar*, J.) NATHAR HUSSAIN *v.* DEPUTY COLLECTOR, USILAMPATI. **31 I.C. 259.**

Market Value.

———S. 23 (1) *Market value—Hypothetical building scheme of development.*

Hypothetical building schemes of development are the most clear bases of valuation in case of compensation or compulsory acquisition. Such schemes can therefore be admitted in evidence though the weight to be attached to any particular scheme is a matter for tribunal hearing of the case. (*Lord Macnaghten*). MERWANJI *v.* GOVERNMENT OF BOMBAY. **16 Bom L.R. 55 (P.C.)**

———S. 23 (1)—*Market value—Price paid by owner—Evidence.*

The fact that the owner of a house had obtained it at a cheap price, would not entitle the Government acquiring it to get it under the fair market value; but the price paid by the owner shortly before the publication of the notification would be a valuable piece of the evidence in ascertaining the market value. (*Richards*, C.J. *and Banerji*, J.) QAMAR ALI *v.* COLLECTOR OF BAREILLY. **23 I.C. 542.**

———S. 23—*Market value—Determination of.*

For purposes of S. 23 of Act I of 1894 the market value of property sought to be acquired, should be determined with reference to the most advantageous way in which the land may be used; a land, for instance, cannot be valued as a building site, when the owner would not in the usal course, be permitted to build upon it. (*Karamat Husain and Chamier*, JJ.) UJJAGAR LAL *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL. **33 All 783= 11 I.C. 815=8 A.L.J. 796.**

LAND ACQUISITION ACT (I of 1894), S. 23 —Market value.

———S. 23—*Market value—Considerations —Speculation.*

The market value of a plot of land is to be determined as a whole, having regard to the sales in the vicinity. The mere fact that it was purchased by a speculator in land with the aim of selling it again at a profit is no footing for disregarding the sale for assessing the compensation. The expression "market value" means the value which a parcel of land would realise if sold in the market. The seller must be one who is willing to sell standard a forced sale affords no criterion of market value. The purchaser must be a prudent purchaser, *i.e.*, one who makes his offer after making necessary enquiries as to the value of the land; an offer made by one knowing nothing of the value of the land in the locality and who makes no enquires about it affords no test of market value. The state of the market at the material date is an important item in determining the market value. (*Mulla*, J.) THE GOVERNMENT OF BOMBAY *v.* MERWAR MOONDIGAR AGA.

23 Bom. L.R. 1182=48 Bom. 190= 1924 Bom. 161.

———S. 23—*Market value — Valuation of land—Development—Schemes for.*

Where a property has been recently purchased by the claimant, the purchase money would be a fair test of its market value. It would however be open to the claimant to show that in the neighbourhood there has been a general rise in the value of property since his purchase, by adducing evidence of subsequent sales in the neighbourhood. On the other hand it would be open to Government to show that the claimant when he purchased the property, had taken a far too sanguine view of its possibilities in the future. The two most important questions are (1) whether the claimant has paid so high a price that the court may caution that he has not displayed the ordinary caution which a purchaser of land should display; (2) whether there has been any increase in the value of property in the neighbourhood within the short period between the purchase and the Govt. acquisition, (*Macleod*, C.J. *and Shah*, J.) K. P. FRENCHMAN *v.* THE ASST. COLLECTOR, HAUELI. 24 Bom. L.R. 782= 1922 Bom. 399.

———S. 23—*Market value — Adaptability for possible use in particular way.*

The fairest and most favourable principle of compensation to the owners is to estimate the market value of the property, not according to its present disposition, but laid out in the most lucrative and advantageous way in which the owners could dispose of it. 2 Cal. 109, Ref. to. The tribunals assessing compensation must take into account, not only the present purpose to which the land is applied but also any other beneficial purpose to which in the course of events it might within a reasonable period be applied just as the owner might do if he were bargaining with a purchaser in the market. Per *Buckland*, J.—Whether or not the particular in which compensation is claimed that the land is so laid out could be disposed of to the best advantage by the owner is one appropriate to prevailing conditions is a question of fact to be decided according to the circumstances of each case. (*Mookerjee and Buckland*, JJ.) MOHINI MOHAN BANERJEE *v.* SECY. OF STATE FOR INDIA. 25 C.W.N. 1002= 67 I.C. 28=34 C.L J. 188.

LAND ACQUISITION ACT (I of 1894), S. 23 —Market value.

———S. 23 (1)—*Market value—Rent of land.*

Where property was leased two years after a declaration for its acquisition the present rent is not a conclusive test as to its market value at the date of acquisition. (*Mookerjee and Beachcroft*, JJ.) JOGESH CHANDRA ROY *v.* SECRETARY OF STATE. 24 I.C. 65= 18 C.W.N. 891.

———S. 23—*Market value— How ascertained.*

The market value of a certain bustee land compulsorily acquired by the Calcutta Municipality shall be determined according to the market value then existing of the land as matters then stood, and not by any use to which the land may be put in future, nor by any valuation based on the most advantageous disposition of the land. (*Fletcher and Richardson*, JJ.) MANINDRA CHANDRA NANDI *v.* SECRETARY OF STATE. 41 Cal. 967= 23 I.C. 412=18 C.W.N. 884.

———S. 23—*Market value—Similar lands.*

To ascertain the market value of property at a certain time, it is a valuable index as to the value of the property, to ascertain prices obtaining for lands more or less similarly situated in the same neighbourhood. (*See* the observations of Banerjee, J. in 22 I.C. 78.) (*Maclean*, C.J. *and Banerjee*, J.) AMRITAL LAL BASACK *v.* SECRETARY OF STATE. 22 I.C. 78.

———S. 23—"*Market value*"—*What is.*

The market value of land is roughly, the price which an owner willing, and not obliged to sell, might expect from a willing purchaser. (*Jenkins and Doss*, JJ.) KAILAS CHANDRA MITRA *v.* SECRETARY OF STATE. 18 I.C. 638=17 C.L J. 85.

———S. 23 (1)—*Market value—Calculation.*

In calculating the value of a plot of land the price previously paid for a portion of the same area affords infinitely the best material which can possibly exist if the prices remain stationery. (*Shadi Lal*, C.J. *and Harrison*, J.) RAI BAHADUR LALA NARASINGH DAS *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL. 1922 Lah. 327.

———S. 23—*Market value—Similar lands.*

Unless similarly circumstanced and situated, the rate of the sale price of lands in the

LAND ACQUISITION ACT (I of 1894), S. 23 —Market value.

vicinity is not relevant in determining the market value of land acquired under the Land Acquisition Act. (*Scott-Smith and Agnew, JJ.*) KANWAR RAMGUR SINGH *v.* SECRETARY OF STATE. **17 P W.R. 1913=21 I.C. 270= 309 P.L R. 1913.**

———Ss. 23 and 24—*Market value—Building surrounded by garden land—Compulsory acquisition—Mode of valuation—Twenty times the net annual rental.*

Where property consisting of a building surrounded by 8½ acres of garden land had been let as a whole block for several years before the date of its acquisition by the Government and the Court below awarded twenty times the net annual rental (deducting Municipal taxes, revenue charges and costs of repairs) as compensation to the owner. *Held*, that the amount awarded was reasonable and that it was not proper to value the land and building separately as independent items and award the aggregate value as compensation. (*Krishnan and Ramesam, JJ.*) RATHNAMASARI *v.* SECRETARY OF STATE FOR INDIA. **44 M L J. 132= 17 L.W. 415=32 M.L.T. (H C.) 879= 1923 Mad. 332.**

———S. 23—*Market value—Buildings and land—Valuation—Repairs—Allowance for.*

When a building and its appurtenant land cannot be valued separately and no attempt has been made to do so in the land acquisition proceedings the market value must be determined on the net rental value and when that is done the building cannot be separated from the land, for it is impossible to say what proportion of the rent is fixed on the building and what on the land. 33 B. 325 ; 2 C. 123, Ref. ; 25 I. C. 393, not foll. The question as to what should be deducted for repairs in calculating the net rental is one of fact. 25 I. C. 393 Ref. (*Phillips and Devadoss, JJ.*) KATHISSABI *v.* REVENUE DIVISIONAL OFFICER, CALICUT. **(1923) M.W.N 54= 31 M.L.T. 409 (H.C.)=16 L.W. 891= 1923 Mad. 31.**

———S. 23 (1)—*Market value—Speculations as to effect of suggested development on prices—How far to be taken into account.*

Speculations as to the effects which any suggested development may have on prices must be excluded, save to the extent to which it is shown that such speculations have actually entered into the market price of land to be acquired at the date of declaration. 26 B. 1, Foll. (*Tyabji and Spencer, JJ.*) MARWADI PADMAJI MIACHAND *v.* DEPUTY COLLECTOR OF ADONI. **24 I.C. 141= 27 M L.J. 106.**

———S. 23 (1)—*Market value—Award on speculations.*

An award of compensation under the Land Acquisition Act cannot be made on speculations and hypothetical schemes of the future development of land. A Land Acquisition Judge took

LAND ACQUISITION ACT (I of 1894), S. 23 —Orchard land.

the market value of the land at Re. 1-8 per square yard, but on the ground that the plot was a large one and the claimant could not dispose of it in 9 years made a deduction of 25 per cent and made further deductions on account of roads which would have to be made to sell the land as a building site. *Held*, that it was not a proper way to award compensation. 33 B. 28, Dist. (*Abdur Rahim and Sundara Iyer, JJ.*) BASAVARAJU KRISHNA ROW *v.* HEAD ASSISTANT COLLECTOR OF BEZWADA. **15 I.C. 672.**

———S. 23—*Market value—Meaning of.*

Market value means the price that would be paid by a willing buyer to a willing seller when both are actuated by the business principles prevalent at the time the transaction takes place in the locality, in which it takes place. (*Stuart, J.*) BRIJRANI *v* DEPUTY COMMISSIONER, SITAPUR **57 I.C. 301=23 O.C. 89.**

———S. 23 (1)—*Market value—Determination of—If sale by a Hindu widow can afford basis—If a single transaction can be relied on.*

A sale by a Hindu widow of neighbouring land cannot afford a basis for calculating the market value under the section as the full value is not fetched at such transactions nor can an isolated transaction afford it, as the price fetched might have been artificial. (*Das and Adami, JJ.*) NITYANANDA DAS *v.* SECRETARY OF STATE FOR INDIA. **57 I.C. 734.**

———S. 23 (1)—*Market value—Criteria for determining.*

The criteria for determining the market price of land for purposes of Land Acquisition Act, will depend upon the circumstances of each case, which would include also compensation for damage caused, by the severance of the land sought to be acquired from other lands. Such damage would include not merely that caused at that time, but also that which may reasonably be anticipated and estimated. (*Mc. Coll, A.J.C.*) THE INDO-BURMA PETROLEUM CO. *v.* THE COLLECTOR OF YENANGYAUNG. **12 I.C. 202=4 Bur. L.T. 250.**

———S. 23—*Market value—Sales of similar lands—Evidence—Sale deeds not registered—Admissibility in evidence.*

An unregistered deed of sale of property above Rs. 100 in value cannot be considered in evidence even for the purpose of estimating the value of lands close by, in a reference under S. 18 of the Land Acquisition Act. (*Hartnoll, C.J. and Twomey, J.*) MA SHWE U *v.* COLLECTOR OF MYANAUNG. **11 I.C. 918= 4 Bur. L.T. 204.**

Orchard Land.

———S. 23—*Orchand land—Mode of assessment.*

In assessing compensation for the acquisition of orchard lands, regard should be had

LAND ACQUISITION ACT (I of 1894), S. 23 —Quarry.

(1) to the recent selling price of similar land in the neighbourhood; (2) to the suitability of the land for orchard purposes; and (3) to its situation with regard to the market. A calculation of the valuation of the ordinary occupancy rights in the neighbouring plots and of the value of the trees of which the orchard is composed is not a satisfactory method of arriving at the proper compensation for orchard land, and should only be adopted where there is no possibility of ascertaining the value of the lands as orchard lands. (*Sharfuddin and Roe*, JJ.) SECRETARY OF STATE FOR INDIA v. BASNI LAL SAHU. 43 I.C. 17= 2 Pat. L.J. 615.

Quarry.

——S. 23—*Quarry—Adventitious value of land.*

Under the Land Acquisition Act if the land has an adventitious value in the sense that it is something beyond being merely agricultural and applicable for a particular purpose, the Court has to consider it in assessing compensation. Where land is acquired for quarrying, its special adaptability for the purpose must be taken into consideration. (*Batchelor and Shah*, JJ.) DAYA KHUSHUL v. THE ASSISTANT COLLECTOR, SURAT 38 Bom. 37= 21 I.C. 320=15 Bom. L.R. 845.

——S. 23—*Quarry — Mode of assessing compensation for.*

Per *Fletcher and Greaves*, JJ.,—(*Huda*, J. dissenting). The compensation payable in respect of quarry, must be based on the amount of workable stone likely to be gotten therefrom taken at a rate to be determined from the evidence. Per *Huda*, J.—In cases of this kind it is generally necessary to take two or all the methods of valuation available in order to arrive at a fairly correct valuation as exact valuation is practically impossible and approximate market value is all that can be aimed at. (*Fletcher, Greaves and Huda*, JJ.) MAZAFFAR ALI KHAN v. THE SECRETARY OF STATE FOR INDIA. 45 I.C. 1.

——S. 23—*Quarry—Basis of compensation —Present value of expected output.*

Special adaptability of a land as quarry is an element for consideration when the land is compulsorily acquired and the basis is the present value of the expected output. (*Oldfield and Bakewell*, JJ.) RAGHUNATH RAO v. SECRETARY OF STATE. 44 Mad. 261= 38 M.L J. 623=(1920) M.W.N. 759= 28 M.L.T. 397=60 I.C. 187=13 L.W. 11.

——S. 23—*Quarry—"Land consisting of gravel and laterite."*

In assessing compensation, the Court has to ascertain the market value, that is the value which would be paid in the market by a purchaser of good ability and well qualified to put the land to the best advantage. On the acquisition of land from which gravel was quarried, *held* that twenty times the annual income derived from the land was a proper basis of assessment of compensation. (*Chapman and Roe*, JJ.) BIRBAR NARAIN CHANDRA v. COLLECTOR OF CUTTAK. 39 I.C. 14= 2 P.L.J. 147.

Vacant Land.

——S. 23 (1)—*Vacant land.*

In awarding compensation for vacant land, the existence of a tenant was supposed and the amount of possible rent with the value of landlord's interest on it was taken to be the sum of compensation. It was held that the principle was unsound. (*Mookerjee and Panton*, JJ.) HEMCHANDRA v. SECRETARY OF STATE. 56 I.C. 738=31 C.L.J. 204.

Miscellaneous.

——S. 23—*Land within Municipality—Prevailing price, absence of.*

In the absence of positive evidence of the prevailing price of adjoining lands, the Court should calculate the compensation by capitalizing the average annual letting value of similar municipal lands to which, the 15 per cent. addition provided by S. 23 (2) of the Act is to be made for compulsory acquisition. (*Banerjee and Sulaiman*, JJ.) KRISHNA BAI v. THE SECRETARY OF STATE FOR INDIA. 42 All. 555=57 I.C. 520=18 A.L J. 695.

——S. 23—*Valuation of compensation by Collector—If can be displaced.*

The Court has to see in each case whether the evidence adduced displaces the amount awarded by the Collector. (*Fletcher and Shamsul Huda*, JJ.) HIGGINS T. W. v. SECRETARY OF STATE FOR INDIA. 46 I.C. 221= 22 C W N. 659.

——S. 23 (1)—*Public body — Rights—Quære.*

Whether a public body acquiring land under the Act for one specific purpose, can use it for other purposes. (*Maclean*, C J. *and Banerjee and Harrington*, JJ.) GURU DAS KUNDU v. SECRETARY OF STATE. 22 I.C. 354= 18 C.L.J. 244.

——S. 23 — *Amount of compensation—Court has no power to reduce.*

A Subordinate Court cannot reduce the amount of compensation awarded by the Collector even though there was a mistake in his calculation. 22 M.L J 379; 19 A.L.J. 871. Ref. (*Phillips and Devadoss*, JJ.) KATHISSALI v. THE REVENUE DIVISIONAL OFFICER, CALICUT. 16 L W. 891=31 M.L T. 409 (H.C.)= 1923 M.W.N. 54=1923 Mad. 31.

——S. 24—*Improvements after notification.*

If the owner of a land invests more capital in the land after the publication of notification he does so at his risk. (*Tudball and Abdul Raoof*, JJ.) SECRETARY OF STATE v. QAMAR ALI. 31 I.C. 501=16 A.L.J. 669.

LAND ACQUISITION ACT (I of 1894), S. 24.

———S. 24—*Delay between notification and acquisition—Excess area.*

Claims, not barred by S. 24, which are just and equitable, should be duly considered. Delay between notification and actual acquisition, unless damages have been caused, should not be taken into consideration. Excess area not really existing, but appearing in revenue records is not to be paid for. (*Chevis and Jones*, JJ.) JOHNSTONE *v.* SECRETARY OF STATE FOR INDIA. **42 I C. 905 = 60 P.R. 1917.**

———S. 24 — *Considerations—Purposes of acquisition—Opinion of witnesses.*

When agricultural land is acquired for *mandi* the compensation should be assessed at the amount which similar land in the neighbourhood would fetch for purposes of agriculture. The purposes for which the land is taken should not influence the measure of compensation. The evidence of witnesses giving opinions as to the value of land or expressing their willingness to purchase it, should not be considered in determining the amount of compensation except under certain circumstances nor the value paid by District Board in a private purchase made to avoid delay in acquisition under the Act. (*Reid*, C.J. *and Robertson*, J.) SECRETARY OF STATE *v.* BASAWA SINGH. **57 P.R. 1918 = 17 P L R. 1912 = 17 I.C. 764 Sup. = 19 P.W.R. 1913.**

———S. 25 — *Collector's award — District Judge—Power to modify award.*

Where a person objects to the Collector's award and the case comes into the Civil Court the whole case is re-opened so far as that objector is concerned, and though the District Judge cannot reduce the Collector's award it is open to him to uphold that award on the ground that though the award my be insufficient as regards certain parts of the claim it is sufficient on the whole. 22 M.L.J. 379 Fol.; 38 C. 230, Diss. (*Chevis and Leslie Jones*, JJ.) JOHNSTON *v.* SECRETARY OF STATE FOR INDIA. **42 I.C. 905 = 60 P.R 1917.**

———Ss. 25, 3, 9 and 18—"*Applicant*," *meaning of—Object and policy of section—'Widows' claim before Acquiring officer does not preclude reversioners from claiming larger amount before District Judge.*

The word "applicant" in S. 25 is used to describe the person who puts in a written application under S. 18 for having his objection to the award referred for decision to a Civil Court. He is not necessarily identical with the person who makes a claim after notice under S. 9. All that S. 18 requires is that he should be "a person interested" within the meaning of S. 3, who should not have accepted the award. S. 25 is designed with the purpose of holding claimants to their own bargains and of preventing demands being increased at every stage from the Collector to the High Court. Claimants are estopped from getting more from the judge than what they claimed before the Collector and on the same principle their legal representatives will also be bound. Where a Hindu widow claimed compensation at a certain rate before the Acquiring officer, but afterwards surrendered the estate to the reversioners, the latter are not precluded by S. 25 from claiming a higher amount before the District Judge; for, though a widow represents her husband's estate for certain purposes, the reversioners are not her legal representatives. Nor are they bound by her acts on any principle of estoppel. (*Spencer and Kumaraswamy Sastry*, JJ.) GATTINENI PEDA GOPAYYA *v.* DEPUTY COLLECTOR OF TENALI. **45 Mad. 421 = 42 M L J. 298 = 18 L W. 366 = (1922) M.W.N. 188 = 1922 Mad. 100.**

LAND ACQUISITION ACT (I of 1894), S. 25.

———S. 25 (1)—*Award not to exceed claim—The amount awarded must not exceed the amount claimed—Meaning.*

It means that the total claim and not a claim under any particular head should not be exceeded. (*Mc Coll*, A.J.C.) THE INDO-BURMA PETROLEUM CO *v.* THE COLLECTOR OF YENANGYANG. **12 I C. 202 = 4 Bur. L.T. 250.**

———S. 25, (2)—*Omission to prefer a claim.*

Where no sufficient reason is given for not putting forward a claim under S. 9 of the Act, the Judge should not interfere with the award of the Collector. (*Tudball and Rafique*, JJ.) NARAIN DUTT *v.* SUPERINTENDENT OF DEHRA DUN. **37 A. 69 = 26 I.C. 795 = 12 All. L.J. 1319.**

———S. 25 (2)—*Omission to appear according to* S. 9 (2)—*Effect.*

Refusal or omission to appear according to S. 9 (2) without sufficient cause, disentitles the claimant from getting a greater sum than that awarded by the Collector. (*Tudball and Richards*, JJ.) SECRETARY OE STATE *v.* BISHUN DUTT. **33 A. 376 = 9 I.C. 428 = 8 A.L.J. 115.**

———S. 25 (2)—'*Sufficient reason*'—*Failure to prefer claim.*

Where the correspondence showed that the applicants in a Land acquisition case, company, were fighting out the question of re-measurement; and were under the impression that the question of valuation would be taken after the question of measurement was finished and had no idea that the very next day after the measurement was completed in their presence, the Collector would make his award without any previous notice to them. *Held* there was sufficient reason for the applicant within S. 25 for the omission to prefer claims before the Collector. (*Chatterjee and Pearson*, JJ.) BURN AND CO. LTD *v.* SECY. OF STATE FOR INDIA. **1923 Cal. 513.**

———S. 25 (2)—*Omission to prefer claim—Effect.*

Though ordinarily a person who has raised no objection to the apportionment of compensation made by the Collector is not entitled to

LAND ACQUISITION ACT (I of 1894), S. 27.

have it valued for his own benefit, when a reference is made by some other party who considers himself aggrieved, yet where the scope and object of reference obtained by the aggrieved party is not to settle any question of apportionment, but merely to obtain a higher amount than that allowed by the Collector the other party too is entitled to claim that the award should be valued for his own benefit too. 34 C. 451, Foll.; 11 C.L.J. 420, rel. (*Mookerjee and Carnduff*, JJ.) BEJOY CHAND *v.* P. K. MOZUMDAR. 9 I.C. 582=13 C.L.J. 159.

———S. 27—*Costs in Land Acquisition cases.*

The same method of calculating costs should be adopted in land acquisition cases as in ordinary suits. (*Scott Smith and Broadway*, JJ.) D. A. V. COLLEGE MANAGEMENT AND TRUST SOCIETY *v.* SECRETARY OF STATE. 37 I.C. 760=126 P.R. 1916.

———S. 29—*Apportionment of compensation—Khot and occupant—Occupant in possession of specific area of* warkas.

In the case of warkas or bhati land in Salsette, it has been a recognised custom to divide the compensation between the occupant and the Khot in the proportion of 2 to 1. But that has been due to the fact that in the case of such lands it is extremely difficult to define, and ascertain the value of the respective interests of the Khots and the occupants, with the result that a rough and ready method of division has been adopted for want of a better one. In many cases the claimants against the Khots can hardly be called occupants. The claims are based on the fact that they are occupants of certain defined plots of land for the purpose of cultivating them so that by reason of such rights as occupants, they are entitled to other rights over the adjacent lands either for the purposes of grazing or of gathering *rab* materials. It is not generally shown that in such cases the occupants of cultivated lands have any defined area of warkas or bhati lands allotted to them, and so in order to divide the compensation between the Khot and the persons who have the right of user, owing to their position as cultivators, it has been found a convenient compromise to divide the compensation between them in that proportion. But it is entirely different where you find a tenant in occupation of a defined area of land, and paying assessment for it. Then undoubtedly he has a right to possession of all that area. (*Macleod*, C.J. *and Crump*, J.) GAJANAN VINAYAK *v.* ASST. COLLECTOR OF SALSETTE. 25 Bom. L.R. 480=1924 Bom. 55.

———Ss. 29, 30—*Apportionment—Principle—Zamindar—Jotedar and Raiyat.*

In apportioning compensation for land acquired if the rent of a tenant is fixed for a certain period the landlord is entitled to a capitalisation of as much rent as is found to be payable *plus* 15 per cent. for compulsory acquisition and something more for the possibility of the enhancement of the value of the land hereafter. In fixing the amount of compensation the question of how much the landlord is realising from the land should also be considered. (*Stephen and Richardson*, JJ.) JAGAT CHANDRA DUTT *v.* COLLECTOR OF CHITTAGONG. 40 Cal. 64=17 C.W.N. 1001=18 I.C. 551=17 C.L.J. 61.

LAND ACQUISITION ACT (I of 1894), S. 30.

———Ss. 29, 30, 45—*Apportionment of compensation*—Abadi—*Tenant of.*

A tenant of *Abadi* site who is only permitted to occupy a house as long as he lives in the village, is not entitled to receive any portion of the compensation as he is only a licensee and has no other interest in the property acquired. (*Brockman*, J. C.) SHANKER GOVIND *v.* KISAN. 45 I.C. 584.

———S. 29 and 18—*Apportionment of compensation—Objection not taken — Effect on award.*

Where no action is taken under S. 18 against an apportionment of the compensation money, by the person interested, the award is conclusive against him under S. 29. (*Pratt*, J.C.) LAND ACQUISITION OFFICER, KARACHI *v.* LAKSHMIBAI. 11 I.C. 804.

———S. 30—*Different interest—Apportionment of valuation.*

When several persons have different interests in the land acquired under Act, the Court should ascertain the value of the different interests and apportion the compensation in proportion to such interests. (*Griffin and Chamier*, JJ.) HIRDEY NARAIN *v.* HOWELL. 35 All. 9=17 I.C. 672=10 A.L.J. 503.

———S. 30—*Apportionment of compensation—Occupancy holding.*

Where an occupancy holding is acquired, the compensation should be apportioned between the landlord and the tenant according to the value of their respective interests though the landlord may get something more on account of the possibility of an enhancement of rent. (*Karamat Husain and Chamier*, JJ.) HARDEY NARAIN *v.* POWELL. 13 I.C. 420.

———S. 30—*Bhati land—Compensation.*

Where Bhati lands (waste lands) growing grass were included in the lease by the Government to the Khot but which were enclosed and sold by certain occupants without objection from the Khot, the occupants can have two-thirds of the loss made good and the Khot to a one-third. (*Macleod*, C. J. *and Shah*, J.) NOWROJI SORABJI *v.* SPECIAL LAND ACQUISITION OFFICER. 23 Bom. L. R. 1288.

———S. 30—*Objection to award by one of the claimants—Other claimant if entitled to any portion of the excess amount allowed.*

In a proceeding under the Land Acquisition Act the tenants accepted the Collector's valuation, but the landlord objected to it and asked for a reference and the Judge allowed an excess amount representing all the interest in the land. *Held*, that the tenants were not entitled

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to any portion of the excess amount allowed by the Judge. (*Chatterjee and Smither, JJ.*) THE SECRETARY OF STATE FOR INDIA *v.* MONALAR MOOKERJEE. **53 I C. 238 = 23 C.W.N. 720.**

——S. 30—*Scope of.*

The section deals with apportionment only and not with a claim to abatement of rent by a tenant, part of whose tenure has been acquired. (*Fletcher and Beachcroft, JJ.*) JAGABANDHU *v.* NAND LAL. **50 I.C 798.**

——S. 30—*Reference, if could be made after payment to claimants.*

The Collector can make a reference to the Civil Court after paying out compensation to one of the claimants. (*Mookerjee and Newbould, JJ.*) SATISH CHANDRA SINHA *v.* ANANDA GOPAL DAS. **33 I.C. 253 = 20 C.W.N. 816.**

——S. 30 — *Apportionment — Zemindar Pattidar.*

Where the terms of a lease debar a pattidar from claiming any abatement of rent on account of compulsory acquisition of land in his tenure, he is entitled to the whole compensation 30 C. 801 ref. (*Macleod, C.J. and Fletcher, J.*) BIPRODAS PAL CHAUDHURI *v.* SARAT CHANDRA SINGHA. **17 I C. 168 = 16 C L.J. 209.**

——Ss. 30, 54—*Decision of Court under reference.*

The decision of a Court under reference made under S. 30 of the Act is a portion of an award and consequently an appeal lies under S. 54 of the Act. (*Shadi Lal and Le-Rossignol, JJ.*) HAZURA SINGH *v* SUNDAR SINGH. **53 I.C. 589 = 97 P.R. 1919.**

——S. 30—*Bar of other remedies—Jurisdiction of Civil Courts.*

Where a reference is made by a Collector under Land Acquisition Act, S. 18, no other Civil Court can determine the same rights between the same parties. (*Robertson and Beadon, JJ.*) AMOTEK SHAH *v.* CHARAN DAS. **16 P.W.R. 1913 = 52 P.R. 1913 = 17 I.C. 685 = 14 P.L.R, 1912 Sup.**

——S. 30—*Landlord's Share—Apportionment—Malabar Law—"Vilakku Money.*

"Vilakku Money," customarily paid by householders in Malabar, to the temples on whose land they are living, is in the nature of quit-rent and a grant of the said sites to the house-holders by the Rajahs, though it confers a permanent tenure on the grantees, is subject to the payment of the quit-rent. Though as a rule, the landlord would ordinarily be entitled to share with tenant actually in occupation, in the compensation paid for land taken up by the Government under the Land Acquisition Act, he may be refused a share, if owing to the small extent and the value of the land acquired it is impracticable to apportion the compensation amount. (*Wallis, C.J. and Hannay, J.*) CHERIA BANGY ACHAN *v.* KRISHNA PATTI. **38 I.C. 8 = 1 L.W. 767.**

LAND ACQUISITION ACT (I of 1894), S. 31.

——Ss. 30, 31 (2) — *Jurisdiction to entertain suit.*

Where on a reference under S. 30 of the Act a District Judge passed an order for payment of compensation to one party if the other party did not institute a suit within four months and the other party, whose suit filed within 4 months, was withdrawn with liberty to bring a fresh suit, instituted a suit in proper form, *held* that the condition imposed by the District Judge was complied with and that the Munsif had jurisdiction to entertain the suit. (*Benson and Sundara Aiyar, JJ.*) PITCHUVIER *v.* PERUMAL KONAN. **11 M.L T. 160 = 13 I.C. 651 = (1912) M.W.N. 163.**

——S. 30—*Apportionment of compensation between landlord and tenant—Separate assessment of landlord and tenants' interest—Whether landlord entitled to claim anything from tenants' share.*

There the interests of the landlord and the tenant were separately assessed and landlord failed before the Collector to prove that the tenant was a tenant-at-will, the landlord could not claim anything out of the sum which has been assessed as the value of the occupancy holding, unless he joined the Collector as a party and objected to the valuation made on the proprietary interest. (*Mullick and Jwala Prasad, JJ.*) BRAJENDRA MOHANDAS *v.* RAM NARAIN MAHTON. **42 I.C. 787 = (1917) Pat. 129.**

——S. 30—*Apportionment—Compensation—Tenants' right to dispute.*

An apportionment by the Collector between the Zamindar and his tenant which was referred to the Court in the application of the Zamindar cannot be disputed by the tenant. (*Hayward, J.C. and Boyd, A.J.C.*) MAHARALA *v.* DIWAN MUSHTAKSING. **25 I.C. 803 = 8 S.L.R. 18.**

——S. 31—*Deposit of compensation — Duty of Government—Poundage.*

It is the duty of Government under S. 31 to deposit in Court the whole of the compensation money which it may be required to deposit by the Act, free from any deduction. When a demand is made by Court officials under Court rules for poundage and fees in respect of such deposit, Government has to pay such poundage and fees in addition to the compensation money. The Court has no power to direct that a portion of the compensation money deposited should be refunded to Government as representing the poundage and fees paid by it when the money was deposited in Court. As the money is compensation in respect of land acquired under the Act, the Court has power only to direct payment of such money without any deduction to the person or persons interested. When land is acquired for a Company, the poundage and fees, which may become payable during the course of proceedings, may be recovered by Government, from the company as

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costs of acquisition. (*Macleod*, J.) *In re* PESTONJEE JEHANGIR HORMUSTJI,
37 Bom. 76=15 I.C. 771=
14 Bom. L.R. 507.

———Ss. 31 and 54—*Order of Dt. Judge allowing withdrawal of deposit—Appeal.*

An order of the Dt. Judge allowing a Hindu widow to withdraw money deposited by Collector under S. 31 of the Act, is not appealable under S. 54. (*Chatterjee and Beachcroft*, JJ.) BISWANATH SINHA *v.* BIDHUMUKHI DASI.
31 I.C. 677=19 C W.N. 1290.

———S. 31 (2)—*Compensation paid to a wrong party—Remedy of right party.*

When the Civil Court comes to the conclusion that the Collector has paid compensation to the wrong party, the decree in favour of the right party should not be against Government, but should be against the party who had been paid by the Collector. (*Mookerjee and Newbould*, JJ.) SATISH CHUNDRA SINHA *v.* ANANDA GOPAL DAS. 33 I.C. 253=
20 C.W.N. 816.

———S. 31, (2)—*Applicability to* shebait *—Power of* shebait *to alienate.*

The *shebait* of an idol occupies a position which is analogous to that of a manager of an infant; he has the possession and management of the dedicated property, but not the power to alienate it. S. 31, Cl. (2) of the Land Acquisition Act therefore applies to the case of a *shebait*. (*Cox and Ray*, JJ.) RAMPRASANNA NANDI *v.* SECY. OF STATE. 40 Cal. 895=
22 I.C. 272=19 C.W.N. 652.

———S. 31 (2)—*Apportionment of compensation—Suit for.*

Where the Collector awards a compensation in Land Acquisition proceedings the person awarded can bring an action in a civil suit for the portion of the compensation money if the question has not been decided by the Collector. 7 C.W.N. 538, Foll. 37 P.R. 1905, Ref. (*Chevis and Abdul Raoof*, JJ.) CHANDU LAL *v.* MUSAMMAT LADLI BEGAM. 83 P.R. 1919=
49 I.C. 657=18 P.W.R. 1919.

———Ss. 31 (2) and 32 (1)—*Unenfranchised Service Inam—Owner of—If competent to alienate.*

The owner of an unenfranchised service *Inam* is incompetent to alienate within the meaning of Ss. 31 (2) and 32 (1). (*Wallis*, C J. *and Seshagiri Aiyar*, J.) GOVINDA GOUNDAR *v.* RAMIEN. 25 I.C. 600.

———S. 32—*Limited owner—Hindu widow—Mode of assessment of value.*

The land acquired belonged to a Hindu widow and there was no evidence on the record that she had only a limited interest, on the other hand it was alleged that under a custom prevailing in Bikanir, where her husband had come from, she had absolute interest and no other claimant had come forward and asked the Court to protect his right. *Held*, that the

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Court was not justified in proceeding under S. 32 of the Land Acquisition Act and awarding to her only the interest on the sum. (*Banerjee and Sulaiman*, JJ.) KRISHNA BAI *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL. 18 A.L.J. 695=37 I.C. 620=
42 A. 555.

———S. 32—*Applicability—Inalienable lands.*

S. 32 should apply to cases where the possessor of the land has a limited interest in it and does not govern the case of the compulsory acquisitions of land incapable of alienation in whose ever hands it may be, *e.g.*, unrecognised nerva holding. (*Batchelor and Hayward*, JJ.) ASSISTANT COLLECTOR OF KAIKA *v.* VITHALDAS VALLAVADAS 40 Bom. 234=
33 I C. 464=17 Bom. L R. 1140.

———S. 32—*Investment—Saving of widow's estate.*

The compensation money for land acquired under the Act which was invested in Government securities under the section, remains in the custody of the Special Judge. He is competent to deal with the question of its application. Expenditure of money to save land comprised in the estate inherited by the widow from her husband, from an impending sale is not an investment "in the purchase of lands" within the meaning of the section. (*Mookerjee and Cuming*, JJ.) DEBENDRA NATH DE *v.* TULSIMANI DASI. 41 I.C. 810=
26 C.L.J. 123.

———S. 32—*Debutter property—Order for investment and payment of interest to Shebait—Award part of—Appeal—Court-fee "ad valorem"—Court Fees Act, S. 8 and Sch. II, Art. 17, Cl. (6).*

Where certain *debutter* properties were acquired under the Land Acquisition Act and the Court ordered under S. 32 that the compensation money should be invested in Government promissory notes and that the *Shebait* would be entitled to draw only the interest on them and an appeal filed against that order had affixed to it a Court-fee of Rs. 10 under Art. 17 (vi) of the Court Fees Act. *Held*, that the relief sought in the appeal could be estimated at a money value at least approximately. The case fell within S. 8 of the Court Fees Act and *ad valorem* Court-fee ought to be paid on the memorandum of appeal computed according to the difference between the amount awarded and the amount claimed by the appellant. (*Brett and Carnduff*, JJ.) TRINAYANI DASI *v.* KRISHNA LAL DEY. 39 Cal. 906=
14 I C. 724=17 C.W.N. 933.

———S. 32—*Debutter property.*

When *debutter* property has been acquired, the provisions of S. 32 can be brought into operation and clause (1) (i) of that section is wide enough to enable the Judge to allow a portion of the money for effecting absolutely

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necessary repairs. (*Mookerjee and Caspersz*, JJ.) KAMINI DEBI *v.* PROPITTO NATH MOOKERJI. **10 I.C. 491 = 18 C.L.J. 597 = 39 Cal. 33.**

——— S. 32—'*Power to alienate*'—*Meaning of—Hindu widow—If within section.*

The words 'power to alienate' is S. 32 refers only to alienation by the Collector but not to alienations in general. The case of a Hindu widow does not come within the purview of Section 32. (*Pratt*, J.C.) LAND ACQUISITION OFFICER, KARACHI *v.* LAKSHMIBAI. **11 I C. 305.**

——— Ss. 35 and 36 (2) — *Temporary occupation when assessable— Compensation.*

Where cultivable land in the hands of the tenants was acquired temporarily for the purpose of digging *Kankar*, *held*, that such portion of the compensation as might be awarded to the owner for the purpose of restoring the land to its original condition was not assessable until after the term of occupation had expired. In the circumstances of the case also this amount was not rightly assessed on the probable value of the *Kankar* which might hypothetically be extracted from the land. (*Tudball and Rafique*, JJ.) SECRETARY OF STATE *v.* ABDUL SALAM KHAN. **30 I.C. 245 = 37 All. 347.**

——— S. 45 (3)—"*Cannot be found*"—*Temporary absence if within.*

Temporary absence of a person to be served with notice, does not fall within the words "cannot be found" in cl. (3), S. 45, Land Acquisition Act. Notice should as far as practicable be personally served. (*Richards*, C.J. *and Banerjee*, J.) FAZAL RASUL *v.* COLLECTOR OF AGRA. **30 I.C. 70 = 17 A.L.J. 268.**

———S. 48—*Withdrawal from acquisition—Municipal Board.*

When proceedings are taken on behalf of a Municipal Board, the Board cannot withdraw but the Government can. (*Tudball and Abdul Raoof*, JJ.) SECRETARY OF STATE *v.* KAMAR ALI. **31 I C. 501 = 16 A.L.J. 659.**

——— S. 48—*Agreement between parties as to amount of compensation.*

A binding agreement as to the ownership of property notified by the Government under the Land Acquisition Act for acquisition for a public body can be made between the public body and the owner before the Collector has made his award under the Act, and could be specifically enforced by the plaintiffs, against the defendants. The power of withdrawal given to the Government by S. 48 of the Act does not render the agreement void for want of mutuality. (*Heaton and Marten*, JJ.) THE FORT PRESS & CO., LTD. *v.* THE MUNICIPAL CORPORATION OF THE CITY OF BOMBAY. **44 Bom. 797 = 58 I.C. 621 = 21 Bom. L.R. 1014.**

LAND ACQUISITION ACT (I of 1894), S. 49.

——— Ss. 49 and 6—*Acquisition of a portion of land—Owner desiring acquisition of whole —Fresh declaration.*

Government notified a portion of a certain land for compulsory acquisition. The claimants desired that the whole of their land should be acquired. The Collector instead of making a fresh declaration for the whole land under S. 6 proceeded to make the award. The award was objected to and a reference was made to the Court. The claimants objected that the whole proceedings were *ultra vires*. *Held*, that the acquisition of the land was contrary to law because the taking up of land without a declaration was illegal, and that the proceedings beginning with the Collector's award were void. (*Heaton and Shah*, JJ.) BHAGWANDAS *v.* SPECIAL LAND ACQUISITION OFFICER. **28 I C. 489 = 17 Bom. L.R. 192.**

——— Ss. 49 and 51—*Reference—Appeal against order—Award, meaning of.*

No appeal lies to High Court from an order of the Judge on a reference under S. 49 which does not amount to an award. "Award" in the Land Acquisition Act means compensation in some form or other, whether it be the amount or its disposal. The decision of a preliminary question raised on a reference under S. 49 does not mean an award. (*Beachcroft and Greaves*, JJ.) SARATCHANDRA *v.* SECRETARY OF STATE FOR INDIA. **28 C.W.N. 378 = 50 I.C. 732 = 46 Cal. 861.**

———S. 49—"*Owner*"—*Under tenant—If one.*

An under-tenant is a person interested in the acquisition of land and so an "owner" for the purpose of S. 49 and is competent to apply for a reference to the Civil Court. He can make such an application at any time before the award is actually made. (*Caspersz and Chatterjee*, JJ.) KRISHNADAS ROY *v.* LAND ACQUISITION COLLECTOR OF PATNA. **13 I.C. 470 = 16 C.L.J. 165 = 16 C.W.N. 927.**

———S. 49—"*Award or any part of the award*"—*If includes decision on reference.*

"Award or any part of the award" means the decision or any part thereof as embodied in a formal document and would not include the judgment on which it is based. So it does not include decision of the Court on a reference under S. 49. 27 M. 350; 30 A. 176; 10 C.W.N. 250 Cons. A decision under S. 49 will not prevent a claimant from obtaining compensation for severance under S. 23, sub-section (1), cl. (3). (*Ayling and Napier*, JJ). GILES SEDDON *v.* DEPUTY COLLECTOR, MADRAS. **17 I.C. 117.**

———S. 49—*Reference — Duty of Deputy Collector—High Court's power of revision.*

Where an objection is raised to an acquisition of a plot of land by the Deputy Collector the objector stating that the portion acquired is part and parcel of his house, the Deputy Collector has no option in the matter but to

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make a reference to the Civil Court. If he makes or refuses to make the reference, in any case his act is a Judicial Act, being the first step in the judicial proceedings, which the High Court can interfere with. (*Chapman and Roe*, JJ.) SARASWATI PATTAK v LAND ACQUISITION COLLECTOR OF CHAMPARAN.
2 P.L.J. 204=39 I.C. 650=
3 P.L.W. 419.

———S. 49 (1)—"*House*," *Godowns used for dwelling of servants.*

S. 49 (1) of the Act includes under the term 'house,' godowns pertaining to it and used for servants' dwelling. (*Holmwood and Imam*, JJ.). DALCHAND SINGH v SECRETARY OF STATE FOR INDIA. 37 I.C. 11=43 Cal 663.

———S. 52—*Applicability—Proceedings to restrain—Improvement Trust for taking steps.*

S. 52 does not apply to proceedings commenced by an owner of property to restrain the Calcutta Corporation and Improvement Trust from taking further steps in some pending land acquisition proceedings. (*Greaves*, J.) *In re* MANICK CHAND MAHATA v. THE CORPORATION OF CALCUTTA AND THE CALCUTTA IMPROVEMENT TRUST. 66 I.C. 600=
48 Cal. 916.

———Ss. 53 and 54—*Appeal to Privy Council from award of the High Court—Not competent.*

An appeal does not exist in the nature of things. A right of appeal from any decision of any tribunal must be given by statute. L. R. 3 Q.B.D. 1, Ref. There is no appeal to the Privy Council as of right from an award of the High Court under S. 54 of the Land Acquisition Act, S. 53 of the Act applies to an earlier stage in the proceedings before an award and has nothing to do with an appeal from the High Court. S. 54 applies to proceedings in the course of an appeal to the High Court and its force is exhausted when the appeal to the High Court is heard. (*Lord Macnaghten*). RANGOON BOTATOUNG. CO., LTD. v. COLLECTOR, RANGOON. 40 Cal. 21=
39 I.A. 197=16 C.W.N. 961=12 M.L.T. 195=
(1912) M.W.N. 781=16 C.L.J. 245=
23 M.L.J. 278=14 Bom. L.R. 833=
10 A.L.J. 271=15 Bur. L.T. 205=
16 I.C. 168=6 L.B.R. 150 (P.C.).

———Ss. 53 and 54—*Acquisition of immoveable property under Ancient Monuments Preservation Act*, VII *of* 1914, *Ss* 10 *and* 21—*Appeal to High Court.*

In cases of acquisition of immoveable property under S. 10 of the Ancient Monuments Preservation Act, 1914, an appeal lies from the award of the Court under Ss. 53 and 54 of the Land Acquisition Act, 1894. (*Beaman and Heaton*, JJ.) VISNU v. THE DISTRICT DEPUTY COLLECTOR, KOLABA.
42 B. 100=43 I.C. 480=
19 Bom. L.R. 937.

LAND ACQUISITION ACT (I of 1894), S. 53.

———Ss. 53 and 54—*Award — Decree—Second appeal—Decision by Assistant Judge—Forum of appeal.*

No second appeal lies to the High Court from an award by a District Court on appeal from an award made by an Assistant Judge's Court under the Act. It must be taken to have been the intention of the legislature to place an award under the Act on the footing of a decree. 53 P.R. 1906, Rel.; 22 B. 802; 35 B. 146, Diss. S. 53 of the Act has the operation of putting proceedings before the Court on the same footing as proceedings in a suit. Where the amount in dispute is less than Rs. 5,000 an appeal against the decision of a Subordinate Judge or an Assistant Judge on an award lies to the District Judge. 33 B. 371, Foll; 23 C. 526, diss. (*Chandavarkar and Russel*, JJ.) NATHUBHAI v. MANORDAS. 36 Bom 360=
16 I.C. 512=14 Bom. L.R. 325.

———S. 53—*C.P.C., S.* 151—*Inherent power.*

It is a rule of law that if a party wrongly takes from the Court moneys deposited by his opponent the Court can enforce refund of the amount with interest. (*Chandavarkar and Heaton*, JJ.) COLLECTOR OF AHMEDABAD v. LAVAJI MULAJI. 35 Bom. 255=
10 I.C. 818=13 Bom. L.R. 259.

———S. 53—*Power to send for records.*

The power to call for records from another Court is a power which is inherent in the Judge of a Land Acquisition Court, and consequently in the special tribunal constituted under the Land Acquisition Act I of 1894 to hear cases from the orders of the Calcutta Improvement Trust. (*Holmwood and Mullick*, JJ.) NARESH CHANDRA BOSE v. HIRA LAL BOSE.
43 Cal. 239=34 I.C. 263=20 C.W.N. 360.

———Ss. 53 and 54—*Review of award.*

Per *Ayling*, J.—A Land Acquisition Court can review an award passed by it under the Act; the power is derived from the language of S. 53, since the words "proceedings before the Court under the Act" are comprehensive to include review. A distinction should be drawn between the power of Court to alter its own order (review) and the power of another Court to alter it (appeal). Per *Srinivasa Iyengar*, J.—An award of the Court cannot be changed by it on review. The words "proceedings before the Court under the Act" in S. 53 exclude the applicability of the provisions of C.P.C. relating to review. *Obiter.*—The words "proceedings before the Court under the Act" in S. 53 exclude the applicability of the wide powers of appeal conferred on Courts by the C.P.C. Except for S 54 no appeal will lie from the decision of a Land Acquisition Judge. Under S. 54 of the Land Acquisition Act, High Court can entertain appeal from every award irrespective of the Court which passed or its value. 23 C. 526, app.; 33 B 371, not app. *Quaere.*—Whether under the Land Acquisition Act proceedings by way of execution can be taken to enforce the

LAND ACQUISITION ACT (I of 1894), S. 53.

award, 22 B. 802 ; 32 C. 921 ; 25 A. 133, ref. (*Ayling and Srinivasa Iyengar, JJ.*) MULAMBATH KUNHAMMAD *v.* PARAKAT KATHIRI KUTTI. **31 M.L.J. 827=38 I.C. 873=5 L.W. 472.**

——— **Ss. 53**—*Review of decision—District Judge.*

A District Judge is competent to review his own order apportioning the compensation money paid on compulsory acquisition of land between the parties entitled to it. No provision of the L.A. Act forbids the application of the C. P. Code, O. 47, to the proceedings under the Act. (*Mullick and Sultan Ahmad, JJ.*) SAKTI NARAIN SINGH *v.* BIR SINGH. **2 U.P.L.R. (Pat.) 50=1 P.L.T. 219=58 I.C. 510=5 P.L.J. 263.**

——— **S. 54**—*Dispute between rival claimants—Decision—Appeal.*

A decision in case of a dispute among rival claimants as regards title to compensation money is appealable to the Privy Council. (*Lord Buckmaster*). T. B. RAMACHANDRA RAO *v.* RAMCHANDRA RAO. **43 M.L.J. 78=49 I.A. 129=30 M.L.T. 164=45 Mad. 820=35 C.L.J. 545=20 A.L.J. 684=16 L.W. 1=(1922) M.W.N. 359=26 C.W.N. 713=24 Bom. L.R. 963=1922 P.C. 80 (P.C.).**

——— **S. 54**—*Letters Patent (Bom.), Cl. 39—Special leave to appeal to Privy Council.*

No appeal lies to the Privy Council against a judgment of the High Court upon an appeal from a Court's award under the Land Acquisition Act and leave to appeal cannot therefore be granted under Cl. 39 of the Letters Patent (Bom.). (*Lord Macnaghten*). SPECIAL OFFICER, SALSETTE BUILDING SITES *v.* DASABHAI BEZANJI. **20 I.C. 763 (P.C.)=17 C.W.N. 421.**

——— **S. 54**—*Award—Amendment on ground of error—Appeal—Award by Court, amount of.*

Where an award under the Act was made by the District Judge and on an application by the Collector, subsequently, the Judge amended the award and reduced it :—*Held*, that what was passed by the Judge was an award and not a decree, that the alteration of the former award, was a fresh award, and that an appeal lay under S. 54 of the Act :—*Held, also*, that the Judge could not award an amount less than the amount which the Collector awarded notwithstanding the error of the Collector in his calculations. (*Tudball and Sulaiman, JJ.*) CHANDU LAL *v.* COLLECTOR OF BAREILLY. **19 A.L.J. 871=64 I.C. 624=44 A. 86=1922 All. 203.**

——— **S. 54**—*Second appeal to High Court, if lies—Award less than Rs* 5,000—*Bombay Civil Courts Act, S.* 16.

Where an award in a Land Acquisition case is below Rs. 5,000, an appeal from the award lies only to the District Judge and a second appeal therefrom does not lie to the High Court. (*Scott Smith and Batchelor, JJ.*) AHMADBHOY *v.* WAMAN DHONDU. **38 Bom. 337=23 I.C. 614=16 Bom. L.R. 72.**

LAND ACQUISITION ACT (I of 1894), S. 54.

——— **Ss. 54, 26 and 49**—*Decision that Government should not be compelled to take portion of land—Award—Appeal.*

A decision that Government could take only that portion which they desired and they should not be compelled to take the whole holding is not an award but a preliminary decision decreeing no compensation. Since the order does not amount to an award, no appeal lies against it. (*Batchelor and Shah, JJ.*) MULRAJ KHATAV *v.* COLLECTOR OF POONA. **21 I.C. 179=15 Bom. L.R. 802.**

——— **S. 54**—*Appeal to Privy Council.*

No appeal lies to the Privy Council under S. 54 from a decision of the High Court although the value of the property exceeds Rs. 10,000 and there is a substantial point of law. As the Act gives no right of appeal to the Privy Council, no such right exists. (*Batchelor and Heaton, JJ.*) SPECIAL OFFICER, SALSETTE BUILDING SITES *v.* DOSA BHAI. **37 Bom 506=17 I.C. 952=14 Bom. L.R. 1194.**

——— **S. 54**—*Dismissal of reference—Right of appeal.*

Where a District Judge dismissed a reference as time-barred, no appeal lies to the High Court against this order. Under S. 54 it is only an award or part of an award that is appealable to the High Court. (*Chatterjee and Newbould, JJ.*) DEMBESWAR SARMA *v.* COLLECTOR OF SIB SAGAR. **39 I.C. 637.**

——— **S. 54**—*Order under—Appeal.*

An order under S. 54 is appealable. 39 C. 393, Dist. (*Holmwood and Imam, JJ.*) DALCHAND SINGH *v.* SECRETARY OF STATE FOR INDIA. **37 I.C. 11=43 Cal. 665.**

——— **S. 54**—*Appeal to Privy Council—If lies.*

No appeal lies to the Privy Council from a decree of the High Court in a land acquisition case determining the apportionment of the compensation money. 40 C. 21 P. C. Rel. (*Jenkins, C.J. and Mcokerjee, J.*) RAM SHOSHI ROY *v.* G. E. GREY. **21 I.C. 427=18 C.L.J. 123.**

——— **S. 54**—*Award—Decree ex parte—Default—Application for restoration—Appeal.*

An order passed on an application for setting aside a decision by the Land Acquisition Judge *ex parte* as the claimant was not present when the case was called is not appealable as the order is not an award. S. 54 of the Land Acquisition Act lays down that only an award or part of an award can be appealed against. (*Jenkins C.J. and Chatterjee, J.*) HASUN MOLLA *v.* TASIRUDDIN. **16 I.C. 925=39 C. 893.**

LAND ACQUISITION ACT (I of 1894), S. 54.

——— S. 54—*Appeal from decision of single Judge.*

S. 54 of the Land Acquisition Act does not affect the right of appeal from the judgment of a single Judge of the High Court to Division Bench under Cl. 10 of the Letters Patent. (*Shadi Lal*, C.J. *and Abdul Qadir*, J.) HAR DIAL SHAH *v.* SECRETARY OF STATE FOR INDIA. 3 Lah. 420=1923 Lah. 278.

——— S. 54—*Award—Order for refund of compensation is not—Appeal—Order of refund.*

An order directing refund of the money paid as compensation under the Act is not an award or a portion of an award within S. 54 and hence is not appealable. But it may be revised if the order be passed without jurisdiction. (*Martineau*, J.) GOHAR SULTAN *v.* ALI MOHAMED. 63 I.C. 1=3 Lah. L.J. 421.

——— S. 54—*Appeal—Parties—Omission of Secretary of State—Effect.*

The only respondent in an appeal from land acquisition case is the Secretary of State, and if his name is omitted, there is in fact no appeal. (*Rattigan and Beadon*, JJ.) FAKIR CHAND *v.* MUNICIPAL COMMITTEE OF HAZRO. 89 P.L.R. 1913=88 P.W.R. 1913= 18 I.C. 37=89 P.R. 1913.

——— S. 54—*Appeal to High Court—Limitation Act, Art. 156—Applicability of.*

The limitation for preferring an appeal to the High Court under S. 54 of the Land Acquisition Act, is that prescribed by Art. 156 of Limitation Act. The expression "an appeal under the C. P. Code" in the first column of Art. 156 includes appeals not allowed by, but governed by, the C.P.C. with reference to procedure. 18 Cal. 221, Rel. 40 Cal. 21, Dist. (*Abdur Rahim and Oldfield*, JJ.) A. RAMASWAMY PILLAI *v.* THE TAHSILDAR OF MADURA. 43 Mad. 81=37 M.L.J. 110= 26 M.L.T. 136=10 L.W. 226= 53 I.C. 403=(1919) M.W.N. 585.

——— S. 54—*Appeal — Decision of High Court—Difference of opinion between Judges—Procedure—C. P. Code, S. 98 (2)—Letters Patent, Cls. 15 and 36.*

The decision of the High Court on an appeal under S. 54 is not a judgment within Cl. 15 of the Letters Patent and is not therefore open to appeal. 40 Cal. 21 and 17 C.W.N. 421, Ref. Under S. 98 (2) of the C. P. Code which applied to the case, the result of the hearing before the Division Bench must be taken to be the confirmation of the award of the District Judge, where neither of the two Judges agree with the award of the Court below nor agree among themselves. 22 C.L.J. 525, Ref. *Per Seshagiri Iyer*, J.—Cl. 36 of the Letters Patent governs appeals from the mofussil in cases where S. 98 of the C. P. Code does not apply. 25 Mad. 548; 29 Mad. 1; 20 Bom. L.R. 185, Ref. (*Abdur Rahim, Oldfield and Seshagiri Iyer*, JJ.) MANAVIKRAMAN JIRUMALPAD *v.* THE COLLECTOR OF THE NILGIRIS 41 Mad. 943=35 M.L.J. 110= 24 M.L.T. 155=(1918) M.W.N. 540= 49 I.C. 27=8 L.W. 261.

LAND IMPROVEMENT LOANS ACT (XIX of 1883), S. 7.

——— S. 54—*Appeal—Memo. of cross-objections.*

S. 54 of the Land Acquisition Act makes no departure from the ordinary rule of the C. P. Code, that the memorandum of objections should not be confined to the subject-matter of the appeal. (*Abdur Rahim and Seshagiri Aiyar*, JJ.) THE DEPUTY COLLECTOR, MADURA DIVISION *v.* MUTHIRALA MUDALI. 38 M.L.J. 83=24 M.L.T. 68= (1918) M.W.N. 458=48 I.C. 1003= 8 L.W. 271.

——— S. 54—*No award—No appeal—Revision.*

S. 54 only gives an appeal to the High Court from an award or any part of an award. Where there was nothing as an award by the Civil Court, the High Court can only interfere by way of revision. (*Skinner*, A.J.C.) COLLECTOR OF AKOLA *v.* ANAND RAO. 11 I.C. 690=7 N.L.R. 88.

——— S. 54—*C. P. Code, S. 109—Lower Burma Courts Act, S. 14—Award by Judge, on original side of High Court—No appeal.*

An award under Part III of the Land Acquisition Act is neither a decree nor an order and S. 14 of the Burma Courts Act which provides for appeals from decrees and orders made by a single Judge on the original side of the Chief Court does not apply in such cases. S. 54 of the Land Acquisition Act does not give a right of appeal from an award of a single Judge on the original side of the High Court. (*Hartnoll*, JJ.) COLLECTOR OF RANGOON *v.* CHANDRAMA. 28 I.C. 260=8 L.B.R. 163.

——— S. 56—*Order under—If binding on Land Acquisition Court.*

A Land Acquisition Judge with whom a sum of money is deposited to a lunatic's credit cannot refuse compliance with the order of a District Judge in his lunacy jurisdiction directing payment of the money to the lunatic's natural guardian, the order being in accordance with S. 56 of the above Act. (*Holmwood and Imam*, JJ.) SATYENDRA NATH DEY *v.* SECRETARY OF STATE. 37 I.C. 110= 20 C.W.N. 975.

LAND-HOLDER.

See MADRAS ESTATES LAND ACT, S. 3.

LAND IMPROVEMENT LOANS ACT (XIX of 1883).

——— Ss. 7 and 12—*Certificate—Suit for balance of loan—Charge on land for improvement—Enforceability.*

Under S. 7, the land for which the advance is made for improvement is a security to the Government for the purpose of securing the repayment of the improvement charge. Where

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the certificate executed by the Collector at the time of granting loan and registered under S. 12 stated that for repayment of the loan with interest, the immoveable property specified in the margin and the land on which the improvement was to be made was hypothecated to the Government, the Government obtains a perfectly good charge on the land and is entitled to enforce the charge by sale, in the ordinary manner. (*Fletcher and Richardson*, JJ.) THE SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* LALIT MOHAN BOSE.

27 I.C. 391.

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See also (1) LAND TENURE.
(2) LEASE.
(3) T. P. ACT, SS. 106—117.
(4) TENANCY ACTS (LOCAL).

ABADI.
ABANDONMENT.
ABWAB.
ACCRETION.
APPURTENANCE.
BUILDING BY TENANT.
CESS.
CO-SHARER.
COVENANT.
DAMAGES.
DISPOSSESSION.
DISTRAINT.
EASEMENT.
EJECTMENT.
ENCROACHMENT.
ESCHEAT.
EXPROPRIETARY TENANCY.
FORFEITURE.
GOVERNMENT REVENUE.
GROVE.
HERITABILITY.
HOLDING OVER.
HOMESTEAD.
IJARADAR.
IMPROVEMENTS.
MERGER.
MINES AND MINERALS.
NATURE OF TENANCY.
NON-TRANSFERABLE HOLDING.
NOTICE TO QUIT.
OCCUPANCY RIGHT.
OUSTER.
PASTURAGE.
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PERMANENT TENANCY.
PROPRIETARY RIGHT.
RAIYAT.
RELATIONSHIP.
RENT.
RIGHTS OF TENANT.
SETTLEMENT OF DISPUTES.
SIR LAND.
SUB-TENANCY.
SURRENDER.
TANKS.
TENANCY AT WILL.
TERMINATION OF TENANCY.
THEKADAR.
TREES.
TRESPASS.
UNDER-PROPRIETARY RIGHT.
UNDER-RAIYATI INTEREST.
WAJIB-UL-ARZ.
WASTE.
ZEMINDAR.

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Abadi.

———*Abadi—Erection of building by tenant—License implied from conduct.*

Erection of building for purposes of agriculture by a tenant and its use by him for more than 12 year's on an abadi raises the presumption of a license. So long as that tenant continues to be the zamindar's tenant the license cannot be revoked. (*Stuart*, J.) CHAUDURI BALWANT SINGH *v.* NET RAM.

L.R. 3 A. 152 (Rev.)

———*Abadi—Death of tenant without heirs—Escheat—Crown and landlord.*

Held, on the evidence, having regard to the settlement of 1850 the proprietor of the Mahal was entitled to the *abadi* on which the tenant had erected a residential house, on the death of the tenant without heirs. The Crown's *prima facie* right was displaced by the evidence in the case. (*Piggott and Walsh*, JJ.) BHARTPUR STATE *v.* SECRETARY OF STATE.

47 I.C. 823=16 A.L.J. 653.

———*Abadi—Right to live in a house built by tenant—Ejectment.*

In the United Provinces the Zamindars are under Government owners of every inch of ground within the Mahal, whether cultivated or waste, within his Zamindari and if any one other than the Zamindar seeks to establish a title to any portion whether through adverse possession or otherwise, the burden is on him of proving such title. The general law of the land is that if a tenant is ejected from the tenancy or abandons it, then, unless there be some special custom to the contrary, the site on which he has built his house reverts to the Zemindar and the tenant must remove the materials therefrom. (*Knox*, J.) SHOHRAT SINGH *v.* JHAGRU.

30 I.C. 782=13 A.L.J. 745.

———*Abadi—Tenant's right to reside in house in abadi—Partition, effect of.*

If prior to the partition of a village, the cultivating tenant possessed a right of residence on the land, the fact that in the partition, his cultivating holding was assigned to one Mahal and his residential house to another, would not in any way affect his right to reside in the house. 12 A.L.J. 588; 30 A. 282, Fol. (*Piggott*, J.) MUKHRAM SING *v.* KOTA.

24 I.C. 22=12 A.L.J. 488.

———*Abadi—Ejectment—Structures erected without permission—Right to demolish.*

Structures built by the tenant of the *abadi* site could, in the absence of custom, be

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demolished by the landlord but the tenant could not be ejected. (*Rafique*, J.) KEHARI SINGH *v.* HOLASI. 21 I.C. 967 = 12 A.L.J. 175.

———*Abadi—Occupation of land — Well—Construction of—Injurious to the right of Zamindar.*

A landlord cannot restrain his tenant who has been in possession of the house for generations without paying rent, from constructing a well in the compound of his house for his convenience and comfort. (*Griffin and Chamier*, JJ.) BHAGWAN DAS *v.* MUHAMMAD YAHIA. 35 All. 292 = 18 I.C. 928 = 11 A.L.J. 301.

———*Abadi — Ground rent — Transfer of site and house.*

In a town it is impossible to start with the presumption that the occupiers of houses have no power to transfer the right to occupy the sites no which their houses stand. 30 A. 311, Dist. The payment of a small ground rent to the landlord is not necessarily inconsistent with the right to transfer the houses with the right to occupy sites. (*Chamier and Rafique*, JJ.) JAMNA KUER *v.* ABDUL NABI. 16 I C. 853.

———*Abadi—Adverse possession — Ancinus possidendi.*

The question of adverse possession depends upon the circumstances of each case; in a case where an innkeeper in an agriculturist village has been using his house for purposes other than those of an ordinary agricultural village paying no rent for the use of the site in *abadi* his possession of the site is adverse to that of the Zemindar. (*Richards*, C.J., *Banerjee and Chamier*, JJ.) INCHA RAM *v.* BANDE ALI KHAN. 38 All 757 = 11 I.C. 52 = 8 A.L.J. 877.

———*Abadi—Tenant-at will.*

When a non-proprietor has occupied common land (generally abadi) for several years with the consent of the proprietary body he cannot be ejected so long as he uses that area for the purpose for which it was granted, but the case of tenants-at-will is different. Their possession has been on sufferance and they have no occupancy right in land. (*Le-Rossignol*, J.) NIHALA *v.* SHAHAB DIN. 1923 Lah. 413.

———*Abadi—Shamilat—Onus of proof.*

The onus of proving that there is *Shamilat* in the *Abadi* which can be partitioned is on the person claiming partition. (*Shadi Lal*, C.J. *and Leslie Jones*, J.) MANJI *v.* GHULAM MAHOMMED. 61 I.C. 415 = 2 Lah. 78.

———*Abadi—Alienation by non-proprietor—Status of alienor—Malik qabza.*

A non-proprietary resident in a village, cannot in the absence of well-established custom, dispose of the site on which his house is built or his right of residence in the house without the consent of the proprietors of the village. The status of the person making the disposition must, however, be determined with reference to the time when he occupied the site. A *Malik qabza* having full proprietary rights over the cultivated land in his possession as *Malik* has the same rights in the absence of proof to the contrary and the proprietors who are entitled to a share in the shamilat are not entitled to interfere with the sale of his house by such *Malik*. (*Shadi Lal*, J.) LADHA RAM *v.* BAHADUR KHAN. 39 P L.R. 1918 = 43 I.C. 695 = 29 P.W.R. 1918.

———*Abadi—Diversion of site by a non-proprietor for a different purpose—Forfeiture.*

When a non-proprietor diverts the site used by him as a *Ghatwal* to other purposes, setting up adverse title in himself, he forfeits his right of user and is liable to ejectment at the instance of the proprietor. (*Chevis*, J.) GIRDARI LAL *v.* NAND RAM. 98 P L R 1917 = 42 I C. 275 = 154 P.W.R. 1917.

———*Abadi—Village abadi if undivided shamilat.*

The entire village *abadi* cannot be looked upon as undivided *shamilat* of the original proprietor. (*Robertson and Sharfuddin*, JJ.) SAWAN SINGH *v.* JAFER KHAN. 7 P.W.R. 1912 = 39 P.R. 1912 = 13 I.C. 405 = 13 P.L.R. 1912.

———*Abadi—Mortgage of house in abadi of village, by occupant—Right of proprietary body to take possession.*

A mortgage by an occupant of a house in the *abadi* of a village, does not by itself entitle the proprietary body of the village to take possession of the house as against both the mortgagor and the mortgagee; the mortgagor has at any time, the right to redeem the mortgage. (*Shah Din*, J.) BAGGA SINGH *v.* HARNAM SINGH. 95 P.L.R. 1911 = 11 I.C. 317 = 213 P.W.R. 1911.

———*Abadi—House—Transfer of—Occupation by transferee—Consent—Sinking of well.*

Where no objection is made by the landlord to the occupation of the *abadi* site by the transferee of a house standing thereon, it must be presumed that such transferee had permission to occupy it on the same terms as the transferor. The sinking of a well on a premises in the *abadi* occupied by an agriculturist is not always inconsistent with the purpose for which the land was granted, especially where there is no indication of any injury to the interests of the landlord. (*Drake-Brockman*, J.C.) RAMDAYAL *v.* JAGRANI. 51 I.C. 304.

———*Abadi—Rights of tenant—Permission of malguzar.*

A tenant's right to a site for his house free of charge is subject to the permission of the malguzar as to the position and extent of the site, but failure by a resident malguzar to object to the occupation of a site by a tenant for even two or three years would be conclusive evidence that the permission had been given. (*Hallifax*, A.J.C.) MUSSAMMAT DEOKI *v.* MUKUNDA KUNBI. 43 I.C. 508.

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———*Abadi—Status of a tenant and his transferee occupying abadi site in Central Provinces.*

A tenant, occupying an *abadi* site which in Central Provinces belongs wholly to the landlord, is a licensee, protected in occupation by the terms of the *wajib-ul-arz*; and any transferee, unless expressly or impliedly allowed by landlord, is liable to be ejected by the landlord as the right is not transferable. A transferee is presumed to occupy on the same terms as transferor subject to the *wajib-ul-arz*, if his occupancy is objected to by the landlord. If the transferee ceases to use it for a dwelling house then he becomes liable to be ejected at the will of the landlord losing the protection of *wajib-ul-arz*, if no prescriptive title is earned which however cannot be earned by bare possession for 12 yeare. (*Stanyon*, A.J.C.) NARAIN *v.* BEHARI. **31 I.C. 807=11 N.L.R. 126.**

———*Abadi—House of tenant — Termination of tenancy—Right of tenant to house.*

Where a tenant is found occupying a house in the *abadi* of an agricultural village, there is a presumption that he holds the site as appurtenant to his tenancy. He has no right to retain it against the wishes of the landlord on ceasing to be a tenant in the village. (*Lindsay*, J.C. *and Daniel*, A.J.C.) RAM HARKH *v.* BHAIYA AMBIKA DATT RAM. **21 O.C. 257= 48 I.C. 420=6 O.L.J. 642.**

———*Abadi—Tenant ejected—Right of.*

Where a tenant is ejected from the agricultural holding in a village, he has no right to occupy a house in the village *abadi* against the will of the *Zamindar*. (*Lindsay*, J. C.) GHARRAO *v.* KARAM SINGH. **47 I.C. 645= 5 O L.J. 453.**

———*Abadi—Sinking well—Injunction.*

A tenant having a house on the abadi land sinks a well on that land as an appurtenance to his dwelling house. The land lord cannot sue him for possession of the site or for an injunction. (*Lindsay*, J. C.) MAHABAL KUMRI *v.* SARJU. **42 I.C. 51=4 O.L.J. 454.**

Abandonment.

———*Abandonment—Fixed rate—Tenancy—Simple mortgage—Dispossession by Zemindar—Rights of mortgagee.*

A tenant made a mortgage of his fixed rate holding and died thereafter. Upon his death his nephew succeeded to the holding. The zamindar took forcible possession of the holding but the nephew took no steps to recover it from the zamindar. In a suit against the zemindar for recovery of the money, *held* that the inaction as to the recovery of the possession of the holding was equivalent to a surrender by the tenant but that surrender did not affect the rights of the mortgagee to enforce his mortgage. (*Mears*, C.J. *and Banerji*, J.) RAM KHELAWAN *v.* BRIJ LAL. **21 A.L.J. 296=L.R. 4 A. 169 (Rev.)= 1923 All. 295 (1).**

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———*Abandonment—Ex parte decree against tenant's heir.*

An *ex parte* decree obtained by a landlord against the heirs of the tenant is evidence to show that the tenancy was subsisting at that date and negatives a plea of abandonment of the tenancy. (*Greaves and Panton*, JJ.) ANUKUL CHANDRA DHAR *v.* KAMALA KANTA ROY. **1923 Cal. 270.**

———*Abandonment — What constitutes — Payment of rent—Offer of payment—Effect of.*

Where there has all along been payment or offer of payment of rent by the tenant, the question of abandonment of the holding cannot arise. (*Woodroffe and Ghose*, JJ.) SARAT CHANDRA DE *v.* MONORAMA DEBI. **1923 Cal. 181.**

———*Abandonment — Occupancy holding—Usufructuary mortgagee—Right of mortgagee—Dispossession by landlord.*

Where there is a transfer of an occupancy holding not by way of sale, the landlord, though he has not consented, is not ordinarily entitled to recover possession of the holding unless there has been an abandonment. Where therefore an occupancy tenant usufructuarily mortgages his holding and delivers possession to the mortgagee who was dispossessed by the landlord, in a suit by the mortgagee for possession against the landlord, *held*, that the plaintiff was entitled to possession in view of the finding that there was no abandonment of the holding by the tenant. (*Greaves and Ghose*, JJ.) AMBICA DEBI *v.* SWARNAMAYI DASI. **49 C. 989=1922 Cal. 135.**

———*Abandonment of tenancy—Plea of.*

It is not open to a landlord, taking possession of the tenancy with a view to cultivate it, under an agreement with his tenant, to set up the plea that the land has been abandoned by the tenant. (*Mookerjee*, A.C.J. *and Fletcher*, J.) KHETRA NATH MONDAL *v.* LAKHAN SARDAR. **59 I C. 442.**

———*Abandonment—Transfer by raiyat—Sub-lease—Non-transferable occupancy.*

Where a tenant having a non-transferable right of occupancy, sells such right to a third person, and having obtained a sub-lease from the purchaser remains in possession of the land and cultivates it, the landlord (in the absence of repudiation by the tenant of his relation to the landlord as such) is not entitled to recover possession, inasmuch as it does not amount to abandonment. 33 Cal. 531; 34 Cal. 689; and 24 C.L.J. 113, Ref. (*Chaudhuri and Cuming*, JJ.) SEPARAN *v.* RAMDEB RAI. **55 I.C. 360=24 C.W.N. 117.**

———*Abandonment—Evidence of non-payment of rent—Non-occupation—Effect of.*

Where a raiyat goes away without giving notice from land which he has occupied and neither cultivated nor pays any rent, the landlord is justified in assuming that he has relinquished it and the raiyat has no right to

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ask to be re-installed on the ground that he never formally relinquished the land. Mere non-payment of rent is not evidence of abandonment, but non-payment of rent coupled with non-occupation of land shows an intention to abandon it. (*N. R. Chatterjee and Panton*, JJ.) GOBER SHEIKH *v.* ALIPUDDIN SHEIKH. 31 I.C. 356=30 C.L.J. 13.

——*Abandonment — Evidence— Non-payment of rent—Submergence of land.*

A tenant's title to a holding is not necessarily lost by rent not being paid during the time the land is submerged. Whether from the non-payment of rent during submergence of the holding or from the conduct of the tenant, abandonment or surrender should be inferred is a question of intention. (*Teunon and Cuming*, JJ.) DINANATH CHANDA *v.* NAWAB ALI. 39 I.C. 984.

——*Abandonment—Essentials.*

There is no abandonment of an occupancy holding where a tenant executes a usufructuary mortgage of a portion of the holding and leaves the village temporarily and his heirs come back and resume possession of a portion of the land. (*Chatterjee and Richardson*, JJ.) RAJAB ALI *v.* PANDU MULLICK. 41 I C. 396.

——*Abandonment—Waiver—Suit for rent without knowledge of abandonment.*

Where a landlord, without knowing that a tenant has abandoned the lease, sues him for rent, he does not thereby waive the abandonment. (*Chatterjee and Walmsley*, JJ.) PRIYANATH MITTER *v.* ANANTH NATH DEY. 37 I.C. 942.

——*Abandonment—Execution of usufructuary mortgage of his holding by the tenant—Whether abandonment.*

The mere execution of a usufructuary mortgage by the tenant of his holding, is not sufficient to establish abandonment by him. Where a raiyat, who had executed a usufructuary mortgage of his holding but consented to pay rent, had left the land owing to ill-health, intending however to come back and the landlord had received rent after the notice of the raiyat's leaving the place, there has been no abandonment of the place. (*Woodroffe and Walmsley*, JJ.) GOUR CHANDRA DAS *v.* ASIMUDDI. 23 I C. 646.

——*Abandonment—Intention.*

Whether in any particular case, there has been an abandonment of holding by a tenant, is a question of intention to be determined upon the facts of each case. (*Holmwood and Sharfuddin*, JJ.) MAHADEO PERSHAD *v.* DURGA SAHNU. 23 I.C. 868.

——*Abandonment* — Ala malika—*Failure to recover malikanam dues whether.*

Mere waiver of his rights by an *ala malik* does not imply abandonment of the rights and an adnamalik's failure to pay dues does not

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establish adversity on his part. (*Rossignol and Abdul Quadir*, JJ.) LEKHURAM *v.* MT. RAMZAN. 1923 L. 32.

——*Abandonment—Evidence—Inference.*

The fact that the plaintiff's ancestors gave up the whole of their holding and quitted the village for good, showed that they abandoned all the rights they had in the village including rights in the Shamilat. On such abandonment their share passed to their co-sharers. (*Shadi Lal and Martineau*, JJ.) MIRZA *v.* KAHAN SINGH. 52 I.C. 839=96 P.R. 1919.

——*Abandonment —Evidence—Land left in possession of persons not related to owner.*

A person left his land in possession of a person not related to him, had no intention of resuming possession for over 20 years, and lived at another village seven or eight miles off and owned other lands. *Held*, it was too late to plead that there was no abandonment. (*Kensington*, J.) AMIR *v.* JIWAN. 38 P W.R. 1913= 19 I.C. 3=72 PL.R. 1913.

——"*Abandonment*"—*and relinquishment —Meaning of.*

(Per *Sadasiva Aiyar*, J.).—"Abandonment" denotes a unilateral act which does not necessarily imply that the act has been or has to be brought to the notice of any other person whereas an act of "relinquishment" or "surrender" implies that the act is brought to the notice of the landlord. (*Sadasiva Aiyar and Napier*, JJ.) VENKATA RAMIAH APPA RAO *v.* LANKA LAKSHMINARAYANA. (1921) M.W.N. 616=15 L.W. 218= 42 M.L.J. 161=30 M.L.T. 186=48 M. 47= (1922) M. 281.

——*Abandonment — Trespasser—Right to contest.*

A person, if he is not an agent or a transferee of the interest of a tenant cannot set up the plea of non-abandonment of tenancy against the landlord. (*Batten*, A.J.C.) SAHASRAM *v.* SHEONATH. 31 I.C. 303=11 N.L.R. 124.

——*Abandonment—Grove—Escheat.*

Where the proprietors of a village sued for possession of a certain grove from the transferee from the original grove-holders on the ground that it had escheated to them even before the transfer, by reason of the abandonment of the groves by the holders and it appeared that the plaintiff had not tried to recover possession for a long time, *held*, that it could not be said that the grove-holders had absconded and the plaintiffs were therefore not entitled to sue for possession on the ground of escheat. (*Piggott*, J. C.) KUNJ BEHARI *v.* RAMESHWER. 20 I. C. 40.

——*Abandonment—House land.*

The abandonment by a tenant of his house in a village does not amount to an abandonment of the land on which the house stands. (*Adami*, J.) GOPAL JEE SINGH *v.* RAM NANDAN SINGH. 54 I.C. 644.

LANDLORD AND TENANT—Abwab.

Abwab.

See also (1) B. T. ACT, S. 74.
(2) MADRAS ESTATES LAND ACT, Ss. 3 (11), 143, 144.

——Abwab:— *Repair of embankment—Long payment.*

An annual sum levied by Government for the upkeep of the embankments is not an *Abwab*. Long continued payment from time immemorial is in itself a title in favour of the recipient to the payment. (*Jenkins*, C. J. *and Holmwood*, J.) UDOY NARAIN JANA *v* THE SECRETARY OF STATE FOR INDIA.
47 I.C. 297=22 C.W.N. 823.

——*Abwab—Test of.*

Where a *Kabuliyat* after stating that the annual rent was to be Rs. 3,351-4-0 recited that the lessee was to pay also Rs 15 as *Mamuli*, *Held* that the sum of Rs. 15 was not part of the consideration for the use and occupation of the land or part of the rent but was an *Abwab* and therefore not recoverable. Per *Sanderson*, C. J.—Each case must depend on the proper construction of the contract before the Court and if upon a fair interpretation of the contract, it can be seen that a particular sum is specified in the contract or agreed to be paid as the lawful consideration for the use and occupation of the land, i.e., if it is really part of the rent though not described as such, the landlord can recover it. Per *N. R. Chatterjee*, J.—Though more sums than one may constitute the rent, it is not every sum forming part of the consideration of the lease that is rent, and recoverable as such. In determining whether an item did or did not form part of rent, the fact that it has been stipulated to have been paid separately from the rent and also the fact that it is not included in the instalments of the rent have a material bearing on the question. 17 C. 726 at p 759, App. (*Sanderson*, C.J. *and N. R. Chatterjee*, J.) BEJOY SINGH *v.* KRISHNA BEHARI.
43 Cal. 259=41 I.C. 561=21 C.W.N. 959.

——*Abwab—Uttarayan.*

A voluntary payment like Uttarayan made by tenants at one pice per rupee of their rents for expenses in connection with basthu puja on the Uttarayan Sankaranthi Day, is an Abwab. (*Mookerjee*, A. C. J., *Fletcher and Walmsley*, JJ.) MAHARAJAH BIRENDRA KISHORE MANIKYA BAHADUR *v.* SECRETARY OF STATE FOR INDIA. **25 C.W.N. 81=32 C.L.J. 433.**

——Abwab—*Rent—Distinction.*

Abwab means an arbitrary and indefinite imposition levied by the landlords on their tenants. An item which forms part of the consideration for which the lease is granted is not an *abwab*. (*Jenkins*, C. J. *and D. Chatterjee*, J.). KALI KUMAR ROY CHOWDHURI *v.* KAILASH NATH ROY CHOWDHURY. **27 I.C. 470.**

LANDLORD AND TENANT—Accretion.

——*Abwab—Rent*—Tahwari—Salami.

On a construction of the Kabuliat, in which there was a stipulation for paying 'tahwari' and 'salami' in a distinct form payable not in consideration of the lease but in accordance with the zamindari practice, these charges were held to be 'abwabs' and not recoverable. (*Coxe and Chatterjee*, JJ.) KALANAND SINGH *v.* SAIRA. **25 I.C. 540.**

——*Abwab*—Batta—*Long payment of—Inference.*

It is open to a Court to infer, as a matter of fact, from the circumstance of long payment of *batta* that it was lawfully payable. (*Mookerjee and Beachcroft*, JJ.) KAMLESHWARI PERSHAD SINGH *v.* KANAISINGH.
17 C.W.N. 1159=20. I.C 171=19 C.L.J. 348.

——*Abwab — Permanent tenure — Consideration for tenancy.*

Sums described as "*Salami Towji*" and "*Tehwari Drshera*" though not described as rent were part of the rent and are not illegal. (*Chitty and Teunon*, JJ.) KALANAND SINGH *v.* EASTERN MORTGAGE AGENCY & CO., LTD.
19 I.C. 701=18 C.L.J. 83.

——*Abwab.*

Where sum is agreed to be paid in consideration of the land occupied by the defendant and also in view of the remission of the *Selami* which would otherwise have been payable, it cannot consequently be deemed in any sense an illegal cess. (*Harrington and Mookerjee*, JJ.) SARAT CHANDRA GHOSE *v.* SHAM CHANDRA SINGH ROY. **16 C.L.J. 71=14 I.C. 701=39 C. 653.**

——Abwab—*Test.*

To find out whether a certain payment in a lease is an *abwab*, the test is to see if the particular item is the lawful consideration for the use and occupation of the land. If it is really part of the rent, it is not an abwab. 31 Cal. 834; 18 C.L.J. 83, followed. (*Mullick and Atkinson*, JJ.) SADANAND TEWARI *v.* DEBI NATH MANJHI. **(1922) P. 184=1922 Pat. 154.**

——Abwab—*Sikka rupees*—Batta *claim.*

The consent to pay rent in Sikka rupees was a valid contract, as a party is entitled to contract to pay rent in any form he pleases and the date of the contract to pay in Sikka rupees is immaterial. The question of *batta* being an *abwab* only arises when the contract to pay in rupees, without the mention of the description of rupees and the contract bears date subsequent to 1836 (*Roe and Imam*, JJ.) RAJADAKESHWAR PRASAD NARAYAN SINGH *v.* RAMA PRASAD SINGH. **4 P.L.W. 47=43 I.C. 753=1918 Pat. 218.**

Accretion.

See also (1) ALLUVION AND DILUVION.
(2) BENGAL ALLUVION AND DILUVION REGULATIONS (XI OF 1825).

LANDLORD AND TENANT—Accretion.

——— *Accretion — Malikana — Whether Zemindar entitled to malikana if the taluqdar has an independent status.*

Accretions follow the estate where the *taluq* is separated from the *Zamnidari*, the legal position of the *taluq* is altered and the question of adverse possession to malikana does not arise. Acoretions to the *taluq* form part of the *taluq* and the *Zamindar* ceases to have any right to the *malikana*. (*Richardson and Huda*, JJ.) HEMANT KUMAR DEVI *v.* JAGDENDRA NATH ROY. **57 I.C. 514.**

Adverse Possession.

See ADVERSE POSSESSION — LANDLORD AND TENANT.

Appurtenance.

——— *Appurtenance— Question of fact.*

What is an appurtenance to a holding of an agricultural tenant must be decided according to the circumstances of each case. (*Knox*, J.) GAJADHAR *v.* BHIMAN. **42 I.C. 896.**

———*Appurtenances—Holding—Question of fact and law.*

The question whether or not certain buildings are appurtenances to the holding of a particular tenant in the sense that the tenant cannot be ejected therefrom so long as his tenancy subsists is a mixed question of law and fact. (*Piggott and Walsh*,, JJ.) UMRAO SINGH *v.* CHHEDA LAL. **35 I.C. 262.**

———*Appurtenance — Lease —* Darkhast *grant of land obtained from Government by lessee—If appurtenance to demised property.*

Land acquired on *Darkhast* grant from Government by a *Mulgeni* lessee cannot in law be deemed to be an appurtenance of the properties held by him under the lease. (*Ayling and Sadasiva Aiyer*, JJ.) KANTHU *v.* DASA UPAHYA. **26 I.C. 376.**

———*Appurtenance—Digging well on land.*

A raiyat is entitled to construct a well in a portion of his house or on land in his possession as an appurtenance to his house. (*Kanhaiya Lal*, J.C.) SHEO SAHAI SINGH *v.* RAJESHWAR BALI. **51 I.C. 1006 = 6 O.L.J. 281.**

Building by tenant.

——— *Building by tenant.*

A tenant cannot enclose or build upon the demised land without the landlord's consent. (*Sunder Lal*, J.) CHATTERPAL *v.* GAJADAR UPADHYA. **25 I.C. 89.**

——— *Building by tenant—Residential purposes—Hut.*

A tenant, permanent or otherwise, of agricultural lands, may erect a building, on his holding in order that he may live there himself when he wants to be on the land for cultivation purposes. (*Macleod*, C.J. *and Heaton*, J.) BHAU MAHADU TORASKAR *v.* VITHAL DATTATRAYA. **44 Bom. 609 = 57 I.C. 349 = 22 Bom. L.R. 793.**

LANDLORD AND TENANT—Cess.

———*Building by tenant—Right to remove.*

Where the plaintiff removed a lease of a suit house granted to her husband and having erected during the first lease a building with the knowledge of the lessor, tried to remove the same after expiry of the second lease. *Held, that* (Per *White*, C.J.):—The plaintiff could neither remove the building nor claim compensation for the same. The mere fact that an opportunity for removal after the completion of lease was given by the lessor does not affect his rights. (Per *Sankaran Nair*.):—That as the building was not erected during the second lease and as the plff. had already become owner of the house S. 108 (b) of the T. P. Act did not apply and the plff. had a right either to remove the building or claim compensation. (*White*, C.J. *and Sankaran Nair*, J.) ANGAMMAL *v.* SAEED ASLAMIS SAHIB. **10 M.L.T. 193 = 11 I.C. 745 = 21 M.L.J. 891.**

Cess.

See also TENANCY ACTS (LOCAL).

——— *—Cess— Artisan cess abadi.*

A cess levied by the zemindar on the weavers at the rate of one rupee per hand-loom is not really a cess. It is really ground rent charged from the various artisans in the village according to the number of hand-looms they have kept and is really a ground rent of the occupation of the site of the abadi. 1 A.L.J. 597, *Foll.* (*Gokul Prasad*, J.) MT. BAKSHI *v.* HYDER KHAN. **L.R. 4 A. 448 (Rev.), 1923 A. 571.**

———*Cesses—Custom—Payment to* Zamindar *by villagers—If ground rent or cess.*

Payment made by occupiers of a village *abadi* under a local custom, to the *Zamindar* on the occasion of any marriage in their family, is ground rent for the use and occupation of the site in the *abadi* and not a cess. (*Banerje*, J.) SUGHRA BEGAM *v.* NAROTAM. **11 I.C. 217.**

——— *Cesses—Agreement to pay— Tenure-holder.*

Where a landlord let out a tenure "at Rs. 90 per annum including the cesses" it is clear that as between him and the tenure-holder, the former agreed to pay the cesses. (*Fletcher and Huda*, JJ.) JOGENDRA NATH *v.* APARA PRASAD MUKHERJEE. **45 I.C. 615.**

——— *Cesses—Right to—Adverse possession by tenant.*

Defendant's becoming owner of the sites occupied by him by adverse possession, in the areas of plaintiff's *patti*, does not lead to the inference that the defendants became jointly entitled with plaintiffs to the dues and cesses that are levied within that area. The presumption is that the right of collecting these dues

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and cesses rested in the proprietary body of the *patti*. (*Robertson and Ratligan*, JJ.) KAMIRA *v*. LALU. 110 P.R. 1912 = 17 I.C. 907 = 30 P.L R. 1913.

———*Cesses—Liability to pay—Zemindar and Ijaradar.*

The Government levied water cess for cultivation of land not allowed by Government to the *Zemindar*, and the *Zemindar* sued the holder of the village under *ijara patta*, for the same. *Held*, the defendant was not liable, not being bound under the contract, to recover the cess from the *ryot*. (*Sankaran Nair*, J.) RAJU *v*. VENKATAKUMAR MALIPAT.
21 M.L.J. 1031 = 10 M.L.T. 452 = 12 I.C. 712 = (1911) 2 M.W.N. 552.

———*Cess — Talukdar — 'Dhara' dues — Construction of decree.*

Where the ex-proprietors of a village included in a *Taluka*, got a settlement decree against the *Talukdar* for their right to receive '*dhara*' dues in the village, the latter was liable under the decree to render the said dues to the former whether the dues were collected by him or not. (*Lindsay*, J.C.) MAHESH CHARAN *v*. MUHAMMAD BAQOR ALI.
40 I.C. 46 = 4 O.L.J. 184.

———*Cess—Nankar—Liability of estate to pay nankar-holders.*

The question of the obligation of an estate to pay the *nankar-holders* is a mixed question of law and fact. (*Evans*, J.C.) INDAR DEWAN SINGH *v*. DEPUTY COMMISSIONER, FAIZABAD. 13 I.C. 629.

———*Cess—Direct payment of — Separate estate.*

Direct payment of cess of rent-free lands is no proof that they form a separate estate. (*Miller*, C.J. *and Coutts*, J.) KUMAR PRAMATH NATH *v*. MEIK. 1920 Pat. 146 = 6 Pat. L.J. 278 = 56 I.C. 184 = 1 Pat. L.T. 760.

Co-sharer.

See also CO-SHARER.

———*Co-sharer Landlords—Supersession of one lease by another.*

Where a usufructuary mortgagee executed a lease to the mortgagor and was succeeded by two persons, one having three fourths and the other one fourths of his mortgagee rights and later on the mortgagor executed a mortgage to one of them it was held that the second mortgage could not affect the original lease. (*Karamat Hussain and Chamier*, JJ.) KASHMIRE *v*. RAMSARAN. 13 I.C. 416.

———*Co-sharer — Sale of a share in an undivided Patti.*

Where a patti is undivided and a co-sharer sells his share, he becomes an exproprietary tenant of the entire body of co-sharer and the buyer has not an exclusive right of collecting rent from him. (*Griffin*, J.) BHAGWANDIN *v*. DEBI PRASAD. 12 I.C. 630.

LANDLORD AND TENANT—Co-sharer.

———*Co-sharer landlords— Suit for rent by one.*

A rent suit by one co-sharer making the other co-sharers, defendants, along with the tenant is maintainable if fraud and collusion between them, is proved. 12 P.L.R. 289 Foll. (*Stanley*, C.J. *and Banerji*, J.) ZIA-UD-DIN *v*. MUHAMMAD UMART. 33 All. 303 = 9 I.C. 275 = 8 A.L.J. 54.

———*Co-sharer—Lease of undivided share in land--Rights of lessee.*

Where the lessee of a piece of land had a valid lease only in respect of a six-annas undivided share in the land, the mere fact that the owners of the remaining 10 as. share did not object to the erection by the lessee of a hut on a small portion of the land could not preclude them from claiming joint *khas* possession of the land, although they would not be entitled to disturb the possession of the lessee so far as the hut was concerned. (*Chatterjee and Newbould*, JJ.) HEM CHANDRA ROY *v*. SASHI BHUSAN. 63 I.C. 863.

———*Co-sharer—Demolition of structures.*

Co-sharer landlords who are in possession of their shares only cannot have a decree directing demolition of structures on lands belonging to all co sharers, unless all of them join in asking for the same relief. (*Newbould and Suhrawardi*, JJ.) TABRIJ *v*. KEDAR NATH DUTTA. 62 I C. 778.

———*Co-sharer landlords— Tenancy—Separation.*

If a tenant allows himself to be treated separately by some co-landlords, there is a separation of tenancy; so also where a co-sharer landlord creates higher rights in a tenant, there is a separation as regards his share. (*Beachcroft*, J.) PRIANATH NAICK *v*. PROMATHA NATH ADHIKARI. 57 I.C. 895.

———*Co-sharer landlords—Tenant—Injunction.*

One of several co-sharer landlords, if he can make out a case, has a right, to obtain an injunction against a tenant especially where the rights of the landlords will be jeopardized. (*Chaudhuri and Walmsley*, JJ.) ISHWAR CHANDRA SAHA *v*. SHASHINATH DAR. 55 I.C. 951.

———*Co-sharer landlords—Suit for assessment of rent—By one of several landlords—Maintainability.*

A suit for assessment of rent by one of several landlords is maintainable under the general law irrespective of the B. T. Act. (*Richardson and Beachcroft*, JJ.) DHANANJOY MANJHI *v*. UPENDRANATH DEB. 46 I C. 428 = 22 C W.N. 635.

———*Co-sharer landlords—Suit for rent.*

A landlord can get a decree for his share of the rent without joining his co-sharers when

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there had been what are called separate collections. (*Fletcher and Newbould*, JJ.) MOHENDRA NATH MADAK *v.* PARESH CHANDRA GHOSE. **40 I.C. 806.**

———*Co-sharer landlords—Suit by one of several joint landlords.*

One of several joint landlords may sue to recover the balance of rent from a tenant or in the alternative to recover sums collected by other co-sharers in excess of their shares. The ground for such an alternative relief should be clearly specified in the plaint. 9 W.R. (P.C.) 9; 27 A. 995 (P.C.) Rel. to. (*Mookerjee and Cuming*, JJ.) UZIR *v.* HARI CHARAN PAL. **37 I.C. 671.**

———*Co-sharer tenants — Rent— Whether one heir liable.*

One heir of a deceased tenant cannot be held liable for rent on the ground that he paid the rent as the deceased tenant's representative. All heirs make up a body of registered tenants of one holding. (*Chatterjee and Newbould*, JJ.) SHAIKH SAHID *v.* KRISHNA MOHAN BASAK. **25 I.C. 863 = 24 C.L.J. 371.**

———*Co-sharer tenant—Partition.*

Permanent tenure holders under same co-owners of a joint estate can sue for partition against their lessor's co-sharers. (*Mookerjee and Roe*, JJ.) SRIS CHANDRA *v.* MAHIMA CHANDRA. **33 I.C. 17 = 28 C.L.J. 231.**

———*Co-sharer tenants—Decree — Tenants unrecorded—If represented by recorded tenants —Symbolical possession, when affects persons not parties to suit or execution proceedings— Suit for possession by execution purchaser of holding—Limitation.*

Where the tenants elected to be represented in their relations to the landlord by their brother, they must be deemed to be parties to the suit in the name of their brother and could not be heard to say that they were strangers to the suit and therefore as against them the symbolical possession got by auction purchaser gave start to a fresh period of limitation. As against strangers to the suit the delivery of symbolical possession does not affect their possession. Unrecognised purchasers of a portion of the holding are bound by the result of the rent suit and are not liable to be turned out by a separate suit brought within 12 years from date of the execution sale but within 12 years of delivery of possession. (*D. Chatterjee and Beachcroft*, JJ.) SADOULA MRIDHA *v.* JOYNABTNUSSA BIBI. **32 I.C. 703.**

———*Co-sharer tenants—When bound by decree against registered tenants.*

Where some tenants allow themselves to be represented by their co-sharers in their dealings with their landlord, they will be bound by a rent decree obtained by the landlord against these co-sharers even though they were no parties to the suit. (*Chatterjee and Walmsley*, JJ.) MALUKJAN BIBI *v.* MATHURA DAS GOSWAMI. **20 I.C. 899.**

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———*Co-sharer — Separate Kabuliyat— Effect.*

The mere fact that a separate Kabuliyat is given by a tenant agreeing to pay rent separately to each co-sharer does not constitute a separate tenancy because it may be perfectly consistent with the continuance of the original lease of the entire lands. (*Chatterjee*, J.) IMAM-UD-DIN CHAUDHURI *v.* DANESH MAHAMMAD. **14 I.C. 738.**

———*Co-sharer landlords—Right to sue collectively.*

The co-sharer landlords can sue the tenants collectively even if they collect rent separately and the rent refers to different periods. (*Holmwood and Teunon*, JJ.) BHOLANATH *v.* BELCHAMBERS. **10 I.C. 891 = 14 C.L.J. 373.**

———*Co-sharer tenant — Representative tenant—Decree against the representative.*

There is no universal rule that a tenant cannot represent his co-tenants in the books of his landlord and a decree against the representative binds the shares of others. 9 C.W.N. 843, Dist. (*Mookerjee and Teunon*, JJ.) GAGAN SHEIK *v.* ABAJAN KHATAM. **10 I.C. 116 = 14 C.L.J. 180.**

———*Co-sharers — Landlords — Partition between landlord and his sons—Effect.*

Where on a partition between lessor of a house and his sons, the house was not expressly allotted to the sons, the lessor is entitled to sue for the rent, though the lessor's sons recovered the debt on the mortgage in pursuance of which the lessor was in possession. (*Kensington*, J.) NARPAT RAI *v.* HARI RAM. **176 P.L.R. 1913 = 19 I.C. 638 = 180 P.W.R. 1913.**

———*Co-sharer — Lambardar — Suit for profits against—Mortgagee of a share in a plot.*

A suit for a half-share of the profits against lambardar was brought by the plaintiff assignee of a possessory mortgage executed by the owners of a half-share in a village in respect of their share in an *abadi* plot in the village. *Held*: The suit as framed against an agent was not maintainable at the instance of the plaintiff alone and in respect of one plot. The principle enunciated in the English statute 4 Anne, C. 16, does not apply to malguzari villages. (*Mittra*, J. C.) BABU NARIDAS *v.* MST. GAHENABAI. **(1922) Nag. 161.**

———*Co-sharer — Surrender by lessee from —Effect.*

Where a lessee of a fractional co-sharer of his *sir* land surrenders the land to the *lambardar* who puts in another person as an occupancy tenant, *held* that on the extinction of the lessee's interest the land became the *khudkasht* of the co-sharer and that the *lambardar* was not entitled to grant a lease to any third person. (*Hallifax*, A.J.C.) UMED SINGH *v.* RAM DAYAL. **63 I.C. 733.**

ANDLORD AND TENANT—Co sharer.

——*Co-sharer tenants—Right of one to pay up entire rent.*

Where a lease is in favour of two or more persons, each tenant is entitled to pay up the entire rent and prevent a forfeiture of the holding. (*Mittra, Offg.* A. J. C.) NILKANTH *v.* BHAGWANT. **42 I.C. 270=13 N.L.R. 178.**

——*Co-sharer landlords — Lambardar—Power of, to consent to transfer of occupancy holdings—Partition proceedings, effect of.*

Mere institution of partition proceedings does not put an end to the power of *lambardar* as representative of the proprietary body to consent to a transfer by an occupancy tenant of his holding. (*Mittra*, A.J.C.) CHOWBE JAIGOPAL *v.* RAMESHWAR. **26 I.C. 606= 10 N.L.R. 89.**

——*Co-sharer—Incumbrance by.*

A co-sharer holding unpartitioned land under a private arrangement cannot encumber it so as to bind the other co-sharers on partition. (*Ross*, J.) LAL DAS *v.* RAM NARAIN SUKUL. **68 I.C. 2.**

——*Co-sharer—Right to realise entire rent.*

One co-sharer landlord can sue for the entire rent due to him and other co-sharers if the others do not join in the suit but he cannot maintain a suit for his share only, unless there is such an arrangement between himself, his co-sharers and tenants. (*Jwala Prasad*, J.) RAM RATAN PRASAD *v.* JANG BAHADUR SINGH. **62 I.C. 47.**

——*Co-sharer landlords—Parties.*

A co-sharer landlord having no right to a separate collection cannot maintain a suit for rent without impleading the other co-sharers as parties to the suit. 31 Cal. 707 ; 6 C.W.N. 326, Foll. (*Mullick and Atkinson*, JJ.) MADWA NAND RAM *v.* MAHOMED KHAN. **42 I.C. 452=2 Pat. L.W. 227.**

Covenants.

See also T. P. ACT, SS. 10, 108 and 102.

——*Covenant running with the land—Liability of transferee.*

A covenant by the tenant not to transfer the land without the landlord's consent is a covenant which sufficiently attaches to and concerns the demised premises and consequently is a covenant running with the land and consequently a transferee or the lessee is bound by such covenant. (*Mookerjee and Chotzner*, JJ.) SARADA KRIPA LALA *v.* BEPIN CHANDRA PAL. **37 C.L.J. 538=1923 Cal. 679.**

——*Covenants—Breach—Damages.*

In case, where a tenant surrenders before expiry of lease the landlord is entitled to a suit for damages and not for rent. (*Mr. Mookerjee and Buckland*, JJ.) JOGENDRA KRISHNA ROY *v.* KURPAL HARSHI AND CO. **49 I.C. 345= 1923 C. 63.**

LANDLORD AND TENANT—Covenants.

——*Covenant against alienation — Involuntary transfer—Effect.*

To a case of involuntary transfer a condition in a lease restraining transfer is not applicable unless there are words in the covenant which clearly make it applicable to such transfer. (*Newbould and Suhrawardy*, JJ.) KUMAR MON-MATHA *v.* CHUNI LAL GHOSE. **1922 C. 96=26 C.W.N. 173.**

——*Covenant for possession—Limits of doctrine.*

In the absence of a contract to the contrary, the lessor is deemed to contract with the lessee that if the latter pays the rent reserved by the lease and performs the contracts binding on him, he may hold the property during the time limited by the lease without interruption. This doctrine does not include a case of disturbance by persons having no lawful title or right of entry. Like the express covenant, the implied covenant protects the lessee against all disturbance by the lessor whether lawful or not, save under a right of re-entry, but as against other persons it protects the lessee only against lawful disturbance. (*Mookerjee, Newbould and Pearson*, JJ.) UDAI KUMAR DAS *v.* KATYAYANI DEBI. **35 C.L.J. 292=(1922) Cal. 87= 69 C. 948.**

——*Covenant for renewal—Assignee from tenant—Right to enforcement—Stipulation as to rent being increased—Vague and unenforceable.*

An assignee of the interest of a lessee is entitled to take the benefit of a covenant for renewal contained in the lease. The renewed lease can be claimed on the same terms and for the same rent as the original lease except for the covenant to renew. Where the covenant for renewal provides that the lessor could enhance the rent without any limit and without any objection on the part of the lessee the covenent is too vague and therefore unenforceable. (*Ghose*, J.) NAVAKISHORE DAS *v.* MADAN MOHAN DAS GOSWAMI. **69 I.C. 600.**

——*Covenant for renewal—Terms of renewal—Implied condition.*

Where there is a covenant for renewal, if the option does not state the terms of the renewal, the new lease would be for the same period and on the same terms as the original lease in respect of all the essential conditions thereof except as to the covenant for renewal itself. 20 C.W.N. 948 ; 16 C.L.J. 217, Rel. (*Mookerjee and Panton*, JJ.) GURU PRASANNA BHATTACHARJEE *v.* MADHUSUDAN CHOWDHURY. **26 C.W.N. 901=64 I.C. 824=35 C.L.J. 87.**

——*Covenant—Agreement to let—Possession given—Right of parties.*

Where B agrees to let land to A who takes possession and the agreement is one of which specific performance could be granted, A and B have the same rights as between themselves as if a lease had been executed provided the rights of third parties are not affected, (*Mookerjee and Fletcher*, JJ.) AMINULLA CHOWDHARY *v.* MAHABAT ALI. **60 I.C. 457= 25 C.W.N. 715.**

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———*Covenant for renewal—Terms of.*

If there is a stipulation for renewal, the tenant is entitled in the absence of other facts to a renewal on the original conditions contained in the lease. (*Beachcroft*, J.) EPASAN ALI *v.* RAM KUMAR DE. 38 I.C. 376.

———*Covenant against alienation—Breach—Sub-lease.*

Where the terms of lease give the lessor a right of re-entry in case of a breach of covenant against alienation in the lease, unless and until that right is exercised, a sub-lease granted in breach of the terms of the lease would operate as valid. (*Newbould*, J.) BROJABASSI RUDRA PAL *v.* SARAT CHANDRA 33 I.C. 555.

———*Covenant for renewal—Omission to give proper notice of intention to renew—No provision in lease for notice—Effect of.*

Where there is an unconditional covenant for renewal before the termination of the term, the lessee loses his right if he fails to give notice in time. But relief will be granted against failure to give notice in time under special circumstances. 27 All. 96, Ref. Where renewal of a lease is made conditional on the observance of certain covenants but not otherwise, such observance is a condition precedent to the right of renewal. The right of renewal is not enforceable if at the time of the renewal there is a subsisting breach of covenant. (*Mookerjee and Carnduff*, JJ.) RAM LAL DUBEY *v.* THE SECRETARY OF STATE FOR INDIA. 51 I.C. 690=29 C.L.J. 315.

———*Covenant against alienation—Enforceability.*

In the absence of a condition of forfeiture in a lease a covenant by the tenant not to transfer his interest cannot restrain the latter from transferring the same. (*Fletcher and Smither*, JJ.) ANNODA CHARAN NAYA *v.* DASARATH HALDAS. 40 I.C. 415.

———*Covenant for renewal — Option or covenant to obtain new lease on expiry of Kabuliyat—Holding over—Term and rent of new settlement—Rights of tenant.*

Where a covenant for renewal in a lease is uncertain both as regards the term to be granted and the future rent, the tenant holding over, after expiry of the Kabuliyat, is liable to be ejected, there being no contract which the tenant can enforce. No notice to quit is necessary and there is no presumption either that the new lease is to be for the term and rent mentioned in the old lease. (*Fletcher and Richardson*, JJ.) AZIMUDDIN CHOUDHURI *v.* PEER MAHOMED BEPARI. 39 I.C. 137.

———*Covenant against alienation—Involuntary transfer.*

A covenant reserving the right of re-entry to the lessor on the deft., lessees, transferring their interest by sale gift or mortgagee is enforceable when the lessees mortgage their interest and allow the leased land to be put up for sale,

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but not when the assignment was *in invitum* and not due to a voluntary act of the lessees. (*Sanderson*, C J. *and Mookerjee*, J.) DWARAKANATH ROY *v.* MATHURA NATH ROY.
24 C.L.J. 40=34 I.C. 833=21 C.W.N. 117.

———*Covenant for renewal—Renewal of leases—Construction.*

Where there is a covenant for the renewal of a lease at prevailing rates, the renewal will be presumed to be for the same period and on the same terms as the original lease in all essentials, except as to the covenant for renewal. Absence of the settlement terms did not render it unenforceable. A landlord could not eject the tenant until there is an offer to pay at the current rate and a refusal by the tenant. (*Newbould*, J.) RASUL GAZI *v.* ABDUL KHAN. 33 I.C. 450.

———*Covenant against alienation—Execution sale.*

A purchaser at an execution sale of the right, title, and interest of tenants holding under a *Nim Bowla* tenure which is expressly made non-transferable to any one except the landlord and containing no covenant against involuntary alienation or for re-entry, acquires a good title by his purchase and the landlord cannot proceed against the original tenants or against the purchaser. (*Mookerjee and Beachcroft*, JJ.) PROMODE RANJAM GHOSH *v.* ASWINI KUMAR NAG. 26 I.C. 23=18 C.W.N. 1188.

———*Covenant against alienation—Breach—Damages, measure of—Bengal Tenancy Act, S. 155.*

In an action for breach of covenant not to assign, the measure of damages is such a sum as would place the landlord in *Status Quo Ante*. (*Mookerjee and Beachcroft*, JJ.) KESHOB LAL NAG MUZUMDAR *v.* JHANENDRA NATH GHOSH. 24 I.C. 538=20 C.L.J. 332.

———*Covenant for renewal—License to carry fixtures.*

A license in a lease giving the lessee the right to carry away fixtures on expiry of lease cannot operate as a covenant to renew the lease, if the fixtures are not removed. 13 C.L.J. 262. (*Fletcher and Chatterjee*, JJ.) BENGAL COAL CO., LTD. *v.* RAJENDRA LAL MITRA. 21 I.C. 920=18 C.W.N. 420.

———*Covenant for pre-emption—If runs with land.*

A stipulation in a lease that the lessee would sell the tenure to the lessor if he wanted to sell it, on payment by the latter of the proper price, is not a covenant running with the land. (*Holmwood and Chapman*, JJ.) CHANDRA KANTH *v.* ABDUL GAFOOR KHAN. 18 I C. 237.

———*Covenant for renewal—Option—Who can exercise—Ejectment.*

If the lease does not mention who is to exercise the option, it is exercisable by the lessee

only. Such option is exercisable by the representative-in-interest of the lessee as well as by the lessee himself. In the absence of a contract to the contrary the renewed lease will be for the same period and on the same terms as the original lease in respect of all essential conditions except as to the covenant for renewal itself. Though there is no legal presumption against a right of perpetual renewal, the burden of strict proof is on the person claiming such a right which cannot be inferred from ambiguous expressions. The intention must be clearly expressed. Otherwise the agreement is satisfied with a single renewal. The position of the lessee who has always been ready and willing to accept a renewal on proper terms is as if a proper lease had been granted. Where the covenant is especially enforceable at the commencement of an ejectment suit, the position of the lessee is the same as if it had been specifically enforced. (2 C.L.J. 343; 11 C.L.J. 543, 16 C.L.J. 71, F.) (*Mookerjee and Beachcroft*, JJ.) SECRETARY OF STATE *v.* FORBES.
17 I.C. 180=16 C.L.J. 217.

———*Covenant against alienation—Simple mortgage.*

A covenant by the lessee in a lease against alienation by gift or sale, does not cover the case of a simple mortgage, but if the simple mortgage by the lessee results in sale, then the act of the lessee would come under the prohibition. (*Jenkins*, C.J. *and N. Chatterjee*, J.) NARENDRA BHUSHAN ROY *v.* BANHU BEHARI GHOSE. 14 I.C. 293.

———*Covenant for renewal—Tenant holding over.*

Where after the expiration of the lease for a term of seven years containing a covenant for renewal, the lessee continued in possession without asking for renewal. *Held*, that he continued as an annual tenant only after the expiry of the term. (*Macleod*, C.J. *and Heaton*, J.) MANILAL DALPATRAM *v.* NANDLAL KESHAVLAL. 53 I.C. 610=22 Bom. L.R. 133.

——*Covenant against alienation—Mulgeni lease—Breach—Effect.*

An assignment of *mulgeni* lease executed prior to the Transfer of Property Act by the lessee thereof, in breach of his covenant not to assign, is perfectly valid. Per *Seshagiri Aiyar*, J.—Even in cases where the Act applies, the same result will follow. (*Wallis*, C.J., *Oldfield and Seshagiri Aiyar*, JJ.). UDIPI SESHAGIRI *v.* SESHAMMA.
43 Mad. 503=12 L.W. 45=
(1920) M.W.N. 408=61 I.C. 668=
39 M.L.J. 128.

———*Covenant against alienation—Relinquishment—Forfeiture.*

A lease by a *Mulgeni* tenant contained the clause "If, while, without alienating the land in any manner, I am enjoying the said land through posterity, I find that I do not require the said land, I shall relinquish the land to you and obtain from you the value of the improvements which I have made thereon". *Held*, the clause did not work a forfeiture but was intended to secure for the tenant a right to relinquish his holding at his option and that the case in which the tenant alienated the land was in terms excluded from the conditions upon which he was allowed to relinquish it. (*Spencer and Kumaraswami Sastri*, JJ.) MAILTHI HENGSU *v.* SOMA.
29 M.L.J. 452=
30 I.C. 484=(1915) M.W.N. 639.

———*Covenant for enjoyment — Breach—Liability to refund.*

A lessor is bound to secure to lessee the possession of the land leased with reference to its intended use which was made known to him at the time when the lease was granted. If he is unable to secure possession to the lessee with reference to the use he wanted to make of it, he is liable to refund any money which he may have received from the lessee. (*Kanhaiya Lal*, A.J.C.) RAZZAQ ALI *v.* RAM AUTAR LAL.
6 O.L.J. 353=52 I.C. 836.

———*Covenant for renewal—Exercise of option.*

A suit brought six months after the expiry of the lease to eject a non-occupancy raiyat is barred by limitation. There is a limit to the exercise of an option to renew and a tenant's failure to come to terms within 3 years of the expiry of the old lease amounts to a failure to avail himself of the option. (*Roe and Jwala Prasad*, JJ.) BRIJNANDAN SINGH *v.* RAMESHWAR SINGH. 46 I.C. 580=5 P.L.W. 52.

———*Covenant for renewal—Scope of.*

Where a lease contains an undertaking by the lessor to grant at its expiration a new lease to contain the same covenants, such covenants will not include the covenant for renewal itself and the person claiming the right of perpetual renewal of a lease must strictly prove it. (*Ormond and Twomey*, JJ.) SECRETARY OF STATE *v.* MA DWE.
7 Bur. L.T. 268=24 I.C. 911=8 L.B.R. 64.

Damages.

———*Damages—Breach of covenant against sub-letting.*

Where the landlord claims damages from his tenant for having contravened the condition as to sub-letting, the landlord must prove damages which are just and natural consequences of the tenant's act. The mere fact that the tenant has benefited himself is not sufficient to prove damage. (*Macleod*, C.J. *and Shah*, J.) GURUSHANTAPPA *v.* MALAVA.
45 Bom. 1197=63 I.C. 240=
23 Bom. L.R. 523.

———*Damages—Specific letting not proved—Decree for profits for use and occupation.*

If a plaintiff claims a rent but fails to prove the agreement, the Court may give him a decree for profits for use and occupation, if no fresh

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issues of an entirely different character are necessary. 22 C. 752. Ref. (*Tyabji*, J). MUNIAPPA CHOWDHURI *v.* SINGARAVELU MUDALI. **24 I.C. 611.**

Denial of title.

See T. P. ACT, SS. 111, 112 and 114.

Determination of lease.

See T. P. ACT, SS. 106 AND 111.

Diluvion.

See (1) ALLUVION AND DILUVION.
(2) BENGAL ALL. & DIL. REGN. (XI OF 1825).

Dispossession.

———*Dispossession by landlord—Introduction of another tenant—Crops on the land—Right to.*

A landlord forcibly dispossessed a tenant from his holding and put the plaintiff in possession. The plaintiff had planted sugar-cane and raised a crop. On a question arising as to whether the plaintiff or the dispossessed tenant was entitled to the crop, *held*, that on every principle of law and equity the plaintiff was entitled to the crop or its value. (*Banerjee and Gokul Prasad*, JJ.) MIR SINGH *v.* MAKKHAN. **45 A. 404 = 21 A.L.J. 800 = L.R. 4 A. 134 (Rev.) = 1923 All. 421.**

———*Dispossession — Adverse possession against lessee is not adverse against landlord.*

The possession of a trespasser during the continuance of a lease does not become adverse against the lessor; the lessor is in possession by receipt of rent from his lessee and so long as such rent is not intercepted by a trespasser, he cannot be said to have been dispossessed. (*Mookerjee, Newbould and Pearson*, JJ.) UDAI KUMAR DAS *v.* KATYAYANI DEBI. **35 C.L.J. 292 = 49 C. 958 = 1922 Cal. 87.**

———*Dispossession — Stranger—Tenant's liability.*

Where a lessee is wrongfully dispossessed by a trespasser whether during the period of lease or after it when the lessee was holding over, the rights of the lessor against the lessee are not extinguished. (*Mookerjee*, A.C.J. *and Fletcher*, J.) BAIKUNTA NATH SARMA *v.* CHAITANYA CHARAN CHOWDHURY. **57 I.C. 994.**

———*Dispossession—Shamilat Deh—Partition of common land—Ejectment of plaintiff from his land in defendant's Thulla.*

The land in suit as well as 4 bighas, 19 biswas cultivated by the plaintiffs formed part of the village common land; when this common land was partitioned according to Thullas, the land in suit was allotted to Thulla Surta and the other plot to Tulla Kanoa. The plaintiffs were in possession (cultivating) of the latter plot and the defendants were similarly in possession of the land in suit, and although the ownership was changed at partition, the parties continued in possession of their respective plots. When the plaintiffs were ejected from

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the land in the Thulla of defendants which they were cultivating they sued for the possession of land in suit which was in their Thulla. *Held*, the arrangement was only for mutual convenience and the plaintiffs were entitled to get possession of the land in suit from defendants who had somehow got their names entered as its proprietors. (*Broadway*, J.) MUGHLA *v.* ABHE RAM. **4 P.W.R. 1923 = 1923 Lah. 172 (2).**

Distraint.

———*Distraint—Proof of tenancy necessary—Tenancy during one year not proof of tenancy in another.*

For a valid distraint, the relation of landlord and tenant must be shown to have existed during the years in respect of the rent of which the distraint was made. The fact that a person was a tenant in one year would not, as a matter of course, show that he was also tenant in another year. (*Griffin*, J.) TOTA RAM *v.* MAN SINGH. **10 I.C. 329.**

Easement.

See also EASEMENTS ACT, S. 12.

———*Easement—If can be acquired by prescription.*

A tenant cannot acquire by prescription an easement against his landlord. (*Daniels*, J.) KARAN SINGH *v.* DAL CHAND. **1924 All. 159.**

———*Easement—If can be acquired by tenant.*

A right of easement cannot be acquired by a tenant against his own landlord; also a tenant of one of several co-owners cannot, unless there has been a partition, acquire a right of easement against the other co-owners. (*Bannerji*, J.) BAHADUR *v.* KHUSHI RAM **22 I C. 379 = 11 A.L.J. 990.**

———*Easement.*

Though a tenant cannot acquire easement against the landlord he may acquire a right of way on proof of such a long user as to lead to a presumption of last grant. (*Beachcroft*, J.) SWARASWATI DASI *v.* MONMOHINI DASI. **57 I.C. 776.**

———*Easement—Customary rights—Right of tenants to Khalihans, to play Ramlila and to conduct marriage processions—Nature of the right.*

Where it is found that the villagers have, without interruption by the malik, been using the land for performing Ramlilas, for putting up marriage processions, for keeping Khalihans and for tying cattle from time immemorial. *Held*, that their right did not amount to an easement but was a customary right. There was nothing to prevent the landlord from selling the land and developing it, so long as he did not interfere with the rights which the villagers had acquired. 23 B. 667; 17 A. 87; 8 C.W.N. 425 Ref. (*Ross*, J.) RAM DAS SAH *v.* DAMODAR PRASAD. **4 P L T. 223 — 1923 P. 316.**

Ejectment.

See also (1) EJECTMENT.
(2) T. P. ACT, S. 111.
(3) TENANCY ACTS (LOCAL).

———*Ejectment—Covenant for renewal—Bar.*

After the expiry of the original lease, the landlord could not succeed in ejectment unless he has tendered to the tenant a lease as contemplated in the covenant for renewal which has not been accepted by the tenant. (*Mr. Ameer Ali.*) NRITYAMONI DASSI *v.* LAKHAN CHUNDER SEN.
43 Cal. 660=20 C W.N. 522=30 M.L J. 529=(1916) 1 M.W.N. 332=3 L.W. 471=18 Bom. L.R. 418=24 C.L.J. 1=33 I.C. 452=20 M L.T. 10. (P.C.).

———*Ejectment—Transfer of holding—Fixed rate tenancy—Effect of transfer—Transferee an agricultural tenant.*

A fixed rate tenant transferred all his property including a fixed rate holding to the defendant who on the death of his transfer took possession of the property and re-built a house which was in ruins. The zemindar thereupon sued to eject the defendant who was himself an agricultural tenant. *Held*, that the suit was not maintainable. (*Stuart and Ryves*, JJ.) THA KURJI MAHARAJ *v.* ANANT BHARTHI.
20 A.L.J. 922=1922 All. 538.

———*Ejectment—Occupancy tenant—Right to keep house appurtenant to holding.*

A tenant who has been ejected from his holding cannot keep possession of the house appurtenant to the holding. (*Chamier*, J.) PHUL BIBI *v.* RAHUR ALI. **28 I.C. 849.**

———*Ejectment—Appurtenance agricultural holding—Long user—Partition—Effect of.*

Where a *Zamindar* allows the tenant to use a plot of land for a long time for the use of cattle and manure, the land will become an appurtenance to the agricultural holding. The fact that at partition this plot was allotted to one Zamindar and the agricultural holding to another, will not render the tenant liable to ejectment at the instance of the Zamindar. (*Rafique*, J.) NET RAM *v.* TEJ RAM.
20 I.C. 260=11 A.L.J. 445.

———*Ejectment*—Jus tertii—*Year to year tenancy—Suit for ejectment—Burden of proof.*

In a suit for ejectment against a tenant from year to year not being a possessory suit, the plff. must establish a present right to possession and the defts. are entitled to rely on the *jus tertii* appearing from facts adduced by plff. (*Scott*, C.J. *and Batchelor*, J.) SITARAM *v.* SADHU AVAJI PARIT. **38 Bom. 240=23 I.C. 786=16 Bom. L.R. 132.**

———*Ejectment — Trespasser — Right of landlord to eject trespasser.*

The landlord can institute a suit for recovery of possession from a trespasser who got possession of land by ejectment. **10 C. 1076**, foll. (*Mookerjee and Chotzner*, JJ.) RAJ KUMAR MANDAL *v.* ALI MIA. **37 C.L.J. 94=1923 Cal 192.**

———*Ejectment — Suit for— Occupancy tenancy claimed—Adhiar tenancy and onus.*

In an ejectment suit the deft. pleaded that he was an occupancy raiyat. The Court determined that there existed an adhiar tenancy, in which case half the produce is paid to the landlord as rent. *Held*, that even though the conclusion arrived at by the Court was not in accordance with the case set up by either party, yet the plff. was not prejudiced in respect of his claim for ejectment as upon the real question in issue each party understood what he had to prove and what he had to expect from his opponent. (*Mookerjee and Panton*, JJ.) GENDLI BIBI *v.* JOYNAL ABDIN SARKAR.
26 C.W.N. 294=35 C.L.J. 103=1922 Cal. 254.

———*Ejectment* — Bona fide *tenant of* de facto *proprietor—Real proprietor, if can eject.*

A *bona fide* tenant of a *de facto* proprietor is not liable to be ejected by the real proprietor as a trespasser on the ground that the *de facto* proprietor had no authority to settle the land which was not his. (*Buckland and Cuming*, JJ) ARABULLA *v.* SUNAMANI DAS. **63 I.C. 962.**

———*Ejectment — Tenancy as regards of part of holding, if can put an end to.*

The landlord cannot end the tenancies as regards parts of the land and maintain them as regards the rest. (*Petheram*, C.J. *and Macpherson*, J.) DURGA CHURN *v.* PANDUB NATH. **33 C.L.J. 518.**

———*Ejectment—Portion of holding.*

A suit for ejectment of a tenant from a portion of the holding transferred cannot lie as he still holds the remainder. (*Piggott and Beverley*, JJ.) BHIMRAM *v.* HURA SUNDERY.
33 C L J. 516.

———*Ejectment—Cannot be had in respect of portion of holding.*

A landlord cannot break up his tenant's tenure into portions and a suit by the landlord to eject a tenant, on service of notice, from a portion of the holding, on the ground of non-payment of rent, is not maintainable. (*Prinsep and O'Kinealy*, JJ.) RAMKANIE *v.* GANESH.
33 C.L.J. 513=64 I.C. 550.

———*Ejectment—Expiry of term—Raiyat acquiring occupancy right—Adverse possession—Lease in favour of landlord.*

Where a raiyat acquires a right of occupancy in his holding by virtue of twelve years possession and cultivation and subsequently executes a fresh lease, he cannot be ejected by the landlord on the expiry of the term of the lease. (*Fletcher and Huda*, JJ.) SAIYAD SHA MAIDAL *v.* SRIDHAR DULEY. **47 I.C. 157.**

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———*Ejectment — Resistance by tenant — Onus.*

A tenant, in a suit by a landlord on the ground that his subordinate interest has terminated on the receipt of notice to quit, must prove his larger interest which cannot be determined and therefore he cannot be ejected. (*Fletcher and Newbould*, JJ.) PARANCHANDRA KARMARKAR *v.* KHAZEE MANDAL
42 I.C. 262.

———*Ejectment — Under raiyat — Time, whether essence of contract.*

Where according to the terms of *Kabuliyat* an *under raiyat* was on the expiry of the term, to release the land to the raiyat unless the tenant shall take a second settlement and the raiyat brought a suit to eject the tenant (under-raiyat), *held*, as the tenant did not even, during the trial, offer to take a second settlement and was not willing to perform his contract, the plaintiff was entitled to a decree though time is not of the essence of the contract in such cases. (*Fletcher and Newbould*, JJ.) RAHMATULLA SHEIKH *v.* ISSABUDDIN SARKAR,
40 I.C. 616.

———*Ejectment—Suit to eject korfa ryot—Burden of proof.*

The suit was brought for ejectment by a landlord. The right of suit was based on a kabuliyat, the terms of which had expired. It was admitted by the defendant, that his right was that of an under-ryot and liable to be ejected on the expiration of the term. *Held*—that a korfa ryot did not necessarily mean an under-ryot. The burden of proof was on the landlord, to prove that the defendant was an under-ryot, subject to ejectment, after the expiration of the term of his lease. (*Fletcher and Richardson*, JJ.) EMADUDDIN CHOWDHARI *v.* DANESHMAMUD. 39 I.C. 240.
See also 39 I.C. 409=21 C.W.N. 452.

———*Ejectment—Parties to suit—Ejectment of tenants.*

S. 27 of the Bengal Act (VIII of 1869) applies only where a tenant is dispossessed by the whole body of landlords. (*Chatterjee and Beachcroft*, JJ.) RAMU PAL *v.* PRAKASH CHANDRA. 32 I.C. 757.

———*Ejectment—Conditional decree—Agricultural year, non-expiry of—Effect.*

Where the landlord instituted a suit before the expiry of the agricultural year current at the time when the original under-*raiyat* died, *held*, that the proper form of the decree would be one for ejectment against his representatives to be executed only on the expiry of that particular agricultural year. (*Mookerjee and Richardson*, JJ.) MEHER ALI *v.* KALAI KHALASHI. 19 C.W.N. 1129=
29 I.C. 461=27 C.L.J. 579.

———*Ejectment—Trespasser—Gift by widow of tenant—Possession—Resumption.*

The widow of an original tenant made a gift of her husband's tenancy in absolute title to a stranger who died after enjoying it for 3 years. The widow resumed the tenancy. *Held*, that by merely occupying the land on the death of the donee, the widow, without ostensible heirs, could not acquire any right of tenancy in the land and was liable to be ejected. (*Holmwood and Carnduff*, JJ.) MAHANT HANUMAN SARAN *v.* SHEO NATH MAHTO. 28 I.C. 305.

———*Ejectment—Continuance of tenancy—Transferee of a portion of holding cannot be ejected—Collusive surrender.*

During the continuance of the tenancy the landlord cannot eject a transferee of a portion of holding. Where after transferring a portion of the holding, the tenant in collusion with the landlord surrenders his holding to him, the tenancy does not terminate on account of the collusive surrender and the transferee cannot be ejected by the landlord. (*Mookerjee and Mullick*, JJ.) ASGAR ALI *v.* GOURI MOHAN ROY CHOUDHARI. 18 C.L.J. 257=
21 I.C. 88 (2)=18 C.W.N. 601.

———*Ejectment—Denial of tenancy—Tenant or trespasser—Licensee.*

A tenant, who is really a trespasser, may set up a tenancy and also plea of limitation, in a suit for possession against him. If he admits the superior title of the plff. or his predecessor, either he can be a tenant or a licensee, but he cannot set up adverse possession. (*Mookerjee and Beachcroft*, JJ.) MOTI LAL ROY *v.* KULU MANDUL. 19 C.L.J. 321=19 I.C. 853.

———*Ejectment—Denial of title in previous suit for rent—Subsequent suit for possession—If deft. can urge tenancy*—Res judicata.

Where in a previous suit by landlord for arrears of rent the deft. pleaded that he was not a tenant and the Court held that no relationship of landlord and tenant existed, the deft. cannot urge his tenancy to defeat a subsequent suit by the landlord for possession. 34 C. 922 Rel. on. 9 C.W.N. 928, Not fol. (*Coxe*, J.) ANANDA PROSAD *v.* SHAMSUNDAR.
18 I.C. 688.

———*Ejectment — Registered lease— Oral contract.*

The defendant entered into possession of land and was paying rent under an *Amalanamah* from M. though not registered. The plaintiff under a subsequent registered lease from M, brought a suit to eject the defendant as a trespasser. *Held*, though the title of the plaintiff under the registered *patta* prevails, yet the defendant being a tenant upon the land, the plaintiff was not entitled to eject him, as a trespasser. (*Jenkins* C.J. *and* D. *Chatterjee*, J.) PARBATICHARAN *v.* PROBAT CHANDRA.
12 I.C. 36.

———*Ejectment—Co-sharer landlords—Conditions necessary.*

To maintain a suit for ejectment of a tenant, by a co-sharer landlord to the extent of his share, proof is necessary of the determination by

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all the landlords of the tenancy by an overt act. (*Chatterjee*, J.) ATUL CHANDRA MAJUMDAR *v.* BEJOY DHUPNI. **11 I.C. 695.**

———*Ejectment—Error in Record of rights* A suit for ejectment on the ground that the defendant is a tenant-at-will, is not a suit for the correction of the record of rights. (*Coxe*, J.) MINAI NAIK *v.* BANCHANIDHI SAHU. **9 I.C. 805.**

———*Ejectment—Whether a tenant whose lease has determined can evict a landlord.*

A tenant whose lease has determined cannot evict the landlord who was let into possession by the *quandum* tenant. (*Le Rossignol and Wilberforce*, JJ.) MAMTAZ *v.* NAURANG. **3 Lah. L.J. 227.**

———*Ejectment—Right to eject inamdars.*

Where the Zemindar sues to eject an Inamdar he is bound to prove that he has a right to eject, and he can do that only by proving that he granted the land itself and is now entitled to get it back. (*Phillips and Devadoss*, J.) SRI RAJA VENKATARANGAYA APPARAO BAHADUR *v.* MORAMPUDI BAJIRAJU. **45 M.L.J. 238=(1923) M.W.N 755 1924 Mad. 93.**

———*Ejectment—Lessee out of possession cannot eject trespasser.*

A lessee of certain lands, who had not obtained possession from his lessor but sub-leased his right to others for a term with a stipulation that they should take possession, has no right to sue during the continuance of the term trespassers in obtaining possession either for mesne profits or for damages. Per *Wallis*, C.J. (*Sadasiva Aiyar*, J. *contra*)—The lessee is also entitled to sue the trespassers for possession. (*Wallis*, C.J. *and Sadasiva Aiyar*, J.) DAVOOD MOHIDEEN RAVUTHAR *v.* JAYARAMA AIYAR. **44 Mad. 937=(1921) M.W.N. 43=29 M.L.T. 78=40 M.L.J. 38=62 I.C. 284=13 L.W. 281.**

———*Ejectment—Right to lease of several items of property—Right of assignee of reversion in one item to eject lessee.*

A lessor is not entitled to eject the lessee from a part only of the holding but an assignee of the reversion in part of the demised premises is entitled to eject the lessee for due cause from such part on payment of the value of the improvements on that part. (*Wallis*, C.J., *Oldfield*, *Sadasiva Aiyar*, *Coutts Trotter and Seshagiri Aiyar*, JJ.) PUTHIAPURAYIL KANNYAN BADUVAN *v.* CHENNYANTEAKATH PUTHIAPURAYIL. **42 Mad. 608=37 M.L.J. 47=10 L.W. 95=51 I.C. 286=(1919) M.W.N. 401 (F.B.).**

———*Ejectment—Determination of tenancy—Onus—Plea of deft.*

In a suit in ejectment based on a terminated tenancy ordinarily the plff. landlord has to prove not only that the defts. were tenants but also his right to eject. He must show that the tenancy is a terminable one and has been terminated validly. This is not affected by any defence of permanent tenancy set up by the tenant but not substantiated at the trial. (*Spencer and Krishnan*, JJ.) MUTHUSWAMI AIYAR *v.* NAINAR AMMAL (1918) **M.W.N 219=7 L.W 194=43 I C. 977.**

———*Ejectment—Execution barred—Right of fresh suit.*

If a plaintiff after obtaining a decree for possession of immoveable property allows execution to become barred, he cannot bring a fresh suit for ejectment against the same parties or their representatives unless there has, in the meanwhile, arisen any fresh cause of action. (*Sadasiva Aiyar and Spencer*, JJ.) RAMAN MENON *v.* MAMMALI. **39 I.C. 954=(1917) M.W.N. 560.**

———*Ejectment—Covenant for renewal of the lease, if a bar.*

A covenant by a lessor to renew a lease contained in a lease deed cannot be pleaded as a bar to a suit for possession brought by him, on the expiry of the lease term. A promise to renew the lease cannot be treated as a promise not to eject on the expiry of the term. (*Sadasiva Aiyar and Napier*, JJ.) DISTRICT BOARD OF TANJORE *v.* VYTHILINGA CHETTI. **31 I.C. 919.**

———*Ejectment—Trespasser—Lease subsisting—Suit by lessor against trespasser.*

A landlord, though he has given a lease to a third person, is entitled to sue the trespassers for the purpose of putting his lessee into possession. (*Sadasiva Aiyar and Hannay*, JJ.) SOMAI AMMAL *v.* VELLAYA SETHURANGAM. **16 M.L.T. 532=1 L.W. 1047=(1915) M.W.N. 12=26 I.C. 347=29 M.L.J. 233.**

———*Ejectment—Mortgagee from landlord—Tenant by sufferance—Limitation Act, Art. 139.*

A usufructuary mortgagee cannot eject a tenant already on the land unless the latter attorns to him. (*Miller and Sadasiva Aiyar*, JJ.) GANAPATHI MUDALI *v.* VENKATALAKSHMINARASAYYA. **26 I.C. 109=(1914) M.W.N. 728.**

———*Ejectment—Co-sharer landlord—Trespasser.*

No co-sharer landlord can eject a tenant unless he represents the full body of proprietors. There can be no partial ejectment of a tenant to the extent of the share of co-sharer nor can there be joint possession by the landlord with the tenant. Any co-sharer landlord can sue to eject a trespasser. (*Stanyon*, A.J.C.) DHANOOLAL *v.* RAMLAL. **48 I.C. 496.**

———*Ejectment—Permanent lessee—Ryot—Encroachment.*

A perpetual lessee can maintain a suit against a *ryot* with regard to a trespass committed by the latter. (*Lindsay*, J. C.) RAGHUBAR *v.* SURAJ BAKSH. **6 O.L.J. 237=46 I.C. 357.**

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———*Ejectment—Decree—Trees planted in cultivating holding tenant.*

When a decree for ejectment is obtained against a tenant he must in the absence of special rule or custom to the contrary, as in the case of groves, deliver over possession of the trees along with the cultivating holding on which they stand, even though they were planted by him, before he acquired the status of a tenant. 1 O.C. 231, distinguished from. (*Lindsay*, J.C.) SARDER SINGH *v.* GAJAH SINGH. 23 I.C. 957 = 1 O.L J. 63.

———*Ejectment—Tenant permitted to hold over.*

Where a landlord allows his tenant to hold on after the expiry of the lease term, he is not precluded from ejecting the tenant. (*Lovett*, S. M. *and Ferard*, J. M.) COURT OF WARDS AJODHYA ESTATES *v.* RAGHUBAR SINGH. 60 I.C. 625 = 7 O.L.J. (B.R.) 667.

———*Ejectment — Notice—Defence of tenant.*

In a suit to contest a notice of ejectment the Court should cancel the notice if the defenant shows that he holds on under-proprietary tenure. (*Hopkins*, S.M. *and Porter*, J.M.) KALLU MISIR *v.* BHAGWATI SINGH. 60 I.C. 142 = 2 U.P.L R. (B.R.) 81.

———*Ejectment—Right of landlord after transfer to Thekadar.*

A landlord who transfers his proprietary rights to a *thekadar* cannot maintain an ejectment suit against a tenant unless by the *thekanama* he reserves to himself a right in this behalf. (*Ferard*, S.M. *and Harrison*, J.M.) KUDAI KHAN *v.* JAGAT NARIAN DUBEY. 55 I.C.569 = 1 U.P.L.R. (B.R.) 42.

———*Ejectment—Notice of—Validity.*

If two brothers jointly succeed as ordinary tenants to their father's holding, but the name of only one of them is entered in the patwari papers and it was not clear whether the landlord ever accepted rent from the other co-tenant, notice of ejectment issued against that son alone whose name appeared in the patwari papers is valid. (*Holms*, S.M.) JHUMAK LAL *v.* SARJU PRASAD. 34 I.C. 711 = 3 O.L.J. 211.

———*Ejectment—Notice—Validity of.*

Where a tenant having a holding at a certain rental, possesses another jointly with other person, the rent of the latter being included in his separate holding, notice of ejectment by a landlord is invalid being for a part only. (*Holms*, S.M. *and Campbell*, J.M.) KUNJ BIHARI *v.* AMRESH BAHADUR SINGH. 33 I.C. 263 = 2 O.L.J. 753.

———*Ejectment— Notice — Contesting of—Court, duty of.*

Where plff. sets up a claim as under-proprietor and not as tenant in a suit to contest a notice of ejectment, the Court should adjudicate on the claim so far as the *prima facie* case is concerned. (*Holms*, S.M. *and Campbell*, J M.) MAHABIR SINGH *v.* MANAGER, COURT OF WARDS. 33 I.C. 246 = 2 O L.J. 729.

———*Ejectment — Tenants at favourable rent.*

A tenant at favourable rent is superior to a mere tenant in status and cannot be ejected by notice. (*Campbell*, J.M.) LAL TRIBHUVAN NATH SINGH *v.* GANGA DEI. 33 I.C. 232 = 2 O.L.J. 722.

———*Ejectment—Notice, of—Description of property.*

A notice of ejectment is bad wherein the land from which the tenant is to be ejected is not specified. (*Holms*, S.M. *and Campbell*, J. M.) SURAJ BALI *v.* THE MANAGER OF THE NANPARA ESTATE. 33 I.C. 168 = 2 O.L.J. 712.

———*Ejectment—Tenant at favourable rate.*

Tenants holding at favourable rate of rent fixed deliberately and not accidentally cannot be ejected as mere tenants. (*Campbell*, J.M.) KRISHNA PRASAD *v.* SURAJ PAL SINGH. 2 O.L.J. 739 = 33 I.C. 215.

———*Ejectment — Non-payment of rent—New lease at enhanced rent—Enhancement illegal—Non-payment of rent.*

A tenant is estopped from pleading in an ejectment suit against him, the commencement of a fresh statutory period from the date when a new lease was granted to him, if he does not pay the enhanced amount of rent entered therein though the enhancement was illegal. (*Holms*, S.M. *and Campbell*, J.M.) RAM PRASAD *v.* DALLA. 30 I.C. 86 = 2 O.L J. 256.

———*Ejectment—Notice—Wrong entry as to amount of rent due.*

Where rent is wrongly entered in the notice, it will not invalidate the notice unless it affects prejudicially the tenant concerned. (*Holms*, J. M.) SHEORAJ SONAR *v.* RAJA PARTAB BAHADUR SINGH. 28 I.C. 211 = 2 O L.J. 112.

———*Ejectment—Exproprietary tenant out of possession—Absence of proof that vendee occupied as sub-tenant—Effect of.*

A person, who has exproprietary rights but who is not in possession, cannot arrest them 12 years after the sale, and cannot eject the vendee in possession unless he proves that the person in possession occupied it as his sub-tenant. (*Baillie*, S.M.) NAGESHER *v.* RAM THAL. 26 I.C. 722 = 1 O.L.J. 692.

———*Ejectment—Notice—Heir of tenant—Occupation by—Landlord's conduct—Acquiescence—Effect of.*

Where the heirs of a deceased tenant continued to hold for three years after the right to hold had ceased and the landlord's conduct shows acquiescence but the landlord eventually issued a unstamped notice of ejectment, *held*, that the landlord's conduct amounted to

acquiescence and that the unstamped notice was insufficient. (*Baillie*, S.M.) UDIT NARAYAN SINGH *v.* GUR CHARAN.
26 I C. 719=1 O.L.J. 717.

———*Ejectment—Notice of—Tenant contesting notice of ejectment*—Prima facie *case—Proof of.*

A tenant contesting a notice of ejectment has simply to make out a *prima facie* case before the Revenue Court, that he has an under-proprietary right in the holding. (*Baillie*, S.M. *and Tweedy*, J.M.) RAGUNATH KUAR *v.* COURT OF WARDS. 26 I.C. 683=1 O.L.J. 587.

———*Ejectment—Notice—Tenant holding at favourable rate.*

A tenant holding at a favourable rate of rent cannot be ejected by notice. (*Tweedy*, J.M.) COURT OF WARDS, ESANAGAR ESTATE *v.* GAURI SHANKAR. 26 I.C. 624=1 O.L.J. 697.

———*Ejectment—Right to — Thekadar—Powers of.*

A notice of ejectment signed by the landlord alone without the signature of the *Thekedar* is insufficient where the power of ejecting is not absolutely reserved and provision is made for the consent of the landlord in issuing notice of ejetment by the *Thekadar*. (*Baillie*, S M.) BHAGWATI PRASAD SINGH *v.* SURAJ BALI.
26 I.C. 263=1 O.L.J. 579.

———*Ejectment—Co-sharer tenant—Notice.*

Notice of ejectment must go to all co-sharers in a tenancy who are tenants in-chief and not merely to the person who is recorded in the *Patwari* papers so that all of them may appear in a suit to contest the notice and questions may be properly decided. (*Baillie*, S.M.) ABBAS BANDI BIBI *v* SARJU PANDE.
26 I C. 95=1 O L J. 531.

———*Ejectment* — Shikmi *tenant* — *Civil Court's finding.*

A person entered in the *patwari* papers as *shikmi* tenant but having a Civil Court decree declaring him to be the proprietor of the holding, and entitled to redeem it, cannot be ejected so long as the decree holds good. (*Baillie*, S.M. *and Tweedy*, J.M.) SANVAL SINGH *v.* PRAG DAT. 26 I.C. 86=1 O.L.J. 517.

———*Ejectment— Raiyat holding — Claim of—Onus.*

Where in a suit for possession of lands by a landlord the defendant sets up that they are his *raiyati* holdings if the plaintiff establishes his title which *prima facie* entitles him to possession, itis on the defendant to identify the land which he claims as his raiyati land. (*Coutts and Das*, JJ.) BHAIYAN SUNDARABAS KUERI *v.* DILWAR SAHU. 1 P.L.T. 30=52 I.C. 701=1920 Pat. 39.

———*Ejectment—Proof of tenancy.*

A plff. in a suit for ejectment on the ground of determination of tenancy must prove

the existence of the relationship of landlord and tenant. (*Mullick and Thornhill*, JJ.) KUBER NATH SINGH *v.* GOPAL NARAIN RAM. 46 I.C. 238.

———*Ejectment — Right to — Landlord's right to enter—Assignee from tenant.*

A deft. claiming that he is the assignee from the tenant and is not bound to quit, must show his right to oppose the landlord's entry in a suit for ejectment by the landlord; and the Court must give a definite finding as to whether the deft. has such a right, in spite of the plff.'s failure to prove a special case set up by him. (*Chapman*, J.) KARU SINGH *v.* BIBI NASIBAN.
37 I.C. 357.

———*Ejectment—Part of holding—Plaintiff, not entitled to immediate possession—No right to sue.*

An ejectment suit must be for the whole and not for a part of a holding. An action for ejectment is based on the right to immediate possession, so that a reversioner cannot sue for ejectment. 11 C.W.N. 828, Diss. (*Atkinson*, J.) BHAGLOO SHAH *v.* MAHADEO CHAUDHURI. 36 I.C. 283.

———*Ejectment — Co-sharer landlords—Execution of lease to one of co-sharer landlords—Lessor's right to recover rent or sue in ejectment.*

A lessee from one of several co-sharers cannot dispute his lessor's exclusive title to receive the rent or sue him in ejectment. 13 Bom. 329, Foll. (*Maung Kin*, J.) KUNA PUNA MAHOMED EBRAHIM *v* KAVANA ENA MAHOMED.
35 I.C. 837=9 Bur. L.T. 110.

Encroachment.

———*Encroachment—Adverse possession.*

Sticking cowdung, erecting a *kàcha* hut, on Banjar and such other acts by a tenant, do not constitute adverse possession. (*Knox*, J.) GAJADHAR *v.* BHIMAN. 42 I.C. 896.

———*Encroachment—Benefit of landlord.*

An encroachment made by a tenant upon the contiguous land of another enures for the benefit of the landlord from the time the tenant takes possession, and not from the time when the tenant executes a kabuliyat in respect of that land in favour of his landlord. (*Teunon and Newbould*, JJ.) RAKHAL CHANDRA GHOSE *v.* MOHENDRA NARAIN SEN. 51 I C. 797.

———*Encroachment—Onus of proof.*

Where a suit is brought to recover possession of a plot of land from a tenant on the ground that the land was not included in the holding but was encroached upon by the tenant the onus is upon the plaintiff to prove that the land sued for is outside the land demised to the tenant. 12 C.L.R. 457, Foll; 19 C.L.J. 408. Dist. (*Teunon and Newbould*, JJ.) NARENDRANATH SANYAL *v.* SHEIKH EMAMAN.
51 I.C. 785.

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———*Encroachment—Suit for possession of land contiguous to holding—Burden of proof.*

Where a landlord brings a suit for possession of land which is contiguous to the holding the burden of proof is upon the plff. to show that the land was not within the tenant's holding. (*Chatterjea and Richardson*, JJ.) SHYAMA CHARAN *v.* MASTAFIZAR RAHMAN.
41 I.C. 769.

———*Encroachment—Neighbouring land of landlord—Permanent tenant.*

Where a permanent tenant was treated as a tenant of the land encroached by him the new tenancy is of the same nature as the old one. (*Mookerjee and Beachcroft*, JJ.) SARADA KRIPA LAHA *v.* AKHIL BANDHU BISWAS.
21 C.W.N. 903 = 41 I.C. 530 = 28 C.L.J. 18.

———*Encroachment—Presumption.*

The doctrine which entitles the landlord to say that there is presumption that all encroachment is for his benefit has no application whether the encroachment is not claimed as annexed to the holding. (*Jenkins*, C.J., *Mookerjee and Beachcroft*, JJ.) MAHARAJA BIRENDRA KISHORE MANIKYA BAHADUR *v.* RAMCAHRAN DAS. 30 I.C. 942 = 22 C.L.J. 147.

——*Encroachment—Effect of.*

Where there is an encroachment on the adjoining land by the deft. the adjoining land becomes the subject of the original tenancy and a suit framed for recovery of possession or in the alternative for assessment of fair rent is not maintainable as being one inappropriate for the purpose of raising and procuring a decision of the question whether or not there should be an enhancement in respect of the particular holding encroached upon. (*Jenkins*, C.J., *Mookerjee and Beachcroft*, JJ.) KADIR BUX *v.* MAHARAJA BIRENDRA KISHORE MANIKYA BAHADUR.
30 I.C. 914 = 22 C.L.J. 119.

———*Encroachment—Waste land belonging to landlord—Intention of parties—Adverse possession.*

Encroachments made from the waste, by a tenant, whether the land taken belongs to the landlord or to a stranger are presumed to have been made for the benefit of his landlord unless it is clearly apparent from some act done at the time that the tenant intended to make the encroachment for his own benefit and not to hold it as he held the farm to which the encroachments were adjacent. As a general rule, the intention of the tenant to make an encroachment for his own benefit must be shown at the time when the encroachment was made, but a subsequent severance of the encroachment from the demised premises may have the same effect if brought to the knowledge of the landlord, although if the landlord is allowed to remain under the belief that the encroachment was held as part of the holding, the tenant might be precluded from

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denying it. 10 Cal. 823, Rel. (*Mookerjee and Beachcroft*, JJ.) MAHARAJAH BIRENDRA KISHORE MANIKYA BAHADUR *v.* LAKSHMI.
30 I.C. 896 = 22 C.L.J. 129.

——*Encroachment—Right of landlord*

Where a tenant of a certain person encroaches on the adjoining land of another as between the landlord and the tenant, there is a presumption that encroachment enures to the landlord's benefit and becomes an accretion to the tenant's holding. He will ordinarily hold the land upon which he has encroached as tenant of his landlord and in that case the landlord may perhaps be described as his *de facto* landlord. (*Richardson and Mullick*, JJ.) TEPU *v.* TEFAYIT.
29 I.C. 216 = 19 C.W.N. 772.

——*Encroachment——Tenant's possession of accretion to his original holding—Denial of landlord's right to separate rent of such accretion—Limitation.*

Where a tenant comes into possession of land other than his holding and he denies his landlord's right to separate rent for such land, limitation for a suit by the landlord for possession of such land is 12 years from the date of such denial. (*Woodroffe and Carnduff*, JJ.) TARAN CHANDRA *v.* GANENDRA NATH.
11 I.C. 30 = 16 C.W.N. 235.

——*Encroachment — Presumption — Adverse possession.*

The true presumption as to encroachments made by a tenant, during his tenancy upon the adjoining land is that the land so encroached is added to this tenure and forms part thereof for the tenant's benefit and after the expiry of the lease, for the benefit of the landlord. In this case, the trespasser is not bound to prove that the landlord had knowledge of the trespass. (*Benson and Sundara Aiyar*, JJ.) MUTHURAKU THEVAN *v.* ROHERT GORDEN OBR. 35 Mad. 618 = 21 M.L.J. 615 = 10 I.C. 875 = 10 M.L.T. 12.

———*Encroachment—Landlord's right.*

Where a tenant encroaches upon land of his landlord not included in his holding, the latter is not bound to recognise the former as tenant of such land and may re-enter on the land unless he has lost his right. If the tenant has been in possession of the encroached portion for more than 12 years, it is a question if possession is adverse as against the landlord and whether interest claimed is limited or absolute. (*Mullick and Atkinson*, JJ.) MIDNAPUR ZEMINDARY Co. *v.* PANDEY SARDAR.
2 P.L.W. 143 = 41 I.C. 114 = 2 P.L.J. 506.

———*Encroachment—Possession of tenant of land adjacent to holding—Presumption.*

When it is found that a tenant is in possession of land adjacent to the holding, paying rent for the whole area and cultivating without objection of landlord, the presumption is that

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the land is part of the holding. 3 C.W.N. 763; 12 C.L.J. 457, Foll. (*Roe and Jwala Prasad* JJ.) KASHINATH RAY *v.* RAJA DURGA PRASAD SINGH. **1 P.L.J. 601=38 I.C. 235=2 P.L.W. 415.**

Escheat.

———*Escheat—Tenant's right inalienable—Death of tenant issueless—Tenancy if escheats to crown or lapses to landlord.*

An inalienable right of a tenant, such as a right to occupy a house, does not, on the tenant's death leaving no issue, escheat to the Crown but lapses to the Zemindar; it is only an absolute and alienable right that escheats to the Crown in the event of the person owning the right dying issueless. (*Rafique*, J.) NATHU RAM *v.* LAXMI NARAIN. **22 I.C. 891.**

———*Escheat—Abandonment.*

The removal from one to another house, is no sufficient evidence of abandonment entitling the landlord to claim a right by escheat. (*Kanhaiya Lal*, A. J. C.) GAURI SHANKAR *v.* ABBAS BEG. **46 I.C. 12=5 O.L.J. 165.**

———*Escheat — Iqrar Malikan—Mafrur—Application.*

If under an Iqrar-Malikan, a house occupied by a tenant escheats to the Zemindar in case the former becomes Mafrur, the expression Mafrur, as used in Iqrar Malikan does not apply to a person who is entitled as a heir to occupy the house of a deceased tenant but never actually occupied it. (*Lindsay*, J. C.) SHEO NATH *v.* SAMPAT. **35 I.C. 848 (1)=3 O.L.J. 274.**

———*Escheat—Zemindar entitled to tenant's rights by escheat—If legal representative of latter.*

A Zemindar, to whom by village custom the house and grove in the possession of his tenant, escheated on the latter's dying without heirs, is not his legal representative. 3 I. C. 519 and 8 M. I. A. 500, Dist. (*Sabonadiere*, A. J. C.) CHIRANJEE LAL *v.* BISHWANATH. **23 I C. 969=1 O.L.J. 86.**

——*Escheat—Right of—Residence, change in, effect of.*

A landlord claimed possession of a grove on the ground that the grove holder has changed his residence and relied on a wazib ul-arz which provided that if a tenant became mafrur or farar ho jana the grove escheats to the landlord. It was held that the provisions of the wazib-ul-arz were loosely used and that a person who has changed the residence permanently and has given up his right over the grove is a mafrur or 'farar ho jana'. (*Piggott*, A.J.C.) PARTAB SINGH *v.* CHANDRA BHUKAN. **12 I.C. 409.**

——*Escheat—Onus of proof—Lands granted by zemindar—Right of the Crown.*

The burden of establishing title by escheat is on him who asserts it. Lands belonging to

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Zamindar granted by the *zamindar* under an absolute hereditary *Mukarrari* tenure, do not, on the death of the grantee without heirs, revert to the *zamindar*; but the Crown by the general prerogative will take the property by escheat. (*Ross*, J.) JAG SAH *v.* SRI KANTA PRASAD. **72 I.C. 401 (2).**

Estoppel.

See EVIDENCE ACT, S. 116.

Exproprietary Tenancy.

———*Exproprietary tenancy—Appurtenance—Meaning of.*

An appurtenance is something which belongs to another thing as principal and passing as an incident to it; it is an appendage, an adjunct, an accessory or something annexed to another thing more worthy. A house in the occupation of a tenant before he became an exproprietary tenant or acquired an occupancy tenancy, is not an appurtenance to the holding and could be mortgaged by him. (*Tudball*, J.) BUDHI MAL *v.* BHATI **30 I.C. 549=13 A.L.J. 846.**

———*Exproprietary tenancy — Relinquishment of—Effect of.*

Where exproprietary rights are relinquished the effect is the same as if the rights had never come into existence at all. The person in whose favour the relinquishment is made cannot subsequently claim those rights. (*Chamier*, J.) DHANI SAHU *v.* RAJMAHAL KUNWARI. **30 I.C. 893=13 A.L.J. 651.**

———*Exproprietary tenancy—Ejectment—Trespasser—Mortgagee of tenant of his right—Position after ejectment.*

An exproprietary tenant interfering with the possession of the landlord after ejectment is a trespasser. The interest of the mortgagee of the exproprietary right ceases from the date of ejectment of the tenant. (*Piggott*, J.) RAM RACHA DUBE *v.* GOKUL RAI. **26 I.C. 201.**

———*Exproprietary tenancy—Right to use tank for irrigation.*

Merely being an exproprietary tenant of a certain field does not create a right to irrigate the field with the water of a tank with which the tenant used to irrigate the field as proprietor. (*Bannerjee*, J.) BAHADUR *v.* KHUSPI RAM. **22 I C. 879=11 A L.J. 990.**

———*Exproprietary tenancy—Adverse possession for twelve years.*

Adverse possession for 12 years, is sufficient to confer on a person the status of the exproprietary tenant since a right short of full proprietorship can be obtained by adverse possession. (*Piggott*, J.) ULAFAT RAI *v.* BALDEO. **22 I.C. 269=12 A.L.J. 93.**

———*Exproprietary tenancy—Rent.*

A Zemindar can claim rent against an exproprietary tenant at the rate fixed by the Rev. Courts not merely from the date on which the

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rent is so fixed but from the date on which the ex-proprietary tenancy arises. (*Rafique*, A.J.C.) BHAN PARTAB *v.* SHEO DUT BAHADUR SINGH. 15 I.C. 189=15 O.C. 45.

———*Exproprietary tenancy — Sale of—When valid.*

A deed of relinquishment of exproprietary rights executed on the same date as the deed of sale of proprietary rights is entirely void and inoperative. The vendor retaining possession of the land can claim exproprietary rights in respect of it in spite of the relinquishment. (*Baillie*, S.M. *and Tweedy*, J.M.) MUHAMMAD ASHRAF *v.* GAYA PRASAD. 27 I C. 835= 2 O.L.J. 42.

Forfeiture.

See also T.P. ACT, Ss. 111 (*g*), 112.

———*Forfeiture—Denial of title—Refusal to perform ceremonial service — Effect of—Resumption—Overt act—Right of landlord—Transfer of Property Act, Ss. 2 and 111 (g)—Principle of justice, equity, etc.*

Forfeiture of tenancy on denial of the landlord's title is governed by S. 111 (*g*) of the T.P. Act which itself reproduces the English law on the subject. Consequently the principle of S. 111 (*g*) of the T.P. Act might be applied as a rule of justice, equity and good conscience to leases granted before the T.P. Act. The denial of title which operates as a forfeiture must now be in clear and unmistakable terms. 28 C. 135, Ref. Admission of tenancy coupled with an unfounded assertion of more favourable terms does not forfeit the tenure, 15 Bom. 407; 20 Bom. 354; 17 Mad. 218; 27 Mad. 28, Cons. There must be an overt act showing the landlord's intention to avail himself of the forfeiture before the institution of the suit. *Semble.*—The breach of ceremonial observance prescribed in a lease, *e.g.* attendance by the lessee with a retinue at the Court of the lessor, is not a cause of forfeiture or resumption, at any rate where the grantor is a subject and not the Govt. The service refused was held to be a subsidiary consideration of no benefit to the landlord. (*Lord Phillimore*). MAHARAJA OF JEYPORE *v.* RUKMINI PATTAMCHADEVI. 42 Mad. 589= 10 L.W. 381=36 M.L.J. 543= 46 I.A. 109=17 A.L.J 852=29 C L J. 828= 21 Bom. L R 656=(1919) M.W.N. 271= 50 I.C. 681=28 C.W.N. 869= 26 M.L.T. 16 (P.C.).

[On appeal from (1916) M.W.N. 346= 29 I.C. 365=2 L.W. 498.]

———*Forfeiture—Relief against—Non-payment of rent—Period of grace—Relief.*

The Court will ordinarily relieve a tenant against a forfeiture clause in a lease, unless the tenant has done something to forfeit his right to bring himself within the principles of equity. The mere fact that a period of grace is provided and rent has not been paid within that period is no bar to relief against forfeiture. (*Macleod*, C.J. *and Fawcett*, J.) KRISHNAJI *v.* SITARAM. 22 Bom. L.R. 1439=59 I C. 769= 45 Bom. 300.

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———*Forfeiture—Non-payment of rent — Effect of—Overt act.*

Non-payment of rent at a stipulated rate month after month is a continuing breach and therefore the landlord's waiver to forfeit one such breach for any particular month or months does not destory his right to forfeit on similar breaches in a subsequent month. The mere presentation of plaint in a suit for ejectment is a conclusive declaration of intention to determine lease. (*Setalvad*, J.) KASTUR BHAI MANIBHAI *v.* HIRALAL DAHYA BHAI. 22 Bom. L.R. 926=58 I.C. 69=45 Bom. 535.

———*Forfeiture—Waiver—Receipt of rent.*

The contention that receipt of rent subsequent to the service of notice to quit operated as waiver is fallacious. Subsequent receipt of rent due prior to forfeiture is not waiver. (*Mookerjee and Chotzner*, JJ.) PURNA CHANDRA DAS *v.* ALI MAHOMED. 37 C.L.J. 548=1923 Cal. 520.

———*Forfeiture—Waiver — Acceptance of rent.*

Where subsequent to an alleged forfeiture by reason of the transfer of an occupancy holding the landlord sues the original tenant and obtains a decree for rent it amounts to a waiver of the forfeiture and the landlord cannot sue to eject the tenant on that ground. (*Mookerjee*, A.C.J. *and Fletcher*, J.) RASH BEHARI CHOUDHURI *v.* UPENDRANATH SAHA. 64 I.C. 711.

———*Forfeiture—Denial of landlord's title.*

Where the defendants chose to fight the case in both the lower Courts on the footing that the plaintiff had no title whatever, they cannot urge in second appeal that by their denial of the plaintiff's title in the rent suit they did not incur forfeiture of property. (*Walmsley*, J.) SARBESWAR BEZ MADAK *v.* GAGANCHANDRA MANNA. 64 I C. 631.

———*Forfeiture—Transfer of a part of holding—Holding if forfeited.*

Where a tenant has transferred a part of his holding, the holdings are not to be forfeited. (*Petheram*, C.J. *and Macpherson*, J.) DURGACHARAN *v.* PANDALE. 33 C L.J. 518.

———*Forfeiture—Attornment to stranger—Possession of stranger adverse.*

The landlord can evict a tenant if during the subsistence of a tenancy the tenant attorns to a third person but the landlord must indicate his intention to put an end to the tenancy the mere act of attornment to a third person does not transfer possession from a landlord to the third person. (*Newbould*, J.) HARI KANTA DAS BARMAN *v.* BIBI NURANNESSA. 53 I.C. 628.

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———*Forfeiture—Covenant against alienation—Breach—No provision for re-entry—Permanent lease.*

A condition in a permanent lease restraining alienation is not void by itself, but the lessor cannot eject the transferee from the lessee, unless the lessor either reserves to himself the right of re-entry or if it is provided in the lease that it would be void if there is a breach of the covenant against alienation. 12 C.L.J. 126 and 17 Cal. 826, Rel. (*Chaudhuri*, J.) NISHI KANTA DUTTA *v.* SHASHI KANTA KARMAKAR.
52 I.C. 19.

———*Forfeiture — Breach of conditions essential.*

There can be no forfeiture of a lease where there is no breach of any condition. (*Fletcher and Smither*, JJ.) KHIRODE CHANDRA *v.* MIDNAPORE ZEMINDARY CO., LTD.
46 I.C. 507.

———*Forfeiture—Waiver — Acceptance of rent—Protest.*

Acceptance of rent under protest also would operate in favour of the payer as a waiver of any forfeiture incurred. 9. Cal. 843, Rel. Receipt under protest of rent deposited by a mortgagee of the holding does not make the receipt the less a receipt of rent from the mortgagee. (*Chatterjee and Walmsley*, JJ.) MOTOOKDHARI *v.* JUGDIP NARAIN SINGH.
19 C.W.N. 1319=28 I.C. 343=21 C.L.J. 261.

———*Forfeiture—Covenant against alienation—Non-transferable holding—Transfer of a portion—Effect.*

The transfer of a portion of a non-transferable holding does not operate as a forfeiture of the tenancy. 1 C.W.N. 160; 1 C.W.N. 162 Rel. on. (*Mookerjee and Beachcroft*, JJ.) SATISH KANTA ROY *v.* TUFAN MULLICK.
24 I.C. 9.

———*Forfeiture — Conditions in default fulfilled—Purchaser under an invalid certificated sale—Lessee's rights.*

The rights of a lessee (or his assigns) who after having forfeited his rights on account of failure to comply with certain conditions as to clearing in pursuance of a *Kabuliyat* executed by him in favour of Government but who satisfied another provision prescribed therein as following in default, prevails over the rights of a purchaser in a certificated sale, rendered invalid for lack of observance of statutory requirement. (*Jenkins*, C.J. *and Mookerjee*, J.) UPENDRA NATH BOSE *v.* SAILENDRA NATH GHOSH.
23 I.C. 627=19 C.L.J. 219.

———*Forfeiture—Denial of title.*

A mere renunciation of tenancy without denial of the landlord's title either by setting up title in another or by claiming title in himself cannot amount to a disclaimer. (*Mookerjee and Beachcroft*, JJ.) PRATAP NARAIN *v.* BIRAJ DASI. **20 I.C. 823=19 C.L.J. 77.**

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———*Forfeiture—Denial of title—Registered tenant—Ejectment against other tenants.*

When one of several tenants, whose name alone was registered in the books of the landlord repudiated the tenancy, he acts beyond the scope of his authority; therefore his disclaimer could not operate as a forfeiture of the tenancy in so far as the other tenants were concerned. There could not be forfeiture of a tenancy in part, and the claim for possession is not maintainable. (*Harrington and Mookerjee*, JJ.) BIRENDRA KISHORE MANIKYA BAHADUR *v.* BHUBANESWARI. **15 I.C. 620=39 Cal. 903.**

———*Forfeiture—Title—Denial of—Interpretation.*

Where a tenant, in the memorandum of appeal in a Land Acquisition case described himself as the owner of the portion acquired and the question was whether that amounted to a disclaimer of landlord's title: *Held*, it did not amount to "a distinct unequivocal renunciation of the tenancy" which is essential to constitute a disclaimer such as the law contemplates. The Court has to bear in mind not only the nature of the document in which the expressions occur, but also to the nature of proceeding in regard to which the document was drafted. In considering whether what has taken place amounts in law to a denial of the landlord's title, the Court must have regard not only to the language used and the circumstances under which it came to be used, but must also consider what the tenant intended by using the particular words under the particular circumstances, (*Shadi Lal*, C.J. *and Fforde*, J.) ZIA-UD-DIN *v.* FAKHR-UD-DIN AHMAD KHAN. **4 Lah. 160=1923 Lah. 484.**

———*Forfeiture—Denial of title—Overt act—Necessity for.*

It is a well established rule of law that the denial of landlord's title in clear and unmistakable terms, whether by matters of record or by certain matters or pais will operate to create a forfeiture of tenancy and enable the landlord to resume possession. This principle which has been embodied in S. 111 (*b*) of the T.P. Act and though the section itself does not apply to the Punjab the principle therein enacted does. Denial in a suit will not work a forfeiture of which advantage can be taken in that suit, because the forfeiture must have occurred before the suit was instituted. The denial therefore must not only be of a clear unambiguous nature but must be antecedent to the suit for possession. The suit must be founded upon the denial, and the denial cannot be expected from the pleading in the suit itself, even if such denial by inference could be held to be one made in clear unmistakable terms. (*Shadi Lal*, C.J. *and Fforde*, J.) KEWAL RAM *v.* ABDUL HAJI.
1923 Lah. 409.

———*Forfeiture—Denial of title—Proof of.*

Denial by a tenant of his landlord's title causes a forfeiture of the tenancy. Where

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plff's. allegation in the plaint that defts. were denying their title as owners had not been traversed in the statement of defence, it was not necessary for the plaintiff, to give evidence in support of their allegation and that the defts. failing in their plea were liable to be ejected. (*Bevan Petman*, J.) KHEM SINGH v. ALI SHER. 54 I.C. 263=8 P.W.R. 1920.

——*Forfeiture—Denial of title—Permanent tenancy—Occupancy right—Punjab.*

The occupancy tenant of the Punjab is more than a mere permanent tenant; he is an individual who in many cases would have been the landlord, and he enjoys a permanent tenancy subject to certain conditions, at a concession rent. The English rule of forfeiture on denial of the landlord's title is inapplicable to the case of an occupancy tenant though applicable to a permanent lessee. (*Le Rossignol*, J.) FAKIR WAZIR KHAN. 45 I.C. 105= 32 P.R. 1918.

——*Forfeiture—Waiver—Suit for possession by landlord — Limitation Act, Sch. I, Art. 143.*

A landlord can condone the forfeiture of his tenant's right caused by the latter's denial of his proprietary title and afterwards to bring a suit for possession within 12 years from the time when a separate and entirely distinct act occasioning forfeiture occurred. (*Leslie Jones*, J.) LOCHA RAM v. JINDWADDA KHAN. 56 P.W.R. 1916=36 I.C. 235= 141 P.L.R. 1916.

——*Forfeiture— Denial of title—Permanent tenancy.*

In deciding a question of forfeiture by denial of title, a distinction should be made between a lease and permanent tenancy. In the former case denial of title involves a forfeiture and in the latter does not, as a permanent tenancy is in the nature of an inferior ownership. (*Barton*, J.) ABDUL MANAN v. SHAHBAZ. 169 P.L.R. 1915.

——*Forfeiture—Denial of title by tenant —Ejectment—If notice necessary.*

No notice determining a tenancy, even if one is required by the lease, is necessary for maintaining a suit in ejectment when the tenant has denied the landlord's title and the validity of the lease before the institutions of the suit. 17 A. 45, Foll. (*Reid*, C.J.) ZIAUDDIN v. GOBIND RAM. 76 P.R. 1911=13 I.C. 323= 289 P.W.R. 1911.

——*Forfeiture—Setting up a permanent tenancy.*

The mere assertion of a permanent tenancy of occupancy right by the tenants does not work a forfeiture of the tenants' right to a due notice to quit. (*Spencer and Devadoss*, JJ.) MULLAI THAYAMMAL v. SUBBARAYYAN PILLAI. 16 L.W. 802=(1922) M.W.N. 763= 31 M. L.T. 430=1922 Mad. 514.

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——*Forfeiture—Relief, when to be granted.*

Where a tenant incurs forfeiture for non-payment of rent, he can be relieved only on paying the full arrears including arrears barred by limitation; the landlord can also claim interest on the arrears. (*Abdul Rahim and Oldfield*, JJ.) ADYAPADI VASUDEVA UDPA v. KRISHNA UDPA. 44 Mad. 629= 40 M.L.J. 460=13 L.W. 420= 29 M.L.T. 235=62 I.C. 593= (1921) M.W.N. 246.

——*Forfeiture—Mulgeni lease—Breach of conditions.*

Where a mulgeni lease was granted under the express stipulation that no alienation shall be made by the lessee and the latter subsequently made a gift of a part of the property in favour of one of her sons. *Held*, where a condition restraining alienation has been infringed, there can be no relief against forfeiture. (*Seshagiri Aiyar and Moore*, JJ.) VITTAPPA KUDVA v. DURGAMMA. 11 L.W. 116=38 M.L.J. 190= 55 I.C. 781=(1920) M.W.N. 188.

——*Forfeiture—Covenant against alienation—Breach—Knowledge- Waiver.*

Prima facie alienation of any portion of a holding will offend against the rule of inalienability unless it can be shown that under the custom which imposes the rule of inalienability, the rule does not apply to partial alienations. A partial alienation will be sufficient to work a forfeiture. Ignorance on the part of the alienee as to the inalienability and forfeitability of such a tenure cannot raise any estoppel against the landlord, if he was in no way responsible for such ignorance. Nor can the fact that the landlord did not exercise his right of enforcing forfeiture in the case of previous alienations lead to an inference of waiver. (*Ayling and Krishnan*, JJ.) ZAMORIN OF CALICUT v. UNIKAT KARNAVAN SAMU NAIR. 36 M.L.J. 275=55 I.C. 380= 27 M.L.T. 111.

——*Forfeiture—Denial of title—What is—Determination of lease—Ejectment suit.*

In order to entail a forfeiture, the disclaimer of the landlord's title by the tenant must amount to a direct repudiation of the relationship of landlord and tenant and nothing short of a complete identification with an adverse claimant to the landlord will do. In cases not governed by the T. P. Act the institution of a suit in ejectment is a sufficient determination of the lease where the lessee has forfeited the lease by denial of the landlord's title. (*Abdur Rahim and Oldfield*, JJ.) RAMA IYENGAR v. ANGA GURUSAWMI. 35 M.L.J. 139=16 I.C. 62=8 L.W. 109.

——*Forfeiture — Relief against — Non-payment of rent—Lease—Deed providing for days of grace—Relief against forfeiture.*

Courts have power to relieve against forfeiture for non-payment of rent even when there is a period of grace allowed in the lease.

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deed for payment of rent after the expiry of the period prescribed. Case-law reviewed. (*Seshagiri Iyer and Napier, JJ.*) APPAYYA CHETTY MAHAMMAD BEHARI. **39 Mad. 834 = 29 M L.J. 381 = 18 M.L T. 386 = 30 I.C. 596 = (1915) M.W.N. 857.**

[See contra (1911) 2 M.W.N. 385 = 12 I.C. 456.]

———*Forfeiture—Forfeiture of tenancy for non-payment of rent—Whether enforceable after the lease expires.*

Since the terms of a lease which has terminated regulate the relations between the parties to the lease when the tenancy becomes one sufference, a condition of forfeiture inserted in such a lease for non-payment of rent holds good after expiry of the lease under the circumstances. (*Oldfield and Tyabji, JJ.*) THAMBIKILAN MUTHIRIAN *v.* MUTHU REDDI. **26 I.C. 284 (1).**

———*Forfeiture—Overt act.*

In leases executed before the T. P. Act, no act is necessary on the part of the landlord showing that he elects to take advantage of the forfeiture for non-payment of rent. (34 M. 161, Foll.; 31 M. 403, Dist.) Whether a tenant is entitled to relief against forfeiture for non-payment of rent depends upon the circumstances of each case. A stipulation that the tenant failing to pay rent, shall lose the value of his improvements ought to be relieved against. 6 M. 159; 6 M.H.C.R., 258. Fol. 15 M.L.J. 210, 21 M.L.J, 960, Dist. (*White, C.J. and Sankaran Nair, J.*) RAM KRISHNA *v.* BABU RAYA. **24 I.C. 139.**

[But see contra, 52 I.C. 333 = 37 M.L.J. 188 (P.C.)]

———*Forfeiture — Non-payment of rent—Relief against forfeiture—Asked for in High Court.*

The High Court can relieve against forfeiture on the tenant undertaking to pay the arrears of rent, though the offer may not have been made in the lower Court. 23 M.L.J. 715, Ref. (*Sadasiva Aiyar and Tyabji, JJ.*) VIDYAPURNA THIRTHA SWAMIAR *v.* RANGAPAYYA. **14 M.L T. 344 = 25 M.L J 486 = 21 I.C. 405 = (1913) M.W.N. 901.**

———*Forfeiture—Ejectment.*

If a clause in a lease includes conditions the violation of which may not entail a forfeiture which would be enforced by Courts of law, the clause should not be disregarded in its entirety but should be given effect to, so far as it is equitable to do so. (*White, C.J., Sankaran Nair and Tyabji, JJ.*) SEVATHA MUTHI ASARI *v.* MASQUITE. **24 M.L.J. 642 = (1913) M.W.N. 480 = 19 I.C. 824 = 13 M.L.T. 518.**

[On appeal from 19 I.C. 721.]

———*Forfeiture—Overt act—Suit.*

To entitle a landlord to sue in ejectment he need not show that he chooses to take advantage of forfeiture in the case of leases prior to T.P. Act. If the lessee has agreed to give back the property without demanding compensation for improvements, no period of grace being fixed for payment, he should be relieved against forfeiture and need not be debarred from getting it because he sets up a plea of payment but fails to prove it. (*White, C.J. and Sankaran Nair, J.*) RAMKRISHNA *v.* BABRIRAJA. **23 M L.J. 715 = 17 I.C. 947 = 12 M.L.T. 656.**

———*Forfeiture—Relief against—Non-payment of rent—Period of grace—Overt act.*

Where a lease allows a period of grace for payment of rent there will be no relief against the forfeiture incurred by non-payment within the period of grace under the terms of the lease. 21 M. 389, Ref. It is doubtful whether prior to the institution of the suit by the landlord he should have done something to show that he intended to avail himself of the forfeiture. (*Sundara Iyer and Sadasiva Iyer, JJ.*) TUNGAMA *v.* KORATTITI. **16 I.C. 803 = (1912) M.W.N. 1135.**

[See Contra 30 I.C. 596 = 39 Mad. 834.]

———*Forfeiture—Denial of title—Person having superior interest.*

Plaintiff and deft. had two separate interests in the land, plff. claiming the *Kudivaram* right under a *Patta* from the Zemindar and the deft. having a right of permanent occupancy, *held*, the latter would not forfeit his right by denying the plff.'s title. The owner of a subordinate interest will not lose it by denying the title of the owner of the superior interest. Only a person, who has been let in occupation of land by another on a lease, forfeits his rights under the lease by repudiating the landlord's title. (*Sundara Iyer and Sadasiva Iyer, JJ.*) AUDI THEVAN *v.* PALANI. **16 I.C. 702.**

———*Forfeiture—Permanent lease—Breach of condition.*

A permanent lease cannot be forfeited for breach of the conditions of the grant, in the absence of an express provision to that effect. (*Kanhaiya Lal, A.J.C.*) KATESAR ESTATE *v.* MUHAMMAD AMIR. **46 I.C. 73 = 5 O.L.J. 149.**

———*Forfeiture — Re-entry — Forcible re-entry not justifiable.*

A lessor cannot justify a re-entry by force under cover of a clause in the lease reserving to him a right of re-entry with or without resort to the Courts, in case of a breach of all or any of the conditions mentioned in the lease inasmuch as a condition justifying an entry by force is void as being contrary to the public policy. (*Lindsay, J.C. and Kanhaiya Lal, A.J.C.*) HABIB ULLAH SHAH *v.* BAKHT BALI SINGH. **30 I.C. 292 = 2 O.L.J, 299.**

———*Forfeiture—Re-entry—Right of.*

If a lease reserves to the lessor the right of re-entry in a case of a breach of a covenant, the result of the breach is at least to confer upon the lessor the right of re-entry. If the

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lessee resists the exercise of the right to re-enter, the lessor's only remedy is to enforce his right to re-enter by a suit in ejectment. A license by a tenant to a landlord to ejectment without process of law is void and can be no answer to a charge of forcible entry. (*Stuart*, A.J.C.) HABIBULLAH SHAH *v.* SUJI.
15 I.C. 857=15 O.C. 295.

———*Forfeiture—Licensor and licensee—Transfer of holding—Sale or mortgage.*

According to the general principles of law applicable to leases, the forfeiture of a lease is not involved in the case of the breach of any condition for which forfeiture is not prescribed as the proper penalty under the terms of the lease or agreement under which the lessee holds. There is no reason why a similar principle should not apply to the case of a licensor and licensee generally. There is an essential distinction between a transfer by way of lease or mortgage and a transfer by way of sale in which case, different considerations would apply. (*Piggott*, J.C. *and Rafique*, A.J.C.) ALI MUHAMMAD KHAN *v.* CHHEDAN.
15 I.C. 386=15 O.C. 91.

———*Forfeiture—Covenant against alienation—Mortgage and sale—Breach.*

Where there is no express penalty of forfeiture, a mortgage by the lessee or licensee does not give a cause of action for ejectment but a sale does, as it involves an entire abandonment of the transferor's rights in favour of another person. 15 I. C. 985. (*Ferard*, S.M. *and Harrison*, J.M.) FATEH BAHADUR SINGH *v.* NAGENDRA BAHADUR SINGH. 7 O.L.J. 60=
55 I.C. 518=2 U.P.L.R. (B.R.) 1.

———*Forfeiture—Denial of title.*

An attempt by a lessee to hold the subject-matter of the lessee adversely to the lessor amounts to a denial of lessor's title and involves forfeiture of the lessee's rights. (*Mullick and Jwala Prasad*, JJ.) SATYA KINKAR *v.* SHIBA PRASAD SINGH. 4 P.L.J. 447=
52 I.C. 452=1920 Pat. 17.

———*Forfeiture—Denial of the landlord's title.*

The denial of the landlord's title by a tenant must be expressed and not implied and that such a denial must precede the institution of the suit for ejectment on the ground of denial of the landlord's title. (*Jwala Prasad*, J.) SAMUNDAR SINGH *v.* MUKH LAL SINGH.
37 I.C. 935.

———*Forfeiture—Waiver — Accrual—Suit for subsequent rent — Acceptance of part payment—Acknowledgment of tenancy—Waiver of right to eject.*

A landlord who had acquired a right to eject his tenant for non-payment of rent should be deemed to have waived that right if and when in a subsequent suit for rent for a later period, the tenant had deposited in Court part of the rent due for the latter period, and the landlord had accepted its payment. (*Mullick*, J.) MIDNAPORE ZEMINDARI CO., LTD. *v.* JOYRAM SANTAL. 34 I.C. 918=1 P.L.J. 185.

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Government Revenue.

———*Government Revenue—Arrears—Sale—Default by proprietor.*

On the failure of an owner to pay the Government assessment, his estate or interest in the land is forfeited or rather determined, and under a sale for arrears of revenue what is sold is not the interest of the defaulting owner but the interest of the Crown, subject to the payment of the Government assessment. A person in adverse possession who occupies the disputed land without payment of rent to the defaulting proprietor, is bound to surrender possession of that land to the revenue sale purchaser when the sale is confirmed and if the land is not so surrendered, he renders himself liable for mesne profits, as he unlawfully keeps the purchaser out of possession. A person is not a defaulting proprietor whose title was not perfected by adverse possession before the revenue sale. (*Mookerjee and Chotzner*, JJ.) JOBEDA KHATUN *v.* TULSI CHARAN DAS.
1923 Cal. 82=36 C.L.J. 472.

———*Government revenue—Permanent lease—Stipulation for payment of Govt. revenue—Increase in Govt. revenue.*

Under the terms of a permanent lease, the lessee agreed to pay a fixed annual rent and a certain sum which was the Govt. revenue. *Held*, that the lessee was not liable for any increase in the revenue imposed by Govt. on a subsequent re-settlement. (*Sundara Iyer and Ayling*, JJ.) KOLAKKOT KUNTAN BIVI DIAR *v.* PUDIKA KANDYIL PARKUN.
16 I.C. 574=(1912) M.W.N. 935.

———*Government revenue—Enhancement of assessment—Liability.*

In mulgeni permanent lease, the burden of the enhancement of Government revenue falls on the *pattadar* who cannot claim proportionate contribution from the tenants. 20 M.L.J. 640; 8 M.L.J. 178, Foll. (*Abdur Rahim and Ayling* JJ.) BASU KUNTHY *v.* VENKAMMA HEGADTHI.
9 I.C. 268=9 M.L.T. 335.

———*Government revenue—Rent—Meaning of 'Moghuli.'*

'Moghuli' in a rent receipt can only mean that the rent represented a proportion of Government revenue. (*Atkinson and Kingsford*, JJ.) NAWAGARH COAL CO. LTD. *v.* BEHARI LAL. 20 C.W.N. 1135=1 P.L.J. 275=
37 I.C. 450=2 P.L.W. 324.

Grove.

———*Grove—Right to trees.*

The planting of a grove with the permission of the zemindar even on occupancy land changes the status of a tenant into that of a grove-holder and he has a transferable right in the trees.

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the absence of a custom to the contrary. (*Daniels*, J.) BALJNATH SINGH *v.* CHANDRAPAL SINGH. **21 A.L.J. 457=L.R. 4 A. 366=1923 All. 553.**

———*Grove — Tenant grove holder dying without heirs but indebted landlord not responsible for the debts of the landholder.*

The right of a tenant to reside in a house in the inhabited site of an agricultural village and the right of a tenant grove holder in certain villages are both limited estates. When the last holder of such a house dies without heirs, the house reverts to the landlord and in the case of certain villages, the trees and land also. The landlord however does not succeed as heir and hence he cannot be held responsible for the debts of the last holder. (*Stuart*, J.) MT. RAMMAN BIBI *v.* MATHRA PRASAD. **1923 All. 374.**

———*Grove—Abandonment—Evidence of—Land left vacant for 12 years.*

There was a grove, some 11 years ago on land property in the possession of the ancestors of the defendants as grove-holders. Those trees were cut down and the grove-holders abandoned the land which thereupon reverted to the Zemindars. For upwards of 12 years the land remained as waste; there were neither trees nor cultivation upon it. Some three years before the suit the defts. planted certain trees on the groves. *Held*, that after the abandonment of the land by their predecessors-in-title the defendant had no right to come upon the land and plant trees without permission of the Zemindar. (*Mears and Banerji*, J.) HAZARI LAL *v.* NIMAR. **45 A. 386=21 A.L.J. 277=L.R. 4 A. 147 (Rev.)=1923 All. 295 (2).**

———*Grove — Ownership — Jurisdiction of Civil Court.*

Where the tenant claimed ownership of a grove and damages for loss caused to the trees *held*, the suit was triable by Civil Court as no question of determination of tenancy was raised by the plaint. (*Mears*, C.J. *and Stuart*, J.) RAM PRASAD *v.* SUMER NATH PANDE. **45 A. 191=21 A.L.J. 33=90 & A.L.R. 277=1923 All 134.**

———*Grove—Ejectment—Land losing character as grove.*

Where a land was leased as grove and it later on became waste and houses were built upon it, a cause of action for ejectment arises when the land completely ceases to be a grove, and the mere building of one house would not by itself give rise to such a cause of action. (*Rafique and Piggott*, JJ). BAKHTI KUAR *v.* GANGA PRASAD. **63 I.C. 226.**

———*Grove—Portion of land denuded of trees.*

Though a portion of grove has been denuded of trees, the grove does not cease to be grove, nor does the landlord get the right of re-entry

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in respect of the whole or part of the land. (*Piggott and Kanhaiya Lal*, JJ.) CHOKHEY LAL *v.* BEHARI LAL. **18 A.L.J. 820=60 I.C. 115=2 U.P.L.R. (All.) 292.**

———*Grove—Sir land—Right to trees—Muafi.*

The land of a grove not being land held for agricultural purposes cannot be the *Sir* land of the grove-holders, although it may have been recorded at the last settlement as *Sir*. Where the land of grove was the *Muafi* of the grove holder he could have no *Sir* rights in respect of it. (*Banerjee and Rafique*, JJ.) BHAGWAN *v.* PEARE LAL. **42 All. 483=18 A.L.J. 570=58 I.C. 620=2 U.P.L.R. (All) 148.**

———*Grove—Occupancy holding—Right of transfer.*

"Where an occupancy tenant plants a grove on his holding with the permission of the Zemindar, it does not change the nature of the holding from an occupancy tenancy to a grove land and the tenant has no right to sell the trees planted nor can the trees be sold in execution of a decree against him. (*Richards*, C.J. *and Piggott*, J.) DAYA KISHEN *v.* MOHAMMAD WAZIR AHMED. **30 I.C. 565=18 A.L.J. 833.**

———*Grove—Right of tenant to transfer trees.*

An occupancy tenant planting a grove on his holding has no right of transferring the trees. The trees cannot be sold privately or in execution of a decree against the tenant. 5 All 616; 10 All 159; 21 A. 297; 23 All. 211, Ref. (*Rafique*, J.) WAZIR AHMED *v.* DAYA KISHEN. **28 I.C. 352.**

———*Grove—Rights of grove-holder of Sir land—Ejectment.*

Where the plff. Zamindar of a village allows the defendant to plant grove on *Sir* land and the *Zamindari* right was sold but the grove existed, *held*, that the deft. grove-holder could not be ejected at the instance of the plff. (*Tudball*, J.) KANTA SINGH *v.* PARMESHWAR. **26 I.C. 734.**

———*Grove planted by proprietor—Status lost—Effect.*

A grove planted by a proprietor with the consent of the general body of the proprietors in a village remains as his property even if he loses the status of proprietor subsequently. But it is doubtful whether he is a tenant under Agra Tenancy Act. (*Piggott*, J.) KHAN CHAND *v.* CHANDAN. **24 I.C. 81.**

———*Grove—Holder—Rights of.*

In the absence of evidence that a particular piece of land was a grover when it was granted rent free if it is proved, that the grove existed from 1836, the presumption is that the trees were planted with the consent of the Zemindars. (*Griffin and Chamier*, JJ.) HADI HASAN KHAN *v.* PATI RAM. **35 All. 200=19 I.C. 416=11 A.L.J. 236.**

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———*Grove in a plot of land with permission of the zamindar.*

Lambardar planted a grove on a plot of land with the permission of the zamindar and continued in its enjoyment on payment of rent, *held*, that the grove could be transferred by landlord (*Knox*, J.). ISMAIL KHAN *v.* MITHU LAL. 14 I.C. 799 (2)=9 A.L.J. 483.

———*Grove—Expropriatary holding—Right to cut trees.*

A zamindar who had sold his rights in certain land over which he had planted groves but became an expropriatary tenant in respect of the trees cannot cut the trees without the consent of the persons to whom he has sold his rights. 9 A. 88; 30 A. 134; W. R. (1864) 367; Agra F. B. (1867) 119; N. W. P. H. C. R. (1866) 27; N. W. P. H. C. R. (1887) 183, Rel. upon. (*Knox*, J.) LACHMAN DAS *v.* MOHAN SINGH. 14 I. C. 582=9 A.L.J. 672.

———*Grove—Grove-holder—Position of—Transfer by.*

A grove-holder, who is given no right of transfer, is a mere licensee and only enjoys personal rights incapable of transfer. If he transfers the grove, the landlord can resume possession notwithstanding there is no provision for re-entry. (*Lindsay*, J. C.) JAGMOHUN *v.* DEPUTY COMMISSIONER, PARTABGARH. 61 I.C. 955=6 O.L.J. 124.

———*Grove—Rights of grove-holder—Ejectment.*

A person who plants groves on property in which he has no title cannot on ouster be given the status of a grove-holder, possession of groves going with the land on which they stand. (*Kanhaiya Lal and Lyle*, A.J.Cs.) MAKUND SINGH *v.* KALKA SINGH. 64 I.C. 856=6 O.L.J. 704.

———*Grove—Rights of grove-holder — New trees—Digging of ditch round grove.*

Once a grove-holder has obtained a right to use a certain area for the purpose of planting and enjoying a grove, he can plant new trees on that area and take such action with regard to the land as is compatible with its existence as grove land or is necessary in its interests. He can plant new trees or dig a ditch around it for the purpose of its draining and protection without the landlord's permission so long the land retains its characteristics as grove land. (*Stuart*, J.C.) DIANAT *v.* RAM CHANDAR BAKHSH SINGH. 6 O.L.J. 741=49 I.C. 46=1 U.P.L.R. 17.

———*Grove Planting of new trees—Landholder not objecting to—Grove-holder, right of—Portion of grove becoming devoid of trees—Resumption, piecemeal*

The question as to when a grove ceases to retain its character as such is more or less one of inference to be drawn from the surrounding circumstances. The fact that the landholder took no objection to the grove-holder's planting new trees when the grove began to lose its character as such must be taken into account. The mere fact that a portion of the grove has become devoid of trees does not entitle the landholder to resume that portion of it, since the land had been granted as a whole and the tenure must therefore, stand or fall in its entirety. (*Kanhaiaya Lal*, A.J.C.) HAR SAHAI *v.* DHANPAL SINGH. 32 I.C. 368=2 O.L.J. 589.

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———*Grove—Reza Milkiyat — What it implies.*

Under the circumstances of the case it was held that the expression Reza Milkiyat implied the recognition of a proprietary or under-proprietary right in the plot of land in respect of which the Reza Milkiyat right was granted. (*Kanhaiya Lal*, A.J.C.) KALISHANKAR *v.* SHEO DYAL. 20 I.C. 586=16 O.C. 173.

———*Grove—Position of grove-holder.*

The position of a grove holder in the present case was that of a licensee entitled to use, for certain purposes, land belonging to the proprietor who was the licensor. (*Piggott*, J.C. *and Rafique*, A.J.C.) ALI MUHAMMAD KHAN *v.* CHHEDAN. 15 I.C 385=15 O.C. 91.

———*Grove—Right to mortgage—Re-entry—Custom as to non-transferability.*

Certain grove-holders mortgaged their trees though under the custom embodied in the "*Wajib-ul ars*", they had no right to do so. The *Wajib-ul-ars* did not contain any provision enabling the *talukdar* to re-enter and take possession of any trees. *Held*, that the *talukdar* could not dispossess the mortgagee forcibly. If the mortgagee is so dispossessed he is entitled in law to recover possession on the ground of his previous possession and dispossession. 2. O.C. 3, Rel. (*Lindsay*, J.C.) MUHAMMAD ABDUL *v.* LALTA. 15 I.C. 277.

———*Grove — Under-proprietary right—Grove-holder—Settlement Circular No. 63 of 1863.*

Settlement Circular No. 63 of 1863 has not the force of law and the position of a grove-holder who has been in possession of the trees of a grove for a long period whether he be a mere tenant or one of the old proprietary body, is not, in respect of under-proprietary rights, in any way different from that of any other person who claims those rights. 1 O.C. 291, Foll. A claimant to under-proprietary rights on the basis of prescription is bound to prove his claim according to the provisions of the Oudh Sub-Settlement Act of 1866. 8 O.C. 144; 9 O.C. 167, Fol. (*Evans*, J.C.) GIRDHARI LAL *v.* JASWANT SINGH. 15 I.C. 181=15 O.C. 33.

———*Grove—Subsequent change into cultivation land—Grove-holder, rights of.*

Where a grove does not retain its character as such but has been brought under cultivation, the grove-holder loses his right to hold

LANDLORD AND TENANT—Heritability.

it rent-free in perpetuity but becomes an ordinary tenant. (*Baillie*, S.M.) RAM DAS *v.* MUHAMMED ABDUL HAQ **27 I.C. 94 = 1 O.L.J. 695.**

Heritability.

——*Heritability--Deceased tenant's brother paying full rent—Acceptance by landlord.*

Though the landlord passes a lump receipt for the rent payable by a tenant for his occupancy holding as well as for the occupancy holding of his deceased brother, such acceptance does not amount to admission that the tenant has succeeded to his brother's occupancy holding. (*Porter*, J.M.) BHOODA *v.* MURARI LAL. **60 I.C. 219 = 2 U.P.L.R. (B R.) 83.**

——*Heritability—Presumption.*

A tenant who claims under a lease which does not contain the words 'from generation to generation' has a heavy onus to discharge if he claims hereditary right and descent of a tenancy from father to son and then son's widow is not enough to establish a heritable tenancy. (*Richardson and Walmsley*, JJ.) PRODYAT COOMER *v.* KRISHNAMONI DASYA. **40 I.C. 513 = 21 C.W.N. 809.**

——*Heritability—Indefinite term—Lease for building and residential purposes.*

A lease for an indefinite term is not necessarily heritable. 3 M. I. A. 261; 4 M. I.A. 321, Foll. But it is open to a Court to hold from the circumstances of a particular case that the lease-hold interest was intended to be heritable, such as, where there is lease for building and residential purposes and no intention to the contrary is indicated either in the terms of the grant or in the nature of the tenancy. 37 C. 377, Rel. (*Harrington and Mookerjee*, JJ.) HARI LAL SINGHA *v.* RUP MANJORY BURMONI. **16 I.C. 137 = 17 C.L.J. 459.**

——*Heritable tenure — Interest of non-occupancy raiyat—If heritable.*

When there is no custom to the contrary, the interest of a non-occupancy *raiyat* is heritable. (*Mullick*, J.) KALRU GARHI *v.* JANGLI CHOUDHURY. **1 P. L.J. 273 = 37 I C. 438 = 3 P.L.W 398.**

Holding over.

See also T. P. ACT, S. 116.

——*Holding over.*

Where a tenant continues in possession without paying rent and without recognising title of landlord, after the expiry of twelve years, Landlord's suit to recover possession is barred. (*Ryves and Stuart*, JJ.) BISHESHAR NATH *v.* KUNDAN. **20 A.L.J. 693 = 44 A 583 = 1922 All. 318.**

——*Holding over—Notice to quit—Notice claiming damages for use and occupation at Rs. 10 a day—Liability of tenant to pay—Illness, if a ground of non-liability.*

A tenant holding over, after notice to quit has been served upon him and after a further notice claiming damages for use and occupation at a certain rate, if the house is not vacated within a specified time, is bound to pay the damages so claimed for the period of such occupation; the fact of his illness for some period does not affect his liability in respect of the same. (*Karamat Husain and Piggott*, JJ.) SCOTT *v.* JYOTIS SAROOP. **11 I.C. 270.**

——*Holding over—Tenant sub-letting premises at higher rental and for a premium—Liability to account.*

The first defendant held over after notice was given to vacate the suit property which was let out to him by the plaintiff. He sub-let the premises and in addition to the rent received a premium of Rs. 250. In a suit by the landlord for mesne profits *held*, that he was entitled to a decree for the premium as well as the rent due. (*Macleod*, C.J. *and Crump*, J.) GULAM MOHI-UD DIN *v.* DAYABHAI. **25 Bom. L R. 447 = 1923 Bom. 398.**

——*Holding over—New tenancy—Terms implied.*

When a tenant holds over after the expiration of the term of the previous tenancy it is considered to be a new tenancy coming into operation after the date of the expiry of the term of the previous tenancy. (*Suhrawardy and Ghose*, JJ.) UDOY CHANDRA BASU *v.* MAHOMED ALI BEPARI. **65 I.C. 589.**

——*Holding over—Effect.*

Where an agricultural tenant holds over, his tenancy is renewed from year to year. (*Chatterjea and Suhrawardy*, JJ.) CHANDRA NATH SARMA MOTAYED *v.* SHEIKH IMAMDI. **64 I C. 118 = 34 C.L.J. 369.**

——*Holding over—Acceptance of rent by one of the co-sharer landlords.*

A tenant holds over if there is acceptance of rent (on the expiry of lease) by all the co-sharer landlords or if they otherwise assent to the continuance of a tenancy. If one of the co-sharer landlords alone accepts rent a new tenancy is created only with respect to his share but not with respect to the shares of other co-sharer landlords. (*N. R. Chatterjee and Newbould*, JJ.) MON MOHAN *v.* MAHOMED HATIM. **49 I.C. 245 = 29 C.L.J. 473.**

——*Holding over—Duty to surrender possession on determination of lease.*

The lessee must surrender possession on the determination of the lease, or else he may be ejected without notice to quit unless the landlord has allowed him expressly or impliedly to hold over. Mere continuance alone does not make him a tenant. (*Mookerjee and Roe*, JJ.) PARAMANANDA SINGH *v.* SYJOU SINGH. **37 I.C. 201 = 24 C.L.J. 30.**

LANDLORD AND TENANT—Holding over.

———*Holding over—Limitation—Ijara.*

Where a *Mouza* was given in *ijara* by a landlord to a tenant who excavated a tank and remained in possession thereof, on the expiry of the term in a suit by the landlord to get *Khas* possession or in the alternative for assessment. *Held*, (1) that the *ijara* was a good answer to the defendant's plea of limitation : (2) that the tenant should be treated as a raiyat holding at fixed rates. (*Jenkins*, C.J., *Mookerjee and Beachcroft*, JJ.) ALLABUDDIN *v.* BIRENDRA KISHORE MANIKYA BAHADUR.
27 I.C. 31 = 20 C.L J. 300.

———*Holding over—Enforcement of—Waived condition.*

A stipulation in Kabuliat which was waived during the term of the tenancy cannot be enforced during the period of holding over. (*Coxe and Mullick*, JJ.) HALDHAR JHA *v.* SHAH MAHAMMAD. **25 I.C. 880 = 22 C.L J. 95.**

———*Holding over—Terms of—Stipulated period—Acceptance of rent at reduced rate for some years—Effect of.*

A tenant holding on after his lease is over, does so on the original terms contained in the deed unless a new agreement is come to between the parties; the mere fact that the rent has been received by the landlord for some years at a reduced rate does not bind the lessor to accept that reduced rate always. 2 C.W.N. 47, Dist. ; 28 C. 227 ; 2 C. W. N. 303 ; 16 W.R. 185 ; 22 W.R. 31; 25 W.R. 234 ; 6 C.W.N. 589 ; 37 C. 373, Fol. (*Mookerjee and Carnduff*, JJ.) BAIJNATH PROSAD *v.* RAGHUNATH RAI.
14 I.C. 817 = 16 C.W.N. 496.

———*Holding over—Chalgeni tenant holding over—Effect* — Mulgeni *tenant when he becomes.*

When once a tenant commences as a chalgeni annual tenant and then holds over, applying the principle of S. 116 of the Transfer of Property Act, he must be considered as a lessee from year to year and he can claim title by prescription as *mulgeni* permanent tenant only from the date on which he sets up that title. (*Seshagiri Aiyar and Phillips*, JJ.) LAXMIPATHAYA *v.* RAMACHANDRA. **31 M.L.J. 311 = (1916) 2 M.W.N. 133 = 35 I.C 421 = 20 M.L.T. 228.**

———*Holding over—What is.*

A tenant holding over or a tenant at sufferance is a person who after his right to occupation under a lawful title is at an end continues (having no title at all) in possession of the land without the agreement or disagreement of the person in whom the right of possession resides. (*Hallifax*, A.J.C.) NARAYAN *v.* TUKARAM. **1923 Nag. 310.**

———*Holding over—Lease for life of lessor—Ejectment—Jurisdiction of Civil Court.*

Where a lessee for the life of the lessor holds over after his death, he is a trespasser and can be ejected in the Civil Court. (*Stuart and Kanhaiya Lal*, A.J.Cs.) DEPUTY COMMISSIONER, PARTAB GARH *v.* KISHAN DAYAL.
49 I C. 80 = 5 O.L J. 754.

LANDLORD AND TENANT—Ijaradar.

Homestead.

———*Homestead—Transfer of.*

Prior to the passing of the Transfer of Propery Act, tenancies from year to year of homestead lands were untransferable. 21 C. 666, Ref. to. 32 C. 1023 ; 36 I.C. 126 ; 33 I.C. 595, Foll. (*Chatterjee and Newbould*, JJ.) RAMANADA SUNDARI MANDAL *v.* SHYAMA KANTA.
37 I.C. 939.

Ijaradar.

———*Ijaradar—Tenure-holder.*

The word '*ijara*' has no settled meaning which would make its use inconsistent with the interest of a tenure-holder. The usual meaning of '*ijara*' is a lease for a term. (*Newbould*, J.) BREJABASHI RUDRA PAL *v.* SARAT CHANDRA RUDRA PAL. **53 I.C. 545.**

———*Ijaradar—Raiyats settled by.*

A raiyat settled even by a trespasser acquires non-occupancy rights and cannot be ejected. So also is a case with one settled by *ijaradars* even after the extinction of the *ijara*. (*Sharafuddin and Coxe*, JJ.) HANIJ MANDAL *v.* BARODA KISORE ACHARYA. **16 I.C. 419.**

———*Ijaradar—Lease of the entire* mauza *including the* man *lands—Claim of tenancy in* man *lands, whether tenable—Notice to quit—Necessity of.*

The defendant got *Ijara* of a *mauza* including the *man* lands from 1291 to 1296 and having also remained in possession from 1297 to 1305 F., he got another *Ijara* from 1306 to 1313 and a fresh *Ijara* from 1314 to 1323. The plaintiff was lessee of the entire *mauza*. He brought a suit in ejectment against the defendant. The latter did not give up his possession over the *man* lands in which he set up a tenancy and claimed a notice to quit before ejectment ; *Held*, (1) that the defendant could not claim any sort of tenancy in the *man* lands and on the expiry of his *Ijara* he was not entitled to retain possession of them, he having neither an occupancy nor non-occupancy rights therein ; and (2) that no notice was required before the suit for ejectment was brought. The *man* lands were held as remuneration for the collection of rents when the period of the *Ijara* expired and so the *Ijaradar* was bound to deliver up possession of the subjects of the *Ijara* not only the lands held by the tenants but also the *man* lands. (*Coutts and Macpherson*, JJ.) CHIGGU CHAUDHRI *v.* SRIMATYA CHAND MONI DEBYA. **2 P.L.T. 777 = 64 I.C. 698.**

———*Ijaradar—Settlement of tenants on land—Right of occupancy.*

An ijaradar can induct a tenant on to the land which is the subject of his *ijara* apart

from any stipulations in the document of title preventing him from so doing. In the absence of such stipulations and when the persons inducted are settled raiyats of the village in which the land is situated, they acquire an occupancy right in the lands. (*Miller*, C.J. *and Foster*, J.) SHEO BALAK SINGH *v.* RADHEY SINGH. **52 I.C 501.**

Improvements.

———*Improvements—Compensation for.*

A tenant is ordinarily not entitled to compensation for improvement or structure on land. He should take it away at the expiry of the term or it becomes landlord's property. (*Macleod*, C.J. *and Heaton*, J.) RAMACHANDRA v. VISHNU. **22 Bom. L.R 943=58 I.C. 828=41 B. 950**

———*Improvements—Tank dug by a tenant.*

Where in contravention of the terms of the lease, the tenant digs a tank, without the landlord's permission, the landlord can claim compensation, but the amount to be awarded as damages should be merely nominal if the tank is beneficial to the inhabitants. (*N.R. Chatterji and Newbould*, JJ.) KRISHNA DAS RAY *v.* MOHENDRA CHANDRA SIL. **62 I.C. 779=25 C.W.N. 930.**

———*Improvements—Right of a tenant to remove buildings.*

The right of a tenant to remove buildings, if he has not removed them before the termination of his tenancy is an equitable one and is to be determined according to the customs and usages of the country. (*Fletcher and Chatterjee*, JJ.) KANAI JALAN *v.* RASIK LAL SADHU KHAN. **28 I.C. 762=19 C.W.N. 311.**

———*Improvements—Compensation—Decree for ejectment.*

In executing a decree for ejectment of the tenant from land on which the latter has built a structure, the landlord is bound to pay the value, of the materials which is not the same thing as the value of improvements. (*Leslie Jones*, J.) LOCHA RAM *v.* JINDWADDA KHAN. **56 P.W.R. 1916=35 I.C. 235=141 P.L.R. 1916.**

———*Improvements — Tenant's claim for compensation—If allowable.*

A tenant on ejectment is not entitled to any compensation for materials of the structures unless the lease was a permanent one or the lessee was encouraged by the landlord's acquiescence. The distinction between carelessness and acquiescence must be kept in mind. (*Chevis and Le Rossignol*, JJ.) KISHEN SINGH *v.* CHURCH MISSIONARY TRUST ASSOCIATION. **26 I.C. 936.**

———*Improvements — Compensation for — Custom of South Canara.*

Under the Customary Law of South Canara a tenant is entitled to the value of improvements

effected by him on ejectment by the landlord. 24 M.L.J. 397, followed. (*Ayling and Coutts-Trotter*, JJ.) RAMAPPA *v.* ABDULLA BEARI. **69 I C. 282=41 M.L.J. 127.**

———*Improvements—Effect of—Estoppel.*

The conduct of landlord who allows a tenant to erect a permanent structure might estop him in three ways in favour of the tenant. It might estop the landlord from denying that the tenant has a permanent right of occupancy or from evicting the tenant without paying him compensation or from denying the tenant's right to remove the superstructure. (*Sadasiva Iyer and Napier*, JJ.) PERUMAL GRAMANY *v.* MAHAMAD KASIM SAHIB. **28 I.C. 840.**

———*Improvements — Compensation—Tenant believing lease to be permanent.*

A tenant who was induced to believe by the landlord's conduct that his lease was permanent is entitled to compensation for improvements when evicted. (*Ayling and Tyabji*, JJ.) GOPALAKRISHNA *v.* SUKIRTHA THEENTHARA. **24 I.C. 790.**

———*Improvements—Well sunk by tenant without landlord's consent—If landlord entitled to sue for mandatory injunction.*

A suit for a mandatory injunction to restrain a tenant from constructing a well upon the landlord's land is not maintainable by the landlord merely on the ground that the tenant did not get his consent but the landlord must prove some special damage to himself which could not be compensated for by money. The construction of a well by a tenant should be held *prima facie* to be beneficial until the contrary is proved and such an act cannot be considered as destructive, injurious or one amounting to the use for a purpose other than that for which it was intended. (*Evans*, J.C. *and Piggott*, A.J.C.) RAGHUNANDAN SINGH *v.* JARAO. **18 I.C. 554=15 C.C. 170.**

———*Improvements — Compensation — Estoppel.*

Even though a landlord allows his tenant to build on his land and allows the sale of the building and recognizes the purchase as tenant, yet it does not give the tenant any right of occupation and does not act as estoppel and the landlord not liable for compensation at the time of ejecting the tenant. (*Fox*, C. J. *and Twomey*, J.) MOOLA MAHOMAD *v.* EBRAHIM. **9 Bur. L.T. 101=35 I.C. 735=8 L.B.R. 433.**

Land Acquisition.

See LAND ACQUISITION ACT—APPORTIONMENT.

Merger.

See also, MERGER.

———*Merger—Mukarrari lease—Patni lease—Granted to different members—Intention.*

There is no merger in case of a mukarrari lease granted to some members of a joint

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family and a patni lease of the same land granted to some other members of the same family if it appears from the document and accounts that the two are kept alive. Merger is not a thing which occurs *ipso jure* upon the acquisition of what for the sake of a just generalisation, may be called the superior with the inferior right. There may be many reasons —conveyencing reasons,—reasons arising out of the object of the acquisition of the one right being merely for a temporary purpose, family reasons and others in the course of which, the expediency of avoiding the coalescence of interest and preserving the separation of title may be apparent. In short the question to be settled in the application of the doctrine is, was such a coalescence of right meant to be accomplished as to extinguish that separation of title which the records contain. (*Vicount Cave, Lord Shaw and Ameer Ali*). DULHIN LACHHANTEALI KUMRI *v.* BODHNATH TIWARI. (1922) M.W.N. 58 = 15 L.W. 343 = 30 M.L.T. 216 = 26 C.W.N. 566 = 3 P.L.T. 383 = 4 U.P.L.R. (P.C.) 42 = 1922 P.C. 279 (P.C.).

———*Merger—Mines and minerals grants—Makurrari lease zamindar if entitled to minerals.*

The grantee or lessee under a Makurrari lease from a zamindar is not entitled to minerals unless expressly conveyed though the tenure may be permanent heritable and transferable. (*Lord Shaw.*) GIRDHARI SINGH *v.* MEGHLAL PANDE. 45 Cal. 87 = 22 M.L.T. 358 = 44 I.A. 246 = 20 Bom. L.R. 64 = 18 A.L.J. 851 = 33 M.L.J. 687 = 3 Pat. L.W. 169 = 26 C.L.J. 884 = 22 C.W.N. 201 = (1917) M.W.N. 232 = 42 I.C. 631 = 7 L.W. 90 (P.C.)

[On appeal from 34 Cal. 358.]

———*Merger—Superior and subordinate interest.*

In cases unaffected by the provisions of the T.P. Act and the B.T. Act the union of a superior and a subordinate interest does not, by operation of law, necessarily merge the subordinate in the superior interest. But the conduct of the party concerned, may show that he did not intend to keep the two interests alive as mutually distinct rights. 25 W.R. 503; 19 C. 760; 11 W.R. 485; 13 C.W.N. 918; 18 C.W.N. 860, Ref. (*Mookerjee and Beachcroft*, JJ.) RAM BISHEN DUTT *v.* HARIPADA MUKERJEE. 23 C.W.N. 830 = 51 I.C. 389 = 29 C.L.J. 427.

———*Merger—Tenures in India—Equitable considerations.*

The English doctrine of a merger has never been held to apply to land tenures in India in their entirety. In deciding whether there is a merger in equity, what must be first looked at, is the intention of the parties and if that be not expressed then the Court looks to the benefit of the person in whom the interests coalesce. 10 C. 1035 (P.C.), Ref. (*Chatterjee and Walmesley*, JJ.) AMATOO *v.* SHEIKH MUKSAD ALI. 28 I.C. 314 = 19 C.W.N. 435.

LANDLORD AND TENANT—Mines and minerals.

———*Merger—Proprietor in possession of Nij Jote lands.*

Nij Jote rights are not subordinate to proprietary rights and so no merger can take place where both interests are vested in one and the same person. (*Mookerjee and Beachcroft*, JJ.) BHOJAKHAN DAS ADHIKARI *v.* BHAGABATI DASI. 17 I.C. 494 = 18 C.L.J. 48.

———*Merger — Rent-decree — Subsequent money-decree—Purchase of tenure by landlord in execution sale—Execution of rent-decree.*

A landlord obtained a decree against his tenant for rent in 1904 and for money in 1906. In execution of the second decree, he attached the tenure and it was proclaimed at the sale that the tenure in question was subject to a judgment-debt under the decree of 1904. The decree-holder purchased the tenure. *Held*, that judgment-debt in respect of the rent-decree must be deemed to have been extinguished and that the landlord could not execute the decree. In this case, however the decree-holders themselves are the execution purchasers and they cannot be permitted to execute the decree. (*Mackerjee and Beachcroft*. JJ.) SAILOJA PRASAD CHATTERJEE *v.* GYANI DAS 16 I.C. 355 = 18 C.L.J. 29.

———*Merger—Grove-holder acquiring share in village—Grove not an incident of legal proprietorship of the land.*

A grove held by the proprietor of a fractional share in the village long before he became proprietor of that fractional share is not necessarily a legal incident of his proprietorship of the land of the village and does not *ipso facto* pass with the sale of the fractional share to the purchaser. (*Kanhaiya, Lal*, A.J.C.) GULAB RAI *v.* KAZIM ALI. 21 C.C. 263 = 48 I.C. 731 = 6 C.L.J. 32.

———*Merger—Under-proprietor — Acquisition of proprietary right.*

When the same person happens to have under-proprietary or heritable untransferable rights and acquires a proprietary share in the same village, and when a partition takes place, no adjudication in the course of those proceeding or any entry in any Kura will be held to decide the question of his status as under-proprietor or permanent lessee, which must be settled by law in the usual way. His status as under proprietor or lessee is entirely apart from his status as proprietor and there is no merger. (*Holms*, S.M. *and Campbell*, J.M.) UMED ALI *v.* ANWAR HUSSAIN. 34 I.C. 733 = 3 C.L.J. 282.

Mines and Minerals.

See also MINES AND MINERALS.

LANDLORD AND TENANT—Mines and minerals.

———*Mines and minerals—Right of zemindar to.*

Where a tenure holder or grantee from zemindar claims minerals under the lands granted, the burden of proof is on the grantee to prove an excess grant of minerals from zemindar or by Government. Otherwise minerals will not pass to the grantee. Where there is a permanent and heritable tenure by the zemindar at fixed rent or rent free, the grantee is not entitled to the minerals underneath the soil in the absence of express evidence of grant of minerals also. The grantee of a permanent and heritable tenure at fixed rent or rent free from a zemindar is not entitled to the subjacent minerals in the absence of express grant of the same. (*Sir John Edge.*) RAGHUNATH ROY *v.* RAJA OF JHERIA. **46 Cal. 158 = 17 A L J. 597 = 36 M.L.J. 660 = 1 U.P.L R. (P C.) 43 = 23 C.W.N. 914 = 23 M.L T. 76 = 30 C.L.J. 160 = 21 Bom. L R. 895 = 50 I C. 849 = 10 L.W. 347 (P.C.).**

[Also 28 I.C. 811 = 19 C.W.N. 375]

———*Mines and minerals — Grant — Mokurrari lease—Zemindar if entitled to minerals.*

The grantee or lessee under a *Mokurari* lease from a Zemindar is not entitled to minerals unless expressly conveyed though the tenure may be permanent, heritable and transferable. (*Lord Shaw.*) GIRDHARI SINGH *v.* MEGH LAL PANDE. **41 Cal. 87 = 22 M.L.T. 388 = 15 A.L.J. 851 = 33 M.L J. 687 = 3 Pat. L.W. 169 = 26 C.L J. 584 = (1917) M.W.N. 232 = 7 L.W. 90 = 20 Bom. L.R. 64 = 44 I.A. 246 = 42 I.C. 651 = 21 C.W.N. 201 (P.C.).**

[On appeal from 34 Cal. 358].

———*Mines and minerals—Digwari tenure Lands not separately settled.*

The Zemindar is entitled to minerals in the absence of a grant thereof made by him to a *digwar* (i.e.) a permanent tenure holder. A *Digwar* is not entitled to minerals in the ands granted to him unless express grant is proved. The *Zemindar* is alone entitled and in a suit by him for declaration of his right to minerals, Government is not a necessary nor a proper party as the Govt. does not claim them under permanently settled estates. (*Lord Macnaughten*). DURGA PRASAD SINGH *v.* BROJO NATH. **36 Cal. 696 = 39 I.A. 133 = 16 C.W.N. 482 = (1912) M.W.N. 425 = 11 M L.T. 337 = 9 A.L J. 462 = 15 C.L.J. 461 = 14 Bom. L R. 445 = 15 I.C. 219 = 23 M.L J. 26 (P.C.).**

———*Mines and minerals—Grant—Khorpost—If passes right in sub-soil.*

A *khor post* grant for the maintenance of the junior member of the family does not carry with it the right to the sub-soil. (*Chitty and Teunon*, JJ.) JAGANNATH MARWARI *v.* GIRIDHARI SINGHA. **29 I.C. 429 = 19 C.W.N. 102.**

LANDLORD AND TENANT—Mines and minerals.

———*Mines and minerals—Grant for maintenance—if passes mines.*

A grantee of lands for life for maintenance is not entitled to work the mines beneath. (*Mookerjee and Beachcroft*, JJ.) CHRISTIAN *v.* TEKAITNI NARBADA KOERI.

20 C.L.J. 521 = 27 I.C. 471 = 19 C.W.N. 796.

———*Mines and minerals—Lease—Right of lessee—In-stroke and out-stroke.*

The right of instroke is the right of conveying minerals leased to the surface through a pit or shaft in an adjoining mine. It is the converse right to that of out-stroke, which is the right of conveying minerals from an adjoining mine to the surface, through a pit or shaft in the mine leased. A lessee is *prima facie* entitled to work by in-stroke but not by out-stroke. *Prima facie* the owner of the surface has a right of support. The lessee is not entitled to work the mine so as to cause a subsidence and an injunction will be granted if the Court is satisfied that the injury is imminent or where the lessee claims to do acts which must inevitably cause subsidence. (*Mookerjee and Beachcroft*, JJ.) RAMJAS AGHARWALA *v.* BROJOMOHAN SINGH. **20 C.L J. 538 = 27 I.C. 214 = 19 C.W.N. 887.**

———*Mines and minerals—Nimak Sayar Mehal—Right of grantee—Zemindar.*

Where at the permanent settlement the *Zemindari* was settled with the defts. and the Nimak Sayar Mehal with the plff. *Held*, that the plff. was entitled to dig for salt-petre in the land but so as to cause as little inconvenience as possible to the defts. as owner of the village. The plff. was not merely entitled to collect revenue if salt-petre was manufactured. (*Jenkins*. C.J. *and Mookerjee*, J.) GOPAL CHAND *v.* JANKI KUAR.

41 Cal. 286 = 18 C.L.J. 151 = 20 I.C. 650 = 17 C.W.N. 1195.

———*Mines and minerals — Permanent lessee.*

The underground mineral rights belong to the landlord and not to a permanent tenure-holder unless so provided by the lease. (*Coxe and Teunon*, JJ.) JYOTI PROSAD SINGH *v.* LACHIPUR COAL CO. **38 Cal. 845 = 14 C.L.J. 361 = 12 I.C. 482 = 16 C.W.N. 241.**

———*Mines and minerals—Lease—Breach of covenant—Provision that lessee should work mines in a workmanlike manner.*

Where a lease of mines provided that the lessee should work the mines continuously without voluntary intermission and in a skilful and workman-like manner, *held*, that the burden of showing that the lessee has not worked as aforesaid lies on the lessor. A proper and workman-like manner does not mean the best possible mode of working, but it means a manner which shall not be simply an attempt to get out of the earth as much mineral as can be got out regardless of any ordinary or workman-like and proceeding, and the mere fact that a

LANDLORD AND TENANT — Mines and minerals.

sufficient quantity of mineral is not produced is not sufficient to show that the mine was not so worked. (*Wallis, C.J. and Seshagiri, Aiyar, J.*) ANSUR SUBBA NAIDU *v* SECRETARY OF STATE FOR INDIA. 41 I.C. 770= (1917) M.W.N. 794.

———*Mines and minerals—Patnidar—No right to.*

A *patni* though heritable and alienable does not vest the sub-soil rights in the grantee in the absence of an express declaration to that effect by the grantor. (*Jwala Prasad and Adami, JJ*) RAM LAL KAVIRAJ *v* MAHARAJ KUMAR 1 Pat. L.T. 474=5 P L.J. 568= 57 I.C. 786=(1921) Pat. 49.

———*Mines and minerals—Grant—Tenure of land, if passes minerals.*

The mineral does not pass to the grantee of tenure of land unless clearly mentioned in the terms of the grant. Leases purporting to grant sub-soil rights will not give a title by adverse possession for which actual working must be established. (*Miller, C.J, and Coutts, J.*) KUMAR PREMATHA NATH *v.* MEIK. 5 P.L.J. 273=1 P.L T. 760= 56 I.C. 184=(1920) Pat. 146.

———*Mines and minerals — Mokhurrari lease—Whether such lease conveys sub soil mineral rights unless expressly conveyed.*

When under the terms of a Mokhurari lease, the lessee was entitled to enjoy the land from generation to generation with power of gift or sale, without any express grant of sub-soil rights. *Held* the lessee is entitled to the surface rights only and not to the minerals underneath. 34 C. 358, dist ; 37 C. 728 ; 39 C. 696, Foll. (*Ros and Jwala Prasad, JJ.*) RAJ KUMAR TANAKUR RANJITNARAIN SINGH *v.* MOTILAL MARWARI. 42 I.C. 808= (1917) Pat. 24.

[Also 47 Cal 95=50 I.C. 849. (P.C.)
45 Cal. 87=42 I.C. 651 (P.C.)
44 Cal. 585=40 I.C. 139 (P.C.)
39 Cal. 696=15 I.C. 219 (P.C.)]

Nature of Tenancy.

———*Nature of tenancy*—Pattah—*Meaning of—Jungle clearing grant—Landlord, power of to enhance rent*—Bishunprit birt and Bankati birt.

The term *pattah* comprehends all tenures and subordinate interests from a permanent *mokurarri* to a yearly lease. Where a *pattah* granted for clearing the jungle, making the land fit for cultivation, etc., and the *birt* holder was to enjoy it free for 5 or 6 years and thereafter at the rate for *Bankati* prevalent in Taluqa, *held* that the Taluqdar could not amend or assess the rent arbitrarily at short intervals and that the assessment must be in accordance with the rate prevalent in the Taluqa. Meaning of *Bishunprit birt Bankati birt*, etc., discussed (*Mr. Ameer Ali.*) MAHAMMAD ABDUL HASAN KHAN *v.* LACHMI NARAIN. 48 All. 355=24 O.C. 123= (1921) M.W.N. 359=8 O L J, 294= 29 M L.T. 373=48 I.A. 267= 63 I.C. 694=26 C.W.N. 249 (P.C.).

LANDLORD AND TENANT — Nature of tenancy.

———*Nature of tenancy—Terms of contract—To be determined by long user and possession—Right of tenant to build on land.*

Long user and possession may be good evidence of what the terms of the grant were. These terms the tenant cannot overstep. A tenant has no right to build on land which has been given to him for other purpose. (*Tudball and Sulaiman, JJ.*) BUDDHU *v.* BANWARI LAL. 57 I.C. 655=2 U.P.L.R. (A.) 339.

———*Nature of tenancy—Squatter cultivating land—His possession, if adverse possession.*

Mere cultivating possession, which does not necessarily imply any claim to proprietary right is not adverse possession against the landlord. A squatter's possession of *patti* land is consistent with a claim to be a tenant or a proprietor on the fact of his being a mere squatter. A squatter is not to be allowed the benefit of the maxim that possession is *Prima Facie* adverse. A mere squatter or intruder who does not set up any claim of right cannot plead adverse possession. (*Holms, S.M.*) BHAGWAN DIN *v.* SHANKAR PRASAD. 39 I.C. 520= 14 A.L.J. 8 (Rev.).

———*Nature of tenancy—Status of tenant—Clause entitling — Landlord to realise rent summarily.*

Where the tenancy of the plaintiffs was unquestionably a raiyat's tenancy, the status of the plaintiffs could not be elevated because a condition was annexed to the lease which entitled the landlord to realise rent by summary process. (*Mookerjee and Chotzner, JJ.*) PURNA CHANDRA DAS *v.* ALI MAHOMED. 37 C.L.J. 548=1924 Cal. 320.

———*Nature of tenancy—Rent in perpetuity—Status of tenant.*

A tenant whose rent is fixed in perpetuity is *raiyat* holding fixed rates. (*Chatterjee and Panton JJ.*) SATISH CHANDRA GHOSE *v.* UPENDRANATH HAZRA. 63 I.C. 592.

———*Nature of tenancy—Heirs of tenant—Son paying rent does not create a new tenancy.*

Though the son of a tenant inherits a tenancy from the father and pays rent to the landlord and the son inherits it before the passing of the Transfer of Property Act, no new tenancy is created. (*N. R. Chatterjee and Pearson, JJ.*) JYOTI PROSAD CHATTERJI *v.* DASARATH GHOSH. 63 I.C. 109.

———*Nature of tenancy — Reservation of yearly rent.*

The reservation of an yearly rent in a lease is only a presumption and not a conclusive

LANDLORD AND TENANT — Nature of tenancy.

proof that the tenancy is a yearly one. (*Chatterjea and Panton*, JJ.) SARI SARDAMAYI DEVI *v.* SAILABALA DASI. **59 I.C. 788.**

———*Nature of tenancy—Presumption.*

Annual payment of rent does not necessarily imply a tenancy from year to year. Nature of the holding should be taken into consideration. (*Chaudhuri and Ghose*, JJ.) JOGENDRA CHANDRA KAR *v.* SHYAM SUNDAR DAS. **57 I.C. 798.**

———*Nature of tenancy—Extent of lands—Onus.*

Where a landlord sued to recover rent under the terms of a Kabuliyat executed by the tenant the burden was not on the plff. to prove the inception of the tenancy and to establish to the satisfaction of the Court the quantity of land and the rent payable by the deft. at the time, 5 C.L.J. 538, dist. (*Mookerjee and Carnduff*, JJ.) A. WHYTE *v.* BHAIRAB MAJI. **53 I.C. 872=30 C.L.J. 121.**

———*Nature of tenancy—Raiyat at fixed rates—Pleading—Proof.*

A person pleading the status of Raiyat at fixed rates, may, if that claim is disallowed, fall back upon and establish the lower status of an occupancy tenant. (*Carnduff and Chapman*, JJ.) ICHHAMOJEE DEBEE *v.* KRISHNA KAMENI DEBEE. **18 C.L.J. 536=18 I.C. 377=16 C.W.N. 358.**

———*Nature of tenancy—Yearly tenant—Assertion of permanent tenancy.*

Tenants originally let on yearly tenancy cannot become permanent tenants by mere length of occupation coupled with assertions of permanent occupancy right. (*Krishnan and Odgers*, JJ.) PONNALAGU KONAN *v.* SINNIAH. **70 I.C. 27=(1921) M.W.N. 719.**

———*Nature of tenancy—Change of terms.*

The fact that a prior suit by the owner for use and occupation was compromised by the plff. accepting a certain amount from the deft. should not alter the previous relation of permissive occupation and create a legal tenancy between the parties. 7 M. 304, dist. (*Sundara Aiyer*, J.) *In re* KAYA RAMAKRISHNAYYA. **15 I.C. 432.**

———*Nature of tenancy—Occupation of land in lieu of services to be rendered to grantor.*

Where in an action in ejectment plaintiff alleged that defendant's ancestors were let into holding by plff's. ancestors on condition of their doing service to the grantors *held* (1) that it was incumbent on the plaintiff to prove that services were due to his family as a condition of the occupation of the land by the defendant's family. (*Abdul Rahim and Sundara Aiyar*, JJ.) SAMINATHA *v.* MARIMUTHU. **14 I.C. 689.**

LANDLORD AND TENANT — Nature of tenancy.

———*Nature of tenancy—Absence of contract.*

When the relations between the ryot and the Zemindar are not the offspring of contract, the law would imply a contract in favour of the continuance of the *states quo* in the absence of proof to the contrary. (*Boddam and Sankaran Nair*, JJ.) NAGU CHETTY *v.* BHASKARA. **(1911) 1 M.W.N. 6=9 I.C. 41=9 M.L.T. 191.**

———*Nature of tenancy—Muafi Khairati—Different kinds of tenancy.*

A Muafi Khairati tenant may be exempted from paying rent for services to be rendered to the Malguzar or for services to be rendered to the village. The distinction between the two classes is clear. A man may be entitled to hold certain land free of rent as long as he performs certain services, both tenure and exemption being dependent on the services and ending with them. This is one class. If the other persons are entitled to hold land as tenants with an added condition that they shall pay no rent so long as they perform certain services, the exemption but not the tenure being dependent on the services and ending with them. (*Hallifax*, A.J.C.) BED PRASAD *v.* KANGALU. **1923 Nag. 163.**

———*Nature of tenancy — Contract of — Inference.*

A contract of tenancy may like any other contract, be either express or implied from the conduct of the parties. (*Stanyon*, A.J.C.) RATNOO *v.* NABIDAD KHAN. **46 I.C. 909.**

———*Nature of tenancy—Fractional share—Not defined by metes and bounds.*

Under the C.P. Tenancy Act there can be no tenancy in respect of a fractional share of a field or fields not defined by metes and bounds. (*Batten*, A.J.C.) SUMERA *v.* PREMCHAND. **44 I.C. 845=14 N.L.R. 62.**

———*Nature of tenancy*—Rafa Tankidar—*Tenant.*

The status of *Rafa Tankidar* is that of an ordinary tenant. Transfer of land from an estate to a temple does not affect the status of the *tankidar*. (*Coutts and Das*, JJ.) HARAYAN PATNAICK *v.* RAGHUNATH PATNAICK. **47 I.C. 225=5 P.L.J. 295.**

———*Nature of tenancy lease—Whether sub-lease conveys sub-soil mineral rights unless expressly conveyed.*

When under the terms of a Makurrari lease, the lessee was entitled to enjoy the land from generation to generation with power of gift or sale, without any express grant of sub-soil rights. *Held* the lessee is entitled to surface rights only and not to the minerals underneath. 34 C. 258, dist.

LANDLORD AND TENANT—Non-transferable Holding.

37 E. 723; 39 E. 696 Foll. (*Roe and Jwala Prasad*, JJ.) RAJAKUMAR TANKUR RAVYITNARAYAN MEG. *v.* NOTHAL MARWARI.
42 I.C. 808=1917 Pat. 24.

[also 47 Cal. 95=50 I C. 859 P.C.=
45 Cal. 87=42 I.C. 631 (P.C.) 44 Cal. 585=
40 I.C 139 (P.C.)=
15 I.C. 219=39 Cal. 696 (P.C.)]

Non-transferable holding.

See also OCCUPANCY HOLDING.

——— *Non-transferable holding—Sale of materials of house by tenant—Purchaser subsequently becoming co-sharer—Right of residence.*

A purchaser of a house from a tenant is entitled to sell only the materials thereof. Though he subsequently acquires the interest in the site of some co-sharers he does not thereby get a right of residence in the house, as against other co-sharers. (*Rafique*, J.) BHIKUMAL *v.* MAKTUL SINGH. 38 I C. 871.

——— *Non-transferable holding—Sale of house—Mousa Sera Hakim—House non-transferable except with consent of landlord—Transfer without consent—Vendee's right.*

The vendee from the occupier of a house in Serai Hakim, who cannot transfer the same without the landord's consent, gets only a right to the materials of the house. (*Rafique*, J.) NATHURAM *v.* LAKSHMINARAIN.
22 I.C. 891.

——— *Non-transferable holding—Khoti tenancy—Transfer—Khoti permission.*

A Khoti tenancy cannot be transferred without the permission of the Khot who is entitled, on such a transfer, to re-enter without any liability to re-imburse the transferee for the money he has spent for the transfer. (*Batchelor*, O.J. *and Kemp*, J.) GOPAL ANANT *v.* BHAGIRATHI. 46 I.C. 668=
20 Bom. L.R. 681.

——— *Non-transferable holdings—Transfer—Ejectment—Abandonment.*

Where a transfer is not by way of sale, the landlord though he has not consented, is not ordinarily entitled, to recover possession of the holding unless there has been an abandonment. 40 Cal. 870; 17 C.W.N. 882; followed. 10 C.W.N. 492 not followed. (*Greaves and B B. Ghosh*, JJ.) SRIMATI AMBIKA DEBI *v.* SRIMATHI SWARNA MAYI DAS.
49 I.C. 989=(1922) Cal. 185

——— *Non-transferable holding—Transfer—Recognition by landlord's agent—Onus of proof.*

There is no inflexible rule that a landlord's gumasta has no power to recognise the transfer of a non-transferable holding. The onus is upon the landlord in the first instance to show what the precise authority of his agent is. 15 C.W.N. 958 Foll. (*N. R. Chatterjee and Panton*, JJ.) MADAN MOHAN SAHA *v.* PRYANATH DUTTA. 64 I.C 362.

——— *Non-transferable holding—Transfer—Ejectment.*

Where on a transfer of part of a non-transferable holding, one of the original tenants is in possession of a part, the landlord cannot sue the transferee for possession. (*Teunon and Chaudhuri*, JJ.) MEHDIALI KHAN PANEE *v.* BASIRUDDIN CHOWDHURY. 57 I.C. 956.

——— *Non-transferable holding—Cannot be sold in execution.*

An occupancy holding or any part of it could not be sold in execution of a decree for money obtained against the raiyat when the raiyat objected even if the land lord gives his consent to the sale. (*Chitty and Walmsley*, JJ.) BIPIN CHANDRA BARUA *v.* JAGAT CHANDRA NATH. 51 I.C. 962.

——— *Non-transferable holding*—Kaimi raiyat—*Attachment.*

Kaimi raiyati does not necessarily import fixity of rent and such a holding is not transferable and cannot be attached in execution of a decree for money. (*N.R. Chatterjee and Duval*, JJ.) ANAND CHANDRA PAL *v.* ASBAB BHANU.
51 I.C. 852.

——— *Non-transferable holding—Homstead—Onus.*

In a suit for *khas* possession by landlord of homestead land, the transferee from the tenant must show that the tenancy is transferable in order that the landlord may not succeed. (*Chatterjee and Greaves*, JJ.) MANMATHA NATH MITTER *v.* ANATH BANDHU PAL.
50 I.C. 232=28 C.W.N. 201.

——— *Non-transferable holding—If can be sold in execution—Right of re-entry by landlord in case of transfer without consent.*

The holding of a non-occupancy *raiyat* is saleable in execution. A right of re-entry in the landlord in cases of transfer without his consent may raise a question between the landlord and the Court auction-purchaser but the *raiyat* is not entitled to object to the sale on that ground. (*Richardson and Beachcroft*, JJ.) LELONG *v.* RAJANI KANTA.
46 I C. 417=22 C.W.N. 792.

——— *Non-transferable holding — Tenancy not* Kaimi Mokarari *or agricultural created before T. P. Act—If transferable.*

A tenancy created before the Transfer of Property Act, which is not *Kaimi Mokarrari* and which is not for agricultural purposes is not transferable except under a custom of transferability. (*Woodroffe and Smither*, JJ.) TARA KANTA DAS *v.* GOPAL CHANDRA, 46 I.C. 191.

LANDLORD AND TENANT—Non-transferable Holding.

———*Non-transferable holding — Gift whether binding upon heirs of donor—Gift—Conditions of rescission.*

A gift of a non-transferable occupancy holding made by a ryot without the landlord's consent is binding upon his heirs. (*Mookerjee and Walmsley*, JJ.) BEHARI LAL GHOSE *v.* SINDHUBALA DASSI. **45 Cal. 434 = 22 C.W.N. 210 = 41 I.C. 878 = 27 C.L.J. 497.**

———*Non-transferable holding—Sale—Subsequent surrender to landlord — Effect—Per Chatterjee*, J. (*Contra Newbould*, J.)

Once a non-transferable holding is sold it cannot be surrendered to landlord and if the landlords accepts the surrender, he cannot eject the purchaser. (*Chatterjee and Newbould*, JJ.) ZAMIR MUNSHI *v.* BISSESWARI DEBYA. **40 I.C. 544 = 25 C.L.J. 480.**

———*Non-transferable holding—Purchaser recognised by landlord.*

A purchaser of a non-transferable occupancy holding in an execution sale cannot oust the the person who got in under a fictitious purchase from the ryot's wife but was recognised by the landlord, as the latter's conduct amounted to a settlement. (*Chatterjee and Newbould*, JJ.) JANAKI NATH SAHA *v.* KAILASH CHANDRA SINGH. **40 I.C. 498.**

———*Non-transferable holding — Suit against transferee of holding—Burden of proof.*

The burden of proof lies on the tenant, who sets up transferability in a suit by the landlord against the tenant, for ejectment on the ground that the holding is non-transferable. (*Mookerjee and Cuming*, JJ.) JAGABANDHU SAHA *v.* MAGNAMOYI DASSI. **44 Cal. 556 = 24 C.L.J. 363 = 36 I.C. 884 = 22 C.W.N. 89.**

———*Non-transferable holding—Transfer—Consent.*

The consent of both the landlord and the tenant is necessary to make a valid transfer of a non-transferable occupancy holding. No part of it can be sold in execution of a money decree if the raiyat objects to the sale even if the landlords consent to such a sale to the decree-holder. This principle does not apply to a sale in execution of a decree on a mortgage or charge voluntarily made by the raiyat in which case the transfer though involuntary operates against the raiyats. 42 C. 172; 19 C. W. N. 814, Expl.; 7 C. W. N. 572; 16 C. W. N. 420, Ref. (*N. R. Chatterjee and Sheepshanks*, JJ.) NARAYANI *v.* NABIN CHANDRA. **44 Cal. 720 = 21 C.W.N. 400 = 36 I.C. 803 = 25 C.L.J. 351.**

———*Non-transferable holding—Purchaser in execution—Deposit—Withdrawal—Estoppel.*

The mere fact that the landlord withdraws the deposit of the amount of his rent decree, made by the plff. purchaser of a non-transferable holding in execution of his own mortgage decree, to prevent a sale of the holding by the landlord in execution of his decree against the recorded tenants (obtained subsequent to the purchase by the plff. under his mortgage decree) does not estop the landlord from disputing the plff's. right, in the absence of any notice as to the plff's interest in the holding. (*Chitty and Walmsley*, JJ.) BHART CHANDRA GALAI *v.* PRAMOTHA NATH ROY. **34 I.C. 337.**

———*Non-transferable holding—Transfer of a portion—Effect of—Right to possession of portion transferred by Tenant of non-transferable holdings.*

If a portion of non transferable holding is transferred by the tenant, it is at the option of the landlord to accept rent for the remaining portion without prejudice to his right to take rent of the entire holding. The landlord is *prima facie* entitled to *khas* possession of the land transferred out of the non-transferable holding. (*Richardson and Imam*, JJ.) KUNYA KESHORI *v.* BAMA SUNDARI DASYE. **32 I.C. 781 = 43 Cal. 878.**

———*Non-transferable holding—Purchase of portion of holding—Vendor not authorised to sell whole—If landlord can recognise.*

Where one of two persons entitled to a holding sells the whole to the plaintiff and the other sells his half to the defendant, the landlord cannot recognise the plaintiff to the prejudice of the defendant. (*Jenkins*, C.J. *and Mookerjee*, J.) SANOO *v.* MUHAMMAD SABED. **25 I.C. 539 = 19 C.L.J. 462.**

———*Non-transferable holding—Transfer by tenant of his entire non-transferable holding—Effect of—Transfer only of a part.*

A transfer by a tenant of his entire non-transferable holding has the effect of terminating his tenancy but if the transfer is of a portion only, there is no forfeiture of the tenancy. (*Mookerjee and Beachcroft*, JJ.) ABDUL AZIZ *v.* TAFASUDDIN. **23 I.C. 889 = 19 C.W.N. 326.**

———*Non-transferable holding—Transfer—Recognition—Rent paid by purchaser as* Marfatdar *for tenant—Suit for possession—Limitation.*

A purchaser of a non-transferable occupancy holding was described by landlord as *Marfatdar* for the tenant in the rent receipt and as a trespasser in the Record of Rights. *Held*, landlord can successfully recover possession from him. (*Holmwood and Chapman*, JJ.) JADUNATH BELEL *v.* RAJ NARAN MUKHERJEE. **19 I.C. 884 = 17 C.W.N. 459.**

———*Non-transferable holding—Transfer.*

Where a tenant transfers his rights to a third person without the consent of the landlord, the purchaser is liable to be ejected by the landlord. (*Holmwood and Chapman*, JJ.) NAGAR ALI JOARDAR *v.* KALA CHAND SARDAR. **17 I.C. 654.**

LANDLORD AND TENANT—Non-transferable Holding.

———*Non-transferable holding — Custom —Raiyat.*

Where the *Raiyat* of a non-transferable holding transferred his interest in the holding and the landlord brought a suit for *khas* possession of the holding against the purchaser. *Held.* the fact that the *Raiyat* had left the holding and disclaimed any interest in it, was a direct inference from the fact that he had sold the entire holding and given possession of it to the purchaser. The *Raiyat* was not a necessary party to the suit. To prove a custom of transferability, it must be proved that the transfers had been effected with the knowledge and without the consent of the landlord and they were recognised by him either without the payment of *Nazar*, or upon payment of *Nazar* fixed by custom. (*Holmwood and Chapman*, JJ.) SEKH CHAND *v.* BOMONI MOHAN ROY. **17 I.C. 603=17 C.W.N. 1105.**

———*Non-transferable holding—Rights of purchaser.*

A purchaser of a portion of a non-transferable holding cannot be ejected. He has a subsisting right though the landlord may not recognise him. 20 C. 540, Foll Therefore a suit by such purchaser that a rent decree obtained by the landlord against his recorded tenant is fraudulent and for recovery of money paid for satisfaction of such decree for the plff. is maintainable. (*Mittra and Bell*, JJ.) BRAHAMDEO NARAIN *v.* RAMDOWN SINGH, **17 I.C. 125=16 C.L.J. 139.**

———*Non-transferable holding—Usufructuary mortgage by tenant—If amounts to abandonment—Landlord is entitled to decree for ejectment.*

A usufructuary mortgage of part of a non-transferable holding is not equivalent to abandonment and so long as the tenant pays rent and expresses willingness to hold himself responsible for rent; he is still a tenant and the landlord is not entitled to a decree for ejectment, 7 I.C. 750. Rel. on. (*Mukherjee and Carnduff*, JJ.) MAHADEO *v.* PACHKARI. **13 I.C. 941=16 C.W.N. 322.**

———*Non-transferable occupancy holding —Sale—Consent of landlords.*

A sale of non-transferable occupancy holding can take place with the consent of the landlords and the latter may give consent even after a sale, but the consent must be by the whole body of landlords. 34 C. 198, rel. on. (*Casperss and Chatterjee*, JJ.) SHUKURUDDIN *v.* HEMANGINI DEBI. **13 I.C. 199=16 C.W.N. 420.**

———*Non-transferable holding—Transfer of holding without landlord's consent—Effect—Quære.*

Whether the transfer of a holding without the landlord's consent is absolutely void or only voidable at the option of the landlords. (*Coxe*. J.) BHAR MAHMUD BEPARI *v.* SADER MAHMUD MONDAL. **9 I.C. 837.**

———*Non-transferable holding — Transfer of holding—Acknowledgment—Proof.*

The mere fact that the landlord enters in the rent receipt not only the name of the tenant but also the name of the person actually paying the money does not amount to an acknowledgment of the transfer by the landlord. (*Coxe*, J.) BARODA PRASAD ROY *v.* TARAK NATH MANDAE. **9 I.C. 887.**

———*Non-transferable holding —Liability of tenants—Mortgage by one co-tenant to another —Effect on holding.*

A tenancy so far as the landlord is concerned is one and indivisible and cannot be affected by an act to which the tenants alone are parties. A mortgage of his share by one co-tenant in favour of another co-tenant is not binding on the landlord. (*Batten*, A. J. C.) ANAND RAO *v.* GIRDHARI LAL. **43 I.C. 474.**

———*Non-transferable holding—Transferee —Position of.*

A transferee of an ordinary tenant of a little higher status having no transferable right in the land is no better than an ordinary tenant. (*Campbell*, J. M.) RAM NATH *v.* AVDAH BIHARI. **33 I.C. 210=2 O.L.J. 727.**

———*Non-transferable holding — Heritable interest—Abandonment.*

In the case of a non-transferable and heritable interest in land, abandonment cannot be inferred by mere absence of active assertion of the right but there must be clear evidence of an intention to abandon. (*Evans*, J. C. *and Lindsay*, A.J.C.) WIZIR MOHAMMAD *v.* HAR PRASAD. **13 I.C. 613=15 O.C. 67.**

———*Non-transferable holding — Decree of Court—Transfer by tenant.*

A decree in the settlement Court for *Hag Qabzadari* provided that the decree-holder should have a permanent and heritable right in the land but should not have the power of transfer. A transfer of such land by the tenant was invalid being forbidden by the decree. (*Chamier*, J.C. *and Piggott*, A.J.C.) BILASA *v.* DASHAN SINGH. **12 I.C. 761=14 O.C. 225.**

———*Non-transferable holding—Transferee —Fraudulent decree enhancing rent—If can be set aside.*

Where a landlord, obtains a decree enchancing rent in collusion with his tenant, a suit cannot be maintained by the transferee of the holding to have it set aside till he suffers loss or damage. (*Miller*, C.J. *and Mullick*, J.) SM. GARABINI KUMARI *v.* SURJA NARAIN SINGH. **3 P. 134=5 P.L.T. 52=1923 Pat. 361=1924 Pat. 250.**

LANDLORD AND TENANT—Non-transferable Holding.

———*Non-transferable holding—Transfer—Recognition by landlord—Evidence of—Burden of proof—Acquiescence.*

Per *Das and Adami, JJ.* (*Chief Justice* dissenting.—On a question arising as to whether the transfer of an occupancy holding has been recognised by the landlord, unless it is shown that an assertion by the tenant was made to the knowledge of the landlord and the latter acquiesced in that assertion with full knowledge, there is no recognition of the transfer by the acquiescence on the part of the landlord. Mere payment of the rent by the transferee of an occupancy holding does not prove recognition of the tenant as such by the landlord unless it is further established that the landlord accepted rent from him as a tenant. The burden of proof of recognition of the transfer is on the tenant. Per *Chief Justice.*—It is well established that the receipt of rent by the landlord from the transferee of a holding, not transferable by custom will validate the transfer. But the *gomastha or Patwari* of the landlord although authorised to collect rent on his behalf has no authority by taking rent from a transferee to create the relationship of landlord and tenant between his master and the transferee. (*Miller* C.J. *and Das*, J.) BHONU LAL CHAUDHURI *v.* VINCENT. **3 Pat. L.T. 683=1922 P. 619.**

——*Non-transferable holding—Transfer of portion—Effect.*

The transfer of a portion of even a non-transferable holding by the tenant would be binding as against the landlord, provided the original holder or occupier has not abandoned possession of the whole holding. (*Miller*, C.J. *and Adami*, J.) PIRTHI MAHTON *v.* JAMSHED KHAN. **3 P. L.T. 403=1922 P. 289.**

——*Non-transferable holding—Occupancy holding—Decree-holder—Execution sale—Consent of landlord not necessary.*

Even in the absence of a local custom of transferability a decree-holder who is not the landlord, is entitled to have his decree satisfied by the sale of a portion of the tenant judgment-debtor's holding even against his wish and without obtaining express consent of the landlord. (*Miller*, C.J., *Das and Adami*, JJ.) JUGESHAR MISRA *v.* NATH KOERI.
1922 Pat. 49=3 P.L T. 20=4 U.P.L.R. (P) 9=1922 P. 19 (F.B.).

———*Non-transferable holding — Private purchase of a holding from original tenant—Co-sharer landlord if can sell holding in execution of rent decree subsequently obtained—Civil Procedure Code (Act V of 1908), S. 47—Representative of judgment-debtor—Non-transferability.*

Where the plaintiff purchased a holding from the original tenant and subsequently a co-sharer landlord obtained a decree for his share of the rent against the original tenant and attached the holding and the plaintiff laid a claim under O. 21, R. 58, Civil Procedure Code but his claim having been disallowed, brought a suit for a declaration that the co-sharer landlord was not entitled to sell the holding in execution of his decree which must be regarded as a money decree against the original tenants: *Held*, that the decree detained by the co-sharer landlord against the original tenants was a money decree and did not affect the holding and the plaintiff having purchased the holding long before the attachment could not be regarded as the representative in interest of the judgment-debtor. 32 Cal. 1031 (1905), dist. That the defendants were not entitled to raise the question of the non transferability of the holding in this action. (*Das*, J.) RAMDEHAL SINGH *v.* JOGINDRA PRASAD.
(1921) Pat. 134=57 I.C. 289=2 U.P.L.R. (Pat.) 148.

LANDLORD AND TENANT—Non-transferable Holding.

———*Non-transferable holding — Transfer of—Recognition by landlords and Tahsildar.*

In the absence of any proof of authority, the Tahsildar of a landlord cannot pass a receipt in respect of a non-transferable holding, to the transferee acknowledging him as a tenant of the same. (*Coutts and Sultan Ahmad*, JJ.) DEBI DAYAL PANDEY *v.* RAM SAKAL PATAK. **(1921) Pat. 135=12 Pat. L T. 4=59 I.C. 845.**

———*Non-transferable holding — Transfer—Recognition of tenancy.*

Where the agent of the landlord duly authorised withdrew rent deposited by the deft. in respect of the holding, the withdrawal amounted to a recognition of the deft. as tenant or at least to an acknowledgment that that deft. was not a trespasser. (*Chamier*, C.J. *and Sharfuddin*, J.) MOTIHARI CONCERN LAD *v.* LACHMI PRASAD. **2 P.L W. 158=41 I.C. 885.**

———*Non-transferable holding — Transfer of holding—Recognition by* gumastha*—How far binding on the landlord.*

To rely upon a receipt granted by a landlord's gumastha as evidence of recognition by the landlord of a transfer of a holding, the transferee must show that the Gumastha's duties actually and ostensibly included at least some of the duties of management. A *Gumastha* is an agent with limited authority and a person dealing with him must see that the limits of agent's authority are not exceeded. 10 I.C. 456, disapp.; 1910 A.C, 174 at 184; 36 I.C. 777, Ref. (*Chapman and Roe*, JJ.) HANKI SAHU *v.* RAN BAHADUR SINGH.
2 P.L.J. 231=39 I.C. 398=1 P.L W. 653.

———*Non-transferable holding — Plea of non-transferability of holding put forward by a fractional co-sharer in mortgagee's suit.*

A fractional co-sharer, having purchased the holding in execution of his rent decree

LANDLORD AND TENANT—Non-transferable Holding.

cannot plead the non-transferability of the holding in a suit by a mortgagee whose long possession has been acquiesced in, by the landlords. 35 C. 904, Dist. (*Jwala Prasad*, J.) RADHA KISHUNJI THAKUR *v.* LALJI SAHA.
37 I.C. 821.

———*Non-transferable holding—Transfer—Acceptance—Acceptance of rent from transferee—Effect.*

Acceptance of rent from transferee of a holding amounts to recognition and is a bar to a suit, for ejectment. (*Atkinson*, J.) BHAGLOO SHAH *v.* MAHADEO CHAUDHARI.
36 I.C. 283.

Notice to Quit.

———*Notice to quit—Requisites of a valid notice—Test of its sufficiency.*

Notices to quit served by landlords upon their tenants may be good and effective in law, even though not strictly accurate or consistent. The test of their sufficiency is not what they would mean to a stranger ignorant of all the facts and circumstances touching the holding to which they purport to refer but what they would mean to tenants presumably conversant with such facts and circumstances. Such notices are to be construed so as to effectuate the intention of the parties *ut res magis valeat quam pereat*. (*Lord Atkinson.*) HARIHAR BANARJI *v.* RAMSASHI ROY.
46 Cal. 468=23 C.W.N. 77=16 A.L.J. 960=
33 M.L.J. 707=29 C.L.J. 117=
9 L.W. 148=25 M.L.T. 159=
21 Bom. L.R. 522=(1919) M.W.N. 471=
1 U.P.L.R. 56=48 I.C. 277=
45 I.A. 222 (P.C.).

———*Notice to quit—Waiver—Receipt of rent.*

On receipt of an increment of rent for a period of 6 months in advance after termination of the tenancy by notice for quitting, the landlord waives notice. A landlord may recover rent of the statutory tenant without waiving the notice to quit. But to collect 6 months' rent in advance is conduct inconsistent with an intention to enforce the notice. (*Pratt*, J.) MADHAVJI VIRJI *v.* LAKSHMIDAS MULJI & CO. 25 Bom. L.R 1178=
1924 Bom. 99.

———*Notice to quit—Portion of holding.*

A notice to quit is a notice intended to terminate the tenancy. A notice relating only to a portion of the holding is not valid so far as the portion is concerned. If he terminates a portion of the tenancy he terminates the whole contract and if the tenant retains any portion that in like manner breaks the bargain and is the commencement of a fresh contract. (*Petheram*, C.J. *and Tottenham*, J.) ATAL CHANDAL *v.* KEDAR NATH. 38 C.L.J. 515=
34 I.C. 551.

LANDLORD AND TENANT—Notice to Quit.

———*Notice to quit—Essentials of—Non-agricultural land—B.T. Act.*

To determine whether on a notice the plff. is entitled to a decree for ejectment two questions are to be investigated. First what is the nature of the tenancy held by the deft. and secondly, if it is a terminable tenancy, has it been terminated by the legal notice to quit. The mere fact that rent is paid annually is not conclusive proof that the tenancy is annual. 20 C.L.J. 448; 20 C.L.J. 455; 44 Cal. 403, Ref. The liability to ejectment of a deft. who is not a cultivator does not depend upon the Bengal Tenancy Act. (*Mookerjee*, C.J. *and Fletcher*, J.) GAYA NATH OJHA *v.* ANUKUL CHANDRA OJHA. 36 I.C. 835=32 C.L.J. 6.

———*Notice to quit—Co-sharer landlords.*

No single landlord or group of them as representing others can terminate the tenancy by notice to quit when the tenant is inducted by all the landlords. When there is a trespasser in place of tenant, the case is different. (*Beachcroft*, J.) PRIANATH NAICK *v.* PROMATHA NATH ADHIKARI. 57 I.C. 895.

———*Notice to quit—Service of—Despatch by post.*

In a suit for ejectment where the posting of a regd. notice is duly proved and the registered envelope with the endorsement of the Postal peon is produced the Court ought not to dismiss the suit on the ground that service of notice has not been legally proved. The Court ought to give the plff. a fair opportunity to prove actual service of notice on the deft. (*Fletcher and Huda*, JJ.) KALAMNA KADIM AMIR *v.* ALIKHEYA. 45 I.C. 917.

———*Notice to quit — Tenancy-at-will — Ejectment, right of.*

To determine a tenancy-at-will a reasonable notice to quit should be given; what is a reasonable notice is a question of fact but a tenant at will cannot in any event claim a notice of six months. (*Fletcher and Newbould*, JJ.) DHUKI RAM DHOK *v.* METABI BIBI.
39 I.C. 795.

———*Notice to quit — Validity of—Notice that tenant shall have to pay enhanced rent.*

Plaintiff let out a shop to deft. on oral lease from month to month at a monthly rent of Rs. 18-8-0. On Septr. 4, 1920 plff. served deft. with a notice thus:—"Some persons offer Rs. 27 a month; you are, therefore, informed by this notice that if from 1st. of Aswin 1318 you want to keep the shop on lease, you shall have to pay Rs. 27 a month." Deft. continued in occupation but refused to pay the enhanced rent. *Held*, that the notice was not sufficient to terminate tenancy or to enhance the rent. 7 A. 899, Foll. (*Mookerjee and Beachcroft*, JJ.) SHAKHI CHAND *v.* RAM CHANDRA MARWARI.
15 I.C. 906=16 C.L.J. 561.

LANDLORD AND TENANT—Notice to Quit.

———*Notice to quit—Ejectment.*

If neither party to an ejectment suit admits or sets up a tenancy notice to quit is not required. But where the suit is based on tenancy and the deft. is found to be a tenant holding over, notice to quit is necessary before the plff. can obtain possession. 9 C.W.N. 44, Ref. (*Caspersz and Chatterjee*, JJ.) SHEIKH MAZAFAR ALI *v.* DAROGA GOPE. **9 I.C. 19.**

———*Notice to quit—Managing member—Claim for double rent on refusal to vacate—Sub-tenant—Suit for ejectment by landlord.*

A notice to quit given by the sons of the deceased lessor is valid and the grandsons of the lessor are not co-parceners with their fathers and even if they are their fathers as managers are competent to give the notice. The notice to quit was valid and legal notwithstanding the addition of a clause that if the tenant did not vacate, he would be liable to pay an enhanced rent. The sub-tenants, having themselves recognised the plaintiffs as landlords and paid them rent, could not defeat the suit on the ground that there was no privity of contract between them and the plaintiffs. (*Martineau*, J.) MUHARRAN ALI CHISHTI *v.* BANSI LAL. **51 I.C. 121=34 P.R. 1919.**

———*Notice to quit—Right to—Assertion of permanent rights of occupancy by tenants—Effect of—Notice not acted upon.*

The mere assertion of a claim of permanent occupancy right does not deprive the tenant of his right to a notice to quit by the landlord. A notice to quit given a long time before the suit and not acted upon does not relieve the landlord from his obligation to giva a fresh notice to quit before ejectment. (*Spencer and Devadoss*, JJ.) SABBVANA PERUMAL PILLAI *v.* SUBBAYEAR. **31 M.L.T. 430 (H.C.)= 16 L.W. 802=(1922) M.W.N. 763= 1922 Mad, 514.**

———*Notice to quit—Point as to legality not raised in lower Court.*

Where in an ejectment suit no plea as to the legality or sufficiency of notice to quit is relied upon by the plff. the point cannot be raised in the High Court. (*Sadasiva Aiyar and Napier*, JJ.) ITTINAN *v.* GOVINDAN NAMBUDRI. **62 I.C. 390=13 L.W. 397.**

———*Notice to quit—Sufficiency of—Necessity for* Purakudi—*Determination of tenancy—Notice—T.P. Act, S.* 111.

A refusal or neglect to perform *purakudi* service, renders the *purakudi* tenant liable to be evicted without notice. S. 111 of the T.P. Act has no application to the case. *Semble.*—A notice of 15 days given after the harvest of the year is over is not insufficient. 11 M. 261, Dist. (*Ayling and Tyabji*, JJ.) RAMASWAMI CHETTIAR *v.* KATHAN AMBALAGARAN. **28 I.C. 915.**

———*Notice to quit—Waiver—Tenant continuing in possession—Non-payment of rent—Effect of.*

LANDLORD AND TENANT — Occupancy Holding.

Where after the service of valid notice to quit the tenant continues in possession without payment of rent and without the consent or permission of the landlord, held that there was no waiver of the notice to quit and that the possession of the tenant was adverse thereafter. (*Dhobley*, A.J.C.) YESHWANT *v.* SHIWAPPA. **1923 Nag. 129 (2).**

———*Notice to quit — Reasonable time—Agricultural lease.*

A notice, giving the tenant more than six months for vacating, is a reasonable notice in the case of agricultural leases not governed by the T.P. Act. (*Batten*, J.C.) BANMALI *v.* NIHAL SINGH. **48 I.C. 354.**

———*Notice to quit — Statutory period—Validity.*

The statutory period of a tenancy was to expire in June 1913 but the notice of ejectment required the tenant to vacate the holding by the 15th May, 1913. *Held*, that the notice was good in law. The time for ejectment fixed by the Oudh Rent Act is simply for the convenience of the parties in order that the Zemindar may be able to make arrangements for the next year's cultivation and the tenants may also take up other land. (*Tweedy*, J.M.) LACHMEN *v.* KANDHAI PRASAD. **27 I.C. 68=10 L.J. 741.**

———*Notice to quit—Ejectment — Fresh admission to tenancy.*

Where, by mistake a notice was issued to the wrong person, at the earliest opportunity and in its cancellation, the landlord issued another notice on the right person and never accepted rent from him. *Held*, there was no fresh admission of the latter to the tenancy, and that the notice though unstamped was valid. 3 S. D. 1904, Dis. (*Baillie*, J.) RAMSUNDER SINGH *v.* MUHAMMAD MEHDI ALI KHAN. **25 I C 624=1 O.L.J. 387.**

———*Notice to quit—Waiver—Claim for arrears of rent for period prior to institution of suit, if waiver of notice to quit.*

A plff. in a suit for ejectment can claim arrears of rent due up to the time of the institution of the suit, and such claim will not operate as a waiver of the notice to quit. (*Chapman and Atkinson*, JJ.) SHAH WALI AHMAD *v.* MUSST. HUSSAINI BEGUM. **2 Pat. L J. 595=42 I C. 653= 2 Pat. L.W. 52.**

———*Notice to quit—Period necessary.*

Where S. 106 of the T.P. Act does not apply, a notice to quit must be a reasonable notice, the question being one of fact depending on the circumstances, of each case. (*Maung Kin*, J.) MAUNG PO *v.* MUNIANDI SERVAI. **42 I.C. 375.**

Occupancy Holding.

See OCCUPANCY HOLDING.

LANDLORD AND TENANT — Occupancy Right.

Occupancy Right.

———*Occupancy right—Inference from facts—Prescription—Evidence of.*

Where it was found that the tenants had been in possession and occupation of the lands in question hereditarily for nearly 80 years; that they had dealt with those lands as occupancy ryots, partitioning their holdings, transferring and mortgaging them with the knowledge and acquiescence of the plff. and his agents and they had received compensation for lands taken up by Government under the Land Acqn. Act, the tenants could well be deemed to have acquired rights of occupancy by prescription. (*Mr. Ameer Ali.*) SRI CHIDAMBARA SIVAPRAGASA PANDARA SANNADHIGAL *v.* VEERAMA REDDI. **43 Mad. 886 = 43 M.L.J. 640 = (1922) M.W.N. 749 = 37 C.L.J. 199 = 27 C.W.N. 245 = 49 I.A. 286 = 31 M.L.T. 34 (P.C.) = 16 L.W. 102 = (1922) P.C. 292 (P.C.).**

———*Occupancy right—Trespasser settling cultivator on the land.*

The actual cultivator of land who honestly and *bona fide* believes that the person who settled him is the owner may, after a period of years, acquire a right in the land as a raiyat even, where it is proved that the latter had no such right. (*Fletcher and Panton, JJ.*) AMARU CHANDRA *v.* NOOR KHATUN. **47 I.C. 777.**

———*Occupancy right—Service tenure.*

A right of occupanay cannot be acquired in land held under a service tenure. A *Zamindar* is entitled on the surrender of a service tenure, to have the land returned to him as it was at the time of the grant apart from the rights of any other person. (*Fletcher and Shamsul Huda, JJ.*) JAFARUDDIN LAHA *v.* JAMINI BALLAV. **23 C.W.N. 136 = 46 I.C. 341 = 28 C.L.J. 249**

———*Occupancy right—Lease for reclamation—Whether constitutes Raiyati lease—Korfa tenant—Meaning of.*

Where an amalnamah authorised the lessees to reclaim land by cutting down jungles and otherwise, and also provided for the renewal of the lease on terms dependent on terms of the future settlement which would be obtained by the lessors from Government; *held*, that the construction of the *amalnamah* depended upon the status of the lessees to be determined according to the circumstances of each case. The word *raiyat* is not unfrequently used in judgments to denote tenants of all classes. A "*Korfa*" tenant does not necessarily mean an under-raiyat A "*Korfa*" tenant is a sub-lessee, whether of a *taluqdar* or a *raiyat*. (*Teunon and Chowdhury, JJ.*) SECRETARY OF STATE *v.* JADAV CHANDRA MISRA. **39 I.C. 409 = 21 C.W.N. 482 = See also 39 I.C. 240.**

LANDLORD AND TENANT — Occupancy Right.

———*Occupancy right—Taking settlement of land from a trespasser.*

The retention of possession against the rightful heir by a tenant let in by a trespaseer is possible, where the lessor and the lessee are both acting *bona fide*. (*Chatterjee and Walmsley, JJ.*) HIASNMOY KUMAR SAHA *v.* BANKA BEHARI GHOSE. **37 I.C. 852.**

———*Occupancy right—Acquired after grant.*

If at the date of the grant of a permanent interest there was no occupancy right which had matured an occupancy right cannot be acquired after the grant. (*Woodroffe and Newbould, JJ.*) AKHIL CHANDRA SEN *v.* TRIPURA CHARAN. **29 I.C. 568.**

———*Occupancy right — Settlement by de facto landlord—Ejectment suit by true owner—Tenant, right of.*

Raiyats settled on lands by the *de facto* landlord have a good answer to a suit for ejectment brought by the true owner. (*Richardson and Mullick, JJ.*) TEPU *v.* TEFAYIT. **29 I.C. 216 = 19 C.W.N. 772.**

———*Occupancy right — Raiyat settled by trespasser.*

A person holding under a *de facto* proprietor *bona fide* is entitled to be treated as a *raiyat* though the *de facto* proprietor turns out to be not the real owner. (*Mookerjee and Beachcroft, JJ.*) RAJENDRA NATH ROY *v.* NANDA LAL GUHA. **18 C.W.N. 1206 = 26 I.C. 977 = 19 C.L.J. 595.**

———*Occupancy right—Tenant let into possession by de facto landlord if a trespasser.*

A tenant let into possession by a *de facto* landlord has a good title and he is not a trespasser, 20 C. 708 applied. (*Carnduff and Chapman, JJ.*) SUKUMARI GHOUSE *v.* HALADHAR MANDAL. **24 I.C. 434.**

———*Occupancy right—Ijardar—Purchase of occupancy holding—Status of tenant inducted into the land by purchaser—Bengal Tenancy Act (VIII of 1885), Ss. 22 (3) and 49.*

An *Ijardar* purchasing a occupancy holding acquires it as a non-occupancy holding so that a tenant inducted into the land by him is an under *raiyat* liable to be ejected at the termination of the tenancy by a notice to quit under S. 49 of the Bengal Tenancy Act. (*Mookerjee and Carnduff, JJ.*) SHEONANDAN SINGH *v.* DEVSARAN SINGH. **13 I.C. 893 = 15 C.L.J. 647.**

———*Occupancy right — Tenure-holer and occupancy raiyat—Distinction.*

A lease taken for the purpose of granting a lease to a company confers only a tenure and not a right of occupancy. (*Tottenham and Ameer Ali, JJ.*) JOGENDRA CHANDRA *v.* RAJENDRA NATH. **9 I.C. 923 = 13 C.L.J. 252.**

LANDLORD AND TENANT — Occupancy Right.

———*Occupancy right — Maurasi right — Meaning—Acquisition.*

Maurasi right is not necessarily anything more than ordinary occupancy right. Right of occupancy cannnot be acquired in homestead, if it was originally taken for the purpose of constituting a homestead. But if a larger holding had been taken for agricultural purposes and subsequently a particular portion had been devoted to the construction of a homestead: occupancy right thereon may be acquired. (*Coxe*, J.) MINAI NAIK *v.* BANCANIDHI. **9 I.C. 804.**

———*Occupancy rights*—Takia *land.*

A Takiadar cannot build a *pakka* mosque, on a *takia* land since the building of a mosque is inconsistent with the nature of his rights as an occupancy tenant. (*Scott-Smith*, J.) SAWAN *v.* MEHRDIN. **16 I.C. 963 = 108 P.W.R. 1918.**

———*Occupancy right — Burden of proof.*

Where tenants claim occupancy rights in *ryotwari* land, in respect of which the landlord has a *ryotwari pattah*, the tenants must prove that right by strong evidence. (*Sadasiva Aiyar and Napier*, JJ.) SUBRAHMANYA KARIYALOM *v.* SIVASUBRAMAHNYA PILLAI. **41 M.L.J. 176 = 62 I.C. 750 = 14 L.W. 40.**

———*Occupancy right— Ryotwari tenure under tenants—Onus of proof.*

In a suit by the temple which held an inam to eject the tenants who claimed occupancy rights in ryotwari lands *held* that the tenants having, through their predecessors-in-title, executed *taram faisal muchilikala* in favour of the Collector while he was in management of the temple lands, they could not claim occupancy rights. The onus of proving a permanent tenancy under a ryotwari pattadar is on the person setting up such tenancy. The mere assertion by the tenants that they were *Kudikani mirasdars* or *ulavadaikani mirasdars* in the village could not invest them with occupancy rights under the pattadar. The mere fact of the tenants' alienating the lands without protest or demur by the temple trustees, will not confer on the tenants an occupancy right. (*Wallis*, C.J. *and Sadasiva Aiyar*, J.) CUNA MOHAMMAD *v.* MUTHU ALAGAPPA CHETTIAR. **23 M.L.T. 161 = 34 M.L.J. 234 = 44 I.C. 894 = 7 L.W. 380.**

———*Occupancy rights—Presumption — Long possession—Uniform rent.*

Long possession for 80 years at a uniform rate of interest entitles tenants to have a permanent right of occupancy 21 M.L.J. 845; 34 Cal. 51. Foll. (*Sadasiva Iyer and Napier*, JJ.) PALANIANDI MALAVARAYAN *v.* VADAMALAI ODAYAN. **28 I.C. 956 = 2 L.W. 703.**

LANDLORD AND TENANT — Occupancy Right.

———*Occupancy right—Ryotwari village—Right of tenant of a Kudivaram interest.*

Per *Seshagiri Aiyer*, J.—Where the defts. have been accepting leases from the plff. in respect of the suit lands, it is inconsistent with their claim to an occupancy right in the lands, *Quære*;—If there is a presumption against the right of occupancy in *ryotwari* villages? *Napier*, J.—The claim of an occupancy right as overriding the proprietor's right to cultivate his own land is of a special character and as such it is one which the party seeking to derogate from the ordinary incidents of property is bound to establish. The use of the term Kudivaram is very objectionable to such interests even when established. (*Seshagiri Aiyar and Napier*, JJ.) ANANTHAPADMANABHA PILLAI *v.* GOPALAKRISHNA AIYAR. **28 I.C. 916 = (1915) M.W.N. 277.**

———*Occupancy tenant — Transfer—Liability for rent after.*

In the case of a tenant with rights of permanent occupancy the tenant is entitled to sell the holding and that "it is the Common Law of India that on transfer of a tenure with notice, the lessee ceases to be liable for rent". (*Sadasiva Aiyar and Tyabji*, JJ.) RANGA RAMANUJA CHARIAR *v.* SRINIVASA AIYANGAR. **16 M.L.T. 192 = 25 I.C. 804 = 27 M.L.J. 397.**

———*Occupancy right—Proof of.*

Whether a person has an occupancy right is a question of fact, 25 years' possession would not by itself confer such right though it is good evidence of such a right. (*Benson and Sundara Aiyar*, JJ.) SITAM RAJU RAMA BRAHMAN *v.* M. LAKSHMANA. **25 M.L.J. 83 = 20 I.C. 843 = (1913) M.W.N. 771.**

———*Occupancy right—Long possession—Absence of origin of tenancy—Admissions.*

Long possession by raiyats coupled with the fact that the origin of the tenancy is not known entitles the Court to find in favour of the acquisition of occupancy rights and the mere fact that some tenants, not parties to the suit admitted that they had no occupancy right is insufficient to rebut the inference. (*Sankaran Nair and Tayabji*, JJ.) KANDADA NARSIMA CHARYALU *v.* KAVICHERLA RAMA BRAHMAN. **24 M.L.J. 656 = 20 I.C. 759 = (1913) M.W.N. 774.**

———*Occupancy right — Lease providing for* Teerva*—No time fixed.*

The styling of an instrument as *Teerva* lease deed does not by itself show that the lessor is entitled to *Teerva* only and not to possession. Nor does the omission to fix a period for the lease show that the tenant has occupancy right. It only shows that the lease is from year to year. (*Benson and Sundara Iyar*, JJ.) RAJA RAM *v.* RAM BOY. **24 M.L.J. 75 = 18 I.C. 77 = 13 M.L.T. 106 = (1913) M.W.N. 176.**

LANDLORD AND TENANT — Occupancy Right.

——*Occupancy tenant* — Khabuliyat *as ordinary tenant*—Effect.

The mere fact that an occupancy tenant has executed *Khabuliyat* as an ordinary tenant is not detrimental to his occupancy rights. (*Holmes*, S.M.) SINGHA CHANDRA ESTATE *v.* SANT BAKSH SINGH. 42 I C. 53 = 4 O.L.J. 456.

——*Occupancy tenant—Relinquishment.*

An occupancy tenant cannot without relinquishing the land, relinquish his rights as such, and still remain a tenant under some other tenure. (*Holmes*, S.M. *and Campbell*, J.M.) SHANKER KHAN DAT PURI *v.* SHEO SINGH. 40 I.C. 48 = 4 O.L.J. 158.

——*Occupancy rights—Claimant's relative under-proprietor.*

Where a co-sharer in a holding has got a decree for under-proprietary rights, no occupancy rights shall be claimable in that holding but a person can claim occupancy rights even though his relatives may have got under-proprietary rights in the village. (*Baillie*, S.M. *and Tweedy*, J M.). JAGADAMBA SINGH *v.* BHAGWAN BAKSH SINGH. 27 I.C. 935 = 2 O.L.J. 65.

——*Occupancy right—Non-transferability—If can be waived.*

Where a suit for rent relating to an occupancy holding was compromised according to which in default of payment of the decree amount, the holding was to be sold, this amounted to a clear representation as to the attachability of the holding. Any right which the holder had must be deemed to have been waived. (*Das and Adami*, JJ.) NIDHI PARIDA *v.* KARUNAKAR PADHAN. 1 P. 183 = 1922 P. 483 (1).

——*Occupancy right — Transferability — Decree-holder whether can sell portion of holding—Landlord holding money decree—Rights of.*

Whether a decree-holder, not being the landlord of the holding, can, against the will of the judgment-debtor and without the express consent of the landlord, of which there is no evidence, cause a portion of the judgment-debtor's occupancy holding to be sold in execution of a money decree where there is no local custom of transferability. Whether a landlord who has sued his tenant and obtained against him a money decree can in execution thereof sell the non-transferable occupancy holding of his tenant without the latter's consent. 48 Cal. 184, followed ; 2 P.L.J. 590, overruled ; 4 Cal. 925; 37 Cal. 687, Ref.; 24 Cal. 355, diss. (*Dawson Miller*, C.J., *Das and Adami*, JJ.) JUGGESHWAR MISRA *v.* NATH KOERI. 1 Pat. 317 = (1922) Pat. 49 = 3 U.P.L.R. (Pat) 2 = 1922 P. 19 (F.B.).

LANDLORD AND TENANT—Pasturage.

——*Occupancy rights—Sale in execution by creditor other than the landlord.*

Where the holding of an occupancy raiyat is being sold in execution of a money decree obtained by a creditor who is not his landlord, he can object to the sale, if in his village there is no custom of transferability without the landlord's consent. (*Das and Adami*, JJ.) DEWAN RAM CHAUDHARY *v.* ATUL MUNDER. 2 P.L.T. 341 = 6 P.L J. 202 = 62 I.C. 55 = (1921) Pat. 197.

——*Occupancy right—Transfer of—Ejectment suit—Limitation—Option to renew.*

A transfer of an occupancy right will not pass all the rights of the transferor. A suit brought six months after the expiry of the lease to eject a non-occupancy raiyat is barred by limitation. There is a limit to the exercise of an option to renew, and a tenant's failure to come to terms within 3 years of the expiry of the old lease amounts to a failure to avail himself of the option. 18 C. 349, P.C., Ref. to. (*Roe and Jwala Prasad*, JJ.) BRIJNANDAN SINGH *v.* RAMESHWAR SINGH. 46 I.C. 580 = 5 P.L.W. 32.

——*Occupancy right—Mortgagee.*

A mortgagor can acquire occupancy rights under a mortgagee. (*Mullick and Jwala Prasad*, JJ.) UDAI CHAND *v.* JANG BAHADUR SINGH. 2 P.L.J. 353 = 40 I.C. 500 = 2 P.L.W. 116.

Ouster.

——*Ouster—Suit for joint possession.*

A landlord who is refused the right to enter by the tenant in possession can sue for joint possession, since the deft.'s denial constitutes an ouster. (*Fletcher and Chatterjee*, JJ.) BENGAL COAL CO., LTD. *v.* RAJENDRA LAL MITRA. 21 I C. 920 = 18 C.W.N. 820.

Pasturage.

——*Pasturage—Right based on custom of cultivators in a village—Grazing cattle from time immemorial—Relief.*

In a suit by a certain cultivating tenant for a declaration of a right of pasturage over the land in suit it was found that the land was unoccupied from time immemorial, that the villagers had grazed cattle for more than 30 years and that their user was open and peaceful and without interruption. *Held*, these findings are not sufficient for a decree in favour of plaintiffs. The landlord would be entitled to plough waste land if only sufficient pasturage was left in the village. (*Coxe and Ray*, JJ.) SYED ALI *v.* SALAM ALI. 19 I.C. 890 = 18 C.W.N. 785.

LANDLORD AND TENANT—Patnidar.

Patnidar.

——Patnidar *and* darpatnidar—*Sale of* Patni *taluk under Regulation VIII of* 1819—*Possession to Zamindar and realisation of rent from tenant—Sale set aside—Relationship of landlord and tenant, if subsists between darpatnidar and tenant.*

Where a *Patni taluk* is sold under Regulation VIII of 1819 and the sale is subsequently set aside, the relationship of landlord and tenant does not cease but subsists between the *darpatnidar* and the raiyats between the date of sale and its setting aside and any payment of rent to the purchaser between the two dates would not bind the *darpatnidar*. (*Fletcher and Chatterjee, JJ.*) NAFAR CHANDRA GHOSH *v.* GADADHAR BHATTA. **22 I C. 908.**

Permanent Tenancy.

——*Permanent tenancy—Ryotwari land—Government pattadar—Tenants holding under—Claim of occupancy right—Onus—Rebuttal.*

In suit by a ryotwari pattadar to eject his tenants on the expiry of a six months' notice to quit, the tenants pleaded a permanent right of occupancy. It was proved by the evidence that the tenants had been in possession for a very long period at uniform rents, without proof that they had been let into possession by the pattadar, that they had reclaimed the land and dug wells in the gardens at considerable expense, that they had been alienating the wells and the lands irrigated thereby and that they had cultivated the lands as they pleased. *Held*, that the title of the plaintiff as landlord and the giving of the notices not having been disputed, the onus lay on the tenants to prove that they had permanent rights of occupancy, but that upon the facts established, the onus was discharged. Permanency is not a universal and integral incident of an under-ryot's holding; if claimed, it must be established. This may be done by proving a custom, contract or a title and possibly by other means. (*Sir Lawrence Jenkins.*) SETURATNAM AIYAR *v.* VENKATACHALA GOUNDAN. **43 Mad. 567=47 I.A. 78=(1920) M.W.N. 61=27 M.L.T. 102=11 L.W. 399=38 M L.J. 476=22 Bom. L R. 678=18 A.L J. 707=56 I C. 117 (P.C.)=**

[On Appeal from 24 M.L.J. 571=13 M L.T. 450=20 I.C. 374=(1913) M.W.N. 434.]

——*Permanent tenancy — Payment of rent of uniform rate—Landlord taking a mortgage of the holding—Description of tenancy-at-will in rent receipts—Effect of.*

In a suit by a landlord to eject his tenants, it was found that the holding was created in 1845, that it had ever since been held at a fixed permanent rent and that the plaintiff's predecessor had taken a *benami* mortgage of the holding treating it as permanent, transferable and heritable. In certain rent receipts granted by the landlord to the tenants the holding was a tenancy-at-will. *Held*, that no importance could be attached to the wording of the rent receipts describing the nature of the tenancy, as there was nothing to show that the tenants had consented to the insertion of those words in the receipts or that they even knew of them. The facts established by evidence were conclusive that the holding was a permanent, transferable and heritable one. (*Mr. Ameer Ali*). SURENDRA NATH ROY *v.* DWARKA NATH CHAKRAVARTHY.

24 C.W.N. 1=50 I.C. 856=(1919) M.W.N. 811=(P.C.).

[See 35 I.C. 605=24 C.L.J. 350.]

——*Permanent tenancy—Inference from facts—No evidence of terms—Long possession—Uniform rent—Erection of costly structures—Estopped—Rent of permanent holding—Not to be enhanced except when authorised by statute.*

In a suit by plaintiff to eject defendants from land situated in the suburbs of Delhi and covered by a masonry building it appeared that about 1859, plaintiff's predecessor-in-title invited the defendant's predecessors to occupy the land in question for building purposes. There was no document evidencing the terms of occupancy. It was proved in evidence that from 1859 onwards, a fixed and uniform rent was paid, that in some the receipts given by the landlord the rent was described as "permanent" that the defts. and their predecessors had erected substantial buildings on the land without objection from the landlord, that they had dealt with the properties by way of sale and mortgage and that the properties had passed by succession. *Held*, that the chief Court was right in holding that the deft.'s tenancy was a permanent one at a fixed rent and that the validity of the inference was not affected by the fact that there was no permanent settlement by the Government in the Punjab. 28 C 738, approved. (*Lord Dunedin*). AFZAL UNNISSA *v.* ABDUL KARIM.

47 Cal. 1=81 P.R. 1919=13 Bur. L. T.1=11 L.W. 176=17 A.L J. 608=36 M.L J. 580=26 P.W.R. 1919=1 U.P.L.R. (P.C.) 47=26 M.L.T. 58=23 C.W.N. 966=30 C.L.J. 152=(1919) M.W.N. 494=50 I.C. 749=27 Bom. L.R. 891 (P C.).

[On Appeal from 121 P.R. 1912=209 P.L R. 1912=17 I.C. 208=197 P.W.R. 1912.]

——*Permanent tenancy—Proof of—Inference from facts.*

The Court below found (1) that the origin of the tenancy and its terms were unknown but it was certain that the tenancies were created more than 30 years and possibly 50 or 60 years ago, (2) that the land was let for building

LANDLORD AND TENANT — Permanent tenancy.

purposes and the lessees constructed houses on the parcels of land in dispute at considerable expense, (3) that the tenancies in dispute were transferred from time to time and that the landlord acquiesced in these transactions and (4) in all other cases brought by the landlord against other tenants in respect of the same tenure on the ground that they were tenancies at will had been dismissed on the finding that the tenancies were permanent. *Held*, that the only legitimate inference from these facts was that the land originally was let for building purposes on a permanent tenancy. 28 C. 738 ; 50 I. C. 749, Ref. to. (*Ryves*, J.) NOBIN CHANDRA *v.* BANDI. **1923 All. 486.**

———*Permanent tenancy—Building—Kachcha House—Pucca building—Nature of grant.*

In a suit by Zemindar for demolition of a *pucca* house built by an agricultural tenant the land was found to have been granted to the tenant for building a house which he had originally built kachcha. The Zemindar did not prove the nature of the original grant. *Held*, the tenant was entitled to make the building a *pucca* building. (*Tudball and Kanhaiya Lal*, JJ.) GHOREY *v.* SHIB LAL. **18 A.L.J. 781=58 I.C. 410= 2 U.P.L.R. (All.) 266.**

——*Permanent tenancy—Use of land in Mahal—Nature of possession.*

User by tenant of a piece of land in a Mahal for building a hut and tying cattle, unless a title by adverse possession is acquired by prescription, is a mere license and is revokable unless he has spent money on a permanent structure. (*Knox*, J.) GAJADHAR *v.* BHIMAN. **42 I.C. 696.**

——*Permanent Tenancy—Improvements—Compensation.*

A mere trespasser upon the land of another making improvements thereon, cannot claim to retain its possession, and compel the owner to receive compensation for his land. (*Sunder Lal*, J.) GANGA DIN *v.* JAGAT TIWARI. **25 I.C. 198=12 A.L J. 1026.**

———*Permanent tenancy—Plea of—Onus.*

In a suit for ejectment by a landlord, if the tenant wishes to set up a plea of a permanent tenancy by adverse possession, the landlord must have specific notice of the tenant's doing so. (*Macleod*, C J. *and Fawcett*, J.) BABUSING RAMCHANDRA RAJESHIRKE *v.* PANDU TATYA KATE. **22 Bom. L.R. 1513= 59 I.C. 718=45 Bom. 808.**

——*Permanent tenancy—Origin of tenancy unknown—Uniform payment of rent—Erection of buildings.*

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Where the origin of tenancy was unknown, but the original tenant and his successor had been in occupation of the land for over sixty years on payment of rent which was never varied, and the tenancy was treated by the landlord as heritable and the land was set out for residential purposes, the inference may well be drawn that the tenancy was in its inception permanent. The presence of a permanent structure on the land is not essential to establish that the tenancy in its inception was of a permanent character. A dwelling-house need not be brick-built in order to indicate that the tenancy was intended in its inception to be of a permanent character. (*Mookerjee and Chotzner*, JJ.) MAKHAN LAL DE *v.* ARUN BALA DEVI. **1924 Cal. 465.**

——*Permanent tenancy—Proof of estoppel—Building of pucca structures.*

Where the document creating the tenancy is not forthcoming the nature of the tenancy can only be proved by the mode of using the land, the acts and conduct of the parties. If there were a series of successions and recognitions and the rent continued uniform for a long series of years the inference is that of permanency. The mere fact that there are *pucca* buildings without proof of landlord's belief and standing by will not do. (*Ghose and Panton*, JJ.) SYED ALI KAZEMINI *v.* MANIK CHANDRA PRAMANIK. **27 C.W.N. 969= 1924 Cal. 186.**

———*Permanent tenancy—Alteration of rent—Effect of.*

Where the original nature of the tenancy is not known, the fact that the rent has been altered once, negatives the hypothesis that the rent had been fixed in perpetuity. (*Mookerjee and Chotzner*, JJ.) NURUL HUQ *v.* MAHARAJA BIRENDRA KISHORE MANIKYA. **38 C.L.J. 121=1924 Cal. 133.**

———*Permanent tenancy—Evidence.*

Long possession and uniform payment of rent are not by themselves sufficient to justify a finding that a tenancy was permanent from its inception. (*Mookerjee and Chotzner*, JJ.) KEDAR NATH SADHUKHAN *v.* MADHU SUDAN DAS. **37 C.L.J. 478=1923 Cal. 682.**

———*Permanent tenancy—Payment of premium—Thika—Mokrari—Incidents of.*

A tenancy may be permanent without payment of premium. Where a document stated that the tenant, the grantee, would pay the thika mokra rent of a certain amount and the grantee was authorised to cultivate from generation to generation. *Held*, that the word 'thika' was used to indicate the creation of a tenancy and the word 'mokra' meant mokrari and hence

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the rent was fixed in perpetuity. (*Mookerjee and Panton, JJ.*) RESHEE CASE LAW *v.* SATISH CHANDRA PAL. **33 C.L.J. 90 = 1922 Cal. 123.**

———*Permanent tenancy — Presumption— When can be drawn*—Dakhilas *stating tenant to be tenant-at-will— Value of.*

Where there is nothing to show that the defendant's tenancy existed before 1884 and the plaintiff produced *dakhilas* showing that the predecessors of the defendant were tenants-at-will, *held*, that the *dakhilas* are not conclusive but that the Lower Court was right in holding that the defendant's tenancy was created after the Transfer of Property Act and that the circumstances of the case did not warrant the presumption that the tenancy was, in its origin, of a permanent character. (*Walmsley and Cuming, JJ.*) SRIMATI SASIBALA *v.* SRIMATI AMALA DEBI. **66 I.C. 61 = 25 C.W.N. 378.**

———*Permanent tenancy—Incidents of—Inference from conduct.*

Prima facie the use of the word taluka in a lease imports permanency. Even though there are no words of inheritance in a puttah and kabuliyat creating a tenure still such incident may be proved by evidence bearing on the history of the tenure and the conduct of the parties. 10 M.I.A. 183 ; 12 M.I.A. 263 ; 34 C. 902, Foll. Though a particular tenure may not be a permanent tenure it may by reason of an agreement between the lessor and lessee be saleable in execution of a decree for rent. *Held*, on the evidence of the case that the tenure in question was permanent, heritable and transferable. 21 C.W.N. 809 ; 46 I.C. 1 ; 25 W. R. 536 and 12 W.R. 403, Rel. (*Richardson and Panton, JJ.*) SECRETARY OF STATE *v.* ANANDA MOHAN ROY. **65 I.C. 145.**

———*Permanent tenancy—Rent to vary with area—Rights of tenants—Enhancement of rent.*

From the year 1878 the defendants had held the lands in question at a rental of As. 2 per. bigha but in a lease of 1886 there was a provision to the effect that if at any time on measurement the defts. were found to be in possession of excess area, they should pay rent at the rate of As. 2 for the excess area. There was also a provision that the tenants were to continue in occupation from generation to generation and that they should pay a proportionate part of any additional cesses levied by the Crown. *Held*, that the rent was fixed in perpetuity at As. 2 per bigha and was not liable to be enhanced. 47 Cal. 280 ; 1 C.L.J. 572 ; 19 C.W.N. 56, Rel. (*Mookerjee and Panton, JJ.*) AMAR NATH BHATTACHARJEE *v.* HRISHIKESH LAHA. **65 I.C. 829 = 35 C.L.J. 138.**

———*Permanent tenancy—Long possession —Uniform rent—Improvements.*

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Where it is found that the tenants were using the fields for sixty years and rent was not varied and they made improvements, then it is presumed that they are permanent tenants. (*Teunon and Newbould, JJ.*) BANGA CHANDRA PAL *v.* KAILASH CHANDRA PAL **58 I.C. 189.**

———*Permanent tenancy—Dwelling house— Half a century.*

The origin of the tenancy was unknown but it had been in existence for at least half a century. The land was let out for residential purposes, it had been held at a uniform rent and the tenant had actually built a dwelling house thereon and lived there from the inception of the tenancy till the sale to the defts. *Held*, that from these circumstances it could not be inferred that the tenant was permanent and transferable. 15 C.L.J. 220, Foll. The dwelling-house need not be of brick in order to indicate that the tenancy was intended in its inception to be of a permanent character. (*Mookerjee, C.J. and Fletcher, J.*) SHOROSHI CHARAN GHOSH *v.* BHAGALOO SAH. **57 I.C. 877 = 32 C.L.J. 85.**

———*Permanent tenancy—Re-entry—Right of—Transfer.*

When a landlord grants a permanent and heritable tenure in land, he has no estate left in him, unless he reserves to himself a right of re-entry or reversion. A lease creating a permanent and heritable tenure contained a clause, if the said land and bari be not used for dwelling purposes the right under the pattah shall be void. *Held*, that the clause did not contain any reservation of the right of re-entry by the landlord. Such tenure was transferable by custom. (*Sanderson, C.J. and Mookerjee, J.*) MAHAMMED REAJUDDIN AHMED *v.* BASU DA SUNDARI DASI. **48 I.C. 330 = 28 C.L.J. 278.**

———*Permanent tenancy—Evidence of.*

The right of alienation is a feature, though not an essential one, of permanent tenure. A permanent tenure may bear a variable rent. (*Richardson and Walmsley, JJ.*) PRODYOT KOOMAR TAGORE *v.* KRISHNAMONI DASIA. **40 I.C. 513 = 21 C.W.N. 809**

———*Permanent tenancy—Permanent tenure—Liability to enhancement of rent—Construction—Patni regulation—Arrears of rent recoverable according to provisions of, whether proves fixity of rent*—Noabad *lands and* taraf *lands.*

Where the lease is permanent, the rent is liable to enhancement, unless the landlord has contracted to the contrary or is by law precluded from claiming enhancement. 12 C.W.N. 175 ; 19 C.W.N. 1129, Rel. Where the material

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terms of a contract of tenancy of *Taraf* and *Noabad* lands were as follows:—"You (that is the lessee) having applied of your own accord for a Taluka Patta I having a Taluka Kabuliyat of the said total lands, grant you this Patta and thereby appoint you *talukdar*." The total rent of the said Mouzahs is a consolidated sum of Company's Rs. 420, etc., etc. "If the Huzur imposes any new assessment, that you shall give without any objection and if you do not pay according to the Kists given below the arrears of rent would be realised in accordance with the Regulations V, VII and VIII and other laws that may come into force." *Held*, (1) that the words "Taluka Patta" would *prima facie* show that permanent interest was granted to the lessee but that does not mean that the rent was also permanent; (2) that the general covenant, regarding the payment of new assessment should not be restricted to a particular tax in respect of a particular land (the *Noabad* land) but should refer to the whole land and to imposition made in future by the Government in respect of any portion of the land; (3) that the agreement to recover the rent in arrears under the Patni Regulation does not prove that permanent rent is fixed; and (4) that the covenant by the lessee to pay a new assessment imposed by the Government does not show that the landlord intended to preclude himself from having his ordinary right of applying to have the rent enhanced in a proper case. (*Fletcher and Richardson*, JJ.) UPENDRALAL GUPTA *v.* JOGESH CHANDRA ROY. 38 I.C 56=22jC.W.N. 275.

———*Permanent tenancy—Uniform rent.*

The mere fact, that the rent of a tenancy of a holding of unknown origin has not been raised, is not conclusive proof of the fact of the rent having been fixed in perpetuity. (*Mookerjee and Cuming*, JJ.) JAGABANDHU SAHA *v.* MAGNAMOYI DASSI, 44 Cal. 665= 24 C.L.J. 363=36 I.C. 881=22 C.W.N. 89.

———*Permanent tenancy*—"Istimrari Mokarari"—*Meaning of—Perpetual tenure—What covenants are necessary—Meaning of words in document—Question of law or fact—Rights of parties.*

"Istimrari Mokarari" does not *per se* confer an estate of inheritance but an Istimrari Mokarari Patta, even in the absence of words denoting heritability such as Bafezandan, Naslan Badnastan or Al Aulad may mean a perpetual grant if the other terms of the instrument, the surrounding circumstances or the subsequent conduct of the parties, disclose an intention with sufficient certainty. A restraint on transfer and on the cutting down of fruit bearing trees and an obligation on the lessees to plant another tree in place of any that might fall down by itself, the recital of a substantial premium, these are surest indications of a permanent grant. On the other hand the clause which throws the costs of improvements on the lessees is not such an indication. The meaning of words in a document is a question of fact, though the effect of words is a question of law. The rights of the parties to a contract are to be judged by that law by which they may justly be presumed to have bound themselves. Where in a lease in favour of two persons the duration of Pattas is to be measured not by the continuance of the joint lives but also by the life of the survivor, no question of limitation can arise before the death of both. (*Jenkins*, C. J., *Mookerjee and Richardson*, JJ.) RAM NARAIN SINGH *v.* CHOTA NAGPUR BANKING ASSOCIATION. 36 I.C. 321=43 Cal. 332.

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———*Permanent tenancy—Burden of proof.*

In the absence of a written instrument containing the terms and conditions of the tenancy the burden of proving a permanent tenancy, is on the person alleging it. Such a question is *prima facie* one of fact. (*Richardson and Mullick*, JJ.) KALURAM SRIMAL *v.* PURAN CHAND NAHAR. 27 I.C. 500.

———*Permanent tenancy—Taluq—Presumption.*

In the absence of any specific indication to the contrary either in the instrument creating the tenure or surrounding circumstances the inference is that the tenancy called a "*taluk*" is a permanent tenure. (*Mookerjee and Mullick*, JJ.) BUDYAR RAHMAN *v.* MATIER RAHMAN. 21 I.C. 47=16 C.L.J. 271.

———*Permanent tenancy — Pattah, Construction of—Word* Mokarari *not used—Fixity of rent.*

The grant of a permanent tenancy is not inconsistent with the construction that the rent is a rent fixed in perpetuity though no such term as *Mokarrari* or *istimrari* is used. (*Richardson and Newbould*, JJ.) PEARY MOHAN SEN *v.* BIDHU BADAN BANERJI. 20 I.C. 200.

———*Permanent tenancy—Renewal—Clause for—Effect.*

A clause for renewal does not necessarily import permanency. (*Mookerjee and Beachcroft*, JJ.) SECRETARY OF STATE *v.* FORBES. 17 I.C. 180=16 C.L.J. 217.

———*Permanent tenancy—Presumption — Frequent transfers of tenancy.*

The frequent transfers of an interest in a taluk without any change in the terms of the holding or in the amount of rent paid extending over more than 60 years, will show that the interest is a permanent and transferable one. 21 W.R. 386, Foll. A sale certificate which was the origin of the defts'. title, expressly

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stated that the holding was a *Mausrarsi Jana*. The landlord was not a party to the case. *Held* the recognition of the permanency of the holding would be a relevant fact as having taken place in the transaction by which the transfer was made. (*Mitra and Geidt, JJ.*) HARIDAS TANTI *v.* UPENDRA NARAIN SAHA. **16 C.L.J. 74=16 I.C. 937=22 C.L.J. 75.**

———*Permanent tenancy—Building purposes—Presumption—Notice.*

Land was let out for dwelling purposes and the rent had not been enhanced for 24 years. The tenant had been allowed to plant fruit trees on a part of the disputed holding. The tenancy had never been transferred and there was no succession from father to son. *Held* that it could not be inferred that the tenancy was of a permanent nature and transferable. A notice was served on the tenant in August calling upon him to quit the land in April next year. *Held*, that the notice was reasonable and valid. 36 C. 927, Ref. (*Mookerjee and Coxe, JJ*). RAIMALA BIPRAJUGI *v.* SHIBA SUNDARI CHOUDHARI. **16 I C. 351=16 C.L.J. 26.**

———*Permanent tenancy—Descent of property—Erection of buildings.*

The fact that lease-hold property has descended for one generation does not, as a matter of law, create the presumption that the lessees have a permanent interest. The fact that masonry buildings, costing a few hundred rupees, have been erected upon lease-hold property by sub-lessees of the lessee, would not confer on the lessees a permanent interest in the property. 16 C.W.N. 567, dist. (*Sharfuddin and Coxe, JJ.*) MOHIN CHANDRA *v.* RUP MANJARI DASSI. **16 I.C. 213.**

———*Permanent tenancy — Circumstances proving.*

Land in a tenancy granted before 1861 for residential purposes was enclosed and improved by the tenant, to form the grounds or compound of a somewhat permanent. residential building. The rent during all these years remained unchanged though the land had increased considerably in value. Afterwards the land was transferred by sale and also passed by inheritance without objection. The transferees were recognised as tenants by receipt of rents by them. No attempt was made to eject the tenants. *Held*, the conclusion that the tenancy was permanent, transferable and heritable tenancy at a fixed rental was obvious. The mere retention of the name of the old tenant in the Sherista of the landlord, is not in itself sufficient to indicate that there was no recognition by the landlord that the tenancy was heritable and transferable. 32 C. 41; 32 C. 51; 34 C. 902, Ref. (*Brett and Sharfuddin, JJ.*) GREY *v.* RAM SHASHI ROY. **15 I.C. 110.**

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———*Permanent tenancy—Inference from facts.*

Where it is established that the tenant and his successor have occupied the land for over sixty years that the rent has not been varied, that the tenure was heritable and that it was let out for residential purposes, the only possible inference is that it was in the nature of a permanent tenancy. (*Mookerjee and Carnduff, JJ.*) MOHORAM SHEIKH CHAPRASI *v.* TELAMUDDIN KHAN. **15 C.L J. 220=18 I.C. 606=16 C.W.N 567.**

———*Permanent tenancy—Grant by proprietor—C. P. Land Revenue Act—C. P. Tenancy Act.*

Neither C. P. Land Revenue Act nor C. P. Tenancy Act prohibit the proprietors from granting permanent leases in consideration of valuable improvements to be made in the village, at any rate before the passing of those Acts. (*Chatterjee, J*). RAJIBA GANNTIA *v.* BAJI KAHAR. **9 I.C. 113.**

———*Permanent tenancy — Burden of proof,*

The onus of proving the permanent nature of a tenancy is on the person who sets it up. Long possession of a tenure by the tenant and his ancestors and the landlords having permitted them to erect substantial structures would warrant the presumption of permanency. (*Broadway and Abdul Qadir, JJ.*) LALA MOTI SAGAR *v.* DHANNA MAL. **1922 Lah. 329=29 P.W.R. 1922.**

———*Permanent tenancy—Evidence of—Presumption.*

Fixity and uniformity of rent and transfer and devolution of interest for a long time without objection by the paramount owner, raise a presumption of permanent tenancy. 15 I.C. 110; 15 C.L.J. 220; 34 C. 902; 121 P.R. 1912. (*Broadway and Abdul Raoof, JJ.*) RAM SAHAI *v.* MAHOMED SADIQ. **4 Lah. L.J. 311.**

———*Permanent tenancy—Evidence of—Origin unknown — Inference from circumstances.*

In a case in which there was no direct evidence as to what the original tenancy was, it appeared that a *pucca* house was erected on the premises in question at least 50 years before suit, that from that date the rent fixed and paid for the premises in question had never varied, that the tenant from time to time had disposed of his interest, and that during that period the value of the land had risen. *Held*, that the proper inference to be drawn on the facts was that the tenancy was a permanent and not one from month to month. (*Schwabe, C.J. and Wallace, J.*) ABDUS SALAM SAHIB *v.* M. KANDASWAMI CHETTIAR. **(1922) M.W.N. 639=43 M.L.J. 556=16 L.W. 473=1923 Mad. 54.**

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——*Permanent tenancy—Acquisition of—Length of possession.*

Mere length of possession will not confer a right of permanent occupancy on the tenant. 43 M. 567 ; 41 M.L.J. 175 ; 34 M.L.J. 294, Ref. (*Kumaraswami Sastri and Deva Doss*, JJ.) TANUKU MAHALAKSHMI *v.* CHAMARTY NARASIMHA MURTHY. (1922) M.W.N. 146 = 15 L.W. 449 = 1922 Mad. 82.

——*Permanent tenancy—Onus of proof—Public trust.*

When the question is whether a temple authority had granted a permanent lease or not, the presumption is against the intention to make such a grant, for it is only in exceptional circumstances that a permanent lease of temple property can be justified, 41 Mad. 709 ; 13 M.I.A. 270 and 15 C.L.J. 227, Foll. Where land had been let at the same rate for 31 years and the superstructure on the land was purchased more than 20 years ago and was subsequently mortgaged by the deft., the presumption against permanency was not rebutted and the land should be surrendered to the trustee after removal of the superstructure. (*Wallis*, C.J. *and Krishnan*, J.) CHINNAMMAL *v.* RATNASABHAPATHI CHETTIAR. (1920) M.W.N. 532 = 59 I C. 241 = 12 L.W. 191.

——*Permanent tenancy—Burden of proof.*

A *ryotwari pattadar* tenant setting up a permanent right of occupancy has the burden of proving such right on him, since under *ryotwari* system, the Government have treated the ryot as the real cultivating owner during the course of their settlement. 29 M. 318 ; 26 M.L.J. 468 ; 7 M.L.J. 1, Foll ; 43 I.C. 977 ; 21 M.L.J. 845 ; 24 M.L.J. 571, Diss. (*Sadasiva Aiyar and Napier*, JJ.) AIYAPPA NAICKER *v.* MEDAI THALALVOI THIRUMALAYAPPA. 10 L.W. 7 = 37 M L J. 238 = 52 I.C. 986 = (1919) M.W.N. 651.

——*Permanent tenancy — Inference — Trustee landlords.*

Ordinarily landlord's acquiescence or conduct may lead to the creating of a permanent tenancy but not that of trustee landlords as they have no power to confer rights of permanent tenancy except for necessity or benefit of the institution. (*Sadasiva Aiyar and Napier*, JJ.) NAINA PILLAI *v.* RAMANATHAN CHETTIAR. 33 M.L.J. 85 = 41 I.C. 788.

[Also 16 C.L.J. 227 = 13 I.C. 596 ; 45 I.C. 893 = 34 M.L.J. 234 ; (1920) M.W.N. 532 = 12 L.W. 191.]

——*Permanent tenancy — Evidence — Ryotwari—Presumption of—Temple lands—Occupancy right in—Recognition of.*

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The Courts below inferred occupancy right from the facts that the tenants had been in possession of the lands for nearly 50 years paying a uniform rent, being equivalent to the Government assessment on a single crop land, that the tenants had been selling and mortgaging their lands to the knowledge of the landlord without any objection, that there had been devolution of the property from father to son, the landlord recognising the son, as tenant in the father's place and that there has been no successful attempt to raise the rent during all the period. *Held*, that the presumption that the tenancy was a permanent one was properly raised. It does not follow that because the lands were unoccupied Government ryotwari lands at one time cultivating tenants can never acquire occupancy rights in them. 21 M.L.J. 845 and 24 M.L.J. 659, Rel. (*Spencer and Krishnan*, JJ.) MUTHUSWAMY IYER *v.* NAINAR AMMAL. (1918) M W.N. 219 = 43 I.C. 977 = 7 L.W. 194.

——*Permanent tenancy — Mirasidars — Ryotwari land.*

When tenants are in possession for a very long time paying a uniform rate of rent after they had reclaimed the lands and *Mirasidars* are not in possession, it raises a presumption that the tenants have occupancy rights. There is no statute that every raiyat under a *pattadar*, is a tenant from year to year. (*Benson and Sadasiva Aiyar*, JJ.) VENKATACHALA GOUNDEN *v.* RANGARATNAM AIYAR. 13 M.L.T 450 = (1913) M.W.N. 434 = 20 I.C. 374 = 24 M.L J 571 =

[Affirmed on appeal 36 I C. 117 = 43 Mad. 567 (P.C.).]

——*Permanent tenancy—No presumption of—Lease for building purposes.*

The fact that the tenancy is one for building purposes, that a substantial building has been erected and that the property has descended from father to son or has been sublet or alienated need not be taken into consideration in determining whether the tenancy was a permanent tenancy, on the face of an instrument defining its terms. There is no presumption of a permanent tenancy where land is let for building purposes and the tenant cannot get the value of buildings on ejectment. (*White*, C.J., *Sankaran Nair and Tyabji*, JJ.) SIVATHA MUTHU ASARI *v.* REVD. J.N.K. MESGUITE. 24 M.L.J. 642 = 19 I C. 824 = (1913) M.W.N. 480.

[On Appeal from 13 M.L.T. 305 = 19 I.C. 721 = (1914) M.W.N. 67.]

——*Permanent tenancy—Presumption of—Pattadar—Payment of fixed rent.*

The mere fact of the payment of a share of the produce by the cultivating ryot to the

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Pattadar does not prove that the deft. is the Pattadar's tenant in the strict sense of the term. (*Abdur Rahim and Sundara Aiyar, JJ.*) PERIA KARUPPAN *v.* ANNASWAMI AIYAR.
21 M.L.J. 845=10 M.L.T. 185=12 I.C. 1=(1911) 2 M.W.N. 162.

———*Permanent tenancy—Proof.*

The mere payment of unvarying rent for a long period by an intermediate holder between the Zemindar and the cultivator does not by itself establish permanent tenure. (*Krishnaswami Aiyar and Ayling, JJ.*) SULLEE ABHOYEE *v.* KRISHNARAO. **9 M.L.T. 224=21 M.L.J. 166=9 I.C. 141=(1911) 2 M.W.N. 36.**

———*Permanent tenancy — Determination of—Lease for specific purpose—Purpose not carried out.*

In the case of a perpetual lease it is determined by the death of the lessee. The principles enunciated in 4 B. 424 apply to a case like the present when the Company to whom the land was given for a specified purpose is defunct. Where a lessor has leased his land for a specific purpose and that condition is broken, the lessor had the right to claim his land back. Where land was given for the purpose of having a Factory on it, and it had no factory now standing on it the landlord is entitled to possession. (*Prideaux, A.J.C.*) GOWARDHANDAS *v.* WAHID KHAN.
6 N.L.J. 170=1923 Nag. 243.

———*Permanent tenancy—Presumption.*

A lease of a waste land and an expenditure on it do not raise presumption of permanent tenancy. (*Mitra, A.J.C.*) MANALAL *v.* SUKHLAL. **57 I.C. 311.**

———*Permanent tenancy—Onus of proof—Lease of jungle—Reclamation — Improvements —Equitable estoppel.*

If in a suit for ejectment the right of the landlord depends upon a lease granted for clearing a jungle, settling a village in the village area, and settling agricultural tenants on the land, and the lessees plead that they have permanent rights, the onus is on them to prove their allegations. If the lessees have made only such improvements as were necessary for the opening of the village, they cannot be said to have been induced to believe that their tenure would be permanent. The presumption is that it is not permanent. If permanent works, beyond those agreed upon at the time of the lease are constructed and the landlord encourages their erection in circumstances which lead the lessees to believe that they are accepted as permanent tenants, the landlord would be equitably estopped from

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denying their possession as such. (*Batten, A.J.C.*) BHUNESHWAR *v.* LAL BAHADUR SINGH. **51 I.C. 380.**

———*Permanent tenancy—Length of occupation—Improvements.*

The lengh of the periods for which a tenant has been in possession of the land does not, in the absence of proof that the rent was uniform, raise any presumption that the tenancy is a permanent one. To raise an equitable estoppel against a lessor precluding him from suing for possession on the determination of the tenancy, the tenant must show facts sufficient to justify a legal inference that the lessor has by implication contracted that the right of the tenancy should be changed into a right of permanent occupancy. (*Batten, Offg. J.C.*) BANMALI *v.* NIHAL SINGH.
48 I.C. 354.

———*Permanent tenancy—Change in rent —Effect.*

A mere change in the rate of rent will not necessarily extinguish the permanent nature of a lease. 8 C.W.N. 55, expl.; 12 C. 117 P.C., ref. to. (*Drake-Brockman, J.C.*) MADHO RAO *v.* GOVIND BHAT. **46 I.C. 794.**

———*Permanent tenancy—Reclamation of waste land—Acquiescence.*

Where it is proved that the tenant has reclaimed waste land at great expense and the landlord was aware of the improvement and had not raised any objection, the tenants can plead an estoppel by acquiescence if the landlord subsequently sued to eject him. (*Mitra, A.J.C.*) SAWAI SINGHA NATHURAM *v.* KALLOO. **44 I.C. 817.**

———*Permanent tenancy—Under-proprietor.*

A permanent lessee not possessing a heritable or transferable right is not an under proprietor. 31 A. 394, P.C., expl. (*Lindsay, J.C. and Kanhaiya Lal, A.J.C.*) PRAG *v.* MUHAMMAD ABDUL HUSSAIN. **25 I.C. 603=1 O.L.J. 345.**

———*Permanent tenancy* — Bemiadi patta — *Grant of permanent tenure by ghatwal.*

A *bemiadi patta* does not necessarily convey a permanent heritable interest; but this does not mean it cannot do so. As stated in the Settlement Report of the Patkum Pargana *bemiadi ijaradars* hold permanent tenures the rent of which is liable to enhancement. 2 P.L.J. 180, Expl. A ghatwal who is incompetent to grant a permanent tenure is estopped from

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alleging that the grant did not create a permanent right if he really purported to do so. (*Coutts and Macpherson*, JJ.) KANGALI CHARAN MUKHERJI *v.* SURAJ NARAIN SAH.
6 P.L.J. 687 = (1922) Pat. 90 = (1922) P. 161.

———*Permanent tenancy—Creation of tenancy—Resumption.*

Where the landlord reduced the rent in lieu of service by a *jeth raiyat*, the landlord could resume lands on cessation of service. Neither duration nor devolution from father to son can in such cases create a permanent tenure so as to prevent landlord from resuming on cessation of service. (*Das*, J.) RAMESHWAR SINGH *v.* BHAGAT MANJHI. 57 I.C. 41 = 2 U.P.L.R. (Pat.) 194.

———*Permanent tenancy — Evidence of—Long possession—Non-payment of rent—Effect of.*

Where the origin of a tenant's possession of certain land used as a house-site is shown to be permissive and derivative from the land the tenant cannot acquire by prescription a title adverse to the landlord unless he openly asserts his permanent right and definitely challenged the right of the landlord to evict him: Mere non-payment of rent is in these cases of very little value as showing any right to permanent residence. In many cases no actual right is placed by tenants of this class except such incorporeal rent as is illustrated by a general position of dependence upon the ground landlord as one of the village proprietors. It is not sufficient for a tenant to show that he has not actually delivered cash or even manure or has not rendered certain definite and specified services, as his position as a temporary tenant may equally well be illustrated by the mere fact of recognising a certain feudal dependency upon the landlord. (*Pipon*, J.C.) RAHIMUDDIN *v.* SHABAZ KHAN. 71 I.C. 812.

Proprietary Right.

———*Proprietary right—Purchase of by tenant.*

A tenant purchasing a share in a village does not thereby become a proprietor or abolish the proprietary right of the other co-sharer. A.W.N. (1901) 53, Foll. (*Piggott*, J.) SRI RAM *v.* MUHAMMADUDDIN. 28 I.C. 40.

———*Proprietary right—House sites.*

The site under the house of a non-proprietor in a village ordinarily belongs to the proprietor and its sale without the consent of the proprietary body is voidable. (*Scott-Smith*, J.) AZIMKHAN *v.* KARIM. 1924 L. 896.

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———*Proprietary right — Encumbrance—Dealing with land by tenant.*

Anything which interferes with the unrestricted rights of the proprietor as they existed at the time of the creation of the tenancy would be an encumbrance upon the land. Even the granting of a lease of zerait lands, that is to say the land which the landlord is entitled to hold in direct possession and to cultivate for his own purposes would be an encumbrance. A lease of such lands granted to an occupier in circumstances which would give him a right of occupancy over the land would amount to an encumbrance. (*Miller*, C.J. *and Jawala Prasad*, JJ.) MAHADEO PERSAD SAHU *v.* GAJADHAR SAHU.
1 Pat. L.R. 145 = 1924 P. 362.

Raiyat—Ryot.

See (1) B. T. ACT.
(2) MADRAS ESTATES LAND ACT.

Relationship.

———*Relationship—Estoppel.*

Whatever may have been the nature of a persons' possession prior to a lease, once he takes a lease-deed in respect of the land from another, he is thereafter estopped from denying the title of his lessor. (*Rafique and Stuart*, JJ.) SITAL PRASAD *v.* BADRI PRASAD.
20 A.L.J. 907 = L.R. 3 A. 523 = 1923 A. 53.

———*Relationship — Adverse possession—Exproprietary tenancy.*

A person cannot obtain the "status" of an exproprietary tenant by adverse possession though he can obtain an absolute title to the property by adverse possession. (*Richards*, C.J. *and Banerjee*, J.) BALDEO *v.* ULFAT RAI. 37 All. 22 = 26 I.C. 21 = 13 A.L.J. 1153.

———*Relationship — Acceptance of rent—Effect of—Ejectment.*

The plaintiff sued to eject the defendants as trespassers in possession of a non-transferable occupancy holding. The defendants proved that in 1919 and 1920 the plaintiff accepted rent from them for the lands in suit in the name of the deceased riots. *Held* that the effect of this acceptance of rent was to constitute the defendant's tenants; consequently at the date of suit, the plff was not competent to eject the defendant as trespassers. (*Mukerjee and Rankin*, JJ.) BALI MOHAMMED SAHA *v.* JANAKI NATH. 1924 C. 535 (1).

———*Relationship—Agreement to settle land—Payment of*—Salami.

Plff. was occupying land belonging to the deft. and obtained a settlement of the land

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from him on condition of paying a fixed *Salami* and executing a Kabuliyat within 15 days. The *Salami* was being a regularly paid but no Kabuliyat was executed till some time after. Subsequently the deft. cancelled the plff.'s lease and gave the lands to another pereon. *Held* that there was a valid and subsisting tenancy between the plff. and the deft. and that the deft. was not entitled to cancel the tenancy, (*Mookerjee and Chotzner*, JJ.) BHAGU SINGH *v.* MOHESWAR BARIK.
1924 C. 531 (1).

———*Relationship — What constitutes — Demand for rent—Effect of.*

Where the evidence indicated that the plaintiff demanded rent from the defendant, with full knowledge that the latter was in possession as purchaser of the tenant's rights in the land, *prima facie* this is evidence of an intention, unless otherwise explained, to recognise the title of the purchaser and unless repudiated, would constitute the relationship of landlord and tenant Where the defendant purchased the holdings on the assumption that they were transferable and professed to be the tenant in occupation, in such circumstances, demand by the plaintiff for rent is good evidence of mutual consent to the creation of a tenancy, unless the plaintiff is able to explain that the demand was not unqualified and should be differently interpreted.(*Mookerjee, and Rankin*, JJ.) MANMATHA NATH KAR *v.* PROBODH CHANDAR. 37 C.L J. 52= 1923 Cal. 102.

———*Relationship—How created—Tenancy not in writing but possession given.*

Per *Mookerjee*, J.—When in pursuance of an agreement to transfer property, the intended transferee has taken possession, though the requisite legal documents have not been executed and registered, the position is the same as if the documents had been executed, provided that specific performance can be obtained between the parties to the agreement in the same Court and at the same time as the subsequent legal question falls to be determined. (*Mookerjee and Buckland*, JJ.) JOGENDRA KRISHNA ROY *v.* KURPAL HARSHI & CO.
49 C. 313=36 C.L.J. 176=1923 Cal. 68.

———*Relationship—Purchaser of non-transferable occupancy holding.*

The purchaser of a non-transferable occupancy holding who is recorded in the Rent Roll as being merely in possession does not become a tenant and can be ejected. (*Newbould*, J.) BROJO GOPAL GOSSAIN *v.* RAJANI KANTA GHOSE. 60 I.C. 473.

———*Relationship—Transfer—Rights and liabilities on.*

The parties cannot have a mutual relation in law which is contrary to the true state of

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facts; if the facts show that the parties are co-ordinate in position, they cannot be treated in law as if they were superior and subordinate holders respectively. Where the plff. transferred to the deft. a share of the land, *held*, that the latter was not a tenant of the former. (*Mookerjee*, A.C.J. *and Fletcher*, J.) CHANDRA KANTA CHAKRABARTHY *v.* ADINATH SHOMA.
59 I.C. 565=32 C.L.J. 81.

———*Relationship—Rent—No covenant to pay*—Burgadar.

Where there is no covenant to pay rent and no interest in land created in favour of the lessees there is no tenancy. A *burgadar* is not necessarily a tenant. A *burgadar* is a person who enters into a profit-sharing arrangement; he cultivates the land gives a share of the profits to the owner and keeps the remainder as his remuneration. In individual cases, the terms of the contract may indicate that the intention of the parties was to create in the grantee an interest in the land in other words, if there is a demise, a tenancy is created. (*Mookerjee*, C.J. *and Fletcher*, J.) BRAHMAMOYEE BARMANI *v.* SHEIKH MUNSUR.
58 I.C. 859=32 C.L J. 37.

———*Relationship*— Kobala — *Payment*— Sadarjama—*Conduct—Record-of-rights.*

Under a *Kobala* a certain sum was to be paid annually to the proprietor as *Sadarjama*. The sum so payable was regarded as rent and in the Record-of-Rights the person making the payment was recorded as a tenant under the *Patnidar*: *held*, that the relationship of landlord and tenant exieted between the parties. (*Walmsley*, J.) KAILASH NATH ROY CHOUDHURY *v.* KAMAKHYA CHARAN CHATTOPADHYAYA. 55 I C. 500.

———*Relationship—Receipt of rent.*

If rent due to one man is realised by another that fact cannot constitute the former the landlord in place of the latter. (*Beachcroft*, J.) BHASHIRAM NATH *v.* DINA NATH DEY.
51 I.C. 897.

———*Relationship — Creation of* — Kabuliyat —*Execution and Registration without landlord's sanction—Effect.*

The execution and registration of a *Kabuliyat* without the landlord's sanction or acceptance, before or after registration does not create a tenancy even though there may have been some previous talk of a settlement. (*Chitty and Walmsley*, JJ.) EDON MOLLAH *v.* BADAN. 46 I.C. 859.

———*Relationship*—Kabuliyat — *Nature of tenancy.*

Where the tenants were holding under *Dowl Khabuliyat* the nature of the tenancy

must be determined from the terms of the *Khabuliyat* itself and not from the conduct of the parties. (*Fletcher and Huda*, JJ.) KUMRA TAGORE *v.* BHUBAN MOYEE DASYA.
46 I.C. 1.

———*Relationship—Proof of — Receipt of rents by agent.*

In the absence of evidence to the contrary, the ordinary presumption would be that a *Gumasta* of a landlord who collects rent, duly pays it to the landlord. Even though the *Gumasta* had no authority to grant an *amalanama* or settle a holding, the mere fact of receipt of rent by the *Gumasta* on behalf of his employer from the occupier of the holding is sufficient to prove the tenancy of the latter. (*Richardson and Beachcroft*, JJ.) JAHURMAL BABU *v.* KERAMUTULLAH MOLLA.
45 I C. 196.

———*Relationship — Evidence of —Entry into possession—Receipt of rent.*

A landlord who enters into an agreement with a tenant to lease out his lands and in pursuance of that agreement receives payment and lets the tenant into possession cannot afterwards grant a subsequent lease to a third person. In such a case the subsequent lease will not prevail over the earlier agreement to lease. (*Fletcher and Huda*, JJ.) EDON MOLLAH *v.* BADAN. 45 I C. 49

———*Relationship—Contract—Assertion of higher right.*

Where the relationship of landlord and tenant is founded upon contract, a mere assertion by the tenant, in the absence of a clear statutory provision to the contrary cannot confer upon him rights other than or higher than those embodied in the contract. (*Sanderson*, C.J. *and Teunon*, J.) BIRENDRA KISHORE *v.* MAHOMED DOULAT KHAN.
43 I.C. 59=22 C.W.N. 856.

———*Relationship— Proof of — Settlement* Khatian *entry in—Possession before entry.*

Having regard to the fact of long possession even prior to the entry in *Khatian* and non-payment of rent not only was there no relationship of landlord and tenant between the parties, but adverse possession was proved. (*Jenkins*, C.J. *and Mookerjee*, J.) BIRENDRA KISHORE *v.* NABIN CHANDRA. 32 I C. 851=22 C L.J. 306.

———*Relationship—Possession — Plaintiff's allegation that defendant's never attorned—No ground for suggestion of the defendants possession on his behalf.*

When the plaintiff comes into Court on the allegation that the defendants have never attorned to him there is no reason for the suggestion that the possession of the defendants was possession on his behalf. (*Mookerjea and Beachcroft*, JJ.) SOBHAN BAKSH *v.* BIRENDRA KISHORE MANIKYA BAHADUR.
30 I.C. 939 (2)=22 C.L.J. 155.

———*Relationship—Proof of—Possession of other lands.*

It is not sufficient to prove the plaintiff's tenancy to show that he was in possession of other lands covered by the lease. (*Chapman and Newbould*, JJ.) KARTIK *v.* BAMA CHARAN MANDAL. 29 I C. 502=20 C.W.N. 182.

———*Relationship—Evidence of—Payment of rent.*

It is open to a party to establish a tenancy by proof of the payment of rent to landlord. (*Mookerjee and Beachcroft*, JJ.) BHUBAN MOHAN *v.* EDAN SARDAR. 27 I.C. 91.

———*Relationship—Suit for damages for use and occupation—Ejectment.*

If a landlord sues for damages for use and occupation only and not for ejectment he does not waive his right to eject and he cannot be deemed to have recognised the defendant as tenant. (*Beachcroft and Newbould*, JJ.) RAJ KRISHNA RUDRA *v.* FAKIR DOME.
21 I.C. 197=19 C.W.N. 478.

———*Relationship—Agricultural tenancy—Kabuliyat*

For the purposes of an agricultural tenancy, the tenant should prove that he executed *kabuliyat* which was accepted by the landlord. (*Chapman and Mullick*, JJ.) KRISHNA CHANDRA JOGHI *v.* ACHIRAM NANK. 19 I.C. 930.

———*Relationship—Proof of—Presumption.*

When there is no evidence to show that there was any agreement at all between the defendant and plaintiff, there is no presumption that the defendant held under the plaintiff under a contract of tenancy. (*Mookerjee and Beachcroft*, JJ.) MATILAL *v* DARJEELING MUNICIPALITY. 18 I.C. 844=17 C.L.J. 167.

———*Relationship—Conduct—Consent.*

To establish the relation of landlord and tenant, the consent of both parties is not required in India though it is required in England. A person settling in some land as trespasser, may be treated as raiyat by the Zamindar to whom the land is transferred by operation of law if the trespasser—raiyat is recorded as such by the settlement authorities. (*Holmwood and Chapman*, JJ.) KALI PRASANNA DAS *v.* BHAGABAN.
17 C.L.J. 431=17 I.C. 887=17 C.W.N. 358.

LANDLORD AND TENANT—Relationship.

——*Relationship*—Khabuliyat *executed by one of two brothers—Effect.*

Where one of two brothers executed a *Khabuliyat*, the question whether the other becomes a tenant depends on the intention of the parties. If the landlord knew that he was letting the land to both but took the *Khabuliyat* in the name of one for the sake of convenience then the relation of tenancy was created with the other brother. But if the landlord knew nothing of the arrangements made between the two brothers and believed himself to be contracting with the brother executing the *Khabuliyat* then those arrangements would not bind him and would not create any relation between him and the other brother. (*Coxe and Richardson*, JJ.) SARAT CHANDRA ROY *v* RATUBUDDIN.
17 I.C. 227=16 C.L.J. 271.

——*Relationship — Pattan—Settlement—Adhi Proja, whether tenant or servant—Burden of proof.*

In a *Pattan* Settlement, the *Adhi Proja* is generally a tenant and the burden of proving that he is a mere servant rests upon the landlord. (*Coxe*, J.) BIROJ MUHAMMED *v.* MOHABUT MUHAMMAD. 11 I.C. 32.

——*Relationship—Proof of—Ambiguous Clause—Surrounding circumstances.*

The Court should take into consideration the surrounding circumstances and should not only depend on an ambiguous clause in the lease deed *to ascertain the terms of the tenancy*. (*Caspersz and Dos*, JJ.) MIDNAPORE ZEMINDARI & CO., LTD. *v.* BAPAPADA ROY. 10 I.C. 430=18 C.L.J. 485.

——*Relationship—Determination of tenancy—Tenant's possession becoming adverse.*

Tenant's possession does not become adverse until he openly repudiates the tenancy. Payment of rent by the tenants to third persons and attornment to them would not cause dispossession of the landlord unless such payments were made under circumstances so as to amount in law to an eviction of the tenants as tenants of the landlord. Non-payment of rent by the tenant and payment of rent to third persons cannot by themselves constitute dispossession of the tenant. Non-payment of rent for any number of years does not determine the tenancy. (*Chatterjee*, J.) RAM NEWAZ *v.* SHASHI BUSHAN.
9 I.C. 119.

——*Relationship—Proof—Dispute whether particular plot is included—Onus.*

When the tenancy is admitted and proved, any further question as to the area held by the deft. refers to the contract of tenancy and not status of tenancy. The onus is therefore on the plff. landlord to establish that a particular plot is not *rayati but khas patit*. (3 C.W.N. 743, Foll.) (*Caspersz*, J.) DINA NATH DAS *v.* GANESH CHANDRA SAHA. 9 I.C. 2.

——*Relationship — Adverse possession — Defendants recorded as tenants—Onus.*

If in the revenue records the defendants were shown as tenants paying rent, the onus is on them to show that they are not tenants, and that onus is not discharged by the fact that the amount of the rent which they paid did not exceed the amount of the revenue and cesses. (*Martineau*, J.) RAM DAS *v.* CHANDI.
1923 Lah. 35.

——*Relationship — Entry in — Revenue Records—Effect.*

Tenant is not entitled to sue for a declaration of title and against landlord. Where they were recorded as tenants only, in revenue records. (*Leslie-Jones and Moti Sagar*, JJ.) MT. JAIKUAR *v.* LAFHU.
4 Lah. L.J. 207=1922 Lah. 163.

——*Relationship—Sanjidar — Position of —Denial of title by—Effect.*

A *Sanjidar* is one who performs certain services and is given land to hold as a tenant. *A Sanjidar* who has repudiated the landlord's title in a previous suit is liable to ejected from the holding if the landlord acquiesces in the repudiation and the *Sanjidar* cannot afterwards be heard to support the landlord's title in a subsequent suit. (*Rattigan and Chevis*, JJ.) MUHAMMAD BADAR KHAN *v.* CHIRAGH SAHH. 16 P.L.R. 1912=13 I.C. 32=43 P.W.R. (1912).

——*Relationship—Decree in ejectment—Effect.*

A decree in ejectment recognising termination of tenancy and decreeing possession to the landlord puts an end to relationship between the parties as landlord and tenant. Subsequent possession by the tenant is that of a trespasser, unless some express and overt act of the parties indicates creation of the relationship afresh. (*Sadasiva Aiyar and Spencer*, JJ.) RAMAN MENON *v.* MAMMALI.
39 I.C. 955=(1917) M.W.N. 560.

——*Relationship — Proof of — Title of plaintiff admitted.*

Where certain properties are proved to have belonged to plaintiffs at one time and others were regarded as tenants under them, very little evidence regarding the actual letting to defendants will suffice to shift the burden of

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proof to deft. (*Spencer and Seshagiri Aiyar* JJ.) NANU NAIR *v.* KANTAN ASHTA MOORTHI. 29 M.L.J. 772=29 I.C. 386= 2 L.W. 509.

———*Relationship—Relations regulated by the lease though expired.*

The terms of the lease on its termination may regulate the relations between the parties when the tenancy becomes one on sufferance if they are not incongruous with a tenancy of that description. (*Oldfield and Tyabji*, JJ.) THAMBIKILAN MUTHIRIAN *v.* MUTHU REDDI. 26 I.C. 284 (1).

———*Relationship — Cessation of relationship.*

The relation of landlord and tenant continues until it is proved to have ceased. (*Ayling and Spencer*, JJ.) DEVAL RAJU *v.* MAHOMED JAFFAR SAHEB. 19 I.C. 555=36 Mad. 58.

———*Relationship—Agreement to execute a lease—Use and occupation.*

Where a person gets into a possession of another's land under an oral agreement to take a lease but continues in such possession without executing the lease, no tenancy is created. The person who is in such p:rmissible occupation is liable in a suit by the owner for damages for use and occupation. (*Sundara Aiyar*, J.) *In re*, KAYA RAMAKRISHNAYYA. 15 I.C. 532.

———*Relationship — Determination of tenancy—Acceptance of rent—Effect.*

A tenant who from the expiry of the last *muchilikas* executed by him, is paying rent to the landlord who is regularly accepting it is a tenant from year to year. (*Krishnaswami Aiyar and Ayling*, JJ.) SULLEE ABHOJEE *v.* KRISHNA RAO. 9 M.L.T. 225= 21 M.L.J. 166=9 I.C. 141= (1911) 2 M.W.N. 36.

———*Relationship — Agreement—Payment of rent.*

The question whether the defendants is a enant of the plff. depends upon the original agreement between the parties. The question of tenancy or otherwise must be decided on the evidence in consideration of the law on the subject. (*Batten*, J.C.) MANOHARLAL *v.* RAM RATAN. 1924 Nag. 67.

———*Relationship—Onus of proof.*

Where a person is not recorded as a tenant and the landlord does not admit he is one, the onus is on the person setting up a claim to tenancy to prove that he was a tenant. (*Batten*, J.C.) ALAMSINGH *v.* SETH GOPALDAS. 1923 Nag. 7 (1).

LANDLORD AND TENANT—Relationship.

———*Relationship—Proof.*

A tenancy can be proved without proving any written lease that may exist. 1 N.L.R. 147; 41 C. 347, Rel. (*Drake Brockman*, J.C.) SUBAT SINGH *v.* RANI. 39 I.C. 461.

———*Relationship—Knowledge of landlord.*

A person cannot be made a tenant without the landlord's knowledge. (*Batten*, C. J. C.) RAMADIN *v.* KESHEO PRASAD. 38 I.C. 36.

———*Relationship — Rights of parties — Khabuliyat not given effect to.*

Where a *khabuliyat* was never acted upon, it does not affect the rights and liabilities; otherwise in existence between the parties. (*Bailie*, S. M. *and Tweedy*, J. M.) MAREY *v.* UMRAO SINGH. 27 I.C. 108=1 O.L.J. 765.

———*Relationship—Omission to collect rent—Effect of.*

If rent is once assessed on land, failure to collect it does not destroy the relationship of landlord and tenant which was once been established. (*Tweedy*, J. M.) RAMESHWAR DAT *v.* SHYAMA KUMAR SINGH. 27 I.C. 102=1 O.L.J. 761.

———*Relationship — Settlement Court — Decision as to status of a person applies to all members of his family.*

The judgment of the Settlement Court as to the status of a person applies to any one belonging to that person's family. (*Baillies*, S. M. *and Tweedy*, J. M.) RAGHUNATH KUAR *v.* COURT OF WARDS. 26 I.C. 683= 1 O.L.J. 587.

———*Relationship—Proof of — Entry in Patwari's papers—Value of.*

Mere entry of one's name in a *Patwari's* papers as the sub-tenant of another, does not prove the relationship of landlord and tenant between them. (*Baillie*, S. M. *and Tweedy*, J.M.) HULAS SINGH *v.* JIT SINGH. 25 I.C. 177=1 O.L.J. 151.

———*Relationship—Agreement to continue in possession of holding as long as certain amount of rent paid—Interpretation—Rights under the agreement.*

A tenant holding land under an agreement that as long as he continues to pay a certain amount of rent he will remain in possession of the land, has neither a transferable nor a heritable right in the land; the right is purely personal. (*Baillie*, S. M.) RAM DIN DUBE *v.* RAM BHAROSE SHUKUL. 24 I.C. 789= 1 O.L.J. 246.

LANDLORD AND TENANT—Relationship.

———*Relationship — Re-entry — Right of lessee.*

A *Talukdar* leased the right of collecting rents to the plff. for a certain period and before the expiry of the term the *Talukdar* took forcible possession of the village and began to collect rent from the tenants. *Held*, that the lessee was entitled to obtain decrees, inasmuch as the relation of landlord and tenant had not ceased between the lessee and the tenants and inasmuch as the lessee had not been in due course of law, ejected and the lease only provided for re-entry in case the lessee agreed to give up the possession and not for re-entry by force. (*Stuart*, A.J.C.) HABIBULLAH SHAH *v.* SURJI. **15 I.C. 867 = 15 O.C. 295.**

———*Relationship—Recorded tenant—When a representative of the tenure.*

So far as tenures are concerned, the Bengal Tenancy Act makes it obligatory upon the tenants to have their names recorded in the landlord's *sherista* whenever they become entitled to them by succession. In the case of a tenure therefore, where only one tenant takes the trouble to have his name recorded in the landlord's *sherista*, and the others either by design or negligence fail to do so, it may be presumed that the tenants who failed to have their names recorded in the landlord's *sherista* consented to the tenant who had his name recorded representing them both in transactions and in suits affecting the landlord and the tenants. But other principles arise where the Court has to deal with the case of the sale of a holding as to which there is nothing in the Bengal Tenancy Act compelling raiyats to have their names recorded in the landlord's *sherista*. It is a question of fact in each case whether the recorded tenant does in fact represent the holding in dispute and that the fact that only one tenant is registered is an item in the evidence upon the question whether he is or is not the representative tenant *qua* the landlord. (*Das and Adami*, JJ.) JAIDEB THAKUR *v.* JAMAHIR MISIR. **1923 Pat. 57 = 1 Pat. L.R. 47 = 1923 P. 206.**

———*Relationship—Road-cess return.*

A road-cess return signed by the landlord is admissible against him to show that the relationship of landlord and tenant existed between the parties. (*Adami*, J.) SADHU SARAN *v.* AMBIKA LAL. **1923 P. 163.**

———*Relationship—Lessee for a term of years cannot create tenancy extending his term.*

A lessee who is a raiyat for a term of years cannot create tenancy rights in favour of another extending his own term against the wishes of his landlord. A tenancy can be created only by a contract either express or implied between the landlord and the tenant or by statute. (*Jwala Prasad and Bucknill*, JJ.) JOGENDRA SINGH *v.* MAHARAJA KESHO PRASAD SINGH. **1 P. 761 = 1923 Pat. 113 = 1922 P. 429.**

LANDLORD AND TENANT—Relationship.

———*Relationship—Recognition of tenancy—Receipt for rent granted by Tahsildar—Effect of.*

A receipt for rent granted by the Tahsildar to the transferee of a tenant does not amount to a recognition by the landlord unless it was proved that the Tahsildar had authority from the landlord to recognise the tenancy. Nor does the fact that the tenant's occupation of the land was acquiesced in for 9 years without remonstrance amount to recognition. (*Ross and Coutts*, JJ.) BALGOBIND MANDAR *v.* DWARKA PRASAD. **1 P. 395 = 1922 Pat. 442 = 3 Pat. L.T. 409 = 1922 P. 279.**

———*Relationship—Road-cess return is evidence to show.*

A road-cess return signed by the landlord is admissible against him to show that the relationship of landlord and tenant existed between the parties (*Adami*, J.) SADHU SARAN *v.* AMBIKA LAL. **68 I.C. 676.**

———*—Relationship—Proof of by kabuliyat—No reference to prior lease—Satta—Non-production of—Effect.*

The generic meaning of the word *satta* is mercantile traffic or exchange for money and *satta* is merely a commercial agreement regulating the condition under which a tenant agrees to grow indigo or do any other thing. The question of the status of the tenant or the origin of the tenancy does not depend upon its production or non production. (*Ross*, J.) HENRY HILL & CO. *v.* BHAVAN THAKUR. **2 Pat. L.T. 605.**

———*Relationship—Creation of — Value of Khasra—Whether creates contract of tenancy—Holder of land in Zemindari, if tenant.*

A mere entry in a *khasra* does not create a contract of tenancy with the persons entered therein. A mere fact of a person's holding lands in a *Zemindari* estate is not a sufficient proof that he is a tenant. (*Mullick and Jwala Prasad*, JJ.) BALDEO SINGH *v.* BRHAMDEO NARAYAN SINGH. **39 I.C. 107 = 1 P.L.W. 721.**

———*—Relationship—Khabuliyat—Tenancy.*

Where deft. under *Khabuliyat* in favour of plff. was put in possession of the holding and paid rent at *Khabuliyat* rates. *Held*, that the khabuliyat having been confirmed by parties must be taken to have been adopted as the basis of tenancy. (*Mullick and Atkinson*, JJ.) KASIM ALI *v.* AHMADALI. **38 I.C. 808 = 2 P.L.J. 40.**

LANDLORD AND TENANT—Rent -- Abatement of.

Rent.

See also T. P. ACT, Ss. 108 and 112.

Abatement.
Accretion.
Acquittance for.
Amount of.
Apportionment.
Charge.
Damages.
Decree.
Deduction.
Determination.
Discharge.
Enhancement.
Excess area.
Favourable rent.
Fixity.
Implied contract.
Interest.
Jodi.
Liability.
"Mulguzari," meaning of.
Payment and non-payment.
Purchaser.
Putni lease.
Rate of.
Receipt.
Remission.
Rent free.
Right to.
Sale.
Service.
Suit for.
Suspension.
Tender.
Transfer.
Trespasser.

Rent—Abatement of.

———*Rent—Abatement of—Onus—Lease of area within boundaries—Deficiency in extent—Tenant deprived of portion of land by erroneous form of injunction.*

It is for the tenant to make out a case, if he has one, for abatement of the fixed rent. Where the rent for an area described to be 400 bighas within specified boundaries is fixed, the lessee cannot adduce evidence of prior negotiations to show that the rent was to depend on the acreage and claim an abatement of rent as on a deficiency in the acreage.

A permanent mining lease authorised the lessee to cut and dispose of all the coal beneath "400 bighas of land in Mouzah Dobari" within specified boundaries. Subsequent to the lease the lessor sued to restrain the lessee from trespassing on his own private land but the Court passed a decree restraining the lessee from dealing with property lying outside the mouzah "as delineated in the amin's map." The lessee preferred no appeal. In a subsequent suit by the landlord for arrears of rent, the lessee claimed abatement of the rent as on a reduction of the area. *Held*, that it was not intended by the prior decree in the landlord's suit to reduce the area of the land demised and even if in fact the order of the Court was in wider terms than were called for, the lessee having submitted to the decree, without appealing, could not plead it as having taken away the area originally demised. The lessee was therefore not entitled to abatement of rent. (*Sir John Edge*). DURGAPRASAD SINGH *v.* RAJENDRA NARAYAN BAGCHI. **40 I. A. 223=26 M. L. J. 23=15 M. L. T. 68=19 C. L. J. 95=18 C. W. N. 66=(1914) M. W. N. 1=16 Bom. L. R. 52=21 I. C. 750=41 Cal. 493 (P. C.).**
[On appeal from 37 Cal. 283=4 I. C. 713=10 C. L. J. 570.]

———*Rent — Abatement — Uniform abatement for 53 years.*

Where it has found that the abatement claimed by the deft. had not been fluctuating but was uniform throughout, and had been uniformally allowed every year since 1868, that it was not a deduction allowed to the tenants personally, but allowed to particular holdings. *Held*, a legal origin has been made out and the apportionment among the lands was proper. (*Marten and Fawcett, JJ.*) KRISHNALAL CHUNILAL MAJUMDAR *v.* DHIRAJLAL NAVNITLAL JHAVERI. **1923 Bom. 389.**

———*Rent—Abatement of—Ouster by title paramount.*

The Government wrongfully purported to resume portion of the lands comprised in a tenure in a diar proceeding and formed it into a separate estate. The Government subsequently settled it with the tenure-holder and realised the rent from him in respect of the same. The landlord did not object to the redemption but accepted malikana. In a suit for rent by the landlord against the tenure-holder *held*, that the act of that Government was an ouster of the defendant by a title paramount and such title having been admitted by the landlord, the tenant was entitled to an abatement of rent in respect of the tenure to the extent of the amount payable by him to the Government. (*Walmsley and Ghose, JJ.*) JITENDRANATH ROY *v.* ASHUTOSH GOSWAMI **39 C. L. J. 287=27 C. W. N. 381=1923 Cal. 429.**

———*Rent—Abatement—Right of tenant—Limitation—Acquiescence.*

Where a tenant did not obtain possession of a portion of the land leased he is entitled to abatement of rent to that extent and although no question of limitation may arise, the tenant might lose that right by long acquiescence. 2 C. L. R. 5, foll. (*Chatterjea and Panton, JJ.*) RAJ KUMAR BOSE *v.* SURENDRA NATH GUHA CHOWDHURY. **27 C. W. N. 166.**

———*Rent—Abatement — Claim for—Eviction by title paramount.*

In a suit for rent by a landlord a lessee is entitled to an abatement of rent, if, upon a claim by a third party, by a title paramount, he attorns to him and holds under him. For that a forcible expulsion is not necessary and the tenant need not actually go out of possession. The meaning of eviction by title paramount is eviction by a title superior to the titles both of lessor and lessee against which

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neither is enabled to make a defence. (*Chatterjea and Suhrawardi JJ.*) BANKA BEHARI *v.* MADAN MOHAN. **68 I. C. 477=26 C. W. N. 143.**

———*—Rent—Abatement—Diluvion.*

In a rent suit on the basis of a written agreement prior to Bengal Tenancy Act, the defendant claimed abatement owing to diluvion : *Held*, that objection would stand, that the landlord must prove the extent of diluvion or must accept a decree to the extent of the written admission of the tenant. (*Mookerjee, A. C. J. and Fletcher, J.*) KRISTO. DAS LAW *v.* ABDUL KARIM. **25 C.W.N. 328=62 I. C. 474=34 C. L. J. 35.**

———*Rent—Abatement of — Acceptance of lower rent.*

Mere acceptance for a long time of rent lower than that stipulated in the kabuliat does not conclusively show that the amount stipulated for in the kabuliat was never intended to be paid, nor that the acceptance amounts waiver of that stipulation (*Chatterjea and Panton, JJ.*) GOLAK BEHARI BHOWMIK *v.* MANINDRA CHANDRA NANDI. **60 I. C. 86.**

———*Rent—Abatement of — Failure to get possession of a plot—Auction-purchaser of tenant's right.*

Lands appertaining to some jotes were sold in execution of rent decree and purchased by the deft. who was subsequently recognised by plff. as tenant. Before the deft.'s purchase the plff. was in possession of a plot of land included in one of the jotes and he settled it with another party after the deft.'s purchase and after his recognition as a tenant. *Held*, that this not being the case of a demise by the plff., the latter could not be held responsible for giving possession to the deft. and the question of suspension of rent did not arise. The plff. was not entitled to rent of the plot of land of which the deft. had not got possession. (*Chaudhuri and Cuming, JJ.*) PRAVAKAR MAJUMDAR *v.* UPENDRA NATH CHANDRA. **53 I. C. 564.**

———*Rent — Abatement of — Diluvion—Contract—Contravention of.*

A lease provided that abatement of rent will not be claimed for flood, draught, death or flight, etc., but there was no mention of diluvion. It was held that a forced construction should not be put upon the contract to make the tenant responsible for entire rent in case of diluvion. (*Mookerjee and Newbould, JJ.*) SALIMULLAH *v.* KALI PROSANNA.
33 I. C. 349=22 C. L. J. 569.

———*Rent — Abatement — Eviction from part.*

A lessee is entitled to abatement of rent in proportion to the loss of lands through eviction by title paramount. To make him liable for the whole rent, notwithstanding eviction, there must be a clear and unambiguous provision in the lease to that effect. A claim for rent as it accrues from year to year is a recurring claim and to each such claim, the

LANDLORD AND TENANT—Rent—Accretions.

defendant is entitled to interpose his claim for abatement of rent. (*Mookerjee and Beachcroft, JJ.*) RASH MOHINEE DASSEE *v.* NAFAR CHANDRA PAL CHOWDHURY. **27 I. C. 265.**

———*Rent—Abatement—Dispossession.*

When a landlord dispossesses a tenant from his holding or a part thereof, rent is suspended during eviction. Dispossession might be directly by the landlord or indirectly through a settlement with another tenant. (*Jenkins, C. J. and Mookerjee, J.*) GODAI MOLLA *v.* AMINUDDI HOWLADAR.
21 I.C. 957=18 C. L. J. 509.

———*Rent—Abatement of* — Amalnamah—Onus.

In an *Amalnamah* granted by the landlord, the term fixed was five years with a stipulation that after that period there would be measurement of the *Jote* and a fresh settlement entered into. The tenants asserted an interchange of *Pattah* and *Kabuliyat* but no *Patta* was produced and they claimed an abatement of the rent. *Held*, that it was incumbent on the tenant to produce their *patta* and to make out the plea of abatement on the ground of diluvion. (*Caspersz and Doss, JJ.*) MAINDRA CHANDRA NANDI *v.* KASHI CHANDRA BAKHSHI. **15 I.C. 458=15 C.L J. 507.**

———*Rent—Abatement of—Holding diminished—By acquisition under Land Acquisition Act—Landlord not giving land in exchange—Entitled to reduction of rent.*

Where a tenant's holding has been diminished by acquisition under Land Acquisition Act and the landlord does not give any land in exchange the tenant is entitled to reduction of rent, no matter whether the compensation has or has not been drawn. (*Ayling, J.*) NAGOOR ROWTHAR *v.* AKHAR ALISHA.
24 I. C. 724.

———*Rent—Abatement.*

In a rent suit, the tenant can plead and claim abatement of rent on the ground of permanent deterioration of the soil. He need not bring a separate suit for the purpose. 20 Cal. 579. Ref. (*Jwala Prasad, A. C J. and Ross, J.*) BABU SUKHRAJ RAI *v.* GANGA DAYAL SINGH.
63 I.C. 219=2 P.L.T. 569.

———*Rent—Abatement — Custom*—Kwin—*Proof.*

The *Kwin* custom for payment of agricultural rent must be as to the manner of payment and quantity to be paid. A party alleging that the custom was for reduction of rent in proportion to damages of crops by flood, must prove that it is followed in a number of cases. (*Maung Kin, J.*) MA U *v.* MAUNG POHAN. **33 I.C. 756.**

Rent—Accretions.

———*Rent—Accretions—Liability — Accretions to rent free tenure.*

A rent free tenure-holder is liable to pay rent in respect of accreted land. (*Mookerjee and Beachcroft, JJ.*) RAJENDRA NATH ROY *v.* NANDA LAL GUHA. **18 C.W. N. 1206=26 I.C. 977=19 C. L. J. 595.**

LANDLORD AND TENANT—Rent—Acquittance for.

Rent—Acquittance for.

———*Rent—Acquittance for—Estoppel.*

Rent receipts granted by the *Patwari* bind the landlord who allows it and who has purchased the estate in revenue sale knowing to be encumbered. (*Coutts and Sultan Ahmed, JJ.*) RADHA KRISHNAJI SUKH *v.* NANDAN SINGH. **58 I. C. 193=2 U. P. L. R. (Pat.) 224=(1920) Pat 332=2 Pat. L. T. 1.**

Rent—Amount of.

———*Rent—Amount of—Construction of documents—Rent payable partly in kind and partly in cash—Liability on failure*—Res judicata.

A *Patta* was granted fixing Rs. 6 as the annual cash rent and a certain quantity of paddy whose price was Rs. 11-8-0 as paddy rent, in all Rs. 17-8-0. *Held*, that the tenant had no option under the *patta* to pay the amount mentioned therein, and there is no universal rule that if paddy is not delivered, the tenant has the right to pay the amount mentioned as the then market value of paddy. 37 C. 626, Foll. (*Fletcher and Newbould, JJ.*) SARAT CHANDRA ROY *v.* ABBAS ALI. **41 I. C. 833.**

———*Rent—Amount of—Cash and kind—Construction of Kabuliyat.*

A term in a *'barge kabuliyat'* that the landlord would be competent to realise Rs. 40 in case of non-payment of half the crops does not prevent a landlord from recovering the value of the half the crops raised on the land. (*Chatterjee and Newbould, JJ.*) KALIKANTA DAS *v.* MOHESH CHANDRA KANTA. **40 I. C. 836.**

———*Rent—Amount of—Evidence.*

Though there is no admission by the deft. that the amount of rent is payable to the plff. the statement that a certain sum is payable to the Shikmi Talukdar as rent is evidence of what would be a fair sum to allow for use and occupation. (*Macpherson and Banerjee, JJ.*) KALI CHANDRA *v.* RAM HARI DEV. **12 I. C. 462=15 C.L J. 310.**

Rent—Apportionment.

———*Rent—Apportionment—Consent of landlord—Conduct of agent.*

Where after the death of the original recorded tenant of a holding at a rental of Rs. 22, it was found that for a series of years the agents of the landlord had given four rent receipts each for Rs. 5-8-0 in favour of the heirs of the original tenant, *held* that the receipts were sufficient evidence in writing, of the consent of the landlord's agents to the division of the holding and if the landlord alleged that the agents had no authority to consent to a division of the holding, the *onus* lay on him to prove the allegation. 25 C. 531 foll. (*Teunon and Newbould, JJ.*) AKHOY KUMAR GOUS *v.* ERADATULLA KAZI. **64 I.C. 883.**

———*Rent—Apportionment—Joint landlords.*

One of the joint landlords is not entitled to claim as a matter of right, what he estimates to be his proportionate share of the rent from the tenant unless the rent is apportioned by an amicable arrangement between all the landlords or by a decree. Joint landlords cannot collect at their choice rent in separate shares even after giving due notice to the tenants of their separate demands. (*Mookerjee and Beachcroft, JJ.*) SATYESH CHANDRA SARKAR *v.* JILLAR RAHMAN. **45 I. C. 721=27 C. L. J. 438.**

LANDLORD AND TENANT—Rent—Apportionment.

———*Rent—Apportionment*—Onus.

In a rent suit the tenant can set up a title paramount to that of his lessor as an answer; and if evicted from part of the land an apportionment of the rent may take place but the lessor must show what is the fair rent of the lands but of which the tenant was evicted. 12 W. R. 109, ref. (*Mookerjee and Beachcroft, JJ.*) SURENDRA NARAIN ROY CHOWDHURY *v.* DINA NATH BASU. **36 I. C. 33=43 Cal. 554.**

———*Rent—Apportionment—Sale of share of tenure.*

A sale of a share in an estate let out to a tenant in its entirety does not effect a severance of tenancy or an apportionment of the rent. A purchaser can bring a suit for that purpose if it cannot be settled amicably. 5 C. 902 rel. (*D. Chatterjee and N. R. Chatterjee, JJ.*) SHYAMA CHARAN DAS *v.* JOGESH CHANDRA ROY. **14 I. C. 292=16 C. W. N. 774.**

———*Rent — Apportionment — Co-sharer's tenants—Liability of Jodi to Zemindars.*

In a village held by *Agraharamdars*, they are jointly and severally liable to the *Zemindar* to pay the whole of jodi due on the entire village. Agreements amongst themselves to enjoy in shares and to pay *Jodi* proportionately is not binding on the landlord unless he consents to it. (*Spencer and Krishnan, JJ.*) SINGARAJU VENKATASUBRAMANIAN *v.* RAJAH OF VENKATAGIRI. **56 I. C. 552=11 L. W. 523.**

———*Rent—Apportionment.*

Suit by a landlord for rent apportioning it among the joint owners is not maintainable unless all joint owners are made parties. (*Jwala Prasad and Adami, JJ.*) UDHAB CHANDRA SINGH *v.* NARAIN MANJHI. **58 I. C. 186.**

———*Rent — Apportionment — Division of holdings—Landlord's consent.*

In order that a tenant should succeed upon a plea that there has been a division of holdings and distribution of rent thereof, he must establish that the division was made either with the express consent in writing of the landlord or with the express consent in writing of his agent duly authorised in that behalf. The consent of the landlord will be presumed if there is proved to have been made in the landlord's rent roll any entry that the holdings have been divided or that the rent payable in respect thereof has been distributed. (*Das, J.*) JUTHAN LAL *v.* RAMDAT SINGH. **51 I.C. 996.**

LANDLORD AND TENANT—Rent—Charge.

Rent—Charge.

———*Rent—Charge — Kabuliyat executed but no patta—Mortgage executed by lessee to secure rent.*

Where the lessee executed a *kabuliyat* and a hypothecation bond to secure payment of rent to the lessor it was held that the hypothecation bond could be sued on, though no *patta* was given to the lessee. (*Richards, C. J. and Banerjee, J.*) SRIKRISHAN DAS *v.* YAKUB KHAN. **35 All. 505=21 I. C. 456=11 A. L. J. 769.**

———*Rent—Charge—Decree—Putni tenure—Rents, if first charge.*

The rent payable to a *Zemindar* by the *putnidar* in respect of which a decree has already been obtained is a first charge on the tenure. (*Mookerjee and Beachcroft, JJ.*) BESANT KUMAR BOSE *v.* KHULNA LOAN COMPANY **20 C. L. J. 1=26 I. C. 197=19 C. W. N. 1001.**

———*Rent—Charge—Seizure of goods in lieu of, is illegal.*

Where a landlord seizes or detains the goods of his tenant, because some rent is due but not paid he acts illegally and is liable for the loss caused to the tenant by the illegal seizure. He has no lien on the goods. (*Jwala Prasad, A C. J. and Das, J.*) BANSIDAR MARWARI *v.* ANAND DAS. **63 I. C. 44.**

Rent—Damages.

———*Rent—Damages—Money left with tenant for payment to superior landlord—Default.*

In an adjustment of accounts between plff. and his tenant a certain sum was left with tenant for payment to the superior landlord on account of rent payable by plff. On failure of the deft. to pay the superior landlord recovered the money from plff. who subsequently brought a suit to recover the amount so paid for the deft. *Held*, a claim for the recovery of such amount is one for damages and not for rent. (*N. R. Chatterjee and Walmsley, JJ.*) LACHMI MISER *v.* DEOKI KUAR. **19 I. C. 752=19 C. W. N. 174.**

———*Rent—Damages.*

In a suit for rent, where an alternative claim is not made for use and occupation, no sum can be decreed for use and occupancy. (*Jenkins, C. J. and Chatterjee, J.*) BHUKHI KOERI *v.* RAM KHELWAN PRASAD. **17 I. C. 646=17 C. W. N. 311.**

———*Rent—Damages—Invalid lease—Duty of lessee to account for mesne profits.*

A lessee under a lease which is found to be invalid is bound to account for the mesne profits of properties in his possession under the lease. (*Benson and Sundra Aiyar, JJ.*) DAKSHINAMURTI PILLAI *v.* SUBBU IYER. **11 I. C. 381=(1911) 1 M. W. N. 370.**

———*Rent—Damages.*

When there is oppression by the landlord which prevents the tenant from cultivating the land, then not only would there be a suspension of rent during these years of oppression, but the tenant would clearly be entitled to damages from the landlord. (*Das and Bucknill, JJ.*) GOBIND LAL SIJUAR *v.* RAM SARAN LAL. **68 I. C. 433=2 P. L. T. 642.**

LANDLORD AND TENANT—Rent—Decree.

Rent—Decree.

———*Rent—Decree against some of the heirs of a tenant—Execution sale.*

On the death of a tenure holder, if a decree is obtained for rent against some of the heirs the interest of those heirs that are not parties to the decree will not be affected either by the decree or by the sale under that decree. 26 C. W. N. 138. (*Suhrawardy and Cuming, JJ.*) ABDUL GANI *v.* NARENDRA KISHORE ROY. **65 I. C. 592.**

———*Rent—Decree—Form of.*

In a suit for arrears of rent a decree must be passed in the ordinary manner. There should no limitation that it should not be executed against the judgment-debtor personally but only against the holding. (*Fletcher and Huda, JJ.*) DWARKA NATH DEY *v.* SAILYA KANTA MULLICK. **45 I. C. 702.**

———*Rent — Decree—Representative of deceased tenant not brought on record.*

Plff. landlord sued six persons as tenants for rent but three of them died before decree, and their legal representatives were not brought on record. *Held*, that the decree was not a nullity but could be executed as a money decree against the judgment-debtors who were living at the date of the decree. (*Chatterjee and Richardson, JJ.*) KRISHNA DAS ROY *v.* KALI TARA CHAWDHURANI. **44 I. C. 80=22 C W. N. 289.**

———*Rent—Decree—Execution—Plff. not landlord.*

Where a person institutes a suit for arrears of rent and obtains a decree, at a time when the landlord's interest is not vested in him by reason of an execution sale thereof, he can execute the decree as a rent decree after the restoration of his status as landlord after the cancellation of the execution sale. 33 C. 566 Foll. (*Woodroffe and Cuming, JJ.*) MANINDRA NATH GHOSE *v.* ASHUTOSH GHOSE. **25 C. L. J. 626=41 I. C. 525=21 C. W. N. 1132.**

———*Rent—Decree for—Rent sale—Rights of purchaser—Rent decree executed as money decree.*

Where different holdings are included in one rent decree, the decree is to be executed only as a money decree. Nothing but the right, title and interest of the judgment-debtor in the holdings can pass to a purchaser on sale of the holdings in execution of the decree. (*Holmwood and Mullick, JJ.*) CHUNI AHIR *v.* KHEMCHAND DUSADH. **27 I. C. 810.**

———*Rent—Decree—Co-sharer landlord—Sale of interest of judgment-debtors what passes.*

A sale of the right etc. of the judgment-debtors in execution of a decree obtained by a co-sharer landlord, may in certain cases pass

LANDLORD AND TENANT—Rent—Decree.

the entire tenancy. (*Mookerjee and Beachcroft, JJ.*) SATYA BHUSHAN BANDOPADHYAYA *v.* KRISHNAKALI BANDOPADHYAYA.
18 C. W. N. 1308=24 I. C. 259=20 C. L. J. 196.

———*Rent—Decree—Execution— Mortgage decree against darpatni tenant—Landlord purchasing property in execution of the decree—Prior rent decree—Whether other property could be proceeded against.*

A landlord, who had purchased a property in execution of a mortgage decree obtained by him against his *darpatnidar*, subject to encumbrances can execute a prior rent decree obtained by him against the *darpatnidar*, in respect of the same property against his other properties (*Imam and Chapman, JJ.*) GOPAL LAL ROY *v.* SHILEN IRAHANSINI CHODHURANI.
23 I. C. 393.

———*Rent—Decree—Rent sale—Purchase by landlord—Mortgagee of holding purchasing—Redemption.*

The entire holding including the mortgagee's interest passed by the rent decree and so the mortgagee purchaser of the holding in execution of the decree cannot claim priority over the landlord—the rent decree-holder—and could not claim to reclaim him. (*Chatterjee and Walmsley, JJ.*) KAPIL RAI *v.* SHEO BARAN RAI. **21 I. C. 126.**

———*Rent—Decree—Transferee of portion of taluq—Decree for rent against original tenure holder only—Transferee, if affected.*

A sale in execution of a decree for arrears of rent against the transferor or one of the tenants only cannot affect the right of the transferee or the other tenants respectively. (*Mookerjee and Mullick, JJ.*) BUDYAR RAHMAN *v.* MATIAR RAHMAN. **21 I.C. 47=18 C.L.J. 271.**

———*Rent—Decree—Execution—Suit for rent of several tenures—Execution of decree—Special procedure in Bengal Tenancy Act, if applicable.*

A landlord can bring a suit for arrears of rent of several tenures held by the same tenant but in execution of the decree obtained in the suit, the provisions of the C. P. C. for execution of an ordinary decree ought to be applied and not the special procedure of the Bengal Tenancy Act. (*Jenkins, C. J. and Chatterjee, J.*) RASH MOHINI DASI *v.* DEBENDRA NATH SINGH ROY.
13 I. C. 604=16 C. W. N. 395.

———*Rent—Decree for share of rent by co-sharer landlord—Sale whether irregular or void—Legality of transaction.*

A non-transferable occupancy holding cannot be sold at the instance of a landlord who has obtained a decree for rent for his share only. But sale held is not necessarily a nullity but is merely irregular and till the sale has been successfully impeached by appropriate proceedings in execution, it must be treated as a valid sale and cannot be set aside by a separate suit. (*Mookerjee and Coxe, JJ.*) KHODA BAKSH v. SADER PRAMANIK.
10 I. C. 417=15 C. L. J. 620.

LANDLORD AND TENANT—Rent—Decree.

———*Rent—Decree for—Purchase in execution sale—Subsequent sale—Validity of—Estoppel.*

It is settled that after a holding has been once sold in execution of a rent decree and has passed out of the possession of the tenant it cannot ordinarily be again sold in execution of any other decree for rent due by the same tenant. An exception, however, has been made in cases where execution Court, though irregularly allows the holding to be sold subject to a liability to satisfy another outstanding decree; in such cases the auction-purchaser is concluded by *res judicata* and the landlord is competent to proceed in the first instance against the holding and to call upon the auction-purchaser to discharge the liability which he has undertaken. But that principle has no application where the decree-holder is himself the purchaser. The judgment-debtor cannot resist the attachment of his other properties if after the sale the decree holder had changed his mind. The law gives the decree-holder an option and there is no question of estoppel. In order to create an estoppel the representation must be a statement of fact and not of a proposition of law. (*Mullick and Macpherson, JJ.*) JUGALKISHORE NARAYAN SINGH *v.* BHATU MODI.
(1923) Pat 205=2 P. 720=1 P. L. R. 311=4 P. L. T. 640=1923 P. 517.

———*Rent—Decree—Death of some tenants prior to suit—Notice—Effect of decree.*

Where a landlord obtains an *ex parte* decree against a number of tenants for rent and in execution it is objected that some of the tenants were dead long before the suit, but it was proved the heirs of the deceased tenant never got themselves recorded in the landlord's registers, and the landlord had no notice of the death, the liability of the tenure for arrears of rent is not affected and the decree is valid. (*Mullick and Bucknill, JJ.*) BHAYA JAGDEO NATH SAH DEO *v.* PRATAP UDAI NATH SAH DEO. **(1923) Pat. 374=1924. P. 339.**

———*Rent—Decree—Execution of—Whether landlord must proceed against the holding.*

A landlord who obtains a rent-decree against a tenant is not bound to proceed in the first instance against the holding nor is he precluded from proceeding against properties of the tenant other than the holding. (*Das and Ross, JJ.*) MAHARAJAH KESHO PROSAD SINGH *v.* PARANJOTA KOER.
6 Pat. L. J. 354=62 I. C. 632=2 Pat. L. T. 603.

———*Rent—Decree—Co-sharer landlord—Suit by.*

A decree for rent obtained by a co-sharer landlord cannot operate as rent decree and does not affect the position of the purchaser of the holding previous to the decree. (*Das, J.*) RAMDEHAL LAL SINGH *v.* JOGINDRA PRASAD SINGH. **57 I. C. 289=2 U. P. L. R. (Pat.) 158.**

LANDLORD AND TENANT—Rent—Decree.

——*Rent—Decree—Suit by some co-sharers—Effect of.*

If a co-sharer sues to recover his share of the rent of more holdings than one without joining his other co-sharers as parties, the decree obtained by him in such a suit is a money decree and not a rent decree. (*Atkinson, J.*) SHEIKH ABDUL AZIZ *v.* BIBI TANHIDUNISSA. **52 I.C. 380.**

——*Rent—Decree—Against one of several tenants—Money decree.*

Where a landlord gets a decree against one out of several joint tenants who have all been recorded in the Survey *Khatian*, the decree will be only a money decree and not a rent decree. The joint tenants, who are no parties to the decree can maintain a suit for execution of the holding from sale, they being not bound under it. (*Roe and Imam, JJ.*) DEYANAND LAL *v.* MAHARAJAH KESHEO PRASAD SINGH. **43 I.C. 748=4 P.L.W. 37.**

——*Rent—Decree—Execution—Right of landlord to choose, manner of.*

A Court cannot direct in what manner the landlord shall execute a decree for rent nor can he be compelled to proceed first against the holding and then against the person of the tenant. (*Mullick, J.*) KESHO PRASAD SINHA BAHADUR *v.* LALJI RAY. **35 I. C. 535=1 P. L.J. 138.**

Rent—Deduction.

——*Rent—Deduction—of Cesses—Payment by darpatnidar to superior landlord of patnidar.*

Money payable to the superior landlord of the *patnidar* by a *darpatnidar* is rent and the money which the *darpatnidar* paid into the Collectorate as revenue and cesses on behalf of the superior landlord by his direction could not be disallowed as a voluntary payment, and the *darpatnidar* should get credit for the same in respect of the rent payable by him. (*Woodroffe and Smither, JJ.*) NAGENDRA BALA DASSY *v.* AMRITA LAL CHATTOPADHYA. **47 I.C. 753.**

——*Rent—Deduction — Boundaries and extent—Claim to abatement—Failure to deliver possession of part.*

Where in a lease the extent of the lands did not form an item of consideration at all in fixing the rent, but the lands were merely leased as villages for which a certain sum of money was to be paid as rent, the tenant cannot claim an abatement in the rent on the ground that the lands on measurement proved to be smaller in area. Where the landlord fails to deliver possession of part of the lands demised, the tenant is only entitled to a remission of rent and not to refuse to pay any rent at all or to throw upon the landlord the burden of proving what rent was payable to him. (*Krishnan and Ramesam, JJ.*) UPPALAPATI SURYANARAYANA RAJU *v.* BRUNDAVANACHANDRA. **17 L.W. 96=(1923) M.W.N. 189=1923 Mad. 459.**

——*Rent—Deduction—Landlord's failure to repair—Tenant's right to deduct from rents.*

LANDLORD AND TENANT—Rent—Enhancement of.

If a landlord fails to repair according to terms of the lease, and the tenant is thereby put to loss and inconvenience, the latter can deduct from the rent a reasonable amount for the loss and inconvenience (*Shahdin and Beadon, JJ.*) NIADER MAL *v.* BORRORAH AND Co. **5 P.W.R. 1914=23 I.C. 358=26 P.L.R. 1914.**

——*Rent—Deductions—Patnidar and darpatnidar.*

A *darpatnidar* paying rent to the superior landlord, can deduct the amount from the rent payable to the *Patnidar*. (*Das and Adami, JJ.*) MAHOMED IRFAN *v.* KALIKA NAND SINGH. **58 I.C. 495=2 U.P.L.R. (Pat.) 47.**

Rent—Determination.

——*Rent — Determination of — Suit for possession—Determination of fair rent.*

Where, in a suit for possession the decree provided for payment of a fair rent to the landlord, that fair rent must be determined by the Court in the suit itself but not in execution proceedings. (*Woodroffe and Carnduff, JJ.*) TARAN CHANDRA *v.* CANENDRA NATH. **11 I.C. 30=16 C.W.N. 235.**

——*Rent— Determination — Termination before expiry—Remedy of lessor.*

When there is a termination before expiry plff. lessor should be required to give credit for the advance made by the lessee which in the ordinary course he would have been required to do if the term of the lease had run its full course. A lessor cannot insist on an exact proportion apart from all considerations. (*Leslie Jones and Wilberforce. JJ.*) KIRPA RAM *v.* KASHMIR STATE. **3 Lah. L.J. 120.**

——*Rent—Determination—Commutation—Deterioration in irrigation system—Refusal of relief.*

Where the tenant would not be able to maintain in proper order an elaborate and extensive system of irrigation works on which the cultivation of the lands depended, the collector exercises a wise and proper discretion in refusing to grant applications for commutation. (*Maude, M. C.*) BULAKI MAHTON, *In re.* **1 P. L. R. 106 (Rev.)**

Rent—Discharge.

——*Rent—Discharge — Plea of payment to intervenor.*

A plea of payment to an intervenor, in a suit for rent, will not hold good where the plff. proves that up to the date of the alleged payment to the intervenor, he had actually been, in good faith, in receipt of it. (*Kanhaiya Lal, A.J.C.*) NIDHA *v.* RAMPRASAD. **46 I.C. 6=5 O.L.J. 176.**

Rent—Enhancement of.

——*Rent — Enhancement of — Permanent holding—Right to be given by statute.*

In the case of permanent tenancy, the landlord has no right to sue for enhancement of the rent, unless the right is given by statute

LANDLORD AND TENANT—Rent—Enhancement of.

(*Lord Dunedin*) AFZAL UNNISSA *v.* ABDUL-KHAN. **47 Cal. 1=81 P. R. 1919=46 I.A. 1=13 Bur. L.T. 1=11 L.W. 176=17 A.L.J. 608=36 M.L.J. 580=26 P.W.R. 1919=1 U.P.L.R (P.C.) 47=26 M.L.T. 55=23 C.W.N. 966=(1919) M.W.N. 494=30 C.L.J. 152=50 I.C. 749=21 Bom. L. R. 891(P.C.)**
[On appeal from 121 P.R. 1912=209 P.L.R. 1912=17 I.C. 208=197 P.W.R. 1912.]

——— *Rent—Enhancement—Non-transferable occupancy holding.*

Where land is non-transferable and therefore the defendant is an occupancy ryot consequently the rent payable by him cannot be enhanced. (*Harrington and Mookerjee, JJ.*) SARAT CHANDRA GHOSE v. SHAM CHAND SINGH ROY. **16 A.L.J. 71=14 I.C. 701=39 C. 663.**

——— *Rent — Enhancement — Contract — Diara Act and Bengal Tenancy Act.*

If there is a contract between the parties that rent should be payable at a certain rate, *prima facie* that is binding. Such a contract cannot be affected by the settlement of rent under the Diara Act. But if there was a settlement of rent under Chap X of the Bengal Tenancy Act, the tenant is liable to pay the same. (*Chatterjee and Suhrawardy, JJ.*) AMBICA CHARAN SEN *v.* GIRISH CHANDRA SEN. **68 I.C. 719.**

——— *Rent — Enhancement—Occupation of more land than assessed.*

In estimating whether the landlord should claim more rent on the ground that the tenant is in occupation of more land than that for which he paid rent till then, the Court will consider whether land has been added by encroachment, accretion or the like or whether the rent was assessed at a consolidated sum for the entire land in possession or whether the rent was assessed on an area fixed by estimate or determined by measurement. The claim would succeed if the rent was not fixed at a consolidated sum. (*Mookerjee, A. C. J. and Fletcher, J.*) DURGA PRIYA *v.* HAZRA GAIN. **62 I. C. 453=25 C.W.N. 204.**

——— *Rent—Enhancement — Naming a sum certain in grant.*

Where the *Jama* is ordinarily variable the naming of a sum certain in the grant of a descendible tenure, does not imply fixity of the sum, unless there are positive words or other evidence to express such an intent. (*Chatterjee and Newbould, JJ.*). BISESWAR ROY *v.* BROJO KANTA ROY. **62 I.C. 49=33 C.L.J. 296.**

——— *Rent—Enhancement — Kabuliat providing for.*

Where a *Kabuliat* provides for increased rent on the measurement of the land leased, the increased rent can be claimed only from the date of measurement but not before. (*Mukerji, A. C. J. and Fletcher, J.*). JATINDRA NATH CHOWDHARY *v.* AJUDHYA NANDI. **60 I. C. 743.**

LANDLORD AND TENANT—Rent—Enhancement of.

——— *Rent—Enhancement of—Permanent tenancy—Patni taluk—Evidence of conduct.*

Unless the landlord is precluded from the exercise of the right of enhancing rent by a contract binding on him, or the lands in question can be brought within one of the exemptions recognized by Bengal Reg. VIII of 1793, he may be presumed to have the right of enhancing rents. The mere fact that a tenure is hereditary does not show that the rent of the tenure has been fixed in perpetuity. In the present case although there were expressions which showed that the tenure was *Maurashi* there was nothing to show it was intended to be *Makurari*. 47 Cal. 280, dist. (*Mookerjee, C. J. and Fletcher, J.*) NIROD CHANDRA SINGH *v.* HARIHAR CHAKRABHARTHY. **24 C.W.N. 874=58 I. C 867=32 C.L J. 19.**

——— *Rent—Enhancement of—Presumption.*

Where in a suit for additional rent for additional area, it was found that the standard of measurement set up by plff. was inconsistent with the *Kabuliyat* which formed the basis of the suit. *Held*, that the present standard of measurement could not be presumed to be the standard at the time the tenancy was created. (*Chatterjee and Panton, JJ.*) MADHABI SUNDARI DASYA *v.* SYAMA CHARAN BISWAS. **56 I. C. 748=31 C.L.J. 202.**

——— *Rent—Enhancement of—Right to—Title by adverse possession.*

Where the rent of tenancy can be legally enhanced an assertion by the tenant that his rent cannot be enhanced not followed within twelve years by a suit for enhancement does not confer on the tenant a right to hold the land at a permanent rent. (*Sanderson, C J. and Teunon, J.*) MAHARAJA BIRENDRA KRISHORE MANIKYA BAHADUR *v.* MUNSHI MAHOMAD DOULAT KHAN. **43 I.C. 59=22 C.W.N. 856.**

——— *Rent—Enhancement—Construction of kabuliyat.*

Under a *kabuliyat* to be in force for 3 years, it appeared that the rent fixed was a certain amount but the landlord allowed a certain amount to be held in abeyance for 3 years and for those 3 years, year by year a certain amount was to be paid by the defendant according to the instalments. In a suit by landlord for arrears *held*, that the plaintiff did not sue for enhancement. (*O'Kinealy and Pratt, JJ.*) ROMESH CHANDRA BISWAS *v.* GHULAM NABI FAKIR. **29 I. C. 807=19 C. W.N. 867.**

——— *Rent—Enhancement of—Right to enhancement.*

Variableness of rent is the normal condition and even the naming of a sum is not conclusive against this. Each case of enhanceability of rent is to be judged by its own circumstances. Where no sufficient ground is found for excluding the normal conditions of variableness, the rent is enhancible. Where there is a document defining the rights of the parties, regard must be had to the term; else the conduct of the party,

LANDLORD AND TENANT—Rent—Enhancement of.

especially if it extends over a long time, determines the terms of the tenancy. (*Jenkins, C. J. and N. R. Chatterjee, J.*) ANATH NATH MITRA *v.* MIDNAPORE ZEMINDARY CO. **29 I. C. 802.**

———*Rent—Enhancement of—A Jamabandi—Signature of tenant—Effect.*

The fact that the Jamabandi is signed by the tenant is not enough to show that he assented to the enhanced rent. (*Jenkins, C. J. and Mullick, J.*) ISHUR CHANDRA SARKAR *v.* TROYLOKYA NATH SINGHA. **19 I. C. 675=17 C. W. N. 865.**

———*Rent—Enhancement—Continuance of tenancy.*

The landlord may terminate a lease if he is entitled to do so and may thereafter settle the land at a higher rent or refuse to let the tenant continue to hold the land unless he agrees to pay more. (*Coxe, J.*) MANINDRA CHANDRA NANDI *v.* JAGUNATH KHAN. **14 I. C. 229.**

———*Rent—Enhancement.*

During the continuance of the tenancy the landlord cannot get more than the tenant has contracted to pay. (*Coxe, J.*) MANINDRA CHANDRA NANDI *v.* JAGUNATH KHAN. **14 I. C. 229.**

———*Rent—Enhancement of—Rent not to be raised as long as tenant kept property—Tenancy not a permanent tenancy.*

The deft. offered to take certain shops from the plff. who himself was a lessee for twenty years on condition that the rent should not be raised so long as he kept them ; plff. agreed to rent the shops on the proposed rent per month to be paid regularly monthly. In a suit for ejectment deft. pleaded that he was entitled to keep the shops as long as he liked. The principle of S. 105, Transfer of Property Act, applied to the case and the Courts should presume that the tenancy was from month to month. The plff. had the right to eject the deft. after serving a valid notice. (*Shah Din and Scott Smith, JJ.*) JAMSETJI BOJA *v.* DUNI CHAND. **180 P. L. R. 1913=19 I. C. 493=120 P. W. R. 1913.**

———*Rent — Enhancement — Additional rent—Double crops.*

A Zamindar can claim additional rent for the second crop raised in the wet lands with the help of irrigation belonging to the Zemindari, unless there is established custom or express or implied contract to the contrary, the burden of proving which lies on the tenant. (*Wallis, C. J., and Sadasiva Aiyar, J.*) MIDNAPORE ZEMINDARI CO. *v.* MUTHAIPUDAYAN. **44 Mad. 534=40 M. L. J. 213=29 M. L. T. 185=62 I. C. 337=13 L. W. 387.**

———*Rent — Enhancement of — Change from money rent to grain or* vice versa.

Change from grain to money rent or *vice versa* may be treated as an enhancement when the circumstances of the case and the evidence adduced admit of that being done. 23 C. L. J. 636 Ref. (*Oldfield and Seshagiri Iyer, JJ.*)

LANDLORD AND TENANT—Rent—Excess area.

PERICHERLA BUTCHIRAJU *v.* ADDEPALLI VENKATA MANGA SEETARAMAYYA. **59 I. C. 258=12 L.W. 86.**

———*Rent — Enhancement of — Notice of higher rent—Estoppel.*

A landlord not having given any notice demanding higher rent on wet crops cultivated, is estopped from claiming it as, if the notice were given, the tenant might have elected to raise dry crops only. (*Ayling, J.*) RALLAHAMDI SUKHIA *v.* VENKATARAMAIAH APPA RAO. **23 I. C. 619=26 M. L. J. 217.**

———*Rent—Enhancement—Waram—Rate.*

Where a landlord claims to be entitled to revert to *waram* rate (division of produce), a contract to pay higher rate in settlement of that claim would be supported by consideration. (*Sankaran Nair and Tyabji, JJ.*) SITHARAMRAZU LINGARAZU *v.* VENKATADRI APPA ROW. **21. I. C. 36.=(1913) M. W. N. 645.**

———*Rent—Enhancement—Rate of—Garden rates—Evidence of payment.*

Where it is proved in a suit for rent by a landlord that the landlords had been receiving garden rates for at least 28 years before suit and there is no evidence of payment of a lesser rate prior to it : *Held*, that this was not a case of enhancement of rent and that the landlord was entitled to the garden rates. 21 Mad. 136 ; 5. I. C. 911 ; 28 Mad. 444. Dist. (*Sankaran Nair and Ayling, JJ.*) ZEMINDAR OF CHITTEDU *v.* PALETI PEDDA NARAYANAPPA NAYUDU. **14 I. C. 563=23 M.L.J. 59.**

———*Rent—Enhancement of—Contract to pay enhanced rent—Consideration.*

If the consideration for a contract to pay enhanced rent by a tenant to his landlord is the settlement of disputes as to the rate of rent and the abandonment of still higher claims by the landlord, the contract is valid and enforceable. (*Ayling and Spencer, JJ.*) VEMURY BRAMAYYA *v.* MALLIKARJUNA PRASAD. **11 I. C. 699.**

———*Rent—Enhancement — Resumption — Principles underlying.*

The principle underlying resumption or assessment is that the State is entitled to a certain share of the produce of the land which in modern times has been transmuted into cash. Similarly the owner of the land is entitled to recoup himself from the occupier or actual cultivator. (*Stuart and Kanhaiya Lal, A. J. Cs.*) SHANKAR SAHI *v.* GAJADHAR PRASAD. **40 I. C. 200=20 O. C. 171=4 O. L. J. 409.**

Rent—Excess area.

———*Rent—Excess area—Tenant in possession of more lands than first let out—Rent for excess land—When landlord entitled.*

A landlord is entitled to rent for any excess land within the boundaries that the tenant is found to be in possession of over that first let out to him if there is an express stipulation in the *kabuliyat*, to the effect. Where rent in respect of a homestead is not a fixed one and

LANDLORD AND TENANT—Rent—Excess area.

the rent actually paid is inadequate, the landlord is entitled to demand reasonable rent and if the tenant refuses to pay it, he can be ejected. A landlord is not entitled to enhanced rent on the ground that a higher rent, than that stated in the *kabuliyat* is prevalent in adjoining lands. (*Chatterjee and Beachcroft, JJ.*) JADU NATH DAS v. MUNINDRA CHANDRA NANDI. **23 I. C. 967.**

———*Rent—Excess area—Claim for additional rent—Proof of use of excess land.*

In order that a landlord may be able to claim additional rent in respect of excess land used, he must prove that the tenants are in possession of lands for which they pay no rent. (*Mookerjee and Beachcroft, JJ.*) LACHMI PROSAD CHOWDHURY v. JAGMOHAN LAL CHAUBEY. **22 I.C. 594=18 C.L.J. 633.**

Rent—Favourable rent.

———*Rent—Favourable rent—Low rent—No bar to ejectment by notice*—Shankalap *plot held as—Inclusion of, in notice.*

A rent extremely low is not necessarily favourable unless it does not exceed the revenue and cesses and mere holding under a favourable rent does not protect a tenant from ejectment. A notice of ejectment issued in respect of lands held at a lump rent, some of which are found to be entered in *Shankalap nama* holds good as regards other plots also. (*Baillie, S. M. and Tweedy, J. M.*) SPECIAL MANAGER OF COURT OF WARDS *v.* SURAJ BALI. **24 I.C. 778=1 O.L.J. 236.**

Rent—Fixity of.

———*Rent—Fixity of—Presumption.*

Where a tenure is heritable, permanent and transferable, there is a presumption of fixity of rent and the *onus* is on the landlord to show his right to enhance the rent. (*Mr. Ameer Ali.*) PORT CANNING AND LAND IMPROVEMENT CO., LTD. *v.* KATYANI DEBI. **47 Cal. 280= 22 Bom. L. R. 437=32 C. L. J. 1= 27 M. L. T. 195=46 I.A. 279= 37 M.L.J. 578=17 A.L.J. 1061= 1 U.P.L.R. (P.C.) 91=(1920) M.W.N. 160= 53 I.C. 822=24 C.W.N. 369=11 L.W. 296 (P.C.). [Affirming 25 I.C. 274=19 C.W.N. 56.]**

———*Rent—Fixity of—'Kaimi' Pattah—Onus of proof.*

The burden of proving that a *kaimi tenure* is a tenure at a fixed rent is on the tenant who holds the tenure. The burden can, however, be discharged by the terms of the *kabuliyat* and the evidence of enjoyment at an unvaried rent. 32 Cal 51 (P. C.); 13 W. R. 11; 11 W. R. (P. C.) 10, Ref. to. (*Richardson and Newbould, JJ.*) PURNACHANDRA GHOSE *v.* COLLECTOR OF KHULNA. **20 I. C. 255.**

———*Rent—Fixity*—Ante ezara *tenant.*

The claim to hold as an *ante ezara* tenant means that the landlord has no right to enhance the rent. (*Mitra, O. A. J. C.*) BHIVAJI *v.* TUKARAM. **39 I. C. 15= 13 N. L. R. 11.**

Rent—Implied contract.

———*Rent—Implied contract*—Vanpayar *on nanja land.*

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Where a tenant has raised *vanpayar* crop on *nanja* lands in respect of which he had executed a *muchilika* agreeing to pay *waram*, the presumption is that they agreed to pay *nanja* rates. The onus is on the tenant to show that the obligation to pay nanja rates was put an end to by a contract between the parties. (*Sundara Aiyer and Sadasiva Aiyer, JJ.*) SITARAMA AIYER *v.* EDWARDS SNEADE BOYED STEVENSON. **16 I. C. 609.**

———*Rent—Implied contract—Commutation.*

When it appeared that money rent at fixed rate had been substituted by the Collector in 1815 for *waram* in respect of *punja* lands, the Court should hold an implied contract to pay rent at same rate for future years. (*Boddam and Sankaran Nair, JJ.*) NAGU NATH *v.* BHASKARA SETHUPATHI. **(1911) 1 M. W. N. 6=9 I. C. 41= 9 M. L. T. 191.**

Rent—Interest.

———*Rent—Interest.—Appropriation.*

Rent does not include interest, due on arrears of rent. The landlord cannot appropriate payments made for rent towards interest due on the arrears of rent. (*Fletcher and Beachcroft, JJ.*) MANILAL SEAL *v.* BHOLANATHA BASU. **50 I. C. 975.**

———*Rent—Interest on.*

A landlord is entitled to interest at the contract rate on the sum decreed as rent although the rate is very high. (*Chitty and Teunon, JJ.*) ASHUTOSH DHAR *v.* JOY LAL SARDAR. **18 I. C. 621=17 C. L. J. 50.**

Rent—Jodi.

———*Rent — Jodi—Inamdar—Liability of tenant to pay.*

Lands in alienated villages not in the actual possession of *inamdars* and falling under the calculation of Government *jodi*, are liable in turn to pay customary rent on the assumption that there has been no survey, assessment or contractual rent agreed upon the *inamdars* who are liable to Government for the *jodi*. (*Beaman and Heaton, JJ.*) GANESH VINAYAK JOSHI *v.* SITABAI NARAYAN JOSHI. **38 I. C. 54=41 Bom. 159= 18 Bom. L. R. 950.**

Rent—Liability.

———*Rent—Liability—Possession not given—Remedy of lessee.*

Where a lessee of an agricultural land is not given possession of a portion of the demised land it is open to him to sue in the Civil Court for damages for breach of contract but there is no possible method by which he can obtain a reduction from his lease money from the Rent Court. The Rent Court can certainly not award him damages. It is not a question of set off because a set off must be for an ascertained sum. (*Stuart, J.*) MUHAMMAD ALTAF ALI KHAN *v.* RANI PHOOL KUNWARI. **1923 All. 367 (1).**

LANDLORD AND TENANT—Rent—Liability.

———*Rent—Liability of heirs of lessee.*

Assuming that the liability of the heirs of each tenant is a joint one, a suit for the entire rent can be maintained if all the heirs of one of several joint tenants are made parties.

27 C. W. N. 521=1923 Cal. 615.

———*Rent—Liability to pay—Wife paying for husband—Rent obtained from wife not in possession.*

Where the defendant is not in possession of some lands for which she is paying rent by reason of the claim by her husband, *held* she cannot be called on to pay rent for the lands of which she has no possession. (*Woodroffe and Cuming, JJ.*) KATYANI DEBI *v.* UDAY KUMAR DAS. **49 Cal. 257 = 1922 Cal. 343.**

———*Rent—Liability—Possession of tenant deprived.*

A tenant, who has been deprived of possession of part of the demised premises, is not liable for the whole rent for ever, and it is especially so when he is so deprived by the act of the landlord himself. (*Chatterjee and Panton, JJ.*) MESBAHUDDIN AHMED *v.* ABDUL.

65 I. C. 539=34 C. L. J. 119.

———*Rent—Liability to pay—Agreement to pay rent partly in cash and partly in kind—Position of tenant.*

Where a tenant under a *Kabuliyat* undertakes to pay rent partly in cash and partly in kind stipulating also the prices of the paddy in kind to be paid by him yearly, notwithstanding the statement as to the value of the paddy given in the deed, the tenant is not entitled to pay the named sum in lieu of the paddy and if he fails to pay the paddy, he is liable to pay damages at the rate of the value of the paddy as on date of breach But if he undertakes to pay so much paddy or a certain amount of money as rent, the tenant has the option to pay in kind or in cash. (*Fletcher and Newbould, JJ.*) BASIRUDDIN BAIDDU *v* HARI MOHAN GHOSE. **39 I. C. 720.**

———*Rent—Liability for—Extent of.*

In the absence of special stipulation for enhancement of rent, the tenant should not be compelled to pay either a fair or customary or prevailing rent or indeed any rent except that which he has covenanted to pay, where the case is not governed by the B. T. Act (*Jenkins, C. J. and Mookerjee, J.*) MAHARAJA MANINDRA CHANDRA NANDI *v.* JAGANNATH KHAN.

21 I. C. 527=18 C. L. J. 324.

———*Rent—Liability for—Shares of tenants and shares of rent payable by each shown in receipts.*

Where the rent receipts given by the landlord show the tenants in the tenure and the shares of the rent payable by each as his own share. *Held*, that the rent was distributed amongst the various tenants and that there was a sub-division of tenure with the landlord's consent. (*Jenkins, C.J. and Mookerjee, J.*) ABINASH CHANDRA CHOWDHURY *v.* PURANANDA KHAN. **21 I. C. 420=18 C. L. J. 174.**

LANDLORD AND TENANT—Rent—Liability.

———*Rent—Liability for—Transferee of holding.*

Where rent has been received from the transferee of a holding not as such but only as the agent or representative of the original tenant there is no recognition of the validity of the transfer. 15 W. R. 197, Foll. 12 C. W. N 539, Rel. 13 C. W. N. 833, Ref. In a suit for rent, the tenant alleged a transfer of holding and the transferee was added as a deft. who paid the amount of the claim to the pleader who certified payment and gave the amount to plaintiff. *Held*, that the acceptance of the sum did not amount in law to a recognition of the validity of the transfer. 6 B. L. R. 92, Appr. 2 C. W. N. 63; 7 C. W. N. 132, Foll. (*Mookerjee and Carnduff, JJ.*) DIGBIJOY ROY *v.* ATA RAHAMAN. **15 I.C. 156=17 C W N. 156.**

———*Rent—Liability for—Recognition of transfer—Subsequent suit against transferor.*

A suit brought by landlord against the old tenant after recognition of the transfer of the holding by him, is tainted by fraud. (*Mookerjee and Teunon, JJ.*) SHIB CHANDRA MOOKERJEE *v.* KRISHNA CHANDRA BASU. **9 I. C. 576.**

———*Rent—Liability—Attachment—House under lock-up.*

A tenant's property was attached and the house was locked up by the attaching officer in the execution of a decree obtained by a creditor of the landlord. *Held*, that the tenancy was not liable for the rent. (*Chevis, J.*) MRS. GROSE JONES *v.* MR. A. GUMPER.

10 I. C. 885=183 P. W. R. 1911.

———*Rent—Liability—Tenant leaving land waste is still bound to pay rent.*

A tenant is bound to pay rent for dry land if he leaves it waste through his wilful neglect. Where there is sufficient water in the tanks to raise a wet crop but the tenant raises only a dry crop, none the less he is liable to pay wet rent. (*Spencer and Ramesam, JJ.*) KOTHANDARAMA REDDYAR *v.* CHINNASAMI.

41 M L.J. 455=64 I. C 740=14 L.W. 618.

———*Rent — Liability — Tenant holding cultivated and uncultivated land.*

If a tenant holding both cultivated and uncultivated land, the latter under a grove tenure, is ejected from the cultivated portion must pay proportionate rent for the remainder. (*Kanhaiya Lal, A J. C.*) THAKURAIN GIRRAJ KUNWAR *v.* CHANDRA SEKHAR.

7 O.L.J. 657=60 I.C. 462= 2 U.P.L.R. (J.C.) 198.

———*Rent—Liability to—Land held without rent—Occupation rent—If landlord is entitled to.*

A landlord, permitting persons to hold land without rent and without there being any agreement to pay rent or a fixation of its amount, cannot claim from them a fair occupation rent. 10 I. C. 2; 9. O. C. 296; 9 O. C. 362, Dist. 33 I. C. 770. Foll. (*Stuart, J. C.*) SARABJIT SINGH *v.* RAMPUR MATHRA ESTATE.

37 I.C. 27 = 3 O.L.J. 468.

LANDLORD AND TENANT—Rent—Liability.

———*Rent—Liability for.*

The fact that a superior proprietor neglected to claim rent for some years will not estop him from claiming his right later on. (*Chamier, J.C.*) RAIPAL *v.* PRATAP. **12 I.C. 331.**

———*Rent—Liability—Malikana—Partition of the estate—Effect of.*

The claim to Malikana is a claim against the whole estate, and a partition of the estate cannot affect that right. (*Das and Adami, JJ.*) RAMESHWAR SINGH *v.* SURAJ NARAIN JHA. **6 P.L.J. 34=61 I.C. 130=2 P.L.T. 174.**

———*Rent—Liability for—Muafi land.*

Muafi is a set off against rent payable by a tenant in consideration of his service. Therefore Muafi land is liable to rent. (*Atkinson, J.*) SHEORATH UPADHYA *v.* KESHO PRASAD. **38 I.C. 368.**

———*Rent—Liability to pay—Admission by 2 out of 3 joint tenants of rate of rent—Effect.*

The admission by 2 out of 3 joint tenants of the rate of rent claimed in a rent suit against them does not amount to a promise to pay the whole of the rent themselves. (*Mullick, J.*) JOGESHWAR RAI *v.* KESHAV PRASAD. **37 I.C. 262=1 Pat. L.J. 190.**

———*Rent—Liability.*

A presumption to pay rent arises from occupation. (*Ormond, J.*) YOO JOO SEIN *v.* MAUNG BA TIN. **31 I. C. 893=9 Bur. L. T. 60.**

———*Rent—Liability to pay—Contract with a third person by a tenant—Effect.*

A, a tenant of B's mortgagor by a bond executed in favour of B promised to pay to B the rent due to the mortgagor and the mortgagor signed the bond as a witness; there was nothing to show that he agreed to the rent due to him being paid direct to B and written off against his liabilities. In a suit by B for rent, *held*, that the right to the rent vested in the landlord and the tenant could not by contract divest his landlord of that right and that what B was suing for, was not the paddy *qua* rent of the land, but merely for the amount of the paddy due under the bond. (*Parlett, J.*) MAUNG LON GYI *v.* RAHMAN CHETTY. **12 I. C. 855=4 Bur. L. T. 142.**

Rent—"Mulguzari"—Meaning of.

———*Rent—"Mulguzari"—Meaning of.*

The word "*Mulguzari*" although usually meaning an amount paid to the crown is capable of meaning the amount due from under-proprietors to the superior proprietor. (*Stuart and Kanhaiya Lal, A. J. Cs.*) CHARU CHANDRA BISWAS *v.* LALLAN SINGH. **40 I. C. 42=4 O. L. J. 148.**

Rent—Payment and non-payment.

———*Rent—Payment to wrong person—Suit by rightful claimant.*

Where a person claiming to be entitled to the rent of certain property brought a suit therefor and obtained a decree for such rent he is liable to the rightful landlord to account for the rent so received. (*Banerji and Gokul Prasad, JJ.*) MAHABIR PRASAD *v.* MT. PARSANDI. **45 A. 410=21 A L.J. 345=L.R. 4 A. 519=1923 All. 532 (2).**

———*Rent—Non-payment—No denial of title.*

Non-payment of rent is not sufficient to extinguish the plff.'s right as Zemindar unless coupled with a denial of his title. (*Banerjee, J.*) ARNOOP MISER *v.* KEDAR PANDE. **15 I.C. 338.**
Also 27 I.C.523=16 Bom. L. R 720.
Also 37 Bom. 284=17 I. C. 943=14 Bom L R. 1173.
Also 16 I. C. 911=17 C. W. N. 627.
Also 43 I. C. 615=35 M. L. J. 11.
Also 57 I. C. 269.

———*Rent—Payment in kind—Money in default.*

A tenant agreed by a *kabuliat* to pay 60 *aris* of paddy as rent and in default the landlord would be entitled to realise the price 'as stated above,' *i e.*, Rs. 15. In a suit for the money equivalent of the rent, *held* that the landlord could recover Rs. 15 only and not the market-value. In such contracts whether market-value should be taken or merely the money fixed in the agreement, must be ascertained from the terms of the *kabuliat* by giving it its most ordinary and natural meaning (*Sanderson, C.J. and Richardson, J.*) HAMID ALI *v.* RAM KUMAR. **62 I. C. 639.**

———*Rent—Payment and non payment—Special payment—Punyaha payment—Meaning of.*

Punyaha is a payment made on *punyaha* day as a special *kist* or instalment and not on account of general arrear. (*Teunon and Richardson, JJ.*) SURAJBALA DEVI v. SARADA NATH BHATTACHARJEE. **50 I. C. 862=23 C. W. N. 336.**

———*Rent—Payment of—Paddy or in default certain sum of money—Price of paddy.*

Where a *patta* provided that 52 *aris* of paddy should be delivered by the tenant every year as rent and in default, its price Rs. 15 with costs and interest, the landlord is not entitled to recover more than Rs. 15 as the price of the paddy in case of its non-delivery. (*N. R. Chatterjee and Huda, JJ.*) PRAN KRISHNA NATH v. MOHESH CHANDRA CHOUDHRY. **47 I. C. 134.**

———*Rent—Payment partly paddy and partly money.*

Where a tenant agreed by a *kabuliyat* to pay rent partly in money and partly in paddy and on failure to give paddy to pay a certain sum as price thereof, *Held*, that the landlord was bound to accept the price of the paddy at the market rate on the day of default. In all such cases the matter must depend only on construction of the contract and the Court has no power to speculate as to whether the amount mentioned in deed was only for the purpose of stamp duty or registration fee. (*Sanderson C. J. and Mookerjee, J.*) NILMADHAB MAHAPATRA *v.* KESHAB LAL MAHAPATRA. **40 I. C. 819=26 C. L. J. 94.**

LANDLORD AND TENANT—Rent—Payment and non-payment.

———*Rent—Payment of paddy and in default a fixed amount—If market value can be recovered.*

Where a tenant by *kabuliyat* had agreed to pay a certain amount of paddy or on default a certain fixed sum. *Held*, that the landlord cannot get the market value of the paddy when default was made. 7 I. C. 842, Rel. on. (*Caspersz and Chatterjee, JJ.*) ATTUL CHANDRA DUTT *v.* ESON ALI. **13 I. C. 423.**

———*Rent—Non-payment—Effect of.*

Mere non-payment of rent by a tenant does not establish his adverse possession but the facts that the tenant did not pay rent for 30 years, that no serious attempt was made by the landlord to recover rent and that the tenant denied on oath his tenancy may lead to an inference of adverse possession against the landlord. 7 Bom. 34, 2 All. 517, Ref. (*Johnstone and Le Rossignol, JJ.*) UMAR BAKSH *v.* BALDEO. **97 P. R. 1915=32 I. C. 36= 193 P. W. R. 1915.**

———*Rent—Non-payment of—Effect of.*

A mere abstention from collecting rent for a particular period will not bar a landlord from claiming rent for a future period. There will be a bar if the tenant had denied the landlord's title to receive rent more than 12 years before the suit, and had refused to pay it basing the refusal on such denial. (*Sadasiva Iyer, J.*) SREENIVASA *v.* JOGIRAJU. **24 M. L. J. 188=13 M. L. T. 130= 18 I. C. 243=(1913) M. W. N. 284.**

Rent—Purchaser of leasehold.

———*Rent—Purchaser of leasehold—Interest on rent.*

The purchaser of a leasehold interest has to pay interest on arrears of rent according to the terms of the contract under which the property is held and the same rate of interest will be allowed by the Court from the date of the institution of the suit to the date of judgment. (*Fletcher and Newbould, JJ.*) AMULYA CHANDRA ROY *v.* SHIVA KRISHNA BOSE. **40 I. C. 768.**

Rent—Putni lease.

———*Rent—Putni lease—Sale—Effect of.*

A sale under a decree for rent-payable by a *patnidar* to the *Zemindar* passes the tenure to the purchaser with liberty to annul all incumbrances. 16 C. L. J. 156, Foll. (*Mookerjee and Beachcroft, JJ.*) BASANT KUMAR BOSE *v.* KHULNA LOAN CO. **20 C.L.J. 1= 26 I.C. 197=19 C.W.N. 1001.**

Rent—Rate of.

———*Rent—Rate of—Statement in a sale proclamation.*

A landlord is bound by the statement in a sale proclamation as to the rate of rent in respect of a tenancy advertised for sale, under a decree for arrears. If the sale proclamation is not forthcoming, the sale certificate would serve as a secondary evidence of the same. (*Mookerjee, A. C. J. and Fletcher, J.*). MIDNAPORE ZEMINDARI CO. *v.* ENATULLA SARKAR. **62 I.C. 60.**

LANDLORD AND TENANT—Rent—Rate of.

———*Rent—Rate of—Intention of parties—Construction of document.*

A *mukarrari* and *mourasi kabuliyat* provided for rent at Rs. 1-6-8 per *bigha* and 7 *aris* of paddy the market price whereof is Rs. 15. It further contained a statement "taking the cash and the price of paddy together" the total rent being fixed at Rs. 16-6-8 *gandas*. This was followed by a clause that there shall be no increase or abatement in the *jama*.

Held (*Newbould, J., dissenting*):—(1) Inasmuch as this was a *mourasi mukarrari* kabuliyat, the parties intended to fix the total rent to be paid in the event of non-delivery of paddy, *viz.*, Rs. 16 6-8 *gandas* and that the rent being thus fixed once for all, the fluctuation in the price of the paddy will not affect the amount to be paid as rent. (2) That the parties should be held to that which they say in the contract and the Court should not speculate and arrive at the conclusion that the provision regarding the total yearly rent had been inserted merely for the purpose of determining the registration-fee. *Per Mookerjee, J.*—The court has to give effect only to such intention as the parties were able to express by the language used in the document and it is not concerned with any unexpressed intention which they might have entertained. The suggestion that the quantity of paddy deliverable might have been valued for the purpose of the registration-fee is a speculation for which there is no foundation either in document or in evidence.

Per Newbould, J.—The recovery of the paddy rent at its cash value, as it varies from year to year is not inconsistent with the tenure being a *mukarrari* one. When the value of the paddy varies the value of the cash may also be said to vary in comparison with the paddy.

In the absence of any agreement in the kabuliyat to pay the total rent in cash the statement fixing the total rent at Rs. 16-6-8 *gandas* can only be taken to mean as a statement added to the document for the purpose of fixing the stamp duty and the registration-fee. (*Sanderson, C. J., Mookerjee and Newbould JJ.*) ASUTOSH MUKHOPADHYA *v.* HARAN CHANDRA MUKHERJEE. **30 C.L.J. 41= 23 C.W.N. 1021=53 I.C. 382=47 C. 133.**

———*Rent—Rate of—Conduct of tenant—If can prove rate of rent.*

The conduct of a tenant is not evidence on the question of the rate of rent. (*Holmwood and Chatterjee, JJ.*) JANGBAHADUR *v.* EMPEROR. **13 Cr. L. J. 62=13 I. C. 398= 14 C. L. J. 652.**

———*Rent—Rate of—Presumption from payment for a long series of years.*

Where a tenant has been paying enhanced rent for a series of years in respect of garden crops raised by him, the Court may infer a contract supported by consideration to pay the enhanced rent. Cases reviewed. (*Wallis, C. J., Ayling, Coutts-Trotter, Seshagiri Aiyar and Kumaraswamy Sastri, JJ.*) PERIAKARUPPA

LANDLORD AND TENANT—Rent—Rate of.

MUKKANDAN *v.* RAJA RAJESWAR SETHUPATHI. **42 Mad. 475=(1919) M. W. N. 161=50 I. C. 616=36 M. L. J. 320 (F. B.).**

———*Rent—Rate of—"Gross-value," meaning of.*

"Gross-value" is the annual rent which a tenant might reasonably be expected to pay for an hereditament if the landlord undertook to bear the expenses necessary to maintain the hereditament in a state to command that rent. (*Seshagiri Aiyar and Phillips, JJ.*) VEERABHADRA IYER *v.* PRESIDENT, CORPORATION OF MADRAS. **31 M. L. J. 315=35 I. C. 589 (1)=(1916) 2 M. W. N. 130.**

———*Rent—Rate of—Arrears—Assessment according to original or a fair rate.*

Where the relationship of landlord and tenant exists and there is an agreement to pay rent, whether that amount is fixed or not, the Court can allow arrears of rent, according to the original rate or in its absence at a fair rate. (*Stuart, A. J. C.*) SURAJ BAKSH SINGH *v.* SITLA BAKSH SINGH. **33 I. C. 770=3 O. L. J. 5.**

——— —*Rent—Rate of admission in a road cess return.*

In a suit for arrears of rent of a *Bhanli land* plff. should be allowed to prove the actual production and its prices and an admission of the rate of rent in a road-cess return cannot be taken as its average rate. (*Sharfuddin and Roe, JJ.*) RAMA SAHI *v.* MAHABIRGIR. **40 I. C. 606=2 P. L. W. 60.**

Rent—Receipt.

———*Rent—Receipt—Form of—Agreement.*

It is not open to a landlord to stipulate with his tenant that only a particular form of receipt for payment would be accepted it tendered as evidence in Court. (*Sadasiva Iyer and Burn, JJ.*) PENUMETSA BAPIRAJU *v.* GOPISETTI NARAYANASWAMY NAIDU. **40 I. C. 590.**

Rent—Remission of.

———*Rent—Remission of—Remission of Government revenue.*

When Government revenue for a period is remitted but not the rent payable by the lessees they cannot claim any remission in the rent payable to the lessor when they are directly liable to pay the Government revenue. (*Stanley, C. J. and Banerjee, J.*) GULAB SINGH *v.* DEBI SINGH. **10 I. C. 1002=8 A. L. J. 505.**

———*Rent — Remission of — Diluvion — Abandonment.*

When the tenant surrenders the diluviated area and agrees to pay a reduced rent, he cannot claim the diluviated lands on their re-appearance though remission of rent is not conclusive proof of abandonment. (*Mookerjee and Walmsley, JJ.*) KALAN SINGH *v.* SECRETARY OF STATE. **41 I. C. 682.**

———*Rent—Remission—Right of tenant.*

Payment of smaller rent than that agreed upon does not give any right to the tenant to compel the landlord to accept that rent. A letter informing the tenant that the contract rate would be charged hereafter, will discharge the tenant's liability up to that date. No consideration is necessary for this remission. (*Chatterjee and Beachcroft, JJ.*) SADULLA MRIDHA *v.* JOYANNA BUNNESSA BIBI. **32 I. C. 703.**

LANDLORD AND TENANT—Rent—Remission of.

———*Rent—Remission of—Lease for a term—Suspension of portion of rent during the term—Stipulation for payment of rent at full rate after expiry of term.*

The landlord by accepting rent at a reduced rate is not deprived of his right to claim rent at the rate stipulated in the *kabuliyat* and is entitled to receive rent at the full rate. 41 Cal. 493 (P. C.); 16 C. W. N. 496, Foll. (*Chatterjee and Newbould, JJ.*) KAILASH CHANDRA SAHA *v.* DARBARIA SHEIK. **32 I. C. 251=20 C. W. N. 347.**

———*Rent—Remission of—Contract rate.*

The mere acceptance of rent at a lower rate than that stipulated for in the *kabuliyat* for some time, does not bind the landlord to accept rent at that rate in future. 37 Cal. 293; 41 Cal. 493 (P. C.); 16 C. W. N. 496, Foll. (*Chatterjee and Newbould, JJ.*) MANINDRA CHANDRA NANDI *v.* DURGA SUNDARI DASIA. **32 I. C. 185=20 C. W. N. 680.**

———*Rent—Remission of—Voluntary.*

Long payment of a smaller rent does not give a tenant a right to compel the landlord to receive that rent in future. An intimation from the landlord that the reduction hitherto allowed, would cease after the date of the letter discharges the tenant from paying the contract rate for a particular period. No consideration is necessary for this remission and it does not contravene S. 92, Evidence Act. (*Ayling and Seshagiri Iyer, JJ.*) MAHARAJA OF BOBBILI *v.* RANGU APPALA NAIDU. **32 I. C. 703=(1916) 1 M. W. N. 149.**

———*Rent—Remission of—Agreement to remit portion of terwa—How far binding.*

A promise to remit rent, made out of grace and not out of any legal obligation, does not affect the rights of the obligee to enforce his legal rights as regards payments due to him in future. 28 Mad. 328; 6 C. W. N. 60; 26 Mad. 195 at 196, Foll. (*Sadasiva Aiyar and Hannay, JJ.*) SUBBARAYA AIYAR *v.* KOLANDAVELU MUDALI. **26 I. C. 958.**

———*Rent—Remission of—Favour.*

The rate of rent paid by *Velamas* in a village was a special reduction for them only. A *non-Velama* transferee from a *Velama* was liable to pay the ordinary higher rate. (*Sundara Iyer and Ayling, JJ.*) VARADARAJU APPA RAO *v.* GUDAVALLI BRAHMAYYA. **21 M. L. J. 1098=12 I. C. 885=10 M. L. T. 378.**

———*Rent—Remission of—When allowed—Failure of irrigation source.*

There is no known rule of equity that a tenant can claim, as a matter of right, remission of rent on failure of rain or other source of irrigation in the absence of an express or

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implied warranty by the landlord to supply water. The burden of proving the warranty is on the tenant. (*Fawcett, J. C. and Crouch, A. J. C.*) GHULAM MAHOMED *v.* SAHIB SINGH. **28 I. C. 5=8 S. L. R. 222.**

Rent—Rent free grant.

———*Rent—Rent free grant—Malikanadari rights how created*—Thakbast *map and* Khasra, *meaning of—Claim for holding rent free*—Onus—*Non-collection of rent by* Thekadar—*Adverse possession.*

It is only by an arrangement with the village proprietor, that a *malikanadari* right comes into existence. Regular surveys are preceded by a preliminary measurement by an *amin* who lays down on a rough map the locality, without any guarantee of scientific accuracy and enters in a register particulars regarding the plots gathered from people, who collect to watch the proceedings. The map is called the *Thakbast* map and the register the *Thakkhasra*. The latter as its name implies, is a rough register and statements entered in it have by themselves no evidentiary value. So, when a statement is made before an *amin* to the effect that within a *mauza* there are certain persons who hold *malikanadari* rights, the entry made in the *Khasra*, to that effect, cannot be treated as an evidence to support the claim unless it is proved that it was noticed by the person affected thereby and that he knowingly acquiesced in the assertion made before the *amin*. Once the landlord has proved that the land which is sought to be held rent free lies within his regularly assessed estate or *mahal* the onus lies upon those who claim to hold the lands free of the obligation to pay rent to show by satisfactory evidence that they have been relieved of this obligation either by contract or by some old grant recognised by the Government. Where a *mahal* has all along been held in *theka*, if the *thekadar* collecting rent and paying fixed sum to the proprietor fails to collect rent from any individual tenant, it would not create adverse possession against the proprietor. Mere non-payment of rent or discontinuance of payment of rent does not by itself create adverse possession. (*Ameer Ali*). JAGDEO NARAIN SINGH *v.* BALDEO SINGH.

2 Pat. 38 = (1923) M.W.N. 361 = 27 C.W.N. 925 = 45 M.L.J. 460 = 3 P.L.T. 605 = 49 I A. 399 = 36 C.L J. 499 = 32 M.L.T. 1 = 1922 P.C. 272.

———*Rent—Rent free grant—Resumption.*

Where a land was granted to the deft.'s ancestors rent free in order that they might excavate a tank at their expense, and the grantee and his descendants have been in occupation for 60 years without any payment or claim of rent the legitimate inference is that the deft. holds land rent free and even if it is not so, the claim is barred as the deft. asserted his right to the knowledge of the plff. The grant had not been produced and there was no evidence that the liability to payment of rent had been suspended. 39 Cal. 43, Dist. (*Mookerjee and Beachcroft, JJ*). KALI MOHAN TRIPURA *v.* BIRENDRA KISHORE.

31 I.C. 391=22 C L.J. 309.

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———*Rent—Rent free tenure—Presumption.*

Long possession of land by the defts. and their predecessors without payment of rent and under assertion of a rent-free title, justifies the inference that the defts. have a rent-free title. 10 W. R. 461; 14 W. R. 108, Ref. (*Mookerjee and Beachcroft, JJ.*) SOBHAN BAKSH v. MAHARAJA BIRINDRA KISHORE MANIKYA BAHADUR. **30 I.C. 939= 22 C. L. J. 144.**

———*Rent—Rent-free tenure—Long possession, without payment of rent—Presumption.*

Where a tenant has been in possession for a long series of years without payment of rent and there is no proof of receipt of rent by the landlord at any time, the tenant may be presumed to have a rent-free title. (*Jenkins, C.J., Mookerjee and Beachcroft, JJ.*) BIRENDRA KISHORE MANIKYA BAHADUR *v.* BHOIRAB CHANDRA CHAKRABARTI.

27 I. C 12=20 C. L. J. 296.

———*Rent—Rent-free grant—Excavation of a tank—No mention of rent—User for 60 years—Liability to resumption or rent.*

Where a Hindu Raja granted a *sanad* to a tenant for re-excavation of an unclaimed tank and the tenant made improvements and was in possession without any stipulation for rent, *held*, that a suit by the successor of the Raja for possession or for rent was premature because the purpose of excavation was still being carried out and that the suit was not barred by limitation and the landlord was estopped from bringing this suit because the tenant had been given a hope that he would enjoy it without let or hindrance. 28 Cal. 693 (P. C.), App. (*Caspersz and Chatterjee, JJ.*) BIRENDRA KISHORE *v.* AKRAM ALI.

39 Cal. 439 = 16 C.W.N. 304 = 13 I. C. 513 = 15 C. L. J. 194.

———*Rent—Rent-free grant—Non-collection grant.*

If in a suit for rent plff. fails to prove that defts. have paid rent to him as landlord the Court may presume a lost rent-free grant. (*Adami, J.*) ANANTA PRASAD JHA *v.* BANKE LAL KUMAR. **55 I.C. 36 = 2 U.P.L.R. (Pat.) 58.**

Rent—Right to.

———*Rent—Right to—Mokarari for life.*

A usufructuary mortgagee of the Mokarari for life is entitled to rent that accrued due before the service of final notice to quit on him by the grantor. (*Sharfuddin and Roe, JJ.*) LALJI SAHU *v.* SHAMIAL. **32 I. C. 827.**

———*Rent—Right to, after eviction.*

A landlord is not entitled to rent after eviction. 11 C. L. J. 591, 601 Foll. (*Mookerjee and Holmwood, JJ.*) KALANAND SINGH *v.* JARAO KUMARI. **17 I. C. 238=17 C.L J. 96.**

———*Rent—Right to—Tenant repudiating liability—Effect of.*

Where a tenant has repudiated altogether his liability to pay rent to the landlord under the lease. *Held*, on the analogy of a suit for damages based on a breach of contract that

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the right to sue for the rent for the entire period accrued on the repudiation by the tenant and that the landlord was entitled to claim the full amount of his rent as damages due to him on account of the breach which took place on the defendant's repudiating all liability and that he was not bound to wait until the end of the year or until the month in which the remainder of the rent was payable. (*Broadway and Harrison, JJ.*) BUDHA MAL *v.* STUB DAYAL. **1924 Lah. 328.**

———*Rent—Right to sue—Lease to two tenants in equal shares—Suit by one lessee for his share.*

Each of the lessees where their interests are specified, can sue for the share contracted to be leased to him. 32 All. 25, Dist. (*Scott-Smith and Shadi Lal, JJ.*) RAPCHAND *v.* FAZAL ILAHI. **40 P. R 1917=41 I C 70= 111 P. W. R. 1917.**

———*Rent—Right to—Auction-purchaser.*

A purchaser of an '*ijmali*' share of an estate at a revenue sale which is subsequently set aside at the instance of the original proprietors, can nevertheless receive rents from the tenants until the recovery of actual possession by the proprietors. (*Chapman and Jwala Prasad, JJ.*) ABDUR RAZAK *v.* BAIJANATH GOENKA. **40 I. C. 426= 2 Pat. L. J. 383.**

———*Rent—Right to—Accrual of.*

The right of a landlord to have the rent of the holding assessed accrues at the date of the publication of the Record of Rights. (*Atkinson, J.*) SHEO RATH UPADHYA *v.* KESHO PRASAD. **38 I. C. 368.**

———*Rent—Right to—No title in lessor—It can be maintained in Civil Courts when land is Government waste.*

Once the relationship of lessor and lessee is created the lessor is entitled even if he has no title to the property to rent in respect of the lease and Civil Courts have jurisdiction to entertain a suit for such rent even though the land is Government waste land. A person who lets out land to another can recover rent from him, though he has no title in law to the land, and the Civil Courts have jurisdiction to entertain suits for such rent even though the land be Government waste land. (*Ormond, J.*) AHAMUT *v.* KALU. **31 I.C. 888= 9 Bur. L.T. 55.**

Rent—Sale.

———*Rent — Sale—In execution — Patni sale—Appropriation.*

After a *patni* sale the landlord is entitled to appropriate a sufficient portion of the sale proceeds towards his rent before the mortgagee can proceed to realise his dues. A tenure which has once been sold for its own arrears, cannot again be put to sale for arrears of another period. (*Mookerjee and Beachcroft, JJ.*) BASANT KUMAR BOSE *v.* KHULNA LOAN COMPANY. **20 C.L.J. 1=26 I.C. 197= 19 C.W.N. 1001.**

LANDLORD AND TENANT—Rent—Suit for.

———*Rent—Sale of tenure for arrears of rent—Liability to pay rent between date of decree and date of sale.*

Where under the Bengal Tenancy Act, a tenure is sold for arrears of rent, the old tenant is personally liable for the rent between the date of the decree and the date of the sale where there are no surplus proceeds of the sale and the purchaser being the landlord is insufficient to throw upon him the liability of paying such rent. (*Fletcher and Richardson, JJ.*) BIJOYCHAND MAHATAP *v.* HARI MANDAL. **24 I.C. 52.**

Rent—Service.

———*Rent—Service—Suit for assessment of fair and equitable rent on failure of service—Parties.*

Where a service tenure is created by all the co-sharers in a zamindari not governed by Bengal Tenancy Act a co-sharer landlord is not competent to sue the tenant for assessment of fair and equitable rent payable in this respect of his share for failure of service originally performed. 31 Cal. 786, Rel. (*Newbould, J.*) MANMOHAN SINGHA ROY *v.* BENODA BEHARI DUEBY. **53 I.C. 249.**

———*Rent—Services—Option of landlord.*

A lease granted in consideration of the tenant agreeing to render services or in lieu of it, a rent at a certain rate, is a valid lease, and failure to render the services is a good ground for ejectment of the tenant. (*Fletcher and Huda, JJ.*) SANCHIRAM DE BEHARI *v.* HARA PRIYA THAKURANI. **45 I. C. 611.**

———*Rent—Service tenure—Grant of* Sanad *by Hindu Raja for excavation of tank—No mention of rent—Estoppel.*

Where a Hindu Raja granted a *Sanad* to a tenant in 1866 for excavation of a tank and the tenant did it at a good deal of expense and the tank served the purpose for which it was excavated and no mention of rent was made in the *sanad, held*, that the plff. was estopped from claiming any rent so long as the tank served those purposes. (*Caspersz and Chatterjee, JJ.*) ASALAT KHAN *v.* BIRENDRA KISHORE. **13 I. C. 519.**

Rent—Suit for.

———*Rent—Suit for.*

A rent suit based on *kabuliat* cannot be dismissed for defect of parties when all the executants of the *kabuliat* are before the Court. (*Newbould and Panton, JJ.*) HOSENJAN CHOUDHURI *v.* MAHAFEDJUDDIN, **62 I. C. 619.**

———*Rent—Suit for—Question of title between several defendants.*

In a suit for rent by a landlord against his tenants, the question of title as between the defendants, cannot be determined. (*Teunon and Majid JJ.*) MANI TARA BOSE *v.* DALINDJI SHEIKH. **61 I. C. 335.**

———*Rent—Suit for—Surrender and dispossession, plea of, disproved—Failure to identify holdings—Effect.*

LANDLORD AND TENANT—Rent—Suit for.

If in a suit for rent the deft.'s allegations of surrender and dispossession are not proved and he is in possession of the holding the mere fact that the plff. is unable to establish the identity of the holdings is not sufficient to deprive him of the rent. (*Teunon and Chaudhuri, JJ.*) BASANTA KUMARI CHAUDHURANI *v.* KRISHNA NALINI DASSYA. **59 I. C. 312.**

———*Rent—Suit for—Tenant Insolvent—If receiver necessary party.*

The receiver is not a necessary party to a suit for arrears of rent against the insolvent if the suit be regarded as a simple money suit. (*Chitty and Smither, JJ.*) AMRITALAL GHOSE *v.* NARAIN CHANDRA. **46 I. C. 395.**

———*Rent—Suit for—Parties—Suit to recover rent—Tenant setting up right of third party already on record.*

If A or B must be the landlord of C. and A brings a suit against C to which B is added as a party and it is agreed between A and B that A is entitled to rent, C cannot ask the Court to determine whether A or B is entitled to recover rent from him. (*Mookerjee and Beachcroft, JJ.*) SUKUMARI GUPTA *v.* BHARAT MANDAL. **26 I. C. 980=20 C. L. J 148.**

———*Rent—Suit for—Tenure appertaining to endowment—Govt. sanction if necessary.*

The fact that a tenure appertains to a public endowment does not make Govt. sanction necessary for maintaining a suit for alteration of rent. (*Jenkins, C. J. and Chattarjee, J.*) BALABHANDRA PRISTE v. JAGANNATH MAHAPRABHOO. **26 I. C. 908.**

———*Rent—Suit for—Question of title.*

If in a rent suit, the plaintiff proves that the deft. is his tenant for the period for which the rent is asked for, he can claim rent from the deft. for that period, no matter who the owner may be and no question of title arises. When the tenancy is proved the deft. cannot question the plff.'s title. (*Chevis, J.*) LABHU RAM v. MOOLCHAND. **60 I. C. 319= 3 Lah. L. J. 335.**

———*Rent—Suit for—Suit by landlord for rent in respect of a portion of the holding.*

Where a landlord brings a suit for rent of a portion of the holding he cannot be allowed to treat the claim as one for the rent of the entire holding. To decree such a claim would be in effect to allow a splitting up of the tenancy without any ascertainment of the portion of the rent which is due from the particular portion of the holdings for which the rent is claimed. (*Coutts and Das, JJ.*) MAHARAJA KESHAWA PRASAD SINGH v. MATHURA KUAR. **(1922) Pat. 336=1922 P. 608 (1).**

———*Rent—Suit for—Claim for* Bhaoli Danabandam—*Appraisement papers disbelieved.*

In a suit for *Bhaoli* rent when the landlord's appraisement papers are not worthy of credit, no decree can be given upon mere surmise. It must be based upon some good and reliable evidence. (*Das and Adami, JJ.*) NADIR KHAN *v.* MAHARANI SHAM SUNDER KUER. **2 P. L. T. 601.**

LANDLORD AND TENANT—Rent—Suspension of.

———*Rent—Suit for—Parties—Rent decree.*

Where a suit for recovery of rent does not include as parties all persons entitled to a holding, the decree in it is not a rent decree, so that the right of the auction-purchaser in execution is limited only to the right, title and interest of the judgment-debtors. (*Chamier, C. J. and Sharfuddin, J.*) MUHAMAD MAHBOOB *v.* BHAGOO MAHTO. **37 I. C. 913= 1 P. L. W. 48.**

———*Rent—Suit for—Parties—Joint tenancy—Bihar—Several promise.*

Though generally a proper rent suit must be against all recorded tenants, in Bihar a several promise by each joint tenant for the whole rent is not presumed in every joint tenancy. (*Mullick, J.*) JOGESWAR RAI *v.* KESHO PERSAD SINGH. **37 I. C. 262= 1 P. L. J. 190.**

———*Rent—Suit for—Necessary parties—Lessee setting up a title of third person.*

When a person, sued for rent, sets up a third person's title, such third person ought not to be made a party to the case so as to convert a simple suit for arrears of rent into one for the determination of the title to immoveable property. (*Maung Kin, J.*) KUNA PUNA MAHOMED IBRAHIM *v.* KABANNAENA MAHOMED. **35 I. C. 337=9 Bur. L. T. 110.**

Rent—Suspension of.

———*Rent — Suspension of — Dispossession from portion of holding.*

Dispossession of a tenant by the landlord from a portion of the holding causes suspension of the entire rent of the holding. (*Newbould and Panton, JJ.*) RAMANI KANTA RAI *v.* HARA CHANDRA DAS. **1923 Cal. 162.**

———*Rent—Suspension of — Possession not given to tenant.*

The tenant is not entitled to a suspension of the rent of the entire tenure, where there is reason to suppose that the landlord omitted through a *bona fide* mistake, to give possession of lands largely jungle and therefore little known and where there has been for forty years no objection from the tenant, but payment of rent by him. (*Woodroffe and Cuming, JJ.*) KATYAYANI DEBY *v.* UDAY KUMAR DAS. **49 Cal. 257 = 1922 Cal. 348.**

———*Rent—Suspension of — Eviction of lessee.*

Where the lessor has evicted the lessee from a part of the land demised the entire rent is suspended. 19 C. W. N. 871 fol. 33 Mad. 499 dist. But where facts indicate an intention that the liability of the defendant lessee to pay a rent for land which was in his possession already did not depend upon the delivery of possession of the other land which was in the possession of another and where the plaintiff-landlord never put any obstruction in the way of defendants recovering possession and there is no question of *mala fides* on the part of the plff. the entire rent should not be suspended and the defendant is liable to pay proportionate

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rent in respect of the land in his possession. (*Chatterjee and Pearson, JJ.*) NAGENDRA CHANDRA LAHIRI *v.* SIR MANINDRA CHANDRA NANDI. **49 C. 1019=26 C W N 826=1922 Cal. 153.**

———*Rent—Suspension of—Lessor unable to give possession of portion of demised land owing to its having been previously let to another.*

The rent due to a lessor by the lessee is entirely suspended when having let out a portion of the land to an earlier lessee, he lets it out again with other lands to a subsequent lessee and is in consequence unable to put the latter in possession of such portion. The result is the same as if the lessor has ousted the tenant from a portion of the holding. (*Fletcher and Cuming, JJ.*) MANINDRA CHANDRA NANDI *v.* NARENDRA CHANDRA LAHIRI. **46 Cal. 956=52 I. C. 13=23 C. W. N. 585.**

———*Rent—Suspension of—Dispossession of tenant from portion of holding.*

Where a landlord dispossesses a tenant from a portion of the holding, the entire rent is suspended and the landlord is not entitled to any apportionment of rent on the lands still in the tenant's possession unless he has replaced the tenant in possession or has taken effective steps to do so. (*Teunon and Cuming, JJ.*) RAJANI MANNA BAGDI *v.* SATISH CHANDRA ROY. **43 I. C. 699.**

———*Rent—Suspension of—Dispossession of tenant by one of several joint landlords.*

Where one of several landlords who jointly let out land to the tenant, dispossesses the tenant, the entire rent is suspended during the time the tenant is kept out of possession. (*Fletcher and Smither, JJ.*) PRAMATHA NATH *v.* CHANDRA SEKHAR BANERJEE. **46 I C. 539**

———*Rent—Suspension of—Inundation—Custom.*

A custom set up by a tenant that the entire rent must be remitted when the lands are inundated irrespective of the effect, beneficial or otherwise of the floods, is an unreasonable custom and not valid in law. A custom to be valid, must be reasonable and must have a legal commencement. A custom prejudicial to class and beneficial only to an individual is unreasonable. Meaning of reasonable explained. (*Mookerjee and Walmsley, JJ.*) SIVANARAYAN MAHOPADHYA *v.* RASIK PATRA. **45 Cal. 475=45 I. C. 289=22 C. W. N. 422=28 C. L. J. 148.**

———*Rent—Suspension of—Tenant of put in possession of entire holding.*

Where a co-sharer landlord purchased the holding of a tenant at a rent sale in execution of a decree for his own share of the rent and resettled the whole holding with the same tenant but did not secure to the tenant peaceful possession of the whole holding, *held*, that the tenant continued to be liable to the other co-sharer landlords for their proportionate shares of the rent and that the plff. was entitled only to his share of the rent. The principle of

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equitable estoppel has no application to the case. (*Fletcher and Newbould, JJ.*) NARA NARAYAN KAPALI *v.* KALI MOHAN DAS KAPALI. **43 I. C. 47.**

———*Rent—Suspension of—Eviction of tenant from portion of holding.*

Eviction of the tenant from a substantial portion of the land of his tenancy by the landlord justifies suspension of the entire rent due for the period of eviction. 24 Cal. 296, Dist. 18 C. L. J. 509, Appr. Court should be reluctant to relax this rule. (*Mookerjee and Beachcroft, JJ.*) TIPAN PRASAD SINGH *v.* RAMJI RAM. **41 I. C. 91.**

———*Rent—Suspension of—Dispossession.*

Where a landlord dispossesses his tenant from a part of his leasehold lands, his right to claim rent is generally suspended in respect of the entire leasehold. 13 C.W.N. 702, Foll. 34 Cal 191 Dist. 24 Cal. 296; 5 C.W.N. 363; 36 Cal. 856; 11 C L.J. 591; 17 C.L.J. 50; 18 C.L.J. 509. Ref. (*Chatterjee and Chapman, JJ.*) SARODA PROSAD BHATTACHARJEE *v.* MANMOTHO NATH MITTER. **28 I.C. 371=19 C.W.N. 870.**

———*Rent—Suspension of—Eviction—Title suit against landlord.*

Where in a title suit against the landlord, the tenant's claim that certain lands were included within his holding, was negatived, the same plea will be *res judicata* in any other litigation. It is not always the rule that because a tenant has failed in a suit for recovery of possession of land, alleged to be comprised within his tenancy, the defence of eviction and consequent suspension of rent is not open to him in a suit for rent. (*Mookerjee and Beachcroft, JJ.*) MIDNAPORE ZEMINDARI CO., LD. *v.* NITYA KALI DASI. **24 I. C. 243**

———*Rent—Suspension of—Dispossession of tenant from certain lands of tenure by the landlord or some person holding under him—Effect.*

A landlord or a person claiming under him having dispossessed a tenant from certain land of the tenure, is not entitled to recover rent for other lands, in his possession (34 Cal. 191, Dist.) A holder of an intermediate tenure between a landlord and his tenants having dispossessed the tenants of a portion of their land cannot recover rent from them, nor can the landlord step into the shoes of the intermediate holder and recover rent. (*Holmwood and Chapman, JJ.*) FATEH ALI CHOWDHURY *v* PARSHA NATH DAS. **23 I C. 552.**

———*Rent—Suspension of—Dispossession.*

Where landlord in a previous suit being in wrongful possession was made liable for mesne profits, his suit for rent for the period of wrongful possession was dismissed as it was not known whether rent was taken into account in the previous suit and as also it was probable that he received for more profits from the properly than the amount of rent due. (*Stephen and Holmwood, JJ.*) NAGENDRA KUMAR RAKSHIT *v.* APARNA CHARAN. **19 I. C. 564.**

LANDLORD AND TENANT—Rent—Suspension of.

———*Rent—Suspension of — Dispossession from part of holding.*

A landlord dispossessing a tenant from portion of the land demised of the holding cannot recover any part of the rent as the suspension of the entire rent is a punishment for the dispossession and as the rule will be rendered nugatory if any part of the rent is allowed to be recovered. (*Chitty and Teunon, JJ.*) ASUTOSH DHAR *v.* JOY LAL SARDAR.
18 I. C. 621=17 C. L. J. 50.

———*Rent—Suspension of—Eviction, what constitutes.*

To constitute an eviction entailing forfeiture of rent it is not necessary that there should be actual physical expulsion. Any act done with the intention of depriving the tenant permanently of the benefit of the enjoyment of any part of the demised premises is sufficient. The fact that an evicted tenant has obtained a decree for mesne profits does not revive the claim for rent which was extinguished by the landlord's action. A decree for mesne profits obtained by the tenant does not necessarily restore him to all the advantages he would have enjoyed had his possession not been illegally disturbed. Consequently a landlord whose claim for rent is dismissed on the ground he had caused the eviction of the tenant cannot recover the mesne profits decreed to the tenant against a trespasser. 13 W. R. 388 ; 11 C. L. J 591 Foll. 14 W. R 43, Cons. (*Mookerjee and Holmwood, JJ.*) KALANAND SINGH *v.* JAHAO KUMARI.
17 I. C. 238=17 C. L. J. 96

———*Rent—Suspension—Eviction—Proof.*

Eviction which was found to exist in a previous judgment must be deemed to continue in the absence of steps taken by landlord to restore possession to the tenant. (*Mookerjee and Carnduff, JJ.*) PURNA CHANDRA *v.* RASIK CHANDRA. **9 I. C. 568=13 C. L. J. 119.**

———*Rent—Suspension of—Property destroyed.*

A tenant is not liable for rent if the demised property is destroyed by earthquake, *i. e.*, through no fault of his. (*Scott-Smith, J.*) PIR BAKHSH *v.* HIRALAL. **25 I. C 26= 54 P. W. R. 1914=146 P. L. R. 1914.**

———*Rent—Suspension of—Partial eviction —Estoppel—Set off—Damages.*

Both under the English and Indian law non-delivery of possession of the premises is a good answer to a suit for rent. Actual or constructive eviction of the tenant from the entire holding is a good plea in answer to a suit for rent by the landlord, but partial eviction is no answer to a suit for rent to the extent of the portion in enjoyment. The tenant may, on partial eviction, repudiate the whole lease but if he does not and remains in possession he is estopped from pleading nonliability of the rent for the portion in his occupation. He is entitled to damages for the portion evicted and can set it off for the amount due from him. (*Benson and Sundara Aiyar, JJ.*) MEENAKSHI SUNDARA NACHIAR *v.* CHIDAMBARAM CHETTY. **23 M. L. J. 119= 15 I. C. 711=(1912) M. W. N. 813= 12 M. L. T. 124.**

LANDLORD AND TENANT—Rent—Trespasser.

———*Rent—Suspension of—Flooding of land.*

Wrongful accumulation of water by landlord on his tenant's land amounts to an interference with the tenant's possession and so long as that interference continues the landlord cannot claim any rent. (*Sultan Ahmed J.*) SURENDRA MOHAN SINHA *v.* SARBA LAL.
57 I. C. 69.

———*Rent—Suspension of—Dispossession from portion of holding*

Where a lessor is directly concerned in the dispossession of a tenure holder from a *Mukurari*, the tenure-holder is entitled to withhold payment of the entire rent to the superior landlord. (*Sharfuddin and Roe, JJ.*) MOSUDAN POTDAR *v.* SATISCHANDRA ROY.
44 I. C. 658=3 P. L. W. 364.

———*Rent—Suspension of—Tenant out of possession—Liability of tenant for rent.*

A tenant is not liable for rent for the time during which he was out of possession at the instance of the landlord or a stranger. (*Sharfuddin and Roe, JJ.*) RAMCHANDRA *v.* MADHO PRASAD. **36 I. C. 537=1918 Pat. 26= 5 P. L. W. 213.**

Rent—Tender.

———*Rent—Tender without interest on arrears.*

Without interest due at that time a tender of rent cannot be said to be a good tender. (*Greaves and Panton, JJ.*) JIBAN KALI MUKERJEE *v.* MANIMALA DASSI.
49 I. C. 1006.

Rent—Transfer.

———*Rent—Transfer—Right of transferee to collect rent after transferor's death.*

The 2nd deft. as guardian of her minor son who was an office holder, authorized the plff. under an agreement to perform the duties of the office and receive a portion of the emoluments therefor, inclusive of the right to collect rents from tenants. After the minor's death, in a suit by the plff. for the recovery of rent from a tenant *Held*, that as the plff.'s rights under the agreement terminated on the death of the office holder, he had no cause of action and his suit should be dismissed. (*Sundara Iyer, J.*) GANALA SOMALINGHAM *v.* KAMUJU GANGULU. **11 I. C. 699.**

Rent—Trespasser.

———*Trespasser—Landlord can sue trespasser.*

Even though land is let out to a tenant it is open to the landlord to sue to eject a trespasser denying his title and not claiming any title under the tenant himself, 10 C. 1076; 39 M. 1042. 11 N. L. R. 124 Rel. (*Prideaux, A. J. C.*) ALLIBHAI *v.* SHAM RAO. **18 N. L. R. 82= 1922 Nag 216.**

LANDLORD AND TENANT—Rights of Tenant.

Rights of Tenant.

———*Rights of Tenant—House-site—Transferability—Presumption—Towns and villages.*

There is no presumption against the transferability of house sites in towns as there is in villages. (*Ryves and Daniels, JJ.*) SAHU GOVIND PRASAD *v.* KUNDAN.
L. R. 4 A. 191=1924 All. 112.

———*Rights of tenant.*

When a tenant's house falls down, the site does not revert to the landlord. The tenant has a good title to the dilapidated premises. (*Stuart, J.*) MAHADEO *v.* RAM BHAROSE.
1923 All. 365.

———*Rights of tenant—Occupancy tenant—Permanent construction.*

It has been held in many cases that ryots in villages, who have acquired rights of user over areas of land adjoining their residential houses to enable them to carry on their lawful callings cannot be restrained in the exercise of such user but there is no authority for the proposition that an occupancy tenant may make permanent constructions upon the land of the Zemindar over which he has no right of user. He would be debarred, even if he had a right of user from making permanent constructions, unless the rights to make permanent constructions are included in the rights of user. (*Stuart, J.*) SANIA *v.* SETH BEHARI LAL.
1922 All. 273 (2).

———*Rights of tenant—Residential tenant—Right to sell the right of residence.*

The residential tenant of a house situated in a village in the United Provinces has no right, in the absence of any custom or contract to the contrary, to sell either the site on which the house stands or the right of residence upon the site in question. (*Piggott J.*) HANWANT SINGH *v.* KAMTA.
11 I. C. 285.

———*Right of tenant—Adjacent land—Restriction of user.*

It might be unreasonable for tenants to claim to prevent a Zamindar using a large piece of land for building, agricultural or other purpose, merely because without interference from the Zamindar they have been using it for some particular purpose such as drying dung cakes. (*Richards and Tudball, JJ.*) SHADI LAL *v.* MUHAMMAD ISHAQ KHA.
33 All. 257=9 I. C. 198=8 A. L. J. 10.

———*Rights of tenant—Acquisition of land—Claim for compensation by tenant and Khot.*

Certain Khoti lands were acquired under the Land Acquisition Act. The Khot claimed the whole of the compensation. The grass lands having passed from hand to hand under sale deeds the Khot was perfectly aware that the villagers were enclosing these grass lands and were treating them as if they belonged to them. *Held*, it was impossible to say that the villagers could not acquire by such action proprietary rights in the lands so enclosed and dealt with. They were entitled to compensation along with the Khot according to the custom of the villages. The acquisition of right by prescription is open in law to these villagers against the Khot whatever his rights under the lease may be. (*Macleod, C. J. and Shah, J.*) VALLABHADAS NARAYANJI *v.* LAND ACQUISITION OFFICER.
46 B. 272=1922 Bom. 365.

———*Rights of tenant—Tenant cannot retain fishing stakes after expiry of lease.*

A tenant of fishery rights cannot retain the fishing stakes on the expiry of the tenancy on the ground that he had retired the stakes primarily or even renewed them where the fishing stakes were frequently owned by the lessor. (*Marten, J.*) LAKSHMAN *v.* RAMJI.
23 Bom. L. R. 939.

———*Rights of tenant—Prescription—Tenant holding at favourable rent—Mortgage—Adverse possession.*

A tenant can acquire by prescription a right against the landlord, to hold at a favourable rent; but if the landlord has mortgaged the land, the tenant's adverse possession cannot begin before the mortgage is redeemed. (*Macleod, C. J. and Faucett, J.*) GITABAI BHAU *v.* KRISHNA MALHARI.
45 Bom. 661=60 I. C. 913=23 Bom. L. R. 119.

———*Rights of tenant.*

Where the grant of a lease was accompanied by an agreement that the lessee may keep the field on the same conditions, if after the expiry of the period he intended to do so, but the lessee did not exercise his right or option of renewal: *Held*, the rights of the lessee were extinguished after the lapse of the period of lease and thereafter he continued only as an annual tenant. (*Macleod, C. J. and Heaton, J.*) MANI LAL *v.* NAND LAL.
55 I. C. 610 (1)=22 Bom. L. R. 133.

———*Rights of tenant—Transferability of holding—Building lease—Ejectment.*

Where a tenant took some land for building a house thereon on condition that so long as the *wadi* of which the land formed a portion remained in the possession of the landlord the tenant would occupy the land but when the *wadi* ceased to be in his possession and the land was required the tenant was to vacate receiving the value of the house. *Held*, that landlord and tenant in the agreement included their assigns also and that the tenant could not be ejected so long as the landlord remained in possession of the *wadi*. (*Scott, C.J. and Davar, JJ.*) YESHWANT VISHNU NENE *v.* KESHAVRAO BHAIJI.
27 I. C. 523=16 Bom. L. R. 720.

———*Rights of tenant—Extra compensation acquired by tenant—Effect.*

A landlord has a right to take back extra compensation acquired by tenant. (*Mookerjee and Newbould, JJ.*) MAHARAJA SASI KANTA ACHARYA *v.* ABDUR RAHIMAN SARKAR.
38 C. L. J. 265=1924 Cal. 168.

———*Rights of tenant—Prior litigation between tenants—Effect of.*

Where in a suit between two tenants of adjoining plots of land from the same landlord

LANDLORD AND TENANT—Rights of Tenant.

relating to the actual extent of the holding of each tenant the landlord is actually made a party to the suit the decision is binding on him. (*Mookerjee and Rankin, JJ.*) BHUPENDRA KUMAR CHAKRABUTTY *v.* SURJA KANTA RAI CHOWDHURY. **38 C L. J. 291=1924 Cal. 128.**

———*Rights of tenant—Excavating land.*

Tenants holding permanent heritable lands on payment of fixed rent are entitled to make excavations for making bricks, and in the absence of special reservations, the landlord's right is only to get the rent fixed. (*Walmsley and B. B. Ghose, JJ.*) BARADA PRASAD BANERJEE *v.* BHUPENDRA NATH MUKHERJEE. **50 Cal. 694=1924 Cal. 56.**

———*Rights of tenant—Concurrent leases of same property.*

Where after a lease has been granted, another lease of the same premises is granted for a concurrent term, the latter lease operates as a grant of the reversion upon the existing term. If it exceeds the residue of the existing term the concurrent lessee is entitled to the rent of such residue and afterwards to possession for the remainder. If it is less than the residue he is entitled to the rent during his own term. (*Mookerjee and Buckland, JJ.*) JOHAR MULL *v.* BHUPENDRA NATH BASU. **34 C. L. J. 79=49 Cal 495=1922 Cal. 412.**

———*Rights of tenant—Long possession of disputed lands—Assertion of rent free title—Justification of.*

Long possession of the disputed lands by the defendants and their predecessors without payment of rent and under assertion of a rent-free title justifies the inference that the defendants had the title they set up. (*Mookerjee and Beachcroft, JJ.*) SOBHAN BAKSH *v.* BIRENDRA KISHORE MANIKYA BAHADUR. **30. I. C. 939. (2)=22 C. L. J. 144.**

———*Rights of tenant—Suit against landlord after lease—Tenant not bound.*

A tenant is not bound by the result of a suit against his landlord instituted after the lease, and to which the lesses is not a party. (*Oldfield and Ramesam, JJ.*) MUSAN HAJI *v.* THAVARA KORAN. **65 I. C. 979=14 L. W. 387=(1921) M. W. N. 679.**

———*Rights of tenant—Right to cut trees.*

A tenant even though he holds on a perpetual lease, is *prima facie* not entitled to cut and carry away timber trees from the holding. (*Sadasiva Iyer and Hannay, JJ.*) LATIFA BIBI *v.* NARAYANACHARI. **26 I. C. 271=17 M. L. T. 202.**

———*Rights of tenant—Non-agricultural holding—Tank not part of holding—Transferability—Law before T. P. Act and the B. T. Act.*

Before the T. P. Act and B. T. Act the law was that the agricultural holdings of a raiyat or the homestead held otherwise than as part of his holding were not transferable except by custom or consent of the landlord. But a non-agricultural holding such as a tank held entirely seperately as an amenity was transferable without the landlord's consent. (*Holmwood and Chapman, JJ.*) CHANDRA MOHAN MOHARANA *v.* RAM NARAYAN. **18 I. C. 379.**

LANDLORD AND TENANT—Settlement of Disputes.

———*Rights of tenant — Heritability—Lease—Wrong persons recognised as successor of grantee—Rights of lawful successor.*

A lease for a term of years does not terminate with the life of the grantee. A lawful successor of the original grantee would not be affected simply because the lessor recognises a wrong person as the successor of the original grantee. (*Mookerjee and Carnduff, JJ.*) HED LOT KHASIA *v.* KARAN KHASIANI. **13 I. C. 377=15 C. L. J. 241.**

———*Rights of tenant—Exchange of land by.*

Where a lease was given for the purpose of effecting an improvement in the property and the lessee exchanged a certain piece of this land with a portion of land held by another in under-proprietary tenure for the purpose of effecting the improvement, the landlord is bound by the lessee's act in giving the land in exchange. (*Baillie, S. M.*) SHEORAJ KUAR *v.* FAKHRUDDIN. **27 I. C. 21=1 O. L. J. 739.**

———*Rights of tenant — Owner of the materials of the house.*

A tenant, owning the materials of the house can not only sell the materials but also the occupancy right in the absence of a contract of custom to the contrary and such sale does not give the landlord a right of re-entry. (*Lindsay, O. A. J. C.*) BANWARI LAL *v.* KAINA. **9 I. C. 427.**

———*Rights of tenant—Plea not open to tenant.*

In an ordinary action between landlord and tenant the latter cannot rely upon subsequent transactions between the lessor and third parties and set up a defence which would imperil the identity of boundaries which they were bound to preserve. (*Das and Foster, JJ.*) LINTON MOLESWORTH AND CO. *v.* JAGANNATH SUPAKAR. **1 P. L. R. 377=1924 P. 226.**

———*Rights of tenant*—Bhaoli danabandi *tenant.*

A *Bhaoli danabandi* tenant can in course of husbandry on giving reasonable notice to landlord, remove the crop to the threshing floor or to his house. (*Mullick, J.*) EMPEROR *v.* LALU GOPE. **18 Cr. L. J 687=40 I. C. 335=1 Pat. L. W. 691.**

Settlement of Disputes.

———*Settlement of disputes—Pattah—Interpretation—Produce — Rent as percentage—Substituted rent in alternative.*

Where under pattah, if the obligations under Cl. 1, which were, estimating of crops and setting aside on the threshing floor a percentage of the produce, were not complied with, Cl. 8 came into force which applied to

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various contingencies, including the following: "If the yield be carried away...without acting in accordance with the condition specified in para 1, in that contingency" you shall pay at the rate specified in para herein our malvaram paddy in respect of the total yield calculated at an average of 170 kalams and 4 marakals per rate of nanja, the Kadappu and Kar produce being payable within 15th December and Samba Pisanam produce by the 15th March. *Held*, the whole question turned upon the meaning of the term "total yield of the produce." The payment of 170 kalams was not for the total yield of the portion, nor was it penal as contended by the appellant, but a substituted rent. Cl. 8 imposed no penalty as such but simply set forth a figure which upon the whole might be reckoned a reasonable practical substitute for the actual percentage which owing to the tenants' conduct had been rendered unascertainable. The substituted rent applied to the yield of each portion of the crop, exactly as the setting aside on the threshing floor was applicable to each portion. (*Lord Shaw.*) RADHA KRISHNA AYYAR v. SUNDERSWAMY IYER.

49 I. A. 211=45 Mad 475=43 M. L. J. 323=27 C. W. N 1=20 A. L. J 937=36 C. L J. 450=16 L. W. 18=31 M. L. T. 31=1922 P. C. 257.

———*Settlement of disputes—Compromise as to nature of tenancy—Binding effect on successor.*

A compromise of a dispute between landlord and tenant as to the nature of tenancy is legal and is binding on the successors in interest of the landlord. (*Richards, C. J and Banerjee, J.*) KESHO DAS v. DOOLAR RAM.

22 I. C. 124.

Sir land.

———*Sir land—Fixed rate tenancy—Sub-tenancy in 1864—If could develop into fixed rate tenancy.*

A sub-tenancy of Sir land in 1864 could not become a fixed rate tenancy. *Obiter* :—Where a sub-tenant of Sir land mortgaged his plot with possession and the Sir rights vanished while the mortgagee continuing to hold as tenant acquired occupancy rights, the acquisition enures for the benefit of the mortgagor. (*Tudball, J.*) MATA PERSHAD MISSER v. GAJADHAR LOHAR.

23 I. C. 864.

———*Sir land*—Dakhal Dihani—*Proprietary rights—Effect.*

A Dakhal Dihani of proprietary rights does not amount to a dispossession of the ex-proprietary rights in Sir. Neither can dispossession be effected by the proprietor collecting rent from the sub-tenant of the ex-proprietor in the back ground, unaccompanied by any overt act. (*Baillie, S. M. and Tweedy, J. M.*) BALRAJEE v. SARJ PRASAD.

27 I. C. 20=1 O. L. J. 759.

Sub-tenancy.

———*Sub-tenancy—Effect of abandonment of tenancy on sub-lease—Amount of rent payable.*

LANDLORD AND TENANT—Sub-tenancy.

Where an occupancy tenant sublets his holding for some years and puts the sub-lessee in possession and then abandons the holding, the superior landlord, is entitled only to the rent of the holding payable by his tenant and not to that agreed to be paid by sub-lessee to his landlord. (*Piggott and Kanhaiya Lal, JJ.*) GOVIND PRASAD v. PERMANAND.

57. I. C. 589=2 U. P. L. R. (A) 338.

———*Sub-tenant—Liability—Tenant of his mortgagor—Effect.*

Where an occupancy tenant after usufructuarily mortgaging his holding, is put in as an under-tenant by his mortgagee no rent can be recovered from him. 29 A 327, Foll. (*Richards and Griffin, JJ.*) MOHAN DEVI v. JAHANGIR MAL.

9 I. C. 605.

———*Sub-tenancy — Permanent tenancy—Sub-tenant of—Recovery of rent—Landlord's right.*

A landlord has the right to recover the rent of his lands direct from the permanent sub-tenants of the original *mulgeni* tenant. (*Macleod, C. J. and Shah, J.*) GANAPATI NAGAPPA v. NAGABHATTA SHITARAMA BHATTA.

55 I. C. 540 =22 Bom. L. R 118.

———*Sub-tenancy — Ejectment of head tenant—Effect of.*

It is convenient that actions for possession based on forfeiture should be brought against all the parties interested in the premises. The effect of not making every sub-tenant a party is not to limit the right which the landlord would have, on obtaining his decree, to obtain possession of the premises by executing the decree against the tenant. Once the owner obtained a decree in ejectment against the head lessees and that decree having been obtained by S. 115 of the Transfer of Property Act, all rights of sub-lessees who held under the head lessees were at an end, for the simple reason that a landlord cannot give to a tenant or sub-tenant something which he does not possess himself. If his rights are gone, those who claim under and through him lose their rights also. The effect of the decree was that the present defts., who were the head landlords of the plffs., were entitled to possession of these premises as against the plffs. and as against the plffs. landlords. (*Page, J.*) RAMKISSEN DAS v. BINJRAJ CHOWDHURY.

50 Cal. 419=1923 Cal. 691.

———*Sub-tenancy—Creation of—Intention of parties—Tenancy, Sub-division of—Whether new tenancies arise.*

Mere sub-division of a tenancy into several tenancies with apportioned rents is not enough to create new tenancies. The intention of parties is the factor which governs the situation. 14 C. W. N. 385, Foll. (*Fletcher and Richardson, JJ.*) PROSUMMA DEB RAIKOT v. PANCHKOWRI MAJUMDAR.

41 I. C. 691.

———*Sub-tenancy—Lease — Determination of lease by efflux of time—Sub-lessee, rights of.*

The right of a sub-lessee *prima facie* comes to an end on the expiry of the lease of his

landlord (*i. e.*, the lessee.) 2 W. R. 155 ; 22 W. R. 274 ; 26 C. 546, Rel. on. And if the sub-lessee holds over and is treated as a tenant by the next lessee under the proprietor, who accepts rent from him, a new tenancy is created in favour of the sub-lessee which is affected by the T. P. Act then in force. (*Mookerjee and Beachcroft, JJ.*) DURGI NIKARINI *v.* GOBERDHAN BOSE.

19 C.W.N. 525=24 I. C 183=20 C. L J. 448.

———*Sub-tenancy—Contract between a raiyat and an under-raiyat regarding new lease —Validity of.*

A raiyat and an under-raiyat can validly contract among themselves that upon the expiration of the term, a new settlement of rent would be made and the effect of such a contract is to prevent the landlord from seeking to eject the under-raiyat. 36 C. 256 ; 9 C.L.J. 76 ; 10 I. C. 469, Rel. on ; 11 C. W. N. 190, not Foll. Where an agricultural raiyat leases out lands used for homestead, the under-tenant is an under-raiyat and the provisions of the Transfer of Property Act have no application but only those of the Bengal Tenancy Act. 8 C. W. N. 454, Rel on (*Mookerjee and Carnduff, JJ.*) ABDUL KARIM PATWARI *v.* ABDUL RAHMAN. **16 C W. N. 618= 13 I. C. 364=15 C. L. J. 672.**

———*Sub-tenancy—Lessee occupying lease of a premises—Portion of which is already in possession of tenant—Relation between.*

Where a lessee accepts the lease of premises a portion of which is already in occupation of a tenant, the latter becomes a sub-tenant of the former, but on vacation by him becomes again the tenant of the lessor. (*Shah Din and Beadon, JJ.*) NIDARMAL *v.* BORRORAH AND Co. **23 I. C. 359 = 6 P. W. R 1914= 30 P L R. 1914.**

———*Sub-tenancy—Lessee out of possession. —If can sue to eject trespasser.*

Where the owner or tenant, creates a tenancy or sub-tenancy, entitling the latter to the exclusive use of land, the owner or tenant has no right to actual possession unless a right to re-enter is reserved. He may have the tenancy determined and the tenant ejected in due course of law but so long as the latter is in possession he has no right to actual possession. Remedies on denial of title discussed. (*Wallis, C. J. and Sadasiva Aiyar, J.*) DAVOOD MOHIDEEN ROWTHER *v.* JAYARAMA IYER. **44 Mad 937=40 M. L, J. 38= (1921) M. W. N 43=29 M. L T. 78= 62 I. C. 284=13 L. W. 281.**

———*Sub-tenancy—Liability to original lessor.*

A sub-lessee who pays rent to his lessor cannot be made liable to his lessor's lessor unless there was a stipulation to that effect or there is collusion between the lessee and the sub-lessee. 17 M. 296, Dist. (*Sundara Aiyar J.*) RAMAN NAIR *v.* MEERANNAN.

14 I.C. 571=(1912) M.W.N. 541= 11 M.L.T. 432.

———*Sub-tenancy—Lessor's rights.*

A lessor is not entitled to a decree against

both the lessee and his sub-lessee for the same rent. (*Ormond. J.*) ARACHAN *v.* MAUNG PO WIN. **24 I.C. 51=7 Bur. L.T. 85.**

Surrender.

———*Surrender—Occupancy tenant planting trees—Transferability of holding.*

Where an occupancy tenant is allowed to plant a grove, there is a surrender and determination of the existing occupancy tenancy and the land ceases to be an agricultural holding and becomes a grove holding. The rights of a grove-holder are transferable. (*Walsh and Wallach, JJ.*) JALESOR SAHU *v.* RAJ MANGAL. **43 All. 606 = 63 I.C. 437= 19 A L.J. 616.**

———*Surrender — Implied and express— Construction.*

Where the new lease does not pass an interest according to the contract, the acceptance of it will not operate as a surrender of the former lease. In the case of surrender implied by law from the acceptance of a new lease, a condition ought also to be understood as implied by law making void the surrender in case the new lease should be made void ; and in case of an express surrender so expressed as to show the intention of the parties to make the surrender only in consideration of the grant, the sound construction of such an instrument would make that surrender also conditional to be void if the grant should be made void. (*Mukherji and Chotzner, JJ.*) JAMINI MOHAN *v.* DEBENDRA NARAYAN.

1924 Cal. 355.

———*Surrender before time—Right to damages.*

Where the term of a tenancy, under which rent is payable periodically, is brought to a premature termination, the lessor is entitled to damages and to rent for unexpired term of the lease. Even the acceptance of surrender does not preclude the lessor from suing for damages for breach of the contract ; it does not destroy the existing cause of action. (*Mukerjee and Chotzner, JJ.*) BEJOY CHANDRA SINHA *v.* HOWRAH AMTA LIGHT RAILWAY CO., LTD. **38 C. L. J 177=1923 Cal. 524.**

———*Surrender by tenant before expiry of period—Damages.*

Where there was a tenancy for 3 years, the tenant cannot put an end to it before the expiry of the period by merely giving notice of relinquishment. Even where the landlord accepts the surrender by re-entry, he is entitled to damages for the breach of contract, but not for rent for the unexpired period, though the latter may form the basis for damages. (*Mookerjee and Buckland, JJ.*) JOGENDRA KRISHNA ROY *v.* KURPAL HARSHI & Co.

49 C. 345=35 C. L J. 175=1923 Cal. 63.

———*Surrender—Surrender by tenant of portion of holding transferred by him.*

An occupancy *raiyat* who has transferred part of his non-transferable occupancy holding cannot surrender to his landlord the portion so transferred either by surrender of that portion alone or by surrender of the whole

inclusive of such portion. (*Mookerjee, A. C. J. Fletcher, N.R. Chatterjea, Teunon and Richardson, JJ.*) MOHSENUDDIN *v.* BHAGABAN CHANDRA SUTRADHAR.

48 Cal. 605=25 C. W. N. 29=61 I. C. 443=32 C. L. J. 286 (F.B).

———*Surrender—Oral—Registered lease—Validity.*

An oral surrender of a tenancy which is created by a registered lease, is not invalid, if accepted and acted upon by the landlord. (*Chatterjea and Panton, JJ.*) SARI SARDAMAYI DEVI *v.* SARI SAILA BALA DASI.

59 I. C. 788

———*Surrender—Implied.*

A taking of a fresh settlement from the landlord by the tenant of an occupancy holding operates as an implied surrender of the original holding (*Woodroffe and Chitty, JJ.*) TAMIZ MUNSHI *v.* BISWESWARI DEBYA.

22 C. W. N. 967=46 I. C. 862

———*Surrender—Operation of law.*

A surrender of a lease needs no document. Where a person having a settlement of land with Government, makes it over to another who thereupon gets a new lease from the Government, the new lease operates as a surrender of the previous settlement, by operation of law. (*Fletcher and Huda, JJ.*) BROJONATH SARMA *v.* MEHESHWAR GAHANI.

28 C. L. J. 220=46 I. C. 100.

———*Surrender—Relinquishment by tenant.*

When a debtor after having executed mortgage of a holding applies to a landlord for mutation of the name of the creditor, as the *de facto* tenant and such application is accepted by the landlord, the transaction amounts to a complete alienation of the holding and the debtor cannot redeem it afterwards. (*D. Chatterjee and Newbould, JJ.*). ALI SHEIKH *v.* IMAM ALI SARKAR. **35 I. C. 102.**

———*Surrender — Relinquishment—Service —Omission to perform.*

Where the worship of a diety is a necessary condition of a tenancy, the entire neglect to take possession and carry on the worship amounts to an evidence of relinquishment and repudiation. (*Holmwood and Carnduff, JJ.*) MOHAN DAS *v.* JAGABHANDU RAUT.

28 I. C. 430.

———*Surrender — Oral endorsement on patta—Registration.*

A Zemindar gets title to lands given up by the mokraridar who returned his patta and endorsed thereon such giving up though such memorandum is not registered. Receipt of consideration and actual surrender by the Mokararidar to the Zemindar constitute a valid relinquishment. (*Harrington and Carnduff, JJ.*). JANGLI RAI *v.* CHURA RAI. **19 I. C. 124.**

———*Surrender—Relinquishment by one of joint tenants—If valid—Effect of relinquishment taking effect at a future date.*

A relinquishment by one or two joint tenants in favour of the landlord is valid to the extent of the share of that tenant though it is to take effect at a future date. (*Jenkins, C. J. and D. Chatterjee, J.*) KUBRI MUNSHI *v.* BAIKUNTA CHANDRA. **11. I.C. 382=15 C.W.N. 680.**

———*Surrender—Holding under mortgage —Right of landlord to redeem.*

Surrender in law is a matter of contract between the landlord and tenant. A landlord can accept a surrender of a holding under mortgage and redeem the mortgage (*Holmwood and Chatterjee, JJ.*) ISSUR BEHARA *v.* KASHI NATH. **10 I. C 307.**

———*Surrender—Effect of, on prior mortgage —Kudivaram right.*

Per Napier J.—Relinquishment, acceptance by landlord and abandonment operate to terminate the estate of a tenant *Kudivaram* right in such land remains in abeyance until it comes into existence again by admission of a new *ryot* and continues in abeyance *so long* as the landlord does and *can in accordance with law* treat the land as private land.

Per Sadasiva Aiyar J.—A mere relinquishment to the landlord cannot put an end to the mortgage already created by the tenant so as to prejudice the mortgagee's right. (*Sadasiva Aiyar and Napier, JJ.*) VENKATA RAMIAH APPA RAO *v.* LANKA LAKSHMINARAYANA.

(1921) M. W. N 615=15 L. W. 218=42 M. L. J. 161=30 M. L. T. 188=45 M. 47=1922 Mad. 281.

———*Surrender—Tenant giving up to one of two co-owners—Effect.*

If a tenant under one of two co-owners surrenders his right to the other co-owner, the latter does not become a tenant of the former co-owner and liable to pay rent to him, but the tenant may be bound to return possession of the property to the person from whom he got it. (*Spencer and Krishnan, JJ.*) KUNHI KUTHI *v.* KUTHI SOOPPI.

89 I. C. 91=4 L. W. 286.

———*Surrender—Joint tenants—Relinquishment by one tenant of his share to the landlord—Whether extinguishes the tenancy.*

If a co-tenant surrenders his share of the joint holding, to the landlord the latter is entitled to the same and the surrender operates at least to the extent of the moiety of the land.

Quaere—Does such a surrender put an end to the tenancy of both the tenants? (*White C. J. and Sankaran Nair J.*) PARANSANNA *v.* VELECHURI SAMU NAIDU. **15 I. C. 330.**

———*Surrender—Express—Implied—Onus—Sub-division of lands—Variation in extent—Presumption.*

In the case of permanent occupancy rights, granted to some persons for the benefit of a community, the *onus* of proving an express or implied surrender of such rights lies on the party affirming it. The sub-division of the lands and even the surrender of a portion thereof by the grantees will not be inconsistent with the others continuing to hold the

LANDLORD AND TENANT—Surrender.

lands in their occupation on the terms of the original grant (*i.e.*) by right of permanent tenancy, though community of interest may have ceased as between themselves. If the same lands had been held by different persons in different years this would be *prima facie* evidence of the tenure being inconsistent with the continuance of the rights under the original grant. (*Benson and Sundara Iyer, JJ.*) VELUSAMI TEVAR *v.* AROKYA UDAYAN. **15 I. C 119.**

———*Surrender—Effect on under tenancy.*

When a tenant surrendered his tenancy, the sub-tenancy was also determined thereby. (*Batten, J. C.*) GOPALA *v* SAKHARAM. **6 N. L. J. 234=1923 Nag. 261**

———*Surrender—Who can accept—Agent—Lambardar.*

It is only a landlord that can accept the surrender of the tenancy but where the "landlord" is composed of more than 2 or 3 persons, an agent acting on behalf of them all or they themselves may accept the surrender. (*Halifax, A J.C.*) HAIJNATH *v.* RAGHUNATH. **26 I C. 608=10 N. L R. 93.**

———*Surrender—Relinquishment—Necessity for—Agreement to relinquish—Enforcement.*

Unless a relinquishment of occupancy right is accompanied by actual surrender to the land, it is not operative. A mere agreement to relinquish occupancy right, whether or not consideration, passes cannot be legally enforced. (*Kanhaiya Lal, J. C*) MT. BIBI SAIDUNNISSA *v.* FAIYAZ HASAN. **4 U. P. L. R. (O.) 76=9 O L. J. 319= 1923 Oudh 1.**

———*Surrender—Co-tenants.*

A surrender by a co-tenant of his share in an undivided holding is not invalid. (*Jwala Prasad, J*) RAGHUNATH CHATTERJI *v.* JUTHU CHATTAR. **56 I. C. 466= 2 U. P. L. R. (Pat.) 97.**

———*Surrender—Partial surrender—Validity of—Writing—Registration.*

A surrender need not necessarily be by deed ; it may be implied as a fact from certain facts proved. A surrender of a part and not of the whole of the demised premises cannot operate in law as a valid surrender. A deed of surrender need not be registered if there are facts *dehors* and apart from the deed itself from which the inference can be drawn that there was an implied surrender. Otherwise it must be registered more especially if the deed of surrender is to operate as a surrender of premises demised by a prior written registered instrument such as a lease. (*Atkinson and Manuk, JJ.*) JAGDAMBA PRASAD *v.* A. V. SHAM. **49 I. C. 504=1919 Pat. 88.**

———*Surrender—Joint lessees—Surrender by one—Validity and effect of.*

Where there are two joint tenants under a lease though one joint tenant may be competent to surrender for the other joint tenants as well as for himself, he would only be entitled to do so if it was for the benefit of them all. Otherwise the other joint tenant is entitled to continue in sole possession. (*Robinson, C. J. and May Oung, J.*) MAUNG KYAW DUNZAN *v.* MA SEIN. **1 Rang. 19=2 Bur. L. J. 50= 1923 Rang. 151.**

LANDLORD AND TENANT—Tenancy at will.

Tanks.

———*Tank—Ownership.*

Tanks in the villages belong to the proprietor if he has made them. They belong to the tenant if he has made them but in the case of an old tank ownership must be determined on the basis of possession. (*Baillie, S. M. and Tweedy, J. M.*) GAURI SHANKAR. *v.* AMBICA PRASAD. **29 I.C 11.**

Tenancy at will.

———*Tenancy at will—Ejectment—Notice.*

A person who enters on land subject to an agreement to be arrived at as to the rent, etc., and who continues thereon without any concluded agreement having been arrived at is not a '*raiyat*' within the Bengal Tenancy Act and is subject to eviction at will after reasonable notice to remove his effects (*Richardson and Shamsul Huda, JJ.*) BEPIN CHANDRA SARKAR *v* BASANTA KUMAR CHAKRAVARTI. **59 I.C. 454=23 C.W N. 773.**

———*Tenancy by estoppel—Creation.*

A tenancy by estoppel cannot be created where the act of the landlord which is relied upon did confer upon the tenant a right as lessee for some time however short. (*Sadasiva Iyer and Spencer JJ.*) SWAMINATHA MUDALI *v.* SARAVANA MUDALI. **40 I C. 581=33 M.L J. 370.**

———*Tenancy by sufference—T. P. Act.*

There is no such thing as tenancy by sufference in agricultural leases not governed by the T. P. Act. (*Miller and Sadasiva Iyer, JJ.*) GANAPATHI MUDALI *v.* VENKATALAKSHMI. NARASAYYA. **25 I.C. 109=(1915) M.W N. 728.**

———*Tenancy at will—Lease terminable to at the pleasure of lessee—Lessor entitled to put an end to tenancy.*

Where a lease is expressed to be at the will of the lessee, the law implies that it shall be at the will of the other party also, because every tenancy at will must according to law be at the will of both parties. (*Miller and Abdur Rahim, JJ.*) KARANI MANIKA MUDALIAR *v.* CHINNAPPA MUDALIAR. **36 Mad. 557= 25 M.L.J. 651=16 I C 1002 (1)= (1912) M.W.N. 811.**

———*Tenancy at will—Incidents of—Mortgage—Redemption.*

A mortgage by a tenant at will is not binding on the landlord but it is open to the landlord to recognise it by accepting rent from the mortgagee during the currency of the tenancy. Such a mortgage is not *ab initio* void and a suit for its redemption is maintainable. (*Kanhaiya Lal, J.C*) BHAIRON *v.* BALAK **9 O.L.J. 331 : 4 U. P. L. R. (O. C.) 88. : 1922 Oudh 287.**

LANDLORD AND TENANT—Tenancy-at-will.

——*Tenancy-at-will—Transfer of.*

The transfer of a tenancy-at-will is illegal and creates no rights between the transferee as the sub-tenant of the tenant-at-will. (*Stuart, A. J. C.*) INDAL SAH *v.* BHABHUTI SINGH. **25 I.C. 6.**

Termination of Tenancy.

(*See also* T. P. ACT, Ss. 111 to 115.

Thekadar.

——*Thekadar — Possession at the end of "ticca"—Tenant claiming a subordinate interest.*

Where a landlord sues for possession of certain lands included in his *mowjah*, at the end of a lease granted to the tenants, who according to him brought the land under their own cultivation during the lease, and the tenants claimed a subordinate interest in the same, they must prove that interest, because the disputed land was in the mowjah of the landlord. Where certain plots were purchased by the landlord during the continuance of a *ticca* but the *ticcadar* was allowed to be in possession and the landlord claimed possession after termination of the *ticca* more than 18 years from the date of purchase, the claim is not barred as the possession of the land by the tenant all the time was equivalent to the possession of the landlord (*Coxe and Chatterjee, JJ.*) H. MANNERS *v.* HARIHAR DUTT KOER. **22. I C. 568= 19 C.W.N. 149.**

——*Thekadar—Power of creation of tenancy.*

Normally, and unless there is something against it in the terms of the *theka* a *thekadar* of proprietary rights has all the powers and privileges that a landlord has under the Tenancy Act in respect of his tenants and in respect of creating tenants. But the powers of a thekadar may be limited by conditions in his *theka* that he should not lease out land or create new tenants. A distinct prohibition does not cease to be a prohibition because the person who acts against the terms of that prohibition is made liable for damages. (*Batten, J. C.*) MULLOO *v.* KUNDANLAL. **1923 Nag. 139 (2).**

——*Thekadar — Ejectment — Notice of—Thekadar acting without landlord's consent.*

A *thekadar* is not entitled to issue a notice of ejectment without his landlord's permission if his powers are in that respect restricted under the terms of the *theka* irrespective of the fact whether or not such restriction is known to the tenants. (*Holms*, S. M.) PARAMESHAR DAT *v.* BISHESHAR. **40 I. C. 41=4 O. L. J. 156.**

——*Thekadar—Sub-tenancy—Thekadar's rights—Burden of proof.*

A landlord is bound by the terms of the tenancies created by a *thekadar*, unless he shows that he restricted the *thekadar's* ordinary powers as a tenant and made the restrictions known to the tenants and that the transactions between the *thekadar* and the tenants were not made in good faith in the ordinary course of business. (*Holms, S. M. and Campbell, J. M.*) PUDLAI KHAN *v.* MUHAMMAD MEHDI ALI KHAN. **33 I. C. 203=2. O. L. J. 754.**

LANDLORD AND TENANT—Trees.

Trees.

——*Trees—Right to—Trees planted by tenant.*

Whatever view may have been formerly held the presumption now is that a tenant has a right to cut and sell trees planted by him. 43 A. 606 followed. (*Daniels, A. J. C.*) RAM NATH *v.* MATA SAHAI. **3 O. & A. L. R. 479= 1923 A. 517 (2).**

——*Trees—Right to enjoy, whether vests in the landlord or in the tenant.*

In the absence of a custom or a contract to the contrary an occupancy tenant is entitled to enjoy the fruits of all the trees on the holding. The presumption of law, and the general rule in the absence of custom, is that the property in timber on a tenant's holding vests in the zemindar, and that the tenant has no right to cut and remove such timber. But it appears to be clear that in the absence of a custom or of a contract to the contrary a Zemindar has no right to interfere with the enjoyment by his tenant of the trees upon his holding as long as the relation of landlord and tenant subsists. (*Lindsay and Daniels, JJ.*) KAMPTA PRASAD *v.* SHEO PRASAD **45 A. 361=21 A. L. J. 292= L. R. 4 A. 86 (Rev.)=1923 A. 406.**

——*Trees—Planting of trees—Effect.*

The planting of trees on a *Sir* (holding does not necessarily change the nature of the holding. (*Richards, C. J., and Banerjee, J.*) SHIAM LAL *v.* ANANT RAM. **17 I. C. 302.**

——*Trees — Planting of with permission—Non-payment of rent — No denial of title—Zamindar's right not extinguished.*

If a tenant plants trees on his holding with permission of the landlord and do not deny his title, non-payment of rent for a long time does not extinguish the landlord's rights. (*Banerji J.*) AUROOP MISIR *v.* KEDAR PANDE. **15 I. C. 338.**

——*Trees — Zamindari— Pass with the Zemindari.*

Tree standing on a plot of land within a *Zemindari* are appurtenant to the *Zemindari* itself and pass along to the purchaser thereof in the absence of evidence to the contrary. (*Tudball, J.*) ONKAR DAS *v.* CHOTE LAL. **11 I. C. 192.**

——*Trees — Vatandar Khot in Kolaba District—Right to 'Injali' trees in Khoti nisbat lands.*

Where in a suit by Vatandar Khot the question was whether the plaintiff or the defendants were the owners of certain injali trees standing upon lands which were in the occupation of the vendors of defendants who were not *dharekaris*, but held their lands since the introduction of the Survey Settlement as tenants of the Khot, subject to certain rights in the nature of the right of occupancy.

Held, that by virtue of Dunlop's Proclamation of 1821, the Khots became the owners of the *Injali* trees standing in Khoti *nisbat*, and there has been nothing to extinguish those rights or to transfer those rights to the present defendants.

LANDLORD AND TENANT—Trees.

Held, further that the mere failure on the part of the plaintiff to sign the annual Kabuliyat should have this result only, that he would not be entitled for the time being to the right of management of the village. That would not however, affect any other right which he might have independently of that right of management, such as the right to timber growing in Khoti *nisbat* lands. 8 B.H.C.R. A.C.J. 142 Foll. (*Macleod, C. J. and Crump, J.*) AHMAD BALLU DABIR *v.* GANESH VISHNU PENDSE.
25 Bom. L.R. 521=1923 Bom. 462.

———*Trees—Occupancy tenancy — Right to, in Fatehpur, Tahsil Gugera.*

Trees growing on the land of an occupancy tenant are not the property of the tenant. He may cut them only for agricultural implements with the consent of the landlord who should not withhold consent unreasonably. In Fatehpur the landlord is not entitled to cut the trees on an occupancy holding without the consent of the tenant. (*Maynard, F. C.*) POHKARDAS *v.* AMIR. **5 P.R. (Rev.) 1917=41 I.C. 907=3 P.W.R. (Rev.) 1917.**

———*Trees— Lease for the full value of the trees to be paid by the landlord on resuming—Damages—Measure of.*

When the lease is put an end to and the landlord takes possession of the land and the trees thereon, he has to pay full value to the tenant for the trees. Hence the damages caused to the landlord by the cutting of the trees can only be nominal. (*Sadasiva Aiyar and Hannay JJ.*) LATIFA BIBI *v.* NARAYANACHARI.
26 I.C. 271=17 M.L.T. 202.

———*Trees—Pattadar—Rights of.*

A pattadar of only trees has interest in trees as well as in all that is necessary for their growth including the soil in which they grow. (*Benson and Sundara Aiyar, JJ.*) SENGODA GOUNDAN *v.* VARADAPPAN. **36 Mad. 148=10 M.L.T. 488=13 I.C. 39=22 M.L.J. 201=(1911) 2 M.W.N. 532.**

———*Trees — Right to enter on land for cutting timber — Permission of lessee, if required.*

A lessor is not entitled as owner of the trees standing on the land leased out, to enter and fell them at his pleasure. 29 A. 484, Foll. If the lessor desires to take out timber he must by an arrangement with his lessee, acquire permission to go on the land for the purpose. It is not however open to the lessee to arbitrarily refuse permission when the lessor as owner of the timber desires to fell what he is entitled to take but reasonable notice of the lessor's intention to enter and fell should be given.

A thekadar has, in the absence or any contract or local usage to the contrary, no right to fell timber nor does the mere grant of a protected status confer on him any right to cut down trees and appropriate them to his own use if he had no such right before the grant of that status. If however the trees are planted by the person claiming the right to cut them or by his forefathers, the principle of S 108. (*h*) of the T. P. Act. applies to such a case. 38 B. 716. Rel. (*Drake-Brockman, J. C.*) TIKARAM *v.* RAMACHANDRA.
54 I.C. 789.

LANDLORD AND TENANT—Trespass.

———*Trees—Ante Jagir tenant—Berar.*

Trees planted in an *ante Jagir* holding by the tenants belong to them and the landlord is in no way affected so long as the rent is regularly paid and he cannot claim either the land or the trees. There is no custom in Berar that a lessee planting fruit trees on his holding is entitled to half the fruit of the trees even after the termination of his lease. (*Pritdeaux, A. J. C.*) SHAMRAD KUNBI *v.* SITARAM.
44 I.C. 865.

———*Trees right to — Burden of proof — Record of rights—Entries in.*

The landlord is under the general law entitled to the trees and the burden is on the tenant to prove the contrary. Where however the record of rights contains an entry in favour of the tenant the onus is shifted and the landlord must rebut by evidence the presumption raised by the entry. 61 I. C 420. foll. (*Ross, J.*) RAM PARICHAN SINGH *v.* BIRANJI PRASAD SINGH. **1923 Pat. 269=4 Pat. L.T. 245=1923 P. 295.**

———*Trees—Rights of tenant.*

A tenant is entitled to cut the trees on his land but the landlord has the right to appropriate the trees. (*Bucknill, J.*) JANKI KOER *v.* WALI MUHAMMED. **61 I.C. 420.**

———*—Trees—Timber, meaning of.*

In general the property in the trees likely to become timber is in the landlord and that in the bushes in the tenant. 'Timber' means such trees only as are used in building or repairing houses. Bamboo trees are therefore timber. (*Dass and Ross, JJ.*) RAMESHWAR SINGH *v.* BASDEO SINGH.
60 I.C. 521=6 Pat. L.J. 127.

———*Trees—Right to.*

The ordinary law is that the tenant has the right to cut the trees on the holding and the landlord has the right to appropriate. If the tenant claims any right of appropriation he must prove a custom to that effect. (*Mullick and Sultan Ahmad, JJ.*) MAHARANI JANKI KOER *v.* SAUDAGAR RAM. **1 Pat. L.T. 221=56 I.C. 417=(1920) Pat. 177.**

Trespass.

———*Trespass — Against tenant — Cause of action for landlord.*

The right of action of the grantor of a subordinate tenure for a trespass against his tenant does not accrue before the expiry of the tenancy. (*Woodroffe and Smither, JJ.*) JOY CHANDRA DAS GUPTA *v.* KHUKI.
46 I.C. 587.

———*Trespass — Adverse possession against both—Right of landlord to eject him during pendency of lease.*

(*Oldfield, J.*) The landlord's right to sue a trespasser in ejectment during the currency of a lease is an exception to the rule that a

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plff. suing in ejectment must establish an unqualified right to immediate possession. The landlord has to enable himself to fulfil his contract to give or restore possession to his tenant. 4 I. C 30 Not. Fol 15 I. C. 146 ; 5 I. C. 479, Rel. 26 I. C. 347 Dist. 21 M. 288, Diss. (*Phillips J.*) A landlord who is bound to give and restore possession to his tenant and is liable in damages if he fails to do so should not be precluded from evicting a mere trespasser in order to put himself in a position to perform his obligations The fact that the tenant refuses or is unwilling to sue jointly with the landlord ought not to be allowed to prejudice the rights of the latter. (*Oldfield and Phillips JJ.*) KATHIRI MOTIR *v.* KUTTICHEKKUTI MUDALIAR. **5 L.W. 330=39 I.C. 425=(1917) M.W.N 339.**

———*Trespass—Reversioners — Whether can sue for declaration of title—C. P. Code, O. 21, R. 36.*

Where during the currency of a lease the defts. took possession of the suit lands not only adversely to the tenant but also claiming adversely to the reversionery rights of the plff. landlord. *Held*, that in as much as the plff.'s right of reversion was affected by such adverse occupation, he was entitled to a decree declaring his title to the lands and giving him "formal" possession thereof by the proclamation of his reversionery right, 8 A. 440. (F. B.) Foll. (*Sadasiva Iyer and Napier, JJ.*) THIRUVENGADA KONAN *v.* VENKATACHALLA KONAN. **39 Mad. 1042=32 I.C 198=30 M.L.J. 258.**

———*Trespasser—Settlement Court decree—Ejectment suit—Jurisdiction—Civil or Revenue.*

The mere existence of a tenancy is a bar to a suit for ejectment of the tenant as trespasser Under a settlement Court decree lessees were entitled to possession and under certain circumstances the landlord was permitted to enhance rent. On the refusal of tenant to pay enhanced rent ejectment suit was filed in a Civil Court Their refusal to pay did not render tenants trespassers and therefore could not be ejected through a Civil Court. (*Kanhaiya Lal and Kendall, A. J. Cs.*) RAMAUTER *v.* BHAGWATI PRASAD SINGH. **38 I C. 409=3 O.L.J. 703.**

Under Proprietary Right.

———*Under-proprietary right—Long recognised title.*

Where certain persons were recognised as under proprietors in the year 1899 by a judicial decision and were recorded as such in settlement records. *Held*, a title so long recognised cannot be overthrown. (*Lord Buckmaster*). PIRTHIPAL SINGH v. GANESH DIN SINGH.

44 M.L.J. 29=1 P.W.R. 1923=25 O C. 396=4 L. 16=50 I.A. 210=27 C.W.N 701=25 Bom. L.R 660=37 C.L.J. 219=9 O.L.J. 649=18 L.W.41=32 M.L.T. 109=9 O. & A. L. R. 541=L.R. 4 A (P. C.) 7=1922 P.C. 383.

———*Under-proprietary right — Re-entry—Proprietor's right to—Lease—Interpretation of.*

One essential factor in under-proprietary rights is that in no circumstances has a proprietor a right of re-entry against the under-proprietor. Therefore a lease providing for re-entry on failure to perform some conditions does not confer an under-proprietary right on the lessee. (*Stuart and Kanhaiya Lal, A. J. Cs*) ARUNACHELLAM CHETTIAR *v.* MUTHAYANAITHAVEN **25 I. C. 675=26 M. L. J. 575.**

———*Under-proprietary right—Grant of birt right.*

Where a document gives a person a perpetual transferable *birt* right without payment of rent the right so conferred is that of an under-proprietor. (*Daniels, A. J. C.*) BIKAROO *v.* ANANT BAHADUR. **63 I.C. 551=8 O.L.J. 311.**

———*Under-proprietary right—Prior litigation between parties—Adverse possession*

In a suit for declaration, the deft. set up under proprietary rights in the land acquired by prescription but failed to establish any decree passed in his favour for such rights at the time of the first regular settlement. The documents showed that at the time his predecessor had set up a claim to proprietary rights which failed and a claim for sub-settlement of the village also was unsuccessful. In 1869, while an appeal in the latter suit was pending a notice of ejectment was issued against the predecessor of the deft who alleged that the land was held in hereditary right and that his claim for sub-settlement was pending in appeal and he was in possession of the land as *Sir*. These proceedings resulted in the notice being cancelled and a decree in favour of the deft. for certain areas of *Sir* lands. There was further litigation between the parties, and the Courts held that the parties to whom notices were issued were not liable to ejectment. *Held*, that there was sufficient evidence of an under-proprietary right as early as 1869 and that, the suit must fail. (*Lindsay, J. C.*) MAHOMEDUL HASAN KIRMANI *v.* SHEOPARSAN SINGH. **57 I. C. 419=7 O. L. J. 296**

———*Under-proprietary right—Grant of, for life—Transfer.*

A tenure which is not transferable cannot be treated as under-proprietary but a superior proprietor can confer under-proprietary title on a person for life without any power of transfer. (*Kanhaiya Lal and Daniels, A. J. Cs.*) MUSSAMMAT JANKI KUNWAR *v.* MITRA SEN SINGH. **54 I. C. 901=6 O. L. J 696.**

———*Under-proprietary right—Shankalpadar in Oudh—Landlord and tenant.*

A Shankalpadar is not necessarily an under-proprietor. One species of sankalpa is of an under-proprietary nature, the other species of the nature of superior tenancy. When in a suit in ejectment in a Revenue Court the defendant set up the plea he was Shankalpadar, it does not give a cause of action to the landlord to file in the Civil Court a suit for declaration that the Shankalpadar, is neither a proprietor nor an under-proprietor. (*Stuart, J. C.*) SITA RAM *v.* THE DEPUTY COMMISSIONER OF FYZABAD. **49 I. C. 457=6 O. L. J. 37.**

———*Under-proprietary right — Holding — Tenancy in.*

Tenancy by an under-proprietor in the under-proprietary tenancy, is not inconsistent with his

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joint interest. A mere lease by under-proprietor in favour of a superior one, unaccompanied by any act or possession does not put an end to his status. (*Lindsay, J. C. and Kanhatya Lal, A.J.C.*) JANG BAHADUR *v.* MUHAMMAD ABDUL HUSSAN KHAN **35 I. C. 743=3 O. L. J. 279.**

———*Under-proprietary right—Onus of proof.*

The burden of proving under-proprietary title and ownership by adverse possession of groves and trees lies on the defendant who sets them up against a zemindar. (*Lindsay, J. C.*) **RAMASARAN** *v.* PERTHIPAL SINGH. **32 I. C. 370= 2 O.L J. 549**

———*—Under-proprietary right—Proof—Nagsha Tasfia Lagam—Shankalpdhar haqadna.*

An entry in a *nagsha tasfia lagan* as *shankalpdhar haqadna* is sufficient *prima facie* proof of a *Shankalp* under-proprietary right. (*Tweedy S. M. and Holms, J. M.*) LOTAN GOSHAIN *v.* AJODHYA ESTATE **30 I. C. 525=2 O. L. J. 353.**

———*—Under-proprietary right—U. P. Land Revenue Act—Rights not affected, by fresh kabultyat to pay enhanced rent.*

Although an under-proprietor executes a *kabultyat* to pay an enhanced rent, his under-proprietary right are not affected. (*Holms, J. M.*) GANGADIN SHUKUL *v.* KRISHNA PRASAD SINGH. **30 I. C. 887=2 O. L. J. 367.**

———*Under-proprietary right—Transferability—Sale of occupancy holding in execution of money decree—Co-sharer of ratyat—Plea of non-transferability.*

Where a settlement Court does not pass a decree for under-proprietary rights or for sub-settlement but merely for *dakyak* rights, and the decree-holder continues possession of land not by virtue of that decree he has no right to possession of land as distinct from the Dahyak decreed to him. (*Lindsay, J. C. and Kanhatya Lal, A. J. C.*) RAM ASRE *v.* RAJA MUHAMMAD ABDUL HASAN KHAN. **30 I. C 218=2 O. L. J. 241.**

———*Under-proprietary right — Refusal of settlement Court to grant sub-settlement—Proof as to.*

The refusal of a settlement court to grant a sub-settlement to a lessee of the whole village conclusively shows that he is not an under-proprietor. (*Kanhatya Lal and Sabonadiere, A. J. C.*) RAM JIYAWAN *v.* MUHAMMAD ABDUL HASSAN KHAN. **28 I. C. 231.**

———*Under-proprietary rights—Claimed by tenant served with notice of ejectment—Cancellation of notice—Cause of action for declaration from Civil Court.*

Where in a suit to contest a notice of ejectment the plaintiff claimed under-proprietary rights and the notice was cancelled by the Revenue Courts on the ground that they had greater rights than that of mere tenants, the landlord gets a cause of action for a declaration by a Civil Court that the plaintiff does not possess any under-proprietary rights. To maintain such a suit, it is not necessary that the Revenue Court should hold the tenant to possess under-proprietary rights. It is enough if the decision is adverse to the title of the landlord. 7 O. C. 372 Expl. A long lease or even a perpetual lease does not constitute the lessee an under-proprietor. The possession and exercise of Zemindari rights which are traceable to and are derived from the leases granted are insufficient to confer an under-proprietary title by prescription. (*Evans, J. C. and Rafique, A. J. C.*) ANANT LAL *v.* JANG BAHADUR SINGH. **11 I. C. 920= 15 O. C. 196.**

LANDLORD AND TENANT—Under Raiyati Interest.

———*Under raiyati interest—Transferability of holding—Custom.*

As a general rule an under-raiyati holding is not transferable but an under-raiyat may under certain circumstances acquire a right of occupancy and if he so acquires it his right is transferable. 42 C. 751 ; 18 C. L. J. 262, 32 C. L. J. 46 Ref. (*Newbould and Cuming, JJ.*) TUKA MEAH *v.* NABIN CHANDRA MAZUMDAR. **1923 Cal. 292.**

———*—Under-raiyati interest—Transfer of Usufructuary mortgage.*

An under-raiyati interest is *prima facie* not transferable ; hence an usufructuary mortgagee of such an interest acquires no title to the mortgaged property and cannot successfully resist an ejectment suit by an auction-purchaser of the holding. 4 Cal. 135 ; 42 Cal. 751 Foll. (*Mookerjee, C. J. and Fletcher, J.*) BISAWAMBHAR MONDAL *v.* NASRAT ALI. **57 I. C. 912= 32 C. L. J. 46.**

[Affirming 52 I.C. 355.]

———*—Under-raiyati interest—Korfa chasi or khorfa raiyati lands.*

Where in a *Kabuliyat* the holdings were described as *Korfa chasi* and *Korfa raiyati* and the predecessors-in-interest of the holders under the Kabuliyat had portions at least of the lands comprised in *Khas* cultivation. *Held*, the holders were under-raiyats. (*Chaudhuri, J.*) ANWAR BEWA *v.* SURENDRA NATH RAHUT **56 I.C. 345.**

———*Under-ratyati interest—Transfer of—Ejectment*

Apart from custom, a transferee of an under-raiyati interest has no interes tin the land and is liable to be ejected at the instance of even a collusive purchaser of the holding. (*Newbould, J.*) BISWAMBHAR MANDAL *v.* NASARAT ALI. **52 I.C. 355.**

[Affirmed on appeal 57 I.C. 912=32 C.L.J.46.]

———*Under-raiyati interest—Rights of a purchaser of portion.*

A transferee of a portion of a non-transferable under-raiyati interest cannot get a declaration of his title in a suit against the landlord in possession. (*Fletcher and Hudu, JJ.*) RAJANI KANTA GOSH *v.* LALA ROUT. **47 I.C. 298.**

———*—Under-raiyati interest—Covenant for renewal of—Validity of.*

A covenant for renewal of an under-raiyati lease is a valid contract and an under-raiyat remaining in possession under its terms cannot be ejected. (*Fletcher and Panton,*) AMINUDDI *v.* ANANDA CHANDRA PAUL. **46 I C. 925.= 28 C.L.J. 507**

———*Under-raiyati interest—Transferability.*

As an under-raiyati interest is not transferable except with the consent of the landlord, its sale in execution of a money decree to which the under-ryot does not object, though binding upon him, does not bind the landlord. Consequently

LANDLORD AND TENANT—Under Raiyati interest.

a landlord who purchases the same at a subsequent sale without objections from the under-ryot has every right to eject the previous purchaser. *(Fletcher and Smither, JJ.)* PRAMATHA BHUSHAN DEB *v.* RAMACHANDRA MANDAL.
39 I.C. 881=32 C. W. N. 124.

———*Under-raiyati interest—Transferability.*

An under-raiyati holding is not transferable. Where a tenure or holding, is not transferable apart from the T. P. Act, it cannot become so unless it is expressly made so by some other statute. *(Holmwood and Chapman, JJ.)* AMINUNNISSA *v* JINNAT ALI. 42 Cal. 751=27 I. C. 271=19 C.W.N. 43=20 C.L.J. 548.

——— *Under-raiyati interest—If transferable.*

The interest of an under-raiyat is not *ipso facto* transferable. *(Mookerjee and Mullick, JJ.)* AKBILCHANDA BISWAS *v.* HASAN ALI SADAGAR.
18 C.L.J. 262=20 I.C 698=19 C.W.N. 246.

———*Under raiyati Interest.*

An *under-raiyat* can have a separate tenancy in respect of an undivided share of land. *(Chatterjea J.)* IMAM-UD-DIN CHAUDHARI *v.* DANESH MUHAMMED. 14 I. C. 738.

———*Under-raiyati interest—Separate tenancy.*

An under-raiyat can have a separate tenancy in respect of an undivided share of land. *(Reid, C.J.)* NAIDARMAL *v.* BIDDULPH MOHAMED.
164 P. W. R. 1912=14 I. C. 737=93 P. R. 1912=255 P. L. R. 1912.

———*Under-raiyati interest—Sale in execution of money decree.*

An under-raiyat has no transferable interest in his holding unless there is a custom to the contrary. An under-ryot can object to the sale of his under-raiyati interest in execution of a money-decree against him. *(Miller, C. J. and Roe, J.)* MADAN MOHAN PANIGRAHY *v.* BANDU BARIK. 51 I. C. 286.

———*Under-raiyati interest—Right of the tenant.*

Where a tenant has been recognised as such by the superior landlord, it is not open to a sub-tenant under him to question the validity of the original tenancy. *(Roe and Jwala Prasad, JJ.)* KAILASPATI CHAUDHURY *v.* MUNESHWAR.
3 Pat. L. J. 576=43 I. C. 965=4 Pat. L. W. 109.

Wajib-ul-arz.

———*Wajib-ul-arz.*

The Wajib-ul-arz provided 'a ryot who sells a house pays ¼ of the sale consideration to the Zemindar and the latter if he desires to do so takes ¼ of the materials of the house.' *Held* the materials of the house alone could be sold unless the Zamindar consents to the maintenance of the house by a transferee from the tenant. *(Stanley, C. J. and Banerji, J.)* MAHOMED USMAN *v.* BABU.
9 I. C. 315=8 A. L. J. 61.

Waste.

———*Waste lands—Noabad Taluq—Tenure permanent or heritable.*

In a *Noabad taluk'* it is not necessary for the Government to settle uncultivated lands, (in this case, the bed of a silted up tank,) with the tenure holders under the *Noabad taluk. (Fletcher and Richardson, JJ.)* MOHINI MOHAN GUHA *v.* JHANDA MIA CHOWKIDHAR. 40 I. C. 596.

———*Waste—Nanjai holding—Right of ryot to use a portion as seed bed—Damages for non-cultivation—Burden of proof of wrong use.*

The use of a reasonable portion of a *nanjai* land as seed bed is a proper use of the land and if the landlord claims damages for non-cultivation he must show that the land was wrongly used or that a ryot ought to have grown on the same plots after removing the seeds. *(Miller J.)* RAMAKRISHNAN PILLAI *v.* ROBERT FICHER.
26 I. C. 797=27 M. L. J. 415.

Zemindar.

——— *Zemindar—Right of, to all lands within Zemindari limits*

A Zemindar has a right to all the lands in his Zemindari. The lands granted to the Zemindar and chargeable with Jamma are not confined to those which were brought into account in fixing the peishcush or *Jamma* but includes waste lands as well which could subsequently be cultivated. *(Lord Parker.)* KANDUKURI BALASURYA PRASADA ROW *v* SECRETARY OF STATE.
40 Mad. 886=44 I. A. 166=33 M. L J. 144=22 M. L. T 76=15 A L. J. 697=21 C W. N 1089=(1917) M. W N. 536=19 Bom. L R. 751=41 I. C 98=6 L. W. 340=2 Pat. L. W. 260=26 C L. J. 290 (P. C.)
[On appeal from 34 Mad. 295=20 M.L.J. 823=8 I. C. 67=8 M.L.T. 389=(1910) M.W.N. 595.]

———*Zemindar—Right of—Chaukidari Chakran lands.*

The Zemindar has a *prima facie* title to all malguzari lands in his zemindari. If the Chowkidari chakran lands forming part of the malguzari lands are resumed the right of Zemindar to possession on resumption by Government is not lost. *(Lord Parker).* RANJIT SINGH *v.* KALIDASI DEBI. 44 Cal. 851=21 C W. N. 609=32 M. L. J. 565=15 A.L.J. 380=25 C.L.J. 499=19 Bom. L. R. 462=(1917) M W N. 559=6 L. W. 101 = 2 Pat. L. W. 1=22 M. L. T. 489=40 I. C. 981=44 I. A. 117 (P. C.)

———*Zemindar—Right of, to full beneficial enjoyment.*

A Zemindar is entitled to the full beneficial enjoyment of every parcel of land within the *ambit* of his Zemindary for which assessment was settled. An express reservation of the power is necessary to prove the right of Government to reserve and assess service tenure lands in Zemindari. 42 Cal. 710 (P. C.) Rel. on. *(Lord Parker.)* RAMACHANDRA BHANJ DEO *v.* SECRETARY OF STATE. 43 Cal. 1104=43 I. A. 172 = 20 M. L. T. 235=20 C. W. N. 1245=(1916) 2 M. W. N. 175=4 L. W. 251=14 A. L. J. 1009=18 Bom. L. R. 838=25 C. L. J. 296=37 I. C. 223=31 M.L J. 745 (P. C.)

———*Zemindar—Right of, to full beneficial enjoyment.*

A Zamindar has the full beneficial enjoyment of every parcel of land within the ambit of his Zemindari for which assessment was settled. To prove the right of Government to resume and

LANDLORD AND TENANT—Zemindar.

assess service tenure lands in a Zemindari, an express reservation of the power is necessary *(Mr Ameer Ali.)* SECRETARY OF STATE v. KIRTI BAS BHUPATI HARICHANDAN MAHA PATRA.
42 Cal. 710=42 I.A. 30=19 C W. N 65=2 L W. 11=17 M. L. T. 1=21 C. L. J, 31=17 Bom. L R. 32=26 I C. 676=28 M. L. J. 457 (P C)

———*Zemindar—Haqi Chairum—Liability of vendee—Custom.*

The haqi-chairum is a customary due payable to the Zemindar on the transfer by sale of house property; and this equally (after the sale became absolute) whether the sale was in its inception conditional or not. The zamindar's right is to a share of the purchase money; it is not merely a right to claim that share from the vendor. It is therefore, incumbent on the purchaser, if he would acquit himself of all liability to see that the zemindar is satisfied in respect of his dues, and he cannot discharge himself by a payment to the vendor. 23 All. 209. foll. *(Stuart and Sulaiman JJ)* KEDAR NATH v DATTA PRASAD SINGH. **20 A L. J. 646=44 A. 739=4 U. P. L. R (A) 197=1922 All. 370.**

———*Zamindar—Fixed rate tenancy—Usufructuary mortgage of—Effect and tenant.*

The usufructuary mortgage of a fixed rate tenancy does not extinguish the tenancy or create any contractual relationship between the mortgagee and the Zemindar. The mortgagor and his legal representatives after him continue to be tenants. *(Walsh and Wallach, JJ)* SAUDAGAR SINGH v. GANGA SINGH,
63 I. C. 274=19 A L. J. 702.

———*Zamindar—Power to interpose—another tenancy.*

A Zemindar or tenure holder who has carved out a tenure or under-tenure is competent to interpose between himself and his tenant an intermediate holder who may realise the rent payable to himself by his original tenant. English and Indian case law reviewed *(Mookerjee and Buckland, JJ.)* JAHAR LAL BHUTRA v. BHUPENRA NATH BASU. **49 Cal. 495=34 C. L. J. 79=1922 Cal. 412 (2).**

———*Zemindar—Resumption of Inam lands by—Nature of lands after resumption.*

When the Zemindar himself resumes the land of an inamdar on the latter's executing a deed of relinquishment expressing his inability to perform the services to the Zemindar, thereafter the lands become ordinary ryoti lands of the estate. The Zemindar's private rights, however valuable, can be surrendered to the Government unless such surrender is prohibited by law. *(Sadasiva Aiyar and Napier, JJ.)* VARADA RAJA APPA RAO v. GONAPALLI RAMAYYA. **30 M. L. J. 545=34 I. C. 626=19 M. L. T. 338.**

LAND REVENUE.

See LOCAL REVENUE ACTS.

LAND TENURE.

Birt Tenure.
Chakran Lands.
Digwari Tenure.
Fazendari Tenure.
Ganti Tenure.
Ghatwal Tenure.
Gordon Settlement.
Jagir.
Kabir Lagan.
Kasavaragam Tenure.
Kasbati Tenure.
Khoti Land.
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Mirasi Tenure.
Mulgeni Tenure.
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Non-transferable Holding.
Patni Tenure.
Permanent Tenancy.
Prajagiri Tenure.
Pujah Miras.
Rafa Tanikdars.
Rent-free Tenure.
Ryotwari Tenure.
Savaram.
Service Tenure.
Tenancy.
Zamindari.
Miscellaneous.

LAND TENURE—Digwari Tenure.

Birt Tenure.

———*Birt tenure — Status of Birtdar — Rent payable to Talukdars—Superior landlord's right to put up right of birtdars to sale in execution of a decree for arrears of rent.*

A Talukdar cannot put up to sale the rights of intermediate holders called *Birtdars* in execution of a rent decree obtained against sub-settlement holders to which the *birtdars* were not parties. The rights of *birtdars* are altogether different from those of sub-settlement holders. No decree, therefore, can be passed against the *birtdars* for arrears of rent due by the sub-settlement holders. The amount payable by the under-proprietor to the superior landlord though calculated on the basis of land revenue is not land revenue but rent. *(Lindsay, J. C)* BRIJLAL v. RAMADHAR.
14 I. C. 117.

Chakran Lands.

———*Chakran lands—Patni Mahal—Suit for possession—Specific performance of contract.*

An action for possession of *Chakran* lands in *Patni* cannot be one for specific performance of a contract. If there is no scope for action for specific performance there is no possible ground, for a Zamindar to keep the *Patnidars* out of possession or to ask to do them anything except to pay the Collectorate assessment. *(Holmwood and Chapman, JJ.)* ABADHAUT BANERJEE v. KANIZ FATHIMA. **18 I. C. 239.**

Digwari Tenure.

———*Digwari tenure—Incidents of Digwar, if entitled to minerals—Zemindari property—Rights of Government.*

Digwari tenure which was granted originally in consideration of the performance of military service, to which police duties were attached is hereditary and inalienable. The digwar is appointed by the Government and is liable to be dismissed by the Government for misconduct. On dismissal, the next male heir, if fit for the office, is appointed.

The Zemindar of a permanently settled estate is entitled to the minerals underneath the lands held on *digwari* tenure in the absence of a separate settlement by Government with the *digwar*

LAND TENURE—Digwari Tenure.

or of evidence that mineral rights had vested in the *digwar* before the permanent settlement or of a grant of such rights by the Zemindar since the settlement. To a suit by the Zemindar for a declaration of his rights to the minerals as against the *digwar* the Government is not a necessary party as it never claimed the minerals in the Zemindari. *(Lord Macnaughten.)* DURGA PRASHAD SINGH *v.* BROJO NATH BOSE. **39 Cal. 696 = 39 I.A. 133=16 C. W. N 482 = (1912) M.W.N 425 = 11 M.L T 337 = 9 A L J. 462 = 15 C L J. 461 = 14 Bom. L R 445 = 15 I.C. 219 = 23 A.L.J. 26 (P.C.)**

[On appeal from 34 Cal. 753 = 12 C W.N 193.]

———*Digwari tenure—Incidents of—Digwari of Ghat Burrah, position of—Suit for declaration of right—Jurisdiction of Civil Court.*

There is a general usage on the death of the *Digwar* holding office to appoint his heir in his place as the successor to his office The heir's claim, and the tenure of office are dependant on approval of Government. The position of a *Digwar of Ghat Burrah* is that of an officer remunerated by the enjoyment of land. The Civil Court has no jurisdiction to reinstate a *Digwar* who has been dismissed by the Executive Government, as unfit for the discharge of his duties. But the position is different when the Commissioner decides against a claimant not in the exercise of his discretion but upon an erroneous view of the relative title of his opponent. In such case the Civil Courts can give a declaratory decree under S. 42 of the Sp. Rel. Act, to enable plaintiff to approach the Government with his claims and seek their decision on the question of the appointment of a successor to the office of *Digwar*. *(Jenkins, C. J., Mookerjee and Holmwood, J.J.)* HEMENDRA *v.* UPENDRA NARAIN **43 Cal. 743 = 22 C L.J 419 = 32 I C. 437 = 20 C.W N. 446.**

———*Digwari tenure—Birbum—Nature.*

A Digwari tenure in Birbun resembles to a Ghatwali tenure. Though not governed by ordinary rules of inheritance the tenures are hereditary, but are subject to Government's approval of the heir. *(Fletcher and Chatterjee JJ.)* HEMENDRA NATH ROY *v.* UPENDRA NARAIN ROY. **23 I C 849 = 18 C.W N. 1036.**

Fazendari Tenure.

———*Fazendari tenures—What is.*

In its strict or proper meaning Fazendari tenure means an indefeasible right to hold for ever on payment of a small quit or ground rent, in its loose sense, any kind of tenure agreed on between the parties.

The estate to be really Fazendari must be one which approaches as near as possible an estate of absolute ownership. It must be of unlimited duration subject to such rights as escheat. There must be no rights as re-entry or resumption on the part of the Government *(Fawcett, J.)* RAHIMTULLA *v.* HASANALI. **26 Bom. L. R. 1192 = 1924 Bom 212.**

———*Fazendari Tenure.*

The word *Fazendari* used is an agreement between a landlord and tenant even though indicating the nature of the rent, does not necessarily decide the nature of the tenure which depends upon the agreement between the parties.

LAND TENURE—Ghatwali Tenure.

(Scott, C.J. and Davar, J.) YESHWANT VISHNU NENI *v.* KESHAVRAO BHAIJI **27 I. C 523 = 16 Bom L.R. 720.**

———*Fazendari—Meaning of.*

The word *Fazendari* is used with reference to tenants holding under a private landholder to indicate sometimes an indefeasible right to hold in perpetuity on payment of a small quit or ground-rent and sometimes any kind of tenure agreed upon, between the parties. *(Farran J.)* PARAMANANDDAS JIVANDAS *v.* ARDESHIR FRAMJI. **27 I.C. 512 = 16 Bom L.R. 723 (Note).**

———*Fazendari tenure—Subletting — Nature of.*

Fazendari tenures are perpetual, subject only to the payment of nominal rents to Government; and the holder thereunder might sublet on any condition he pleases and the tenant does not necessarily take a permanent tenure unless specifically stipulated *(Beaman, J.)* YESHWANT *v.* KESHAV RAO. **39 Bom. 316 = 23 I. C. 880 = 16 Bom. L R. 252.**

Ganti Tenure.

———*Ganti tenure—Tenure created by previous settlement holder.*

The temporary settlement holder of a mahal created a ganti interest in favour of certain persons. Subsequently the mahal was sold for arrears of revenue and purchased by plaintiff, whereupon the Settlement Officer settled the rent for the mahal on the basis of the rent payable by the *ganttdars*, and plaintiff executed a kabuliyat stipulating to respect the recorded right of under-tenure-holders and other persons: *Held*, that the plaintiff was bound to recognise the *ganti* tenure and could not question its existence, *(Walmsley and Huda, JJ.)* JARIP SARDAR *v.* JOGENDRA NATH CHATTERJEE. **24 C. W. N. 53 = 54 I. C. 719 = 31 C. L. J. 78.**

Ghatwali Tenure.

———*Ghatwali—Incidents of—Succession.*

Ghatwali tenure is ordinarily hereditary, the estate descending to such male member of the family as the Zemindar approved as competent, and it is the right of the family, so long as they have male members competent to perform the duties, to have one or more of them appointed *Ghatwals*. The member appointed however, does not hold on behalf of the family, and the other members of the family have no rights in the land while it is in his hands as *Ghatwali*.

Where the Zemindar on being released from the performance of *Ghatwali* duties gave the *pattah* to four *Ghatwals* members of a family, granting the lands (which were till then subject to the *Ghatwali* tenure) in perpetuity of an annual fixed *juma*, *held*, that the members of the family other than the four grantees took no beneficiary interest in the lands granted. *(Lord Phillimore)* RAJA DURGA PRASAD SINGH *v.* TRIBENI SINGH **46 Cal. 862 = 48 I. C. 527 = 24 M. L. T. 407 = 28 C L. J. 508 = 9 L.W. 60 = 21 Bom. L R. 869 = 45 I.A. 251 (P.C.).**

———*Ghatwali—Transfer of — Transferable right granted after auction, sale of.*

As the *Ghatwal* judgment-debtor had no transferable right on the date when the

LAND TENURE—Ghatwali Tenure.

execution sale took place, the plaintiff purchaser in execution had taken nothing by the purchase. The subsequent enfranchisement from service does not give a title to plaintiff. *(Harrington and Mookerjee, JJ.)* PURNA CHANDRA LAHA *v.* SOUDAMINI BAISNARI. **48 I. C. 335= 28 C. L. J. 283.**

———*Ghatwali tenure—Bankura—Succession—Rules as to.*

The ordinary Hindu and Muhammadan rules of inheritance are not applicable to the *Ghatwali* tenure in Bankura, but it is held upon the condition of the approval of the heir by Government. 9 C. 187 P. C. Rel. on. *(Fletcher and Richardson, JJ.)* DEBAKAR SINGH *v.* RADHA GOLINDS SINGH. **24 I. C. 527.**

———*Ghatwali tenure—Ghatwal dismissed—No male heir—Forfeiture.*

Where a Ghatwal is dismissed and has no male member of the family to succeed, the tenure is forfeited; and if a stranger should permanently be appointed to his place, no subsequently born son of the dismissed Ghatwal can claim it on the ground that the tenure is hereditary. Government cannot disapprove of the heir of a Ghatwal or withhold sanction on any ground it likes and apart from the question of his fitness. 1 W.R. 321 and 5 Cal. 749 Dist. *(Fletcher and Chatterjee, JJ.)* HEMENDRA NATH ROY *v.* UPENDRA NARAIN ROY. **23 I.C. 849= 18 C W.N. 1036.**

———*Ghatwali tenure—Execution of decree—Surplus profits realised by Ghatwal if can be attached.*

A Ghatwali tenure by itself cannot be attached in execution though the surplus rents and profits realised by the Ghatwal may be attached as his personal property. 4 W.R. 5; 10 C.W.R. 260 Rel. A receiver may be appointed in execution of a decree against the Ghatwal so that he might receive the rents and profits and apply it to the satisfaction of decree. *(Coxe and Imam, JJ.)* KESHABATI KOERI *v.* MOHON CHANDRA MONDAL. **39 Cal. 1010=15 I.C. 227=16 C.W.N. 802.**

———*Ghatwali tenure—Incidents of—Succession—Hindu Law relating impartible estates—Applicability of.*

The incidents that attach to the tenure known as Ghatwali are (1) that it is impartible and permanent; (2) that it descends by lineal primogeniture; and (3) that it is alienable at least with the consent of the Zamindar.

Where the family of a ghatwali is governed by the *Mitakshara* law the devolution of immoveable property in the family must be governed by that law subject to the question of impartibility, unless either there be some special custom of the family to the contrary, or unless there be some peculiar feature inherent in *ghatwali* tenures, which prevents the operation of the Mitakshara rule of succession in the case of the impartible property. The Ghatwali property is impartible and the sons and the other members of the family take no immediate interest at birth entitling them to claim partition. But in a joint Mitakshara family the course of succession to *ghatwali* property is not

LAND TENURE—Gordon Settlement.

different from that which regulates the succession of other impartible property. In a Mitakshara family living in commensality, the inheritance even of impartible estates is confined to male members to the exclusion of the females unless the estate itself is separate or self-acquired. *(Miller, C. J. and Foster, J.)* THAKURAIN FULCATT KUMARI *v.* MAHARAJA KUMAR RAO MAHESWARI PRASAD SINGH. **4 Pat. L. T. 473= (1923) Pat. 161= 2 Pat. 685=1923 P. 453.**

———*Ghatwali tenure.*

Grant of permanent tenure by ghatwal was competent and he was estopped from denying the grant. *(Coutts and Macpherson, JJ.)* KANGALI CHARAN MUKHARJI. *v.* SURJA NARAIN SAH. **65 I.C. 303=6 P.L.J. 687.**

———*Ghatwali tenure—Transferability — Sale in execution.*

A ghatwali or Police Jaghir is transferble and saleable in execution of a decree, subject to the right of the Government to object to it. *(Jwala Prosad and Ross, JJ.)* BIKHAMBHAR SINGH *v.* BHAJO HARI MARWARI. **64 I.C. 522= 2 Pat. L.T. 752.**

———*Ghatwali — Sonthal Pergannas — Handwa—Istimrari Mokkurari tenure—Permanent settlement—Alienation by holder—Heirs of holder—Rights of.*

The *Handwa* and *Chandwa* estates were crown *Ghatwalis* holding the lands as military tenure directly under the British crown. The sanad issued to the holder by the British Government made the tenure one held directly under the Government, and resumable at the death of the life tenant. The sanction of Government is necessary to validate the succession on the death of each holder. The permanent settlement of 1796 might destroy a military tenure by a new contract with the holder of the tenure but it does not affect the position of the tenure holder with whom the new settlement was not made.

The mere fact that the *Ghatwali* service had not been demanded or rendered does not show that the services could not be demanded by the Government. Where a *Ghatwal* had been for generations without rendering military services and the *de facto* holder of the *Ghatwal* mortgaged it, it is not open to his heirs to impugn the mortgage on the ground that it is inalienable. *(Roe and Coutts, JJ.)* RANI KESHOBATI KUMARI *v.* KUMAR SATYA NIRANJAN CHAKRABARTI. **47 I.C. 179=1918 Pat. 305.**

———*Ghatwali—Manbhum—Nature of tenure.*

The *Ghatwal* tenure in the District of Manbhum is not heritable. The *Ghatwal's* appointment depends upon the will and pleasure of the Crown. *(Mullick and Atkinson, JJ.)* MIDNAPUR ZAMINDARY CO. *v.* PANDEY SARDAR. **2 Pat L.W. 143= 41 I.C. 114=2 Pat. L.J. 508.**

Gordon Settlement.

———*Gordon settlement—Property held under—Nature of—Liability thereunder.*

Under the Gordon Settlement, each successive male holder is practically a holder of an estate of inheritance in tail male, without any service and

must maintain the last holder's widow. *(Scott, C.J. and Heaton, J.)* BASANGAVDA CHANNAPPAGOVDA *v.* GANGANA KUMMANGAVDA.
37 I.C. 291=18 Bom. L.R. 450.

Jagir.

———*Jagir—Sabarkari—Incidents of—Khurda—Orissa.*

Sarbarkars is Khurda are mere office holders, though in practice their position was hereditary. They have no heritable or transferable right in their office or in the Sabarkari Jagir lands. They are liable to dismissal for misconduct and upon dismissal lose all rights in the Jagir lands. *(Sir John Edge.)* PARAMANANDA DAS *v.* KRIPASINDHU ROY. **46 Cal. 378=36 M.L.J. 18=25 M.L.T. 73=20 C.L.J. 175=9 L.W. 269=21 Bom. L.R. 580=23 C.W.N. 343=48 I.C. 391=54 I.A. 246 (P.C.)**
[On appeal from 22 I.C. 359=18 C.W.N. 74.]

———*Jagir—Hereditary tenure.*

If descent from one to another heir, that is from father to son, is proved by long with interrupted usage, the inference, would be that the grant was one of inheritance, because the descent from father to son is the strongest possible evidence of hereditary character. *(Jenkins, C.J., Harrington and Mookerjee, JJ.)* BHAGWAT BUKSH ROY *v.* SHEO PERSHAD SAHU. **21 I.C. 481=18 C.W.N. 297=18 C.L.J. 277.**

———*Jagir—Police tenure in Pachete Raj—Incidents of.*

Police jagirs in Pachete Zamindari are hereditary though the Government could dismiss the heir and appoint a stranger if it so chose. The appointee in such a case takes by *vis major* and not under the last holder. If the jagir is sold in execution, the heir of the jagirdar gets nothing. *(Mullick and Jwala Prasad, JJ.)* JADAB LAL *v.* DEB LAL SINGH. **3 Pat. L.W. 149=42 I.C. 399=2 Pat. L. J. 725=1918 Pat. 526.**

Kabil lagan.

———*Kabil lagan.*

The term 'kabil lagan' denotes a tenancy liable to pay rent but for which it is not actually paid. *(Jenkins, C. J. and Mookerjee, J.)* KESHWAR BHAGAT *v.* SHEO PROSAD LAL.
18 C. L. J. 166=21 I.C. 415=18 C.W.N. 913.

Kasavargam Tenure.

———*Kasavargam tenure — Kasavargamdar doing Gurukkal service—If amounts to holding under temple.*

Mere doing of *Gurukkal* service by a *kasavargamdar*, in the absence of proof of title in the temple, will not raise a presumption that the *kasavargamdar* was holding under the temple though it was the only person whom he was serving. *(Sundara Aiyar, J.)* *In re* VERRAPPA CHETTYAR **18 I.C. 660.**

———*Kasavargam—Incidents of.*

The following incidents of the *Kasavargam* tenancy are recognised by usage in the Tanjore District. (1) The *Manaikat* or site is the property of the Mirasdars; the *kasavargamdar* has no proprietary interest in it, but he is the owner of the building on it. (2) The *kasavargamdar* holds the *Manaikat* free of rent, or for a nominal rent

on condition that he performs services as an artisan or otherwise for the mirasdars. (3) The *kasavargamdar* cannot transfer the *Manaikat* to another but, on his death, it passes to his heirs. (4) The Mirasdar can eject the *kasavargamdar* forthwith if the latter refuses the customary services. (5) The *kasavargamdar* ejected must be compensated by the Mirasdar for any house erected on the land during the tenancy. *(Abdur Rahim and Phillips, JJ.)* NATHARSA ROWTHER *v.* AMIRTHAM. **22 M.L.J. 1=12 I.C. 414=10 M.L.T. 341.**

Kasbati Tenure.

———*Kasbati—Leasehold interest—Pattas—Bombay Acts VI of 1862 and 1868—Cession of territory—Effect of.*

The predecessor in title of the defendant had been *kasbati* of a village in Pargana Viramgan at the time of the cession of the District to the British Government of Bombay. The Government had granted pattas from time to time to succeeding *kasbatis* regulating the terms and conditions of the tenancy. The defendant claimed that he had a proprietary interest in the village. *Held*, that whatever rights the *kasbatis* might have had under the native Government, only a leasehold interest had been conferred on them by the British Government and that they had therefore no proprietary right. Bom. Act. VI of 1862 does not apply to *kasbatis* nor does Bombay Act VI of 1888 confer on a *kasbati* holding greater rights than those under the *patta*. *(Lord Atkinson)* SECRETARY OF STATE *v.* BAI RAJ BAI. **39 Bom. 625=42 I.A. 228=19 C.W.N. 1087=18 A.L.J. 953=(1915) M.W.N. 563=28 M.L.J. 242=18 M.L.T. 179=2 L.W. 731=17 Bom. L.R. 730=30 I.C. 303=23 C.L.J. 1 (P.C.).**
[Reversing on appeal 11 I.C. 948=]
13 Bom. L.R. 609.

———*Kasbati tenure—Nature of—'During the pleasure of Government,' meaning of—Right of management—Resumption—Alienation of right.*

The *Kasbatis* hold their tenure permanently (as opposed to temporarily) but not unconditionally; and the British Government can resume the villages on failure to fulfil the conditions. The words 'during the pleasure of Government' do not mean absolutely and unconditionally at the will of Government; they imply subjection to Government but not subjection to an arbitrary and final extinction of the rights claimed by the subjects and to a considerable extent acknowledged by the sovereign. *(Chandavarkar and Heaton, JJ.)* THE SECRETARY OF STATE FOR INDIA *v.* BAI RAJ BAI. **11 I.C. 948=13 Bom. L. R. 609.**

Khoti Land.

———*Khoti land—Khoti Khasgi lands—Khoti Nisbat—Faida—Liability to pay.*

All khoti lands are liable to pay Faida, that is, the Khot's profits. It constitutes his remuneration for the trouble and risk of collecting the revenue of the village and managing the village. Khoti Khasgi lands in the hands of a co-sharer Khot or Khoti Nisbat lands in the hands of his alience are not exempt from payment of Faida. *(Macleod, C. J. and Coyajee, J.)* JAYANT BAPSHA SAVANT *v.* ABDUL RAHIMAN.
25 Bom. L. R. 868=46 B. 819=1922 Bom. 335.

LAND TENURE—Khoti Land.

———*Khoti land—Transfer of—Without Khot's consent—Effect.*

A *Khoti* tenancy cannot be transferred without the permission of the *Khot* who is entitled, on such a transfer, to re-enter without any liability to reimburse the transferee for the money he has spent for the transfer. *(Batchelor, C. J. and Kemp, J.)* GOPAL ANANT *v.* BHAGIRATHI.
46 I. C. 668 = 20 Bom. L. R. 681.

Kumaki Land.

———*Kumaki land—South Kanara—Warg—Grant to wargdar—Effect of.*

Where a *wargdar* mortgaged usufructuarily certain *warg* land and the adjoining *kumaki* land and subsequently the Government assigned the *Kumaki* land on *Dharghast* to the mortgagor the lands so assigned belong to the mortgagor absolutely and do not enure to the benefit of the mortgagee. *(Oldfield and Sadasiva Aiyar, JJ.)* KODI SANKARA BHATTA *v.* MOIDIN. **8 L. W. 100 = 40 I. C. 157 = 35 M. L. J. 120.**

———*Kumaki land—South Kanara—Transfer of.*

Kumaki lands are waste land adjoining *warg* lands, and a *kumaki* privilege is the right which the ryot holding the *warg* land has to collect the leaves for manure and to pasture his cattle as an assistance to the cultivation of the *warg* land. 28 M. 257 Ref. These *kumaki* privileges are extinguishable by Government, which may assign the land over which they are exercised to persons other than the holder. 12 M. 422; 28 M. 527 Ref. *(Whitle, C. J. and Ayling, J.)* MATILDA FERNANDUS BAI *v.* ALLEX PINTO. **15 I. C. 278.**

Mirasi Tenure.

———*Mirasi Tenure—Incidents of—Hindu temple—Ekabogham—Mirasdar.*

Lands may be held on mirasi tenure by the deity in a Hindu temple as juristic entity with all the rights and obligations incident to that tenure. An ekabogam miras or tenure is the possession of village land by one person or family without any co-sharer. The appellation is continued in some instances where other parties have been admitted to hold portions under the original tenure so long as that remains unaltered. *(Lord Shaw)* T. P. SRINIVASACHARIAR *v.* C.A. EVALAPA MUDALIAR. **46 Mad. 565 = 43 M. L. J. 536 = 16 L. W. 247 = 24 Bom. L. R. 1214 = L. R. 3 (P. C.) 213 = 36 C. L. J. 524 = 31 M. L. T. 1 (P.C.) = 49 I. A. 237 = 21 A. L. J. 250 = 27 C. W. N. 317 = 1922 P. C. 325.**

———*Mirasi Tenure — Alienation effective for the life-time—Regulation (Bom.) XVI of 1827 — Hereditary Offices Act (Bom. III of 1874).*

An alienation of *Vatandar's inam* or *Mirasi* rights in *Vatan* lands (which are on the lines of Gordon Settlement) whether held under Court sale or private transfer, is effective only during the life-time of the *Vatandar* if they were made after Reg. XVI of 1827 and before Bombay Act III of 1874. 15 Bom. 13 and 44 Bom. 257. Ref. The High Court assumed that the restriction as to inalienability did not apply to *Mirasi* or occupancy rights unless they were shown to be a part of the grant. In the particular case, *held* that there was no evidence that the *Mirasi* rights were independently acquired by the original *Vatandar*. *(Macleod, C. J. and Shah, J.)* BALKU SIDHU KUMBHAR *v.* VYANKATESH VAMAN DESHPANDE. **62 I.C. 942 = 23 Bom. L.R. 789.**

LAND TENURE—Mirasi Tenure.

———*Mirasi tenure — Kudivaram right — Chingleput District.*

There is no presumption that any land in a Chingleput village not in the possession of mirasdars is held under them and that mirasdars are entitled to the kudivaram of all lands, whether or not in their possession. *(Oldfield and Odgers, JJ.)* ELLAPA NAIDU *v.* BOOLOGACHARY. **42 M. L J. 359 = (1922) M. W. N. 180 = 16 L. W. 531 = 1922 Mad. 97.**

———*Mirasi — Rights of Mirasdar—Irrigation—Government tank.*

Where a part of the source of irrigation for a ryotwari village is a Government tank, Mirasdars who have from time immemorial cultivated their wet lands with the tank water, have a preferential right to irrigate from the tank, over the assignees of waste land from the Government. *(Wallis, C.J. and Seshagiri Aiyar, J.)* SECRETARY OF STATE FOR INDIA *v.* SRIRANGACHARIAR. **51 I.C. 734.**

———*Mirasi — Gramanattam — Rights of Government and of Mirasdars—Grant of house site by Government—Mirasdar's suit for recovery—Recognition of mirasi rights by the State.*

Per Wallis, C. J.—There is no general presumption of Mirasdar's ownership of *Nattam*. In the absence of evidence of user, but where user is shown the presumption of ownership readily arises. Before the coming of British rule and especially under the Muhammadan rule occupied *Nattam* was not generally recognised by Government as the private property of Mirasdars and their ownership has not been established subsequently either by Government recognition or by judicial decisions. *Per Wallis, C. J. and Ayling, J.*—The preferential right of a mirasdar to cultivate waste does not give him any right to eject persons who have got *Nattam* from Government but entitles him to the sites if necessary. *Per Ayling, J.*—The rule is not applicable in cases in which Mirasdars have prior to the grant by Government already acquired a title to the particular site either by previous grant or prescription. Though all the incidents of a Mirasi tenure may have a common origin in the status of the Mirasdar, none of them necessarily involves the other. Each requires to be separately established and recognition by the State whether express or implied, is an indispensable condition for enforcing each. *Per Kumaraswami Sastri, J.*—In Mirasi villages the rights of Government over waste including *Nattam* and *Cheri* are subject to the rights of the Mirasdars. The nature and extent of such rights are not uniform throughout the Presidency but vary, and the onus is on the Mirasdars to prove that any specified incidents attach to Mirasi rights

in any particular district there being no presumption that *Gramanattam* is the exclusive property of the Mirasdars. The rights of Mirasdars over waste are not put an end to by the mere fact the Government grants *pattas* to strangers. (*Wallis, C. J., Ayling and Kumaraswami Sastri, JJ.*) SESHACHALA CHETTY *v.* PARA CHINNASAMI.

40 Mad. 410=40 I.C. 809=32 M.L.J. (Sup) 1 (F. B.)

———*Mirasi tenure—Chingleput District—Subordinate proprietors—Swatantram—Ulkudi.*

In a mirasi tenure, produce of land is devided into (1) *Melvaram* or the Royal share, (2) *Thunduvaram* or landlord's, and (3) *Kudiwaram* or the occupant's share. The history of the Mirasi tenure in the Chingleput District discussed.

A *Payakar* whom a mirasdar introduces for cultivation purposes, if he permanently settles in the village and his descendants enjoy the lands as tenants for about 100 years becomes an *Ulkudi Payakar* with permanent rights of occupancy and acquires in a sense *Kudiwaram* rights.

Swatantrams include *Thunduvaram* and mean a certain portion of the gross produce raised by *Ulkudi* tenants and due to the Mirasdar.

The presumption in the case of an Inamdar is that at the time of the grant of the inam, he is not the owner of the *Kudiwaram* right. (20 I.C. 374 and 8 I.C. 365 Dis.)

But in the case of a Mirasdar in Chingleput District to whom an inam was granted long ago it cannot be said that there is a presumption against his owning the *Kudiwaram* right.

A Mirasdar owning the *Kudiwaram* right in the lands in the village is called an *Ekabhogam* Mirasdar. (*Sadasiva Aiyar and Spencer, JJ.*) CHINNAM *v.* KONDAM NAIDU.

23 I. C. 113=1 L. W. 41=26 M. L. J. 169.

Mulgeni Tenure.

———*Mulgeni—Sub-tenancy—Right of landlord to recover rent.*

A landlord has the right to recover the rent on his lands direct from the permanent sub-tenants of the original *mulgeni* tenant. (*Macleod, C. J. and Shah, J.*) GANAPATI NAGAPPA *v.* NAGABATTA SITARAMABHATTA.

55 I. C. 560=22 Bom. L. R. 118.

———*Mulgeni—Death of tenant—Escheat to Government or to mulgar.*

The rights of a *mulgenidar* do not escheat to the Government on his dying without issue but revert back to the *mulgar* from whom the *mulgeni* was acquired. A *mulgeni* is not of the same character as a permanent lease. 30 A. 489; 17 C. 826; 1 C. 391 Dist. (*Sheshagiri Aiyar and Phillips, JJ.*) THE SECRETARY OF STATE FOR INDIA *v.* SHITARAMAPPA.

42 Mad 827=36 M. L. J. 207=50 I. C. 666=(1919) M. W. N. 366=26 M. L. T. 270.

———*Mulgeni lease—Trees—Right of lessee to cut.*

A Mulgeni tenant in South Canara cannot cut trees existing at the date of the grant. A

lessee can remove trees planted by him after the commencement of the lease, and trees and plants of spontaneous growth, provided he restores the land in status *quo ante* at the end of his lease. 24 M. 547; (F.B.) Ref. (*Spencer and Kumaraswami Sastri, JJ.*) KRISHNACHARYA *v.* AUTHAKKI **31 I. C. 12=29 M. L. J. 315=18 M. L. T. 218=(1915) M. W. N. 726.**

———*Mulgeni—Registration.*

The T. P. Act does not apply to mulgeni leases. When the defendant has been asserting for 40 years that he has mulgeni rights to the land, the inference is that the defendant had such rights though there is no registered lease. (*Ayling and Tyabji, JJ.*) RAGHAVACHARLU *v.* SECRETARY OF STATE.

28 I. C. 599=(1915) M. W. N. 271.

Noabad Mahal.

———*Noabad lands—Settlement by Government—Rights of party in possession.*

The determination of the precise nature of the right of the Government in Noabad lands is not free from difficulty. In respect of Noabad lands Government stands in the same position as an ordinary Zemindar and it may settle the lands like an ordinary Zemindar with whomsoever it likes. 24 I.C. 820; 24 C. W. N. 211; 17 W. R. 376; 9 W. R. 312; 9 C. L. J. 265; 26 C. 792; 20 C W.N. 636; Ref. (*Chetterjea and Pearson, JJ.*) NAZIR AHMED CHAUDHURY *v.* SECRETARY OF STATE. **26 C. W. N. 913=35 C. L. J. 580=1922 Cal. 387.**

———*Noabad Mahal—Nature of.*

A Noabad Taluk is a tenure, the land being *Khas Mahal* land of Government. (*N. R. Chatterjee and Newbould, JJ.*) GANGA DAS SIL *v.* SECRETARY OF STATE. **32 I.C. 752=20 C.W.N 636.**

———*Noabad Mahal—Nature of right.*

A Noabad Mahal means a hereditary and transferable title in perpetuity subject to rent for all lands under cultivation. (*Mookerjee and Beachcroft, JJ.*) JOGESH CHANDRA ROY *v.* SECRETARY OF STATE. **24 I.C. 65=18 C.W.N. 831.**

Non-transferable Holding.

———*Non-transferable holding—Surrender—Khas possession.*

A non-transferable occupancy holding was sold in execution of a money decree on the raiyat's refusal to leave possession; the transferee and the raiyat divided the holding between them. The transferee executed a conveyance for the portion retained by the raiyat who executed a deed of collusive surrender of the whole field in favour of the landlord while remaining in possession. The landlord's suit for Khas possession failed as the surrender being unreal and did not terminate the tenancy. (*Chatterjee and Richardson, JJ.*) NABA KISHORE SAHA *v.* DHANANJOY. **33 I.C. 611=20 C.W.N. 610.**

Patni Tenure.

———*Patni tenure—Zemindar's possession when adverse.*

The possession of *Chaukidari Chakran* lands by a Zemindar may become adverse to the *patnidar* in

LAND TENURE—Patni Tenure.

a variety of ways, *e.g.*, when the lands are settled by the Zemindar with tenants or when the *patnidar* after being invited to come and take the lands does nothing and the Zemindar thereafter makes other arrangements either for holding the lands in *khas* or for settling the same with *tjaradars* or the like. (*C. C. Ghose and Panton, JJ.*) SRIMATI NAGENDRA BALA CHOUDHURANI *v.* MAHARAJA OF BURDWAN.
28 C. W. N. 114=1923 Cal. 734.

———*Patni tenure—Right of —Zemindar to create intermediate tenure.*

A Zemindar can create an intermediate *mirasi* tenure between himself and a *patnidar* and such *mirasdar* can recover rent from the *patnidar*. (*Carnduff and Richardson, JJ.*) NILAMBAR *v.* MOHASANUDDIN. **67 I. C. 105=34 C. L. J. 77.**

———*Patni tenure* — Durputni — *Zemindar's rights to create an intermediate tenure*

There is nothing opposed to law or custom, to prevent a Zemindar to create an intermediate tenure between the *patnidar* and the *Durpatnidar* and a suit for rent by such an intermediate tenure-holder will lie. (*Mitra and Caspersz, JJ.*) MADHU SUDAN *v.* DEBENDRA. **66 I. C. 200=34 C. L. J. 76.**

———*Patni and darpatni—Durpatnidar and Zemindar.*

A *Durpatnidar*, to whom *Khut* rent assessed on the proportion of land revenue payable to Government on that portion of the estate, should be paid by tenants holding Chakran lands under the Zemindar, is not a landlord of the tenants by payment of *khut* rent; the *Zemindar* and not *durpatnidar* has the right to settle tenants during the Chakran tenancy but not after it is resumed by *zemindar*. The *durpatnidar* is entitled to *khas* possession as well as mesne profits. (*Sharfuddin and Newbould, JJ.*) HAZARI LAL SARKAR *v.* MAHARAJ KUMAR KSHAUNISH CHANDRA ROY.
31 I. C. 249=22 C. L J. 290.

———*Patni—Transferee's rights—Completion.*

The transferee's rights are perfected by transfer by the *patnidar* and are not contingent on payment of the fee and security under S. 6. (1) of the Patni Regulations. (15 C. 345; 12 C. 622 Foll. 20 W. R. 380 Con.) The transferee may therefore claim the compensation money on acquisition by Government even though he has not registered his name in the books of the Zamindar. (*Mookerjee and Holmwood, JJ.*) GANPUR SINGH BAHDUP *v.* MOTICHAND **16 C. L. J. 301=17 I. C. 171=18 C. W. N. 103.**

Permanent Tenancy.

———*Permanent Tenancy—Itmam — Taluq—Whether hereditary.*

The word *Itmam* in the permanenty settled parts of Chittagong imports permanent, heritable and transferable tenure. A *Taluq* is heritable and permanent. The fact that rent receipts are granted *Marfatdari* in the name of the original grantee does not necessarily show that the tenure is not transferable. (*Richardson and Huda, JJ.*) JOGESHCHANDRA ROY *v.* MAKBUL ALI.
47 Cal. 979=60 I. C. 984=25 C. W. N. 857.

LAND TENURE—Rent-free Tenure.

———*Permanent tenancy—Evidence — Characteristics.*

Long possession at uniform rent, erection of expensive buildings without interferences, transfers by sale, gift, mortgage in succession, execution of receipts for rent, in which it is described as permanent, are indications to show the permanent nature of the tenancy. (28 C. 738 Foll. 3 C. 696, 16 C. 223, 21 A. 496 Dist.) In the case of a permanent tenancy at fixed rate no enhancement can be allowed. Permanent tenants cannot also be restrained from building or rebuilding their houses in the absence of a contract to the contrary. (*Shah Din and Beadon, JJ.*) ABDUL KARIM *v.* ALLAH BAKHSH. **197 P. W. R. 1912=17 I. C 208=209 P. L. R. 1912=121 P. R. 1912.**

Prajagiri Tenure.

———*Prajagiri Tenure.*

Under a lease purporting to grant a prajagiri settlement of several thousand bighas of land, the grantee was required to bring the land under cultivation in *nij jote* or through tenants and a period of remission was fixed during which no rent was to be paid. *Held*, that the evidence of the conduct of the parties, surrounding circumstances, and such other matters as might throw light on the original purpose and intention of the tenancy, showed that the grantee was a tenure holder (*Fletcher and Teunon, JJ.*) SECY. OF STATE *v.* GOBIND PRASAD. **39 I. C. 934=21 C. W. N. 505.**

Pujah Miras.

———*Puja miras—Duties appertaining to*

Per Sadasiva Aiyar, J.—A *Pujah miras* entails the duty of touching, bathing and adorning, etc., the idols in a temple, the making of offerings to the idols, the chanting of *mantrams*, etc. (*Sadasiva Aiyar and Tyabji, JJ.*) SUNDERAMBAL AMMAL *v.* YOGAVANAGURUKKAL. **26 M. L. J. 315=(1914) M. W. N. 286=23 I. C. 72=1 L. W. 276.**

Rafa Tanikdars.

———*Rafa Tanikdars—Occupancy rights—Khurdah.*

In the Kurdah Estate, and in Zemindaries which at one time formed part of that Estate, *Rafa Tanikdars* are occupancy *Raiyats* and not tenure holders. (*Coutts and Das, JJ.*) HARAYAN PATNAIK *v.* RAGUNATH PATNAIK.
57 I.C. 225=5 Pat. L.J. 373.

Rent-free Tenure.

———*Rent-free tenure—Long possession without paying rent.*

From the evidence of long and uninterrupted possession without paying rent, the Court may presume the land to be granted rent-free, though possibly not revenue-free. There can be a rent-free grant of a permanently settled land and such a grant is binding on the grantor's heirs and successors. In strictness 'Lakhiraj' indicates a freedom from liability to pay revenue but is often used loosely to indicate exemption from liability to pay rent. (*Jenkins, C. J. and Mookerjee, J.*) KESHWAR BHAGAT *v.* SHEO PRASAD LAL.
18 C.L.J. 166=21 I.C. 415=18 C.W.N. 913.

LAND TENURE—Rent-free Tenure.

———*Rent free tenure—Dohli tenure.*

Dohli tenure is a peculiar kind of tenure to be found in south-eastern districts of the Punjab. It is a rent-free grant of a plot of land by the village community for the benefit of a religious institution. So long as the purpose for which the grant is made is carried out it cannot be resumed, but if the holder fails to carry out the duties of his office the proprietors can eject him and substitute some one else. Such tenure cannot be alienated by sale or mortgage. Such an alienation by the dohlidar is absolutely void. (*Shadilal, C.J. and Harrison, J.*) SEWAGNAN *v.* UDEGIR. **2 L. 213 = 1922 Lah. 126.**

———*Rent-free tenure—Creation of.*

A rent-free tenure is created when the proprietor of a land creates rights by which one person can hold it free of rent while the other is liable for the revenue and where such rights are created, the law as to rent-free grants applies. The law as to resumption as to rent-free tenures overrules, in view of Government interests contracts otherwise valid. In considering their effect considerations other than those applying to ordinary transactions mast be taken into consideration. (*Batllie, S. M. and Tweedy, J. M.*) GHULAM SARVAR *v.* MUHAMMAD AMBAR ALI KHAN. **25 I.C. 594 = 1 O L J. 325.**

Ryotwari Tenure

———*Ryotwari tenure — Pattadar—Tenants under—Claim of permanent occupancy—Onus*

If in a case of ryotwari land the under-tenants, under a Government *pattadar*, claim a permanent right of occupancy in the land the burden of proving their right is on the tenants. A permanent tenancy may owe its origin to a custom, contract or title. Where the under-tenants of a pattadar had been in possession from time immemorial digging wells and making expensive improvements and selling the wells with or without the lands and enjoying the properties hereditarily. *Held* that they had proved a permanent right of occupancy. (*Sir Lawrence Jenkins.*) SETHURATHNAM AIYAR *v.* VENKATACHELLA GOUNDEN. **43 Mad. 567 = 47 I.A. 76 = 18 A.L.J. 707 = 56 I. C 117 = 22 Bom. L.R. 578 = (1920) M.W.N. 61 = 27 M.L.T. 102 = 11 L.W. 399 = 38 M.L.J. 476 (P.C.).**

[On appeal from 24 M.L.J. 571 = 13 M.L.T. 450 = 20 I.C. 374 = (1913) M.W.N. 434.]

———*Ryotwari—Occupancy right—Presumption against—Vernacular descriptions of tenure—Contract executed by predecessors of tenants negativing claim of occupancy—Onus.*

There is no special rule as to burden of proof applicable to Tanjore temples on account either of their location or their management by the Collector up to 1860, or on account of anything except the agreements between the Collector and the ryots about 1830. 34 M.L.J. 234 Expl. The fact that landholders had a tendency to get inserted in *pattas* and *muchilikas* terms negativing the existence of occupancy rights is not itself sufficient to justify a Court in refusing to consider on the merits and with reference to the burden of proof such terms in *pattas* and *muchilikas* of a date prior to the decision in 6 M.H.C.R. 164. There is a presumption against occupancy

LAND TENURE—Ryotwari Tenure.

rights in a tenant of a ryotwari *pattadar*. Vernacular descriptions of tenures in Madras Presidency are elastic and their definitions derived from Wilson's Glossary, or other works of reference must be accepted with caution as corresponding at most to their normal meanings and subject in each particular case to revision in the light of its circumstances. (*Oldfield and Phillips, JJ.*) AMBALAVANA PANDARA SANNADHI *v.* PICHAKUTTI ODAYAN.

(1920) M.W.N. 163 = 53 I.C. 308 = 10 L.W. 525.

[Also (1920) M.W.N. 532 = 12 L.W. 191.]

———*Ryotwari—Occupancy right — Pattadar—Long enjoyment and low and un-varying rent—Transfer of holdings by tenant—Effect of.*

In the case of lands held under the ryotwari settlements the presumption is that the ryotwari pattadar is the owner of the land and the burden is on his tenants claiming a permanent right of occupancy to prove it. Mere length of enjoyment in the capacity of tenants or parukudies irrespective of their circumstances does not raise a presumption of occupancy right. The inference as to occupancy right depends on a consideration of the whole circumstances of the case and among these circumstances are the continuance of the lands in the same hands at low and unvarying rents and the recognition by the landlord of the tenant's rights to transfer the holding. The history of the ryotwari settlement considered. 1918 M.W.N, 219 Diss : 24 M L.J, 571 ; 21 M.L.J. 845 Expl. 34 M.L.J. 234 ; 33 M.L.J. 854 Rel. (*Wallis, C.J. and Seshagiri Aiyar, J.*) PONNIAH NANDAN *v.* DEIVANAI AMMAL.

36 M.L.J. 463 = 52 I.C. 247 = 9 L.W. 453 = 26 M.L.T. 311.

———*Ryotwari—Mirasi village—Water supply—Preferential right of Mirasidars.*

Mirasdars who own wet lands from time immemorial have a preferential right to the supply of water from a Government tank in a village to the assignees of waste lands from Government who have since brought them under cultivation. (*Wallis, C.J. and Seshagiri Aiyar, J.*) THE SECRETARY OF STATE FOR INDIA *v.* SRIRANGACHARIAR. **51 I.C. 734.**

———*Ryotwari—Permanent tenancy—Onus of proof.*

The onus of proving a permanent tenancy under a ryotwari *pattadar* is on the tenant setting up such right. Where the ryot is a temple the trustees of which could not create a permanent lease of the temple lands, the presumption against the acquisition of occupancy rights by the raiyats is greater. Mere description by the tenants as *kudikanaidars, Ulavadaikani mirasdars* in the village could not confer occupancy rights on them. Nor does the fact that the tenants have made transfers of the holdings without objection or demur by the trustees confer a permanent occupancy right by estoppel. (*Wallis, C.J. and Sadasiva Aiyar, J.*) MUNA MUHAMMAD *v.* MUTTHU ALAGAPPA CHETTIAR.

23 M.L.T. 161 = 45 I.C. 695 = 35 M.L.J. 234 = 7 L.W. 380.

———*Ryotwari—Pattadar—Rights of.*

Rights of a pattadar holding land upon ryotwari tenure under the Government are different from those of an occupancy tenant under a

landholder of an estate. So it cannot be maintained that the occupant of land under the former can by means of such occupation acquire by prescription a title under the latter. (*Sadasiva Aiyar and Spencer, JJ.*) NARAYANI AMMAL *v.* SECRETARY OF STATE. **41 I.C. 167.**

———*Ryotwari—Occupancy right.*

The right of an occupancy right as overriding the proprietor's right to cultivate his own lands is of a special character and as such it is one which the party seeking to derogate is bound to establish.

When the defendants have been accepting leases from the plaintiff in respect of the suit lands and when the crops were attached, they failed to bring a suit to establish their right when their claim petition was rejected, the defendants have failed to make out their occupancy right. (*Seshagiri Aiyar and Napier, JJ.*) ANANTHA PADVATTA PILLAI *v.* GOPALKRISHNA AIYAR. **28 I.C. 916=(1915) M.W.N. 277.**

———*Ryotwari—Petition to Government to remit assessment on land used for cattle shed—Grant of remission—Land not excluded from patta—Effect.*

Where plaintiffs petitioned Government to allow them to use a portion of their own land as a cattle shed and a farm house free from rent and the Government allowed the remission but in the next *pattah* the portion of the land in question was included though the assessment thereof was deducted from the total amount of rent. *Held*, that the plaintiffs did not give up their interest in the land and place it at the disposal of the Government absolutely. (*Ayling and Hannay, JJ.*) SECRETARY OF STATE *v.* MIKKELINENI CINNA VENKATA. **26 I.C. 961.**

———*Ryotwari—Dam by Government—Right to sue.*

A plaintiff, whose land is prevented from getting water by a dam erected by Government, can sue in a Civil Court to protect his right. (*Ayling and Hannay, JJ.*) SIVASIALAM AIYAR *v.* RAMAKRISHNA AIYAR. **26 I.C. 18=(1914) M.W.N. 788.**

———*Ryotwari—Tree patta—Land patta—Cancellation of tree patta—Effect of—Right of pattadar of land to trees.*

Plaintiff held a *patta* of trees on suit land for 20 years and defendant held *patta* for land. The former *patta* was cancelled and defendant interfered with plaintiff's enjoyment of trees. In plaintiff's suit for recovery of trees it was held that the cancellation of the tree *patta* did not vest ownership of them in the defendant and plaintiff had a preferential claim. (*Benson and Sundara Aiyar, JJ.*) SENGODA GOUNDEN *v.* VARADAPPAN. **36 Mad 148=13 I.C. 39=10 M.L.T. 488=(1911) 2 M.W.N. 532=22 M.L.J. 201.**

Savaram.

———*Savaram—Nature of.*

Per Sundara Aiyar, J.—*Savaram* does not necessarily import absence of *kudivaram* in the cultivating ryot. It was compensation granted to the Zamindar or Revenue Officer by the Mahomedan Government. In some cases land

exempt from payment of rent was granted. But if it was unavailable, the revenue of a portion of the lands for the assessment of which he was responsible was granted. *Per Sadasiva Aiyar, J.*—In consequence of certain lands being *savaram* the Courts may (*but not must*) presume that both *Melvaram* and *Kudivaram* belong to the Zamindar. (*Sundara Aiyar* and *Sadasiva Aiyar, JJ.*) MULPURA LAKSHMAYYA *v.* VARADARAJA APPARROW. **36 Mad. 168=17 I.C. 353=23 M.L.J. 624=(1912) M.W.N. 1193=12 M.L.T. 561.**

Service Tenure.

———*Service Tenure—Police service—Abolition.*

Police service tenures were abolished by the Government of Madras in 1816. In the present case, it was held that it was not proved that the palayam had in fact been held on such a tenure. (*Sir John Edge.*) MALAYANDI APPAYASAMI NAIKER *v.* MIDNAPORE ZEMINDARI CO. **44 Mad. 575=48 I.A. 100=40 M.L.J. 537—34 C.L.J. 6=26 C.W.N. 106=29 M.L.T. 383=14 L.W. 49=60 I.C. 953=(1921) M.W.N. 352 (P.C.)**

[On appeal from 47 I.C. 733=41 Mad. 749.]

———*Service tenure—Chaukidari Chakran lands—Resumption by Government.*

Where chaukidari chakran lands situate in a Zemindari and included in the malguzari lands are resumed by Government the title of the Zemindar is not affected; but Tannadhari lands are Lakhiraj (rent-free) and resumption by Government puts an end to title of Zemindar. (*Lord Parker*). RANJIT SINGH *v.* KALI DASI DEBI **44 Cal. 851=21 C.W.N 609=32 M.L.J. 565=15 A.L.J. 390=25 C.L.J. 499=19 Bom. L.R. 462=(1917) M.W.N. 459=6 L.W. 101=2 Pat. L.W 1=22 M.L.T. 489=40 I.C. 981=44 I.A. 117 (P.C.)**

———*Service tenure—Chaukidari chakran lands—Origin of tenure—Resumption—Rights of Zemindar or Government.*

The nature of a grant of choukidari is not altered though some of the appointments of choukidars are made with the approval of Government officers. Under Bengal Regulation I of 1793, S 4 and VIII of 1793, S. 41, the option of resumption was reserved in the lands appropriated by Zemindar with Government's permission for remunerating choukidars for services though such lands were not considered in the assessment of revenue being included in the mahal and annexed to malguzari lands. (*Mr. Ameer Ali.*) SECRETARY OF STATE *v.* KIRTIBAS BHUPATI, HARICHANDAN MAHAPATRA. **42 Cal 710=42 I.A. 30=26 I.C. 676=19 C.W.N. 65=2 L.W. 11=17 M.L.T. 1=21 C.L.J. 31=17 Bom. L.R. 32=28 M.L.J. 457 (P.C.)**

———*Service tenure—Alienability—Cessation of service.*

If the service cannot be enforced, the service tenure loses its character as a service tenure the common law better of inalienability is removed and the land can consequently be alienated.

LAND TENURE—Service Tenure.

(Jenkins, C.J., Mookerjee, Harrington, JJ.) BHAGWAT BUKSH ROS *v.* SHEO PERSHAD SAHU.
18 C.L.J. 277=21 I.C. 481=18 C.W.N 297.

———*Service Tenure—Grantor if can put an end to.*

A grant subject to a burden of service of patwari cannot be put an end to by the grantor whether the services of the holder of the grant are required or not. 13 B. L. R. 124 Rel. *(Mookerjee and Beachcroft, JJ.)* MOHADEO LAL *v.* KALANAND SINGH. **20 I.C. 69=19 C.L.J. 241.**

———*Service tenure—Karamkari and Adimayavana tenures—Inalienability and forfeitability—Custom—Forfeiture—Waiver, evidence of.*

Karamkari and Adimayavana tenures are not inalienable by custom in South Malabar and the Jenmi is not entitled to forfeit them on alienation. The burden is on the landlord to prove the custom of inalienability and forfeitability of such tenures. Evidence relating to Pravarthianubhavam grants which are grants for the performance of future services is inadmissible in considering the question of the existence or otherwise of the custom of inalienability and forfeitability as the resumption of Pravarthianubhavam grants arises under the general law itself and not from any special custom. A right of holding on alienation and even inalienability of it cannot be inferred from the mere existence of a right of escheat in the landlord on failure of the grantee's heirs. Where resumability does not follow inalienability the right of resumption and re-entry on alienation must be expressly given. *Prima facie* alienation of a portion of a holding will offend against the rule of inalienability if there is one and unless it can be shown that under the very custom which imposes the rule of inalienability the rule does not apply to partial alienations. A partial alienation will be sufficient to work a forfeiture. Ignorance on the part of the alienee of an inalienable holding as to the inalienability and forfeitability of such a tenure cannot raise any estoppel against the landlord if he was in no way responsible for such ignorance; nor can the fact that the landlord did not exercise his right of enforcing forfeiture in the case of previous alienations. *(Ayling and Krishnan, JJ.)* ZAMORIN OF CALICUT *v.* UNIKAT KARNAVAN SAMU NAIR.
16 L.W. 164=1922 Mad. 290.

———*Service tenure—Alienability — Resumption.*

A right of forfeiture on alienation or inalienability cannot be inferred from the existence of a right of escheat in the landlord on failure of the grantee's heirs. The custom must be proved by evidence. Resumability does not follow from alienability; the right of resumption and re-entry on alienation must be expressly given. *(Ayling and Krishnan, JJ.)* ZAMORIN OF CALICUT *v.* UNIKAT KARNAVAN SAMU NAIR. **38 M.L.J. 276=65 I.C. 380=27 M.L.T. 111.**

———*Service tenure—Resumption.*

Resumption is permissible only when the assets include the estate at the Permanent Settlement and the grant is for service in lieu of wages or is burdened with service which the grantee is unable to perform. The attendance on ceremonial and indefinite occasions is not a condition of the holding and non-performance does not result in forfeiture. *(Sankaran Nair and Oldfield, JJ.)* MAHARAJA OF JEYPORE *v.* RUKMINI PATTAMHADEVI. **2 L.W. 483=29 I.C. 365=(1915) M.W.N. 346=**
[Affirmed by the Privy Council on appeal: 50 I.C. 631=42 Mad. 589.]

LAND TENURE—Service Tenure.

———*Service tenure—Palayam — Alienability—Liability for debts of holder—Enfranchisement—Omission to issue sanad under Regulation XXV of 1802.*

Lands held on service tenure are inalienable beyond the life-time of the holder. If in an estate is freed from its connection with its public office and the services are abolished, it is subject to the same incidents of ownership and devolution as ordinary property. 7 Mad. 85; 14 M.L.J. 134 and 9 Bom. 198 Ref. Where lands held on service tenures have been alienated, the subsequent enfranchisement of the lands from service will not validate the alienation so as to give an absolute interest to the alienee. 34 M.L.J. 17 and 24 Bom. 556 Rel. An unsettled *palayam* held originally on condition of rendering military and police services, ceases to be inalienable on the abolition of such services by the British Government in spite of the omission of the Government to issue sanad under Regulation XXV of 1802 finally settling the *peishcush* payable by the holder of the estate. 1 I.A. 283 and 1 I.A. 268 Rel. *(Wallis, C.J. and Spencer, J.)* THE MIDNAPORE ZAMINDARI CO., LTD. *v.* MALAYANDI APPASWAMY NAICKER.
41 Mad. 749=34 M.L.J. 563=47 I.C. 733=24 M.L.T. 1=8 L.W. 382.
[Affirmed on appeal by the Privy Council: 40 M.L.J. 537.]

———*Service tenure—Anubhavam—Denial of title—Forfeiture.*

The tenant holding lands on *Anubhavam* tenure does not forfeit them except by denial of title made directly to the landlord. *(Sadasiva Aiyar and Seshagiri Aiyar, JJ.)* SANKARAN NAIR *v.* KOCHAPPU MENON. **20 I.C. 427.**

———*Service tenure — Purakudi service — Incidents of—Notice to quit—T.P. Act, S. 111.*

In the case of purakudi service it is the refusal or neglect to perform such service that determines the tenancy and the tenants render themselves liable to be evicted without notice to quit. S. 111, T. P. Act, has no application to the tenancy. *(Ayling and Tyabji, JJ.)* KAMASWAMI CHETTIAR *v.* RATTAN AMBALAGARAN.
23 I.C. 915.

———*Service tenure—Dharmulla Inam—Resumption.*

An Inam granted by a Zamindar to a servant for performing personal services is resumable when the services are dispensed with. So long as the servants do not commit any default in payment of rent and are willing to render the services stipulated for, they cannot be ejected. *(Ayling and Tyabji, JJ.)* KARUPAMAYA ANANGA BHEKMA *v.* SANDI PRAHALADHA BISOYI RATNO.
12 M.L.T. 562=21 I.C. 833=(1914) M.W.N. 179.

LAND TENURE—Tenancy.

Tenancy.

———*Tenancy—Nature—Bengal Tenancy Act (VIII of 1885).*

A tenancy is not a cultivation of a tenure created for purposes other than agriculture. The annual payment of rent is not conclusive proof of the tenancy being annual (*Mookerjee, A. C. J. and Fletcher, J.*) GAYANATH *v.* ANUKUL CHANDRA.
58 I.C. 835 = 32 C.L.J. 6.

———*Tenancy—Principle of construction.*

Where the lessee was to hold land either in khas or by letting it out to tenants and the tenancy was a temporary one, he was a tenure holder and not a raiyat. The conduct of parties may be looked into when the grant is ambiguous and not otherwise. Though the tenancy is described as a jote strangers may show that its real character is that of a tenure (*Mookerjee and Teunon, JJ.*) PRAMOTHA NATH KUMAR *v.* NILMONI KUMAR. **10 I.C. 431 = 14 C.L.J. 38 = 15 C.W.N. 902.**

Zamindari.

———*Zemindari—Rights of Zemindar.*

The Zemindar is entitled to all lands within the Zemindari limits and chowkidari chakran lands included in malguzari lands though originally excluded in calculating assessment belong to the Zemindar on resumption. (*Lord Parker.*) RANJIT SINGH *v.* KALI DASI DEBI.
44 Cal. 841 = 21 C.W.N. 609 = 32 M.L.J. 565 = 40 I.C. 981 = 18 A.L.J. 390 = 23 C.L.J. 499 = 19 Bom. L.R. 462 = 1917 M.W.N. 459 = 6 L.W. 101 = 2 Pat L.W. 1 = 22 M.L.T. 439 = 44 I.A. 117 (P.C.).

———*Zemindari—Right of Zemindar.*

A Zemindar has a right to the full enjoyment of lands within the ambit of the Zemindari. If the Government claims to resume service lands (*i.e.*) chowkidari chakran lands in the Zemindari the onus of proving express reservation lies on Government. (*Lord Parker.*) RAMCHANDRA BHANJ DEO *v.* SECRETARY OF STATE.
43 Cal. 1104 = 20 M.L.T. 235 = 20 C.W.N. 1245 = (1916) 2 M.W.N. 175 = 37 I.C. 223 = 4 L.W. 251 = 14 A.L.J. 1009 = 18 Bom. L.R. 838 = 24 C.L.J. 296 = 31 M.L.J. 745 = 43 I.A. 172 (P.C.)

———*Zemindar's right—To create an intermediate tenure.*

A Zemindar is competent to create an intermediate tenure between himself and his tenant who will then be liable for rent to such an intermediate tenure-holder. But such a right however is not derogatory to the position or affect the right of the first tenant. (*Mookerjee and Buckland, JJ.*) JOHAR MULL *v.* BHUPENDRA NATH BASU. **34 C.L.J. 79 = 49 Cal. 495 = 1922 Cal. 412.**

Miscellaneous.

———*Military tenure—Nature of—Palayams in South India.*

In the south of Madras, many palayams were held on military service and subject to the payment of tribute to the paramount power. These were abolished by the Government proclamation dated 1st December, 1801, and thereafter any character of inalienability attached to the palayams ceased. Where in British India they are held on military tenure, there is good reason for holding that the successive tenants cannot dispose of the *corpus* of the property. (*Sir John Edge.*) MALAYANDI APPASAMI NAIKER *v.* MIDNAPORE ZEMINDARI CO.
44 Mad. 575 = 48 I.A. 100 = (1921) M.W.N. 352 = 40 M.L.J. 537 = 29 M.L.T. 383 = 14 L.W. 49 = 60 I. C. 953 = 34 C.L.J. 6 = 26 C.W.N. 106 (P.C.)
[On appeal from 47 I. C. 733 = 41 Mad. 749.]

———*Arazis.*

Arazi lands are *held* on a distinct tenure from that of the mauza or mahal and their ownership conveys no title to any right or interest in other parts of the mauzas or mahals. (*Rafiq and Lindsay, JJ.*) SURWAN PRASAD TEWARI *v.* BASDEO NARAIN SINGH.
45 A. 237 = 21 A.L.J. 65 = L.R. 4 A. 57 = 1923 All. 129.

———*Chukni Tenure.*

The term "Chukni" is used with regard to a particular sort of tenancy in Mymensingh and its incidents are governed by custom. (*Walmsley and Ghose, JJ.*) BHAJAN SHEIKH *v.* BALAI SARKAR. **1923 Cal. 375.**

———*Enhancement of rent.*

In this country, every tenure whether permanent or otherwise is subject to the incident of enhancibility of rent. (*Suhrawardy and Cuming, JJ.*) YAKUB ALI CHOUDHURI *v.* RAJA KUMAR DATTA. **65 I.C. 527.**

———*Belagan—Behar.*

The term when used by settlement officers in Behar means a rent free tenure. The term means 'not paying agricultural rent' and does not imply anything as to liability to pay rent (*Jenkins, C. J. and Mookerjee, J.*) KESHWAR BHAGAT *v.* SHEO PROSAD LAL. **21 I.C. 415 = 18 C.L.J. 166 = 18 C.W.N. 918.**

———*Forcible dispossession.*

Forcible dispossession of an estate does not affect the tenant's rights who subsequently enters. (*Sankaran Nair and Oldfield, JJ.*) MAHARAJA OF JEYPORE *v.* RUKMINI PATTEMA DEVI.
2 L.W. 483 = 29 I.C. 365 = (1915) M.W.N. 346.
[Affirmed on appeal = 50 I.C. 631 = 42 Mad. 589 (P.C.).]

———*Pattidar — Relinquishment — Sale by mortgage from Pattadar.*

A decree obtained by a mortgagee from the *pattadar* subsequent to the relinquishment by the *pattadar* and grant of the *patta* to a third person does not affect the rights of such third person who claims under a title granted by the Government even though the mortgagee has purchased the land himself and obtained a *patta*. (*Sundara Aiyar and Sadasiva Aiyar, JJ.*) MOOLIVATTI VEERANNA GOWNDEN *v.* DEVARINLI BHIMA REDDI. **12 M.L.T. 261 = 17 I.C. 253 = (1913) M.W.N. 880.**

LAND TENURE—Miscellaneous.

———*Grant by Zemindar having no Kudivaram rights—Effect—Rights of inamdar to eject a tenant.*

A grant by a Zemindar having no *kudivaram* rights cannot operate as grant of an inam. An inamdar, to establish his right to eject tenant, must show that he had the *kudivaram* right which can be proved only by showing that he let in the tenants at the begioning of their occupation. (*Sadasiva Aiyar and Napier, JJ.*) PARVATANENI VENKATARAMIAH *v.* PARVATANENI NARAYULU. 17 I. C. 246 : 12 M. L T. 313.

———*Berar—Khatedar—Rights of alienation.*

At the time of the first settlement in Berar, villages obtained on full survey assessment fields used for grazing cattle. One among them called khatedar was responsible for the whole assessment and the property was entered in his name though it belonged to the villagers as a body. The assessment was collected among them and through him paid to the Government. An alienation from such a khatedar who is aware of the real nature of the title gets nothing at all. (*Prideaux, A. J. C.*) LATIF *v.* PANDHARI.

1923 Nag. 214.

———*Oudh—Biswi— Paramsana—What are —Extinction of right to redeem— Effect.*

Biswi is a kind of under-proprietary tenure arising out of a special class of mortgage by the proprietor to a cultivator of the latter's holding for a sum of money paid as consideration. A low rent representing the difference between the full rent and the interest or the money is reserved to the mortgagor. This is known as *paramsana*. The extinction of the right of redemption of a mortgage of this kind does not destroy the right of the mortgagor or his successor to claim the *paramsana* as rent. (*Kanhaiya Lal, J. C.*) SAT DEO *v.* JAI NATH. 9 O. L. J. 141 : 4 U. P. L. R. (O. C.) 43 : 1922 Oudh 75.

———*Tenure in Oudh—Lord Canning's Proclamation — Outram's Proclamation — Queen's Proclamation—Interpretation.*

The effect of Lord Canning's Proclamation was to divest all the landed property and house property from the proprietors in Oudh and to vest it in the British Government. Neither the *Parwana* issued by Outram on 25—3—1858 nor the Queen's Proclamation can be taken to have operated to restore the property confiscated under Lord Canning's Proclamation. The property which by confiscation has become the property of the State must be 'public property' within S. 17 of the Limitation Act. The Government took them free of all customary rights. (*Lindsay, J. C. and Wazir Hasan, A. J. C.*) SECRETARY OF STATE *v.* MUHAMAD QASIM.

8 O. L. J. 160: 24 O. C. 77 : 61 I. C. 871 : 3 U. P. L. R. (J. C.) 19.

———*Tenure in Oudh—Lord Canning's Proclamation—Outram's Proclamations—Settlement decrees—Settlement in Oudh.*

The effect of Lord Canning's Proclamation was to divest all the landed property from the proprietors in Oudh and to vest it in the British Government. Outram's Proclamation cannot be taken to have any operation inconsistent with that of Lord Canning. No rights of occupation which were possessed by any one prior to 15—3—1868 can now be put forward to establish a title by adverse possession against the British Government. All who now claim title to lands in Oudh must claim through Government or prove sixty years' adverse possession counting from the date of Canning's Proclamation. Settlement decrees passed under the First Regular Settlement conferred no new title upon Government. They were based on a recognition of title which had accrued to the Government under Canning's Proclamation. *Held*, on a construction of the Financial Commissioner's letter dated 7—8—1868 that it declared that the land occupied by houses in the city of Lucknow was the property of the owner of the houses, that the declaration extended to all areas within the city including the *abadi* areas of Baraulia-Qutubpur Khalispur and Iradatnagar, that the Financial Commissioner had power to make such declaration and that even if he had not, it was supplied subsequently by implication, so as to constitute it a ratification of the Financial Commissioner's Act. Unoccupied lands were, in the settlement, treated as Nazul and that the Financial Commissioner's letter does not purport to transfer any title in such lands. But it is not correct to say that land upon which the ruins of a house are standing is unoccupied. (*Lindsay, J. C. and Kanhaiya Lal, A. J. C.*) BARATI *v.* SECRETARY OF STATE.

24 O. C. 33 : 8 O. L. J. 233 : 61 I. C. 721 : 3 U. P. L. R. (J. C.) 35.

———*Oudh—Under-proprietary rights—Distinction from proprietary rights.*

Under-proprietary rights are distinct from proprietary rights. They do not form part and parcel of talukdari right. An under-proprietor has complete ownership over his land subject only to the payment in certain cases of rent or *malikana* to the superior proprietor and his estate is alienable and transferable ; but he cannot, and unlike the proprietor, engage directly with the Government for land revenue but must pay his assessment to the proprietor. (*Stuart, J. C. and Kanhaiya Lal, A. J. C.*) SURAJ BIKRAM SINGH *v.* CHANDRABHAN SINGH. 17 I. C, 334.

———*Unauthorised settlement—Parti land.*

The holder of a settlement made by an unauthorised Zemindar can either derive title therefrom nor resist the rightful owners who are in possession according to Survey Record of Rights. Possession of *parti* land follows title. (*Jwala Prasad and Adami, JJ.*) KUNAN DAS *v.* GULAM ALI. 57 I. C. 323 : 1 Pat. L. T. 184.

LAW AND EQUITY.

See (1) EQUITY.
(2) PRACTICE.

LAW REPORTS.

See PRACTICE—PRECEDENTS.

LEADING QUESTIONS.

See EVIDENCE ACT, Ss. 141—143.

LEASE.

See *also* (1) LANDLORD AND TENANT.
(2) T. P. ACT, Ss. 106—117.

Agricultural.
Assignment.
Construction.
Covenant.
Heritability.
Holding over.
Kabuliyat.
Mokurrari.
Permanency.
Phalphul.
Shabait.
Sub soil rights.
Under-proprietary Tenure.
Zur-i peshgi.

Agricultural.

——*Agricultural—Oral lease.*

The letting out of agricultural land need not be a document only; it may be by oral agreement or even by conduct of parties. (*Suhrawardy and Cuming, JJ.*) ALAM MULLA *v.* SURENDRA KUMAR.
1923 Cal. 432.

Assignment.

——*Assignment—Option to the lessee to purchase the land leased, whether enures to the assignee—By conduct.*

On an assignment of the lease, the option of the lessee to purchase the leased property enures to the assignee. (*Kajiji, J.*) LADHABAI *v.* SIR JAMSETJI JIJEEBHAY. 42 Bom. 103: 42 I. C. 882 : 19 Bom. L. R. 813.

——*Assignment—Suit for rent after—Kattahonam—Right to set off.*

After the execution of a lease deed, the lessee gave a certain sum as *Kattakonam* to the lessor. The interest due from the lessor was to be deducted from the rent due every year and the principal of the *Kattakonam* was repayable when the lease from year to year terminated. After the lease, the lessor assigned his reversion to a third party. The lessor then filed a suit for rent. *Held*, (1) that the lessee could not set off the *Kattakonam* against plaintiff's claim ; (2) that the tenant could proceed for his *Kattakonam* against either the assignor or the assignee ; and (3) that the right to enforce the *Kattakonam* did not accrue due, on the date of the assignment but on the termination of the tenancy unless a special contract to the contrary exists. (*Sundara Aiyar and Sadasiva Aiyar, JJ.*) VEERAYAYAN *v.* PARAKAL GOPAL MENON. 17 I. C. 623.

——*Assignment—Liability of assignee.*

No action lies against an assignee except for breaches of covenant occurring while he is assignee. (*Das and Adami, JJ.*) BHUPENDRA NATH BOSE *v.* MIR PRASAD SINGH. 2 Pat. L. T. 175: 60 I. C 297: 1921 Pat. 74 : 3 U. P. L. R. (Pat.) 3.

Construction.

——*Construction.*

Held, on a construction of the *Kabuliyat* that it did not confer rights of occupancy on the lessees or vest in them a new term of years after the expiry of that mentioned therein but merely gave a right of renewal. (*Lord Dunedin.*) MIDNAPUR ZEMINDARI CO., LTD. *v.* NARAYAN ROY.
48 Cal. 460: 48 I. A. 49: 14 L. W. 265: 1922 P. C. 241 (P. C.).

——*Construction— Security— Stipulation to furnish in a fortnight—Waiver*

Under a lease the lessees were to give security within 15 days. The security bond was executed after the expiry of the 15th day and then the lessors made over possession to the lessees. *Held*, that the surety was liable to perform the obligation he entered into, under the document as the time clause was solely for the benefit of the lessors. (*Mears, C. J. and Banerji, J.*) KIFAYATULLAH KHAN *v.* SRI RAGHUNATHJI.
18 A. L. J. 105 : 55 I. C. 230 : 2 U. P. L R. (All.) 53.

——*Construction— Lease for 'Season'—Hill station—Period.*

In the absence of evidence to the contrary, a lease of a house at Mussoorie for the 'season' continues to the end of the year. (*Richards, C. J. and Banerji, J.*) OLD *v.* SHAIL.
29 I. C. 437 : 13 A. L. J. 647.

——*Construction — Grove— Planting of— Condition not rendered impossible—Transfer of.*

A land was granted to defendant for the purpose of planting a grove and it was provided that the transferee might plant trees on the land and cut them at his pleasure, that if any revenue was assessed on the land the defendant was to pay it. If he wished to sell it the plaintiff was to have a right of pre-emption. *Held*, that the document created an interest in the land in favour of the defendant and that the right granted could not be revoked at the will of the grantor. No time having been fixed for planting a grove, the condition could not be said to have been broken until the defendant rendered the performance of the condition impossible. (*Chamier, J.*) NAIKRAM *v.* JWALA PRASAD. 28 I. C. 680 : 13 A. L. J 376.

——*Construction--'Thicca,' 'Mokra'--Meaning of—Tenancy from generation to generation.*

The word "thicca" is used to indicate the creation of a tenancy and the word "*mokra*" is in reality "*Mokarari*" indicating that the rent was fixed in perpetuity. Consequently, if these two words are taken together, there is no escape for the inference that the rent was fixed in perpetuity; in other words, that the tenure was not only *maurasi* but *mokarari*. There is, however, a subsequent clause in the document which may militate against this view ; namely, the clause which bars the alienation of the tenancy without the consent of the landlord. (*Mookerjee and Cholzner, JJ.*) RISHEE CASE LAW *v.* BHUBAN MOHAN PAL. 1924 Cal. 361.

——*Construction —' Mireshorotto Janmaiya' —Meaning of.*

Held, on a construction of the lease that the lease was permanent and heritable and that by the use of the words *Mireshorotto Janmaiya* it was intended that the tenancy should be heritable and to be enjoyed by the grantee from generation

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to generation. The word *Mireshorotto* is a misspelling. (*Walmsley and Suhrawardy, JJ.*) AJIMANNESSA BIBI *v.* PANNA LAL SIL
27 C. W. N. 1037 : 1923 Cal. 705.

——*Construction — Boundary line—Settlement map—Misdescription.*

In the lease of the plff. the land was thus described, "land lying within the boundaries as shown in the map which is in the settlement papers and appertaining to the Sadarkahs mahal, etc." and again in the schedule as "4 drones, 14 kanis of land in dag No. 1742-13796 of the present survey, etc." The defts.' land was similarly described in his lease. 'Land lying within the boundaries as shown in the map which is in the settlement papers, etc.' and in the Schedule as "1 drone 5 gandas of land in all covered by dag No. 1742-13797 of the present survey, etc." It was admitted that the reference to the map in the leases had this effect, that it should be treated as incorporated in the leases and forming part of the documents. If things stood alone, there would have been no question that each party would be entitled to the dag as shown in the map as forming his parcel and the boundary line would have been the line drawn in the map. In the map, however, at the place where the boundary line had been drawn a *gopath* had been depicted, but as a matter of fact there was no *gopath* in the locality. There was, however, actually a *gopath* in existence further to the south of the boundary line as drawn in the map. *Held*, that the plff. was entitled to all the lands up to the line as drawn in the map, without reference to the actual site of the *gopath*. The map was referred to in the leases not for the purpose of showing the site of the *gopath*, which is not mentioned at all, but for the purpose of showing the boundary lines, and the mistake in the drawing of the *gopath* at the place was immaterial. As soon as there is an adequate and sufficient definition with convenient certainty, of what is intended to pass by a deed, any subsequent erroneous addition will not vitiate it. (*Walmsley and Ghose, JJ.*) DARAPALI SADAGAR *v.* NAJIR AHAMED. 50 Cal. 394 : 1923 Cal. 669.

——*Construction—Lease at fixed rent.*

The use of the words *putrapoutradi krame* indicate that it was intended to be a perpetual lease. In the body of the document there was in one place an undertaking by the tenant to pay fixed rent, and in another portion the tenant undertook to pay in addition to the fixed rent, certain other sums, *i.e.*, road cess and public works cess as assessed and any tax or additional amount that may be assessed or settled by the Government in future in respect of lands of the tenancy. *Held*, the tenancy was intended to be a lease at a fixed rent. The restrictive clauses "the tenant undertakes not to excavate any ditch or tank, prepare bricks, construct pucca buildings and cut down trees, etc., without taking a written order expressing consent from the landlord" do not modify the nature of the tenancy. (*Mookerjee and Cholzner, JJ.*) GOLAM RAHAMAN MISTRI *v* GURDAS KUNDU CHOUDHRI. 38 C. L. J. 350 : 1923 Cal. 505.

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——*Construction—Fixed rent.*

Where a lease deed provided for enjoyment at a certain fixed rent from son to grandson, permanent and heritable rights are conferred but not the maximum of rent leviable. (*Richardson and Ghose, JJ.*) RAJ MOHAN PODDER *v.* TARAPROSANNA. 1923 Cal. 354.

——*Construction—Fixed rent.*

A document purporting to be a lease provided "You will enjoy from generation to generation keeping intact the boundaries as before. The profit and loss are yours. You will on no account be entitled to claim a reduction of rent. When required by me you will submit to Jarip Jamabandi.....If any new imposition be made by the Government you will pay it besides the Jama of this Patta." *Held* that the lease was not one for fixed rent. (*Chatterjea and Pearson, JJ.*) KRISHNENDRA NATH SARKAR *v.* RANI KAMANI DEBI. 1923 Cal. 351.

——*Construction—Right to build—Boundaries and area—Conflict—Effect of.*

The fact that the lessee was given possession of an area of land less than that granted by the lease does not justify his encroaching on other lands of the lessor outside the area specified in the boundaries. The portion of a lease governing the lessee's right to build was as follows :—"You shall not be competent to make big excavations but you shall be competent to construct pucca wall, pucca privy and pucca plinth of the tin ghur." *Held*, that reading the clause as a whole, it was the intention of the parties that the lessee's right to erect permanent structures should be limited to those specified in the condition and that this condition amounted to a prohibition to build any other structures than those expressly mentioned (*Newbould and Cuming, JJ.*) DINANATH DAS *v.* GOPAL CHANDRA DAS. 1923 Cal. 309.

——*Construction—Kabuliyat— Provision for payment of salami—Involuntary transfer— Covenant against alienation.*

A kabuliyat stipulated that at every transfer a certain salami should be paid. The tenure in respect of which this kabuliyat was given was sold in execution of a money decree. The landlord subsequently sued for recovery of the stipulated salami. *Held*, that the covenant did not cover an involuntary sale. A condition in a lease restraining transfer is not applicable to a case of involuntary transfer unless there are words in the covenant which clearly make it applicable to such a transfer. The transfer in execution of a money decree cannot be treated as on the same footing as a voluntary sale. 42 C. 172 foll. 21 C. W. N. 117 ref. to. (*Newbould and Suhrawardy, JJ.*) KUMAR MONMATHA NATH MITRA *v.* CHUNI LAL GHOSE. 26 C. W. N. 173 : 1922 Cal. 96.

——*Construction—Sub-lease—Heritability.*

If a lease is valid and the terms of the lease allow the continuance of the tenancy the interest created by a sub-lease is heritable. (*Newbould, J.*) PRASANNA DASYA *v.* AMARCHAND ROY. 57 I. C. 580.

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———*Construction—Stipulation for rent in kind or money value—Landlord if can recover market value.*

Where a tenant executed a *kabuliyat* promising to pay rent Rs. 4 in cash and 91 *arts* of paddy and on his failure to pay the said rent and share of paddy the landlord would be competent to realise the said rent and Rs. 36 as price of the paddy. *Held*, that on the tenant making default in paying the landlord's share of the paddy the latter was not entitled to recover the market value of the paddy at the time but only the fixed amount of Rs. 36. The question whether a landlord is entitled to anything more than the value of the paddy stipulated to be paid, on default of payment by the tenant, is one depending on the construction of the *kabuliyat* in each case. 15 C. W. N. 249, Ref. (*Chatterjee and Duval, JJ.*) GURUDAS *v.* GOBINDA CHANDRA SINHA.

54 I. C. 914 : 24 C. W. N. 85.

———*Construction—Lease or contract for service.*

A *kabuliyat* by a *burgadar* created a settlement of a land for a term with a provision for giving up the land without notice on the expiration of the term. *Held*, that the contract was not a mere contract for service but created a tenancy. (*Newbould, J.*) SHEIKH MANSUR *v.* BRAHMAYEE.

53 I. C. 541.

———*Construction*—Mukarari Mourashi—*Rent partly in money and partly in kind—Liability of tenant.*

A *mukarari* lease provided that the rent was payable partly in kind and partly in cash and if the former was delivered, the tenant should pay a certain sum to be fixed by the parties as its value. *Held*, that the parties intended to fix the value of the rent in kind and on default of payment in specie and that the tenant was liable only to pay the sum fixed. *Per Banerjee J.*—The words '*jamma abadharit*' meant more than a provisional settlement of rents for the incidental purpose of ascertaining stamp duty. (*Maclean, C. J. and Banerjee, J.*) DWARKA NATH MUKERJEE *v.* DWIJENDRA NATH GHOSAL.

47 Cal. 139n : 53 I. C. 103 : 30 C. L. J. 37.

———*Construction*—Mourashi Mokarari Jamai Jami.

The words '*Mourashi Mokarari Jamai Jami*' though not inconsistent with the position of a tenure-holder are more apt to describe the position of a raiyat. (*Beachcroft, J.*) ABDUL MAJID *v.* NUR MUHAMMAD. **50 I. C. 641.**

———*Construction—Right of tenant to settlement.*

When the landlord had, under a *Kabuliyat*, granted a lease of certain lands to the defendant, and the defendant had taken possession, he must recognise the defendant as his tenant. (*Walmsley, J.*) AFSURUDDIN *v.* ABDUL HOSSEIN.

50 I. C. 314.

———*Construction— Covenant for renewal—Lease by Government.*

The grantee under a settlement by Government executed a *kabuliyat* containing a clause 'if I agree to the enhanced rent to be fixed at the time of the next settlement, Government shall have power to settle the lands with me or if I do not agree, then with others. *Held*, that the clause in the lease was a covenant for renewal on the same terms as the old lease except as to the amount of rent. (*Mookerjee and Beachcroft, JJ.*) SECRETARY OF STATE FOR INDIA *v.* SITAPRASAD JANA.

45 I. C. 983 : 27 C. L. J. 447.

———*Construction—Covenant for renewal.*

A lease granted by Government contained the following clause 'If you (the lessee) agree to pay the enhanced rent fixed at the time of resettlement in future, the Government will have the right to settle with you. *Held*, that the clause embodied a covenant for renewal subject to any higher rent which might be fixed at the settlement. (*Mookerjee and Beachcroft, JJ.*) SECRETARY OF STATE *v.* DIGAMBAR NANDA.

46 Cal. 160 : 45 I. C. 939 : 27 C. L. J. 443.

———*Construction— Toll—Payment of—Shop.*

The defendant took a lease of certain property for keeping a shop. The terms were that the lessee should pay a certain amount of rent and must also pay toll over the stipulated rent as part of the rent in respect of goods that should be sold in the shop or on boat or on road on certain terms. *Held*, defendant was liable to pay toll not only for goods sold in his shop but also for those taken from his shop and carried by boat or on road to some other near place and sold there. (*Fletcher and Huda, JJ.*) KISHORE LAL GOSWAMI *v.* TARAPADA BHATTACHARJEE. **45 I. C. 875.**

———*Construction—Consent decree empowering landlord to eject tenant on refusal to cultivate—Right to sue for rent.*

A landlord and tenant agreed under a consent decree that if the tenant refused to cultivate the land and to deliver to the landlord his share of the produce the landlord could eject the tenant, *Held*, that the clause relating to the ejectment was in the nature of a clause for re-entry and had not the effect of depriving the landlord of his ordinary right to sue for the arrears of rent due by the tenant. (*Richardson and Beachcroft, JJ.*) PROBODH CHANDRA MITRA *v.* INDRA CHANDRA CHAULE. **44 I. C. 925.**

———*Construction of* — Istimrari Mourashi Mokarrari—*Meaning of.*

The words *Istimrari Mourashi Mokarrari* in a lease always mean permanent and heritable interest and not merely permanent for the life of the grantee, even when no other words indicating a heritable interest are used in the document. (*Fletcher and Newbould, JJ.*) BAIKUNT NATH *v.* LAKSHMAN CHANDRA. **41 I. C. 875.**

———*Construction* — Taluka patta—*Covenant for re-entry whether personal or runs with the land.*

The interest created by a *Taluka patta* constitutes *prima facie* a permanent tenure, where there was nothing to the contrary either in the surrounding circumstances or in the instrument. When the *taluka patta* was silent as to heritability and transferability but during the period of sixty years the tenancy had devolved from father-

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to son and had formed the subject of many transfers and the rent fixed had never varied, the lease was held to be permanent. Though there was a covenant in the lease that if the grantor had personal necessity the grantee would be bound to relinquish the land, the covenant was a personal one and ceased to be operative on the death of the grantor. The covenant must be construed strictly against the grantor and most beneficially in favour of the grantee. The question whether a covenant in a lease is a personal one or runs with the land depends upon the true intention of the grantor and the grantee to be ascertained from the construction of the terms of the grant. (*Mukerjee and Beachcroft, JJ.*) SARADA KRIPALA *v.* AKHIL CHANDRA BISWAS.

21 C. W. N. 903 : 41 I. C. 530 : 28 C. L. J. 18.

——*Construction*—Abwab *or rent.*

Whether any particular item is an *abwab* or not, must depend upon the construction of the contract of lease in each case, and the question in each case is whether the sum claimed is really part of the rent agreed to be paid under the lease. (*N. R. Chatterjee and Sheepshanks, JJ.*) UPENDRA LAL GUPTA *v.* ATAULLA.

36 I. C. 404 : 21 C. W. N. 108.

——*Construction—Breach of—No right of re-entry—Remedy of lessor.*

Where there is a covenant against alienation by the tenant but no right of re-entry reserved in the landlord, the lease is not forfeited by breach of the covenant and the remedy of the landlord is by the limited ways of injunction against an apprehended breach or by recovery of damages for the breach already committed. (*Sanderson, C. J. and Mookerjee, J.*) DWARKA NATH ROY *v.* MATHURANATH ROY.

24 C. L. J. 40 : 34 I. C. 833 : 21 C. W. N. 117.

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The circumstances existing at the date of the lease should be looked at for the purpose of construing the words in the lease. (*Sanderson, C. J. and Woodroffe, J.*) RAI CHARAN *v.* KANAI KAMMAR. 34 I. C. 72 : 24 C. L. J. 21.

——*Construction—Abatement of rent.*

In a lease the tenants agreed not to claim abatement of rent on account of flood, dispossession or other grounds of like nature, but did not mention 'diluvion.' *Held*, that it was still within their rights to claim abatement on the ground of diluvion. A forced construction should not be put to justify that the tenants were bound to pay. (*Mookerjee and Newbould, JJ.*) SATIMULLAH *v.* KALI PROSONNO PARBAT. 33 I. C. 349 : 22 C. L. J. 569.

——*Construction*—'Putra Poutradi' — *Perpetual lease.*

The expression '*putra poutradi kramay*' in a lease deed indicates a permanent lease. (*Chapman and Newbould, JJ.*) KARTIK MANDAL *v.* RAM CHARAN MANDAL. 29 I. C. 502 : 20 C. W. N. 182.

——*Construction—Plain and unambiguous words.*

Where the true effect of the language used in a lease is perfectly clear, no reference is possible to the conduct of the parties and no amount of acting by the parties can alter or qualify words which are plain and unambiguous. (*Mookerjee and Beachcroft, JJ.*) RAHIM BAKSH MANDAL *v.* SAJJAD AHMED CHOWDHURY. 26 I. C. 466 : 19 C. W. N. 1311.

——*Construction—Nim-howla lease—Stipulation against voluntary alienation—Execution sale—Stranger purchaser—Landlord if can sue original tenants for rent and obtain decree.*

At a sale in execution the plaintiff purchased the right, title and interest of the tenants in a *nim-howla* tenure. Notwithstanding that the purchase by plaintiff was duly notified to the landlord, the latter sued the tenants for rent and obtained a decree. The plaintiff sued for a declaration that this decree was not binding on him and that the tenure in his hands was not liable to sale in execution. The lease which created the *nim-howla* provided, 'Let it be known that if you transfer the *nim-howla* tenure, you will transfer it to me for proper price, and will not transfer it to any other person. If you transfer it to any other person such transfer will be invalid.' *Held*, that there being no covenant against involuntary alienations and no covenant for re-entry the plaintiff acquired a good title by his purchase and consequently the landlord could not sue the original tenants to obtain a decree whereby he could proceed against the tenure in the hands of the plaintiff. (*Mookerjee and Beachcroft, JJ.*) PROMODE RANJAN GHOSH *v.* ASWINI KUMAR NAG. 26 I.C. 23 : 18 C.W.N. 1138.

——*Construction — Land acquired for culverts, embankments on roads—Words if exhaustive or illustrative.*

Words like 'culverts, embankment, roads' appearing in a *Patni Kabuliyat* are merely illustrative of the purposes and not exhaustive. (*Fletcher and Chatterjee, JJ.*) HIRENDRA NATH DUTT *v.* HARI MOHAN GHOSE.

22 I. C. 966 : 18 C. W. N. 860.

——*Construction — Rent—Fixity of—Mokurari.*

Words creating or importing the existence of a permanent tenure at a fixed rent may admit of the construction that the rent is a rent fixed in perpetuity though no such term as '*mokarari*' is expressly used. (*Richardson and Newbould, JJ.*) PURNA CHANDRA GHOSE *v.* COLLECTOR OF KHULNA. 20 I. C. 255.

——*Construction—Covenant for renewal.*

A lease recited prior settlements on the expiration of the last of which the lease was renewed at an enhanced rent and also provided that after the expiry of the term the lessor would have power to resettle at an enhanced rent. *Held*, the clause was a covenant for renewal. (*Mookerjee and Beachcroft, JJ.*) SECRETARY OF STATE *v.* FORBES. 17 I. C. 180 : 16 C. L. J. 217.

——*Construction—Agreement to pay Government dues—Remission—Right to benefit.*

Under a *Patni* lease, the annual rent was fixed at a certain sum out of which Rs. 1,080-8-7 was to be paid by the tenant, on account of Government dues payable by the landlord and the

balance was to be paid to the landlord as *Malikana*. The lease provided that if any new imposts be levied by Government in the future the tenant would be liable for the same but there was no provision for the case of any remission. Except for the *Malikana*, the landlord was to have no right and interest whatever. Subsequently the Government demand was reduced. *Held*, that the landlord was entitled to the benefit of this sum, that is, he may realise it from the tenant in addition to the *Malikana*. 33 C. 140 ; 32 C. 169, Dist. 14 C. L. J. 589. Ref. (*Harrington and Mookerjee, JJ.*) JANAKI BALLABH SEN *v.* GOPAL LAL ROY.
15 I. C. 301.

———*Construction—Mokarrari lease — Rent payable to grantor for life—Absolute after grantor's death.*

If the terms of a deed indicate that the grantor intended to create a perpetual *Mokarrari* lease, the lessee to pay the rent to the grantor during the latter's life-time and after his death the lessee to get the absolute interest, *Held*, that the entire ownership was divided into two portions, the grantee becoming the tenant while the interest of the landlord continued in the grantor and there was no present disposition of property. (*Mookerjee and Carnduff, JJ.*) KANIJ JINATAL KOBRA *v.* HAMIDUNNISA. 14 I. C. 56 : 16 C. L. J. 111.

———*Construction—Consideration*—Abwab.

If a definite sum is specified in a lease or is agreed and is the lawful consideration for the use and occupation of the land, *i. e.*, part of the rent although not described as such, the landlord can recover the same. In a *kabuliyat* before the B. T. Act, there was a term for delivery of 10 *seers* of chilli besides the money rent. *Held* that the chilli was part of the consideration of the lease and not *abwab*. (*Chatterjee and Teunon, JJ.*) SARADA KRIPA LALA *v.* MOSTFIZAR RAHMAN.
12 I. C. 37.

———*Construction — Improvements, right to remove.*

A provision in a lease-deed enabling the tenant if he is unwilling to take the lease again to remove the improvements made by him does not cover the right of renewal on the same terms but only the right of removal of fixtures and other improvemehts. (*Tottenham and Ameer Ali, JJ.*) JOGENDRA CHANDRA *v.* RAJENDRA NATH.
99 I. C. 923 : 13 C. L. J. 262.

———*Construction—Cess—Liability to pay.*

An agreement to pay road and public work cesses at half an anna per rupee as is levied at present will bind the tenant to pay enhanced cesses in case of re-valuation. (*Mookerjee and Carnduff, JJ.*) KRISHNA CHANDRA *v.* MOHENDRANATH. 9 I. C. 704 : 13 C. L. J. 212.

———*Construction—Rent, liability to pay.*

Where the sub-lessee undertook to pay the fixed rent to his landlord and also undertook to discharge the rent due from his lessor to the superior landlord, he must pay the rent actually due to the superior landlord though such rent is enhanced subsequently. (*Woodroffe and Carnduff JJ.*) CHANDRA KUMAR SINGH *v.* KALI PRASAD.
9 I. C. 223.

———*Construction—Provision for additional rent—Special occasions—Durbar.*

Where a lease of a house in Delhi contained a clause authorising the tenant to sub-let and provided that if the tenant sub-let the whole or a portion of the house to any Chief for "Durbar" occasion the tenant should pay 25 per cent of the rent received from such Chief in lieu of the rent reserved by the lease. *Held*, that the intention of the parties was that the clause regarding payment of 25 per cent of the rent received from a Chief should be operative on special occasions when there was a competition for house accommodation in Delhi among ruling Chiefs, and that the clause did not refer to isolated visits of individual chiefs. Whenever an occasion arose to which the clause was properly applicable, the tenant was bound to pay the landlord 25 per cent. of the money recovered from a chief without deduction of any commission or other expense incurred by the tenant. (*Abdul Raoof and Campbell, JJ.*) NAURANG AHMED *v.* BISHESHAR NATH. 32 P. L. R. 1922 :
5 P. W. R. 1922 . 1922 Lah 155.

———*Construction—Joint lessees.*

A lease specified certain shares in favour of several lessees but the various lessees were treated as one person and the consideration was one sum due from the lessees as a body. The lease was joint and indivisible. *Held*, that none of the joint lessees can sue for possession of his proportionate share. One joint lessee can sue for possession of the whole where the other lessees act in collusion with the lessor. (*Reid, C. J. and Ratligan, J.*) MOHOMED ALI *v.* MAHOMAD SHAH. 57 P. R. 1911 : 49 P. L. R. 1912 :
12 I. C. 850 : 242 P. W. R. 1911.

———*Construction—Lease—Covenant for renewal.*

Where a lease ran as follows:—I shall improve the land and when the improvements have survived the period of decay and the cocoanut trees begin to bear fruit and I shall take a lease after fixing the rent according to local custom, *held*, that there was a covenant for renewal on the expiry of the prior lease if the improvements proved effective and that the rent was to be revised in view of the larger yield that might be got from the land. (*Rahim and Odgers, JJ.*) KAITHAL KUTTIYAN *v.* UMMAM AMMA.
44 Mad. 509: 13 L. W. 208 :
(1921) M W. N. 169 : 62 I. C. 62 :
29 M. L. T. 172 : 41 M. L. J. 202.

———*Construction* — Khayam Saswatham Patta—*Incidents of.*

The incidents of '*Khayam Saswatham Patta*' and the test to determine its character are those laid down by the Privy Council in 12 C. 117 The use of such terms as 'generation to generation' will signify the grant of a permanent tenure and their absence would generally import only a life-interest. The *pattas*, surrounding circumstances, and the conduct of the parties may be considered in this connection. Where to the knowledge of the lessor and acquiesced in by him there have been transfers effected by the lessees and Court auctions, the presumption might arise.

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that the grant was permanent and heritable. In every lease there is an implied condition that the lessee shall do nothing to prejudice the lessor's title. (*Abdur Rahim and Oldfield, JJ.*) RAMA AIYANGAR *v.* ANGA GURUSAMI.
8 L. W. 109 : 46 I. C. 62 : 35 M. L. J. 129 :
Also 48 I. C. 301 : 35 M L. J. 647.

——— *Construction—Municipal taxes—Liability for—Covenant by lessee to pay taxes on buildings and by lessor to pay quit-rent.*

A lessee undertook to pay all the municipal taxes payable for buildings erected on the land demised and the lessor agreed to pay only quit-rent. Subsequent to the lease the Municipality began to levy separate assessments on the buildings and the lands. *Held*, that on the construction of the lease, the lessee was bound to pay all taxes leviable under Ss. 129, 145, 148 of the City of Madras Municipal Act. The liability was not affected by any arrangement on the lands and buildings standing thereon. (*Wallis, C.J. and Oldfield, J.*) RAMACHANDRA AIYAR *v.* DURAIVELU MUDALIAR. 43 I. C. 634 : 7 L. W. 140 :
(1918) M. W. N. 130.

——— *Construction—Permanency—Proof.*

A lease is not permanent because no time is prescribed and the lessee has been in occupation for 60 years on a low rent. (*Sadasiva Aiyar and Seshagiri Aiyar, JJ.*) MURUGAPPA CHETTIAR *v.* RANGASAMI NAICKEN. 33 I. C. 57.

——— *Construction—Penal clause in lease deed.*

The penal clause in a lease must be construed strictly without favouring either side. 32 I.C. 512' (*Seshagiri Aiyar and Kumaraswami Sastri, JJ.*) AHMAD SAHIB SHULLARI *v.* MAGNESITE SYNDICATE. 32 I. C. 512 : 39 Mad. 1049.

——— *Construction—Occupancy right.*

A stipulation by a ryot the he will not touch the land without obtaining a fresh *cowle* amounts merely to a covenant not to cultivate and is not inconsistent with occupancy right. (*Bhashyam Aiyangar and Moore, JJ.*) SUBBARAYA *v.* DARAPPA REDDI. 9 I. C. 566 : 9 M. L. T. 213

——— *Construction—Lease for specific purpose—Duration.*

A lease provided "under the rent note dated 2nd August 1890 executed by my Dadi, named Fundabi, the land is in your possession for the purpose of your ginning factory. That khata holder died and the khata is transferred in my name as heir. Therefore I have fixed the rent of the field which is given to you by Fundabi for constructing a ginning factory and is in your possession at Rs. 120 per annum, and given it to you in order that you may keep it in your possession as long as you please. You should always keep this land in your possession for the use of your ginning factory, I will not ask it back." *Held*, that it was an agreement with a particular company, the original lessees, that they should hold the land as long as they liked. A perpetual lease is determined by the death of the lessee. 4 Bom. 424, Ref. and on the same principle where the company to whom the land is given for a specified purpose is defunct, the lease comes to an end. The lease is a perpetual one in the sense

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that the lessees could do what they liked with the land and any diversion of use of the land from the purpose for which the lease was apparently granted would give the lessor a right of re-entry and therefore in the present case the lease came to an end when the land was no longer used for ginning factory. (*Prideaux, A. J. C.*) GOVARDHAN DAS *v.* WAHID KHAN.
6 N. L. J. 170 : 1923 Nag. 243.

——— *Construction — Clause of repurchase—Transferability.*

A lessor contracting for a right of repurchase of lessee's rights does not in any way derogate from the transferable quality of the rights under the lease. The decision of every case will depend on the conditions of the lease. (*Kanhaiya Lal, J. C and Dalal, A. J. C.*) SHAIKH RUTAB ALI *v.* MAHOMED ZUMAN BEG. 9 O. L J 101 :
1923 Oudh 47.

——— *Construction.*

An agreement among co-owners to remain in possession by rotation is not a lease ; so registration is unnecessary. (*Ashworth, J.C. and Simpson, A, J. C.*) NAGESWAR PRASAD *v.* JAI NARAYAN.
9 O. L. J. 184 : 1922 Oudh 201.

——— *Construction—Absolute right—Use of technical expressions*—Naslan bad naslan—Ba qaemu qami.

A lease recited that the lessee was to be in possession of the village leased *ba qaemu qami* of the lessor. *Held*, that the intention was to confer an absolute estate subject to the liability to pay annual rent. The use of the words *Naslan bad naslan* without more, shows an intention to convey an absolute estate. 14 C. 296, Ref. (*Wazir Hasan, A. J. C.*) LACHHMAN DAS *v.* BHAGWANT RAM. 65 I. C. 707 : 8 O. L. J. 481.

——— *Construction—'Hamesha'—'Dawami'.*

No interest after the life of the lessee or grantee is created by the use of 'Hamesha' or 'Dawami' in a lease or grant. Circumstances must be considered. (*Holmes, S. M.*) TRIBHAVAN DAT *v.* MUHAMMAD ABDUL HASAN KHAN
33 I. C. 264 : 3 O. L. J. 746.

——— *Construction — Lease for purposes of cultivation and building tenants' houses.*

Where the lease of a certain land was for purposes of cultivation and building tenants' houses at a certain amount of annual rent and where an appreciable portion of the land was occupied by non-agricultural tenants, *Held* it was a mixed lease, containing both agricultural and non-agricultural land held under a lump rent. (*Tweedy, J.*) UMRAN BAHADUR *v.* SECRETARY OF STATE. 24 I. C. 788 : 1 O. L. J. 194.

——— *Construction*—Bemiadi *lease—Building purposes—Permanent tenancy.*

Where under a *bemiadi* lease, namely a lease without any term, the purpose of the lease was to enable the lessee to erect a *gola* house and to sell commodities therein, but the lessee was not to construct any *pucca* building without the express and written permission of the lessor, and the lessee had built a superstructure with the permission of the lessor, *Held*, that the lease

LEASE—Construction.

was meant to be of a permanent character and not a yearly one. (*Jwala Prasad and Adami, JJ.*) FORBES *v.* HANUMAN BHAGAT. 2 Pat. 452 : 4 Pat. L. T. 414 : 1 Pat. L. R. 190 : 1924 P. 88.

———*Construction—Lease for seven years—Provision for another lease with same conditions—Right of landlord to eject before the expiry of first lease.*

Under the terms of a *thikapatta* the lessee was to enjoy the property for seven years and that after the expiry of that period the lessor was to execute a fresh patta on the same conditions as before and with respect to the same lands. In a suit in ejectment by the landlord after the expiry of the first term of 7 years. *Held*, that the landlord was not entitled to eject. The lessee was in possession and since the time for the specific performance of the contract of lease for the second period of 7 years had not expired, the effect was the same as if a renewal had been granted. (*Bucknill and Kulwant Sahay, JJ.*) MOHIT NARAYAN *v.* KAMAL NATH OJHA. 1 Pat. L. R. 69 : 1923 Pat. 23 : 1923 P. 236.

———*Construction—Building lease—Presumption of permanency.*

A lease of land measuring 4 bighas for erection of buildings, etc, provided that the lessee was to pay an annual rent of Rs. 180 at the rate of Rs. 45 per bigha and also Zemindari *dak* cess and other cesses legally payable from the Bengali year 1302. On a question arising as to the construction of the lease, *Held*, that the lease was one from year to year at an annual rent of Rs. 45 per bigha and though the lessees had power to build, yet it could not be construed to be a permanent lease. Though the fact that a lease is for building purposes raises a presumption that it is a permanent one, yet such presumption cannot outweigh the terms of the lease itself. (*Miller, C. J. and Mullick, J.*) L. E. RALLI *v.* A. H, FORBES. 3 Pat. L. T. 467 : 4 U. P. L. R. (Pat.) 43 : 1922 Pat. 209 : 1922 P. 258.

———*Construction—Rent—Provision for payment in kind—Fixing of money value—Rights of landlord.*

Where a lease provides for the payment of rent in kind and also fixes the approximate value of the produce, it is open to the landlord to realise the market value of the produce. He is not confined to restrict his claim to the approximate value of the produce specified in the lease deed. 37 C. 626, Foll.(*Ross, J.*) JITENDRANATH CHATTERJI *v.* JHAKU MANDAR. 3 Pat. L. T. 456: 1922 P. 4.

———*Construction—Assignment or sub-lease.*

On a question as to a transaction amounting to an assignment or to an under-lease, the proper test is to see whether the lessee under the head lease has parted with his whole interest or with a greater interest than he himself possessed. If he has,then the instrument of transfer, by whatever name it may be called,is in reality an assignment. The right to surrender the land in lease

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does not make it any the less a permanent lease. (*Das and Foster, JJ.*) THE LONDA COLLIERY CO., LTD *v.* BIPIN BEHARI BOSE. 55 I. C. 113 : 1 Pat. L. T. 84.

———*Construction*—Bemiadi patta.

Where a certain woman gave a '*Bemiadi patta*' of a *jagir* the terms of which were that the lessee, his heirs and successors should hold possession of the property and have rights in the minerals and that the lessor shall have the rights to use the trees thereon as she may require, and the rent shall be payable to her and after the death to her daughter yearly. *Held*, that the *Bemiadi patta* was a lease without a term, if not for any definite period, and the mere mention of the heirs, minerals, etc., did not make the lease a permanent one and that it was only a lease from year to year. (*Chapman and Roe, JJ.*) PARSHAN KUER *v.* TULSI KUER. 2 Pat. L. J. 180 : 39 I. C. 658 : 1 Pat. L. W. 447 : 1918 Pat. 11.

Covenant.

———*Covenant — Premature termination — Damages.*

Where the term of a tenancy under which the rent is payable periodically is brought to a premature termination the lessee is entitled to damages and not to rent for the unexpired term of the lease. Even the acceptance of surrender does not preclude the lessee from suing for damages for breach of the contract ; it does not destroy the existing cause of action. (*Mookerjee and Chotzner, JJ.*) BIJOI CHANDRA SINGH *v.* HOWRA AMTA LIGHT RY. CO., LTD. 38 C. L. J. 177 : 1923 Cal. 524.

———*Covenant for renewal—Provision for—Position of lessee willing to accept renewal.*

Though the position of a lessee willing to accept a renewal of the lease on proper terms is the same in equity as if a proper lease had been executed it is necessary that the covenant for renewal should be such as to be specifically enforced. (*Mookerjee and Cuming, JJ.*) GAJENDRA NATH DEY *v.* MOULVI ASHRAF HOSSAIN 27 C. W. N. 159 : 36 C. L. J. 48 : 1923 Cal. 130.

———*Covenant for renewal—Option not stating terms of renewal—Presumption.*

Where there is a covenant for renewal, if the option doesnot state the terms of the renewal the new lease would be for the same period and on the same terms as the original lease in respect of all the essential conditions thereof except as to the covenant for renewal itself. 20 C. W. N. 948, Foll.(*Mookerjee and Panton, JJ.*) GURUPRASANNA BHATTACHARYA *v.* MADHUSUDAN CHOWDHURY. 26 C. W. N. 901 : 64 I. C. 824 : 35 C. L. J. 87.

———*Covenant—Oral agreement—Validity—Premises let to third party.*

Where a person is in possession under an oral agreement to lease, and the premises are then let to third party, he must be deemed to have notice of the prior lease. An oral lease is not invalid and where the lessee takes possession,the effect is the same as if a document had been executed, provided the specific performance is asked for in the same Court, between the parties and at the same

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time when the subsequent question comes to be determined. (*Sanderson, C.J. and Woodroffe, J.*) BARANASHI DASSI *v.* PAPAT VELJI RAJDEN
63 I. C. 118 : 25 C. W. N. 220.

———*Covenant—Construction of—Restriction on alienation.*

A 'person' in a covenant against assignment includes a corporation and a limited company is capable of being 'a respectable and responsible person' within such a covenant. (1920) 2 Ch. 525, Ref. 'Unreasonable' means without fair, solid and substantial cause, justifying refusal of the lessor's consent to the alienation. (*Ghose, J.*) DUCASSE *v.* COHEN. 60 I. C. 105 : 24 C. W. N. 1007.

———*Covenant for renewal—Terms of—Silence as to—Presumption.*

In the absence of specification of the terms of renewal the renewed lease would be for the same period and on the same terms as the original lease in respect of the essential conditions except the covenant for renewal itself. Silence in the condition as to the terms for which a settlement was to be made does not render a covenant for renewal unenforceable. (*Newbould, J.*) RASUL GAZI *v.* ABDUL JALIL KHAN. 33 I. C. 450.

———*Covenant—Stipulation in a lease—Lessor to have a right to demand back any land—Refusal to comply with—Action for.*

Where a stipulation in a lease provided that the lessor should have a right to demand any portions of the lands required by him, on a proportionate reduction of rent and the lessor having demanded almost all the lands, the lessee refused to comply with it and a suit was brought for *khas* possession by the lessor. *Held*, that form of action in such case should have been that of an action for specific performance and not of an action in ejectment. (*Stephen and Chatterjee, JJ.*) JOGESH CHANDRA ROY *v.* ANANDA CHARAN CHOWDHURY. 19 I. C. 907.

———*Covenant for renewal—Renewal from time to time—Covenant running with the land.*

A covenant to renew a lease from time to time at the lessee's option is one running with the land and is enforceable if the intention in that behalf is clear enough. The covenant is not subject to any rule against perpetuity. (*Abdur Rahim and Oldfield, JJ.*) TELLICHERRY PICHU NAIDU *v.* JAFARSON. 44 Mad. 230 : 12 L.W. 670 : 60 I. C. 591 : (1921) M.W.N. 31 : 41 M. L. J. 94.

———*Covenant for quiet enjoyment—Breach—Eviction*

It is settled law that any annoyance on the part of the lessor himself which prevents the lessee from enjoying the demised premises as per terms of the lease amounts to a breach of the covenant for quiet enjoyment. It is not necessary that there should be actual eviction, as the same can be inferred from acts like seizure of crops. (*Prideaux, A. J. C.*) DEBOO *v.* JIWAN RAO. 1923 Nag. 81.

———*Covenant—Breach of—Right of re-entry—Waiver.*

A right to re-enter for breach of a covenant is waived if the lessor brings an action for rent accruing subsequently to the breach with knowledge of its existence. (*Das and Ross, JJ.*) LLEWHELLIN *v.* ALI ASGAR. 60 I. C. 476.

———*Covenant—Breach of—Provision to give up land on notice—Remedy of lessor.*

Where the lessee was bound by the terms of the lease, to give up a portion of land required by the lessor for which proportionate remission in rent should be allowed and the lessor gave notice to the lessee to give up almost all the lands in question and, on refusal, sued for possession, *Held*, that the proper remedy to ask for would be specific performance and not relief in ejectment. (*Pratt, J. C. and Crouch, A. J. C.*) MOTUMAL *v.* JAVERMAL. 19 I. C. 908 : 6 S. L. R. 265.

LEASE—Holding over.

Heritability.

———*Heritability—Term fixed—* Putra Poutradi Santathi—*Meaning of—Collaterals if excluded.*

Where a lease for forty years was granted to a person and his *putra poutradi santathi*, and the lessee died before the expiry of the full term, leaving no lineal descendants, but only collaterals, *Held*, the words "*putra poutradi santathi*" when appearing in a will convey an absolute estate of inheritance, alienable and never resumable unless in a particular case some custom were proved which would exclude the ordinary law. 7 Cal. 304 (P. C.) and 31 Cal. 561 followed. There is no difference whether such words be found in a will or lease, and as the properties were leased absolutely for 40 years, it passes to the collaterals on the death of the original lessee. (*Macleod, C.J. and Shah, J.*) CHANDMAL KESARMAL *v.* VISHVANATH BALVANT SOHONI. 24 Bom. L. R. 300 : 1922 Bom. 45.

———*Heritability—Fixed rent for thirty years.*

Where a lease was granted for thirty years at a fixed rent which was to be increased at the end of the term if the revenue was increased and there was no mention whatever of hereditary rights the tenure was heritable possibly only for the unexpired period of thirty years. (*Holmes, S. M.*) RAMESHER *v.* ABBAS ALI KHAN. 40 I. C. 116 : 4 O. L. J. 191.

———*Heritability—Circular No. 16 of 1874—Ejectment—By notice.*

Leases granted under Circular No. 16 of 1874 are heritable leases, and a tenant holding under such a lease cannot be evicted by notice. (*Campbell, J. M.*) MAHADEO PRASAD *v.* AJODHYA PRASAD. 34 I. C. 760 : 3 O. L. J. 218.

Holding over.

———*Holding over—Tenancy on sufferance.*

There is no such thing as tenancy on sufferance in India. (*Sanderson, C. J. and Ghose, J.*) REAJUDDIN PATWARI *v.* SYED ABDUL JABBAR. 69 I. C. 504.

———*Holding over—Consent—Effect.*

If the tenant continues to hold after the lease for one year by consent of both the parties a tacit contract for renewal of the agreement is implied, (*Seshagiri Aiyar and Phillips, JJ.*) BEVI UMMA *v.* THIKKINIYIDATH ALLATH SHAMU MENON. 3 L. W. 189: 19 M. L. T. 128 : 32 I. C. 709: (1916) M. W. N. 192.

LEASE—Kabuliyat.

Kabuliyat.

———*Kabuliyat—Construction.*

The date of the Kabuliyat is not an index to the commencement of a tenancy. (*Lord Phillimore.*) MAHOMED SULAIMAN *v.* BIRENDRA CHANDRA.

50 C. 243 : 32 M. L. T. 115: 27 C. W. N. 749: 37 C. L. J. 561 : 44 M. L. J. 388 : 1922 P. C. 405.

———*Kabuliyat — Construction of—Condition about payment of any tax or road cess—Whether includes income-tax also—Royalty—Nature of.*

Where a clause in a Kabuliyat ran as follows: "In respect of land covered by this Kabuliyat or any portion thereof or in respect of coal business if any tax or road cess be assessed on you by Government, then I shall pay the same." *Held*, the lessee was liable to make good to the lessor the road cess and the Health Board cess also. S. 10 of the Bengal Act (V of 1912) referred. No doubt royalty is one of the sources of the income on which the income-tax is levied ; but income-tax is a personal tax and, therefore, the lessor had no right to recover the amount of the income-tax from the lessee under the above clause. Royalty represents the lessor's share of the profits made from the business. (*Das and Adami, JJ.*) RAJA NILKANATH *v.* NIBARAN CHANDRA.

1922 P. 75.

Mokurrari.

———*Mokurrari — Incidents — Minerals — Grantee's right to.*

A *Mokurrari* lease is a permanent heritable and transferable tenure but the grantee is not entitled to subjacent minerals unless expressly conveyed. '*Mai Hak Hakuk*' (with all rights) is not sufficient to convey the minerals, (*Lord Shaw.*) GIRDHARI SINGH *v* MEIGHMAL PANDEY.

45 Cal. 87: 44 I. A 246: 22 M. L T. 358: 15 A. L. J. 351 : 3 Pat. L. W. 169 : 26 C. L. J. 584 : (1917) M. W. N. 232 : 22 C. W. N. 201 : 7 L. W. 90 : 20 Bom. L. R. 64 : 42 I. C. 651 : 33 M. L. J. 687 (P. C.).

——*Mokurrari (mourasi) — Fixed rate of rent—Consent decree agreeing to pay enhanced rate—Effect of.*

Where under a *mourasi mokurrari* lease, a permanent, transferable and heritable tenancy was created at a permanent rate of rent, and some time after a consent decree was passed in a suit according to which the tenant agreed to pay an enbanced rate: *Held*, this did not destroy the tenancy or supersede the original tenancy or destroy the transferable character of the tenancy. (*Mookerjee and Cumming, JJ.*) PRIONATH GHOSE *v.* SURENDRANATH DAS. 26 C. W. N. 657 : 35 C. L. J. 440 : 1922 Cal. 511.

———*Mokurrari (mourasi) —Sale—Covenant for share of purchase money is not illegal.*

A covenant, in a *Mourasi Mokurrari* lease providing for a payment of a fourth of the purchase money, if the land is sold is not illegal but the landlord must prove what exactly is the amount of the purchase money. (*Buckland, J.*) PROVOSH CHANDRA *v.* PRATIVABALA DASI.

63 I. C. 337.

LEASE—Permanency.

——— *Mokurrari—Forfeiture— Relief against clause—Nullity.*

A *mokurrari* lease granted before the T.P. Act contained a clause that if default were made in the payment of 3 instalments of rent, the lease should be null and void. *Held*, the clause was one of nullity, but as there is no distinction between clauses of forfeiture and nullity in India even though the T. P. Act may not in terms apply, Courts have power to relieve against forfeiture. (*Das and Adami, JJ.*) HIRANANDHAN OJHA *v.* RAMDHAR SINGH. 1 P. 363 : 4 P. L. T. 292: 1922 P 528.

Permanency.

——— *Permanency- Mokurrari — Incidents— Minerals- Grantee's rights to.*

A *Mokurrari* lease is permanent, heritable and transferable tenure, but the grantee is not entitled to subjacent minerals unless expressly conveyed. '*Mai Hak Hakuk*' (with all rights) is not sufficient to convey the minerals. (*Lord Shaw.*) GIRDHARI SINGH *v.* MEIGHMAL PANDEY.

45 Cal. 87: 44 I. A. 246: 22 M. L. T. 358: 15 A. L. J. 851 ; 3 Pat. L. W. 169 : 26 C L. J. 584 : (1917) M W. N. 232 : 22 C. W. N. 201 : 7 L. W. 90 : 42 I, C. 651 : 20 Bom. L. R. 64 : 33 M. L. J. 687 (P. C.).

———*Permanency—Provision for lessor taking possession in a certain event—Effect.*

A provision in *Dowl Kabuliyat*, that, in the event of the landlord and the tenant not being able to arrive at a new rate of rent after the expiration of the temporary term covered by the *kabuliyat*, the landlord would be entitled to take possession of the land, was held to be absolutely inconsistent with a plea of permanent interest in the land by the tenant. (*Fletcher and Huda, JJ.*) MAHIM CHANDRA PAL *v.* PRADYAT KUMAR TAGORE. 45 I. C. 651.

———*Permanency —Indefinite term—Absence of words indicating permanency or heritability— Renewal, right to.*

A *kabuliyat* recited that lands were settled for five years at a certain rent. After five years the lessee was to take a fresh settlement under a fresh *kabuliyat*. In case of failure to do so the lessee was to hold and enjoy possession of the land on payment of an excess rent of one anna per rupee every five years. The lessee was not to make a gift, sale or mortgage of the tenure to anybody. *Held*, that the tenancy after the expiry of five years was for an indefinite period ; but as there were no words of inheritance in the lease nor any circumstances, such as long possession, or the fact of succession to heirs or a series of transfers, the tenure could not be presumed to be a heritable or a permanent one. (*N. R. Chatterjee and Smither, JJ.*) JAGADISH CHANDRA ROY *v.* BISWESWARI DEBYA. 41 I. C. 227.

———*Permanency — Long possession—Presumption.*

Though a land was let out for building purposes and the lessee was allowed to remain in possession of the land on payment of rent for long period, this would not in itself be sufficient.

LEASE—Permanency.

to support the conclusion that the lease was permanent at its inception. (*Brett and Carnduff, JJ.*) BARODA PRASAD BARMAN *v.* PRASANNO KUMAR DAS. 14 I. C. 152 : 16 C. W. N. 564.

———*Permanency—Fixed rent—Reverter to waram.*

A lease provided for a permanent rate of rent for ever and coupled with words of inheritance that the property shall descend to the heirs of the lessee. *Held*, that the lease was not only for a fixed period but conveyed an absolute estate and that it was not open to the lessor or his assignee to revert to *waram*. (*Seshagiri Aiyar and Phillips, JJ.*) CHOCKALINGA NAYAKAN *v.* ARUNACHALAM CHETTIAR. 52 I. C. 239 : 26 M.L.T. 262 : (1919) M. W. N. 363.

———*Permanency—Kayam and Saswatham patta—Renewal of prior lease deeds—Permanent tenancy.*

The words '*kayam*' and '*saswatham*' were used in a lease to describe the nature of the tenure and the deed was in renewal of previous lease the tenancy under which was held to be permanent in a prior suit, *Held*, that the intention was to confer a permanent tenure on the lessees (*Wallis, C. J. and Seshagiri Aiyar, J.*) C. VENKATACHARIAR *v.* NARASIMHA AIYANGAR.
9 L. W. 164: 24 M.L.T. 469 : 48 I. C. 301 : (1918) M. W. N. 846 : 35 M. L. J 647.
Also 46 I. C. 62 : 35 M. L. J. 129

———*Permanency—Tenancy at will.*

A perpetual lessee though he cannot be so treated owing to the lease having been subsequently found to be invalid, may yet be treated as a tenant at-will. (*Kanhaiya Lal, A. J. C.*) RAM SARUP *v.* SURAJ DIN. 30 I. C. 258: 2 O.L.J. 276.

Phal Phul

———*'Phal Phul'—Meaning of.*

The expression, '*phal phul*' (fruits and flowers) of trees leased would in the natural meaning of the words include the natural products of the trees only and *prima facie* in the absence of other circumstances the artificial cultivation of lac on them would not be included. (*Sanderson, C. J. and Woodroffe, J.*) RAICHARAN *v.* KANAI KAMAR. 34 I.C. 72: 24 C. L. J. 21.

Shebait.

———*Shebait—Permanent lease by—Rights of grantee—Effect of.*

The grant of a permanent lease from a *shebait* holds the land during the subsistence of the grantor's interest. 18 W. R. 439. Fol. (*Coxe, J.*) PRAHLAD CHANDRA *v.* BIHARILAL.
13 I. C. 686.

Sub-soil rights.

———*Sub soil rights—Minerals—Adverse possession.*

Leases purporting to grant sub-soil rights will not give a title by adverse possession for which actual working must be established. (*Miller, C.J. and Coutts, J.*) KUMAR PRAMATHA NATH *v.* MEIK.
1920 Pat 148 : 5 Pat. L. J. 273 : 56 I. C. 184: 1 P. L. T. 760.

LEGAL PRACTITIONER—Abandonment of plea.

Under-proprietary Tenure.

———*Under-proprietary tenure—If amounts to sale of tenure.*

A grant of under-proprietary rights by means of leases, giving heritable and transferable rights in lieu of a premium taken in advance, and an annual rent reserved thereby, cannot be treated as a sale of a proprietary or an under-proprietary tenure. (*Stuart, J. C. and Kanhaiya Lal, A. J. C.*) DATA RAM TEWARI *v.* DEO KALI TEWARI.
1 O. L. J 463 : 25 I. C. 865 : 17 O C. 299.

Zur-i-peshgi.

———Zur-i-peshgi—*Rights of a lessee under.*

Where the object of a *zur-i-peshgi* lease was to secure repayment of a debt and not to create the relationship of landlord and tenant, the lessee could not claim occupancy rights in the land. (*Chapman and Atkinson, JJ.*) SHEO SAHAI MISIR *v.* BAJO SINGH.
41 I. C. 495 : 1917 Pat. 271.

LEAVE TO SUE.

See (1) C. P. CODE, O. 40, R. 1.
(2) PROV. INS. ACT, S. 16.

LEGACY.

See (1) PROB. AND ADMN. ACT, Ss. 112—145.
(2) SUCCESSION ACT, Ss. 129—178.
(3) WILL.

LEGAL ADVISER.

See (1) EVIDENCE ACT, Ss. 126—129
(2) LEGAL PRACTITIONER.

LEGAL CRUELTY.

See (1) HINDU LAW—MARRIAGE.
(2) HUSBAND AND WIFE.

LEGAL DISABILITY.

See LIM. ACT, Ss. 6—8.

LEGAL ESTATE.

See TRUSTS ACT.

LEGAL NECESSITY.

See HINDU LAW—ALIENATION.

LEGAL PRACTITIONER.

See also C. P. CODE, O. 3.

Abandonment of plea.
Admission.
Authority to act.
Compromise by.
Costs.
Duty of.
Fees.
Intervention of Solicitor.
Lien.
Misconduct.
Negligence.
Return of brief.
Selection of Junior.
Transfer of brief.
Withdrawal from case.
Witness.
Miscellaneous.

Abandonment of plea.

———*Abandonment of plea—Binds client.*

LEGAL PRACTITIONER—Abandonment of plea.

Parties are bound by what their counsel do, in the shape of admissions, consents, withdrawals, in conducting the cases in the exercise of their discretion, acting within the scope of their authority unless they have been induced or misled by some circumstances to make a statement under a mistake. (*Walsh and Sunder Lal, JJ.*) BRIJ BHUKAN LAL *v.* MAHADEO PRASAD. **35 I. C. 205.**

———*Abandonment of plea—Agreement to be bound by special oath—Validity.*

One of the plaintiffs in a suit for recovery of money died and her heirs were brought on record. On behalf of the original plaintiffs three pleaders were engaged. The substituted plaintiffs presented a second *Vakalatnama* on which only two pleaders made a formal endorsement of acceptance though it contained the name of the third also who was the senior pleader. *Held*, that as senior pleader of the three, the third was entrusted with the management of the case on behalf of all the plaintiffs. The two *Vakalatnamas* were similar in terms and authorised the pleaders to withdraw the suit or to give up the claim of the plaintiff, to cite and examine the witnesses or to refuse to examine the same and provided that all acts done by the pleaders for the benefit of their clients would be accepted by the parties. *Held*, that the powers were wide and comprehensive enough to include also the step taken by the pleader in placing one of the defendants on special oath and agreeing that his clients should be bound by the answers given by the witness. (*Teunon and Beachcroft, JJ.*) MEHARJAN BIBI *v.* SYED KAURRUDDIN HAFIZ.
57 I. C. 149: 24 C. W. N. 385.

———*Abandonment of plea.*

Where a pleader abandons a plea at one stage of the hearing of a cause it should not be entertained at later stages. (*Mookerjee and Beachcroft, JJ.*) NAJABAT ALI *v.* BIBI KADIRAN.
53 I. C. 49 : 30 C. L. J. 48.

———*Abandonment of plea—Issue of fact.*

On a question of fact it is within the competence of the pleader or the parties to give up an issue. 25 M. 367, Foll. (*Seshagiri Aiyar and Moore, JJ.*) DALKRISHNA *v.* VENKATATRIBAKA.
43 Mad. 398 : 27 M. L. T. 142: 11 L. W. 379 : 55 I.C. 371 : (1920) M. W. N. 272 : 38 M. L. J. 86.

———*Abandonment of plea--Authority—Client cannot reopen issues in appeal.*

A pleader is entitled to withdraw a plea raised in the pleadings and the client cannot reopen to the issues based on such a plea in appeals. (*Lindsay, J. C.*) SURAJPAL SINGH *v.* DEBI BAX SINGH. **34 I. C. 390 : 3 O. L. J. 156.**

Admission.

———*Admission—Binds client.*

Parties are bound by what their counsel do, in the shape of admissions, consents, withdrawals, in conducting the cases in the exercise of their discretion, acting within the scope of their authority unless they have been induced or misled by some circumstances to make a statement under a mistake. (*Walsh and Sunder Lal, JJ.*) BRIJ BHUKAN LAL *v.* MAHADEO PRASAD. **35 I. C. 205.**

LEGAL PRACTITIONER—Admission.

———*Admission—Effect of on—Party.*

Where a pleader in the Lower Court makes an admission upon an issue regarding which evidence might be, but is not given, the party will be bound by the admission. (*Scott, C. J. and Batchelor, J.*) DATTAJIRAO SHIDHOJI RAO *v.* NILKANTH RAO. **39 Bom. 352 : 28 I. C. 485: 17 Bom. L. R. 187.**

———*Admission—Erroneous on point of law.*

An erroneous admission by a pleader on a point of law is not binding on the party whom the pleader represents and does not preclude the party from claiming his legal rights in an Appellate Court. (*Mookerjee and Beachcroft, JJ.*) SECRETARY OF STATE FOR INDIA *v.* SIBAPROSAD JANA. **45 I. C. 983 : 27 C. L. J. 447.**

———*Admission—Question of fact—Binding on client.*

An admission of fact by the pleader of a party is binding upon his client and the opposite party cannot be arbitrarily deprived of the benefits of such admission. (*Richardson and Beachcroft, JJ.*) JAHADALI *v.* AJIMANNESSA BIBI. **44 I. C. 18.**

———*Admission—Binds client.*

An attorney's admission is evidence against his client unless shown to be otherwise. 29 A. 184 (P. C.) Ref. to. (*Sanderson, C. J.*) KARTOKEY CHARAN *v.* SARA KAMARI DABEE.
37 I. C. 71 : 20 C. W. N. 995.

———*Admission — Question of fact — Client when bound.*

A pleader can bind his client by an admission upon a question of fact provided that such a question falls within the scope of the suit in which he has been retained. 18 A. 384 ; 22 Mad. 538 ; 4 C.W.N. 169 Ref. Where there is no question as to the liability of a transferee-defendant arising in a suit against the transferor-tenant, it is beyond the scope of the pleader's authority to bind his client by an admission of the validity of the transfer. (*Mookerjee and Carnduff, JJ.*) DIGBIJOY ROY *v.* ATA RAHAMAN. **15 I. C. 156 : 17 C. W. N. 156.**

———*Admission—How far binding on client.*

Plaintiffs are bound by the statement made by their duly appointed pleader. (*Scott Smith, J.*) INDAR SINGH *v.* KARIM SINGH. **164 P. W. R. 1916 : 35 I. C. 870 : 86 P. L. R. 1916.**

———*Admission—Erroneous point of law—If binding on client.*

A pleader's erroneous admission on a point of law is not binding on the client. (*Sundara Aiyar and Sadasiva Aiyar, JJ.*) RAMA AIYANGAR *v.* KASINIVENDA AIYANGAR. **16 I. C. 746 : 23 M. L. J. 327.**

———*Admission — Repudiation— Time of—Pleader and client.*

A party desiring to repudiate his counsel's admission must do so at the earliest stage. A pleader may abandon issue which he thinks unnecessary. (*Kanhaiya Lal and Kendall, A.J.Cs.*) LACHMANDAS BABA *v.* RAJJAN LAL.
38 I. C. 800 : 20 O. C. 49.

LEGAL PRACTITIONER—Admission.

———*Admission of question of law—Effect.*

Counsel cannot bind his client by an admission made purely as a point of law. (*Pipon, J. C.*) HABIB GUL *v.* SHAHDAD KHAN. **73 I. C. 594.**

———*Admission—Erroneous on point of law.*

An erroneous admission on a point of law made by the pleader of a party prior to the filing of the suit is not binding on that party. (*Pratt, J. C. and Fawcett, A.J.C.*) LOUIS DREYFUS & Co. *v.* FIRM OF GHANDAMAL & Co.

52 I. C. 878: 12 S. L. R. 128.

———*Admission—Erroneous on point of law.*

A client is not bound by the erroneous admission of law made by his pleader. 24 B 360, Ref. (*Fawcett, J. C. and Boyd, A. J. C.*) HASSOMAL MURIJMAL *v.* GHULAM MAHOMAD.

27 I. C. 357 : 8 S. L. R. 156.

Authority to act.

———*Authority to act—Defective vakalatnama.*

Where by oversight, the name of the pleader presenting an appeal was not mentioned in the *vakalatnama*, the pleader was not a properly appointed one, and there was no proper presentation of the appeal. 11 A. L. J. 458. (*Rafique, J.*) MUHAMMAD ALI KHAN *v.* SAKHU.

19 I. C. 674 : 11 A. L. J. 458.

———*Authority to act.*

Where a pleader files a *vakalatnama* at the first hearing, he need not bring fresh *vakalatnama* for setting aside an *ex parte* decree. (*Macleod, C. J. and Kanga, J.*) BACHUBAI JHIRAO *v.* IBRAHIM ISULL.

24 Bom. L. R. 744: 47 B. 11 : 1922 Bom. 207.

———*Authority to act—Appearance without vakalatnama—Procedure.*

When an accused is represented by a pleader without *vakalatnama* in an appeal, the proper course is to adjourn the hearing of the appeal until it is produced and thus afford the accused an opportunity of being represented by a pleader. (*Sanderson, C. J. and Walmsley, J.*) JASIR KHAN *v.* EMPEROR. **56 I. C. 61 : 21 Cr. L. J. 413.**

———*Authority to act—Extent of.*

The authority of a solicitor to represent his client does not necessarily come to an end on the passing of the judgment in the suit. (*Mookerjee and Caspersz, JJ.*) MOHINI MOHAN *v.* BARODA.

12 I. C. 780 : 14 C. L. J. 445.

———*Authority to act.*

A pleader cannot exceed the powers given to him by the contract between him and the client. (*Johnstone and Shah Din, JJ.*) SHAM SUNDAR *v.* HARBANS SINGH.

71 P. R. 1915 : 109 P. W. R. 1915 : 30 I. C. 517 : 13 P. L. R. 1916.

———*Authority to act— Vakalat to execute decree—What it implies.*

A power given to a *vakil* to execute a decree includes a power to receive from the judgment-debtor, money out of Court and therefore an order of Court recording satisfaction of the decree to the extent of the amount so received by the *vakil* is legal. (*Sadasiva Aiyar and Spencer, JJ.*) SANKARARAJA *v.* SHRIRAM DESIKACHARIAR.

15 M.L.T. 162 : 22 I. C 277 : (1914) M.W.N. 220.

LEGAL PRACTITIONER—Compromise by.

———*Authority to act—Pleader cannot supersede arbitrator appointed by client.*

Where a litigant has himself appointed an arbitrator, his pleader has no power to substitute another or others in their place or to revoke the appointment of, one or more of them without the knowledge of, or instructions from, his client. Power to make an appointment in the first instance in the absence of instructions to the contrary is one thing and power to undo the appointment made by his client is another thing. (*Kotval, A. J. C.*) KASHIRAM *v.* MT. GUDDOO.

5 N. L. J. 229 : 18 N. L. R. 140 : 1922 Nag. 39.

———*Authority to act—Notice.*

A notice to his pleader is a sufficient notice to the appellant. (*Lyle, A. J. C.*) SHEO SAIK SINGH *v.* AUSAN.

9 O. L. J. 170 : 1922 Oudh 75.

———*Authority to act—Presentation without —Invalid.*

A petition of appeal presented without a *Vakalatnama* has not been legally presented at all. (*Roe and Coutts, J.*) SHEIKH PALAT *v.* SARAWAN SAHU.

55 I. C. 271.

———*Authority to act—Pleader appearing with party's knowledge and consent—Power of attorney not filed—Effect.*

Where a pleader appears with the party's knowledge, consent and authority, the mere non-filing of a power-of-attorney would only be an irregularity and could not nullify the pleader's action or statement in Court. (*Hartnoll and Young, JJ.*) WILLIAMS, F. G. *v.* KING, T.

20 I. C. 189 : 6 Bur. L. T. 62.

Compromise by.

———*Compromise by—Authority must be express.*

A pleader who does not hold and has not filed in the suit before the Court his client's general power-of-attorney authorising him generally to compromise suits on behalf of his clients, cannot be recognised by a Court as having any authority to compromise the suit unless he has filed in the suit his client's *vakalatnama* giving him authority to compromise the suit before the Court. (*Sir John Edge.*) SURENDRA NATH MITTRA *v.* HERAMBA NATH BANDOPADHYAYA.

(1923) M. W. N. 734 : 33 M. L. T. (P. C.) 294 : L. R. 4 A. (P. C.) 138 : 45 M. L. J. 453 : 1923 P. C. 98. (P. C.).

———*Compromise by—Excess of pleader's authority—Binding nature of—Actings of parties.*

A compromise signed by a pleader on behalf of his client which has been acted upon and adopted cannot afterwards be objected to on the ground that the pleader had no instructions to enter into the compromise. (*Fletcher and Cuming, JJ.*) RAJA PROMOTHA NATH ROY *v.* BEJOY MADHAB.

53 I. C. 143.

———*Compromise by—Authority to withdraw suit.*

Power to withdraw a suit must be given specifically and cannot be implied from general

LEGAL PRACTITIONER—Compromise by.

words authorising a compromise. (*Seshagiri Aiyar, J.*) RAMASWAMY PILLAI *v.* BADRA NAYAKAR. 27 M. L. T. 99 : 11 L. W. 225 : (1920) M. W. N. 270 : 55 I. C. 267 : 38 M. L. J. 322.

———*Compromise by—Consent of client.*

An authority given to a vakil to compromise a suit, if necessary, does not necessarily give him authority to negotiate the terms of the compromise without reference to his client. Such authority must be strictly construed. (*Seshagiri Aiyar and Kumaraswami Sastri, JJ.*) THENAL AMMAL *v.* SOKKAMMA. 41 Mad. 233 : 41 I. C. 429 : 22 M. L. T. 149.

———*Compromise by—General vakalat—If sufficient.*

A vakil who has a general *vakalat* authorising him to compromise does not require a special power in order to effect a compromise. 2 M. I. A. 253 : 21 M. 274, Dist. (*Sadasiva Aiyar J.*) *In re* KOLLIPARA VENKAMMA. 12 M L. T 348 : 17 I. C. 391 : 23 M. L. J. 381.

———*Compromise by—Extent of authority.*

Where a vakil entered into a compromise with the opposite party and without settling the matters in dispute, left the parties to fight out their rights in a fresh litigation and also surrendered the suit property to the adverse party. *Held*, that the vakil acted improperly and the compromise was invalid. (*Benson and Sundara Aiyar, JJ.*) MANIKKA MUDALIAR *v.* DEIVASIKAMANI PILLAI. 13 I. C. 595 · (1912) M. W. N, 158.

———*Compromise by—Advocate — Failure of client to repudiate in time—Effect of acquiescence —Powers of court to set aside consent orders.*

Express authority is not needed for a counsel to enter into a compromise within the scope of the suit. Where there is a limitation of authority and that limitation is communicated to the other side, consent by counsel outside the limits of his authority would be of no effect. But the position is one of difficulty where the limitation is unknown to the other side or when counsel acts on instructions as to a compromise under a misapprehension and not in exercise of that authority which is vested in him as an advocate of the party to the litigation. Principles as laid down in English cases referred to. Where a consent order was passed in the presence and with the sanction of the client and he acquiesced in it for a long time, and long after the drawing up of the order, he changed his mind or found it impossible to comply with the terms thereof, *Held*, a proper case had not been made out for receiving the order. The Court undoubtedly has a very large discretion in the matter before the order is actually drawn up and perfected, but there is no such discretion where the order has in fact been drawn up and perfected (*Das and Bucknill, JJ.*) NILMONI CHOUDHURY *v.* KEDIAR NATH DAGA. 1 Pat. 480 : 3 Pat. L. T. 371 : 1922 P. 232

———*Compromise by—Extent of authority.*

The authority of a pleader to compromise a suit on behalf of his client, does not extend to his effecting a compromise in respect of matters outside the scope of the suit. (*Miller, C. J. and Jwala Prasad, J.*) HERAMBA NATH *v.* SURENDRA NATH MITTRA: 53 I. C. 20 : 1919 Pat. 465.

LEGAL PRACTITIONER—Costs.

———*Compromise by—Authority — General vakalatnama.*

A *vakalatnama* in general terms is wholly insufficient to authorise a vakil either to compromise the suit or to refer it to arbitration. The position of a pleader is that of an agent to the client and his power is created entirely by the *vakalatnama*. (*Jwala Prasad, J.*) JAIPAL TEWARY *v.* TAPESWAR TEWARY. 45 I. C. 321.

———*Compromise by—Advocate in Burma.*

An advocate in Burma can only compromise on express consent of his client. There is no distinction in this respect between an advocate to act only as counsel and one to act both as counsel and solicitor. 13 A. 272 ; 21 M. 274, Ref. (*Maung Kin, J.*) U. P. O. YEIK *v.* BA KHAING. 1 Bur. L. J. 1.

———*Compromise by—Authority—Ratification by client—Effect of.*

Where a pleader has effected a compromise without specific authority and it has been ratified by the client it is binding on the latter. (*Pratt, J. C. and Crouch, A. J. C.*) SIRDAR KHATUN *v.* MURAD ALI. 34 I. C. 928 : 9 S. L. R. 218.

———*Compromise by—Authority—Sind Courts Civil Circulars.*

A pleader has ordinarily no powers of compromise and Form 4 of the Sind Courts Civil Circulars does not permit such a power to be given in the *vakalatnama*. (*Hayward and Crouch, A. J. Cs.*) MAHOMED UMAR *v.* CHIMAN SINGH. 25 I. C. 935 : 8 S. L. R. 91.

Costs.

———*Costs — Attorneys—Personal liability—Unnecessary printing.*

The Court ordered the cost occasioned by unnecessary printing of certain matter in the printed paper book of appeal, at the instance of the defendant's attorneys to be paid by the defendant's attorneys personally and not their clients. Similarly with regard to the costs of a Judge's order obtained for the amendment of the memorandum of the appeal by the addition at the instance of the plaintiff's attorneys, of a very unnecessary paragraph asking for relief in respect of a certain matter. (*Scott, C. J. and Batchelor J.*) LAXIMI BAI *v.* RADHA BAI. 42 Bom. 327 : 47 I. C. 762 : 20 Bom. L. R. 905.

———*Costs—Solicitor himself a party.*

A solicitor who is himself a party in a suit is entitled to the same costs as if he had employed a solicitor except for items of personal appearance for which he cannot get his costs (*Sanderson, C. J. and Mookerjee, J.*) THE BENGAL STONE COMPANY, LTD. *v.* JOSEPH HYAM. 45 I. C. 738 : 27 C. L. J. 78.

———*Costs—Attorney—Infant client—No personal decree.*

Where an attorney appointed by a next friend of an infant is able to show that he has no

LEGAL PRACTITIONER—Duty of.

reasonable chance of recovering his costs from the next friend he can institute a suit against the infant through a guardian *ad litem* to get a charge declared upon the property when it is recovered in the suit for which he was engaged, when it is found that the suit was properly instituted and was for the benefit of the infant. (*Chaudhuri, J.*) KUMAR KRISHNA DUTT v HARI NARAYANA GANGULI. **43 Cal. 676 : 33 I. C. 708 : 20 C. W. N. 537.**

Duty of.

———*Duty of—Scandalous charges against Judges—Professional misconduct.*

Members of the legal profession are under no duty to their clients to make grave and scandalous charges either against Judges or the opposite party on the mere wish of their clients. They are not paupers compelled to obey the dictates of their client where matters of good faith and honourable conduct are concerned. They are agents, not of the man who pays them, but are acting in the administration of justice and are bound to exercise an independent judgment and to conduct themselves with a sense of personal responsibility. (*Mears, C. J., Walsh and Sulaiman, JJ.*) *In the matter of* DURGA PRASAD MITHAL **21 A. L. J. 893 : L. R. 4 A. 615 (Civ) : 46 All. 121 : 1924 All. 253 (F. B.)**

———*Duty of—Clients with conflicting interest.*

By the custom of the mofussil, a pleader employed legally a party to a proceeding before a court must faithfully and exclusively serve that party throughout the whole proceeding. The pleader in the mofussil is not merely an advocate. He is the confidential legal adviser of his client and plays the role of a solicitor of a Presidency town. For legal advice, for the prosecution of legal proceedings in all their stages, the client is dependent on the pleader. This dependance makes the position of the pleader peculiarly onerous and he must give his exclusive attention to the interests of the client throughout any proceeding in which he is engaged. In winding up proceedings, a single pleader must not represent two different creditors whose interests are known to conflict. A pleader must not accept a *vakalatnama* when he knows that he cannot act for his client throughout the proceedings. (*Batchelor and Heaton, JJ.*) GOVERNMENT PLEADER *v.* BHAGHUBHAI. **36 Bom: 606 : 14 Bom. L. R. 700 : 16 I. C. 788 . 13 Cr. L. J. 913.**

———*Duty of—Boycott of Courts.*

Per Sanderson, C.J.—If a pleader in pursuance of a concerted movement to boycott the Courts, deliberately abstained from attending it, he is guilty of course of conduct which cannot be justified or tolerated. Pleaders have duties and obligations to their clients in respect of the suits and matters entrusted to them. It is an equally important duty and obligation on them to co-operate with the Court in the orderly and pure administration of justice. If a pleader has any complaint against any Subordinate Judge, he has two courses open to him, *i. e.*, to make a representation to the particular Judge, or to the High Court. (*Sanderson, C. J., Woodroffe and Mookerjee, JJ.*) *In the matter of* TARINI MOHAN BARARI.

26 C. W. N. 580 : 35 C. L. J. 403 : 1923 Cal. 212.

LEGAL PRACTITIONER—Duty of.

———*Duty of—Effect of accepting vakalat—Duties and obligations of.*

Per Sanderson, C. J.—The acceptance of a *vakalatnama* which is much more than an authority to act by a pleader entails a duty upon him to attend the Court on the day fixed for the hearing or at least to make arrangements with other pleaders to look to the client's interest. A pleader cannot divest himself of the duty arising by the acceptance of *vakalatnama* without leave of Court. He is bound to give reasonable notice to the client so as to afford him an opportunity of obtaining other legal assistance. *Per Woodroffe, J.*:—When a person becomes a pleader he becomes an officer in a judicial system in which his position, rights and duties and the authority to which he is subject are determined. If he has a grievance he must seek the remedy from the administrative authority concerned. It follows that he cannot join in an action to boycott a Court or any particular Judge. It is open to any practitioner for reasons personal to himself to refuse to practice in any particular Court, but he must, if he has accepted a brief, discharge himself in the proper manner. What would be a lawful excuse considered. Mere acceptance of a *vakalatnama* does not bind the pleader to appear in every day of the proceedings if there are special terms affecting the matter. The acceptance of a general *vakalatnama* is sufficient to start the case against him, and if there was any special contract the burden of proving this, as a matter specially within his knowledge, is on the pleader. If a pleader stipulates for fees before he does any work, he is not bound to do the work without payment. But if he accepts a *vakalatnama* without such stipulation, he must proceed to represent him even though unpaid, until he is properly discharged. *Per Mookerjee, J.*—A pleader who has accepted a *vakalatnama* and filed it in Court is ordinarily bound to appear and conduct his case in the absence of an agreement to the contrary. If he fails to perform this duty he must be ready to justify his conduct by proof that the client failed to fulfil an implied term of the agreement such as the advance payment of fee, etc. His liability continues till he has discharged himself by recourse to the appropriate procedure. This is not a matter solely between the pleader and the client. Failure to appear renders him liable to disciplinary action by the Court. What would be justifying reasons for absence considered. Fresh *vakalatnama* is not necessary to entitle the pleader to appear in proceedings subsequent to decree. (*Sanderson, C.J., Woodroffe and Mookerjee, JJ.*) EMPEROR *v.* RAJANI KANT BOSE.

49 Cal. 732 . 35 C. L. J. 356 : 26 C. W. N. 589 : 1922 C. 51 : 44 Cr. L. J. 33.

———*Duty of—Acquisition of subject-matter of suit—Duty to reconvey—Equity.*

While the relation of pleader and client continues, the pleader cannot as against his client *acquire* absolutely a beneficial interest in or title

LEGAL PRACTITIONER—Duty of.

to the subject-matter of the litigation antagonistic to that of his client; if the pleader gains a pecuniary advantage, he must hold it for the benefit of his client subject to reimbursement for expenses incurred. (*Mookerjee and Walmsley, JJ.*) NAGENDRA BALA DASSI *v.* DEBENDRA NATH.
22 C. W. N. 491 : 44 I. C. 13 : 27 C. L. J. 388.

———*Duty of —Paper book—Contract between Pleader and High Court.*

An undertaking by a pleader to prepare an office book is a contract between the Pleader and the High Court which the Court expects him to fulfil and can be enforced in the same way as the contracts by attorneys are enforced. (*Tottenham and Trevelvan, JJ.*) SATIS CHANDER BHAUMICK *v.* SARODA PRASAD RAY. 25 I. C. 510 : 19 C. L. J. 432.

———*Duty of—Counsel's duty to give evidence.*

Counsel appearing in a case ought to give his evidence as a witness if he can thereby throw light on the case. (*Woodroffe, Coxe and Chatterjee, JJ.*) WESTON *v.* PIYARE MOHAN DAS.
40 Cal. 898 : 23 I. C, 25 : 18 C. W. N. 185.

———*Duty of—Officer of Court—Joining an Association declared unlawful—Effect.*

A legal practitioner joining an association declared as unlawful under the Cr. Law Amendment Act is liable to be dealt with under the Letters Patent. The proceedings against him in such a case is neither civil nor criminal. (*Shadi Lal, C. J., Scott-Smith and Abdul Raoof, JJ.*) *In re* ABDUL RASHID. 4 Lah. 271 : 1924 Lah. 123.

———*Duty of.*

It is incumbent on counsel to see that their clients are properly represented when their case is called on for hearing. If a counsel is unable to appear himself he should arrange for another counsel to take the brief for him. (*Abdul Raoof and Martineav, JJ.*) SAIF ALI *v.* CHIRAGH ALI SHAH. 1923 Lah. 97.

———*Duty of—Acceptance of vakalat—Duty to appear.*

When a pleader accepts a brief it is his duty to attend to his client's interest throughout the proceedings in the case unless his appointment be determined with the leave of the Court by a writing signed by him or his client and filed in Court. (*Lyle, A. J. C.*) SHEO LAIQ SINGH *v.* AUSAM SINGH. 25 O. C. 40 : 90 L. J. 170 : 1922 Oudh 75.

———*Duty of—Pleader—Trustee—Rights.*

A pleader-trustee should not appropriate the the first assets realised as his fee without the consent of beneficiaries. (*Pratt, J.C. and Crouch, A. J. C.*) HASSOMAL *v.* KOTUMAL.
19 I. C. 443 : 6 S. L. R. 183.

Fees.

———*Fees—Certificate of ees—When should be filed.*

A fee certificate is filed within time, if it is put in before the date on which the appeal was actually heard though it is after the date fixed for first hearing. (*Chamier, J.*) DAMBAR SINGH *v.* KALYAN SINGH. 11 I. C. 3.

LEGAL PRACTITIONER—Intervention of solicitor.

———*Fees—Land acquisition case.*

If the claim against a land acquisition award is exorbitant, and absurdly extravagant the Counsel's fees for the Secretary of State should be allowed *ad valorem*, on the amount in appeal. (*Reid, C. J. and Robertson, J.*) FAIZ MUHAMAD *v.* SECRETARY OF STATE.
107 P. R. 1912 : 17 I. C. 901 : 34 P. L. R. 1913.

———*Fees—Advocate instructed by vakil on Original Side of the High Court— Fees whether recoverable as part of costs.*

On the Original Side of the High Court a party cannot recover from his adversary as part of the costs of the suit the fee paid to the advocate who appeared on the instructions of a vakil. (*Wallis C. J. and Seshagiri Aiyar, J.*) SRINIVASA AIYANGAR *v.* KANNAPPA CHETTI. 33 I. C. 906 : 30 M. L J. 120.

———*Fees—C. P. Code, S. 47— Civil Rules of Practice, R. 32.*

In an appeal against an order under the old section 244, read with the old section 212, a pleader's fee should under R. 32 of the Rules of Practice, be allowed only at the rate of 1¼ per cent. (*Sadasiva Aiyar and Spencer, JJ.*) ADUSMALLI VENKATRATNAM *v.* SENKARAYANNA.
24 I. C. 283 : 1 L. W. 298.

Intervention of Solicitor.

———*Intervention of solicitor—Counsel—Professional etiquette.*

Looking to usage and etiquette of the profession, counsel should not undertake any professional work as regards which the relation of counsel and client can arise except on the instructions of a solicitor. No statutory rule of law prevents a litigant from instructing counsel directly or to prevent counsel so instructed from appearing on behalf of a litigant, but eminent Judges emphasized the importance of strict adherence to the long established professional usage in this respect. In the Calcutta High Court departure from this practice is allowed only in the case of appeals from the muffasil. A real and not merely a formal compliance with requirements of professional usage is necessary in this respect which is expedient in the interest of suitors and for the satisfactory administration of justice. Consequently, communications should pass between counsel and attorney and not between counsel and the lay client without the intervention of the attorney. (*Mookerjee and Fletcher, JJ.*) JACOB & Co. *v.* RASHBIHARI GHOSE.
57 I. C. 22 : 31 C. L. J. 313.

———*Intervention of solicitor—Counsel—Professional etiquette.*

Though there is no rule of law preventing a litigant from instructing his Counsel directly, it is expedient in the interests of the suitors and for satisfactory administration of justice that the usuage obtaining on the Original Side of the Calcutta High Court that counsel should take their instructions only from attorneys, should be adhered to. (*Sanderson, C. J. and Chaudhuri, J.*) AN ADVOCATE, *In re.* 44 Cal. 741 : 42 I. C. 63 : 26 C. L. J. 605.

LEGAL PRACTITIONER—Lien.

Lien.

—— —— *Lien—Right to—Tort.*

The right of a solicitor claiming a lien will largely depend on the circumstances under which he has ceased to act for his client. Whether the solicitor has discharged himself or whether he has been discharged by his client is the test. In other words, whether the solicitor has ceased to act for his client owing to an unjustifiable action of his own or whether he has ceased owing to the action of his client. In an administrative action the obligation of the solicitor to give inspection of and to produce documents that are in his possession and over which he has a lien is confined to those cases in which they are essential to determine those questions arising in the normal administration proceedings when the estate is being actually administered. *Boughton* v. *Boughton*, 23 Ch. D. 169 ; *In re Capital Fire Insurance Association*, 24 Ch. D. 408 Foll. (*Robertson, J.*) AYESHABI *v.* AHMED ESSA. 35 Bom. 352 : 12 I. C. 3 : 13 Bom. L. R. 670.

——— *Lien—Limitation*

A pleader's lien in respect of the bill of costs of the pleader can be exercised by the pleader notwithstanding that by the terms of the Limitation Act he is barred from bringing a suit. (*Rankin, J.*) RAJAH NARENDRA *v.* TARUBALA. 66 I. C. 209 : 25 C. W. N. 800.

——— *Lien — Enforcement of costs—Direct order to pay—Jurisdiction of Court.*

The Court has jurisdiction to enforce, in a proper case the solicitor's lien by making a direct order for payment to the solicitor by the opposite party of such costs. 2 C. W. N. 508 Foll. Where the original client was dead and his legal representatives were not people of substance and were unable to pay, it is a proper case for the Court to exercise discretion and pass an order for payment of such costs to the solicitor by the opposite party. (*Rankin, J.*) HARANANDROY FOOLCHAND *v* GOOTIRAM BHUTTAR. 54 I. C. 691 : 46 Cal 1070.

——— *Lien—Judgment obtained by client.*

Solicitor's lien on the judgment passed in favour of his client should be given effect to, like other liens, if the judgment is in the solicitor's possession. The lien should be subject to other equities if any. (*Chaudhuri, J.*) BHUPENDRA NATH BHOSE *v.* E. D. SASSOON & Co. 43 Cal. 932 : 38 I. C. 30 : 21 C. W. N. 106.

——— *Lien—Extent of moveable and immoveable property recovered in the suit.*

An attorney has a lien for his costs over the properties moveable or immoveable, recovered in the suit of his client but he cannot get a personal decree against an infant client. (*Chaudhuri, J.*) KUMAR KRISHNA DUTT *v.* HARI NARAYAN GANGULI. 43 Cal. 676 : 33 I. C. 708 : 20 C. W. N. 537.

——— *Lien—When modified—Change of solicitors.*

If a change of solicitors in the course of an action takes place the former solicitor's lien is not taken away but modified according as his discharge is by himself or by his client ; in the former case he is entitled to have an undertaking from the new solicitor that he should hold the papers without prejudice to his lien and to return them intact to him after the action is over. in the latter case he cannot be compelled to hand over or produce the papers so long as his costs are unpaid. (*Sanderson, C. J., Woodroffe and Mookerjee, JJ.*) PRABHU LAL *v.* KUMAR KRISHNA DUTT. 20 C W. N. 437 : 33 I. C. 73 : 23 C. L. J. 326.

——— *Lien—Money in cash deposit.*

Where a Barrister does not obtain a decree in favour of his client there are no fruits on which he can claim a lien. When he allows money of the client deposited in Court to be taken away he cannot subsequently claim a lien on the amount. (*Hartnoll and Twomey, JJ.*) ROBERTSON *v.* KO CHEIK. 29 I. C. 870 : 8 L. B. R. 70.

Misconduct.

——— *Misconduct—Unfounded imputations in open Court against the fairness and impartiality of the presiding Judge—Duty of pleaders towards their client and the Court.*

Unfounded imputations in open court against the fairness and impartiality of the presiding Judge amounts to professional misconduct. (*Sanderson. C. J. and Richardson. J.*) MAHENDRA LAL ROY, *In re.* 27 C. W. N. 88 : 1924 Cal. 550.

——— *Misconduct—Application for renewal of certificate—Suppression of facts—Discharge from Government Service.*

A pleader who had been discharged from Government service for improper conduct in connection with a criminal case concealed the fact, and applied for renewal of the Pleader's certificate. *Held* that though the conduct of the pleader in relation to the criminal case was open to grave comment, yet, the renewal of the certificate could be granted. The High Court ordered the renewal of the certificate after six months. (*Mookerjee, C. J. and Fletcher, J.*) MUKUNDA LAL DHAR, *In the matter of.* 37 C. L. J 391 : 27 C. W. N. 528.

——— *Misconduct—Defiance of law—Taking the law into his own hands.*

Where a pleader had deliberately taken the law into his own hands and defied the orders of constituted authority and where he expressed no regret for his past conduct and has given no assurance for future conduct, *held* the mere warning is not a sufficient punishment. (*Miller, C. J., Mullick and Kulwant Sahay, JJ.*) BABU MADHEVA SINGH, *In the matter of* 1923 Pat. 42 : 1923 P. 185 (S. B.).

Negligence.

——— *Negligence—Dismissal of appeal—Liability to client.*

Per Richards, C. J. :—If it is shown that an advocate who is a Barrister or other professional gentlemen received and accepted instructions to file an appeal but his client lost his right of appeal as a result of his negligence to file the appeal or application in time he will be liable to the client. (*Richards, C. J. and Banerjee, J.*) BUDHU *v.* DIWAN. 37 All. 267 : 28 I. C. 265 : 13 A. L. J. 286.

LEGAL PRACTITIONER—Negligence.

——*Negligence—Pleader's responsibility for fraud committed by his clerk—Remedy of client.*

A pleader is responsible for any fraud perpetrated by his clerks on his clients. The principles of agency are not applicable without reservation, to the relation between a client and his pleader. The conduct of a pleader who is guilty of fraud or such gross negligence as would, in law, amount to fraud, cannot bind his client and the Court has power to restore an appeal dismissed for such conduct on the part of the appellant's pleader. The Court may in its discretion leave the appellant to his remedy against the pleader by an action for damages. (*Sundara Aiyar and Spencer, JJ.*) MURUGA CHETTY *v.* RAJASAWMI. (1912) M. W. N. 332 : 11 M. L. T. 280 : 14 I. C. 823 : 22 M. L. J. 284.

Return of brief.

——*Return of brief—Return of fees.*

Where an advocate accepted a brief containing instructions to appear for a client but in consequence of other work returned the brief to his attorney and claimed to have earned the consultation fee marked on the brief. *Held*, he should have returned the whole fee as the consultation was only with a view to attending at the trial. (*Sanderson, C. J. and Chaudhuri, J.*) *In re* AN ADVOCATE. 44 Cal. 741 : 42 I. C. 63 : 26 C. L. J. 605.

Selection of Junior.

——*Selection of Junior.*

The practice of one counsel already engaged in the case selecting the other counsel who should be briefed with him is contrary to the traditions and to the best interests of the profession and ought to be discouraged. (*Sanderson, C. J. and Chaudhuri, J.*) AN ADVOCATE, *In re* 44 Cal. 741 : 42 I. C. 63 : 26 C. L J. 605.

Transfer of brief.

——*Transfer of brief—Failure of pleader to appear on account of illness—Pleader engaging another to conduct the case—Refund of fees.*

It is doubtful whether a client is entitled legally to claim refund of fees, because his pleader being absent on account of illness, sent a substitute in accordance with the power of attorney and the client refused to engage him. In case of neglect client is entitled to refund. (*Chevis, J.*) DEVI PRASAD *v.* RAM RAKHA MAL. 33 I. C. 993 : 20 P. W. R. 1916.

——*Transfer of brief—Pleader appearing for another—High Court rules.*

Where a pleader appears for another who is unable at the moment to attend court he ought to inform the court that he is so appearing. (*Carnduff and Richardson, JJ.*) JOGESH CHANDRA GUPTA, *In the matter of.* 17 Cr. L. J. 1916 : 33 I. C. 831 : 20 C. W. N. 283.

Withdrawal from Case.

——*Withdrawal from case—Grounds—Notice What amounts to.*

A Solicitor may withdraw on good grounds which include misconduct of an offensive character or such misbehaviour on the part of the client as makes it impossible for a self-respecting solicitor to continue to act for him. It is incumbent upon the Attorney to give reasonable notice to the client of his intention to withdraw from the case. That the Attorney would apply to be discharged from the case which application comes on for hearing before the Court the next day does not mean giving reasonable notice to the client. (*Sanderson, C. J., Woodroffe and Mookerjee, JJ.*) PRABHU LAL *v.* KUMAR KRISHNA DUTT. 20 C. W. N. 443 : 33 I. C. 78 : 23 C. L. J. 473.

LEGAL PRACTITIONER—Miscellaneous.

——*Withdrawal from case—Implied—Non-payment of out-of-pocket expenses.*

The refusal of Attorney to go on acting unless his out-of-pocket expenses are paid by the client amounts to a discharge of Attorney by himself and he, thenceforward, cannot claim to retain the papers when they are wanted for continuing the litigation. (*Sanderson, C. J., Woodroffe and Mookerjee, JJ.*) PRABHU LAL *v.* KUMAR KRISHNA DUTT. 20 C. W. N. 437 : 33 I. C. 73 : 23 C. L. J. 326.

——*Withdrawal from case—Implied—Non-payment of necessary funds.*

An Attorney discharges himself by refusing to proceed with a suit because the client does not put him in funds. The contract of the Attorney is an entire contract to carry on the litigation to its termination subject to his being paid. (*Fletcher, J.*) MOHESHPUR COAL CO., LD. *v.* JOTINDRA NATH GUPTA. 40 Cal. 386 : 18 I. C. 315 : 17 C. W. N. 278.

Witness.

——*Witness—Counsel likely to be witness in a cause—Acceptance of brief.*

If counsel knows or has reason to believe he will be an important witness in the case a retainer therein ought not to be accepted by him. If he finds he is likely to be a witness during the course of the trial he ought not to continue to appear unless his retiring would jeopardise the client's interest. If counsel knows that his own professional conduct is likely to come in question in the cause he must not accept a retainer or if he accepts it without such knowledge, he must return it. There is nothing inherently unprofessional in counsel giving evidence, in a case where he appears, as to facts that happened before or after the retainer but counsel must not testify for or against his client, on matters which are not merely formal. A counsel appearing in a case ought to give his deposition if he can thereby throw light on the case. (*Woodroffe, Coxe and Chatterjee, JJ.*) D. WESTON *v.* PEARY MOHUN. 40 Cal. 898 : 23 I. C. 25[illegible] : 18 C. W. N. 185.

——*Witness—Appearance in case where his evidence is likely to be material.*

Though it is desirable that counsel should not appear in a case in which evidence is likely to be material, there is no rigid rule preventing the court from examining the pleader at any stage of the suit when such a thing is necessary for the ends of justice. (*Kumaraswami Sastri, J.*) LODD GOVINDAS *v.* RUKMANI BHAI. 29 I. C. 135 : 17 M. L. T. 382.

Miscellaneous.

——*Agreement not to practice for a certain time—Breach—Injunction.*

LEGAL PRACTITIONER—Miscellaneous.

Where two branches of the legal profession (Barrister and Solicitor) are amalgamated in a particular place, a person who carries on both branches and is a legal practitioner in that place may enter into an agreement not to practise for a reasonable time. In case of breach of such an agreement without justification or excuse, the court will grant an injunction. (*Lord Macnaughten*). HOME *v.* DOUGLAS.

19 I. C. 822 : 17 C. W. N 215 (P. C.).

———*Reference by the Board of Revenue to High Court—Right of pleader to be heard.*

On a reference to the High Court by the Board of Revenue on a matter arising in the mofussil, Vakils are entitled to be heard. (*Mookerjee, C. J., Fletcher and Walmsley, JJ.*) BIRENDRA KISHORE *v.* SECRETARY OF STATE.

25 C. W. N. 80 : 61 I. C. 112 : 32 C. L. J. 433.

———*Judge—Competency of to try case, in which he was Counsel for one of the parties.*

Judges voluntarily decline to hear cases with which they were connected as Counsel before their elevation to the Bench This practice is but an evolution of the elementary maxim that no man should be a Judge in his own suit and preside in a case in which he is not wholly disinterested and impartial. But this principle does not apply when objection is taken to Judge trying a cause on the ground that he had, before his appointment, acted as Counsel in other matters for one of the parties. It is no objection to a Judge trying a case that before his appointment he was Counsel in other matters for one of the parties. The fact that a Judge was prior to elevation to the Bench engaged in the particular cause is no disqualification, though according to long usage a Judge would refuse to adjudicate upon a case if he had been engaged as Counsel therein. (*Mookerjee and Fletcher, JJ.*) JACOB AND CO. *v.* RASHBIHARI GHOSE. 57 I. C. 22 : 39 C. L. J. 313.

———*Capacity to be an arbitrator.*

A pleader is not incompetent to be an arbitrator simply because on some occasions he was engaged by one of the parties as his pleader. (*Fletcher and Newbould, JJ.*) RAJENDRA NATH DAS *v.* ABDUL HAKIM KHAN. 39 I. C. 767.

———*Professional practice.*

When a suit for rent is in contemplation by the lessor, and one of the tenants, (who were joint) approaches the plff.'s pleader for the purposes of seeing whether he could settle the action he must be implied to have authority to act on behelf of all the defts. (*Sanderson, C. J. and Mookerjee, J.*) MEAJAN MATBOR *v.* ALIMUDDIN MEA.

44 Cal. 130 : 20 C. W. N. 1217 : 34 I. C. 571 : 25 C. L. J. 42.

———*Privilege—Full Bench.*

The question whether a Counsel has exceeded the license given him for conducting the case must be heard by the Full Bench. 10 M. 28 ; 2 Bom. L. R. 3 Ref. (*Fletcher, J.*) PEARY MOHUN DAS *v.* DONALD WESTON. 9 I. C. 509.

———*Purchase of subject-matter of suit—Pre-emption—Payment of money—Right to embursement.*

LEGAL PRACTITIONER—Miscellaneous.

Where a pleader paid the pre-emption money out of his own pocket for his minor client and claimed the pre-empted property on the ground of its sale to him by the minor's next friend, he is entitled only to a decree for money against the client under S. 65 of the Contract Act. A pleader who agrees to conduct a case for his client without remuneration is not afterwards entitled to claim it from the client's representatives. (*Johnstone and Lal Chand, JJ.*) CHANDA SINGH *v.* HARBANS SINGH.

12 P. L. R. 1916 : 30 I. C. 513 : 108 P. W. R. 1915.

———*Mukhtear—Status and position of.*

A *Mukhtear* is an attorney, whether appointed specially or generally or certificated as a legal practitioner. A Mukhtearnamah is a document which empowers him to act for the person by or on whose behalf the document is executed and includes a power-of-attorney in favour of a person other than a certified *Mukhtear*. (*Reid, C. J., Kensington and Chevis, JJ.*) GANPAT *v.* PREM SINGH. 108 P. W. R. 1912 : 15 I. C. 122 : 202 P. L. R. 1912.

———*Perjury—Conviction for—Effect, Propriety of conviction if open to challenge—Matters to be considered—Removal by Benchers—Effect.*

The conviction of a legal practitioner for perjury is good ground for striking off his name from the roll of practitioners. In deciding the question, the propriety of the conviction cannot be questioned, but the court can go into the facts to find out for itself the extent of the moral turpitude involved. Where the conviction is by a foreign court but the law is the same as in India and there has been a fair trial, the same principles will apply. An order of disbarment is not conclusive for all time, if circumstances change and the court is convincted that the delinquent bas been brought to a higher sense of honour and duty, the order can be cancelled. During the interval if the practitioner leads a honourable life, the court can take that matter into consideration. Disbarment of a member of the English Bar by the Benchers of his Inn does not *ipso facto* lead to his being struck off the rolls of an Indian High Court. The matter would have to be decided under the discretion given by the Letters Patent. (*Schwabe, C. J., Coutts Totter and Krishnan, JJ.*) *In the matter of an* ADVOCATE OF THE HIGH COURT.

46 Mad. 903 : 18 L. W. 823 : 33 M. L. T. 110 (H.C.) : 45 M. L. J. 639 : 1924 Mad. 265.

———*Right to appear—Powers of District Magistrate over private pleaders—General directions to Subordinate Magistrates—Revision.*

A District Magistrate has no power to issue general directions to his subordinate Magistrates to allow a person to practise as a private pleader in their courts. If however a particular pleader is aggrieved by any order of the District Magistrate or other magistrate refusing to hear him he can apply in revision to the High Court. (*Oldfield and Devadoss, JJ.*) NAGASAMI IYER, *In re.*

1923 M. W. N. 809 : 31 M. L. T. 488: 16 L. W. 879 : 1923 Mad. 513.

LEGAL PRACTITIONER—Miscellaneous.

———*Enrolment of—Proceedings—Nature of.*

The proceedings relating to enrolment of pleaders are purely administrative and not judicial. (*Dawson Miller, C.J., Mullick and Jwala Prasad, JJ.*) SUDHANSU BALA HAZRA, *In re.*

1 Pat 104 : 3 Pat. L. T. 69 : 1922 Pat 97 : 1922 P. 259 (F. B.).

——*Defamation by—Suit for damages, if lies.*

A suit for damages against a pleader for words used during argument is not maintainable. (*Das and Adami, JJ.*) JAGAT MOHAN *v.* KALIPADA.

1 P. 371 : 3 P. L. T. 276 : 1922 Pat. 85 : 1922 P. 104.

LEGAL PRACTITIONER Miscellaneous.

——*Enquiry—Court, duty of.*

The duty of Court, in holding an enquiry under the Act is not to allow irrelevant matter to be introduced or to admit inadmissible evidence. (*Miller, C.J., Mullick and Jwala Prasad, JJ.*) EMPEROR *v.* SURYA NARAYAN SINGH.

1 Pat. L. T. 372 : 57 I. C. 460 : 21 Cr. L. J. 636 : 2 U P. L. R. (Pat.) 168.

——*Evidence—Omission to call—Effect.*

If an advocate takes the responsibility of not calling evidence, whatever his reasons for so doing may be, the case cannot be reopened in order to admit such evidence after it has been decided. (*Fox, C.J. and Hartnoll, J.*) ROSE MARY BENNETT *v.* JAMES HOUSRIER BENNETT.

11 I. C. 779 : 4 Bur. L. T. 161.

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LEGAL PRACTITIONER'S ACT (VIII OF 1879).

——*Practice.*

A question relating to the rival claims of different sanctions of the Legal Practitioners of the High Court cannot be settled by a single Judge or a Division Bench of the Court. (*Chaudhuri, J.*) BUDHU *v.* CHOTU.
25 C. L. J 401 : 21 C. W N. 654 : 41 I. C. 313 : 18 Cr. L. J. 793.

—— S. 4—*Provision—Audience, right of—"Under this section"—Letters Patent* (*Mad.*1866), *Cl.* 44.

The words "under this section" in the provision to S. 4 applies the whole section. The proviso is not a variation by the legislature of the rule giving to vakils the right of audience under Letters Patent, Cl. 44 (*Coutts-Trotter, J.*) NAMBERUMAL CHETTY *v.* NARASIMHA CHARI.
(1916) 2 M. W N. 529 : 37 I. C. 699 : 31 M. L. J. 698.

—— S. 6—*Suspension of practice on entering Government service—Calcutta High Court Rules, R.* 32.

Where a practitioner is suspended from practice owing to his accepting a Government service, and he applies for renewal of the permission after his discharge from such service, he should make a full and true disclosure of the facts which led to his removal from service. (*Mookerjee, A. C. J. and Fletcher, J.*) MUKUNDA LAL DHAR, *In re.* **62 I. C. 831 : 22 Cr. L. J. 591.**

——S. 6—*Females as pleaders—Calcutta High Court Rules, R.* 18.

The whole Act contemplates admission of males only for legal profession. From the history of immemorial time, either in Hindu, Buddhist or Mahomedan Rules, females were never allowed to be enrolled as pleaders ; the Act removed the disabilities of men only. Females cannot be allowed to practise as pleaders under this Act, though masculine gender includes females in the Universities Act. (*Sanderson, C. J., Mookerjee, Chitty, Teunon, and Chowdhury, JJ.*) REGINA GUHA, *In the matter of.* **44 Cal. 290 : 24 C. L. J. 382 : 35 I. C 925 : 21 C. W. N. 74 (S. B.).**

——S. 6—*High Court Rules—R.* 15—*Board of Examiners—If can delegate their powers.*

The Board of Examiners cannot delegate their duty of considering the fitness of a candidate fo

LEGAL PRACTITIONER'S ACT (XVII OF 1879), S. 6.

the pleadership examination to the secretary or to any single member. (*Imam, J.*) PROBHASH CHANDRA ROY *v.* BOARD OF EXAMINERS.
18 I. C. 459.

——S. 6—*Rules framed under—Professional misconduct*

A transaction by which a pleader advances money to his client on interest is a void transaction under Cl. 8 of para. 267 of the Oudh Civil Digest framed under S. 6 of the Legal Practitioner's Act, though the transaction may not be void, under S. 23 of the Contract Act; the action though not absolutely forbidden by law is opposed to public policy being a violation of the rule which imposes in the public interest, certain restriction upon dealings between pleader and their clients and therefore the transaction is void. (*Lindsay, J. C.*) SAHI BUNNISSA NISSA *v.* ABDUL GHAFFUR. 3 O. L. J. 140 : 34 I. C. 360 : 19 O. C. 60.

——Ss. 6, 7 and 8—*Women not entitled to be enrolled as pleaders.*

Women are not entitled to be enrolled as pleaders of courts in India. 44 Cal. 290 foll. (*Dawson Miller, C. J., Mullick and Jwala Prasad, JJ.*) SUDHANSU BALA HAZRA *In re.* 1 Pat 104 : 3 Pat. L. T. 69 : 1922 Pat. 97 : 1922 P. 269 (F. B.)

——Ss. 10 and 32—*Appearance in Courts without pleader's license—Proper procedure—O. 3, R. 1, C. P. C.*

A Barrister should not complain to the Deputy Commissioner about the appearance of a certain person in courts without a pleader's certificate without asking for any specific relief, what should be done would be to petition to the Judge (Dist.) asking the man to be punished under S. 32 of the Legal Practioners Act and the Judge should then proceed to find out whether the person complained about is practising in contravention of S. 10 of the Act or whether his appearances are covered by O. 3, R. 1, C. P. C. (*Hartnall, O. C. J.*) MAUNG GYI *v.* MAUNG SEIN NYUN. 8 Bur. L. T. 280 : 33 I. C. 669 : 8 L. B. R. 531.

——Ss. 12, 13 and 14—*Pleader keeping a common gambling house—Suspension from practice.*

The conviction of a pleader under S. 6 of the Towns Nuisance Act for using his office as a common gambling house implies a defect in character which unfits him to be a pleader within S. 12 of the Legal Practitioners Act. Having regard to the novelty of the case the High Court suspended the pleader from practice for a period of six months only. In a proceeding under S. 12 of the Lega Practitioners Act the whole of the procedure prescribed with regard to charges under Ss. 13 and 14 need not be followed. The Court should not re-try the case which ended in a conviction of the pleader. The only question to be considered is whether the offence of which the pleader has been convicted implies a defect of character unfitting him to be a pleader. (*Wallis, C.J., Ayling and Seshagiri Aiyar, JJ.*) A SECOND GRADE PLEADER *In re.* 42 Mad. 111 : 25 M. L. T. 71 : (1918) M. W. N 847 : 8 L. W. 691 : 19 Cr. L. J. 1001 : 48 I. C. 341 : 35 M. L. J. 850 (S. B.)

——S. 13—

Abandonment of case.
Acting without instructions.
Agreement for payment on success.
Altering document.
Appearing for opposite side.
Contempt of Court.
Criminal offence
Error of law.
False statements.
Improper advice.
Inquiry into misconduct.
Intimidation.
Misappropriation.
Negligence.
Politics
Privilege.
Reasonable cause.
Miscellaneous.

Abandonment of case.

——Ss. 13 and 14—*Abandonment of case.*

A pleader acts improperly in abandoning his client's case while in the midst of the client's examination-in-chief. After once taking up his client's case he ought to have seen that it was terminated. (*Stephen and Mullick, JJ.*) BABU BENI MADHUB DAS, *In the matter of.*
20 I. C. 139 : 17 Cr. L. J. 379.

——S. 13—*Abandonment of case—Wilful neglect of pleader to appear*

Plea of non-payment of fees. A pleader is guilty of misconduct if after receipt of full fees he wilfully neglects to appear and conduct a case. Per *Sundara Aiyar, J.*:—Wilful neglect to appear after receipt of full fees is worse than gross negligence and amounts to a fraudulent conduct. A plea of non-payment of fees as excuse for non-appearance is useless in the absence of an agreement that it must be paid previously. Per *Sankaran Nair, J.*—In the absence of such an agreement or at least notice to the party in time, a Vakil must appear and conduct the case though the fee or a portion thereof remains unpaid. (*Benson, O. C. J., Sankaran Nair and Sundara Aiyar, JJ.*) MUNI REDDI *v.* VENKATA ROW 37 Mad. 238 : 12 M. L. T. 815 : (1912) M. W. N 1029 : 13 Cr. L. J. 800 : 17 I. C. 544 : 23 M. L. J. 447.

——S 13 *Abandonment of case—Acceptance of fees for whole case—Failure to appear.*

In the absence of a special contract to the contrary, the fees accepted by an Advocate must be taken to be for the whole case. Where a case requiries more hearings than anticipated and the advocate refuses to appear unless a further fee is paid to him, he is guilty of professional misconduct. A writing to evidence the term of the engagement between the advocate and the client is always desirable. (*Ormand and Twomey, JJ.*) A FIRST GRADE PLEADER, *In the matter of.*
16 Cr. L. J. 707 : 30 I. C. 995 : 8 L. B. R. 294.

Acting without instructions.

——S. 13—*Acting without instructions.*

A *Muktear* is not guilty of professional misconduct, where, in the absence of any instructions from the first client, he appears for the opposite

LEGAL PRACTITIONER'S ACT (XVIII OF 1879), S. 13—Acting without instructions.

party in a subsequent connected proceeding. (*Richards, C. J., Knox and Banerjee, JJ.*) MUKHTEAR. *In the matter of* 16 Cr. L. J. 593 : 30 I. C. 145 : 13 A. L. J. 475 (F. B.).

——S. 13—*Acting without instructions—General rules and orders of Calcutta High Court Rule* 45 (*e*)—*Receiving instructions from unauthorised persons*—Bona fide *mistake.*

On the instructions of the cleak of a pleader who has left the court to practise in another court, another pleader signed the *vakalatnama* for the plff. and withdrew the money for plff. deposited by the judgment-debtor in court, and handed it over to the clerk *bona fide* believing that the clerk had taken out his "card" for the year while in fact he *had not.* The pleader was held to be guilty of contravening the provisions of S. 13 (*a*) of Legal Practitioners Act and of rule 45 (*e*) of General Rules and Orders of High Court and deserved severe censure for his act. (*Chatterjee and Sheepshanks, JJ.*) JOGENDRA CHANDRA NANDY, *In the matter of.* 36 I. C. 442.

——S. 13—*Acting without instructions.*

A pleader receiving instructions from an authorised person, who is neither the recognised agent, guardian, servant, relative or authorised to give instruction on behalf of the party, is guilty of misconduct, under S. 13. (*Chamier, C. J., Sharfuddin and Atkinson, JJ.*) JAGAL CHANDRA *In the matter of.* 17 Cr. L. J. 229 : 34 I. C. 645 : 20 C. W. N. 1016 (F. B.)

——Ss. 13 and 14—*Acting without instructions—Instructions to practitioners directly from clients or their duly authorised agent.*

Instructions must be received by legal practitioners directly from clients or their duly authorised agents : gross negligence tantamount to misconduct is attributable to a *mukhtear* who receives and acts on a *mukhtearnama* from an unauthorised person without proper inquiry. (*Atkinson, J.*) LEAKUT HUSAIN, *In the matter of,* 18 Cr. L. J. 140 : 37 I. C. 492 : 2 Pat. L. J. 86.

Agreement for payment on success.

——Ss. 13, 14 and 15—*Agreement for payment on success.*

Agreement to pay a pleader in event of success if not actually illegal, is at least highly objectionable. (*Richards, Griffin and Tudball, JJ.*) MIRZA AFZAL BEG *v.* JYOTISHWARUP.

12 Cr. L. J. 12 : 9 I. C. 130 : 8 A. L. J. 151.

——S. 13—*Agreement for payment on success.*

To agree with a client for *inam* or present over and above his fees in the event of success, is disgraceful for an advocate. His conduct accounts to gross misconduct in his profession if he attempts to extract more supplemental fee at the last moment from his client, on whose failure to pay he absents himself from the case. The failure of a barrister in exacting money as supplemental fee does not absolve him from his original obligation to his client and the court. (*Scott, C. J., Chandavarkar, Russel and Hayward, JJ.*) ADVOCATE-GENERAL *v.* RUSTOMJI B. SUNAWALA. 13 Cr. L. J. 916 : 16 I. C. 780 : 14 Bom. L. R. 691 (F. B.).

LEGAL PRACTITIONER'S ACT (XVIII OF 1879), S. 13—Altering document.

Altering document.

——S. 13—*Altering document—Legal substitution of names in summons.*

Where a solicitor acting for a plff. who had been refused a warrant for the detention of the deft. by a Civil Court, started a criminal process on the same subject-matter, and, by means of allegations to which the Civil Court attached no credit, obtained his warrant from a different Court, almost as a matter of course, his conduct does not necessarily involve any punishable contempt of the Civil Court. The law does not restrict a litigant to a single form of remedy and he may pursue all the legal remedies appropriate to his grievance. Where a solicitor substituted the names of two witnesses in a summons on the ground that the persons originally summoned were totally ignorant of the facts of the case. *Held*, that the solicitor was not guilty of forgery, as there was no intent to defraud and at the most he committed an irregularity for which some pecuniary penalty on his part was an adequate punishment. The Privy Council set aside the order striking off the name of the solicitors and restored his name to the Roll. (*Lord Robson.*) MOSES AMADO TAYLOR, *In re.*

16 C. W. N. 386 : 9 A. L. J. 676 : 15 C. L. J. 639 : 14 Bom. L. R. 471 ; 12 M. L. T. 106 : (1912) M. W. N. 683 : 13 Cr. L. J. 440 : 15 I. C. 72 : 23 M. L. J. 194 (P. C).

——Ss. 13 and 14—*Altering document—Court record.*

Where a property to be sold in execution of a decree was, owing to the carelessness of the pleader for the decree-holder and his clerk, misdescribed in the application for execution, the pleader was held to have acted without due care and sense of responsibility and thus was guilty of grave impropriety in the performance of his duty. In the case he was suspended from his practice for 3 months. *Held*, (ordering the pleader's suspension for three months) that to tamper with the Court's records is a serious matter and the pleader acted without due care and caution and without sense of responsibility in allowing it to be done by his clerk. (*Teunon and Chaudhuri, JJ.*) A PLEADER, *In the matter of.* 18 Cr. L. J. 42 : 36 I. C. 874 : 20 C. W. N. 1069.

——Ss. 13 and 14—*Altering documents—Insertion of name in* Vakalatnamah.

A *Mukhtear* added to the names given in a *Vakalatnamah*, his own name, also altered certain words in the *Vakalatnamah* at the request of the individual who had executed the *Vakalatnamah*, without any improper motive as he could not file a criminal appeal unless the *Vakalatnamah* contained his name. *Held*, as the *mukhtear* was not actuated by any improper motive which would constitute grossly improper conduct, no order under S. 14 of the Act should be passed. The apology of the *mukhtear* expressing regret might be accepted, (*Brett and Richardson, JJ.*) PURNA CHANDRA CHATTERJEE, *In the matter of.* 18 Cr. L. J. 846: 17 I. C. 718: 17 C. W. N. 328.

LEGAL PRACTITIONER'S ACT (XVIII OF 1879), S. 13—Appearing for opposite side.

Appearing for opposite side.

——S. 13—*Appearing for opposite side—Appearing for complainants—Proceedings relating to immoveable property.*

A *Mukhtear* appeared in assault proceedings for certain accused. The complainant in the assault proceedings instituted proceedings under S. 145 of the Cr. P. Code and the *Mukhtear* appeared for him. The defts. did not offer to engage him. *Held*, on the facts of the case, that the *Mukhtear* was not guilty of any professional misconduct. Pleaders should make it a point as far as possible to appear for the party who first employed them. (*Richards, C. J., Knox and Bannerjee, JJ.*) A. MUKHTEAR, *In the matter of.*

16 Cr. L. J. 593 : 30 I. C. 145 : 13 A. L. J. 475 (F. B.).

——S. 13—*Appearing for opposite side—Professional etiquette.*

It is improper on the part of a legal practitioner who has acted for one party in a dispute, to act for the other party in subsequent litigation between them relating to or arising out of that dispute. It is a matter which concerns the honour of the profession. Such conduct is open to misconception and is likely to raise suspicion in the mind of the original client and to embitter the subsequent litigation. (*Sir John Edge.*) MARY LILIAN HIBA DEVI *v.* KUNWAR DIGBIJAI SINGH.

21 C. W. N. 1137: (1917) M. W. N. 636: 42 I. C. 236 : 7 L. W. 133 (P. C.)

——S. 13—*Appearing for opposite side.*

A professional gentleman should, as far as possible, stick to the side who first employed him. It might be a very good practice, when gentleman were offered instructions by the opposite side in any connected case, that they should at least in the first place inform their first clients (*Richards, C. J., Knox and Banerjee, J.*) AMBA PRASAD *In the matter of.* 28 I. C. 996: 16 Cr. L. J. 420.

——S. 13, (d)—*Appearing for opposite side—Prosecuting pleader drafting written statement for accused—Excuse.*

A legal practitioner cannot represent conflicting interests or undertake the discharge of inconsistent duties. When he has once been retained and received the confidence of a client, he cannot accept a retainer from or enter the service of those whose interests are adverse to his client in the same controversy or in matters so closely allied thereto as to be in effect a part thereof. The rule is rigid and is designed not only to prevent the dishonest practitioner from fraudulent conduct but as well to preclude the honest practitioner from putting himself in a position where he may be required to choose between cunflicting duties or be led to an attempt to reconcile conflicting interests, rather than to enforce to their full extent the rights of the interests which he should alone represent. Fidelity is required from all who hold fiduciary relations; they must not lightly enter upon such relationships, but if they do, they will not be permitted to be disloyal; and of all species of disloyalty, desertion and adherence to the enemy or to the opposite party in a suit is recognised as the worst. On those grounds it has been held that an attorney may be disbarred where he conducts a criminal prosecution against a person or assist therein, and thereafter appears for the defence, or while acting as attorney for the prosecutor in a criminal case he accepts money from the defendant in consideration of a dismissal. (*Mookerjee and Chotzner, JJ.*) EMPEROR *v.* RAJANIKANTA GHOSE. 37 C. L. J 48: 24 Cr. L. J. 294: 1923 Cal. 106.

LEGAL PRACTITIONER'S ACT (XVIII OF 1879), S. 13—Contempt of Court.

——S. 13—*Appearing for opposite side—Pleader retained by one party—When entitled to appear for opposite side.*

When a client engages another pleader the presumption arises that the services of the original pleader are not required and that he is free to appear for the opposite side. (*Kumaraswami Sastri, J.*) ATCHUTA RAMAIAH *v.* SECRETARY OF STATE. 16 M. L. T. 349: 25 I, C 712 : (1914) M. W. N. 785.

——S. 13—*Appearing for opposite side—Power of Court to prohibit.*

Where a pleader who had appeared in criminal proceedings appeared for the opposite party in a subsequent civil suit, the Court was justified in prohibiting his appearance, as the civil suit was connected with the previous criminal proceedings. (*Miller, J.*) SRINIVASA ROW *v.* PICHAI PILLAI. 38 Mad. 650: 21 I. C. 629: 25 M. L. J. 567.

——S. 13—*Appearing for opposite side.*

In order to bring a pleader within the purview of S. 13 of the Act it is not necessary that there should be an intentional disobedience of the rules or that there must be some act involving a moral stigma or proof of actual injury to the litigant. A pleader who acts for both the parties in the suit at one stage or other is guilty of gross negligence amounting to professional misconduct. (*Mullick, Imam and Thornhill, JJ.*) EMPEROR *v.* BIR KISHORE RAI. 19 Cr. L. J. 636 : 45 I. C. 684 : 3 Pat. L. J. 390.

Contempt of Court.

——S. 13—*Contempt of Court—Abusive letter to Judge—Misconduct.*

A *Mukhtear* who addressed certain letters to a Magistrate in connection with a copy for which he had applied, and the contents of the letters were grossly insulting, the *Mukhtear* could be proceeded against under S. 13 (f) of the Act. (*Rafique, Stuart and Wallach, JJ.*) AMRITALAL *In the matter of.* 42 All. 86: 17 A. L. J. 1050: 20 Cr. L. J. 718: 52 I. C. 798: 1 U. P. L. R. (H. C.) 134.

——Ss. 13 and 14—*Contempt of Court—Disciplinary powers.*

The words "such misconduct as aforesaid" in S. 14 are not restricted to fraudulent or grossly improper conduct in the discharge of his professional duty but include all cases of misconduct whether included in Cl. (*b*) or in one or more of the other clauses of S. 13. A Subordinate Court can inquire into the matter falling within any of the clauses of S. 13 when the pleader or *Mukhtear* whose conduct is called in question, practices in such Court. Under S. 13 the inquiry need

LEGAL PRACTITIONER'S ACT (XVIII OF 1879). S. 13—Contempt of Court.

not be conducted by the High Court, but may be by a Subordinate Court, under the discretion of the High Court. The charges must be framed with great care and precision, so that the practitioner may know what he is to oppose; his conduct which shows disrespect of the Court or which obstructs or interferes with the due administration of justice, committed in the actual presence of the Court or in places where the Court is deemed present such as places set apart for its use and for the use of its officers, jurors, witnssses, amounts to contempt A *Mukhtear* practising in a Court exchanged some hot words with the Accountant of the Court in his office, in the course of which he abused the Accountant, which was heard by the Judge holding his Court in an adjoining room. The misconduct amounted to a contempt for which a warning was deemed sufficient. (*Mookerjee and Cumming, JJ.*) RAZIK LAL NAG, *In the matter of.* **44 Cal. 639 : 24 C.L.J. 190: 38 I. C. 980 : 18 Cr. L. J. 420 : 20 C. W. N. 1284.**

——— **Ss. 13 (b), (f) and 14**—*Contempt of Court—Imputation of prejudice to presiding Judge.*

A letter written by a legal practitioner imputing racial antipathy to a judge and charging him with having allowed such feelings to influence him in passing unfavourable orders to the practioner constitutes misconduct. A belated apology in the High Court was held to be insufficient and the pleader was suspended from practice for 3 months. (*Broadway and Martineau, JJ.*) KHEWAJA FAKHARUDDIN, *In the matter of.* **67 I. C. 504: 23 Cr. L. J. 408.**

——— **S. 13**—*Contempt of Court—Letter to Judicial officer.*

A legal practitioner who writes a letter to a Judicial officer asking him in a particular manner is guilty of grossly improper conduct within S. 13 (*f*) of the Legal Practitioner's Act. (*Leslie Jones and Broadway, JJ.*) NARINDRA SINGH, *In the matter of.* **3 P. W. R. 1918 Cr. : 19 Cr. L. J 267 : 44 I. C. 123 : 161 P. L. R. 1917.**

——— **S. 13**—*Contempt of Court—Letter to Commissioner to report in client's favour—Addressing disrespectful letter—Private capacity—Misconduct.*

A pleader addressing a letter to a Commissioner appointed to investigate a case to report in his client's favour, is guilty of professional misconduct under S. 13, Cl. (*b*) of the Act. A pleader addressed to the Commissioner of the District a most disrespectful letter and circulated it free among his subordinates. *Held*, he is guilty of miaconduct under Cl. (*f*) of S. 13 of the Act, though the matter is one of a private nature between the pleader and that officer. S. 13 (*f*) of the Act is not confined to the misconduct of a pleader as such but also covers his misconduct as a party to a suit. (*Kensington, C. J., Rattigan and Shadi Lal, JJ.*) BHAICHANDA SINGH, *In the matter of.* **18 P. R. 1915: 12 P. W. R (Cr.) 1915: 28 I. C. 722: 16 Cr. L. J. 338.**

——— **Ss. 13 and 14**—*Contempt of Court—Improper suggestion.*

LEGAL PRACTITIONER'S ACT (XVIII OF 1879). S. 13—Criminal offence.

For a *vakil* to suggest that he is in a position to influence a judge by indirect and improper means is professional misconduct meriting more than mere warning. (*White, C. J., Sankaran Nair and Oldfield, JJ.*) PRESIDENT, VAKIL'S ASSOCIATION, HIGH COURT, MADRAS *v.* A VAKIL. **23 I. C. 789 : 26 M. L. J. 429.**

——— ——**S. 13**—*Contempt of Court—Misconduct—Libellous attack on judge.*

A pleader is an officer of the Court and is bound to assist the Court in the administration of justice. Criticism which is permissible to a private individual is not permissible to a pleader. The co-operation of a pleader and a Judge would be impossible if the pleader were attacking the Judge in the public press Nor would it be possible for the business of the Court to be conducted with dignity, decorum and impartiality when the pleader is posing in public as the chastiser of the Judge. Such conduct is not only a breach of the pleader's duty to the Court but must also result in an actual obstruction to the administration of justice. A letter published by a Pleader, alleging that a certain Judge is indolent and takes credit for cases not tried but compromised, even if written in good faith and even if it does not constitute the offence of libel, amount to misbehaviour under S. 16 of the Sind Courts Misbehaviour Act. (*Pratt, J. C., Crouch and Hayward, A. J. Cs.*) *Re Enquiry Against* MR M., PLEADER. **11 S. L. R. 81 : 19 C. L. J. 322 : 44 I. C. 388 (F.B.).**

Criminal offence.

——— **S. 13**—*Criminal Offence—Pleader suspected of—Evidence insufficient for—Criminal prosecution—Disciplinary proceedings.*

A Dt. Judge being of opinion that the evidence available in respect of certain charges against a pleader, was of such a character that a criminal prosecution was not likely to succeed, directed the institution of proceedings against him under S. 13 (*f*) of the Legal Practitioners Act. *Held*, that summary investigation under the Legal Practitioners Act of what in reality is grave criminal charge may, in particular instances, be to the prejudice of the pleader. The rule deducible from the cases is that an attorney will be struck off the roll if convicted of felony or if convicted of a misdemeanour involving want of integrity even though the judgment may be arrested or reversed for error and also without previous conviction if he is guilty of gross misconduct in his profession or of acts which, though not done in his professional capacity, gravely affect the character as an attorney; but in the latter case if the acts charged are indictable and are fairly denied, the Court will not proceed against him until he has been convicted by a jury: and will in no case compel him to answer on oath to a charge for which he may be indicted. (*Mookerjee, O. C. J. and Fletcher, J.*) CHANDI CHARAN MITTER, *In the matter of.* **31 C. L. J 471 : 57 I. C. 931 : 21 Cr. L. J. 691 : 24 C. W. N 755.**

——— **S. 13**—*Criminal offence—Removal for misconduct—Reinstatement.*

LEGAL PRACTITIONER'S ACT (XVIII OF 1879), S 13—Criminal Offence.

Where a legal practitioner, found guilty of a serious offence committed several years ago, and removed from the rolls applied for reinstatement: *Held*, that the test to be applied to cases of this description was whether the sentence of exclusion, however right, had the effect to awakening in the delinquent a higher sense of honour and duty and whether in the interval his conduct has been so irreproachable that notwithstanding the delinquency in early life he may be safely entrusted with the affairs of clients and admitted to an honourable profession without that profession suffering degradation 12 C. L J. 625, Rel. (*Mookerjee and Teunon, JJ.*) HARA KUMAR CHATTERJEE, *In re.* 16 C. W. N 237 : 14 C. L. J. 113 : 13 Cr. L. J. 461 : 11 I. C. 997.

——Ss. 13 and 14—*Criminal offence—Grave criminal charges against pleader—Reasonable cause*

Proceedings under the Act being summary proceedings a pleader should not be proceeded thereunder for what are in reality grave criminal charges. 31 C L J 471, Ref Though the phrase "any other reasonable cause" in Cl. (*f*) of S. 13 is interpreted not as *ejusdem generis* with the preceding ones, and a Court can investigate cases of moral turpitude unconnected with the discharge of professional duty, the case of a pleader's conduct in the capacity of a suitor is different. 43 C. L. J. 237, Foll. (*Das and Adami JJ.*) NARENDRA NATH DAS *v.* SHIVAKUMARJA. 1 Pat. L. T. 571 : 21 Cr. L.J 726: 58 I. C. 150 : 5 Pat. L. J. 601.

——Ss. 13 and 14—*Criminal offence*—Mukhtear *suspected of taking money from client for bribing Court—Offence.*

There is no reason why a different standard of proof of guilt should be required in a case under the Legal Practitioners Act from that which is necessary in any other legal proceedings, *viz.*, that the offence has been committed beyond any reasonable doubt. To remove a person from his profession for what amounts to a criminal charge upon mere suspicion cannot possibly be justified, the suggestion to adopt a less stringent mode of proof would be an entirely novel departure and unjustifiable on any known principles of law. (*Dawson Miller, C. J., Mullick and Jwala Prasad, JJ.*) EMPEROR *v.* SURYA NARAIN SINGH. 1 Pat. L.T. 378 : 21 Cr. L. J. 636 : 57 I.C. 460: 2 U. P. L R (Pat) 168 (F.B.).

——S. 13—*Criminal offence—Enrolment—Concealment of conviction—Effect.*

A pleader intentionally concealing his conviction in his application for admission is liable to be dismissed. (*Hartnoll and Ormond, JJ.*) A SECOND GRADE PLEADER, *In the matter of.* 15 Cr. L. J 587 : 25 I. C. 359 : 11 Bur. L. T. 304.

——S. 13—*Criminal offence.*

Under the Legal Practitioners Act, the High Court will not go into the merits of the conviction but will ordinarily accept the findings of Criminal Courts as final. (*Fox, C. J. and Hartnoll, J.*) M. M J., *In the matter of.* 13 Cr. L. J. 875: 17 I.C. 811 : 5 Bur. L. T. 191.

Error of law.

——Ss. 13 and 14—*Error of law.*

LEGAL PRACTITIONER'S ACT (XVIII OF 1879), S. 13—False statement.

Error of law is no professional misconduct. (*Chatterjee and Beachcroft, JJ.*) POORNA CHANDRA *In re.* 43 Cal. 685 ; 20 C. W. N. 278 : 32 I. C. 657 : 23 C. L. J. 237 : 17 Cr. L. J. 65.

False statement.

——S. 13—*False statements—False identification.*

A Legal Practitioner is guilty of professional misconduct if he identifies a person not known to him. (*Banerjee and Walsh, JJ.*) JOSHIA PETERS, *In the matter of.* 21 Cr. L. J. 658 : 57 I. C. 818 (F.B.) : 2 U. P. L. R. (All) 211.

——S. 13—*False statements—Reply to Dt. Judge.*

A pleader in defending himself against charges of professional misconduct made certain statements. He was dealt with for making them under the disciplinary jurisdiction It was contended in his behalf that the statements made by him in defence must be regarded as having been made by an accused and were, therefore, protected. *Held*, overruling the contention that the pleader was writing to the Court as a pleader and was responsible as such for the statements made by him. (*Batchelor and Heaton, JJ.*) GOVT. PLEADER *v.* BHAGUBHAI. 36 Bom. 606 : 13 Cr. L. J. 913 : 16 I. C. 788 : 14 Bom. L. R. 700.

——Ss. 13—*False statement*

Where a pleader in order to recover fees due to him from his client for work done, made certain statements which, if true, would expose him to criminal prosecution. *Held*, that the conduct of the pleader though improper was not such as to call for action being taken under the Act. (*Woodroffe and Carnduff, JJ.*) TINCOWRI SANTRA *In the matter of.* 14 I. C. 208 : 13 Cr. L. J. 208 : 15 C. L. J. 224.

——S. 13—*False statements—Attesting a will after testator's death—Extenuating circumstances.*

Where a *Mukhtear* was pressed by person to put a signature to a will as an attesting witness and he signed it because he believed the signature of the testator as genuine and confessed everything ; the Court, though holding that the *Mukhtear* was liable under S 13 of the Act, was lenient in his case in view of the fact that he was a *vakil* of 25 years standing, bore a good character and was repentent. (*Mookerjee and Carnduff, JJ.*) RUDRA PROSAD, *In re.* 13 Cr. L, J. 61 : 13 I. C. 397: 14 C. L. J. 606.

——Ss. 13 and 14—*False statements.*

To deliberately enter into a false defence, with intent to defraud others, is a ground of action under Ss. 13 and 14. (*Woodroffe and Carnduff, JJ.*) AKHOY NARAIN, *In re.* 9 I. C. 362 ; 12 Cr L. J. 67.

——S. 13—*False statement — Professional misconduct.*

Where a pleader retained in his service a suspected tout without dismissing him even after notice from the Bar Council not to retain him in his service and thereafter gave a false statement that he had dispensed with the services of that tout and stuck to that statement deliberately in a subsequent enquiry, *Held*, he was guilty of pro-

LEGAL PRACTITIONER'S ACT (XVIII OF 1879), S. 13—False statement.

fessional misconduct under S. 13 (f). (*Robertson, Kensington, Rattigan and Shah Din, JJ.*) MR. M., FIRST GRADE PLEADER OF THE PANJAB CHIEF COURT, *In the matter of.* 49 P.W.R. 1914 (Cr.) : 16 Cr. L. J. 108 : 27 I. C. 156 : 214 P. L. R. 1915 (F. B.).

——— S. 13 (b) and (g)—*False statement—Apprehension of injury to professional reputation—Vindictive proceedings—Costs.*

A First Grade Pleader falsely stated to his client that he was not in possession of certain documents which were as a matter of fact in his custody. The statement was made out of fear that sinister suggestions might be made against him and he might be injured professionally: *Held*, that though there was no justification for not speaking the truth the case was not one which called for any more severe punishment than an expression of disapproval of the conduct of the practitioner by the High Court. Where a pleader was pursued vindictively by a client who with a sinister view made charges of a very serious kind against the pleader all of which failed, the pleader though guilty of improper conduct need not pay the costs of the petitioner. (*Schwabe, C. J., Coutts Trotter and Ramesam, JJ.*) A FIRST GRADE PLEADER, *In the matter of.* 17 L. W. 356 : 24 Cr. L. J. 585 : 1923 Mad. 485.

——— S. 13—*False statements—False suit.*

A pleader is guilty of misconduct under S. 13, Cl. (*f*), if he files a false suit, and can be dismissed or suspended. The words "any other reasonable cause" in S. 13. cl. (f) are not to be construed *ejusdem generis* with causes enumerated in Cls. (*a*) to (*e*). They include personal misconduct distinguished from professional one. (*Hartnoll and Twomey, JJ.*) SECOND GRADE PLEADER *In the matter of* 6 L. B. R. 33 : 12 I. C. 838 : 12 Cr. L. J. 574 : 4 Bur. L. T. 275.

Improper Advice.

——— S. 13 — *Improper advice — Ulterior motives.*

In this case a *Vakil* of the High Court was suspended from practice for 2 years by the High Court under Cl. (10) of the Letters Patent (Madras) for professional misconduct arising from the following acts he did : *viz.*, (1) giving improper advice and getting a nominal sale for a low value, (2) pleading a false defence, (3) giving false evidence and suborning perjury. (*Abdur Rahim, Offg. C. J., Seshagiri Aiyar and Phillips, JJ.*) A VAKIL *In the matter of.* 18 Cr. L. J. 449 : 39 I. C. 289 : 40 M. 69.

Inquiry into misconduct.

——— S. 13 — *Inquiry into— Misconduct — Power of Court to—refuse audience.*

No rule is necessary to enable a subordinate Court subject to correction by the High Court to refuse, audience to a pleader where, by his appearance, he is guilty of professional misconduct. (*Miller, J.*) SRINIVASA ROW *v.* PICHAI PILLAI. 38 Mad. 650: 21 I. C. 629: 25 M. L. J. 567.

——— S. 13 — *Inquiry into misconduct — Procedure.*

If a Court thinks that there has been any breach of professional etiquette, or any matter calling for he exercise of disciplinary powers, in the conduct of the pleader or advocate in the case, it should decide the merits and reserve such question for further consideration after the disposal of the suit. (*Walsh, J.*) BISHESHAR NATH *v.* EMPEROR. 40 All. 147 : 44 I. C. 26 : 19 Cr. L. J. 865 : 16 A. L. J. 64.

LEGAL PRACTITIONER'S ACT (XVIII OF 1879), S. 13—Inquiry into misconduct.

——— Ss. 13 (c) and (f) and 14—*Inquiry into misconduct—Additional District Magistrate—Power to report to High Court regarding misconduct of pleader—Imputation against the fairness and impartiality of the Magistrate.*

An Additional District Magistrate appointed with all the powers of a District Magistrate is a Court Subordinate to the High Court within S. 14 of the Legal Practitioners Act and is competent to draw up a charge and report the professional misconduct of a pleader appearing before him in a criminal case before him. The correct procedure is to forward the report through the Sessions Judge to the High Court. The High Court may and ought, in a proper case, to take action even without the intervention of a Subordinate Court in matters relating to the misconduct of pleaders. A pleader who makes unfounded imputations in Court against the fairness and impartibility of the tribunal in a pending trial, is guilty of professional misconduct within S. 13 (b) and (f) of the Legal Practitioners Act. Pleaders have a duty not only towards their clients but also towards the Court of which they are officers and it is part of their duty to co-operate with the Court in the pure and orderly administration of justice. (*Sanderson, C. J. and Richardson, J.*) MAHENDRA LAL ROY, *In re.* 27 C. W. N. 88 : 24 Cr. L. J. 209 : 1922 Cal. 550.

——— S. 13 (b) and (f)—*Inquiry into misconduct—Disciplinary action against pleader.*

Where a pleader after accepting a vakalatnama and before it has been properly revoked or terminated, fails to appear in Court without justification, he is liable to the disciplinary jurisdiction of the High Court. *Per Sanderson, C. J.* ;—The fact that the report of the munsif and the reference of the Judge do not agree, does not render the proceedings improper. *Per Woodroffe, J.*:—The evidence must establish the petitioner's guilt beyond all reasonable doubt. Proceedings fall under S. 13 (b) in so far as they involve neglect of duty towards the client in accepting a vakalat and without excuse not fulfilling the duties : under S. 13 (f) in so far as the conduct was directed against the court by abstention from attendance on account of "Hartal." Per *Mookerjee, J.*:—The test to find out whether the conduct of a pleader falls within the Act, is to consider whether the misconduct is of such a description as shows him to be an unfit or unsafe person to enjoy the privileges and manage the business of others in the capacity of a pleader. (*Sanderson, C. J., Woodroffe and Mookerjee, JJ.*) EMPEROR *v.* RAJANI KANTA BOSE. 49 Cal. 732 : 26 C. W. N. 589 : 35 C. L. J. 356 : 24 Cr. L. J. 33 : 1922 Cal. 515.

——— Ss. 13, and 14—*Inquiry into misconduct—Subordinate courts—Receipt of money from accused for bribing police.*

LEGAL PRACTITIONER'S ACT (XVIII OF 1879), S. 13—Inquiry into misconduct.

Subordinate courts can take proceedings against a legal practitioner in respect of an act coming under Cl. (*f*) to S. 13, where proceedings are commenced under Cl. (*f*) to S. 13, but if it is found that the act comes under Cl. (f) to S. 13, the High Court may avail itself even if the subordinate court in such case would have no jurisdiction to make the enquiry it did. In this case the High Court dismissed a muktear for having received a sum of money from one of the persons against whom a case is pending for the purpose of bribing the police acting as a go-between (*Woodroffe and Beachcroft, JJ.*) HARI PROSANO MOOKERJEE, *In the matter of.* 21 C. W. N. 516 : 39 I. C. 305 : 18 Cr. L. J. 465.

——Ss. 13 and 14—*Inquiry into misconduct—Charge—Subordinate Courts.*

S. 14 of the Legal Practitioners Act includes a charge under clause (*f*) of S. 13 (as amended by Act XI of 1896). and Subordinate Courts have jurisdiction to take proceedings under clause (*f*). 39 Mad. 1045 (F. B.) Foll, 27 C. 1023, Diss. The fact that the pleader concerned had become a Vakil of the new High Court at Lahore since the action was taken under S. 14 of the Act by a Lower Court could not affect the jurisdiction of that Court. (*Pelman, J.*) BELERAM *In the matter of.* 54 I. C. 982 : 152 P. R. 1919.

——Ss. 13 and 14—*Inquiry into misconduct—Who should conduct—Misconduct—Pleader.*

A charge of professional misconduct of a pleader can be inquired into only by the presiding officer of the Court in which the pleader practises. (*Sadasiva Aiyar, J.*) NALLASIVAN *v.* RAMALINGAM. (1917) M. W. N. 303 : 6 L. W. 364 : 18 Cr. L. J. 785 : 41 I. C. 305 : 32 M. L. J. 402.

——Ss. 13 and 14—*Inquiry into misconduct—Subordinate Courts.*

S. 13 (f) is not confined to cases of misconduct *ejusdem generis* as those in other clauses. The subordinate Courts can take proceedings under S. 14. (*Wallis, C. J., Coutts Trotter and Seshagiri Aiyar, JJ.*) THE DT. JUDGE OF KRISHNA *v.* C. HANUMANULU. 39 Mad. 1045 : 18 M. L. T. 549 : 32 I. C. 326 : 17 Cr. L. J. 38 : (1915) M. W. N. 1050.

——S. 13—*Inquiry into misconduct.*

As an order of refusal of an application under the Legal Practitioners Act is an administrative act. Leave for appeal to His Majesty in Council cannot be granted under the Letters Patent. Special leave may of course be asked for of their Lordships of the Judicial Committee. (*Miller, C.J. and Adami, J.*) MISS SUDHANSU BALA HAZRA *In re.* 4 Pat. L. T. 229 : 1 Pat. 590 : 1922 P. 603.

——Ss. 13 and 14—*Inquiry into misconduct—Proof of guilt—Standard of.*

The standard of proof of guilt under Legal Practitioners Act is not different from other legal proceedings and should be such as to leave no reasonable doubt in the mind of the Court that the offence has been committed.

LEGAL PRACTITIONER'S ACT (XVIII OF 1879), S. 13—Negligence.

(*Miller, C. J., Mullick and Jwala Prasad, JJ.*) EMPEROR *v.* SURYA NARAYAN SINGH.
1 Pat L. T. 372 : 21 Cr. L. J. 636 : 57 I C. 460 : 2 U. P. L. R. (Pat.) 168.

Intimidation.

——S. 13—*Intimidation—Witness.*

A pleader intimidating a witness to prevent him from giving evidence is gulity of professional misconduct. (*Richards, C. J., Tudball and Abdul Raoof, JJ.*) HARPRASAD SINGH, *In re.* 46 I. C. 819 : 19 Cr. L. J. 803 (F. B.).

——S. 13—*Intimidation—Insulting letter to Magistrate—Instructions— Conditional apology.*

A letter addressed by a pleader to a Magistrate with reference to a case disposed of by him containing improper and vulgar abuse of the magistrate and a demand for an apology followed by a threat of further proceedings, is highly objectionable and the pleader is guilty of professional misconduct. Instructions from client are no excuse whatever for a pleader exceeding what is his duty towards the Court. In cases like this an apology and much less conditional apology would be insufficient. (*Macleod, C. J. and Crump, J.*) THE GOVT. PLEADER *v.* TATKE. 25 Bom. L.R. 264 : 24 Cr. L. J. 353 : 1923 Bom. 234.

Misappropriation.

——S. 13—*Misappropriation.*

Where a pleader received in his private capacity certain shares from a lady client with instructions to sell them and realise the proceeds on her behalf but appropriated the proceeds without her consent, to his fees as a pleader, the pleader is guilty of conversion and misconduct. (*Pratt, J. C., Crouch and Fawcett, A. J. C.*) VARAMBAI *v.* M. PLEADER. 13 Cr. L. J. 513 : 15 I. C. 785 : 14 Bom. L. R. 499.

——S. 13—*Misappropriation.*

Misappropriation of the client's money entrusted to a pleader for a specified purpose amounts to professional misconduct. (*Shahdin, C. J. and Jones, J.*) ASQUITH, *In the matter of.* 18 Cr. L. J. 903 : 42 I. C. 135 : 30 P. W. R. 1917 Cr.

Negligence.

——S. 13—*Negligence—Cheating of client by clerk.*

Negligent management of his office and permitting his clerks to cheat the clients and mislead them as to the progress of the case, and to inform the client that a case had been dismissed on the merits when in fact it was dismissed owing to the Pleader's neglect, is misconduct on the part of the pleader for which he might be suspended from practice. (*Lord Shaw.*) G. KRISHNASWAMY AIYAR *In the matter of.* 35 Mad 543 : 39 I. A. 191 : 16 C. W. N. 1081 : 13 Cr. L. J. 680 : 12 M. L. T. 396 : 14 Bom. L. R. 1079 : 16 C.L. J. 634 : (1912) M. W. N. 963 : 16 I. C. 328 : 23 M. L. J. 114 (P. C.)

——S. 13—*Negligence—Reckless signing of vakalatnama.*

LEGAL PRACTITIONER'S ACT (XVIII OF 1879), S. 13—Negligence.

Every practitioner is bound to see before accepting a *Vakalatnama* that he has not already been engaged on the other side. To recklessly sign a *vakalatnama* very nearly amounts to misconduct. (*Richards, Knox and Banerjee, JJ.*) INAMUL HAQ *v.* FAIZUL HASAN. 18 I. C. 268 : 14 Cr. L. J. 44.

——S. 13—*Negligence—General Rules and Orders of Calcutta High Court, R.* 45 (*e*)

A pleader engaged jointly with another on behalf of plff. in a suit instead of signing the *Vakalatnama* at the time of the suit, signed it after the other pleader had left that Court for another Court and on the instructions of that other's clerk received from Court a sum of money deposited by the judgment debtor to be paid to the plff, decree-holder and paid it over to the clerk, who did not pay it to the plff. It transpired that the clerk had not taken out his "card" for the year and was not thus entitled to act as pleader's clerk when the money was withdrawn. but that the pleader *bona fide* believed that he had such authority and had taken out his 'card." *Held*, that the pleader contravened the provisions of S. 13 (*a*) of the Legal Practitioners Act and of R. 49 (*e*) of the General Rules and Orders of the Calcutta High Court and, therefore, deserved severe censure for his conduct. (*N. R. Chatterjee and Sheepshanks, JJ.*) BABU JOGENDRA CHANDRA NANDY, *In re.* 36 I. C. 442.

——S. 13—*Negligence--R.* 45, *Ch. XI, Calcutta High Court—Civil Rules and Orders.*

The duty of a pleader who accepts a *vakalatnama* is to note on it, the date and the name of the person from whom it is received, and he must be satisfied that the person brought to him was either the party himself or his recognised agent or some friend or relative. (*Carnduff and Richardson, JJ.*) JOGESH CHANDRA GUPTA, *In the matter of.* 20 C. W. N. 283 : 33 I. C. 831 : 17 Cr. L.J. 1916.

——S. 13 (b)—*Negligence—Dismissal of bail application—Subsequent application without disclosing prior one—If ; amounts to misconduct.*

Where after the dismissal of a bail application by a Sessions Judge, the said pleader put in another application before the *locum tenens* of the Sessions Judge without disclosing that a previous bail application had been dismissed the pleader is guilty of professional misconduct, even though the first dismissal did not bar the filing of a second application. (*Broadway and Martineau, JJ.*) EMPEROR *v.* JODH SINGH. 23 Cr. L. J. 714 : 1923 Lah. 211.

Politics.

——S. 13—*Politics—Passive resistance--Civil disobedience to laws.*

As a protest against the passing of the Rowlatt Act certain barristers and pleaders practising joined the movement called the Satyagraha Sabha and signed a pledge whereby they undertook to refuse civilly to obey such laws as a Committee to be hereafter appointed may think fit. *Held*, that the barristers and pleaders had by signing the pledge, rendered themselves amenable to the disciplinary jurisdiction of the High Court, but that under the circumstances warning was enough. Per *Macleod. C. J.*— Advocates and pleaders are a privileged class enrolled not only for the purpose of rendering assistance to the Courts in the administration of justice but also for giving professional advice, for which they are entitled to be paid, by those members of the public who require their services. It is not necessary for the High Court to exercise its jurisdiction that any offence should have been committed, nor is it necessary that what the pleaders have done should have subjected them to anything like general infamy or imputation of character (*Macleod. C J., Heaton and Kajiji, JJ.*) JIVAN LAL DESAI, *In re.* 54 I. C. 679 : 22 Bom. L. R. 13.

LEGAL PRACTITIONER'S ACT (XVIII OF 1879), S. 13—Privilege.

——S. 13 (f)—*Politics—Organised resistance to unpopular tax—Security*

S. 13 (f) of the Leg. Practitioners Act is not confined to acts done in a professional capacity and where a pleader was guilty of organizing a determined resistance to the payment of a tax with the result that the Magisterial authorities had to bind him over to keep the peace, there is sufficient foundation for disciplinary action under S 13 of the Legal Practitioners Act. (*Lord Buckmaster*). SHANKER GANESH DABIK *v.* SECRETARY OF STATE FOR INDIA. 31 M. L. T. 192 : 49 Cal. 845 : 18 N. L. R. 176 : 49 A. A. 319 : 27 C. W. N 43 : (1923) M. W N 528 : 25 Bom. L, R 131 : 18 L. W. 59 : 37 C. L. J. 136 : 44 M. L. J 82 : 1922 P. C. 251.

——S 13—*Politics—Counselling disobedience of laws—Expressing regret.*

Where a pleader preaches at public meetings disobedience to law and order, but expresses his regret and undertakes a help in the administration of law his sanad may be again granted. (*Schwabe, C. J , Coutts Trotter and Krishnan, JJ.*) FIRST GRADE PLEADER GUNTUR *In the matter of a.* 45 M L. J 718 : 33 M. L. T. 100 (H. C.) : (1924) M. W N. 18 : 18 L. W. 717 : 1924 M 160.

——S. 13— *Politics — Non-co-operation speeches—Effect*

Where a pleader delivers speeches advocating non-payment of taxes, boycott of Courts, etc , and does not express regret for his action, a case lies under the Legal Practitioners Act and the renewal of his Sanad can be withheld. (*Schwabe, C. J., Coutts Trotter and Krishnan, JJ.*) J. R A. SECOND GRADE PLEADER, *In the matter of.* 45 M L.J. 684 : 33 M. L. T. 98 (H. C) : 18 L. W. 689 : (1923) M W. N. 768 : 1924 M. 129.

Privilege.

——S. 13 —*Privilege—Refusal to disclose —Communication.*

A pleader has general authority to act in the interests of his client in the manner he thinks best, and cannot be charged with misconduct if he drafts a petition without consulting his client and asks or advises him to present the same in Court, where the facts on which the petition is based took place within his own cognizance and were such as to endanger the interests of his

LEGAL PRACTITIONERS ACT (XVIII OF 1879), S. 13—Reasonable cause.

client. A pleader cannot be charged for misconduct for refusing to disclose to the Court a professional communication made to him by his client. (*Kanhaiya Lal, A. J. C.*) SATGUR PRASAD *v.* EMPEROR. 20 I. C. 598 : 14 Cr.L. J. 438.

Reasonable Cause.

——— Ss. 13, 14—*Reasonable cause—Meaning of—Criticism of administration.*

The phrase 'for any reasonable cause' in the residuary Cl. (f) of S. 13 is not to be understood in an *ejusdem generis* sense but it covers cases other than those of professional misconduct in the ordinary sense, but which unfit a pleader for the practice of his profession, for instance, conviction for a crime involving dishonesty or moral turpitude or gross and habitual contempt of Court. 26 M 448 ; 44 C. 639 ; 29 A. 95 P. C. ; 39 M. 1045 dist. The remedy provided by S. 14 is not intended to apply to cases in which a pleader as an ordinary member of the public criticises the administration of justice though such criticisms may on enquiry be found not to be wholly justified. S. 13 cannot be properly utilised in punishing a pleader for making comments on matters of public interest in the newspapers merely because such comments exceed the limits of in fairness. Per *Krishnan, J.*—The Legal Practitioners Act, 1879, deals with the pleader only in his professional, and not in his private capacity. Though misconduct other than professional may fall under Cl. (f), S. 13, its impropriety must be such as would render the continuance of the pleader in practice undesirable or unfit him from being a member of the profession. (*Abdur Rahim, O. C.J. Spencer and Krishnan, JJ.*) K. V. SUBRAMANIYA AIYAR *v.* THE DT. MAGISTRATE OF SALEM.

11 L. W. 192 :
(1920) M. W. N. 105 : 21 Cr. L. J. 246 :
55 I. C. 198 : 38 M. L J. 230 (F. B.)

Miscellaneous.

——— S. 13—*Misconduct—Entry into trade.*

The carrying on of a family business by a Vakil which has been in existence for a long time, does not amount to entering into any trade, or business within the second paragraph of Rule 26, Part II, of the Allahabad High Court Rules. Before a Vakil embarks on any commercial transactions he should give notice to and obtain the permission of the High Court. (*Banerjee and Piggott, JJ.*) RAM SARUP *v.* TIKARAM.

17 A. L. J. 1147 : 52 I. C. 638 :
1 U. P. L. R. (H. C.) 139

——— S. 13—*Professional misconduct—High Court Rules, Chapter XV, Rule 25.*

A pleader acting for a decree holder and purchasing the property sold in execution of his client's decree is guilty of professional misconduct, equally so if he purchases the property for other persons. Where in execution of his client's decree, a pleader made a purchase on behalf of his father, *Held*, he was guilty of misconduct. (*Richards, C. J., Tudball and Chamier, JJ.*) HAR PRASAD SINGH, *In the matter of.*

17 I. C. 589 : 13 Cr. L. J. 795.

——— Ss. 13 and 14—*Pleader employing himself as professor without consent of Court—Expressing loss of faith in British Justice.*

LEGAL PRACTITIONERS ACT (XVIII OF 1879) S. 13—Miscellaneous.

Disciplinary action can be taken against a pleader and against a pleader who employs himself as a professor without the permission of the court who states before a Court that he has lost all faith in British justice and owed no allegiance to British Courts. (*Mookerjee and Chotzner, JJ.*) EMPEROR *v.* BIMALANAND DAS GUPTA.

38 C. L. J. 353 : 1924 Cal. 329

——— S. 13—*Boycott of courts—Duties and obligations of pleaders.*

Per Sanderson, C. J.—If a pleader in pursuance of a concerted movement to boycott the courts, deliberately abstained from attending it, he is guilty of a course of conduct which cannot be justified or tolerated. Pleaders have duties and obligations to their clients in respect of the suits and matter entrusted to them. It is an equally important duty and obligation on them to cooperate with the court in the orderly and pure administration of justice. If a pleader has any complaint against any Subordinate Judge, he has two courses open to him, *i. e.*, to make a representation to the Dt. Judge or to the High Court. (*Sanderson, C. J., Woodroffe and Mookerjee, JJ.*) EMPEROR *v.* TARINI MOHAN BARARI.

26 C. W. N. 580 : 35 C. L. J. 403 : 1923 Cal. 212.

——— S. 13—*Acting without authority — Acceptance of* vakalat *from an unauthorised person.*

The rule relating to the acceptance of *vakalatnamas* and *muktearnamas* must be scrupulously and punctiliously observed. Where a *Muktear* not influenced by any dishonest or corrupt motive accepted a *Muktearnama* from an unauthorised person known by him to be such, his conduct calls for something more than censure, his duty being of a high standard of honour and integrity to the people around. The *Muktear* was suspended from practising for a period of three months. (*Richardson and Beachcroft, JJ.*) BRINDABAN CHANDRA DAS, *In the matter of,*

43 I. C. 819 : 19 Cr. L J. 227.

——— S. 13—*Re-admission—Procedure.*

The High Court has power to reinstate a legal practitioner who had been dismissed for misconduct of any description. Before the Court should exercise such powers it should be clearly convinced not by mere protestations of repentance or regret but by actual facts that the delinquent has reformed his character and has for a sufficiently long period acted in such a way that he can be trusted to act in future as a worthy member of an honourable profession. The proper course is for the petitioner to apply to a Bench presided over by the Chief Justice and ask for a rule in the matter. The Bench over which he presides can then, if a *prima facie* case is made out, direct that a rule be issued and call upon the Government Advocate to show cause why the petitioner should not be reinstated. The matter would then come up before a Bench specially constituted and the case would be determined by that Bench. 12 C. L. J. 625 Foll. (*Miller, C. J. and Mullik, J.*) MATHURA PRASAD, *In re.* 1 P. 684 :
24 Cr. L. J. 74 : 4 P. L. T. 303 : 1922 P. 604.

——— S. 13—*Acting as arbitrator — Personal interest.*

LEGAL PRACTITIONERS ACT (XVIII OF 1879), S. 14.

Where a pleader who had been engaged by the plff. withdrew on behalf of defendant money, which he knew was payable to the plff. and took a conspicuous part as arbitrator in a matter in which he was seriously and personally concerned, he was guilty of professional misconduct. (*Chamier, C. J., Sharfuddin and Chapman, JJ.*) *In the matter of* TWO PLEADERS.
1 Pat. L. W. 483 ; 1917 Pat. 217 : 41 I. C, 328 : 18 Cr. L. J. 808 : 2 Pat. L. J. 259.

———S. 14—*Criminal proceedings pending—Renewal of pleader's certificate.*

Where a prosecution is ordered against a legal practitioner instead of proceeding according to S. 14, the Judge ought not to wait until the result of the criminal proceedings are known before renewing the pleader's certificate. (*Richards, C. J., Tudball and Rafique, JJ.*) *In the matter of.* A PLEADER 38 All. 182 : 33 I. C. 632 : 17 Cr. L. J. 152 : 14 A.L. J. 82.

———S. 14—*Nature of proceedings under—Object of section—Written statement put in.*

Per *Sanderson, C. J.*—S. 14 of the Legal Practitioners Act was probably provided for the purpose of giving the High Court the benefit of the District Judge's opinion and also as an additional protection to the person, whose case might be under consideration. The fact that the District Judge's opinion differs from that of the Munsif does not render the proceedings improper.

Per *Woodroffe, J.*—The proceedings under the section are quasi criminal in the sense that they may result in penalties. *Quaere*—Whether the pleader can be examined on oath? It is open to the pleader in such a case to say nothing, give no explanation, adduce no evidence, or refuse to be examined, on oath. Though it is legally open to him to do so, it is neither a proper nor wise course. The onus is on the party making the charge, but any explanation offered may be taken into account.

Per *Mookerjee, J.*—Proceedings under the section are not of a criminal nature, though it is undoubtedly a judicial proceeding. Their object is to preserve the purity of courts and the proper and honest administration of the law. Fair notice and opportunity to be heard must be given. If he submits a written statement, the Court is bound to take it into consideration. But it is not obligatory on the Court to rule out all conceivable hypothetical grounds which could have been but had not been set up in answer. The ultimate decision is always with the High Court and the divergence of opinion between the lower courts does not affect jurisdiction. (*Sanderson, C. J. Woodroffe and Mookerjee, JJ.*) EMPEROR *v.* RAJANI KANTA BOSE. 35 C.L.J. 356 : 49 Cal. 732 : 26 C. W. N. 589 : 24 Cr. L. J. 33 : 1922 Cal. 515.

———S. 14—*Misconduct in Subordinate Court—Power of Dt. Judge to inquire—Power of High Court to quash proceedings.*

S. 14 of the Legal Practitioners Act empowers any court in which a pleader practises to consider a charge of misconduct made against him in such court and the section does not limit the consideration of a charge to the court in which the misconduct is alleged to have been committed. Consequently it is open to the Dt. Judge to institute proceedings under the Act against a pleader in respect of his misconduct in a Subordinate Court 188 P. L. R. 1921 Ref. If on the facts charged, there is no ground for proceeding under the Legal Practitioners Act, the High Court can quash the proceedings under the Act.

Per *Mookerjee, J.*—S. 14 of the Legal Practitioners Act does not specify the nature of the materials upon which the Court concerned may take action. If the proceedings are instituted there must be an enquiry and supported by legal evidence. 15 C. 152 Ref. The charge must be formulated with precision so as to enable the legal practitioner to meet the allegations against him. (*Sanderson, C. J., Woodroffe and Mookerjee, JJ.*) RABINDRA CHANDRA CHATTERJEE, *In re.*
49 Cal. 850 : 35 C. L. J. 520 : 1922 Cal. 484.

———S. 14—*Vakalatnamah—Acceptance of—Bona fide mistake—Effect of.*

It is the duty of pleaders to strictly observe the rules relating to the acceptance of Vakalatnamahs. Where a pleader through a *bona fide* mistake accepted a vakalatnamah believing it to have been executed by the executant and the court accepted his explanation and warned him to be careful in future, the ends of justice would be met thereby and proceedings need not be started afresh. (*Sanderson, C. J. and Cholzner, J.*) JNANENDRA KUMAR CHOWDHURY, *In the matter of.* 23 Cr. L. J. 65 : 1922 Cal. 178.

———Ss. 14 and 36—*Proceedings under—C. P. C.* (1908), *S.* 16—*Applicability of.*

Summoning, enforcing attendance of witness and production of documents would be made as prescribed by C. P. C., S. 16 in an enquiry by the Dt. Judge under the Legal Practitioners Act. 26 M. 596 ; 6 M. 252 Rel. 11 C. L. J. 513, Dist. (*Chatterjee and Newbould, JJ.*) NANDO LAL ROY *v.* BASERALI. 50 I. C. 806 : 23 C. W. N. 560.

———S. 14—Mukhtear *practising without license—Misconduct—Whether report to High Court lies.*

A report to High Court under S. 14 of the Act recommending the dismissal of a *mukhtear* having no license to practise in a Revenue office for gross misconduct, does not lie as the misconduct was committed in the capacity not of a *mukhtear* but as a private individual and came to light in a proceeding wherein he was not a party but only a witness. (*Chitty and Teunon, JJ.*) DINESH CHANDRA BHATTACHARJEE, *In re.*
15 Cr. L. J. 378 : 23 I. C. 746 : 19 C. L. J. 110.

———S. 14—*Procedure—Natnre — The procedure of S. 14 must be strictly followed.*

The proceedings must be separate and distinct and cannot be made part of criminal proceedings. The opinion of the officer making the report must accompany the report of the High Court. (*Casperz and Chitty, JJ.*) FAZLAR RAHMAN. *In re.*
12 Cr. L. J. 40 : 9 I. C, 247 : 15 C. W. N, 764.

LEGAL PRACTITIONERS ACT (XVIII OF 1897), S 14.

———S. 14—*Power of suspension—Report—Investigation—Meaning.*

By 'investigation' in para. 5 of S. 14 is meant investigation in the High Court. It is only after a report to the High Court under para. 4 that power is given to suspend under para. 5. (*Woodroffe and Carnduff, JJ.*) BAJIRANJI SHAHAI, *In re.*

13 C. L. J. 457 : 9 I. C. 225 : 12 Cr. L. J. 33 : 15 C. W. N. 269.

———S. 14—*Reference—Costs of.*

A Dt. Judge has no power to award costs in a matter referred by him to the High Court, under the Legal Practitioners Act. (*Kumarasawmi Sastri, J.*) VENKATA RAO v. MARWADI MOTIRAM.

26 I. C. 125 : 1 L. W. 937.

———S. 14—*Scope of enquiry—Asking Bench clerk for trend of judgment before it is delivered—Professional misconduct.*

By S. 14 of the Legal Practitioners Act a court has power to enquire into offences under cls. (a), (b) and (f). A lawyer is perfectly within the bounds of his profession if he enquires from the Bench clerk about the trend of the judgment before it is actually pronounced. (*Dawson Miller, C. J., Kulwant Sahay and Foster, JJ.*) NARENDRA NATH ROY, *In the matter of.*

1923 Pat. 329 : 25 Cr. L. J. 40 : 1924 P. 131.

———S. 14—*Offence committed in court of Sub-Divisional officer—Power of Sessions Judge to take action.*

Where certain offences are alleged to have been committed by a Mukhtear before a Sub-Divisional Magistrate, the Sessions Judge of the District has no jurisdiction to take action under S. 14 of the Legal Practitioners Act. (*Miller, C. J., Mullick and Kulwant Sahay, JJ.*) MANAZIRUL HUQ, *In the matter of.*

1923 Pat. 45 : 4 Pat. L. T. 97 : 24 Cr. L. J. 239 : 1923 P. 185.

———Ss 14 and 13—*Disciplinary jurisdiction of High Court—Reference by appellate court—Statement on behalf of a party whose brief the pleader does not hold.*

The High Court would exercise its disciplinary jurisdiction even though the reference under S. 14 with regard to alleged misconduct of a pleader is not made by the trial Court where the occurrence has taken place but by the appellate court which has no power to refer it. It would be necessary however that the High Court should make an enquiry. What the nature of that enquiry ought to be is clearly a matter for the discretion of the court. Though the attitude of forgetfulness taken by the pleader perhaps to shield some of the parties was reprehensible and suspicious, the Court not having been satisfied that he was a party to a fraud, no extreme steps were taken. (*Miller, C. J., Mullick and Jwala Prasad, JJ.*) BANAMALI DAS, *In re.*

1 P. 689 : 4 P. L. T. 235 : 1 P. L. R. 57 : 24 Cr L. J. 81 : 1922 P. 608 (2).

———S. 14—*Jurisdiction of Dt. Magistrate to institute proceedings—Offence committed before another Court—Personal knowledge.*

Under S. 14 of the Legal Practitioners Act the proceedings could be instituted only by the Deputy Magistrate in whose Court the alleged misconduct or offence took place. 1 P. L. J. 576, Foll. The Dt. Magistrate acted improperly in relying upon his own recollections of facts when they differed from those of other witnesses and it was undesirable for him to sit as a Judge to determine the matters in respect of which he might have been called upon to report or examined as a witness. (*Miller, C. J., Mullick and Jwala Prasad, JJ.*) EMPEROR v. SATYENDRA NATH RAY.

1920 Pat. 225 : 57 I. C. 277 : 21 Cr. L. J. 613 : 1 Pat. L. T. 379.

LEGAL PRACTITIONERS ACT (XVIII OF 1879), S. 14.

———S. 14—*Removal of record and substitution of another in its place without consent.*

The removal from the Court by a mukhtear of a complaint which charged the *peshkar* with complicity in a certain offence in order to substitute therefor, without the consent of the complainant, another petition which omitted the charge against the *peshkar*, amounts to gross misconduct. The certificate of the *mukhtear* was cancelled and he was debarred from practice. (*Chamier, C. J., Sharfuddin and Chapman, JJ.*) EMPEROR v. MATHURA PRASAD.

43 I. C. 93 : 1917 Pat. 265 : 19 Cr. L. J. 61.

———S. 14 *Proceedings under—Nature of——C. P. C., S. 141—Transfer of enquiry—Government of India Act* (1915), *S.* 107.

Where proceedings were instituted under the Leg. Practrs. Act before the Dt. Munsif and an application was made to transfer the same to another Court. *Held*, that the procedure under the Legal Practrs. Act is neither Criminal nor Civil but purely designed for the purpose of discipline. Such disciplinary proceedings under S. 14 are not proceedings of a Court of Civil Jurisdiction and S. 141, C. P. C. cannot apply to them. The enquiry under S. 14 of the Legal Practrs. Act, cannot be delegated to another officer who is not the presiding officer of the Court in which the malpractices complained of, were committed. Applicability of S 107 of the Govt. of India Act, 1915, to proceedings under S. 14 of the Legal Practrs. Act, discussed. (*Mullick and Atkinson, JJ.*) JANAK KISHORE, *In the matter of.*

1917 Pat. 60 : 37 I. C. 484 : 18 Cr. L. J. 132 : 1 Pat L. T. 576.

———S. 14 *Misconduct of pleader—Power to inquire—Jurisdiction of court.*

The first clause of S. 14 of the Legal Practitioners Act empowers any Court in which a pleader practises to consider a charge of misconduct made against him in such court, and the section does not limit the consideration of the charge to the court in which the misconduct is alleged to have been committed so that it seems immaterial that the misconduct charged was committed in another Court. If the charge is made in the Court in which the Pleader practises, that Court is competent to enquire into it. The expression "such Court" in the first clause of S. 14 cannot be construed to mean the Court in which the misconduct is alleged to have been committed. The section only means that any Court in which a Pleader practises is competent to enquire into a charge of misconduct, if the charge is brought in that

LEGAL PRACTITIONERS ACT (XVIII OF 1879), S, 27.

Court. (*Maung Kin and Duckworth, JJ.*) MAUNG TUN AUNG GYAW *in the matter of.*
24 Cr. L. J. 409 : 72 I. C. 521 : 11 L. B. R. 111.

——S. 27—*Scope of.*

S. 27 of the Act has no reference to the fees payable by a party to his own pleader, advocate or vakil because that is regulated by private agreement. (*Mookerjee and Carnduff, JJ.*) KAMINI MONI DEBI *v.* KHETTRA MOHAN.
17 C. W. N. 45 : 13 I. C. 43 : 15 C. L. J. 660.

——S. 27 *Engagement of more than one vakil—Rights to fees.*

When a client engages more than one pleader he is presumed to expect the full services of the gentlemen to whom he has given the *vakalat*. If more than one pleader is retained by the same *vakalat* all of them cannot share the single fee allowed against the losing party. 7 C. W. N. 300 Not Appr. 1 M. H. C. R. 369, Dist. (*Ayling and Seshagiri Aiyar, JJ.*) RAMAKRISHNA RAO *v.* VENKATARAMAYYA. 38 I. C. 210.

——Ss. 27 and 28 *Fees—Suit for remuneration for work done.*

The Act does not impose any limitation upon the fees recoverable by practitioners from their clients. S. 27 refers to fees to be paid to the adversary's pleader, where the fees are not settled before hand and the suit is one for remuneration for work done; the Court in assessing the amount performs the functions of the taxing officer in England and when it assesses the remuneration at a certain amount having regard to the circumstances, an Appellate Court should be very slow to interfere with its discretion. (*Wallis, C. J. and Tyabji, J.*) MAHARAJA OF VIZIANAGARAM *v.* NARASINGA RAO. 29 I. C. 763.

——Ss 27 and 28—*Right to retain costs for fees.*

An advocate cannot retain anything of what he has received from the other party as costs awarded, etc., on the ground that he was retained for a sum lesser than what he would have been entitled to under the taxation rules. S. 27 authorised the Court to regulate fees payable by a party in respect of the fees of his adversary's advocate and assumes the propriety of advocates charging a daily fee after the first day. (*Fox, C. J. and Parlett, J.*) JULIAN FRANCIS COOLHO *v.* COWASJEE. 33 I. C. 107.

——S. 28—*Suit by* Mukhtear *for fees.*

Suit by a *Mukhtear*, for recovery of money due, on account of fees for his services, is maintainable. (*Banerjee, J.*) HAR SAHAI MAL *v.* BIRJ LAL. 18 A. L. J. 373 : 58 I. C. 182 : 2 U. P. L. R. (All.) 86.

——S. 28—*Failure to file agreement.*

Even an illegal agreement if not actually filed under S. 28 cannot be acted on and if the pleader was actuated by *bona fide* intentions, no action ought to be taken on it. (*Richards, Griffin and Tudball, JJ.*) MIRZA AFZAL BEG *v.* JYOTISWARAPU. 12 Cr. L. J. 12 : 9 I. C. 130 : 8 A. L. J. 151.

LEGAL PRACTITIONERS ACT (XVIII OF 1879), S, 28.

——S. 28—*Suit by pleader for remuneration on foot of an adjusted account—Account not filed in court—Right to reasonable remuneration.*

When there is no agreement between the pleader and his client, the pleader is entitled to maintain an action for reasonable remuneration for services rendered. But where there is a contract between the parties such contract to be enforceable must fulfil the requirements of S. 28 of the Legal Practitioners Act. *viz.*, that the contract must be in writing and the writing must be deposited in court within the prescribed period. Where there was an agreement between the pleader and the client for remuneration but the agreement was not deposited in court and the pleader sued the client for the balance due on an adjustment of accounts, *held*, that the suit was one in essence to enforce an agreement which did not comply with the requirements of S. 28 of the Act. (*Mookerjee and Cholzner, JJ.*) KALIPADA DAS *v.* DURGADAS ROY. 27 C. W. N. 769 : 1923 Cal. 677.

——S. 28—*Suit for fees—Oral agreement—If maintainable—"Amount", if to be fixed.*

Where a suit by a pleader for fees against the client is based on an agreement, he cannot succeed unless the agreement is both in writing, signed by the party to be charged and filed as provided in S. 28 of the Legal Practitioners Act. The 'amount' referred to in S. 28 need not be a fixed sum. (*Greaves, J.*) BEACHARAM LAHIRI *v.* SUDEBI DASI. 26 C. W. N. 709 : 1922 Cal. 567.

——S. 28—Quantum meruit.

Where a pleader takes up a brief without any agreement as to the amount of fees or the manner of his payment, he is entitled to recover on an implied promise a reasonable remuneration. A suit to recover such sum is not affected by S. 28. In the absence of any agreement, a pleader is entitled to *quantum meruit* which has to be determined according to the circumstances of the case. 15 C. L. J. 660 ; 15 C. L. J. 690 ; 20 C. L. J. 424, Ref. (*Mookerjee and Chapman, JJ.*) SIB KISHOR GHOSH *v.* MANIK CHANDRA NATH.
29 I. C. 453 : 21 C. L. J. 618.

——S. 28—*Oral agreement.*

An oral agreement between a pleader and his client for payment of fees and litigation expenses is invalid and unenforceable. (*Mookerjee and Beachcroft, JJ.*) ISHAN CHANDRA *v.* RAM CHARAN.
26 I. C. 960 : 20 C. L. J. 445.

——S. 28—*Pleader and client—Contract between.*

A contract between a pleader and his client, to be enforceable must satisfy S. 28 of the Legal Practitioners Act. But no written contract need be produced where a pleader works on the expectation of being paid in the ordinary course. His claim can be based on S. 70 of the Contract Act. (*Stephen and Mullick, JJ.*) MOHENDRA LAL BISWAS *v.* AKHIL CHANDRA PAKRASHI.
20 I. C. 47 (1) : 20 C. L. J. 424.

——S. 28—*Requisites of a valid agreement.*

An agreement made under S. 28 of the Act must be in writing signed by the client and

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submitted in a Court within the prescribed period and an agreement in contravention of this section is of no avail to a pleader either as a plff. or as a deft. 9 M. 375; 14 M. 63; 17 M. 306, 27 M. 512; 12 A. 169; 25 A. 764; 4 A. L. J. 535, Diss.; 7 C. W. N. 300, Exp. and Dist. (*Mookerjee and Carnduff, JJ.*) KAMINI MONI DEBI *v.* KHETTRA MOHANA. 15 C.L.J. 660 : 13 I.C. 43 : 17 C.W.N. 45.

———S. 28—*Agreement to pay fees—Lien on client's money for fees, if exists.*

If an agreement for payment of fees by a client is contrary to the provisions of S. 28 of the Legal Practitioners Act, a pleader has no lien on monies of the client. (*Mookerjee and Coxe, JJ.*) KAMINI DEBI *v.* KHETTRA MOHAN.
15 C. W. N. 681 : 11 I. C. 382 : 15 C. L. J. 690.

———S. 28—*Promissory note for out-fees—Right of pleader to recover the amount.*

A promissory note executed to a pleader by his client in respect of out-fees disbursed by him is invalid if not filed in Court under S. 28. The pleader can obtain a decree for his sums actually spent by him on the original cause of action. Such a promissory note, even though invalid for not being filed in Court, may still operate as an acknowledgment of liability and the dismissal of a suit on the note does not bar a fresh suit on the original cause of action but interest at the rate specified on the note cannot be allowed. 27 M. 512; 14 M. 63; 16 M. 278, Foll. (*Kumaraswami Sastri, J.*) NATESA MOOPPAN *v.* RAMACHANDRA AIYAR. 1 L. W. 1070 : 27 I. C. 116 : 27 M. L. J. 728.

———S. 28—*Oral agreement.*

A verbal agreement for fees by pleaders is not valid under S. 28. (*Abdur Rahim and Sadasiva Aiyar, JJ.*) KATTICH RAMUNI *v.* UDAYAMAGALTH.
14 I. C. 279 : (1912) M. W. N. 524.

———S. 28—*Agreement for fees.*

The provisions of S. 28 of the Legal Practitioners Act regarding the filing of agreements between pleaders and clients in the District Court or some other court where the work is to be done, are applicable to agreements for fees in respect of the practitioner's services, if the business lies neither in a civil court nor in a criminal court. (*Fox, C.J. and Hartnoll, J.*) T. GAME *v.* V. KYE.
6 Bur. L. T. 18 : 19 I. C. 209 : 7 L. B. R. 6.

———S. 35—*Tout— Declaration— Grounds—Legal.*

Proof by general repute or otherwise is necessary before a person can be declared a tout under the section. (*Johnstone, J.*) SHANKER SINGH *v.* EMPEROR. 112 P. L. R. 1912 : 15 I. C. 307 : 13 Cr. L. J. 467 : 12 P. W. R. (Cr) 1912.

———S. 36—*Declaration of a person as tout—Inquiry—Mode of—Discretion of District Judge.*

The only qualifications imposed by the Act on the exercise of the discretion in declaring a person a tout are that the District Judge must be satisfied by evidence of general repute or otherwise and further that no person's name is to be included in a list of touts until he has had an opportunity of showing cause against such inclusion. It is a valid ground for interference by the High Court, in the exercise of its general powers of supervision, if the District Judge had disobeyed this latter direction and had included in his list of touts the name of a person who had never been allowed an opportunity of showing cause against such inclusion It has never been the intention of the Legislature to allow anything of the nature of an appeal against the decision of a competent Court under S. 36 of Act of XVIII 1879. The High Court cannot allow its general powers of supervision to be invoked so as, in effect, to create a right of appeal which was never intended by the Legislature. (*Mears, C. J. and Piggott, J.*) KASHINATH *v.* EMPEROR. 45 A. 676 : L. R. 4 A. 317 : 21 A. L. J. 671 : 9 O. & A. L. R. 696 : 1924 All. 69.

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———S. 36—*Tout — Declaration — General repute—Meaning of.*

A person sought to be proclaimed as a tout under S. 36 of the Act can be proved to be such by evidence of general repute including hearsay evidence which may be tested by cross-examination. The exhibition of the copy list referred to in S. 36, Cl. (3) of the Act is necessary to constitute a man a proclaimed tout. The principle applicable in cases under S. 110 of Cr. P. Code apply to cases under S. 36. (*Walsh, J.*) KALKA PRASAD *v.* EMPEROR. 40 All. 158 : 44 I. C. 125 : 19 Cr. L. J. 269 : 16 A. L. J. 76.

———S. 36—*Jurisdiction — Order declaring tout.*

Where a person's name is published in a list of touts and the list applies to courts over which the judge has no jurisdiction, the order is bad. (*Newbould and Suhrawardy, JJ.*) JAGAT CHANDRA GHOSE *v.* EMPEROR. 25 Cr. L.J. 34 : 1923 Cal. 484

———S. 36— *Tout — Writing petitions and looking after people's cases.*

In order that a person may be declared a tout, it must be proved that he gets the employment in any legal business from any practitioner for moving for such practitioner. Merely looking after people's cases and writing petitions does not make a person a tout. (*N. R. Chatterjee and Panton, JJ.*) KERAMAT ALI *v.* EMPEROR.
62 I. C. 839 : 22 Cr. L. J 589.

———S. 36—*Tout—Declaration—Inquiry.*

An order under S. 36 of the Legal Practitioners Act declaring a person to be a tout can be made only by one of the authorities specified in that section and upon evidence taken by such authority himself. (*Mookerjee, C. J. and Fletcher, J.*) NAGAR CHANDRA MANDAL, *In the matter of.*
60 I. C. 321 : 24 C. W. N. 1074.

———S. 36—*Tout—Enquiry by Magistrate—Delegation — Evidence—Opportunity to cross-examine.*

An enquiry under S. 36 of the Legal Practitioners Act must be made by the Dt. Magistrate himself and cannot be delegated to any subordinate officer. 12 C. W. N 842 Foll. The decision of a Court determining that a person is a tout must be based on substantial legal evidence. 4 C. W. N. 36. Rel. The person against whom the

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evidence is directed must have an opportunity of cross-examining the witnesses. (*Brett and Sharfuddin, JJ.*) HARIPADA MUKERJI, *In re.*
15 I. C. 654 : 13 Cr. L. J. 510.

———S. 36—*Tout, Definition of.*

Under the Legal Practitioners Act, a tout is a person who procures the employment of legal practitioners in any legal business in consideration of any remuneration. A person who is merely seen in Court often times will not come within this definition. (*Mookerjee and Carnduff, JJ.*) SUNDAR UPADHYA *v.* THE PRESIDENT OF THE MUKTEARS ASSOCIATION.
11 I. C. 432 : 15 C. W. N. 1000.

———S. 36—*Tout—Included in list of Magistrate.*

Proceedings under S. 36 are neither governed by the Civil or the Criminal Procedure Codes and cannot be revised under the Civil or Criminal jusisdiction. But the High Courts have held that they have jurisdiction to interfere under S. 15 of the High Courts Act. (*Kensington, C. J. and Ratligan, J.*) SADRUDDIN *v.* EMPEROR.
18 P. R. (Cr.) 1914 : 51 P. W. R. (Cr.) 1914 : 25 I. C. 513 : 15 Cr. L. J. 601 : 266 P. L. R. 1914.

———S. 36—*Tout—Proceedings against—Procedure—Irregularity—Power to interfere—High Court.*

In proceedings to declare a person a tout under S. 36 of the Legal Practitioners Act, it is not necessary that there should be a petition. The Court can act on evidence of general repute provided an opportunity is given to the alleged tout to rebut the evidence against him and to place his case before the Court. 11 C. L. J. 213 Rel. The High Court has power to interfere with an order of the court below in proceedings under S. 36 of the Legal Practitioners Act. 15 C. W. N. 1000 ; 4 C. W. N. 36 ; (1912) M. W. N. 959 ; 28 I. C. 918 ; 61 I. C. 829 Rel. (*Venkatasubba Rao, J.*) VARADARAJACHARIAR *v.* KALYANASUNDARAM AIYAR.
44 M. L. J. 437 : 23 Cr. L. J. 705 : 16 L. W. 795 : 1923 Mad. 186 (2).

———S. 36—*Tout—Declaration—Evidence.*

To declare a person a tout it is necessary to have some evidence of the facts required by S. 3 of the Leg. Practrs. Act as amended by Act XI of 1896. A stray admission by a person that he is a tout without understanding its full legal significance, is not enough to declare him a tout, (*Tyabji, J.*) JONALAGEDDIA SAMBAYYE, *In re.*
28 I. C. 918.

———S. 36—*Tout—Evidence.*

There must be legal evidence to prove that a person is a tout. The mere report of the Bar Association is not enough (*Wallis, J.*) *In re* SOMAYAJULU RAMAMURTHI.
12 M. L. T. 259 : 17 I. C. 251 : (1912) M. W. N. 959.

———S. 36—*Tout—Declaration—Dt. Munsiff.*

A Dt. Munsiff has no power to declare a man a tout under S. 36 of the Legal Practitioners Act. He can enquire into the matter and report to the Dt. Court. A person cannot be prohibited from entering court on the ground that he is a

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tout unless the presiding officer takes steps to have the person declared a tout on due inquiry. *Per Sadasiva Aiyar, J.* :—Such an order is not a judicial order and cannot be revised by the High Court. It is a purely departmental affair. (*Sundara Aiyar and Sadasiva Aiyar, JJ.*) RAVINUTHALA VENKATAPPAIAH *v.* SECY. OF STATE.
12 M. L. T. 411 (1) : 16 I. C. 895 : (1913) M. W. N. 370.

———S. 36—*Tout—Procedure to declare a person a tout—Scope of section.*

It is necessary before directing inclusion of a person's name in the list of touts to give the person an opportunity of showing cause against the inclusion. The duties to be undertaken under the section cannot be delegated by any of the officers mentioned therein to their subordinates. (*Miller, C.J., Coutts and Das, JJ.*) MOHANA DAS *v.* EMPEROR.
22 Cr. L. J. 66 : 59 I. C. 322 : 1919 Pat. 273. (S. B.).

———S. 36—*Tout—Declaration—Procedure.*

Notice to show cause why a person should not be declared a tout must be given to him and evidence should be taken in his presence to show that he is a tout. (*Chamier, C. J., Sharfuddin and Chapman, JJ.*) ABU MUHAMMAD *v.* EMPEROR.
5 Pat. L. W. 229 : 19 Cr. L. J. 36 : 42 I. C. 996 : 1917 Pat. 186. (F.B.).

———S. 36—*Order under—Revision.*

The High Court cannot in its revisional jurisdiction interfere under S. 115 with an order under S. 36, Legal Practrs. Act. The enquiry under the Legal Practrs. Act is in the nature of the departmental inquiry aud it may be conducted in such a way that the officer inquiring acts with substantial justice and gives the person against whom proceedings are being taken an opportunity to defend himself. (*Kennedy and Raymond, A. J. Cs.*) *In re* MULCHAND.
21 Cr. L. J. 449 : 56 I. C 433 : 13 S. L. R. 212.

———S. 40—*Notice to show cause.*

The provisions of S. 40 are applicable to interim orders of suspension passed under S. 14 para 5 ; before the passing of an interim order of suspension under S. 15 (5) he must be asked to show cause under S. (4) and a report must be sent to the High Court under S. 14 (4). (*Woodroffee and Carnduff, JJ.*) *In re* BAJRANGI SAHAI.
13 C. L. J. 457 : 9 I. C. 225 : 12 Cr. L. J. 33 : 15 C. W. N. 269.

———S. 41, Cl. 3—*Proceedings under the Act—Conviction by Magistrate for an offence under S. 153-A., I. P. C.—Case, if can be re-opened—Offence involving moral turpitude—Penalty.*

Where proceedings under the Act are initiated against a practitioner on the strength of a conviction by a Magistrate under S. 153-A., I. P. C., it is not open to the practitioner to show that the conviction was not justified on the evidence. 22 A. 49 Foll. Moral turpitude is always involved in the commission of an act which comes under S. 153-A., I. P. C. and a practitioner convicted of the offence should be dealt with by the High Court in the exercise of its disciplinary jurisdiction. In this case the High Court ordered the name of the Advocate to be struck off the rolls

with the observation that if he wished to rejoin the profession at some future time and his attitude and conduct be favourable, his application would be considered by the Court. (*Mears, C. J. Banerjee and Rafique, JJ.*) *In the matter of* AN ADVOCATE (T. A. SHERVANI.) 44 All. 352 : L. R. 3 A. 73 : 4 U. P. L. R. (A) 1 : 20 A. L. J. 200 : 23 Cr. L. J. 128 : 1922 All. 140 (F. B.)

LEGAL REPRESENTATIVE.

See C. P. CODE, S. 2.

LEGAL REPRESENTATIVES SUITS ACT (XII OF 1855).

———*Suit for damages by manager of Hindu family—Effect of death.*

The Act does not apply during the pendency of a suit for damages for malicious prosecution by the manager of a joint Hindu family where he dies, since the Act relates to the maintainability of the suit and not to the continuation of it and since surviving members are not his representatives. (*Sadasiva Aiyar and Napier, JJ.*) SUBRAMANIA AIYAR *v.* VENKATARAMIER. 31 I. C. 4.

LEGATEE.

See WILL.

LEGISLATURE—Powers of.

See INTERPRETATION OF STATUTES.

LEGITIMACY.

See also (1) HINDU LAW.
(2) MAHOMEDAN LAW.
(3) EVIDENCE ACT, Ss. 112, 114.

———*Proof of cohabitation and acknowledgment—Presumption.*

Where there is a *prima facie* evidence of cohabitation as man and wife and a course of treatment of the lady as wife and the children as legitimate, the presumption as to legitimacy is raised and can be repelled only by strong, distinct and satisfactory evidence to the contrary. (*Mookerjee and Carnduff, JJ.*) IMAMBANDI *v.* MATASADDI. 13 I. C. 678 : 15 C. L. J. 621 : [On Appeal *See* 45 Cal. 878 : 47 I. C. 513 : 45 I. A 73 (P. C.)]

———*Presumption of—Ceremony of marriage gone through—Treatment by relations, etc.*

Where a man and a woman who were proved to have been recognised by all persons concerned as man and wife, were so described in important documents and their daughters were respectably married as would be natural in the case of legitimate children. *Held*, that on these facts, following upon a ceremony of marriage which undoubtedly took place, though its validity was attacked afforded an extremely strong presumption in favour of the validity of the marriage and legitimacy of its offspring. The like presumption applies to the question whether the formal requisites of a valid marriage ceremony were satisfied. (*Sir Arthur Wilson.*) MOUJI LAL *v.* CHANDRABATI KUMARI. 38 Cal. 700 : 15 C. W. N. 790 : 10 M. L. T. 53 : (1911) 2 M. W. N. 91 : 13 Bom. L. R. 584 : 14 C. L. J. 72 : 11 I. C. 502 : 21 M. L. J. 933 (P.C.)

———*Proof of*—Jagir *Estate.*

In cases of succession to landed property of a large value or a *jagir* more than ordinary care should be taken to place the legitimacy of a posthumous son beyond all possible dispute. (*Chevis and Shadilal, JJ.*) JAGIR SINGH *v.* DALIP KAUR. 44 I. C. 57 : 42 P. W. R. 1918.

———*Proof of—Presumption—Entry in* Khewat.

An entry in a *Khewat* founded on a mutation proceeding showing the plff. to be the reputed son of a certain person is relevant in proving their legitimacy though the defts. were not party to such proceeding. (*Lindsay, J.C.*) APARBAL SINGH *v.* NARPAT SINGH. 23 I. C. 972 ; 1 O. L. J. 89.

———*Proof of—Entry in legal proceedings.*

A memorandum of appeal substituting a person as the son of the deceased party is no proof of the legitimacy of the person. (*Piggott, J. C. and Lindsay, A.J.C.*) BHABUTI SINGH *v.* KHETAL SINGH. 21 I. C. 274.

LEPROSY.

See HINDU LAW—SUCCESSION.

LESSOR AND LESSEE.

See (1) C. P. ACT. Ss. 106—117.
(2) LANDLARD AND TENANT.

LETTERS OF ADMINISTRATION.

See PROB. AND ADMN. ACT.

LETTERS PATENT.

Allahabad.

———*Appeal under—Cross objections—Provisions of Civil Procedure Code do not apply.*

The provisions of the Code of Civil Procedure relating to cross objections do not apply to appeals under the Letters Patent. 21 All. 297 foll. (*Stuart, J.*) PRAGNARAIN *v.* ANGAD. 1922 All. 55.

———*Appeal—Court-fee.*

No court-fee is leviable upon a petition of appeal under the Letters Patent of the Allahabad High Court from the judgment of a single Judge. (*Tudball, J.*) BHADOOL PANDAY *v.* MANNI. 63 I. C. 318 : 19 A. L. J. 677.

———Cl. 8—*Vakil—Professional misconduct.*

A *Vakil*, engaged to defend in the Court of Sessions, certain persons accused of murder, prepared and put before the Sessions Judge a statement which purported to be a petition issuing from his clients and drafted on their instructions. In fact it was a petition which originated with him without instructions from his clients and which contained allegations which were made recklessly and without reasonable ground of belief. *Held*, that the *Vakil* was guilty of professional misconduct and under S. 8, Letters Patent, the *Vakil* was suspended from practising his profession. (*Mears, C.J., Banerjee and Walsh, JJ.*) *In the matter of* A VAKIL 42 All. 450 : 18 A. L. J. 419 : 56 I. C. 501 : 21 Cr. L. J. 469 : 2 U. P. L. R. (All.) 130.

———Cl. 10—*Order of Single Judge on appeal from order of remand—Letters Patent—Appeal not maintainable.*

There is no appeal under cl. 10 of the Letters Patent from an order of a Single Judge of the

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High Court on an appeal from an order of remand. 39 A. 191 followed. (*Mears, C.J. and Banerjee, J.*) GAJADHAR PRASAD *v.* NAWAB MAHOMED ABDUL MAJID. 4 L.R. A. 227 (Civ.) (1) : 1923 A. 396.

——Cl. 10—*Application for review of judgment—Order rejecting, is not appealable.*

There is no appeal against an order of a single judge of the High Court rejecting an application for review of a judgment made by another Judge previously. (*Banerjee and Gokul Prasad, JJ.*) TIRMAL SINGH *v.* KANHAIYA SINGH.
21 A. L. J. 341 : L. R. 4 A. (Civ.) 218 : 45 A. 335 : 1923 A. 356.

——Cl. 10—*Judgment—Meaning of—Order of single judge in appeals under O, 43, R. 1, C.P. Code—Appealability.*

As regards the question whether a particular adjudication is or is not a judgment within cl. 10 of the Letters Patent (All) the test seems to be not what is the form of adjudication but what is its effect in the suit or proceeding in which it is made. If its effect, whatever its form may be, and whatever may be the nature of the application on which it is made, is to put an end to the suit for proceeding so far as the court before which the suit or proceeding is pending is concerned or if its effect, if it is not complied with, is to put an end to the suit or proceeding, the adjudication is a judgment. The word 'Judgment' covers not merely final orders, but also preliminary or interlocutory orders. 35 M. 1, 17 A. 442 Rel. As a general working rule there has grown up in the Allahabad High Court a practice of regarding those matters which are mentioned in O. 43, R. 1, C.P. Code as being generally appealable from a single Judge to a Bench. (*Mears, C.J. and Piggott, J.*) SADIG ALI *v.* ANWAR ALI.
20 A. L. J. 801 : 45 A. 66 : 1923 All. 44.

——Cl. 10—*Appeal under.*

Memorandum of cross objection is not maintainable in a Letters Patent appeal (*Mears, C.J. and Bannerjee, J.*) MANGAT RAI *v.* MUSST. PURNA KUAR. L.R. 3 A. 198.

——Cl. 10—*Review of judgment.*

No application for a review of judgment is allowable where the decree was given in an appeal under Cl. 10 of the Letters Patent, 1 A. L. J. 509, Foll. (*Richards, C.J.. and Banerjee, J.*) KALYAN SINGH *v.* ALLAH DIYA.
48 I. C. 476 : 16 A. L. J. 964.

——Cl. 10—*Appeal from order in execution—Dismissal—Appeal.*

Under S. 10 of the Letters Patent (Allahabad), no appeal lies from the order of a single Judge of the High Court dismissing an appeal from an order of the executing Court on an application under O. 21, R. 90 to set aside an execution sale 14 A. 226. F. (*Richards, C.J. and Banerjee, J.*) PIARE LAL *v.* MADAN LAL.
39 All. 191 : 39 I. C. 460 : 15 A. L. J. 46.

——Cl. 10—*Judgment — Meaning—Cr. P. Code, S. 195—High Court—Meaning.*

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Order of sanction for prosecution under S. 195 Cr. P. C. is not a judgment within Cl. 10 Letters Patent; it is not appealable, when passed by a Judge of High Court, who; when sitting alone to do his part of his work, is the High Court itself and not subordinate to any Bench of the High Court. (*Richards, C. J. and Banerjee, J.*) RAMJAS *v.* MAHADEO PERSHAD. 39 All 147 : 36 I. C. 585 : 17 Cr. L. J. 537 : 14 A. L. J. 1230.

——Cl. 16 (24, 25 Vic. C. 104) —*Constitution of High Court—Appointment of sixth Judge—Legality.*

The appointment of a sixth Judge to a High Court created by Letters Patent is legal. (*Richards, C.J. and Knox, J.*) EMPEROR *v.* GHURE.
36 All. 168 : 22 I. C. 984 : 15 Cr. L. J. 200 : 12 A. L. J 231.

——Cl. 22—*Village punchayat Court—Proceedings.*

Held per Kanhaiya Lal. J. (*Stuart, J. dissenting,*) A village punchayat court is a court for the purposes of cl. 22 Letters Patent, and the High Court has got the power to transfer proceedings pending in one such court to another. (*Stuart and Kanhaiya Lal, JJ.*) SAT NARAIN *v.* SARJU.
21 A. L. J. 925 : 46 All. 167 : 1924 A. 265.

Bombay.

——Cl. 10—*Pleader—Disciplinary jurisdiction—Contempt—Criticisim of pending proceedings in court.*

Anything done or said which may amount to criticism of any proceedings pending in a court of justice is calculated to hinder the even and impartial administration of justice. Pleaders of the court are expected to extend their co-operation and assistance in the task of the administration of justice and the least that could be expected of them is that by their act they will cause no hindrance to the even and impartial administration of justice. Where pleaders of a court in public meeting assembled pass a resolution extolling the accused in a pending criminal trial for their self-sacrifice and patriotism, their conduct is likely to influence the verdict of the jury or the court in the trial and constitutes contempt. (*Shah, A. C. J. and Crump, J.*) THE GOVERNMENT PLEADER *v.* VINAYAK BALVANT CHANKAR.
24 Bom. L. R. 1049 : 47 B. 117 : 1922 Bom. 361.

——Cl. 10—*Advocates and Pleaders—Passive resistance—Signing of pledge to civilly disobey laws—Unprofessional conduct—Bombay Regulation II of 1827, S. 56.*

As a protest against the passing of the Rowlatt Act, certain barristers and pleaders practising joined a movement called the Satyagraha Sabha and signed a pledge whereby they undertook "to refuse civilly to obey such laws" as a committee to be hereafter appointed may think fit. *Held*, that the barristers and pleaders had, by signing the pledge, rendered themselves amenable to the disciplinary jurisdiction of the High Court, but that under the circumstances a warning was enough. *Per Macleod, C. J.*— Advocates and pleaders are a privileged class enrolled not only

for the purpose of rendering assistance to the Courts in the administration of justice, but also for giving professional advice, for which they are entitled to be paid, to those members of the public who require their services. It is not necessary in order for the High Court to exercise its jurisdiction that any offence should have been committed, nor is it necessary that what the pleaders have done should have subjected them to any thing like general infamy or imputation of bad character. (*Macleod, C. J., Heaton and Kajiji, JJ.*) JIVAN LAL DESA, *In re.* 54 I. C 679 : 22 Bom. L. R. 13.

———Cls. 11 and 36—*High Court—Original side—Power of Judge on Original Side to stay—Proceedings in mofussil—Charter Acts, Ss. 2, 9, 13 and 15—Appellate Side Rules (Bombay), Rr. 1 and 5—Original Side Ruls, R. 62.*

The jurisdiction of the High Court and of the Judges composing the Court is determined by the Charter Act, by the Letters Patent and by the rules framed by the Court under S. 13 of the Act. Under Cls. 11 and 36 and of the Letters Patent (Bombay) and R. 62 of the Original Side Rules, the local jurisdiction of a Judge of the High Court on the Original Side is limited to the Town and Island of Bombay. S. 15 of the Charter Act gives to the High Court powers of superintendence over all Courts subject to its appellate jurisdiction. R. 1 of the Appellate Side Rules (Bombay) provides that with certain exceptions, the civil jurisdiction on the Appellate Side shall be exercised by a Division Court of two Judges. It is not competent to a single Judge of the High Court, exercising the ordinary civil jurisdiction of Court, to stay the hearing of the suit pending for a trial in a Subordinate Judge's Court, in the mofussil unless authorised to do so, by the rule. (*Per Macleod, J.*)—A single Judge sitting on the Original Side of the High Court, is competent to restrain the parties in a suit before him from proceeding with a suit in a subordinate Judge's Court in the mofussil, and so in effect stay the proceedings, (*Scott, C. J. Batchelor, Macleod, Shah and Hayward, JJ.*) NARAIN *v.* JANKI BAI. 39 Bom. 604 : 30 I. C. 560 : 17 Bom. L. R. 655.

———Cl. 12—*'Suit for land'—Suit for maintenance charged on immoveable property.*

A claim for maintenance will be charged on immoveable property in a suit for land within the meaning of cl. 12 of the Letters Patent. (*Fawcett, J.*) YESHVADABAI *v.* JANARDHAN RAGHUNATH WARIK. 25 Bom. L. R 1172 : 1924 Bom. 141.

———Cl. 12—*Leave to sue—Cause of action outside jurisdiction—Suit against dead man—Subsequent addition of legal representative—Fresh leave if necessary.*

Plaintiffs obtained leave under cl. 12 of the Letters Patent and instituted a suit against a person who resided outside jurisdiction. It was found that when the suit was instituted defendant was dead. The plaintiffs amended the cause title of the plaint by substituting the name of the defendant's legal representatives in his place. The legal representative was himself residing out of the jurisdiction. *Held*, that the suit as

originally instituted was invalid and that the plaintiff should obtain leave for suing the defendant's legal representative. 20 B. 767 foll. (*Mulla, J.*) RAMPRATAB BRIJ MOHANDAS *v.* GAURI SHANKER. 25 Bom. L. R. 7 : 1924 Bom. 109.

———Cl. 12—*Administration suit is not a suit for land.*

An administration suit is not a suit for land within Cl. 12 and a High Court has jurisdiction to entertain a suit even though some immoveable properties are alleged to belong to the estate to be administered to be outside its ordinary original civil jurisdiction. (*Macleod, C. J. and Shah, J.*) ABDUL HUSSAIN *v.* MAHOMEDALLY. 65 I. C. 160 : 23 Bom. L R. 1326.

———Cl. 12—*Jurisdiction—Partition suit—Part of property situate outside British India—Leave of Court.*

The High Court has no jurisdiction to entertain a suit for partition of lands outside British India even though part of the estate was within the local limits of the ordinary original civil jurisdiction. But the Court would, under Cl. 12 of the Letters Patent, have power in granting leave, to exercise the jurisdiction. The Court would however be very slow to grant leave as difficulties would arise in the execution of the decree that might be passed in the suit. The Court can exercise this at the hearing or even at once against the applicant for leave. Even a granting of leave at the time of the application does not bind the Court, at the hearing, from deciding that no direction shall be made as regards properties outside British India but that the parties should be left to a separate suit. (*Macleod, C. J. and Shah, J.*) GOVINDLAL *v.* BANSILAL 23 Bom. L. R. 1049.

———Cl. 12—*Third party procedure—Bombay High Court Rules, Ch. VIII, r. 127.*

A defendant, asking for the issue of a third party notice in a case in which leave has to be obtained under cl. 12, should apply to the Judge for such leave to be endorsed on the notice in the same way as it is endorsed on a plaint. It is open to the third party to raise, at the trial, any issues which an added defendant is entitled to raise, one of which is whether leave ought not to have been given under cl. 12 as he was residing outside jurisdiction. Where Judge makes an order granting leave, it should appear clearly on the face of it that he was giving leave under cl. 12. (*Macleod, C. J. and Heaton, J.*) KARIM ELAHI SHETI *v.* SHER AHMAD HAJI MIR AHMED. 45 Bom. 24 : 59 I. C. 28 : 23 Bom L. R. 863.

———Cl. 12—*Third party proceedings—Cause of action partly outside jurisdiction—Party outside jurisdiction—Leave to proceed.*

"Suits of every other description" in cl. 12 of the Letters Patent include third party proceedings and leave of the High Court must be obtained to proceed therein, when part of the cause of action arises outside the jurisdiction of the High Court and the third party also resides outside the jurisdiction. No such leave can be inferred from the fact that leave was obtained to issue the third party notice, as that does not

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imply a judicial consideration of the question. (*Marten, J.*) WELD & Co. *v.* SHER AHMED EKBAL AHMED. **59 I. C. 12 : 21 Bom. L. R. 808 at p. 810.**

——Cl. 12—*Leave of the Court—High Court—Suit on Hundi—Hundi not payable in Bombay.*

The Bombay High Court has no jurisdiction to entertain the suit on *Hundis* which were not made payable in Bombay and the fact that the consideration for the *Hundis* was the balance of accounts, due by the deft. to the plff. in respect of transactions effected in Bombay is no part of the cause of action. (*Macleod, J.*) SEWARAM *v* BAJRANGDAT. **40 Bom. 473 : 32 I. C. 918 : 18 Bom. L. R. 57.**

——Cl. 12—*Leave of Court, absence of jurisdiction.*

The absence of leave under Cl. 12 of the Letters Patent goes to the root of the jurisdiction of the Court and the Court trying issues, in the absence of such leave, is not competent to try it within the meaning of S. 44 of the Evidence Act. (*Scott, C J. and Shah, J.*) ABDUL KADAR *v.* DULANBIBI. **37 Bom. 563 : 20 I C. 530 : 15 Bom. L. R. 672.**

——Cl. 12—'*Suit for land.*'

'Suit for land' does not mean only suits for recovery of land. The words include a suit which, having regard to the real object of the suit is substantially a suit for land and is in effect and reality a suit to establish title to the land and for the recovery of possession thereof. (*Devar, J.*) LULEKABI *v.* EBRAHIM. **37 Bom. 494 : 17 I. C. 198 : 14 Bom. L. R. 846**

——Cl. 15—*Judgment—Sanction for prosecution under S. 195, Cr. P. Code.*

It is doubtful whether an order refusing to grant a sanction to prosecute under S. 195, Cr. P. Code, is a judgment within this clause. (*Shah, A. C. J. and Crump, J.*) ABDUL LATIF USMAN *v.* HAJI TAR MAHOMED. **24 Bom. L. R. 817 : 23 Cr. L. J 497 : 1922 Bom. 455.**

——Cl. 15—'*Judgment*'—*Meaning of—Bombay High Court Rules, Rr.* 130 *and* 131.

"Judgment" in Cl. 15 means a decision affecting the merits of the question between the parties by determining some right or liability. It may be final or preliminary or interlocutary the difference between them being that a final judgment determines the whole cause or suit and a preliminary one only a part of it. An order refusing the directions in third party proceedings under rules 130 and 131 of the High Court Rules is not a "judgment" within Cl. 15 of the Letters Patent and is not appealable under that clause. (*Macleod, C. J. and Fawcett, J.*) CHARANDAS CHATURBHUJ *v.* CHHAGANLAL. **45 Bom. 428 : 59 I. C. 533 : 22 Bom L. R. 1169.**

——Cl. 15—*Judgment—Order giving liberty to withdraw.*

A pronouncement giving plaintiff liberty of withdrawing his suit made after recording evidence and hearing argument is a judgment within the meaning of cl. 15. (*Heaton, A. C. J. and Marten, J.*) NARANDAS RAGHUNATH DAS *v.* SAHNTILAL BHOI ABHAI. **45 Bom. 877 : 58 I. C. 1004 : 22 Bom. L. R. 1012.**

LETTERS PATENT (BOMBAY), Cl. 36.

——Cl. 15—"*Judgment*"—*Order refusing to restrain deft. from prosecuting suit in a foreign Court.*

An order refusing to restrain the deft. by an injunction from prosecuting his suit in a foreign Court is not a "judgment" within Cl. 15 of the Letters Patent and no appeal lies from such an order. 8 Bom. L. R. 433, 452 ; 32 Bom. 602, 610, Ref. A "judgment" means a decision affecting the merits of the question between the parties by determining some right or liability. (*Macleod, C. J. and Heaton, J.*) VANI CHAND RAJ PAL *v.* LAXMI CHAND MANECK CHAND. **53 I. C. 395 : 21 Bom. L. R. 955.**

——Cl. 15—*Judgment—Order of single Judge refusing to excuse delay in presentation of appeal.*

An order of a single Judge of the High Court refusing to excuse the delay in presentation of the appeal is in effect an order dismissing the appeal and is a 'judgment' within Cl. 15 of the Letters Patent (Bombay.) (*Heaton and Shah, JJ.*) RAMACHANDRA GANGADHAR *v.* MAHADEO MORESHWAR, **42 Bom. 260 : 44 I. C. 913 : 20 Bom. L. R. 172.**

——Cl. 29—*Village Magistrate's proceedings—Jurisdiction to quash.*

Bombay High Court has no power to quash proceedings before Village Patil under the Cr. P. C. but it has such power under the Letters Patent. 10 Bom. L. R. 630, Rel. (*Heaton and Pratt, JJ.*) VASUDEO PUNDALIK SAMANT, *In re.* **50 I. C. 491 : 20 Cr. L. J. 315 : 21 Bom L. R. 274.**

——Cl. 36- *C. P. Code, S.* 98 *does not appeal Cl.* 36—*Costs, question of.*

According to Cl. 36, if the Judges are equally divided in opinion, that of the senior prevails, S. 98 of the C.P. C. which provides for reference of the disputed point to one or more other Judges does not affect Cl. 36 of the Letters Patent. In the present case, the Board had all the materials before them and were willing to decide the question at issue, but the appellant would not consent to this being done Therefore the Board reserved the costs of appeal and decided that the appellant should pay them even in case of success. (*Lord Buckmaster.*) BHAI DAS SHIV DAS *v.* BAI GULAB. **45 Bom. 718 : 48 I. A. 181 : 25 C. W. N. 605 : 33 C. L. J. 488 : 19 A. L. J. 409 : 23 Bom. L. R. 623 : 3 U. P. L. R. (P. C.) 22 : 26 C. W. N. 129 : 14 L. W. 7 : 29 M. L T. 350 : (1921) M. W. N. 408 : 60 I. C 822 : 40 M. L. J. 519 (P. C.)**

——Cl. 36—*Difference of opinion—Second appeal.*

On a difference of opinion between an appeal from the Mofussil the procedure is governed by

LETTERS PATENT (BOMBAY), Cl. 39.

S. 98, C. P. Code and not by Cl. 36 of the Letters Patent. 3 B. 204 ; 25 M. 558 ; 22 M. 68 ; 11 A. 176 Rel. (*Scott, C. J., Heaton, Macleod, Shah Din and Hayward, JJ.*) BHUTA JAYAT SING *v* LAKHU DHANSINGH. **43 Bom. 433 and 492 : 50 I. C. 715 ; 21 Bom. L. R. 157 (F.B.).**

——— Cl. 39—*Case stated under Income Tax Act—Order on, if appealable—Considerations determining.*

A decision of the High Court on a reference by case stated under S. 51, Income Tax Act, is not final but merely advisory, and as such is open to an appeal. (*Lord Atkinson.*) TATA IRON AND STEEL COMPANY *v.* CHIEF REVENUE AUTHORITY, BOMBAY. **25 Bom. L. R. 908 : 21 A L. J. 675 : 18 L.W. 372 : 47 Bom. 724 : 50 I. A. 212 : 45 M. L J. 295 : 1923 P. C. 148 (P. C).**

——— Cl. 39—*Land Acquisition case—Leave to appeal to Privy Council.*

Cl. 39 of the Letters Patent does not make the order of the High Court appealable in cases; where there is no appeal in a Land Acquisition case. (*Lord Macnaghten.*) SPECIAL OFFICER SALSETTE BUILDING SITES *v.* DASABHAI BEZANJI. **20 I. C. 763 : 17 C. W. N. 421 (P. C.)**

[On appeal from 37 Bom. 506 : 17 I. C. 952 : 14 Bom. L. R. 1194.]

——— Cl. 39—*Interlocutory order—No right of appeal.*

An order in Civil Extra ordinary application is not appealable as it is not a final order. (*Shah and Crump, JJ.*) SHRINIVAS LAKSHMIPATHI RAO *v.* DESHPANDE. **1923 Bom. 39**

——— Cl. 39—*Application under Sp. Rel, Act, S. 45—Order refusing—Leave to appeal.*

Where the petitioners applied to the High Court for an order under S. 45 of the Sp. Rel. Act directing the Chief Revenue authority to refer a case for the decision of the High Court, under S. 51 of the Income Tax Act, 1918, and the application was refused by a Division Bench of the High Court, leave to appeal to the Privy Council ought to be granted, where the Division Bench entertained an appeal from the judgment of the single Judge of the High Court. (*Macleod, C. J. and Shah, J.*) ALCOCK ASHDOWN & Co. *v.* CHIEF REVENUE AUTHORITY. **64 I. C. 959 : 23 Bom. L. R. 1102.**

——— Cl. 39—*Privy Council—Leave to Appeal—Income Tax Act, S. 51.*

The decision of a High Court on a reference from the Chief Revenue Authority under S. 51 of the Income Tax Act (1918) is a judgment within Cl. 39 of the Letters Patent, Bombay, and an appeal lies to the Privy Council from the same. (*Macleod, C. J. and Shah, J.*) TATA IRON AND STEEL Co. *v.* CHIEF REVENUE AUTHORITY BOMBAY. **64 I. C. 931 : 23 Bom. L. R. 1102.**

——— Cl. 39—"*Final*", *meaning of.*

The meaning of "final" is that the judgment or order must finally determine the rights of the parties. (*Heaton and Shah, JJ.*) GANGAPPA RAVANSHIDDAPPA *v.* GANGAPPA MALESHAPPA. **38 Bom. 421 : 23 I. C. 373 : 16 Bom. L. R. 195.**

LETTERS PATENT (CALCUTTA), Cl. 12.

——— Cl. 39—*Application of legal Representative to be brought on record—Merely interlocutory—Whether appeal lies to Privy Council.*

An order of the High Court rejecting the application of a legal representative to be brought on record not being final, but interlocutory, no appeal from the order lies to the Privy Council. (*Heaton and Shah, JJ.*) GANGAPPA RAVANSHIDAPPA *v.* GANGAPPA MALESHAPPA. **38 Bom. 421 : 23 I. C. 373 : 16 Bom. L. R. 195.**

——— Cl. 39—*Final judgment or order.*

An award made in a Land Acquisition case by the High Court is not a decree. Nor is it a final judgment or order within the meaning of Cl. 39 of the Letters Patent. (*Batchelor and Heaton, JJ.*) SPECIAL OFFICER, SALSETTEE BUILDING SITES *v.* DOSA BHAI. **37 Bom. 506 : 17 I. C. 952 : 14 Bom. L. R. 1194.**

See **On Appeal 20 I.C. 763: 17 C. W. N. 421 (P. C.)**

Calcutta.

——— Cl. 10—*Attorney, procedure for striking attorney's name of the file.*

There is no special procedure for disciplinary action of the Court. The English Procedure cannot be adopted in its entirety. Proceedings should be initiated by a rule, motion or notice calling upon the attorney to answer the matter in the affidavits of the applicant, service should be personal, and ordinarily a day should be given for the notice to be returned. Disciplinary action rests on the principle that the court deems a person unfit to act as an attorney and not by way of punishment. A case of suspicion is not enough to justify disciplinary action. (*Jenkins, C. J., Stephen and Choudhury, JJ.*) AN ATTORNEY, *In re.* **14 Cr. L. J. 305 : 19 I. C. 993 : 41 Cal. 113.**

——— Cl. 12—*High Court—Original Side—Limited territorial jurisdiction—Fictitious entry in mortgage—Not effective to give jurisdiction—Decree of High Court—Nullity.*

The High Court in its original side, is a court of limited territorial jurisdiction. Consequently it has no jurisdiction to try a suit on a mortgage if the parties thereto included a fictitious item of property situate in the city of Calcutta, merely with a view to give jurisdiction to the Registrar of Calcutta and the properties really intended to be mortgaged were situate wholly outside the limits of the original jurisdiction of the High Court. Where in a suit on such a mortgage, the Court allowed the description of the property to be amended so as to substitute an actually existing property within its jurisdiction for the fictitious item and then passed a decree. *Held*, that the decision that the High Court had jurisdiction, being erroneous could not extend its limited territorial jurisdiction and neither the direction to amend nor the decree could bind strangers who had acquired title in the property before the date of the amendment nor render the registration valid. *Quaere*—Whether such amendment was within the scope of the suit which was not

one for rectification. (*Lord Moulton.*) HARENDRA LAL ROY *v.* HARI DASI DEBI. 41 Cal. 972 : 41 I. A. 910 : 1 L. W. 1050 : 27 M. L. J. 80 : (1914) M. W. N. 462 : 16 M. L. T. 6 : 18 C. W. N. 817 : 19 C. L. J. 484 : 16 Bom. L. R. 400 : 23 I. C. 637 : 12 A. L. J. 774 (P. C.).

———Cl. 12—*Suit for land—Specific performance—Land without the local jurisdiction.*

In a suit for specific performance of a contract to sell a tea estate situate in Assam instituted on the Original Side of the Calcutta High Court, it appeared that the contract for sale was entered into in Calcutta and the price was agreed to be paid in Calcutta but the defendant ordinarily resided in Assam. *Held* that the suit was one relating to land within Cl. 12 of the Letters Patent and that leave to sue on the original side had properly been granted. 19 Cal. 358 foll. 42 Cal. 942 ref. (*Sanderson, C. J. and Richardson, J.*) NAGENDRA NATH CHOWDHURY *v.* ERALIGON CO. LTD. 27 C. W. N. 65 : 49 Cal. 670: 1922 Cal. 443.

———Cl. 12—*Jurisdiction—Suit for land—Agreement to mortgage land outside jurisdiction—Specific performance.*

Plaintiff advanced in Calcutta sums of money to the deft. secured by promissory notes as well as by deposit of title deeds of property outside Calcutta. The defendant resided outside the jurisdiction. The title deeds were with the plaintiff in respect of a previous regularly executed mortgage. The defendant agreed to register and execute a regular mortgage whenever called upon to do so but refused to return the money or execute the said mortgage and in breach of the agreement defendant attempted to transfer the property to others. The plaintiff applied for leave under cl. 12 of the Letters Patent to sue the deft. on the original side of the Calcutta High Court. *Held*, that a suit for specific performance of an gareement to mortgage lands outside the jurisdiction, is a suit for land within cl. 12 of the Charter and accordingly leave cannot be given. 5 Cal. 82 foll. (*Greaves, J.*) RATANCHAND DHARAMCHAND *v.* GOBIND LALL DUTT. 48 Cal. 882 : 1922 Cal. 328.

———Cl. 12—"*Carrying on business*"—*Meaning of—Ordinary original jurisdiction of High Court.*

Where a suit for damages for alleged breach of contract entered into beyond the local limits of the High Court's Ordinary Original Civil Jurisdiction, plff. contended that the suit was maintainable within such jurisdiction as the deft. was carrying on business within the local limits of the said jurisdiction of the Court by virtue of an agreement of managing agency between him and a certain company which had its office in the Town of Calcutta : *Held*, that the plff.'s contention failed and the suit was not maintainable. The mere facts that he granted certain rights to a firm in Calcutta does not mean he carried on his business there. (*Sanderson, C. J., Fletcher and Mookerjee, JJ.*) MAHARAJA MONINDRA CHANDRA NUNDY BAHADUR *v.* CHANDY CHARN BANERJEE. 24 C. W. N. 582 : 57 I. C. 211 : 31 C. L. J. 327.

———Cl. 12—*Leave to sue—Power to grant.*

The Calcutta High Court cannot under cl. 12 grant leave to enforce a cause of action regarding properties partly within and partly without the ordinary original civil jurisdiction and so a decree affecting properties without those limits is void. A mortgagee of property situate in Mofussil by mortgaging his mortgagee interest together with a property in Calcutta can sue his mortgagor in the original side of the Calcutta High Court where a suit between himself and mortgagee, *i.e.*, sub-mortgagee can be properly brought. (*Mookerjee and Fletcher, JJ.*) KRISHNA KISHORE DE *v.* AMAR NATH KHATTRY.
31 C. L. J. 272 : 56 I. C. 532 : 24 C. W. N. 633.

———Cl. 12—*Waiver of jurisdiction.*

A deft. cannot be held to have waived his objection to jurisdiction when the plaint alleged the cause of action to have risen wholly within the original civil jurisdiction, if it afterwards turns out that a portion was beyond jurisdiction and no leave was obtained. (*Fletcher, J.*) SHAMA KANT CHATTERJEE & CO. *v.* KUSUM KUMARI.
38 I. C. 571 : 44 Cal. 10.

———Cl. 12—*Suit for land—Test.*

The test whether a suit is a suit for land or other immoveable property is not formal test but regard is to be had to substance of the suit. A suit for damages in respect of injury to land is a suit for land within the meaning of Cl. 12 of the Letters Patent and so if the land is outside the original jurisdiction of High Court the High Court cannot try it. (*Jenkins, C. J. and Woodroffe, J.*) SUDAMDIH COAL CO., LTD. *v.* EMPIRE COAL CO., LTD. 31 I. C. 581 : 42 Cal. 942

———Cl. 12—*Leave of Court—Inadvertently not endorsed in plaint—Objection — Waiver—Conduct.*

Where by inadvertence, leave under Cl. 12 of the Letters Patent declared by the Registrar was not endorsed in the plaint, *held* that it could not be endorsed subsequently, as at the date on which the plaint was presented for admission. Leave declared by the Registrar is not a proper leave. An objection as to want of such leave might be waived and would be considered to have been waived if the deft. had taken any steps in furtherance of the suit to its trial. (*Imam, J.*) SARASWATI DASSEE *v.* BIRAJ MOHINI DASSEE. 18 I. C. 898 : 17 C. W N. 512.

———Cl. 12—"*Suit for land*"— *Trespass—Wrongful breaking through mine and carrying away coal—Covenant to keep barrier between lessor and lessee—Cause of action—Suit for damages for erection of buttresses.*

The venue of a suit on a covenant by reason of a privity of estate is local. A, an under-lessee, covenanted to leave a certain barrier as provided in the under-lease. Subsequently A assigned his rights or granted an underlease to B, who granted an under lease to C. The representative of the original lessor sued C. for damages for breach of the covenant and for damages which would be caused to plff. erecting masonary buttresses to protect his mine. *Held*, that there was no privity of estate between C and the plff. that

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C was not personally liable on the covenant and that the plaint did not disclose any cause of action against C. That the claim for damages for erecting masonry buttresses was a claim for land within Cl. 12. A suit to recover damages for breaking through plff.'s mine or land and carrying away coal is a suit for land or immoe vable property within Cl. 12 and is founded on the ordinary case of a trespass *quare clausum* freight and necessitates the decision of the question of title as to the coal. (*Fletcher, J.*) LONDA COLLIERY Co. *v.* BIPIN BIHARI BHOSE.

17 I. C. 500 : 39 Cal. 739

——Cl. 12—*Cause of action arising wholly outside jurisdiction — Secy. of State — Suit against.*

The Secy. of State for India in Council does not dwell or carry on business, or personally work for gain within the local jurisdiction of the High Court at Calcutta. Where the cause of the action for a suit arises wholly out of the ordinary original civil jurisdiction of the Calcutta High Court, the Court has no jurisdiction to entertain the suit against the Secy. of State for India in Council. 14 C. 256, Foll. (*Chaudhuri, J.*) RODRICKS *v.* SECRATARY OF STATE.

21 I C. 1 : 40 Cal. 308 :
On appeal from 16 C. W. N. 747. : 15 I. C. 955.

——Cl. 12—*Jurisdiction— Original Side— Deft. resident outside—Local limits but trading within.*

A contract was signed by the manager of the deft's business in Calcutta, the deft. himself was resident of Singapore. The deft. can be sued in his firm's name for damages for breach of the contract in the Original Side of the High Court. (*Harrington, J.*) SASOON & Co. *v.* ANGULLIA & Co.

10 I. C. 895.

——Cls. 13 and 15—*Judgment—Transfer of suit from Small Cause Court.*

An order of a single Judge transferring a suit from the Small Cause Court to the High Court for trial is not a judgment within cl. 15, and hence no appeal lies from the order. (*Mookerjee, A. C. J, and Fletcher, J.*) KHATIZAN *v.* SONAIRAM DAULATRAM.

60 I. C. 963 : 47 Cal. 1104.

——Cl. 15—*Order of attachment before Judgment is a 'judgment.'*

Where the Court confines its order to a direction that the defendant should give security within a fixed time, there should be no appeal from that order. But where the deft.'s property is ordered to be attached before judgment there will be an appeal inasmuch as the order directing attachment is a judgment. (*Sanderson, C.J. and Richardson, J.*) HAJI MAHOMUDDIN Coy. *v.* THE EASTERN JAPAN TRADING Coy.

50 C. 215 : 1923 Cal. 639

——Cl. 15—*Order restoring suit—Is not a judgment.*

An order restoring a suit dismissed for default is not a judgment within the meaning of Cl. 15 of the Letters Patent and is not appealable. (*Sanderson, C. J. and Richardson, J.*) MAHARAJ KISHORE KHANNA *v.* KIRAN SHASHI DASI.

49 Cal. 616 : 1922 Cal. 407.

LETTERS PATENT (CALCUTTA), Cl. 15.

——Cl. 15—*Order setting aside abatement is a judgment and is appealable.*

A decision which sets aside an abatement is a "judgment" within the meaning of cl. 15 of the Letters Patent and is appealable. (*Sanderson, C. J. and Richardson, J.*) SARAT CHANDRA SARKAR *v.* MAIHAR STONE AND LIME Co., LTD.

49 Cal. 62 : 1922 Cal. 335.

——Cl. 15—*Judgment—Suit on behalf of a lunatic—Application to take the plaint off the file—Dismissal of the application is not a judgment.*

In a suit instituted on behalf of a lunatic one of the defendants applied for taking the plaint off the file on the ground, amongst others, that the suit was not for the benefit of the lunatic and was an abuse of the process of the Court. The Court dismissed the application on the ground that on the materials before the Court at that stage the Court was not prepared to hold that these grounds were substantiated. The defendant appealed : *Held*, that the order dismissing the application was not a "judgment" within the meaning of cl. 15 of the Letters Patent, inasmuch as the said order did not finally decide any right between the parties, it being open to the defendant to substantiate the grounds by further materials at the hearing of the suit. 8 B L. R. 433 at p. 452 and 23 C. W. N. 1017 Ref. (*Sanderson, C. J. and Richardson, J.*) GOUR MOHAN MULLICK *v.* NOYAN MANJURI DASSI.

26 C. W. N. 242 : 1922 Cal 172.

——Cl. 15—*Revisional jurisdiction —Order without jurisdiction by single judge—Letters Patent—Appeal.*

We are of opinion that the contention is not well founded and that an appeal under clause 15 of the Letters Patent does not lie from an order made in the exercise of revisional jurisdiction, whether such order was or was not made with jurisdiction (*Mookerjee and Panton, JJ.*) BYOMKES SETH *v.* BHUT NATH PAL.

64 I. C. 689 . 34 C. L. J. 489.

——Cl. 15—*Arbitration Act (IX of 1899), S. 19—Order refusing to stay proceedings.*

An order refusing to stay proceedings under S. 19 of the Arbitration Act for having incurred the forfeiture of the benefit under the section to applicant for taking part in the proceedings is a judgment and hence appealable under Cl. 15 of the Letters Patent. But a deft. can claim an order before filing a statement to stay proceedings in a suit in which he has referred the matters in dispute to arbitration but no steps in that direction have been taken. (*Mookerjee and Fletcher, JJ.*) JOY LALL & Co. *v.* GOPIRAM BHOTICA.

47 Cal. 611 : 58 I. C. 755 : 24 C. W. N. 612.

——Cl. 15—*Appeal under—While case open.*

Where in an appeal heard by a bench of two or more Judges transactions, separate, and independent, were involved, and the Judges of the Division Bench were agreed as to one or more of them, effect should be given to their view so far as they agreed. Though they disagreed as to

the others, the whole case should not be dismissed. (*Mookerjee, Fletcher and Richardson, JJ.*) GOPESWARA PYNE *v.* HEM CHANDRA BOSE.
57 I.C. 226 : 31 C. L. J. 447.

———Cl. 15—*Judgment—Order refusing to issue commission to examine witnesses.*

No appeal lies from an order refusing to issue commission for the examination of witnesses as the order is not a "judgment". (*Sanderson, C. J. Mookerjee and Fletcher, JJ.*) TOREMULL DILSOOK ROY *v.* KUNJ LALL MONOHAR DAS.
55 I. C. 766 : 31 C. L. J. 162.

———Cl. 15 — *Judgment — Order rejecting application for judgment on admissions.*

An order rejecting an application for judgment on admissions is a judgment with in Cl 15 of the Letters Patent and is appealable. (*Sanderson, C. J. and Woodroffe, J.*) KORAMALL RAMBULLOBH *v.* MONGILAL. 54 I. C. 836 : 23 C. W. N. 1017.

———Cl. 15—*Order refusing leave to file written statement—Appeal.*

An order of a single Judge on the original side of the High Court refusing leave to file a written statement after the expiry of the time allowed is not a judgment and therefore not open to appeal under Cl, 15 of the Letters Patent. (*Sanderson, C. J. and Woodroffe, J.*) MURALIDHAR CHAMARIA *v.* M. R. DALNIA. 49 I. C. 120 : 45 Cal, 818.

———Cl. 15—*Judgment—Decree or order—Dismissal of an appeal without investigation.*

The term 'Judgment,' in Cl. 15 of the Letters Patent means "decrees or order"; consequently an order of dismissal of an appeal without investigation of the merits, may be judgment whether an order dismissing an appeal presented out of time is a judgment. (*Mookerjee and Beachcroft, JJ.*) PROSANNA KUMAR BAIDYA *v.* RAMACHANDRA DE. 47 I. C, 677 : 28 C. L. J. 20

———Cl. 15—*Amendment--Appeal—Judgment.*

Semble.—Ordinarily an order of a judge on the Original Side allowing or refusing an amendment is not a judgment within Cl. 15 of the Letters Patent. (*Sanderson, C. J. and Woodroffe, J.*) UPENDRA NARAYAN ROY *v.* JANAKI NATH ROY.
45 Cal 305: 47 I. C. 129 : 22 C. W. N. 611.

———Cl. 15—*Judgment—Arbitration Act, Ss. 11 (2) and 15—Order refusing to set aside award if appealable—C. P. C., S. 104 (f),*

An order refusing to set aside an award is a judgment within Cl. 15 of the Letters Patent and is therefore appealable. There is no right of appeal against such an order under S. 104 (*f*), C. P. C., which has no application to the filing of an award under S. 11, Cl. (2) of the Arbitration Act. (*Sanderson, C. J. and Woodroffe, J.*) CAMPBELL &. Co. *v.* JESHRAJ GIRDHARI LAL.
46 I. C. 687 : 45 Cal, 502

———Cl. 15—*Judgment— Decision of single Judge setting aside sale and remanding the case.*

A decision of a single Judge of the High Court reversing in appeal an order of a Dt. Judge and remanding the case for rehearing is a judgment

within Cl. 15. (*Sanderson, C. J., Teunon and Walmsley, JJ.*) KUMAR CHANDRA KISHOR ROY *v.* BASAT ALI. 27 C. L. J. 418: 44 I. C. 763 : 22 C. W. N. 627.

———Cl. 15—*Judgment, what is—Test.*

A decision that a suit being open to the objection of multifariousness cannot be entertained as framed is a judgment within the meaning of cl. 15. (*Per Mookerjee, J.*;—The true test to be applied to determine the question of competence of an appeal under the Letters Patent from an adjudication is, not the form of the adjudication but its real effect on the suit or proceedings in which it has been made. Whatever the form of adjudication may be if it puts an end to the suit, so far as the trial court is concerned the adjudication is a judgment within the meaning of Cl. 15. Authorities reviewed. (*Woodroffe and Mookerjee, JJ.*) RAMENDRA NATH RAY *v.* BROJENDRA NATH DAS.
45 Cal. 111 : 21 C. W N. 794 : 41 I. C. 944: 27 C. L. J. 158.

———Cl. 15—*Judgment, what amounts to.*

To decide whether an adjudication is a judgment within Cl. 15 of the Letters Patent the test is not what the form of the adjudication is but what is its effect on the suit or proceeding in which it is made. If its effect, whatever its form and whatever the nature of the application on which it is made is put an end to the suit or proceeding, so far as the Court before which the suit or proceeding is pending is concerned, or if its effect, if it is not complied with is to put an end to the suit or proceeding, the adjudication is a judgment. 43 C. 857, Foll. A remand order nullifying the benefit of the decree is a judgment the expression some right or liability in the Judgment of *Couch, C.J.* in 17 W.R. 364 is not restricted to the right in controversy in the suit itself. (*Mookerjee and Beachcroft, JJ.*) CHANDI CHARAN *v.* JYANENDRA NATH. 21 C. W. N. 921 : 41 I. C. 250 : 29 C L. J. 225.

———Cl. 15—*Review of judgment of Division Bench—Refusal by a Judge—Appeal.*

An application for review of a Judgment of a Division Bench of the High Court being rejected by a Judge the other having ceased to be a Judge, no appeal lies under the Letters Patent against the order. (*Woodroffe and Mookerjee, JJ.*) KAILASH CHANDRA LAMODDAR *v.* REVATI MOHAN ROY. 25 C. L. J. 360: 41 I. C. 183: 21 C. W. N. 652.

———Cl. 15— *Judgment — Sanction—Cr. P. Code, S. 195*

An order of a Judge of the High Court remanding a case to the Small Cause Judge who refused to grant a sanction under S. 195, Cr. P Code, to make a further investigation and pass orders thereon, is a "Judgment" within the meaning of Cl. 15 of the Letters Petent and as such is appealable. (*Sanderson, C. J., and Mookerjee, J.*) BUDHU LAL *v.* CHATTU GOPA. 44 Cal. 816: 25 C L J 193 : 39 I. C. 465 : 18 Cr. L. J. 497 : 21 C, W. N. 269.

———Cl. 15—*Judgment—Rejection of application under C. P. C, O. 9 R. 9.*

An order of a Judge of the High Court in its original jurisdiction rejecting an application

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under C.P.C., O,9, R.9 for restoring a suit dismissed for default is a judgment within Cl. 15 and is appealable. (*Sanderson, C. J., Woodroffe and and Mookerjee, JJ.*) MAHTOORA SUNDAREE DASSI, *v.* HARACHANDRA SHAH, 43 Cal. 857 : 20 C.W.N. 594: 34 I C. 634 : 23 C. L. J. 448.

——Cl. 15—*Appeal—Against revision.*

There is no appeal against an order discharging a rule under S. 115 of C. P. C. (*Fletcher, J.*) ASHARAM *v* KESRI CHAND. 33 I. C. 247: 22 C.L.J. 22.

——Cl. 15—*Judgment, meaning of—Appeal—What questions open.*

The term 'Judgment' in Cl. 15 means the sentence of law pronounced by the Court. An appeal under Cl. 15 is deemed to be preferred against the decree and all the points necessary to be investigated for the determination of the question of the correctness of the decree, are open for consideration, though the Court as a Court of appeal will be slow to take, on questions of fact, a view contrary to the concurrent opinion of the trial Judge and the Judges of the Division Bench. (*Jenkins, C. J. Mookerjee and Holmwood, JJ.*) UPENDRA NATH BOSE *v.* BUNDESHRI PROSHAD. 22 C.L.J, 452 : 32 I. C. 468 : 20 C. W. N. 210.

——Cl. 15—*Judgment—Present meaning.*

Per Mukerjee, J.—'Judgment' in Cl. 15 of the Letters Patent, signifies what is how termed 'decree' or 'order' (*Jenkins, C. J., Mookerjee and (Richardson, JJ.*) MOHUNT KRISHEN DAYAL. *v.* IRSHAD ALI. 31 I. C, 985 : 22 C. L. J. 526.

——Cl. 15—*Appeal—Prob. and Admn. Act. S. 86—Difference of opinion.*

Where the Judges of a Division Bench hearing an appeal in a probate case, have disagreed and a decree has been drawn up in accordance with S. 98 of the C. P. Code, an appeal lies under Cl. 15. (*Jenkins, C. J. Mookerjee and Holmwood, JJ.*) PANCHUMONI DASI *v.* CHANDRA KUMAR. 31 I. C. 319 : 22 C. L. J. 398.

——Cl. 15—*C.P. Code, O. 37—Appealability.*

An order under O, 37, C P. C. against a deft, to furnish security before he can defend the suit, is not appealable if it is that of a single Judge of High Court Original Side, under Cl. 15 of Letters Patent. (*Jenkins, C. J., and Woodroffe, J.*) SUKHLAL CHUNDERMULL *v.* EASTERN BANK, LTD. 42 Cal. 735 : 31 I. C. 235 : 22 C. L. J. 41.

——Cl. 15—*C. P. C., S. 115—Rule discharged under S. 115, C.P. Code, is not appealable.*

An order discharging a rule issued under S. 115, C. P. Code, is not appealable under Cl. 15 of Letters Patent. (*Jenkins, C. J., Mookerjee and Richardson, JJ.*) BAIJNATH MISTRI *v.* JUNG BAHADUR 30 I. C. 906 : 22 C. L. J. 113.

——Cl. 15—*Judgment—C. P. Code, S. 115—Order refusing revision.*

No appeal lies against an order of a single Judge of the High Court on its Original Side, refusing an application under S. 115, C. P. Code, for revision of a decree of the Calcutta Small Cause Court. (*Jenkins, C. J. and Woodroffe, J.*) PEARY LAL DAW *v.* BANAMALI DEY. 30 I. C, 862 : 22 C. L. J. 40.

LETTERS PATENT (CALCUTTA), Cl. 26.

——Cl. 15—*C. P. Code, S. 115—Single Judge of High Court reviewing judgment of Presy. Sm. Cause Court—Whether decree—Appeal.*

The order of the single Judge of the High Court interfering with the judgment of a Presy. Sm. Cause Court under S. 115, C. P. Code, is a judgment within cl. 15 of Letters Patent and is appealable 22 Bom 891 Dist. 21 M. 68 ; 13 C. L. J. 90; 17 M. 100 approved. (*Jenkins, C.J. and Woodroffe, J.*) SHEO PRASAD *v.* RAM CHUNDER. 23 I. C. 977 : 41 Cal. 323.

——Cls. 15 and 36—*Dissentient Judgment—Further appeal.*

An appeal lies under Cl. 15 of the Letters Patent from a Dessentient judgment that has prevailed in an appeal under the same clause. (*Jenkins, Harrington and Mookerjee, JJ.*) JADHU NATHA *v.* HARIKAR. 27 C. W. N. 308 : 18 I. C. 253 ; 17 C. L. J. 206.

——Cls. 25 and 26—*Cases stated for opinion of Full Bench—Right to begin.*

If in a Sessions trial the Judge convicts the accused but reserves the question of admissibility of the evidence for the opinion of the Full Bench, the Counsel for the accused should begin and have a right of reply before the Full Bench. Under Cls. 25 and 26 of the Letters Patent the Full Bench is not competent to order a retrial but should finally decide the matter on review. 44 C. 477 ; 2 B. 61 ; 17 C. 642, Ref. The Full Bench is not competent to investigate, independently of the evidence erroneously admitted, whether there was a sufficient evidence to justify the verdict of the Jury. As it was doubtful whether a reasonable Jury would have found the accused guilty on the residue of the evidence, the conviction must be set aside. (*Sanderson, C.J. Mookerjee, Fletcher, Chaudhuri and Walmsley, JJ.*) EMPEROR *v.* PANCHU DAS. 47 Cal. 671 . 31 C. L. J. 402 : 58 I. C. 929 : 21 Cr. L. J. 849 : 24 C. W. N. 501 (F. B.).

——Cls. 25 and 26—*Certificate—Whole case open.*

When points of law have been reserved or certified by the Advocate-General under the clauses and the High Court on review holds on the point of law in favour of the accused, it can consider the whole case on the evidence and pass such sentence as it thiks to be just. (*Sanderson, C. J., Mookerjee, Fletcher, Teunon and Chaudhuri, JJ.*) FATEH CHAND *v.* EMPEROR. 44 Cal 477 : 24 C. L. J, 400 : 38 I. C. 945 : 18 Cr. L. J. 385 : 21 C. W. N. 33 : (F. B.)

——Cls. 25 and 26—*Right of appeal—Extent.*

The right of appeal or revision in the case of trials on the Sessions Side of a High Court is limited to the two clauses, (*Sanderson, C. J. Chaudhuri and Newbould, JJ.*) BONOMALLY GUPTA, *In the matter of.* 44 Cal. 723 : 38 I. C. 423 : 18 Cr. L. J. 311 : 21 C. W. N. 167.

——Cl. 26—*Certificate of Advocates-General—Statement of trial judge as to fact happening at the trial—Conclusiveness of—Procedure for granting certificates.*

LETTERS PATENT (CALCUTTA), Cl. 26.

The power of the High Court are limited under Cl. 26 of the Letters Patent. Where there is no misdirection or other error as certified, by the Advocate-General, the certificate is misconceived and the High Court has no power to interfere with the conviction and sentence Where the Court is called upon to review a case under Cl. 26 of the Letters Patent, it would accept as unquestionable the statement of the trial judge as to what took place before him in court. 21 C. L. J. 377 ; 10 B. H. C. R. 75 Ref. Cl 26 of the Letters Patent though silent as to the procedure to be followed by the Advocate General, when he is called upon to grant a certificate, requires that the certificate should reflect the judgment of the Advocate-General and is presumably granted in the interests of justice, after a consideration of all the available materials. 21 C. L. J. 377 Rel. If that judgment is founded on incomplete materials or inaccurate allegations, its weight is diminished in a corresponding degree. In a case where the error ascribed to the judge depends on the evidence adduced at the trial, it is desirable that the notes of the evidence as recorded by the judge, should be laid before the Advocate General when he is asked to grant the certificate. The certificate of the Advocate General should be granted after he has heard the representatives of the prisoner and the Crown and has carefully considered all the available materials whose accuracy bad been vouchsafed by counsel or other responsible persons,(*Mookerjee, Richardson, Ghose, Cuming and Page, JJ.*) EMPEROR *v.* BARENDRA KUMAR GHOSE.

28 C.W.N. 170: 38 C.L.J. 411 : 1924 Cal. 257 (F.B.)

——— Cl. 26—*Joint trial—judicial discretion—Defective summing up—Interference.*

Where a Judge in his discretion under S. 239, Cr.P.C , desires,to try a number of accused jointly it is not a matter for interference on a certificate of the Advocate General under Cl. 26 of the Letters Patent. A defective summing up to the jury, unless it causes a failure of Justice is not ground for reversing a conviction. (*Maclean, C. J., Prinsep Hill, Harrigton and Brett, JJ.*) EMPEROR *v.* CHARU CHANDER MUKERJEE.

76 I. C. 966 (2) : 38 C. L. J. 309 (F. B.).

——— Cl. 26—*Certificate of Advocate-General—Statement of trial Judge—Weight due to.*

A certificate under S. 26 of the Letters Patent should reflect the judgment of the Advocate General and must be granted in the interests of justice after a careful consideration of all the available materials. It must be in conformity and not in conflict with the statement of the Judge who presided at the trial. Once the Advocate-General grants a certificate the Court has to deal with the case. The statement of the trial Judge as to what took place before him is conclusive. (*Jenkins, C.J. Stephen, Woodroffe, Mookerjee and Holmwood, JJ.*) EMPEROR *v.* UPENDRA NATH DAS.

19 C. W. N. 653 : 21 C. L. J. 377 : 30 I. C. 113 : 16 Cr. L. J, 561 (F.B).

——— Cl. 32—*Admiralty jurisdiction—High Court—Law applicable.*

LETTERS PATENT (CALCUTTA), Cl. 39.

The Admiralty jurisdiction of the High Court, rests on Cl. 32 of the Letters Patent of 1865 which continues Cl. 31 of the Letters Patent in 1862. The effect of these clauses is to vest in the High Court such Civil and Maritime jurisdiction as might be exercised by the Supreme Court under Charter of 1774, Cl 26. Assuming that the High Courts in its Admiralty jurisdiction did not acquire jurisdiction over maritime necessities by any previous enactments such jurisdiction now rests on Ss. 2 and 35 of the Colonial Courts of Admiralty Act of 1890, which vests in the High Court the powers described in S. 5 of the Admiralty Act 1861. To oust the jurisdiction so conferred on the High Court under S. 5, it is not enough that the owners ofthe ship should be in fact domiciled in British India; this domocile has to be proved to the satisfaction of the Court. The Court when it made the order for arrest had *prima facie* jurisdiction to do so, and as the exception to its jurisdiction had not been established the order cannot be treated as *coram non judice or a nullity* (*Jenkins, C. J., and Stephen, J.*) MADRAS STEAM NAVIGATION Co *v.* SHALIMAR WORKS LTD.

28 I. C. 463: 42 Cal 85.

——— Cl. 36—*Costs—Difference of opinion—Original Side appeal.*

As regards the costs of an original side appeal, the Judges having differed, S. 98, C. P. C. is not applicable but cl. 36 of the Letters Patent applies and the opinion of the Chief Justice prevails (*Sanderson, C. J., and Woodroffe, J.*) JUSTAIN HULL *v.* ARTHUR FRANCIS PAUL.

58 I. C 421 : 24 C. W. N. 352.

——— Cl. 36—*Difference of opinion—Criminal revision—Govt. of India Act, S. 107.*

If case is outside S. 435, Cr. P. Code, S. 439 cannot apply to it and in such a case, either cl. 36 of the Letters Patent applies or there is no law regulating the procedure. In the latter case the Court should act in accordance with the principle underlying cl. 36 of the Letters Patent. (*Newbould and Huda, JJ.*) MOIRAM BEWAH *v.* MRIJAN SARDAR.

24 C. W. N. 97 : 54 I. C. 189 : 21 Cr. L. J. 25 : 31 C. L. J. 183.

——— Cl. 36—*Difference of opinion—Costs—*

Where there is a difference of opinion on the question of costs,the opinion of the Senior Judge prevails under cl. 36 of the Letters Patent. (*Mookerjee and Beachcroft, JJ.*) RAMDAS HAZRA *v.* SECRETARY OF STATE.

18 C. W. N. 106 : 16 I. C. 922 : 17 C. L. J. 75.

——— S. 39—*Order on appeal—Order under S. 15, Charter Act—'Final order,' meaning of.*

An order passed under S. 15 of Charter Act also is one passed on an appeal for the purposes of Cl. 39 of the Letters Patent. 21 W.R. 263, F. 30 C. 679, Dist. By 'final order' in Cl. 39, Letters Patent, is meant an order finally deciding any matter directly at issue in the case in respect of the rights of the parties. (*Mookerjee and Coxe, JJ.*) SECRETARY OF STATE FOR INDIA *v.* BRITISH INDIA STEAM NAVIGATION CO.

13 C. L. J. 90 : 9 I C, 183 : 15 C. W. N. 848.

LETTERS PATENT—(CALCUTTA), Cl. 41.

———Cl. 41—*Criminal appeal—Decision of High Court—Leave to appeal to His Majesty in Council.*

The High Court is not empowered to grant leave to appeal to His Majesty in Council from its decision in a criminal appeal either under cl.41 of the Letters Patent or any other provision of law. (*Mookerjee and Chatterjee, JJ.*) PHILLIP E. BILLINGHURST *v.* EMPEROR.

38 C. L. J. 406 : 1924 C. 338.

Lahore.

———Cl. 8—*Proceedings under—Nature of—Propriety of conviction cannot be gone into—Duties of legal practitioners.*

Where a legal practitioner has been sentenced for being a member of an unlawful association and proceedings are taken against him under the disciplinary powers conferred by the Letters Patent, the proceedings are not criminal in their character. They are sometimes described as *quasi* criminal but that is only in so far as they may result in penalties. They are in fact neither civil suits nor criminal proceedings. The High Court will apply such rules of procedure as will ensure a fair trial, giving the practitioner a proper notice and a reasonable opportunity to be heard. When proceedings are stayed on a conviction, it is not in the nature of a second trial. The propriety of the conviction in law or in fact cannot be questioned, but the court is bound to inquire into the nature of the crime in order to decide if it was of such a character as to render a person guilty of it unfit to remain a member of the profession. Disobeying the order even if it does not imply any moral turpitude, the fact of an officer of court like the legal practitioner joining an association declared to be unlawful renders him liable to be dealt with under the Letters Patent. (*Sir Shadi Lal, C. J. Scott-Smith and Abdul Raoof, JJ.*) *In re.* ABDUL RASHID.

4 Lah. 271. : 25 Cr. L. J. 161 : 1924 Lah. 123 (S. B.)

———Cl. 10—*Judgment—Dismissal of appeal for default—Order of single Judge—Appeal.*

Where a single Judge of the High Court refuses to set aside a dismissal of an appeal for default, his order of refusal is a judgment and is appealable under Cl. 10 of the Letters Patent (Punjab). The bench hearing the appeal will not legally interfere with the discretion of the single Judge even though it might have taken a different view of the cause if the matter had originally come up before it. (*Shadi Lal, C.J. and Fforde, J.*) NANAK CHAND *v.* SAJJAD HUSAIN. **1924 Lah. 412.**

———Cl. 10—*Final order, meaning of.*

After the passing of the preliminary and final decrees in a mortgage suit against a Hindu father, the son brought an objection against the sale of his share, instituted a suit and got an order of stay. His suit was dimissed and he filed an appeal and on the day the appeal came for preliminary hearing stay order was again granted ex parte. The decree-holder then applied for the discharge of the stay order praying in the alternative security for the amount of the decree and costs be taken. The application of the decree-holder was dismissed and he filed an L. P. A.

LETTERS PATENT—(LAHORE), Cl. 10.

against this order. It was contended that the order was not a final order within the meaning of Cl. 10 of Letters Patent. *Held*, if that objection is acceded to it would follow that the appellants would be bound by an exparte order. Without power to question that order justice would be done by treating this appeal of 15th May as being one from the order of the 23rd July, 1921, and extending the time within which that appeal would have to be brought. Justice will be met by allowing the appeal on the terms that security be given by the respondent for the full decretal amount without regard to the security of the property attached. (*Shadi Lal, C. J. and Fforde, J.*) BULAQI MAL *v.* SHAMAS DIN.

5 Lah. L. J. 287 : 1923 Lah. 428.

———Cl. 10—*Decision by single Judge in appeal under* S. 54 *of the Land Acquisition Act is appealable.*

The judgment of the High Court in an appeal from an award of the District Judge is a judgment within the meaning of Cl. 10 of the Letters Patent and is appealable to a Division Bench of the High Court. (*Shadi Lal, C. J. and Abdul Qadir, J.*) HAR DIAL SHAH *v.* SECY. OF STATE FOR INDIA. **3 Lah. 420 : 1923 Lah. 275.**

———Cl. 10—*New point if can be raised.*

Dubitante : Whether in an appeal under the Letters Patent an appellant is entitled to be heard on a point raised for the first time which has not been raised before the Judge from whose judgment he is appealing. 20 All. 258 and 1 Pat. 485, Ref. (*Shadi Lal, C. J. and Abdul Qadir, J.*) HAJI MOHOMMED FAQI *v.* HAJI ABDUL RAHMAN.

1923 Lah. 151.

———Cl. 10—*Second Appeal— Appeal from order of a single Judge—Interference with finding of fact.*

On interference with a finding of fact of the Lower Appellate Court by a single judge of the High Court it is open to a Division Bench in an appeal under Cl. 10 of the Letters Patent to set aside his decision and restore that of the lower Appellate Court. (*Leslie Jones and Dundas, JJ.*) MEINA MAL *v.* LALA DAS. **5 Lah. L. J. 109.**

———Cl. 10—*Judgment — Order of single Judge of the High Court dismissing an appeal from an order of remand— Appealability.*

In order to decide whether an adjudication should be treated as a "judgment" regard should be had, not to the form of the adjudication but to its effect upon the suit or other civil proceeding in which it was made. If its effect whatever its form may be and whatever may be the nature of the application on which it was made, is to put an end to the suit or proceeding so far as the court before which the suit or proceeding is pending is concerned, or if its effect, if not complied with, is to put an end to the suit or proceeding, the adjudication is a judgment within cl. 10 of the Letters Patent. 8 B. L. R. 433: 45 C. 111; 44 C. 804 ; 39 A. 191 : 35 M. 1 (F. B.) 3 M. H. C. R. 384 Rel. The determination of the question whether the plaintiff is entitled to bring his suit after the lapse of 12 years from the date of the mutation consequent upon an alienation, is a determination of a right and the adjudication thereon certainly

affects the merits of the question between the parties, more especially when it involves the determination of the point whether the defendant has acquired a prescriptive right of ownership to the land in dispute. Where a suit for setting aside an alienation of ancestral land is dismissed as barred by limitation and on appeal a single judge holds that it is not so barred, his judgment confirming an order of remand by the lower appellate court is appealable under cl. 10 of the Letters Patent. (*Shadi Lal, C. J. and Harrison, J.*) RULPU SINGH *v.* SAWAL SINGH.

3 Lah. 188: 1922 L. 380.

———Cl. 10—*Judgment—What is.*

The term judgment in Cl. 10, Letters Patent, includes any interlocutory judgment which decides so far as the Court pronouncing such judgment is concerned, whether finally or temporarily, any question materially in issue between the parties and directly affecting the subject matter of the suit. 1 Lah. 348 ; 35 Mad. 1 followed. (*Shadi Lal, C. J. and Abdul Quadir, J.*) THE FIRM BADRI DAS JANAKIDAS OF DELHI *v.* MATHANMAL.

1922 Lah. 185.

———Cl. 10—*Appeal under—New point not to be raised.*

An appellant in Letters Patent Appeal cannot put forward a new case not suggested in the Courts below and claim relief on that footing. (*Chevis and Scott-Smith, JJ.*) BASANT RAM *v.* MAHOMED ALI.

4 Lah. L. J. 293.

———Cl. 10—*Appeals under Limitation Act, does not apply.*

The Letters Patent of the Lahore High Court, with the rules framed thereunder as to the limitation for filing appeals are a complete Code, and the general provisions of the Limitation Act, including S. 4, do not apply to appeals under cl. 10 of the Letters Patent. (*Scott-smith and Chevis, JJ.*) LIAL SINGH *v.* BUDHA SINGH. 2 Lah. 127: 61 I. C. 327: 3 Lah. L J. 415.

———Cl. 10—*Appeal—Limitation.*

The limitation for a Letters Patent appeal is governed by the rules made by the High Court. The Limitation Act does not apply to such a case. Where the limitation for a Letters Patent appeal expired, when the High Court was in vacation, the appeal could not be presented after vacation as being time-barred. (*Le Rossignol and Martineau, JJ.*) FATTEH MAHAMAD *v.* CHOTHU RAM.

60 I. C. 737: 3 Lah. L J. 361.

———Cl. 10—*Point not raised before single Judge—Division Bench.*

It is not open to the parties to raise in appeal under the Letters Patent a contention which was not urged before the Court from the judgment of which the appeal is preferred. (*Shadi Lal and Broadway, JJ.*) AHMAD SHAH *v.* FAUJIDAR KHAN.

2 Lah. L. J. 1: 11 P. W. R. 1920: 55 I. C. 983: 28 P. L. R. 1920.

———Cls. 10, 29 and 30—"*Judgment*"—*Interlocutory order—Stay of execution.*

The term 'Judgment' in the Letters Patent is a very wide one, having a not much narrower con-

notation than the definition given in the C. P. Code. 'Judgment' in S. 10 of the Letters Patent includes any interlocutory judgment which decides so far as the Court pronouncing such judgment is concerned, whether finally or temporarily, any question materially in issue between the partles and directly affecting the subject-matter of the suit. An order on an application to stay execution pending appeal, comes within the definition of 'Judgment' and so is appealable. 24 M. 358: 21 C. 473. 35 M. 1: 8 B. L. R. 433: 43 C, 857: 3 M. H. C. 384. Ref. (*Le Rossignoll and Bevan Pelman, JJ.*) GOKAL CHAND *v.* SANWAL DAS.

12 P. W. R 1920: 55 I. C. 933: 79 P. L. R. 1920.

———Madras.

———Cls. 8, 21, 22 and 23—*Scope of.*

(*Per Sundara Aiyar, J.*—Cl. 8 of the Letters Patent does not widen the jurisdiction given to the Court in Civil and Criminal matters by Cls. 21, 22 and 23. (*Sundara Aiyar and Sadasiva Aiyar, JJ.*) NATARAJA AIYAR. *In re.*

36 Mad. 72 : 13 M. L. T. 367 : (1912) M. W. N. 1012: 16 I. C. 755: 13 Cr. L. J. 723 : 23 M. L. J. 393.

———Ss. 9 and 10—*Vakil—Right of audience.*

Vakils have a right of audience on the Original Side of the Madras High Court; Attorneys have not the right of audience on tne Original Side of the Mad. High Court. 1 M. 24 (F. B.), Foll. R. 533 of tne Original Side Rules of the Mad. High Court of 1902 is not *ultra vires* of the Letters Patent. (*Coutts-Trotter, J.*) NAMBERUMAL CHETTY *v.* NARASIMHACHARI.

(1916) 2. M. W. N. 529 : 37 I. C. 699 : 31 M. L. J. 698.

———Cl. 10—*Vakil—Suspension— Reasonable cause—Negligence—Duty to the court and the client.*

Where a vakil, though acquitted of personal fraud, permitted his clerks, guilty to his own knowledge of practising fraud and gross deception upon his client to continue in correspondence with him, there is "reasonable cause" to suspend the vakil from practice under Cl. 10 of the Letters Patent. It is the general function of the bar and solicitors that they must in the conduct of all suits entrusted to them, co-operate with the Court in the orderly and pure administration of justice. (*Lord Shaw*). *In the matter of.* G. KRISHNASWAMI AIYAR.

35 Mad. 543: 39 I. A. 191: 16 C. W. N. 1081: 13 Cr. L. J. 680 : 12 M. L. T. 396 : 14 Bom. L. R. 1079: 16 C. L. J. 634: 16 I. C. 328: (1912) M. W. N. 963 : 23 M. L. J. 114 (P. C.).

———Cls. 10 and 39—*Disciplinary jurisdiction—Order suspending vakil from practice—Leave to appeal.*

The High Court has no power to grant leave to appeal to the Privy Council in a case where an order is made by the court suspending a vakil from practice. 4 Pat. L. J 423: 39 M. 128; 2 M. I. A. 428 foll. (*Schwabe, C. J. Coutts Trotter, Kumaraswami Sastri, Krishnan and Ramesam, JJ.*) E. RAGHAVA REDDI, *In the matter of.*

43 M. L. J. 382: 31 M. L. T. 173 (H. C.) (1922) M. W. N. 530 : 16 L. W. 328: 1922 Mad. 440. (F. B.).

LETTERS PATENT—(MADRAS), Cl. 10.

——Cl. 10—*Vakil—Professional misconduct—Perjury—Asserting absolute title in himself—Getting a conveyance benami.*

Where a vakil taking advantage of the ignorance and needy position of his clients bought the equity of redemption for much less than its value and afterwards fraudulently executed a fresh mortgage deed in favour of the plff.'s mortgagee in order to defraud his clients and secure for himself the property in fraud of the understanding between himself and his clients which he sought to support in Court by giving false evidence and securing evidence of false witnesses; *Held*, he was guilty of professional misconduct and was debarred from practising for 2 years. (*Abdur Rahim, Offg. C. J., Seshagiri Aiyar and Phillips, JJ.*) *In the matter of* A VAKIL.

39 I. C. 289: 18 Cr. L. J. 449: 40 Mad. 69.

——Cls. 10 and 39—*Disciplinary jurisdiction—Orders—Appeal.*

Disciplinary proceedings under clause 10 of the Letters Patent are not appealable under clause 39, and that the High Court has no power to give leave to appeal to the Privy Council from an order passed in the exercise of such jurisdiction. (1 A. 725 F. 31 I.A. 41 Dist.) 41 C. 734 Foll (31 R 106.) (*Wallis, C, J. Sankaran Nair and Oldfield, JJ.*) A VAKIL OF HIGH COURT v. PRESIDENT OF VAKILS ASSOCIATION. 39 Mad. 128 : 29 I. C. 879 : 29 M. L. J. 16.

——Cl. 10—*Vakil—Professional misconduct—Suggestion to influence a Judge in his favour.*

For a *vakil* to suggest that he is in a position to influence a judge in his favour by indirect and improper means is professional misconduct meriting more than a mere warning. (*White, C. J. Sankaran Nair and Oldfield, JJ.*) PRESIDENT, VAKILS ASSOCIATION, HIGH COURT, MADRAS v. A. VAKIL. 23 I. C. 789 : 26 M. L. J. 429.

——Cls. 11 and 12—*Original jurisdiction.*

The High Court in the exercise of its original jurisdiction is merely a local Court. (*Bakewell, J.*) OFFICIAL ASSIGNEE OF MADRAS v. RAMASWAMI AIYANGAR. 12 M. L. T. 229 : 1912 M. W. N. 974 : 17 I. C. 342 : 23 M. L. J. 726.

——Cl. 12—*High Court—Original jurisdiction—"Dwelling within limits" meaning of.*

The deft. who was a domiciled resident in Mysore left his house in charge of a servant, hired a house in Madras to which he brought his wife and children, and apprenticed himself to a vakil for a year in Madras. In a suit brought against him some months after, on the Original Side of the High Court, with leave under Cl. 12 of the Letters Patent. *Held*, that, as the deft. has taken up his abode in Madras with the intention of dwelling there for several months and was living there at the time of the institution of the suit, the suit was cognizable by the High Court on the Original Side. (*Lord Macnaghten.*) SRINIVASA MOORTHY v. VENKATAVARADA AIYANGAR.

34 Mad 257 : 38 I. A. 129 : 15 C. W. N. 741 : 8 A. L. J. 774 : 13 Bom. L. R. 520 : (1911) 2 M. W. N. 375 : 14 C. L. J. 64 : 10 M. L. T. 263 : 11 I. C. 447 : 21 M. L. J. 669. (P. C.).

LETTERS PATENT—(MADRAS), Cl. 12.

——Cl. 12—*'Carrying on business'—Meaning of—Defendant—If, includes foreigners.*

"Carrying on business" in Cl. 12 of the Madras Letters Patent includes carrying on business through an agent by foreigners living outside the jurisdiction of the court as well as the carrying on business through an agent by Br. subjects. A foreigner is included in the word "defendant." (*Schwabe, C.J. and Coleridge, J.*) JANOO HASSAN v. BATHU KAMANDU. 18 L.W. 515 : (1923) M. W. N. 739: 33 M. L. T. 19 (H.C.) : 45 M. L. J. 471 : 1924 Mad. 158.

——Cl. 12—*Leave to sue—Jurisdiction—Discretion of Court—Decree of Malabar Court obtained by fraud—Suit in High Court to set aside—Cause of action for suit—Fraud—Discovery of fraud—"The defendant" in cl. 12 of Amended Letters Patent (Madras)—If, includes case of one of defendants.*

Plaintiff was sued for the due performance of his duties and due accounting by an agent. In a suit instituted in Malabar by the principal a decree was passed against the agent and the plaintiff for the balance due by the agent to the principal and that decree was on appeal affirmed by the High Court. Alleging that, in allowing that decree to be passed, the agent or his representative conspired with the principal in suppressing material documents with a view to make the plaintiff pay the decree amount, the agent being impecunious, that the said fraud was practised in Madras and that it was discovered in Madras, the plaintiff instituted a suit in the High Court (Original Side) Madras, for having the prior decree set aside on the grounds alleged. The defendants were the agent's representatives who resided in Malabar. In order to bring the suit within the ordinary Original Jurisdiction of the High Court plaintiff applied for and obtained leave under S.12 of the Amended Letters Patent to sue the defendant living in Malabar. The leave so granted was after notice set aside. On an appeal from the order setting aside the leave *held*, that assuming that the High Court had jurisdiction to grant the leave, it should, in the exercise of its discretion, refuse the same. Nearly whole of the alleged cause of action arose in Malabar. There would be no ground at all for bringing the suit here but for the fact that two of the defendants reside here who it is alleged, have in their power there a very material document. The fact that some difficulty is anticipated in getting the document produced in Malabar, is not sufficient ground for holding that the suit, which is essentially a Malabar suit not a Madras suit, should be brought in Madras.

Per *The Chief Justice.*—The discovery of the fraud is not part of the cause of action but the fraud itself is. *Quaere* whether the fraud alleged is sufficient ground for setting aside the decree.

Semble S. 12 of the Amended Letters Patent does not confer jurisdiction upon the High Court in cases where one or more of the several defendants reside within jurisdiction. (*Schwabe, C. J. and Wallace, J.*) PARAMESWARA PATTER v. VIYATHAN MAHADEVI.

(1923) M. W. N. 841 : 1923 M. 272.

LETTERS PATENT—(MADRAS), Cl. 12.

———Cl. 12—*Suit for land—Suit for damages for cutting and carrying away trees.*

A suit for damages for cutting and carrying away trees is a suit for land or other immoveable property within the meaning of Cl. 12. (*Wallis, C.J. and Seshagiri Aiyar, J.*) SRINIVASA AIYANGAR *v.* KANNAPPA CHETTI.

33 I. C. 906 : 30 M. L. J. 120.

———Cls. 12 and 18—*Relation.*

S. 12 does not control S. 18. (*Abdur Rahim O. C. J. and Seshagiri Aiyar, J.*) THE OFFICIAL ASSIGNEE OF MADRAS *v.* VEDAVALLI AMMAL.

40 Mad. 810 : 20 M. L. T. 311: 36 I. C. 524 : 4 L. W. 425.

———Cl. 12—*Lands situate partly within and partly without—Leave to sue, discretionary.*

Where land is situated partly within and partly without the local limits of the original civil jurisdiction of the High Court, the granting of leave to sue under Cl. 12 is purely discretionary and the High Court will not, in appeal, interfere. Per *Seshagiri Aiyar, J.*—A plaint presented on the granting of a provisional leave becomes invalid the moment the leave is withdrawn. 28 M. 216, Dist, 35 M. 1 Foll. (*Wallis, C. J. and Seshagiri Aiyar, J.*) MAHALINGAM *v.* NATESA AIYAR.

(1916) 1 M. W. N. 146: 32 I. C. 423 : 3 L. W. 107.

———Cl. 12—*Jurisdiction—Submission of accounts at Madras—Deft. residing out of Madras.*

If the defendant submits the accounts of his agency to the plff. in his shop at Madras, the High Court in its Original Side does not cease to have jurisdiction merely because the deft. resides in a place outside such jurisdiction. (*Sadasiva Aiyar, Bakewell and Napier, JJ.*) BAPU SAHIB YUSUFF SAHIB *v.* ISAC ISMAIL & CO.

29 I. C. 462 : (1915) M. W. N. 519.

———Cl. 12—*Suit for land—Claim for damages for trees cut—Test.*

The suit is one for land under Cl. 12 where, on the allegations in the plaint, title to land has to be determined either expressly or by implication so as to preclude it from being raised in any subsequent suit. A suit for the recovery of damages for trees cut and carried away from the plff's casuarina plantation is a suit for land. (*Sankaran Nair, J.*) SRINIVASA AIYANGAR *v.* CUNNIAPPA CHETTY.

15 M. L. T. 411: 24 I. C. 895 : 26 M. L. J. 567.

———Cl. 12—*Suit for land.*

A suit to avoid an incumbrance on land is a suit for land. 127 M. 187 ; 33 M. 131 F. (*Bakewell, J.*) OFFICIAL ASSIGNEE OF MADRAS *v.* RAMASWAMI AIYANGAR.

12 M. L. T. 229 (1912) M. W. N. 974 : 17 I. C. 342 : 23 M. L. J. 726.

———Cls. 13 and 20—*Proceedings in Dt. Court—Transfer of, to High Court.*

The powers of the High Court in a case transferred from the Dt. Court are confined to those exercisable by a Dt. Court but for the transfer. (*Lord Parker.*) MRS. ANNIE BESANT *v.* NARAYANIAH.

38 Mad. 807: 41 I. A. 314 : 18 C. W. N. 1089 : 1 L. W. 520 : 1914 M. W. N. 585: 16 M. L. T. 165 : 20 C. L. J 253 : 16 Bom. L. R. 625 : 12 A L. J. 1155: 24 I.C. 290 : 27 M. L. J. 30.(P.C.).

LETTERS PATENT—(MADRAS), Cl. 15.

———Cls. 13 and 15—*Appeal— Order for transfer of a suit—"Judgment".*

An order for transfer of a suit to the High Court, under Cl. 13 of the Letters Patent, is a "judgment" and appealable under Cl. 15 of the Letters Patent 35 M. 1 ; 21 M. L. J. 1 (F. B.) foll. 47 C. 1104 not foll. (*Schwabe, C. J and Ramesam, J.*) KRISHNA REDDI *v.* THANIKACHALA MUDALI.

1923 M. W. N. 681 : 45 M. L. J. 152 : 1924 M. 90.

———Cls. 13 and 15—*High Court—Madras—Case transferred to High Court from Judicial Commissioner of Coorg—Trial—Appeal under cl. 15 of the Letters Patent.*

Case transferred to High Court from Judicial Commissioner, Coorg is appealable under Cl. 15 of the Letters Patent. (*Schwabe, C. J. and Odgers, J.*) KONGANDRA APPAYYA *v.* KONGONDRA KUTTAPPA.

(1922) M. W. N. 830.

———Cls. 13 and 15—*Jurisdiction—Appellate—Order under Charter Act.*

An order of a single Judge in the exercise of the power of superintendence under S. 15 of the Charter Act (S. 107, Govt. of India Act) and dealing with the decision of a Court subject to the appellate jurisdiction, is one made in the exercise of the appellate jurisdiction of the Court within the meaning of Cl. 13 of the Letters Patent. 22 M. 68, Rel. on. 17 M. L. J., 158 ref. to. (*Miller and Sadasiva Aiyar, JJ.*) CHINNA PILLAI CHINNA THIRUVENKATACHARIAR *v.* SELLAPPA NATTAN.

20 I. C. 633 : (1913) M. W. N. 595.

———Cl. 13—*Transfer of suit from Presidency Small Cause Court to High Court—To be made to Judge on the Original Side.*

An application for the transfer of a suit from the Presidency Small Cause Court to the High Court is governed by S. 13 of the Letters Patent and must be made to a Judge sitting on the Original Side of the High Court. 3 C. W. N. 247 Dist. (*Sundara Aiyar and Spencer, JJ.*) SRINIVASA AIYAR *v.* BALAKRISHNA DEVAI.

(1912) M. W. N. 150 : 11 M. L. T. 159 : 13 I. C. 860 : 22 M. L. J. 187.

———Cl. 15—*Partnership suit—Order referring suit to Commissioner is not a Judgment.*

An official referee is merely to ask the judge in taking the accounts rendered necessary for passing the final decree. He is to be guided by the directions of the judge. The order of the judge referring the whole suit to the official referee was neither a 'decree' within the meaning of S. 2 of C. P. C. nor a 'judgment' within the meaning of clause 15 of the Letters Patent and was therefore not appealable (*Kumaraswami Sastri, J.*) ABDUL WAHAB *v.* ROKIA BIBI.

1924 M. 406.

———Cl. 15—*Order of Judge under R. 206—Original Side Rules—If a judgment.*

A judge deciding in Chambers to reserve price to be put on property to be sold in auction under R. 206 Original Side Rules, acts only in a ministerial capacity. Such an order is not a judgment

LETTERS PATENT—(MADRAS), Cl. 15.

and hence no appeal lies. (*Schwabe, C. J. and Krishnan, J.*) TAWKER AND SONS *v.* HARSOOKDOSS CHOUGHMULL 18 L. W. 647 : (1923) M. W. N. 834 : 33 M. L. T. 72 (H. C.) : 45 M. L. J. 611 : 1924 M. 386.

——Cl. 15—*Judgment—Order refusing to alter sale proclamation or postpone sale is not one.*

An order of a judge on the original side refusing to alter the terms of a sale proclamation or to postpone a sale, is not a judgment and hence it is not appealable. (*Schwabe, C. J. and Coleridge, J.*) KAVERI BAI AMMAL *v.* MEHTA AND SONS. 18 L. W. 615 : (1923) M. W. N. 894 : 46 M. L. J. 71 : 1924 Mad. 234.

——— Cl. 15— *Judgment—Order in criminal case is not one—Sanction application.*

Semble : If a single Judge sitting on the Original Side of the High Court grants sanction under S 195 (1) Cr. P. Code for a prosecution, his order is one made in the exercise of criminal Jurisdiction and is not a judgment within the meaning of Cl. 15 of the Letters Patent. (*Schwabe, C.J. Olafield and Coutts-Trotter, JJ.*) MUNISWAMI MUDALIAR *v.* RAJARATNAM PILLAI.

(1923) M. W. N. 594 : 31 M. L. T. 267 (H. C.) : 16 L. W. 365 : 45 M. 928 : 24 Cr. L. J. 78 : 43 M. L. J. 375 : 1922 Mad. 495.

——Cl. 15—*Judgment—Order of admission—Judge—Stay of execution—Appeal—Division Bench.*

The order of a single Judge, sitting in the Admission Court, dismissing a petition for stay of execution, is not a 'judgment' within the meaning of cl. 15 of the Letters Patent, and it is not appealable to the Division Bench. (*Oldfield and Ramesam, JJ.*) VAIRAVAN CHETTIAR *v.* RAMANATHAM CHETTIAR. 14 L. W. 701.

——Cl. 15—*Order of single Judge directing prosecution under S. 478—Appeal—Cr. P. Code, Ss. 215 and 478.*

Even if an appeal lies under Cl. 15 of the Letters Patent from an order of commitment under S. 478 of the Cr. P. C. by a Judge of the High Court trying a Civil Suit in the original side, the order cannot under S. 215 of the same Code be set aside except on a point of law. (*Abdur Rahim, O. C. J. and Burn, J.*) VENKATAGIRI AIYAR *v.* N. M. FIRM. 21 Cr. L. J. 28 : 10 L. W. 568 : 54 I. C. 172 : 37 M. L. J. 652.

——Cl. 15—*Judgment—Taxation of costs.*

An order as to costs passed by a Judge, sitting on original side, on a review of taxation by the taxing officer is a 'Judgment' and hence appealable. (*Wallis, C J., Ayling and Kumaraswami Sastri, JJ.*) KULASEKARA NAICKER *v.* JAGADAMBAL AMMAL. 42 Mad. 352 : 9 L. W. 322 : 25 M. L. T. 292 : 50 I. C. 14 : 36 M. L. J. 351. (F. B.)

——Cls. 15 and 36—*Land Acquisition appeal—Dissenting judgment—Appeal.*

The decision of the High Court in an appeal under S 54 of the Land Acquisition Act does not form a judgment within Cl. 15 of the Letters Patent. 40 Cal. 21 and 17 C. W. N. 421. Foll.

LETTERS PATENT—(MADRAS), Cl. 15.

(*Abdur Rahim, Oldfield and Seshagiri Aiyar, JJ.*) T. MANAVIKRAMAN TIRUMALPAD *v.* THE COLLECTOR OF NILGIRIS. 41 Mad. 943 : 8 L. W. 261 : 24 M. L. T. 155 : (1918) M. W. N. 540 : 49 I. C. 27 : 35 M. L. J. 110.

——Cl. 15—*Criminal trial—Order for compensation under S. 250 of the Cr. P. Code.*

An order for compensation under S. 250 of the Cr. P. Code is an order in a criminal trial and the Judgment of the single judge of the High Court in revision from that order is not open to appeal under Cl. 15 of the Letters Patent. (*Ayling and Napier, JJ.*) KANDASAMI PILLAI, *In re.* 43 I. C. 624 : 19 Cr. L. J. 208.

——Cl. 15—*Order under S. 95, Cr. P. Code.*

Whether an appeal lies under the clause against an order of the High Court under S 195, Cr. P. Code, is doubtful. (*White, C. J., Miller and Oldfield, JJ.*) KRISHNAYAN *v.* PILLAI. 39 Mad. 768 : 38 I. C. 994 : 18 Cr. L. J. 434.

——Cl. 15—*Review of judgment passed in appeal under C. P. Code, S. 114—Practice.*

The High Court is competent to entertain an application to review a judgment passed in a Letters Patent appeal. S. 114, C. P. Code applies to judgment under the High Court's Letters Patent. (*Seshagiri Aiyar and Phillips, JJ.*) VENKATASUBARAYUDU *v.* KRISHNA YACHENDRULU VARU. 40 Mad. 651 : 19 M. L. T. 126 : (1916) 1 M W. N. 135 : 3 L. W. 172 : 32 I. C. 873 : 32 M. L J. 144.

——Cl. 15 — *Judgment — Order refusing amendment of plaint—Appeal.*

An order refusing leave to amend is not a judgment. 35 M. 1. Foll. (*Wallis, C. J., and Seshagiri Aiyar, J.*) MAHALINGAM *v.* NATESA AIYAR. 3 L. W. 107 : 32 I. C. 423 : (1916) 1 M. W. N. 146.

——Cl. 15—*Order setting aside order of abatement—Appeal.*

An appeal lies under Cl. 15 of the Letters Patent against an order of a single Judge of the High Court sitting on the original side setting aside the abatement of a suit, as such order is a judgment under Cl. 15. 35 M. 1, Foll. (*Sadasiva Aiyar and Napier, JJ.*) KYROON BEE *v.* ADMINISTRATOR-GENERAL OF MADRAS. 31 I. C. 38 : 2 L. W. 948.

——Cl. 15—*Order of a single Judge staying further trial of a suit—Appeal.*

No appeal lies under Cl. 15 of the Letters Patent from an order of a single Judge of the High Court staying the further trial of a suit. (*Sadasiva Aiyar and Napier, JJ.*) PALANIAPPA CHETTY *v.* CHIDAMBARAM PILLAI. 30 I. C. 942 : 18 M. L. T. 312.

——Cl. 15—"*Judgment*"—*Prov. Sm. C. C. Act, S. 25—Order under.*

A single Judge of the High Court when disposing of an application under S. 25 of the Prov. Sm. C. C. Act (IX of 1887) exercises "Appellate Jurisdiction" within the meaning of S. 13 of the High Courts Act and his order is a judgment even when the Judge merely declines to interfere in

revision. It is immaterial whether before such refusal the records were called for and a notice issued to the other side. An appeal lies from such an order under S. 15 of the Letters Patent. (22 M. 68 F. 35 M. 1. F.; 23 M. 169: 27 M. 340. Overruled.) In matters of discretion, the Court will not ordinarily interfere in appeal though it has jurisdiction to do so. (24 W. R. 423 F.) (*Wallis, C. J., Seshagiri Aiyar and Kumaraswami Sastri, JJ.*) SRINIVASA AIYANGAR *v.* RAMASWAMI CHETTIAR. **39 Mad. 235 : 18 M. L. T. 46 : 29 I. C 846 : 29 M. L. J. 12.**

——Cl. 15—*Criminal trial—Appeal.*

No appeal lies under Cl. 15 of the Letters Patent against an order passed by a single Judge of the High Court in the exercise of its Criminal Revisional jurisdiction. 27 M. 510 F. (*Ayling and Tyabji, JJ.*) ADAPALA VENKATA NARASA, *In re.* **29 I. C. 96 : 16 Cr. L. J. 464 : 3 L. W. 363.**

——Cl. 15—*Criminal trial—Order passed in revision—Under Cr. P. Code, S. 488—Appeal.*

The order of a single Judge of High Court passed in revision in proceedings under S. 488 Cr. P. Code, is one passed in a criminal trial within Cl. 15 of the Letters Patent and no appeal lies therefrom. (*Spencer and Coutts-Trotter, JJ.*) RAGAVA APPADU *v.* RAGAVA APPAMMA. **39 Mad 472 : 28 M. L. J. 483 : 28 I. C. 662 : 16 Cr. L. J. 326 : 17 M. L. T. 330.**

——Cl. 15—*Criminal trial—Revision—Order of a single Judge—Appeal, Cr. P.C.—S.* 118.

No appeal lies against the order of a single Judge on a revision petition presented against the order of Magistrate acting under S. 118 of Cr. P. Code. Proceedings taken for binding over persons to keep the peace under Ch. VIII of Cr. P. Code, are criminal trials within Cl. 15 of the Letters Patent. The portion of the Letters Patent commencing with S. 22 dealing with criminal jurisdiction give the right of appeal against the order of a single Judge acting as a Court of Revision. (*Spencer and Sadasiva Aiyar, JJ.*) ADUR DESIKACHARI *v.* EMPEROR. **39 Mad. 539 : (1915) M. W. N. 224 : 28 I. C. 527 : 16 Cr. L. J. 303 : 28 M. L. J. 307.**

——Cl. 15—*Appeal—Order on claim petition by single Judge.*

Neither S. 283 nor S. 591 of the C. P. Code, 1882, takes away the right of appeal conferred by Cl. 15 of the Letters Patent from an order of a single Judge of the High Court on a claim petition. (*Sadasiva Aiyar and Napier, JJ.*) VENUGOPAL MUDALI *v.* VENKATASUBBIAH CHETTI. **39 Mad. 1196 : 17 M. L. T. 208 : 28 I. C 367 : (1915) M W. N. 211.**

——Cl. 15—*Order of single Judge — Small Cause—Revision.*

A Letters Patent appeal will lie against an order of rejection by a single Judge of the High Court of a petition for a revision of a Small cause judgment. 30 M. 311. Foll. [The Letters Patent have now been amended so as to exclude an appeal in a case like this.] (*Oldfield and Seshagiri Aiyar, JJ.*) AIYA GOUNDAN *v.* JEYAN MANDALATHPIATHI GOPANNA MAURADIYAR. **1 L. W. 726 : 16 M. L. T. 253 : 27 M. L. J. 480 : 26 I. C. 57 : (1914) M. W. N. 832.**

——S. 15—"*Judgment*"—*Includes order as to costs.*

The term "judgment" in S. 15 Letters Patent includes an order awarding costs even if they are discretionary and such order can be appealed against. Where both the parties can be blamed for having litigated, costs can be awarded to neither. (*Sadasiva Aiyar and Spencer, JJ.*) NATHEIR SAHIB *v.* ROWTHER. **22 I. C. 551.**

——Cl. 15—*Trial—If includes appeal.*

The word "*Trial*" includes an appeal under Cl. 15 of the Letters Patent. (*Benson and Sundara Aiyar, JJ.*) WALLAJAPET RAJAMMAL *v.* EMPEROR. **22 M. L. J. 44 : 10 M. L. T. 502 : 12 I. C. 653 : 12 Cr. L. J. 565 : (1911) 2 M. W. N. 479.**

——Cls. 25 and 26—*Criminal Law Amendment Act (XIV of* 1908), *S.* 6 (2)—*Judgment under—Appeal.*

The Judgment of a special Criminal Bench of the High Court constituted under S. 6 (*b*) of the Indian Criminal Law Amendment Act, 1908, is open to review on a certificate granted by the Advocate-General under Cl. 26 of the Letters Patent. The Court of review cannot go into matters not covered by the certificate of Advocate-General. (*Benson, Wallis, Miller, Abdur Rahim and Sundara Aiyar, JJ.*) MUTHU KUMARASWAMI PILLAI *v.* EMPEROR. **(1912) M. W. N. 549 : 12 M. L. T. 1 : 14 I.C, 896 : 13 Cr. L. J. 352 : 35 Mad. 397 (F.B.).**

——Cl. 36—*Difference of opinion—Revision—Procedure.*

In cases of difference of opinion in revision cases Cl. 36 and not S. 98, C. P. C. regulates the procedure. (*Abdur Rahim and Ayling, JJ.*) KARRI VENKANNA PATRUDU, *In re.* **32 I. C. 330 : 17 Cr. L. J. 42 : 18 M. L. T. 591.**

——Cl. 36—*Difference of opinion among Judges—Sanction, Cr.* P. *Code. S.* 195 (6).

Where two Judge of the High Court differ in opinion as to whether a sanction given by the Lower Court should be revoked on an application under S. 195 (6), the provision in cl. 36 of the Letters Patent applies and the opinion of the senior Judge prevails. (*White, C. J., Sankaran Nair, Abdur Rahim, Ayling and Sadasiva Aiyar, JJ.*) BAPU *v.* BAPU. **39 Mad. 750 : 11 M. L. T. 367 : (1912) M. W. N. 499 : 14 I. C. 305 : 13 Cr. L. J. 209 : 22 M. L. J. 419 (F. B.).**

——Cl. 37—*Rule* 105 *of Appellate Side Rules—If* ultra vires, *C.P.C., O.* 41, *S.* 100 *Rr.* 11 *and* 15.

R. 105 of the Appellate Side Rules of the High Court is authorised by S. 37 of the Letters Patent and is therefore not *ultra vires* R. 105 of the High Court Appellate Side does not contravene the provisions of the C. P. C. by limiting the right of appeal conferred by S. 100, C. P. C., or by varying the provisions of O. 41 as to the mode of disposing of appeals. (*Ayling and Tyabji, JJ.*) KEEPILACHERI PARKUM *v.* VENNATHANKANDIJIL. **2 L. W. 999 : 18 M. L. T. 383 : 29 M. L. J. 784 : 31 I. C. 74 : (1915) M. W. N. 817.**

LETTERS PATENT—(MADRAS). Cl. 39.

——Cl. 39—*Leave to appeal to His Majesty in Council—Order suspending vakil from practice in the exercise of High Court's disciplinary jurisdiction—No power to grant leave.*

The High Court has no powers to allow an appeal to the Privy council against an order in a disciplinary matter, such as suspending a vakil from practice. (*Schwabe, C. J. Coutts Trotter, Kumaraswami Sastri, Krishnan and Ramasam, JJ.*) E. RAGHAVA REDDI *In the matter of.*

43 M. L. J. 382 : 16 L. W. 328: 1922 M.W.N. 530 : 31 M. L. T. 173: 1922 M. 440.

——Cl. 39—*Deputy Collector sanctioning prosecution on income Tax Officer—High Court order refusing to quash proceedings, if appealable—Privy Council—Leave to appeal.*

Where the High Court refuses to quash by its writ of *Certiorari*, the prosecution sanctioned by a Deputy Collector on Income tax Officer, leave to the appeal of the Privy council should be given under cl. 39 of the Letters Patent, since it appertains to criminal jurisdiction. Moreover cl. 39 of the Letters Patent does not apply to the case of a writ of *Certiorari*. (*Sundara Aiyar and Sadasiva Aiyar, JJ.*) NATARAJA AIYAR, *In re.*

25 M. L. J. 565 : 21 I. C. 896 : 14 Cr L. J. 656 : 14 M. L. T. 421.

——Cl. 44—*Scope of.*

The provisions of cl. 44 do not enable courts by implication to supplement the Letters Patent by importing into it all Acts *ejus dem generis* passed by the Governor-General in Council. The provision is only intended to empower the Governor-General in Council to legislate with a view to supplement the omission in the Letters Patent. (*Seshagiri Aiyar and Phillips, JJ.*) VENKATASUBBARAYADU *v.* KRISHNA YACHENDRALU VARU.

40 Mad. 651 : (1916) 1 M. W. N. 135 : 3 L. W. 172 : 19 M. L. T. 126 : 32 I. C. 873 : 32 M. L. J. 144.

Patna.

——*Right of appeal given by, does not apply to administration or disciplinary powers.*

The right of appeal to His Majesty in council conferred by the Letters Patent is confined to the different classes of jurisdiction named in Letters Patent and not to the administrative or disciplinary powers conferred upon the court thereby. (*Miller, C. J. and Adami, J.*) MISS SUDHANSU BALA HAZRA, *In re.* **1 P. 590 : 1922 P. 603.**

——*Appeal—Questions not raised before Bench cannot be raised later.*

Even pure questions of law ought not to be entertained in a Letters Patent Appeal, if they have not been raised in the Court below. (*Miller, C. J. and Adami, J.*) GRANT *v.* EKLAL JHA.

3 Pat L. T. 386 : 1922 P. 171.

——Cl. 8—*Pleader or Advocate—Removal of—Conviction under S. 17 (2) of the Criminal Law Amendment Act, (XVI of 1918).*

Where a High Court Vakil defied the order of constituted authority and took the law in his own hands as a result of which he was convicted under S. 17 (2) of the Criminal Law Amendment Act, he renders himself liable to the disciplinary

LETTERS PATENT—(PATNA). Cl. 10.

jurisdiction of the High Court. Where the vakil without expressing regret for his conduct maintained the correctness of his position he was suspended for 6 months. Advocates and pleaders are a privileged class enrolled not only for the purpose of rendering assistance to the courts in the administration of justice but also for giving professional advice for which they are entitled to be paid by those members of the public who require their services. Their position, training and practice give them an immense influence with the public and their example must necessarily have a much greater effect whether for good or for evil than the example of those who do not occupy this privileged position. It is not necessary for the High Court in order to be able to exercise its disciplinary jurisdiction that any offence should have been committed by a pleader nor is it necessary that what the pleader has done should have subjected him to anything like general infamy or imputation of bad character. (*Miller, C. J. Mullick and Kulwant Sahay, JJ.*) BABU MADHEVA SINGH *In the matter of.*

(1923) Pat. 42 : 1 Pat. L. R. (Cr). 36 : 1923 P. 185 (2).

——Cl. 10—*Judgment—Order of retrial is a.*

If a single judge by order reverses and remands a case for being tried anew then this is a judgment and can be appealed under clause 10. But it is not a judgment if the remand is made for a finding. (*Miller, C. J. and Mullick, J.*) AJIT CHAUDHURI *v.* JANAK LAL CHAUDHURI.

1923 Pat. 332 : 1924 P. 336.

——Cl. 10—*Judgment—Order remanding a case for re-hearing—Order calling for decision on issue—Appealability.*

An order of a single Judge of the High Court setting aside a decree of the lower appellate court is a "Judgment" whether there is an order for re-hearing of the case by the lower court or whether the case is decided by the Judge himself. But an order of a single Judge merely referring an issue for trial by the lower Court without disposing of the appeal finally is not a final judgment and is not appealable. (*Miller, C. J. and Coutts, J.*) MUNSHI LAL *v.* RAMASIS PURI.

1 Pat. 246 : 3 Pat. L. T. 343 : 1922 P. 384.

——Cl. 10—*Appeal under—Applicability of S. 12 of the Limitation Act—Patna High Court Rules, Ch. VII, R. 2.*

Ch. VII, R. 2 of the High Court Rules of the Patna High Court excludes the applicability of S. 12 of the Limitation Act to appeals which are preferred under Letters Patent, Cl. 10. (*Miller, C. J. and Mullick, J.*) DEOKI LAL *v.* RAMANAND LAL. **5 Pat. L. J. 701 : 2 U. P. L. R. (Pat). 235 : 2 Pat. L. T. 42 : 59 I. C. 179 : 1920 Pat. 333.**

——Cl. 10—*Appeals—Preliminary hearing—Practice—High Court Rules—Validity—Effect.*

The High Court rules which contemplate and authorize the procedure of preliminary hearing of Letters Patent appeals in the manner provided by O. 41, R. 11, C. P. C., having received the sanction of the Governor-General-in-Council and

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of the Local Government, have the force of law. Even if no procedure were provided either by the Code or by rules of the Court or elsewhere it would be the duty of the Court to deal with appeals under Cl. 10 of the Letters Patent in conformity with the practice aforesaid, as it is a rule of justice, equity and good conscience. (*Dawson Miller, C. J. and Adami, J.*) JAGDIS CHANDRA DAS *v.* CHANDRA DAS.
4 Pat. L. J. 695 : 54 I. C. 230 : 1919 Pat. 416.

———Cl. 10—*Order of single Judge staying criminal trials—Govt. of India Act, S. 106—Appeal.*

An order of a Judge of the High Court sitting alone, staying a criminal trial is not a judgment and is not appealable under Cl. 10 of the Letters Patent of the Patna High Court. The object of Cl. 10 was to prohibit appeals, (i) in respect of sentences and orders passed or made in the exercise of criminal jurisdiction, and (ii) in respect of orders, made in the exercise of revisional jurisdiction in civil cases. (*Mullick and Thornhill, JJ.*) BABUJAN MISSER *v.* SHEO SAHAY CHAUDHURY.
3 Pat. L. J. 509 : 5 Pat L. W. 153 : 19 Cr. L. J. 1008 : 48 I. C. 348 : 1919 Pat. 218.

———Cl. 12—*Applicability of—Submission to jurisdiction—Part of the cause of action within jurisdiction—Waiver of objections.*

Where the breach of an agreement took place in Calcutta part of the cause of action arises within the limits of the ordinary Original Jurisdiction of the Calcutta High Court. Though the plaintiffs in the action should have taken the leave of the Court under Clause XII of the Letters Patent before instituting the suit, still if there is a submission to the jurisdiction of a Court and if there is no inherent lack of jurisdiction in that Court the absence of the formality which would confer complete jurisdiction on that Court will not render the judgment of that Court null and void. Part of the cause of action having arisen within the jurisdiction of that Court, there is not an entire absence of jurisdiction in the Original Side of the Calcutta High Court taking cognizance of the suit. In order to give a complete jurisdiction it was necessary for the plaintiff in that action to ask the leave of the Calcutta High Court. Where leave of the High Court was not taken when plff. instituted the suit in 1914 but the defendants submitted the jurisdiction of the Court and expressly undertook not to question the jurisdiction of the Court that undertaking having been given when they applied for setting aside the *ex parte* decree, and one of the terms of the consent order by which the *ex parte* decree was set aside, was that the defendants would not question the jurisdiction of the Calcutta High Court. *Held*, that Calcutta High Court had jurisdiction to render Judgment in the case, and the decree could not be set aside on the ground of want of jurisdiction. (*Das and Foster, JJ.*) RAJA GANESH NARAYAN SAHI *v.* MANIK LAL CHANDRA. 1 Pat. L. R. 318 : 1923 P. 562.

———Cl. 27—*Matrimonial jurisdiction of the High Court—Extent of.*

LETTERS PATENT—(RANGOON), Cl. 7.

The jurisdiction of the High Court in matters matrimonial, is only such jurisdiction as is comprised within the provisions of the Divorce Act. (*Bucknill, J.*) ADELAIDE CHRISTIANA LISH *v.* DAVID LISH. 1923 Pat. 127 : 1 P. L. R. 129 : 1923 P. 301.

———Cl. 31—*Disciplinary jurisdiction — No right of appeal.*

Under the Letters Patent the right of appeal to His Majesty in Council conferred by the Letters Patent is confined to different classes of jurisdiction named in the Letters Patent and not to the administrative or disciplinary powers conferred upon the Court thereby. It may always be necessary in performing administrative acts for the Court or the Judge or the persons whose duty it is to carry out these acts to consider and come to a conclusion as to what his power may be under particular Act of Council and the mere fact that such a consideration arises does not take the case out of the ordinary course. (*Miller. C. J. and Adami, J.*) SUDHANSU BALA HAZRA *In re.*
1 P. 590 : 1922 P. 603.

———Cl. 31—*Legal Prac. Act—Disciplinary action against pleader—Appeal to Privy Council —Leave.*

There is no provision in the Legal Prac. Act conferring a right of appeal to His Majesty in Council from an order passed by the High Court under S. 13 of that Act. Cls. 31 to 34 of the Letters Patent do not apply to orders passed in the exercise of administrative or disciplinary powers conferred on the Court by earlier clauses or statute. 32 Bom. 106, Foll. 2 M. I. A. 428 : 4 M. I. A. 220 : 17 All. 498 : 34 I. A. 41. (*Miller, C. J. and Coutts Trotter, J.*) BIR KISHORE ROY *v.* EMPEROR. 20 Cr. L. J. 679 : 52 I. C. 599 : 4 P. L. J. 423.

———Cl. 40—"*Judgment*"—*Order directing trial of certain issue—Court hearing appeal after return of findings if entitled to disregard order of remand.*

There is no appeal under the Letters Patent of the Patna High Court against an order of a single Judge directing the trial of a certain issue and a Judge before whom the case comes up for final hearing with the findings after remand can disregard the order of remand and dispose of the appeal on the original findings of the Appellate Court. (*Chamier, C. J., Chapman and Jwala Prasad, JJ.*) BARA ESTATE, LTD. *v.* ANUPCHANDAR. 2 Pat. L. J. 663: 2 P. L.W. 71 : 41 I. C. 337 : 1917 Pat. 342.

Rangoon.

———Cl. 7—*Advocates of Upper Burma—Right to be enrolled—Status.*

First Grade Advocates of Upper Burma if they want to be enrolled as advocates of the Rangoon High Court must first show they possess all the qualifications prescribed by the rules. The mere fact they were called Advocates in Upper Burma does not entitle them to be Advocates in Rangoon also. (*Robinson, C. J. Heald and May Oung, JJ.*) *In the matter of* CERTAIN FIRST GRADE ADVOCATES. 1 Rang. 142 . 1924 Rang. 1.

LETTERS PATENT—(RANGOON), Cl. 8.

———Cl. 8—*Allegations against practitioner in his role as printer—Acts punishable under Criminal Law—Disciplinary action.*

Before High Court exercises its disciplinary powers as regards a Pleader who makes statement in a capacity of a receiver, it should be first investigated in a criminal court whether the statement is an offence (*Rutledge, Heald and May Oung, JJ.*) MAUNG BA KYIN, *In the matter of.*

2 Bur. L. J. 210 : 1924 Rang. 113.

———Cl. 11—*Application under, should be entertained by a Judge on the original jurisdiction side.*

It is desirable that the application for removal to the High Court of a suit under clause 11 should also be dealt with in the original jurisdiction of the Court. (*Lentaigne and Carr, JJ.*) THE JUPITER GENERAL INSURANCE CO., LTD. *v.* ABDUL AZIZ. 1 R. 226 : 1923 Rang. 185.

——— Cl. 13—*Judgment— Order refusing to file an award—Case concluded in Chief Court—Effect.*

An order refusing to file an award is a judgment within the meaning of the Letters Patent. Where the case itself is concluded by the Chief Court of Lower Burma, no appeal lies under the Letters Patent. (*Duckworth and Po Han, JJ.*) SAYA PYE *v.* U. KUNDINNYA.

1 Rang. 661 : 2 Bur. L. J. 193: 1924 Rang. 47.

———Cl. 13—*Appeal—Limitation for—Delay.*

Though no period of limitation is prescribed by Letters Patent (Rangoon) for appeals under cl. 13, yet delay to apply for an appeal will be considered against the party. (*May Oung, J.*) MAUNG HMAN *v.* MA SHIN.

2 Bur. L. J. 164 : 1924 Rang. 45.

———Cl. 13—*Appeal — Delay in applying—Limitation.*

Period of one month is not limitation period under Letters Patent (Rangoon) for an appeal and the said period is not delay so as to affect the party. (*Heald, J.*) MAUNG TUNYA *v.* MAUNG AUNG TUN. 2 Bur. L. J. 165.

———Cl. 34 —*Applicability of—Difference of opinion among Judges of the Division Bench of the High Court—Procedure—C. P. Code, S. 98.*

It is not in all cases that clause 34 of the Letters Patent overrides the provisions of S. 98 of the Code of Civil Procedure and where that section can be properly applied it may be resorted to in spite of the provisions of clause 34. Only those cases in which the appeals come before the Court by virtue of a right of appeal given by the Letters Patent are governed by cl. 34. Where an appeal lies under the ordinary law of the land the Letters Patent will override the provisions of the Code applicable to the appeal. (*Robinson, C. J.*) TIN TIN NYO *v.* MAUNG BA SAING.

1 R. 584 : 1924 Rang. 148.

LIABILITY.

———for Torts.

See TORT.

———of Agents.

See (1) CONTRACT ACT.
(2) PRINCIPAL AND AGENT.

LIMITATION—Plea.

———of Guardian.

See GUARDIAN AND WARDS.

———of Sons for Father's Property.

See HINDU LAW—DEBTS.

LIBEL.

See TORT—DEFAMATION.

LICENSE.

See also EASEMENTS ACT, Ss. 52—64.

———*Notice of revocation—Trespassers.*

When the grantor of a license dies his heir can treat the licensee as a trespasser without giving notice of revocation of the license with respect to immoveable property. (*Kotwal, A. J. C.*) KARSHLAL *v.* BADRIPRASAD.

18 N. L. R. 76 : 1922 Nag. 162.

LICENSED WAREHOUSE AND FIRE BRIGADE ACT (I B. C. OF 1893).

——S. 7—*Application for license not disposed of—Effect.*

If an application for license under the Act is not disposed of within 30 days from the date of receipt by the Chairman, the applicant is under S. 7 exempted for liability so long as there is no final refusal. (*Newbould and Suhrawardy, JJ.*) LEGAL REMEMBRANCER, BENGAL *v.* MULL.

25 C. W. N. 960 : 66 I. C. 428 : 34 C. L. J. 203.

———S. 15—*Refusal of license — Order by Vice-Chairman—Legality.*

Refusal of an application for license to use any building as a warehouse must be in writing and signed by the Chairman of the Commissioners and an order by the Vice-Chairman is no refusal under S. 15 of the Act. (*Newbould and Suhrawardy, JJ.*) LEGAL REMEMBRANCER, BENGAL *v.* MULL.

25 C. W. N. 960 : 66 I. C. 428 : 34 C. L. J. 203.

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See (1) CONTRACT ACT, Ss. 95—105.
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LIFE-ESTATE.

See T. P. ACT, S. 14.

LIFE INSURANCE.

See INSURANCE.

LIFE INSURANCE COMPANY.

——*Calculation of income.*

Four per cent. of the premia received may be taken as the gross income of the life insurance office. (*Ayling and Venkatasubba Rao, JJ.*) SUN LIFE INSURANCE COMPANY OF CANADA *v.* CORPORATION OF MADRAS. 15 L. W. 330 : (1922) M. W. N. 155 : 46 M. 10 : 31 M. L. T. 271 : 42 M. L. J. 283 : 1922 Mad. 85.

LIFE-INTEREST WITH REMAINDER OVER.

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LIMITATION ACT OF 1859.

———S. 1—*Applicability—Law in force at the date of the suit or proceeding.*

Unless there is a distinct provision to the contrary, the law of limitation applicable to a suit or proceeding is the law in force at the date of the institution of the suit or proceeding. (*Sir John Edge.*) SONI LAL *v.* KANHAIYA LAL.

35 All. 227 : 40 I. A. 74 : 13 M. L. T. 437 : 17 C. W. N. 605 : 11 A. L. J. 389 : (1913) M. W. N. 470 : 17 C. L. J. 488 : 15 Bom. L. R. 489 : 19 I. C. 291 : 25 M. L. J. 131 (P. C.).

———S. 1 (12) and (15)—*Adverse possession—Possession of mortgagee under Bengal Regulation (XV of 1793) after mortgage money has been paid—Nature of.*

The possession of a mortgagee under the Bengal Regulation XV of 1793 does not become adverse simply because he remains in possession after the mortgage money has been paid out of the usufruct and the suit for redemption of a mortgage effected before the passing of the Limitation Act of 1859 is governed by 60 years rule. 33 A. 97. Foll. (*Karamat Husain and Chamier, JJ.*) HABEEBULLAH *v.* ABDUL HAMID.

34 All. 261 : 13 I. C. 963 : 9 A. L. J. 131.

———S. 1, Cl. (12)—*Scope of—Widow barred—Reversioners barred.*

Under Act XIV of 1859 if the widow is barred, the reversioners would also be barred and their rights are not revived by the Act of 1871 (*Spencer and Seshagiri Aiyar, JJ.*) KUNJARU VENKATARAMANAYYA *v.* DEJAPPA KONDE.

22 M. L. T. 233 : (1917) M. W. N. 679 : 6 L. W. 530 : 42 I. C. 540 : 34 M. L. J. 319.

———S. 1, Cls. (15) and (18)-*Mortgage-Redemption—Act IX of 1908, S. 29 and Art. 148—Acknowledgment of title after expiry of period prescribed for redemption—Effect of.*

LIMITATION ACT (IX OF 1908).

Plff. sued to redeem a mortgage of 1798. Under Cl. 15 of S. 1 of the Limitation Act of 1859 the mortgagor has sixty years to redeem unless there was an acknowledgment of the mortgagor's title in the meantime. The sixty years expired in 1858. There was an acknowledgment in 1861, *i.e.*, within two years of grace allowed by S. 18 of the Act to bring a suit. *Held*, that the suit brought in 1911 was barred by limitation. The words "in the meantime" occurring in S. 1, Cl. 15 of the Act of 1859 refer to the sixty years mentioned in the first part of the clause and the right of the mortgagors to sue, having become barred in 1858, their right to the property was extinguished by S 29 of the Act of 1871 The subsequent acknowledgment was ineffective to save limitation. 27 C. 1004 (P. C.) ; 5 M. 182, Foll. (*Spencer and Krishnan, JJ.*) RAMAN KURUP *v.* CHAPPAN NAIR.

(1917) M. W. N. 864 ; 22 M. L. T. 419 : 43 I. C. 50 : 33 M. L. J. 753.

———S. 1 (15)—Anandravan—*If person claiming under* Karnavan—*Limitation Act (IX of 1871), Sch. II, Art.* 148.

An *Anantravan* cannot be said to be a person claiming under a *Karnavan* within the meaning of S. 1 (15) of the Act XIV of 1859 or Art. 148 of Act IX of 1871 and has no right to make an acknowledgment and save limitation and such an acknowledgment cannot be effective even if construed as one by a co-mortgagee. 17 B. 173 ; 19 M. L. J. 288 ; 11 C. 204, Foll. (*Wallis, Offg. C. J. and Seshagiri Aiyar, J.*) MUHAMMAD *v.* MAYI KUNHI HAJI.

26 I. C. 127.

———(IX OF 1908).

Applicability of.
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LIMITATION ACT (IX OF 1908)—Applicability of.

Applicability of.

———*Applicability—Decree barred under old act, revival of.*

There is no provision in this statute so retrospective in its effect as to revive and make effective a judgment or decree which before the date of its operation had become unenforceable by lapse of time. (*Lord Atkinson*) SACHINDRA NATH ROY v. MEHRAJ BAHADUR SINGH.
4 U. P. L. R. (P C.) 57 : 30 M. L. T. 96 : 24 Bom. L. R. 659 : 1922 M. W. N. 338 : 26 C. W. N. 858 : 49 C 203 : 48 I. A. 335 : 1922 P C. 187. (P. C.)

———*Applicability of—Rights barred under old Act—Not revived by the passing of the new Act.*

The intention of the law of limitation is, not to give a right where there is none, but to interpose a bar after a certain period to a suit to enforce an existing right. 21 Cal. 8, Ref. Nothing in the new Limitation Act can revive a right which has already become barred under the old Act. (*Mr. Ameer Ali.*) KHUNNI LAL v. GOBIND KRISHNA NARAIN.
33 All. 356 : 38 I. A. 87 : 15 C. W. N. 545 : 8 A. L. J. 552 : 13 C. L. J. 575 : 13 Bom. L. R. 427 : 10 M. L T. 25 : (1911) 1 M. W. N. 432 : 10 I. C. 477 : 21 M. L. J. 645 (P. C.).

———*Applicability of—Suit or proceeding—Law of Limitation applicable.*

The Law of Limitation applicable to a suit or proceeding is the law in force at the date of the institution of the suit or proceeding, unless there is a distinct provision to the contrary. (*Walmsley, J.*) BISWESWAR SEN v. IMAMUDDE.
29 I. C. 833.

———*Applicability of—Criminal appeal—Last day for filing appeal expiring during vacation—Appeal filed on reopening day—Limitation.*

Where the last day for filing a criminal appeal in a Sessions Court expired during the Court's civil vacation but on that day the Judge held criminal sittings of which however neither the appellant nor his counsel had timely notice and the appeal was filed on the reopening day, *held* that the appeal should not be dismissed as time-barred. (*Teunon and Ghose, JJ.*) SONA v. NAIB ALI.
61 I. C. 714 : 22 Cr. L.J. 426.

———*Applicability—Actions to be taken by Court.*

The provisions of the Limitation Act do not apply to actions which it is the duty of the Court to take up without any formal application by parties. (*Sharfuddin and Coxe, JJ.*) BENI SINGH v. BERHAMDEO SINGH.
19 C. W. N. 473 : 28 I. C. 211 : 22 C. L. J. 66.

———*Applicability—Pending proceedings.*

The law of limitation is a law relating to procedure and the law applicable to suits or proceedings is the law in force at its institution unless there is a distinct provision to the contrary (*Richardson and Newbould, JJ.*) NARENDRA LAL KHAN v. UPENDRA NATH.
21 I. C. 113.

LIMITATION ACT (IX OF 1908)—Applicability of.

———*Applicability—Retrospective operation.*

The law of limitation applicable to a suit is *prima facie* the law in force at the time of the institution of the suit, in the absence on circumstances indicating an intention on the part of the legislature to affect retrospectively existing causes of action. One such circumstance is that a new law is brought into immediate operation without any opportunity afforded to litigants to enforce their rights under the old law. 35 A. 227, Foll. (*Mookerjee and Beachcroft, JJ.*) BUDHU KAMAR v. HAFIZ HUSSAIN. 20 I. C. 821 : 18 C. L. J. 274.

———*Applicability of—Date of suit.*

A suit is governed by the Limitation Law in force at the time of its institution and not by subsequent statute which comes into operation during the pendency of the suit. (*Mookerjee and Beachcroft, JJ.*) MAULA BAKHSH v. BHABASUNDARI DASYA.
19 I. C. 968 : 19 C. L. J. 187.

———*Applicability.*

The limitation for a Letters Patent appeal is governed by the rules made by the High Court. The Limitation Act does not apply to such a case where the limitation for a Letters Patent appeal expired, when the High Court was in vacation. The appeal could not be presented after the vacation as being time-barred. (*Le Rossignol and Martineau, JJ.*) FATTEH MAHAMAD v. CHOTHU RAM.
60 I. C. 737 : 3 Lah. L. J. 361.

———*Applicability of—Cause of action—Accrual of—Law governing suit.*

The law of limitation is a law of procedure and it is the rule of limitation in force at the time when an application is made that governs it and not the one under which the right to apply accrued. This rule applies whether the time available under the new Act is shorter than that available under the former Act or no time is available under the new Act at all. If there has been an interval between the passing and the coming into force of a later Limitation Act, it is clear indication that the Act was meant to have a retrospective operation. 21 L. J. 193 ; (1899) P. 236 ; 39 M. 645 Rel. (*Oldfield and Venkatasubba Rao, JJ.*) GANAPATHI MUDALIAR v. KRISHNAMA CHARI.
43 M. L. J. 184 : 16 L. W. 178 : 31 M. L. T. 135 (H. C.) : (1922) M. W. N. 514 : 1922 Mad. 417.

———*Applicability—New rules.*

New rules of limitation which are merely procedural, apply to causes of action arising before their enactment. (*Wallis, C. J. and Oldfield, J.*) VAITHYANATHA AIYAR v. GOVINDASWAMI ODAYAR.
13 L. W. 522 : (1921) M. W. N. 338 : 62 I. C. 795 : 41 M. L. J. 65.

———*Applicability of—Barred rights—Not revived.*

A right to sue barred under a repealed Limitation Act is not revived by the passing a new Act in the absence of a provision to that effect in the later enactment. (*Spencer and Krishnan, JJ.*) RAMAN KURUP v. CHAPPAN NAIR.
(1917) M. W. N. 864 : 33 M. L. T. 419 : 43 I. C. 50 : 33 M. L. J. 753.

LIMITATION ACT (IX OF 1908)—Construction.

———*Applicability — Reversioner's suit for possession from heirs and representatives of adopted son—Suit within 12 years of death of widow— Right barred under Act of 1871 not revived by Act of 1877.*

The right to sue to set aside an adoption, if barred under Art 129 while the Limitation Act 1871 was in force, is not revived by the Act of 1877 or by that of 1908. (*Wallis, C.J. and Burn, J.*) SOMASUNDARAM CHETTIAR *v* VAITHILINGA MUDALIAR. **40 Mad. 846 : 41 I. C. 546 : 6 L. W. 253.**

———*Applicability—Retrospective operation—Limits of.*

Though laws affecting limitation might abridge or enlarge periods of limitation in cases of suits or causes of action which are alive at the date when the new enactment comes into force which under the old law would expire afterwards, the change cannot, unless there is clearly expressed an intention to the contrary either by apt words in the enactment or otherwise operate retrospectively so as to destroy rights of suits which were alive on the date. (*Wallis, C. J , Seshagiri Aiyar and Kumaraswami Sastri, JJ.*) RAJA OF PITTAPUR *v.* GANI VENKATA SUBBA RAO.
39 Mad. 645 : 18 M. L. T. 67 : (1915) M. W. N. 547 : 2 L. W 661 : 30 I. C. 94 : 29 M. L. J. 1.

———*Applicability of—Suits governed by.*

The Limitation Act purely prescribes within what periods suits must be brought and does not create an obligation to sue, where none existed. (*Wallis, C. J. and Coutts Trotter, J.*) NARAYAN CHETTIAR *v.* LAKSHMANAN CHETTIAR.
39 Mad. 456 : 29 I. C. 1 : 28 M. L. J. 571.

———*Applicability—Date of operation.*

The law of limitation is a branch of adjective law and governs all proceedings to which it applies, from the date of its enactment. (*Jwala Prasad and Ross, JJ.*) MYERS *v.* DIVAKAR MANILAL & Co. **62 I. C. 100 : 2 P. L. T. 667.**

———*Applicability of—Pending proceedings.*

The law of limitation is a branch of the adjective law and is applicable to all proceedings which it governed from the date of its enactment (*Chamier, C J. and Jwala Prasad, J.*) KRISHNA DAYAL GIR *v.* SAKINA BIBI. **20 C. W. N 952 : 2 P. L. W. 370 : 34 I. C. 27 : 1 P. L. J. 214**

———*Applicability of—Application to Court.*

The Limitation Act does not apply to applications to a Court to do what it cannot refuse, nor to applications for the exercise of functions, of a purely ministerial character. (*Fox, C.J. and Twomey, J.*) MULA KASIM *v.* MULA ABDUR RAHIM.
9 Bur. L. T, 148 : 35 I. C. 950 : 8 L. B. R. 422.

Construction.

———*Construction— Strict interpretation.*

Statutes of limitation are in their nature strict and inflexible and are not capable of equitable construction. (*Chaudhari, J*) DEUTSCH ASIATISCHE BANK *v.* HIRALAL BURKHAN & SONS.
47 I. C. 122.

———*Construction—General and special articles.*

LIMITATION ACT (IX OF 1908)—Applicability of.

It is a principle of the Limitation Act that the particular article must be applied in preference to the general article wherever possible. (*Le-Rossignol and Campbell, JJ.*) KUNJ LAL *v.* GULAB RAM. **67 I. C. 365 : 55 P. L. R. 1922.**

———*Construction—Rules for—Schedule.*

Courts are not at liberty to allow periods of suspension not provided for in the Act. It is equally inadmissable under the Act to say that time shall not begin to run from the time limited in the article except under some express provision of the Act. Per *Abdur Rahim and Seshagiri Aiyar, JJ*:—It is a well-known rule for construing the Indian Statute of Limitation that the first and the third columns of an article should be given the same meaning as in other columns. Per *Seshagiri Aiyar, J.*—Where both first and third columns of an article do not apply to a case the residuary article must be applied. Per *Srinivasa Iyengar, J.*—In construing the articles of the Limitation Act undue stress ought not to be laid on the first column of the article which describes the nature of the suits and it ought to be held that all suits of that class must be governed by that article, though the starting point fixed in the third column cannot be applied to all or cannot be applied without working injustice (*Wallis, C J., Abdur Rahim, Coutts Trotter, Seshagiri Aiyar and Srinivasa Iyengar, JJ.*) MULLA VITTIL SEFTI *v.* KUNHI PATHUMMA. **40 Mad. 1040 : 22 M L. T. 236 : (1917) M. W. N 609 : 6 L. W. 464 : 43 I. C. 31 : 33 M. L. J. 320 (F B.).**

———*Construction—Common law and statutory liability.*

A statutory liability will be governed by the same articles of the Limitation Act as a Common Law liability if the words of the articles are capable of covering it. (*Seshagiri Aiyar, J.*) RAJESHWAR MUTHURAM LINGA SETUPATHI *v.* MAHALINGA RAYA. **6 L. W. 277 : 22 M. L. T. 146 : (1917) M. W. N, 710 : 42 I. C. 502 : 33 M. L. J. 379.**

———*Construction—Benevolent interpretation.*

The Limitation Act operates as a bar to legally enforceable claims and it should therefore be construed as much as possible in favour of the person whose right is sought to be barred. (*Ayling and Napier, JJ*) SATHULA VENKANNA *v.* NAMADHUKI VENKATAKRISANNYYA.
41 Mad, 18 : 41 I. C. 807 : 6 L. W. 192 : 33 M. L. J. 35.

———*Construction.*

The sections in the Act govern and control the applications of the articles except where the language of a particular article clearly precludes the application of a section. (*Abdur Rahim and Sundara Aiyar, JJ.*) DORASAWMY SERUMADAN *v.* NANDISAMI SELUVAN. **10 M. L. T. 418 : (1911) 2 M. W. N. 450 : 12 I. C. 695 : 21 M. L. J. 1041.**

———*Construction— Strict construction.*

The law of Limitation must be strictly interpreted and applied. No right or remedy is to be regarded as barred unless it is clearly shown to be shut out by the enactment (*Stanyon, A. J. C.*) MURLIDHAR *v.* MULU. **27 I. C. 935 : 11 N. L. R. 18.**

LIMITATION ACT (IX OF 1908)—Construction.

———*Construction—Strict interpretation.*

The Limitation Act being one in which the rights are rendered ineffective if not abrogated. must be read strictly. (*Fox, C. J.*) MA SHWE ON *v.* MAUNG KYWT. 32 I. C. 536 : 9 Bur. L. T. 45.

Defence.

———*Defences—Fraud.*

There is no limitation under the Indian Statute which will exclude the defence of fraud to an action. The Limitation Act does not bar defences, (*Sir John Edge*) SRI KRISHAN LAL *v.* KASHMIRO 20 C. W. N. 957 : (1916) 1 M. W. N. 433 : 3 L. W. 528 : 14 A. L. J. 1236 : 34 I. C. 37 : 31 M. L. J. 362 (P. C.).

———*Defence—First appeal.*

The general rule is that in a first appeal effect should be given to a plea of limitation raised for the first time at the hearing. (*Shah and Crump, JJ.*) DHANJI JAIRAM *v.* SECRETARY OF STATE. 45 Bom. 920 : 61 I. C. 347 : 23 Bom. L. R. 279.

———*Defence.*

The Act does not put a bar to any defence in any case except where a suit falls under S. 26 or S. 28 of the Act. (*Macleod, C. J. and Heaton, J.*) MADHAV NARAYAN *v.* SADASHIV KESHAV. 45 Bom. 45 : 59 I. C 118 : 22 Bom. L. R. 1092.

———*Defence—Set-off.*

The law of limitation applies to a claim to set-off subject to this that a defendant may prosecute a set-off if the claim was not barred at the time of the issue of the plaint. (*Rankin, J.*) RAJAH NARENDRA *v.* TARUBALA. 66 I. C. 209 : 25 C. W. N. 800.

———*Defence — Question of law.— Second appeal.*

A point of limitation can be taken in second appeal for the first time, if there are sufficient findings of fact on which it could be argued as a question of law. (*Walmsley and Buckland, JJ.*) PANCHANAN *v.* APORNA. 63 I. C. 785.

———*Defences—No bar of limitation.*

There is no Limitation under the Act to bar defence of fraud to an action. 31 M. L. J 362 ; 34 I. C. 37 (P C.) The time limt under the Act applies only to actions brought by the plff. and not to rights set up in defence. (*Woodroffe and Chaudhuri, JJ.*) DEODHARI PANDEY *v.* DAYANAND PANDEY. 35 I. C. 610.

———*Defence—Laches.*

A defence of laches cannot prevail where a statutory period of limitation is prescribed (*Jenkins, C. J. and Woodroffe, J.*) OSMOND BEEBY *v.* KHITISH CHANDRA. 41 Cal. 771 : 26 I. C. 284 : 18 C. W. N. 631.

———*Defence—Defect in the instrument—Discharge a barred debt.*

A defendant may in equity set up a defence that a certain instrument is by reason of its invalidity or other defect, ineffectual against him, although if he sued to have it avoided or declared a nullity, his suit would be barred by limitation. This cannot apply to establish a proposition that a party has a substantive right to compel his opponents to discharge a barred debt before they can succeed in their suit. (*Ayling and Spencer, JJ.*) ATHAN KUTTI *v.* KUTTANAT ILLOTH NARAYAN NAMBUDRI'S WIFE. (1917) M. W. N 9 : 5 L. W. 461 : 37 I. C. 756 : 32 M. L. J. 317.

LIMITATION ACT (IX OF 1908)- Starting point.

———*Defences—Not subject to.*

No limitation can exist against a defence. (*Lindsay, J. C. and Stuart, A. J. C.*) MEHARBAN SINGH *v.* RAGHUNATH SINGH. 49 I. C 115 : 5 O. L. J. 768.

———*Defence—Plea of—When to be entertained in appeal.*

Where the defendant simply mentions in his written statement that the suit is barred, he is entitled to argue it upon the allegations made in the plaint. But if it was his object to raise any questions of fact in connection with the issue as to limitation, it is obligatory on him to state those facts and have an issue raised. Where this has not been done, it is not open to raise the question for the first time in second appeal. (*Das and Adami, JJ.*) KHUB LAL UPADHYA *v.* JUGDISH PRASAD SINGH. 1 P. 23 : 3 P. L T. 795 : 1922 P. 398.

Object of.

———*Object of—Not to confer right.*

The intention of the law of limitation is not to give a right of suit where there is none but to lay down a restriction, after certain period, to a suit to enforce an existing right. 33 A. 356 Rel. (*Mookerjee and Holmwood, JJ.*) KUMEDA CHARAN BALA *v.* ASHUTOSH CHATTOPADHYA. 17 C. W. N, 5 : 16 I. C. 743 : 16 C. L. J. 282.

———*Object of.*

Per *Venkatasubba Rao, J.*—The intention of the Law of Limitation is not to give right where there is not one but to interpose a bar after a certain period to a suit to enforce an existing right. (*Spencer and Venkatasubba Rao, JJ.*) AIYAPURAJU *v.* VEEVA VENKATAKRISHNAYYA. 44 M. L. J.303 : (1923) M. W. N. 195 : 18 L. W. 85 : 1923 Mad. 462.

———*Object of—Discretion of court to grant time.*

Subsequent payment is allowed if the court has discretion in the matter of allowing time to meet the deficiency of court fees appeal. (*Coutts and Macpherson, JJ.*) DEONATH SAHAI *v.* RADHAKANT PRASAD. 3 P. L T. 142 : 1922 P. 56 (1).

Starting point.

———*Starting point—Unregistered Company—Suit for refund of capital.*

Where a suit for refund of capital against an unregistered company which is illegal under S. 4 of the Companies Act, was brought 20 years after the company was formed, *held* that it was time-barred as the cause of action was not a continuing one, but accrued as soon as the money was paid. (*Gokul Prasad and Lindsay, JJ.*) RAM KUMAR *v.* NEM CHAND. 64 I. C. 447 : 19 A. L. J. 836.

———*Starting point—Puisne mortgagee paying off prior mortgage—Right to reimbursement—Contract Act, S. 69.*

LIMITATION ACT (IX OF 1908)—Starting point.

A puisne mortgagee discharging the prior mortgage acquires a charge on the property on the date of the payment of the prior mortgage and his right to reimbursement accrues to him on the date on which he pays off the amount of the decree and relieves the mortgagors of the obligation which, under the decree, exists on them. (*Banerji and Gokul Prasad, JJ.*) BARA SHIB LAL *v.* MUNNI LAL. **63 I. C. 604 : 3 U. P. L. R. (A.) 193 : 19 A. L. J. 840.**

———*Starting point— Amended decree—Appeal.*

When an appeal is preferred against an original decree after amendment but not attacking any point in the amendment, the period of limitation is computed from the date of the original decree. (*Rafique and Ryves, JJ.*) BOHRA GAJADHAR SINGH *v.* BASANT LAL. **43 All. 380 : 19 A. L. J. 152 : 61 I. C. 69 : 3 U. P. L. R. (All.) 7.**

———*Starting point — Decree— Execution—Period of stay if a deduction.*

The period during which the execution of a decree is stayed by order of court can be deducted in computing the period of limitation for executing a decree. (*Richardson and Ghose, JJ.*) CHARU CHANDRA MAZUMDAR *v.* FANINDRA NARAYAN CHOUDHURY. **1923 Cal. 310 (2).**

———*Starting point—Decree incapable of execution—Time, when begins to run.*

Until a decree is capable of execution, limitation does not begin. Where the costs though taxed were not entered in the decree, an application praying that they be included is not one for amendment of decree but for supplying the defect, and in any case limitation begins only from the date the costs are included. (*Greaves and B. B. Ghosh, JJ.*) RAJAKOTI KUMER MUKERJI *v.* TIN COWRI CHAKRABURTI. **1922 Cal. 136.**

———*Starting point—Amendment of plaint—Limitation.*

Where a plaint is amended, it relates back to the date of the presentation of the plaint and limitation is not counted from the date of the amendment but from the date of the presentation of the plaint. (*Chatterjea and Panton, JJ.*) NRIPENDRANATH *v.* HEMANTA KUMAR. **63 I. C. 701.**

———*Starting point — Debtor and creditor same.*

When the hand that receives and the hand that pays is the same no suit will lie for payment. When there is no one competent to sue there can be no cause of action and consequently limitation cannot run, because there is no one against whom it can run. (*Phillips and Devadoss, JJ.*) SRIMATH DEVASIKHAMONY NATARAJA DESIKAR *v.* GOVINDA RAO. **44 M. L. J. 318 : 46 M. 579 : 17 L. W. 344 : 32 M. L. T. (H. C.) 174 : (1923) M. W. N. 252 : 1923 Mad. 461.**

———*Starting point—Fresh cause of action.*

Where a debtor annulled the satisfaction of his debt on the ground of coercion and obtained a decree, the creditor gets a fresh cause of action and time begins to run from the date of the annulment. 9 Cal. 255 (P. C.) ; 12 M. I. A. 244,

LIMITATION ACT (IX OF 1908), S. 2.

Foll. (*Wallis, C. J. and Seshagiri Aiyar, J.*) MUTHUVEERAPAH CHETTY *v.* ADAIKAPPA CHETTY. **43 Mad. 845 : 12 L. W. 240 : (1920) M. W. N. 505 : 59 I. C. 472 : 39 M. L. J. 312.**

———*Starting point—Declaratory suit—Application for review, whether it gives fresh starting point for limitation.*

Held, that the question whether an application for review gives a fresh starting point of limitation for a declaratory suit depends upon whether the application re-opened the question already decided :—*Held*, further that a review of judgment is not an ordinary process and does not of necessity re-open questions already decided between the parties. The matter in issue is only re opened when the application for review is accepted unlike a petition in appeal. (*Dalal, A. J. C.*) BHAGWAN BAKSH SINGH *v.* MANRAJI KUAR. **24 O. C. 280 : 66 I. C. 205 : 8 O. L. J. 3.**

———*Starting point—Arbitration proceedings, if suspends.*

The pendency of an arbitration before an arbitrator does not oust the jurisdiction of a Civil Court and the fact of the reference to arbitration does not suspend the operation of limitation. (*Das and Ross, JJ.*) ABDUL RAHIM *v.* BARIRA. **2 Pat. L. T. 556 : 61 I. C. 807 : 6 P. L. J. 273.**

———*Starting point— Appeal—Execution application—Second application in amendment of first—Disposal on different dates.*

Where subsequent to an application in execution, a second one also is made in amendment of the first, and both the applications are disposed of on two different dates, *held*, that limitation for appeal against both, commences from the later date. (*Fawcett and Raymond, A. J. Cs.*) CHOITRAM *v.* LALBUX. **63 I. C. 310 : 15 S. L. R. 47.**

———*Ss. 2 and 14—'Defendant'—Joint Hindu family—Status of other members—Suit against manager—Subsequent suit impleading subsequently born son.*

S. 2 of the Lim. Act assumes that every person who acquires an interest by devolution or otherwise in the subject-matter of a litigation previously vested in others, which renders him liable to be impleaded as a defendant derives his liability to be sued from or through somebody. In the case of a new born son in a Mitakshara family the person or persons through whom he derives this liability must be the other members of the family in whom the property which the son acquires by birth was previously vested. Where a previous suit was brought against the managing member of a joint Hindu family and that suit was dismissed on the ground of want of jurisdiction in the Court in which it was brought, the time taken in the conduct of the suit can be deducted under S. 14 of the Lim. Act even though the subsequent suit is brought against the original defendant and members of the joint family born subsequent to the previous suit. (*Miller, C. J. and Bucknill, J.*) HARI PRASAD SINHA *v.* SOURENDRA MOHAN SINHA. **3 Pat. L. T. 709 : 1922 P. 450.**

———S. 2 (4)—*'Defendant'—Tacking on of possession—Independent trespassers—Limitation Act (XV of 1877), S. 3.*

LIMITATION ACT (IX OF 1908), S. 2.

Where the Govt. after taking possession of reformed lands has released them to persons claiming to be entitled thereto as their own, those persons do not derive their liability to be sued from or through the Govt. and cannot tack on, the possession of the Govt. to their own. (*Lord Sumner.*) BASANTA KUMAR ROY *v.* SECRETARY OF STATE 44 Cal. 858 : 1 P. L. W. 593 : 21 C. W. N. 642 : 15 A. L. J. 398 : 25 C. L. J. 487 : 19 Bom. L. R. 480 : (1917) M. W. N. 482 : 6 L. W. 117 : 22 M. L. T. 310 : 44 I. A. 104 : 40 I. C. 337 : 32 M. L. J. 505 (P. C.).

——— Ss. 2 (5) and 26—*Easement rights—Indeterminate and fluctuating body if can acquire.*

Under Ss. 2 (5) and 26, 20 years uninterrupted enjoyment confers the absolute right on a determinate person and not an indeterminate and fluctuating body like the *Santals* and *Ghatwals.* (*Mullick and Jwala Prasad, JJ.*) MAHARAJ BAHADUR SINGH *v.* GAUDURI SINGH. 2 P. L. J. 323 : 39 I. C. 868 : 2 P. L. W. 282.

——— S. 2 (7) and 5—*Good faith—Sufficient cause—Wanton negligence of legal adviser.*

'Good faith' implies what was done with due care and attention ; wanton negligence on the part of a legal adviser is not a sufficient ground for extending the period of limitation under S. 5 of the Act, 41 M. 412 (P. C.) Ref. to. (*Roe and Coutts, JJ.*) JODHAN PERSHAD SINGH *v.* NANKHU PERSHAD SINGH. 3 P. L. J. 484 : 46 I. C. 509 : 6 P. L. W. 136.

——— Ss. 2 (7) and 14—*Good faith—General Clauses Act (X of 1897), S. 3 (20)—C. P. C. (Act V of 1908), S. 80.*

Where a suit for damages was brought by a person against a public officer and it was dismissed for want of notice to the officer and the plff. brought another suit after giving the required notice and claimed to exclude from the period of limitation the time taken by the first suit it was held that notice was imperative under S. 80 of the C. P. Code and that the plff. could not be taken to have acted in good faith within the meaning of S. 2 (7) of the Limitation Act or S. 3 (20) of the General Clauses Act. (*Fawcett, A. J. C.*) MANGHANMAL *v.* FERNANDEZ. 13 I. C. 260 : 5 S. L. R. 181.

——— S. 2 (8)—*Plaintiff a purchaser from Government—Adverse possession against latter if tenures against former.*

If tenures are against plaintiff adverse possession is against Government. (*Walmsley and Buckland, JJ.*) ANNADA MOHAN ROY CHOWDHURY *v.* KINA DAS. 28 C. W. N. 66 : 1924 Cal. 394

——— S. 2 (8)—*Cause of action—Transfer of title.*

A cause of action cannot be prolonged by mere transfer of title. 4 W. R. (P. C.) 36 Foll. (*Mookerjee and Beachcroft, JJ.*) ABBAS DHALI MASABDI KARIKAR. 24 I. C. 216.

——— S. 2 (8) and Art. 144—*'Plaintiff'—Purchaser of tenant's right in homestead land under* Ghatwal—*Ejectment.*

LIMITATION ACT (IX OF 1908), S. 3—Defences.

An ejectment suit against the purchaser of the right, title and interest of a tenant in homestead land under a *Ghatwal*, falls under Art. 144 of the Lim. Act. Time runs from the date when the possession of the deft. became adverse to the plff. A *Ghatwal* does not claim through his father and the word "plff," in S. 2 of the Limitation Act does not include a Ghatwal. (*Mookerjee and Beachcroft, JJ.*) PROSANNA KUMAR MOOKERJEE *v.* SRI KANTA RAY. 17 C. W. N. 137 : 16 I. C. 365. 40 Cal. 173 : 16 C. L. J. 202. [Also 37 M. 38 and 15 C. W. N. 572 :

——— S. 3.

Construction.
Defences.
Duty of Court.
Exemption from Limitation.
Local Law.
Onus.
Plea of Limitation.
Waiver.
Miscellaneous.

Construction.

——— S. 3—*Construction—Mandatory.*

A suit or an application shall be dismissed though limitation has not been set up. The section is mandatory. (*Mookerjee and Cuming, JJ.*) ASUTOSH GOSWAMI *v.* UPENDRA PROSAD. 24 C. L. J. 467 : 38 I. C. 17 : 21 C. W. N. 564.

——— S. 3—*Construction—C. P. Code, S. 151, if affects.*

C. P. Code, S. 151, does not override S. 3 of the Limitation Act. (*Chevis, J.*) LAL DEVI *v.* AMAR NATH. 57 I. C. 15 : 2 U. P. L. R. (L.) 128.

——— S. 3—*Art. 164—Construction—Ex parte decree—Application to set aside—Limitation.*

Art. 164 applies to an application to set aside an *ex parte* decree made after that Act came into force, the decree being passed before the Act came into force. S. 3 clearly lays a rule to that effect. (*Johnstone, J.*) ZAIBUL NISSA *v.* GHULAM FATIMA. 70 P. L. R. 1911 : 10 I. C. 823 : 265 P. W. R. 1911.

——— S. 3—*Construction—Question of limitation—If question of jurisdiction.*

S. 3 of the Act does not say that the suits or applications filed after the period of limitation shall not be entertained but what it says is that such suits or applications shall be dismissed. A question of limitation is therefore not a question of jurisdiction. (*Chapman and Roe, JJ.*) BHAIGA PARIDA *v.* GANNATH KHANDAI. 46 I. C. 569.

——— S. 3—*Construction.*

The provisions of S. 3 are mandatory where the bar appears on the face of the plaint, which does not involve questions of fact. 28 B. 458 (F. B.) Rel. (*Maung Kin, J.*) KALIYAPARAMA PADAYACHI *v.* C. V. A. R. CHETTY. 9 L. B. R. 71 : 39 I. C. 154 : 11 Bur. L. T. 73.

Defences.

——— S. 3—*Defences—Applicability to.*

A further advance was made by an usufructuary mortgagee on the security of the same

LIMITATION ACT (IX OF 1908), S. 3—Defences.

property on condition that the second simple mortgage was to be paid off before redemption of usufructuary mortgage, *held*, since the suit on the simple mortgage was barred, the plff. redeem the usufructuary mortgage without paying off the simple mortgage. 37 A. 634, Foll (*Rafique and Piggott, JJ.*) ACHHAIBAR SINGH v. RADHI.
40 I. C. 404.

———S. 3—*Defences—Applicability to.*

Sch. 1 provides limitation within which suit must be brought and neither it nor S. 28 applies to defences. (*Shah Din and Chevis, JJ.*) GOKALCHAND v. NIADAR MAL. 1 P. R. 1916 : 32 I. C. 485 : 206 P. W. R. 1915.

———S. 3—*Defences—Applicability to.*

A defence can be allowed though a suit to enforce the claim is time-barred. 20 C. W. N. 957 (P. C.) Foll. (*Sadasiva Aiyar and Napier, JJ.*) SETHURAMA SAHIB v. CHOTTA RAJA SAHIB. 40 I. C 820 : (1917) M. W. N. 327.

———S. 3 and Art. 44—*Defences—Applicability to.*

A person, whose right to set aside an alienation is barred under Art. 44, cannot avoid it as deft. by attacking it in a suit for possession brought by the alienee. (*Sadasiva Aiyar and Spencer, JJ.*) KANDASWAMI NAICKEN v. IRUSAPPA NAICKEN. 41 Mad. 102 : 40 I. C. 664 : 33 M. L. J. 309.

———S. 3—*Defences—Applicability to.*

Unless the mortgagee is compelled to bring a suit for money within S. 3 he is entitled to set up every claim in defence to a suit for redemption that he has in law to support the debt which still remains due, although his right to sue under the bond be barred. (*Ayling and Napier, JJ.*) NATHAMUNI PILLAI v. VENGAMMAL.
40 I. C. 358 : 5 L. W. 593.

Duty of Court.

———S. 3—*Duty of Court.*

The question of limitation can by law be raised at any stage of the proceedings and it is always a Court's duty, whether it is raised or not, to see whether the claim is excluded by limitation. (*Mullick and Jwala Prasad, JJ.*) ANAGRAHIT RAM v. SITARAM DAS. 40 I. C. 661.

Exemption from Limitation.

———S. 3, Arts. 142 and 144—*Exemption from limitation — Disqualified proprietor — Bengal Court of Wards Act, S. 6 (a).*

For purposes of limitation possession of the Court of Wards is possession of the ward. A disqualified proprietor under S. 6 (2) of the Bengal Court of Wards Act does not suffer under such a legal disability as to get an extended period of limitation under the Limitation Act. Consequently for a suit by him to set aside a sale of his property by the Court of Wards and to recover possession, time runs from the date when possession is given to the purchaser and not from the date when the Court of Wards gives up possession of the ward's property. (*Sir Lawrence Jenkins.*) RANI KUAR MANSINGH MANDHATA v. NAWAB BAHADUR OF MURSHIDABAD. 46 Cal. 694 : 36 M. L. J. 210 : 17 A. L. J. 202 : 23 C. W. N. 531 : 29 C. L. J. 355 : 25 M. L. T. 341 : 21 Bom. L. R. 611 : 1 U. P. L. R. (P. C.) 16 : 50 I. C. 202 : (1919) M. W. N. 318 (P. C.)

LIMITATION ACT (IX OF 1908), S. 3—Plea of Limitation.

———S. 3—*Exemption from limitation—Court of Wards.*

Under the Limitation Act no other disqualification than those of minority, insanity or idiocy can be admitted to save limitation. In spite of S. 35 of the Bengal Court of Wards Act of 1879, the right of suit is in the disqualified proprietor and no exemption can be made in his favour for the period of management by the Court of Wards. (*Fletcher and Teunon, JJ.*) KUARMANI SINGHA v. WASIF ALI. 28 I. C. 818 : 19 C. W. N. 1193.

———Ss. 3 and 6—*Exemption from limitation, grounds of.*

Limitation being the results of statute law no exemption from it can be recognised apart from what the statute itself provides. (*Benson and Sundara Aiyar, JJ.*) REBALA RAMANA REDDI v. REBALA BABU REDDI. 37 Mad. 186 : 13 M. L. T. 79 : (1913) M. W. N. 114 : 18 I. C. 586 : 24 M. L. J. 96.

Local Law.

———S. 3—*Local law—Execution of decree passed by Baroda Court—Transfer to British Court.*

In 1913, an application to execute the decree of 1909 was made in Baroda. It was within time according to the law of Baroda. In 1915, the decree was transferred for execution to a British Court in Ahmedabad. *Held*, that the application was barred by time, because suits and applications are governed by the local law of the country in which the suit or the application is brought. 15 B. 28, Dist. 12 Bom. L.R. 844. Foll. (*Batchelor and Shah, JJ.*) NABIBHAI v. DAYALBHAI. 40 Bom. 504 : 36 I. C. 369 : 18 Bom. L. R. 481.

Onus.

———S. 3—*Onus.*

The plff. must prove from his own allegation that his suit is not barred by limitation. He cannot rely on deft.'s allegations. (*Johnstone and Chevis, JJ.*) MANSA RAM v. BEHARI.
6 P. R. 1912 : 218 P. L. R. 1911 : 12 I. C. 453 : 204 P. W. R. 1911.

Plea of Limitation.

———S. 3—*Plea of limitation—Raised for the first time on appeal—When given effect to.*

In order that an appellate court may give effect to a plea of limitation raised before it for the first time, it is necessary that all the facts should have been elicited and must be apparent from the record. (*Newbould, J.*) HEM CHANDRA ROY CHOWDHURY v. SRIMATI BIRAJA SUNDARI CHOWDHURANI. 1923 Cal. 283.

———S. 3—*Plea of limitation—Cannot be taken for first time in appeal.*

LIMITATION ACT (IX OF 1908), S. 3—Plea of limitation.

A question of limitation cannot be raised for the first time in appeal. It must be raised by the deft. in his pleading according to Civil Procedure Code, O. 8, R 2. (*Asutosh Mookerji, A.C.J. and Fletcher, J.*) BHUSHAN CHANDRA PAL *v.* NARENDRA NATH KOER. 60 I. C. 280 : 32 C. L. J. 236.

———S. 3—*Plea of limitation—Appeal.*

The Court can take on a second appeal notice of the question of limitation although it has not been taken up in the Courts below (*Chitty and Walmsley, JJ.*) NARASINGHA BAVA GOSWAMI *v.* PROTHODMAN TEWARI 46 Cal. 415 : 47 I. C. 25 : 22 C. W. N. 994.

———S. 3—*Plea of limitation—Duty of Court barred.*

Under S. 3, it is obligatory upon the Court to dismiss a time-barred application although limitation is not set as a defence. (34 C. 911 ; 1 C W. N. 67 ; 20 A 78 ; 39 C. 473 Ref.) (*Mookerjee and Roe, JJ.*) TARA SANKAR GHOSE *v.* NASARUDDI. 22 C. L. J 589 : 29 I. C. 476 : 19 C. W. N. 970.

———S. 3—*Plea of limitation—Effect of not raising.*

Where question of limitation is not merely a question of law and is not raised by the deft. the Court ought not to dismiss the suit on the ground of limitation. (*Fletcher and Chatterjee, JJ.*) KALI DAS BHANGA *v.* GIRIBALI DASI. 23 I.C. 360.

———S. 3—*Plea of limitation—Appellate Court not bound to reinvestigate unless pressed.*

A suit was dismissed on the merits, it being held by the Court that it was not barred by limitation. The question of limitation was not reinvestigated on appeal as the deft. did not argue it. *Held*, that the Appellate Court was not called upon to determine the question of limitation, and was concerned only with the question on the merits. (*Mookerjee and Beachcroft, JJ.*) LAHAR SINGH *v.* JOHUN MUNDA. 16 I. C. 418.

———S. 3—*Plea of limitation — Appellate Court.*

The abandonment of a point of limitation in a Lower Court does not relieve an Appellate Court of the duty of taking notice of the statute. But the plea of limitation in order to be effective must be properly put before the Court. (*Leslie Jones, J.*) HUKAM SINGH *v.* SHAHAB DIN. 44 I. C. 890 : 14 P. W. R. 1918.

———S. 3—*Plea of limitation—When to be taken.*

A plea of limitation in the original court must be heard and decided if it is taken before issues are raised ; and after the issues are fixed, the Court can refuse to entertain the plea but when once the matter goes on appeal and the plea is not taken either in the original court or in the grounds of appeal but is raised in the course of arguments, the appellate court would be justified in refusing to entertain it. 8 B. 535 ; 15 A. 123 ; 34 C. 911 ; 25 M. 367, Rel. on. (*Johnstone and Chevis, JJ.*) SHAH AHMAD *v.* PIARAMAL. 84 P. R. 1911 : 13 I. C. 792 : 255 P.W.R 1911.

LIMITATION ACT (IX OF 1908), S. 3—Plea of limitation.

———S. 3—*Plea of limitation — Appellate Court—Duty of*

S. 3 of the Limitation Act does not lay upon an Appellate Court the duty of dismissing suits filed out of time in the original Court, unless its attention is drawn to it. 22 C L. J. 589, Dist ; 32 I. C. 785, Foll. (*Phillips, J.*) BRITISH INDIA STEAM NAVIGATION COMPANY, LTD. *v* HUSSAIN RAHIM SHETT. 42 I. C. 536.

———S. 3—*Plea of limitation—Point taken in—Second appeal.*

A plea of limitation cannot be taken for the first time in appeal, unless the point can be determined on pleadings and no evidence is necessary. A plea that the suit was barred under S. 7 as the plff.'s elder brother could give a discharge was not allowed to be taken in second appeal as the point could not be determined without evidence as to whether he was a manager and did not collude with the deft. (*Ayling and Tyabji, JJ.*) POWERUMA GOUNDAN *v.* RAMA GOUNDAN. 28 I. C. 378 : 28 M. L. J. 115.

———S. 3—*Plea of limitation—Non-raising of effect.*

A question of limitation arising upon the facts before a Court must be heard and determined though it is not directly raised in the pleading or in the appeal. S 3 is not controlled by any rule of pleadings, *e. g.*, O. 41, R. 2, C. P. Code. Where the claim decreed is found to be barred by limitation in appeal the Appellate Court is not only competent, under O 41, R. 33, C. P. Code, but must under S 3 dismiss the suit. (*Stanyon, A. J. C.*) GANESHADAS *v.* MUSAMMAT NIMBI. 17 I. C. 638 : 8 N L. R. 174.

———S. 3—*Plea of limitation—Appeal—Court when bound to enquire.*

Where a plea of limitation was not taken in either of the courts below and the determination of the question involves a fresh investigation of facts, it could not be entertained on appeal. (*Mullick and Jwala Prasad, JJ.*) BHADAI SAHU *v.* MANOWAR ALI. 4 Pat. L J 645 : 52 I. C. 125 : 1920 Pat 91

———S. 3—*Plea of limitation—Raising of.*

The question of limitation can be taken at any time in the course of proceedings. (*Roe and Jwala Prasad, JJ.*) SHEOBUX SINGH *v.* DAYAL SINGH. 1 Pat. L J 221 : 36 I. C. 960 : 2 Pat. L. W. 374.

———S. 3—*Plea of limitation—When to be raised.*

A plea of limitation can be raised at any stage of execution proceedings if facts are patent on the face of the record. (*Roe, J.*) GUNIRA KOER *v.* LAKHAN KOER. 35 I. C. 337.

———S. 3—*Plea of limitation—Hig Court's power to take up.*

Where a question of limitation is raised by the written statement but no issue was framed thereon nor raised in the first appeal. *Held*, that the High Court can take the matter into consideration and dismiss the suit if it is barred. (*Saunders, J. C.*) NGA TOK *v.* NGA E GYAL. 20 I. C. 360 : (1913) 1 U. B. R. 164.

LIMITATION ACT (IX OF 1908), S. 3—Waiver.

Waiver.

——S. 3—*Waiver—Effect.*

Where the plea of limitation is waived though the suit is time-barred, the decree following is a consent-decree and thus not appealable. (*Lord Buckmaster.*) RAMCHANDRA DEO GARU *v.* CHAITANA SAM 18 A L. J. 625 : (1920) M. W. N. 366 : 28 M. L. T. 97 : 24 C. W. N. 1055 : 56 I. C. 539 (P. C.) : 2 U. P. L. R. (P. C.) 122 : 12 L. W. 260 : 39 M. L. J. 68.

——S. 3—*Waiver—Contract against limitation—Invalid.*

Parties are not at liberty to contract themselves out of the law of limitation and the *Quilibet protest renuncare jurepose introducto* is restricted to legal provisions intended for the benefit of individuals and does not apply to rules of law based, as are statutes of limitation, on public policy and general considerations. (*Carnduff and Beachcroft, JJ.*) KSHETRA MOHAN CHATTERJEE *v.* MOHUNCHANDRA DAS. 18 I. C. 595 : 17 C. W. N. 518.

——S. 3—*Waiver—Willingness to pay barred instalments in previous suit.*

Where in previous suit for the recovery of unpaid instalments the deft. was willing to pay barred instalments, he is not estopped from pleading limitation in respect of the same in a subseqaent suit. (*White, C. J. and Oldfield, J.*) SITARAMA CHETTY *v.* COTTA KRISHNASWAMI CHETTY. 24 I. C. 507.

——S. 3—*Waiver—Agreement to postpone suit—Invalidity of.*

There is no estoppel against a statute. Parties cannot waive or contract themselves out of the Law of Limitation. An agreement by a person not to take advantage of a cause of action would not extend the period unless it amounts to an acknowledgment. (*White C. J. and Oldfield, J.*) SITARAMA CHETTY *v.* COTTA KRISHNASWAMI CHETTY. 38 Mad 374 : (1913) M. W. N. 676 : 21 I. C. 24 : 25 M. L. J. 264.

——S. 3—*Waiver.*

A waiver of the question of limitation is not permissible. (*Kanhaiya Lal, J. C.*) SAMUEL BURGE *v.* THE IMPROVEMENT TRUST. LUCKNOW. 26 O. C. 324 : 9 O. & A. L. R. 925 : 1924 Oudh 127.

——S. 3—*Waiver—Extension of time.*

The period of limitation cannot be extended by express agreement between the parties nor can it be extended by an agreement which can be implied from circumstances such as those of the present case. It is the duty of the Court to give effect to a bar by limitation though the parties waive the plea. (*Chamier, C. J., and Chapman, J.*) MIDNAPUR ZEMINDARY CO., LTD. *v.* THE DY. COMMISSIONER OF MANBHUM. 44 I. C. 570 : 3 Pat. L. J. 132.

Miscellaneous.

——S. 3—*Appellate Court—Power of, to take cognizance of.*

An appellate Court can take cognizance of the question of limitation for the first time when no further evidence is required for deciding it. (*Chevis and Shadi Lal, JJ.*) GULAB MAL *v.* SHULAWAL. 25 I. C. 354 : 259 P. L. R. 1914.

LIMITATION ACT (IX OF 1908), S. 4.

——S. 3—*Inherent powers when can be used—Scope of.*

Inherent powers of Courts are not to be used in order to relieve a party from the consequences of his own mistakes or to enable him to evade the law of limitation. (*Oldfield and Venkatasubba Rao, JJ.*) GANAPATHI MUDALIAR *v.* N. KRISHNAMACHARI. 43 M. L. J. 184 : 16 L. W. 178 : 1922 M W. N. 514 : 31 M. L. T. 135 : 1922 M. 417 (2).

——S. 3—*Appeals from Revenue Courts.*

The Act applies to appeals from Revenue Court to the Dt Judge. (*Kanhaiya Lal, A. J. C.*) BINDA PARSHAD *v.* RAM BHAJAN. 25 I. C. 703 : 17 O. C. 254.

——S. 3—*Reference to Judge.*

The Act does not apply to references to a Judge on an order by a Deputy Registrar of the Chief Court of Lower Burma, such reference neither being an appeal nor one of the applications set out in the third division of the schedule of the Act, (*Young, J.*) K. HILL *v.* M. M. GREENBERG. 38 I. C. 563 : 9 Bur. L. T. 226.

——S. 4—*Auction sale—Setting aside on deposit—Vacation time—Effect of deposit after re-opening.*

The statutory period for setting aside an auction sale by depositing the amount in court expired during the vacation and the application together with a tender of the amount due was presented on the re-opening day. As the judge could not sign the tender that day, the money could be deposited only the next day. *Held*, the application and tender were both in time as the delay was not due to any fault of the judgment debtor. (*Kanhaiya Lal, J.*) DURGA PRASAD *v.* BABU LAL. L. R. 3 A. 358 : 20 A. L. J. 543 : 4 U. P. L. R. (A) 117 : 1922 All. 195.

——S. 4—*Decree directing payment within a certain time—Court closed on the day—Payment next day is valid.*

Where the decree directs payment within a certain time but on the last day of that period the Court is closed, payment on the first day the Court re-opens is a good payment. (*Piggott and Walsh, JJ.*) REOTI RAM *v.* SITARAM. 60 I. C. 894 : 19 A. L. J. 49.

——S. 4—*Applicability—Conditions in decree—Pre-emption decree—Expiry of time.*

S. 4 of the Limitation Act applies to those cases where a definite period of limitation is given in the section. It is not applicable to conditions in the decree. A decree in a pre-emption case in its very terms becomes a decree in favour of the deft. vendee when the conditions imposed on the plff. have not been complied with. No Court has power to alter the terms of the decree, when has become final so as to extend the time allowed for payment. (*Richards, C. J., and Tudball, J.*) HIRDEY NARAIN *v.* ALAM SINGH. 41 All. 47 : 48 I. C. 353 : 16 A. L. J 892.

——Ss. 4 and 14—*Wrong Court—Presentation in, on re-opening day—Exclusion of holiday.*

The last day of limitation for a suit on a promissory note was a Sunday therefore the suit was

LIMITATION ACT (IX OF 1908), S. 4.

filed the next day in a court having no jurisdiction and having been returned by that court to be presented to the proper court; it was done so but was dismissed as barred by limitation. *Held*, that though the period during which suit was pending be allowed the suit was barred by time as the plffs. were not entitled to exclusion of the extra day. (*Richards, C. J., and Rafique, J.*) MAKUND RAM *v.* RAMRAJ. 35 I. C. 292 : 14 A. L. J. 310

———S. 4—*Summary suits—Bombay High Court—Original Side if closed during summer vacation.*

The Original Side of the Bombay High Court is not closed within the meaning of S. 14 Lim Act in order to dispose of summary suits on Negotiable Instruments. For other purposes it is a question of fact whether for any particulars the Courts is closed or not. (*Marten, J.*) THE TATA INDUSTRIAL BANK *v.* ABDUL HUSEN HAKIMJI.
25 Bom. L. R. 1296: 1924 Bom. 144.

———S. 4—*Assignment of debt—After limitation but in Court vacation—Suit filed on re-opening—Maintainability.*

When the period prescribed for a suit to recover a debt expires during the court vacation and before re-opening the debt is assigned, the suit brought by the assignee on the re-opening day is within time. (*Beaman, J.*) VISRAM *v.* TABAJI. 19 I. C. 820. 15 Bom. L. R. 348.

———S. 4—*Applicability—Period of grace under S.* 31 (1). *Time, how reckoned—Sundays.*

S. 4 is not applicable to the period of grace allowed by S. 31 (1) consequently when the last day of the two years fell on a Sunday the suit instituted on Monday, *i e.* the next day was held as time barred. When an act providing a given number of days for doing a particular act says nothing about Sunday, the days are to be reckoned, as consecutive days including Sunday. Where, therefore the last day falls on a Sunday, to do the act on Monday would be too late. (*Scott, C. J. and Batchelor, J.*) SHEODAS *v.* NARAIN ASAJI.
36 Bom. 268 : 12 I. C. 811 : 13 Bom. L. R. 1153.

———S. 4—*Applicability—Suits under S. 77 of the Registration Act.*

S. 4 of the Limitation Act, 1887 (corresponding to S. 4 of the Act of 1908) applies to suits under S. 77 of the Registration Act. If the last day for bringing a suit under S. 77, Registration Act was a holiday and the suit is brought on the next working day the suit was not barred. The 30 days must be counted from the date when the order was communicated to the plff. (*Woodroffe and Teunon, JJ.*) MATABAR MOLLAH *v.* SHASHI BHUSHAN. 12 I. C. 33 : 16 C. W. N. 20.

———S. 4—*Applicability of--Time fixed by pre-emption decree.*

Obiter, The principle laid down in S. 4 of the Lim. Act, and in S. 10 of the General Clauses Act (X of 1897) and in S 8 of the Punjab General Clauses Act (I of 1898) is not applicable to the period of limitation prescribed by a pre-emption decree for the payment of money. (*Chevis, Broadway and Wilberforce, JJ.*) HIMMUM *v.* FAUJA. 67 I. C. 772 : 3 Lah. L. J. 310 (F. B.).

LIMITATION ACT (IX OF 1908), S. 4.

———Ss. 4 and 5—*Application to set aside dismissal for default — Court working with special permission of the High Court—Application presented on the next day—Good ground for excusing delay.*

The last day for citing an application to set aside an order of dismissal for default expired on a holiday, but the Court worked on that day with the special permission of the High Court. The applicant presented his petition on the next day *Held* that the delay could be excused under S. 5 of the Limitation Act. (*Oldfield, J.*) KALIYANA SUNDARAPPA AIYAR *v.* CHINNASWAMI SERVAI.
(1923) M W. N. 211 : 17 L. W. 413 : 1923 Mad. 489.

———Ss. 4 and 14—*Scope of — Suit filed in wrong Court —Deduction of holiday—Permissibility of.*

A Suit was filed on 10-9-1918 the day next to the last day allowed, as the last day happened to be a holiday. The plaint however was presented in a wrong court and was returned on 23-1 1920 for presentation to the proper court. The plaint was represented on 26-1-1920 as the two previous days were holidays On an objection raised by the defendant that the suit was barred. *Held* that the holiday prior to 10 9-1918 could not be excluded under S. 4 of the Lim Act as the suit was filed in a wrong court. S. 4 applies only if the holiday follows the period that can be excluded under S. 14 but not if it precedes such period. 45 B. 443 dissented 8 L. W. 256 : 36 M. 131 : 44 M. 817 foll. (*Oldfield and Venkatasubba Rao, JJ.*) GOVINDASAMI PADAYACHI *v.* SAMI PADYACHI.
43 M. L. J. 579 : 31 M. L. T. 258 (H. C.) : 16 L. W. 911 : 1923 M. W. N. 42 : 1923 M. 114 (2).

———Ss. 4 to 25—*Scope of—Application under C. P. Code.*

Per Ramesam, J.—(Spencer, J contra) Ss. 4 to 25 of the Limitation Act are not confined in their application to periods prescribed in the Limitation Act but extend also to periods prescribed by other general Acts such as the Civil Procedure Code 1 C. 226 ; 18 C. 631 foll. 40 A. 198 ; 42 A. 118 Ref. (*Spencer and Ramesam, JJ.*) MINOR SUBBARAYAN *v.* MINOR NATARAJAN.
43 M. L. J. 168 : 44 Mad. 785 : 31 M. L. T. 140 (H. C.) : 16 L. W. 68 : (1922) M. W. N. 424 : 1922 Mad. 368.

———Ss 4, 14—*Time, expiry of during Court's vacation—Institution of suit in wrong Court on re-opening day—Representation after return in the proper Court—Exclusion of period.*

Where limitation for a suit expired during the Court's vacation and the plaint was presented in a wrong Court on the re-opening day and after its return, was presented to the proper Court the next day. *held* that the suit was barred as section 4 cannot be taken advantage of because under that section account could not be taken of the closing and the reopening of any other Court than that in which the suit was rightly dismissed and as S. 14 cannot revive a claim which became time barred by the plaintiff's failure to institute the suit in the proper Court on the re-opening of the Court, When a Court is invested with both

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original and small cause jurisdictions a suit instituted on the small cause side cannot, for the purpose of S. 4 of the Act, be regarded as a suit instituted in the Court having jurisdiction to hear original suits. (*Spencer and Ramesam, JJ.*) UMMATHU *v.* PATHUMMA. **44 Mad. 817 : 13 L. W. 631 : 63 I. C. 924 : 1921 M. W. N. 442 : 41 M. L. J. 84.**

——Ss 4 and 14—*Wrong Court— Presentation in, on re-opening day—Subsequent presentation in proper court—Deduction of time.*

Plff. instituted a suit on the day after the last day of filing (the last day being a holiday) in a court within whose jurisdiction one only of the defts. resided. The court declined to grant leave under S. 20 (*b*) of the C.P. Code and returned the plaint for presentation to the proper court which was subsequently done. *Held*, that the plaint not having been presented to a proper court on the day after the last day of limitation the suit was barred. S. 4 of the Limitation Act is a particular statutory provision not for the purpose of computing the period of limitation but for allowing in certain circumstances the filing of the suits after the period had expired. This section avails only where there has been a presentation to the proper Court. S. 14 is a provision relating to the computation of the period of limitation and the time occupied in conducting *bona fide* proceedings, in a wrong court after the last day of limitation cannot be deducted in reckoning the number of days to see if the time prescribed by the article has expired. There is nothing improper or want of good faith, within S. 14 of the Act, in a creditor to discharge the debt. (*Sadasiva Aiyar and Napier, JJ.*) RAMALINGAM IYER *v.* SUBBIER. **24 M. L. T. 214 : 47 I. C. 624 : 8 L. W. 256.**

——S. 4—*Court closed—Meaning of—Officer absent in camp—Madras Civil Rules of Practice, R. 14—Applicability.*

A court is not closed within S. 4, if the Officer authorised to receive plaints is absent from head quarters and is in camp. R. 14 of the Madras Civil Rules of Practice does not apply to proceedings before a Revenue Court. (*White, C. J. Sankaran Nair and Miller, JJ.*) RECEIVER OF THE N. AND M. ESTATES *v.* SURAPARAZU. **29 I. C. 449 : 38 Mad. 295 (F. B.).**

——Ss. 4 and 14—*Wrong Court—Presentation in, on the re-opening day— Exclusion of holidays.*

Where a suit, on the last day for filing which the Court closed for recess was filed in a wrong Court on the re-opening day and was returned several months later for presentation in a right Court and was presented there soon after, the period from the date of filing to the date of presentation in the right Court would be deducted under S 14 of the Limitation Act but not the period of recess and S. 4 could not be invoked to save the latter period 1 All. 644 ; 19 All, 342 ; 27 Mad. 21 : 25 Bom. 584 : 33 Mad. 256 ; 24 W. R. 405, Dist. (*Ayling and Spencer, JJ.*) MIRA MOHIDEEN *v.* NALLA PERUMAL PILLAI. **36 Mad. 131 : 10 M. L. T. 254 : (1911) 2 M. W. N. 221 : 12 I. C. 58 . 21 M. L. J. 1000.**

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——S. 4—*Applicability of —Compromise decree—Payment of money due under— Court closed on last day—Deposit on re-opening day is valid.*

The appellant plaintiff sued the respondents defendants for joint possession of a plot of land acquired by the defendants On the 29th November 1920 a decree for joint possession was passed in the plaintiff's favour subject to his paying the defendants one hundred rupees as contribution within six months from the date of the decree. The period of six months expired in the vacation when the Courts were closed, and the appellant deposited his money in Court on the day that the Court re-opened. *Held* that there was a valid compliance with the decree. Even where the decree directs payment to the decree-holder, payment into Court is a valid compliance with the decree unless perhaps the Court directed that payment should be to the decree-holder and not otherwise. (*Batten, J. C.*) DHANU SINGH *v.* KESHEO PRASAD **19 N. L. R. 116 : 1923 Nag. 246.**

——S. 4—*Operation of.*

Although a party cannot extend a period allowed by law for doing an act in Court by his own act yet if the Court is closed on the last day of that period, he is entitled to do the act on the first opening day. (*Drake-Brockman J. C.*) BAL KRISHNA *v.* TIMA. **12 I. C. 810 : 7 N. L. R. 176.**

——Ss. 4 and 31 (1)—"*Prescribed*' *meaning of—General Clauses Act (XI of 1897), S. 10.*

A suit, to which the two years period of grace provided for by S. 31 (1) was applicable, was instituted on 8th August, 1910, the 7th August being a Sunday, *Held*, the suit was not barred by limitation. In such a case the limitation though not saved under S. 4 of the Limitation Act, yet it is saved under the provisions of S. 10 of the General Clauses Act, 36 B. 268, not foll. 9 A. L. J. 439, Foll. (*Lindsay, J. C. and Stuart, A. J. C.*) RAHMATUL *v.* ASHRAF ALI. **15 I. C. 439 : 15 O. C. 373.**

——S. 4—*Applicability — Private contracts between parties—Execution of decree.*

S. 4 of the Limitation Act has no application to a case where a certain date has been fixed for payment by agreement of parties. A decree-holder agreed to set aside the sale on the judgment-debtor's depositing the decretal amount within a fixed time. The Court being closed on the last day money was deposited the next day. The sale was not set aside. (*Mullick and Sultan Ahmed, JJ.*) ADAYA SINGH *v* NASIB SINGH. **56 I. C. 495 : 1 Pat. L. T. 227.**

——S. 5.

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Construction.
Delay in getting copies.
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Mistake of Court.
Mistake of fact.
Mistake of law.
Mistake of pleader.
Negligence of guardian.
Negligence of party.
Negligence of pleader.
Onus
Power of successor.
Poverty.
Procedure
Proceedings.
Review.
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Want of stamp.
Miscellaneous

Applicability.

——S. 5—*Applicability — Application for leave to appeal—Sufficient cause.*

An application for leave to appeal to His Majesty in Council clearly comes within the purview of S. 5. Where an affidavit was filed to the effect that the agent of the applicant was coming to Allahabad for the purpose of filing the application, that when he reached the Aligarh station, he had an attack of Renal Colic, which confined him to bed till the 2nd of November following and the affidavit was uncontradicted and supported by a medical certificate. *Held*, that sufficient reason had been shown for the delay. (*Banerji and Gokul Prasad, JJ.*) DRO INDER SINGH *v.* KHUSHI RAM. 1923 A. 536.

——S. 5—*Applicability—Application.*

S. 7 does not apply to an application for substitution filed beyond six months, but the remedy of the party after the abatement is to apply to have it set aside on the ground that he was prevented by sufficient cause; to this S. 5 of the Act will apply. (*Richards, C. J., and Banerjee, J.*) SECRETARY OF STATE *v.* JAWAHIR LAL.
36 All. 235 : 25 I. C. 48 : 12 A. L. J. 299.

——S. 5—*Applicability—Application under S. 17, Pr. Sm. C. C. Act.*

An application for review of judgment of a Small Cause Court was made on the last day of the period prescribed for limitation but without deposit of the amount of costs or security for the same as required by S. 17. On the following day the Court allowed the applicant time for making the deposit which was eventually made and the application for review was granted. *Held*, that the application failed to comply with S. 17 and was barred under Art. 161, Limitation Act. It was doubtful whether S.5, Limitation Act, applied to the case at all as the application was made within time. (*Sanderson, C. J. and Walmsley, J.*) ABDUL SHEIK *v.* MAHOMED AYUB.
24 C. W. N. 880 : 56 I. C. 551 : 31 C. L. J. 197.

——Ss. 5 and 18—*Applicability—Cases under S. 47 of the C. P. C.*

Neither S. 5 nor S. 18 of the Limitation Act applies to cases under S. 47 of the C.P.C. (*Holmwood and Sharfuddin, JJ.*) SHEKAMBARI *v.* RAM KUMAR.
23 I. C. 240.

——S. 5—*Applicability—Application under Art. 158.*

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The Court cannot extend the time prescribed by Art. 158. (*Mookerjee and Holmwood, JJ.*) SURYA NARAIN JHA *v.* BANWARI JHA.
18 C. L. J. 35 : 17 I.C. 7 : 18 C. W. N. 626.

——S. 5, and Art. 164—*Applicability—Application to set aside ex parte decree.*

S. 5 does not apply to applications under Art. 164 of the Lim Act to set aside *ex parte* decrees. (*Chevis, J.*) KHAIRATI *v.* UMAR DIN.
1922 Lah. 266.

——S. 5—*Applicability—Application to bring legal representative on record.*

S. 5 of the Limitation Act does not govern applications to bring on record the legal representatives of a deceased respondent (*Chevis and Harrison, JJ.*) SHAH MAHOMED *v.* KARAM ILAHI.
1922 Lah. 131.

——S. 5—*Applicability — Application under Art. 166—Extension of time.*

S. 5 does not apply to extend the period of 30 days provided by Art. 166 (*Chevis, J.*) ASANAND *v.* JHANGI RAM. 2 P. W. R. 1919 : 50 I. C. 610
29 P. L. R. 1919.

——S. 5—*Applicability— Provincial Insolvency Act.*

S. 5 applies to proceedings under Prov. Insol. Act. (*Chevis, J.*) RAM KISHEN *v.* UMRAO BIBI.
33 I. C. 730 : 80 P. W. R. 1916.

——S. 5—*Applicability — Application for leave to appeal in an insolvency matter.*

S. 5 applies to the application for leave to appeal in an insolvency matter. (*Spencer and Devadoss, JJ.*) KARUTHIAN CHETTIAR *v.* RAMAN CHETTI. (1923) M.W. N. 746 : 18 L. W. 808 :
1924 M. 400.

——S. 5—*Applicability to O. 41, Rr. 17 and 19.*

It is desirable that S. 5 of the Lim Act should also apply to applications under O. 41, Rr. 17 and 19 by means of an enactment or rule. (*Schwabe, C. J. and Waller, J.*) KRISHNASWAMI NAIDU *v.* CHENGALROYA NAIDU. 45 M. L. J. 813 :
18 L. W. 870 : 33 M. L. T. 207 : 47 Mad. 171 :
1924 Mad. 114.

——S. 5—*Applicability—Delay in depositing decree amount under S. 17 Prov. Sm. Cause Courts Act can be excused.*

Payment required, by proviso (1) to S. 17 (1) of Provincial Small Cause Courts Act is a complement of an application to set aside an *ex parte* decree passed by a Small Cause Court. A Small Cause Court Judge has therefore jurisdiction to excuse delay in deposit under O. 9, R. 3, C. P. Code. (*Oldfield and Roe, JJ.*) SUDALAIMUTHU *v.* ANDI REDDIAR.
42 M. L. J. 484 : 15 L. W. 494 :
(1922) M. W. N. 266 : 30 M. L. T. 342 :
45 M. 628 : 1922 M. 186 (2).

——S. 5—*Applicability—Application for leave to appeal.*

S. 5 is applicable to an application for leave to appeal to His Majesty in Council. (*Ashworth and Simpson, A. J. Cs.*) BHAGWATI PROSAD *v.* ACHHAIBAR SINGH.
9 O. L. J. 831 :
28 O. C. 24 : 1923 Oudh 93.

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——S 5—*Applicability—Execution application—Extension of time.*

In the absence of any rule or enactment making S 5 of the Act applicable to an application for execution of a decree the section does not apply to such an application. (*Chamier, C. J. and Chapman, J.*) MIDNAPUR ZEMINDARY CO., LTD. *v.* THE DY. COMMISSIONER OF MANBHUM.
44 I. C. 570 : 3 P. L. J. 132.

Construction.

——S. 5—*Construction.*

S. 5 should be liberally construed so as to advance substantial justice but not when negligence in action or *mala fides* could be imputed to the appellant. 13 A.L.J. 1101, Ref. (*Knox, J.*) GUR PRASAD SINGH *v.* RAM SAMAJH SINGH.
31 I. C. 876 : 13 A. L. J. 1101.

——Ss. 5 and 14—*Construction.*

S. 5 of the Act allows a discretion, the wording being 'May be admitted.' while S. 14 allows no such discretion, the words being 'shall be excluded.' (*Rattigan and Chevis JJ.*) MUSAMMAT HUSAINA *v.* MUSAMMAT SAHIB NUR.
254 P. L. R. 1913 : 20 I. C. 3 : 159 P. W. R. 1913.

——S. 5—*Construction.*

A delay of one day in presenting an appeal is as fatal as delay of any longer period. (*Hayward, J. C., and Fawcett, A J.C.*) TOLARAM *v.* JAFFER-KHAN. 38 I. C. 464 : 10 S. L. R. 165.

Delay in getting copies.

——S. 5—*Delay in getting copies—Money paid to clerk—Appellant taking no steps—Negligence.*

Where the appeal was filed late on account of delay in getting copies and the same was due to the fact that money for getting the same was given to the pleader's clerk and thereafter the appellant took no steps to inquire of his pleader for the same, there is no sufficient cause to excuse delay within the meaning of S. 5, Lim. Act. (*Daniels, J.*) MT. MAHTAB KUNWAR *v* BIRHMO.
21 A. L. J. 817 : L. R. 4 All, 580 : 75 I. C. 254 : 9 O. & A. L. R. 1017.

——Ss. 5 and 12—*Delay in getting copies—Appeal filed beyond time.*

Where judgment was delivered on the 1st and the Court closed on the 3rd and the application for copies was made on the Court reopening and the appeal was filed the day after the copies were delivered, *held*, there was sufficient cause for delay and further the time spent in obtaining copies should be deducted. (*Tudball, J.*) BUDHU *v.* SULTAN. 23 I. C. 874.

——S. 5—*Delay in getting copies—Appeal filed a day beyond—Delay in office to deliver copy—Sufficient cause.*

Where an appeal was obliged to be filed a day beyond time on account of the delay caused by the officer of the Court it was held that this was sufficient cause for not filing the appeal in time (*Karamat Husain and Chamier, JJ.*) BALMUKUND *v.* KUNDAN LAL. 13 I. C. 943 : 9 A. L. J. 15.

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——S. 5—*Delay in getting copies—Indulgence.*

A Court is not bound to show indulgence to a litigant who has not been prompt in seeking the remedy available to him, *e. g.*, in applying for copies preparatory to filing an appeal. (*Abdul Raoof, J.*) MADAN GOPAL *v.* MALAWA RAM.
1923 Lah. 96.

——S. 5—*Delay in getting copies—Time required in taking copy of trial Court's judgment.*

Delay due to the obtaining of copy of trial Court's judgment may be excused, if the appellant had not obtained the copy at the commencement of the period of limitation and had been compelled to obtain it towards the end of the period. (*Broadway and Abdul Qadir, JJ.*) GURDIT SINGH *v.* CHARAN DAS. 1922 Lah. 415.

——Ss. 5 and 12 and Rules and Orders of the Chief Court, Vol. I, R. 23 (1) and (2)—*Delay in getting copies—Mistake of Copyist Office.*

It is the duty of the copying department to inform the applicant of the date on which a copy will be ready for delivery and omission to do so is sufficient cause for delay in filing an appeal. (*Rattigan, J.*) SARKHARA *v.* NAWAB.
13 I. C. 850 : 11 P. W. R. 1912.

——S. 5—*Delay in getting copies—Sufficient cause.*

Where the appellants did not apply for a copy of the judgment and decree themselves but came to Lahore to engage counsel by whom a letter was sent to the Copying Agent asking for copies without however remitting money until he replied asking for money when money was sent to him so late that he could apply for copies only after the expiry of the period of limitation, *Held*, the appellants were guilty of gross negligence and were not entitled to the benefit of S. 5. (*Johnstone and Shah Din, JJ.*) ASHIQ HUSSAIN *v.* ALI BAKHSH. 61 P. L. R. 1911 : 9 I. C. 381 : 189 P. W. R. 1911.

——Ss. 5 and 12—*Delay in getting copies—Appeal presented out of time—Delay, if can be excused.*

Non-availability of a copy of a decree is sufficient ground for excusing delay in filing an appeal in time. (*White, C. J., and Oldfield, J.*) RAO SAHEB NUMBERUMAL *v.* KRISHNAJI.
15 M. L. T. 263 : (1914) M. W. N. 310 : 22 I. C. 919 : 26 M. L. J. 356.

——S. 5—*Delay in getting copies—Mistake in copyist Office.*

A mistake in the copyist office, in not preparing copies of the judgment and decree is a sufficient cause under S. 5 of the Act. (*Kanhaiya Lal, A. J. C.*) DALJIT *v.* RAMRATAN. 25 I. C. 26.

——S. 5—*Delay in filing appeal—Ground for excusing—Mistake of Pleader.*

In considering whether the delay caused by the prosecution of the appeal in a wrong Court is sufficient cause for admitting an appeal after expiration of the prescribed period within the meaning of S. 5 of the Limitation Act, the real question is whether the error was one that is in any way excusable or whether it was one

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which might have easily occurred even if reasonably due care and attention had been exercised by the Pleader (*Robinson, C. J.*) TIN TIN NYO *v.* MAUNG BE SUMG. 1 R. 584 : 1924 R. 148.

——S. 5—*Delay in getting copies.*

A judgment was passed on 15th October and the decree was signed on 9th Nov. There was a delay in paying copying fees. *Held*, that the delay was due to want of payment of proper copying fee and not to the late signing of the decree. Therefore the appellant cannot take advantage of S. 5 of the Limitation Act. (*Pratt, J. C. and Crouch, A. J. C.*) TOPANDAS *v.* MANAGER OF ENCUMBERED ESTATES.
10 I. C. 210 : 5 S. L. R. 47.

Delay not explained.

——S. 5—*Delay not explained—Effect of.*

When the delay is not sufficiently explained it should not be excused under S. 5 of the Act. (*Sunder Lal, J.*) DEWAN *v.* BUDDHU.
25 I. C. 30 : 12 A. L. J. 837.

——S. 5—*Delay not explained—Failure to file judgment with memo. of second appeal.*

The memorandum of appeal in second appeals to the High Court must be accompanied by a copy of the first Court's judgment and if the latter is not presented till after the period of limitation has expired the appeal should ordinarily be rejected as barred by time. A valuable right accrues to the opposite party by reason of the appeal having become barred by time. 2 Lah. 227 foll. (*Scott Smith, J.*) LAKHMI DAS *v.* MEHAR CHAND.
1923 Lah. 144 (1).

——S. 5—*Delay not explained.*

Where an appeal which was returned was not re-presented for 3 weeks though appellant could have easily done so. *Held* no sufficiant cause is made out. (*Le Rossignol, J.*) MUSSAMAT RAJAN *v.* KURRIA.
4 L. L. J. 475 : 39 P. L. R. 1922 : 1923 Lah. 95.

——S. 5—*Delay not explained—Effect.*

If the plff. has brought his suit just within limitation no adverse inference can be drawn from the delay but when each day's delay entails additional loss on a plff. his omission to bring a suit until just before the expiry of the period requires some explanation without which his case becomes doubtful. (*Per Phillips, J.*) (*Wallis and Phillips, JJ.*) RAGHUNATHA *v.* ARAVAMUTHAIYANGAR.
34 I. C. 617.

——S. 5—*Delay not explained—Effect.*

Omission to account for the major portion of the delay in presenting an appeal will disentitle a party to benefit under this section. (*Ayling and Abdur Rahim, JJ.*) DEVI BHASHYAM *v.* PEDINTI VENKATARAMANAYYA.
3 L. W. 109 :
32 I. C. 579 : 19 M. L. T. 86.

——S. 5—*C. P. C., Order 22, R. 9—Delay not explained—Effect.*

An application made on 2nd October 1914 for setting aside an abatement which took effect on the 23rd of November 1913 is barred by limitation especially when no excuse is shown for the delay in bringing the legal representative on

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record and setting aside the order of abatement under O. 22, R. 9 of the C. P. C. 35 B. 393 Dist. (*Bakewell, J.*) KANDASWAMI CHETTI *v.* MURUGAPPA CHETTY.
26 I. C. 472 : 16 M. L. T. 547.

Discretion of Court.

——S. 5—*Discretion of Court—Interference in appeal.*

Where the lower Appellate Court exerises a Judicial discretion in such matters, and decides not to extend the time the High Court would not interfere in Second Appeal with the exercise of that discretion even if it might have taken another view had it been the lower Appellate Court. (*Ryves and Daniels, JJ.*) AHMAD HUSSAIN *v.* MD. FASIHULLAH.
45 A. 432 :
21 A. L. J. 319 : L. R. 4 A. 178: 1923 All. 455.

——S. 5—*Discretion of Court—Interference in Second Appeal.*

Where the Lower Appellate Court has refused to act under S. 5 and dismissed the appeal, the High Court wil not interfere in Second Appeal unless the Lower Court has acted arbitrarily and without exercising discretion. 25 A. 71; 216 A 327 Ref. (*Richards, C. J. and Banerji, J.*) BIKRAM SINGH *v.* NARAIN SINGH.
14 I. C. 59 : 9 A. L. J. 282.

——S. 5—*Discretion of Court—Delay in filing necessary papers—Power to exercise.*

Where the necessary papers have not been filed along with the memorandum of appeal, it is open to the Court to excuse the delay under S. 5 of the Lim. Act, (*Mookerjee and Chotener, JJ.*) TARA KUMAR GHOSE *v.* KUMAR ARUNCHANDRA SINGH.
36 C. L. J. 389 : 1923 Cal. 261.

——S. 5—*Discretion of Court — Letters Patent, S. 15—Power of High Court.*

Under special circumstances, the High Court can (has extended) extend the time by more than 5 years for preferring an appeal under S. 15 of the Letters Patent. (*Sanderson, C. J. and Mookerjee, J.*) ADWAITYA CHARAN *v.* SORAJ RANJAN.
34 I. C. 584.

——S. 5—*Discretion of Court.*

In an appeal from a decree filed beyond the period of limitation from the date of the decree but within time from the date of its amendment the appellant is to be limited to the grounds of appeal referring to the amendment unless he can claim benefit under S. 5. (*Sanderson, C. J. and Mookerjee, J.*) SATIKANTH BANERJEE *v.* RAM CHANDRA CHATTERJEE.
34 I. C. 656.

——S. 5—*Discretion of Court—Not to be fettered—No set rules should be laid down.*

In the admission of appeals filed out of time, the discretion of the appellate court should not be fettered by any definite or crystallised set of rules. (*Holmwood and Walmsley, JJ.*) SUDHAKAR RAUT *v.* SADASIV JHATAP SINGH.
31 I. C. 705: 19 C. W. N. 1113.

——Ss. 5 and 14—*Discretion of Court—Admission of appeal after time.*

When the time for appealing is once passed, a very valuable right is secured to the successful litigant and the Court must be fully satisfied of the justice of the ground for an extension of

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the time for attaching the decree and thus perhaps depriving the successful litigant of the advantage he has obtained. 30 B. 329 rel. upon. There is no analogy between Ss. 5 and 14 of the Act and the latter section cannot be of any use in the exercise of discretion under S. 5 of the Act (*Mookerjee and Beachcroft, JJ.*) DAND BAHADUR SINGH *v.* DEO NANDAN PRASAD.
20 I. C. 513 : 17 C. L. J. 596.

——S 5—*Discretion of Court—Interference by High Court.*

The High Court refused to interfere with the discretion of the Judge in a Letters Patent Appeal. (*Shadi Lal, C. J and Martineau, J.*) THE MUNICIPAL COMMITTEE, CHINIOT *v.* BASHI RAM.
1922 Lah 170.

——S. 5—*Discretion of Court—Extension of time—Subsequent amendment of decree.*

The defts. are not obliged to appeal at a time when the plff. had within the period of 90 days allowed for an appeal, already applied for an amendment and in any event the Court would grant an extension of time under S. 5 of the Limitation Act to the defts. (*Rattigan, C. J and Scott-Smith, J.*) HARKISEN SINGH *v.* LAHORE BANK, LIMITED, IN LIQUIDATION.
51 I. C. 712 : 64 P. R. 1919.

——S. 5—*Discretion of Court.*

Where in a redemption suit the Lower Court framed two issues, *viz.* (1) as to limitation, and (2) as to the amount due to deft. and decided the first issue in favour of the plff. on 22nd March and the 2nd issue on 31st May and the deft. appealed to the Dt. Judge against the final order on 25th June but the Dt. Judge rejected the appeal as time-barred, calculating the time from the 22nd March, *Held*, on appeal (1) that the order of the 22nd March was not a preliminary decree against which a separate appeal could have been preferred and therefore the appeal was not barred by time, (2) that even if technically it was time barred, it was a fit case for excuse under S. 5 of the Limitation Act Meaning of S. 2. C.P. Code, discussed. (*Johnstone, C. J.*) KHUSI RAM *v.* TULSA RAM
39 I. C. 100 : 7 P. R. 1917.

——S 5—*Discretion of Court—No interference in second appeal*

When Lower Appellate Court has considered the matter carefully and decided that the period of limitation need not be extended under S. 5, the Chief Court will not interfere in second appeal, 26 A 327; 25 M 166, Ref. (*Rattigan, J.*) HARDHAN *v.* MAM CHAND. 38 I. C. 614: 92 P R. 1916.

——Ss. 5 and 12—*Discretion of Court—When exercised—Expiry of time allowed for appeal on a holiday.*

Indulgence under S. 5 on the ground of mistake is only allowed where it is shown that the appellant has acted with due care and diligence and in computing the period prescribed for an appeal time taken to obtain copies is excluded only if the application for copies is made while the right of appeal subsists. So where the last day of limitation expired on a holiday and an application was made for copies on the reopening day and the appeal was filed as soon as the copies were received, it was held that even deducting the time spent in obtaining copies the appeal was time-barred. 25 B. 584 ; 25 B. 586 distinguished. (*Johnstone, C. J.*) GURAN RAKHA *v.* BINDRABAN. 55 P. W. R 1916: 125 P L. R. 1916: 35 I. C. 233 : 79 P. R. 1916.

LIMITATION ACT (IX OF 1908), S. 5—Doubtful point of practice.

——S. 5—*Discretion of Court—Second appeal —"Sufficient cause".*

"Sufficient cause" is a question of fact and there can be no second appeal as to the exercise of discretion by the Lower Court. (*Johnstone, C. J.*) ASARAM *v.* BUDHU MAL. 43 P. W R. 1916 : 88 P. R. 1916 : 35 I. C. 67 : 132 P. L. R. 1916.

——S. 5—*Discretion of Court—Interference.*

Punjab Chief Court will interfere in exceptional cases. Particularly in cases of change introduced by the new Punjab Courts Act. on the ground of erroneous legal advice. (*Johnstone, C. J.*) AZAM ALI *v.* AKHTAR HUSSAIN.
33 I. C. 808 : 18 P. W. R. 1916.

——S 5—*Discretion of Court—Appeal filed without copy of decree—Appellant asked to file on next hearing day—Copy filed after expiry of limitation.*

Where an appeal was filed without copy of the decree and the appellant being asked to file it on the next date of hearing and being misled by the order, filed it, long after the period of limitation had expired on the date of the hearing, it was held that there was sufficient cause for not filing the appeal in time (*Shah Din, J.*) IMAM DIN *v.* BANSHI RAM. 14 I. C 244 : 189 P. W. R. 1912.

——S. 5—*Discretion of Court— Minority of applicant.*

Where more than 3 years after the decree-holder's death, his minor legal representatives apply to be brought on record, the delay can be excused. (*Kanhaiya Lal, J. C.*) AKHTAR HUSAIN *v.* QUDRAT ALI. 26 O. C 244: 1924 Oudh 83.

——S. 5—*Discretion of Court—Second appeal.*

If the Lower Appellate Court has come to a definite finding as to the 'Sufficient cause' for filing an appeal beyond time, High Court will not interfere in second appeal. (*Chamier, C J., and Sharfuddin, J.*) DEBI CHARAN LAL *v.* MEHADI HUSSAIN. 20 C.W.N. 1303: 1 Pat. L. J. 485 : 35 I. C. 888: 1 Pat. L. W. 209.

——S. 5—*Discretion of Court.*

In admitting appeals under S. 5 of the Act there must be a judicial exercise of discretion on judicially cognizable facts and the High Courts will not distrust the Lower Court's exercise of its discretion unless for want of appreciation and consideration of material facts on right principle. (*Fox, C. J., and Twomey, J.*) MA MAI GALE *v.* MAUNG TUN WIN. 8 L B R 566 : 37 I. C. 815 : 10 Bur. L. T. 221.

Doubtful point of practice.

——S. 5—*Doubtful point of practice.*

An appeal from the order of the Dt. Judge was preferred to the High Court A single Judge held that the appeal from the order of the Settlement Officer lay to the Commissioner and not to the

LIMITATION ACT (IX OF 1908), S. 5—Doubtful point of practice.

District Judge. When the memo. of the appeal was presented to the Commissioner, he held that appeal lay to the Dt. Judge. Then the appellant's application for review of the judgment of the single Judge of the High Court who had heard the case was dismissed. Thereupon they appealed under S. 10, Letters Patent *Held*, that there was sufficient cause for delay in presenting the appeal beyond time. (*Richards, C. J. and Banerjee, J.*) MAHABAT RAI *v.* BHARADWAJ DAMODAR DAS. 37 I. C. 818: 15 A. L. J. 200.

——— S. 5—*Doubtful point of practice.*

Time may be extended when a litigant has been misled by a change in the practice of the Court. (*Mookerjee and Fletcher, JJ.*) NIBRAN CHANDA DUTT *v.* MARTIN & Co.
58 I. C. 408 : 32 C. L. J. 127.

——— S. 5—*Doubtful point of practice—Conflicting decisions of the High Court.*

Certain conflicting decisions of the High Court confused the appellant as to the proper remedy against an order directing the amendment of a decree, *viz.*, whether it is by notion or by way of appeal, and then prevented him from presenting the appeal within time, *Held* that it was a sufficient excuse. (*Chapman and Roe, JJ.*) GULAB CHAND *v.* ABAS ALI. 39 I. C. 542: 13 N. L. R. 25.

——— S. 5—*Doubtful point of practice.*

Where a matter allowed several possible views, and a party reasonably doubted the course to be followed he should be excused for delay in filing an appeal. A judgment was altered at the instance of one of the defts. and other defts. applied for revision, but did not succeed in it. Then they appealed against the decree based on the altered judgment: *Held*, that the matter allowed several views and the delay in filing the appeal should be excused. (*Kanhaiya Lal, J. C. and Ashworth, A. J. C.*) HEWLETT *v.* BEHARI LAL.
58 I. C. 995: 6 O. L. J. 622.

——— S. 5—*Doubtful point of practice—Sufficient cause—Appellant misled by practice.*

An appellant is entitled to an extension of time if he had been misled by the practice which had hitherto prevailed in the Subordinate Courts but which had recently been held to be wrong. An appellant relying on S. 5 of the Limitation Act ought ordinarily to be deemed to have acted with ordinary diligence during the whole period between the date of the decree appealed against and the date of presenting the appeal The time spent in applying a review of judgment might, if *bona fides* is proved to be deducted under S. 5 of the Limitation Act, when the appeal would be in time but for the time spent in review. (*Miller, C. J. and Foster, J.*) RAMCHARITA SAHU *v.* RAM NARAYAN SAHU. 52 I. C. 959.

——— S. 5—*Doubtful point of practice—Different views of High Courts—Sufficient cause.*

In cases of the conflicting decisions of the High Courts in India, the appellant being doubtful, as regards the remedy against an order directing the amendment of a decree, was by way of motion or by way of appeal and thus delay was caused in presenting the appeal, within the limitation prescribed therefor. *Held*, that there is

LIMITATION ACT (IX OF 1908), S. 5—Ex-parte admission.

ground for excusing the carelessness in the prosecution of the appeal as the case comes within the terms of S. 5 of the Limitation Act. Appeal was allowed to be admitted for hearing. (*Chapman and Roe, JJ.*) GULAB CHAND *v.* ABAS ALI.
39 I. C. 542

Ex-parte admission.

——— S. 5—Ex-parte *admission—Appeal filed after time—Effect of.*

The admission of an appeal after the period of limitation deprives the respondent of a valuable right, for it puts in peril the finality of the decision in his favour. Where therefore an order for such admission is made *ex parte*, it is open to consideration, at the respondent's instance at the hearing. It is an implied term of the order. The question of limitation should not however be left open till the hearing of the appeal. The Courts in India should adopt a procedure which will secure at the stage of admission the final determination of any question of limitation affecting the competence of an appeal. (*Sir Lawrence Jenkins.*) KRISHNASAMI PANIKONDAR *v.* RAMASAMI CHETTIAR.
41 Mad. 412:
4 P. L. W. 54: 16 A. L. J. 57: 7 L. W. 156:
23 M. L. T. 101: 27 C. L. J. 253: 2 P. L. R. 1918 :
22 C. W. N. 481: 21 Bom. L. R. 541:
11 Bur. L. T. 121: (1918) M. W. N. 906:
43 I. C. 493: 45 I. A. 25 : 34 M. L. J. 63 (P.C.).

——— S. 5—Ex-parte *admission — Competency of court.*

Where an appeal has been provisionally admitted, a Judge can entertain and decide the question whether there was sufficient cause for extending the time for appeal under S. 5 of the Limitation Act. (*Basil Scott and Batchelor, JJ.*) RAVI KESHAV DESMUKH *v.* KRISHNA RAO.
38 Bom. 613: 25 I. C. 369: 16 Bom. L. R. 516.

——— S. 5— Ex-parte *admission—If respondent can object afterwards.*

The order admitting an appeal *ex parte* can be re-opened on the objection of the respondent at the hearing. (*Mookerjee and Beachcroft, JJ.*) DAND BAHADUR SINGH *v.* DEO NANDAN PRASAD.
20 I. C. 513 : 17 C. L. J. 596.

——— S. 5—Ex-parte *admission by Dt. Judge—Transfer to Sub-Judge*

An appeal was admitted by a Dt. Judge under S. 5 of the Limitation Act, on the *ex parte* statement of the appellant, the respondent not having entered appearance. The case was thereafter transferred to Sub-Judge for trial. *Held* that the Sub-Judge had jurisdiction, on proper cause being shown to revoke the *ex parte* order and dismiss the appeal on the ground that it was barred by limitation at the time when it was admitted. 5 C. 1, Not Foll. (*Brett and Chapman, JJ.*) BHISMADEO DAS *v.* SITA NATH ROY.
40 Cal. 259: 16 I. C. 407: 17 C. W. N. 42.

——— S. 5—Ex-parte *admission—Effect.*

An order admitting an appeal *ex parte*, is not binding on the respondent, who can at the hearing raise any objection to such admission, that is legally possible. (*Broadway and Abdul Quadir, JJ.*) BALWANT SINGH *v.* SUNDER SINGH.
63 I. C. 726.

LIMITATION ACT (IX OF 1908), S. 5—Ex-parte admission.

——S. 5—Ex-parte *admission—Right of respondent to contest.*

A respondent is entitled to contest an *ex-parte* order extending the appeal time, (*Rattigan and Shadi Lal, JJ.*) TADA CHAND *v.* OFFICIAL LIQUIDATORS OF PEOPLE'S BANK OF INDIA, LTD.
90 P. L. R. 1915; 46 P. R. 1915: 29 I. C. 265 : 71 P. W. R. 1915.

——S. 5—Ex-parte *admission—Objection when to be taken—Practice—Procedure.*

Where an appeal presented out of time has been admitted by the appellate court *ex parte*, the respondent as soon as he is served with notice of the appeal, may apply by motion for dismissal of appeal on the ground of delay. If the respondent sleeps over his right and allows the appellant to incur expenses in bringing the case for hearing, he cannot be allowed at the hearing of the appeal to raise a preliminary objection that the appeal is time-barred. (*Schwabe, C. J. and Wallace, J.*) MURUGAPPA NAYAKER *v* THAYAMMAL.
16 L. W. 662: (1922) M. W. N. 727: 31 M.L.T 456: 1923 Mad. 82.

——S. 5—Ex-parte *admission—Pauper appeal—Application to excuse delay for filing appeal.*

An *ex-parte* order granting an application for excuse of delay in applying for leave to appeal as a pauper, may be considered at the instance of the party prejudicially affected thereby. (*John Wallis, C. J. and Seshagiri Aiyar, J.*) KRISHNASWAMY NAYAKER *v* VEERAPPA NAYAKER.
60 I. C. 212: 12 L. W. 500.

——S. 5—Ex-parte *admission—If can be set aside by the successor of admitting Judge.*

A Judge has jurisdiction to consider at the final hearing of the appeal, after notice, the question whether the delay in the filing of the appeal had been adequately explained, notwithstanding the ex parte order of his predecessor excusing the delay and admitting the appeal 9 M. 450 : 21 M. 228 : 34 C. 216 : 1 L. W. 440 Foll. (*Sadasiva Aiyar and Tyabji, JJ.*) MALLI REDDI *v.* PEDDAKKA. 1 L. W. 517 : 16 M. L. T. 100 : 25 I. C. 746 : (1914) M.W.N. 619 : 27 M. L. J. 147.

——S. 5—Ex-parte *admission—Objections overruled and appeal admitted—Effect.*

White, C. J., and Oldfield J., contra.—Where notice as to why delay should not be excused was served by appellant's vakil but without proper order from court and the appeal was admitted on appearance of other respondents and after hearing them, *held*, the respondent was not entitled on the hearing of the appeal to set up want of notice of proceedings in the Admission Court. Notice without proper order of court is a nullity and cannot by mere inaction amount to an estoppel. (*White, C. J. and Oldfield, J.*) T. RUTHNA GRAMANY *v.* N. VEERABUDRA AIYAR.
(1918) M. W. N, 751 : 21 I, C. 96 : 25 M. L. J. 281.

——S. 5—Ex-parte *admission—Re-opening of.*

The opposite party can raise objection at the hearing to the admission of an appeal without notice to him after the prescribed period of limitation. (*Miller and Abdur Rahim, JJ.*) KRISHNASWAMI PANKONDAR *v.* RAMASWAMI CHETTIAR. 12 M. L. T. 260 : (1912) M. W. N. 962 : 16 I. C. 486: 23 M. L. J. 219 :
[Affirmed 0. A. 43 I. C. 423 : 41 M. 412 (P. C.).

LIMITATION ACT (IX OF 1908), S. 5—Inability without fault.

——S. 5—Ex-parte *admission—Appeal filed out of time.*

A respondent is not bound by an order of admitting a barred appeal in the exercise of the discretion under S. 5 Limitation Act, if it is passed before an issue of process to him, but such admission order cannot be at once discharged on an objection of the respondent on the ground already considered before the order and made before the Judge other than that who passed the order of admission in the exercise of his discretion. (*Stanyon, A. J. C.*) SAKU *v.* MAROTI.
15 I. C. 562; 8 N. L. R. 50.

——S. 5—Ex-parte *admission subject to objections—Respondent not aware of the fact—Objection on the ground of limitation if can be raised again.*

Where an appeal which was filed out of time was admitted subject to objections, but the Respondent was not made aware of the order and question was raised as to the legality or propriety of the order and the appeal was allowed on the merits by the lower Appellate Court and the Respondent raised the question in second appeal. *Held*, that the admission of the appeal subject to objection by the lower Appellate Court was irregular and there was no sufficient reason for extension of time under S. 5 of the Limitation Act on the materials before the Court. (*Dawson Miller, C. J. and Coutts, J.*) ABDUL KASIM *v.* CHATURBHUJ SAHAI,
3 Pat. L. T. 110 : 6 P. L. J. 444 : 1922 Pat. 20 : 1922 P. 47.

——S. 5—Ex-parte *admission—Sufficient cause—Burden of proof—Duty of Court to decide the question of excusing the delay before final hearing—Question of limitation—Power to decide.*

An appellant seeking the benefit of S. 5 of the Limitation Act must adduce distinct proof of sufficient cause on which he relies and must furnish a detailed affidavit explaining the cause of the delay. Where an Appellate Court exercises the discretion vested in it, it must record the reasons for allowing an extension of the period of Limitation. Where a respondent fails to object to the admission of a time-expired appeal, the Court is not precluded from considering the question of limitation. Even an agreement between the parties that the objection should not be raised would not prevent the High Court from interfering. 3 Pat. L. J. 132. Ref. The practice of admitting appeals out of time provisionally without notice to the respondent and allowing objection to its admission to be taken at the hearing, should be discontinued. (*Adami, J.*) CHATURBHUJ SAHAY *v.* MUHAMMAD HABIB.
54 I. C. 36.

Inability without fault.

——S. 5—*Inability without fault—Party not able to conform to limitation created by court, without any fault of his own.*

LIMITATION ACT (IX OF 1908), S. 5—Inability without fault.

When the Court creates a limitation and a party is unable to conform to it, for no fault of his own (*e. g.*, failure to get a Conciliator's certificate owing to the cancellation of the appointment of Conciliator or the Govt., and he has no other remedy, the law will ordinarily excuse him (*Heaton and Shah, JJ.*) RUP CHAND *v.* MAKUNDA MAHADEV.

38 Bom. 656: 25 I. C. 67: 16 Bom. L R. 444

———S. 5—*Inability without fault—Party not able to conform to law—Without any fault of his.*

Where the law creates a limitation and a party is unable to conform to it for no fault of his own, *e. g.*, failure to get a Conciliator's certificate owing to the cancellation of the appointment of Conciliator or the Govt., and he has no other remedy, the law will ordinarily excuse him, (*Heaton and Shah, JJ.*) SATYABHAMABAI *v.* GOVIND JANKU BADE.

38 Bom. 653: 25 I. C. 66: 16 Bom. L. R. 441.

Merits of Case.

——S. 5—*Merits of case.*

An appellant filing in time but in a wrong court under a *bona fide* mistake may be allowed to put the mistake right unless disentitled by laches on his part; but not when he appears to have no substantial point to argue. (*Walsh, J.*) MAGBUL AHMAD *v* MURLA.

33 I. C. 546: 14 A. L. J. 212.

———Ss. 5 and 12—*Merits of case—Consideration of—Time for obtaining a copy.*

Where a party wishing to file an appeal waited till the 90 days were about to expire and then applied for judgment and decree and was asked to present the application at the proper place and the appeal was consequently filed a day too late it was *held* that he was not entitled to an extension of time and that the plea of the appeal being a strong one and likely to succeed would not entitle him to indulgence. (*Johnstone and Chevis, JJ.*) LAL SINGH *v.* PALA SINGH.

66 P. W. R. 1912: 13 I. C. 714 : 170 P. L. R. 1912.

———S. 5—*Merits of the case.*

The Court would excuse the delay in the presentation of an appeal if there are any merits in the appellant's case. But when the appeal is on a mere technical ground the principle of technicality defeating technicality may well be brought into play. (*Sadasiva Aiyar and Tyabji, JJ.*) AVUDAI AMMAL *v.* GANAPATHI AIYAR. 25 I. C. 28.

Mistake in Calculation.

———S. 5—*Mistake in calculation.*

Mistake in calculating period of limitation which is a mistake of arithmetic is not sufficient cause for extension. (*Fletcher and Smither, JJ.*) GURU CHARAN GHOSE *v.* KASHI CHANDRA GHOSE

46 I. C. 480

———S. 5—*Mistake in calculation*—Bona fide *miscalculation by pleader whether sufficient cause.*

The expression sufficient cause in S. 5 should receive a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of *bona fides* is imputable to appellant. A *bona fide* mistake by the pleader in calculating the period of limitation in consequence of which the appeal is filed out of time may constitute sufficient cause which must be decided by the court having regard to all the facts and circumstances of the case. (*N. Chatterjee and Walmsley, JJ.*) RAKHEL CHANDRA *v.* ASHUTOSH GHOSH.

19 I. C. 931 : 17 C. W. N. 807.

LIMITATION ACT (IX OF 1908), S. 5—Mistake of Court.

———S 5—*Mistake in calculation.*

If a man chooses to adopt his own method of calculation which is found to be erroneous, and files an appeal on the last possible day, no extension can be granted. (*Batten, A. J. C.*) SALAM SINGH *v.* HIRA. 40 I. C. 425 : 13 N. L. R. 89.

Mistake of Court

———S. 5—*Mistake of Court—Appeal—Presentation in proper time to proper Court—Return of appeal—Subsequent presentation.*

An appeal was presented within the period of limitation to the proper Court which taking a wrong view of the jurisdiction value, returned it for presentation to the Chief Court where it was instituted after the period of limitation. *Held*, that as the appeal was presented in time to the Divisional Court, it was not precluded. The Chief Court instead of returning the appeal for representation to the Divisional Court treated it as transferred from that Court to its own file. (*Robertson and Chevis, JJ.*) KHOTA RAM *v.* MAUJ DIN.

12 P. L. R. 1912 (Sup.) : 16 I.C 979 : 276 P. W. R. 1912.

———S. 5—*Mistake of Court—Wrong dismissal of application for review after acceptance—Civil P. C., O. 47, R, 9.*

Where an application for review of an order was dismissed after it was granted; *held*, the order being wrong must be ignored and the time taken must be deducted in computing the period of limitation for appeal from the original order (*Ashworth and Simpson, A. J. Cs.*) BHAGWATI PRASAD *v.* ACHHAIBAR SINGH.

9 O. L. J. 531 : 26 O. C. 24 : 1923 Oudh 93.

———S 5—*Mistake of Court—Decree of Appellate Court legally incorrect in form—Inability to obtain relief in lower Court—Remedy*

Where a decree of the Appellate Court is legally incorrect in form and so a decree-holder cannot obtain relief in the Lower Court, his remedy is for review of judgment of the Appellate Court and not for revision of the Lower Court's order and the time spent in seeking relief under the decree is allowable to him when he applies for a review (*Lindsay, J. C.*) SOMNATH *v.* RAM BILAS.

24 I. C. 113 : 1 O.L.J. 193.

———S. 5—*Mistake of Court—Notice of judgment date not given.*

A delay in filing an appeal caused by the failure of the Court to give notice of the date of delivery of judgment ought to be excused. A discretion exercised by the Court under S. 5 should not be interfered with on appeal unless exercised arbitrarily or illegally. (*U. Kin, J.*) MA HLA DUN *v.* MAUNG SHAWE YA. 38 I. C. 575 : 9 Bur. L. T. 250.

———S. 5—*Mistake of Court—Notice of judgment date not given.*

LIMITATION ACT (IX OF 1908), S. 5 - Mistake of fact.

Where a Court delivers judgment without notice to the parties or their pleaders as prescribed in O. 20, R. 1, C.P.C, and the appeal becomes barred entirely through the negligence of the Judge, it is a fit case for excusing the delay. (*Parlett, J.*) MA ME THIN *v.* MAUNG SAU LUN.
27 I. C. 784 : 8 Bur. L. T. 99.

Mistake of fact.

——— S. 5—*Mistake of fact--Mistake of counsel's clerk—Time if can be extended.*

A *bona fide* mistake by a counsel's clerk in counting time and presenting an appeal out of time, is a sufficient cause for extending the time within S. 5 of the Act. (*Piggott, and Ryves, JJ.*) SHEO MOHAN PANDE *v.* KALI PRASAD SHUKUL.
59 I. C. 937.

———S. 5--*Mistake of fact.*

The Court can extend the period in favour of an appellant under S. 5 of the Act if he has omitted to include the name of a respondent on account of oversight or *bona fide* mistake.(*Rafique, J.*) GAYA PRASAD *v.* CHOTTO. 26 I. C. 68 : 12 A. L. J: 941.

———S. 5—*Mistake of fact—Recent notification—Ignorance of.*

Where the rule requiring the appellant in a second appeal to file a copy of the judgment of the first court had only been published in the Gazette a few days before the filing of the appeal. *Held*, that the delay in filing the copy should be excused. The filing a copy of a detailed judgment-dealing with the suit in question and others is a sufficient compliance with the rule. (*Scott-Smith and Moti Sagar, JJ.*) MAHOMED HASSAN-UD-DIN *v.* SAIF ALI SHAH. 4 Lah, 122 : 5 Lah. L. J. 246 : 1924 Lah. 41.

———S. 5—*Mistake of fact—Gazetted holiday—Substitution of by another day—Second appeal.*

When an appellant was misled by a particular day, gazetted public holiday being substituted by another day. *Held*, that it was sufficient cause for excusing the delay and when the Lower Appellate Court does not apply its mind to the question, it can be considered in second appeal, 37 I. C. 503, 35 I. C. 67 Dist. (*Scott-Smith and Broadway, JJ.*) NAND SINGH *v.* GULLI. 77 P. R. 1917 : 42 I. C. 343 : 147 P. W. R. 1917.

———S. 5—*Mistake of fact — Two cross-appeals—Two decrees—Appellant believing in one decree—Sufficient cause.*

Two cross-appeals were decided by an Appellate Court and two separate decrees were framed. A second appeal was filed in respect of only one decree The appellant in the second appeal was misled into thinking that only one decree had been drawn up. *Held*, that the appellant had sufficient cause within S. 5 for not filing the appeal as to the other decree within the prescribed period and should be allowed to file a copy of the other decree. (*Shah Din and Scott-Smith, JJ.*) DHAN SINGH *v.* KALU SINGH. 115 P. R. 1912 : 6 P. L. R. 1912 (Supp) : 15 I. C. 140 : 191 P. W. R. 1912.

———S. 5—*Mistake of fact—Date on which copy ready.*

LIMITATION ACT (IX OF 1908), S. 5—Mistake of Law.

A *bona fide* mistake as to the date on which the copying department told the applicant to come to take delivery of decree copy, is sufficient cause to justify extension of time under S. 5. Where an appellant has no notion at the time of filing his appeal that it is time-barred he cannot be expected to have explained the cause of delay at the time of filing the appeal 22 P.R. 1903, Dist. (*Chevis, J.*) MOHAN RAM *v.* MOHOMAD KHADAD KHAN. 71 P. W. R. 1911 : 9 I. C. 607 : 79 P. L. R. 1911.

———S. 5—*Mistake of fact—Sufficient cause.*

When a judgment disposes of two differently valued suits and the appellant being misled files an appeal, under the *bona fide* mistake in the Court of Dt. Judge after time, the appeal is not time-barred under S. 5. (*Lindsay, J. C.*) GHANSHYAMDASS *v.* HARDU. 32 I. C 380 : 2 0 I. J. 562.

———S. 5—*Mistake of fact.*

An appellant is bound to show that there has been no negligence, inaction or want of *bona-fides* imputable to the appellant before he can claim an extension of time on the ground of a mistake of fact. When a pleader was misled as to the date of the decree the copy having been dated wrongly and the appeal unverified, was consequently filed out of time there was no sufficient cause within the section to excuse the delay. (*Fawcett, J. C. and Crump, A. J. C.*) KARACHI TRADING COMPANY *v.* FIRM OF TEJBHANS.
28 I. C. 82: 8 S. L. R. 235.

Mistake of Law.

———S. 5—*Mistake of law*—Stare decisis—*Procedure—Discretion--Appellate Court,*

The judicial discretion given by S. 5 of the Limitation Act to admit an appeal after the prescribed period of limitation should be exercised if the appeal has been prosecuted with due deligence. The time occupied by an application, in good faith for review of the judgment, although made on a mistaken view of the law, might be excused. The Privy Council refused to overrule this practice it having been acted upon for many years by all the courts in India though not warranted on strict construction of the language of S. 5 of the Limitation Act, where in the exercise of a judicial discretion a Judge fails to apply a rule laid down for its exercise the Appellate Court should either remit the case or itself exercise the discretion (1891) A. C. 173; 45 C. 94 ; 44 I. A. 229 42 I. C. 849 (P.C.) (*Sir John Edge.*) GUNJESHWAR KUNWAR *v.* DURGA PRASAD SINGH.
45 Cal. 17 : 22 M. L. T. 403 : 22 C. W. N. 74 : 26 C. L. J. 557 : 16 A. L. J. 1 : 20 Bom. L. R. 38 : (1918) M. W. N. 16 : 7 L. W. 94 : 4 P. L. W. 1 : 42 I. C. 849 : 44 I. A. 229 : 34 M. L. J. 1 (P.C.).

———S. 5—*Mistake of law—Mistaken proceedings.*

Mistake of law is *per se* no ground for exclusion of time but when in fact erroneous proceedings are instituted owing to the mistake, extension

LIMITATION ACT (IX OF 1908), S. 5—Mistake of Law.

may be granted. (*Lord Dunedin.*) H. H. BRIJ INDER SINGH *v.* LALA KANSI RAM.
45 Cal. 94 : 44 I. A. 218 : 22 M. L. T. 362 : 6 L. W. 592 : 126 P. W. R. 1917 : 15 A. L. J. 777 : 19 Rom. L. R. 866 : 3 Pat. L. W. 313 : 26 C. L. J. 572 : 104 P. R. 1917 : (1917) M W. N. 811 : 22 C. W. N. 169 : 42 I. C. 43 : 127 P. L. R. 1917 : 33 M. L. J. 486 (P.C.).

——S. 5—*Mistake of law—Pleader's mistake.*

Where the only excuse put forwa·d in the affidavit for not filing the appeal within time was that the appellants had no knowledge before the order of the District Judge returning the memorandum of appeal, that it had to be presented to the High Court but there was sufficient room to hold that they had such knowledge, and the same pleader had been working for the appellants and had filed various appeals rightly in connection with this case, *held*, the mistake pleaded in this case was not *bona fide* and extension was refused (*Abdur Raoof, J.*) UMRAO BAKHSH *v* MALIK MAHOMED KHAN. 1923 Lah. 612.

——S. 5—*Mistake of law—Illiteracy of clients.*

The decision appealed against was dated the 20th June, 1921. An application for copies of the decrees and the lower appellate Court's order was filed on the 27th of June 1921 and those copies appeared to have been received by the appellant on the 9th of July 1921. The appeal itself was filed on the 4th of October 1921 and was returned on the same date on the ground that it was not accompanied by a copy of the judgment of the trial Court. The appellant appeared to have done nothing further in the matter until the 26th October 1921, when he applied for a copy of the necessary judgment which was ready on the 31st of that month and actually delivered to the appellant on the 7th of November 1921. The appeal was then refiled on the 22nd of November 1921. *Held* even allowing for the fact the Kangra is at some distance from Lahore and the parties are *jats* this delay is unwarranted. (*Broadway, J.*) MT. NAZKO *v.* MT. GOPAL. 1923 Lah. 208 (2).

——S. 5—*Mistake of law,*

The respondent brought on record by an order passed before he was a party can challenge the validity thereof after he is made a party. A mistake of law is not 'sufficient cause' unless it was made in 'good faith,' *i.e.*, in spite of due care and attention. A Court should no doubt interpret the words "sufficient cause" liberally, but it must be in accordance with judicial principles The appeal time must not be extended simply because the appellant's case is hard. (*Ratligan and Beadon, JJ.*) FAKIR CHAND *v.* MUNICIPAL COMMITTEE OF HAZRO. 59 P.L.R. 1913 : 88 P. W. R. 1913 : 18 I. C. 37 : 59 P. R. 1913

——S. 5—*Mistake of law—Sufficient cause.*

Where a *Pardanashin* lady is ignorant of the rules of procedure, it is not 'sufficient cause' within S. 5 of the Limitation Act (*Reid, C. J. and Ryves, J.*) MASUM BEGAM *v.* MADAN MOHAN LAL. 9 I. C. 222 : 8 P. W. R. 1911,

LIMITATION ACT (IX OF 1908), S 5—Mistake of Law.

——S. 5—*Mistake of law.*

A *bona fide* mistake of law is a sufficient cause for excusing delay in presenting an appeal. Where a person mistook the preliminary order as a final order which a man of ordinary prudence would not have mistaken and filed an appeal against it beyond the period of limitation, *Held*, that the mistake was not a "Sufficient Cause" for excusing the delay. (*Oldfield and Bakewell, JJ.*) SOUNDARARAJA IYENGAR *v.* SREENIVASACHARIAR. 39 I. C. 975 : (1917) M. W. N. 362.

——S. 5—*Mistake of law—Delay in institution of suit.*

A mistake of law might be a sufficient reason for asking the Court to exercise its discretion under S. 5, of the Lim. Act more so when the mistake is one in which the Court was seized of the suits shared. The real question for consideration in such cases is whether the plaintiffs had acted in good faith in prosecuting their suits in the Revenue Courts before they came back to the Civil Court. If they did, the time spent in prosecuting those suits in the Revenue Court ought to be taken into account, and if there has been an undue delay meanwhile, the delay in filing the appeals from the original decrees, by which the plaints were directed to be returned for prosecution to the Revenue Court should be excused. (*Kanhaiya Lal, J. C.*) BENI MADHO *v.* SHAM SHAD ALI. 26 O. C 56 : 1923 Oudh 238.

——S. 5—*Mistake of law—Appeal to Privy Council.*

An applicant for leave to appeal to His Majesty in Council was misled by the practice of calculating the period of limitation for such application and thus filed his application beyond time: *Held*, that in the particular case the time should be extended. (*Miller, C.J., Jwala Prasad, Das, Adami and Bucknill, JJ.*) JYOTINDRA NATH *v.* LODNA COLLIERY CO. 2 P. L. T. 361 : 1921 Pat. 177 : 62 I. C. 649 : 6 P. L. J. 350 (F. B.).

——Ss. 5 and 12—*Mistake of law— Leave to appeal to Privy Council—Two appeals one judgment—Delay in preparing decrees.*

The practice of the Patna High Court being to insist upon the filing of the decree either along with the petition for leave to appeal to the Privy Council or if it is not ready, to allow the decree to be filed later on, when it is obtained, the period of six months was not to be computed from the date when the decree was signed but from the date of the decision. The time actually spent in obtaining a copy of the decree could only be deducted under S. 12 (2) of the Limitation Act. 13 Cal. 104 Not Foll. 12 All. 461 (F.B.); 23 Bom. 442; 39 Cal. 766 Rel. Where there are two appeals decided by one and the same judgment two petitions for leave to appeal have to be presented in respect of the two decrees. The above practice being well known and the later decisions having settled the law, no indulgence could be granted under S. 5. (*Miller, C. J. and Adami, J.*) MAHADEO PRASAD SAHU *v.* GAJADHAR PRASAD SAHU. 57 I. C. 312 . 1 P. L. T. 262.

LIMITATION ACT (IX OF 1908), S. 5—Mistake of Law.

———S. 5—*Mistake of law—Law settled—Time if can be extended—C. P. Code, S. 149.*

Where on the question of court-fees in a particular class of cases, there was a considered ruling binding on all the courts in the districts, it is no ground for extending time that the appellant was under a misapprehension as to the amount to be paid. (*Pipon, J. C.*) MURLI MAL *v.* VAISHNO DITTA. 73 I. C. 788.

Mistake of Pleader.

———S. 5 and Art 152—*Mistake of pleader.*

An appeal which lay to the Dt. Court was presented under wrong legal advice to the High Court which returned it for presentation to the Dt Court At the time of presentation to the Dt. Court the time for appealing to the Court had expired, but the appeal would have been in time if it lay to the High Court. The Dt. Judge admitted the appeal *ex parte* subject to objections on the ground of limitation. The appeal was afterwards transferred to the High Court which excused the delay holding that the mistake of appellant's legal adviser was sufficient cause within S 5. *Held*, that the order of the High Court was proper 45 Cal. 94 (P. C.) Foll. (*Sir John Edge.*) SUNDERBHAI *v* COLLECTOR OF BELGAUM.
43 Bom. 376 : (1919) M. W N. 254 : 23 C. W. N. 763 : 52 I. C. 897 : 21 Bom. L. R. 1148 : 46 I. A. 15 (P. C.).

——— S. 5—*Mistake of pleader — Sufficient cause.*

Though the courts should ordinarily insist upon legal practitioners giving correct advice, nevertheless it may be that to demand at the present time a normal standard of efficiency would impose hardship upon litigants. An honest mistake made by a litigant upon incorrect advice of counsel, is a sufficient cause for excusing delay under S. 5 of the Limitation Act. Where in ignorance of the rules of procedure of the High Court, a mofussal pleader did not procure copies of judgment and decree to be filed along with the second appeal and these copies were filed after the time prescribed. *Held*, there was sufficient cause within S. 5 of the Lim. Act for excusing delay. (*Mears, C. J., Banerjee and Stuart, JJ.*) SHIB DAYAL *v.* JAGANNATH PRASAD. 44 All 637 : L. R. 3 A. 413 : 20 A. L. J. 674 : 1922 All. 490.

——— S. 5—*Mistake of pleader — Sufficient cause—Vakalatnama filed with memorandum of appeal omitting pleader's name but accepted by pleader.*

Where the body of the vakalatnama filed along with a memorandum of appeal omitted the name of the pleader but the latter had signed it in token of acceptance and before the appeal was decided the appellant filed a complete vakalatnama, *held* that the appeal must be deemed to have been presented on the date when the complete power of attorney was filed and that the time should be extended under S. 5 of the Act. (*Banerji and Gokul Prasad, JJ.*) SHAMBHU NATH *v.* BADRI DAS. 43 All. 392 : 61 I. C. 410 : 19 A L. J. 183.

———S. 5——*Mistake of pleader.*

A lawyers wrong advice causing an error has to be proved by the party. It is pertinent under S. 5 of the Limitation Act. (*Stuart, J.*) KHAIRATI LAL *v.* DEBI DAYAL. L. R. 3 A. 151 (Rev.).

———S. 5—*Mistake of pleader — Recalling order excusing delay.*

In order that a mistake of the pleader may be sufficient cause for granting an extension of time under S. 5. there must be a proper evidence establishing that a *bona fide* mistake was committed. A Judge has power to revoke an order excusing delay before the appeal is admitted. (*Fletcher and Huda, JJ.*) ISWAR CHANDRA KAPALI *v.* ARJUN. 45 I. C. 725.

——S. 5—*Mistake of pleader —Omission to file copy of decree.*

Where the copy of the decree appealed from had been given to the *vakil* but by an unexplicable mistake it had not been filed along with the memorandum of appeal and the *vakil* had since died the High Court extended the time under S. 5 of Limitation Act. (*Mookerjee and Beachcroft, JJ.*) PROSONNO KUMARI DEBI *v.* RAMCHANDRA SINGHA. 17 I. C. 155 : 17 C. L. J. 66

———S. 5—*Mistake of pleader.*

The plffs. correctly valued their claim for Court-fees at a certain sum : but for the sake of jurisdiction they valued it erroneously due to the legal adviser's omission to give effect to S 8 of Suits Valuations Act. Defts. did not raise objection to the same. Plff's. case was dismissed and they appealed to the Dist. Judge where also they did not object at once but asked for an adjournment. At the hearing they raised the objection on which memorandum of appeal was returned to be presented to the High Court. They promptly filed it before the High Court but after the expiry of due period. *Held*, that sufficient cause required by S. 5 of the Limitation Act had been made out and the appeal, ought to be admitted even though out of time as some responsibility was on the deft. for the difficulty which the plffs. presently experienced. (*Mookerjee and Holmwood, JJ.*) BONOMALI GAONTIA *v.* PADMA LOCHAN GAONTA. 16 I. C. 425 : 16 C. L. J. 366.

———S. 5—*Mistake of pleader.*

Though generally erroneous advice of pleader is not a sufficient cause, a litigant should not be made to suffer for the pleader's error if the mistake is of such a nature as would mislead even experienced practitioners. The true test is whether the litigant has acted under honest though mistaken belief, formed with due care and attention. (*Mookerjee and Carnduff, JJ.*) SUNDER KOER *v.* RAGHUNATH SAHAI. 12 I. C 677.

———S. 5—*Mistake of pleader—Appeal filed in Court without jurisdiction.*

" A legal adviser's mistake, in order to justify an extension of the period prescribed for presenting an appeal, must be a *bona fide* one, and nothing can be deemed to be done in good faith which is not done with due care and attention." 45 I. C. 542 ; 43 I. C. 317 Foll. Mere carelessness or oversight of the appellant, or his counsel in presenting an appeal in a wrong Court, which by the exercise of due diligence, could have been

LIMITATION ACT (IX OF 1908), S. 5—Mistake of Pleader.

avoided, cannot be recognised as a sufficient reason for excusing delay under S. 5 of the Lim. Act. (*Abdul Raoof, J.*) UMRAO BAKHSH *v.* NUR MAHOMED KHAN. 1923 Lah. 612.

———S. 5—*Mistake of pleader—Memo. of appeal not signed through oversight—Extension allowed.*

Omission to sign a memorandum of appeal by oversight, which was otherwise in order and had been duly presented, was sufficient cause for extension of time under S. 5. (*Scott-Smith and Zafar Ali, JJ.*) THE FIRM MATHRA DAS *v.* THE FIRM RAM LAL. 1923 Lah. 402.

———S. 5—*Mistake of pleader—Memorandum not signed by pleader—Extension of time.*

S. 5 of the Act must be applied under equity to a case where an appeal is filed in time and no laches can be attributed to the appellant, but the pleader through oversight did not sign the memorandum of appeal. (*Broadway and Abdul Quadir, JJ.*) BALWANT SINGH *v* SUNDAR SINGH. 63 I. C. 726.

———S. 5—*Mistake of pleader.*

A legal adviser's mistake in order to justify an extension of time must be a *bona fide* one. Filing an appeal in a court which has obviously no jurisdiction cannot be considered to be a *bona fide* mistake. A mistake is not *bona fide* if it is done without due care and attention (*Broadway, J.*) AHMAD HUSSAIN *v.* SHAMSUL NISA. 10 P. L. R. 1918 : 45 I. C. 542 : 69 P. W. R. 1918.

———S. 5—*Mistake of pleader.*

A legal adviser's mistake to justify an extension under S. 5 of the Limitation Act, must be a *bona fide* one. (*Shadi Lal and Broadway, JJ.*) RESAL SINGH *v.* SHADI. 95 P. R. 1917 : 174 P. W. R. 1917 : 43 I. C. 317 : 18 P. L. R 1918.

——— S. 5—*Mistake of pleader.*

Where an appeal was filed out of time under the advice of a pleader who was misled by a change in law, it was held that there was sufficient cause under S. 5 for not filing within time. 17 C. W. N 807, Foll. (*Shah Din, J.*) AZIM ULLAH *v.* GOKALCHAND. 32 I. C. 640 : 37 P. W. R. 1916.

———S. 5—*Mistake of pleader—Extension of time.*

Assuming that in some circumstances a litigant is entitled to an extension of time under S. 5 of the Limitation Act when he has been misled by a mistake of his legal adviser the principle on which the court acts is that the mistake must be of such a description that it might arise even amongst practioners of experience. 12 I. C 677 Rel. (*Dawson Miller, C.J. and Mullick, J.*) S. C. DEY *v.* MT. RAJWANTI KUER. 3 P L. T. 98 : 1923 P. 140.

———S. 5—*Mistake of pleader — Erroneous advice.*

The rule, that an erroneous advice of a pleader or counsel is no sufficient cause to extend the time for an appeal presented out of time, is not inflexible, and where the mistake is one that may arise even among experienced practitioners, a litigant should not be made to suffer for such an error. (*Miller, C.J, and Mullick, J.*) S. C. DEY *v.* RAJWANT KUER. 63 I. C. 278 : 6 Pat. L. J. 287.

LIMITATION ACT (IX OF 1908), S. 5—Negligence of Party.

———S. 5—*Mistake of pleader*—Bona fide *advice based on false information.*

The advice given by a legal adviser though honest and *bona fide* will not be counted as under S. 5 a sufficient cause if it is on an untrue statement. (*Miller, C.J. and Coutts, J.*) MUSSAMMAT BIBI FAKHRUNNISSA *v.* RAMBHAJAN SINGH. 49 I. C. 1000.

———S. 5—*Mistake of pleader.*

A pleaders's mistake is a good ground for admitting a time-barred appeal, when the mistake is *bona fide*, *i.e.*, made in spite of due care and attention. (*Fox, C.J. and Twomey, J.*) MA MAI GALE *v.* MAUNG TUN WIN. 8 L. B. R. 566 : 37 I C. 815 : 10 Bur. L. T. 221.

———S. 5—*Mistake of pleader.*

Where an advocate's firm delayed presenting an appeal by two days after the last date for filing it, despite their knowledge that costs and fees had been sent to them by Telegraph money-order which could not be received owing to the absence of the member of the firm to whom it was addressed. *Held*, there was no sufficient cause to excuse the delay. (*Parlett, J.*) MAKYA MYA *v.* MG TUN HLA. 27 I C. 639.

———S. 5—*Mistake of pleader.*

A mistake of law by an advocate is not a sufficient cause within S. 5 of the Limitation Act. 25 M. 166, Dist. (*Twomey, J.*) SALVADOR *v.* MEYER & Co. 11 I. C. 812 : 4 Bur. L. T. 175.

Negligence of Guardian.

———S. 5—*Negligence of guardian.*

Where the court of wards had the authority to make an application on the ward's behalf but did not do so within the limitation period, the ward cannot after release from the superintendence of court of wards, be said to have had sufficient cause for not making the application during the period of his wardship. (*Stuart and Kanhaiya Lal, A.J.Cs.*) NARENDRA BAHADUR SINGH *v.* OUDH COMMERCIAL BANK 46 I. C. 68 : 5 O. L. J. 153.

Negligence of Party.

———Ss. 5 and 2 (1)—*Negligence of party—Due care on appellant's part required.*

Due care and attention are required on the part of an appellant to warrant an extension of the appeal time by the Court under S. 5 of the Act. (*Shadi Lal and Broadway, JJ.*) JAIDAYAL MAL *v.* AMAR NATH. 37 I. C. 828 : 27 P. W. R. 1917.

———S. 5—*Negligence of party—Appeal filed with copy of the judgment but without copy of decree.*

Appeal filed without copy of decree though with copy of judgment is not properly presented and becomes barred if the filing of the copy of the decree is after the period of limitation. (*Reid, C.J. and Ryves, J.*) MASUM BEGAM *v.* MADAN MOHAN LALL. 9 I. C. 222 : 8 P. W. R. 1911.

———S. 5—*Negligence of party—No extension of time to negligent appellant.*

LIMITATION ACT (IX OF 1908), S. 5—Negligence of Party.

An extension of time to appeal cannot be granted on the ground of unforeseen contingency in the case of a negligent appellant postponing to present the appeal till the last day of the prescribed period. (*Stanyon, A.J.C.*) KEDARNATH *v.* ZUMBARLAL. **37 I. C. 503 : 12 N. L. R 171.**

———S. 5—*Negligence of party—Notice of judgment—Date.*

In the absence of any indication to the contrary, it must be presumed that the notice required under O. 20, R. 1, C. P. Code was given. A person who wishes to take advantage of S. 5 must show that he has not been negligent and tha he has been prosecuting his case with due delige nce (*Lyle, J.*) HABIBULLAH *v.* BANARSI DAS. **22 O. C. 379 : 55 I. C. 837 : 2 U. P. L. R. (J. C.) 60.**

———S. 5—*Negligence of party—Carelessness.*

A Court should not excuse under Sec. 5 of Lim. Act delay due to gross carelessness. (*Roe and Coutts, JJ.*) SHEIK PALAT *v.* SARWAN SAHU. **55 I. C. 271.**

———S. 5—*Negligence of party—Negligence of servant or agent.*

The Court can extend time under S. 5 only for sufficient cause. The negligeace of a servant in the performance of the duties entrusted to him does not amount to sufficient cause. (*Miller, C. J. and Mullick, J.*) JALESWAR DAYAL SINGH *v.* RAM HARI SAHU. **55 I. C. 17.**

———S. 5—*Negligence of party—Delay—Explanation—Negligence of servant.*

Where law provides a time-limit within which a step is to be taken and a party waits until the last moment before taking that step, he is not entitled to the Court's indulgence if an accident prevents the step from being taken within the time. A party is not entitled to plead the negligence of his servants as a ground for excusing delay. (*Miller, C. J. and Roe, J.*) SETH JAHAR MAL *v.* PRITCHARD. **52 I. C. 225 : 3 Pat. L. J. 381.**

Negligence of Pleader.

———S. 5—*Negligence of pleader—Mistake of pleader's clerk—Unstamped decree.*

Where an appeal is filed without a stamped copy of the decree appealed against, and the deficiency in Court-fee is not made up within the period of limitation allowed for filing the appeal and it is urged as a ground for excusing the delay that the pleader's clerk concerned had by mistake omitted to file a stamped copy of the decree, *held* that there was no ground for excusing the delay and that the appeal should be dismissed. Valuable right had accrued to the respondent by reason of the period of limitation for filing the appeal having elapsed and it would not be fair to admit the appeal on such slender grounds as had been put forward in the case. (*Scott-Smith, J.*) SHAHADAT *v.* HUKAM SINGH. **1924 Lah. 401.**

———S. 5—*Negligence of pleader—Delay in filing appeal.*

It is not always a sufficient ground for excusing the delay in filing an appeal to say that the negligence of the pleader has been responsible for the delay. Each case must be judged on its own facts and circumstances. (*Prideaux, A. J. C.*) ISHWARDAS *v.* BISMILLA KHAN. **1923 Nag. 133.**

LIMITATION ACT (IX OF 1908), S. 5—Negligence of pleader.

———S. 5—*Negligence of pleader.*

Where it is shown that an Advocate who is a Barrister or other professional gentl men, recieved, and accepted instructions to file an appeal or make an application and the client lost his right to appeal or make the application as a result of the negligence of the Barrister or practitioner to file the appeal or application within time, such Barrister or Vakil would be liable in a Court of Law. That however is no ground for excusing the delay. When an appeal was filed 37 days out of time, and no explanation for the delay was given except that instructions had been given in time to the Barrister together with a sum of money for costs the Dt. Judge could not admit the appeal. (*Richards, C. J. and Banerjee, J.*) BUDHA *v.* DIWAN. **37 All. 267 : 28 I. C. 265 : 13 A. L. J. 286.**

———S. 5—*Negligence of pleader—Appeal, presentation for*—Vakalatnamah *not signed by appellant.*

Where the memorandum of appeal was presented in time but was signed by a pleader whose *vakalatnamah* was not signed by the appellant the mistake being *bona fide*, is a sufficient cause for extending time under S. 5 of the Limitation Act. (*Lyle, J.*) KABEEB *v.* NAUSH ALI. **21 I. C. 444 : 11 A. L. J. 779.**

———S. 5—*Negligence of pleader.*

Where an appeal is filed in a wrong Court owing to gross carelessness of the pleader and after return was filed in the right Court after time, it was held there was no sufficient cause for not filing in time 28 A. 414 and 29 A 638 not Foll. (*Kensington and Beadon, JJ.*) MOHAMLA *v.* LADHA SINGH. **9 P. L. R. 1914 : 23 I. C. 86 : 23 P. W. R. 1914.**

———S. 5—*Negligence of pleader—Sufficient cause.*

Notwithstanding the carelessness of the appellant's counsel in filing a copy of deposition instead of a copy of the decree, at the time of filing an appeal, time should be extended to enable him to file a copy of decree. (*Reid, C. J.*) HARJASMAL *v.* KAHNI. **104 P. W. R. 1913 : 173 P. L. R. 1913 : 19 I. C. 438 : 85 P. R. 1913.**

———S. 5—*Negligence of pleader--Delay when excusable,*

Held, that "Sufficient cause" within S. 5. for not filing the appeal within time had been shown though the pleader was not free from blame as the pleader's clerk neglected to file the papers in time. The Counsel must see that their client's appeals are not barred by time. 28 A. 414 ; 29 A. 638, 13 C. 62 ; Ref. and Dist. (*Shah Din and Scott-Smith, JJ.*) BIBI PUTLI *v* JWALA DEBI. **126 P. W. R. 1912 : 16 I. C. 488 : 7 P. L. R. (Supp.) 1912.**

———S. 5—*Negligence of pleader.*

Under S. 5 neither delay caused by negligence in applying for delivery of copies at the office

LIMITATION ACT (IX OF 1908), S. 5—Onus.

nor delay caused by pleader's clerk's negligence in filing the appeal is " sufficient cause". (*Hayward, J. C.*) ALLAHDADSHAH *v.* MUKHDUM AMIN MOHOMED. 24 I. C. 977 : 7 S. L. R. 201

Onus.

———S. 5—*Onus.*

It is the duty of the litigant to know the last day on which he can present his appeal and if there is delay the burden rests on him of adducing strict proof of the sufficient cause on which he relies. (*Sir Lawrence Jenkins, J.*) KRISHNASWAMI PANIKONDAR *v.* RAMASWAMI CHETTIAR. 41 M. 412 : 4 P. L. W. 54: 16 A. L. J. 57 : 7 L. W. 156 : 28 M. L. T. 101 : 27 C. L. J. 253 : 2 P. L. R. 1918 : 22 C. W. N. 481 : 21 Bom. L. R. 541 : 11 Bur. L. T. 121 : (1918) M. W. N. 906 : 43 I. C. 493 : 45 I. A. 25 : 34 M. L. J. 63 (P. C.).

Power of successor.

———S. 5—*Power of successor—Order excusing delay—Successor of Judge bound.*

An order made by one judge extending time owing to delay in getting copies of decree should not be interfered with, by his successor. (*Greaves, J.*) UJIR ALI *v.* SIDDIQUE AHAMED. 50 I. C. 882.

———S. 5—*Power of successor—Appeal admitted—Successor of Judge bound--Admission subject to objections.*

An order admitting a time-barred appeal subject to objection at the hearing is binding on the successor of the Dt. Judge who cannot re-open it except at the instance of the respondent. The practice of admitting appeals 'subject to objection at the hearing' has been condemned by Privy Council and should therefore cease. (*Richardson and Huda, JJ.*) TELENDRA JIT RAJ KUMAR *v.* GUNENDRA JIT RAJ KUMAR. 50 I. C. 374.

Poverty.

———S. 5—*Poverty—Application to appeal as pauper.*

An appeal presented after time with full stamp, may be admitted if a previous application for leave to appeal as pauper was presented within time, and rejected. (*Chevis and Scott-smith, JJ.*) BHAGWANDAS *v.* BALWANTI. 74 P. R. 1916 : 173 P. W. R. 1916 : 30 P. L. R. 1917 : 38 I. C. 84.

———S. 5—*Poverty—Application for leave to appeal as a pauper—Subsequent change of condition if sufficient cause.*

Where during the pendency of an enquiry into the financial condition of an applicant applying for leave to appeal as a pauper, the applicant inherited some properties and paid court fee after the expiry of the limitation period *held*, that the applicant was entitled to an extension of time under S. 5 of the Act. 47 P. R. 1899 ; 26 C. 925, Foll. (*Johnstone and Shahdin, JJ.*) SHADI KHAN *v.* BEEBEE UMDAN BEGAM. 34 P. W. R. 1913 : 18 I. C. 73 : 52 P. L. R. 1913.

———S. 5—*Poverty—If sufficient cause for extending periods of limitation.*

LIMITATION ACT (IX OF 1908), S. 5—Proceedings.

Poverty is not a sufficient cause within S. 5 for extending the period of limitation. (*Hartnoll, O. C. J. and Young, J.*) ANNAMALAI *v.* O. M. M. R. M. CHETTY. 22 I. C. 884 : 7 L. B. R. 90.

Procedure.

———S. 5—*Procedure—Delay in filing appeal—Extension of time—Implied from the procedure of the High Court.*

The secretary of a company registered was granted by the company a charge on the unpaid calls. In the winding up proceedings, the secretary applied to enforce the charge, and the Dt. Court recognised the validity of the charge, though unregistered, in spite of the opposition of the liquidator. Neither the liquidator nor the debenture holders appealed against the order. More than a year after the expiry of the time for appeal, when it was sought to enforce the charge, the debenture holders objected and on their objections being overruled by the Dt. Court, appealed to the High Court, on the ground of non-registration. The High Court allowed the appeal on that ground. *Held*, that the High Court must be taken to have impliedly extended the time for appealing against the first order of the Dt. Judge, though the proper procedure would have been to allow an extension of time on an application for leave to appeal. (*Viscount Finlay.*) KRISHNA IYENGAR *v.* NALLAPERUMAL PILLAI. 43 M. 550 : 18 A. L. J. 489 : 22 Bom. L. R. 568 : 28 M. L. T. 28 : 12 L. W. 92 : (1920) M. W. N. 419 : 56 I. C. 163. 2 U. P. L. R. (P. C.) 118 : 38 M. L. J. 444 (P. C.).

———S. 5—*Procedure—Delay in presentation of appeal—Procedure.*

When a memorandum of appeal is presented beyond the prescribed period of limitation the Judge should endorse upon it the date of presentation and order that notice be given to the respondents. The Court should secure at the stage of admission the final determination (after due notice to all parties) of any question of limitation affecting the competence of the appeal. 41 M. 412 Rel. (*Sir John Edge.*) SUNDAR BAI *v.* COLLECTOR OF BELGAUM. 43 Bom. 376 : (1919) M. W. N. 254 : 23 C. W. N. 753 : 21 Bom. L. R. 1148 : 52 I. C. 897 : 46 I. A. 15 (P. C.).

Proceedings.

———S. 5—*Proceedings in wrong Court—Duty of Court.*

When time-barred appeals are filed in wrong Court the Court can dismiss them and need not return them for presentation to the proper Court in order that the latter might consider the question as to whether the time for presentation could be extended. (*Lord Buckmaster,*) CHARANDAS *v.* AMIRKHAN. 48 Cal. 110 : 25 C. W. N. 289 : 3 P. W R. 1921 : 13 L. W. 49 : 28 M. L. T. 149 : 18 A. L. J. 1095 : 22 Bom. L. R 1370 : 47 I. A. 255 : 57 I. C. 606 . 2 U. P. L. R. (P. C.) 134 : 39 M. L J. 195 : (P. C).

———S. 5—*Proceedings in wrong court.*

Where the point of law was a doubtful one and the appellants filed their appeal in a wrong Court but within 5 days of the return of memorandum

LIMITATION ACT (IX OF 1908), S. 5—Proceedings.

of appeal by the wrong Court filed it in the proper Court, held that extension of time under section 5 of the Limitation Act ought to be granted. (*Gokul Prasad, J.*) MT. AKBARI BEGAM *v.* SHAIKH ZAMIN ALI. 1923 A. 364.

——Ss. 5 and 14—*Proceedings in wrong Court*—Bona fide *mistake—Discretion of Court.*

Where an appeal filed in time but in wrong court owing to a *bonafide* mistake, is returned on the last day of limitation for presentation to a proper Court, the fact that it is not presented on the proper day ought not to be a ground for rejecting it as barred; judicial descretion should point to its admission. (*Piggott, J.*) NARAIN SINGH *v.* BIKRAM SINGH. 11 I. C. 814 : 8 A. L. J. 793

——S. 5—*Proceedings in wrong court—Presenting appeal in a wrong Court—'Good faith' meaning.*

Where delay is caused by the fact that the appeal was first filed in a wrong Court, the period of limitation should be extended provided the appellant has acted in 'good faith' which means 'honestly' but not without due care and attention. (*Macleod, C. J. and Fawcett, J.*) DATTATREYA SITARAM GADKARI *v.* SECRETARY OF STATE.
45 Bom. 607 : 60 I. C. 744 : 23 Bom. L. R. 89.

——Ss. 5 and 14—*Proceedings in wrong court—Sufficient cause.*

In exercising its discretion under S. 5 of the Limitation Act in excusing delay in the presentation of an appeal the Court will be guided by the provisions of S. 14 though S. 14 does not in terms apply to appeals 23 C. 325; 23 C. 556; 21 B. 352 Ref (*Mookerjee and Panton, JJ.*) KUMUDINI RAY *v.* KAMALA KANT SEN.
35 C. L. J. 106 : 1922 Cal. 247.

——Ss. 5 and 14—*Proceedings in wrong court—Sufficient cause.*

The *Bona fide* prosecution of an appeal in a wrong court should be regarded as a proper ground or as sufficient cause within S. 5 of the Act for extending the time for filing an appeal notwithstanding that S. 14 of the Act does not apply to appeals. (*Richardson and Beachcroft, JJ.*) RUPA THAKURANI *v.* KUMADNATH KARMARKAR. 46 I. C. 116 : 24 C. W. N. 594.

——S. 5—*Proceedings in wrong court.*

The High Court directed under S. 5 of the Limitation Act that the memorandum of appeal to the Dt. Judge be registered as an appeal from an original decree against the order of the Sub-Judge. (*Mookerjee and Carnduff, JJ.*) RANJIT MISSER *v.* RAMUDAR SINGH. 16 I. C. 940 : 16 C. L. J. 77 : 17 C. W. N 116.

——S. 5—*Proceedings in wrong Court—Criminal appeal.*

Delay in filing a criminal appeal should be excused under S. 5 of the Limitation Act where it was erroneously filed in another Court since there is no question of a "successful litigant loosing a "valuable right". (*Scott Smith, J.*) SURTA SINGH *v.* EMPEROR. 59 I. C. 556 : 22 Cr. L. J. 124 : 1 Lah. 508.

——S. 5—*Proceedings in wrong Court—Presentation of appeal in wrong Court.*

LIMITATION ACT (IX OF 1908), S. 5—Review.

Held, there was no excuse at all for filing the appeal in the wrong Court and that the mistake was not excusable and the appeal was barred. (*Shadi Lal and Broadway, JJ.*) NATHU *v.* MAHOMMED SHAFI. 2 Lah. L. J. 390.

——Ss. 5 and 14—*Proceedings in wrong court—Carelessness—Minority—Effect of.*

Held, that as S. 86 of the Probate and Administration Act clearly specified the High Court as the Appellate Court, the appeal against an order appointing a receiver was filed in the Divisional Court by carelessness and not by mistake of law. There was no sufficient cause for not filing the appeal in the High Court within the time prescribed. The time taken up in the Divisional Court could not be excluded; the fact that the appellant was a minor did not justify extension of the period of limitation. (*Reid, C. J.*) HARNAM KUAR *v.* SOHAN SINGH.
16 I. C. 170 : 205 P. W. R. 1912.

——S. 5—*Proceedings in wrong court—Legal advice*—Bona fides *of appellant.*

Where an appeal is preferred to a wrong court in good faith and by the advice of a lawyer the time which is spent in prosecuting the same should be excused under S. 5 of the Limitation Act, 45 Cal. 194 (P. C.) and 20 C. W. N. 49 Foll. (*Kanhaiya Lal, A. J. C.*) MAHABIR SINGH *v* BEHARI SINGH.
52 I. C. 235 : 1 U. P. L. R. (J. C.) 9.

——S. 5—*Proceedings in wrong Court*—Bona fide *mistake of guardian—Sufficient cause.*

Where an illeterate mother of a minor, as his guardian, presented the appeal in a wrong court but on its being returned presented it to the proper Court the mistake is *bona fide* and the delay in presenting the appeal to the proper Court is excusable. (*Lindsay, J. C.*) SHEO PAL SINGH *v.* KRIPALA. 30 I. C. 211 : 2 O. L. J. 325.

——S. 5—*Proceedings in wrong court—Mistake of law.*

The presentation of appeal to a wrong court through a mistake of law is not sufficient excuse for admitting the appeal out of time. The appellant must, when he files an appeal out of time, state in his memorandum of appeal the grounds on which he seeks to get the delay excused. (*Mc. Coll, A. J. C.*) NGAFO KAN *v.* NGA SHWE DAT.
27 I. C. 967 : 7 Bur. L. T. 250.

——S. 5—*Proceedings in wrong Court.*

An appeal was filed by oversight in the Divisional Court instead of the Chief Court and the Court passed judgment thereon without noticing the error. The facts are a sufficient cause for not presenting the appeal within time. (*Hartnoll, O. C. J. and Ormond, J.*) MG. SIN. *v.* MG. PO.
12 I. C. 28 : 4 Bur. L. T. 224.

Review.

——S. 5—*Review.*

Where on an application for review the lower court heard fresh evidence, considered the merits of the case but finally rejected the application for review and it was not clear whether the lower Court granted the review and re-heard the case or

LIMITATION ACT (IX OF 1908), S 5—Review.

whether it had rejected the application for review and it was difficult to see from which decision of the lower Court the appeal should be made, *Held*, that it was a fit case for admitting the appeal out of time under S. 5 of the Act (*Richards, C.J. and Tudball, J.*) NANHE *v.* MANGAT RAI.
30 I. C. 647.

———Ss. 5 and 14—*Review—Discovery of new evidence.*

Where there was no actual delay in fact but only a kind of constructive delay imputed to the appellant, a Mahomedan female by reason that certain applications made from time to time by her legal advisers were not applications valid and efficient under the law, *held* that it was a case calling for the application of Ss 5 and 14 of the Act. (*Batchelor, C. J. and Kemp, J.*) BAI NEMATBU *v.* BAI NEMATULLABU.
42 Bom. 295: 46 I. C. 14: 20 Bom. L. R. 434

———S. 5—*Review—Time taken in filing review Appeal.*

An appellant is entitled to deduct the period during which an application for review was pending. 45 C 94 Rel. (*Woodroffe and Ghose, JJ.*) PURNA CHANDRA CHHATOPADHYA *v.* SHEIKQ MABUD BAKSH. 1923 Cal 291 (1)

———S. 5—*Review—Time taken in.*

An appellant is not entitled as a matter of right to deduction of the period during which an application for review remained pending in the court below. He has to seek extension of time under S. 5 of the Act, (*Mookerjee and Beachcroft, JJ.*) PROSANNA KUMAR BAIDIA *v.* RAMACHANDRA DE
47 I. C. 677 : 28 C. L. J. 20.

———S. 5—*Review—Time taken in.*

The time spent in an infructuous application for review will not be excluded if the grounds of review were only grounds of appeal. (*Holmwood and Walmsley, JJ.*) SUDHKARRAUT *v.* SADASIV JHATAP SINGH. 31 I. C. 705: 19 C. W. N. 1113.

———S. 5—*Review—Time taken in.*

The time taken for review of judgment can be excluded under S. 5 of the Act in reckoning the period of limitation for filing an appeal if the Appellate Court finds that there was a good ground for review and that the proceedings amou t to sufficient cause within the meaning of the section. (*Scott-Smith, J.*) WARYANI SINGH *v.* WADHANA. 88 P. W. R. 1918: 89 P. R. 1918: 46 I. C. 588 : 87 P. L. R. 1918.

———S. 5—*Review—Time spent in—Exclusion.*

An application for review preferred with a reasonable expectation of success and not prosecuted with reasonable deligence does not justify an excuse of the delay for filing an appeal caused by the prosecution of the review application. (*Rattigan, C.J. and Le Rossignol, J.*) AZIZ-UD-DIN *v.* BHAGMAL. 125 P. W. R. 1918: 107 P. R. 1918 : 46 I. C. 23 : 108 P. L. R. 1918.

———S. 5 and Art. 178— *Review—Cross-review—Extension of time.*

Where one party applies for review the time or cross review by the other party should be extended if necessary as one is a counter blast to the other. (*Shadi Lal and Le Rossignol, JJ.*) NIKKI *v.* GUJAR MAL. 94 P. W. R 1917: 42 I. C. 54 : 144 P. L. R. 1917.

LIMITATION ACT (IX OF 1908), S. 5—Revision.

———S. 5—*Review – Time taken for—Exculusion of.*

A review was attempted by putting forward a fresh document before the Court, which was rejected. An appeal was filed after the period of limitation but within time. If the time taken for adjudicating review was excluded from computation and the Appellate Court excused the delay in appealing and decreed the appeal on the basis of the new document. *Held*, that the appeal was rightly admitted and the procedure of the Appellate Court was not irregular. (*Johnstone and Shadi Lal, JJ.*) WINKLEY *v.* WASAWA SING. 55 P. L. R. 1915 : 28 I. C. 926 : 50 P. W. R. 1915.

———S. 5—*Review—Time spent in.*

Time spent in review proceedings based on reasonable grounds may be sufficient cause but an unexplained delay of two months after rejection of the review application is no sufficient cause. (*Shah Din, J.*) GANDA SINGH *v.* JAWALA SINGH. 140 P. L. R. 1911 : 10 I. C. 129: 222 P. W. R. 1911.

———Ss. 5 and 12—*Review—Time taken in—Exclusion of.*

Time taken in obtaining a review of an erroneous order, cannot be deducted from the time required to present an appeal against the order sought to be reviewed. (*White, C J. and Oldfield, J.*) RAO SAHEB NAMBERUMAL *v.* KRISHNAJEE.
15 M. L. T 263 : (1914) M. W. N. 310 : 22 I. C. 919: 26 M. L J. 356.

———S. 5—*Review.*

Time spent in an infructuous application for review will not be excluded if the grounds of review were only grounds of appeal. 31 I. C. 705 : 19 C. W. N. 1113. And time spent in unsuccessfully prosecuting an application for review is not always "a sufficient cause" (*Chamir, C. J. and Jwala Prasad, J.*) DWARKASINGH *v.* LAYAKAT ALIKHAN. 34 I. C. 44.

———S. 5—*Review—Time spent in, can be deducted.*

Where an appeal has been filed after the expiry of the prescribed period of limitation and the appellant seeks to deduct in his favour the time spent in a review of the lower Court's judgment the appellate Court would not excuse the delay unless the grounds of review were reasonable. (*Maung Kin, J.*) MAUNG LUN *v.* MAUNG DUN. 1 Bur. L. J. 154 : 1923 Rang. 75 (2).

———S. 5—*Review—Time taken in — When excused.*

Where a litigant files an application for review on totally insufficient grounds, the time taken by him cannot be deducted under S. 5 of the Lim. Act. 33 C. 1323 ; 183 P. R. 1888; 46 C. 94 Rel. (*Maung Kin, J.*) MAUNG DAW NA *v.* MA KAYA.
84 I. C. 518 : 13 Bur. L. T. 219.

Revision.

———S. 5—*Revision of order—Delay in presentation of appeal—Order refusing to excuse if open to revision—C. P. Code, S. 115.*

LIMITATION ACT (IX OF 1908), S. 5—Want of Stamps.

An order refusing to excuse delay in presentation of an appeal is not open to revision even for showing that the appeal was in time. (*Ayling, J.*) THANDAYUTHAPANI *v.* CHINNATHAL.
24 I. C 872.

Want of Stamps.

———S. 5—*Want of stamps—Court fee paid outside time by order of Court.*

The appeal was filed on Rs. 18 stamp within limitation and the balance of Court fees was made up within a week under the orders of the Court without any objection on the part of the appellant. *Held* the mistake was a *bona fide* one, and it is a fit case for the extension of time under S 5 of the Limitation Act. (*Moti Sagar, J.*) AGHA MAHOMED ASLAM *v.* JODH SINGH,
1923 Lah. 513 (2).

———S. 5—*Want of stamp— Difficulty in obtaining stamp.*

Semble : Difficulties in the procuring of the necessary court fee stamps constitute sufficient cause within S. 5 for not having filed the appeal within time. (*Chamier, C. J and Mullick, J.*) RAM SAHAY RAM PANDEY *v.* LAKSMI NARAIN SINGH.
3 P. L. J. 74 : 42 I. C. 675 : 5 P. L W, 18.

———Ss. 5 and 12—*Want of stamp--Delay in presenting appeal.*

In the case of presenting an appeal against a Lower Court's judgment when there is no unreasonable delay on the part of appellant to supply Folios and to follow up his application for copy, the appellant is entitled to the benefit of S. 12 of the Limitation Act and delay caused by Stamps not being procurable on the last day of limitation is excusable under S, 5 of the Act. (*Mullick, J.*) KESHO PRASAD SINGH *v.* HARBANS RAUT.
37 I. C. 211 : 1 P. L. J 163.

———S. 5—*Want of stamp.*

Delay in filing an appeal owing to the non-availability of stamp on the last day for filing the appeal will be excused. (*Mullick, J.*) KESHO PRASAD SINGH *v.* HARBAUS RAUT.
37 I. C. 211 : 1 Pat. L. J. 163

Miscellaneous.

———S. 5—*Appeal by heir.*

An appeal preferred beyond time by the heir of the deft. who died just before Judgment is barred. (*Batchelor and Shah, JJ.*) BABU GANESH *v.* SITARAM MARTAND. 18 Bom. L. R. 751 :
36 I. C. 439 : 41 Bom. 15.

———S. 5—'*Sufficient Cause*'—*Meaning—Ignorance of death.*

Mere ingnorance of death is not a 'sufficient cause' under the S. 5. 113 P.R. 1907, 60 P.R, 1911 Dist. (*Johnstone, C. J. and Chevis, J.*) DAYA SINGH *v.* BUTA SINGH. 38 I. C. 7 :
118 P. R. 1916.

———S. 6
Non-execution application.
Personal privilege.
Scope of.
Several plaintiffs.
Subsequent disability.
Miscellaneous.

LIMITATION ACT (IX OF (1908), S. 6—Non-execution application.'

Non-execution application.

———Ss. 6 and 181—*Non-execution applications—Application for final decree.*

S 6 of the Limitation Act will not save limitation inasmuch as an application for a final decree in a mortgage suit is not an application for execution. (*Richards, C. J. and Bannerjee, J.*) NIZAMUDDIN SHAH *v.* BOHRA BHIIM SEN.
40 All 203 : 43 1. C. 870 : 16 A. L. J. 85.

———S. 6—*Nonexecution applications—Decree barred by C. P. Code, S. 48—Effect of.*

S. 6 of the Limitation Act only applies to cases dealt with by the statute itself and does not apply to cases barred by S. 48 of the Code. Minority, therefore, is no ground for exemption from the operation of limitation provided for by S. 48 of the Code, 16 B. 536 not foll. 37 M. 186, foll. (*Richards, C. J. and Piggott, J.*) RAM NATH TEWARI *v.* CHATARPAL MAN TEWARI.
37 All. 638 : 30 I. C. 521 : 13 A. L. J. 826.

———S. 6—*Non-execution application—Application to restore—Appeal dismissed for default.*

Where an appeal of a minor appellant has been dismissed for default, he cannot resort to S 6 to apply for its restoration, (*Shah and Crump, JJ.*) SOMBAI BABURAO *v.* SHIVAJI RAO KRISHNARAO. 45 Bom. 648 :
60 I. C 919 : 23 Bom. L. R. 110.

———S. 6 and Ss 5, 7, 8 and 14—*Non-execution applications—Pre-emption suit*

A suit, where the representative of one of two joint vendees is brought on record, after the period of limitation, the suit being barred against the representative, is really barred against the surviving vendees. The period of limitation could not be extended as Ss. 5 and 14 of the Limitation Act were not applicable and the provisions of Ss. 6 and 7 did not extend to suits to enforce a right of pre-emption under S. 8 of this Act. (*Ralligan, C. J. and Martineau, J.*) MUSAMMAT HUSAIN BIBI *v.* HAKIM.
52 I. C. 587 : 86 P. R. 1919.

———S. 6—*Non-execution applications—Limitation Act (XV of 1877), S. 7—Applications to set aside* ex parte *decree.*

Minority can be successfully invoked as a plea only in suits and execution applications under S.6 of Limitation Act of 1908, by which S. 7 of old Act is replaced, and so the exception in S. 6 of the Act of 1908 does not include the case of an application to set aside an *ex parte* decree. (*Shadi Lal and Le Rossignal, JJ.*) MANOHAR LAL *v.* SADIQA BEGAM. 37 I. C. 292 : 101 P. R. 1916.

———S. 6—*Non-execution applications*—C. P. *Code. S.* 48—*Application under.*

S. 6 of the Limitation Act, does not operate to extend the period of twelve years under S. 48, C. P. C (*Benson and Sundara Aiyar, JJ.*) REBALA RAMANA REDDI *v.* REBALA BABU REDDI.
13 M. L. T. 79 : 1913 M. W. N. 114 :
37 Mad. 186 : 18 I. C. 586 : 24 M. L. J. 96.

———S. 6 and Art. 181—*Non-execution applications—Applications for order absolute.*

S. 6 of the Limitation Act is not applicable to an application to make a decree absolute which

LIMITATION ACT (IX OF 1908), S. 6—Non-execution application.

is governed by Art. 181. (*Drakebrockman, J. C.*) VINAYAKARAO *v.* BAIJNATHA.
48 I. C. 934 : 15 N. L. R. 36.

——— S 6—*Non-execution applications—Application under O. 22, R 3.*

The section does not apply to applications under O 22, R. 3 of the C.P. Code to bring on record legal representatives of a deceased appellant nor to applications to set aside an *ex parte* decree on the ground of minority. 101 P. R, 1916. (*Parlett. J.*) MA MIN THIN *v.* MAUNG. PO WIN.
35 I. C. 438 . 10 Bur. L. T. 27.

Personal Privilege.

———S 6—*Personal privilege—Assignee of minor.*

The purchaser of the property of a minor has not got, by the assignment, the rights of a person under disability under S. 6 of the Limitation Act. 9 C. 663, (*Fletcher and Syed Huda, JJ.*) BHAGABAN CHANDRA *v.* ISHAN CHANDRA. 46 I. C. 602 : 22 C. W. N 831.

———S. 6.—*Personal privilege—Assignee from minor.*

The Assignee of property from a Mahomedan minor cannot avail himself of the benefit of S. 6 of the Limitation Act. (*Leslie Jones, J.*) HUKAM SINGH *v.* SHAHAB DIN. 44 I. C. 890 : 14 P. W. R. 1918.

———Ss. 6. 7 and 8—*Personal privilege—Assignee of minors.*

S. 8 is ancillary to and restrictive of the concession granted by Ss. 6 and 7 and does not confer any substantial privilege. The assignee of a minor cannot avail himself of the privilege under S. 6 which is personal to the minor. (*Oldfield and Seshagiri Aiyar, JJ.*) RANGASWAMI CHETTI *v.* THANGAVELU CHETTI.
42 Mad. 637 : (1919) M. W. N. 448 : 26 M. L T. 147 : 50 I. C. 380 : 10 L. W. 333.

———S. 6—*Personal privilege — Transferee from minor—Institution of—Suit.*

Minority is a personal privilege and a transferee from the minor is not entitled to avail himself of the special provisions of S. 6 of the Lim. Act. The transferee cannot maintain a suit even if he brings it on the same day on which the transfer takes place, if it is otherwise barred. 9 C. 663 ; 5 O. C. 197; 42 M. 637 Rel ; 186 C. 34 diss. (*Daniels and Lyle, A. J. C.*) MAHOMED NURKHAN *v.* LACHMI NARAYAN. 9 O. L. J. 88: 1922 Oudh 31.

———S. 6—*Personal privilege — Transferee from minor.*

The privilege conferred by S. 6 is personal. The privilege is not transferable and an assignee from minor must file the suit either within the ordinary period provided for the suit or on the date of the transfer if the transferor's right subsists till that date. (*Kanhaiyalal, A. J. C.*) IMAM UDDIN *v.* MUMTAZUNNISSA. 10 O. L. J. 747: 37 I. C. 118 : 18 O. C. 84.

LIMITATION ACT (IX OF 1908), S. 6—Scope of.

Scope of.

———Ss. 6 and 7—*Scope of.*

Ss. 6 and 7 of the Limitation Act are not mutually exclusive ; S. 7 supplements S. 6. (*Piggott and Walsh, JJ.*) RATI RAM *v.* NADAR. 41 A. 435: 49 I. C. 990 : 17 A. L. J. 649.

———S. 6—*Scope of—Application under* S. 144, C. *P.* C.

The section is an enabling section to enable persons under disability to exercise their legal rights within a certain time and it should be construed liberally. The section applies to applications under S. 144, C. P. C. (*Scott, C. J. and Batchelor, J.*) KURGODIGAUDA *v.* NINGANGAUDA.
41 Bom. 625 : 41 I. C. 238 : 19 Bom. L. R. 638.

———S. 6—*Scope of.*

A plaintiff must prove affirmatively and clearly that his suit is within time. A mere entry that a son was born to a man of the name of the plaintiff's father does not necessarily prove that the entry relates to the plaintiff, unless the entry can be supported by evidence. Right of collaterals is not a single indivisible rights but each is entitled to his own share. (*Campbell, J.*) PREM DAS *v.* SARBALAND. 1923 Lah. 41.

——— Ss. 6. 8, 9 and Art. 144—*Scope of—Lunatic—Adverse possession against—Legal representative a widow—Right of reversioners when barred.*

Lunacy by itself does not prevent limitation running against a lunatic. Where the person entering into possession was under no duty to the lunatic but entered into possession on his own behalf and in assertion of a hostile title to the lunatic, limitation runs from the date of possession though the lunatic would be entitled to sue within 3 years from the cessation of his disability—If he dies a lunatic leaving his widow, she could sue within the same period ; but if she fails to do so, the reversioners would also be barred and they cannot reckon limitation from the death of the widow. (*Kumaraswami Sastry and Devadoss, JJ.*) KALIDINDI SEETARAMARAJU *v.* VEGESANA SUBBA RAJU. 45 Mad. 361 : (1922) M. W. N. 136 : 30 M. L. T. 128 : 15 L. W. 382 : 42 M. L. J. 262 : 1922 Mad. 12.

———S. 6 Arts. 44 and 144—*Scope of.*

The section lays down a general rule for all kinds of disabilities and in all kinds of suits while Arts. 44 and 144 apply to only one case of disability, *i.e.*, minority and one class of suits, *i.e.*, a suit to set aside a sale by guardian (*Abdur Rahim and Sundara Aiyar, JJ.*) DORAISAWMY SERUMADAN *v.* NANDISAWMI SELUVAN. 10 M. L. T. 418 : (1911) 2 M. W. N. 450 : 12 I. C. 695 : 21 M. L. J. 1041.

———Ss. 6 and 7—*Scope—Minority—Extension of time.*

S. 7 of the Limitation Act refers to S. 6 of that Act, to which it serves as an appendix, and the disability referred to in S. 7 means a disability of a kind which is of the nature and existed at the time, referred to in the preceding section.

LIMITATION ACT (IX OF 1908), S. 6—Several plaintiffs.

33 All. 654 and 23 O. C. 320 ref. (*Daniels and Lyle, JJ.*) CHOKHEY SINGH *v.* HARDEO SINGH. **24 O. C. 330 : 4 U. P. L. R. (J. C.) 10 : 64 I.C. 757 : 8 O. L. J. 667.**

Several plaintiffs.

———Ss. 6 and 7, Art. 144—*Several Plffs.—Disability of single plff.—Joint interest of other plffs.*

In 1895 a Mahomedan mortgaged his property to deft. The mortgagor having died, his widow sold the equity of redemption to the mortgagee in 1901, and placed him in possession. The three plffs. (sons and daughters of the mortgagor) who owned the remaining seven shares, sued in 1914, to redeem the mortgage. Plffs. 1 and 2 had attained majority in 1901 and 1908. *held* that, as neither of the plffs who attained majority more than three years before suit was qualified to discharge or release the equity of redemption and the right was indivisible, the suit having been brought within three years of the date when the youngest plff. attained majority, was within time, under S. 7 of the Limitation Act. (*Scott, C. J. and Shah, J.*) GULAM *v.* SHRIRAM. **43 Bom. 487 : 51 I. C. 79 : 21 Bom. L. R. 353.**

———Ss. 6 and 7—*Several plffs.—Joint Decree-holders—One minor—Whether other can grant valid discharge.*

A joint execution creditor is a joint creditor within S. 8 of the Limitation Act of 1877 : 28 C. 465 : Rel. 14, C. 50 Dist ; 25 M. 431, Dis. Where one of two joint execution creditors is a minor and the other is *sui juris* the latter cannot give a valid discharge so as to bind the interest of the minor. 6 C. W. N. 348, Dist. (*Mookerjee and Carnduff, JJ.*) JAGARNATH SINGH *v.* MOHABIR DASS. **15 I. C. 664.**

———Ss. 6, 7, 8, and 15 (2)—*Several plffs.—Disability—Extension of time.*

Where one of two plffs. attained majority more than three years prior to suit and was capable of giving a discharge for both, the suit is barred under S. 7 of the Limitation Act, 38 M. 118, Foll. S. 15 (2) of the Limitation Act does not refer to the extension of time allowed to persons under disability under Ss. 6 and 8. (*Abdur Rahim and Spencer, JJ.*) NARASIMHADEO GARU *v.* KRISHNACHENDRADEO. **(1919) M.W.N. 440 : 10 L.W. 156 : 52 I. C. 725 : 37 M. L. J. 256.**

———Ss. 6 and 7 and Art. 44—*Several plffs.—Bar against elder—Effect.*

(*Per Abdur Rahim, J.*)—The sections apply to cases falling under Art. 44. The Act does not deprive persons under disability of the common advantages under the Act. It makes certain concessions in their favour. A suit by two Hindu brothers to recover properties alienated by their mother and guardian during their minority without necessity is barred if brought more than 3 years after the elder-brother becomes maior but within 3 years of the attainment of majority by the younger. (*Per Sundara Aiyar, J.*) The section does not apply to suits by number of plffs. some of whom are under disability. The words "the same period after the disability has ceased, etc," show that the section applies where but for the disability time would run against the litigant before the cessation of disability. (*Abdur Rahim and Sundara Aiyar, JJ.*) DORAISAWMY SERUMADAM *v.* NANDISWAMI SELUVAN. **10 M. L. T. 418 : (1911) 2 M. W. N. 450 : 12 I. C. 695 : 21 M. L. J. 1041.**

LIMITATION ACT (IX OF 1908), S. 6—Subsequent disability.

———Ss. 6 & 7, Sch. 1 Art. 126—*Several plffs.—Hindu Law—Joint family—Cause of action accruing before the birth of a son.*

A son born in a joint Hindu family acquires by birth interest in ancestral property but does not acquire any interest in any right to sue. The cause of action accrues after an alienation, when the purchaser takes possession and a new cause of action does not accrue upon the subsequent birth of a son in the family. In the case of an after-born son the time from which the period of limitation is to be reckoned is the date of the transfer and as he was not born on that date and was under no disability on that date he cannot obtain the benefits of the provisions of section 6 of the Limitation Act. When he cannot save limitation for himself he can give no benefit under section 7 to his elder brothers, 40 Cal. 966 Dist: 8 W. R. 15 : 23 W. R. 285 ; 4 All. 120, Ref. (54 C. 1). (*Dalal and Wazir Hasan, JJ.*) RANODIP SINGH *v.* RAMESHAR PRASAD. **9 O. L. J. 45 : 24 O. C. 330 : 1923 Oudh 52.**

Subsequent disability.

———S. 6—*Subsequent disability—Elder son's right barred on date of suit—Sons born after alienation but before the eldest was* 18.

Where on the date of the suit by the eldest son who was over 21, the other sons were less than 21 and were within time so far as they were concerned and where they were not born on the date of the alienation by the father but were in existence before the eldest son attained majority, *held*, that the minor plffs. being not born when the right to sue accrues, *i.e.* the date of the alienation the suit was barred by limitation. (*Chevis and Dundas, JJ.*) LACHMAN DAS *v.* SUNDAR DAS. **59 I. C. 678 : 1 Lah. 668.**

———Ss. 6 and 9—*Subsequent disability—Trespass before birth of minor.*

Where a person trespasses on immoveable property belonging to a person and after such trespass the owner dies leaving a minor son, the minor is not entitled to the exemption in S. 6 of the Limitation Act. (*Scott-Smith and Wilberforce, JJ.*) GHULAM MUHAMMAD *v.* AHMAD KHAN. **55 I. C. 335.**

———S. 6—*Subsequent disability.*

A minor is not entitled to the benefit of S. 6 of the Limitation Act in respect of a right to sue which accrued before his birth. (*Shadi Lal and Dundas, JJ.*) MIRAN DATTA *v.* BIHARI LAL. **54 I. C. 838 : 2 U. P. L. R. (L.) 39.**

———S. 6—*Subsequent disability—Commencement of minority—Punjab Limitation Act (I of 1900).*

S. 6 of the Limitation Act does not apply to the case of a minor, born subsequent to the alienation objected to. Minority begins at birth and not at conception. (*Chevis, J.*) KEHAR SINGH *v.* HAYNA SINGH **14 I. C. 60 : 173 P. W. R. 1912.**

LIMITATION ACT (IX OF 1908), S. 6—Miscellaneous.

Miscellaneous.

——S. 6—*'Affect or alter'—Meaning.*

The words 'affect or alter' in S. 6 refer to period prescribed but not to the mode in which the period is to be calculated (*Richards, C. J., Karamat Hussain and Chamier, JJ.*) DROPADI *v.* HIRA LAL. 34 All. 496 : 16 I. C. 149 : 10 A L J. 3.

——S. 6 (1)—*Death of minor—Disability of legal representative.*

Where a minor acquiring a cause of action to sue for possession dies within 3 years of his attaining majority his personal representatives can sue on the same cause of action within the 3 years' period though 12 years had expired since the cause of action accrued. (*Basil Scott, C. J. and Heaton, J.*) ARJUN RAMJI MAHANKAL *v.* RAMABAI RAOJI VITHOBA. 40 Bom. 564 : 37 I. C. 221 : 18 Bom. L. R. 579.

——S. 6—*After-born son, right of to sue.*

If the right to challenge an alienation accrues before plff's birth he cannot clai n an extention of limitation under S. 6. (*Chevis and Dundas, JJ.*) LACHMAN DAS *v.* SUNDAR DAS. 59 I. C. 678 : 1 Lah. 558.

——Ss. 6 and 8 and Art. 12—*Suit to set aside auction sale—Limitation.*

S. 6 of the Limitation Act gives the minor the same priod of limitation after his attaining his majority as an ordinary person gets. There is nothing in S. 8 to extend the period. To set aside the sale under Art. 12 of the Limitation Act, the minor must bring an action exactly within one year from the date of his attaining majority. (*Chevis, J.*) PALA SINGH *v.* HARNAM. 40 P. L. R. 1918 : 43 I. C. 712 : 30 P. W. R. 1918.

——S. 6—*Starting point.*

Under the Punjab Limitation Act time runs from the date of Limitation and where the plff. in a suit governed by that Act was a minor on that date, he is entitled under S. 6 of the Indian Limitation Act to bring his claim within three years of his attaining majority. (*Ratligan and Beadon, JJ.*) NATHA SINGH *v.* KISHEN SINGH. 84 P. L. R. 1914 : 22 I. C. 687 : 47 P. W. R. 1914.

——S. 6—*Execution application—Death of decree holder—Failure of minor legal representatives to come on record.*

An application by minor representative after more than 3 years but during minority for execution of decree is not barred. (*Kanhaiya Lal, J. C.*) AKHTAR HUSAIN *v.* QUDRAT ALI. 26 O. C. 206 : 1924 Oudh 31.

——S. 6—*Guardian* ad litem *or next friend—Effect of existence of—Minor—Limitation.*

The existence of a next friend or guardian *ad-litem* cannot deprive the minor of the benefit of S. 6 of the Limitation Act and a minor can apply for execution of decree on attaining majority within the time prescribed by S. 6. (*Sabonadire, A. J. C.*) JAGAT NARAIN *v.* MUSAMMAT NARBADA KUMAR. 21 I. C. 365 : 16 O. C. 206.

LIMITATION ACT (IX OF 1908), S. 7—Co-partners.

——S. 7—

Applicability.
Co-heirs.
Co-partners.
Discharge by adult brother
Discharge by guardian.
Discharge by Manager.
Joint decree-holder.
Joit promisees.
Miscellaneous.

Applicability.

——S. 7—*Applicability.*

Section does not apply where disability had not existed when the right to apply accrued. (*Chatterjee and Beachcroft, JJ.*) UMAKUNTA SEN *v.* HIRA LAL ROY. 34 I.C. 86 : 20 C.W.N. 852.

——Ss. 7 and 8—*Applicability—Non-liability of minor to the law of limitation.*

Minors have no privilege of disability, in respect of limitation, under the Act of 1908, except as regards suits and applications for execution, though under the older Act, they had this privilege in respect of all applications, in judicial proceedings. This is a privilege conferred by law and cannot be affected by any subsequent statute. (*Holmwood and Teunon, JJ.*) FAZIL KARIM *v.* ANANDA MOHAN RAY. 11 I. C. 401 : 14 C. W. N. 845.

Co-heirs.

——Ss. 7 & 9—*Co-heirs—Hindu joint family—Cause of action accruing to minor brothers.*

Where a cause of action accrues to two brothers of a joint Hindu family when they are minors, limitation runs from the date on which the elder of the two becomes major. (*Oldfield and Phillips, JJ.*) KUPPUSAMY IYENGAR *v.* KAMALAMMAL. 43 Mad. 842 : 12 L. W. 243 : 59 I. C. 662 : 39 M. L. J. 375.

——S. 7—*Co-heirs—Tenants-in-common—No right to give discharge.*

In Mahomedan family, the heirs are entitled to definite shares as tenants-in-common and the cause of action of such heirs cannot be said to be a joint one for the purpose of limitation. (*Ayling and Seshagiri Aiyar, JJ.*) ALLA PICHAI ROWTHAN *v.* PAPPATHIAMMAL. 51 I C. 748 : 36 M. L. J. 184.

——S. 7—*Co-heirs—Must join in suit for accounts of partnership.*

In a suit for accounts of the partnership on the death of a partner all the representatives of the deceased should join. S. 7 applies to the case (*Bakewell and Phillips, JJ.*) PUTHENPURAYIL BAVACHUTTY *v.* PUTHENPURAYIL KUNHI. 33 I. C. 564.

Co-partners.

——S. 7—*Co-partners—Dissolution of partnership—Limitation.*

One member of a partnership even if it has been dissolved is entitled to give a valid discharge of a debt to the partnership. A suit by a minor partner for his share of a loan by the partnership within three years after he became a major but

LIMITATION ACT (IX OF 1908), S. 7—Discharge by adult brother.

more than three years after dissolution is barred. (*Abdur Rahim and Spencer, JJ.*) ANNAMALAI CHETTY *v.* ANNAMALAI CHETTY.

52 I. C. 456 : 10 L. W. 67.

Discharge by adult brother.

——— S. 7 and Art. 126—*Discharge by adult brother—Joint Hindu family—Alienation by father—Suit by sons subsequently born.*

Where a suit to set aside an alienation by a Hindu father is brought by the eldest son within three years of his attaining majority, sons born subsequent to the alienation are entitled to join in the suit and get their share. (*Samuel Griffith.*) RAMKISHORE KEDARNATH *v.* JAINARAYAN RAMRACHPAL. 40 Cal. 966 : (1913) M. W. N. 661 : 14 M. L. T. 163 : 17 C. W. N. 1189 : 18 C. L. J. 237 : 15 Bom. L. R. 867 : 11 A. L. J. 865 : 10 N. L. R. 1 : 40 I. A. 213 : 20 I. C. 958 : 25 M. L. J. 512 (P. C.)

———S. 7—*Discharge by adult brother—Suit to redeem—Disability of one of the plaintiffs to sue—Bar.*

Where in a suit to redeem a mortgage, one of the two plaintiffs, who were brothers, is a minor and the other a major whose right to redeem was barred by limitation, *held*, the suit was in time inasmuch as the elder brother could not give a valid discharge, even though he be a manager, without the concurrence of his minor brother. The existence of the right to redeem in the minor, during the minority, could not be defeated by the fact that his elder brother failed to redeem in time. 22 Bom. L. R. 1383, dist. (*Macleod and Shah, JJ.*) BAIKEVAL *v.* MADHU KALA. 23 Bom. L. R. 1191 : 46 B. 535 : 1922 B. 319.

———S. 7, Sch. I, Art. 44—*Discharge by adult brother—Alienation by guardian—Suit by ward more then 3 years after eldest attained majority—Limitation.*

A suit by minor brothers to set aside an alienation by their mother brought after 3 years after the eldest of them attained majority, is barred by time. (*Macleod, C. J. and Fawcett, J.*) BAPU TATYA *v.* BALA RAOJEE. 45 Bom. 446 : 59. I. C. 759 : 22 Bom. L. R. 1323.

———S. 7—*Discharge by adult brother—Power to give—Cash allowance.*

Where plffs. are jointly interested in a cash allowance, they can sue to recover it, though one of them is a minor at the date of the suit. 6 Bom. L. R. 647, Dist. (*Heaton and Shah, JJ.*) HUCHRAO *v.* BHIMA RAO. 42 Bom. 277 : 44. I. C. 851 : 20 Bom. L. R. 161.

———S. 7 and Art. 44—*Discharge by adult brother — Minor co-parceners — Attainment of majority by eldest—Limitation.*

Where a minor could on attaining majority give discharge in a joint family on behalf of other minors in the family a suit for setting aside an alienation by a testamentary guardian barred as regards him would be barred against the other minors too. (*Scott, C. J. and Beaman, J.*) MAHABLESHWAR KRISHNAPPA *v.* RAMCHANDRA MANJESH KULKARNI. 38 Bom. 94 : 21. I. C. 350 : 15 Bom. L. R. 882.

LIMITATION ACT (IX OF 1908), S. 7—Discharge by adult brother.

———S. 7—*Discharge by adult brother—Suit for possession and mesne profits—Enfranchisement of inam.*

Time began to run from the date of enfranchisement of an *inam*. both as against the elder brother and against the present minor plffs. and their claim for mesne profits was barred except as to three years before suit. (*Wallis, C. J. and Spencer, J.*) ADDAGANTI CHINNA VENKATA SUBBA RAO AND NARASAMMA *v.* YEMMANUR VENKATARAMIA. 53. I. C. 161 : 10 L. W. 422.

———S. 7—*Discharge by adult brother—Joint cause of action.*

Where two brothers have got the same cause of action and the elder brother could institute the suit for himself and his younger brother, on that joint right and joint cause of action, S. 7 would become applicable and would bar the younger brother's right when the elder brother's becomes barred. But where the cause of action is distinct, the mere fact that the elder brother could have joined it with his, does not bring the suit within S. 7 of the Act. (*Sadasiva Aiyar and Spencer, JJ.*) KANDASWAMI NAICKEN *v.* IRUSAPPA NAICKEN.

41 Mad. 102 : 40. I. C. 664 : 33 M. L. J. 309.

———S. 7—*Discharge by a adult brother—Suit to set aside alienation by guardian—Starting point.*

For a suit to set aside alienation by the members of a joint Hindu family, limitation begins to run from the date of the elder brother's attaining majority. (*Spencer and Seshagiri Aiyar, JJ.*) SURRAPPA RAJU *v.* VENKAYYA.

32 I. C. 802 : (1915) M. W. N. 908.

———Ss. 7, 8 and Art. 44—*Discharge by adult brother—Alienation by mother—Suit to set aside alienation—Limitation.*

Properties belonging to two minor brothers forming a joint Hindu family were sold in 1895. In 1909 the plffs. sued for recovery of possession of the properties and on the date of suit the elder brother was 23 years old. *Held*, that the suit was governed by Art. 44 of the Limitation Act and the suit was barred against both the brothers on the expiry of 3 years after the date of the elder brother's attaining majority. (*White, C. J. Sankaran Nair and Sadasiva Aiyar, JJ.*) DORAISAMI SIRUMADAN *v.* NONDISAMI SALUVAN

38 Mad. 113 : 14 M. L. T. 401 : 21 I. C. 410 : 25 M. L. J. 405.

———S. 7—*Disoharge by adult brother—Hindu family.*

(Per *Abdur Rahim, J.*)—Co-parceners of a Hindu joint family seeking to recover family property from alienee are claimants with S. 7 and it is immaterial whether the alienation is by manager or guardian. The elder brother on attaining majority becomes capable of giving a valid discharge within S. 7.

(Per *Sundara Aiyar, J.*)—The section applies where the third column of the schedule provides that time would run from a certain date and the section postpones the running of time. Hence though the elder brother's right of action is barred, that of the younger is not barred. The section

LIMITATION ACT (IX OF 1908), S. 7—Discharge by Guardian.

does not apply to cases governed by Art. 44. (*Abdur Rahim and Sundara Aiyar, JJ.*) DORAISAWMY SERUMADAN *v.* NANDISAWMI SELUVAN.
10 M. L. T. 418 : (1911) 2 M. W. N. 450 : 12 I. C. 695 : 21 M. L. J. 1041.

Discharge by Guardian.

——S. 7—*Discharge by guardian—Right to give valid discharge.*

A Mahomedan mother who is a *de facto* guardian having no authority to transfer or deal with the property of the minors cannot give a valid discharge for payments made to the minors. (*Piggott and Walsh, JJ.*) AMINA BIBI *v.* RAMA SHANKAR. 41 All. 473 : 50 I. C. 730 : 17 A. L. J. 582.

Discharge by Manager.

——S. 7—*Discharge by Manager—Decree-debt—Joint Hindu family.*

A major manager of a joint Hindu family can give a valid discharge of a decree debt within S. 7 of the Limitation Act so as to make time run against minor members of the family. 21 M. L. J. 1088, foll. (*Abdur Rahim and Bakewell, JJ.*) CHEVAKULA VENKATASUBBIAH *v* GOLLAPUDI VENKATESWARULU. 44 I. C. 566 : (1917) M. W. N. 816.

——S. 7—*Discharge by Manager—'Discharge'—Meaning of—Malabar Tarwad—Karnavan's right to give discharge.*

'Discharge' in S. 7 is not confined to pecuniary liability but includes also "release of rights to immoveable property." 25 M. 26 Foll. In the absence of fraud, a *Karnavan* sufficiently represents a *tarwad* as to be able to give a discharge even on behalf of the minor members. 1914 M. W. N. 231, Foll. (*Sadasiva Aiyar and Napier, JJ.*) PARAMESWARAN NAMBUDRIPAD *v.* SANKARAN NAMBUDRIPAD. 16 M. L. T. 241 : 25 I. C. 755 : (1914) M. W. N. 669.

——S. 7—*Discharge by Manager—Decree in favour of a joint Hindu family — Managing member a major and the rest minors.*

In the case of a decree in favour of a joint Hindu family and the managing member where a major is in a position to give a discharge without the concurrence of the other members, the minority of the latter has not the effect of extending the period of limitation for execution of the decree. (*Sadasiva Aiyar and Spencer, JJ.*) PALANIANDI PILLAI *v.* PAPATHI AMMAL.
15 M. L. T. 100 : 22 I. C. 76 : (1914) M. W. N. 159.

——S. 7—*Discharge by Manager—Execution of decree.*

The Manager of a joint Hindu family has a right to execute a decree for his own benefit and that of the remaining members of the family and to give a valid discharge without the concurrence of the other members. If the Manager fails to exercise his right, time runs against all the members of the joint family including minors. (*Stuart, A. J. C.*) NAURANG SINGH *v.* SHEORAJA. 30 I. C. 75.

LIMITATION ACT (IX OF 1908), S. 7—Miscellaneous.

Joint Decree-holders.

——S. 7—*Joint decree-holders—Decree in favour of major and minor members of joint Hindu family—Discharge—Limitation.*

Where a decree is in favour of major and minor members of joint Hindu family the manager has the same power of dealing with the decree and granting a discharge to the debtor as he had before the debt merged into the decree. S. 7 of the Limitation Act treats the suit by joint creditors on the same footing as an application by joint decree-holders and contemplates that one joint creditor can be empowered to give a discharge without the concurrence of the others. That power could not be given by a minor after the decree in his favour so that the section contemplates an authority apart from and anterior to the decree. (*Bakewell, J.*) RAMANADHAN SIVAYYA *v.* UDATHA ACHHAYYA.
13 M. L. T. 304 : 18 I. C. 723 : (1913) M. W. N. 288.

——S. 7—*Joint decree-holders—Discharge by.*

If one of several decree-holders can give a discharge without the concurrence of others, S 7 applies. The cases in which one decree-holder can give a discharge binding the other decree-holders must be decided by the substantive law of the parties. (*Sundara Aiyar and Phillips, JJ.*) DURAISAWMY SASTRIAL *v.* VENKATARAMA IYER. 10 M. L. T. 370 : (1911) M. W. N. 420 : 12 I. C. 503 : 21 M. L. J. 1088.

——S. 7—*Joint decree-holders.*

One of the two joint decree-holders cannot give a valid discharge of the decree without the concurrence of the other. Therefore, such a discharge does not prevent the decree-holder from taking advantage of S. 7 to apply for execution of decree. (*Abdur Rahim, J.*) VENKATARAMA AIYAR *v.* DURAISAWMY SASTRIAL,
9 M. L. T 482 : 10 I. C 464 : (1911) 2 M. W. N. 307.

Joint Promisees.

——S. 7—*Joint promisees—Person severally entitled—Suit for possession.*

When several persons jointly entrusted in a property have been dispossessed S. 7 of the Limitation Act does not apply if each of the several persons can sue for his individual share. (*Teunon and Newbould, JJ.*) RAKHAL CHANDRA GHOSE *v.* MAHENDRA NARAYAN SEN. 51 I. C. 797.

——S. 7—*Joint promisees—Minority of one.*

A payment to one of several joint promisees is a good discharge of the liability. A minor promisee of a pro-note cannot sue on it after 3 years, when the adult co-promisee allows it to be barred. (*White, C. J., Sankaran Nair and Sadasiva Aiyar, JJ.*) MANNAVA ANNAPURNAMMA *v.* UPPALA AKAYYA. 36 Mad. 544 : 18 M. L. T. 268 : (1913) M. W. N. 328 : 19 I. C. 12 : 24 M. L J. 333 (F. B.).

Miscellaneous.

——S. 7—*Discharge by Receiver—Receiver of decree-holder's estate—Right to give valid discharge.*

LIMITATION ACT (IX OF 1908), S. 7—Miscellaneous.

Where in a suit between partners some of whom were minors a Receiver was appointed with full powers to realise the decree debts of the firm. *Held*, that the decretal debts vested in the receiver on the date of the appointment and from that date he was competent to give a discharge. An application for execution more than 3 years after the appointment of the Receiver will be barred. (*Chatterjee and Walmsley, JJ.*) RAI KUMAR GIRIJA NANDAN *v.* KANHAIYA PRASAD. 20 I. C. 701 : 18 C. W. N 131.

——S. 7—*If Court bound to raise ex proprio motu the special plea in party's favour—C. P. C., S. 115.*

A Court is bound to throw out a suit or application filed after the period of limitation, but is not bound to protect the interest of a party by raising *ex proprio motu* the point whether he is entitled to proceed out of time by reason of some special provision of law, *e. g.*, S. 7 of the Limitation Act. (*Carnduff and Chapman, JJ.*) PANCHU MANDAL *v.* ISAC
18 I. C. 391 : 17 C. W. N. 667.

——S. 9—*Adverse possession, interruption of—Co-sharers—Ouster of, by stranger—Subsequent acquisition of ownership to a portion of the property.*

Where a person has begun to hold possession of land adversely to two co-sharers, each being the owner of a moiety, and before the expiration of the statutory period of limitation succeeds to one moiety upon the death of its owner, his possession continues to be adverse to the owner of the other moiety, although he has become jointly interested with the other. (*Viscount Cave.*) VARADA PILLAI *v* JEEVARATHAMMAL. 10 L. W. 679 : (1919) M. W. N 724 : 24 C. W. N. 346 : 18 A. L. J 274 : 53 I. C. 901 : 38 M. L. J. 313 (P. C.).

——S. 9—*Time—Continuous running of—Merger of interests.*

Once time begins to run for a suit on a mortgage there is no suspension of the running of time during the period when there has been a fusion of the interests of the mortgagor and the mortgagee. (1844) 7 Beav. 205, Dist. (*Sir John Edge.*) SONI LAL *v.* KANHAIYA LAL.
35 All. 227 : 40 I. A. 74 : 13 M. L. T. 437 : 17 C. W. N. 605 : 11 A. L. J. 389 : (1913) M. W. N. 470 : 17 C. L. J. 488 : 15 Bom. L. R. 489 : 19 I. C. 291 : 25 M. L. J. 131 (P. C.).

——S. 9—*Time—Continuous running of—C. P. C., S. 48.*

The period of 12 years prescribed by S. 48, C. P. C., must be computed from the day on which it begins to run. The running of time of 12 years under S. 48 is not suspended during minor's minority succeeding to his deceased father who died after the decree is passed. (*Chandavarkar and Batchelor, JJ.*) BHAGWANT RAMCHANDRA *v.* KAJI MAHOMED ABAS.
36 Bom. 498 : 15 I. C. 829 : 14 Bom. L. R. 387.

——Ss. 9 and 15— "*Disability*"—"*Inability*"—*Alien enemy—S. 9 of the Limitation Act covers the case of an alien enemy who is debarred from suing in consequence of a declaration of war.*

LIMITATION ACT (IX OF 1908), S. 9.

The general rule is that once a limitation has begun to run, a subsequent 'Disability' to sue will not avail to stop it in the absence of express statutory provision. Per *Sanderson, C. J.*—The Legislature in enacting S 9 of the Limitation Act did not mean the same thing by the use of two words "disability" and "inability." An express statutory provision on a particular matter would have the effect of overriding any common law rule regarding the same. Per *Woodroffe, J.*—S. 15 of the Limitation Act refers to orders of Civil Courts and not to the case of an alien enemy who is prevented from suing owing to a declaration of war. (*Sanderson, C. J. and Woodroffe, J.*) DEUTCHE ASIATISCHE BANK *v.* HIRA LALL BURDHAN & SONS. 46 Cal. 526 : 47 I. C. 398 : 23 C. W. N. 157.

——S. 9—"*Disability*"—*Alien enemy.*

S. 9 of the Act makes no exception in favour of alien enemies who are prevented from suing in consequence of a declaration of war. The "disability" in S. 9 means want of legal ability and is quite different from inability to sue. (*Chaudhari, J.*) DEUTSCH ASIATICHE BANK *v.* HIRA LALL BURDHAN & SONS. 47 I. C. 122.

——S. 9, Art. 155—*Suit for possession by mortgagee—Limitation—Suspension of.*

No suspension or extension of Limitation is allowable unless it is provided for in the Limitation Act. 43 M. 185 relied on. Where a mortgagee is entitled to possession immediately time begins to run from the date of the mortgage and the mere fact that possession of the mortgaged property was subsequently taken by the prior mortgagee does not stop limitation from running. (*Abdul Raoof and Moti Sagar, JJ.*) HUKAM CHAND *v.* SHAHAB DIN. 4 Lah. 90 : 1924 Lah. 40.

——S. 9—*Cause of action—Limitation—Adjustment of claim—Re-opening of—Fresh cause of action.*

Plff. realised the money due to him from the deft. on an award which had merged in a decree of court. Subsequently the award was set aside and the plff. directed to refund the money realised by him. In a suit by plff. for recovery of the amount due. *Held*, that when the plff's original claim was satisfied in execution, limitation ceased running against him. On the annulment of that satisfaction a fresh cause of action arose and the suit was within time. 43 M. 845 foll. (*Broadway and Abdul Quadir, JJ.*) KARTAR SINGH *v.* BHAGAT SINGH. 2 Lah. 320 : 64 I. C. 454 : 4 U. P. L. R. (L.) 25.

——S. 9—*Time—Continuous running of.*

When time once begins to run against a reversioner for contesting the validity of an alienation of ancestral property no subsequent disability to sue on the ground of minority of another reversioner can suspend it. (*Johnstone and Le Rossignoll, JJ.*) CHANDA SINGH *v.* MUKAND SINGH. 61 P. W. R. 1915 : 29 I. C. 761 : 144 P. L. R. 1915.

——S. 9—*Appeal—Failure to file decree copy—If sufficient cause for extension of time.*

LIMITATION ACT (IX OF 1908), S. 9.

Failure to present the decree copy in an appeal within the time allowed for appeal amounts to not filing the appeal at all and time cannot be extended especially when the opportunity once granted, was lost. (*Chevis, J.*) ACHHAR SINGH *v.* NIKKU. **2 P. W. R. 1914 : 23 I. C. 319 : 25 P. L. R. 1914.**

———Ss. 9 and 15—*Time—Suspension of—Pendency of insolvency proceedings.*

It is not open to a plff. suing on a pro-note to deduct the time during which insolvency proceedings were pending against the deft. S. 15 of the Limitation Act does not apply so as to save limitation in a case where a suit could have been instituted with the leave of the insolvency Court. 35 Mad. 622 ; 8 Mad. 229. Dist. (*Seshagiri Aiyar and Phillips, JJ.*) RAMASWAMI PILLAI *v.* GOVINDASWAMI NAYAKER. **42 Mad. 319 : 25 M. L. T. 247 : (1919) M. W. N. 698 : 49 I. C. 625 : 36 M. L. J. 104.**

———Ss. 9 and 31—*Disability, subsequent—Application of S. 6 to S. 31.*

Limitation once begun to run cannot stop by any subsequent disability and there is no distinction between voluntary and involuntary disabilities. The period fixed under S. 31 cannot be extended by an application of S. 6. (*Lindsay and Kanhaiya Lal, A. J. Cs.*) KHANJAN SINGH *v.* BHIRAN SINGH. **18 I. C. 306.**

———S. 9, Art. 182—*Continuous running of time.*

Where the creditor fails to execute his decree, the time taken to prove his will cannot be excluded. (*Duckworth, J.*) F. N. BURN *v.* G. H. PAUL, EXECUTOR. **1 Bur. L. J. 192 : 1923 R. 98 (2).**

———S. 9—*Time—Continuous running of—Running.*

Where once time has begun to run against a party the subsequent minority of his heirs does not stop it. (*Ormond, C. J. and Parlett, J.*) MAUNG PO KA *v.* MA KU. **42 I. C. 809.**

———S. 10—

Administrator.
Assign.
Express Trust.
Implied trust.
Office of trustee.
Trustee de son tort.
Trust property.
Miscellaneous.

Administrator.

———S. 10—*Administrator—Not a trustee.*

An Administrator in whom no special trust is vested for a specific purpose is not a trustee within the meaning of S. 10. (*Sharfuddin and Roe, JJ.*) JANARDHAN PROSAD *v.* JANKIBATI THAKURAIN. **2 P. L. J. 642 : 4 P. L. W. 337 : 40 I. C. 860 : 1918 Pat. 170.**

Assign.

———S. 10, Art. 134—*Assign—Valuable consideration—S. 10 inapplicable.*

S. 10 and Art. 134 of the Limitation Act must be read together. S. 10 is in the main designed to meet a suit brought for the purpose of following misapplied trust funds for the benefit of the trust. In India "the trust for any specific purpose" means the same thing as the express trust in English Law. It does not apply to assigns for valuable consideration from express trustees. (*Batchelor, C. J. and Kemp, J.*) RAMACHARYA *v.* SHRINIVASA CHARYA. **46 I. C. 19 : 20 Bom. L. R 441.**

LIMITATION ACT (IX OF 1908), S. 10—Express trust.

———S 10, Art. 134—*Assign—Purchaser in Court auction of trust properties.*

A purchaser in court auction is an 'assignee for valuable consideration' within the meaning of S. 10, Limitation Act, although he knows he is purchasing trust properties in which his alienor is entitled to only a limited interest. The omission of the words 'in good faith' from S. 10 and Art. 134 of the Acts of 1877 and 1908 is a clear indication to that effect 15 W. R. 24 (P. C.) Ref ; 2 C. L. J. 448 Diss. (*Ayling and Srinivasa Aiyangar, JJ.*) SUBBAIYA PANDARAM *v.* MAHAMAD MUSTAPHA MARACAYAR. **21 M. L. T. 62 : 5 L. W. 690 : 40 I. C. 50 : 32 M. L. J. 85.**

———S. 10—*Assign—Gratuitous transferee of trust property.*

A gratuitous transferee of trust property is within S. 10 of the Act and therefore there is no limitation of time for following up the property in his hands. (*Tyabji and Spencer, JJ.*) VENKATACHELLA *v.* COLLECTOR OF TRICHINOPOLY. **33 I. C. 45 : 38 M. 1064.**

———S. 10—*Assign—Gratuitous transferee of trust property.*

A transferee of trust property not acting in good faith and who has paid no consideration is not an "assign" and in his case, a suit is not barred by any length of time. (*Tyabji and Spencer, JJ.*) VENKATACHALA REDDIAR *v.* COLLECTOR OF TRICHINOPOLY. **(1914) M. W. N. 581 : 24 I. C. 369 : 26 M. L. J. 537.**

Express trust.

———S. 10—*Express trust—Vesting of property—Adverse possession.*

Where the testator by his will dedicated two of his properties to his family deity and at the same time appointed his two wives and adopted son as shebaits, executrixes and executor, it is incumbent on the persons so nominated to take out probate of the will and to carry out the religious trust created by the testator. They are persons in whom the estate becomes vested in trust for a specific purpose within the meaning of S. 10 of the Lim Act They could not by breach of trust continued for a period of 12 years confer a statutory title on themselves in derogation or extinction of the trust. 34 M. 257 Ref. Time would be no bar to an action against the shebaits themselves in such circumstances for recovery of the debutter properties from their hands. 33 C. 511 Rel. (*Mookerjee and Cuming, JJ.*) CHARU CHANDRA PRAMANICK *v.* NAKUSH CHANDRA KUNDOO. **36 C. L. J. 85 : 50 I. C. 49 : 1923 C. 1.**

———S. 10—*Express trust—Suit by co-sharer for mesne profits.*

S. 10 of the Act does not apply to a suit by one co-sharer against others for mesne profits as it

LIMITATION ACT (IX OF 1908), S. 10—Express trust

cannot be said that the defendant co-sharers in possession have been holding the profits 'in trust for a specific purpose' within S. 10 of the Act. (*Leslie Jones and Broadway, JJ.*) SHAMS-UL-NISSA *v.* YAKUB BAKSH. 61 I. C. 393 : 3 U. P. L. R. (Lah.) 53.

———S. 10—*Express trust — Meaning of—Agreement for payment of sum out of particular fund—Obligor if a trustee—Suit for recovery of money out of fund—Agreement to pay on demand—Limitation—Promissory note—Assignment—Rights of assignee.*

On the deposition of a Native Prince, the East India Company took over such of his debts as were proved to its satisfaction under commission appointed for the purpose. The manner in which those debts were to be paid—as provided for by an agreement between the company and the creditors of the deposed Rajah by which the Company undertook to set aside a sufficient part of the revenue to be received by it to provide for the payment to the creditors of the Rajah, who had signed the agreement, of their debts. Those creditors were to receive transferable bonds or certificates and sufficient revenue was to be set apart and applied to paying the interest on those bonds and also to creating and accumulating a sinking fund for the redemption in due course of the principal. In pursuance of that agreement transferable bonds, called promissory notes, were issued whereby the company agreed to pay the holders thereof on the expiration of 15 months' notice of payment on demand at the general treasury at Fort St. George the principal sum and to pay interest half yearly as long as the company was in possession of the revenues of Tanjore. The interest was to be paid at the Treasury in cash to the proprietors if resident in India and in cash or by bills at 12 months at the option of the proprietors, if resident in Europe. In a suit by the assignee of one of such notes against the Secretary of State for India in Council for recovery of the amount due thereon. *Held*, (1) that a trust was created by agreement between the company and the creditors of the deposed Rajah, that the company and the Government and its successors were trustees of the funds in their hands for the purpose specifically defined in the agreement namely, the payment of interest and of principal of the transferable bond to be issued under the agreement and that S. 10 of the Lim. Act applied to the case; and (2) that assuming Art. 120 of the Lim. Act applied, time began to run only from the date of demand for payment and the suit which was filed within 6 years from that date was not barred.

Per *the Chief Justice*.—The Company was not under a duty to seek out the creditors and pay them, especially as the payment under the promissory notes was to be to the payees or their order. It came under no liability to pay either the principal or interest until the demand was made for payment at a particular place and in some cases in a particular manner. A "specific purpose" within the meaning of S. 10 of the Lim. Act is a purpose that is either actually and specifically defined in the terms in which the trust is created or a purpose which from the specified terms can be certainly affirmed.

LIMITATION ACT (IX OF 1908), S. 10—Implied trust.

Per *Wallace, J.*—The trust created by the agreement did not cease by the issue of the bonds, but continued and was to continue according to the agreement, so long as any obligation to pay remained on any bond, and only when every bond was discharged. The assignment to the plaintiff which was made in 1909 recited that the assignor was entitled to the promissory note and to a specified amount of interest. The assignor was on the date of the assignment entitled to a larger sum by way of interest, but the parties to the agreement erroneously thought that interest on the note had stopped from 1854, and hence mentioned a smaller sum as representing interest. The operative part of the assignment however assigned all the interest on the promissory note which the assignor had, *Held*, that the deed of assignment was wide enough to cover both principal and all interest due and to become due, and the plaintiff had by virtue of it all the rights of the assignor. (*Schwabe, C. J. and Wallace, J.*) SECRETARY OF STATE FOR INDIA *v.* PANDIT RADHIKA PRASAD BAPULI. 44 M. L. J. 685 : 46 Mad. 259 : 18 L. W. 210 : 1923 Mad. 667.

———S. 10 and Arts. 49 and 145—*Express trust—Suit for recovery of property or its value by beneficiary—Limitation.*

The phrase "trust for a specific purpose" in S. 10 of the Limitation Act is merely a more expanded mode of expressing the same idea as that conveyed by the expression "express trust" in English Law and is used in the section in contradistinction to trusts arising by implication of law, trusts resulting and trusts constructive. 32 Bom. 394 Relied on. Where certain jewels were in the possession of the defendant and he agreed under a written instrument that the plaintiff should enjoy the jewels for her life and that after her death they should be divided among the defendant and other parties to the instrument, *held* that defendant was an express trustee of the jewels for the plaintiff and that a suit by her for the jewels or their value fell within S. 10 of the Limitation Act. Observation of the Chief Justice on the scope of Art. 135 of the Limitation Act. (*Schwabe, C. J. and Wallace, J.*) KISHTAPPA CHETTY *v.* LAKSHMI AMMAL. 44 M. L. J. 431 : 17 L. W. 467 : (1923) M. W. N. 284 : 32 M. L. T. (H. C.) 217 (2) : 1923 Mad 578.

———S. 10—*Express trust— Fiduciary relationship.*

An express trust within the meaning of S. 10 of the Limitation Act does not result from a mere fiduciary relationship between two parties such as solicitor and client, depositor and banker, principal and agent and creditor and debtor. (But a son in-law does not stand in a fiduciary relationship to his father-in-law by reason of the matrimonial relationship.) (*Sadasiva Aiyar and Spencer, JJ.*) RAJAMMAL *v.* LAKSHMAMMAL. 1 L. W. 577 : (1914) M. W. N. 606 : 22 I. C. 936 : 16 M. L. T. 199.

Implied trust.

———S. 10—*Implied trust.*

Where money is held under an implied trust for the benefit of the plff. then S. 10 of the

LIMITATION ACT (IX OF 1908), S. 10—Implied trust.

Indian Limitation Act applies to the case. (*Scott, C. J. and Batchelor, J.*) SECRETARY OF STATE *v.* BAPUJI MAHADEO. 39 Bom. 572 : 31 I. C. 277 : 17 Bom. L. R. 641.

———S. 10—*Implied trust.*

A person claiming under a resulting trust, may be barred by limitation u less the resulting trust is of such a kind as to fall within the scope of S. 10 of the Limitation Act. A trust for a specific purpose is a trust for a specified purpose. A resulting trust in favour of the heirs of a testator upon failure through invalidity of one of the trusts declared in the will, is not a trust for a specified purpose within the meaning of S. 10. For the purposes of limitation there is a distinction to be drawn between resulting trusts and trusts for specific purposes and limitation may run in favour of a trustee, whether by express words or by operation of law, even where he is not in as a trespasser. (*Scott, C. J. and Chandavarkar, J.*) MAHOMED IBRAHIM *v.* ABDUL LATIF.
37 Bom. 447 : 17 I. C. 689 : 14 Bom. L. R. 967.

———S. 10—*Implied trust—Section does not apply.*

Section 10 of the Limitation Act does not apply to cases of resultant, implied, or constructive trusts. (*Beaman, J.*) PEERBHOY *v.* EBRAHIM.
13 Bom. L. R. 717 : 12 I. C. 225 : 36 B. 214.

———S. 10, Art 120—*Implied trust—Suit for accounts—Manager of joint Hindu family.*

S 10 of the Limitation Act does not apply to an implied trust but to an express trust. A *Karta* of a Hindu joint family is not vested with the property belonging to a joint Hindu family. Art. 120 of the Limitation Act applies to a suit for accounts against a *Karta* of a joint Hindu family. (*Chaudhuri and Newbould, JJ.*) BISWAMBAR HALDER *v.* GIRIBALA DASI. 32 C. L. J. 25 : 58 I. C. 877 : 25 C. W. N. 356.

———S. 10—*Implied trust—Scope of section.*

S. 10 of the Limitation Act is limited in its operation to "express trusts" and has no application to the case of a constructive trust or an obligation in the nature of a trust falling under Chapter IX of the Trusts Act. S. 10 of the Limitation Act does not apply to a suit for accounts by the plff. against the defendant. (*Krishnan and Odgers, JJ.*) KRISHNA PATTAR *v.* LAKSHMI *alias* AMMU AMMAL. 42 M. L. J. 119 : 45 Mad. 415 : 30 M. L.T. 238: (1922) M. W. N. 117 : 16 L. W. 886 : 1922 Mad. 57.

———S. 10—*Implied trust—Mortgage by trustee—Interest paid to mortgagee—Suit for recovery, by beneficiary.*

S. 10 does not apply to a suit by a beneficiary for recovery of interest paid on a mortgage created by the trustee which has been declared to have been in breach of trust, of which the mortgagee had notice as the payments did not become vested in the mortgagee in trust specifically for the beneficiary. (*Wallis, C. J. and Sadasiva Aiyar, J.*) RAJA RAJESWARA DORAI *v.* PONNUSAMI TEVAR. 44 M. 977: 13 L. W. 56: 40 M. L. J. 52: (1921) M. W. N. 37: 61 I. C. 907: 29 M. L. T. 101.

LIMITATION ACT (IX OF 1908), S. 10—Trust property.

———S. 10—*Implied trust—Applicability.*

S. 10 has a very limited application and does not refer to trusts founded on an unexpressed but implied intention of the party creating them or to trusts which are raised by construction of equity without any reference to the intention of parties. (*Crouch, A. J. C.*) LEKHRAJ VISUMAL *v.* ASSAMAL TARUMAL. 27 I. C. 332: 8 S. L. R. 132.

Office of Trustee.

———S. 10—*Office of trustee—Adverse possession—Suit to recover possession as* Hukdar.

S. 10 of the Limitation Act does not apply to a suit to recover possession of certain villages as *Hukdar* and for an injunction restraining the defts. from interfering with the plff.'s discharge of his duties. Such a suit is barred if it is found that the right of management had been acquired by deft. by adverse possession for nearly 60 years before suit. (*Wallis, Offg. C. J. and Seshagiri Aiyar, J.*) AMBALAVANA PANDARASANNADHI AVERGAL *v.* MINAKSHI SUNDARESHWARA DEVASTANAM. (1915) M. W. N. 76: 26 I. C. 841 : 17 M. L. T. 271 : 28 M. L. J. 217.

———S. 10—*Office of trustee— Adverse possession.*

Where a person has been performing the duties of a *shebait* of an idol and applying the trust funds for the trust, and claims the right to hold that office and perform those duties adversely to the lawful *shebait*, S. 10 has no application and he can acquire that right as against that original *shebait* by such adverse possession. 36 Cal. 1003; 7 Mad. 387; 23 Mad. 271; 31 Cal. 314, Foll. (*Dawson Miller, C. J. and Mullick, J.*) NATHE PUJARI *v.* RADHA BENODE NAIK.
3 P. L. J. 327: 4 P. L. W. 283: 47 I. C 290 : 1918 P. 247.

Trustee de son tort.

———S. 10, Art. 120—*Trustee* de son tort *—Suit for accounts—Limitation.*

A suit for accounts in respect of trust property comes under S. 10 and a trustee *de son tort* stands in the same position as an express trustee. The claim for accounts for six years prior to the institution of the suit would be saved by Art. 120, the obligation of a trustee to accounts being continuous. Under the new Act, a suit for accounts can be launched against a trustee. Though under the new Act there is no limit to a suit for accounts against a trustee, a right to sue barred under the old Act cannot be revived under the new Act. (*Chatterjee and Panton, JJ.*) DHANPAT SINGH *v.* MOHESH NATH TEWARI.
57 I. C. 805: 24 C. W. N. 752.

Trust property.

———S. 10—*Trust property—Suit by trustee to recover from person claiming as trustee.*

A suit by an alleged trustee for recovery of trust property against person claiming himself to be trustee is governed by Art. 144 of the Limitation Act. (*Lord Shaw.*) ARUNACHALAM CHETTY *v.* VENKATACHALAPATHI GURUSWAMIGAL.
46 I. A. 204: (1919) M. W. N. 850 : 17 A. L. J. 1097 : 10 L. W. 642: 26 M. L. T. 479 : 53 I. C. 288: 24 C. W. N. 249: 37 M. L. J. 460 (P. C.).

LIMITATION ACT (IX OF 1908), S. 10—Trust property.

——— S. 10—*Trust property— Guardian and Ward—Acquisition by guardian.*

When the guardian gave a discharge for a decree in favour of the minor in consideration of the transfer to him of certain property he holds the property as a trustee for the minor. (*Richards, C.J. and Banerjee, J.*) MUNNA KUNWAR *v.* VENAIK RAM. 28 I. C. 861.

———S. 10— *Trust property— Suit against trustee—Suit against* karta.

S. 10 of the Act expressly provides for the cases of vested trust in a trustee for specific purpose only ; a suit against a *karta* for account is not governed by it, as *karta* is not vested with property of the family. (*Choudhury and Newbould, JJ.*) BISWANBAR HALDAR *v.* GIRIBALA DASI. 32 C. L. J. 25: 58 I. C. 877: 25 C. W. N. 356.

———S. 10—*Trust property—Deposit as security.*

The plff. deposited as security his Post office Savings Bank Pass Book with the deft. then manager of an estate. On the plff.'s dismissal a sum due to him was with the Collector's sanction and plff.'s consent and authority, withdrawn from the Savings Bank and credited to the estate. The plff. demanded money from the deft. The decree given by the trial court to the plff. was revised by the High Court which held that no property vested in the deft. in trust for the plff. and the suit was barred by limitation being instituted after more than three years. (*Chatterjee and Newbould, JJ.*) NANDA LAL *v.* ASUTOSH. 52 I. C. 65.

———S. 10—*Trust property—Suit against trustee—Neglect to get income of trust property.*

S. 10 of the Act of 1877 does not save from limitation, cases where it is sought to render a trustee accountable for property which, but for his wilful default or neglect, would come into his hands. The effect of S. 10 of the Act of 1908 is to make a trustee liable for an indefinite time and without bar of limitation for breaches of trust consisting in failure to get in trust property. A suit against a trustee for failure to obtain possession of the corpus and income of the trust property is not within S. 10 of the Act but is governed by the ordinary law of limitation. (*Fletcher and Newbould, JJ.*) SHAHRUDDIN *v.* JIJARUDDIN. 42 I. C. 543.

———S. 10—*Trust property—Directors—Whether trustees.*

S. 10 of the Limitation Act does not apply to directors of companies as they are not persons in whom the property of the company is vested, as is contemplated by S. 10. This section applies to cases of express trusts only. (*Shadi Lal, C.J. and Abdul Quadir, J.*) THE BANK OF MULTAN, LTD. *v.* HUKAM CHAND. 1923 Lah. 58 (2).

———S. 10—*Trust property—Land granted to custodian as dharnarth.*

A suit for the recovery of property from a person in whom it was vested in trust for the upkeep of a shrine, or from a gratuitous transferee from him is governed by S. 10. The custodian of a shrine can acquire private property if he is not a sanyasi. 78 P. R. 1912. (*Scott-Smith, J.*) JAMIAT SINGH *v.* MUSSAMAT RAJI. 53 I. C. 577: 109 P. R. 1919.

LIMITATION ACT (IX OF 1908), S. 10—Trust property.

———S 10—*Trust property— Land assigned by mutual agreement—Suit for its recovery—Limitation.*

Suit against defts. to whose predecessors in interest the suit lands were assigned and who were in possession as assignees according to mutual agreements is governed by S. 10 and is consequently not barred by limitation. (*Jones, J.*) SEOTI *v* BAGHIRATH. 12 P L R. 1918: 70 P. W. R. 1918: 45 I. C. 325: 66 P. R. 1918.

———S. 10—*Trust property — Suit against trustee—Failure of trustee to reduce trust property to possession—Liability for acts on default of predecessors—Failure to account—Limitation.*

A suit based on the failure of a trustee to reduce trust property into possession is barred under the Lim. Act notwithstanding S. 10. Further, a trustee is not liable for the acts or defaults of his predecessors. If the trustee himself had actually received money for which he had not accounted, S. 10 prevents any period of limitation running, and if he held money in another capacity which he ought to have held as trustee, he could not be heard to say that he held it in the other capacity and not in the capacity of a trustee, and therefore in such a case S. 10 would apply and prevent him from relying on the Lim. Act. (*Schwabe, C. J. and Odgers, J.*) DORAIVELU MUDALIAR *v.* ADIKESAVALU NAIDU. (1922) M. W. N. 620: 1922 Mad. 409.

———S. 10—*Trust property — Suit against trustee—Neglect to get income of trust.*

A suit against a trustee for failure to obtain possession and income of the trust falls under the ordinary Law of Limitation and not under S 10. (*Wallis, C. J. and Oldfield, J.*) KOLTA THOLASINGAM CHETTY *v.* VEDACHALLA AIYAH. 41 Mad. 319 : (1917) M. W. N. 651 : 6 L. W. 523 : 42 I. C. 544 : 22 M. L. T. 388.

———S. 10—*Trust property—Trustee—Right to re-imbursement.*

Where a trustee is removed and an account ordered against him, his claims against the estate, though barred, may be gone into and a decree may be given to him if the accounts should turn out to be in his favour. An executor has a right of retainer, but no charge on properties not in his possession for sums due to him from the estate and his claim in respect of them is governed by Art. 120 of the Limitation Act. (*Wallis, C. J. and Krishnaswami Aiyar, J.*) CHIDAMBARA MUDALIAR *v.* KRISHNASWAMI PILLAI. 39 Mad. 365 : 28 I. C. 221 : 2 L. W. 241 : 28 M. L. J. 285.

——— S. 10—*Trust property — Suit against trustee—Former trustee.*

A suit on behalf of a Devasthanam for recovery of property from a former trustee is governed by S. 10 of the Limitation Act though the former trustee's title to the office was not legally valid. (*Benson and Sadasiva Aiyar, JJ.*) SUBRAMANIA AIYAR *v.* SUBBA NAIDU. 25 M. L. J. 452 : 21 I. C. 421 : 14 M. L. T. 437.

LIMITATION ACT (IX OF 1908), S. 10—Trust property.

——S. 10 and Arts. 134, 142 and 144—*Trust property—Permanent lease—Possession for 12 years—Effect of.*

When trust property was permanently leased to the deft. on condition of paying yearly rent and the tenant was in possession for over 12 years: *held*, that S. 10 did not apply as he was an assignee for valuable consideration and that the deft acquired by prescription the right of permanent lessee under either Art. 142 or 144 of the Act. Art. 134 does not apply. 23 M. 271: 36 C. 1003: 38 C. 526 Rel. on. There was no creation of a tenancy from year to year by the mere payment of rent as such tenancy can be created only by express or implied contract. (*Sundara Aiyar and Sadasiva Aiyar, JJ.*) NARSAYA UDPA *v.* VENKATARAMANA BHATTA. 12 M. L. T. 218: 16 I. C. 53: (1912) M. W. N. 870: 23 M. L. J. 260.

Miscellaneous.

——S. 10 and Arts. 120 and 148—*Suit for redemption after voidable sale.*

Where a mortgagor sued for redemption of the mortgage after sale of equity of redemption contrary to the provisions of O. 34, R. 14, C. P. C. *Held*, S. 10 of the Limitation Act would not apply to such a case and the mortgagor must set aside the sale before redemption. (*Sanderson, C. J. and Woodroffe, Mookerjee, Chatterjee and Newbould, JJ.*) UTTAM CHANDRA DAW *v.* RAI KRISHNA DALAL. 47 Cal. 377: 24 C. W. N. 229: 55 I. C. 157: 31 C. L. J. 98 (F. B.).

——S. 10—*If controls Art.* 134.

S. 10 of the Lim. Act controls Art. 134 of the Act and gives the clue to its meaning. (*Scott-Smith, J.*) DIVAN SINGH *v.* SHAM DAS. 1922 La. 271.

——S. 10—*Applicability—Suit by one trustee against another for possession and management.*

The words of S. 10, Lim. Act, are wide enough to cover a case by one of two trustees who claims against the other that the property ought to be held and managed by both. (*Schwabe, C. J. and Coutts-Trotter, J.*) SHUNMUGAPPA *v.* SANGAYA CHETTY. 18 L. W. 907: 33 M. L. T. (H C.) 225: 1924 M. 125.

——S. 10—*Legal representative—New trustee.*

A new trustee succeeds to the office of a former trustee and not to him personally and is not therefore his legal representative under this section. (*Bakewell and Phillips, JJ.*) MANIKKAM PILLAI *v.* THANIKACHELLAM PILLAI. 4 L. W. 369: 34 I. C. 945: (1916) 2 M. W. N. 87.

——S. 12.

Applicability.
Award.
Computation of time.
Copy obtained by another person.
Copies sent by post.
Decree later than judgment.
Holidays.
Laches.
Leave to appeal to Privy Council.
Practice of Patna High Court.
Review.
Separate Copy application for decree and judgment.
Miscellaneous.

LIMITATION ACT (IX OF 1908), S. 12—Applicability.

Applicability.

——S. 12—*Applicability—Time taken in obtaining copies—Deduction of—Extent of time permissible*

Time taken actually in obtaining copies is to be deducted in calculating the period of limitation. (*Lord Buckmaster.*) PREMATH NATH ROY *v.* WILLIAM ARTHUR LEE. 49 Cal 999: 21 A. L. J. 118: 37 C. L. J. 86: 27 C. W. N. 156: 18 L. W. 56: (1923) M. W. N. 526: 1922 P. C. 352 (P. C.).

——S. 12—*Applicability—Appellant must apply once for all for all necessary copies.*

S. 12 merely extends the time for any given appeal by the period which is necessary to obtain essential documents for the Court to which the appeal is being made and it does not contemplate nor allow an appellant to apply for a series of documents one after the other and to claim that his time of appeal is extended merely because he has applied within the successive periods of what he contends is the extended limitation of time. In other words, an appellant must apply under S. 12 once and for all for every essential document before the period of limitation for his appeal has run out. (*Mears, C. J. and Tudball, J.*) MOOL RAJ *v.* NIADAR MAL. 18 A L. J. 208: 2 U. P. L. R. (A) 64: 55 I. C. 315: 42 A. 260.

——S. 12—*Applicability—Provincial Insolvency Act, S. 46—Appeal.*

An appeal presented under S. 46, Prov. Insol. Act, falls under S. 12, Limitation Act. (*Richards, C. J. and Karamat Hussain and Chamier, JJ.*) DROPADI *v.* HIRA LAL. 10 A. L. J. 3: 16 I. C. 149: 34 All. 496.

——S 12—*Applicability—Application to be before expiry of the period allowed.*

To claim the deduction of the period of obtaining copies under S. 12 of Limitation Act from that allowed for the appeal, the application must be made before the expiry of the period allowed as the time requisite for obtaining copy counts from the date on which application is made. (*Mookerjee, A. C. J. and Fletcher, J.*) NIBARAN CHANDRA DUTT *v.* MARTIN & Co. 58 I. C. 408: 32 C. L. J 127.

——S. 12—*Applicability—Applies to pauper appeals.*

The provisions of S. 12 are applicable to pauper appeals. (*Abdul Raoof, J.*) PIRJI ASHRAF ALI *v.* RAMESHAR NATH. 1923 Lah. 684.

——S. 12—*Applicability—Time taken for copies of judgment of trial court not excluded.*

Only the time requisite for obtaining a copy of the judgment appealed against and of the decree can be excluded. (*Abdul Raoof, J.*) CHUHARBAL *v.* BIRA RAM. 1923 Lah. 461.

——S. 12 (3)—*Applicability—Time for obtaining copies of first Court's judgment—If excluded.*

S. 12 (3) of the Lim. Act allows to be excluded only the time requisite for obtaining a copy of the judgment against which the appeal is preferred. Even where the rules of the Court require the filing of the judgment of the Court of first instance

LIMITATION ACT (IX OF 1908), S. 12—Applicability.

in a second appeal, the time requisite for obtaining it does not fall under S. 12. (*Abdul Raoof, J.*) MADAN GOPAL *v.* MALAWA RAM. **1923 Lah. 96.**

———Ss. 12 and 5—*Applicability—Time spent in obtaining translation—If sufficient cause.*

Time spent in obtaining a translation of the judgment cannot be excluded under S. 12 of the Act and it is not a sufficient cause under S. 5 of the Act, to justify an extension of time. (*Wilberforce, J.*) KANHAYA *v.* NUR MOHAMMED. **59 I. C. 965.**

———S. 12—*Applicability—Period for obtaining copies.*

S. 12 will not apply unless the application for obtaining copies is made before the expiry of the prescribed period. (*Johnstone and Shah Din, JJ.*) ASHIO HUSSAIN *v.* ALI BAKSH. **61 P. L. R. 1911 : 9 I. C. 381 : 189 P. W. R. 1911.**

———S. 12—*Applicability to appeals under cl. 10 of the Letters Patent—Patna High Court Rules, Ch. VII, R. 2.*

S. 12 of the Limitation Act does not apply to appeals under Cl. 10 of the Letters Patent as Ch. VII, R. 2, of the Patna High Court Rules, excludes such applicability. (*Miller, C. J. and Mullick, J.*) DEOKI LAL *v.* RAMANAND LAL. **5 Pat. L. J. 701 : 2 U. P. L. R. (Pat.) 235 : 59 I. C. 179 : 2 Pat. L. T. 42 : 1920 Pat. 333.**

———S. 12—*Applicability—Decree drawn up—Time spent in obtaining copy of decree.*

Where a formal decree has been drawn up in a miscellaneous execution case the time requisite for obtaining a copy of such a decree is to be deducted under S. 12. 17 All. 213, Foll.; 6 C. W. N. 283, Dist.; 14 I. C. 1006, Foll. (*Doss and Foster, JJ.*) MOHESH *v.* RAM PRASAD. **1 P. L. T. 33: 2 U. P. L. R. (Pat.) 26 : 54 I. C. 630 : 1920 Pat. 75.**

Award.

———S. 12 and Art. 158—*Award—Time requisite for obtaining copy of—Application to set aside award.*

The period taken for obtaining a copy of the award must be excluded in computing the period of limitation for an application to set aside the award. (*Sanderson, C. J. and Woodroffe, J.*) SOVACHAND *v.* HURRY BUX **46 Cal. 721 : 53 I. C. 46 : 23 C. W. N. 280.**

———S. 12 (4)—*Award—Setting aside—Exclusion of time necessary to get copy.*

In an application to set aside an award filed in Court, the time requisite for obtaining a copy of the award may be taken into account under S. 12 (4) in calculating the period of limitation. (*Napier, J.*) SUBRAMANIA AIYAR *v.* POOPPARAM LALA. **29 I. C. 860.**

Computation of Time.

———S. 12—*Computation of time—Time for obtaining copies—If can be attacked.*

Under S. 12, only the time from the date of making the application for copies up to the date on which the copies are ready for delivery can be excluded. A finding as to the time requisite is one of fact and cannot be attacked in second appeal or revision. (*Moti Sagar, J.*) RAM SARUP *v.* ZORAWAR MAL. **1923 Lah. 696.**

LIMITATION ACT (IX OF 1908), S. 12—Computation of time.

———S. 12—*Computation of time—Time requisite for obtaining copies.*

In computing the time taken for obtaining copies under S. 12 of the Lim. Act the time spent between the date of decree and the date of application for copies cannot be deducted. The question as to the time requisite for obtaining copies is one of fact. (*Martineau, J.*) BAWA SINGH *v.* THAKUR SINGH. **4 U. P. L. R. (L.) 80: 1922 Lah. 423.**

———S. 12—*Computation of time—Absence decree - Copying time.*

The appellant may be entitled to exclusion of time from date of application to date of preparation of copy or even from date of judgment but is not entitled to exclusion of time between the date of preparation of copy and application for copy of decree. (*Shadi Lal, C. J. and Martineau, J.*) THE MUNICIPAL COMMITTEE, CHINIOT *v.* BASHI RAM. **1922 Lah. 170.**

———Ss. 12 and 19—*Computation of time—Acknowledgment—Saving of limitation.*

Where a debt is acknowledged in writing the day on which the acknowledgment was signed must be excluded in computing the period of limitation under S. 12 of the Act. (*Hallifax, A. J. C.*) JAINARAYAN BAPU *v.* VITHOBA. **6 N. L. J. 281 : 1923 Nag. 143.**

———Ss. 12 and 5—*Computation of time—Exclusion of one day twice over.*

The appellant applying for copies on the day on which the judgment is delivered is not entitled to exclude that day twice over. (*Batten, A. J. C.*) SALAM SINGH *v.* HIRA. **40 I.C. 425 : 13 N. L. R. 89.**

———S. 12—*Computation of time—Time when begins.*

The time requisite for obtaining copy of decree within S. 12, does not begin to run until an actual application has been made. (1917) Pat. 21 overruled. If the appellant does not so apply withinthe time allowed for appeal, provided copies are then available, he cannot deduct the time between signing of the decree and delivery of judgment. (*Miller, C. J., Jwala Prasad, Das, Adami and Bucknill, JJ.*) JYOTINDRA NATH SARKAR *v.* LODNA COLLIERY CO. **2 P. L. T. 361 : 1921 Pat. 177 : 62 I. C. 649 : 6 P. L. J. 350 (F. B.).**

———S. 12 (1)—*Computation of time.*

In a suit filed on 9th May 1910 a Monday, on a promissory-note dated 7th May 1907, *held* that limitation began to run from the expiration of the 7th May 1907 and expired, at 12 midnight on 7th May 1910 and hence the suit was barred by time. (*Mr. Eales, J. C.*) NGA POYIN *v.* MI SHAN NU. **18 I. C. 574: 1 U. B. R. (1912) 146.**

———S. 12—*Computation of time.*

In computing the time required for obtaining copies for the purpose of appeal, an extra day

LIMITATION ACT (IX OF 1908), S. 12—Copy obtained by another person.

cannot be allowed for the delivery of the copies in addition to the day they are ready for delivery. (*Hayward, J.C. and Fawcett, A. J. C.*) TOLARAM *v.* JAFFER KHAN. 38 I. C. 464 : 10 S. L. R. 165.

Copy obtained by another person

——S. 12 (2)—*Copy obtained by another person—Exclusion of time.*

The appellant in an appeal preferred to the High Court applied within the prescribed period for a copy of the decree but allowed the application to be dismissed for non-payment of copying charges and subsequently filed the appeal with a copy of the decree obtained by another party, *held*, that the appellant was entitled to deduct the time for obtaining such copy, 12 M. L. J. 385, Not Foll. ; 29 A. 264, Foll. S. 12 does not lay down that the copy of the decree must have been obtained by the appellant himself. (*Wallis, C. J. and Krishnan, J.*) AMINUDEEN SAHEB *v.* PYARI BAI. 43 Mad. 633 : 38 M. L. J. 340 : 11 L. W. 370 : 56 I. C. 73 : (1920) M. W. N. 246.

——S. 12—*Copy obtained by another person—Application for copy—Who should make.*

It is not necessary that an application for copy should be made by the party himself. 12 M. L. J 385, Dissented from. (*Lindsay, J. C.*) BABU RUDRA PRATAB SINGH *v.* RAGHURAJ GIR. 23 I. C. 209.

Copies sent by Post.

——S. 12—*Copies sent by post—Time for despatch.*

From the day when copy is ready, to the day when it is despatched, the time is excluded. (*Broadway and Abdul Qadir, JJ.*) GURDIT SINGH *v.* CHARAN DAS. 1922 Lah. 415.

——S. 12—*Copies sent by post—Time for obtaining copies—Mode of computing.*

Where in accordance with the rules, copies are despatched by post, the period intervening between completion and despatch of the same is also excluded in computing the time for filing appeals. (*Scott-Smith, J.*) GHULLA SINGH *v.* SOHAN SINGH. 3 Lah. 280 : 4 L. L. J. 500 : 1922 Lah. 219.

——S. 12—*Copies sent by post—Time spent between completion and despatch—Central Provinces Courts Act (II of 1904), S. 8 (1) (c).*

The period between the completion and despatch of copies of the decree and judgment by post must be included in computing the period of Limitation in cases where copies are applied for and sent by post, 6 C. P. L. R. 13, Relied upon. (*Drake Brockman, J. C.*) KRISHNA *v.* BALIA. 14 I. C. 403 : 8 N. L. R. 11.

——S. 12—*Copies sent by post.*

The time requisite under S. 12 of the Limitation Act is the time from the date of the application to the date of posting the copies irrespective of the fact that the copies are ready for delivery before the latter date in a case where the applicant has asked for the copies to be sent to him by post (*Lyle, A. J. C.*) IQBAL JEHAN BEGUM *v.* MATHURA PRASAD. 54 I. C. 831 : 6 O. L. J. 660.

LIMITATION ACT (IX OF 1908), S. 12—Decree later than judgment.

Decree later than judgment.

——S. 12—*Decree later than judgment.*

In appeal, limitation runs from the date on which the decree was actually signed and the same rule applies in an application for review of a judgment of the High Court. (*Sanderson, C. J. and Mukerjee, J.*) GANGADHAR KARMAKAR *v.* SHEKH ARBASINI DASYA. 20 C. W. N. 967 : 35 I. C. 348 : 24 C. L. J. 235.

——S 12 (2)—*Decree later than judgment—Copying fees paid before decree.*

An application for a copy of judgment and decree was made on 2nd July 1910. The applicant obtained the copy of the judgment on the 8th July, but his deposit money for the copy of the decree was returned to him on the same date, the decree not being then signed by the Court. The decree was signed on 11th July and on 15th July an application for a copy of a decree was made, which copy was delivered to him on 20th July. He filed his appeal on 17th August. *Held* that the appeal was in time, the appellant getting a deduction of the days between the delivery of judgment and signing of the decree. The application for a copy of the decree made on 2nd July ought to have been held pending on 11th July. (*Mookerjee and Caspersz, JJ.*) TARABATI KOER *v.* GAJDEO NARAIN. 10 I. C. 542 : 15 C. W. N. 787.

——S. 12 (2)—*Decree later than judgment—Date of decree—C. P. C., O. 20, R. 7.*

The 'date of decree' for calculating time for appeal is the date of the judgment but when the decree is drafted later owing to time being granted for extra Court-fee, the time given must be excluded under S. 12 (2), Limitation Act. (*Ayling and Napier, JJ.*) NARAYANASWAMI TEVAN *v.* KRISHNASWAMI PILLAI. 25 I. C. 67.

——S. 12—*Decree later than judgment—Time between judgment and signing of decree.*

The period between the delivery of judgment and the preparation and signing of the decree would be excluded from the period of limitation prescribed for filing the appeal if the application for copy is made before the preparation of the decree. 1 P.L.J. 573 F.B. Dist. (*Jwala Prasad and Ross, JJ.*) MAULVI SYED MAHOMED MOINUDDIN ASHRAF *v.* MAULVI MAHOMED ISHAQ ASHRAF. 1 P. L. R. 459 : 1923 P. 539.

——S. 12—*Decree later than judgment—Time requisite for obtaining copies—Time between date of judgment and date of decree.*

No period between the date of the judgment and the date of the decree can be deducted from the period of limitation, as requisite for obtaining copies under S. 12 of the Act. (*Miller, C. J. and Mullick, J.*) DEY *v.* RAJANTI KUER. 63 I. C. 278 : 6 P. L. J. 237.

——S. 12—*Decree later than judgment—Delay in signing.*

The delay in signing a decree cannot entitle an appellant to His Majesty in Council, to deduct the period between the signing of the judgment and of the decree in computing the period of limitation except when the appellant has made an

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application prior to the signing of decree but if no application is made the non-signature has no effect. (*Miller, C. J. and Adami, J.*) MAHADEO PRASAD SAHU *v.* GAJADHAR PRASAD SAHU.
57 I. C. 312 : 1 P. L. T. 262.

——S. 12—*Decree later than judgment.*

The time which elapsed between the delivery of the judgment and the signing of the decree should be excluded in calculating the period of limitation for the appeal 20 C W. N. 1303 Rel. The period during which the Court was closed for the long vacation was time requisite for obtaining copies within S. 12 of the Limitation Act, 1 Pat. L. J. 573, Rel. (*Manuk, J.*) IMAMAN *v.* SHAM SAGAR RAI. 49 I. C. 664.

——S. 12—*Decree later than judgment—Preliminary decree, appeal from.*

A judgment on some issues was framed on 4-8-1916 but the preliminary decree was not signed till 9-7-17. On 2-9-1916 the appellant applied for certified copy of the judgment and it was delivered on 23-9-1916. On 4-11-1916 he applied for a copy of the decree but without getting one, he appealed on 10-11-1916. On 7-7-1917 he again applied for a copy of the decree and he got it on 13-7-1917 On 17-7-1917 he filed the copy in the Appellate Court with an application that he was appealing on the grounds contained in his memo. filed on 10-11-1916. It was objected at the hearing that the appeal was barred. *Held*, that the appeal was not barred. (*Fawcett, J. C. and Raymond, A. J C.*) HARJIMAL & SONS *v.* FIRM OF DHANPATMAL DEWANCHAND. 62 I. C. 537 : 5 S. L. R. 16.

Holidays.

——S. 12 (2)—*Holidays.*

The time from the date of the application till the re-opening of the courts should be taken as the time requisite for obtaining copy of judgment though the notice of readiness was posted on the board during the vacation as the applicant was not bound to take cognizance of the notice. (*Banerji and Piggott, JJ.*) KHUB CHAND *v.* HARMUKH RAI. 34 All. 41 : 12 I. C. 183 : 8 A. L. J. 1095.

——S. 12—*Holidays—Closing of Court immediately after date of signing of decree—Exclusion of time.*

Where immediately after the signing of a decree, the court is closed, the period during which it is so closed ought to be excluded in computing the period of limitation.(*Piggott and Stevens, JJ.*) SRI CHANDAN BHUYA *v.* HAROO SETHI.
11 I. C. 387 : 13 C. L. J 544.

——S. 12 (2) and (3)—*Holidays—Judgment on the last day of the session.*

Holidays should be taken into consideration in computing the time where judgment was pronounced sufficiently early on the last day preceding the vacation. (*Ayling and Coults-Trotter, JJ.*) MASILAMANI *v.* ARANGA MUDALI. 63 I. C. 922 : 12 L. W. 460.

——S. 12—*Holidays—Application for judgment after re-opening day—Vacation time.*

"Time requisite "means 'time reasonably requisite. Where the judgment was delivered on the

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first day of the Christmas vacation and the appellant applied for copies on 7th January, *i.e.*, some days after the re-opening. *Held*, that the time for appeal began to run from the first day of the Christmas vacation and that the appellant was not entitled to add the days during which the Court was closed for Christmas as part of the time requisite for obtaining copies. (*Wallis, C. J. an Krishnan, J.*) DONOPUDI SUBRAMANIAM *v.* NUNE NARASIMHAM. 43 Mad. 644 : 38 M. L. J. 465 : 11 L. W. 483 : 56 I. C. 67: (1920) M. W. N. 293.

——S. 12 (2) and (3) — *Holidays — Long vacation—Notification that copies will be supplied—Vacation, if can be excluded.*

The publication of a notification that copies will be granted during the long vacation prevents the vacation from being excluded as the period for granting a copy of the judgment or decree. On the other hand, the whole period of the vacation must be reckoned in computing the period. (*Phillips and Kumaraswami Sastri, JJ.*) KADIR MOIDEEN SAHIB *v.* SAYYED ABU BAKKAR SAHIB.
36 M. L. J. 122 : (1918) M. W. N. 886 : 9 L. W. 8 : 50 I. C. 518 : 25 M. L. T. 245.

——S. 12—*Holidays—Gazette notification for delivering copies during vacation.*

Where a party applied for copies before the long vacation of the Court and in accordance with a Gazetted notification the copies were read during the vacation but the copies were taken delivery of only on the re-opening day o the Court after the vacation he is not entitled to deduct the time between the date when the copies were ready and the re-opening date. 5 Mad. 189 Foll. (*Phillips and Napier, JJ.*) KOMURU APPALASWAMI *v.* PALLI NARAYANASWAMY.
49 I. C. 626 : 36 M. L. J. 62.

——S. 12—*Holidays--Intervention of Sunday.*

Sundays intervening after the calling for the stamps and the date the copies being announced as ready must be included in the time requisite for obtaining copies and should be deducted in calculating the time for appeal. (*Benson and Sundara Aiyar, JJ.*) RAMASWAMY CHETTY *v.* RAMANATHAN CHETTY. 14 M. L. T. 194 : 25 M. L. J. 354 : 21 I. C. 192 : (1913) M. W. N. 805.

——S. 12—*Holidays—Judgment delivered during vacation—Application made long after re-opening—Deduction if can be allowed.*

Where judgment in a case was delivered during the summer vacation of a Court but application for copies of the decree and judgment was made 17 days after the re-opening of the Court the time during which the Court was closed cannot be deducted in computing limitation for an appeal as such an application was not made at the first available opportunity. (*Sankaran Nair and Ayling, JJ.*) TANJORE PALACE ESTATE *v.* AUDI RAMIAH CHETTY. 11 I.C. 339 : (1911) 1 M W. N. 364.

——S. 12—*Holidays—Copying fee—Deposit of, insufficient—Further demand—Holidays intervening.*

An applicant for a copy should pay in advance a sum sufficient for the preparation of the copy. If

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there is a further demand and he supplies it immediately following a holiday the holidays may be excluded in computing limitation. (*Macnair, A. J. C.*) GONDAJI *v.* KISAN, 61 I. C. 889.

———S. 12 (2)—*Holidays—Court closing the next day after judgment.*

Where the decree was signed on the day when the judgment was delivered and the Court closed for a month from the next day except for copying purposes and the party applied for copies on the re-opening date and filed the appeal the next day after grant of copies to him, *held*, that the appeal was in time. (28 M. 452, Dist.) (*Batten, A. J. C.*) KASHI BAI *v.* KANNO, 29 I. C. 833 : 11 N. L. R. 104.

———S. 12—*Holidays—Tender of copying fees on—Validity of.*

Where a copy application is made through post, the time occupied by the Post Office in conveying the application and fees to the copying office and in carrying back the copies to the applicant is outside the computation under S. 12 of the Act. A tender of copying fees transmitted by money-order and reaching the office on a holiday is not a tender at the proper time. (*Stanyon, A. J. C.*) RAGHU *v.* MADHGIA. 26 I. C. 819 : 10 N. L. R. 139.

———S. 12—*Holidays—Copies applied by post reaching office only after vacation.*

A decree was passed on 12th May 1911 and on 15th May the deft. applied by post for a copy of the judgment and decree. The application did not reach the office before the vacation and so it was treated as received on 16th June after the Courts re-opened. The copy was ready on the 3rd July ; the deft. took it personally on 4th. On the same day he preferred an appeal against it. *Held*, that the appeal was not barred and that the 3rd and 4th of July should be included in the time requisite for obtaining copies. (*Drake-Brockman, J. C.*) PAGA *v.* SADASHEO. 17 I. C. 624: 8 N. L. R. 172.

———S. 12—*Holidays—Copy of judgment — Time taken—Deduction of—Intervention of vacation.*

Where the judgment of the trial Court was pronounced on the last day before the Civil Court vacation and the copy of the judgment was applied for on the day on which the Court re-opened after the vacation, *held*, that under these circumstances the appellant was entitled to include the vacation as part of the time requisite for obtaining the copy under S. 12, sub-section (2) of the Limitation Act. 27 Mad. 21; 20 C. W. N. 1303; 13 I. C. 544; 43 Mad. 640 Ref. (*Daniels, A. J. C.*) ABDUL GHAFFAR *v.* RASUL-UN-NISSA. 25 O. C. 71 : 9 O. L. J. 436 : 1922 Oudh 39.

———S. 12—*Holidays—Application for copies to be made on the day following the holidays.*

Where limitation for filing an appeal expires during the Court vacation, the appellant can apply for copies on the day following the vacation and the time in obtaining the copies can be added to the period of limitation. (*Jwala Prasad, J.*) FARZAND ALI *v.* ABDOOL HAMID. 60 I. C. 493.

LIMITATION ACT (IX OF 1908), S. 12—Laches.

———S. 12—*Holidays—"Time requisite for obtaining a copy of the decree"—If continuous.*

Time requisite for obtaining a copy need not be continuous; hence vacation is part of such time. (*Chamier, C. J. and Sharfuddin, J.*) DEBI CHARAN LAL *v.* MEHADE HUSSAIN. 20 C. W. N. 1303 : 1 Pat. L. J. 485: 35 I. C. 888 : 1 Pat. L. W. 209.

Laches.

———S. 12 — *Laches — Time taken in obtaining copies—Deduction of—Extent of time permissible—Practice.*

Under S. 12 of Lim. Act no period can be regarded as requisite under the Act which need not have elapsed if the appellant had taken reasonable and proper steps to obtain the order appealed against. Where the appellant did not apply to have the order drawn up within a reasonable time after judgment, and even after the draft was drawn up he did not return it after approval, he cannot claim to deduct the whole of the time occupied in obtaining a copy of the order. (*Lord Buckmaster.*) PRAMATHANATH ROY *v.* LEE. 4 U. P. L. R. (P. C.) 103 : 27 C. W. N. 156 : 49 I. A. 307 : 2 A. L. J. 118 : 31 M. L. T. 193 : 43 M. L. J. 765 : 1922 P. C. 352 (P.C).

———Ss. 12 and 5—*Laches—Copies applied for after expiry of period for appeal.*

An appellant who does not, within the period of limitation, apply for a copy of the order appealed from, and who has within that period taken no steps to procure the copy, cannot be allowed after the period of limitation has run out, to claim exclusion of time requisite for procuring such a copy. The appeal could not be admitted under S. 5 of the Limitation Act as there was no sufficient cause for not preferring the appeal within time. (*Sanderson, C.J. and Chitty, J.*) PRAMATHANATH ROY *v.* W. A. LEE. 52 I. C. 582 : 23 C. W. N. 553.

———S. 12—*Laches—Period requisite—Meaning.*

The period to be excluded under this section is the period requisite and not that actually spent in obtaining copies. An appellant is not therefore entitled to deduct the days during which the copies lie ready but undelivered in the office. (*Le Rossignol, J.*) NUR MUHAMMAD *v.* RAM DAS. 50 I. C. 760 : 4 P. L. R. 1919.

———S. 12, (2) and (3)—*Laches — Time spent in getting vernacular decree copy—When to be excluded.*

Where a decree of the first Court is drawn up in English, an appellant is not entitled to the exclusion of the time he has to wait for getting a copy of the decree in vernacular which he filed with the memorandum of appeal, inasmuch as the practice was to file only an English copy of the decree in the Lower Appellate Court. 6 P. R. 1894; 8 M. L. J. 148; 21 I. C. 366 : 38 I. C. 66, Ref. (*Shadi Lal and Le Rossignol, JJ.*) MAHOMED AMIN *v.* CHIRAGH BEG. 64 P. W. R. 1917 : 39 I. C 617 : 124 P. L. R. 1917.

———S. 12—*Laches—Application for a copy of the judgment mislaid in jail—Limitation for appeal.*

LIMITATION ACT (IX OF 1908), S. 12—Laches.

Where in an appeal filed through the jail authorities it appeared that an application for a copy of the judgment of the magistrate was made within the period of limitation but was somehow mislaid and a second application had to be sent after the limitation. *Held*, in the circumstances that the appeal must be treated as filed within time. (*Shah Din, J.*) HIDAYAT *v.* EMPEROR.

3 P. R. Cr, 1915 : 28 I. C. 524 : 16 Cr. L. J. 300 : 191 P. L. R. 1915.

———S. 12—*Laches—"Time requisite for obtaining a copy."*

An appellant required to appear on a certain day to ascertain if copy was ready, failing so to appear, is not entitled to count it, as 'time requisite.' (*Batten, A. J. C.*) LACHMAN *v.* KALYA.

34 I. C. 458 : 12 N. L. R. 66.

———S. 12—*Laches—Time requisite for obtaining copies—How reckoned.*

The time requisite for obtaining copies is the time which an applicant takes to obtain copies using all due diligence either by himself or by an agent. The applicant must (1) present an application at the proper time and place, accompanied by the prescribed fee. (2) He must take delivery of the copies on the appointed day. If an applicant elects to work through an agent he does so at his risk because the time is the same for both the Principal and Agent. No discretionary extensions of the time for obtaining copies of judicial records are permissible. (*Stanyon, A. J. C.*) RAGU *v.* MADHGIA. 26 I. C. 819 : 10 N. L. R. 139.

———S. 12—*Laches—Copy of decree — Application for—Date fixed for attendance to obtain copy—Copy ready before time.*

Under the general rules and Circular Orders of the Calcutta High Court followed in Patna, the copying department notified on the counterfoil of the application for copies the date when the applicant was to attend the office for receiving copies. The copies were as a matter of fact made ready much earlier. *Held*, that the applicant was entitled to a deduction of time up to the date when he was required to attend the office for copies. The period of time spent in obtaining a copy can be enlarged if the delay has been caused not through his fault but by the negligence of the copying department. (*Jwala Prasad, J.*) FOUDA URAON *v.* GANPAT RAM. 1920 Pat. 271 : 57 I. C. 263 : 1 P. L. T. 383.

———S. 12—*Laches.*

Delay in supplying copy stamps not to be deducted. An applicant for copies should deposit the required number of folios and deposit stamps not later than the first day on which the office is open after that on which the number of folios and stamps is notified to him and if he neglects to do so, he is not entitled to deduct the intervening days between the notification and supply of the stamped folios. (*Miller, C. J. and Coutts, J.*) MUSSAMAT BIBI FAKHRUNNISSA *v.* RAMBHANJAN SINGH. 49 I. C. 1000.

———S, 12—*Laches.*

An appellant is entitled to deduct the whole time spent in obtaining copies irrespective of the fact that he supplied less stamps and was called upon to furnish more but delay in furnishing folios after the number of such folios were notified will not entitle him to such indulgence. (*Chamier, C. J., Sharfuddin and Kingsford, JJ.*) RAM ASRAY SINGH *v.* SHEONANDAN SINGH.

1 P. L. J. 573 : 1 P. L. W. 35 : 35 I. C. 868 : 1917 Pat. 21 (F. B.).

LIMITATION ACT (IX OF 1908), S. 12—Leave to appeal to Privy Council.

———S. 12—*Laches—Delay in getting decree copy.*

Where an application for a copy of the decree is refused because the decree not being ready, the delay in obtaining the copy will be excused, though copying charges have not been deposited. (*Pratt, J. C. and Fawcett, A. J C.*) THE MANAGER, INCUMBERED ESTATES IN SINDH *v.* GANGA RAM BACHO MAL. 19 I. C. 671 : 6 S. L. R. 244.

Leave to appeal to Privy Council.

———S. 12, Sch. 1, Art. 179—*Leave to appeal to Privy Council.*

S. 12 of the Act applies to applications for leave to appeal to the Privy Council and hence time required for obtaining a copy of the decree is excluded. (*Richards, C. J. and Rafique, J.*) RAM SARUP *v.* JESWANT RAI 38 All. 82 : 31 I. C. 906 : 13 A. L. J. 1114.

———S: 12—*Leave to appeal to Privy Council—Computation of period.*

In an applicatioh for leave to appeal to the Privy Council, the time requisite for obtaining a copy of the decree is to be excluded. (*Jenkins, C. J. and Woodroffe, J.*) ABDULLA HUSSAIN CHOWDHURY *v.* ANANDA CHANDRA ROY.

42 Cal. 35 : 24 I. C. 273 : 18 C. W. N. 1066.

———S. 12 and Art. 179—*Leave to appeal to Privy Council—Time for obtaining copies of judgment and decree—Exclusion of.*

The time required for obtaining the copies of the judgment and decree of the High Court can be excluded while computing the period of six months during which period an application for leave to appeal to the Privy Council must be presented. S. 12 (2) does apply to applications under O. 45, R. 2, C.P.C. (*Jenkins, C.J. and Chatterji, J.*) EASTERN MORTGAGE AND AGENCY CO., LTD. *v.* PURNA CHANDRA.

15 I. C. 497 (1) : 39 Cal. 510

———Ss. 12 (2) and 5—*Leave to appeal to Privy Council— Period occupied in obtaining copy of decree—Date of decree — Delay of applicant—Sufficient cause—Erroneous decision.*

S. 12 of the Limitation Act, 1908, is applicable to application for leave to appeal to His Majesty in Council and allowance must be made for the period occupied in obtaining a copy of the decree. The applicant is only entitled to be excused for a delay for which he was not himself responsible. 12 A. 461 (F. B.) Rel. There is no rule in the High Court providing for the Judge's signing decrees to note the date on which they sign so that in fact there is no definite record from which the date when a decree signed can be accurately ascertained. An applicant for copies of a High Court's decree could not be allowed to say that he was prevented from filing the application in time by reason of the fact that the decree was

LIMITATION ACT (IX OF 1908), S. 12—Leave to appeal to Privy Council.

not signed. He is not entitled to a deduction of the period which expired between the signing of the judgment and the signing of the decree. 13 C. 104 (F.B.) Dist. But as he was possibly misled by the Full Bench ruling in 13 C. 104 the High Court under S. 5 of the Limitation Act admitted the application. (*Brett and Carnduff, JJ.*) HARISH CHANDRA TIWARI *v.* CHANDPUR CO., LTD.

15 I. C. 59 : 39 Cal. 763

———S. 12 (3) and Art. 179—*Leave to appeal to Privy Council — Time for obtaining copy of judgment—If to be deducted.*

In computing the period of 90 days fixed by Art. 179 of the Lim. Act for applying for leave to appeal to His Majesty in Council, the time for obtaining a copy of the judgment can be deducted. (*Miller, C.J. and Ross, J.*) MAHABIR PRASAD TEWARY *v.* JAMUNA SINGH.

1 P. 429 : 3 P. L. T. 289 : 1922 Pat. 193 : 4 U. P. L. R. (P.) 33 : 1922 P. 255.

———S. 12—*Leave to appeal to Privy Council —Separate appeals—Disposed of by one judgment—Separate petitions for leave.*

Only time actually and necessarily required by the plff. in making active steps to obtain a copy of decree or judgment is excluded in computation. Separate appeals disposed of by one judgment require separate petitions for leave to appeal to His Majesty in Council. (*Miller, C. J. and Adami, J.*) MAHADEO PRASAD SAHU *v.* GAJADHAR PRASAD SAHU. 57 I. C. 312 : 1 P. L. T. 262.

Practice of Patna High Court.

———S 12 (3)—*Practice of Patna High Court —Connected appeals—One copy of the judgment filed—Time for obtaining copies.*

According to the practice of the Patna High Court when several suits are disposed of by one judgment, only one copy of the judgment is required to be filed in appeal to the High Court. Under S. 12 (2) of the Limitation Act the time taken for obtaining a copy of the judgment will be deducted in computing the period of limitation for each of the several analogous appeals. 17 All. 213, Appl. Thus in the computation of the period of limitation in all such cases, the time required for obtaining the copies will be excluded although only one copy is filed. (*Miller, C. J. and Mullick, J.*) BIBI UMATAL RASUL *v.* RAM CHARAN.

58 I. C. 991 : 1 P. L. T. 562.

Review.

———S. 12—*Review— Application for—Limitation.*

S. 12 of the Limitation Act applies to an application for review and the period of limitation does not begin to run until at all events the day on which the decree was signed even though it is unnecessary to attach a copy of the decree to such application. (*Sanderson, C.J. and Mookerjee, J.*) GANGADHAR KARMAKAR *v.* SHEKHARBASINI DASYA.

20 C. W. N. 967 : 35 I. C. 348 : 24 C. L. J. 235.

———S. 12 (2)— *Review — Deduction of time spent in obtaining copies.*

A petitioner for review is entitled under S. 12 of the Limitation Act to deduct the time taken in

LIMITATION ACT (IX OF 1908), S. 12—Separate Copy Application for Decree and Judgment.

obtaining a copy of the judgment on which the review is founded. (*Spencer and Krishnan, JJ.*) CHOKKALINGAM CHETTY *v.* LAXMANAN CHETTY.

38 M. L. J. 224 : (1920) M. W. N. 228 : 55 I. C. 444 : 11 L. W. 217.

———S. 12—*Review—C. P. C., O. 47, R. 3.*

Though no copy of judgment is required to be filed with the review application, the time spent in obtaining a copy of it must be excluded in computing the period of limitation. 17 A. 213 ; 24 C. L. J. 235, Rel. (*Sadasiva Aiyar and Spencer, JJ.*) RAMALINGA ANNAVI *v.* NARAYANA ANNAVI.

42 I. C. 504.

Separate Copy Application for Decree and Judgment.

———S. 12—*Separate copy application for decree and judgment.*

There is no warrant to assume that a party is bound to apply for copies of judgment and decree at the same time. As long as the applications are put in within the appealable time the time occupied in obtaining copies can be deducted separately, the overlapping period not being twice excluded. (*Shah, A. C. J. and Crump, J.*) MACMILLAN AND CO. *v.* COOPER.

25 Bom. L. R. 1309 : 1924 Bom. 185.

———S. 12—*Separate copy applications for decree and judgment – Both periods to be excluded.*

Under S. 12, cls. (2) and (3) the appellant can deduct the time requisite as well for obtaining a copy of the judgment though he has applied for copies of the judgment and decree at different times, both these periods should be excluded, unless the two periods overlap partially or entirely in which case the appellant cannot deduct the same time twice over. (*N.R. Chatterjee and Newbould, JJ.*) RAJANI NATH KAPALI *v.* KALI MOHAN DAS KAPALI.

38 I. C. 66 : 21 C. W. N. 217

———S. 12—*Separate copy applications for decree and judgment—Exclusion of time.*

Deduction of time cannot be had twice for the same cause and although an appellant is entitled to a deduction of the time taken up in obtaining a copy of the judgment as also of the time taken up in obtaining a copy of the decree if the periods overlap partially or entirely the appellant is not entitled to have a deduction of the same time twice over. (*Mookerjee and Carnduff, JJ.*) SUNDER KOER *v.* RAGHUNATH SAHAI. 12 I. C. 677.

———S. 12, (2) and (3)—*Separate copy application for decree and judgment—Exclusion of time—Mode of calculation.*

The appellant is entitled to deduct the time requisite for obtaining a copy of the decree appealed from as well as the time requisite for obtaining a copy of the judgment under S. 12, Cls. (2) and (3) of the Limitation Act respectively and he is not obliged to ask for both copies in the same application. (*Scott-Smith and Marlineau, JJ.*) ALI MOHAMED *v.* NATHU.

54 I. C. 879 : 163 P. R. 1919.

———S. 12—*Separate copy applications for decree and judgment—"Time requisite for obtaining copies."*

LIMITATION ACT (IX OF 1908), S. 12—Separate Copy Application for Decree and Judgment.

Under S. 12 of the Limitation Act an appellant can only deduct such time as was "requisite" for obtaining copies. A person cannot claim deduction of the time spent in obtaining copies of the judgment and decree by separate applications. What time is requisite for this purpose is a question of fact. Where the Divisional Judge has decided that two deductions, *viz.*, one for obtaining the copy of the judgment and another for obtaining copy of the decree of the lower court were not requisite in the particular case and made only one allowance, the question whether he was right or wrong is not a question of law. (*Chevis, J.*) SHER SINGH *v.* PEM RAJ.
100 P. R. 1918 : 48 I. C. 31 : 185 P. W. R. 1918.

——S. 12 (2) and (3)—*Separate copy application for decree and judgment — Time for obtaining copies of judgment and decree—If both can be excluded.*

The appellant can under S. 12, cls. (2) and (3) exclude periods requisite for obtaining both a copy of the decree and a copy of the judgment appealed from so long as they are not counted twice over. (*Spencer and Odgers, JJ.*) VELLAIYAMMAL *v.* KOOLAYANNA.
14 L. W. 269 : 41 M. L. J. 273 : 66 I. C. 23 : (1921) M. W. N. 557.

——S. 12—*Separate copy applications for decree and judgment—Exclusion of time.*

The time occupied in obtaining copy of a judgment ought also to be deducted in addition to the time required for obtaining copy of the decree. 33 M. 256, F. (*Sadasiva Aiyar and Napier, JJ.*) KARNAM NARASIMHULU *v.* SECRETARY OF STATE
17 I. C. 393 : 12 M. L. T. 360.

——S. 12—*Separate copy applications for decree and judgment—Computation, mode of.*

An appellant is entitled to deduct the aggregate period taken in obtaining copies of judgment and decree if they are applied for on different dates provided that both the applications are made before the expiry of the period of limitation fixed for filing the appeal. 42 I. C. 965, Foll. 101 C. 886, Dist. (*Mitra, A. J. C.*) SHEORAM *v.* CHINTOO.
49 I. C. 961.

——S. 12—*Separate copy applications for decree and judgment—Aggregate period—Whether excluded.*

Where two separate applications are filed for copies of the judgment and the decree in a case, each within the period of limitation prescribed by law for appealing, the aggregate period occupied in obtaining copies on both the judgment and the decree is excluded from the period for filing the appeal. 7 N. L. R, 67, Dist (*Drake-Brockman, J. C.*) BAGMAL *v.* FIRM OF JAMNADAS POTDAR.
42 I. C. 965.

——Ss. 12 and 5—*Separate copy applications for decree and judgment.*

The time requisite for obtaining a copy of the decree appealed from does not ordinarily begin till an application for the same is made and the period required for obtaining the copy is excluded. But when first only copy of judgment is asked for and then afterwards, after the usual period of limitation is run out, a copy of the decree is asked for, the period required for that copy cannot be excluded unless sufficient reason is shown. The words "time requisite for obtaining copy" should be strictly construed. (*Drake-Brockman, J. C.*) PARASHRAM *v.* LIKHAN.
10 I. C. 866 : 7 N. L. R. 67.

LIMITATION ACT (IX OF 1908), S. 12—Miscellaneous.

——S. 12 (2)—*Separate copy application for decree and judgment—Exclusion of time.*

An application for copy of a decree was made beyond the period of limitation prescribed for appeal but within the period if the time taken in obtaining copy of the judgment is excluded. An appeal was filed appending the copies so obtained. *Held* that the appeal was filed in time. 8 M. L. J. 148, Ref. (*Kanhaiya Lal, A. J. C.*) DIN DAYAL *v.* RAMESHAR.
18 O. C. 74 : 28 I. C. 366 : 2 O. L. J. 159.

Miscellaneous.

——S. 12—*Time for obtaining decree or order.*

An appeal was filed in time with a copy of the judgment. Before the appealable period was over, an application for formal order was put in and the same was filed as soon as it was obtained,—*Held*, the appeal was within time. (*Kanhaiya Lal, J.*) KEDAR NATH *v.* NANAK.
1924 A. 162.

——S. 12 and Sch 1, Art. 151—*Extension of time for appeal—Practice.*

An extension of the time provided in Art. 151 of the Act cannot be claimed unless an application is made to the Court for a copy of the decree or judgment indicating the intention to appeal, within the period fixed by the Article, 23 B. 442 ; 25 B. 584, Appr. (*Basil Scott, C. J. and Chandavarkar, J.*) NEW PIECE GOODS BAZAAR CO. *v.* JIVABHAI VADILAL.
20 I. C. 537 : 15 Bom. L. R. 681.

——S. 12—*Copies—Deduction of time--Copies delivered to copying agent.*

Held, the copying agent must be taken as an agent of the appellant and delivery of the copies to him must be regarded as delivery to his principal. The appellant was entitled to a deduction of the time till the copies were delivered to the copying agent. (*Broadway, J.*) FAIZ AHMED *v.* KARM ELAHI.
55 I. C. 406.

——S. 12—*Second appeal—Time taken in obtaining copy of first court's judgment.*

An appellant preferring a second appeal is entitled to deduct the time occupied in obtaining a copy of the 1st Court's judgment. (*Pelman, J.*) BHAN SINGH *v.* GOKAL CHAND.
53 I. C. 137.

——S. 12, (2)—*Copies—Deduction of time.*

An appellant is not entitled to deduct time taken to obtain a copy of the judgment to be filed in another connected appeal. (*Sadasiva Iyer and Tyabji, JJ.*) AVUDAI AMMAL *v.* GANAPATHI IYER.
25 I. C. 28.

LIMITATION ACT (IX OF 1908), S. 12.

———S. 12—*Exclusion of time.*

Exclusion of time under S. 12 can be claimed only from the date of the deposit of the copying fee and not from the date of the application accompanied by the deposit. (*Pratt, J.C. and Crouch, A.J.C.*) TOPANDAS *v.* MANAGER OF ENCUMBERED ESTATES. **10 I. C. 210 : 5 S. L. R. 47.**

———S. 13—*Absence from British India—Proof.*

Strict proof of the duration of the deft's absence from British India must be adduced by the plff. (*Krishnaswami Iyer, J.*) PERIYANNA PILLAI *v.* ARASU THEVAN. **9 I. C. 568 : 9 M. L. T. 217.**

———S. 13—*Foreign territory — Territory under temporary military occupation—Basra.*

Basra was not a territory under the administration of the Government of India within the meaning of S. 13 of the Lim. Act. The fact that the troops which took part in the campaign in Mesopotamia were known by the name of the Indian Expeditionary Force, and the despatches relating to its operation were published in the *Gazette of India* is not sufficient to show that Basra was under the administration of the Government of India. The occupation was military occupation for the purpose of proceeding with the expedition and protecting the army on its way onward and securing its safety and support. The territory was, except for those purposes, not under the administration of the Government of India. Consequently a plaintiff is entitled to deduct the time during which the deft. had been absent in Basra. (*Kanhaiya Lal and Sulaiman, JJ.*) FAKHRULLAH KHAN *v.* RAM SARUP.

45 A. 18 : 20 A. L. J. 786 : 1923 A. 64.

———S. 14.

Applicability.
Causes of like nature.
Civil Proceeding.
Computation of Time.
Court.
Defect of Jurisdiction.
Delay after order of return.
Discretion of Court.
Due Diligence.
Good Faith.
Proceeding in Revenue Court.
Prosecution of Proceeding.
Return for want of Pecuniary Jurisdiction.
Time spent in Execution Proceedings.
Time spent in revision.
Unable to Entertain.
Miscellaneous.

Applicability.

———Ss. 14 and 15—*Applicability—Plaintiff defending another suit concerning the same subject-matter—Time occupied cannot be deducted.*

Plaintiff obtained a decree for possession on February 15th, 1913. There was an appeal first to the District Court and then to the High Court which ultimately confirmed the decree on December 10th 1915. He filed his application for execution of this decree on June 28th, 1920. During the interval, however, the defendant filed suit No. 42 of 1916 for a declaration that the plaintiff's decree had been obtained by fraud. That litigation lasted till July 31st, 1920 and ended on the present plaintiff's favour. *Held*, that plaintiff may have been under an honest but mistaken impression that during all this time it would be futile for him to prosecute the application for execution of the decree which was challenged by the suit of 1916. That in a case of this kind it may be desirable that the plaintiff ought to be in a position to deduct the time taken up in defending a litigation of the nature such as in the present case, but that as it was impossible to bring the case within the provisions of the Indian Limitation Act the application was time-barred. (*Shah, Ag. C. J. and Crump, J.*) SWAMI *v.* SHIVAPPA.

25 Bom. L. R. 863 : 1924 Bom. 39.

LIMITATION ACT (IX OF 1908), S. 14—Applicability.

———Ss. 14 and 15—*Applicability—Debt due—Insolvency—Period of pendency o proceedings—Exclusion of time.*

Where after a debt has become due and payable and time has commenced to run against the creditor, the debtor is adjudged insolvent by the order of a High Court cancelled later, if the creditor institutes a suit thereafter against the debtor to recover the debt time during which the insolvency proceedings are pending cannot be deducted in computing the period of limitation. (*Macleod, C.J. and Shah, J.*) SIDHRAJ BHOJRAJ *v.* ALLI HAJI. **47 Bom 244 : 24 Bom. L. R. 509 : 47 B. 244 : 1923 Bom. 38 (2).**

———S. 14—*Applicability—Appeals—Not governed by section.*

S. 14 of the Limitation Act is not applicable to appeals. (*Sharfuddin and Co e, JJ.*) BEN SINGH *v.* BARAHMAN DEO SINGH. **22 C. L J. 66 : 28 I. C. 211 : 19 C. W. N. 473.**

———S. 14—*Applicability—Delay.*

The essential point to be considered in any application under S. 14 of the Act is that the previous proceeding was founded upon the same cause of action as is sought to be enforced in the subsequent suit. The section would not apply when the causes of action in the two suits are entirely distinct. 14 B. 365 approved. (*Mookerjee and Beachcroft, JJ.*) DAUD BAHADUR SINGH *v.* DEO NANDAN PRASAD. **20 I. C. 513: 17 C.L.J 596.**

———S. 14—*Applicability—Proceedings of—Revenue Court.*

The proceedings in a Revenue Court do not fall under S. 14 of the Act so as to extend the period of limitation. (*Shah Din and Beadon, JJ.*) GOBINDA MAL *v.* SANTA. **83 P. R. 1914 : 26 I. C. 441 : 232 P. L. R. 1915.**

———S. 14—*Applicability of—Strict interpretation—Misconception of remedy.*

Where a person misconceived his remedy and instead of proceeding by an application to set aside an execution sale brought a suit which was eventually dismissed, the time taken in prosecuting the suit and an appeal therefrom cannot be deducted under S. 14 of the Lim. Act in computing the period of limitation for an application. 22 A. 248 not foll. ; 23 M. 121 foll. (*Oldfield and Venkatasubba Rao, JJ.*) GANAPATHI MUDALIAR *v.* KRISHNAMA CHARI. **16 L. W. 178 : 31 M. L. T. 185 (H C.) : (1922) M. W. N. 514 : 43 M. L. J. 184 : 1922 Mad. 417.**

LIMITATION ACT (IX OF 1908), S. 14—Applicability.

——— S. 14—*Applicability—Prov. Ins. Act*, S. 36.

S. 14 cannot be invoked to enlarge the period under S. 36 of the Prov. Ins. Act. (*Oldfield and Sadasiva Aiyar, JJ.*) MOHAMMAD MARAIKKAR *v.* OFFICIAL RECEIVER, TINNEVELLY. **5 L. W. 123 : 36 I. C. 828 : (1917) M. W. N. 103.**

———S. 14—*Applicability—Insolvency proceedings.*

The provisions of the Limitation Act are not applicable to proceedings under the Prov. Ins. Act. Therefore the fact that the petition was filed in wrong court not having jurisdiction cannot save limitation under S. 6 of the Prov. Insolv. Act. (*Oldfield and Tyabji, JJ.*) TRASI DEVA RAO *v.* PARAMASHRAYA.
39 Mad. 74 : 27 I. C. 144 : 29 M. L. J. 451.

———S. 14—*Applicability—Collector.*

S. 14 does not apply to a case where the Zamindar sues for possession of lands on the ground that the Collector who during his minority managed the estate treated the lands granted for *Jadha* service as Government property and dealt with them as such. (*Wallis, C.J. and Kumaraswami Sastri, J.*) SURYANARAYANA *v.* SECRETARY OF STATE. **25 I. C. 876 : 1 L. W. 662.**

———S. 14—*Applicability of—Operations when excluded.*

In the case of suit as contemplated by S. 169 of the C. P. Land Rev. Act the period fixed therein cannot be extended by the application of S. 14, S. 29 excludes the operation of S. 14 in such a case. (*Baker, J.C. and Hallifax, A.J.C.*) LAKSHMAN *v.* KESHEO. **6 N. L. R. 205 : 1923 N. 306.**

——— S. 14 — *Applicability—Proceedings in Revenue Courts.*

Time spent in Revenue Courts fruitlessly to eject a tenant cannot be excluded. (*Stuart, J.C.*) DONDO SINGH *v.* SHIV NARAIN SINGH.
36 I. C. 770 : 3 O. L. J. 445.

———S. 14—*Applicability—Parties and cause of action different.*

S. 14, Lim. Act is not applicable if in the prior litigation, the period of the pendency of which is sought to be deducted, the parties and the cause of action were not the same. (*Robinson, C. J. and Heald, J.*) HOOSEIN *v.* ASHA BIBI.
1 Rang. 402 : 1924 R. 123.

———S. 14—*Applicability—Non-joinder—Misjoinder—Meaning.*

For purposes of S 14, there is no distinction between non-joinder and misjoinder though only the latter word alone is used in expl. III. Both are only variations of the same defect. (*Fawcett, J. C. and Raymond, A. J. C.*) IBRAHIM *v.* GHULAM HUSSAIN. **62 I. C. 507: 15 S. L. R. 11.**

Causes of like nature.

———S. 14 (2)—*Causes of a like nature—Proceedings infructuous—Misconception as to law—Deduction of time.*

Where relying upon a decision of the High Court a decree-holder institutes proceedings in a Civil Court for a relief which according to a later decision of the High Court is to be sought in the Revenue Court, the time during which the proceedings were pending in the Civil Court would be deducted under S. 14, cl. (2) of the Act. (*Piggott and Walsh, JJ.*) PARBATI *v.* RAJA SHYAM RIKH. **44 A. 296 : L. R. 3 A. 73 (Rev.): 20 A. L. J. 147 : 1922 All. 74.**

LIMITATION ACT (IX OF 1908), S. 14—Civil Proceedings.

———S. 14—*'Cause of a like nature.'*

An improper joinder of parties or causes of action is not a 'cause of like nature' inasmuch as the court has jurisdiction to entertain the suit but is not able to decide the suit by reason of defect in the form of the suit. (*Reid, C. J.*) ALLAN KHAN *v.* DOST MUHAMMAD. **8 P. R. 1911: 77 P. L. R. 1911: 9 I. C. 680 : 78 P. W. R. 1911.**

———S. 14 (2)—*Cause of a like nature—'Res judicata' is not 'other cause of a like nature.'*

Res judicata does not constitute 'other cause of a like nature' within S. 14, Cl. (2) of the Act. (*Coutts and Ross. JJ.*) BRAJA GOPAL MUKERJI *v.* TARACHAND MARWARI. **2 Pat. L. T. 585 : 3 U. P. L. R. (Pat.) 79 : 63 I. C. 593 : 1921 Pat. 233 : 6 P. L. J. 593.**

———S. 14 (1) (Expl.)—*'Cause of a like nature'—Exclusion of time.*

Where a suit on a promissory-note executed to a firm was dismissed for want of endorsement to the plff. of the note and a second suit was instituted with the necessary requirements. *Held*, that the first suit having failed from a cause not within the knowledge of the plff. and by reason of a rightly technical and legal character, the plff. was entitled to exclude the time spent in it. The words "causes of like nature" include misjoinder of parties and causes of action. 22 A. 248 followed. (*Hartnoll, Offg. C. J. and Ormand, J.*) PO NYAN *v.* MUTHUKARAPAN CHETTY.
14 I. C. 437 : 6 L. B. R. 43.

——— S. 14—*'Cause of a like nature'—Failure to give notice under S. 80, C. P. Code.*

The failure to give notice under S. 80, C. Pt Code is not a 'cause of a like nature' with defec, of jurisdiction within S. 14 of the Act. (*Fawcett. A. J. C.*) MANGHATENAL *v.* T. A. FERNANDEZ.
13 I. C. 260 : 5 S. L. R. 181.

Civil Proceedings.

———S. 14, Cl. (2)—*Civil Proceeding—Partially wrong.*

Marten, J.—The two separate courts of Poona and Vadagaon have a common Judge; from the 1st to the 20th of each month the Judge sits at Haveli, Poona; from 21st to 25th he sits at Vadagaon and from the 25th to 30th of the month he sits at Lonavli a part of the Vadgaon Court. The plaintiff filed his Darkhast No. 284 of 1913 on the 10th April 1912. He filed it at Vadgaon quite correctly but as the Judge was then sitting at Haveli, the Court Officials apparently sent the papers to the Judge at Haveli and he on the 11th April 1912, gave a notice to the defendants returnable on the 14th or 15th April 1911 in the Haveli Court. The defendants did not appear and on the 15th April the Judge sitting in the Haveli Court made the warrant for possession absolute. Defendants appealed on the 26th February 1913. This order was set aside on the ground that Judge had no jurisdiction to direct the defendant to appear in the Haveli Court nor to make the order against

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them in that Court. It was accordingly directed that the Court of first instance should take up the Darkhast at the point where it was when the order for issuing the warrant of possession was passed. The plaintiff appealed to the High Court but on 3rd Feb. 1915 his appeal was dismissed. On 29th June 1915 Darkhast was brought on again, that the plaintiff was present but as the Judge was away the proceedings were adjourned to the next day. The plaintiff this time was not present in Court and accordingly the Darkhast was struck off. The next Darkhast he filed was, on the 7th June 1916. *Held*, that it was not time barred (*Marten and Pratt, JJ.*) PANDY WALAD DAGADU MAHAR *v.* JAMNADAS CHOT MALMARWADI. 1923 Bom. 218.

——S. 14—*Civil proceedings—Nature of.*

To obtain the benefit of S. 14, the proceeding, the time spent in prosecuting which is to be excluded, must be between the contesting parties. (*Mookerjee, A. C. J. and Fletcher, J.*) JANKINATH SINGHA RAI *v.* BEJOYCHAND MAHATAP.
60 I. C. 698: 33 C. L. J 366

——S. 14—*"Civil proceeding" — Revision petition to the High Court.*

A revision petition under S. 115, C. P. Code, is a "Civil proceeding" within S. 14. The expression 'Court of appeal' in S. 14 means a court which has the power to bring under review the decision of an inferior court, irrespective of the extent of jurisdiction that the superior court may possess in reviewing the decision of the inferior court. Where a plaint was returned for presentation to a proper court and the plff. having unsuccessfully appealed against that order moved the High Court in revision and the High Court dismissed the revision petition. *Held*, that plff should deduct the time during which the revision petition in the High Court was pending. (*Sundara Aiyar and Sadasiva Aiyar, JJ.*) VENKATRAGAYYA APPA ROW *v.* MURALA SRIRAMULU. 17 I. C. 593

——S. 14—*Civil proceedings—Meaning.*

One of several plffs. applied for execution of a decree passed in favour of them all; the application was disallowed in second appeal. Thereupon all the plffs. applied for execution. *Held*, the application was not barred as the plffs. had a right under S. 14, to exclude time occupied in good faith in prosecuting the previous application. 'Another civil proceeding' does not mean one in another Court. (*Fawcett, J. C. and Raymond, A. J. C.*) IBRAHIM *v.* GHULAM HUSSAIN.
62 I. C. 507: 15 S. L. R. 11.

Computation of Time.

——Ss. 14 and 4—*Computation of time—Suit filed in wrong court—Holiday.*

A plff. though entitled to deduct time of actual pendency in a wrong court, cannot exclude any extra day on the ground that it is a holiday (*Richards, C. J. and Rafique, J.*) MAKUND RAM *v.* RAMRAJ. 35 I. C. 292: 14 A. L. J. 310.

——S. 14—*Computation of time—Order directing return of plaint—Period between date of order and date of returning plaint—Exclusion.*

There is no reason why the period between the date of the order directing return of plaint and the date of returning the plaint should not be excluded under S. 14 of the Limitation Act. (*Macleod, C. J. and Shah, J.*) NAGINDAS KAPURCHAND *v.* MAGANLAL PANACHAND.
23 Bom. L. R. 1023: 1922 Bom. 160.

LIMITATION ACT (IX OF 1908), S. 14—Computation of Time.

——S. 14, Expl. 1—*Computation of time—Plaint returned—When proceedings ended.*

Where a plaint is returned and costs ordered, the proceedings terminate on the day of the return and not on the day when the costs are assessed. (*Chatterjee and Newbould, JJ.*) GANGA CHARAN DAS *v.* AKHIL CHANDRA SAHA.
35 I. C. 595: 24 C. L. J. 355.

——S. 14—*Computation of time—Date of institution—What is.*

The date of institution of a suit is the date on which the plaint is filed in the proper court excluding for the purpose of reckoning limitation, only the periods excluded under that section. (*Brett and Richardson, JJ.*) HARIDAS ROY *v.* SARAT CHANDRA DEY. 18 I. C. 121: 17 C. W. N. 515.

——S. 14—*Computation of time—Suit filed in wrong court—Deduction of holiday—Permissibility of.*

A suit was filed on 10-9-1918 the day next to the last day allowed, as the last day happened to be a holiday. The plaint however was presented in a wrong court and was returned on 23-1-1920 for presentation to the proper court. The plaint was re-presented on 26-1-1920 as the two previous days were holidays. On an objection raised by the defendant that the suit was barred *held* that the holiday prior to 10-9-1918 could not be excluded under S. 4 of the Lim. Act as the suit was filed in a wrong court. S. 4 applies only if the holiday follows the period that can be excluded under S. 14 but not if it precedes such period. 45 B. 443 dissented from. 8 L. W. 256: 36 M. 131: 44 M 817 foll. (*Oldfield and Venkatasubba Rao, JJ.*) GOVINDASAMI PADAYACHI *v.* SAMI PADAYACHI.
16 L. W. 911 : 31 M. L. T. 258: 43 M. L. J. 579 : (1923) M. W. N. 42 : (1923) M. 114 (2).

——Ss. 14, 4—*Computation of time—Expiry of time during Court's vacation—Institution in wrong Court on reopening day—Representation after return in the proper Court—Exclusion of time.*

Where limitation for a suit expired during the Court's vacation and the plaint was presented in a wrong court on the re-opening day after its return was presented to present it to the proper Court the next day: *held*, that the suit was barred as S. 4 cannot be taken advantage of because under that section account could not be taken of the closing and the reopening of any other Court than that in which the suit was rightly dismissed, and as S. 14 cannot revive a claim which became time-barred by the plffs.' failure to institute the suit in the proper Court on the reopening of the Court. When a Court is invested with both original and small cause jurisdiction, a suit instituted on the small cause side, for the purpose of S. 4 of the Act, be regarded as a suit instituted in the court having jurisdiction to hear original suits.

LIMITATION ACT (IX OF 1908), S. 14—Computation of Time.

(*Spencer and Ramesam, JJ.*) UMMATHU *v.* PATHUMMA. 44 Mad. 817 : 13 L. W. 631 : (1921) M. W. N. 442 : 63 I. C. 924 : 41 M. L. J. 84.

——S 14—*Computation of time—Suit withdrawn with liberty—Limitation for fresh suit.*

Where a suit is withdrawn with liberty to bring a fresh suit the limitation for the latter nevertheless runs from the date of the original cause of action. 29 B. 219 ; 20 C. 205, F ll. (*Coutts-Trotter and Phillips, JJ.*) ARUNACHELLAM CHETTIAR *v.* LAKSHAMANA AIYAR.
39 Mad. 936 : 2 L. W. 1002 : 18 M. L. T. 385 : (1915) M. W. N. 850 : 31 I. C. 234 : 29 M. L. J. 569.

——S. 14—*Computation of time — Plaint ordered to be presented in proper court.*

Proceedings instituted wrongly in an incompetent court are not legally valid and capable of being continued in another court. Where the plaint instituted in a wrong court is re-presented in the proper court the proceedings in the right court are not a continuation of the proceedings in the wrong court for purposes of limitation. 21 M. L. J. 1000, Foll ; 3 W. R. 20 ; 22 M. 494 ; 16 W. R. 47, Dist.; 24 W. R. 260, Ref. (*Benson and Sundara Aiyar, JJ.*) SESHAGIRI ROW *v.* VELAYUDHAM PILLAY. 36 Mad. 482 : (1912) M. W. N. 457 : 14 I. C. 167 : 22 M. L. J. 377.

——S. 14—*Computation of time—Suit in wrong Court—Plaint returned for presentation to proper Court—Exclusion of time.*

Where a plaint, presented in a wrong Court, is returned to be presented to the proper Court the plaintiff is entitled to exclude the time between the date of institution in the wrong court and the date of the return of the plaint. (*Wazir Hasan, A. J. C.*) BAHADURKHAN *v.* ABDUL SAHEB.
24 O. C. 137 : 61 I. C. 203 : 8 O. L. J. 76.

Court.

——S. 14—*Court—Exclusion of time—Proceeding before Collector—Bombay Hereditary Offices Act (III of 1874), S. 11.*

An application to the Collector to take action under S 11 A, of the Bom. Hereditary Offices Act, 1874, is not a proceeding in a court within S. 14 of the Limitation Act ; and the time taken up in prosecuting such an application cannot be excluded under S. 14. (*Heaton and Hayward, JJ.*) LAXMAN *v.* KESHAV. 20 Bom. L. R. 918 : 48 I. C. 467 : 43 Bom 201.

——S. 14—*Court—Berar Court not a Court within the section.*

A Berar Court is not a Court contemplated by S. 14 of the Limitation Act. (*Batten, J. C. and Prideaux, A. J. C.*) RAJANNA *v.* NARAYAN.
1923 Nag. 321.

Defect of Jurisdiction.

——S. 14—"*Defect of jurisdiction*"—*Scope.*

The words "defect of jurisdiction" in S. 14 of the Limitation Act mean a defect of jurisdiction peculiar to the court in which proceedings were taken ; and do not cover such mistakes as the presentation and prosecution of an appeal which

LIMITATION ACT (IX OF 1908), S. 14—Discretion of Court.

did not lie at all, in any court. 63 P. R. 1886 ; 55 P. R. 1893 ; 34 P. R. 1898, Foll. (*Johnstone, J.*) MOTI SINGH *v* MAGHAR. 22 P. R. 1912 : 163 P. W. R. 1911 : 11 I. C. 880 : 244 P. L. R. 1911.

——S. 14—*Defect of jurisdiction—Order made not without jurisdiction but passed too late—Time occupied cannot be excluded.*

The rejection of an application that a certain decretal debt be entered in the schedule of creditors of the judgment-debtor during insolvency proceedings for want of affidavit is not due to any defect of jurisdiction and S. 14 has no application. (*Mullick and Bucknill, J.*) AKHAJ KHALIFA *v.* RAMLAL MARWARI. 1923 Pat. 271 : 1924 P. 40.

Delay after order of return.

——S. 14—*Delay after order of return—Plaint returned three days after order for return—Exclusion of time.*

Where a plaint was actually returned for presentation to the proper court only three days after the order directing the plaint to be returned was signed. *Held*, that for purposes of S. 14 of the Limitation Act the date on which the plaint was actually returned must be taken to be the date on which the order was promulgated. 24 W. R. Dist. A. W N. (1887) 302 Foll. (*Newbould and Ray, JJ.*) MOHENDER PRASAD SINGH *v.* NANDA PROSAD SINGH. 20 I. C. 183 : 17 C. W. N. 1043.

——S. 14—*Delay after order of return—Exclusion of.*

For the purposes of limitation, an applicant for re-presentation is entitled to deduct the time spent in the Dt. Munsif's Court after order of return. (*Krishnaswami Aiyar and Ayling, JJ.*) YERENI ANJAYYA *v.* VAPPULAPATI BAPAYA.
9 I. C. 157 : 9 M. L. T. 374.

Discretion of Court.

——S. 14—*Discretion of Court.*

In regard to the admission of appeals the court may in its discretion apply S. 14 though it is not made expressly applicable to appeals. (*Mukerjee and Panton, JJ.*) KUMUDINI RAY *v.* KAMALAKANT SEN. 35 C. L. J. 106 : 1922 Cal. 247.

——S. 14—*Discretion of Court—Time within which plaint must be represented.*

The only period which the plff. is entitled to exclude under S. 14 of the Limitation Act, is the period during which the suit was actually pending on the file of the Dt. Munsif's Court and Munsif had no power to alter or enlarge the period within which the suit ought to have been filed by fixing a period of one month for presenting the plaint to the proper court. (*Chitty and Walmsley, JJ.*) RAMGOPAL MANDAL *v.* KUMAR KAMALA RANJAN ROI. 53 I. C. 955 : 30 C. L. J 522.

——S. 14—*Discretion of Court—Suit filed on last day, returned as under-valued.*

There is no provision in the Limitation Act or in the C. P. Code for allowing further time to refile a plaint. (*Chatterjee and Newbould, JJ.*) GANGA CHANDRA DAS *v.* AKHIL CHANDRA SAHA.
35 I. C. 595 : 24 C. L. J. 355.

LIMITATION ACT (IX OF 1908), S. 14—Due Diligence.

Due Diligence.

——S. 14—*Due diligence.*

For claiming exclusion of time during which a former proceeding was pending applicant must prove first that he had prosecuted the former proceeding with due diligence and secondly that the former Court had been unable to entertain it from defect of jurisdiction or other cause of a like nature. Where, therefore, each of the two plffs. in a suit came into a court originally to sue separately in respect of a contract which gave them a joint but not several right and their error was pointed out to them and they were given every opportunity of rectifying it, but they elected to proceed with their suits as then framed and by the time they were dismissed on the ground of non-joinder the period of limitation had expired. *Held*, that the plffs. had not shown that degree of diligence which alone could entitle them to the benefit of S. 14. 19 P. R. 1888, Foll. (*Rattigan and Shadi Lal, JJ.*) KALU *v.* MAHRU.

41 P. R. 1916 : 32 I. C. 497 : 33 P. W. R. 1916.

——S. 14—*Due diligence—Litigant prosecuting—Proceedings after taking wrong legal advice.*

A litigant who takes action without taking legal advice or consults only a practitioner of inferior standing cannot be said to have exercised due diligence within S. 14 of the Act. But when he consults a leader of the Bar and follows his advice he cannot be said not to have exercised due diligence merely because the court holds that the advice was wrong. (*Rattigan and Chevis, JJ.*) MUSAMMAT HUSAINA *v.* MUSSAMMAT SAHIB NUR.

254 P. L. R. 1913 : 20 I. C. 3 : 159 P. W. R. 1913.

——S. 14—*Due diligence—Error which could have been avoided with due care—Party acting on the advice of pleader.*

The fact that a litigant acted on the advice of a pleader will not improve his position if the error made is so patent that it would have been avoided with the exercise of due care. (*Daniels, A. J. C.*) RAM SAHI *v.* IMDAD HUSAIN.

6 O. L. J. 294 : 51 I. C. 590 : 22 O. C. 39.

——S. 14 and Art. 11—*Due diligence of pleader—Duties of court.*

A party suing under O 21, R 63, C.P Code, to establish his title cannot deduct the time spent in appeal or revision from the claim owing to the mistaken advice of his pleader, and is bound by the advocate's negligence S. 5 leaves it to the discretion of an appellate court to exclude the time whereas S. 14 obliges a court to exclude time if it finds a certain state of facts. (*Fox and Hartnoll, JJ.*) MG. TUN U *v.* PALANIAPPA CHETTY.

8 Bur. L. T, 93 : 27 I. C. 829 : 8 L. B. R. 146.

Good Faith.

——S. 14—*Good faith—Deduction of time—Ejectment— Suit by some co-owners other co-owner's made defts. setting up their own title—Decree in their favour by first court set aside on appeal—Fresh suit.*

Some of the co-sharers in a *Dayabhaga* joint family sued for a declaration that purchase in the

LIMITATION ACT (IX OF 1908), S. 14—Good faith.

name of a widow was a *benami* for themselves and the other co-sharers whom they joined as defts. The latter associated themselves with the plaintiffs and asked for an adjudication of their right to a one-third share and a distinct issue in respect of their claim was without objection raised and decided and the court made a decree on 20th April 1903 in favour of both co-sharer defts. But on appeal the decree so far as it was in favour of the co-sharer defts. was set aside on 22nd February 1904 on the ground that not being plff. they could not be given any relief in that suit; and the co-sharer defts. thereupon on 14th November 1904 instituted a fresh suit for recovery of their fresh share. *Held*, that though limitation began to run against them from Jan. 1892 it remained in suspense whilst they were *bona fide* litigating their rights in the previous suit and this suit was therefore not time-barred. 12 C. W. N. 326 ; 35 Cal. 109. Affirmed. (*Mr. Ameer Ali.*) SRIMATHI NRITHYAMANI DASSI *v.* LAKHUN CHUNDER SEN.

43 Cal. 660 : 20 C. W. N. 522 : 24 C. L. J. 1 : (1916) 1 M. W. N. 332 : 20 M. L. T. 10 : 3 L. W. 471 : 18 Bom L. R. 418 : 33 I. C. 452 : 30 M. L. J. 529 (P. C.).

——S. 14—*Good faith*—Bona fide *prosecution of suit.*

A suit was filed in the S. C. Court for contribution. The plaint was returned for presentation to the proper Court but plff. filed a revision in the High Court against the order of return. The revision was dismissed 3 months after the order of dismissal plff. applied for the return of the document which was returned 15 days after the application on which day the plaint was presented in the proper court. *Held*, on the above facts that it was not a valid presentation and the interval of time between the application for return of the plaint and the date of representation should not be excluded since the plff. did not prosecute the suit with due diligence as required by S. 14 of the Limitation Act and she waited for three months to apply for a return of the plaint. (*Tudball and Abdul Raoof, JJ.*) HAMIDA BIBI *v.* FATIMA BIBI.

45 I. C. 991 : 16 A. L. J. 429.

——S. 14—*Good faith—Suit in wrong Court.*

Where plff. acted in good faith and neither the court nor the deft. objected to the cognizance of the suit he is entitled to the benefit of S. 14. (*Ryves, J.*) FORD AND MACDONALD, LTD. *v* MEYER.

40 I. C. 447 : 15 A. L. J. 573.

——S. 14—*Good faith—Time spent in review.*

Before the appellant can claim the deduction of the period occupied in review proceedings, it must be found that the proceedings in the review were reasonably presented and in good faith. (*N. R, Chatterjee and Panton, JJ.*) THAKAMANI DASI *v.* PITAMBAR BHUIYA.

68 I.C. 957.

——S. 14—*Good faith*—" *Due diligence* ".

Held, on the facts that the plff. acted in good faith and with due diligence up to 22nd July 1913 when the plaint was returned for presentation to the proper court but after the date he did not, and failed to satisfy the requirements of S. 14 of the

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Limitation Act. (*Shadi Lal, J.*) RADHA KISHEN *v.* THE FIRM OF LADHA MAL RAM CHAND.
51 P. L. R. 1915 : 28 I. C. 347 : 54 P. W. R. 1915.

———S. 14—*Good faith.*

Where a wrong allegation was made by the plaintiff in the plaint that accounts had been made and he declined to amend it although it was brought to his notice, *held* that his conduct was not in good faith under S. 14. (*Hallifax, A. J. C.*) SHEONARAYAN *v.* RAM PRASAD. 1923 Nag. 241.

———S. 14—*Good faith—Mixed question of fact and law.*

Whether a party acted in good faith in S. 14 is a mixed question of law and fact. When a plaint is presented in wrong court on the last day and returned, was later filed in right Court, *held* the plff. is not entitled to benefit under the section as the error was not one that would be committed by a reasonable and prudent man acting in good faith with due diligence. A Court can grant the indulgence allowed by S. 14 only where the error is one that might be committed by a reasonable and prudent man exercising due diligence and acting in good faith. Mere absence of fraud is no ground for exemption. Where plff. filed a suit in a Sub-Judge's Court, which should have been filed in a Munsif's Court on the last day of limitation, and the plaint on being returned was filed in the latter Court, held that the plff. cannot get the benefit of S. 14. (*Stuart, A. J. C.*) RAM JAG PANDEY *v.* BHASWANT DAT PANDEY. 3 O. L. J. 387 : 36 I. C. 702 : 19 O. C. 367.

———S. 14—*Good faith—Under-valuation not wanton.*

Where there is nothing to show a deliberate or reckless under-valuation S. 14 will apply. (*Kanhaiya Lal, A. J. C.*) RAM DAYAL *v.* SARJA PRASAD. 25 I. C. 403 : 17 O. C. 210.

———S. 14—*Good faith—Form of appeal mistaken by reason of under-valuation in plaint.*

Where a deft. has been misled in selecting form of appeal owing to a wrong valuation in the plaint, he is entitled to the benefit of S. 14 of the Limitation Act. (*Stuart and Kanhaiya Lal, A. J. Cs.*) RAHATULLAH KHAN *v.* IBADULLAH KHAN. 18 I. C. 92.

———S. 14—*Good faith—Reckless valuation—Effect of.*

If a plff. relies on S. 14, he must prove that he prosecuted the previous proceeding in good faith (*i. e.*) with due care and attention. So when a person recklessly undervalues his claim and prosecutes the suit in a wrong Court, consequently he is not entitled to the benefit of S. 14 (*Lindsay and Rattigan, JJ.*) RUKAIYA *v.* MUBARAK ALI. 14 I. C. 86.

———Ss. 14 (2) and 15 (1) and Art. 18—*Good faith.*

The appellant obtained a mortgage decree against respondents on 15th Oct, 1900 for sale; the decree was made absolute on 12th August 1902. The mortgaged property was sold on the 25th June 1906, and a portion of the decree was realized. On 24th July 1906 one of the Respondents instituted a suit for a declaration that the decree was not binding on him. The suit which was dismissed by the first Court was decreed by the first appellate court on 30th April 1907. This decree was reversed by the second appeal on 8th July 1908. On 8th December 1909, the present application for execution was made. On objection as to limitation it was urged that the mortgaged decree was in abeyance from 30th April 1907 to 8th July 1908 and that time should be excluded. *Held*, that the appellant could not claim the benefit of S. 14 (2) or 15 (1) as it was not a case of *bona fide* proceedings in a wrong court or of the staying of a decree by injunction. Even on general principles of equity the time could not be excluded. (*Evans, A. J. C.*) AMIR CHAND *v.* NARSING NARAIN. 10 I.C. 21.

LIMITATION ACT (IX OF 1908), S. 14—Prosecution of Proceeding.

———S. 14—*Good faith—Under-valuation.*

S. 14 of the Limitation Act had no application where it was found as a fact that the plff. was not acting in good faith in undervaluing the property and instituting the suit and prosecuting it in the Munsif's Court. (*Miller, C. J. and Foster, J.*) BIBI SIRALI *v.* GOLAB KOER.
53 I. C. 892 (2) : 1919 Pat. 409.

———S. 14—*Good faith—Meaning of.*

What amounts to good faith is to be decided on the facts of each case. (*Pratt, J. C. and Crouch, A. J. C.*) GEHUMAL *v.* MANAGER, INCUMBERED ESTATES IN SIND. 32 I. C. 616 : 9 S. L. R. 167.

Proceeding in Revenue Court.

———S. 14—*Proceeding in Revenue Court.*

The plff. is entitled to a deduction of time from the date of institution of the suit wrongly in the Revenue Court to the date on which the plaint was returned for re-presentation. (*Munro, J.*) GOPISETTI NARAINSWAMI NAIDU *v.* TALLAPRAGADA VENKATASUBRAYUDU. 9 M. L. T. 315 : 9 I. C. 642 : (1911) 1 M. W. N. 233.

Prosecution of Proceeding.

———S. 14—*Prosecution of proceeding.*

The time during which a Court holds up a case while it is discovering that it ought to have been presented in another Court, is time which ought to be excluded in computing the period of limitation which is applicable as provided by S. 14 of the Limitation Act. It cannot be said that a plff. is not prosecuting a suit with due diligence in a court of first instance when the delay in caused by the action of the court itself. (*Walsh, J.*) MT. MARYAM BIBI *v.* RAM DAS. 1922 All. 404.

———Ss. 14, and 15—*Prosecution of proceeding—Insolvency—Period of pendency of proceedings—Exclusion of time.*

Where after a debt has become due and payable and time has begun to run against the creditor, the debtor is adjudged insolvent, but the order cancelled later if the creditor institutes a suit thereafter against the debtor to recover the debt the time during which the insolvency proceedings are pending cannot be deducted in computing the period of limitation. (*Macleod, C. J. and Shah, J.*) SIDHRAJ BHOJRAJ *v.* ALLI HAJI.
24 Bom. L. R. 509 : 1923 Bom. 33.

LIMITATION ACT (IX OF 1908), S. 14—Prosecution of Proceeding.

——S. 14—*Prosecution of proceeding—Plaint presented on last day in wrong Court—Return of, for presenting in proper Court—Time.*

Where a plaint is returned for presentation to the proper Court, the suit is within time if it is presented to the proper Court on the same day on which it is actually returned by the wrong Court. (*Macleod, C. J and Fawcett, J.*) BASWANAPPA SHIVRUDRAPPA *v.* KRISHNA DAS GOVERDHAN DAS.
45 Bom. 443 : 59 I. C. 743: 22 Bom. L. R. 1387.

——S. 14—*Prosecution of proceeding.*

A mere routine order registering an application for review does not constitute a *bona fide* prosecution of a civil litigation. (*Holmwood and Walmsley, JJ.*) SHUDAKAR RAUT *v* SADASIV JHATAP SINGH. 31 I. C. 705 : 19 C. W. N. 1113.

——S. 14 and Art. 178—*Prosecution of proceeding—Resisting a suit.*

An applicant to file an award could not be allowed to deduct the time spent by him as deft. in setting up the award in bar of a prior suit instituted by the plff. 41 P. R. 1916 ; 1 W. R. 455 ; 38 All 85 Ref. ; 35 Cal. 209. Dist (*Scott-Smith, J*) NAZIMKHAN *v.* ALAMKHAN. 52 I. C. 561 : 89 P. R. 1919.

——S. 14—*Prosecution of proceeding—Time spent in prior litigation—Exclusion of*—Bona fide *claim by defendants.*

S. 14 of the Limitation Act should be liberally construed, the principle being that limitation would remain in suspense while the plaintiff was *bona fide* litigating on his rights in a Court of Justice. 30 M. L. J. 529, 541 (P. C.) relied on. In a suit by some of the trustees of a mosque for removal of its manager and for the appointment of a receiver the manager (defendant) claimed that the suit was unsustainable and that instead of his being indebted to the mosque, the mosque owed him considerable sums of money which he had spent out of his pocket. An issue was raised as to the amount payable to or by the manager and the trial court found on evidence that the manager was entitled to be paid a sum of Rs. 3,302 from the mosque and directed the receiver appointed in the suit to pay up the said sum. On appeal the appellate court concurred with the trial judge as regards the liability of the mosque to pay the manager but dismissed the suit on the ground that all the trustees had not been impleaded as parties The manager thereupon brought a suit for recovery of the amount found to be due to him deducting the amounts actually paid by the receiver, appointed in the previous suit. The trustees pleaded that the suit was barred by limitation, *Held*, that the manager was entitled to exclusion of the time spent in the prior suit and in appeal therefrom under S. 14 of the Limitation Act and that his suit was in time. (*Schwabe, C. J. and Wallace, J.*) THURUTHEELAKATH KUNHI KUTTI ALI *v.* KUNHAMMAD.
44 M. L. J. 179 : 1923 Mad. 347.

——S. 14—*Prosecution of proceeding.*

Time taken in prosecuting the first suit against Hindu manager can be excluded from the limitation period when the first suit is dismissed and the second suit is brought against the manager and also the subsequently born members. (*Miller, C. J. and Bucknill, J.*) HARI PRASAD SINHA *v.* SOURENDRA MOHAN SINHA.
3 P. L. T. 709 : 1 P. 506 : 1922 P. 450.

LIMITATION ACT (IX OF 1908), S. 14—Return for want of pecuniary jurisdiction.

——Ss. 14 and 15—*Prosecution of proceeding—Suit to recover debt—Period of— Insolvency of debtor, if can be excluded.*

A creditor taking no part in the insolvency proceedings of his debtor, cannot, in a suit to recover his debt, exclude the period of insolvency of the debtor from the limitation period, either under S. 14 or S 15 of the Act. (*Maung Kin, J.*) GREENBURGH *v.* XAVIER. 64 I. C. 50 : 13 Bur. L. T. 197.

——Ss. 14 and 15—*Prosecution of proceeding—Resisting an application in insolvency.*

In computing the period of limitation for a suit the plff. is entitled to exclude the time during which he has been opposing the deft.'s application for insolvency. (*Young, J.*) N. K. M. M. CHETTY *v.* LUTCHMAN CHETTY. 52 I. C. 934 : 12 Bur L. T. 83.

——S. 14, Expln. III—*Prosecution of proceeding—Execution proceedings—Non-joinder of party—Rejection of application.*

An application by one of several plaintiffs decree-holders to execute the decree without impleading the other decree-holders as parties was allowed by the lower courts but dismissed by the High Court. On a subsequent application for execution properly presented, *held*, that the time occupied in prosecuting the earlier application in good faith should be allowed under S. 14 of the Limitation Act. S. 14 of the Limitation Act does not require the Court to make an absolute distinction between cases of misjoinder and non-joinder in regard to S. 14 of the Limitation Act. They are on the same footing in so far as in consequence thereof the Court is barred from deciding a suit or application on its merits and in this respect they are on the same footing as a defect affecting jurisdiction. (*Fawcett, J. C. and Raymond, A. J. C.*) SETH IBRAHIM *v.* FIRM OF GHULAM HUSAIN.
15 S. L. R. 11.

Return for want of pecuniary jurisdiction.

——S. 14—*Return for want of pecuniary jurisdiction—Wrong valuation.*

Time spent in prosecuting an infructuous appeal, due to wrong valuation may be deducted in computing the period of limitation. (*Shadi Lal and Wilberforce, JJ.*) BHAWANI SHANKER *v.* INDUSTRIAL BANK, LTD., LUDHIANA.
4 P. W. R. 1919 : 31 P. L. R. 1919 : 50 I. C. 645 : 70 P. R. 1919.

——S. 14 — *Return for want of pecuniary jurisdiction—If delay could be excused.*

Where plaint was returned for want of pecuniary jurisdiction, a delay caused owing to change in law must for purposes of limitation be taken to have been instituted on the day of presentation in the wrong Court. (*Johnstone, C. J.*) AZAM ALI *v.* AKHTAR HUSSAIN.
33 I. C. 808 : 18 P. W. R. 1916.

LIMITATION ACT (IX OF 1908), S. 14—Time spent in Execution Proceedings.

Time spent in Execution Proceedings.

——— S 14—*Time spent in execution proceedings — Execution application disposed of on merits—If time can be excluded.*

The time during which an execution application was pending in the first court and in appeal, and which was disposed of on the merits cannot be deducted for purpose of bringing in a subsequent application within the period of limitation. (*Mookerjee and Panton, JJ.*) RAJANI BANDHU CHATTERJI *v.* KALI PRASANNA CHATTERJI.
74 I. C. 279.

——— S. 14 and Art. 36—*Time spent in execution proceedings—Extension of time.*

Under Ss. 5 and 6 of the Malabar Com. for Ten. Impr. Act, the Court executing the decree in a suit brought for ejectment of a tenant has jurisdiction to award compensation to the decree-holder for damages done to his property after passing of the decree. In a suit brought by a decree-holder against his judgment-debtors to recover compensation for damages done by them after and before the decree-holder's entry upon the property, the plff. is not entitled under S. 14 of the Limitation Act to a deduction of the time spent by him in prosecuting execution proceedings to obtain the same relief though the Executing Court held that it had no jurisdiction to grant that relief. (*Sadasiva Aiyar and Spencer, JJ.*) ABDULLA KOYA *v.* KALLUMPURATH KANARAN.
6 L. W. 696 : 43 I. C. 6 :
(1917) M. W. N 822 : 33 M. L. J. 463.

——— S. 14—*Time spent in execution proceedings.*

Time spent in prosecuting the first application must be excluded under S. 14 of the Limitation Act from limitation. (*Coutts and Sultan Ahmad, JJ.*) KARIMULLA SHAH *v.* MOHAMMAD RAZA.
58 I. C. 40 : 1 P. L. T. 612

——— Ss. 14 and 19—*Time spent in execution proceedings — Execution — Injunction against limitation—Acknowledgment.*

The period during which an injunction not to execute a decree is in force will be deducted from the period of limitation for execution of the decree. (*Mullick and Atkinson, JJ.*) BULUK CHAND LAL *v.* NATHUNI SINGH.
38 I. C. 85 : 2 P. L. J. 24.

Time spent in revision.

——— S. 14—*Time spent in revision.*

Time cannot be deducted under S. 14 in favour of a person occupied in prosecuting a revision petition in the High Court when he had another remedy open to him. 6 W. R. 1908, Dist. (*Ayling and Hannay, JJ.*) BAIJNATH LALA *v.* RAMADOSS.
39 Mad. 62 : 16 M. L. T. 509 :
26 I. C. 219 : 1 L. W. 952 : 27 M. L. J. 640.

——— S. 14—*Time spent in revision—Plaint returned for presentation to proper court.*

Where a person, whose plaint was returned for presentation to proper court, filed an appeal against the order which was also dismissed and thereupon filed a revision petition to the High Court he could deduct the time spent up to the

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disposal of the appeal but not the time spent in revision. (*Ayling, J.*) VENKATA RANGAYA *v.* MURELA VENKAYA. 14 I. C. 259.

Unable to Entertain.

——— S. 14—*'Unable to entertain'.*

'Unable to entertain' is not equivalent to 'unable to decide. 34 P. R. 1898, 28 M. 338; 35 C. 728, Foll.; 22 A. 248, Dist. (*Reid, C. J.*) ALLAN KHAN *v.* DOST MUHAMMAD.
8 P R. 1911 : 77 P. L R. 1911 :
9 I. C. 680 : 78 P. W. R. 1911.

Miscellaneous.

——— S. 14—*Execution application— Prosecution of suit.*

In counting the period of limitation for an application for refund of excessive moneys levied in execution of a decree the time taken up by the deft. in prosecuting a suit for the purpose in another Court, under an error of law, ought to be deducted under S 14 of the Indian Limitation Act. (*Shah and Hayward, JJ.*) GANPATRAO *v.* ANAND RAO. 44 Bom. 97 :
55 I. C. 967 : 22 Bom. L. R. 238.

——— S. 14—*Ejectment—Arrears of rent.*

The limitation for a suit to recover arrears of rent accruing due whilst a suit by landlord for ejectment of the tenant on the ground of forfeiture was pending is not extended by reason of the continuation of the ejectment suit. (*Chatterjee and Walmsley, JJ.*) ASWINI KUMAR NAG *v.* MADHU SUDAN PAL KUNDU. 39 I. C. 865.

——— S. 14—*Time required for taking copy of judgment.*

The judgment of the lower appellate court was pronounced on the 24th June 1918 and the appeal to High Court was preferred on the 14th May 1919. An application for certificate was presented on the 31st July 1918 and though it was rejected on the following day the appellant succeeded in obtaining from the Chief Court an order remitting the question of the grant of certificate to the lower Appellate Court who upon reconsideration granted the certificate on the 7th May, 1919. *Held*, in the circumstances the application for certificate must be deemed to have been pending during the period from 31st July 1918 to 7th May 1919 and this period should be excluded computing the period prescribed for filing the appeal. (*Shadi Lal, C. J. and Brasher, J.*) MT. CHHOTO *v.* MT. SONA DEVI. 1923 Lah. 11 (2).

——— S. 14—*Prosecuting one suit for several claims—Deduction of time.*

Several portions of a property were sold to separate vendees on different occasions but the pre-emptor in good faith sued all the vendees jointly, the suit was eventually restricted to only one of the sales. *Held*, that S 14 applied in computing the period of limitation for the other suits subsequently instituted in respect of rest of the property. (*Shah Din, J.*) AHMAD *v.* SULTAN. 26 P. W. R. 1915 :
27 I, C. 927 : 87 P. L. R. 1915.

——— S. 14—*Wrong remedy—Time spent in prosecution of.*

LIMITATION ACT (IX OF 1908), S. 14—Miscellaneous.

The plaintiffs applied to continue a prior suit but their application was dismissad as the suit was held to have abated and the dismissal was confirmed on appeal. The plffs then brought a suit in their own right. *Held*, that in computing the limitation for the second suit plff. could deduct the interval between the date of their application to be allowed to continue the previous suit and the date of the High Court's order in second appeal dismissing that suit. (*Ayling and Krishnan, JJ.*) ARUNACHALAM PILLAI *v.* VELLAYA PILLAI. 25 M. L. T. 360 : 62 I. C. 465 : 9 L. W. 345.

——— S. 14—*Execution—Dismissal of application for transfer—Subsequent application for attachment—Appeal and second appeal.*

The time for preferring an appeal and a second appeal against an order refusing the transfer of a decree should not be deducted so as to save limitation for an execution application for the abatement of the judgment-debtor's properties. The second application being more than 3 years from the date of the first application, is barred by time. S 14 of the Limitation Act is not applicable to such a case since there is no *bona fide* mistake in pursuing a wrong remedy or no want of jurisdiction in the court in dealing with the first application. (*Abdur Rahim and Oldfield, JJ.*) VIDHAYA THEERTHA SWAMIGAL *v.* VENKATARAMA IYER. 45 I. C. 460: 33 M. L. J. 682.

——— S. 14—*Appeal—Deduction of time—Dismissal for default.*

An appeal under the Letters Patent filed against the order by a single Judge dismissing an application for restoration of an appeal cannot be treated as an appeal against the order dismissing the appeal if it is beyond time. The question of deduction of time on account of the mistake of the appellant under S. 14 will arise when the latter appeal is filed. (*Oldfield and Tyabji, JJ.*) SRINIVASA RANGA ROW *v.* RAJA OF KARVETNAGAR. 28 M. L. J. 67 : 28 I. C 64 : (1915) M. W. N. 101.

——— S. 14—*Suit for arrears of rent—Pendency of suit for possession.*

The pendency of a suit for possession does not save limitation for the rent suit. (*Sankaran Nair and Seshagiri Aiyar, JJ.*) BHAVARAJU VENKATA SUBBA RAO *v.* YENUNULA MALLU DORA. 23 I. C. 942 : 1 L. W. 438.

——— S. 14 and Art. 74—*Suit to set aside award—Waiver—Estoppel.*

Under an award in a business dispute the defts. passed an instalment bond in plff.'s favour. The bond, besides providing for monthly instalments, provided for the recovery of principal and interest on default of three instalments. The deft. paid the instalment till May. The instalments for May and June were returned by the plff. In August he sued to set aside the award which was upheld on 26th February 1908 and by the appellate Court by 19th January 1910. During the appeal the plff.'s vakil applied for the decree of unpaid instalments but it was rejected. After the appeal the plff. sued for the recovery of instalments due. Deft. pleaded Art. 75 as bar. *Held*, there was

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no default on the part of the deft., that there was waiver on the part of the plff. and that the plff. could not deduct under S. 14 the period of previous litigation and also that the defts. could not plead the bar of limitation and that the plffs. were entitled to interest on the instalments due as there was no true legal tender of those instalments. (*Wallis, J.*) CHOTA KRISHNASWAMY CHETTY *v.* SITARAM CHETTY. (1912) M.W N. 967: 17 I. C. 513 : 23 M.L.J. 335.

——— S. 15.

Applicability.
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Applicability.

——— S. 15—*Applicability—Royal Proclamation.*

Effect of S. 15 of the Limitation Act relates to injunctions or orders of Court, and not to Royal proclamations which prevent the institution of suits by alien enemies. (*Choudhuri, J.*) DEUTCH ASIATISCHE BANK *v.* HIRALAL PURDHAN & SONS. 47 I. C. 122.

——— S. 15 (2)—*Applicability—Suits under S. 104-A of the B. T. Act.*

S. 15, Sub-S. (2) of the Limitation Act does not extend the period of six months mentioned in S. 104 A of the B. T. Act. 19 C. W. N. 31 and 34 All. 496, Dist. (*Mookerjee and Walmsley, JJ.*) SECRETARY OF STATE *v.* GANGADHAR NANDA. 45 Cal. 934 : 45 I.C. 228 : 27 C L. J. 374.

——— S. 15—*Applicability of —Limitation prescribed by S. 48, C. P. Code.*

S. 48, C. P. Code contains an unqualified prohibition against execution of decrees more than 12 years old and this section is not controlled by S. 15 of the Limitation Act. 10 L. W. 156; 40 A. 198; 42 A. 118, Ref.; 54 I. C. 279 foll. Consequently in computing the period of 12 years under S. 48, C. P. Code it is not open to the decree-holder to deduct the time during which execution was stayed. S. 15 of the Lim. Act speaks only of the computation of periods of limitation with reference to the periods prescribed in the schedule to the Act. (*Spencer and Ramesam, JJ.*) MINOR SUBBARAYAN *v.* MINOR NATARAJAN. 43 M. L. J. 168 : 44 Mad. 785 : 16 L. W. 68 : 31 M. L. T. 140 (H.C.) : 1922 M. W. N. 424 : 1922 Mad. 268.

——— S. 15 (1)—*Applicability—Property under Court of Wards—Execution.*

A mortgagee holding a decree against an estate under the Court of Wards' management, is not entitled to the benefit of exclusion of the period of management by the Court of Wards when the decree itself was not transferred to the Collector for execution. (*Oldfield and Tyabji, JJ.*) VENKATAPERUMAL *v.* PARAYAG DASSJEE. 29 I. C. 556.

——— S. 15—*Applicability — Estate under Court of Wards—Madras Court of Wards Act, S. 45.*

LIMITATION ACT (IX OF 1903), S. 15—Injunction.

The provisions of S. 45 of the Madras Court of Wards Act allowing deduction of time during which the estate was under the Court's management will apply when decrees have been transferred to the Collector for execution, and an amendment of it in execution petition cannot be permitted to revive a barred claim. 36 M. 378 : 35 W. R. 820 : 26 M. L. J. 83, Foll. ; 37 M. 186, Diss. Whether the section of the Limitation Act relating to exclusion of time spent in necessary acts, etc., govern also the 12 years period prescribed by S. 48, C. P. Code. (*Wallis and Sadasiva Aiyar, JJ.*) KUMARA VENKATA PERUMAL RAJA BAHADUR *v.* VELAYUDA REDDI. 24 I. C. 195 : 27 M. L. J. 25.

Injunction.

———S. 15 (1)—*Injunction—Execution.*

Where a decree-holder is prevented by an injunction from executing his decree he must apply for execution within three years from the termination of the injunction period, to save his decree from being barred. (*Tudball and Sulaiman, JJ.*) BALWANT SINGH *v.* BUDH SINGH. 56 I. C. 1006 : 18 A. L. J. 642.

———S. 15 and Art. 182—*Injunction—Exclusion of time—Pendency of claim suit.*

Where in execution of a decree a claim was put in by two persons and was disallowed and the latter brought a regular suit to set aside the attachment and an injunction was obtained and an order was passed releasing the property from attachment, it was held that an application by the decree-holder for execution within three years of the date when the attachment was raised was not barred by limitation since time began to run from that date and that time should in any case be deducted during which the injunction staying sale was in force. (*Knox and Griffin, JJ.*) GHULAM NASIRUDDIN *v.* HARDEO PRASAD. 34 All. 436 : 14 I. C. 343 : 9 A. L. J. 540.

———S. 15—*Injunction—Insolvency—Effect—Revival of execution—Execution against firm.*

A decree-holder applied on 30-8-1912 for execution of a decree against the firm B. and J. On 1-10 1912 an order striking the case off the list was passed on the ground that the firm had been adjudicated an insolvent. On 3-4-1916 it was decided in the insolvency proceedings that B alone was the proprietor of the firm. Thereafter on 19-4-1917 they made an application for execution against J. *Held*, that the application for execution dated 19-4-1917 was not barred by limitation under Art. 182 as the application of 13-8-1912 was to be considered against all the persons who were mentioned in the decree as members of the firm. Even if the application dated 19-4 1917 be regarded as new, the order of 1-10-1912 amounts to an injunction within S. 15 of the Limitation Act. The period from 1-10-1912 to 3-4-1916, is therefore to be excluded. 55 P. L. R. 1912, Dist. (*Shadi Lal, J.*) FIRM OF TARA CHAND *v.* JUGAL KISHORE. 51 I. C. 64 : 17 P. W. R. 1919.

———S. 15 (1)—*Injunction—If includes attachment.*

The words "injunction or order" in S. 15 of the Limitation Act do not include "attachment."

LIMITATION ACT (IX OF 1903), S. 15—Stay of Execution.

(*Oldfield and Seshagiri Aiyar, JJ.*) RANGASWAMI CHETTY *v* THANGAVELU CHETTY. 42 Mad. 637 : 10 L. W. 333 : 26 M. L. T. 147 : 50 I. C. 380 : (1919) M. W. N. 448.

———S. 15 (1)—*Injunction—No order of—Exclusion of time.*

A party cannot claim to exclude under S. 15 in his favour the time during which no injunction was in force against it. Case-law discussed. 27 M. 143 P. C. Ref. (*Seshagiri Aiyar and Kumaraswami Sastri, JJ.*) DORAISWAMI REDDI *v.* VENKATACHELLA PILLAI. 26 I. C. 267 : 27 M.L.J. 734.

Notice.

———S. 15 (2)—*Notice—C. P. Code, S. 80.*

When notice to Government is compulsory under S. 80, C. P. C. the period of two months should be excluded in computing the period of limitation prescribed for the suit against Government. (*Johnstone, C. J. and Shah Din, J.*) N. W. RAILWAY *v.* RAMDHAN MALSHIBLAL. 42 P. W. R. 1917: 38 I. C. 600: 52 P. R. 1917.

———S. 15 (2)—*Notice—Suit against private person—Joinder of Secretary of State—Limitation.*

Where a plff. under a mistake of law or fact conceives that he has a cause of action against the Secretary of State and impleads him as a party along with a private individual he shall not be entitled to invoke S. 15 of the Limitation Act and to extend the period of limitation ordinarily allowed against the private person by two months. (*Stuart, J.*) LADDI PRASAD *v.* NIZAMUD-DIN KHAN. 22 O. C. 342: 54 I. C. 535 : 2 U. P. L. R. (J. C.) 25.

———S. 15 (2)—*Notice—Single suit against several defendants—Notice under S. 77 of the Railways Act to one deft.*

Where a plff. brings a suit against three railways one of which is owned by the Secretary of State he is entitled to deduct the period of 2 months' notice given to the Secretary of State. If in a single suit against several defendants the plff. is entitled to a deduction of time as against one deft. he is entitled to a deduction against all the defendants under S. 15 (2) of the Lim Act. (*Coutts and Adami, JJ.*) B AND N. W. RAILWAY CO. *v.* RAM SARUP LAL CHAUDHURY 3 P. L. T. 643: 4 U. P. L. R. (Pat.) 66: 1922 Pat. 254 : 1922 P. 549.

Stay of Execution.

———S 15 (1)—*Stay of execution—Order granting time to judgment-debtor—If operates as.*

An order granting time to the judgment-debtor for the payment of the decree-amount is not an order staying execution within S 15. "Prescribed" in S. 15 refers to periods prescribed by the Act and has no application to the provisions of S. 48 of the C. P. Code. (*Richards, C.J. and Banerjee, J.*) JURAWAN *v.* MAHABIR DUBE. 40 All. 198 : 44 I. C. 24: 16 A. L. J. 71.

———S. 15 (1)—*Stay of execution—Execution of decree in part—Exclusion of time.*

Where on appeal an order staying the execution of a decree was obtained, the decree-holder was entitled under S. 15 (1) to exclude the period of stay in computing time for an another execution application. The fact that the execution

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order related only to a part of the decree is immaterial (*Heaton and Shah, JJ.*) BAI UJAM *v* BAI RUKHMANI. 38 Bom. 153: 15 Bom. L. R. 936 : 21 I. C. 713.

——S. 15 and Art. 182—*Stay of execution—Suit to set aside decree—Injunction—Subsequent application for execution.*

An application for execution of a final decree in a mortgage suit was made on 16-11-1908 and a sale was held on 3-5-1909 in which the decree-holder was the purchaser. The sale was set aside on 14-2 1911 at the instance of the judgment debtor. On 18 3-1913 a second application for execution was made but as the judgment-debtor's son had instituted a suit and obtained an injunction restraining the decree-holder from selling his share of the property, the execution court stayed the entire proceedings. The suit was decreed on 23-5 1915 and the decree-holder applied on 12-1 1917 for execution. *Held*, that the application of 18-3-1913 made after the setting aside of the execution sale was one to revive and continue the earlier application and was not barred by limitation. As regards the third application, the decree-holder could under S.15 of the Lim. Act, deduct the time between the date when the order for stay was made and the date when it ceased to be operative. (*Mookerjee and Panton, JJ.*) JIRA BIBI *v.* MAJIRUDDIN CHOWDHURY. 61 I. C. 849 : 35 C. L. J. 135.

——S. 15 (1)—*Stay of execution.*

S. 15 (1) of the Act contemplates the stay of execution of a decree either by injunction or by order. Where execution of a decree had been stayed partly by injunction and partly by an order in execution, *held*, the decree-holder was entitled to deduct the time during which the injunction and order continued, the date on which the injunction was issued and the order made and the date on which the injunction and the order ceased to be operative. (*Mookerjee and Panton, JJ.*) GOVINDA NATH *v.* BASIRUDDIN. 64 I. C. 594 : 34 C. L. J. 163.

——S. 15 and Art. 182—*Stay of execution—Execution application—Case struck off—Suspension of limitation.*

Where the final decree in a mortgage suit was set as de against some of the owners of the equity of redemption and the case was ordered to be retried, the decree holder's application for execution against the other defts. was struck off till the liability of the defts. against whom the decree had been set aside, was finally settled, the execution of the decree is thus stayed until the liability is determined. (*Fletcher and Huda, JJ.*) SATISH MOHINI DEBYA *v.* PABNA BANK, LTD. 47 I. C. 907.

——S. 15 (1)—*Stay of execution—Attachment—Before judgment—If operates as.*

An attachment before judgment is not an injunction or order staying execution within the meaning of S. 15 of the Limitation Act whether the subject-matter of attachment is decree or any other property. (*Fletcher and, Richardson, JJ.*) MUNSUR ALI *v.* ABHOYA CHARAN DAS. 40 I. C. 816 : 21 C. W. N. 1147.

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——S. 15 (1)—*Stay of execution—Adjournment of execution application, if operates as.*

In order to apply S. 15 a party must point out the injunction or order staying the execution of the decree, the dates of its issue and withdrawal. The section does not apply where the hearing of an application is adjourned for some time as the judgment-debtor objected to the execution. (*Fletcher and Newbould, JJ.*) THAKAMOYI DASI *v.* NADIAR CHAND PALBAL. 36 I. C. 939.

——S. 15 (1)—*Stay of execution—Attachment of decree, if operates as—Limitation—C. P. Code, O. 21, R. 53.*

An attachment of a decree under O. 21, R. 53 C. P. Code operates as a stay of execution of the decree by order of Court and that the time during which it was under attachment should be deducted in computing the period of limitation for execution. (*Chitty and Walmsley, JJ.*) KIRANSHASHI DEBI *v.* CHANDRIKA PRASAD SINGH. 30 I. C. 587.

——S 15 and Sch I, Arts. 181 and 182—*Stay of execution—Mortgage decree against three persons - Stay order on application by one under Chota Nagpur Encumbered Estates Act—Fresh application for execution after stay order withdrawn.*

Where an application for execution of a mortgage decree against A, B and C was dismissed by reason of an order staying the proceedings, issued by the Commissioner on an application therefor by A under the Chota Nagpur Encumbered Estates Act, a fresh application for execution after the withdrawal of the stay order must be deemed to be one for the revival and continuance of the previous application and is governed by Art. 181 of the Limitation Act. Where the mortgaged property was to be sold substantially as the property of A and it would have been futile for the decree-holder to proceed against B and C while the order of stay of execution against A was in force, the decree-holder is as against B and C entitled to a deduction, under S. 15 of the Limitation Act, of the period during which the stay order was in force. 27 A. 334 (P.C.); 23 C 397; 30 C 407; 28 M. 50, Rel. (*Richardson and Newbould, JJ.*) LAL GOBIND NATH *v.* BHIKAR SAHU. 20 I. C. 489.

——Ss. 15 (1)—*Stay of execution— Insolvency proceedings, if operates as.*

The pendency of an insolvency proceedings at the instance of the judgment-debtor will not arrest the running of time as against the decree-holder seeking execution unless the proceedings are stayed by the Insolvency Court or Executing Court. (*Rattigan, J.*) RAM DAS *v.* KANSHI RAM. 80 P. W. R. 1912 : 14 I. C. 335 : 155 P L R 1912.

——S. 15 and Art. 182, Expl. 1—*Stay of execution—Joint decree—Stay against one.*

In case of joint decree against several judgment-debtors if execution is stayed against one of them the period of stay shall be excluded in computing time against the rest of the judgment-debtors. (*Abdur Rahim and Odgers, JJ.*) CHINNA VELLAYAN *v.* MUTHAYYA CHETTY. 13 L. W. 59: 61 I. C. 901 : 29 M. L. T. 57.

LIMITATION ACT (IX OF 1908), S. 15—Stay of execution.

——— S. 15 (1)—*Stay of execution—Due to decree-holder—Exclusion of time.*

Where the stay of a sale in execution is due entirely to the decree holder, such stay cannot be regarded as a legal stoppage of the execution proceedings so as to entitle the decree-holder to the benefit of S. 15 of the Limitation Act. (*Jwala Prasad and Adami, JJ.*) MAHARAJA KESHO PRASAD SINGH BAHADUR *v.* HARBANS LAL.
53 I. C. 85 : 1920 Pat. 109.

———S. 15 and Art. 182—*Stay of execution—Order permitting execution on security—Deduction of time during which order was in force.*

Pending appeal to the Privy Council, the High Court made an order allowing the decree-holder to execute the decree on furnishing security within one month. The decree-holder was unable to find the required security. There upon execution could not proceed and the Privy Council eventually dismissed the appeal for default. *Held*, that the order of the High Court, whatever its form, did in fact stay the execution of the decree, prevented him from executing the decree unconditionally as he was entitled to do. As the condition could not be performed, the effect was to stay the execution altogether. The time during which the order was in force could be deducted in reckoning the period of limitation for filing the execution petition. (*Miller, C. J. and Foster, J.*) SATDEO NARAIN *v.* RADHEY KUAR. 5 P. L. J. 39 : 53 I. C. 9 : 1919 Pat. 434.

———S. 15 and Art. 182—*Stay of execution—Insolvency proceedings—Absence of protection order—Time does not stop.*

The pendency of an insolvency proceedings under the Pres. Towns Ins. Act does not in the absence of a protection under S. 15 of the Act bar the remedy of the decree-holder to execute his decree by the arrest of the judgment-debtor. The limitation for the execution of a decree, therefore continues to run against a decree-holder during the pendency of an insolvency proceedings. (*Mullick and Thornhill, JJ.*) SHEO SARAN RAM *v.* BASUDEO PRASAD SAHU.
47 I. C. 798 : 1918 P. 357.

——— S. 15 (1)—*Stay of execution—Decree accepted as security for costs of appeal—If operates as.*

Plff. appealed to the Privy Council and offered as security for respondent's costs in that appeal a decree which he had obtained against the latter in another suit. *Held*, that the acceptance of the decree as security did not amount to an order by the Court that execution of the decree should not proceed pending the disposal of the appeal to the Privy Council. The period between the dismissal of the suit by the High Court and the date on which the application for execution of the decree was filed could not be excluded under S. 15 of the Limitation Act. (*Chamier, C.J. and Chapman, J.*) MIDNAPUR ZEMINDARI CO. *v.* THE DEPUTY COMMISSIONER OF MANBHUM.
44 I. C. 570 : 3 P. L. J. 132.

——— S. 15 (1) and Art. 181—*Stay of execution.*

Where there was nothing to prevent the decree-holder from prosecuting the execution such as an order staying further execution, the decree-holder is not entitled to deduct the time spent in proceedings started by the judgment-debtor. (*Chamier, C. J. and Sharfuddin, J.*) MOHESH RAM TEWARY *v.* MUSSAMAT LACHMAN KUER.
42 I. C. 811 : 1917 Pat. 58.

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———S. 15 (1)—*Stay of execution—Partial—Execution of time.*

A partial stay of execution in respect of a particular property against which execution is sought amounts to a stay of execution within the meaning of S. 15 of the Limitation Act so that in computing the period of limitation prescribed for an application for execution of a decree the time during which the execution of the decree has been partially stayed should be deducted. (*Heald, J.*) NACHIAPPA CHETTY *v.* MAUNG PE.
46 I. C. 399 : 3 U. B. R. (1918) 73.

Stay of Suit.

——— S. 15 (1)—*Stay of suit—Ejectment suit—If suspends rent suit.*

During the pendency of a suit for ejectment the right to sue for rent for the period of suit continues and the limitation for a suit for the rent is not suspended by the ejectment suit. 11 W. R (P. C.) 5 Dist. 9 C. 255 (P.C.), Foll. (*Newbould and Panton, JJ.*) NAGENDRA NATH SEN *v.* SADHU RAM MANDAL. 57 I. C. 992 : 48 Cal. 65.

———S. 15—*Stay of suit—Order staying further proceedings—Mortgage suit—Preliminary decree—Appointment of receiver.*

Where pending an appeal from the preliminary decree in a mortgage suit, a receiver is appointed with direction to pay the mortgagee the interest due on his mortgage, the order of the appellate court is one in effect staying further proceedings and the period during which it was in force should be excluded in calculating the time for applying for a final decree. (*Das and Adami, JJ.*) CHHOTEY NARAIN SINGH *v.* KEDAR NATH SINGH. 3 P. L. T. 565 : 1922 P. 201 : 1 P. 435 : 1922 Pat. 342.

Miscellaneous.

———S. 15 (1) and Art. 182 (5)—*Agreement not to execute—Running of time.*

An agreement not to arrest the judgment-debtor is not binding on the decree-holder or judgment-debtor especially where it had been broken by the decree-holder and it would not save the period of limitation from running against him. (*Tudball and Rafique, JJ.*) IBRAHIMJI *v.* HASANUDDIN KHAN. 28 I. C. 381 : 13 A. L. J. 305.

———S. 15—*Pendency of insolvency proceedings.*

Period of pendency of insolvency proceedings cannot be deducted when the question of limitation arises in a suit by a creditor for sum due. (*Macleod, Kt., C.J. and Shah, J.*) SEDHRAJ BHOJRAJ *v.* ALLI HAJI. 24 Bom. L. R. 509 : 47 B. 244 : 1923 B. 33.

———S. 15 (1) and Arts. 181 and 182—*Execution—Limitation, suspension of.*

Where no obstacle, actual or resulting, is imposed upon the execution of a decree by the

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Executing Court or by a Court before which an appeal is pending or by the Court before which a suit or appeal to contest the validity of the decree or the order passed in execution, is awaiting trial, there is nothing to stop the running of limitation either under Art. 181 or under Art. 182. (*Kanhaiya Lal, A. J. C.*) KALKA SINGH *v.* GUR SARAL LAL. 54 I. C. 426 : 6 O. L. J. 656.

——S. 15 (1) — *Execution — Application in continuation of a former application — When valid.*

An application *prima facie* barred could be deemed as in continuation of a former application only if the decree-holder shows that he has not been remiss. 17 C. L J. 125, Dist. (*Chamier, C. J. and Sharfuddin, J.*) MAHADEO PRASAD SAHU *v.* RAMCHANDRA NARAYAN SINGH. 35 I. C. 579.

——S. 16 and Arts. 137, 138, 144—*Applicability of—Auction purchaser obtaining symbolical possession, but kept out of actual possession—Suit for possession—Limitation.*

Where Art. 144 of the Limitation Act applies, no deduction of time under S. 16 can be allowed either in law or under the general principles of equity. An auction sale was confirmed on 13—9—1902 and symbolical possession obtained on 12—1—1904. An application was made to set aside the sale on 21—6—1905, but was dismissed on 8—4—1906. A suit for possession was instituted on 11—7—1914 but the contesting defendants were added as parties only on 27—3—1916. *Held*, (1) the sale became absolute on 13—9—1902 when the sale was confirmed and not on 8—4—1906 on the dismissal of the application for setting aside the sale, as the confirmation of a sale cannot be kept in abeyance when proceedings are not taken to set it aside before confirmation; (2) Art, 137 is not applicable to the case, as the judgment-debtor was in possession at the date of sale; (3) Nor would Art. 138 govern, as it evidently refers to a case where the purchaser has not obtained delivery of possession: even if it applies, the suit is barred even after deducting the period during which the application to set aside the sale was pending ; (4) the proper provision applicable is Art. 144 and from the date symbolical possession was delivered the possession of the judgment-debtor was adverse to the purchaser. (*Chatterjee and Panton, JJ.*) BROJENDRA KUMAR ROY CHOWDHURY *v.* ASUTOSH ROY. 26 C. W. N. 364 : 1923 Cal. 282 (2).

——S. 16—*Proceeding—If applies to suits as well as applications.*

The word 'proceeding' in the section is comprehensive and includes a suit as well as an application. (*Per Mookerjee, J.*)—Limitation does not run against an auction purchaser during the time the land is unoccupied, as possession vests in him as the rightful owner, as soon as the judgment-debtor has vacated it. (*Sanderson, C. J. and Mookerjee, J.*) PROMOTHANATH ROY *v.* KISHORILAL SAHU. 21 C. W. N. 304 : 38 I. C. 547 : 25 C. L. J. 133.

——S. 17—*Capability to sue—Executor — Accrual of right— Probate and Administration Act (V of 1881), S. 4.*

LIMITATION ACT (IX OF 1908), S. 18—Construction.

The right of an executor to sue begins from the date of the death of the testator. (*Wallis, J.*) BALAKRISHNUDU *v.* NARAYANASWAMY CHETTY. 24 I. C. 652 : 37 Mad. 175.

——S. 17 and Art. 124—*Capability to sue—Trespasser of temple properties—Vacancy of trusteeship—Adverse possession.*

Limitation will not run where there is no person competent to sue and a trespasser of the temple properties cannot be said to be in adverse possession till some person is appointed as trustee. (*Sundara Aiyar and Sadasiva Aiyar, JJ.*) PALANIYANDI MALAVARAYAN *v.* VADAMALAI OCDAYAN. 18 I. C. 373.

——S. 17 (1) and (2)—*Capability to sue—Executor and administrator—Accrual of right to sue.*

The executor of a will capable of probate in Br. India is a legal representative capable of instituting a suit within S. 17 (1) from the date of the testator's death and not only from the date when he obtains probate. The title and authority of the executor are derived from the will and not from the probate. An administrator on the other hand derives his title solely under his grant, and cannot, therefore, sue an administrator before he gets his grant, *Quaere* :—As to an executor who renounces probate, the cause of action arises in favour of the estate of a deceased person at or after his death (1) if there be an executor, time will begin to run at once, even though probate has not been obtained; (2) if there be no executor, time runs only from the actual grant of letters of administration. (*Lord Parker.*) SOONA MAYANA KENA ROONA MAYAPPA CHETTY *v.* SOONA NAVENA SUPPRAMANIAN CHETTY. 20 C. W. N. 833: (1916) 1 M. W. N. 455 : 18 Bom L. R. 642: 85 L. J. P. C. 179: 43 I. A. 113: (1916) 1 A. C. 113: 35 I. C. 323 : 114 L. T. (1002) (P. C.).

——S. 18.

Applicability.
Construction of.
Execution sale.
Fraud.
Knowledge of fraud.
Knowledge of right.
Non-transferable holding.

Applicability.

——S. 18 and Art. 147—*Applicability—Suit to set aside order under S. 145, Cr. P. Code.*

S. 18 and Art. 147 apply to a suit brought to set aside the order of the Magistrate under S. 145, Cr. P. Code. (*Benson and Krishnaswami Aiyar, JJ.*) GANGADHARAM AIYAR *v.* SANKARAPPA NAIDU. 12 Cr. L. J. 47 : 9 M. L. T. 91 : 9 I. C. 385.

Construction.

——S. 18—*Construction of—'Against any person'.*

The words "against any person" should be understood to follow the words "a suit" in the beginning of the section. A sold his land to B, M being the real purchaser. K who had a right to pre-empt brought a suit for pre-emption within one year of the knowledge of M's rights, but after one year from the sale to B. *Held*, that the

LIMITATION ACT (IX OF 1908), S. 18—Execution sale.

suit was within time and that time began to run from the knowledge of the fraud (*Reid C. J.*) ISMAIL *v.* BOJI. 29 P. R 1911 : 186 P. W. R. 1911 : 10 I. C. 114 : 156 P. L. R. 1911.

Execution sale.

——S. 18—*Execution sale— Setting aside Limitation—Fraud.*

Where owing to the fraud of the decree-holder or other parties certain irregularities in the conduct of a sale are concealed from the knowledge of the judgment-debtor, the latter is entitled to apply for setting aside the sale in spite of confirmation and the time for the application is to be computed from the date when the fraud comes to the knowledge of the applicant. 17 C. 769 : 14 C. 681, Ref. (*Mears, C. J. and Banerjee, J.*) SHEO RAM KOERI *v.* IKRAMUNNISSA BIBI. 45 A. 316 : 21 A. L. J. 176 : L. R. 4 A. 129 : 1923 A. 282 (2).

——S, 18—*Execution sale—Setting aside of —Fraud subsequent to sale, if to be proved.*

In order to avail himself of S 18, the judgment-debtor need not prove fraud subsequent to execution sale. The right to have execution sale set aside accrues the very moment the sale takes place, and if the judgment-debtor was, by means of fraud, kept from the knowledge of the sale, he was necessarily kept from the knowledge of his right to have the sale set aside and S. 18 of the Act will apply to such a case. (*Mookerjee and Beachcroft, JJ.*) JOTINDRA MOHUN ROY *v.* BROJENDRA KUMAR. 24 I. C. 249 : 19 C. W. N. 553.

——Ss. 18 and Art. 166—*Execution sale— Setting aside—Limitation.*

When a sale is confirmed it becomes absolute under the Code : but it can be challenged by a person interested, who is able to satisfy the Court that the confirmation of the sale ought not to have been made either because of fraud or irregularity : and the petitioner can bring his case within S. 18 of the Limitation Act. (*Mookerjee and Beachcroft, JJ.*) NILMONI SINGH *v.* BRINDA DASYA. 16 I. C. 436.

Fraud.

——S. 18—*Fraud—Onus of proof.*

The onus is on the person committing the fraud to prove that the person injured thereby has had clear and definite knowledge of the fact constituting the fraud at a time too remote to allow him to seek the assistance of the Court. 17 B. 341 (P. C.) Ref. to. (*Mookerjee and Walmsley JJ.*) RAM KENKAR TEWARI *v.* STHITI RAW PANJA. 46 I. C. 221 : 27 C. L. J. 528.

——S. 18—*Fraud—Antecedent to cause of action—Effect.*

There can be no inflexible rule of law that fraud antecedent to an execution sale necessarily indicates fraud subsequent to the sale. It is also clear that fraud antecedent to the sale may have an important bearing on the question whether there was fraud subsequent to the sale, sufficient

LIMITATION ACT (IX OF 1908), S. 18—Fraud.

for the purpose of S. 18. (*Mookerjee and Beachcroft, JJ.*) TOOKOOMUNI DASI *v.* DWARKA NATH. 17 C. W. N. 478 : 17 I C. 972 : 16 C. L J 581.

——S. 18—*Fraud—Ignorance of right.*

Generally mere ignorance of a plaintiff of his right to sue would not prevent time from running against him ; it is only when such ignorance has been brought about by the fraud of his opponent that S. 18 of the Limitation Act can be applied in his favour. To constitute fraud within S. 18, it is not enough that the right to sue should be merely unknown to the plff. but there must have been some intentional imposition or some deliberate concealment of facts by which the ignorance of the plff. was brought about. 8 W. R. 23; 19 W. R. 269, Rel. (*Mookerjee and Beachcroft, JJ.*) LOKENATH RUTH *v.* CHINTAMONI TRIPATHI. 16 I. C. 547.

——S 18—*Fraud— Mis-statement of value of property in execution petition—Fraudulent concealment.*

To make S. 18 applicable to an application to set aside an execution sale, the fraud need not be subsequent to the sale for a fraud is a continuing influence and until that influence ends, it retains its power of mischief 36 C. 654 : 17 B 341, Ref. Fraud is not to be lightly charged or lightly found. The mis-statement in an execution petition of the value of the property assuming it to be a fraud, does notconstitute such fraudulent concealment as is necessary to save limitation. Even if the non-publication of the sale proclamation in the mofussil exposed the sale to attack, to bring the case within S. 18 of the Act, it must be shown that the judgment debtor was by means of fraud of which the decree-holder was guilty or to which he was accessory, kept from the knowledge of his right. (*Jenkins, C. J and Chatterjee, J.*) NARAYAN SAHU *v.* DAMODAR DAS. 16 I. C. 464 : 16 C. W. N. 894.

——S. 18—*Fraud— Antecedent to cause of action—Applicability of section.*

S. 18 of the Limitation Act applies only to such cases of fraud as amount to concealment and is intended to keep from the injured party the knowledge of his wrong or of its remedy ; it is however doubtful if the section applies to a case in which the fraud was antecedent to the accrual of the right. (*Coxe and Teunon, JJ.*) KISHORI DASI *v.* MUKUND LAL. 11 I. C 295 : 15 C. W. N. 965.

——S. 18—*Fraud—Plea of*—Ex parte *decree.*

For getting benefit of S. 18 in setting aside an *ex parte* decree, fraud in keeping deft. ignorant of the decree, must be proved. Mere fraud in getting decree is not sufficient. (*Chevis, J.*) LAL DEVI *v.* AMAR NATH. 57 I. C. 15 : 2 U. P. L. R. (L.) 128.

——S. 18—*Fraud—Plea of—How sustained.*

To take the benefit of the section the party must show that he was prevented by fraud from knowledge of his right to institute a suit or make an application. Fraud in any other connection is immaterial. (*Chevis, J.*) ASANAN *v.* JHANGI RAM. 2 P. W. R. 1919 : 50 I. C. 610 : 29 P. L. R. 1919.

LIMITATION ACT (IX OF 1908), S. 18—Fraud.

———S 18—*Fraud—Concealment—Alienation by a sonless male proprietor—Limitation—Burden of proof.*

It is for the plffs. who sue as reversionary heir to show that their claim is within time. Where the alienation is made openly and mutual union is published and there have been settlements giving effect to the alienation there is no fraudulent concealment of which advantage can be taken under S. 18 of the Limitation Act. (*Shah Din and Beadon, JJ.*) PHULA SINGH *v.* PREM SINGH. 177 P. L. R. 1912 : 16 I. C. 844 : 236 P. W. R. 1912

———S. 18—*Fraud—Plea of—Express averment—Necessity of.*

If the allegations in the plaint necessarily imply fraud on the part of the deft. or indeed suggest that any such imputation is intended, the absence of express description of the deft.'s conduct as fraudulent is no bar to the plff.'s relying on it. In such cases, the Court should return the plaint under O. 6, Rr. 4 and 17, C. P. Code, to the plff for amendment. A mere omission to give notice of a breach of the contract to the plff. cannot of itself be regarded as an act of fraud on the part of the deft. who was so in default. (*Reid, C. J. and Rattigan, J.*) HARDHIAN SINGH *v.* DELHI CLOTH AND GENERAL MILLS CO., LD. 265 P. W. R. 1912 : 259 P. L. R. 1912 : 16 I. C. 804 : 32 P. R. 1913.

———S. 18—*Fraud—Failure to give pre-emptor notice of sale.*

The omission by a vendor to give notice of sale to a pre-emptor does not amount to fraud within the meaning of S. 18 unless there was an intentional fraudulent concealment or an indication to that effect; a sale-deed which has only one attesting witness does not apply any such concealment (*Rattigan and Chevis, JJ.*) KAKA RAM *v.* MUHAMMAD ALI. 130 P. W. R. 1911 : 11 I. C. 313 : 209 P. L. R. 1911.

———S. 18 and Art. 181—*Fraud—Proof—Onus—C. P. Code, S. 47.*

Where more than six years after an execution had taken place, the representative of the judgment-debtor applied under S. 47, C. P. Code, to recover possession of a house from the decree-holder on the ground that it was fraudulently obtained possession of by the latter by misleading the Court, *held*, that the onus lay on the applicants to prove that they are within S. 18 of the Limitation Act. 36 C. 654, Foll; 17 B. 341 (P. C.); S. C. A. No. 204 of 1906, dist. (*Piggott, J. C.*) KASHIRAM *v.* MUSSAMMAT PRAGI. 20 I. C. 638.

———S. 18—*Fraud—Execution sale—Application to set aside by judgment-debtor—Limitation—Judgment-debtor kept out of knowledge of fraud—Effect of*

The party guilty of fraud must show that the continuing effects of fraud have been removed, and then only limitation would operate. (*Ross, J.*) MAHABIR RAM *v.* RAM BAHADUR DUBEY. 4 Pat. L. T. 306 : 1923 P. 435.

———S. 18—*Fraud—Suit to set aside decree obtained by fraud—Burden of proof.*

In a suit to set aside a decree on the ground of fraud the onus is on the plff. to give some evidence of the fraud on which the onus is shifted on to the deft. to prove that the plff. had knowledge more than three years before suit. The plff. is not required to prove when he became aware of the alleged fraud where he alleges a date within 3 years of the suit. (*Chapman and Atkinson, JJ.*) RAM PORTAB LAL *v.* KESHO PRASAD SINGH. 41 I. C. 385 : 2 P. L. W. 12.

LIMITATION ACT (IX OF 1908), S. 18—Knowledge of fraud.

———S. 18—*Fraud—Neglect by agent to settle accounts.*

Neglect to settle accounts with the object of concealing his misconduct from the principal is not "fraud" within this section. (*Fox and Twomey, JJ.*) ARDIKAPPA CHETTY *v.* K. A. R. KADAPPA. 36 I. C. 418 : 9 Bur. L. T. 130.

Knowledge of fraud.

———S. 18—*Knowledge of fraud—Proof of.*

To bring his case within S. 18 of the Lim. Act the plaintiff must allege when the fraud pleaded came to his knowledge. (*Lord Phillimore*) RAI RADHA KRISHNA *v.* BISHESHWAR SAHAY. 16 L. W. 190 : 3 Pat. L. T. 529 : 31 M. L. T. 209 (P. C.) : 49 I. A. 312 : 1922 P. C. 336. (P. C.)

———S. 18—*Knowledge of fraud—Guardian's knowledge, if binds ward.*

Where a fraud was committed in a business and was brought to the notice of the guardian after two years, the ward cannot say that he got its notice 10 years after and sue to set aside the transaction within 3 years from the time the fraud became known to him. (*Scott, C. J. and Chandavarkar, J.*) JAMSETJI NASARWANJI *v.* HIRJI BHAI NAVROJI. 37 Bom. 158 : 19 I. C. 406 : 15 Bom. L. R. 193.

———S. 18—*Knowledge of fraud—Onus.*

The onus is on the deft. setting up the plea of limitation to prove that the injured plff. has had clear and definite knowledge of the fraud at a time which is too remote for the suit to be brought. (17 B. 341. Foll). (*Chandavarkar, A. J. C. and Batchelor, J.*) VITHAPPA DEVAPPA PATIL *v.* BASAGOWDA DEVAPPA PATIL. 17 I. C. 10 : 14 Bom. L. R. 771.

———S. 18—*Knowledge of fraud—Time for application to set aside.*

Sale of immoveable property of insolvent by Insolvency Court on ground of fraud runs from the moment fraud becomes known to applicant. (*Scott-Smith, J.*) AFZAL ALI *v.* AMAN ALI. 36 P. W. R. 1914 : 23 I. C. 397 : 107 P. L. R. 1914.

———S. 18—*Knowledge of fraud—Auction sale—Judgment-debtor fraudulently kept in ignorance of sale—Effect.*

Where the decree-holder failed to serve the judgment-debtor with notice of the intended sale and the latter came to know of the sale only when application was made for delivery of possession, the facts justify the application of S. 18 of the Lim. Act. (*Spencer and Venkatasubbu Rao, JJ.*) SHEIKH MUHAMMAD ROWTHER *v.* SUBBA NAICKER. 17 L. W. 152 : 32 M. L. T. (H. C.) 252 : 1923 Mad. 353.

LIMITATION ACT (IX OF 1908), S. 18—Knowledge of fraud.

——— S. 18 and Arts. 91, 95 and 120—*Knowledge of fraud—Deed void* ab intio—*Suit to set aside—Limitation.*

Plaintiff brought a suit for a declaration that a deed of gift executed by her was void and inoperative as she signed the deed believing, on account of the fraud and misrepresentations of the defendant, that it was only a power of attorney. She also sued for declaration of title in the properties gifted *Held*, that on the averments made in the plaint, the deed of gift was void *ab initio* and could not be set aside. Consequently the suit was governed not by article 91 or 93 but Art 120. Under S. 18 of the Act limitation would not run until the fraud of the defendant became known to the plaintiff. 14 I. A. 148; 25 B. 337 dist (*Sanderson, C. J. and Richardson, J.*) SARAT CHANDRA GUPTA *v.* KANAI LAL CHAKRAVARTY.
70 I. C. 525 : 26 C. W. N. 479.

Knowledge of right.

——— S. 18—*Knowledge of right—Discovery of the void sale.*

When the true nature of rights was not discovered by the plaintiff earlier than that time at which his demand for possession was resisted. *Held*, limitation began from the date of resistance (*Sir Lawrence Jenkins.*) THAKURAIN HARNATH KUAR *v.* THAKUR INDAR BAHADUR SINGH.
45 A. 179 : 50 I. A. 69 (P. C.) : 9 0 L. J. 652 : 37 C. L.J. 346 : 26 0. C. 223 : 27 C. W. N. 949 : 18 L. W. 383 : 44 M. L. J. 489 : 1922 P. C. 403.

——— S. 18 and Art. 166—*Knowledge of right—Execution sale--Application to set aside—Fraud.*

Where a judgment-debtor was by the fraud of the decree-holder and auction purchaser induced to omit to make an application under R. 89 of O. 21 of the C. P. Code upon the promise that they would themselves apply to have the sale set aside: *Held*, that the fraud was not of the kind which would operate to extend the limitation provided for an application to set aside a sale on the ground of irregularity. The fraud did not keep the judgment-debtor from the knowledge of his rights but merely prevented him for making an application. (*Richards C. J. and Bannerjee, J.*) HARISH CHANDER *v.* GANGA BISHUN. 43 I. C. 671.

——— S. 18—*Knowledge of right—Proof—Exemption from limitation.*

Where a person in order to bring a suit barred on the face of it within time. relies upon this section he must establish that there has been fraud and that by means of such fraud he has been kept from the knowledge of his right to sue or of the title whereon it is founded. The burden would then be shifted on to the other side to show that the plaintiff had knowledge of the transaction beyond the period of limitation Such knowledge must be clear and definite knowledge of the facts constituting the particular fraud merely proving that the plaintiff had some clues and hints, which perhaps, if vigorously and actually followed up, might have led to a complete knowledge of fraud, is not enough. (*Mookerjee, Walmsley and Pearson, JJ.*) BIMAN CHANDRA DATTA *v.* PRAMATHA NATH GHOSH, 36 C. L. J. 295 : 49 C al. 886 : 1922 Cal. 157.

LIMITATION ACT (IX OF 1908), S 18—Knowledge of right.

———S. 18 and Art. 166—*Knowledge of right—Court auction sale—Setting aside of—Court—Duty of.*

When an application to set aside a sale is made after 30 days from the date of the sale the court cannot apply S. 18 of the Limitation Act without first finding the time when the applicant came to know of the sale. (*Fletcher and Walmsley, JJ.*) ABHA MUNSHI *v.* KAMU MOLLA. 48 I. C. 970.

———S. 18—*Knowledge of right.*

Where a right of suit is not known owing to the practice of fraud, limitation runs only from the date of discovery of the fraud. (*Fletcher and Newbould, JJ.*) SARAT CHANDRA BOSE *v.* THE KHARAREA MEZEJULA ZEMINDARI SYNDICATE, LTD. 42 I. C. 548.

———Ss. 18 and 22—*Knowledge of right—*Benamidar *impleaded deft.—Real owner added after period of limitation—Effect.*

Where in a mortgage suit a *Benamidar*, subsequent mortgagee was made a defendant. And an objection being taken, the real subsequent mortgagee was impleaded but after the limitation period. *Held*, that the suit is not barred against him either in the view that he must be deemed to have been on the record in the name of his *Benamidar* or in the view that the plff's cause of action against him had been kept concealed from the plffs. until the date of the objection and that S. 18 of the Limitation Act would apply. (*Teunon J.*) RAJENDRA KUMAR GHOSE *v.* ADINADI.
26 I. C. 860

——— S. 18—*Knowledge of right.*

S. 18 of the Limitation Act applies only when a party is kept by fraud from *knowledge* and not from *exercising* his right. (*Woodroffe and Mullick, JJ.*) GOLAM MUJAHAR CHOUDHURY *v.* GOLOKECHARAN DAS. 25 I. C. 884.

——— S. 18—*Knowledge of right—Fraud of decree-holder, if can extend time for judgment-debtor to apply under O. 31, R. 2 (C P. C.)*

In the case of an uncertified adjustment, it is not open to the judgment-debtor to claim an extension of time to apply under O. 31, R. 2, C. P. C. on the ground of fraud on the part of the decree-holder because the judgment-debtor cannot be held to be kept thereby from his knowledge of his right to apply within the meaning of S. 18 of the Limitation Act but only from the exercise of his right. (*Mookerjee and Carnduff, JJ.*) BIROO GORAIN *v.* JAINURAT KOER
16 C. W. N. 923 : 13 I. C. 63 : 16 C. L. J. 174.

———S. 18, Art. and 62—*Knowledge of right,*

On 6th July 1893 plff a *Jenmi* granted a *Kanom* to the second deft. and on 28th January 1904 he granted *Melcharth* of the same and to the first deft. who was to redeem the *Kanom* and to pay the plff. the rent due by *Kanomdar* for 1896 to 1905 and 1910 to 1913; the first deft. getting possession of the property did not redeem the *Kanom* but assigned the *Melkanom* to the second deft. in 1909 under which the latter undertook to pay the arrears of rent to the plff. On 18th January 1912, the plff. by a notice demanded the arrears and brought the present suit. *Held*, (*Wallis, C.J. and Kumaraswami Sastri, J.*) the *Melkanom* was not

LIMITATION ACT (IX OF 1908), S. 18—Knowledge of right.

invalid, the plff. could recover the arrears from the second deft. that Art. 62 governed the suit. (*Wallis, C.J.*) Owing to the assignment the second deft. became bound to redeem the old *Kanom* the redemption cannot be considered as having taken place on the date of assignment : even if it were, time runs against the plff. under Art. 62 and S. 18 so long as he did not know as to the manner in which the assignment affected his right. (*Kumaraswami Sastri, J.*) The assignment extinguished the *Kanom* from the date the *Jenmi* assented to the assignment : the *Kanomdar* could not claim the advantages by the assignment of the *melcharth* without performing the obligations imposed by it (*Bakewell, J.*) The demise under the *melkanom* did not take effect till *melkanomdar* paid the rent to plff. The first deft's. stipulation to redeem the *kanom* to pay rent to *Jenmi* was present and could not be enforced against the *Kanomdar*. (*Wallis, C. J. Bakewell and Kumaraswami Sastri, JJ.*) MANNATH VEETTIL ITTI PANKU MENON *v.* DHARAMAN ACHAN.

41 Mad. 488 : 8 L. W. 118 : 22 M. L. T. 543 : 34 M. L. T. 193 : 43 I. C. 625 : (1918) M. W. N. 98.

——S. 18 and Art. 174—*Knowledge of right—C. P. Code, O. 21, R. 12.*

S. 18 of the Limitation Act applies only of those cases which a person has been kept from knowledge of his rights and has the application where he has been kept from the exercise of his right. Where a decree-holder fraudulently promised to certify an adjustment out of Court and failed to do so, the judgment-debtor cannot claim the benents of S. 18, in order to extend the time for an application under R. 2 (2) of O. 21 of the C P. Code, which, owing to the fraud of the decree-holder, is made after the time prescribed therefor. (*Pratt, J. C.*) MAUNG ON MYIT *v.* MAUNG SHWE PI. 3 U. B. R. (1919) 169 : 52 I. C. 958.

——S. 18—*Knowledge of right.*

Section 18 does not deal with the exercise of the right, but with knowledge of the right. Where it was alleged that the decree-holders had fraudulently kept the judgment debtor from exercising his rights under O. 21, R. 2 by giving him assurances, no extension was granted. (*Robinson, C. J. and Macgregor, J.*) P R.P. L. CHETTY FIRM *v.* G. LON POW 11 L. B. R. 363 : 1 Bur. L. J .226 : 1923 Rang. 103.

——S. 18 and Art. 174—*Knowledge of right—Scope.*

Where a settlement had been come to to satisfy the respective decrees in two suits and the decree-holders represented to the judgement-debtors that this was the case, and on the strength of such a representation judgment-debtors signed it, and thought that,as it was filled the two decrees were adjusted. *Held*, such conduct would be said to keep the judgment-debtor from the knowledge of the right of applying to the Court for the adjustment of the decree to be certified. (*Rutledge, J.*) P. R. P. L. CHETTY FIRM *v.* G. LON POW, 1922 L. B, 31.

Non-transferable holding.

——S. 18 and Art. 144—*Non-transferable holding—Ejectment by landlord.*

LIMITATION ACT (IX OF 1908), S. 19—Acknowledgment to whom.

A plff. suing in ejectment a purchaser of a non-transferable occupancy holding cannot succeed unless he makes out a case under S. 18 of the Act where his right to possession accrued long before 12 years before commencement of suit. (*Mookerjee and Beachcroft, JJ.*) PANCHKARI CHATAPADHYA *v.* MAHARAJAH BAHADUR SINGH.

28 I. C. 708 : 19 C. W. N. 186.

——S. 19.

Acknowledgment to whom.
Authority to acknowledge.
Effect of.
Essentials of acknowledgment.
Execution.
Form of acknowledgment.
Identity.
Implied acknowledgment.
Mortgagor and mortgagee.
Oral ackowledgment.
Scope of.

Acknowledgment to whom.

——S. 19—*Acknowledgment to whom—Government—Kist—Mortgage — Redemption—Limitation.*

The acknowledgment in a receipt given as mortgagees to the Government is a sufficient acknowledgment that the interest of the persons receiving money from Government was that of mortgagees and a suit for redemption can be brought within 60 years from the date of such acknowledgment. (*Lord Moulton.*) HIRALAL ICHHALL MAJUMDAR *v.* DESAI NARSILAL CHATURBHUJDAS.

37 Bom. 326 : 17 C. W. N. 573 : 13 M. L. T. 415 : (1913) M W. N. 428 : 40 I. A. 68 : 11 A. L. J. 432 : 17 C. L. J. 474 : 18 I. C. 909 : 15 Bom. L. R. 483 : 25 M. L. J. 101 (P. C.).

Affirming 2 I. C. 469 : 11 Bom. L. R. 318.

——S. 19—*Acknowledgment to whom—If must be addressed to the person entitled.*

An acknowledgment have the effect of saving limitation need not to be addressed to the person entitled to the property. So where a judgment-debtor filed an insolvency petition in which he set out his debts including the one for which execution was sought. *Held*, that it was an acknowledgment within the meaning of S. 19. 33 C. 1047 (P.C.) Ref. to. (*Stephen and Coxe, JJ.*) KAMPAL SINGH *v.* NANDALAL MARWARI.

13 I. C. 603 : 16 C. W. N. 346.

——S. 19—*Acknowledgment to whom—Endorsement of Sub-Registrar.*

A previous mortgage deed, though executed more than 12 years before the deed of 1902, was registered on the 12th Feb. 1890, less than 12 years before the date of the latter deed, and it bore an endorsement by the Sub-Registrar stating that the execution of the deed and the receipt of the consideration was admitted and signed by the mortgagor. *Held*, the endorsement in which he admitted the receipt of the consideration for he mortgages was an acknowledgment of liability within the meaning of S. 19 of the Limitation Act and that the debt had not become barred when the deed of the 3rd Feb. 1902, was executed. (*Martineau and Harrison, JJ.*) LABHA MAL *v.* IMA DIN. 1923 Lah. 369.

LIMITATION ACT (IX OF 1908), S. 19—Acknowledgment to whom.

——S. 19—*Acknowledgment to whom—Recital in deed executed to third person and addressed to him.*

An acknowledgment in a deed of assignment executed by the obligor in favour of a third person is enough to save limitation within S. 19 of the Limitation Act. An acknowledgment is valid even if it is addressed to a person other than the person having the right to the property. (*Jwala Prasad, J.*) JAGERNATH GIR *v.* RAJ MAN GIR.
49 I. C. 868.

—— S. 19—*Acknowledgment to whom—Limitation—Saving of—Receiver's authority.*

An acknowledgment of a debt by a receiver of a partnership firm whose powers were limited to collecting outstandings and doing all things necessary for the realisation and preservation of the assets and upon whom no power of managing or carrying on the business of the firm had been conferred by the Court, does not save limitation. Payment of interest would stand on a different footing. (*Fox, C J. and Hartnoll, J.*) S. M A CHETTY *v* M. L. R. M. A. CHETTY.
29 I. C. 27 : 8 L. B R. 159.

Authority to acknowledge.

—— S. 19—*Authority to acknowledge—Limited owner- Effect of, on reversioner.*

An acknowledgment of liability by a Hindu woman in possession, for her limited interest, of the estate of her husband or father, will not extend the period of limitation as against the reversioners. The reversioners do not claim title through the limited owner within the section. (*Sir John Edge*) SONI LAL *v.* KANHAIYA LAL.
35 All. 227 : 40 I A. 74 : 13 M. L. T. 437 :
17 C. W. N. 605 : 11 A. L. J 389 :
(1913) M. W. N 470 : 17 C. L J. 488 :
15 Bom. L. R. 489 : 19 I. C 291 (P C.) :
25 M. L. J. 131

Affirming 32 All 93 : 6 A. L. J. 931 :
3 I. C. 725 : 6 M. L. T. 348

—— S. 19—*Authority to acknowledge—Person having general authority to settle claim.*

An agent who had general authority to settle the purchase price of the goods and thus could pay the amount of the claim could plainly also arrange to prevent time from becoming a bar to it. (*Viscount Haldane.*) RAJA BRAJA SUNDAR DEB *v.* BHOLA NATH.
24 C W. N. 153 :
55 I. C. 543 : 2 U. P L. R. (P.C.)1 : (P.C.)

——S. 19—*Authority to acknowledge—Mukhtar-i-am.*

An acknowledgment by the mukhtar-i-am of a person not specifically empowered to make such acknowledgment is not valid under S. 19 of the Lim. Act. (*Ryves and Gokul Prasad, JJ.*) NARAIN RAO KALIA *v.* MT. MANNI KUER
44 A. 546 : 20 A. L. J. 359 : (1922) A 230

—— S. 19—*Authority to acknowledge—Manager of a joint Hindu family—Whether binds other members.*

An acknowledgment of a debt made within limitation by the manager of a joint Hindu family binds other members of the family. (*Richards, C. J and Banerjee, J.*) INDRA PAL SINGH *v.* MAWAHLAL.
36 All 264 :
23 I. C. 429 : 12 A. L. J. 374.

LIMITATION ACT (IX OF 1908), S. 19—Authority to acknowledge.

—— S. 19—*Authority to acknowledge—Acknowledgment by one of joint mortgagees.*

An acknowledgment by one of two mortgagees of the title of a mortgagor would not save the mortgagor's right to redeem from being barred by limitation where the mortgage was a joint mortgage and incapable of being redeemed piecemeal. 18 A. 458, Foll. (*Karamat Hussain and Tudball, JJ*) JWALA PRASAD *v* ACHAY LAL.
34 All. 371 : 14 I. C. 132 : 9 A. L. J. 386.

—— S. 19—*Authority to acknowledge—Agent—Contract Act (IX of 1872), Ss. 208 and 209.*

A had dealings with *B*'s firm, *C* being the *gumasta* with whom *A* transacted his business An acknowledgment of a debt was made by *C* to *A* shortly after *B*'s death, but before *A* had knowledge of it. *Held*, that it was a proper acknowledgment *C* being *B*'s agent for A. (*Scott, C.J. and Batchelor, J.*) EBRAHIM *v.* CHUNNI LAL.
35 Bom. 302 : 10 I. C. 888 : 13 Bom L. R. 264.

—— S. 19—*Authority to acknowledge—Judgment-debtor—Auction-purchaser- If bound.*

An acknowledgment by a judgment debtor may save limitation against the auction purchaser. An acknowledgment if made after the attachment cannot prevail against the auction purchaser who is entitled to have property purchased by him in the condition in which it was at the time of the attachment (*D. Chatterjee and Walmsley, JJ.*) RAJESHWARI DASI *v.* BINODA SUNDARI DASI. 44 I. C. 533 : 22 C. W. N. 278.

—— S 19—*Authority to acknowledge—Court of Wards.*

Court of Wards has power to give an acknowledgment so as to give a new period of limitation (*Fletcher and Richardson, JJ.*) RASH BEHARI LAL *v.* ANAND RAM. 34 I. C. 205 : 43 Cal. 211.

——S. 19—*Authority to acknowledge*—Karta *of joint Hindu family—Acknowledgment by.*

A *Karta* of a joint Hindu family is an agent authorised to make an acknowledgment under S. 19 of the Indian Limitation Act, of a debt not contracted for illegal or immoral purposes. (*Fletcher and Coutts, JJ.*) HAR PRASAD DAS *v.* BAKSHI BINDESWARI PRASAD. 31 I C. 30 : 19 C.W.N. 860.

—— S. 19—*Authority to acknowledge*—Karta *of Hindu family.*

An acknowledgment by the *Karta* of a Hindu family would not be sufficient to keep the debt alive if the debt was contracted not for a family purpose but for securing a particular sum of money. 25 M. 220 foll. (*Fletcher and Richardson, JJ.*) BAIKUNTA GUI *v.* LAL CHAND SAMANTA.
26 I. C. 511.

—— S. 19—*Authority to acknowledge—Co-judgment debtors—Effect.*

An acknowledgment in writing by some of several judgment-debtors within three years from the date of the last execution application saves limitation against all. (*Fletcher and Chatterjee, JJ.*) BAN BEHARY KAPUR *v.* JNANENDRANATH GHOSH.
22 I. C. 709.

LIMITATION ACT (IX OF 1908), S. 19—Authority to acknowledge.

——— S. 19—*Authority to acknowledge—Co-judgment-debtor.*

An acknowledgment made by one of several judgment-debtors cannot save limitation against any but the person making it. 25 M. 220; 32 M. 421; 27 A. 575 rel. on. (*Costerse and Chatterjee, JJ.*) CHANDRA KUMAR *v.* RAMDIN.

16 C. W. N. 493 : 13 I. C. 702 : 15 C. L. J. 251.

———S. 19—*Authority to acknowledge—Joint Hindu Family—Acknowledgment by junior member when binding on the family.*

It is not open to a member of a joint Hindu family, not being its manager to make an acknowledgment so as to bind the other members of the family, except those who claim through the person acknowledging (*Shadi Lal, C. J. and Abdul Quadir, J.*) RAMKISHEN *v.* HIRDE RAM.

1923 Lah. 135.

———S. 19—*Authority to acknowledge—Acknowledgment by some of the several mortgagees—Effect of.*

An acknowledgment of the title of the mortgagor made by some of the several mortgagees would be of no advantage to save the mortgagor's right to redeem being barred where the mortgage was a joint mortgage and incapable of being redeemed piecemeal. (*Broadway and Dundas, JJ.*) MAHOMED IBRAHIM *v.* MAHOMED ISMAIL.

5 Lah. L. J. 111.

———S. 19 and Art. 144—*Authority to acknowledge—Co-sharers—Suit for possession of property in the hands of a co-sharer—Letter of acknowledgment—Adverse possession.*

A suit for a share of property in possession of one of the co-sharers is not time barred where it is found that the defendant co-sharer in possession had written a letter to the plaintiff acknowledging his title within the statutory period of 12 years. (*Broadway, J.*) BALMOKAND *v.* WAZIR CHAND.

5 Lah. L. J. 47.

———Ss. 19 and 21—*Authority to acknowledge—Guardian de facto—Mahomedan mother.*

A Mahomedan mother cannot make a valid acknowledgment on behalf of her minor son, not being the guardian of his property under Mahomedan law. (*Shadi Lal, J.*) CHANAN SHAB *v.* FIRM OF WADHU RAM JIWAN MAL.

61 P. L. R. 1917 : 42 I. C. 17 : 143 P. W. R. 1917.

———S. 19—*Authority to acknowledge—Promissory note by father—Acknowledgment by son—Effect on joint family.*

Where the father and managing member of a joint Hindu family borrows money on a promissory note reciting that the debt is for their necessity and not for a joint family purpose limitation will not be saved as against the father though the son acknowledges the debt. (*Wallace, J.*) MAHALAKSHMI *v.* VAKKALAGALDA VENKAM SETTI.

32 M. L. T. 317 (H. C.) : 1924 Mad. 96.

———Ss. 19 and 20—*Authority to acknowledge—Manager of joint Hindu family—Acknowledgment or payment by manager—Payment by an agent through his servant—Payment for principal.*

LIMITATION ACT (IX OF 1908 .S. 19—Authority to acknowledge.

An acknowledgment by the manager of a Hindu joint family cannot extend the period of limitation as against other members of the family who are also parties to the original contract. 25 Mad. 220 (F. B.) Foll. Where the son writes and attests a mortgage-deed executed by the father in which part of the consideration is the payment towards a promissory note signed by both of them and the mortgagee pays the money to the creditor under the promissory note. *Held*, that the son must be deemed to have authorised his father to make the payment and acknowledgment and that time was saved as against him also. (*Abdur Rahim and Spencer, JJ.*) DURAISWAMI IYER *v.* KRISHNAIYER.

10 L. W. 466 : 54 I. C. 318 : (1919) M. W. N. 797.

———Ss. 19, Expls. 11 and 21—*Authority to acknowledge—Receiver—Acknowledgment by—Firm under dissolution.*

An acknowledgment of a debt due by a firm under dissolution made by a receiver of that firm is valid to save limitation if it is authorised by the terms of the order appointing the receiver. A receiver may be an agent authorised to make an acknowledgment within S. 19, Expl. 11. A receiver appointed to take charge of the property of a firm with power "to do all things necessary for the preservation of the assets of the firm", is entitled to make acknowledgments if at the time the acknowledgments are made, they are acts necessary for the preservation of the estate. (*Abdur Rahim and Oldfield, JJ.*) LAKSHMANAN CHETTY *v.* SADAYAPPA CHETTY.

(1918) M. W. N. 877 : 8 L. W. 594 : 25 M. L. T. 371 : 48 I. C. 179 : 35 M. L. J. 571.

———Ss. 19 and 21 (3)—*Authority to acknowledge—Partnership—Evidence of express authority if necessary.*

Direct evidence of a specific authority by a co-contractor or partner to make acknowledgments or payments saving limitation on his behalf, is unnecessary and such an authority can be inferred from circumstances. (*Ayling, Coutts-Trotter and Seshagiri Aiyar, JJ.*) PANDIRI VEERANNA *v.* GRANDHI VEERABHADRASWAMI.

41 Mad. 427 : 23 M. L. T. 261 : (1918) M. W. N. 285 : 7 L. W. 562 : 45 I. C. 18 : 34 M. L. J. 373 (F. B.).

———Ss. 19 and 20—*Authority to acknowledge—Guardian—Powers of.*

A guardian cannot renew or acknowledge a debt unless it is for the benefit of the minor or unless the document appointing him guardian expressly gives him such power. (*Sadasiva Aiyar and Spencer, JJ.*) CHIDAMBARAM PILLAI *v.* VEERAPPA CHETTIAR.

(1917) M. W. N. 744 : 22 M. L. T. 380 : 43 I. C. 865 : 6 L. W. 640 : [*See also* 41 Mad. 561 : 45 I. C. 905 : 34 M. L. J. 381.]

———S. 19—*Authority to acknowledge—Receiver of insolvent's property—Power to bind by acknowledgment.*

A receiver of an insolvent's estate appointed under S. 351, C. P. Code, (1882) applied for sanction of Court to sell the insolvent's property and in the petition admitted a mortgage

LIMITATION ACT (IX OF 1908), S. 19—Authority to acknowledge.

on the property. *Held*, that the admission is an acknowledgment of liability within S. 19, Limitation Act, against the mortgagor and the Receiver. (*Oldfield and Phillips, JJ.*) PARAMASIVAN PILLAI *v.* ARISTOTLE CHAKONA
38 I. C. 169 : 5 L. W. 222.

——S. 19 and 21—*Authority to acknowledge partnership — Acknowledgment by insolvent partner, effect of.*

An acknowledgment by a partner in accordance with statutory provisions, and not in the ordinary course of business, is not one made under authority of the other partners or on their behalf. Admission of liability by a partner in his insolvency is the rule does not bind the other partners. (*Willis, C. J. and Phillips, J.*) KESSENDOSS *v.* KHATAU MAKANJEE SPINNING AND WEAVING CO., LTD. 36 I. C. 389.

——S. 19—*Authority to acknowledge—Manager of joint Hindu family.*

A promissory note by a managing member of a joint Hindu family on behalf of himself and his brothers cannot be renewed by him after he ceases to be the manager of the family and an acknowledgment by him will not bind the other members of the family so as to save limitation against them. 17 B 512 Dist. (*Srinivasa Aiyangar, J.*) KOTHANDA RAMA AIYAR *v.* ARUNACHELLA AIYAR. 32 I. C. 997.

——S. 19 — *Authority to acknowledge — Partnership dissolved —Acknowledgment by one partner authorised to collect or pay debts.*

In the absence of express evidence of authority an acknowledgment of a partnership debt by an ex-partner, after the dissolution of partnership does not bind any ex-partner other than the one making it. Where however an ex-partner has authority to collect the outstandings and pay all debts of the partnership, such authority includes the lesser power of acknowledging debts (*Ayling and Tyabji, JJ.*) MUTHUSWAMI NADAN *v.* SANKARALINGAM CHETTY.
18 M. L. T. 273 : (1915) M. W. N. 722 : 30 I. C. 675 : 2 L. W. 828.

——Ss. 19 and 20—*Authority to acknowledge— Payment or acknowledgment by one partner, how far binding on others.*

A partner cannot bind another by his acknowledgment or written payment, simply by proving that the act done was for necessity and in the usual course of business. To render one of several partners liable by reason of a written payment or acknowledgment by another, it is not enough to show that the payment was an act necessary for the partnership Authority to act on behalf of the other partners must be proved as there is no presumption in favour of it. 32 M. 421; 35 M. 142, Foll. English cases reviewed (*Wallis, J.*) K. R. V. FIRM *v.* SATHYAWADA SITHA RAMASWAMY.
37 Mad. 146 : 21 I. C. 684 : 25 M. L. J. 501.
[This is no longer correct *See* 45 I. C. 18 : 41 Mad. 427.]

——S. 19 — *Authority to acknowledge—Trustees—Not binding on others.*

LIMITATION ACT (IX OF 1908). S. 19—Effect of acknowledgment.

A mere acknowledgment of payment by one of the trustees who did not really receive the money, cannot bind the institution. (*Sundara Aiyar, J.*) GANAPATHI PILLAI, *In re.*
15 I. C. 186 : (1912) M W. N. 181.

——Ss. 19, 20 and 21—*Authority to acknowledge — Partners — Acknowledgment by one partner, how far binding on others—Implied authority.*

There is no implied authority vested in one partner, to acknowledge a partnership debt so as to bind other from the mere fact that the former is actually in management of the business; there should be an express authority to do so which should be clear and unequivocal. (*White, C. J. and Sankaran Nair, J.*) SHEIKH MOHIDEEN *v.* THE OFFICIAL ASSIGNEE.
35 Mad. 142 : (1911) 1 M. W. N. 347 : 11 I. C. 332 : 9 M. L. T. 478 :
[Dissented from in 41 Mad. 427 : 45 I. C. 18 : 34 M. L. J. 373.]

——S. 19 —*Authority to acknowledge — Partner.*

A partner of a money lending business, which is being wound up has no authority to give an acknowledgment for a subsisting debt so as to bind the firm. (*Ormond and Twomey, JJ.*) MALAYANDI CHETTY *v.* NARAYANA CHETTY.
8 L. B. R. 363 : 36 I. C. 225 : 9 Bur. L. T. 239.

Effect of acknowledgment.

——S. 19—*Effect of acknowledgment — General Clauses Act, S. 6 (b).*

An acknowledgment of liability only extends the period of limitation and does not confer title and is not a "thing done" within S 6 of the General Clauses Act. (*Sir John Edge.*) SONI LAL *v.* KANHAIYALAL.
36 All. 227 : 40 I. A. 74 : 13 M. L. T. 437 : 17 C.W. N. 605 : 11 A. L. J. 389 : (1913) M. W. N. 470 : 17 C. L. J. 488 : 15 Bom. L. R. 489 : 19 I. C. 291 : 25 M. L. J. 131 (P. C.).
[Affirming 32 All 33 ; 6 A L. J. 931 : 3 I. C. 725 : 6 M. L. T. 348.]

——S. 19—*Effect of acknowledgment—New Act.*

An acknowledgment invalid under Act XIV of 1859 but valid under subsequent Limitation Acts is valid within S. 19. (*Richards, C. J. and Banerjee, J.*) ZAIBUNNISSA BIBI *v.* PRABHU NARAIN SINGH 34 All. 109 : 12 I. C. 604 : 8 A. L. J. 1272.

——S. 19—*Effect of acknowledgment—Partial liability.*

Where there is a liability to account and it is admitted in part, the admission, but not under S. 19 of the Limitation Act, has complete power to save the entire right. (*Sanderson, C. J. and Mookerjee, J.*) KALI DAS CHAUDHURI *v.* DRAUPADI SUNDARI DASEE. 22 C. W. N. 104 : 43 I. C. 893 : 27 C. L. J. 403.

——S. 19—*Effect of acknowledgment—Minor —Effect.*

LIMITATION ACT (IX OF 1908), S. 19—Effect of acknowledgment.

If a balance be struck or an acknowledgment made within S. 19 of the Limitation Act in favour of a minor, the period of limitation is to be computed from the date when the plff. becomes a major 13 Mad. 135 and 45 I. C. 694, Ref. (*Broadway, J.*) RAMJI LAL *v.* MANYA. 52 I. C. 115 : 37 P. L. R. 1919.

——S. 19—*Effect of acknowledgment—Judgment debt.*

A valid acknowledgment of a judgment debt in a written petition by judgment-debtor to the executing court gives a fresh starting point under S. 19 of the Act. (*Rattigan, J.*) RAM DAS *v.* KANSHI RAM. 80 P. W. R. 1912 : 14 I. C. 335 : 155 P. L. R. 1912.

——S. 19—*Effect of acknowledgment—Acknowledgment of mortgage in a plaint, if an acknowledgment of liability in respect of mortgagor's right to redeem.*

A statement in a plaint admitting a mortgage in plff.'s favour amounts to an acknowledgment of his liability in respect of the mortgagor's right to redeem the mortgage within the meaning of S. 19 of the Limitation Act. (*Shahdin, J.*) HARI CHAND *v.* PHIRAYA RAM. 82 P. W. R. 1911 : 11 I. C. 377 : 180 P. L. R. 1911

——S. 19—*Effect of acknowledgment—Barred right—Not revived.*

An acknowledgment does not revive a right which has become barred at the date of acknowledgment. (*Spencer and Krishnan, JJ.*) RAMAN KURUP *v* CHAPPAN NAIR. 22 M. L. T. 419 : (1917) M. W. N. 864 : 43 I. C. 50 : 33 M. L. J. 753.

——S. 19—*Effect of acknowledgment—Admission of a barred debt.*

An admission of a barred debt is not an "acknowledgment of the debt." 18 I. C. 595, Foll.; 19 M. 416 ; 25 M. 55 ; 10 C. W. N. 959 ; 5 M. I. A. 43; 11 M. I. A. 468, Dist. (*White, C. J. and Oldfield, J.*) SITARAMA CHETTY *v.* CHOTHA KRISHNASWAMI CHETTI. 24 I. C. 507.

——S. 19—*Effect of acknowledgment—Barred debt.*

An acknowledgment under S. 19 of the Limitation Act saves limitation if it is made before the original debt, which is always the basis of the suit, is time barred. (*Jwala Prasad, J.*) SURAJ PRASAD PANDY *v.* W. W. BURKE.
5 P. L. J. 371 : 1 P. L. T. 190 : 56 I. C. 379 : 2 U. P. L. R. (P.) 105.

——S. 19—*Effect of acknowledgment—Fresh cause of action.*

If a payment is made by way of an acknowledgment on foot of general debt a new cause of action springs from it and limitation begins to run afresh. (*Mullick and Atkinson, JJ.*) BALUK CHAND *v.* NATHUNISING. 38 I. C. 85 : 2 P. L. J. 24.

Essentials of acknowledgment.

——S. 19—*Essentials of acknowledgment—Letter of information.*

A letter of information of the trace of the goods and its disposal awaiting instructions, is not an acknowledgment within S. 19 of the Act. An acknowledgment after the expiry of the period of limitation cannot save the operation of the Act. (*Banerjee, J.*) MATSADI LAL *v.* B.B. AND C. I. RY. CO. 42 All. 390 : 2 U. P. L. R. (All.) 84 : 58 I. C. 547 : 18 A. L. J. 377.

LIMITATION ACT (IX OF 1908), S. 19—Essentials of acknowledgment.

——S. 19—*Essentials of acknowledgment—Subsisting liability—Mortgage proved but date unknown—Onus of proving acknowledgment is in time*

In a suit for redemption plaintiff set out and proved all the particulars of the mortgage excepting the date for which he mainly relied on an acknowledgment, enumerating the mortgage in detail, and mentioning that it was redeemable upon payment. There was no evidence either way as to whether this acknowledgment was within 60 years of the mortgage. *Held*, per *Piggott and Walsh, JJ.* that no inference could be drawn that the mortgage was at that date subsisting as a mortgage and was not barred by limitation ; before the plaintiff could succeed upon an acknowledgment at all, he had to establish that it was made before the expiration of the period of limitation. (Per *Banerji, J.*) Where a mortgagee has acknowledged a mortgage, that acknowledgment is *prima facie* evidence until rebutted, that it was a mortgage which subsisted at the time when the acknowledgment was made and was not a mortgage which had become extinct by lapse of time. (*Banerjee, Piggott and Walsh, JJ.*) ANUP SINGH *v* FATEH CHAND.
42 All. 575 : 2 U. P. L. R. (All.) 187 and 258 : 56 I. C. 986 : 18 A. L. J. 789 (F. B.).

——S. 19—*Essentials of acknowledgment—Statement in Settlement Report.*

A statement of the existence of a mortgage contained in Settlement Report thirty years old and purporting to have been signed by the mortgagor and coming from proper custody is not an acknowledgment within S. 19. (*Richards, C. J. and Banerjee, J.*) GOKUL SINGH *v.* SAHEB SINGH.
38 I. C. 162 : 15 A. L. J. 121.

——S. 19—*Essentials of acknowledgment—Repudiation.*

An express repudiation, by a letter, of the plaintiff's claim coupled with a denial of existing liability is not an acknowledgment of liability under S. 19 of the Act. (*Richards, C. J. and Lyle, J.*) BADRI DAS *v.* MANDHAR DAS.
20 I. C. 10 : 11 A. L. J. 601.

——S. 19—*Essentials of acknowledgment—Unsigned entries in accounts.*

Entries as to payment of rent in an account book not signed by deft. or his authorised agent are not acknowledgment. (*Griffin and Chamier, JJ.*) JUGGI LAL *v.* SRI RAM.
34 All. 464 : 16 I. C. 146 : 10 A. L. J. 1.

——S. 19—*Essentials of acknowledgment—Signature—Valid signature.*

A signature written by a third person under the directions of the person whose signature is in question, and in his presence, is proper signature and is personal signature for the purposes of S. 19 of the Limitation Act. (*Tudball, J.*) MAHARAJ SINGH *v.* SHANKER LAL. 10 I. C. 915.

LIMITATION ACT (IX OF 1908), S. 19—Essentials of acknowledgment.

——S. 19—*Essentials of acknowledgment—Acknowledgment after limitation—Effect.*

Quaere.—Whether an acknowledgment after the period of limitation is sufficient to form the basis of a fresh action on the ground that it implies a promise to pay. (*Macleod, C. J. and Shah, J.*) NARAYAN LAXMAN *v.* CHAPSI.
23 Bom. L. R. 1186 : 1922 B. 168.

——S. 19—*Essentials of acknowledgment—Mortgagee signing register of sanads.*

An acknowledgment within S. 19 of the Act must distinctly refer to the liability in dispute It may be express or may be left to implication which however must be a necessary implication. It need not be addressed to the creditor. The signing by a mortgagee of an entry in the register of sanads granted to him as mortgagee and reciting the mortgage amounts to an acknowledgment within S. 19 of the Act. (*Macleod, C. J. and Fawcett, J.*) PRANJIWANDAS PURUSHOTTAMDAS *v.* BAI MANI. 45 Bom. 934 : 61 I. C. 406 : 22 Bom. L. R. 294.

——S. 19—*Essentials of acknowledgment—Execution—Application for order for foreclosure—Limitation—Application for certifying payments.*

Where in an application by the mortgagor for certifying payments made by instalments, the decree ordering payment for redemption is mentioned as an outstanding decree, it amounts to an acknowledgment within S. 19 of the Limitation Act (*Heaton and Shah, JJ.*) BACHARAJ NYAHALCHAND MARWADI *v.* BABAJI TUKARAM AVATI. 38 Bom. 47 : 21 I. C. 407 : 15 Bom. L. R. 930.

——S. 19—*Essentials of acknowledgment—Statement of liability.*

A statement setting out the admission of liability in general terms, amounts to an acknowledgment (*Scott, C. J. and Batchelor, J.*) EBRAHIM *v.* CHUNNILAL. 35 Bom. 302 : 10 I. C. 888 : 13 Bom. L. R. 264.

——S. 19—*Essentials of acknowledgment—New consideration or actual promise to pay not required.*

An acknowledgment does not require new consideration nor an actual promise to pay. (*Newbould and Rankin, JJ.*) IBRAHIM MULLICK *v.* LALIT MOHAN ROY. 50 Cal. 974 : 28 C. W. N. 322 : 1924 Cal. 388.

——S. 19—*Essentials of acknowledgment—Barred debt—Promise to pay—Contract Act, S. 25.*

An acknowledgment of a debt to be effective for the purpose of saving limitation must be made before the enforcement of it by suit is barred. An acknowledgment of a barred debt is of no avail to save limitation (*Suhrawardy and Cuming, JJ.*) PANCHANAN PODDAR *v.* KHITISH CHANDRA. 67 I. C. 298.

——S. 19—*Essentials of—Acknowledgment.*

Whether a particular endorsement constitutes an acknowledgment within the meaning of S. 19 of the Act depends upon its terms. The endorsement by the mortgagors on a mortgage bond to the effect "paid on account of principal as per separate accounts rupees 1,751" would amount to such an acknowledgment. (*Mookerjee and Buckland, JJ.*) PRASANNA *v.* NIRANJAN.
64 I. C. 988 (2) : 33 C L. J. 483.

LIMITATION ACT (IX OF 1908), S. 19—Essentials of acknowledgment.

——S. 19—*Essentials of acknowledgment—Future promise—"Will sign after looking into accounts."*

A letter merely saying that the writer after looking into the account will sign it is not an acknowledgment of liability ; even assuming that it were, it is not an acknowledgment of liability to pay the sum due on the accounts for the year. (36 Cal 1047 P. C. Dist.) (*Coxe and Imam, JJ.*) BHAIRO PRASAD *v.* GAJADHAR PRASAD.
23 I. C. 587 : 19 C. W. N. 170.

——S. 19—*Essentials of acknowledgment—Admission of legal consequences of right unnecessary.*

An admission of a right necessarily implies the admission of the legal consequences of that right, so that when a person admits that a certain property of which he is in possession is the property of another, he admits his liability to restore it to him by implication. (*Carnduff and Richardson, JJ.*) GURU CHARAN SAHA *v.* SURRENDRA KRISHNA ROY. 22 I. C. 6.0 : 19 C. W. N. 263.

——Ss. 19 and 20—*Essentials of acknowledgment—Joint mortgagors.*

Under the Lim. Acts of 1871 and 1877 an acknowledgment of the right of redemption must be made by all the mortgagees and if not so made, it did not save limitation even against the shares of those who signed it, if the mortgage was indivisible. (*Martineau, J.*) NADAR SHAH *v.* ISHAR DAS.
67 I. C. 463.

——S. 19—*Essentials of acknowledgment—Deposition—Not signed by the deft. or his agent.*

A deposition made by the deft. in another case which was not signed by him or his duly authorised agent does not constitute a valid acknowledgment. 122 and 145 P. R. 1889 and 16 P. R. 1891 Dist. ; 184 P. W. R. 1911 foll. (*Shah Din, C. J.*) KUPUR CHAND *v.* NARINJAN LAL. 45 I.C 99 : 34 P. R. 1918.

——S. 19—*Essentials of acknowledgment—Recital of past events — Whether acknowledgment.*

Recitals of past events cannot be construed as acknowledgment of existing liability. Such a recital coupled with a statement that it was already discharged, is no acknowledgment. 313 C. 1047 (P. C.) Dist. ; 20 M. 239 ; 25 M. L. J. 259 ; 18 A. 384 foll. (*Rattigan and Shadi Lal, JJ.*) KALU *v.* MAHRU LAL. 41 P. R. 1916 : 32 I. C. 497 : 33 P. W. R. 1916.

——S. 19—*Essentials of acknowledgment—Promise to pay—Suit if lies.*

A suit based on an acknowledgment which contains no promise to pay is not maintainable. (*Shah Din and Agnew, JJ.*) MUKAND LAL *v.* ABDU MAJIT 180 P. W. R. 1913: 20 I. C. 501: 292 P. L. R. 1913.

——S. 19—*Essentials of acknowledgment—Condition of acknowledgment.*

The cash-keeper of a fund wrote to the manager thus : "If you write to me in detail as to how

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much is payable by me to the said *Nidhi* obtaining the orders of the higher authorities and communicate to me a copy of the order together with the aforesaid account, I am willing to pay accordingly." *Held*, that this was not a conditional acknowledgment of liability by the cash-keeper but was sufficient to keep the liability alive as against him. (*Abdur Rahim and Odgers, O.C.J.*) PERUMAL GOUNDAN *v.* THE JANANUKOOLA DANASEJHA SANKA NIDHI, LTD. 58 I.C. 446: 10 L.W. 586.

———S 19—*Essentials of acknowledgment—Legal consequences need not be acknowledged.*

An acknowledgment by a judgment-debtor of the amount due by him under a mortgage decree falls under S. 19 of the Limitation Act and saves limitation for a final decree for sale. If the right itself is acknowledged, the right to take legal steps for enforcing the right need not be acknowledged. (*Spencer and Krishnan, JJ.*) SABBALAK SHIMMI AMMAL *v.* RAMALINGA CHETTY.
42 Mad. 52 : (1918) M.W.N. 792 : 48 I.C. 288 : 8 L. W. 526 : 24 M.L.T. 486 : 35 M.L.J. 552.

———S. 19—*Essentials of acknowledgment—Conditional acknowledgment.*

A request to leave partnership accounts to arbitration and to accept its award is only a conditional acknowledgment of liability. It will not save the period of limitation under S. 20 if the arbitration fails and consequently there is no award. (*Seshagiri Aiyar and Napier, JJ.*) NARAYANASWAMI MUDALI *v.* GANGADHARA MUDALI.
48 I. C. 89 : 37 M. L. J. 353.

———S. 19—*Essentials of acknowledgment—Arbitration—Reference.*

Admission of the existence of relationship of creditor and debtor is necessary for an acknowledgment under S 19. A reference to arbitration is not such relationship. A promise to pay on condition is a conditional acknowledgment which operates only on fulfilment of the condition. (*Kumaraswami Sastri and Phillips, JJ.*) BOLLAPRAGODA KAMAMURTHI *v.* THAMMANNA GOPAYYA. 31 M.L.J. 231 : 40 Mad. 701 : 4 L. W. 48 : 35 I.C 575 : 20 M. L. T. 129.

———Ss. 19 and 20—*Essentials of acknowledgment—Stamp—Unstamped payment — Acknowledgment.*

Payments in discharge of a debt evidenced by unstamped and therefore inadmissible pronote are payments against or acknowledgments of the original debt and not on account of the pronote. (*Coutts-Trotter and Srinivasa Aiyangar, JJ.*) CHOKKALINGAM CHETTY *v.* ANNAMALAI CHETTY.
34 I. C. 417.

———S. 19—*Essentials of acknowledgment—Promise to remit money due.*

A promise to remit money due on a particular document is a sufficient acknowledgment of liability and as such it saves the bar of limitation. (*Seshagiri Aiyar and Kumaraswami Sastri, JJ.*) RAMASWAMI PATTER *v.* TIRUCHA MANNADIAR.
29 I. C. 38.

———S. 19—*Essentials of acknowledgment—Award—Acceptance.*

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Acceptance of an award directing the parties to share equally the outstandings and amounts found payable in the accounts of the partnership is not an acknowledgment of liability under S. 19 of the Limitation Act. (*Sadasiva Aiyar and Tyabji, JJ.*) SUBRAMANIA PILLAI *v.* SANKARALINGAM CHETTIAR. 28 I. C. 864.

———S. 19—*Essentials of acknowledgment—Mortgage.*

Reference to the mortgage and its transfer as the title under which a party holds is sufficient acknowledgment of the right to redeem within S. 19 of the Limitation Act. The legal consequences need not be acknowledged. (*Spencer, Tyabji and Sadasiva Aiyar, JJ.*) KALLIANIAMMA *v.* NARAYANA NAMBIAR. 17 M. L. T. 170 : 28 I. C. 69 : (1915) M. W.N. 105 : 28 M. L. J. 266.

———S. 19—*Essentials of acknowledgment—Promise to pay—Plea of discharge.*

Under S. 19 all that is necessary is an acknowledgment of liability and a promise to pay is not necessary. Neither a plea of accord and satisfaction nor a plea of denial and in the alternative that debt if due is set off against money due is an acknowledgment. (*White, C. J. and Oldfield, J.*) SHAIK MEERA SAHIB & Co *v.* NAINAR LUBBAY. 25 M. L. J. 259 : (1913) M.W.N. 682 : 21 I. C. 30.

———S. 19—*Essentials of acknowledgment—Letter.*

A letter admitting dues on settlement of accounts is an acknowledgment. (*Abdur Rahim and Phillips, JJ.*) NARAYANAN CHETTY *v.* CHIDAMBARAM CHETTY. 23 I. C. 410.

———S. 19—*Essentials of acknowledgment—Reply asking for detailed bill.*

A reply by a customer to a tradesman to his bill with the words "accounts rendered," that detailed accounts be sent, does not amount to an acknowledgment. A debtor's letter in reply to a creditor's letter of demanding a definite sum of money, asking for a copy of accounts or their inspection does not amount to an acknowledgment. (*Ayling and Spencer, JJ.*) ANDIAPPA CHETTY *v.* DEVARAJULU NAIDU. 36 Mad, 68 10 M. L. T. 251 : (1911) 2 M. W. N. 225 : 12 I. C. 378 : 21 M. L. J. 1024.

———S 19—*Essentials of acknowledgment—Oral agreement to pay does not extend time.*

Where there was a *sanda* and a date fixed for delivery and defendant failed to deliver and thereafter he said he would pay damages at Rs. 8 per khandi. *Held*, the a mere fact that at a later date he said, he would pay the damages cannot extend the time where the cause of action already accrued. (*Prideaux, A.J.C.*) KAMAL NARAYANA *v.* BANIRAM. 1923 Nag. 332.

———S. 19—*Essentials of acknowledgment—Signature of debtor.*

Oral evidence is admissible to prove the identity of the debt, property or right in respect of which an acknowledgment is made, or the name of the creditor or of the person entitled to the right or property, or the date of an acknowledgment, and these need not appear on the face of

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the writing, but the writing itself must import an acknowledgment of an existing liability. Such liability cannot be read into it by proof *aliunde* or by subsequent admissions of the acknowledgor. If the writing does not contain any acknowledgment of personal liability or of a debt this cannot be imported into it by referring to statements of the parties or to other writings. The writing sought to be used as an acknowledgment should in itself import that the person making the acknowledgment is under an existing liability. 26 Mad. 34; 31 Cal. 195, ref. The signature need not appear at any particular part of the writing and the person authorised to give an acknowledgment may sign his own name or that of his principal 1 All. 683; 10 Bom. 1; 6 Cal. 340 ref. (*Dhobley, A. J. C.*) ONKARLAL *v.* RAJ MAHOMED.
65 I. C. 279: 17 N. L. R. 209.

——— S. 19— *Essentials of acknowledgment—Agency—Inference.*

An acknowledgment need not specify every legal consequence of the thing acknowledged. From an acknowledgment of a debt follow the legal incidents, which flow from the existence of a liability. In fact an admission by a mortgagor of his liability under the mortgage carries with it an admission of all the remedies to which the mortgagee is entitled under it. 25 C. 844; 6 O. L. J. 248, Ref. If the manager of a joint Hindu family makes an acknowledgment in a statement made before a Court and the circumstances indicate that he was making the statement on behalf of the other members of the family, the latter would be liable on the strength of that acknowledgment (*Kanhaiya Lal, J. C.*) RAM AUTAR *v.* BENI SINGH. 25 O. C. 89: 1922 Oudh 135.

——— S. 19—*Essentials of acknowledgment—Right or liability.*

It is a sufficient acknowledgment, if it is of a liability, whether pecuniary or in relation to other obligation, and is in respect of the property or right which is the subject-matter of the suit or application. The acknowledgment need not necessarily be in respect of the particular relief prayed for in a suit or application. The word "exact" in Expl. (1) to S. 19 is intended to qualify the specification of the nature of the property or rights rather than of the properties or right itself. (*Wazir Hassan, A. J. C.*) JOGESHWAR SINGH *v.* BIR RAM. 23 O. C. 176: 7 O. L. J. 451:
(C. 189: 2 U. P. L. R. (J. C.) 152.

———S. 19—*Essentials of acknowledgment—Document undated and unsigned.*

A document undated and unsigned by the mortgagee or his duly authorised agent cannot save limitation under S. 19 of the Act, in a suit for redemption of the mortgage. (*Piggott, J. C. and Lindsay, A. J. C.*) GAJRAJ SINGH *v.* MUHAMMAD BAKAR ALI KHAN. 20 I. C. 62.

———S. 19 — *Essentials of acknowledgment—Existing liability.*

There must be a distinct acknowledgment of an existing liability or jural relation. 2 B. H. C. R. 330; 8 B. 99; 6 M. 182 ; 9 C. 616, ref. (*Hartnoll, J.*) A. P. S. V. FIRM *v.* SHRFE SAFATULLA.
15 I. C. 363 : 5 Bur. L. T. 81.

LIMITATION ACT (IX OF 1908), S. 19—Execution proceedings.

———S. 19 and Arts. 30 and 31—*Essentials of acknowledgment—Suit for damages—Misdelivery of goods—Letter repudiating liability.*

In an action for damages for non-delivery of goods by a Railway Co., plff. relied on a letter by the Railway Co., stating that the delivery of the goods under an indemnity bond was perfectly correct and that his claim was against the person to whom the goods had been delivered and not the Railway. *Held*, that the letter relied upon by the plff. from the Railway contained no acknowledgment of liability under S. 19 of the Limitation Act, but, on the contrary, amounted to a denial of liability. (*Fawcett, A. J. C.*) FIRM OF LUDHOMAL PURTOMAL *v.* THE SECRETARY OF STATE FOR INDIA. 51 I. C. 570: 13 S. L. R. 1.

Execution proceedings.

———S. 19—*Execution proceedings—Uncertified payment—Effect.*

An uncertified payment is no step-in-aid to save limitation. 24 C. L. J. 462, Ref. But in the execution application itself the decree holder may apply to certify the payment and then it would save limitation. (*Woodroffe and Newbould, JJ.*) ESUFF ZEMAN SARKAR *v.* SANCHAYYA LAL MAHTA. 20 C. W. N. 272:
34 I. C 606: 23 Cr. L. J. 390 : 43 Cal. 207.

———S. 19—*Execution of decree—Application by decree-holder not reciting terms of adjustment—Limitation.*

An execution application by a decree-holder without reciting the terms of an alleged adjustment does not embody an acknowledgment of the judgment-debtor's right to have the adjustment recorded as certified and hence the application was barred by limitation under S. 19, Limitation Act. (*Mookerjee and Beachcroft, JJ.*) JOGENDRA NATH SARKAR *v.* PROBHAT NATH CHATTERJEE. 21 I. C. 926 : 19 C. L. J. 126.

———S. 19— *Execution of decree—Application for execution of a small amount—Subsequent application for execution for a larger additional amount.*

Where an application for execution for a smaller sum was presented and the judgment-debtors acknowledged that sum and then another was put in for a larger sum left out of the 1st application, it was *held*, that the acknowledgment of the smaller sum cannot save limitation as regards the larger sum. (*Caspersz and Chatterjee, JJ.*) CHANDRAKUMAR *v.* RAMDIN.
15 C. L. J. 251: 13 I. C 702: 16 C. W. N. 493.

———S. 19— *Execution of decree— Acknowledgment.*

Under S. 19 of the Limitation Act of 1877 acknowledgment of decree debts had not the effect initiating a new period for limitation. A right barred under the old Act cannot be revived by a new Act without express words. 5 M. 171 (F. B.) Foll. (*Sadasiva Aiyar and Napier, JJ.*) AKKAMMA *v.* KOPPARAM RAGAPPA. 26 I. C. 368 :
(1914) M. W. N. 875.

———S 19—*Execution proceedings—Acknowledgment.*

Effect of acknowledgment of right in execution proceedings is only to give 3 years from that date

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and not another 12 years therefrom. The words "fresh period of limitation" in S. 19 do not refer to term of 12 years prescribed by S. 48, C. P. C. (*Chamier, C. J. and Jwala Prasad, J.*) KRISHNA DAYAL GIR *v.* SAKINA BIBI. 20 C. W. N. 952: 2 P. L. W. 370: 34 I. C. 27: 1 P. L. J. 214:

Form of acknowledgment.

——— S. 19 and Art. 148—*Form of acknowledgment—Receipt in Collector's books.*

In 1793 a *desai* mortgaged with possession certain *desaigiri dastur*. In 1831 the Government resolved on paying a money allowance to the *desai* from the treasury instead of allowing him to collect from *raiyats*. In 1843 the persons in whom the mortgage rights were vested received the payments from the Government. The payment was entered in the Collector's books, the recipients being described as the mortgagees of the *desai*. To confirm this entry the mortgagees signed a receipt as mortgagees. *Held*, that the receipt amounted to an acknowledgment and a suit for redemption in 1901 was within time. (*Lord Moulton*). HIRALAL *v.* NARSILAL.

37 Bom. 326: 40 I. A. 68 : 17 C. W. N. 573 : 13 M.L.T. 415: (1913) M.W N. 428: 11 A.L.J. 432: 17 C. L. J. 474 : 15 Bom. L. R. 483: 18 I. C. 909 : 25 M. L. J. 101 (P. C.).

[Affirming 2 I. C. 469 : 11 Bom. L. R. 318.]

———S. 19—*Form of acknowledgment—Proof—Statement in prior case.*

The mere fact that in some other case the defendant merely admitted the execution of the document is not an acknowledgment of liability within the meaning, of section 19 of the Lim. Act where no evidence was taken and there was nothing but the endorsement in proof of admission. (*Ryves, J.*) LALLU MAL *v.* PANDIT REOTI RAM. 45 A. 679: L. R. 4 A. 315: 21 A. L. J. 669: 9 O. & A. L. R. 674 : 1924 A. 70.

———S 19—*Form of acknowledgment*—Dakhalnama.

The acknowledgment contained in the *dakhalnama* executed by deft.'s predecessor is mere description of the property purchased and not an acknowledgment of liability within the meaning of S. 19. (*Piggott and Lindsay, JJ.*) KHIALI RAM *v.* TAIK RAM. 38 All. 540: 36 I C. 452 : 14 A. L. J. 834.

———S. 19—*Form of acknowledgment—Statement made and signed before a Judge.*

An acknowledgment in a statement made and signed before a Judge in a suit is sufficient within S.19. 14 C. 801 (P.C.) Ref. to; 33 C 1047 (P.C.) Foll. (*Richards, C. J. and Lyle, J.*) MEGH RAJ *v.* MATHURA DAS. 35 All. 437 : 20 I. C. 27 : 11 A. L. J. 638.

———S. 19—*Form of acknowledgment—Submortgage—Acknowledgment o—Effect on original mortgage.*

An acknowledgment to whomsoever made is a valid acknowledgment only if it points with reasonable certainty to the liability in dispute. The acknowledgment need not be express it may be left to implication. But it must be a necessary implication from the words used that the person acknowledging was referring to and admitting the liability in dispute and not any dispute. An acknowledgment of a sub-mortgage by the sub-mortgagee in a rent note executed by him does not involve an acknowledgment of the original mortgage or of a liability to be redeemed by the original mortgagor. 11 Bom. L. R 318. Ref. (*Macleod, C. J. and Coyajee, J.*) BHAGWAN GANPATI MANKESHWAR *v.* MADHAV SHANKAR.

24 Bom. L. R. 713 : 46 B. 1000 : 1922 Bom. 356.

———S. 19 and Art. 64—*Form of acknowledgment*—Rozakhata—*Implied promise—Suit to recover—Limitation.*

An acknowledgment of liability signed by a debtor on the *khata* of his creditor before the limitation period has expired implies a promise to pay and a suit can be based thereon. (*Macleod, C. J. and Shah, J.*) CHUNILAL RATANCHAND *v.* LAXMAN GOVIND DUBE. 63 I. C. 923 : 23 Bom. L. R. 606.

———S. 19—*Form of acknowledgment—Letter of offer by Collector—Bombay Court of Wards Act* (1905), *S.* 16.

The proviso to S. 16 of the Bombay Court of Wards Act does not prevent the claimant from using the letter of offer by the Collector as acknowledgement to start a fresh period of limitation under S. 19, Limitation Act, though the offer made by a Collector cannot be proved in a suit by the claimant if he does not accept the offer. (*Macleod, C.J. and Heaton, J.*) SHIVAJI RAO NARAYAN RAO *v.* HARI NARAYAN TAGORE. 22 Bom. L. R. 943 : 58 I. C. 319 : 44 B. 871.

———S. 19—*Form of acknowledgment—Mortgage debt referred to in subsequent pro-note for another debt as an extra or additional debt.*

Reference in a promissory note of a debt due under a mortgage executed some years previously as an extra or additional debt amounts to an acknowledgment of that debt under S. 19 of the Limitation Act. (*Heaton and Shah, JJ.*) DINKAR HARI KULKARNI *v.* CHAGANLAL NARSIDAS.

38 Bom. 177 : 23 I. C. 353 : 16 Bom. L. R. 20.

———S. 19—*Form of acknowledgment—Inclusion in schedule filed by insolvent.*

S. 19 is much wider and more comprehensive than the English Law, and includes every case in which the debtor has acknowledged and signed in writing even though the acknowledgment may not have been to the creditor or may have been accompanied by a refusal to pay. The inclusion by an insolvent debtor of a debt in his schedule which is signed by him is an acknowledgment. (*Beaman, J.*) SHRI GOPAL CHIRANJI LAL *v.* DHANA LAL GHASIRAM.

35 Bom. 383 : 9 I. C. 944 : 13 Bom. L. R. 123.

———S. 19—*Form of acknowledgment—Contract Act, S. 25 (3)—Promised to pay and mere acknowledgment.*

The document executed by the defendant was in the following terms:—"Account of money, in the name of Panaulla Miji and Umer Ali Miji of Nanupur Mokam Chandpore. Amount due. Brought forward from the account of Panaulla

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Miji at page 24 of this book Rs 3,535, Interest at the rate of one rupee per cent. per mensem stipulated time for payment the month of Bhadra of the year 1318 B S". Then followed the signatures of the executants on one anna stamp. *Held*, that it sets out a promise made in writing and signed by the persons to be charged there with to pay wholly the debts specified therein, and not an acknowledgment within the meaning of S. 19. *Held*, further, that the document is an agreement or a memorandum of agreement within the meaning of Art. 5, Cl. (c) of Sch I of the Stamp Act. (*Mookerjee and Rankin, JJ.*) PRASANNA KUMAR PAL *v.* PANAULLA MIJI.
1923 Cal. 659.

——S. 19—*Form of acknowledgment—Arbitration—Reference.*

Where the parties to an abihalnama acknowledged that accounts remained unadjusted which the arbitrators were to adjust and each party agreed that he would pay such amounts as might be found due from him on adjustment of accounts. *Held*, that this was sufficient acknowledgment. It is not necessary that the acknowledgment should be addressed to any particular persons and it is a sufficient acknowledgment even if it be accompanied by a refusal to pay. (*N. R. Chatterjee and Panton, JJ.*) JANARDAN SHAHA PODDAR *v.* RADHA BULLAB. 53 I. C. 898 : 23 C. W. N. 921.

——S. 19—*Form of acknowledgment—Hatchitta—If effective acknowledgment.*

A hatchitta is an acknowledgment within S. 19 of the Limitation Act. 33 Cal. 1047, Foll. (*Fletcher and Walmsley, JJ.*) MAHENDRANATH CHATTERJEE *v.* LALI MOHAN DATTA. 53 I. C. 864 : 46 Cal. 746.

——S. 19—*Form of acknowledgment—Hundi and Cheque—Payment by—Dishonour.*

A payment by a cheque and *Hundi* which was dishonoured on presentation do not constitute an acknowledgment within S. 19 of the Limitation Act. (*Mookerjee and Beachcroft, JJ.*) PADMA LOCHAN PATTAR *v.* GIRISH CHANDRA KIL.
46 Cal. 168 : 45 I. C. 241 : 27 C. L. J. 392.

——S. 19—*Form of acknowledgment—Promissory note for pre-existing debt—Acknowledgment.*

When a Court of Wards which has power to give an acknowledgment of an existing debt authorises a promissory note to be executed, the note could in any event be used as acknowledgment of the pre-existing debt. (*Fletcher and Richardson, JJ.*) RASHBEHARY LAL MANDAR *v.* ANAND RAM. 34 I. C. 205 : 43 Cal. 211.

——S. 19—*Form of acknowledgment—Insolvency petition—Statement by one of the judgment-debtors.*

If one of several judgment-debtors in a joint decree acknowledges in a petition of insolvency the existence of the several pecuniary claims against him the decree-holder gets a fresh starting point against that particular judgment-debtor to the extent of the amount stated in the petition of insolvency 10 C. W. N. 551, not Foll. (*Coxe and Imam, JJ.*) NANDLAL MARWARI *v.* RAMPAL SINGH. 14 I. C. 1.

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——S. 19—*Form of acknowledgment—Suit for possession of mortgaged land—Acknowledgment in bonds.*

Where liability to pay interest in subsequent bonds on a previous mortgage has been admitted it means an acknowledgment of liability. 25 Cal. 844 : 54 I. C. 985, Foll. (*Leslie Jones and Dundas, JJ.*) ANANT RAM *v.* INAYAT ALI KHAN.
2 Lah. L. J. 549.

——S. 19—*Form of acknowledgment—Suit for possession of land mortgaged—Acknowledgment contained in bonds—Part of consideration entered being interest due on mortgage.*

Plffs. sued for possession on certain land which had been mortgaged to them and claimed an extended period by reason of the existence of certain acknowledgments by the mortgagor. This extension wasclaimed on the basis of acknowledgments contained, in bonds, dated 1899 and 1903 executed by the mortgagor in the plaintiff's favour. In these bonds part of the consideration was entered as being the interest due to the plaintiffs on the mortgage in the suit. *Held*, that the admission of liability to pay interest under the mortgage in the bonds of 1899 and 1900 amounts to an acknowledgment of liability under the mortgage including liability to give possession to the mortgagee. 25 Cal. 844 ; 54 I. C. 985, Foll. (*Leslie Jones and Dundas, JJ.*) ANAND RAM *v.* INAYAT ALI KHAN. 68 I. C. 185 : 2 Lah. L. J. 549.

——S. 19—*Form of acknowledgment—Effect of 'Ruqqa.'*

A 'ruqqa' which is an admission of indebtedness is not an express or implied agreement to pay upon which to base a suit (*Johnston and Le Rossignol, JJ.*) RAM ADIN *v.* MUNSHI RAM.
76 P. R. 1915 : 31 I. C. 209 : 154 P. W. R. 1915.

——S. 19 and Art. 148—*Form of acknowledgment—Entry in a Settlement Record of mortgagor's right to redeem.*

An entry in a Settlement Record of the mortgagor's right to redeem the land on payment of the mortgage money and not signed by the mortgagee or anybody on his behalf is not an "acknowledgment." 116 P. R. 1891 ; 75 P. L. R. 1905 (F. B.) Foll. (*Kensington, C. J.*) WAZIR SINGH *v.* JHANDA SINGH. 77 P. W. R. 1914 : 24 I. C. 898 : 178 P. L. R. 1914.

——S. 19—*Form of acknowledgment—Application.*

An application signed by the widow of the deceased mortgagor distinctly admitting the mortgage constitutes an acknowledgment under S. 19. (*Reid, C. J.*) GADEH *v.* RAJHA.
191 P. W. R. 1911 : 75 P. R. 1911 : 10 I. C. 147 : 152 P. L. R. 1911.

——S. 19—*Form of acknowledgment—Deposition.*

Deposition containing an admission may amount to an acknowledgment for the purpose of S. 19, if it is signed by the deponent. (*Rattigan, J.*) ATTAH DITTA *v.* KARAN CHAND.
194 P. W. R 1911 : 10 I. C. 142 : 151 P. L. R. 1911.

LIMITATION ACT (IX OF 1908), S. 19—Form of acknowledgment.

———S. 19—*Form of acknowledgment—Statement by witness in criminal proceedings—English and Indian Law*

Where a witness made a statement "I executed this promissory note. The contents are correct" *held* that it amounted to an acknowledgment under S. 19 of the Act. The absence of an allegation that the pro-note was discharged implies that the liability is still subsisting. There is no distinction between the English and Indian law as to acknowledgment of liability except that under the latter, there is no necessity to show anything from which a promise to pay could be inferred. (*Napier and Odgers, JJ.*) SUBBARAMA AIYAR *v.* VEERABADRA PILLAI.

14 L. W. 148 : 70 I. C. 593 : (1921) M. W. N. 475 : 41 M. L. J. 217.

———Ss. 19 and 20—*Form of acknowledgment—Signature—Vilasam of the firm written at the top of the letter — No signature — Nattukottai Chetties.*

According to the practice of Nattukottai Chetties who do not sign their letters at the foot but begin by saying that the sender is such and such a firm, the name so written is a sufficient signature within S. 19 of the Limitation Act. 1 A. 683, 6 C. 340. Foll. (*Abdur Rahim and Oldfield, JJ.*) MUTHIA CHETTIAR *v.* KUTTAYYAN CHETTY.

6 L. W. 790 : 43 I. C. 20 : (1918) M. W. N. 42.

———S. 19—*Form of acknowledgment — Signature of endorsement of payment in pronote—Acknowledgment.*

Where on a promissory note, an endorsement written out by the plff. is signed by the deft. it is sufficient acknowledgment of liability. (*Sadasiva Aiyar and Napier, JJ.*) JAGANADHA SAHU *v.* RAMA SAHU. 27 I. C. 747 : 17 M. L. T. 80.

———S. 19—*Form of acknowledgment—Signature—Usage.*

Where it is proved that *Nattukottai Chetties* usually do not sign their name but write words invoking the help of the family deity, a letter so signed may be taken as signed by the writer for the purpose of S. 19 of the Limitation Act (*Sankaran Nair and Spencer, JJ.*) CHIDAMBARAM CHETTY *v.* RAMASWAMI CHETTIAR.

26 I. C. 911 : 27 M. L. J. 631.

———S. 19—*Form of acknowledgment—Documents not including a certain and definite debt.*

Where the acknowledgment is contained in a document which does not prove a definite and certain debt, any other debt proved is presumed to be the debt, under consideration. The acknowledgment under S. 19 need not be in respect of the particular relief prayed for in the suit, nor need the specification of the nature of the property be exact. (*Wazir Hasan, A. J. C.*) JAGESHOR SINGH *v.* BIS RAM.

7 O. L. J. 451 : 23 O. C. 176 : 60 I. C. 189 : 2 U. P. L. R. (J. C.) 152.

———S. 19—*Form of acknowledgment.*

There is a difference between acknowledgment sufficient for Limitation Act, S. 19, and Contract Act, S. 25. In order to create a new contract as required by the latter, the promise to pay must be expressed. (*Das and Ross, JJ.*) RAM BAHADUR SINGH *v.* DAMODAR PERSHAD SINGH

6 P. L. J. 121 : 60 I. C. 514 : 2 P. L. T. 308.

LIMITATION ACT (IX OF 1908), S. 19—Implied acknowledgment.

Identity of Right.

———S. 19—*Identity of right—Acknowledgment of liability in sale deed—Mortgage—Wrong date—Effect.*

An acknowledgment of liability of a mortgage cannot be ruled out merely because the date of the mortgage given is not correct. An acknowledgment need not be made to the person entitled to the property or right. (*Chamier, J.*) HAR NARAIN *v.* SHIVO PRASAD.

18 I. C. 95 . 11 A. L. J. 86.

———S. 19—*Identity of right—Acknowledgment of liability.*

An acknowledgment of liability need not be made to the person entitled to the right ; if it points with reasonable certainty to the liability in dispute or to the rights out of which that liability arises as a legal consequence, it is an "acknowledgment" of liability within the meaning of S. 19 of the Limitation Act. (*Carnduff and Richardson, JJ.*) GURU CHARAN SAHA *v.* SURENDRA KRISHNA ROY. 22 I. C. 650 : 19 C. W. N. 263.

———S. 19—*Identity of right—Proof of debt.*

It is settled law that the identity of the debt acknowledged in writing may be proved by parol evidence. (*Coutts-Trotter and Srinivasa Aiyangar, J.*) CHOKKALINGAM CHETTY *v.* ANNAMALAI CHETTI. 34 I. C 417.

———S. 19—*Identity of right—General acknowledgment—Nature of—Admission that accounts be taken.*

The acknowledgment of the liability in respect of a right must be in respect of the right which is the subject of the suit. In a suit for a definite sum of money an admission that accounts must be taken and settled does not amount to an acknowledgment. (*Ayling and Spencer, JJ.*) ANDIAPPA CHETTY *v.* DEVARAJULU NAIDU.

36 Mad. 68 : 10 M. L. T. 251 : (1911) 2 M. W. N. 225 : 12 I. C. 378 : 21 M. L. J. 1024.

———S. 19—*Identity of right—Right claimed must be acknowledged.*

The acknowledgment referred to in S. 19 of the Limitation Act must be an acknowledgment of liability in respect of the right claimed, and the right acknowledged must be of the same description as the right which is the subject of suit. A recital in a sale-deed that a sum of money has been left with vendee to pay off a mortgage by the vendor does not amount to an acknowledgment of the rights of the mortgagee to obtain possession of the mortgaged property. (*Lindsay, J. C.*) BENI MADHO *v.* BIR BAL SINGH.

46 I. C. 813 : 21 O. C. 151.

Implied acknowledgment.

———S. 19—*Implied acknowledgment — Co-mortgagors—Statement in a plaint in a suit for redemption by one co-mortgagor.*

Where in a suit for redemption instituted by a co-mortgagor, he admits in the plaint the rights of the other mortgagors not joined as parties to

LIMITATION ACT (IX OF 1908), S. 19—Implied acknowledgment.

redeem, the statement is an acknowledgment of the other mortgagors' right to redeem within S. 19 of the Lim. Act. 36 A. 408, Foll.; 11 A. 423 Ref (*Ryves and Gokul Prasad, JJ.*) MAQSUD HUSSAIN *v.* KARIM-UD-DIN. 64 I. C 979.

——S. 19 - *Implied acknowledgment — Rubkai of proceedings—Inference*

No admission amounting to an acknowledgment under S. 19 of the Act, can be inferred from the *Rubkai* of proceedings under Regulation XVII of 1806. (*Piggott and Walsh JJ.*) HARIMRAT *v.* RAMHIT. 63 I. C. 490 : 3 U. P. L. R. (A.) 179.

——S 19 — *Implied acknowledgment—Account debiting a particular sum.*

Deft. sent a letter and a memorandum of account to the plff. stating that they were squaring an account of Rs. 1,654 by debiting against the plff. Rs. 1,497 due to the deft. from a third party and remitting the balance to the plff. *Held*, there was an acknowledgment in respect of the whole sum of Rs. 1,654. (*Piggott and Gokul Prasad, JJ.*) CURLENDER *v.* ABDUL HAMID.

18 A. L. J. 1131 : 59 I. C. 941 : 2 U. P. L. R. (A.) 437 : 41 A. 260.

——S 19 — *Implied a knowledgment — Co-mortgagor's right to redeem.*

A co-mortgagor's allegation in the plaint of a redemption suit that the other co-mortgagors have been included as defts. as they would not join as plffs. is an "acknowledgment" within the meaning of the section of the latter's right to redeem (*Rafique and Piggott, JJ.*) BALESHWAR *v.* RAM DEO. 36 All. 408 : 24 I. C. 104 : 12 A. L. J. 674.

——S. 19, Expl. II—*Implied acknowledgment—What is.*

Where a judgment-debtor in an execution proceeding objected to his being arrested as he was a poor man and asked for the stay of the warrant till his objection had been decided, there is no acknowledgment of debt within the meaning of S. 19 as an acknowledgment must be a clear acknowledgment and not a mere inference. (*Tudball, J.*) LACHMAN DAS *v.* AHMAD HASAN.

39 All. 357 : 38 I. C. 105 : 15 A. L. J 305.

——S. 19—*Implied acknowledgment—Part payment—Liability impliedly acknowledged*

Towards a promissory note executed by him defendant made part payments on three different dates. He endorsed the payments subsequently at the foot of the note, added up the total and signed underneath. *Held*, that the endorsement was an acknowledgment sufficient to save limitation under S 19 of the Lim. Act, since it recorded that the deft. had paid certain amounts towards the liability which stood against his name on the promissory note. There was therefore an admission of liability to pay the balance. An endorsement on a promissory note by the promissor is an acknowledgment of liability which starts a fresh period of limitation from the date on which it is made. It makes no difference that such endorsement is below an account showing what has already been paid on the promissory note. (*Macleod, C. J. and Crump, J.*) GANESH *v.* DATTATRAYA. 47 B. 632 : 25 Bom. L. R. 144 : 1923 B. 239.

LIMITATION ACT (IX OF 1908), S. 19—Implied acknowledgment.

——S 19 — *Implied acknowledgment — Bengal Tenancy Act, Ss. 184, 185, Sch. III, Art. 6.*

S. 19 applies to a decree for rent valued at less than Rs. 500 and an acknowledgment of liability made by the judgment-debtor gives the decree-holder a fresh starting point for counting the period prescribed by Art. 6, Sch. III of the Tenancy Act. Where the judgment-debtor admitted the existence of an instalment decree in favour of the decree-holder that the instalment for *Pous* remained unpaid as it had not become due, *held* that this was sufficient acknowledgment under S 19 of the Lim. Act. (*Chatterjee and Newbould, JJ.*) PARESH *v.* ISMAIL.

34 C. L. J. 195 : 1922 Cal. 187.

——S. 19—*Implied acknowledgment—Suit for balance of account.*

Where the existence of an account is admitted, the inevitable deduction must be that the person making such an admission acknowledges his liability to pay his debt if any debt is found against him. 33 C. 1047 (P. C.): 25 C. 844 at p. 851 : 35 B. 302, Rel. The admission relied on in the case amounted to an acknowledgment of liability to pay and the bar of limitation was removed. (*Shadi Lal and Wilberforce, JJ.*) GANGA SAHAI *v.* KHAZAN CHAND.

2 Lah. L. J. 107 : 58 I. C. 787 : 1 Lah. 357.

——S. 19—*Implied acknowledgment—Recital in later bond.*

An acknowledgment of liability need not be express but may be implied and the mention in a later bond of the earlier bond was by implication a sufficient acknowledgment of liability to bring the claim on the later bond within the time. 9 Bom. L.R. 715 (718); 33 Cal. 1047 (1057) (P.C.) Rel. (*Martineau, J.*) ARUR SINGH *v.* PRATAB SINGH.

53 I. C. 425 : 131 P. R. 1919.

——S 19 — *Implied acknowledgment — Deposition—Statement of execution of mortgage property.*

No implied acknowledgment of liability can be spelt out of the mere statement that the witness on some prior date executed a mortgage bond. Moreover, it did not amount to an acknowledgment of a subsisting liability at the date of the bond. 45 B. 443 : 26 M. 34 : 16 M. 220 referred to. (*Spencer and Krishnan, JJ.*) MUTHUKUMARA MUDALIAR *v.* CHOCKALINGA MUDALIAR.

17 L. W. 674 : 1923 Mad 634.

——S. 19—*Implied acknowledgment—What amounts to—Admission of execution of hypothecation deed in plaint—Effect.*

Where in a plaint in a former suit, defendants mentioned the execution of a hypothecation deed by them to the plaintiff but under circumstances in which it was immaterial whether the deed had then been discharged or not, *held* in a suit on the bond by the plaintiff the statement in the plaint in the former suit was an acknowledgment of a subsisting liability within the meaning of S. 19. An admission of past liability unaccompanied by an allegation of discharge should not in all

LIMITATION ACT (IX OF 1908), S. 19—Implied acknowledgment.

cases be interoreted as an admission of a subsisting liability. (*Ayling and Venkatasubba Rao, JJ.*) KANDASWAMI REDDY *v.* SUPPAMMAL.

42 M. L. I. 268 : 45 Mad 443 : 15 L. W, 325 : 32 M. L. T. 166 : (1922) M W. N. 168 : 1922 Mad. 104.

———S. 19— *Implied acknowledgment —Promise to pay.*

Deft wrote as follows in reply to the plff. : "In case the account is compared now and any amount is due, my client is prepared to pay it. The amount mentioned in your notice is not due as per your accounts. As my client is not aware of certain amounts contained in the *kaichits* given to the aforesaid person, it is not possible to set right the accounts of my client. I am therefore instructed by my client that your client should be made to give forthwith the *kaichits* and accounts and on getting them compared should receive the amount found to be true." *Held*, that there was a sufficient acknowledgment of the liability to save limitation and it was not conditional on the accounts being gone into. 33 Cal. 1047 ; 37 M. L. J. 353 : 40 Mad. 701 : 36 Mad. 68, Dist. (*Moore, J.*) ARUMUGA CHETTIAR *v.* RAMANADAN.

59 I. C. 898 : 12 L. W. 352.

———S. 19—*Implied acknowledgment.*

The assignee of a subscriber to a *chit* fund wrote to the manager of the fund asking for payment of the subscription due to his assignor ; the manager replied "you have not shown me the deed of assignment under which you claim. Further I have been issued an injunction order prohibiting me from paying the amount to anybody. A third party Sunder Rao has sent to me a notice that the amount was due to him. You are informed that you must send me the amount of subscription and I cannot give you credit for anything". *Held*, that the letter amounted to an acknowledgment of liability. An acknowledgment of liability may be express or implied. 25 C. 844 (P.C.) 35 A 437, Applied. 16 M. 182 : 20 M. 239 : 36 M. 68 Dist. (*Seshagiri Aiyar, J.*). A. SUBBA RAO *v.* PARASURAMA PATTAR.

46 I. C. 973 : 34 M. L. J. 551.

———S. 19—*Implied acknowledgment — Suit on accounts —Part-payment by insurance towards accounts—Whether acknowledgment.*

A sum sent by debtor by insured post with directions to credit in his accounts amounts to acknowledgment. 4 L. W. 148. (*Krishnan, J.*) REGUNA NAGENDRAN CHETTY *v.* KUPPUSWAMI AIYAR.

36 I. C. 593 : 4 L. W. 148.

———Ss. 19 and 20—*Implied acknowledgment —Endorsement of payment—No payment.*

An endorsement not good as a payment under S 20, might still operate as a valid acknowledgment ; where an endorsement of payment is made on a promissory note without any money being paid the endorsement will be sufficient as an acknowledgment to save limitation. (*Kumaraswami Sastri, J.*) RAMAKRISHNA CHETTY *v.* VENKATASUBBA CHETTY.

28 I. C. 15 : 17 M. L. T. 139.

———S 19—*Implied acknowledgment—Letter accompanying part-payment.*

LIMITATION ACT (IX OF 1908), S. 19—Mortgagor and Mortgagee.

Where a lessee was bound to pay his rent under a registered lease in four instalments, the last of which was to be paid in February 1902 and the lessee sent to his lessor Rs. 20 on 15th February 1905 and a letter requesting him to credit the amount to the account on the lease, and the lessor brought a suit for recovery of amounts due under the lease *held* that the suit was not time-barred as the letter of the 15th February 1905 contained a clear admission that the rent was then due and an implied promise to pay whatever was actually due. (*Wallis and Hannay, JJ.*) VISVANATH SANTHASING RAO *v.* RAMACHENDRA MARDRAJ.

27 I. C. 744 . 17 M. L. T. 78.

———S. 19—*Implied acknowledgement—Endorsement of receipt of money—No actual payment—If sufficient acknowledgment.*

Where an endorsement of payment is relied on as acknowledgment of liability, the fact that no money was actually paid on that date does not make the endorsement inoperative as an acknowledgment if it was the intention of the parties that it should be treated as such. (*Kumaraswami Sastri, J.*) LAKSHMI AMMAL *v.* RANGASWAMI IYENGAR.

26 I. C. 754.

———S. 19—*Implied acknowledgment — Endorsement of payment.*

An endorsement of payment on the back of the bond in the handwriting of the debtor amounts to an implied acknowledgment of the debt. (*Drake Brockman, J. C.*) MOHAN LAL *v.* GANESH RAM.

48 I. C. 724.

———S. 19—*Implied acknowledgment—Pre-emption.*

During a pre-emption suit, by an inferior pre-emptor, the vendee entered an agreement to sell the property, the subject-matter of the suit, to a superior pre-emptor. *Held*, the agreement was an acknowledgment of the right under the section. (*Kanhaiya Lal, A. J. C.*) KUBRA BIBI *v.* KHUDAIJA BIBI.

38 I. C. 582 : 20 O. C. 13.

———S. 19—*Implied acknowledgment—Liability in dispute—Acknowledgment of principal—Interest*

An acknowledgment of liability within S. 19 of the Limitation Act need not be express but there must be a necessary implication so that the acknowledgment is clear and unequivocal. The acknowledgment must also distinctly and definitely relate to the liability in dispute and not to any liability. An acknowledgment of liability in respect of the amount due as principal, does not involve an admission to pay interest. (*Fawcett, J. C. and Raymond, A. J. C.*) FIRM OF MESSRS. FILLIP & CO. *v.* MAHOMEDALLI ESSAJI.

55 I. C. 822 : 13 S. L. R. 183.

———S 19—*Implied acknowledgment.*

Acknowledgment may be by implication but it must be a necessary implication. (*Pratt, J.C. and Boyd, A. J. C.*) BIBI SAHIB JADI *v.* MIR MUHAMMAD.

32 I. C. 548 : 9 S. L. R. 143.

Mortgagor and Mortgagee.

———S. 19—*Mortgago and mortgagee—Redemption—Sale of mortgagee's rights—Acknowledgment.*

LIMITATION ACT (IX OF 1908), S. 19—Mortgagor and Mortgagee.

In a suit for redemption against a person purchasing mortgagee's rights in a property, the period of limitation commences on the date of his purchase as he purchased admittedly mortgage rights and as the mortgage right subsisted on that date. (*Banerjee, A. C. J. and Ryves, J.*) SIDHARI RAM *v.* DR. GARJI DIN.

L. R. 4 A. 470

———S. 19—*Mortgagor and Mortgagee—Acknowledging debt after execution of puisne mortgage.*

An acknowledgment by a mortgagor in favour of the first mortgagee is effective against a second mortgagee whose title originated before the acknowledgment was given. (*Walsh and Stuart, JJ.*) ARBINDAKU RAI *v.* JAGESHAR RAI.

51 I. C. 829 : 17 A. L. J. 763.

———S. 19—*Mortgagor and mortgagee—Co-mortgagee.*

Signature on *Wajib-ul-arz* referring to the *Khewat*, by a mortgagee is not sufficient acknowledgment of mortgagor's title. The acknowledgment by one mortgagee does not bind other co-mortgagees. (*Richards, J.*) CHUNNI *v.* HUKUM SINGH. 10 I. C. 238 : 8 A. L. J. 605.

———S. 19—*Mortgagor and mortgagee—Acknowledgment—Mortgage.*

Where a mortgage bond executed by three persons, had on its back an endorsement by two of the mortgagors and the representative of the third in the following terms. "Paid on account of the principal as per separate accounts, rupees one-thousand seven hundred and fifty-one only." *Held*, that the endorsement amounted to an acknowledgment under S. 19 and the mortgagee was entitled to recover any balance that might be found to be due and it would not be barred by limitation. (*Mookerjee and Buckland, JJ.*) PRASANNA KUMAR RAY *v.* NIRANJAN RAY.

33 C. L. J. 433 : 64 I. C. 988 (2) : 26 C. W. N. 213.

———S. 19—*Mortgagor and mortgagee—Acknowledgment by mortgagor.*

A mortgagor whose interest in the property mortgaged to several persons has not wholly ceased to exist can acknowledge in favour of the first mortgagee so as to bind the subsequent mortgagees. (*Sadasiva Aiyar and Burn, JJ.*) LAKSHMANAN CHETTY *v.* MUTHIAH CHETTY.

29 M. L. T. 189 : 62 I. C. 833 : 40 M. L. J. 126.

———Ss. 19 and 20—*Mortgagor and mortgagee—Effect on puisne mortgagee.*

An acknowledgment of mortgage debt is good not only against the person making it but against those who derive their title from him, *i.e.*, puisne mortgagee. 1 C. L. J 337 expl. *Quaere.*—What is the effect of an acknowledgment against the previous junior encumbrancer. (*Ayling and Srinivasa Aiyangar, JJ.*) KAVANOOR VELAYUDA REDDI *v.* REDDYVARI NARASINHA REDDI.

5 L. W. 111 : 21 M. L. T. 105 : 38 I. C. 240 : 32 M. L. J. 263.

———S. 19—*Mortgagor and mortgagee—Effect on remedies of mortgagee.*

LIMITATION ACT (IX OF 1908), S. 20—Scope of.

An admission by a mortgagor of his liability under the mortgage, within S 19 of the Limitation Act carries with it an admission of all the remedies to which the mortgagee might be entitled under it (*Daniels and Lyle, A.J.Cs.*) THAKUR BASANT SINGH *v.* THAKUR RAMPAL SINGH.

6 O. L. J. 248 : 51 I. C. 985 : 1 U. P. L. R. (J. C.) 45.

Oral acknowledgment.

———S 19—*Oral acknowledgment.*

An oral acknowledgment of a debt would not extend the period of limitation under S. 19 of the Limitation Act. (*Rattigan, J.*) GHASITA *v.* SULTAN.

93 P. R. 1911 : 151 P. W. R 1911 : 11 I. C. 445 : 228 P. L. R. 1911.

Scope of.

———S. 19—*Scope of—Plaint barred—Acknowledgment—Onus.*

A plaintiff who is prosecuting a suit which is on the face of it barred by limitation and who is trying to bring it within limitation by proving an acknowledgment under S. 19, Lim. Act, must give cogent proof of his allegation. (*Rafique and Lindsay, JJ.*) THE COLLECTOR, JAUNPORE *v.* JAMNA PRASAD. 44 A. 360 : 4 U. P. L. R. (A) 50 : 20 A. L. J. 140 : L. R. 3 A. 134 : 1922 All. 37.

———S. 19—*Scope of—Acknowledgment of debt—Promise to pay—English and Indian law.*

In English law it is quite clear that an acknowledgment of debt has always been understood to connote and imply a promise to pay, but in India a mere acknowledgment of debt has never been held, to justify the implication of a promise to pay. (*Le Rossignol and Martineau, JJ.*) NAND LAL *v.* PARTAB SINGH. 3 Lah. 326 : 1922 Lah. 425.

———Ss. 19 and 20—*Scope of—Not exclusive.*

Ss. 19 and 20 are not mutually exclusive. Part-payment endorsed, but not in the debtor's handwriting is ineffectual under S. 20 but is effectual in saving limitation under S. 19. (*Napier and Srinivasa Aiyangar, JJ.*) PAMULAPATI VENCATAKRISHNIAH *v.* KONDAMUDI SUBBARAYUDU.

40 Mad. 698 : 3 L. W 576 : 36 I. C. 240 : (1916) 2 M. W. N. 256.

———S. 19—*Scope of—Starling point.*

The date fixed for payment in the later deed acknowledging the liability under the former deed is not the date from which fresh period can commence. (*Kotval and Prideaux, A. J. Cs.*) WAMAN *v.* DEORAO. 1922 Nag. 256.

———S. 19—*Scope of—"Prescribed"—Meaning of.*

The word "prescribed" in S. 19 of the Lim. Act means prescribed by the Schedule, 26 B. 782. (*Batten, J. C.*) NANDRAM *v.* RANCHHOD DASS.

5 N. L.J. 178 : 1922 Nag. 250.

———S. 20—

Appropriation.
Authority.
Handwriting.
Mode of payment.
Part payment of principal.

LIMITATION ACT (IX OF 1908), S. 20—Appropriation.

Payment by whom.
Payment of Interest.
Scope of.
Uncertified payment.

Appropriation.

——— S. 20 (2)—*Appropriation — Saving of limitation—Intention of the parties.*

S. 20 (2) of the Limitation Act does not refer expressly to the intention of the party who receives the rent or produce and can be construed to apply wherever mortgaged land is, in fact, in the possession of the mortgagee. In such an event the receipt of the rent and produce of the land may be deemed a payment for the purpose of sub-sec (1). (*Mookerjee and Panton, JJ.*) BAMA CHARAN CHAKRABARTHI *v.* KISHORE MOHAN ROY. 35 C. L. J. 58 : 1922 Cal. 114

———S. 20—*Appropriation—Payment by debtor—Without direction regarding appropriation—Effect of—Fresh start to limitation.*

Where payment was made by a debtor without stating expressly whether it was to be appropriated towards the principal or interest, but he knew that according to the usual practice it would be credited on account of interest. *Held*, that the court ought to have concluded that under such circumstances the payment was with the intention that it should be appropriated as interest and hence gave a fresh start to limitation, under S. 20 of the Limitation Act. (*Teunon and Richardson, JJ.*) SIVA KUMARI DEBI *v.* BISWAMBHAR ROY. 46 I. C. 532.

——— S. 20—*Appropriation of payments—Payment not expressly described—Whether towards interest or towards principal.*

A payment not expressly made as towards interest will be considered as payment towards principal under this section. (*Fletcher and Teunon, JJ.*) HEMCHANDRA BISWAS *v.* PURNACHANDRA MOOKERJEE. 44 Cal. 667 : 30 I. C. 638 (2) : 22 C. W. N. 190.

———S. 20—*Appropriation of payment—Suit debt and another—Effect of, on limitation.*

The plff. had appropriated the payments generally towards the deft.'s debts due on the suit promote, which was earlier and another due on a mortgage. *Held*, both the debts were saved and the suit was in time. 11 M. L. T. 429 and 13 C. L. J. 39 foll. (*Kumaraswami Sastry, J.*) SANKARAM AIYAR *v.* THIRAVIYA NADAN. 51 I. C. 240.

———S. 20—*Appropriation of rents—Limitation—Payable not periodically, but on one date.*

The mere appropriation of rents due by a mortgagee to the mortgagor towards the interest due by the latter, will not save limitation when the interest is payable not periodically but on a single date. (*Ayling and Spencer, JJ.*) ATHAN KUTTI *v.* KUTTANAT ILLOTH NARAYAN NAMBUDRI'S WIFE (1917) M. W. N. 9 : 5 L. W. 461 : 37 I. C. 706 : 32 M. L. J. 317.

———S. 20—*Appropriation of payments—Payment—Several pronotes payment without specification of debt—Effect of—Limitation.*

Where payment was made by a debtor to a creditor in respect of several pronotes without specifying the debt to which they were paid or whether it was paid for principal or interest but such payments were corroborated by an entry in the creditor's account in the handwriting of the debtor. *Held*, that the entry has the effect of saving limitation in respect of all notes whether the payment was for interest or principal or both. (*Abdur Rahim and Sundara Aiyar, JJ.*) SOUMIA NARAYANA IYENGAR *v.* ALAGIRISWAMI IYENGAR. 11 M. L. T. 429 : 14 I. C. 580 : (1912) M. W. N. 754.

LIMITATION ACT (IX OF 1908), S. 20—Handwriting.

———S. 20—*Appropriation of payment—Acceptance of over due instalment—Effect of.*

The mere acceptance by a decree-holder of overdue instalments is not of itself sufficient proof of waiver on his part to execute the decree for the whole amount whether such an acceptance amounts to a waiver so as to extend the period of limitation is a question of fact which will not be disturbed in second appeal. (*Pratt, J. C. and Hayward, A. J. C.*) FIRM OF BHAWANDAS FEROOMAL *v.* MEGHRAJ. 45 I. C. 324 : 11 S. L. R. 120.

Authority.

———S. 20—*Authority—'Authorised agent'—Payment by.*

Limitation does not apply to payment by authorised agent without indicating in what particular way it was to be appropriated but being in the handwriting of the person making it since it is either paid as interest or if paid towards principal was in the handwriting of the authorised agent. (*Scott-Smith and Leslie Jones, JJ.*) ARJAN MAL *v.* AMAR SINGH. 3 Lah. L. J. 250.

———S. 20—*Authority—Part payment—Vendee—Authority to keep debt alive.*

A vendee had no authority to keep a debt alive by making a part payment when he was asked to pay it by the sale-deed. (*Kumaraswami Sastri and Devadoss, JJ.*) SRI DANTARU RAMACHANDRA RAJU *v.* MANUKONDA PURUSHOTTAM. 1922 Mad. 401.

——— Ss. 20 and 21—*Authority to acknowledge—Joint Hindu Family—One member managing for all after partition—Acknowledgment by him.*

Where one member after partition was allowed to manage the properties on behalf of all, an acknowledgment by him after partition is not binding on the others unless it can be proved that he was then authorised agent under S. 21. (*Ayling and Napier, JJ.*) VUPPA BAPANNA *v.* PABBISETTI BHEEMALINGAM. 3 L. W. 231 : 33 I. C. 986 : (1916) 1 M. W. N. 162.

———S. 20 (1)—*Authority—Payment by agent.*

A payment made by an agent of the debtor does not cease to be so because the money was actually handed over by a menial servant under his orders. (*Daniels, A. J. C.*) RAMKISHAN DAS *v.* SHYAM SUNDAR LAL. 61 I. C. 918 : 8 O. L. J. 115.

Handwriting.

———S. 20—*Handwriting— Part payment of principal of the debt—Joint account—Written by one debtor but signed by both.*

LIMITATION ACT (IX OF 1908), S. 20—Handwriting.

Where two persons are liable on a debt embodied in a Khata and they make payments towards satisfaction of the debt, it is not necessary that both persons should make entries in the creditor's books. It is enough if the writing is made by the debtor paying the debt and it is signed by both the debtors. (*Macleod, C. J. and Crump, J.*) DEVCHAND CHATRAJI *v.* JAMSHEDJI.
25 Bom. L. R. 354 : 1923 Bom. 369.

———S. 20—*Handwriting— Mere signature insufficient.*

A mere signature of debtor to an entry of payment in the handwriting of a third party does not bring the case within the section unless there is something in writing to which it is appended and which will record the fact of payment. (*Scott, C. J. and Heaton, J.*) NIVAJKHAN NATHANKHAN *v.* DADABHAI MUSSE VALLI. 41 Bom. 166 : 38 I. C. 359 : 18 Bom. L. R. 973.

———S. 20—*Handwriting—Signature—Want of.*

An endorsement of a part-payment of the principal bearing no signature or any mark of the payer will not extend the limitation under S. 20. (*Fletcher and Shamsul Huda, JJ.*) BALIRAM *v.* SABHA SUKH. 28 C. L. J. 222 : 44 I. C. 516 : 23 C. W. N. 930.

———S. 20—*Handwriting— Deposition—Part payment—Unsigned deposition.*

A valid acknowledgment of a judgment-debt gives a fresh starting point under S. 19 of the Act but an unsigned deposition alleging part payment would not, because part payment must be in the handwriting of the person making it or his duly authorised agent. (*Rattigan, J.*) RAM DAS *v.* KANSHI RAM. 80 P. W. R 1912 : 14 I. C. 335 : 155 P. L. R 1912.

———S 20—*Handwriting—Hundi—Part payment of debt.*

A part-payment of the principal of a debt must in order to be operative under S. 20 not only be in the handwriting of the debtor or his agent but it is also necessary that the writing should show that the part-payment was a payment towards the debt in question. It is not enough that the amount paid by the debtor is placed to his credit generally. Where the part-payment was by means of a hundi and the creditor wanted to rely on the language of the hundi itself as the writing signed by the debtor within S. 20 (1), Cl. 2, it would be his duty to summon for the production of the hundi itself and unless that was done secondary evidence as to the contents of the hundi would not be allowed. (*Abdur Rahim and Oldfield, JJ.*) MUTHIA CHETTIAR *v.* KUTTAYYAN CHETTY.
6 L. W. 790 : 43 I. C. 20 : (1918) M. W. N. 42.

———S. 20—*Handwriting—Payment of principal and interest.*

A part-payment of the principal of a debt must be in the handwriting of the person making the payment but this rule does not apply to payment of interest. 1 L. W. 529, 35 C. 813, foll. (*Kumaraswami Sastri, J.*) MUTHU PILLAI *v.* MARIA SANDANAM PILLAI. (1914) M. W. N. 910 : 26 I. C. 507 : 16 M. L. T. 505.

LIMITATION ACT (IX OF 1908), S. 20—Mode of payment.

———S. 20—*Handwriting—Literate person*

In the case of a literate person, it is not sufficient for him, to write his name beneath a statement of payment written by another ; the whole statement must be in his handwriting (*Hallifax, A. J. C.*) BISHESHWAR DAS *v* MADHO RAO
62 I. C. 297 : 17 N. L. R. 40.

———S. 20—*Handwriting—Payment towards principal—Extension of limitation.*

Limitation under S. 20 cannot be extended, unless the payment towards the principal is in the handwriting of the debtor. (*Coutts, J.*) AMBIKA PRASAD *v.* GAYA LOAN OFFICE, LTD.
1922 P. 446.

———S. 20—*Handwriting—Unable to write himself.*

Where the person making part-payment is unable to write himself and therefore gets another person to make the indorsement for him and, on his behalf, the provisions of S. 20 are sufficiently complied with. 7 Mad. 55 and 76 ; 28 Bom. 262 ; 26 Cal. 246, Ref. (*Jwala Prasad, J.*) SRI RAM SINGH *v.* KASHI MOLLAH.
62 I. C. 644 : 2 P. L. T. 355.

———S. 20—*Handwriting—Authority to agent.*

Under S. 20 of the Limitation Act when an agent makes payment it is he who should endorse the entry of payment and the debtor's handwriting is not required. 23 Cal. 546; 26 Bom. 246 Dist, 35 C. 813 Ref. The law of limitation must be strictly interpreted, and the plaintiff has to prove that the person making payment is a duly authorised agent. (*Adami, J.*) BABU BANWARI LAL *v.* RAM CHANDRA SINGH. 1 P. L. T. 17 : 54 I. C. 802 : 2 U. P. L. R. (Pat.) 23.

———S. 20 and Art. 182—*Handwriting—Part-payment of debt—Limitation.*

Part payment of a decree amount under S. 20 of the Limitation Act must be in the handwriting of the debtor to save limitation for an application for execution. (*Atkinson and Manuka, JJ.*) MANINDRA NATH ROY *v.* KANHAI RAM MARWARI.
1919 Pat. 46 : 48 I. C. 728 : 4 P. L. J. 365.

———S. 20—*Handwriting — Signature of party making payment, if essential.*

Under S. 20 the person making payment should be the person signing the writing. (*Atkinson and Jwala Prasad, JJ.*) BISHAN PRAKAH NARAIN SINGH *v.* MUHAMMAD SADIQUE.
35 I. C. 375 : 1 P. L. J. 474.

Mode of payment.

———S. 20 (2) and Art. 116—*Mode of payment —Trespasser in possession—Mortgage of* vatan *lands— Mortgage void on mortgagor's death— Bom. Hereditary Offices' Act (III of 1874), S. 5— Mortgagor's heir recovering possession of mortgaged properly—Suit by mortgagee to recover mortgage money—Limitation.*

Some *Vatan* lands were mortgaged in 1893 by the *Vatandar* with possession for a period of twelve years for a sum of Rs. 2,000. The deed of mortgage provided for personal liability to pay in case of any obstruction to the mortgagee. The mortgagor died in 1901. The mortgage having

LIMITATION ACT (IX OF 1908), S. 20—Mode of payment.

thereafter become void under S. 5 of the Bombay Hereditary Offices' Act, 1874, the mortgagor's son sued to recover possession of the property and obtained possession in 1914. Shortly afterwards on the mortgagees' sons suing to recover the mortgage amount. *Held*, (1) that the suit was barred by time; (2) that the covenant in the mortgage deed, provided by the personal obligation by the mortgagor came to an end with his death; that the date of the subsequent dispossession or the hindrance caused to the enjoyment of the property after the death of the mortgagor had nothing to do with the question of limitation, and that the time against the mortgage could not be taken to commence from the date of such hindrance; and (3) that the suit was not saved under S. 20 (2) Limitation Act, for after the death of the mortgagor the mortgagee was only a trespasser not claiming limited interest in the property as a mortgagee. (*Shah and Crump, JJ.*) KRISHNAJI SAKHARAM DESHPANDE *v.* KASHIM MOHIDDIN SAHIB HAVALDAR.
44 Bom. 500:
57 I. C. 76 : 22 Bom. L. R. 385.

———S. 20—*Mode of payment—Part-payment and acknowledgment—Distinction between—Settlement of accounts—Accounts stated.*

It is open to a borrower to make a promise in writing signed by himself, to pay a debt of which his creditors might have enforced payment but for the law of limitation of suits. If the entry be construed as a promise to pay, such promise is applicable quite as much to the sum borrowed on that day as to the sum found due on adjustment of account. 18 C. L. J. 269 : 18 C. L. J. 329: 23 M. 94 : 31 A. 495 : 33 M. 159 Rel. The distinction between an acknowledgment and promise to pay is sometimes difficult to draw, specially as an unconditional acknowledgment, has always been held to imply a promise to pay because that is the natural inference. If nothing is said to the contrary, it is what every honest man would mean to do. The case is clear where the entry is made in respect of an aggregate sum, with regard to a portion whereof there could only be a promise to pay and not an acknowledgment. 6 Bom. 683; 8 B. 405 Rel. It is not necessary that the payment should be actually made in money, for any arrangement between the parties intended to have the effect of discharging *pro tanto* the party indebted, will have the same effect as a payment of money. L. R. 2 Ex 158 Rel. Thus where there are debts due on both sides and the accounts are gone through by the parties and a balance struck, this in effect constitutes a payment of the amount of the smaller debt. But it is the striking of the balance that constitutes the payment, not the mere existance or even statement in writing of gross demands. An agreed statement of accounts where all the items are on one side only, if the statement is not signed by the party liable is inoperative as an acknowledgment and will not be allowed to support an action on an account stated in respect of items which are statute—barred. (*Mookerjee and Chotzner, JJ.*) GULJAR MANDAL *v.* SRIMAN MANDALINI.
36 C. L. J. 228 : 1923 Cal. 71.

LIMITATION ACT (IX OF 1908), S. 20—Part-payment of principal.

———S. 20—*Mode of payment—Payment by labour—Whether saves limitation.*

If within three years before the suit the servant had paid interest through his labour, a suit to recover balance of wages advanced is not barred under S. 20. 28 M. 234 foll. (*Sadasiva Aiyar, J.*) SWAMINATHA PILLAI *v.* MONDAIYAN.
35 I.C. 480 : 3 L. W. 552.

———S 20—*Mode of payment — Rendering service—Whether equivalent to payment of interest.*

In a suit against a servant for balance of advance of wages, his continuance in service within three years before suit was held equivalent to "payment of interest" and so saved limitation (*Sadasiva Aiyar, J.*) MUTHUKRISHNA AIYAR *v.* PAKIRI VOIKARAN.
33 I. C. 134.

———S 20—*Mode of payment — Produce—Land held under mortgage, not registered—Receipt of produce—Payment of interest.*

Receipt of produce of land held under an unregistered mortgage though registration is required in law, cannot be deemed to be a payment of interest under S. 20 of the Limitation Act. (*Batten, A. J. C.*) BALAPRASAD *v.* BHOLANATH.
21 I. C. 281 : 9 N. L. R. 140.

———S. 20—*Mode of payment—Cash.*

It is not necessary that payment of debt should be actually made in money. Any arrangement by which a discharge is effected has the same effect. (*Atkinson and Jwala Prasad, JJ.*) BHAGELA KOER *v.* ABDUL RAHMAN. 36 I. C. 77 :
1 Pat. L. J. 472 (note).

———S. 20 and Art. 97—*Mode of payment—Rents and profits—Suit for recovery of debt on dispossession.*

A suit by the plaintiff for a debt for the interest of which, he was put in possession of land by the defts. is governed by Art. 97 of the Act and the taking of the profits by the plaintiff amounted to payment of interest under S. 20 of the Act. (*Ormond, J.*) MAUNG KYAN *v.* MAUNG PO.
26 I. C. 933 : 7 L. B. R. 138.

Part-payment of principal.

———S. 20— *Part payment of principal — Handwriting of the person making the same.*

If a creditor proves, that the fact of the payment appears in the hand-writing of the person making the same and also that the payment is in fact in part satisfaction of the principal, the requirements of S. 20 are satisfied. (*Shah and Hayward, JJ.*) SAKARAM MANCHAND GUJAR *v.* KEVAL PADAMSI GUJAR. 44 Bom. 392 :
56 I C. 429 : 22 Bom. L. R. 313.

———S. 20 and Art. 182 (5)—*Part-payment of principal portion of decretal amount—Limitation—Fresh starting point.*

A decree-holder will get a fresh starting point of limitation to execute the decree within Art. 182 (5) of the Limitation Act from the date of payment made by the judgment-debtor. (*Teunon and Newbould, JJ.*) JOTINDRA KUMAR DAS *v.* GAGAN CHANDRA PAL. 45 I. C. 903 :
46 Cal. 22.

———S. 20—*Part-payment of principal—Presumption.*

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Where a claim is for principal and interest but the decree does not bear interest, any payment by judgment-debtor should be taken as payment towards principal and therefore it should be in the handwriting of the judgment-debtor or his agent duly authorised in that behalf. (*Chatterjee and Newbould, JJ.*) KUNJA BEHARI RAHA *v.* JOGENDRA CHANDRA DAS. 38 I. C. 293.

——— S. 20 proviso—*Part-payment of principal—Payment by cheque—How far effectual.*

A cheque signed by a debtor and given in part payment of a debt would save limitation provided the cheque is duly honoured. 42 Cal. 1043. (*Jenkins, C. J. and Woodroffe, J.*) KEDAR NATH *v.* DENOBANDHU SHAH. 42 Cal. 1043 : 31 I C 626 : 19 C. W. N. 724

——— S. 20—*Part-payment of principal—Instalment bound—Payment—Proof—Entries*

The proviso to S. 20 of the Limitation Act is applicable to payments of instalments fixed by and payable under a bond which provides that in default of payment of one instalment the whole sum secured will be recoverable, and the fact that any instalment was paid cannot be proved but by the production of entries signed by the debtor and reciting the fact of such payments. The payment of each instalment is to be regarded as a part-payment of the principal amount due on the bond. (*Reid, C J. and Rattigan, J.*) JAWANAND LAL *v.* SHARFE DIN. 35 P. R 1913 : 4 P L R. 1913 : 16 I. C. 961 : 277 P. W R. 1913.

——— S. 20—*Part-payment of principal- C.P.C., O. 21, R. 2—Payment made within 3 years—Bound to be recognised by Court.*

Alleged part payments made within three years but certified to the Court under O. 21, R. 2 more than 3 years after the date of the first application extend the limitation. 20 C. L. J. 131 foll; 12 A. L. J. 387, 825 and 666 diss (*Abdur Rahim and Spencer, JJ.*) RAJAM AIYAR *v.* ANANTHARATNAM IYER. 29 M L. J. 669 : 18 M. L T 475 : 31 I. C 318 : (1916) 1 M W. N. 127.

——— S. 20—*Part-payment of principal—Burden of proof of nature of payment.*

The burden of proving that a payment made by a deft. saves limitation under S. 20, rests on the plff. (*Mc Coll, J. C.*) NGA YA BAW *v.* NGA BYA. 22 I. C. 959 : (1913) 1 U. B. R. 178.

Payment by whom.

——— S. 20—*Payment by whom—Mortgagor—Subsequent mortgagee or purchaser if bound.*

A payment of interest as such by sale of certain other properties by the mortgagors saves time not only against themselves but also against the subsequent purchasers of the equity of redemption or subsequent mortgages. (*Piggott and Walsh, JJ.*) KAUSHAN LAL *v.* KANHAIYALAL. 41 All. 111 : 47 I. C 845 : 16 A L. J. 790.

——— S. 20—*Payment by whom—Proof of.*

The burden lies upon the plff. to prove that payment of interest was made either by the debtor or by his duly authorised agent. (*Knox, J.*) RAMACHANDRA SINGH *v.* DURGA DEVI. 23 I. C. 863.

LIMITATION ACT (IX OF 1908), S. 20—Payment by whom.

——— S. 20 (1)—*Payment by whom—One of joint debtors.*

Where all the heirs of the deceased were jointly liable to pay his debts, a payment of interest by one of the heirs on the debts would not save the running of limitation against the other heirs. *Coxe, J.*) ARJUN PAL *v.* ROHIMA BANU. 14 I. C. 128.

——— S. 20—*Payment by whom—Joint Hindu family—Payment by* karta *binds other members.*

The words "agent duly authorised" in S 20 of the Limitation Act included authority given by law as well as authority given by act of parties. Where the *karta* of a joint Hindu family purporting to act for himself as well as for his minor brother, made part payment of interest due on debt contracted by himself and his father for joint family purposes it has the effect of saving limitation in respect of the claim as against the minor member as well. 5 W. 169 (F.B.); 37 C. 461; 17 B. 512; 19 C W. N. 860 ; 30 A. 422 (F. B.) Rel. on. (*Walmsley and Huda, JJ.*) CHANDRA KANTA BHATTACHARJEE *v.* BEHARI LAL BHATTACHARJEE. 52 I. C. 436 : 31 C. L. J. 7.

——— S. 20—*Payment by whom—Messenger—Effect.*

A payment through a messenger made by a manager having general authority to make payments and followed by an entry by the manager of such payment with his own hand in his account book saves limitation. (*Teunon and Richards, JJ.*) SARAJUBALA DEBI *v.* SARDANATH BATTACHARYA. 50 I. C. 862 : 23 C. W. N. 336.

——— S. 20—*Payment by whom—Principal and surety—Interest—Payment of, by principal debtor.*

A payment of interest made by the principal debtor with the knowledge and consent and at the request of the surety, but not on his behalf does not extend the period of limitation under S. 20 so far as the surety is concerned. A payment by one person cannot keep alive the remedy against another unless payment by the one may be regarded as payment for the other Payment by the principal will not in general bind the surety. The fresh period of limitation created under S. 20 by payment of interest by the principal debtor is only in respect of the debt upon which the interest was paid, *viz.*, the debt of the principal debtor. Though the liabilities of the debtor and the surety arise out of the same transaction their liabilities are distinct for the application of S. 20. (*Sanderson, C J. and Mookerjee, J.*) BROJENDRO KISHORE ROY CHOWDHURY *v.* THE HINDUSTAN CO-OPERATIVE INSURANCE SOCIETY, LTD. 44 Cal. 978 : 21 C W. N. 482 : 39 I. C. 705 : 25 C. L. J. 238.

——— S. 20—*Payment by whom—Mortgagor after parting with equity of redemption—Effect on purchaser.*

Payment of interest by the mortgagor after transfer of the equity of redemption, extends the period of limitation against the purchaser of the equity. (*Carnduff and Richardson, JJ.*) HEM CHANDRA CHAUDHURI *v.* PURNA CHANDRA CHOUDHURY. 22 I. C. 510.

LIMITATION ACT (IX OF 1908), S. 20—Payment by whom.

———S. 20—*Payment by whom—Co-heirs—One of joint-debtors—Effect.*

Where all the heirs of the deceased were jointly liable to pay his debts, a payment of interest, on the debt by one of his heirs does not save limitation as against the other heirs. (*Coxe, J.*) ARJUN RAM PAL *v.* ROHIMA BANU. 14 I. C. 128.

———S. 20—*Payment to whom—Partners.*

Payment to one partner of a debt due to the firm is a valid discharge of the debt only when the payment is a money payment. (*Mookerjee and Coxe, JJ.*) BAIKUNTA NATH *v.* HARALAL. 9 I. C. 116: 13 C. L. J. 234.

———S. 20—*Payment by whom—Principal and surety—Payment of interest by debtor.*

A fresh start is given to limitation against the surety under S. 20, by the payment of interest by the principal debtor. (*Martineau, J.*) HARBANA LAL *v.* NATHU. 53 I C. 586: 105 P. R. 1919.

———S. 20 (1)—*Payment by whom—Sub-mortgage—Payment by mortgagor or sub-mortgagor—Limitation—Suit as against original mortgagee.*

If a mortgagor makes a payment to the sub-mortgagee it saves limitation also as against the sub-mortgagor. There is no distinction between his position and that of an acknowledged surety. (*Scott-Smith and Jones, JJ.*) RAM CHAND *v* MEWA RAM. 44 I. C. 213: 3 P. R. 1918.

———S. 20—*Payment by whom—Part-payment of principal—Agent duly authorised to make payment—Judge, if an agent.*

Where some items of a mortgaged property, after a decree for sale was passed were acquired by the Government who deposited the compensation money into Court, and the Judge paid it out to the decree-holder, in part satisfaction of his decree and signed a paper indicating such payment, *held* that the payment was in part-payment of the principal of the decree debt that the Judge was an agent duly authorised by the judgment-debtor, to make it and that the fact of the payment appeared in the hand-writing of the Judge, within S. 20 of the Limitation Act. (*Sadasiva Aiyar and Coutts-Trotter, JJ.*) GOVINDA PILLAI *v.* DASAI GOUNDAN. 44 Mad 971: (1921) M. W. N. 683: 68 I. C. 100: 14 L. W. 321: 41 M. L J. 423.

———S. 20—*Payment by whom—Servant—Agent.*

Payment by the agent through a servant is payment by the agent on behalf of the principal falling within S. 20 of the Limitation Act. (*Abdur Rahim and Spencer, JJ.*) DURAISWAMI IYER *v* KRISHNA IYER. 10 L. W 466: 54 I. C. 318: (1919) M. W. N. 797.

———S. 20—*Payment by whom—Payment by manager not acting as such—Junior members.*

Payment towards principal and interest made by the manager and endorsed on the note in his writing and over his signature had the effect of extending the period of limitation as against the junior members also, though the payment and the endorsement did not purport to have been made and signed by him as manager. (*Sadasiva Aiyar and Spencer, JJ.*) THANKAMMAL WAYAMKAR AMMA *v.* KUNHAMMA. 53 I. C. 878: 37 M. L. J. 369.

LIMITATION ACT (IX OF 1908), S. 20—Payment by whom.

———S. 20—*Payment by whom—Partners—Implied authority.*

Acknowledgment must be either by an authorised person or it can be inferred from the acts of parties. In the absence of direct evidence that a contractor or partner has authorised his co-contractor or co-partner to acknowledge a debt or to make payments saving limitation on his behalf, the Court can infer such authority from other circumstances, such as the position of the other co-contractors or partners in the business. 37 M. 146. Foll: 32 M. 421 35 M. 142. Disappr. (*Ayling, Coutts-Trotter and Seshagiri Iyer, JJ.*) PANDIRI VEERAMMA *v.* GRANDHI VEERABHADRASWAMI. 41 Mad. 427: 23 M. L. T. 261: (1918) M. W. N. 285: 45 I. C. 18: 7 L. W. 552: 34 M. L. J. 373. [Also 37 Mad. 146: 21 I. C. 634 : 25 M. L. J. 501.]

———S. 20 (1)—*Payment by whom—Partner—Limitation—Saving of.*

The mere fact that a partner is in charge of a branch of the partnership business does not authorise him to bind the firm by a payment or acknowledgment. He must be specially authorised to do so in order to bring the payment within S. 20 of the Limitation Act. (*Sankaran Nair and Oldfield, JJ.*) VEERAPPA CHETTY *v.* CHIDAMBARAM CHETTY. 28 I. C. 845.

———S. 20—*Payment by whom—Receiver—Partition or administration suits—Acknowledgment of debts.*

A receiver in a partition or administration suit authorised to pay interest on debts can, by his payment, keep alive the debts. 26 B. 221 F. B. Relied on. (*Kumaraswami Sastri, J.*) VENKATARAMIAH PANTULU *v.* SUBRAMANIAM PILLAI. 26 I. C. 393: 16 M. L. T. 489.

———S. 20—*Payment by whom—"Duly authorised agent"—Mortgagee.*

A mortgagee authorised to pay off a debt due by the mortgagor is not his "duly authorised agent" within S. 20 of the Limitation Act. (*Wallis and Sadasiva Iyer, JJ.*) ALAGAPPA CHETTIAR *v.* SUBRAMANIA PANDIA THEVAN. 23 I. C. 810: 26 M. L. J. 509.

———S. 20—*Payment by whom—Parties and privies.*

S. 20 requires that the payer should be one liable to pay the debts and the result of the payment would be to give a fresh period of limitation from the date of payment; the debt being kept alive, the result must be to make it enforceable against any one liable for it. The 'party liable' means any person or persons against whom an action on the debt could be brought whether liable originally or as representing or taking the estate, real or personal, of the donor. (*Benson and Sundara Aiyar, JJ.*) VELAYUDAM PILLAI *v.* VAITHYALINGAM PILLAI, 12 M. L. T. 610: 17 I. C. 619 : 24 M. L. J. 66.

———S. 20—*Payment by whom—Principal and surety.*

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Payment of interest by principal debtor does not extend limitation as against surety. 28 B. 248, Foll. (*Abdur Rahim, J.*) SAMI AIYANGAR *v.* LAXMI. 9 M. L. T. 263: 9 I. C. 8: 21 M. L. J. 455.

——S. 20—*Payment by whom—'Debtor'—Payment by son during life-time of father.*

The word "debtor" as used in S. 20 of the Limitation Act, means the person who is liable under the contract of debt. Hence where a father and his son form together a joint Hindu family and a debt is contracted by the father, the son is in the lifetime of the father neither a debtor nor, in the absence of any evidence, as agent of the father for the ourposes of the said section. (*Lindsay, J. C.*) LACCHIMI NARAIN *v.* DAYA SANKAR. 47 I. C. 655: 5 O. L. J. 419.

——Ss. 20 and 21—*Payment by whom—Interest—Payment of by co-mortgagor, if binding on the other mortgagors.*

Where payment of interest as such is made by one of several co-mortgagors such payment cannot in view of S. 21 of the Limitation Act save limitation under S. 20 of that Act except as against that co-mortgagor unless it is shown that the other co-mortgagors authorised the payment. (*Kanhaiya Lal, A. J. C.*) MUBARAK ALI *v.* GOPINATH. 45 I. C. 613: 5 O L. J. 73.

——S. 20—*Payment by whom—Stranger——Suit for sale on a mortgage—Subsequent transaction between mortgagee and third person paying off mortgage-debt—Whether time extended thereby.*

Limitation in respect of a suit for sale on a mortgage cannot be extended by subsequent transaction between the mortgagee and a third person for paying off the mortgage debt. (*Lindsay, J. C.*) DEPUTY COMMISSIONER, LUCKNOW *v.* SUKANANDAN. 17 O. C. 38: 23 I. C. 448.

——S. 20—*Payment by whom—Payment by one of the co-reversioners—Effect against others.*

Payment of interest made by some only of the reversionary heirs of a Hindu towards the amount due under a mortgaged bond executed by his widow was not sufficient to save the bar of limitation as against the other reversioners. (*Roe and Jwala Prasad, JJ.*). SARAB NARAIN DAS *v* TOP OJHA. 48 I. C. 361 : 4 P. L. W 85 : (1917) Pat. 348.

——S. 20—*Payment by whom*—De facto *guardian.*

Payment by even a *de facto* guardian for the benefit of minor to avoid law suits, extends periods of limitation against the minor. (*Sharfuddin and Roe, JJ.*) GITA PROSAD SINGH *v.* RAGHO SINGH. 40 I. C. 809 : 1 P. L. W. 777.

——S. 20 (1)—*Payment by whom—Husband and wife.*

Under S. 20 of the Limitation Act it is sufficient for an illiterate person paying the money to affix a mark below an endorsement written by another person. A Burmese married couple of the cultivating class, working on land together, work it as partners to. all intents. When one is temporarily incapacitated there is a natural presumption that the wife has ostensible authority to act for both

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on the quasi partnership and is an agent within S. 20. (*Twomey, J.*) MAUNG AUNG DO. *v.* ESOOF ALI. 12 I C. 23 : 4 Bur. L. T, 217.

——S. 20—*Payment by whom—Payment of interest by one deft.—If saves limitation against other.*

Where payment of interest is made by one deft. on behalf of another, limitation as against the latter will be saved only on strict proof by plff. that the former had authority to make such payment on his behalf. (*Hartnoll, O. C. J., and Ormond, J.*) MUTHUVEERAPPA CHETTY *v.* ABDUL KADER. 11 I. C. 858 : 4 Bur. L. T. 191.

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——S. 20 and Art. 85—*Payment of interest—Proof of.*

The deft. borrowed a sum in 1909 and further sums in 1910. He paid certain amount in instalments. The plff, settled the accounts and carried the balance forward. Last instalment was paid in 1912. The suit by the plff. in 1913 for the balance is barred as it was not a mutual account under Art 85 and the payments by defts. were neither in his handwriting nor for interest. (*Piggott and Lindsay, JJ.*) BANK OF MULTAN, LTD *v.* KAMTA PRASAD. 39 All 33: 35 I. C. 199 : 14 A. L. J. 949

——S. 20—*Payment of interest—Partial payment—Interest—Payment of.*

"Interest" in S. 20 of the Act means interest or any part of the interest due. (*Ryves and Lyle, JJ.*) ABDUL AHAD *v.* MAHTAB BIBI. 35 All. 378 : 20 I. C. 258 : 11 A. L. J. 477.

——S. 20—*Payment of interest—Receipt of rents and profits by sub-mortgagee—Effect on original mortgage.*

The purpose of S. 20, Sub-S. (1) of the Limitation Act is clear. Where interest on a debt or legacy is paid by the person liable to pay the debt or legacy or where part of the principal of a debt is paid by the debtor the person entitled to the debt or legacy acquires the benefit of a fresh period of limitation. Under S. 20, sub S. (2), the receipt of the rent or produce of mortgaged property by the mortgagee in possession is deemed to be a payment for purposes of sub-S. (1). The scope of sub-S. (2) is limited : it extends the period of limitation allowed to a mortgagee for suing on the mortgage debt ; it does not confer a like indulgence on a mortgagor suing to redeem the mortgage. The effect of any other view of S. 20 would be practically to exclude suits for redemption of usufructuary mortgages from the operation of the Limitation Act. In any event receipt of rents by a sub-mortgagee does not extend the time for redemption of the original mortgage. (*Macleod, C.J and Coyajee, J.*) BHAGWAN GANAPATI MANKESHWAR *v.* MADHAV SHANKAR. 24 Bom. L.R. 713: 46 B. 1000: 1922 Bom. 356.

——S. 20 (2), Sch. I, Art. 116—*Payment of interest—Mortgagee in possession receiving profits in lieu of interest.*

Where a mortgagee is in possession and as per terms of the mortgage document received the profits in lieu of interest such receipt of profits is a payment of interest under S. 20 (2) and under Art. 110

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of the Act the plaintiff would have 6 years from the death of the mortgagor within which to sue for the debt from that date. (*Macleod, C. J. and Shah, J.*) VITHOBA MAHIPATHI *v.* BALAKRISHNA.

45 Bom. 1206 : 63 I. C. 234 : 23 Bom. L. R 529.

——— S 20—*Payment of interest—Addition of interest to principal.*

The addition of interest due to the principal amount by consent of the debtor, is payment of interest within the meaning of S. 20. (*Robertson, J.*) TRICOMDAS MILLS CO. LIMITED, *In re.*

11 I. C. 552 : 13 Bom. L. R. 482.

———S. 20—*Payment of interest—Payment by debtor without directions as to its appropriation—Effect of.*

Where a payment made with the knowledge that it would be appropriated to interest was made with the intention that it should be so appropriated, it gave a fresh starting point of limitation within S. 20 of the Limitation Act. (*Teunon and Richardson, JJ.*) SIVA KUMARI *v.* BISWAMBHAR ROY. 46 I. C. 532.

———S. 20—*Payment of interest—Interest as such.*

To bring a case within S. 20 of the Limitation Act it is not essential that the debtor should on the occasion of every payment, state explicitly that the payment is made on account of interest as such. It is enough if circumstances exist which make the conclusion inevitable that the payment must have been made for interest. 9 Bom, L R. 1329; 31 A. 285 Foll. (*Mookerjee and Beachcroft, JJ.*) CHARU CHANDRA BHATTACHARJEE *v* KARAM BUXA SIKDAR. 43 I. C, 812 : 27 C. L. J. 141.

———S. 20—*Payment of interest—Debt not bearing interest.*

A payment by a judgment-debtor for money, bearing no interest will not extend limitation unless it is in his hand-writing though the decree-holder certified it in the execution application as payment of interest. Decree-holder's application certifying payment does not affect S. 20. (*Chatterjee and Richardson, JJ.*) HARENDRA CHANDRA BATTACHARJEE *v* GAJAN CHANDRA DAS.

35 I. C. 177 : 22 C. W. N. 825.

———S. 20—*Payment of interest as such.*

Under S. 20 the payment of interest must have been made as such either by express declaration, or under circumstances from which such an intention on the part of the debtor may be inferred. (*Chatterjee and Walmsley, JJ.*) BITARI RAM *v.* KUNJI SINGH. 20 I. C. 857 : 19 C. W. N. 237.

———S. 20—*Payment of interest — General balance of accounts— Payments not expressly made towards interest—Effect.*

Payments made in reduction of a general balance of account but without intimating that it is to be appropriated towards interest are not payments towards interest and do not save limitation. (*Shadi Lal and Jones JJ.*) MUINUDDIN *v.* MUHAMMAD AHAMAD. 9 P. W. R. 1916 : 31 I. C. 782 : 68 P. L. R. 1916.

———S. 20—*Payment of interest and principal.*

LIMITATION ACT (IX OF 1908), S. 20—Payment of interest.

Payment of interest saves limitation even though a part of the principal is paid at the same time. 6 I C. 16 and 4 B.L.R. 281 foll. (*Phillips, J.*) RAMAKRISHNA ANNAVI *v.* PICHANDI CHETTIAR.

(1923) M. W. N. 564 (1) : 1924 Mad. 123.

———S. 20—*Payment of interest—Person liable to pay—Purchaser at Court auction.*

A purchaser of mortgaged property at a Court auction, is a person "liable to pay the mortgage debt" within S. 20, and therefore if he pays into Court a sum equal to the amount due for costs and an excess equal to the amount of interest, the excess must be regarded as payment on account of interest as such. (*Wallis, C. J. and Ramesam, J.*) ARKONAM SOWCAR *v.* VENKATASWAMI NAIDU.

44 Mad. 544 : 40 M. L. J. 218 : 62 I. C. 393 : 13 L. W. 193.

———S. 20 — *Payment of interest—Interest added to principal.*

Where in the accounts both of plff. and defts, interest due up to October 25th was calculated and added to the principal, thus wiping out the debt on account of interest, it is a payment of interest which saves limitation under S. 20 of the Limitation Act. 24 B. 493; 29 M. 234, Foll. (*Spencer and Phillips, JJ.*) SUBRAMANIAN CHETTIAR *v.* SOMASUNDARAM CHETTIAR. 30 I. C. 777 : (1915) M. W. N. 755.

———S. 20—*Payment of interest—What is.*

Where the agreement between a creditor and a debtor was that a credit in the creditor's book of a certain amount in favour of the debtor should be treated as "payment of interest" by the debtor and it is relied on to save limitation, the evidence must show that the debtor was a party to the arrangement and the accounts charging interest from time to time were accepted by him. A creditor cannot by a more unilateral act of his own turn a payment into payment of interest as such. (*Sankaran Nair and Oldfield, JJ.*) NAGAPPA *v.* RAMANATHAN. (1916) 2 M. W.N. 264 : 29 I. C. 422 : 4 L. W 553.

———S. 20—*Payment of interest 'as such'—Appeal, second—Question if can be raised.*

To make S. 20 of the Limitation Act apply, there must be an indication that the debtor made a payment with the intention that it should be taken for interest. The mere appropriation by a creditor or that interest was due on the date, is no such indication, but the fact that the amount due and the amount paid are same, may amount to such an indication. The question is one of fact and cannot be raised for the first time in second appeal. (*Hallifax, A. J. C.*) JAGO *v.* MAHADEO. 59 I. C. 709.

———S. 20—*Payment of interest—Intention to pay—Appropriation.*

An intention to pay interest as such ought not to be inferred merely from the creditor's appropriating payments in accordance with his legal power. But if the method of appropriation is determined at the outset by express contract between the parties, specific appropriation on the occasion of each payment is not necessary. (*Drake-Brockman, J. C.*) GOPAL *v.* GOVIND.

19 I. C. 849: 9 N. L. R. 78.

LIMITATION ACT (IX OF 1908), S. 20—Payment of interest.

——— S. 20—*Payment of interest—Intention—Mere appropriation by creditor.*

Under S. 20 only payment of interest made as such will save limitation, *i e.*, when the debtor has paid the amount with the express or implied intention that it should be paid towards interest The mere appropriation by the creditor of the payments to interest is not such an indication. (*Rafique, A. J. C.*) CHANDERPAL KUNWAR *v.* DUNIA PRASAD. **19 I. C. 825.**

——— S. 20—*Payment of interest—Possession of land and receipt of rents—Saving of limitation.*

Limitation is saved in this case by receipts of the produce of the land which the plaintiffs continued to occupy in lieu of interest at the request of the defendant No. 1 owing to his inability to pay his debt. There can be no ground or reason why the produce of the land should not be accepted in lieu of interest if the parties had so arranged. (*Ross, J.*) FOUJDAR SINGH *v.* BAIJU MAHTON. **72 I. C. 492.**

——— S. 20—*Payment of interest—Intention.*

Payment towards interest must be payment of interest as such to save limitation under S. 20 of the Act and there must be something to indicate an intention to that effect. (*Saunders, A. J. C.*) NGA TWE *v.* NGA BA. **31 I. C. 101 : U. B. R. (1915) II 80.**

———S. 20—*Payment of interest—Decree payable by instalments.*

The holder of a decree payable by instalments can, after applying for execution, extend the period of limitation by entering the payment of interest towards the overdue instalments. (*Fawcett, J. C. and Kemp, A. J. C.*) PAHLUMAL SEWANMAL *v.* SIDIK. **60 I. C. 935 : 14 S. L. R. 198.**

Scope of.

———S. 20—*Scope of—Part-payment of principal—Handwriting of debtor.*

A part-payment of principal, appearing in the handwriting of the person making it is not required to be expressly stated as being such. (*Piggott and Gokul Prasad, JJ.*) CURLENDER *v.* ABDUL HAMID. **18 A. L. J. 1131 : 59 I. C. 941 : 2 U. P. L. R. (A.) 437 : 41 A. 260.**

——— S. 20—*Scope of—Execution—Saving of limitation.*

Part-payment and certification must be made before the application for execution is barred by limitation. (*Chatterjee and Suhrawardy, JJ.*) MADAN MOHAN *v.* HARANLAL KUNDU. **64 I. C. 72.**

——— S. 20—*Scope of.*

Per Ayling, J.—A payment under section 20 of the Limitation Act in order to save limitation must be a conscious act (*Ayling and Spencer, JJ.*) ATHAN KUTTI *v.* KUTTANAT ILLOTH NARAYAN NAMBUDRI'S WIFE. **(1917) M. W. N. 9 : 5 L. W. 461 : 37 I. C. 756 : 32 M. L. J. 317.**

———S. 20—*Scope of—Payment within limitation—Written statement after expiry of limitation—Effect of.*

A statement of payment made in writing by the payer after the expiry of the original period of limitation is a sufficient compliance with S. 20 of the Limitation Act, if the payment itself was made within that period. The written statement is merely evidence of the fact and date of payment, and it is the fact of payment that extends the period and it is the date of payment from which it is extended. The proviso to S. 20 lays down that the fact and date of payment can be taken as proved only by evidence of a certain kind and so imposes a minimum decree of credibility in the evidence. 17 M. 92 ; 9 N. L. R. 78, Ref. (*Batten, J. C. and Hallifax, A. J. C.*) RAMPRASAD *v.* BANSILAL **19 N. L. R. 6 : 6 N. L. J. 121 : 1923 Nag. 117.**

LIMITATION ACT (IX OF 1908), S. 21.

———S. 20 (2)—*Scope of—Suit for recovery of mortgage money—Applicability of the section.*

S. 20, cl. (2) of the Lim. Act applies to a suit for recovery of the mortgage money by the mortgagee under S. 68 of the T. P. Act. (*Lindsay, J. C.*). MAHADEO TEWARI *v.* SITLA BAKHSH SINGH. **8 O. L. J. 660 : 1922 Oudh 102.**

Uncertified Payment.

——— S. 20 (1)—*Uncertified payment—If can save limitation.*

A payment under S. 20 must be of such a nature that it could be an answer to a suit brought by the plff. to recover the amount. 19 M. 340 ; 24 B. 496 ; 25 C. 852 (P. C.), Foll. A payment of the decree amount uncertified under O. 21, R. 2, C. P. Code, before the expiration of the "prescribed' as laid down in S. 20 cannot be relied upon by the decree-holder to prevent an application for execution being time barred. (*Pratt, J. C and Fawcett, A J.C.*) NARSOOMAL *v.* TIRATHMAL. **30 I. C. 51 : 9 S. L. R. 27.**

———S. 21 (1)—"*Lawful guardian*"—*Hindu brother.*

The brother under the Hindu Law is not a lawful guardian within S. 21 during the life-time of the mother. (*Mookerjee and Walmsley, JJ.*) BIRESWAR MOOKERJEE *v.* AMBIKA CHARAN BATTACHARJEE. **42 I. C. 472 : 45 C. 630.**

———S. 21 (1)—"*Lawful guardian,*" *meaning of.*

A person lawfully acting as guardian though not appointed for the purpose, is lawful guardian within the meaning of the section, when acting for the benefit of the minor (*Bakewell, J.*) TIRAPAYYA *v.* MULLIDI RAMASWAMI. **(1913) M.W.N. 364 : 19 I. C. 362: 24 M. L. J. 428.**

——— S. 21 (2)—*Joint mortgagors—Payment of interest by one—Effect.*

The distinction between simple debts and real debts maintained in the English Statutes of limitation is abrogated by S. 21 of the Limitation Act, There is no distinction made by the section between the case of co-mortgagors and that of co-mortgagees. The word "joint contractors" in the section includes joint mortgagors also. S. 21 of the Limitation Act is an explanation to Ss 19 and 20 of the Act the object being to provide that one only of the contracting parties shall not ordinarily impose a liability on the matter by anything done by him. Limitation whether created as a right or as a disability is *prima facie*

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personal and unless the legislature so provides a co-operative right or liability should not be imposed. (*Spencer and Seshagiri Aiyar, JJ.*) MUTHU CHETTIAR *v.* MUHAMMAD HUSSAIN.
55 I. C. 763.

———S. 21 (2)—*Joint partners—Acknowledgment—Implied authority.*

An acknowledgment must be authorised or must be capable of being inferred from the acts of parties. In the absence of direct evidence that a co-contractor or partner has authorised his co-contractor or co-partner to acknowledge a debt or to make payments saving limitation on his behalf, the Court can infer such authority from other circumstances, such as the position of the other co-contractors or partners in the business. 37 M. 146, Foll. 32 M. 421; 35 M. 142, Disapproved. (*Ayling, Coutts Trotter and Seshagiri Aiyar, JJ.*) PANDIRI VEERANNA *v.* GRANDHI VEERABHADRASWAMI.
41 Mad. 427: 23 M. L. T. 261: (1918) M. W. N. 285: 7 L. W. 552 : 45 I. C. 18 : 34 M. L. J. 373 (F. B.).

———S. 21 (2)—*Joint contractor—Surety.*

Where the debt is kept alive by part-payment and the liability of other is several, then it should be proved that the person represented the other persons. 28 B. 248; 27 M. L. J. 455, Foll. S. 21 (2) of the Act is not exhaustive and the test is whether the person keeping the debt alive had express or implied authority on behalf of others. (*Seshagiri Aiyar, J.*) KOTHANDARAM CHETTY *v.* SHANMUGAM CHETTI.
32 I. C. 608.

———S. 21 (2)—*Joint promissors—Acknowledgment by one—Effect.*

The conduct of the parties might show that one joint promisor has implied authority to make an acknowledgment on behalf of the other. (*Hannay, J.*) ANNAMALAI PATTAR *v.* NATESA IYER.
25 I. C. 927 : (1914) M. W. N. 792.

———S. 21 (2)—*Co-heirs—Payment by one—Effect.*

Payment of interest by one of the heirs on a debt due by the deceased person does not save limitation as against the other heirs. 14 I. C. 128, Foll. (*Maung Kin, J.*) YAGAPPA CHETTY *v.* MAHOMED
9 L. B. R. 78: 40 I. C. 858 : 11 Bur. L. T. 132.

——— S. 22

Addition of parties.
Amendment.
Applicability.
Heirs added as parties.
Necessary party.
New defendant.
New plaintiff.
Scope of.
Substitution of parties.
Suit against wrong defendant:
Suit against dead person.

Addition of parties.

———S. 22—*Addition of parties—Institution of suit, date of.*

Against a party subsequently added, limitation is to be calculated from the date when he has been brought on the record. (*Beaman and Hayward, JJ.*) MAHOMED BHAI *v.* ISMAILJI HAJI.
12 I. C. 586: 13 Bom. L. R. 1014.

LIMITATION ACT (IX OF 1908), S. 22—Addition of parties.

———S. 22—*Addition of parties—Partnership—Suit for dissolution.*

In a suit for dissolution of a partnership two members of the firm were described as Joharmull Manmull, that being the name of a firm constituted by those two members only. Subsequently the plaint was allowed to be amended by putting in the full name and description of each of the partners. *Held*, that the amendment did not amount to addition of new parties and consequently was not affected by the provisions of S. 22 of the Limitation Act. 12 C. W. N. 8; 20 C. W. N. 49; 37 Cal. 229 referred to. (*Page, J.*) SHEODOYAL KHEMKA *v.* JOHARMULL MANMULL.
50 C. 549 : 1924 Cal. 74.

——— S. 22—*Addition of parties*—Benamidar *suit against—Addition of real owner.*

A principal cannot be added out of time in the shoes of his *benamidar* who is sued within time. (*Holmwood and Chapman, JJ.*) JAGABANDHU BISWAS *v.* SRINATH CHATTERJEE. 18 I. C. 392.

———S. 22—*Addition of parties—Additional representatives.*

In a suit to enforce rights of trust, by persons interested in the trust, additions of more representatives out of time does not bar the suit. (*Seshagiri Iyer and Phillips, JJ.*) KANDA PONNAPPA NAICKEN *v.* VENKATESA IYER. 9 L. W. 377 : 50 I. C. 353 : (1919) M. W. N. 435.

———S. 22—*Addition of parties—Institution of suit, date of.*

The date of institution of a suit as against a newly-added party must be the date on which he was added as a party. (*Oldfield and Phillips, JJ.*) PARAMASIVAM PILLAI *v.* ARISTOTLE CHAKONA.
38 I. C. 169 : 5 L. W. 222.

———S. 22—*Addition of parties— Assignee added—Limitation.*

Per Seshagiri Aiyar, J :—S. 22 of the Limitation Act applies only to cases where the added or substituted plaintiff wants to litigate a right for himself independently of the right of the original plaintiff. Where therefore a plaintiff is added in consequence of the assignment of the rights of the original plff, his right to a decree is not affected by S. 22. 23 A. 331; 14 C. 400; 20 C. L. J. 107, Foll.; 34 C. 612, Dist. (*Wallis, C. J. and Seshagiri Aiyar, J.*) ARUNACHELLA AMBALAN *v.* R.G. ORR. 40 Mad. 722: 29 I.C. 634: 32 M.L.J. 407.

———S. 22—*Addition of parties—Suit by agent on behalf of firm—Addition of partners as co-plaintiffs.*

The section will not apply when a suit is brought by an agent on behalf of a firm of partners, merely because it is so barred when the other members of the partnership are impleaded as co-plaintiffs. (*Seshagiri Iyer, J.*) MARAYAPPA CHETTY *v.* SWAMI CHETTY.
28 I. C. 210 : 2 L. W. 239.

———S. 22 — *Addition of parties — Party already represented—Joinder of, after expiry of limitation—Effect.*

The joinder of a person already represented in the suit as a party to it is not joinder within

LIMITATION ACT (IX OF 1908), S. 22—Addition of parties.

the meaning of S. 22 of the Limitation Act. (*Mitra, A. J. C.*) NARAHAR *v.* NARAIN.
56 I. C. 386.

——S. 22—*Addition of parties—After time—When acts as a bar.*

The joinder of parties after time involves a bar only if the joinder was necessary to the suit. (*Pratt, J. C. and Crouch, A. J. C.*) GOHIMAL DAYALIMAL *v.* KARMOOMAL SIROOMAL.
35 I. C. 551 : 10 S. L. R. 38.

Amendment.

——S. 22—*Amendment of plaint—After time—Non-essential particular—Bar.*

Amendment of a plaint with reference to a non-essential particular made after time without adding a new plff. or deft. is not affected by S. 22. (*Kanhaiya Lal, A. J. C. and Kendall, A. J. C.*) BISHESHAR BAYA *v.* HIRA LAL. 19 O. C. 221 : 36 I. C. 941 : 4 O. L. J. 49.

Applicability.

——S. 22—*Applicability*—Pro forma *defts. made plffs.*

S. 22 of the Limitation Act does not apply to cases where *pro forma* defts. are made plffs. (*Kensington and Chevis, JJ.*) BHAGWAN DAS *v.* BHANAMAL. 137 P. W. R 1912 : 14 I. C. 566 : 84 P. R. 1912

——S. 22—*Applicability—Application to substitute legal representative.*

S. 22 of the Limitation Act governs suits and not applications for the substitution of a legal representative. (*Batten, A. J. C.*) AMOLAKSAO *v.* GOVINDRAO. 49 I.C 34: 15 N. L. R. 21.

——S. 22—*Applicability—Application to set aside ex parte decree—Addition of parties.*

S. 22 of the Lim. Act, which speaks only of suits, does not apply to applications. An application to set aside an *ex parte* decree cannot, as regards an added party, be regarded to have been made when the added party is actually brought on the record of the application. When a thing is deemed to be something else, in truth it is not that something else, but is treated as that something else by a statutory fiction for the purposes of that particular statute. Thus the word "deemed" in S. 22 of the Limitation Act indicates that the statutory fiction can be resorted to only when after the institution of a suit a new party is added or substituted. (*Das and Bucknill, JJ.*) CHANDRIKA ROY *v.* RAM KUER THAKUR.
1922 Pat. 75: 1923 P. 88.

——S. 22—*Applicability — Proceedings in execution.*

S. 22 does not apply to execution proceedings. (*Das and Adami, JJ.*) GULAB KUAR *v.* MUHAMMAD ZAFFAR HASSAN KHAN 2 P. L. T. 619 : 62 I. C. 30 : 6 P. L. J. 358.

Heirs added as parties.

——S. 22—*Heirs added as parties.*

In a suit brought against the minor son of the mortgagor a Mahomedan on contention that the suit was barred as against the other heirs who were afterwards added as parties on plff's. application, it was held that the addition of the parties after the expiry of required time fixed, did not involve a dismissal of the suit under S. 22 of Limitation Act ; moreover the suit was not barred against them as money was specifically charged on the whole property by the deceased. (*Scott, C. J. and Shah, J.*) VIRCHAND VIJAKARAN *v.* KONDU KASAM. 39 Bom, 729 : 31 I, C. 180 : 17 Bom, L, R, 685.

LIMITATION ACT (IX OF 1908), S. 22—Necessary party.

Necessary party.

——S. 22—*Necessary party*—Pro forma *defendants added.*

Where in a suit, some persons against whom the suit is barred are added as defendants, S. 22 of the Act does not bar the whole suit, if the added parties are *pro forma* defendants against whom no relief is claimed. (*Macleod, C. J. and Fawcett, J.*) SHIWA BHAI RAJARAM *v.* SHIDDHESWAR.
45 Bom. 1009 : 61 I. C. 590 : 23 Bom. L. R. 405.

——S. 22—*Necessary party — Addition of parties after limitation—Whole suit when barred.*

Where the addition of a defendant is not essential to the maintainability of the suit but is merely made to protect the interests of the defendant already impleaded, the fact that he is added as a party after the expiry of the period of limitation prescribed for the suit does not entail the dismissal of the suit as barred by limitation. 33 Cal. 1079; 33 All. 272; 28 B. 11 Ref. (*Suhrawardy and Cuming, JJ.*) SITAL PRASHAD GODDAR *v.* KAIFUT SHEIKH. 26 C. W. N. 488 : 1922 Cal. 149.

——S. 22—*Necessary party—Suit for pre-emption—Impleading one of the vendees after limitation—Effect.*

Where one of several vendees in a suit for pre-emption is impleaded after the expiry of one year from the date of sale, when the suit would be barred against him the whole suit is barred. (*Broadway, J.*) NIAZ ALI KHAN *v.* MUHAMMAD AFZAL KHAN. 1924 Lah. 230.

——S. 22 (1)—*Necessary party — Addition after time—Effect.*

If a necessary party without whose presence on the record the suit cannot be adjudicated upon has been omitted and is added after the period of limitation the suit is barred against all the defts. (*Scott-Smith, J.*) KARM NARAIN *v.* SALAMAT RAI.
57 I. C. 52 : 2 U. P. L R. (L.) 120.

——S. 22—*Necessary party — Co-executor added late.*

Where in a suit by an executor to recover properties of the testator within 12 years of the adverse possession by the deft., the co-executor who was a necessary party was made deft. more than 12 years after the deft's. adverse possession: *Held*, that the suit should be deemed as instituted on the date the co-executor was added, and hence it was time-barred. To save the bar of limitation, a properly framed suit must be filed within the prescribed period. (*Wallis, C. J. and Ramesam, J.*) SRERRANGATHANNI *v.* VAITHILINGA MUDALIAR. 40 M. L. J. 532 : 13 L. W. 392: 29 M. L. T. 281 : 63 I. C. 104 : (1921) M. W. N. 248.

LIMITATION ACT (IX OF 1908), S. 22—Necessary party.

——S. 22—*Necessary party—Alienee pendente lite.*

An alienee *pendente lite* is not a necessary party to the suit. He might be made a party as an act of grace but as he is not a necessary party, he cannot take advantage of S. 22 (1) of the Limitation Act and raise the question of limitation based on the fact that he was made a party after the period of limitation had expired. (*Sadasiva Aiyar and Spencer, JJ.*) KRISHNAPPA CHETTY *v.* ABDUL KADER SAHEB.

38 Mad. 535 : 25 I. C. 11 : 26 M. L. J. 449.

——S. 22—*Necessary and proper parties—Distinction between.*

In mortgage suits the puisne mortgagee is a proper but not a necessary party. A necessary party is a proper party but a proper party is not always a necessary party. (*Miller, C. J. and Mullick, J.*) SITAL PRASAD *v* ASHO SINGH.

1922 Pat. 326 : 1923 P 651.

——S. 22—*Necessary party—Bar of limitation—C. P. Code, O. 1, R. 9.*

If a plff. sues to recover the joint property of two or more persons, and at the time of trial omits to join all proper and necessary parties, and if the rights of those who ought to be added as parties to the suit are barred by limitation, the suit must be dismissed for want of proper or defective joinder of parties. 6 C. 815 ; 14 C 721 ; 7 B. 217 : 31 C. 487 (P. C.); 21 B. 154 : 14 A. 524 : 41 C. 727 : 12 A. L. J. 619 ; 794 ; 27 B. 31, ref. The principle applies to cases where several persons jointly seek to recover the assets of a deceased person. 18 C. W. N. 464, Appr. O. 1, R. 9 only applies to cases where relief can be given if the necessary parties are joined and the application is within time, but not to cases where the parties to be joined, are barred in the assertion of their rights. In that case though they may be joined the suit must be dismissed. (*Atkinson and Jwala Prasad, JJ.*) BHAGELA KOER *v.* ABDUL RAHMAN.

36 I. C. 77.

New defendant.

——S. 22—*New defendant — Petition against admissible purchaser—Addition of real purchaser after time—Suit not barred.*

Where the real purchaser was joined as a party to the application after period of limitation, *held*, that the addition of party after the period of limitation does not entail the dismissal of the application as against the newly added real purchaser (*Stuart, J.*) MT. BHAGGO *v.* MAHTA PRASAD.

1923 All. 462

——S. 22—*New defendant—Clerical mistake—Misdescription of deft.—Amendment.*

Where in a suit for the correction of a certain entry in the Record-of-rights the deft. was described as Mr. P. J. Forbes instead of Miss P. J. Forbes. *Held*, that the suit was not barred by limitation inasmuch as the mistake in the name of the deft. was but a clerical one and the case was merely one of misdescription since the party that was meant to be deft. in the suit was the person whose name had been recorded in the Record-of-rights. (*Sharfuddin and Teunon, JJ.*) JOGENDRA NARAIN ROY *v.* MRS. P. J. FORBES, 32 I. C. 872.

LIMITATION ACT (IX OF 1908), S. 22—New plaintiff.

New plaintiff.

——S. 22—*New plaintiff—Suit by manager of joint family—Other members added after time—Effect—Formal parties.*

Where in a suit by the manager of a joint Hindu family junior members are added as parties after expiry of the period of limitation they are merely formal parties and the suit is not barred. (*Lord Robson.*) KISHEN PRASHAD *v.* HAR NARAIN SINGH.

33 All 272 : 38 I. A. 45 : 15 C. W. N 321 : 8 A. L. J. 256 : 9 M. L. T. 243 : 13 C. L. J. 345 : 13 Bom. L. R. 359 : (1911) 2 M. W. N. 395 : 9 I. C. 739 : 21 M. L. J. 378 (P. C.).

——S. 22—*New plaintiff—Suit by manager of a joint Hindu family—One member joined after limitation period—Effect.*

Where a suit for rent was filed by the manager of a joint Hindu family within time, but after the period of limitation was over, one of the members was allowed to be joined as co-plff. The addition of the new plff. would not affect the right of the original plff. to continue the suit and the claim is not barred by reason merely of the said addition. (*Jenkins, C.J. and Mookerjee, J.*) BHOLA ROY *v.* JUNG BAHADUR SINGH.

22 I. C. 798 . 19 C. L. J. 5.

——S. 22—*New plaintiff—Suit amended as on behalf of company.*

Where a person sued in his own name but amended it after time as suing on behalf of the company, *Held*, that it was not one of adding a new plff. within S. 22 and the suit was therefore not barred. (*Abdur Rahim and Spencer, JJ.*) MUTHU KRISHNA PILLAI *v.* RAJAM AIYANGAR.

33 I. C 357 : 30 M. L. J. 57.

——S. 22—*New plaintiff—Suit in private capacity—Amendment of suit as managing director—Effect.*

The effect of a subsequent application by the plaintiff asking that a decree in the alternative may be passed in his favour as Managing Director of a Company (he having sued in his private capacity in the first instance), is not to add a new plaintiff after the right to sue has become barred by limitation. This is not equivalent to adding a new plaintiff so as to admit of the terms of Art. 22 being applied to the case The alteration merely has the effect of altering the ground on which the plaintiff already on record can recover the suit amount. 15 M. 417 ; 32 C 582 ; 25 M. L. J. 452 Foll. (*Hannay, J.*) RAJAM AIYAR *v.* MUTHUKRISHNA PILLAI.

25 I. C. 945 : 16 M. L. T. 251.

——S. 22 (1)—*New plaintiff—Party not signing or verifying pleading—Wrong description of party.*

Where one of the plffs. is wrongly described in the plaint as a minor and has not himself signed and verified the plaint, he is not, on that account, to be considered not a party. The plff. who has not signed or verified cannot be considered to be a new party, when he signs or verifies the plaint. under S. 22. (*Miller and Abdur Rahim, JJ.*) ARUNACHELLAM CHETTY *v.* PRABHAYYA CHETTY, (1912) M.W.N. 1207: 17 I. C. 880 : 25 M. L. J. 174.

LIMITATION ACT (IX OF 1908), S. 22—Scope of.

Scope of.

——S. 22—*Scope of—Devolution of interest—C. P. Code. O. 22, R. 10.*

S. 22 (1) of the Limitation Act (corresponding to the Straits Ordinance) contemplates cases in which a suit is defective by reason of the right persons not having been made parties, but not cases in which the suit was originally properly instituted but has become defective owing to a devolution of interest. In the latter case an order to carry on proceedings should be made. (*Lord Parker, J.*) SOONA MAYNA KENA ROONA MEYAPPA CHETTY *v.* SOONA NAVENA SUPPRAMANIAN CHETTY.

20 C. W. N. 833 : (1916) 1 M. W. N. 455 : 18 Bom. L. R. 642 : 43 I. A. 113 : (1916) 1 A. C. 603 : 35 I. C. 323 : 85 L. J. (P. C.) 179 : 114 L. T. 1002. (P. C.)

——S. 22—*Scope of—Joinder after limitation of a party not necessary.*

Where the holder of a bond was not impleaded by the plaintiff assignee until the expiry of the period of the limitation but the assignee admitted that she had authorised her agent to assign the bond for consideration, *held* S. 22 of the Limitation Act does not lay down that a joinder after the period of limitation shall in all cases necessarily involve a dismissal of the suit. If the presence of a party added after the prescribed period is not necessary to enable the court to award such relief as may be given in the suit framed by the plaintiff and he is joined *ex majori cautela* the suit is not barred merely because the limitation had expired at the time when he was impleaded. (*Shadi Lal, C.J.*) KUNJ LAL *v.* HARI RAM. **1923 Lah 438 (1).**

——S. 22—*Scope of—Addition of parties—Suit—Appeal.*

S. 22 of the Lim. Act does not prescribe any period of limitation for the joinder of a party to a suit under O. 1, R. 10. C.P. Code or to an appeal under O. 41, R. 20, C.P. Code, and there is nothing to prevent such a joinder in either a suit or appeal even after it is barred by time. S. 22 applies undoubtedly to appeals as much as to suits in principle, if not in words. But there is a difference in the result arising out of the application of S. 5 of the Lim. Act to appeals and not to suits. A suit in which a defendant is joined after the period of limitation has expired must necessarily be dismissed against him. In an appeal, however, there may possibly be reasons justifying its admission after time under S. 5. (*Hallifax, A. J. C.*) RUKSA *v.* RAJIBA BAHU.

1922 Nag. 213.

——S. 22—*Scope of—"Suit" deemed—Meaning.*

'Suit' in S. 22 does not include 'application' and hence the section does not apply to applications. Apart from the section, an application to set aside an *ex parte* decree, cannot as regards an added party, be considered as made when the added party is brought on record, 'Deemed' indicates that the statutory fiction can be resorted to, only when after the institution of a suit a new party is added or substituted, (*Dass and Bucknill, JJ.*) CHANDRIKA BOY *v.* RAM KUER THAKUR.

2 Pat. L. T. 771 : 62 I. C. 536 : 6 P. L. J. 463.

LIMITATION ACT (IX OF 1908), S. 22—Suit against wrong defendant.

Substitution of parties.

——S. 22—*Substitution of parties*—Pro forma *deft. made plff*—*Limitation.*

A person originally impleaded as a *pro forma* deft. but subsequently made a plff. is not a new party to whom the provisions of S. 22 of the Limitation Act apply. 35 Cal. 1065; 38 Cal. 342; 34 Bom. 91 Ref. (*Holmwood and Mullick, JJ.*) DWARKA NATH DASS *v.* MANMOHAN TOPEDAR.

19 C. W. N. 1269 : 30 I. C. 34 : 21 C. L. J. 611.

——S. 22 (1)—*Substitution of parties—Amendments—Effect of.*

Amendments made in the plaint by the leave of the judge cannot amount to an addition or substitution of party within S. 22 of the Limitation Act. (*Fletcher and Teunon, JJ.*) KURMANI SINGHA *v.* WASIF ALI. **28 I. C. 818 : 19 C. W. N. 1193.**

——S. 22 (2)—*Substitution of parties—Deft. made plff.*

S. 22 of the Limitation Act does not apply when a deft. is made a plff. (*Spencer and Napier, JJ.*) MUNICIPAL COUNCIL OF KUMBAKONAM *v.* VEERAPERUMAL PADAYACHI.

(1915) M. W. N. 143 : 28 I. C. 45 : 28 M. L. J. 147.

——S. 22—*Substitution of parties—Rectification of original improper representation.*

When the *cestu que* trust is substantially on the record from the beginning, the rectification of the original improper representation by inserting the name of a proper representative cannot be treated as the addition of new parties to come under S. 22 of the Limitation Act. (*Benson and Sadasiva Aiyar, JJ.*) SUBRAMANIA IYER *v.* SUBBA NAIDU. **14 M. L. T. 437 : 21 I. C. 421 : 25 M. L. J. 452.**

——S. 22—*Substitution of parties—Transposition of* pro forma *deft. as plff.—Limitation.*

Where a *pro forma* deft. is transferred from the category of a defendant to that of a plff. there is no introduction of a new plaintiff within S. 22 of the Lim. Act. 35 C. 1065; 34 B. 91; 38 C. 342 Rel. Consequently even though the suit would be time barred if instituted on the date of such transposition it does not affect the suit already instituted. (*Raymond, A. J. C.*) FIRM OF GERIMAL HARIRAM *v.* FIRM OF RAGHUNATH KALIANJI. **66 I. C. 873.**

——S. 22 (2)—*Substitution of parties—New firm suing on contract of old firm.*

Retirement of a partner and introduction of a new one in his stead has the effect of constituting a new firm. In such a case the new firm is precluded from enforcing contract by old firm and if the new firm brings a suit on a contract by the old firm, S. 22 (2) operates as a bar to the substitution of the names of old firm after the expiry of limitation period. (*Kemp, J.*) MANGHOOMAL JETHANAND *v.* ARATMAL SUTKAMDAS. **15 S. L. R. 152 : 1922 Sind 18.**

Suit against wrong defendant,

——S. 22—*Suit against a wrong deft. joining a right one after time.*

LIMITATION ACT (IX OF 1908), S. 22—Suit against dead person

Where the mistake in the name of the deft. is a clerical mistake the suit is within time and such amendment is also within time. (*Sharfuddin and Teunon, JJ.*) JOGENDRA NARAYAN ROY *v.* FORBES, 32 I. C. 872.

Suit against dead person.

——S. 22—*Suit against dead person—Effect of.*

A plff. cannot claim the benefit of the institution of a suit against dead person for the purpose of extending the period of limitation against his heirs. (*Kanhaiya Lal, A. J. C.*) NAU NEHAL SINGH *v.* THE DEPUTY COMMISSIONER, UNAO.
47 I. C. 894 : 5 O. L. J. 546.

——S. 22—*Suit for damages for wrongful distraint—Limitation—Agra Tenancy Act, S.* 146

The plaintiffs had cut and stacked, from the land, within the purview of their lease a large quantity of thatching grass which they hoped to sell at a substantial profit. The defendants wrongfully and maliciously levied a distraint, under colour of Chapter IX of the Tenancy Act, upon this grass of the plaintiffs. The immediate result of this was that the plaintiffs missed their market and were unable to sell their grass, while the defendants were disposing of theirs. In the meantime the rainy season began and the land upon which the plaintiffs' stacks were standing was flooded. The plaintiffs brought a suit to contest the distraint and finally succeeded in obtaining an order from the Court setting the distraint aside. When however, they became entitled to re-enter into possession of their own grass, the stacks, had been so damaged by rain and flood as to be utterly worthless. Thereupon the plaintiffs claimed the full value of the stacks, as the correct measure of damages for the wrong done to them by the defendants in wrongfully distraining the same. The distraint was levied on the 15th May 1919. The suit under S. 142 of the Tenancy Act, to contest the distraint was terminated by the Court's order releasing the grass on 16th of September 1919. The present suit for damages was insituted on the 12th of December 1919.

Held following *Dalip Upadhia v. Gauridat Upadhia* (II Legal Remembrancer 61) the cause of action for a suit for damages in respect of a wrongful distraint takes its origin from the day on which the distraint came to an end and the suit may be lawully instituted within the prescribed limitation period of three months calculated from the said date. The suit was therefore within time. (*Piggott, Walsh and Lindsay, JJ.*) JHABBU *v.* MUSAMMAT BATUL. 45 A. 208: L. R. 4 A. 1 (Rev.): 1923 All. 146.

——S. 23 and Art. 120—*Cause of action—Trespass.*

Every act of trespass gives a fresh starting point for limitation. (*Sunder Lal, J.*) SHEO PRASAD SONAR *v.* MANGAR MANIHAR. 25 I. C. 185 : 12 A. L. J. 1150.

——Ss. 23 and 24—*Continuing wrong—What is—Suit for damages.*

Where damages are claimed for personal injury which is caused by throwing sulphuric acid

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on the face, there is no continuing wrong for purpose of limitation nor does time run only from the time any specific injury is caused. (*Shah, A.C.J. and Crump, J.*) ABDULLA *v.* ABDULLA.
25 Bom. L. R, 1333 : 1924 Bom. 390.

——S. 23—*Applicability—Suit for a declaration of public right of way—Continuing obstruction.*

S. 23 is applicable to a suit for a declaration of public right of way as the obstruction is a continuing wrong. (*Panton, J.*) HARIS CHANDRA SAHA *v.* PRAN NATH CHAKRABARTY.
26 C. W. N. 587.

——S. 23 and Art. 146—*Continuing wrong—Adverse possession—Encroachment in Municipal street.*

Where the deft. had erected a *rowak* or platform as an integral part of his building over a street or a drain vested in the plff. Municipality and the building had stood for half a century there is no continuing wrong and limitation for a suit by the plff. is not saved by S. 23 of the Limitation Act. The injury is complete on the erection of the *rowak*. (*N. R. Chatterjee and Sheepshanks, JJ.*) ASHUTOSH SADUKHAN *v.* CORPORATION OF CALCUTTA. 49 I. C. 93 : 28 C. L. J. 494.

——S. 23—*Continuing wrong—Obstruction to discharge of water.*

An obstruction to the discharge of surface water constitutes a recurring cause of action and therefore no question of limitation can arise in a suit for the removal of the obstruction. (*Walmsley and Greaves, JJ.*) KAESWAR MUKERJI *v.* ANNODA PRASAD PATRA. 41 I. C. 863 : 22 C. W. N. 666.

——S 23, Arts. 120 and 131—*Applicability—Suit by succeeding manager to set aside a commutation — Arrangement made by his predecessor.*

Where the deft. held lands belonging to a temple at half the Government rates and was also liable to render certain personal services and the manager commuted the latter into a money rent of one rupee, in a suit by the subsequent manager to set aside this commutation ten years after its date, *held* remanding the case (1) that if the arrangement was a temporary one, the suit would not be barred if brought within 12 years of denial of the plff.'s right inasmuch as the plff.'s claim was either to assess rent which was a recurring right or to enhance the rent, and (2) that if the arrangement was a permanent one and the rent was fixed in perpetuity then it would amount to the creation of a permanent tenure, at a fixed rent by *shebait* and it must be set aside whithin 6 years of the plff.'s succession to office. Otherwise the suit would be barred under Art. 120 (*Chatterjee and Newbould, JJ.*) SURAJA DATT SARMA DEOLI *v.* EKA-DAHIA KOCH.
39 I. C. 522.

——S. 23, Sch. I, Arts. 120 and 142—*Continuing wrong—Order under S.* 146, *Cr. P. Code.*

Where a Magistrate attached a disputed property under S. 146, Cr. P. Code when plff. was in lawful possession and plff. sued for declaration of title for recovery of possession *it was held* that the suits though framed as suits

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for possession could not be treated as such and were not governed by Art 142, Limitation Act. The case should be treated as one of continuing wrong within S. 23 of the Limitation Act and the suit is not barred under Art. 120 of Limitation Act as a fresh period of limitation begins to run at every moment of the time the wrong continues, as the title continues unaffected in the true owner for under S. 28 his right is extinguished only at the determination of the period limited for the institution of a suit for possession. (*Mookerjee and Beachcroft, JJ.*) BROJENDRA KISHORE ROY *v.* BHARAT CHANDRA ROY.
22 C. L. J. 283 : 31 I. C 242 : 20 C. W. N. 481.

——— S 23—*Continuing wrong—Obstruction to waterflow--Right of way.*

The obstructions which interfere with the flow of water are in the nature of continuing nuisances as to which the cause of action is renewed *de die in diem* so long as the obstructions causing such interference are allowed to continue. There is no distinction between an obstruction to a water course and one to a way and wrongful interference with a right of way constitutes a nuisance. Obstructions to easements other than watercourses may be treated as continuing nuisances, 1 C. W. N. 96 ; 6 C. 394, Ref. (*Mookerjee and Richardson, JJ.*) NAZIMUI LA *v* WAZIDULLA.
29 I. C. 385 : 21 C. L. J. 640.

——— S. 23—*Nuisance is a continuing wrong.*

Causing nuisance is a continuous wrong independent of contract and therefore a fresh period of limitation begins at every moment during which the wrong continues. (*Le Rossignol, J.*) RUKN-UD-DIN *v.* ALTAF AHMAD.
60 I. C. 529.

——— S. 23—*Continuing injury — Erecting chappers on land is a.*

Erecting chappers on land belonging to another is not a continuing injury within S. 23. (*Broadway, J.*) LAL SINGH *v.* HIRA SINGH.
3 Lah. L. J. 128 : 60 I. C. 20 : 3 U P L. R. (Lah.) 9

——— S. 23 and Art. 120—*Continuing wrong—Discharging rain water on to plff.'s roof.*

Plaintiffs sued for perpetual injunction restraining defendant from discharging rain water on to the roof of the plaintiff's shop through a *parnala*. *Held*, that each occasion when the defendant discharged water through the *parnala* on the plaintiff's roof the plaintiff's got a fresh cause of action and that the last occasion when this was done may be held as the starting point of limitation for the present suit, unless an indefeasible right of easement by twenty years' enjoyment has been acquired by the deft. 25 I. C. 185 ; 24 W. R. 97, Foll (*Shadi Lal, C. J.*) NUR MAHOMED *v.* GAURI SHANKAR.
2 U. P. L. R. (Lah.) 116 : 56 I C. 1003 : 2 Lah. L. J. 463.

——— S. 23—*Cause of action—Appropriation of income by co-sharer—Suit for declaration.*

Every fresh appropriation of the income of property by one co-sharer to the exclusion of others is a fresh invasion of their rights and gives rise to a fresh cause of action to the other co-sharers for a suit for a declaration of their rights. (*Chevis and Shadi Lal, JJ.*) HARNAM SINGH *v.* MAKHAN SINGH.
21 P. L. R. 1918 : 44 I. C. 31 : 43 P. W. R. 1918.

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——— S. 23—*Continuing wrong—Using mosque as private residence.*

Where the defendant, the *mutwalies*, built in 1903 a *balakhana* over the mosque and used it as a private residence and the plaintiff sought to eject them in 1912, *held* that the deft's act was a "continuing wrong" within S. 23 of the Act so that a fresh period of limitation began to run at every moment of the time during which the wrong continued. (*Shah Din and Leslie Jones, JJ.*) MUHAMMAD AHMAD *v.* MUHAMMAD FAZAL.
31 P. R. 1917 : 39 I. C. 116 : 31 P. W. R. 1917.

——— S. 23, Arts. 32, 142, 144 and 146 (a)—*Continuing wrong—Encroachment on public way.*

A suit for ejectment of a person from a specific field is not within S. 23 of the Limitation Act by the fact that the field has been recorded as a part of a thoroughfare and *shamilat deh*. Where in spite of encroachment on a road the road left is sufficiently broad for the use of the public the encroachment cannot be treated as an interruption of easement giving a recurring cause of action *de die in diem* under S. 23 of the Limitation Act. 1 C. W. N. 96 Dist. (*Reid, C. J.*) ACHAR SINGH *v.* BADHAWA SINGH.
124 P. R. 1912 : 2 P. L. R. 1913 : 15 I. C. 285 : 132 P. W. R. 1912.

——— S. 23—*Continuing wrong—Trade mark—Infringement.*

The infringement of a trade mark is a continuing wrong and so long as the infringement continues, a fresh cause of action arises *de die in diem*. (*Shah Din and Scott-Smith, JJ.*) ABDUL SALAM *v.* HAMIDULLA.
97 P. R. 1913 : 5 P. L. R. 1912, Supp : 15 I. C 116 : 166 P. W. R. 1912.

——— S. 23—*Cause of action—Alienation of offerings of a temple—Suit for declaration.*

Alienations of future income of the offerings give a fresh cause of action on each successive act of appropriation by the alienee and a suit is therefore not barred by limitation. (*Abdur Rahim, Offg. C. J., Seshagiri Aiyar and Phillips, JJ.*) KALYANA VENKATARAMANA AIYANGAR *v.* KASTURI RANGA AIYNGAR.
40 Mad. 212 : 20 M. L. T. 490 : 5 L. W. 625 : (1917) M. W. N. 400 : 38 I. C. 73 : 31 M. L. J. 777.

——— S. 23—*Continuing wrong — Wrongful distraint.*

Where the cause of action consists in a wrongful distraint, there is no continuing wrong and so no continuing cause of action under S. 23. 24 M. 331 Dist. and Ref. (*Miller and Tyabji, JJ.*) VENKATARAMA AIYAR *v.* VYTHILINGA THAMBIRAN AVERGAL.
38 Mad. 655 : 24 I. C. 754 : 1 L. W. 89.

——— S. 23 and Art. 120—*Applicability—Dissolution of marriage—Suit for—Divorce—Cause of action.*

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A suit for dissolution of marriage or for a declaration as to an accomplished divorce is essentially different in cause of action from a suit for restitution of conjugal rights. The cause of action for a suit for restitution of conjugal rights is founded on a breach of the contract of marriage and the breach continues so long as the person of the wife is withheld from the husband and he is denied the undoubted legal rights of her conjugal society. The same cannot be predicated of a cause of action for a suit for dissolution of marriage or for a declaration that a divorce had taken place between the parties. The latter suit is governed by Art. 120 of the Limitation Act and S. 23 has no application to the case. (*Wazir Hasan, A J.C.*) MAHOMED HAMIDULLAH KHAN *v.* FAKHRJAHAN BEGAM. 8 O. L. J. 650 : 1922 Oudh 109.

——S. 23—*Continuing wrong—Non-transferable tenancy—Mortgage by tenants—Oudh Rent Act (XXII of 1886), S. 52 (2).*

Where tenants holding land under a settlement decree with heritable and non transferable rights mortgaged their holding and a suit in ejectment was brought by the landlord 16 years after the mortgage *held*, S. 23 of the Limitation Act applied as there was a continuing wrong. (*Bailie, S. M. and Tweedy, J. M.*) BHIKHARI *v.* MANAGER, COURT OF WARDS, HISSA. 24 I C. 780 : 1 O. L. J. 273.

——Ss. 23 and 26—*Continuing wrong—Riparian right—Obstruction.*

The obstruction of a stream, whether having a continuous flow or not, is a continuing wrong under S 23 of the Limitation Act and a suit for its removal is not governed by S. 26. (*Chapman and Jwala Prasad, JJ.*) KRISHNA DAYAL GIR *v.* BHAWANI KOER. 3 P. L. W. 5 : 43 I. C. 235 : 3 P. L. J. 51.

——S. 24—*Bodily injury—First suit for damages—Second suit for further injury consequential on the first injury.*

Plff. is entitled to compensation not only for damages actually visible at the time when the suit is instituted or at the time of trial, but even such consequential damage as may reasonably be expected to arise in the future from the wrongful act complained of ; where a plff. has sued for and recovered damages for injury to his person, a future suit for subsequent loss of the injured limb is not maintainable as it did not give rise to a fresh cause of action without any further wrong on the deft.'s part. S. 24 of the Limitation Act was not at all applicable to the case. (*Miller, C. J. and Adami, J.*) ALLAN MATHEWSON *v.* DISTRICT BOARD, MANBHUM. 1 Pat. L. T. 269 : 1920 Pat. 193 : 58 I. C. 749 : 5 P. L. J. 359.

——S. 25—*Instalment bond—Date in Hindi.*

A mortgage bond executed on 24th July, 1892 provided for the payment in 8 yearly instalments, each instalment had to be paid on *Magha Sutha Powrnamasi* of each year. The last payment was to be made on that day in 1956, corresponding to 14th of February 1900. In a suit on the bond brought on 19th July 1912, *held* it was barred by limitation. S. 25 did not apply to this case. The true test is on what date plff. was entitled to claim his money if payment was not made of any instalment fixed in the bond. (*Richards, C. J. and Banerjee, J.*) DWARKA PRASAD *v.* RAJA RAM. 29 I. C. 980 : 13 A L J. 486.

——S. 25 (3)—*Notice to file a claim on a certain date—Filing the claim on succeeding day if sufficient for S. 25.*

Where a notice under S. 9 of the Act is given to file a claim on a certain date and the claim is filed on the following day, it is sufficient compliance with the notice to enable him to come in under Cl. (3) of S. 25 of the Act. (*Richardson and Huda, JJ.*) GYANENDRA NATH PAUL *v.* SECY. OF STATE. 61 I. C. 532 : 25 C. W. N. 71.

——Ss. 26 and 27—*See also* EASEMENT ACT SS. 15 AND 16.

——Ss. 26 and 28—*Defences.*

Unless a suit falls under S. 26 or 28 there is no bar of limitation to a defence. (*Macleod, C. J. and Heaton, J.*) MAHADEV *v.* SADASHIV. 59 I. C. 118 : 22 Bom. L. R. 1082.

——S. 26—*Right to take water based on lost grant—Section does not apply.*

S. 26 of the Lim. Act does not govern a claim to take water from a tank where that claim is based on a lost grant. It applies only to cases of easements claimed by prescription. (*Greaves and Panton, JJ.*) GURU PRASANNA ROY *v.* FUL CHAND MONDAL. 1923 Cal. 291 (2).

——S. 26—*Right of way—Customary right—Section does not apply.*

A customary right of way is not an easement in the legal sense of that term, and even if it were an easement it is not necessary for the party claiming it to rely on S. 26 of the Act, if the existence of the right could be otherwise established, A right based on custom is established by proof of the custom and it is not necessary that there should be evidence from which a lost grant may be presumed. (*Richardson and Suhrawardy, JJ.*) ALI MAHOMED *v.* SHEIKH KATU. 36 C. L. J, 280 : 1923 C. 200.

——S. 26—*Suit for declaration of right of way—Affirmative proof of 'actual user'—'Enjoyment'—'Actual exercise.'*

It is not necessary for a plaintiff suing for a declaration of a right of way to prove affirmatively "actual user" of the way down to a date within 2 years before the suit. A person may be in 'enjoyment' of a right of way during a period of time, though the way is not actually "used" by him every moment. Cessation of user is not always inconsistent with continuance of enjoyment as of right (*i.e.*) cessation of user is not an invariable indication of abeyance of enjoyment of a right. (*Mookerjee and Beachcroft, JJ.*) GOPAL CHANDRA *v.* BANKIM BEHARI. 26 C. W. N. 121.

——S. 26—*Customary right—Section not applicable.*

A customary right of way for all the villagers is not case of acquisition by prescription and is not governed by S. 26 of the Limitation Act. (*Chatterjee and Panton, JJ.*) MAHOMED NURAL HUQ *v.* BAKSU MANDAL. 65 I. C. 509.

LIMITATION ACT (IX OF 1908), S. 26.

———S. 26—*Right of way—Cessation of user—Effect of.*

A person may be said to be in 'enjoyment' of a right of way during a period of time, though he does not actually "use" the way every moment. Cessation of user for a time is not an invariable indication of abeyance of enjoyment of a right. (*Mookerjee and Beachcroft, JJ.*) GOPAL CHANDRA SEN *v.* BANKIM BEHARY RAY.
51 I. C. 372 : 29 C. L. J. 421.

———S. 26—*Easement—Peaceable enjoyment for 20 years.*

Where an easement is enjoyed peaceably and uninterruptedly for 20 years, the requirements of S. 26 of the Limitation Act are fulfilled and the right becomes absolute. (*Mullick and Walmsley, JJ.*) GIRISH CHANDRA *v.* KUNJA BEHARI KOWAR.
26 I. C. 781.

———S. 26—*Right of way—Non-user for two years prior to suit.*

A plff. bringing an action for obstruction of a right of way for boats is not barred by S. 26 of the Limitation Act by non-user within two years prior to the institution of the suit. 8 C. 132, Foll. (*Holmwood and Chapman, JJ.*) RAM GOPAL SEN *v.* ABHOYA CHARAN GHOSH. 26 I. C. 485.

———S. 26—*Obstruction—Filling up channel—When amounts to.*

The filling up of a water channel will not necessarily constitute an obstruction of the plff's enjoyment of his right within S. 26, if no water for irrigation was required at that time and there was no refusal by defts. to reopen it. (*Teunon, J.*) KANAI LAL MANDAL *v.* JADAB LAL GANGOPADHYA. 25 I. C. 386.

———S. 26—*Easement—Discharge of surplus water—Right to compel.*

When the plff. has not proved the use of a watercourse carrying surplus water of adjoining lands over deft.'s land into his own peaceably and openly as an easement and as of right for statutory period within S. 26 the plff cannot compel the defts, who claim to use the water entirely to continue to discharge the water or prevent them from blocking up the channel in their own land, though the defts. and the adjoining owners may have acquired a right of easement to discharge such water on the plff.'s land. (*Mookerjee and Beachcroft, JJ.*) BIMALCHANDRA *v.* CHANDRA KANT. 22 I.C. 514 : 19 C. L. J. 45.

———S. 26—*User as of right—Onus.*

Under S. 26 of the Limitation Act, the onus is on the plff. to prove that the user was as of right. The presumption to be drawn from user is a question of fact depending on the circumstances of the case, 8 C. W. N. 359, Foll. (*Beachcroft and Chapman, JJ.*) RAMESHUR MITRA *v.* NUT BEHARI GUIN. 19 I. C. 66.

———S. 26—*Right of way—User as of right—Onus.*

Under S. 26 of the Limitation Act which is the law in force in India, a right of way claimed must be proved to have been used as of right and the onus is on the plff. to prove it. (*Carnduff and Chapman, JJ.*) BARODA KANT KARMAKAR *v.* SREE NATH SIL. 18 I. C. 211.

LIMITATION ACT (IX OF 1908), S. 26.

———S. 26—*Fishery—Right of—Easement.*

A right of fishing is an easement under S. 26, Limitation Act. A plff claiming a statutory easement of fishery must prove that the right was exercised within two years before the commencement of the suit; but not so where plff. traces the right to the end of the 18th. century. (*Mookerjee and Carnduff, JJ.*) LOKANATH *v.* JAHANIA.
12 I. C. 305 : 14 C. L. J. 572.

———S. 26—*Scope of.*

S 26 is concerned only with the acquisition of the easement and not with the extent of the right or with the remedy by which a disturbance of the right may be vindicated, for which English Law would have to be resorted to. (*Jenkins, C.J. and Woodroffe, J.*) P. C. PAUL *v.* WILLIAMS ROBSON. 12 I. C. 60 : 39 Cal. 59.

———S. 26—*Fishery—Private rights—How acquired—Prescription.*

Private rights of fishing in public waters may be acquired either by a grant from the Crown or by prescription from which a grant may be presumed. *Quaere.*—Whether exclusive rights can be acquired in a tidal or navigable river by proof of mere enjoyment in the manner provided by S 26 of the Limitation Act. A person to acquire the right of fishery, by prescription must show that he had an uninterrupted enjoyment of it openly, publicly and peacefully for over the statutory period; but where such an enjoyment was in exercise of a common right which be shared with others, he should show that his user was in assertion of a higher right than the general right in himself and for exclusive benefit. (*Coxe and Teunon, JJ.*) ABHOY CHARAN *v.* DWARKA NATH MALO. 39 Cal. 53 : 11 I. C. 180 : 15 C. W. N 972.

———S. 26—*Ferry—If easement.*

A ferry is not an easement within S 26. (*Coxe, J.*) ABDUL KHOYRAT *v.* HEM CHANDRA ROY.
9 I, C. 846.

———S. 26—*Immemorial user.*

The plea that the defendants had been using a particular *Kul* from time immemorial, does not amount to setting up a plea of easement. (*Moti Sagar, J.*) MANSA RAM *v.* KALU RAM.
1923 Lah. 605.

———S. 26—*User of intermittent nature—Absence of assertion of rights—Acquisition of rights.*

User of an intermittent nature unaccompanied by assertion of right is very common and arouses no opposition. A pond is not susceptible of actual physical possession by the legal owner and possession follows title, unless the usurper can prove long and continuous exclusion of rightful owner. (*Le Rossignol, J.*) BHURU *v.* DATU RAM.
4 Lah. L. J. 461 (1) : 1923 Lah. 59.

———S. 26—*User as of right—Open user for 20 years—Right of way.*

An open user of a right of way for twenty years without interruption and without sufference on the owner's part is an enjoyment as of right within S. 26 of Limitation Act. Plffs. and defts. were co-sharers in a will. Plffs. had used

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a road across defts'. fields without let or hindrance for a period of 20 years and this road they could use to gain access to the well *Held*, that having regard to the habits of the people of this country the enjoyment of the road "as of right" within S. 26 of the Limitation Act should have been presumed, (*Broadway, J.*) DIWAN *v.* JAGTA.
113 P. L. R. 1920 : 56 I. C. 728 . 1 Lah 206

———S. 26—*Easement—Supply of water from natural stream—Acquisition*

An easement of the supply of water from a natural stream may be acquired by twenty years' user under the provisions of S 26 of the Limitation Act, 35 P. R. 1895, Foll. 49 P. R. 1888, not Foll. (*Rattigan, C. J.*) ABDUL RAHIM *v.* MUHAMMAD ALAM. 57 P R. 1918 : 130 P. W. R. 1918: 46 I. C. 441 : 104 P. L. R. 1918

———S. 26—*Easement—User for 19 years, 6 months.*

In reckoning the period of 20 years obstruction acquiesced in for less than one year before suit must be ignored and a plff. who has proved enjoyment of a right for 19 years and a fraction within one year before suit, must be taken to have established his right of easement. An easement can therefore be acquired after an enjoyment of 19 years and a fraction and the 20 years period in S. 26 is accordingly curtailed by the explanation. (*Shadi Lal, J.*) SAWAN SINGH *v.* CHATTAR SINGH. 46 I. C. 17 : 48 P. R. 1918.

———S 26—*Easement—User as of right—Meaning of—Acquisition—Essentials.*

To become an easement the enjoyment of a right must be open, peaceable and as of right ; and so the ability of the servient owner to stop the enjoyment, irrespectively of the dominant owner's will is inconsistent with the idea of a real easement existing.

User as of right implies a user against the will of the owner of the property over which the user is sought ; and so an annual payment for the use of a mill negatives the idea of the user being as of right, and consequently there can be no easement in such a case. (*Shadi Lal, J.*) SUNDAR *v.* NAG. 37 I. C. 788 : 4 P. R. 1917.

———S. 26—*Right of way—User by public—Presumption.*

The user of a road by the public openly and as of right is sufficient, apart from the law laid down in the Limitation Act, 1877, S. 26, to raise a presumption of its dedication to their use though such presumption might be rebutted by evidence of the owner's intention that the public should only have a permissive use or that the dedication was implied to a particular class of persons only. 62 P. R. 1898 ; 4 I. C. 870 Foll. ; 8 I.C. 175, Foll. (*Johnstone, C. J. and Scott-Smith, J.*) MUNICIPAL COMMITTEE KARNAL *v.* MUHAMMAD RUSTAM ALI KHAN. 108 P. R. 1916 : 35 I. C. 468 : 146 P. W. R. 1916.

———Ss. 26 and 27—*Applicability — Easements.*

Ss. 26 and 27 do not apply to cases where the easements are acquired under the Easements Act. The question even as regards an easement right claimed under the statutory prescription is not one of limitation but whether the enjoyment necessary to acquire the prescriptive right, has been peaceable and as an easement without interruption for 20 years within 2 years before suit. (*Sadasiva Aiyar and Bakewell, JJ.*) MUTHU GOUNDAN *v.* ANANTHA GOUNDAN.
18 M. L. T. 476 : 2 L. W. 1107 : (1916) 1 M. W. N. 113 : 31 I. C. 528 : 29 M. L. J. 685.

———S. 26 and Art. 144—*Fishery—Immoveable property—Adverse possession.*

A right of fishery is an interest in land and falls under Art 144 of the Lim. Act. It is not necessary for the plff. to prove user for 20 years under S. 26 of the Lim. Act. (*B. K. Mullick and Ross, JJ.*) MESSRS. HENRY HILL AND CO. *v.* SHEORAJ RAI. 3 Pat. L. T. 53 : 1922 P. 9.

———S. 26—*Ferry—Right to maintain—Easement—Right of easement.*

The right to establish and maintain a ferry over the property of another is a right of easement and to make it absolute it should be exercised as an easement and as of right for twenty years. Acts referable to an exercise of easement are distinct from those of user, the latter alone constitute dispossession, the former do not. (*Das and Adami, JJ.*) PARDIP SINGH *v.* SECRETARY OF STATE FOR INDIA. 1 P. L. T. 395 : 5 P. L. J. 500 : 1920 Pat. 297 : 57 I. C. 516 : 2 U. P. L. R. (Pat.) 181.

———S. 26—*Person—Claim to a right of way.*

The term 'person' in the first clause of section 26 cannot be limited to the narrow meaning of individual, but when the claim to a right of way is made in virtue of the occupation of a piece of land. The term means and includes the person in occupation of that land, whether that person is the same individual throughout the period of 20 years or not. (*Brown, A. J. C.*) MAUNG PO PLA *v.* MAUNG PO SEIN. 1923 U. B. 23.

———S 26—*Easement—Discharge of surplus water—Right to.*

A plff. seeking to enforce a right to discharge surplus water through a watercourse may base his right either on the acquisition of an easement to be proved under S. 26 or as an alternative case on a natural right existing in him apart from any easement, provided the matter was brought before the trial Court in some form or other in which latter case on proof of the right the deft. has to establish the acquisition of a right to dam the flow under S. 26. 1 M. 335, 7 W. R. 498 : 20 W. R. 287, Referred to. (*Fox, C.J. and Twomey, J.*) MAUNG THA TE *v.* KO SHWE BYAN.
35 I. C. 394 : 10 Bur. L. T. 38.

———S. 26—*Easement—Discharge of surplus water—Right to compel.*

Where *A* has the right to discharge surplus rainfall from his land to *B*'s land, no period of time will give *B* the right to compel *A* to send water on to him, provided *A* does not interfere with the flowing water in a natural and defined channel. Every owner of land has the natural right to collect or dispose of all water on the surface not passing in a defined channel. (*Parlett, J.*) MI HLA THANDA *v.* MAUNG SHWE PANTUNG.
13 I. C. 27 : 4 Bur. L. T. 223.

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——S. 27—*Applicability—Transferee from Hindu widow as representing estate*—Obiter.

S. 27 of the Limitation Act does not apply to a donee or transferee from a Hindu widow in virtue of her powers as representing the estate, as in such a case the transferee succeeds the widow in her capacity as full owner and not as upon the determination of her life interest. (*Richardson and Walmsley, JJ.*) ERALIJOOL TEA CO., LTD. *v.* NAGENDRA NATH. 41 I. C. 47.

——S.28—Defence if barred. *See* LIMITATION ACT, S 3.

——S. 28—*Lapse of time—Effect on possession already got.*

A right of property which is vested in one person is not transferred by the mere lapse of time to the person actually in possession. (*Lord Salvesen.*) MAHOMED MUMTAZ ALI *v.* MOHAN SINGH. 45 A. 419 : 33 M. L. T. 321 (P. C.) : 21 A. L. J. 757 : 26 O. C. 231 : L. R. 4 P. C. 1 : 9 O. & A. L. R. 901 : 10 O. L. J. 383 : 50 I. A. 202 : 45 M.L.J. 623 : 1923 P.C. 118 (P.C.).

——S. 28—*Title by prescription—Plea of —Proof.*

Where a person pleads title by prescription he must prove possession for the full statutory period. Possession for a shorter period does not shift the onus on to the original owner to show that possession became adverse within the statutory period. (*Lord Shaw.*) SECRETARY OF STATE *v.* CHELIKANI RAMA RAO, 39 Mad. 617 : 20 C. W. N. 1311 : (1916) 2 M. W. N. 224 : 14 A. L. J. 1114 : 20 M. L. T. 435 : 4 L. W. 486 : 18 Bom. L. R. 1007 : 25 C. L. J. 69 : 35 I. C. 902 : 43 I. A. 192 : 31 M. L. J. 324 (P. C.).

——S. 28 and Art. 144—*Discontinuous user —Right to cut wood from trees—Adverse possession.*

Plff.'s ancestor obtained leave in 1867 to plant trees on land belonging to, the Government. He was to do so at his own expense and to tend them; the only right he was entitled to, was to get the fallen dry wood from the trees. Certain transfers of the village took place, and on two occasions *viz.*, once in 1900, and another time in 1910, the deft. who purchased the village got the proceeds of sales of such wood. The plffs. on both the occasions asserted their claim to wood or the price thereof but were unsuccessful. Within six years from the date of the last sale they brought the suit for declaration of their right to get the dry wood under the agreement of 1867. *Held*, that the plff.'s right to take and appropriate wood from trees when fallen and cut being one which could only be exercised on occasions that is when the wood might fall or be cut from the trees and not occurring every year or at stated times and there having been disputes as to the right between the parties on two previous occasions there could be no adverse possession. *Quaere*—Whether S. 28 of the Limitation Act applies at all to the case like this. (*Tudball and Rafique, JJ.*) DEBI PRASAD *v.* BADRI PERSHAD. 40 All. 461 : 44 I. C. 980 : 16 A. L. J. 345

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——Ss. 28 and 29—*Applicability—Restitution of conjugal rights—Limitation Act (XV of 1877), Ss. 2, 28 and Sch. II, Art 35*

The result of the expiry of the period of limitation in respect of rights to restitution of conjugal rights is that the remedy is only barred, but not extinguished under S. 28. The portion of S. 2 of the old Act of 1877 enacting "that nothing herein or in that Act contained shall be deemed to affect any title acquired or to revive any right to sue barred under that Act or any enactment thereby repealed" has not been reproduced in S. 29 of the new Act of 1908 and therefore a suit for restitution of conjugal rights while the Act of 1908 is in force, is maintainable though itis filed after the expiry of the period of limitation prescribed under Art. 35 of the old Act. (*Karamat Hussain and Tudball, JJ.*) AYESHA *v.* FAIZ HUSSAIN. 34 All. 412 : 16 I. C. 124 : 9 A. L. J. 784.

——S. 28—*Extinction of ownership—None where no one is in possession.*

The owner of property does not lose his right to it though he is not in possession for 12 years, and none else also is in possession of it. His right ends only at the termination of the period prescribed by the Act for a suit for possession ; the period cannot terminate unless it begins to run, and it will not begin to run, till some one else gets into possession of the property and holds adversely to the true owner. (*Macleod, C. J. and Fawcett, J.*) SWAMIRAO SRINIVAS *v.* BHIMABAI PADAPPA. 45 Bom. 1020 : 62 I. C. 101 : 23 Bom. L. R. 416.

——S. 28 and Art. 146-A—*Title by prescription—Municipal Street—Bombay Dt. Municipal Act (1901), S. 122.*

When a *verandah* is standing on part of a public street for more than thirty years. the Municipality cannot issue notice under S. 122 for its removal as the owner of *verandah* gets title to the site under it by virtue of S. 28 and Art. 146 A Limitation Act. (*Macleod, C.J. and Heaton, J.*) TAYABALLI ABULLAHBHAI *v.* DOHAD MUNICIPALITY. 58 I. C. 326 : 22 Bom. L. R. 951.

——S. 28—*Right to maintenance—Section does not operate to extinguish.*

The cause of action for maintenance accrues from time to time according to the want and exigencies of the person entitled, and S. 28 of the Lim Act does not operate to extinguish it. (*Mookerjee and Cholmer, JJ.*) GOPALCHANDRA PAL *v.* KADAMBINI DASI. 1924 C. 364.

——S. 28—*Title by prescription—Municipal Street.*

A Municipality is not entitled to remove verandah standing on a public street for over thirty years and no notice can be issued for its removal (*Mookerjee, A. C. J. Fletcher and Richardson, JJ.*) PROMOTHA NATH *v.* SORAI DASI. 24 C. W. N. 1011 : 58 I.C. 327 : 31 C. L. J. 463 : 47 C. 1108.

——S. 28—*Applicability—Personal actions—Dispossession of mortgagor.*

S. 28 is limited to suits for possession and does not apply in respect of suits for debts. In respect

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of debts the act simply bars the remedy but does not extinguish the debts Therefore the dispossession of the mortgagor in a simple mortgage extinguishes only the equity of redemption and not the title of the mortgagee to his debt. (*Sanderson, C.J. and Mukerjee, J.*) PRIY SAKHI *v.* BIRESHWAR SAMANT. 44 Cal. 425: 21 C. W. N. 177 : 37 I. C. 277 : 27 C. L. J. 212.

——S. 28—*Scope of.*

Quaere—Whether S. 28 of the Limitation Act operates only to extinguish the interest of the dispossessed owner and not to assign that interest to the adverse possessor. (*Sanderson, C.J. and Mookerjee, J.*) NABIN CHANDRA GHOSH *v.* NILKAMAL MUKHOPADHYAYA. 36 I. C. 11 : 25 C. L. J. 537.

——S. 28—*Title by prescription—Basis of.*

A prescriptive title is not based on original right or morality but solely on expediency. (*Shadi Lal and Le Rossignol, JJ.*) ALLAH DAD *v.* FAZAL DAD. 46 I. C. 964.

——S. 28 and Sch. 1—*Applicability—Defence.*

Sch. 1 provides periods of limitation within which a "suit" must be brought. Neither Sch. 1 nor S. 28 applies to defences. (*Shah Din and Chevis, JJ.*) GOKUL CHAND *v.* NIADARMAL. 1 P. R. 1916 : 32 I C. 485 : 206 P. W. R. 1915.

——S. 28, Sch 1 Art. 44—*Title by prescription—Guardian of Minor—Alienee from guardian, right of.*

Art 44 of the Limitation Act applies to a suit by a ward for setting aside the alienations made by his guardian and the same article applies even when a prayer for possession is added in cases where the possession is with the alienee. The title to the property vests in the alienee till the alienation is set aside and becomes exclusively his on failure of the ward to sue to set aside the alienation within three years of his attaining majority by virtue of S. 28 of the Act. (*Sadasiva Aiyar and Spencer, JJ.*) KANDASAMI NAYAKEN *v.* IRUSSAPPA NAYAKEN. 41 Mad. 102 : 40 I. C. 664 : 33 M. L. J. 309.

——S. 28—*Scope of—Limitation not extinction.*

Limitation Act should be construed strictly. Limitation is not extinction and the bar created by limitation does not discharge a debt save in the particular circumstances of S. 28.(*Ayling and Napier, JJ.*) NATHAMUNI PILLAI *v.* VENGAMMAL. 40 I. C 358 : 5 L. W. 593.

——S. 28—*Service Inam — Adverse possession.*

Where an *inam* granted, for service is trespassed upon by a stranger before its enfranchisement and held adversely for the statutory period the holders acquire title to it under S. 28 of the Limitation Act. 24 I, C. 501. Dist. (*Seshagiri Aiyar and Phillips, JJ.*) DINVAHI LAKSHMIPATHI *v.* PINGALI NARASIMHAN. (1916) 1 M. W. N. 473 : 34 I. C. 898 : 3 L. W. 590.

——S. 28—*Trust property—Transferee of—Title by prescription.*

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Where a transferee of trust property has not acted in good faith but has paid valuable considerations he acquires good title after the lapse of the period necessary for extinguishing under S. 28 the right of the beneficiary to follow the property in his hands. (*Tyabji and Spencer, JJ.*) PRASANNA VENKATACHELLA *v* COLLECTOR OF TRICHINOPOLY. 33 I. C. 45 : 38 Mad. 1064.

——S. 28, Art. 134—*Trust property—Transferee of—Title by prescription—Trust Act, S. 64—Transferee for consideration but not in good faith—The right to follow trust property—Extinguishment of the right*

A transferee of trust property for consideration but not in good faith acquires good title only after the period necessary under S. 28 of Limitation Act for extinguishing the right of the beneficiary to follow trust property. (*Tyabji and Spencer, JJ.*) CHETTIKULAM PRASANNA VENKATACHELLA REDDIAR *v.* COLLECTOR OF TRICHINOPOLY 26 M. L J. 537 : 24 I. C. 369 : (1914) M. W. N. 581.

——S. 28 and Arts. 44 and 144—*Applicability—Minor suing to set aside sale by guardian.*

Per Abdur Rahim, J.—A suit by a minor to set aside a sale by his guardian and to recover property is governed by Arts 44 and 144 and also S. 28. (*Per Sundara Aiyar, J.*) Whenever one of two brothers sues for possession after 3 years of his attaining majority, his title and ownership all become extinguished. (*Abdur Rahim and Sundara Aiyar, JJ.*) DORAISWAMI SERUMADAM *v.* NANDISWAMY SELUVAN. 10 M. L. T. 418 : (1911) 2 M. W. N. 450 : 12 I. C. 695 : 21 M. L. J. 1041.

——S. 28—*Applicability—Old Act* (1877).

The Limitation Act, 1877, did not apply to suits under Regulation VI of 1831. So possession prior to Madras Act III of 1895 which repealed Regulation III of 1831 cannot be relied on to establish title by prescription (*Munro and Sankaran Nair, JJ.*) SREENIVASA VARADACHARY *v.* NARASINGA PILLAI. (1911) 1 M. W N. 208 : 9 I. C. 796 : 9 M. L. T. 430.

——S. 28—*Title by prescription — Suit for possession.*

A person acquiring indefeasible title to any property by adverse possession, is entitled to institute a suit to recover the possession of the same, if lost afterwards. (*Jwala Prasad, J.*) RAM BIRCH SINGH *v.* SONJHARI KOER. 58 I. C 380 : 2 U. P. L. R. (Pat.) 225.

——S. 28—*Scope of.*

S. 28 provides only the extinction of the rights upon the termination of the period of limitation for a suit and not that at the termination of the period of limitation for an application, any right shall be exinguished. (*Chapman and Rao, JJ.*) BHAIGA PARIDA *v.* GANNATH KHANDAI. 46 I. C. 569.

—— —S. 28, Art. 144—*Grant to Municipality—Government land—Adverse possession.*

Where the exclusive right of possession for ever over the suit land was transferred by Govt. to a Municipality subject only to the right reserved by

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the Govt. to resume the land when required for a public purpose the possession of the Municipality is not that of an agent or servant of the Govt but one in its own right; such possession can therefore be destroyed by adverse possession by a stranger for 12 years. (*Pratt, C. J. and Fawcett, A. J. C.*) KARACHI MUNICIPALITY *v.* SHAMOO LADHA
30 I. C. 13 : 9 S. L. R. 1.

——S. 29 and Art. 146-A—*Public street—Obstruction—Adverse possession.*

The site of an encroachment on the public street which has existed for over 30 years no longer forms part of the street but belongs to the party who has been in adverse possession thereof and the Municipality cannot take action under S. 122 of the Bombay District Municipal Act. (*Macleod, C. J. and Shah, J. dubitante*) ABAJI RAGHO *v.* JALGAON MUNICIPALITY.
23 Bom. L. R. 1028 : 1922 Bom, 111

——S. 29—*Local law—Bombay Regulation V of 1827.*

S. 1 of the Bombay Regulation V of 1827 being an enactment of positive presumption was not affected by Act XIV of 1859 which was a statute of limitation. (*Batchelor and Rao, JJ.*) RANGACHARYA APPACHARYA *v.* DASACHARYA SANKHALPACHARYA. 37 Bom. 231 : 19 I C. 387 : 15 Bom. L. R. 178.

——S. 29—*Special law—Prov. Insol. Act, S. 46—Appeals under—Applicability.*

The Prov. Insol. Act though a special law within the meaning of S. 29 of the Limitation Act is not a complete code in itself, and there is nothing to prevent the application thereto of the general provisions of the Limitation Act. (*Scott Smith, J.*) WARYAN SINGH *v.* WADHAVA.
88 P W R. 1918 : 89 P. R. 1918 : 46 I. C. 688 : 87 P. L. R. 1918.

——Ss. 29 and 5—*Special law—Registration Act, S. 77—Suit under—General principles of Limitation Act if applicable to—Suit to compel registration time expired when Court closed—Suit filed on opening of Court—Limitation—Applicability of section.*

Though S 5 of the Limitation Act does not apply to a suit under S. 77 of the Registration Act, yet on general principles, a suit, time for filing which had expired when the Court closed and, which was therefore filed on the Court re-opening is not barred. (*Miller and Tyabji, JJ.*) SUBRAMANIAN *v.* EDATHIL MADATHIL.
15 M. L. T. 233 : 23 I. C. 23 : 26 M. L. J. 397.

——Ss. 29 and 14—*Order passed under S. 169, C. P. Land Revenue Act—Limitation.*

In the case of a suit filed as contemplated by S. 169, C. P Land Revenue Act, the period of limitation fixed therein, *i. e.* 6 months cannot be added to in any way, such as by the application of S. 14 Limitation Act. S. 29 of he Limitation Act excludes the operation of S. 14 in such a case (*Baker, J. C. and Hallifax, A. J. C.*) LAKSHMAN *v.* KESHEO. 6 N. L. J. 205 : 1923 Nag 306.

——S. 29—*Local law—U. P. Land Revenue Act, S. 111—Applicability.*

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The Limitation Act has no application to suits contemplated by S. 111 of the U. P. Land Revenue Act. (*Stuart, A J. C.*) NURUL HASSAN *v.* SARJU PRASAD. 43 I. C. 473 : 4 O. L J. 553.

——S. 29 (b)—*'Special' Law—Pro. Insol. Act, 1907.*

Prov Insol. Act, 1907, is a special law under S 29, but it is not a complete code in itself; by it is created a special jurisdiction and a special branch of law. (*Richards, C. J. and Karamat Hussain and Chamier, JJ.*) DROPADI *v* HIRA LAL.
34 All. 496 : 16 I. C. 149 : 10 A. L. J. 3.

——Ss 29 (b) and 14—*Special law—Registration Act. S. 77—Suit instituted in wrong court—Extension of time*

S. 14 of the Limitation Act cannot be applied to compute the period of limitation prescribed by S. 77 of the Registration Act for a suit to enforce the registration of a document. 30 Cal.532; 10 Cal. 265 Disappr. (*Sanderson, C.J., Woodroffe, Mookerjee, Chatterjee and Newbould, JJ.*) KALI MUDDIN MOLLAH *v.* SAHIBUDDIN MOLLAH.
24 C. W. N. 4 : 54 I. C. 705 : 30 C L. J. 455 (F. B.).

——Ss. 29 (b) and 14—*Special law—Registration Act, S. 77—Suit under—Period if can be extended—Proceedings instituted in wrong Court.*

As Ss. 71 to 77 of the Registration Act lay down a complete procedure where registration is refused and as S. 77 limits the period within which a suit is to be brought to 30 days, the said period cannot be extended under S. 14 of the Limitation Act on the ground of prosecution of proceedings in good faith in a Court not having jurisdiction in the matter. (*Chaudhury and Cuming, JJ.*) KHAGENDRA NARAYAN ROY BARMANI *v.* BAMINI BARMANI.
54 I. C. 228 : 24 C. W. N. 29.

——Ss.29 (b) and 15 (2)—*Local law—B. T. Act S. 104 H—Suit under—Notice to Secretary of State under S. 80 of the C. P. Code—Deduction of time.*

S. 15, sub-S. (2) of the Limitation Act does not apply to a suit instituted under the terms of S. 104 H. of the B. T. Act. A suit under S 104 H. must be brought in any event, within six months as specified in that section and the Plff is not entitled to exclude the time during the currency of a notice to the Secretary of State whom he has joined as a deft. 27 C. L. J. 314; 22 C. W. N. 802 Foll. 5 Cal. 100 Diss. 18 C.I. 368 Ref. (*Fletcher and Huda, JJ.*) GANGADAR NANDA *v.* JANAKIMONI DASI. 22 C. W. N. 817 : 47 I C. 524 : 28 C L. J. 536.

——Ss. 29 (1) (b) and 15 (2)—*Local law—B. T. Act—Suit under S. 104 H—Notice to Secretary of State under S. 80, C. P. Code—Period of notice, —Deduction of.*

The effect of S. 29 (1) (b) of the Limitation Act is to make parts II and III of the Act inapplicable to a special period of limitation prescribed by a special or local law. In a suit against the Secretary of State under S. 104 H. of the B. T. Act in a computing the period of six months prescribed by clause (2) plff. is not entitled to deduct two

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months in respect of the notice which he in bound to give to the Secretary of State under S. 80 of the C. P. Code. (*Richardson and Walmsley, JJ.*) THE SECRETARY OF STATE FOR INDIA *v.* SAHIB NARAYAN HAZRA. 46 Cal. 199: 47 I. C 502 : 22 C. W. N, 802.

———S. 29 (b)—*Local law—Santhal Parganas Regulation—Minority.*

The section saves all provisions of local laws as to limitation and the Act though applicable to Santhal Parganas does not affect the three years rule under S. 25-A of Regulation III of 1872 (Santhal Parganas Regulation) the regulation does not make any exception in favour of minors and the minority provisions of the Limitation Act have reference to the periods of limitation prescribed in that Act only. (*Chatterjee and Walmsley, JJ.*) SHANKAR PERSHAD SHA *v.* BABULAL JHA. 28 I. C. 241 : 19 C. W. N. 499.

———Ss. 29 (b) and 18—*Local law—Bengal Tenancy Act, S.* 174,

S. 18 of the Limitation Act does not apply to a proceeding under S. 174 of the Bengal Tenancy Act. 17 C. 263; 29 C. 813, Rel. on. (*Mookerji and Beachcroft, JJ.*) RADHA SHIAM KAR *v.* DINA BHANDU BISWAL. 18 C. L. J. 533 : 20 I. C. 760: 18 C. W. N, 31.

———S 29 (b)—*Special law—Prov. Insol. Act, Ss. 46 and 47—Appeals under—Applicability.*

Recourse cannot be had to the provisions of the Limitation Act (IX of 1908) in dealing with the admissions of petitions and appeals presented after the time prescribed under the Prov. Insol. Act. 34 M. 505 Foll. Per *Seshagiri Iyer, J.*:—Wherever an attempt is made to construe a special period fixed by an enactment with reference to the general provisions of the Limitation Act, the effect of such a process would be "to affect the period of limitation" fixed by that enactment as provided by S. 29 of the Limitation Act (*Ayling, Bakewell and Seshagiri Aiyar, JJ.*) KOPPARTHI LINGAYYA *v.* ARAVETI CHINNARAYANA. 41 Mad. 169: 7 L. W. 443 : 44 I. C. 805 : 33 M. L. J. 566.

———Ss. 29 (b) and 35 and 12—*Special law—Prov. Ins. Act, S.* 46 (3)—*Appeal under—Exclusion of time for obtaining copies of decrees and judgment appealed against.*

S. 12 (3) of the Limitation Act which provides for the exclusion of time occupied in obtaining the copies of the judgment and decree appealed against from the period allowed for filing the appeal does not apply to appeals under S. 46 of the Prov. Insol. Act. In the exceptional circumstances of the case the High Court treated the appeal as a revision petition and dealt with it as such under S. 15 of the Charter Act. 34 M. 505, Foll. 94 A 496, not Foll. Per *Sadasiva Aiyar J.*,—The Court has power to excuse the delay in filing this appeal under S. 5 of the Limitation Act (*Oldfield and Sadasiva Aiyar, JJ.*) MANGULURI SIVARAMAYYA *v* SINGHUMAHANTI BHUJANGA RAO 18 M. L. T. 200 : 30 I. C. 708: 39 Mad. 593.

———Ss. 29 (b) and 12—*Special law—Prov. Insol. Act, S. 22—Receiver's order—Time for getting copy of—If excluded.*

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In reckoning the period of 26 days under S. 22, Prov. Insol. Act, the time for getting a copy of the Receiver's order cannot be excluded 34 M. 505; 35 A. 410: 17 I. C. 593, Foll.) (*Oldfield and Seshagiri Aiyar, JJ.*) DURAISAMI AIYANGAR *v.* MEENAKSHI SUNDARAM AIYAR. 16 M. L. T. 246 : 25 I. C. 610: (1914) M. W. N. 831.

———Ss. 29 (b) and 15 (2)—*Local law—Mad. Rev. Rec. Act (II of* 1864), S. 59—*Suit under—General principles of Limitation Act—Applicability.*

S. 15 (2) of the Limitation Act governs suit to set aside a sale under S. 59 of the Madras Act II of 1864. The question whether the general provisions of the Limitation Act should be applied to cases where a special period of limitation is prescribed by a special or local Act, would depend on whether the provisions of such Act are complete regarding limitation for suits thereunder. 34 M. 505, Dist. (*Benson and Sundara Aiyar, JJ.*) SRINIVASA AIYANGAR *v.* SECRETARY OF STATE. 38 Mad, 92 : 18 I. C. 617 : 24 M. L. J. 41.

———Ss. 29 (b) and 6—*Local law—C. P. Land Revenue Act, S.* 6—*Minority.*

S. 6 of the Limitation Act *prima facie* applies only to suits in the schedule to the Act and a suit under S. 6 of the C. P. Land Rev. Act is not subject to the rule of limitation in the Limitation Act. (*Batten, A. J. C.*) BALKRISHNA LAXMAN *v.* BALA. 46 I. C. 879.

———S. 29 (b)—*Special law—Prov. Insol. Act, S.* 46—*Appeals under—Limitation.*

The provisions of Ss. 5 and 12 (2) of the Limitation Act apply to applications and appeals under the Prov. Insol Act and they cannot be deemed to *affect* or *alter* the periods of limitation fixed by the Prov. Insol. Act. 34 A. 496 (P. B.), Foll. ; 2 C. P. L. R 6, 1 I. C, 178, Expl. (*Stanyon, A. J. C.*) GANGA RAM *v.* RAM CHANDRA. 20 I. C. 258: 9 N. L. R. 91.

———Ss. 29 (b) and 4—*Local law—Karachi Port Trust Act—Exclusion of holidays.*

The general provisions of the Limitation Act for excluding holidays in computing the period of limitation are not applicable to suits under the Karachi Port Trust Act which prescribes a special period of Limitation (*Hayward, A. J. C.*) MOOSAJI AHMED *v.* ASIATIC STEAM NAVIGATION CO., LTD. 45 I. C. 168: 11 S. L. R. 106.

———Ss. 30 and 31 and Art. 135—*Effect of—Mortgage by conditional sale of* 1830—*Right of foreclosure arising in* 1850—*Limitation—Effect of Act of* 1859 *and* 1877.

A mortgage by conditional sale of 1830 contained a provision that the mortgagee would be entitled to enter into possession if the mortgage-debt was not paid on a certain date in 1850. The debt was not paid on that date. In 1910 the mortgagee brought a suit for foreclosure without putting in an application as required by Reg. VII of 1836. *Held*, that the suit was barred by limitation The cause of action arose on the mortgagor's failure to pay the mortgage-money, on the due date in 1850 and the mortgagee's right to possession of the property mortgaged was extinguished under S. 1, Cl. 12 of Act XIV of 1859 as

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soon as 12 years had elapsed from the due date and the subsequent creation of foreclosure suits could not revive the extinct right. S. 31 of the Limitation Act IX of 1908, had, therefore, no application and the suit was barred by Art. 135 of the Limitation Act. 16 C. 693 700. Foll. (*Karamat Hussain and Tudball, JJ.*) RAM DAWAR RAI *v.* BHRIGU RAI. 15 I. C. 240: 10 A. L. J. 538.

———Ss. 30 and 31 and 115—*Applicability—Suit by consignor for price of goods mislaid by Ry. Co.*

A suit by a consignor for price of goods mislaid by the Railway Co. is not governed by Art. 30 or Art. 31 but by Art. 115, as it is a case of a breach of a written contract. 26 C. W. N. 790. (*Chatterjee and Beachcroft, JJ.*) RADHA SHAM BASAK *v.* SECRETARY OF STATE. 44 Cal. 16: 34 I. C. 130: 23 C. L. J. 547.

——S. 30—*Scope of.*

S. 30 only applies where there is a period of limitation "prescribed" both by Act of 1877 and by Act of 1908. Where the plaintiff cannot bring his case under S. 30, the suit is barred by limitation under Art. 134 of the Act of 1908, when property is not purchased but transferred by lease. (*Fletcher and Teunon, JJ.*) RAMESWAR MALIA *v.* JIU THAKUR. 43 Cal. 34: 29 I. C. 337: 19 C. W. N. 1082.

——S. 30—*Applicability.*

S. 30 of Act IX of 1908 applies not only to cases in which the period of limitation has been altered expressly but also to a case where it has been altered owing to an alteration in the description of the suit. (*Chapman and Newbould, JJ.*) UMACHARAN BHATTACHARJEE *v.* HERONMOYEE DEBI. 26 I. C. 943: 18 C. W. N. 770

———S. 31 and Art. 135—*Revival of barred rights—Reg. XVII of 1806—T. P. Act.*

A mortgage by conditional sale was made on February 25, 1866 for a period of six years providing that if after six years, anything remained due to the mortgagees, they might take possession of the mortgaged property and realise the principal and interest that the property should not be transferred so long as any principal and interest remained due and that if it was transferred while the money due to the mortgagee was not paid, the latter might bring a suit for recovery of the principal and interest within 6 years and might also get possession "by completion of sale." Nothing was paid on foot of principal or interest on the mortgage. Proceedings under S. 8 of the Reg. XVII of 1806 were not taken by the mortgagee. Part of the mortgaged property was transferred by the mortgagor in 1867. In the year 1910 the mortgagee brought a suit for foreclosure. *Held*, that the suit was barred by limitation the cause of action having accrued in 1867. (*Richards, C. J. and Rafique, J.*) BANSGOPAL *v.* SHEO RAM SINGH. 38 All. 97 32 I. C. 95: 14 A. L. J. 1.

———S. 31—*Applicability — Realisation of rents and profits in lieu of interest—If receipt of interest as such.*

When under the terms of a mortgage of 1850 the mortgagee was to take possession of the

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mortgaged property and to appropriate its rents and profits in lieu of interest and the mortgagee was dispossessed in 1889, *Held*, that the realisation of rents and profits in lieu of interest was equivalent to the receipt of interest as such, that the limitation can be computed from the year 1889 when Act XV of 1877 had come into operation and that S. 31 of Act IX of 1908 did apply and the plff.'s suit for sale of the property brought on the 10th January 1910 was not barred. (*Banerjee and Tudball, JJ.*) INDRAJIT *v.* GAJADHAR SAHAL. 35 All 270: 19 I. C. 238: 11 A. L. J. 289.

———S. 31—*Revival of barred rights—Right to sue on mortgage barred under Limitation Act, 1871—Limitation Act (XV of 1877), S. 2 and Art. 147.*

A right to sue for the mortgage money under mortgage dated 1863 and payable in 1864 which had already been barred under Act of 1871 cannot be revived by the introduction of S. 31 of the new Act of 1908. (*Richards and Banerji, JJ.*) JAI SINGH PRASAD *v.* SURAJA SINGH. 35 All 167: 18 I. C. 517: 11 A. L. J. 167.

———S. 31—*Period of grace—Expiry on Sunday—Exclusion of Sundays.*

Where the special period of two years prescribed by S. 31 to file a suit for foreclosure or sale expired on a Sunday and the suit was filed the next Monday. *Held*, that the suit is not barred. 13 Bom. L. R. 1153. Diss. 28 A. 48 and 23 A. 277. Ref. (*Griffin and Chamier, JJ.*) HIRA SINGH *v.* AMARTI. 34 All. 375: 14 I. C. 154: 9 A. L. J. 439.

———S. 31—*Period of grace—Extension of.*

The period of 2 years' grace allowed by S. 31 is not to be extended by including any time within it. (*Basil Scott, and Batchelor, JJ.*) DAYARAM *v.* LAXMAN. 10 I. C. 910: 13 Bom. L. R. 284.

———S. 31—*Suit for damages for non-delivery by carrier.*

A suit for damages for non-delivery of goods by a carrier is governed by Art. 31, Sch. I of the Lim. Act. (*Phillips, J.*) BRITISH INDIA STEAM NAVIGATION Co. *v.* HUSSAIN KASSIM SAIT. 42 I. C. 536.

———Ss. 31 and 4—*Period of grace—Expiry on Sunday—Institution on Monday if in time.*

Where a mortgage suit was instituted on Monday the period of grace of 2 years having expired on Sunday, the suit was in time. S. 4 of the Lim. Act can be invoked in a suit covered by S. 31 for limitation purposes. (*Sadasiva Aiyar and Spencer, JJ.*) MURUGESA MUDALI *v.* RAMASWAMI CHETTIAR. 21 I. C. 770: 26 M. L. T. 23.

———S. 31—*Period of grace—Mortgage of 1873—Suit on Lim. Act (XV of 1877: Ss. 2 (1) and 4 and Arts. 132 and 147—Mortgage before the T. P. Act—Power of sale.*

A mortgage, created when the Lim. Act of 1871 was in force and not barred when the Lim. Act of 1877 was passed, gets the benefit of the extension of the period of limitation under the latter Act. A right to sue already barred cannot be revived. A mortgagee can also claim the

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benefit of S. 31 of the Lim. Act of 1908 if he institutes his suit for sale within two years of the passing of the Act. The word 'Mortgage' includes documents executed after the passing of the T. P. Act, and mo tgages executed prior to the passi g of the Act have the power of sale incidental to them. 23 M L. J. 131, Appr. 9 M. 218 : 10 M. 509 ; 21 M 326 : 25 M. 220 ; 30 M. 426, Ref. (*Benson, Offg, C. J. and Napier, J.*) SAKKARI AMBALAGARAN *v.* SUNDARAPATHI.
16 I. C. 236

———S. 31—*Applicability—Berar—Period of grace.*

In S. 31 of the Act, the words "from the date of passing of this Act" cannot be construed in Berar to mean "from the date of *application* of this Act to Berar" and the Act as applied to Berar gives the same chronological period of grace as was given in British India, a period which began on 7th August 1908 and ended on 8th August 1910. (*Stanyon, A. J. C.*) SONBA *v.* MUNIRUDDIN.
19 I. C. 518 : 9 N. L. R 49.

———S. 31—*Revival of barred rights—Limitation Act*, 1871—*Limitation Act*, 1859—*Limitation Act*, 1877.

Nothing in the Limitation Act, 1877, could revive rights barred under the Limitation Acts of 1871 or 1859 Nor is there anything in S. 31 of the Limitation Act, 1908, to revive rights barred before the Act of 1877 came into force. (*Kanhaiya Lal, A.J.C.*) RAJA RAM *v* PARAG NARAIN.
20 I. C. 465 : 16 O. C. 157.

———S. 31, Art. 132—*Mortgage—Bond providing for payment at time of redemption of previous mortgage—Applicability of S. 31 to suits governed by Art. 132.*

A executed a usufructuary mortgage and a bond after some years with the provisions that he would pay off the sum of the bond within a period : and if he failed to do so, he would pay it with interest at the time of paying the mortgage money. This sum would be paid first and the mortgage will be redeemed afterwards by paying in a lump sum. *Held*, (i) that the bond was not a simple mortgage though it might have effected a charge, (ii) that suits governed by Art. 132 cannot get the benefit of S. 31 of the Limitation Act, (iii) that when the construction of a deed is in question rulings thereon in different language help very little. (*Stuart, A.J.C.*) HABIBULLAH SHAH *v.* SURJI.
15 I. C. 857 : 15 O. C. 295.

———S. 31—*Period of grace— Foreclosure of mortgage of* 1869—*Suit in May* 1910.

Where a mortgage by conditional sale was executed in 1869, the period fixed being six years and the condition being that if the mortgage was not redeemed the mortgage would be deemed a sale and the mortgagee brought a foreclosure suit in May 1910. *Held* that S. 31 of the Act applies and the suit was within time (*Evans, J. C. and Lindsay, A. J. C.*) JAFRI BEGUM *v.* GHASU KHAN.
13 I. C. 604.

———S. 31—*Revival of barred rights—Accrual of cause of action in* 1868—*Reg XVII of* 1806.

S. 31 does not confer on the plff. a right of suit under the provisions of the Transfer of Property Act when no such suit would have been entertainable on the day the Act came into force. So a foreclosure suit in respect of a mortgage deed of 1861 providing for payment in 1868 is not protected by S. 31 when no proceedings had been taken under Reg XVII of 1806 before 1880 and the mortgagee's rights have been lost before the T.P. Act came into force. (*Piggott, A.J.C.*) TILAK SINGH *v.* SHIB SINGH.
9 I. C. 1038.

———S. 31 (1)—"*Suit pending*"—*Remand on appeal for enquiry—Enquiry not commenced at date of Act.*

Where a mortgage suit for foreclosure or sale was remitted by the Privy Council to be disposed of on the merits after enquiry by the Court in India and that enquiry had not been entered upon at the date of passing of the Limitation Act IX of 1908, *Held*, that the suit was pending within the meaning of S. 31 (1) of the Act IX of 1908. (*Lord Shaw*) VASUDEVA MUDALIAR *v.* SADAGOPA MUDALIAR.
35 Mad. 191 : 39 I. A. 96 : 16 C. W. N. 489 : (1912) M. W. N. 433 : 11 M.L.T. 313 : 9 A. L. J. 504 : 15 I. C. 222 : 15 C. L. J. 466 : 14 Bom. L. R. 455 : 23 M. L. J. 16 (P.C).

———S. 31 (1)—*Mortgage—Meaning not dependent upon the date of execution.*

The question whether an instrument is a mortgage or not under S 31 (1), Lim. Act does not depend upon the date of its execution. (*Miller and Sadasiva Iyer, JJ.*) VENKATARAMA AYYAR *v.* SUPPA NADAN.
(1914) M. W. N. 601 : 24 I. C. 24 : 27 M. L. J. 58.

———S. 31 (1)—*Period of grace— General Clauses Act, S.* 10.

The special period of two years allowed by S.31 (1) for instituting certain suits for foreclosure or sale is not a part of the "period of limitation prescribed "for such suits. It is only a period of grace and is not governed by S. 4 or S. 12. S. 10 of the General Clauses Act, should be applied in dealing with a plaint for sale on foot of a mortgage instituted with reference to the special period of limitation allowed by S. 31 (1) of the Limitation Act. So a suit filed on Monday when its last day fell on Sunday is not time-barred. (*Drake-Brockman, J. C.*) BAL KRISHNA *v.* TIMA.
12 I. C. 810 : 7 N. L. R. 176.

———S. 31 (1)—*Operation of—Suit for foreclosure of a mortgage due on* 4-7-10 *if within time.*

The application of the first clause of Sub-S. (1) of S. 31 of the Lim. Act is not restricted to suits already barred by limitation when the Act came into force. The words in the clause operate not only for the benefit of those persons whose claims are barred before the passing of the Act but also of those whose claims are barred within two years after the passing of the Act. Consequently a suit for foreclosure of a mortgage due on 4th July 1910 is within time. (*Batten, A. J. C.*) SHEOCHARAN *v.* PIARELAL. 12 I. C 799 : 7 N. L.R. 165.

———S. 31 (1)—*Period of grace — Foreclosure —Suit within 2 years of the passing of the Act— Suit for foreclosure.*

If a suit for foreclosure on a mortgage executed more than 12 years before suit, is filed within

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the period of 2 years allowed under S. 31 (i) it is within time. (*Lindsay, J. C.*) MAHADEO PRASAD *v.* MT. TIKU. 16 I. C. 20

———S. 31 (1) and (2)—*Withdrawal of suit—Fresh suit it should be brought under S. 31 (2).*

A suit in 1907 for recovery of money on a mortgage was withdrawn with liberty to bring fresh suit. After the passing of the Limitation Act of 1908 the plff. brought the said suit on the same mortgage. It was contended by the deft. that the plff. should proceed under Sub-S. 2, S. 31 of the Lim. Act. *Held* that the plff. was entitled to bring a fresh suit under Sub-S. (1) S. 31 of the Lim. Act and was not bound to proceed under Sub-S. (2). A person who has withdrawn a suit with permission to bring a fresh one should not be compelled to resort to the procedure allowed by Sub-S (2). (*Chamier, J. C.*) PARBHU DAYAL *v.* MANDAN SINGH. 12 I. C. 323

———S. 31 (2)—*Applicability — Fresh suit—C. P. C., O. 23, Rr 1 and 2.*

S. 31 of the Limitation Act applies to an application for restoration of a case dismissed or withdrawn on the ground of the 12 years rule of limitation and has no application to a fresh suit. Such a suit is governed by the law of limitation in the same manner as if the first suit had not been instituted. (*Karamat Hussain, J.*) CHHAJJU *v.* KHYALI RAM. 14 I. C. 175 : 9 A. L. J. 378.

———S. 31 (2)—*Applicability—Mortgages executed before and after* 1882—*Distinction.*

For the purposes of S. 31 (2) of the Lim. Act there is no distinction between mortgages executed before and after 1882 (T. P Act.) 16 I C. 236 Foll. 21 M. L. J. 562 ; 23 M. L. J. 562 ; 23 M. L. J. 13 ; 9 M. 218 : 10 M. 509, Dist. (*Oldfield and Tyabji, JJ.*) CHOKKALINGA CHETTY *v.* KANNUSWAMI PILLAI. 26 I. C. 938.

———Sch. 1—*Scope.*

The first schedule provides periods of limitation for the institution of suits and not for putting in defences. (*Shah Din and Chevis, JJ.*) GOKUL CHAND *v.* NIADARMAL. 1 P. R. 1916 : 32 I. C. 485 : 206 P. W. R. 1915.

———Art. 2—*Sale under—Sale under protest—Unauthorised sale.*

Plff's. property was advertised for sale. He tendered the decretal amount to the officer of the Court empowered to receive the money in order to stop the sale. The Officer however in spite of the deposit, got the property sold. Plff. brought a suit against the officer for damages. *Held*, that the basis of the suit being that the deft. had refused to accept the money which he was bound to accept under C. P. Code the suit was governed by Art. 2. (*Richards, C.J. and Banerjee, J.*) MUKATLAL *v.* S. GOPAL SARUP. 41 All. 219 : 48 I. C. 815 : 16 A. L. J. 1017.

———Arts. 2 and 120—*Suit against Municipalities for refund of* octroi *duties.*

A suit for the refund of money legally collected by a Municipality but wrongfully refused to be refunded is governed by Art. 120 and not by

LIMITATION ACT (IX OF 1908), Art. 3.

Art. 2. (*Chamier and Rafique, JJ.*) THE MUNICIPAL BOARD OF GHAZIPUR *v.* DEOKINANDAN PRASAD. 36 All. 555 : 25 I. C. 943 : 12 A. L. J. 952.

———Art. 2—*Compensation for an order of demolition by a Magistrate at the instance of a Municipality.*

A suit for damages caused by an order for demolition of certain huts passed by a Magistrate under S. 144, Cr. P. C. at the instance of a Municipality is governed by Art. 2. (*Holmwood and Chapman, JJ.*) HARI CHARAN BOSE *v.* SURENDRANATH BANERJEE. 18 I. C. 84.

———Art. 2—*Damage caused by flood water—Construction of Irrigation work—Limitation.*

Where as a result of the construction of a canal under Act VIII of 1873, flood water caused damage to plaintiff's land, Art 2, Lim. Act. will allow a suit for damage more than 90 days afterwards. (*Harrison and Zafar Ali, JJ.*) PUNJAB COTTON PRESS COY. *v.* SECRETARY OF STATE. 4 Lah. 432 : 1924 Lah. 192 (1).

———Art. 2— *Essentials for—Applicability—*Terminus a quo.

In order to bring a suit under Art. 2 of the Lim. Act all that is necessary is that the public officer should have acted with the honest intention of acting as the Statute authorized. Limitation begins to run from the date of the damage. (*Harrison and Zafar Ali, JJ.*) PUNJAB COTTON PRESS COY. *v.* SECRETARY OF STATE FOR INDIA. 4 Lah. 428 : 1924 Lah. 169.

———Art. 2—*Municipal Council—Damages—Breach of contract.*

Quaere.—If Art. 2 of the Lim. Act is applicable to a suit for damages against a Municipal Council for breach of contract to remove rubbish, (*Spencer and Napier, JJ.*) MUNICIPAL COUNCIL OF KUMBAKONAM *v.* VEERAPERUMAL PADAYACHI. (1915) M. W. N 143 : 28 I. C. 45 : 28 M. L. J. 147.

———Arts. 2 and 36—*Act done under statute—Act done in improper manner out of malice and carelessness.*

The intention of Art. 2 of the Lim Act is to meet those cases where a public official or a public authority or a private person does an act, injurious, or possibly injurious, to another under powers conferred or honestly believed to be conferred by some Act of the legislature Art 2 does not apply to a case where the damages arise not from the doing of the Act or from the failure to do it, but from doing it in an improper manner out of malice and carelessness. Art. 36 applies to such a case. (*Sabonadiere, A.J.C.*) WADI UL-LAH *v.* RAJ BAHADUR. 21 I C. 426 : 16 O. C. 211.

———Art. 3—*Sp. Rel. Act, S. 9.*

For a suit under S. 9, Sp. Rel. Act all that has to be determined is whether the plff. was dispossessed and whether his suit was brought within six months from the date of dispossesion, *i e.*, regard should be had to the terms of the S. 9, Sp. Rel Act and Lim. Act, Art 3. (*Jenkins, C J. and Chatterjee, J.*) GNAN CHANDRA *v.* LOCH MOHAN. 13 I. C. 541.

LIMITATION ACT (IX OF 1908), Art. 7.

——Art. 7—*Suit for wages by wet nurse.*

A suit by a wet nurse to recover her wages is not governed by Art. 7 but is governed by Art. 102. (*Rafique, J.*) MOHAN LAL *v.* MT. JUMARAT.
17 I. C. 658 : 10 A. L. J. 395.

——Art. 7—*Suit by cook for wages.*

A cook though he is an expert in his art is none the less a domestic servant, and a suit by him for wages due is governed by Art. 7 of the Lim. Act. (*Seshagiri Aiyar and Kumaraswami Sastri, JJ.*) KUPPU RAO *v.* NARASAYYA.
28 I. C. 956.

——Art. 7—*Applicability.*

Art. 7 Lim. Act is not applicable to all servants but only household servants. *A bisardar* in Oudh is not such a servant. (*Dalal, J. C.*) GHASI RAM *v.* UMA DATT.
26 O. C. 327 : 9 O & A. L. R. 554 : 10 O. L. J. 348.

——Art 7—*Suit for recovery of wages.*

Plff. sued the defts. for wages due to him for work done in 1918 as field labourer to deft. No 1. In 1919 plff. made a demand for wages and deft. No. 2 stood surety promising to pay the amount due in 1919. The trial court held that the suit was time-barred against both. On appeal it was held that the suit was not time-barred and the claim was decreed. *Held*, in revision that the claim as against the principal debtor was time-barred under Art 7 of the Lim. Act. (*Maung Kin, J.*) SHWE HLA GYI *v.* SAN DEVE,
64 I. C. 361 : 10 L. B. R. 332.

——Art. 7—*Mechanical Engineer—'Artisan.'*

A suit by a Machanical Engineer, who was in charge of an engine which worked the deft.'s mill, to recover the amount of his wages would be governed by Art. 102 and not by Art. 7 of the Lim Act. The word 'artisan' in Art. 7 means a mechanic or a workman who has acquired some manual skill and does not mean persons undertaking higher class of work involving responsibility and intellectual training. (*Pratt, J. C., and Fawcett, A. J. C.*) NAVALMAL *v.* MANGALDAS.
50 I. C. 37 : 12 S. L. R. 140.

—— Art. 10 and Art. 120—*Pre-emption suit—Lease, pure and simple.*

A suit for pre-emption in respect of a pure and simple lease is governed by Art. 120 and not by Art. 10. (*Tudball and Rafique, JJ.*) MUKHLAL RAI *v.* HIRANAND SINGH. 19 A. L. J. 442 : 62 I. C. 884 : 3 U. P. L. R. (All.) 81.

——Art. 10—*Sale of fractional share of Zamindari.*

A fractional share of Zamindari situated in several *Kathas* is not capable of being physically taken possession of. A suit beyond one year of the date of the sale-deed is therefore barred. (*Richards, C. J. and Rafique, J.*) UMRAO BEG *v.* MUKTAR BEG. 50 I. C. 80 : 17 A. L. J. 269.

——Art. 10—*Mortgage by conditional sale—Decree absolute.*

A mortgage by conditional sale was executed on 3rd June 1909. A decree absolute was made on 13th June 1914 and possession given in 1915. A suit for pre-emption with respect to the property instituted within one year of the date of delivery of possession but more than one year after the date the decree was made absolute, is barred, as the plff.'s right accrued at the time of the original transfer, *i.e.*, in 1909 and not in 1915. (*Richards, C. J. and Tudball, J.*) SUBA SINGH *v.* MAHABIR SINGH. 39 All. 544 : 40 I. C. 461 : 15 A. L. J. 514.

LIMITATION ACT (IX OF 1908), Art. 10.

——Art. 10—*Pre-emption—Suit for.*

A simple lease was executed by a co-sharer to a stranger on 27-6-1910. Deft. brought a suit for pre-emption on 31-3-1911 and obtained a decree on 18-9-1911. On 31-5-1912 plff. brought a suit for pre-emption on the ground of preferential right. *Held*, that the suit was barred. (*Richards, C. J. and Tudball, J.*) MEHDI HASSAN *v.* BACHA PANDE. 28 I. C. 691 (1) : 13 A. L. J. 383.

——Art. 10—*Vendee selling property to another—Suit against first vendee.*

M sold certain property to N on 16th November 1909. N sold the property to O, on 14th November 1910 but got the deeds registered on 21st November 1910. P sued N for pre-emption on 15-11-1910. O was made a party in February 1911. *Held* the suit was not barred. (*Richards, C. J. and Tudball, J.*) SAT NARAIN *v.* BADRI NATH. 13 I. C. 645 : 9 A. L. J. 211.

——Art. 10—*Divided Mahal—Suit—Starting point.*

A suit for pre-emption in respect of property in a divided *mahal* must be instituted within one year from the date of registration and not from the date of mutation. (*Knox and Karamat Hussain, JJ.*) KALI SHANKAR TEWARI *v.* RAGHUBAR DAYAL. 9 I. C 309.

——Art. 10—*Possession with tenants does not admit of physical possession.*

Property which is in the possession of a tenant does not admit of physical possession within the meaning of Art. 10, Lim. Act. Whether the subject of sale in a suit for pre-emption does or does not admit of physical possession must be determined with reference to date of sale and it is immaterial whether the property afterwards became susceptible of physical possession. (*Shadi Lal, C.J. and Fforde, J.*) GANWA *v.* JOTI PRASAD.
1924 Lah. 302.

——Art. 10 — *Pre-emption—Share in undivided joint property not capable of physical possession—Limitation.*

Obiter : A mere share in joint undivided property is not capable of physical possession and Art. 10 of the Lim. Act is inapplicable to such cases. (*Le Rossignol, J.*) SARDAR ALI *v.* FAZIL.
1923 Lah. 75.

——Art. 10—*Suit for pre-emption—Starting point of limitation.*

A sold his occupancy rights in a plot of land to B on 19-9-1912 but refused to register the sale-deed. He again sold the same property to C on 15-10-1912 on which B by proper proceedings got the sale-deed registered on 22-11-1912. C in the meanwhile got possession and B then sued for possession, got a decree and possession thereunder on 15-6-1914. C sued for pre-emption of

LIMITATION ACT (IX OF 1908), Art. 10.

1-10-1915. *Held* that the second part of Art. 10 barred the suit. (*Shadi Lal, C. J. and Wilberforce, J.*) NAGINA SINGH *v.* DUNICHAND.
62 I. C. 797.

——— Art. 10—*Suit by pre-emptor— Starting point of limitation.*

Under Art. 10 time runs against the pre-emptor from the date on which the purchaser takes physical possession of the whole property sold. Where under arrangement with the vendor the vendee takes possession of the property which he intends to purchase before the actual sale, the possession cannot be held to be under the sale and must be referred to the subsequent date on which the sale actually takes place and from the subsequent date the limitation prescribed by the article begins to run. (*Shah Din, J.*) RAM PEARA *v.* RUP LAL.
80 P. R. 1918 : 48 I. C. 102 :
181 P. W. R. 1918.

———Art. 10—*Suit for share in village Shamilat.*

A suit for pre emption in the respect of property consisting of certain specific plots and a share in the *Shamilat* comes under Art. 10 as the share in the *shamilat* does not admit of physical possession. (*Smith, J.*) LEHNA SINGH *v.* BHAGAT SINGH. 68 P. R. 1918 :
158 P. W. R 1918 : 47 I. C 359 :
108 P. L. R. 1918.

———Art. 10—*Rectification of a deed of sale describing property wrongly—Starting point*

Where a sale-deed wrongly described certain property which was sold, but where mutation was made according to the admitted numbers, limitation for pre-emption begins from the date of the sale-deed and not from the date of the mutation. (*Rattigan, J.*) GANGA RAM *v.* SARDARA.
64 P. L. R. 1916 : 35 I. C 278 :
60 P. W. R. 1916.

———Art 10— *Pre-emption— Limitation in regard to subsequent vendee.*

The period of limitation in regard to a subsequent vendee is six years and he can be impleaded in the suit even after the expiry of the period of one year. (*Chevis and Shadi Lal, JJ.*) HARI RAM *v.* ALLAH DITTA. 17 P. R. 1915 :
28 I. C. 695 : 186 P. L. R. 1915.

———Art, 10—*Pre-emptor if can treat sale as a nullity.*

A pre-emptor cannot treat a sale as a nullity on the ground that the Land Alienation Act requires certain formalities to be gone through, simply because the sale is unenforceable until sanctioned by the Deputy Commissioner. The sale, if sanctioned is operative from the date of sale. A suit brought beyond twelve months of the sale but within twelve months of sanction is therefore barred 16 I. C 775 not Foll. (*Kensington and Beadon, JJ.*) SAGHAR *v.* NUR AHMAD.
59 P. W. R. 1918 : 110 P. L. R. 1913 :
19 I. C. 239 : 79 P. R. 1918.

———Art. 10—*Transferee from the vendee— Joinder after one year—Starting point.*

Where a vendee's transferee was joined as a party after limitation had expired as against the original vendee, though the original vendee had got by assignment the property in suit prior to the date of suit. *Held*, the suit was governed by Art. 120 as against the transferee, since Art. 10 applied only as against the original vendee. 25 P. R 1903 and 106 P. R 1907 overruled. (*Rattigan, Shah Din and Beadon, JJ.*) KARAMDAD *v.* ALI MUHAMMAD. 28 P. W. R 1913 :
61 P.L R. 1913 : 18 I. C. 70 : 31 P. R. 1913 (F.B.).

——— Art. 10—*Rival pre emptors.*

Pre-emption suits brought by rival pre-emptors in respect of the same sale, in which each pre-emptor is impleaded as deft, in a suit brought by the other, are governed by Art. 120 and not by Art. 10 nor by Punjab Pre-emption Act, S. 29. (*Shah Din, J.*) ILAHI BUX *v.* MAHOMMAD BALE NAWAZ KHAN.
186 P. W. R. 1912 : 14 I. C. 328 : 80 P. R. 1912.

——— Art. 10—*Right of pre-emption to mortgagee—Mortgagee refusing to make offer when asked—Suit for redemption—Right of pre-emption if can be pleaded in defence.*

A mortgage document contained a covenant that without the consent in writing of the mortgagee, the properties would not be sold, mortgaged, leased etc., and giving the latter a right of pre emption. In 1918, the mortgagor gave notice to the mortgagee of his intention to sell and asked him what offer he would make. No offer was made by the mortgagee who took up the position that the mortgagor could not sell. The properties were then sold in 9-4-1918 and in a suit in 1921 by the mortgagee to pre-empt and a coun er-suit by the purchasers to redeem. *Held*, the sale being of the equity of redemption of which phy ical possession could not be given, limitation for the pre-emption suit ran under Art. 10 from the date of registration of the sale-deed and where such a suit is barred, he cannot in the redemption suit plead by way of defence his claim for pre-emption 24 Mad. 449, 29 Mad 336 and 40 Mad 1134 Foll. 13 Mad. 491, 20 Mad, 305 Not foll.

Even assuming there was a valid right of pre-emption, the refusal to make an offer when asked was a failure to exercise the right. 39 All. 127 and 42 All. 402 Foll. (*Kumaraswami Sastri, J.*) VISWANATHAN CHETTY *v.* ETHIRAJULU CHETTY.
45 M. L. J. 389 : (1924) M. W. N. 57 :
1924 Mad. 67.

———Art. 10—*Suit for pre-emption—Physical possession not with vendor.*

A sold certain property to *B* with a covenant to pre-empt in case of its sale by *B* to a third person, and himself remained in possession, under an oral agreement for a certain period. While *A* was thus in possession *B* sold the property to *C* and after one year of the execution of registered deed of sale between *B* and *C*, *A* sued for pre-emption, *held* that the suit was governed by Art. 120 and was not barred, as possession had not been taken by the vendee, *i.e.*, *B*. (*Napier and Krishnan, JJ.*) VELAYUDHAM PILLAI *v.* THINA VELAYUDHAM PILLAI.
13 L. W. 268 : 40 M. L. J. 443 :
29 M. L. T. 261 : 62 I. C 27 :
(1921) M. W. N. 207.

LIMITATION ACT (IX OF 1908), Art. 10.

——— Arts. 10 and 120—*Pre-emption—Limitation for—Intended and actual sale.*

Art. 120 of the Lim Act applies to suits for pre-emption in respect of a contemplated sale while Art. 10 applies where the sale has actually taken place. (*Hallifax, J. C.*) RAI *v.* SIDAKALLI.
1922 Nag. 14.

———Art 10—*Physical possession not possible—Effect of.*

The first part of the third column of Art. 10 does not apply where the subject-matter of the sale consists of land or other tangible immoveable property, physical possession of which at the date of the sale is with the holder of an intermediate estate, *e g*, mortgagee or lessee owing to which circumstance the vendor is unable to give immediate physical possession to the purchaser. (*Batten, Stanyon and Mitra, A. J. Cs.*) JAIRAM *v.* SITARAM
52 I. C. 940: 16 N. L. R, 37 (F. B.).

——— Art. 10—*Property sold in possession of lessee—Starting point for pre emption suit.*

When the subject-matter of sale is in the possession of lessee, the vendee cannot take physical possession of it and limitation for a suit for pre-emption runs from the date of registration of sale-deed. (*Skinner, A. J. C.*) RAMJI *v* SHEIKH MANSUR. 15 I. C. 890 : 8 N. L. R. 68.

——— Art. 10—*Applicability—Essential.*

Vendee must do one of two things within limitation; either, he must institute a suit for pre-emption, or he must obtain a convevance from the vendee. (*Simpson, A. J. C.*) SHRO DUTT BAHADUR SINGH *v* RISHUNATH SINGH.
9 O. L J. 646 : 1923 Oudh 91.

———Art. 10—*Sale subject to mortgage—Mortgagee in possession—Suit—Starting point.*

A zemindari property in the possession of mortgagees and incapable of physical possession at the time of sale was transferred subject to the mortgage by a registered sale deed. *Held*, that the period of limitation runs from the date when the sale-deed is registered and not from the date when the vendee takes possession of the property, from the mortgagees (*Lindsay, J. C. and Kanhaiya Lal, A. J. C.*) NARENDRA BAHADUR *v.* WALI MAHOMED. 28 I. C 208 :
2 O. L. J. 109.

——— Arts. 10 and 120—*Pre-emption—Suit between rival purchasers.*

Where the first purchaser has sold the property within the period prescribed for filing a pre-emption suit and parted with the possession, a suit against the purchaser is governed by Art. 120 and not by Art. 10. If, however, the second purchaser has been impleaded as a deft. after the period of limitation in the suit against the first purchaser, the suit against the second purchaser is in effect a suit for a declaration that the pre emption is not effected by the re sale and the second purchaser will be bound by the decree ultimately passed between the original parties. (*Lindsay, J.C.*) RAZAWAND SINGH *v.* DUCKHHOR.
24 I. C. 116 : 1 O. L. J. 196.

LIMITATION ACT (IX OF 1908), Art. 11—Applicability.

———Art. 10—*Starting point — Pre-emption suit.*

Limitation against the pre-emptor begins from the date o the physical possession of the purchaser and not symbolical possession. (*Coutts and Bucknill, JJ.*) ACHUTANANDA PARSAIT *v.* BIKI PIBI. 1 P. L. T. 578 :
4 P. L. J. 277 : 1922 P. 601

——— Art. 10 (2)—*Pre-emption suit—Land in possession of tenant—Physical possession.*

Where a sale deed was registered on 16th September 1919 and a pre-emption suit was filed on 8th July 1911 and it was found that a portion of the land sold was in the possession o tenants at the time of sale. *Held*, that the suit was barred by Art 10 (2). (*Agnew, J.*) SHEOJI *v.* FAZAR ALI KHAN. 230 P. L. R. 1913 : 20 I C. 475 :
148 P. W. R. 1913.

——— Art. 11.

Applicability.
Effect of order.
Exclusion of time.
Order without investigation.
Starting point.
Stranger to proceedings.
Miscellaneous.

Applicability.

———Art. 2 - *Applicability.*

Art. 11 of the Limitation Act applies as much to a case where an objector remains absent as to a case where he comes forward and says that he cannot sustain an objection. (*Richards, C. J. and Banerji, J.*) GULAB *v.* MUTASADDI LAL.
17 A. L. J 674 : 50 I C 748 : 1 U P.L.R. (H.C.) 41.

———Art. 11-A—*Applicability—Suit by decree-holder against a third person obstructing possession—Limitation.*

The words " a person against whom " in art. 11-A of the Lim Act include a decree holder. 15 C. 521 ; 19 A. L. J. 53 Foll. Where therefore a decree-holder brings a suit for declaration of his title against a third person in whose favour an order under O 21. Rr. 98, 99 or 101, C. P. C., has been made his suit is governed by Art. 11-A of the Lim. Act. (*Ryves and Stuart, JJ.*) BHIKARI DAS *v.* ABDULLAH. 44 All. 607 : 20 A. L. J. 578 :
L. R. 3 A. 359 : 1922 All, 403.

———Art. 11-A—*Applicability—Auction-purchaser resisted in taking possession—Refusal of possession by Court—Suit for possession.*

Where the auction-purchaser is resisted in taking possession of the property sold by a third person and the Court, after investigation, refuses to put the auction purchaser in possession, his suit t establish his right to possession is governed by Art. 11 A. (*Piggott and Walsh, JJ.*) GANPAT RAI *v.* HUSSAINI BEGAM. 60 I. C 905 :
19 A. L. J. 53.

———Art. 11-A—*Applicability of.*

Where in execution of a decree of *A* against *B*. *C*. purchased a house and three days before it, *D* sold another house to *A* and when *C* attempted to get possession he was resisted by one *D* but *D*'s objection was disallowed and he brought a suit to set aside the auction sale. *Held*, that the

LIMITATION ACT (IX OF 1908), Art. 11—Applicability.

suit was governed by Art. 11-A of the Act. (*Griffin, J.*) GOPAL DAS *v.* CHADI LAL.
17 I. C. 591.

——Art. 11—*Applicability—Application by mortgagee to sell subject to mortgage.*

The mortgagee need not sue to set aside an order rejecting his application to sell the attached property subject to his mortgage. (*Batchelor, C.J. and Shah, J.*) GANESH KRISHNA KULKARNI *v.* DAMOO NATH SHIMPI. 41 Bom. 64 : 36 I. C. 627 : 18 Bom. L. R. 782.

——Art. 11-A—*Applicability of—C.P. Code, O. 21, R. 100—Application under—Dismissal of, for want of cause of action.*

The 1st defendant purchased the land in suit in execution of a mortgage-decree and took delivery of the same through the Court. Thereupon the plaintiff, who claimed half of each of plots Nos. 1 to 3 and entirely of plot No. 4 made an application under O. 21, R. 100 of the C. P. Code. That application was dismissed on 8-7-1916 and in these terms "On the applicant's (plaintiff's) side he examined himself. The opposite party is ready. It appears from the applicant's deposition that he is still in possession of the disputed plots of land. So here is no cause of action for his application under O. 21, R. 100, Civil Procedure Code Hence it is ordered that this case be dismissed with costs to the opposite party. Pleader's fees Rs. 2 only." The plaintiff did not bring any suit for recovery of possession within a period of one year from the date of the last mentioned, namely, 8th July 1916. His present suit was instituted on the 7th March 1918 that is more than a year after the date of the order passed on the application under O 21, R. 100. His cause of action, so far as the present suit is concerned has been formulated by him in paragraph (6) of his plaint and it appears therefore that after the date of the order passed on the application under O. 21, R 100 defendants Nos. 1 to 5 entered into a conspiracy and forcibly cut and took away the paddy reaped by the Bhag tenants of the plaintiff and thereby dispossessed the plaintiff. The plaintiff stated that thereupon, he instituted a suit being suit numbered 225 of 1917 in the Court of the first Munsiff of Kantai. That suit was, however, allowed to be withdrawn by the Court, with liberty to institute a fresh suit and the present suit is the fresh suit which the plaintiff had the liberty to institute. It was pleaded on behalf of plaintiff that the subsequent dispossession alleged in para. (6) of the plaint gave rise to the cause of action, after the suit had been withdrawn, for the present suit. The defendant contended that the plaintiff not having brought the suit within the period prescribed by Art. 11-A of the Limitation Act the present suit should be held to be barred by limitation. *Held*, that the suit was not barred. It is the question of possession with which the plaintiff was concerned and having remained in possessed down to the date when, as alleged by him, he was dispossessed in the manner referred to in paragraph 6) of the plaint, he was not under any necessity so far as we can see, to go to a Civil Court for the useless formality of asking for confirmation of possession of the property in question when as a matter of fact he remained in possession thereof. (*Ghose and Panton, JJ.*) PAHAL GHORAI *v.* HAJI MUNSHI FAZIUDDIN MAHOMED. 38 C. L. J. 150 : 1924 Cal. 97.

LIMITATION ACT (IX OF 1908), Art. 11—Applicability.

——Art. 11-A—*Applicability—Cause of action—Subsequent to date of order under O. 21, R. 100, C. P. C.*

Although it is undoubtedly true that a person claiming to get rid of the effect of an order under O. 21, R. 100 is bound to bring his suit for such a purpose within the period mentioned in Art 11-A of the Limitation Act, where the cause of action alleged by the plaintiff is one that has arisen subsequent to the date of the order made on the application under O 21, R 100, C.P Code, and where the plaintiff's application under O. 21, R. 100 was dismissed on the ground that inasmuch as his possession has not been disturbed the application was one which did not come within the purview of O. 21, R 100, C. P. Code, the provision of Art. 11-A of the Limitation Act do not apply. (*Ghose and Chotzner, JJ.*) ATARMOYI DASI *v.* RAMANANDA SEN CHOUDHURY.
50 C. 311 : 1923 Cal. 601.

——Art. 11-A.—*Applicability—Order under O. 21, Rr. 98, 99 and 101.*

Art, 11-A of the Limitation Act applies to an order under O. 21, Rr. 98, 99 and 101, C.P. Code, where such order has been made on investigation. An order dismissing an application for default is not an order passed upon investigation. 6 C. L. J, 362 Foll. 45 C. 785 ; 41 M. 985 ; 31 M. L. J 247 ; 26 C. W. N. 126 dist (*Chatterjee and Pearson, JJ.*) NIRODE BARANI DASI *v.* MANINDRA NARAYAN CHANDRA. 35 C. L. J. 537 : 26 C. W. N. 853 : 1922 Cal. 229.

——Art. 11 — *Applicability—Dismissal for default—Bar of suit.*

Dismissal of an objection for default bars a suit beyond a year. (*Henderson and Panton, JJ.*) HARIPADA (BERMAN) *v.* SURENDRA NATH SAMANTHA. 1922 Cal. 164.

——Art. 11—*Applicability—Claim petition—Dismissal for default—Suit—Limitation.*

Where a claim petition filed when the C. P. Code of 1882 was in force was dismissed for absence of the parties the order is not one under S. 281 of the C. P. Code but under the powers of the Court to dismiss miscellaneous matters and a regular suit to establish title is not governed by Art 11 of the Lim Act. (*Chapman and Newbould, JJ.*) OOMACHARAN CHATTERJEE *v.* HIRANMOYEE DEBI. 26 I. C. 948 : 18 C. W. N. 77.

——Art. 11—*Applicability—C. P. C.* (1882), S. 332.

A suit instituted under the last para. of S. 332 of the old Code of 1882 is not governed by Art. 11, 12, 13 or 14 of the Limitation Act of 1877. (*Mookerjee and Beachcroft, JJ.*) MAULA BAKSH *v.* BHABHASUNDARI DASYA. 19 I. C. 968 : 19 C. L. J. 187.

——Arts. 11, 13, 120 and 142—*Applicability—Suit for possession of immoveable property—C. P. Code* (1882), S. 332.

LIMITATION ACT (IX OF 1908), Art. 11—Applicability.

The Art. 11 does not govern a suit for possession of immoveable property for establishment of plff's. title, when an adverse order is made against him under S. 332, C. P. Code (1882). The suit is governed by Art. 142. (*Brett and Carnduff, JJ.*) MAINDI SARDAR *v.* AKOOR CHANDRA GHOSH. 14 I. C. 92 : 16 C. W. N. 971.

——Art. 11—*Applicability.*

By invoking Art. 11 the bar of limitation cannot be got over if the title to the property is otherwise extinguished. In other words a suit though not barred by Art. 11 may be barred by some other provisions of the Lim. Act. (*Shadi Lal and Le Rossignol, JJ.*) HARNAM SINGH *v.* KISHENCHAND. 50 I. C. 6.

——Art. 11—*Applicability — Resistence to possession—C. P. C., O. 21, R. 97.*

Where a court dismisses an apolication under R. 97, O. 21, C. P. C., it cannot pass an order directing the person in whose favour the order is passed, to bring a regular suit ; the person is not bound to sue within one year as the Art. 11 does not apply to the suit. (*Shah Din, J.*) DAULAT RAM *v.* GADI RAM. 49 I. C. 138 : 1 P. R. 1919.

——Art. 11—*Applicability of—Claim petition by mortgagee—Order declining to adjudicate on the petition—Effect of—Suit on mortgage—Limitation Act, art. 11 not applicable but only art. 132.*

If on a claim being preferred the court neither proceeds to investigate nor dismisses it under the proviso to R 58 of O. 21 of the C. P. Code the order which it passes is not an order against the claimant and does not cause limitation to run against him under Art. 11 of Sch. I to the Limitation Act. (*Schwabe, C.J.*) ABDUL KADIR *v.* U.T. M. SOMASUNDARAM. 48 M. L. J. 467 : 45 M. 827 : 16 L. W. 485 : 31 M. L. T. 441 : 1923 Mad. 76.

——Art. 11—*Applicability—Attachment before judgment—Decree—Sale in execution—Subsequent claim—Suit to set aside order—Limitation.*

It is desirable that Art. 11 should be made clear so as to expressly include claims to property attached before judgment. Where properties are attached before judgment and after an order for sale in execution is made, a claim is preferred, a suit to set aside the order, on such claim, is governed by Art. 11 of the Act. *Per Wallies, C. J.* —Property attached before judgment does not become property attached in execution, under Art. 11 of the Act by the mere passing of a decree for the plaintiff. (*Wallis, C. J., Oldfield, Spencer Ramesam and Kumaraswami Sastri, JJ.*) ARUNACHALLAM CHETTY *v.* PERIASAMI SERVAI 44 Mad. 902 : (1921) M. W. N. 569 : 14 L. W. 645 : 70 I. C. 439 : 41 M. L. J. 252 (F. B.).

——Arts. 11 and 13—*Applicability—Provincial Ins. Act, S. 34—C.P. Code, O. 21, Rr. 58 to 63.*

The official receiver's claim to any property where the vesting was after the attachment of that property in a statutory claim and not a claim under O. 21, Rr. 58 to 63 and the Court dealing with such claims acts under S. 151 of the C. P. Code and not under O. 21, Arts. 11 and 13 of the Limitation Act, have no application to orders on such claims. (*Sadasiva Aiyar, and Spencer, JJ.*) BALAKRISHNA MENON *v.* RANGAN PATTAR. 41 M. L. J. 384 : 14 L. W. 334 : (1921) M.W.N. 775 : 30 M.L.T 77 : 45 M. 70: 1922 Mad. 189.

LIMITATION ACT (IX OF 1908), Art. 11—Effect of order.

——Art. 11—*Applicability—Claim case—Direction to sell after notifying claim.*

An order on a claim petition expressing no final judgment on the right put forward but simply directing a sale after notifying the claim is one against the claimant and his suit to establish his title is governed by Art. 11. (*Wallis, C.J., Oldfield and Seshagiri Aiyar, JJ.*) VENKATARATNAM *v.* VADREVU RANGANAYAKAMMA. 41 Mad. 985 : 24 M. L. T. 197 : (1918) M. W. N. 599 : 8 L. W. 292: 48 I. C. 270: 35 M. L. J. 330 (F. B).

——Arts 11 and 15—*Applicability—Attachment under O. 38, R. 8, C. P. Code—Property released.*

A suit to recover property released from attachment under O. 38, R. 8 is not governed by art. 11 or 13, such a suit not being in form to set aside an order of Civil Court within Art. 13 and therefore the existence of the order releasing the attachment before judgment does not bar the suit. (*Ayling and Napier, JJ.*) RAMANAMMA *v.* BATHULA KAMARAJU. 41 Mad. 23 : 39 I. C. 863 : 5 L. W. 704.

——Art. 11—*Applicability—Order under old Code.*

An order, passed in 1905 under S. 283, C. P. Code, 1882, need not be set aside by a suit within one year of the date of the order as Art. 11 refers to orders passed under the new code only. (*Sadasiva Aiyar and Napier, JJ.*) T. S. SUBBA AIYAR *v.* SUBBA AIYAR. 31 I. C. 250.

Effect of order.

——Art. 11-A—*Effect of order—Order under O. 21, R. 99, C. P. Code—Suit for possession—Limitation.*

Where an application by an auction-purchaser to be placed in actual possession is disallowed under O. 21, R. 99, C. P. C., a suit for possession must be brought within one year from the date of the order disallowing the application. (*Lord Dunedin.*) BALDEO *v.* KANHAIYALAL. 3 P. L. T. 33 (P.C.).

——Art. 11—*Effect of order—Execution sale—Fraud—Suit on mortgage—Defence.*

Where by an order of Court, properties were sold subject to a mortgage in favour of the plaintiffs and the deft. purchased the property in ignorance of the order, *held*, that the order under O. 21, R. 63, would be conclusive against deft. only if it was shown that he was aware of the fraud of the plff. within a year of the date of the order and being so aware did not take steps to establish his rights within the period prescribed by Art. 11. If the deft. became aware of the fraud after the period, he could assert under S. 44 of the Evidence Act the fraudulent nature of the plff.'s claim and the consequent invalidity of the court's order in any proceeding instituted by plff. on the strength of such order. (*Scott, C. J. and Beaman, J.*) SADASHIV *v.* RAMDAYAL. 27 I. C. 238 : 16 Bom L. R. 648.

LIMITATION ACT (IX OF 1908), Art. 11—Effect of order.

——Art. 11—*Effect of order—Garnishee—Defence.*

It is not open to a garnishee to plead a defence which had already, in an execution enquiry been successful, except in a suit instituted within one year from the date of the adverse order. (*Scott, C. J. and Batchelor, J.*) TYABALI *v.* ATMA RAM.

28 Bom. 631 : 25 I. C. 375 : 16 Bom. L. R. 520.

——Art. 11-A—*Effect of order—Application under O. 21, R. 100, C. P. C.—Dismissal of—Suit for possession—Limitation.*

Under Art. 11-A of the Act, a suit for possession if not brought within one year of the order disallowing an application under O. 21, R. 100, C. P. C., is barred by limitation. (*Chatterjee and Panton, JJ.*) MOTO DASI *v.* BEHARI LAL.

59 I. C. 772.

——Art. 11—*Effect of order.*

Any order on an objection made by a third party to attachment of property in execution of a decree is conclusive, whether that order was passed summarily or after investigation. (*Ratligan and Le Rossignol, JJ.*) GOPAL SINGH *v.* GANPAT SINGH. 130 P. L. R. 1916 : 117 P. W. R. 1916 : 35 I. C. 321 : 66 P. R. 1916.

——Art. 11—*Effect of order—Limitation.*

An order dismissing an application for declaration that the property be sold subject to an encumbrance in favour of the applicant is final if not set aside within a year, both against the applicant and a judgment-debtor. The effect of the order if not set aside is to free the property from the incumbrance. (*Sadasiva Aiyar and Spencer, JJ.*) VELU PADAYACHI *v.* ARUMUGAM PILLAI.

14 L. W. 343 : 27 M. L. T. 312 : 56 I. C. 491 : 38 M. L. J. 397.

——Art. 11—*Effect of order—Applicability of article.*

An order under O. 21, R. 63, C. P. C., is conclusive against the party unless set aside within the time allowed by law. In a suit by the decree-holder against the objector whose objection was dismissed for ejectment of the objector on the basis of a subsequent trespass by the objector. The objector cannot take advantage of the fact that the plaint and the written statement were within one year of the order because the objector himself did not sue to set aside the order. (*Abdur Rahim and Napier, JJ.*) PEELA YARAKAYYA *v.* KUNUMARI VENKATA KRISHNAM

(1917) M. W. N. 721 : 6 L. W. 281 : 41 I. C. 684 : 22 M. L. T. 282.

——Art. 11-A—*Effect of order—Suit to set aside order under O. 21, R. 100, C.P.C.—Limitation.*

A suit to set aside an order passed under O. 21, R. 100 of the Civil Procedure Code is governed by one year's limitation under Art. 11-A of the Limitation Act. (*Das and Adami, JJ.*) SHEO NANDAN CHOUDHRY *v.* DEBI LAL CHAUDHRY.

4 P. L. T. 93 : 1 P. L. R. 134 : 2 P. 372 : 1923 Pat. 78 : 1923 P. 239.

Exclusion of time.

——Art. 11—*Exclusion of time.*

Where the judgment-debtor was not made a party to the objection proceedings but was a necessary party to a regular suit, the time taken in prosecuting claims against the judgment-debtor in obtaining the conciliator's certificate under the Deccan Agriculturists' Relief Act should be deducted from computing the period of limitation. (*Chandavarkar and Batchelor, JJ.*) EKANATH *v.* DAGDURAM.

36 Bom. 624 : 17 I. C. 87 : 14 Bom. L. R. 750.

LIMITATION ACT (IX OF 1908), Art. 11—Order without investigation.

——Art. 11—*Exclusion of time—Extension of time—Claim proceedings—Suit.*

An order under O. 21, R. 63 of the C. P. Code is conclusive subject to a regular suit within one year of the order, and a party cannot claim to deduct the time taken in an unsuccessful revision petition to the High Court from the period of one year prescribed. (*Fox, C. J. and Hartnoll, J.*) MG TUN U *v.* Y. S. P. L. PALANIAPPA CHETTY.

8 Bur. L. T. 93 : 27 I. C. 829 : 8 L. B. R. 146.

Order without investigation.

——Art. 11—*Order without investigation.*

If an objection under O. 21, R. 58, C. P. Code, is dismissed without investigation Art. 11 does not apply to a suit by an objector for establishing his right to the property. (*Piggott and Rafique JJ.*) GOKUL *v.* MOHRI BIBI. 40 All. 325 : 44 I. C. 1005 : 16 A. L. J. 256.

——Art. 11—*Order without investigation—Application by auction-purchaser for possession.*

The auction-purchaser applied for delivery of possession of the property purchased and made the defendant a party to the application as the latter had put in a claim to the property and had applied for setting the sale aside. The application was dismissed for default on the 11th August 1913. Subsequently the plaintiff again applied and got possession on which the defendant preferred an objection which was allowed on 12th December 1914. Two days afterwards the plaintiff sued for declaration of title as auction-purchaser *Held* that the suit was not barred as the order on 11th August 1913 was one merely dismissing the application for default and the plaintiff had no opportunity to establish the right and no adjudication of title could have been made in their absence. Therefore limitation began to run against him from 12th December 1914 when the defendants' objection was allowed. (*Richards, C. J. and Banerji, J.*) ALI MAHOMED SHAH *v.* RAM NARAIN.

39 I. C. 797 : 15 A. L. J. 420.

——Art. 11—*Order without investigation—Dismissal for want of prosecution.*

Dismissal of an application for want of prosecution on the ground that objector did not produce evidence is an order on merits and is not an order dismissing the application for default of appearance. Therefore a suit to set aside the order beyond one year from the date of the order is barred. (*Banerji, J.*) CHANDI PRASAD *v.* NAND KISHORE. 20 I. C. 369.

——Art. 11—*Order without investigation—Dispossession—Suit by third party.*

Where a person not a party to the suit complained of dispossession of a room in a house delivered in execution to the purchaser and the application of the third party was dismissed without an

LIMITATION ACT (IX OF 1908), Art. 11—Order without investigation.

enquiry into the merits a suit under O. 21, R. 103 of the C. P. Code will be barred if not brought within one year under Art. 11. (*Banerji, J.*) SHAGUN CHAND *v.* SHIBBI.
10 I. C. 401 : 8 A. L. J. 626

——Art 11—*Order without investigation.*

Art. 11 applies only where there has been an investigation of a claim. It does not apply to a consent order without investigation of a claim. (*Greaves, J.*) PANCHU MUCHU *v.* BHATO MUCHU.
50 I. C. 649.

——Art. 11—*Order without investigation—Dismissal for default—Scope of the Article.*

The article applies to a case where the person sues to establish his right to the property in respect of which a claim is preferred by him but which is dismissed for default and without investigation. The article is more comprehensive than that of the preceding Acts and the application of the article cannot be restricted to those cases only in which the claim preferred under O. 21, R. 58, has been disallowed after investigation. (*Richardson and Beachcroft JJ.*) NOGENDRA LAL *v.* FANI BHUSHAN.
45 Cal. 785 : 44 I. C. 266 : 23 C. W. N. 375.

——Art. 11 (1)—*Order without investigation—Execution proceeding resisted—Order passed without enquiry—Art. 11 not applicable.*

Where an execution proceeding is resisted an order passed without enquiry is not one under S. 335, C. P. C., 1882, and a suit for possession of the property may be brought one year after the date of the order. (*Walmsley and Newbould, JJ.*) RAGHUNATH *v.* BIRJNANDAN.
31 I. C 444.

——Art 11—*Order without investigation—Order under O. 21, Rr. 58, 63.*

Where executing court does not adjudicate on merits of an objection, the limitation for suit does not begin till the date on which fresh objections were allowed after second application for execution by decree-holders. (*Scott Smith and Abdul Qadir, JJ.*) FATEH DIN *v.* QUTABDIN.
3 Lah. 7 : 1922 Lah. 108.

——Art. 11—*Order without investigation.*

Plaintiff filed an objection to the attachment of a share in a village, in respect of which he held two registered mortgages. On the date fixed for evidence the scribe of one of the mortgage deeds was the only witness present An adjournment was refused and the objection was thus disallowed. The plaintiff then sued for declaration more than a year after the dismissal of the objection. *Held* that as there was not really an investigation under the objection the case did not fall within the one year's limitation provided by Art. 11 and the suit was therefore within time. (*Prideaux, A.J.C.*) NANHU *v.* MALLOO.
16 P. R. 1918 : 37 P. W. R 1918 : 44 I. C. 528 : 16 P. L. R. 1918.

——Arts. 11 and 144—*Order without investigation—Execution sale—Objections not investigated—Suit for recovery of property.*

Where the objections to an execution sale were summarily rejected without investigation, a suit for recovery of the property can be brought within twelve years under Art. 144, Art 11 not being applicable to the case. (*Rattigan, J.*) MAHOMED BAKSH *v.* BAL KISHEN.
160 P. L. R. 1915 : 29 I. C. 731 : 72 P. W. R 1915.

LIMITATION ACT (IX OF 1908), Art. 11—Starting point.

——Art. 11-A—*Order without investigation—Application under O. 21, R. 100, C. P. Code.*

If an application under O. 21, R 100, is dismissed without investigation, the person dispossessed is not bound to bring a suit to establish his right to possession within one year under Art. 11-A (*Spencer and Srinivasa Aiyangar, JJ.*) VENKATASUBBIAH REDDI *v.* LINGA REDDI
41 I. C. 640.

——Art. 11—*Orders without investigation—Orders on default.*

The article covers orders refusing to recognise mortgages. The language of this article in the new Act is wider than that of the previous Act and covers orders made after full investigation as well as those passed on default. (*Seshagiri Aiyar and Bakewell, JJ.*) PONNUSAMI *v* SAMU.
38 I. C. 937 : 31 M. L. J. 247.

——Art. 11—*Order without investigation—Effect of—Suit to establish title—Limitation.*

Where the executing Court dismisses a claim preferred without investigation of the merits on the ground of delay, the order is one passed against the claimant under O. 21, R. 63, C. P. Code, and a suit to establish title must be brought within the time prescribed by Art. 11 of the Limitation Act. (*Prideaux, A. J. C.*) NARSAYYA *v.* LAKMINARAYAN.
6 N. L. J. 66 : 19 N. L. R. 34 : 1923 Nag. 187.

——Art. 11—*Order without investigation—Applicability of—Suit under O. 21, R. 63—Order passed without any enquiry.*

Even though an order under O. 21, R. 63, C. P. C., is passed without any investigation and not on the merits and the claim is rejected, a suit to estaolish the claimant's right is governed by Art. 11 of the Limitation Act, 14 N.L R. 66 not followed. 41 M. 985 ; 45 C. 785 followed. (*Hallifax, A. J. C.*) GANGADHAR RAO *v.* ABDUL MAJID.
1923 Nag. 69 (1).

——Art. 11—*Order without investigation—C. P. C., O. 21, R. 103.*

Art. 11 applies to orders under R. 103 of O. 21, C. P. C. and even orders without investigation under that rule are covered by the article. (*Coutts and Sultan Ahmed, JJ.*) RAZIUDDIN *v* BINDESRI.
1 P. L. T. 559 : 58 I. C. 37 : 5 P. L. J. 652.

——Art. 11—*Order without investigation.*

The Art. does not apply to a case where an objection against attachment of property has not been disposed of on merits. (*Mullick and Jwala Prasad, JJ.*) NANDHLAL PAL *v.* NARESH CHANDRA.
41 I. C. 468: 2 P. L. W. 108.

Starting point.

——Art. 11-A—*Starting point—Application for possession by execution purchaser—Rejection—Suit.*

Where an execution purchaser who is not entitled to actual physical possession applies to be placed in possession and where his application

LIMITATION ACT (IX OF 1908), Art. 11—Starting point.

is rejected, he must sue within one year of the order rejecting his application. (*Lord Dunedin.*) BALDEO *v* KANHAIYALAL. 16 N. L. R. 103: 24 C. W. N. 1001: (1920) M. W. N. 545: 2 P. L. T. 33: 58 I. C. 21 : 12 L. W. 408 (P. C.).

———Art. 11—*Starting point—Applicability.*

The objector whose objection is dismissed must establish his right to the property within one year of the date of the order. (*Walsh, J.*) RAM NIRANJAN TEWARI *v.* KHANU RAI. 57 I. C. 5 : 2 U. P. L. R. (All.) 198.

———Art. 11-A—*Starting point—Dismissal of objection under O. 21, R. 103, C. P. C.*

A person whose objection is dismissed under O. 21, R. 103, must sue for possession within one year of the order of dismissal under Art. 11-A (*Le Rossignol, J.*) RAM SINGH *v.* KUNDAN SINGH. 103 P. L. R. 1916: 36 I. C. 211 : 96 P. W. R. 1916.

———Art. 11—*Starting point—Declaratory suit—Sale to defraud a creditor.*

A suit for a declaration that the property is liable to attachment and for setting an order allowing the objection is governed by Art. 11 and not by Art. 91 even though the result of the suit would be to set aside a sale by the judgment-debtor and even though the suit is brought after three years of the sale-deed. The cause of action for the plff. arises only on the date when the objection is allowed. (*Kensington, J.*) RAJA RAM *v* UM DAN. 179 P L. R. 1913 : 18 I. C. 519 : 118 P. W. R. 1913.

———Art. 11—*Starting point—Order under O. 21, R. 63, C. P. Code—Suit for declaration.*

A suit by a holder of a decree to declare an alienation as fraudulent based on an order passed under O. 21, R. 63, C. P. Code, is governed by Art. 11 and should be brought within one year from the date of the order. (*Ayling and Phillips, JJ.*) VENKATESWARA AIYAR *v.* SOMASUNDARAM CHETTIAR. 7 L. W. 280: 44 I. C. 551: (1918) M. W. N. 244.

———Art. 11—*Starting point.*

A suit brought within one year of the date of the order though more than a year of attachment and sale of property is not barred. The Art. 11 includes not only for a prayer for declaration but also the consequential relief dependent on the declaration. The words "to establish the right" in O. 21, R. 63, C. P. C., are not confined to the obtaining of a mere declaration to the exclusion of all consequences of relief, which include the recovery of the value of the property sold prior to the date of the order. (*Abdur Rahim, O. C. J., Seshagiri Aiyar and Phillips, JJ.*) KOURI BASSIVA REDDI *v.* NIDUMOOKI RAMAYYA REDDI. 40 Mad. 733 : (1916) 2 M. W. N. 207 : 4 L. W. 300 : 36 I. C 445 : 20 M. L T 353 : 31 M. L. J 394

———Arts 11 and 13—*Starting point—Claim petition—Order in, by a single Judge of the High Court—Appeal under Letters Patent Suit—Limitation.*

Where an order of a single Judge of the High Court in claim proceedings is contested on appeal under the Letters Patent, time under Art. 11 runs

LIMITATION ACT (IX OF 1908), Art. 11—Stranger to proceedings.

only from the date of the appellate order as the proceedings in an appeal are only a continuation of the proceedings commenced by the petition and the decree in appeal is the only subsisting decree in the suit. (*Sadasiva Aiyar and Napier, JJ.*) VENUGOPAL MUDALI *v.* VENKATASUBBAYYA MUDALI. 39 Mad. 1196 : 17 M. L. T. 208: 28 I. C. 367: (1915) M. W. N. 211.

Stranger to proceeding.

———Art. 11—*Stranger to proceeding—Claim case.*

A person divides his properties to his four grandsons in equal shares. Plaintiffs obtained a settlement of half the property from his sons. Subsequently in execution of a money decree against the sons the whole tenure was sold. After the claims preferred by the defendant's grandsons were rejected, no suit was brought to set aside the order in the claim case. In a suit by plaintiffs who were not parties to the claim case for a declaration of their occupancy right in half the property. *Held*, that Art. 11 was a bar to a suit by defendants and the plaintiffs were entitled to prove that at the time of the settlement the grandsons had a good title to the interest claimed by them. Further that the Art. 11 does not apply as the plaintiffs were no parties to the claim proceedings. (*Neubould, J.*) BARKAT ALI *v.* DAS KAZI. 53 I. C. 260.

———Art. 11—*Stranger to proceeding—Applicability of article to.*

Art. 11 does not apply to a person who was not a party to the proceedings in which the order sought to be set aside was made. (*Scott-Smith, J.*) KARM NARAIN *v.* SALAMRAT RAI. 57 I. C. 52: 2 U. P. L. R. (L) 120.

———Art. 11—*Stranger to proceeding—Judgment-debtor, if bound.*

A judgment-debtor will not be bound by an order unless he is a party to it and unless the order in express terms adjudicates on his title. Where only a question of possession is decided, the title of the judgment-debtor is not affected though he be a party. (*Seshagiri Aiyar and Bakewell, JJ.*) VEDALINGAM PILLAI *v.* V ERATHAL 26 M. L. T. 513: 54 I. C. 530: (1920) M. W. N. 77: 37 M. L J. 547.

———Art. 11-A—*Stranger to proceedings—Order for symbolical possession—If must be set aside within one year.*

An order for symbolical delivery need not be set aside within one year by strangers in actual possession of the land. (*Sadasiva Aiyar and Spencer, JJ.*) AIYAKUTTI MANKONDAN *v.* PERIASWAMI KOUNDAN. 15 M. L. T. 163: 24 I C 771 : 1 L W. 31 : (See on appeal 30 M. L. J. 404 : 31 I C. 615 : 2 L. W. 1184)

———Art. 11—*Stranger to proceeding—Suit to set aside a sale in execution of a decree obtained against third party.*

Plaintiff sued for a declaration that a certain well site was not the property of her mother and guardian who had been in possession on her behalf but was a gift to her by her uncle and was

LIMITA TION ACT (IX OF 1908), Art. 11—Miscellaneous.

not liable to be attached and sold in execution of the decree against the latter and that the sale in execution consequent on the attachment was void. *Held* that the suit was not governed by Art. 11 of the Limitation Act inasmuch as it applied only to parties to the suit on execution proceedings in question and not to strangers. (*Saunders, A. J. C.*) MA NGE MA *v.* LA SHAWE HNIT.
(1916) 2 U. B. R. 116: 36 I. C. 3: 10 Bur. L. T. 225.

Miscellaneous.

———Arts. 11 and 120—*Suit for declaration—Certain property is liable to attachment.*

Plaintiff attached a certain house in execution of his decree against the judgment-debtor. The latter's brother filed objections on the ground that he was the sole owner of the property, the judgment-debtor having relinquished his interest by a deed of release. The objection being allowed the plaintiff brought a suit for declaration that the house was liable to attachment and sale. *Held* Art. 11 governs the suit. A person by simply invoking Art. 11 cannot affect the law of limitation if his title to the property has been extinguished. (*Shadi Lal and Le Rossignol, JJ.*) HARNAM SINGH *v.* KISHEN CHAND. 50 I. C. 6.

———Art. 11—*Nature of claim suit—Suit by unsuccessful claimant—Continuation of claim.*

A suit under O. 21, R. 63 of the C. P. Code is a mere continuation of the execution proceedings in a claim petition. A suit of this class though called original suit are in their essence mere forms of appeal allowed by the C. P. Code. (*Sadasiva Aiyar and Spencer, JJ.*) KRISHNAPPA CHETTY *v.* ABDUL QADIR SAHIB. 38 Mad. 535 : 25 I. C. 11 : 26 M. L. J. 449.

———Arts. 11 and 29—*Distinction between.*

Art. 11 deals with a suit by a person to establish his right to or to the present possession of the property comprised in the order while Art. 29 deals with suits for compensation for wrongful seizure of moveable property. A suit for value of property recovered in execution is governed by Art. 29 and not by Art 11. (*Hartnoll, J.*) VENKATACHELLAM CHETTY *v.* NAGAPPA.
9 I. C. 773 : 4 Bur. L. T. 45

———Art. 12—*Applicability of—Sale voidable and not void—Setting aside.*

Where a decree holder purchases at an execution without having obtained leave to bid and in spite of a refusal by the court to grant leave the execution sale is not void but merely voidable and an application to set it aside is governed by Art. 12 of the Lim. Act. (*Lord Phillimore.*) RAI RADHA KRISHNA *v.* BISHESHWAR SAHAY
16 L. W. 190 : 3 P. L. T. 529 : 31 M. L. T. 209 (P. C.) : 49 I. A. 312 : 1922 P. C 336 (P. C.)

———Art. 12—*Void sale—Setting aside.*

A suit for a declaration that the sale in execution proceedings was fraudulent and cannot affect the rights of the plff. in respect of the properties sold is not barred though brought more than a year after the sale. (*Banerji, J.*) SITARAM *v.* SUBHEDA KUAR. 24 I. C. 695.

LIMITATION ACT (IX OF 1908). Art. 12.

———Art. 12—*Applicability of.*

Where in execution of a decree of *A* against *B* *C* purchased a house and three days before it *B* sold another house to *A* and when *C* attempted to get possession, he was resisted by one *D* but *D*'s objection was disallowed and he brought a suit to set aside the auction sale *Held*, that the suit was governed by the Art. 11 A and not by Art. 12. (*Griffin, J.*) GOPAL DAS *v.* CHEDI LAL.
17 I. C. 591.

———Arts. 12 and 96—*Execution sale—Setting aside—Property included by mistake in decree sold in execution—Limitation.*

Where property outside the suit had been included by a mistake in the decree as being liable to be sold in satisfaction of the decree and was sold in execution and two years after the sale the judgment-debtor sued to recover the property, *Held*, (1) that the execution sale was not a nullity and had to be set aside within thirty days from its date ; (2) that plff. having allowed the sale to become final could not sue to recover the property, and (3) that art. 12 of the Lim. Act barred the suit. (*Macleod, C. J. and Coyajee, J.*) NAGABHATTA *v.* NAGAPPA. 24 Bom. L. R. 423 : 1923 Bom. 163.

———Art. 12—*T. P. Act, S. 99—Sale of mortgaged property in execution—Purchased by mortgagee—Mortgagor's remedy—Limitation.*

Where a mortgagee obtains a money decree against the mortgagor on account of arrears of interest due on the mortgage amount, and purchases the mortgaged property in execution of his decree, *held*, that the sale was only a voidable one and that the failure of the mortgagor to set it aside within the time fixed by Art. 12 of the Lim. Act extinguished his right of redemption. (*Scott, C.J. and Russell, J.*) SAHADU MANAJI *v.* DEVLYA JAHA MAHAR. 14 I. C 780 : 14 Bom L. R. 254.

———Art. 12—*Fraudulent decree and sale.*

Even a sale in execution of a fraudulent decree is operative unless it is set aside within one year, since the decree is not set aside, is valid. (*Mookerjee and Richardson, JJ.*) RAJKUMAR SARKEL *v.* RAJKUMARI MALI. 33 I. C. 767 : 20 C. W. N. 659.

———Art. 12—*Sale requiring confirmation.*

For the purposes of Art. 12, in the case of a sale that requires confirmation, time begins to run from the date of the confirmation and in other cases from the date on which the sale becomes otherwise final (*Norris and Banerjee, JJ.*) BHUBAN MOHUN *v.* GIRISH NARAIN.
10 I. C. 87 : 18 C. L. J. 33 9.

———Art. 12—*Strangers—Section does not apply.*

Art. 12 of the Limitation Act which provides for the setting aside of a sale in execution of a decree of a Civil Court, applies only to the parties to the sale and not to strangers. Strangers are governed only by Art. 144 of the Limitation Act, 15 P. R. 1912 Foll. (*Scott-Smith, J.*) AZIM KHAN *v.* KARIM.
71 I. C 822.

———Art. 12—*Execution against minor—Not represented—Suit to set aside sale—Limitation.*

LIMITATION ACT (IX OF 1908), Art. 12.

In an execution proceeding against a minor if the application for the appointment of the guardian is not accompanied by affidavit and the guardian does not act at all and appear for the minor, the minor is not a party to the proceedings, and the suit to declare sale null and void can be brought at any time within 12 years. (*Harrison, J.*) ALAM DIN *v.* ALLAH DIN.
1922 Lah. 447.

——Art 12—*Applicability—Suit by strangers to set aside—Limitation.*

Art. 12 applies to suits brought by parties to the decree which resulted in the sale or by parties to the proceedings in which the sale took place or by persons claiming through them and does not apply to suits brought by persons who are not bound by the sale. Nor does the article affect a defence set up by a party in possession. (*Broadway and Martineau, JJ.*) TARA CHAND *v.* ABDUL AHAD. 67 I. C. 894

——Art 12—*Applicability.*

The limitation applicable to a suit for possession of property sold in execution of a decree is governed by Art 12. (*Scott-Smith, J.*) IMAM DIN *v.* PURNACHAND. 1 Lah. 27 : 55 I. C. 833 : 84 P. L. R. 1920 : 37 P. W. R. 1920.

——Arts. 12 and 144—*Deft. a minor—Decree against—Sale of property in execution—Suit to recover property.*

Where a minor deft. is not properly represented a decree passed against him is a nullity and the Court has no power to sell the minor's property in execution of that decree. If such a sale takes place the minor can recover the property from the auction-purchaser and the article applicable is 144 and not Art. 12. (*Chevis, J.*) HIRA SINGH *v.* GHULAM QADIR. 48. I. C 399 : 113 P. R. 1918

——Art 12—*Suit by minor.*

According to Art. 12 a suit by minor to set aside his sale must be brought within one year from the date of the plff's. majority. (*Chevis, J.*) PALA SINGH *v.* WARYAM SINGH 30 P. W R. 1918 : 43 I. C. 712 : 40 P. L. R. 1918

——Arts. 12 and 144—*Suit by objector.*

An objector who is not a party to the decree in execution of which the sale took place and whose title to the immoveable properties is not denied, can sue for possession against the auction-purchaser, under Art. 144. His suit is not governed by Art. 12. 20 M. 118, Rel. (*Johnstone, J.*) SHARFUDDIN *v.* HANSRAJ. 203 P. L R. 1911 : 15 P. R. 1912 : 11 I. C. 76 : 262 P. W. R. 1911.

——Art. 12—*T. P. Act, S. 99—Sale in contravention of—Mortgagor's remedy.*

A sale of mortgaged property in contravention of S. 99 of the T. P. Act is a voidable one and if not avoided within the time prescribed, the right to redeem is extinguished. (*Ayling and Napier, JJ.*) ARJUNA REDDI *v* VENKATACHALA ASARI.
19 M. L. T. 121 : 5 L. W. 242 : 32 I. C. 611 : 32 M. L. J. 525.

——Art. 12—*Execution sale—Defl. minor—Notice on guardian* ad litem.

LIMITATION ACT (IX OF 1908), Art. 12.

A suit to set aside an execution sale, brought after one year after the date of sale, is barred though it appeared that at the date of passing the decree that deft. was minor but became *sui juris* at the time of execution proceedings, notice of which was served not on him but on the guardian *ad litem*. (*Sadasiva Aiyar and Napier, JJ.*) SESHAGIRIRAO *v.* TANGATURI JAGGANADAM.
39 Mad. 1031 : 32. I. C 391 : 19 M. L. T. 93.

——Arts. 12 and 166—*Execution sale—Death of judgment-debtor—Minor representative not properly represented—Suit to set aside sale.*

A judgment-debtor died after decree and during the execution proceedings his widows, one of whom a major and the other a minor, were brought on record as legal representatives. The major widow had no subsisting interest at the time of the proceedings and the minor was not represented by a proper guardian. The properties were sold for a grossly low price and purchased by a decree-holder. In a suit by the minor widow after attaining majority for the recovery of the possession of property, *held*, that the suit having been instituted within three years of the plff's majority was in time. Neither Art. 12 nor Art. 166 had any application to the case. (*Wallis and Sadasiva Aiyar, JJ.*) PYDANNA *v* LAKSHMINARASIMMA. 38 Mad 1076 : 29. I C. 314 : 28 M. L. J. 525.

——Art. 12—*Execution sale—Suit to set asside,*

Art. 12 of the Limitation Act governs suit to set aside sales in execution cases after an attachment of property in the judgment-debtor's life time but without being properly represented by his heirs after his death, as such sales are voidable and not void at the heirs' instance. (*Daniels, A.J.C.*) MASUMAN *v.* GULZARI LAL
58 I. C. 549 : 23 O. C. 218

——Art. 12—*Sale of property of joint family.*

Obiter.—A suit for redemption of property which was sold in execution of a decree against a joint family which was effectively represented in the suit, is barred if no suit to set aside the execution sale is brought within one year of the sale. (*Chamier, C. J. and Sharfuddin, J.*) RANJIT *v.* RAMJATAN. 1 P. L W. 197 : 37 I.C. 833: 1917 Pat. 113.

——Art. 12—*Suit for redemption.*

A suit for possession sold in execution of a decree on the ground that the sale was a nullity need not be brought within one year of the sale. 11 C. W. N 1078, Diss. 14 C. L. J. 530 foll. Art 12 does not apply to a suit for redemption where it is not necessary to set aside the decree or the sale thereunder. (*Mullick and Kingsford, JJ.*) JAHNAVI PRASAD SINGH *v.* GHARBARAN DHUBEY.
35 I. C. 404.

——Art. 12—*Hindu Law— Mitakshara—Mortgage decree against father.*

Where in an execution of a decree against the father of a joint Hindu family, property has been sold the sons cannot claim to redeem without setting aside the sale within the time prescribed by Art. 12. (*Sharfuddin and Roe, JJ.*) BHOLA JHA *v.* KELI PRASAD. 1 P. L. J. 180 : 34 I. C. 288 : 2 P. L. W. 413.

LIMITATION ACT (IX OF 1908), Art. 12.

———Art. 12—*Suit to set aside sale in execution of a decree against third party.*

Where plff. sued for a declaration that a certain property sold in execution of a decree against the guardian was not liable to sale and that the attachment was void, the suit is not governed by Art. 12. (*Saunders, A. J. C.*) MA NGE MA *v.* MA SHWE HNIT. (1916) 2 U B. R. 116 : 36 I. C. 3 : 10 Bur. L. T. 225.

———Art. 12 (a) and Ss. 26 and 28—*Suit to set aside Revenue sale—Limitation for defence that Revenue sale is void—Revenue sale and Civil Court sale.*

While a suit for a declaration that land was free from payment of assessment was pending, the land was sold under a decree for arrears of assessment by the Revenue Court. Plff., the owner of the land, however, remained in possession and obtained a decree in the same court declaring the land free from assessment about the time of the sale by the Revenue Court. In a suit by the vendee of the auction-purchaser at the Revenue sale plff. pleaded as a deft. that the Revenue sale was void and gave no right to the auction-purchaser, *held*, that the defence was not prohibited by the law of limitation though the owner of the land could not file a suit after a year from the sale by the Revenue court. *Held*, further that the Revenue sale was not valid under the circumstances. (*Macleod, C J. and Heaton, J.*) MAHADEV NARAYAN DATAR *v.* SADASHIV KESHAV. 59 I. C. 118 : 22 Bom. L. R. 1082.

———Art. 12 (a)—*Execution sale—Suit to set aside—Fraud.*

Where in pursuance of a compromise decree passed against one of several administrators of an estate property belonging to the estate is sold, a suit to set aside the sale must be brought within one year from the date of the sale and if fraud is alleged, within one year from the date of fraud. The sale is binding on all persons interested in the estate including the co administrators in the absence of fraud. It is of the greatest importance that sales made under the authority of the Court should not be lightly set aside. (*Sadasiva Aiyar and Napier, JJ.*) RHODES *v.* PADMANABHA CHETTIAR. 1 L. W. 1033 : (1914) M. W. N. 921 : 26 I C. 369 : 17 M. L. T. 18.

———Art. 12 (b)—*Revenue sale under Madras Estates Land Act—Suit to set aside.*

A suit to set aside a revenue sale under the Madras Estates Land Act more than one year after the expiry of 30 days after the sale does not lie as it is barred by Art 12 (*b*) of Lim. Act. (*Phillips and Venkatasubba Rao, JJ.*) KAMULAMMAL *v.* CHOKKALINGAM ASARI. 46 M. L J. 840 : 1924 Mad. 878.

———Art. 12 (b)—*Mad. Act VII of 1865—Suit to set aside rent sale—Necessary party.*

In a suit to set aside a rent sale under S. 39 of Act VII of 1865 (Mad.) the person at whose instance the sale was brought about is not a necessary party and the joinder of such person as party more than one year from the date of the sale, will not enable the Court to dismiss the suit as barred under Art. 12 (*b*) of the Lim. Act. (*Sadasiva Iyer and Spencer, JJ.*) ANNAMALAI VELAN *v.* MURUGAPPA VELAN. 38 Mad. 837: 1 L. W 212 : (1914) M. W. N. 236 : 22 I. C. 826 : 26 M. L. J. 239.

LIMITATION ACT (IX OF 1908), Art. 13.

———Art. 12 (c)—*Sale for Government revenue—Suit to set aside—Compromise—Subsequent suit for possession.*

Where lands of the plffs. were sold for arrears of Government revenue and plffs in a suit to have the sale set aside on the ground of fraud compromised the claim with the purchaser and more than three years after date of the compromise sued for possession of the lands on a declaration of their title, *held*, that the suit was barred by Art. 12 (*c*) of the Lim. Act. (*Holmwood and Sharfuddin, JJ.*) SHEKANBERI *v.* RAM KUMAR DAS. 23 I. C. 240.

———Art. 12 c)—*Execution sale—Collateral attack.*

A sale (in this case under the Revenue Recovery Act) by the court cannot be attacked either directly or collaterally after the perod of limitation. Thus irregularities in the sale cannot be availed of to ignore the sale after the period of limitation, (*Miller and Sadasiva Iyer, JJ.*) MUTHUSAMIER *v.* SREE METHANITHI SWAMIER. 38 Mad. 356 : 13 M. L. T. 498 : (1913) M. W. N. 581 : 19 I. C. 694 : 25 M. L. J, 393.

———Art. 13—*Execution of decree— Attachment of house sold—Suit by vendee—Attachment withdrawn—Suit by vendee against vendor.*

The deft sold a house to plff in 1910 and himself remained in possession as plff.'s lessee. A creditor of the deft. attached the house and then plff. applied to raise the attachment under O. 21. The application was rejected on the ground that the sale by deft. to plff. was fraudulent Against this order plff. filed a suit on 15-8-16 but it was withdrawn owing to a compromise between deft. and his creditor. The attachment was also withdrawn. On 25-5-17 plff. filed the present suit for possession and arrears of rent. *Held*, the suit is not barred by time as the attachment being withdrawn there was no longer any attachment to operate against him and the deft not being a party to the attachment proceedings, the parties were in the same position as before the attachment. (*Macleod, C, J. and Fawcett, J.*) MANILAL GIRDHAR PATAL *v.* NATHA LAL. 22 Bom. L. R. 1446: 59 I.C. 774 : 45 Bom. 561.

———Art, 13—*Possession of immoveable property.*

Art. 13 does not govern a suit for possession of immoveable property after the establishment of title when an adverse order is made against plff. under S. 332, C. P. Code (1882), as the suit is one to establish plff.'s right to the property. The suit is governed by Art. 142. (*Brett and Carnduff, JJ.*) MAINDI SARDAR *v.* AKOOR CHANDRA GHOSH. 14 I. C. 92 : 16 C. W. N. 971.

———Arts. 13 and 11—*Attachment under O. 38, R. 8, C. P. Code—Property released.*

A suit to recover property released from attachment under O. 38, R. 8 is not governed by Art. 11

LIMITATION ACT (IX OF 1908), Art, 13.

or 13 such a suit not being one to set aside an order of Civil Court within Art. 13 and therefore the existence of the order releasing the attachment before judgment, does not bar the suit, (*Ayling and Napier, JJ.*) RAMANAMMA *v.* BATHULA KAMARAJU. 41 Mad. 23 : 39 I. C. 11 : 5 L W 704

——Art. 13-*Objection by vendee to attachment disallowed— Subsequent withdrawal of attachment—Suit for declaration of validity of sale.*

The article does not apply where a judgment-debtor sells his property to a third person and the property is subsequently attached in execution of another decree, the purchaser's objection to sale is disallowed, but the sale set aside on the purchaser paying the decretal amount. The purchaser's suit for declaration is therefore maintainable though the order dismissing his objection was not questioned or set aside by a suit. (*Miller C. J., Mullick and Bucknill JJ.*) LAL SHAH *v.* KADO MAHTO. 2 P. L. T. 345 : 6 P. L. J. 85 : 60 I. C 849 : 1921 P. (F. B.)

——Art, 14—*Applicability — Order under Revenue jurisdiction.*

Where the order of a Collector permitting the ejectment of a person is appealable under the Rev. Jurisdiction Act a suit to set aside the order will not lie where the cause of action is only on that order. But where plff is ejected a suit will lie as there is no appeal against the physical act of ejectment. *Obiter.*—Art. 14 does not apply to suits based upon title (*Pratt and Crouch, A. J. C.*) AGHA SULTAN MAHOMED SHAH *v.* SECRETARY OF STATE FOR INDIA, 10 I. C. 223.

——Art. 14—*Order* ultra vires — *Article if applies.*

Where relief being asked for on the ground that a certain order is *ultra vires*, art. 14 of the Lim. Act does not apply. (*Shah, A.C.J and Kemp, J.*) PATDAYA MUPPAYA *v.* SECRETARY OF STATE FOR INDIA.
25 Bom. L. R. 1160 : 48 B. 61 : 1924 Bom. 273.

——Art. 14—*Eviction by officer not acting in his official capacity.*

Where the plaintiff was evicted from a property by an officer who was not acting in his official capacity Art 14 of the Act is not applicable to a suit by the plaintiff to recover possession of that property. (*Shah and Crump, JJ.*) DHANJI JAIRAM *v.* SECY. OF STATE. 45 Bom. 920 : 61 I. C. 347 : 23 Bom. L. R. 279.

——Art. 14—*Order of Collector—Remedy.*

On a forfeiture of land by the Collector for failure to pay arrears of Govt. Revenue the aggrieved party may either appeal to the Rev. authorities or bring a suit in a Civil Court. But he must sue within one year of the order of the Collector under Art. 14. (*Macleod, C.J., Heaton, J.*) GANESH SHESHO DESHPANDE *v.* THE SECRETARY OF STATE. 44 Bom. 461: 57 I. C 587 : 22 Bom. L. R. 212

——Art. 14—*Lease by Collector — Collector refusing to entertain plaint.*

A suit to recover possession of lands forming a river bed leased by the Collector is barred if

LIMITATION ACT (IX OF 1908), Art. 14.

brought after a year of the date of the order of the Collector under S. 37 of the Bombay Land Revenue Code by which the Collector refused to entertain the plaint. Prior to the Bombay Act XII of 1912 the starting point of limitation is the date of the order. (*Macleod, C.J. and Heaton, J.*) CHHOUTUBHAI *v.* SECRETARY OF STATE FOR INDIA. 55 I. C. 691 : 22 Bom. L. R. 146.

——Art. 14—*Money held in trust by Govt. —Order of payment to several heirs of the depositor—Suit by one.*

From 1836 to 1859 the accounts of the Satara treasury showed the sum claimed by the plff. as payable to *C*, the plff.'s ancestor. In 1857 the Collector of Satara issued a notice to *C*'s eldest son *S* and called upon him to withdraw the amount, *S* accordingly applied for the money, but *S*'s younger brother asked that it should be distributed among all *C*'s sons. In 1860 the Asst. Collector ordered that *C*'s sons and heirs should produce the certificate of heirship. *Held* the plff.'s claim did not fall within Art. 14 and the case was one to which the bar of limitation could not be pleaded (*Scott, C.J and Batchelor, J.*) SECY. OF STATE *v.* BAPUJI MAHADEO. 39 Bom. 572 : 31 I. C. 277 : 17 Bom. L. R. 641.

——Art. 14—*Order under Ss.* 65 *and* 66, *Bombay Land Revenue Code—Possession for fifty years—No payment of revenue.*

Where the plffs had been in possession of the land in dispute for over fifty years without paying any assessment and the Deputy Collector acting under Ss. 65 and 66 of the Bombay Land Revenue Code ejected the plffs. *Held*, in a suit by plffs. for possession that the order of the Deputy Collector was *ultra vires* and Art. 14 did not apply. (*Heaton and Shah, JJ.*) RASUL KHAN *v.* SECRETARY OF STATE.
39 Bom. 494 : 29 I. C. 490 : 17 Bom. L. R. 513.

——Art. 14—Ultra vires *order—Suit to set aside.*

A suit to set aside an order which is *ultra vires* of the officer passing it, is not governed by Art. 14 (*Chandavarkar and Russell, JJ.*) MALKAJEPPA *v.* SECY. OF STATE.
36 Bom 325 : 15 I. C. 517 : 14 Bom. L. R. 832.

——Art. 14—*Applicability.*

A suit for declaration that an allotment made by the Collector under the Bengal Estates Partition Act is not legally valid is governed not by Art. 14 but by Art. 120. (*Sanderson, C. J and Panton, J.*) JITENEDRA GOPAL ROY *v.* MATANGINI. 49 I. C. 965.

——Arts. 14 and 120—*C. P. Land Revenue Act, S.* 83—*Suit under.*

A suit under S. 83 of the C. P. Land Revenue Act is governed not by Art. 14 but by Art. 120 of the Lim. Act though the section speaks of a suit as one to have an entry cancelled or amended it is a declaratory suit and the Civil Court can only declare that the entry is erroneous but cannot itself amend the record of rights. (*Richards and Mullick, JJ.*) NABHOGHAN BADHAI *v.* RAGHUNATH.
19 C. W. 1303 : 30 I. C. 61 : 21 C. L. J. 646.

LIMITATION ACT (IX OF 1908), Art. 14.

———Art. 14—Ultra vires *order.*

An order of the Collector which declared that the lands in the possession of the plff. should be given to the deft and for which there was no warrant of law is an *ultra vires* order, and the owner need not set it aside. Art. 14 therefore does not apply. (*Sharfuddin and Coxe, JJ.*) RAJANI *v* RAM DHULAL DAS,
17 I. C. 881 : 17 C. W. N. 55.

——— Art. 14—Ultra vires *order.*

Where the Collector was authorised under the *Putni Regulation* to make a summary investigation if the Talukdar contested the Zamindar's demand for any arrear but he determined the rent payable for the tenure in future the order is *ultra vires* and is not required to be set aside. Art. 14 therefore does not apply. (*Chatterjea and Richardson, JJ.*) NAGENDRA LAL *v.* RAJA BIBI. 17 I. C. 504 : 17 C. W. N. 374.

———Arts. 14 and 120—*Entries in the Record-of-Rights—Entry whether an act or order of Govt. Officer.*

A suit for amendment or cancellation of certain entries in the Record-of-Rights is not a suit to set aside any act or order of a Government Officer and therefore does not fall under Art. 14 but under Art. 120. (*D. Chatterjee, J.*) DASARATHI PANDA *v.* SATYABADI GANUTIA. 14 I. C. 50.

———Art. 14—*Decision of Collector as to chaukidari chakran lands—Bengal Chaukidari Act,* 1870.

Where the Collector holding that the Chaukidari Act was applicable to the plff.'s estate took proceedings in 1899 with a view to transfer the chaukidari chakran lands. *Held,* Per *Woodroffe, J.*—That it may be a question whether the article applies at all having regard to 11 Bom. 429. Per *Caspersz, J.*—The Collector's order being a nullity and the lands transferred not being within his jurisdiction, the suit cannot be defeated because it was instituted more than one year after the date of the order. 15 C.W.N. 300, Foll. (*Woodroffe and Caspersz, JJ.*) BIRBAR NARAYAN *v.* SECRY. OF STATE. 11 I. C. 899 : 14 C. L. J. 151.

———Art. 14—Ultra vires *order.*

Where resumption and transfer of certain lands could not take place under Chaukidari Act the order being without jurisdiction, is null and void and Art. 14 would not apply. (*Woodroffe and Caspersz, JJ.*) KIRTIBASH BHUPATI HARI CHANDRAN MAHAPATRA *v.* THE SECRETARY OF STATE FOR INDIA. 9 I. C. 688 : 15 C. W. N. 300.

———Art. 14—*Application for partition — Rejection of—Suit for declaration.*

Plffs. applied for partition of the *Shamilat* property in 1908. The Revenue Officer rejected the application in 1909. In 1912 plffs. sued for a declaration of their title to a share in the *Shamilat. Held* that the suit was governed by Art. 120, and not by Art. 14. (*Shadi Lal and Leslie Jones, JJ.*) KALU KHAN *v.* UMDA.
150 P. L. R. 1916 : 136 P. W. R. 1916 : Cr. 34 I. C. 546 : 47 P. R. 1916.

———Art. 14—*Applicability.*

Where the object of the suit is to recover possession of certain villages which were resumed by Government, the order of resumption should be treated as a nullity and Art. 14 therefore does not apply. (*Abdur Rahim and Spencer, JJ.*) SECRETARY OF STATE *v.* GULAM.
(1919) M. W. N. 736 : 9 L. W. 587 : 51 I. C. 366 : 42 M. W. N. 673 : 37 M. L. J. 71.

———Arts. 14 and 131—*Inam resumed—Suit for cancellation of the resumption order.*

Where the Collector resumed a *dasabandham inam* owing to the *inamdar's* failure to fulfil the conditions of the *inam* the *inamdar* sued after 12 years for a declaration that he was entitled to hold the land rent free. *Held,* that the suit for cancellation of the order should have been brought within one year of the date of the order. (*Spencer and Tyabji, JJ.*) SUBBANNA *v.* SECRY. OF STATE. 31 I. C. 267 : (1915) M. W. N. 915.

———Art. 14—*Impeaching grant by Collector.*

Art. 14 has no application to a suit by a Zemindar for possession of certain land of his on the ground that the Collector who, during his minority was in possession of his estate treated the suit property, which had been granted to another *gada* service, as the property of the Government, resumed the lands and re-granted them to the then occupants thereof on *jeraiti* pattahs. The resumption of lands granted by zemindar for the performance of *gadaba* service is in the zemindar and not in the Government. (*Wallis and Kumaraswami Sastri, JJ.*) SURYANARAYANA *v.* SECRETARY OF STATE.
25 I. C. 878 : 1 L. W. 662.

———Arts. 14 and 120—*Suit for amendment of settlement entries—Limitation for C. P. Land Rev. Act (XVIII of* 1881), *S.* 83.

Art. 14 and not Art. 120 of the Limitation Act governs a suit for amendment of settlement entries and the period of limitation is one year from the date on which the Record of Rights is made and attested and the aasessment is offered. (*Hallifax and Dhobley, A. J. C.*) ONKARLAL *v.* SHALIGRAMLALA. 5 N. L. J. 199 : 1923 Nag. 76.

———Art. 14—*Settlement entry.*

A suit for cancellation of a Settlement entry is governed by Art. 14, the period of limitation being one year from the date of the entry. (*Skinner, A. J. C.*) DINA *v.* DADU. 57 I. C. 319.

———Art. 14—Ultra vires *Order—Limitation*

An order under S. 524, Cr. P. C. which directed the forfeiture of property seized on suspicion of its being stolen, and which ordered the sale-proceeds thereof to be credited to Government is *ultra vires.* Since, the section authorises the Government to hold the property as trustee for the real owner, a suit for possession of the property is not barred though brought after a year of the order of confiscation. (*Mullick and Sultan Ahmed, JJ.*) SECRETARY OF STATE *v.* LOWN KARANIMARWARI.
5 P. L. J. 321 : 56 I. C. 507 : 1920 Pat. 253 : 21 Cr. L. J. 475 : 1 Pat. L. T. 451.

———Art. 14—*Sind Encumbered Estates Act* (1896), *S.* 38—*Suit against manager.*

A suit, by the lessee of lands under the management by the manager of Encumbered Estates,

LIMITATION ACT (IX OF 1908), Art. 14.

Sind, for an injunction restraining the manager from selling the land for arrears of rent, is governed by Art. 14. (*Pratt, J. C. and Crouch, A. J. C.*) GEHIMAL *v.* MANAGER, INCUMBERED ESTATES, SIND. **32 I. C. 616 : 9 S. L. R. 167.**

——Art. 14—*Question of title—Revenue Court Bombay Land Revenue Code*, S. 3.

If a Collector makes an order or commits an act of dispossession relating to private land acting under S. 3 of the Bombay Land Revenue Code, the order is a nullity and there will be no necessity to set aside such an order before proceeding to sue for recovery of possession as against the Government. (*Hayward and Boyd, A. J. Cs.*) SECRETARY OF STATE *v* MUSKTAQ SINGH. **24 I. C. 813 : 7 S. L. R. 169**

——Art. 14—*Applicability.*

One A was in possession of a graveyard for a number of years. On the Collector's passing an order directing A to hand over the property to B, A appealed to the Commissioner without success. A brought a suit that the property belonged to him and that the Government had no right or interest and for a perpetual injunction against the Secretary of State. *Held* that the suit was virtually one to set aside the Collector's order and should have been brought within one year from that order. If the order was a nullity Art. 14 would not apply. (*Pratt, J. C. and Fawcett, A. J. C.*) FAKIR SHAH BULDIN *v.* SECRETARY OF STATE. **19 I. C. 565 : 6 S. L. R. 210.**

——Art. 16—*Madras Irrigation Cess Act* (1865)—*Madras Revenue Recovery Act*, S. 59—*Law governing.*

A suit for refund of *tirvajasti* levied under the Irrigation Cess Act comes under Art. 16 and not under S. 59 of the Madras Rev. Recov. Act. (*Abdur Rahim and Sundara Aiyar, JJ.*) RAVULA VENGALA REDDI *v.* SECY. OF STATE. **15 I. C. 328 (2) : 17 C. W. N. 494.**

——Art. 16—*Water cess—Illegal Levy—Suit for recovery—Limitation—Madras Revenue Recovery Act*, S. 59.

A suit for the recovery of water cess alleged to have been levied illegally and without any justification is governed by the period of limitation specified in Art. 16 of the Limitation Act and not by the limitation prescribed by S. 59 of the Revenue Recovery Act, S. 59 of the Madras Revenue Recovery Act applies to cases of persons aggrieved by illegal or irregular proceeding taken for the collection of revenue under the provisions of that Act and not to case where the levy of the cess or tax is *abinitio* illegal. 12 M. 168; 15 I. C. 328 ; 1913 M. W. N. 75 ; 12 L. W. 334 followed. (*Spencer and Krishnan, J.*) SECRETARY OF STATE *v.* NAGARAJA AIYAR. **44 M. L. J. 645 : (1923) M. W. N. 327 : 32 M. L. T. 230 : 17 L. W. 618 : 1923 Mad. 665. (H. C.)**

——Art. 16—*Water cess—Illegal levy—Suit for recovery of cess—Limitation — Madras Revenue Recovery Act*, S. 59.

A suit by a person for recovery of water-cess alleged to have been illegally levied and paid under protest is governed by Art. 16 of the Lim. Act, and not by S. 59 of the Madras Revenue Recovery Act. 15 I. C. 328 foll. (*Sir Walter Schwabe, C. J.*) SECY. OF STATE FOR INDIA *v.* CHELLASAMI VENKATARATNAM. **45 M. L. J. 12 : 46 Mad. 488 : 32 M. L. T. 236 : 17 L. W. 683 : 1923 Mad. 652 (H. C.).**

LIMITATION ACT (IX OF 1908), Art. 19.

——Art. 16—*Suit for recovery of water cess paid on demand but under protest.*

A suit for the recovery of water cess paid under protest on demand but without any proceedings by way of attachment, sale, etc., is governed by Art 16 of the Lim. Act, and not by S. 47 of Mad. Act II of 1864. (*Abdur Rahim and Sundara Aiyar, JJ.*) PANCHALAPALLI PACHI REDDY *v.* SECRETARY OF STATE FOR INDIA. **70 I. C. 884.**

——Art. 16—*Water cess—Illegal levy from ryots—Suit for recovery by Zemindar—Maintainability.*

Where the Government levy, without any statutory authority, water cess from the *ryots* of a Zemindar and the latter remits the amount to the *ryots* out of the rents payable by them, *held* that the Zemindar is entitled to sue to recover from the Government the amount so illegally collected, and such suit is governed by Art. 16 of the Limitation Act. (*Wallis, C. J., Ayling and Coutts Trotter, JJ.*) THE SECRETARY OF STATE FOR INDIA *v.* ZEMINDARINI OF VEGAYAMMAPETA ESTATE. **59 I. C. 98 : 12 L. W. 334.**

——Art. 16 — *Suit for damages against Government—Attachment and recovery of money under Madras Act I of* 1858.

The Collector under Madras Act I of 1858 attached plff.'s crops for value of the labour which he was asked to contribute and which he refused. The Collector recovered the amount in accordance with the procedure prescribed by Madras Act II of 1864. In a suit for damages by the plff. against the Government, *held*, that the limitation applicable to it was six months under S 59 of Madras Act II of 1864 and not one year under Art. 16. 23 Mad. 57. Foll. (*Sadasiva Aiyar and Hannay, JJ.*) RAMASWAMI AIYAR *v.* SECRETARY OF STATE. **26 I. C. 863 : (1915) M. W. N. 154.**

——Art. 16—*Illegal collection of water-cess.*

A suit for recovery of water-cess illegally collected without any proceeding under the Revenue Recovery Act is governed by Art. 16 and not by the Revenue Recovery Act. (*Benson and Sundara Aiyar, JJ.*) RAVALA NAGAMMA *v.* SECRETARY OF STATE. **18 I. C. 699 : (1913) M.W.N. 75.**

——Arts. 19 and 23—*Malicious prosecution—Joint tort—Damages.*

A suit for damages for false imprisonment or malicious prosecution against tort feasors is governed by the one year rule under Arts. 19 and 23 of the Lim. Act. Where there is a joint tort the proper action is on the tort against the joint tort-feasors and not on a cause of action to recover special damage by reason of a conspiracy to cause damage. (*Woodroffe, Coxe and Chatterjee, JJ.*) WESTON *v* PIYARE MOHAN DAS **40 Cal. 898 : 23 I. C. 25 : 18 C. W. N. 185.**

LIMITATION ACT (IX OF 1908), Art. 22.

——Art. 22 — *Personal injury caused by throwing sulphuric acid—Suit for damages.*

In a suit for damages where personal injury is caused by throwing sulphuric acid on the face, the period of limitation is one year as prescribed by Art. 22 of the Lim. Act and time begins to run from the date of injurious act done. (*Shah, A. C. J. and Crump, J.*) ABDULLA v. ABDULLA.

25 Bom. L. R. 1333 : 1924 Bom. 290.

——Art. 23—*Malicious prosecution—Suit for Limitation from date of discharge—Revision petition does not suspend period.*

The period of limitation for a suit for malicious prosecution is one year from the time the plaintiff is acquitted or the prosecution is otherwise terminated. The cause of action would not be suspended because further proceedings might be taken either by Government or the complainant to get the order of discharge set aside. (*Macleod, C. J. and Kanga, J.*) PURSHOTTAM VITHALDAS SHET v. RAVJI HARI ATHAVLE.

24 Bom. L. R. 507 : 1922 Bom. 209.

——Art 23 — *Malicious prosecution—Joint tort—Damages.*

A suit for damages for malicious arrest, imprisonment and prosecution against several joint tort-feasors is governed by the one year's rule of limitation under Arts. 19 and 23 of the Lim. Act. Where a suit for damages in respect of such torts would be barred by limitation as against one, it would be barred against all. (*Woodroffe, Coxe and Chatterjee, JJ.*) WESTON v. PIYARE MOHAN DAS.

40 Cal. 893 : 23 I. C. 25 : 18 C. W. N. 185.

——Arts. 23 and 24—*Malicious prosecution—Libel—Proceedings under the Bengal Disorderly Houses Act.*

Proceedings under the Bengal Disorderly Houses Act do not constitute a prosecution but only a libel and a suit for damages is governed by Art. 24 and not by art. 23. (*Mookerjee and Beachcroft, JJ.*) DHIRAJBALA DASI v. GOPAL CHANDRA MUKERJI. 20 I. C. 768 : 18 C. L. J. 352.

——Art. 23—*Damages resulting from a conspiracy.*

A suit to recover damages resulting from a conspiracy falls within Art. 120 or 36 and not within Art 23. (*Fletcher, J.*) PEARY MOHAN DAS v. D. WESTON. 13 Cr. L. J. 65 : 13 I. C. 721 : 16 C. W. N. 145.

——Art. 23—*Applicability—Acquittal.*

Where the Dt. Magistrate directed further inquiry after cancelling an order of discharge but the High Court set aside the order of the Dt. Magistrate holding that the order of the trying Magistrate amounted to an acquittal, limitation for a suit for damages for malicious prosecution begins from date of the order of the High Court. The second part of the article applies even in cases of acquittal. (*Bakewell and Phillips, JJ.*) TANGUTURI SRIRAMULU v. VEERESALINGAM GARU.

57 I. C. 635.

——Art. 36—*Standing crops—Attachment of land and crop—Damages.*

A suit for damages for the wrongful attachment of land and crops and the consequent loss or destruction of the crops is governed by Art. 39. Standing crops at the time of attachment was immoveable property and the attachment of the land with the crop thereon, it illegally made, constitutes a trespass on immoveable property. 31 Mad. 431 ; 23 M. L. J. 511 : 32 Cal 459 and 36 Cal. 141 Ref. (*White, C. J., Miller and Oldfield, JJ.*) VENKATARAMANUJAM v. BASAVAYYA.

(1913) M. W. N. 869 : 14 M. L. T. 225 : 21 I. C. 213 : 25 M. L. J. 447.

LIMITATION ACT (IX OF 1908), Art. 29.

——Arts. 29 and 36—*Attachment of property—Claim allowed—Suit for declaration—To ignore the claim.*

A property was attached by P over which plff.'s predecessor claimed a lien. The claim was allowed by the executing Court and P. brought the present suit for a declaration that the plff.'s predecessor had no claim. The suit was decreed and proceeds of the attached property were rateably distributed among P and certain other creditors but the decree obtained by P. was reversed in appeal and the plff. sued him and the other creditors to recover sums paid, in satisfaction of their claim. *Held* that the suit was not governed either by Art. 29 or by Art. 36 as there was not a seizure of money and the defts. were not guilty of any non-feasance, misfeasance, or malfeasance in respect of the money. (*Piggott and Walsh, JJ.*) RAM NARAIN v. BANKEY LAL.

39 All. 322 : 39 I. C. 532 : 15 A. L. J. 295.

——Art. 29—*Applicability.*

A suit to recover money received by the deft. in the form of rent under a decree of a Court in respect of property of which the plff. was entitled to possession and also to rent is not covered by Art. 29, but is governed by Art. 62. (*Walsh and Sundar Lal, JJ.*) NIADER SINGH v. GANGA DEI. 38 All. 676 : 35 I. C. 86 : 14 A. L. J. 728.

——Art. 29—*Seizure under writ — When wrongful—Damages.*

Where a seizure is under a writ of court it is *prima facie* not wrongful and unless it is shown that the court issuing the writ had no jurisdiction over the subject-matter or that the writ was executed against a person not a party to the decree, a suit for compensation for seizure would not fall within Art. 29 of the Lim. Act. 19 M. 80 ; 38 M. L. J 314 foll ; 31 M. 431 ; 42 C. 85 ; 31 M. L. J. 257 dist. (*Chatterjee and Pearson, JJ.*) ARJAN BISWAS v. ABDUL BISWAS.

64 I. C. 513 : 35 C. L. J. 480.

——Arts. 29, 39 and 49—*Arrest of ship—Trespass—Action in rem—Damages—Limitation.*

In the absence of proof of malice or its equivalent a suit for simple trespass will not lie for the arrest of a ship. The arrest of the ship is a judicial act of the Court and an ordinary step in an action *in rem* assuming that an action would lie in the absence of proof of malice or its equivalent the action would be for wrongful seizure under legal process and would be barred by Art 29 of the Lim. Act. (*Jenkins, C. J. and Stephen, J.*) MADRAS STEAM NAVIGATION CO. v. SHALIMAR WORKS. 28 I. C. 463 : 42 Cal. 85.

——Art. 29—*Seizure of standing crops.*

Where the wrong is solely the seizure of standing crops Art. 29 does not apply. Art. 37 may

apply but a suit for damages for unlawfully distraining, cutting, and carrying away the crops is not governed by Art. 36 but is governed either by Art. 48 or 49. (*Kensington, C. J., Harrington and Mookerjee, JJ.*) JADU NATH DANDUPAT *v.* HARI KAR.

17 C. W. N. 308 : 18 I. C. 253 : 17 C. L. J. 206.

——Art. 29—*Attachment before judgment.*

A suit for damages on account of injury to stock caused by making an attachment before judgment is covered by Art. 36. But a suit for damages on account of the sale of the goods attached before judgment, at a low price and for injury to trade and reputation due to the attachment itself is governed by Art. 29. (*Oldfield and Seshagiri Aiyar, JJ.*) SOKKALINGA CHETTY *v.* KRISHNASWAMI AIYAR.

(1920) M. W. N. 192 : 27 M. L. T. 259 : 55 I. C. 786 : 11 L. W. 479 : 38 M. L. J. 324.

——Arts. 29 and 36—*Wrongful attachment of moveable—Prohibitory order.*

A suit for compensation for wrongful attachment of moveables by the issue of prohibitory order is governed by Art. 29 or 36 and not by Arts. 42, 46, 62, or 120. An attachment by a prohibitory order is not injunction within the meaning of Art. 42. (*Sadasiva Aiyar and Napier, JJ.*) PANDIRI VEERAMMA *v.* MANDAVILLI SUBBA RAO.

35 I. C. 98 : 31 M.L. J. 257.

——Art. 29—*Immoveable property—Standing crops—Suit to recover compensation.*

A suit to recover the value of standing crops wrongfully cut and carried away is not one to recover compensation within Art. 29 as immoveable property defined in the General Clauses Act, S. 3 (25) includes standing crops and the definition of moveable property given in S. 2 (13) does not govern the Lim. Act. (*Kumaraswami Sastri, J.*) DEVARASETTI NARASIMHAM *v.* DEVARASETTI VENKIAH. 31 I. C. 796 : 18 M. L. T. 532.

——Art. 29—*Attachment of debt—Assignee of debt—Suit for recovery.*

Attachment by decree-holder of debt due to judgment debtor does not amount to 'wrongful seizure of immoveable property' within Art 29 as the attachment is not effected by actual or constructive seizure but only by a written order. A debt due to a judgment-debtor was attached by his decree-holder and when the debtor paid the money into Court, it was paid over to the attaching creditor A third person claiming to be assignee of the debt before attachment sued for recovery of the money. *Held* neither Art. 29 nor Art. 36 applied. The article applicable was either 62 or 120 and time runs from the date the attaching creditor received the money from the Court. (*White, C. J., Sankaran Nair and Oldfield, JJ.*) YELLAMMAL *v.* AYYAPPA NAICK.

38 Mad. 972 : 26 M. L. J. 166 : 1 L. W. 162 : 22 I. C. 870 : (1914) M. W. N. 348 (F.B.).

——Art. 29—*Wrongful attachment— Standing crop—Damages.*

A suit for damages for the wrongful attachment of land and crops and the consequent loss or destruction of the crops is governed by Art. 39.

Standing crops at the time of attachment was immoveable property and the attachment of the land with the crop thereon, if illegally made, constitutes a trespass on immoveable property. 31 Mad. 431, 23 M. L. J. 511, 32 Cal. 459 and 36 Cal. 141 Ref. (*White, C. J., Miller and Oldfield, JJ.*) VENKATARAMANUJAM *v.* BASAVAYYA.

(1913) M. W. N. 869 : 21 I. C. 213 : 14 M. L. T. 225 : 25 M. L. J. 447.

——Art. 29—*Illegal attachment—Suit for damages.*

Per *Sundara Aiyar, J.*—Where a suit for damages for the value of the standing crops cut during attachment is brought after a suit for declaration that the attachment is illegal has terminated, it is governed by Art. 62 or 120 and the cause of action arises on the termination of the suit, declaring the attachment illegal. Per *Sadasiva Aiyar, J.*—The suit is governed by Art. 29 or 36 and the cause of action arises from the date of attachment. (*Sundara Aiyar and Sadasiva Aiyar, JJ.*)KOTAGIRI VENKATARAMARAYANIM *v.* BASAWAYYA. (1912) M. W. N. 1222 : 17 I. C. 185 : 23 M. L. J. 620.

——Art. 29—*Attachment of debt—Payment by debtor.*

Per *Sundara Aiyar, J.*—A suit to recover the amount of debt paid by the debtor on attachment by a Court is governed by Art. 62 or 120, and not by Art. 29, because debt is not moveable property. (2) There is no seizure under legal process, the debtor having voluntarily paid the amount. (3) The suit is not for compensation for wrongful seizure of moveable property. (4) The article applies only where the Court is able to reduce the property to possession and does so at the instance of the judgment-creditor. 31 M. 431 and 8 Bom. 17, Diss. Per *Sadasiva Aiyar, J.*—The suit is governed by Art. 29 because (1) attachment amounted to wrongful seizure, (2) the suit was for compensation for wrongful seizure of moveable property. (*Sundara Aiyar and Sadasiva Aiyar, JJ.*) YELLAMMAL *v.* AYYAPPA NAICK.

23 M. L J. 519 : 12 M. L. T. 458 : 16 I. C. 914 : (1912) M. W. N. 1179. (On appeal 22 I. C. 870.)

——Arts. 29 and 49—*Moveables illegally seized in execution of decree.*

A suit to recover price of moveables illegally seized in execution of decree is one for illegal seizure of property in execution and comes under Art. 29 or 49 of the Act. (*Wallis, J.*) PEDDUPALLI MAHALAKSHMI *v.* KOVVURU BASIVIREDDI GARU.

14 I. C. 182.

——Arts 29—*Suit for rateable distribution.*

On the dismissal of an application for rateable distribution of the proceeds of the moveable property of the judgment-debtor, a suit brought more than one year after attachment is governed by Art. 29. (*Abdur Rahim and Phillips, JJ.*) RAMASAWMY IYENGAR *v.* VENKATATANJERI CHETTY. 12 I. C 406: 10 M. L. T. 381.

——Arts. 29, 62 and 120—*Suit for money due on decree assigned to plff.—Plff. barred at time of receipt by deft.*

LIMITATION ACT (IX OF 1908), Art. 29.

Where plff., an assignee decree-holder, was legally barred from collecting the money due on the decree assigned to him, and the assignors received the amount and entered satisfaction and the plff. brought a suit against the assignors for recovery of the amount collected by them, *held*, that the proper article applicable to the case was not Art. 29 or 62 but Art. 120. (*Munro and Sankaran Nair, JJ.*) RAMASAWMY CHETTY *v.* HARI KRISHNA. (1911) 1 M, W, N. 220 : 9 M. L. T. 465 : 10 I. C. 658 : 21 M. L. J. 705.

———Arts. 29 and 36—*Illegal attachment—Standing crops—Suit for damages—Limitation.*

A suit for damages for illegal attachment of standing crops is governed by Art. 29 and not by Art. 36 of the Lim. Act, standing crops being treated as immoveable property for the purposes of the Act. 32 C. 459 ; 4 N. L. R. 49. 54, Ref; 25 M. L. J. 447 foll.; 36 C. 141 dist. (*Kotwal, A.J.C.*) SURAJMAL GANESHDAS *v.* PRALHAD. 18 N. L. R. 96 : 1922 Nag. 212.

———Art. 29—*Standing crop—Wrongful attachment—Damages—Limitation.*

Standing crops are not 'moveable property' within Art. 29 and a suit for damages for the wrongful attachment of such crop is not governed by Art. 29 or any other article requiring the institution of a suit within one year of the seizure. (*Stanyon, A. J. C.*) MURLIDHAR *v.* MULU. 27 I. C. 935 : 11 N. L. R, 18.

———Arts. 29 and 120—*Recovery of value of moveable property wrongfully seized.*

A suit for recovery of the value of moveable property wrongfully attached and sold is governed by Art. 29 and not by Art. 120. (*Hartnoll, J.*) MAUNG PO ON *v.* MAUNG TUN U. 9 I. C. 774 : 4 Bur. L. T. 46.

———Arts. 29, and 11—*Distinction between.*

Art. 11 deals with a suit by a person to establish his right to or to the present possession of the property comprised in the order while Art. 29 deals with a suit for compensation for wrongful seizure of moveable property under legal process. Where a plff. sued for the value of the property recovered in execution the suit is not barred if brought after a year of the date of the order since Art. 29 governs the suit and not Art. 11. (*Hartnoll, J.*) VENKATACHELAM CHETTY *v.* NAGAPPA CHETTY. 9 I. C. 773 : 4 Bur. L. T. 45.

———Arts. 30 and 31—*Carriage of goods by railway—Loss—Suit for damages—Limitation.*

Art. 30 of the Lim. Act applies to suits for compensation for losing or injuring goods and the period is one year from the date when the loss or injury occurs. The article refers to losing or injuring goods by the carrier and not by the consignee, that is to say, time begins to run from the time when the carrier lost or injured the goods, and not from the time when the consignee may be said to have suffered loss. 19 I. C. 47 Rel. Art. 31 of the Lim. Act fixes one year from the date when the goods ought to have been delivered and applies to suits for compensation for non-delivery. Where no time is fixed for the delivery of the goods, the suit may be instituted within a year after the expiry of a reasonable time for the delivery of the goods. (*Stuart and Sulaiman, JJ.*) JUGAL KISHORE *v.* G. I. P. RAILWAY. 45 A. 43 : 20 A. L. J. 792 : 1923 A. 22 (2).

LIMITATION ACT (IX OF 1908), Art. 30.

———Art. 30—*Suit against Railway Company—Negligence or theft by Company's servants.*

A suit by consignor against a Railway Company for compensation for loss of goods owing to the loss caused by negligence of or theft by the Company's servants is governed by Art. 30. (*Chatterjee and Beachcroft, JJ.*) THE EAST INDIAN RAILWAY COMPANY *v.* JHARI LAL. 38 I. C. 502 : 20 C. W. N. 696.

———Arts. 30, 31 and 115—*Suit against Railway goods consigned—Railway refusing consignment.*

Per *D. Chatterjee. J.*—Art. 115 and not 30 or 31 applies to suit by a consignor against Railway for compensation and value of goods consigned but neither delivered to the consignee nor returned to the consignor and denied by Railway to have received. Art. 31 seems to contemplate a suit by the consignee. (Per *Beachcroft, J.*) If Art. 31 applies, the suit is not barred in the absence of evidence as to when the goods should have been delivered. (*Chatterjee and Beachcroft, JJ.*) RADHA SHAM *v.* SECY. OF STATE. 44 Cal. 16 : 34 I. C. 130 : 28 C. L. J. 547.

———Art. 30—*Mis-delivery not non-delivery.*

A carrier does not lose goods under the article where he really mis-delivers though an actual loss does not occur to the owner. The loss referred to must be by the carrier himself. (*Ratligan, J.*) FAKIR CHAND *v.* SECRETARY OF STATE. 170 P. L. R. 1913 : 19 I. C. 477 : 122 P. W. R. 1913.

———Art. 30—*Starting point.*

Where a Railway Company has not proved that the goods were lost more than one year before the institution of the suit, a suit brought within one year from the date of refusal to deliver is not barred either by Art. 30 or 31. (*Benson, O. C. J. and Sankaran Nair, J.*) 17 I. C. 419 : 23 M. L. J. 511.

———Arts. 30 and 115—*Carriage of goods by Railway—Short delivery—Damages—Suit for.*

A suit for damages for short delivery of goods consigned by a Railway is governed by Art. 30 and not by Art. 115 of the Limitation Act. Short delivery means loss of the portion of the consignment undelivered. (*Ross, J.*) RAMESWAR DAS MALI RAM *v.* THE E. I. RY. CO. 4 P. L. T. 331 : 1923 P. 298.

———Art. 30—*Loss of goods—Transit by Railway—Misdelivery—Non-delivery.*

The term ' loss ' in Art. 30 of the Limitation Act contemplates a loss of goods arising from non-delivery as well as mis-delivery. 2 Lah. 103; 41 M. 871 ; 43 Mad. 617 ; 43 Bom. 386 referred. (*Mullick and Bucknill, JJ.*) THE GREAT INDIAN PENINSULAR RY. CO. *v.* JITAN RAM NIRMAL RAM. 2 P. 442 : 4 P. L. T. 173 : 1 P. L. R. 169 : 1923 Pat. 82 : 1923 P. 285

———Art. 30—*Applicability.*

Where a suit is framed as a suit to recover compensation for non-delivery of goods Art. 31

LIMITATION ACT (IX OF 1908), Art. 30.

applies. and not 30 ; and the cause of action is the failure of the defts. to perform their contract. It is not a case of misfeasance. (*Fawcett, A. J. C.*) LUDHUMAL PURTOMAL & Co. *v.* SECRETARY OF STATE. 51 I. C. 570 : 13 S. L. R. 1.

——Art. 30—*Suit for compensation against carrier.*

A suit for compensation for injury to goods while in the possession of a carrier, *e. g.*, a Railway Company falls under Art. 30. (*Hayward, A. J. C.*) LOUIS DREYFUS & Co. *v.* SECRETARY OF STATE. 45 I. C. 173 : 11 S. L. R. 103.

——Art. 30—*Carrier—Damage to goods.*

A carrier is one who conveys goods for hire or for reward. A Port Trust Board which merely stores and delivers goods to the ships calling at the port is not a carrier and a suit for compensation for damage to goods against thePort Trust is not governed by Art. 30. (*Leggatt, A. J. C.*) PRAG NARAIN *v.* KARACHI PORT TRUST. 10 I. C. 972 : 4 S. L. R. 236.

——Art. 31—*Suit for damages for non-delivery.*

The limitation applicable to a suit by consignor of goods against a Railway Administration for damages for non-delivery is the one prescribed by Art. 31. (*Bannerjee, J.*) MUTSADDI LAL *v.* B. B. AND C. I. RY. 42 All. 390 : 18 A. L. J. 377 : 58 I. C. 547 : 2 U. P. L. R. (All.) 84.

——Art. 31—*Suit against Railway Company.*

A suit against a Railway Company for compensation for non-delivery of goods is governed by Art. 31. (*Stanley, C. J. and Banerjee, J.*) GREAT INDIAN PENINSULAR RAILWAY CO. *v.* GANPAT RAI. 33 All. 544 : 10 I. C. 122 : 8 A. L. J. 543.

——Arts. 31 and 115—*Common carrier—Suit by consignor for compensation is within Art.* 31.

There is no distinction between a cause of action for compensation for non-delivery by a consignor and one by a consignee. Article 31 of the Lim. Act is wide enough to include a suit brought by the consignor also. It provides for a suit for compensation for non-delivery, that is, a suit by a person who by reason of non-delivery has sustained loss. There may be cases in which it is not the consignee who sustains loss but the consignor. In such cases it would be a suit by the consignor for compensation for non-delivery. (*Page, J.*) VALLY MD. HAJI *v.* NETHERLAND S. NAVIGATION CO. 27 C. W. N. 806 : 1924 Cal. 178.

——Arts. 31 and 115—*Non-delivery of goods consigned—Suit for compensation against carrier—Limitation.*

A suit against a carrier for compensation for non-delivery of goods consigned to him is governed by Art. 31 and is liable to be dismissed if brought after the lapse of one year from the time the goods ought to have been delivered. Art. 115 of the Act applies only to suits for compensation for breach of any contract not specially provided for in the Act. (*Ghose, J.*) LAL MOHAN HAZRA *v.* E. I. RY AND CO. 1922 Cal. 330.

LIMITATION ACT (IX OF 1908), Art. 31.

——Arts. 31, 115 and 30—*Denial by Railway to have received goods.*

Per *Chatterji, J.*—Art. 115 and not 30 or 31 applies to a suit by consignor against Railway for compensation and value of goods consigned but not delivered by defendant to consignee nor returned to consignor and denied by Railway to have received. Art. 31 seems to apply to a suit by consignee. (*D. Chatterji and Beachcroft, JJ.*) RADHA SHAM *v.* SECY. OF STATE. 44 C. 16 : 34 I. C. 130 : 23 C. L. J. 547.

——Art. 31—*Mis-delivery.*

Mis-delivery or delivery to a wrong person is not non-delivery within Art. 31. The case of mis-delivery is covered by Art. 115. (*Rattigan, J.*) FAKIR CHAND *v.* SECRETARY OF STATE. 170 P. L. R. 1913 : 19 I. C 477 : 122 P. W. R. 1913.

——Art. 31—*Sale held by Railway Company under S.* 56, *Railways Act is not within section.*

Art. 62 of the Limitation Act governs a suit to recover the surplus proceeds of sale held by the Railway Company under S. 56 of the Railways Act as the proceeds are received for plaintiff's use. 41 Mad. 871, Dist. (*Oldfield and Ramesam, JJ.*) TARACHAND *v.* MADRAS AND SOUTHERN MAHRATTA RY. CO. 44 Mad. 823 : 41 M. L. J. 205 : 13 L. W. 693 : 62 I. C. 742 : (1921) M. W. N. 422.

——Art. 31—*Applicability.*

Art. 31 applies equally to those common carriers and also carriers who come within the definition. (*Wallis, C. J. and Kumaraswami Sastri, J.*) MYLAPPA CHETTIAR *v.* THE BRITISH INDIA STEAM NAVIGATION CO., LTD. 35 M. L. J. 553 : 8 L. W. 46 : 45 I. C. 485 : 24 M. L. T. 175.

——Arts. 31, 49 and 115—*Suit for specific moveable property against a carrier—Non-delivery of goods—Compensation.*

In a suit against a carrier plff. asked for recovery of a plank of wood not delivered to the consignee and also for a sum of money being the loss of interest. The plaint contained no allegation that the deft. was in possession of the plank in question. *Held*, if the suit was regarded as one for compensation for failure to deliver the plank in breach of the contract in the bill of lading, it was governed by Art. 31 and not by Art. 49 or 115 of the Lim. Act. By the amendment of Art. 31 of the Lim. Act the Legislature clearly indicated its intention that the article should apply to a claim against a carrier for compensation for non-delivery of goods irrespective of the question whether the suit was laid in contract or in tort. Art. 49 is inapplicable to such a case on the principle of *generalia specialibus non derogant.* (*Wallis, C.J., Ayling and Sadasiva Aiyar, JJ.*) VENKATA SUBBA RAO *v.* THE ASIATIC STEAM NAVIGATION COMPANY OF CALCUTTA. 39 Mad. 1 : 29 M. L. J. 342 : (1915) M. W. N. 644 : 2 L. W. 805 : 30 I. C. 840 : 18 M. L. T. 236. [On appeal from 24 I. C. 676].

——Arts. 31 and 49—*Non-delivery of goods—Suits against carrier.*

LIMITATION ACT (IX OF 1908), Art. 31.

A suit against a carrier for non-delivery of goods is governed by Art. 31 and not by art. 49 which will apply only when there is proof that the goods are still in the possession and custody of the carrier. (*Tyabji, J.*) JALDU VENKATA SUBBA RAO *v.* ASIATIC STEAM NAVIGATION CO. 24 I. C. 676.

——— Art. 31—*Starting point.*

Where a Railway Company has not proved that the goods were lost more than one year before the institution of the suit, a suit brought within one year from the date of refusal to deliver is not barred either by art. 30 or 31. (*Benson, O.C. J. and Sankaran Nair, J.*)
17 I. C. 419 : 28 M. L. J. 511.

———Arts. 31 and 115—*Carrier — Railway—Non-delivery of goods.*

A suit against a Railway Company for compensation for non-delivery of goods is governed by Art. 31 and not by Art. 115 of the Lim. Act. The application of Art. 31 is not ousted by the mere fact that the responsibility of the Railway Company is limited by an agreement of the kind contemplated by S 72, Cl. (2) of the Railways Act, (*Drake-Brockman, J.C.*) ALI MAHOMED *v.* G.I.P. RAILWAY CO. 31 I. C. 474 : 11 N. L. R. 174.

———Art. 31—*Applicability.*

Where a suit is framed as a suit to recover compensation for non-delivery of goods Art 31 applies, and not Art. 30; and the cause of action is the failure of the defts. to perform their contract. It is not a case of misfeasance. (*Fawcett, A. J. C.*) LUDHOMAL PURTAMAL AND CO. *v.* SECRETARY OF STATE. 51 I. C. 570 : 18 S. L. R. 1.

———Art. 32 — *Placing heavier beams on plff's wall is perversion of purpose.*

The fact, that heavier and more numerous beams than what existed previously, were placed on the wall of a person and that in place of a thatched roof a masonry roof was put up, does not constitute a perversion of the purpose for which the wall is to be used, and a suit for removal of the beams does not come under Art. 32 of the Limitation Act. (*Banerjea, A.C.J. and Ryves, J.*) MOHAN *v.* BISHAMBAR SAHAI.
4 L. R. A. (Civ.) 510 : 46 All. 68 : 1924 All. 450.

———Art. 32—*Easement—Perversion.*

The appellants who had a right by way of easement to support a thatch against a wall belonging to the plaintiff substituted for the thatcher masonry building and supported the beams necessary for its construction upon the wall in question thereby increasing considerably the burden upon the wall. *Held* it was a clear case of perversion of a right, and where the perversion first became known to the plaintiff more than two years before the date of the suit, the suit must fall under the provisions of Article 32. (*Stuart, J.*) BISHAMBAR SAHAI *v.* FANKI DAD. 1922 All. 320.

———Art. 32—*Claim of easement— Interruption.*

The deft. nearly doubled his wall and erected a second storey to his house and put a double sided thatch which increased the burden on the plff.'s land. *Held*, the deft's. case being a case of easement he could acquire it only by 20 years user and Art. 32 was not applicable (*Walsh, J.*) JADDURAM *v.* KANHAIYARAM. 33 I. C. 90.

LIMITATION ACT (IX OF 1908), Art. 36.

———Art. 32—*Suit for removal of structure.*

A suit by a landlord for removal of a structure erected by the mortgagee of an occupancy holding upon the holding without his consent is covered by Art. 32 or by 120 if it is treated as a suit for an injunction. (*Piggott J.*) LACH RAM RAO *v.* JANGI BAI. 12 I. C. 108 : 8 A. L. J. 914.

———Arts. 32 and 148—*B. T. Act, S. 155—Suit for possession—Misuse of land by tenant*

Suit for possession under B. T. Act, S. 155 on the ground of tenants misuse of land or user in contravention of the lease terms governed by Art. 32 and not Art. 143. (*Sharfuddin and Newbould, JJ.*) TAHER MONDAL *v.* TARAFDI GHARAMI.
33 I. C. 923 : 20 C. W. N. 661.

———Art. 32—Shamilat *property — Adverse possession by member.*

A suit to oust deft. from specific part of *Shamilat Deh* held by him adversely to the remaining proprietors or to remove obstruction to the enjoyment of the *Shamilat* is governed by Art. 120 and not by Art. 32. (*Ried, C.J.*) ACHAR SINGH *v.* BUDHAWA SINGH. 132 P. W. R. 1912 : 124 P. R. 1912 : 15 I. C. 285 : 2 P. L. R. 1913.

———Art. 35 and S. 28—*Lim. Act*, 1908—*Suit for restitution of conjugal rights—Limitation.*

A right to restitution of conjugal rights is not extinguished under S. 28 of the Act. The remedy only is barred. In view of the fact that Arts. 34 and 35 of the Act of 1877 have been removed from the Act of 1908 a suit though filed after the expiry of the period prescribed by Art 35 of the Act, 1877 is not barred by limitation. (*Karamat Hussain and Tudball, JJ.*) AYESHA *v.* FAIZ HUSSAIN. 34 All. 412 : 16 I. C. 124 : 9 A.L.J. 784.

———Art. 35—*Suit barred under the old Act.*

Where the right to sue had become barred under the Act of 1877, it could not be revived by the new Act of 1908, which repealed Art. 35. (*Scott, C. J. and Chandavarkar, J.*) MAHAMMED MEHDI FAYA *v.* SAKINA BAI. 37 Bom. 393 : 17 I. C. 629 : 14 Bom. L. R. 908.

———Arts. 36 and 89—*Suit to recover money paid under rateable distribution.*

A property was attached by *P* over which the plff's predecessor claimed a lien, which lien being allowed by the executing court, *P* sued for declaration of the invalidity of the claim and got a decree and the proceeds of the attached property were rateably distributed among *P* and certain other creditors but the decree obtained by *P* was reversed in appeal and the plff. sued him and the other creditors to recover sums paid, in satisfaction of their claim. *Held* that the suit was not governed either by Art. 29 or by Art. 36 as there was not a seizure of money and the defts. were not guilty of any non-feasance, or misfeasance or malfeasance in respect of the money. (*Piggott and Walsh, JJ.*) RAM NARAIN *v.* BANKEY LAL. 39 All. 322 : 39 I. C. 532 : 15 A. L. J. 295.

LIMITATION ACT (IX OF 1908), Art. 36.

———Arts. 36 and 62—*Tort—Money had and received—Commencement of limitation.*

The cause of action for damages for a wrong accrues at the date of the wrong. But the cause of action for money had and received is the date of the receipt of the money. (*Walsh, J.*) HARPAL *v.* RAM SARUP. 34 I. C. 173.

———Arts. 36 and 89—*Suit for money misappropriated by servant.*

A suit for money received and misappropriated by a servant is governed by Art. 89 and not by Art. 36. It is immaterial whether the misappropriation charged is criminal or not. If there is no misappropriation that money is payable by the deft. having been received by him and not accounted for still Art. 89 applies. (*Holmwood and Mullick, JJ.*) SEO SARAN LAL *v.* HARIHAR PRASAD SINGH. 28 I. C. 452.

———Art. 36—*Seizure of standing crops.*

Art. 36 may apply to a wrong consisting solely in the seizure of standing crops, but to a suit for damages for unlawfully distraining cutting or carrying away the crops. Art. 36 does not apply. The article applicable is either 48 or 49. (*Jenkins, C. J., Harrington and Mukerjee, JJ.*) JADUNATHA DANDUPAT *v.* HARIKAR. 17 C. W. N. 308 : 18 I. C. 253 : 17 C. L. J. 206.

———Art. 36—*Damages resulting from a conspiracy.*

A suit to recover damages resulting from a conspiracy falls within Art. 120 or 36 and not within Art. 23. (*Fletcher, J.*) PEARY MOHAN DAS *v.* D. WESTON. 13 I. C. 721 : 13 Cr.L. J. 65 : 16 C. W. N. 145.

———Art. 36—*Misfeasance—Claim for compensation—Company—Winding up—Commencement of limitation.*

The provisions of Limitation Act are by virtue of S. 235 (3) of the Companies Act, 1913 applicable to an application under that section as if such application were a suit and as the section does not create new rights and liabilities the period of limitation for making an application for compensation for misfeasance under that section is prescribed by Art. 36 of Sch. I to the Limitation Act and time begins to run from the date of the misfeasance for which compensation is sought. (*Martineau, J.*) HUKAMCHAND *v.* BANK OF MULTAN. 1924 Lah. 285.

———Arts. 36, 48 and 49—*Tort—Irregular sale in execution—Suit for compensation—Claim for refund—Limitation.*

A suit for compensation for loss sustained by him on account of the irregular sale of certain property in execution of a decree alleging that in consequence of the irregularities a sum far below the market value of the property had been realized is governed neither by Art. 48 nor by Art. 49 but by Art. 36. (*Harrison and Zafar Ali, JJ.*) CHANDA SINGH *v.* JAI KISHEN DAS. 5 Lah. L. J. 289 : 1924 L. 136.

———Art. 36—*Misfeasance by—Liquidator—Companies Act, S. 235.*

A suit for recovery of compensation from an officer of a company in respect of certain misfeasance committed by him is barred against the liquidator, if it is brought by the liquidator after 2 years. (*Shadi Lal, C. J., and Abdul Qadir, J.*) THE BANK OF MULTAN, LTD. *v.* HUKAM CHAND. 1923 Lah. 58 (2).

———Art. 36—*Attachment before judgment.*

A suit for damages on account of injury to stock caused by making an attachment before judgment is covered by Art. 36. But a suit for damages on account of the sale of the goods attached before judgment, at a low price and for injury to trade and reputation due to the attachment itself is governed by Art. 29. (*Oldfield and Seshagiri Aiyar, JJ.*) SOKKALINGA CHETTY *v.* KRISHNASWAMI AIYAR. (1920) M. W. N. 192 : 27 M. L. T 259 : 55 I. C. 786 : 11 L. W. 479 : 38 M. L. J. 324.

———Art. 36—*Claim against trustee as in tort*

Art. 102 will, therefore, not apply and the plff's claim as against the defts. will be in tort and art. 36 might apply. (*Sadasiva Aiyar and Bakewell, JJ.*) BHARADWAJA MUDALIAR *v.* ARUNACHALA GURUKKAL. 23 M. L. T. 288 : 45 I. C. 414 : 7 L. W. 524.

———Art. 36—*Malabar Law—Redemption suit.*

A Malabar mortgagor obtained a decree for redemption on 9th March 1907 and was put into possession on 8th December 1908 and carried on the execution proceedings for the recovery of damages subsequent to the decree between 8th November 1908 and 22nd June 1910 which ended unsuccessfully, the Court deciding in appeal that the proper remedy for him was to proceed by way of suit. He then brought a suit for damages both prior and subsequent to the decree. *Held* that Art. 36 applied and the mortgagor had only two years from the date of damage to institute the suit. (*Sadasiva Aiyar and Spencer, JJ.*) ABDULLA KOYA *v* KANARAN. 6 L. W. 696 ; (1917) M. W. N. 822 : 43 I. C. 6 : 33 M. L. J. 463.

———Art. 36—*Wrongful attachment of moveables—Prohibitory order.*

Art. 36 and not any of the Arts. 42, 46, 62 or 120 applies to a suit for compensation for wrongful attachment of moveables by the issue of a prohibitory order. An attachment by a prohibitory order is not an injunction within the meaning of Art. 42. (*Sadasiva Aiyar and Napier, JJ.*) PINDIRI VEERAMMA *v.* MANDAVALI SUBBA RAO. 35 I. C. 98 : 31 M. L. J. 257.

———Arts. 36, 49 and 132—*Mortgage—Depreciation—Security—Remedy—Limitation.*

Where trees on the mortgaged property are cut and carried away by third parties and the only remedy of the mortgagee isa suit for damages for the depreciation of the security and the proper article of the Lim. Act applicable would be either Art. 36 or Art. 49. (*Coutts-Trotter and Srinivasa Aiyangar, JJ.*) SURAPUDI MUNIAPPA *v.* NOOKALA SESHAYYA GARI SUBBIAH. 32 I. C. 901 : 3 L. W. 341.

———Art. 36—*Attachment of debt—Assignee of debt—Suit for recovery.*

A debt due to judgment-debtor was attached by decree-holder and the attaching creditor received

the money paid by the debtor into Court. A third person claiming to be assignee of the debt before attachment sued for recovery of the money. *Held* neither Art. 29 nor Art. 36 applied. The article applicable was either 62 or 120 and time runs from the date the creditor received the money from the Court (*White, C.J., Sankaran Nair and Oldfield, JJ.*) YELLAMMAL *v.* AYYAPPA NAICK.
33 Mad. 972 : 1 L. W 162 : (1914) M. W. N. 848 : 22 I C. 870 : 26 M. L. J. 166 (F. B.).

———Arts. 36 and 115—*Damages— Person untruly representing himself to be agent of another.*

A suit for compensation against a person for untruly representing himself to be the authorised agent of another and thereby inducing the plff to deliver goods or deal with him as such agent, is governed by Art. 115 and not by Art. 36. (*Benson and Sundara Aiyar, JJ.*) VYRAVAN CHETTIAR *v.* AVICHI CHETTIAR. 38 Mad. 275 : 14 M. L T. 360 : (1913) M. W. N. 884 : 21 I. C. 65 : 25 M. L. J. 256.

———Arts. 36 and 39—*Suit for damages for trespass.*

A suit for damages for unlawfully setting fire to and destroying pepper vines is governed by Art. 39 and not 36, which applies to cases of misfeasance not otherwise provided for. Trespass includes the mischief committed by the trespasser after entering on the land. (*Sundara Aiyar and Sadasiva Aiyar, JJ.*) NATUVLAPURAYIL *v.* KOMAN.
12 M. L. T. 538 : (1912) M. W. N. 1229 : 17 I. C. 605 : 23 M. L. J. 618.

———Art. 36—*Damages for malicious prosecution.*

The limitation for a suit for damages for malicious prosecution runs from the date of the discharge as found in the records and not from any date on which the Magistrate expressed an opinion that no case was made out for trying the accused. (*Miller and Abdur Rahim, JJ.*) SHUPPY IYER *v.* SIVARAM PATTAR KARIAKAR.
16 I. C. 584 : (1912) M. W. N. 951.

———Arts. 36 and 2—*Act done under statute—Act done in improper manner out of malice and carelessness.*

The intention of Art. 2 of the Lim. Act is to meet these cases where a public official or a public authority or a private person does an act, injurious or possibly injurious to another under powers conferred or honestly believed to be conferred by some Act of the legislature. Art. 2 does not apply to a case where the damages arise not from the doing of the Act or from the failure to do it, but from doing it in an improper manner out of malice and carelessness applies to such a case. (*Sabonadiere, A. J. C.*) WALIULLAH *v.* RAJ BAHADUR. 21 I. C. 426 : 16 O. C. 211.

———Arts. 36, 62 and 120—*Suit to recover money deposited.*

Plff.'s predecessor got a lease from Collector of certain property for carrying on a grog shop but died shortly after. By way of security for rent of the property, he had deposited a sum of Rs. 250 in the Collectorate. Deft. got the lease transferred

in his name and the Collector agreed to retain the money in satisfaction and discharge deft.'s liability under the lease Plff. brought the present suit to recover the sum. *Held*, that the suit was one to recover a specific sum of money which had been applied by the deft. for his own use, and was governed by Art. 120 and not by 36 or 62. (*Atkinson, J.*) RAJA KUMAR *v.* BAHADUR LAL.
38 I. C. 525

———Arts. 36, 115 and 120.

A suit by one co-sharer against another to recover his share in the profits of a ferry is governed by Art. 120 and by Art. 36 or 115 of the Lim. Act. (*Mullick, J.*) KISHEN DAYAL SINGH *v.* KISHEN DEO JHA. 35 I. C. 480 : 1 P. L. J. 69.

———Art. 36—*Compensation for injury by mortgagee.*

Art. 49 and ot Art. 36 governs a suit by mortgagee for compensation from a third person for injury to specific moveable property mortgaged to the former. (*Fox, C. J. and Hartnoll, J.*) CHITHAMBARAM *v.* U KHA GYI.
5 Bur. L T. 156 : 17 I. C. 906 : 6 L. B. R. 75.

———Arts. 39, 26 and 29—*Wrongful attachment—Standing crop—Damages.*

A suit for damages for the wrongful attachment of land and crops and the consequent loss or destruction of the crops is governed by Art. 39. Standing crops at the time of attachment was immoveable property and the attachment of the land with the crop thereon if illegally made, constitutes a trespass on immoveable property. 31 Mad. 431 ; 23 M.L.J. 511 ; 32 Cal. 459 and 36 Cal. 141, Ref. (*White, C. J., Miller and Oldfield, JJ.*) VENKATARAMANUJAM *v* BASAVAYYA.
(1913) M. W. N. 869 : 14 M. L. T. 235 : 21 I. C. 213 : 25 M. L. J. 447.

———Art. 39—*Suit for damages for trespass.*

A suit for damages for unlawfully setting fire to and destroying pepper vines is governed by Art. 39 and not 36, which applies to cases of misfeasance not otherwise provided for. Trespass includes the michief committed by the trespaser after entering on the land. (*Sundara Aiyar and Sadasiva Aiyar, JJ.*) NATUVLAPURAYIL *v.* KOMAN. 12 M. L. T. 538 : 17 I. C. 605 : (1912) M. W. N. 1229 : 23 M. L. J. 618.

———Art. 39—*Suit for possession of land free of houses and trees—Removal of trees.*

Art. 142 of the Lim. Act is applicable to a suit claiming possession of land free of the house and trees, which have been built and planted wrongfully and without any consent, and that such a claim is not similar to one merely for the removal of the trees. (*Kanhaiya Lal, J. C.*) JAGMOHAN SINGH *v.* TULARAM DAS. 25 I C 701 : 17 O. C. 252.

———Art, 40—*Suit for damages for infringement of trade mark.*

A suit for damages for infringement of a trade name or trade mark which is an exclusive privilege, is governed by Art. 40. (*Scott-Smith and Martineau, JJ.*) VARCADOS *v.* MC LEOD.
45 P. R. 1919 : 51 I. C. 434 : 83 P. L. R. 1919.

———Art. 42—*Detention—Deposit of moveables—Suit for recovery.*

Where moveables are entrusted to any person on condition of returning them on the expiry of a

LIMITATION ACT (IX OF 1908), Art. 42.

specified period, the fact that the persons detained the articles beyond the period and they are not demanded back does not render the detainer's possession unlawful. The period of limitation for a suit for the return of the moveables, or, in the alternative, for their value, commences to run from the date of demand and refusal under Art. 49. (*Banerjee and Wallach, JJ.*) LADDE BEGAM *v.* JAMALUDDIN.

42 All. 45 : 52 I. C. 382 : 17 A. L. J. 907.

———Art. 42—*Injunction—Suit for damages for obtaining perpetual injunction maliciously and without reasonable cause.*

No suit lies for damages against a deft for maliciously and without reasonable and probable cause, obtaining perpetual injunction which was subsequently dissolved on appeal. 13 W. R. 305 Doubted. (*Fletcher and Richardson, JJ.*) MOHINI MOHAN MISSER *v.* SURENDRA NARAYAN SINGH.

42 Cal. 550 : 18 C. W. N. 1169 : 26 I. C. 296 : 21 C. L. J. 68.

———Art. 42—*Scope.*

The present plff. began to construct a house on his own land The present deft. brought a suit for declaration and took out a temporary injunction to stay further progress of the work. The suit was decreed in the Lower Court but dismissed on appeal on July 3, 1905. The present plff. applied on 2nd July 1908 under S. 197, C. P. Code (1881) for damages, The Court treated the application as a plaint. *Held* that the present suit being brought within 3 years from July 3, 1905 was not barred under Art. 42. (*Mookerjee and Carnduff, JJ.*) BHOOTANATH PAL *v.* CHANDRABINODI PAT. 16 I. C. 443 : 16 C. L. J. 34.

———Art. 42—*Wrongful attachment of moveables—Prohibitory order.*

A suit for compensation for wrongful attachment of moveables by the issue of a prohibitory order is governed by Art, 36 and neither by Art. 42, 46, 62, nor 120 An attachment by a prohibitory order is not an injunction within Art. 42. (*Sadasiva Iyer and Napier, JJ.*) PANDIRI VEERAMMA *v.* MANDAVILLI SUBBA RAO.

35 I. C. 98 : 31 M. L. J. 257.

———Art. 44.

De facto guardian.
Defence not barred.
Execution sale
Executor.
Joint Hindu family.
Natural guardian,
Suit for possession.
Surrender.

De facto guardian.

———Arts 44 and 144—De facto *guardian—Mahomedan Law.*

Alienation by minor's elder brother acting as his *de facto* guardian of property subject to a valid mortgage is void and need not be set aside. The minor on attaining majority can sue for possession within the period prescribed by art. 44. (*Lord Robson.*) MATA DIN *v.* AHMADALLI.

34 A. 213 : 16 C W. N. 338 : 11 M. L. T. 145 : (1912) M W N. 183 . 9 A. L. J. 215 : 15 C. L. J. 270 : 14 Bom L. R. 192 . 15 O. C. 49 : 13 I. C. 976 : 39 I. A. 49 : 23 M. L. J. 6 (P.C).

LIMITATION ACT (IX OF 1908), Art. 44—De facto guardian.

———Art. 44—De facto *guardian—Alienation by Hindu mother.*

Art. 44 does not apply to the case of a *de facto* guardian such as a mother or step-mother, wholly unauthorised to transfer. (*Scott, C. J. and Shah, J.*) BALAPPA DUNDAPPA *v.* CHANBASAPPA SHIVALINGAPPA. 33 I. C 444 : 17 Bom. L. R. 1134.

———Art. 44—De facto *guardian—Suit for setting aside guardian's alienation—Limitation—Burden of proof as to age.*

A ward on attaining majority can sue within 3 years of that date to set aside the alienation made by the guardian, onus will be on him to prove that his suit is in time, if the date of attaining majority is disputed. (*Mookerjee and Rankin, JJ.*) PROHLAD CHANDRA CHOWDHURY *v.* RAMSARAN CHOUDHURY. 38 C. L. J. 213 : 1924 Cal. 420.

———Art. 44—De facto *guardian—Alienation by unauthorised person—Mahomedan mother.*

An alienation by a Mahomedan mother of immoveable property of her children as their *de facto* guardian is not as guardian but as unauthorised person and so the infant can sue for possession of the alienated property within 12 years of the date of sale or 3 years of his attaining majority whichever is a later date. (*Mookerjee, A. C. J. and Fletcher, J.*) LALOO KARIKAR *v.* JAGAT CHANDRA. 25 C. W. N. 258 : 62 I. C 428 : 33 C. L. J. 256.

———Art. 44—De facto *guardian—Suit by minor to set aside sale by.*

A suit to recover property alienated by person who is not a guardian in fact or law but who alienated property of minor purporting to act as such guardian is governed by Art. 144 and not 44 or 91. (*Abdul Raoof and Abdul Qadir, JJ.*) SUNDER *v.* SHIAMAN. 1922 Lah. 386.

———Art. 44—De facto *guardian—Suit by widow of lunatic for possession of the property sold by his guardian.*

The cause of action for a suit by the widow of a lunatic Mahomedan for possession of her husband's property sold for legal necessity by his mother as his *de facto* guardian accrues not on the date of sale of the property but on the date of the death of her husband. 15 P. R. 1913 ; 37 M. 514 ; 34 A. 213 (P. C.) ; 83 P R. 1916 Fol. (*Shah Din, J.*) MEHR BIBI *v.* CHANAM DIN.

59 P. R, 1917 : 41 I. C 932 : 100 P. W. R. 1917.

———Arts. 44 and 144—De facto *guardian—Alienation—Suit by minor for possession—Mahomedan law.*

A suit by a Mahomedan for recovery of land sold during his minority by his *de facto* guardian is governed by Art. 144 and not Arts. 44 and 91. (*Shah Din and Scott-Smith, JJ.*) UTTAMSINGH *v.* BARKAT ALI. 15 P. R. 1913 : 19 I. C. 235 : 202 P. L. R. 1913.

———Arts. 44 and 144—De facto *guardian—Suit by ward for recovery of possession of properties.*

It is Art. 144 of the Lim. Act and not Art. 44 that applies to suits by wards to set aside alienations by their *de facto* guardians. (*Kensington, J*). RUPA SHAH *v.* IRSHAD ALI. 180 P. L. R. 1912 = 16 I. C. 847 : 234 P. W. R 1912.

LIMITATION ACT (IX OF 1908), Art. 44—De facto guardian.

———Art. 44—De facto *guardian—Alienation by.*

Art. 44 does not apply to alienation by unauthorised guardians. 34 A. 230 P. C. Ref to. (*Sadasiva Aiyar and Tyabji, JJ.*) THAYAMMAL *v.* KUPPANNA KOUNDAN. 38 Mad. 1125 : 26 I. C 179 : 27 M. L. J. 285

———Arts. 44, 91 and 144—De facto *guardian—Step-mother.*

An alienation by the step-mother of Hindu minor is not governed by Art. 44 as she is not his lawful guardian. Art 91 of the Lim. Act applies ordinarily only to an instrument executed by a party or his predecessor in title. 12 N L. R. 12, Ref. (*Mitra, A. J. C.*) VITHU *v.* DEVIDAS. 51 I. C. 943 : 15 N. L. R. 55.

———Arts 44 and 91—De facto *guardian—Alienation—Limitation.*

An alienation by a *de facto* guardian is void and need not be set aside before recovery of possession of the property by the minor. Arts. 44 and 91 do not apply to such suits. (*Hallifax, J. C.*) HUSSAN *v.* RAJA RAM. 26 I. C. 813 : 10 N. L. R. 133.

———Art. 44—De facto *guardian—Alienation by the mother of a Mahomedan minor—Suit to set aside—Limitation.*

Art. 44 does not apply to a suit to set aside an alienation of a Mahomedan minor's property by h is mother, she not being his guardian under Mahomedan Law. (*Chapman and Atkinson, JJ.*) RAJAB ALI *v.* WAZIR ALI. 34 I. C. 85 : 1 P. L. J. 188.

Defence not barred.

———Art. 44—*Defence not barred.*

Where the vendee from the guardian under a voidable sale sues to recover possession of the property three years after the ward attained majority it is open to the deft. to set up the plea of the invalidity of the sale in defence though a suit by him as plff. to avoid the sale would be barred under Art. 44 of the Lim. Act. (*Phillips and Kumaraswami Sastri, JJ.*) CHINNASWAMI REDDI *v.* KRISHNASWAMI REDDI. 42 Mad. 36 : 48 I. C. 856 : 35 M. L. J. 652

———Art. 44—*Defence not barred—Alienation by guardian—Suit by minor.*

An alienation by guardian ought to be set aside by the ward by instituting a suit within the period prescribed by Art. 44 and till it is set aside the alienee has the title. Though Art. 44 describes the suit to be brought by the ward as a suit merely to set aside the transfer by guardian, if the transferee has obtained and is in possession, the ward has to add a prayer for possession and Art. 44 still applies though the suit relates to both reliefs. A person whose right to set aside an alienation is barred under Art. 44 cannot avoid it as a deft. by denouncing it in a suit for possession brought by the alienee. (*Sadasiva Aiyar and Spencer, JJ.*) KANDASWAMI NAICKEN *v.* IRUSAPPA NAICKEN. 41 Mad. 103 : 40 I. C. 664 : 33 M. L. J. 309.

Execution sale.

———Art. 44—*Execution sale—Property belonging to minor wrongfully attached and sold in a decree against the guardian—Setting aside.*

LIMITATION ACT (IX OF 1908), Art. 44—Joint Hindu family.

A suit by a minor to set aside a sale in execution of decree obtained against guardian is governed by Art. 44. (*Saunders, A J. C.*) MANGE MA *v.* MA SHWE HNIT. (1916) 2 U. B. R. 116 : 36 I. C. 3 : 10 Bur. L. T. 225.

Executor.

———Arts. 44 and 91—*Executor—Alienation by.*

A sale by an executor of the testator's properties must be governed by the rules relating to an executor and a suit by his son, a legatee, under the will to set aside the sale is not governed by Art. 44. Nor is Art. 91 applicable as the alienation need not be set aside in order to recover possession of the property (*Sundara Aiyar and Sadasiva Aiyar, JJ.*) GANAPATHI IYER *v.* SIVAMALAI. 36 Mad. 575: 12 M. L. T. 207 : 17 I. C. 4 : (1912) M. W. N. 1112 : 23 M. L. J. 306.

Joint Hindu family.

———Arts. 44, 91 and 144—*Joint Hindu family—Alienation by Hindu father for no benefit or necessity—Suit by minor to set aside—Limitation.*

A suit to set aside alienation by Hindu father during son's minority without any benefit or necessity is not governed by Art. 44 or 91 but by Art. 144. (*Scott, C. J. and Rao, J.*) ANANDAPPA *v.* TOTAPPA. 33 I. C. 441: 17 Bom. L. R. 1137 (Note).

———Art. 44—*Joint Hindu family—Testamentary guardian—Setting aside—Limitation Act, S. 7.*

It is competent to a Hindu father to appoint a testamentary guardian of the family properties during the minority of his sons. If the guardian makes an improper alienation, the minors will have to set it aside under Art. 44 of the Lim. Act. If the eldest of them is barred, then under S. 7 of the Lim. Act all are barred. (*Scott, C. J. and Beaman, J.*) MAHABALESHWAR KRISHNAPPA *v.* RAMACHANDRA MANGESH KULKARNI. 38 Bom. 94: 21 I. C. 350: 15 Bom. L. R. 882.

———Arts. 44 and 144—*Joint Hindu family—Alienation by manager—Suit by minor member for his share.*

A suit by a minor since attained majority, to recover his share of joint family properties transferred by the manager of the joint family but not as guardian of the plff. is governed by Art. 144 and not by Art. 44. (*Fletcher and Panton, JJ.*) AFTA BUDDIN *v.* PROKASH CHANDER SOOT. 49 I. C. 118: 28 C. L. J. 496:

———Arts. 44, 91 and 144—*Joint Hindu family.*

A suit by minor member of a family to set aside alienation of his share can be brought within 12 years. Such a suit is not barred if brought after 3 years of his attaining majority but within 12 years of the alienation. Art. 44 does not apply as the alienation is not made on minor's behalf or for his benefit and his undivided share is not property which can be dealt with by his guardian neither Art. 91 is applicable for it is not intended to apply to suit for possession of immoveable property alienated by persons whose powers are restricted, such as managers of joint families and religious endowments, Hindu widows, etc. Where a person executing a document had no authority in law to execute it, the

LIMITATION ACT (IX OF 1908), Art. 44—Joint Hindu family.

plff. need not sue to set it aside. An express prayer to that effect may be treated as not an essential part of his relief. 25 A. 407 Ref.; 14 M. 26 ; 24 C. 77. Ref. (*Shadi Lal and Le Rossignol, JJ.*) RADHU RAM *v.* MOHAN SINGH. **84 P. R. 1915: 29 I. C. 199: 96 P. W. R. 1915.**

———**Arts. 44, 62 and 120**—*Joint Hindu family Minor represented by mother in partition of family—Suit to re-open partition.*

Where in a partition in a joint family a minor was represented by his mother and on attaining majority the minor sued to re-open the partition, *held* that there was no transfer by the minor's mother as guardian and therefore neither Arts. 44 or 62 applied but only Art. 120. (*Wallis, C. J. and Krishnan, J.*) VENKATA REDDI *v.* KUPPU REDDI. **61 I. C. 762 : 13 L. W. 260.**

———**Arts. 44 and 126**—*Joint Hindu family—Alienation by father as guardian—Suit to set aside—Limitation.*

The fact that a Hindu father executed a sale-deed as guardian of his son will not take the case out of Art. 126 and bring it under Art. 44 which applies to cases where a minor's property is transferred by his guardian. 38 All. 126: 40 C. 966 P. C. Rel. (*Wallis, C. J. and Kumaraswami Sastri, J.*) GANESA AIYAR *v.* AMRITHASAMI ODAYAR. **23 M. L. T. 245: 44 I. C. 605: (1918) M. W. N. 892.**

———**Arts. 44 and 144**—*Joint Hindu family—Alienation by Manager—Minor's property.*

A suit by a member of a joint Hindu family for possession of property alienated by the manager during plff 's minority as the guardian of the minor, is a suit for recovery of immoveable property within the meaning of Art. 144 of the Lim. Act and not under Art. 44 which applies to cases where a person acts as a guardian of a minor in respect of property in which he has individual rights of ownership. 29 I. C. 199, Foll.: 22 M.L.J. 404, Dist (*Spencer and Krishnan, JJ.*) THIRUPATHI RAJU *v.* VENKARAJU. **40 I. C. 418.**

———**Art. 44**—*Joint Hindu family—Suit by minor member.*

A suit by a minor member of a joint undivided Hindu family on attainment of majority to declare an alienation made by his natural guardian invalid and not binding on him is not governed by article 44 (*Ayling and Napier, JJ.*) APPANNA PRASADA PANDA *v.* APPANNA MAHAPATRO. **40 I. C. 145: 5 L. W. 374.**

———**Art. 44**—*Joint Hindu family—Sale by one other than guardian.*

Where a minor and his uncle formed a joint family and a sale was effected by uncle and the mother of minor joined in execution as minor's guardian, *held* that as the undivided paternal uncle was the guardian in law of the minor and not the mother, a suit to set aside this sale would not fall under Art. 44. (*Ayling and Kumaraswami Sastri, JJ.*) KATHAPERUMAL THEVAN *v.* RAMALINGA THEVAN. **27 I. C. 695: 17 M. L. T. 138.**

———**Arts. 44, 91 and 144**—*Joint Hindu family—Alienation by* ejaman—*Suit to set aside.*

A suit by an aliyasanthana family to obtain possession of the family properties alienated by its *ejaman* not being a suit to set aside an instrument within Art. 91, is governed by Art. 144. (*White, C. J. and Seshagiri Aiyar, J.*) KUNHANNA SHETTY *v.* TIMMAJU. **24 I C. 246: 27 M L.J. 60.**

LIMITATION ACT (IX OF 1908), Art. 44—Natural guardian.

———**Art. 44**—*Joint Hindu family—Alienation by guardian— Setting aside—Minority—Majority of elder brother—Effect.*

Where the mother of two Hindu minors sold their properties as guardian and more than three years after the attainment of majority by the eldest brother, but within three years of his attaining majority the younger brother sued to set aside the alienation, *held*, the suit was governed by Art. 44 of the Lim. Act but that it was barred under S. 8 of the Act. The elder brother on attaining majority to give a discharge on behalf of himself and his younger brother. (*White, C. J., Sankaran Nair and Sadasiva Aiyar, JJ.*) DORAISWAMI *v.* NONDISWAMI. **38 Mad. 118 : 14 M. L. T. 401 : 21 I. C. 410 : 25 M. L. J. 405.**

[On appeal from 12 I. C. 695: 21 M. L. J. 1041.]

———**Art. 44 and 144**—*Joint Hindu family—Minor member of a joint Hindu family—Suit by to set aside alienation by manager—Limitation.*

A suit by a member of a joint Hindu family on attaining majority for possession of family property on the allegation that alienation by the manager was without necessity is not governed by Art. 44 or 91 but by Art. 144. This is so even though the manager describes himself as a minor's guardian in the deed of alienation. (*Batten, A J. C.*) ASARAM *v.* RATAN SINGH. **32 I. C. 242: 12 N. L. R. 12.**

Natural Guardian.

———**Art. 44**—*Natural guardian—Suit by minor after attaining majority—Transaction a mortgage and not a sale—Declaratory suit—Limitation.*

A suit brought after three years of the minor's attaining majority is not barred where he claims that a transaction entered into by his mother was a mortgage and not a sale. The suit is not governed by Art. 44, and is maintainable under S. 10-A of the Deccan Agri. Rel. Act. (*Shah, A. C. J.*) SHIVBASAPPA NINGAPPA *v.* BALAPPA BASAPPA. **25 Bom. L. R. 1209 : 1924 Bom. 172.**

———**Art. 44**—*Natural guardian— Alienation by mother—Suit by minor to set aside—Limitation.*

During the minority of a person his equity of redemption was sold by his mother acting as his natural guardian, without any legal necessity. *Held* the minor must sue to set aside the sale within three years of his attaining majority. Otherwise neither he nor his next reversioner can impeach the transfer. (*Macleod, C.J., Heaton and Shah, JJ.*) FAKIRRAPPA LIMANNA *v.* LUMANNA MAHADU. **44 Bom. 742 : 58 I. C. 257: 22 Bom. L. R. 680.**

———**Art. 44**—*Natural guardian— Mother—Suit to set aside alienation—Limitation.*

A suit by a minor on attaining majority to set aside an alienation of his property by his mother as guardian, is governed by Art. 44. (*Beaman and Heaton, JJ.*) LAXMAVA *v.* RACHAPPA. **42 Bom. 626 : 48 I. C. 22 . 20 Bom. L. R. 408.**

LIMITATION ACT (IX OF 1908), Art. 44—Natural guardian.

———Art. 44—*Natural guardian—Alienation by mother—Consideration applied for the benefit of minor—Suit by minor 3 years after majority*

A suit by minor to set aside an alienation made by his mother acting as guardian brought more than three years after his attaining majority is barred under Art. 44 of the Act. 5 A. 490, Dist. 9 I. C. 377, Foll. 14 M. 26, 7 M. L. J. 131., Diss. (*Mookerjee and Beachcroft, JJ.*) MANMATHA NATH MANDAL *v.* KHIRODHAR GHOSH.
24 I. C. 110.

———Art. 44—*Natural guardian—Suit to set aside sale—Burden of proof as to suit being in time.*

In a suit by a minor on attaining majority to set aside sale by his mother on the ground that she was induced by fraud and misrepresentation, the burden lies on plaintiff to prove that his suit is in time. (*Campbell, J.*) JAGAT SINGH *v.* BALAGA SINGH. 1923 Lah. 254 (1).

———Art. 44—*Natural guardian—Suit to set aside alienation by.*

An alienation by guardian of the property of the ward is only voidable and a suit to set aside the alienation is governed by Art. 44 (*Napier and Krishnan, JJ.*) ARUMUGAM PILLAI *v.* PANDIGAM AMBALAM. 13 L. W 416: 29 M. L. T. 255 : (1921) M. W. N. 255 : 62 I. C. 630 : 40 M. L. J. 475.

———Art. 44—*Natural guardian—Father—Property collaterally inherited by minor.*

A suit to set aside alienations by the father as guardian of property surrendered by widow in favour of the minor reversioner is governed by Art. 44, (*Spencer and Krishnan, JJ.*) SATYALAKSHMI NARAYA *v.* JAGANNATHAM.
6 L. W. 765 : (1917) M. W. N. 854 : 32 M. L. T. 498 : 42 I. C. 939 : 34 M. L. J. 229.

———Art, 44—*Natural guardian—Mortgage by mother as guardian—Suit to set aside—Limitation.*

A mortgage executed by a Hindu mother of the properties of her minor son, is one by her as guardian though the document does not purport to be as such and a suit to set it aside is governed by Art. 44. 22 M. L. J. 404, 20 B. 286, 6 M. I. A. 393, Foll. 7 M. L. J. 131, Not Foll. (*Sadasiva Aiyar and Napier, JJ.*) VELAYUDHUM PILLAI *v.* PERUMAL NAICKER. 31 I. C. 811 : 2 L. W. 1210.

———Arts. 44 and 144—*Natural guardian—Alienation by mother—Suit by son.*

The limitation for a suit for a declaration that a sale of the plff's. property by his mother as his guardian is not binding on him in three years from the date of the plff.'s majority under Art. 44 of the Lim. Act, 23 M. 271, 30 M. 393, Foll. 14 M. 26, 7 M.L.J. 131, Foll. (*Benson and Bakewell, JJ.*) SIVAVADIVELU PILLAY *v.* PONNAMMAL.
11 M. L. T. 198 : (1912) M. W. N. 383 : 15 I. C. 385 : 22 M. L. J. 404.

———Arts. 44, 91 and 144—*Natural guardian—Transfer by—Suit to recover property—Limitation.*

A suit to recover property alienated by the *de facto* as well as *de jure* guardian of the properties of a minor is governed by art. 44 of the Limitation Act and not by art. 91 or art. 144. Among

LIMITATION ACT (IX OF 1908), Art. 44—Suit for possession.

the Gonds of the Central Provinces a step brother is the *de jure* guardian of a minor's properties in preference to the mother. (*Hallifax, A.J.C.*) KOLHU *v.* BELSINGH. 17 N.L.R. 183 : 1922 Nag. 201.

———Art. 44—*Natural guardian—Alienation by mother.*

(Per *Pratt, J C.*)—The article does not apply to alienation by Hindu widow as guardian of her minor son, in excess of her authority. The alienation is void and not voidable.(Per *Crouch, A.J.C. contra*).—The purchaser is protected by this article in the above circumstances. (*Pratt. J.C. and Crouch, A.J.C.*) GEHIMAL DYALMAL *v.* KARMOO MAL SIROOMAL. 35 I C. 551: 10 S. L. R. 381.

Suit for Possession.

———Art. 44—*Suit for possession—Property transferred by natural guardian.*

A suit for the recovery of property transferred during the minority of plff. by his natural guardian must under Art. 44 of the Lim. Act be brought within 3 years of attaining majority such a transfer being voidable and not void. (*Mookerjee, C.J. and Fletcher, J.*) BROJENDRA CHANDRA SARMA *v.* PROSUNNA KUMAR DHAR.
24 C. W. N. 1016 : 59 I. C. 589 : 32 C. L. J. 48.

———Art. 44—*Suit for possession—Suit to impeach sale not brought within 3 years of majority—Title of vendee—Lim. Act, S 28.*

A sale by a certificated guardian of a minor not in accordance with the Court's sanction is voidable, but it is good until it is avoided If the minor does not, within three years after attaining majority take action for repudiating sale his right to set aside the sale and recover possession of the property is barred. A transferee from him cannot successfully sue the purchaser from the certificated guardian for recovering possession of the property after declaration of title (*Chowdhury, J.*) KANOK DASI *v.* SRIHARI GOSWAMI. 52 I. C 269.

———Art. 44—*Suit for possession—Fraudulent sale by guardian—Right to recover possession—Limitation.*

A fraudulent sale by a guardian is only voidable and should be set aside within three years under Art. 44, so that if he fails to so set aside, his right to recover possession is gone. (*Chatterjee and Newbould, JJ.*) KRISHNA DHONE *v.* BHAGBAN CHANDRA. 34 I. C. 188.

——Art. 44—*Suit for possession—Void conveyance.*

Art. 44 applies only to cases in which the plff. seeks to set aside a genuine transaction. If the transaction is void *ab initio*, it is not necessary to seek the cancellation of the conveyance. It is only when the transaction is genuine but is in excess of authority of the executant, that Art. 44 will apply. Art. 44 applies to alienations by *de facto* as well as *de jure* guardians. (*Mookerjee and Coxe, JJ.*) SHAM CHANDRA *v.* GODADHAR MANDAL.
9 I. C. 377 : 13 C. L. J. 277.

———Arts. 44 and 144—*Suit for possession.*

In the case of a suit for possession of property alienated by plaintiff's gaurdian, Art. 44 and not

LIMITATION ACT (IX OF 1908), Art. 44—Suit for possession.

Art. 144 is applicable and the suit must be brought by the person aggrieved within three years of his coming of age. (*Wilberforce, J.*) TARA CHAND *v.* MURLIDHAR.
61 I. C. 384 : 3 L. L. J. 280.

——Arts. 44, 91 and 144—*Suit for possession—Alienation of stranger.*

A suit for possession of immoveable property alienated by a person who is neither a guardian under Mahomedan Law, nor one appointed by Court is governed by Art. 144 and not by Art. 44 or Art. 91. (*Shadi Lal and Leslie Jones, JJ.*) SAJJAD ALI *v.* MUHAMMAD ZULFIKARALI KHAN.
88 P. R. 1916 : 33 I. C. 943 : 125 P. W. R. 1916.

——Art. 44—*Suit for possession—Void sale.*

Where the guardian sold properties by a sale deed which was void owing to the fraud upon the Registration Act no valid title passed to the vendee and the article applicable to the suit for possession of the properties sold is not Art. 44 but 144. (*Spencer and Krishnan, JJ.*) GOKARAKONDA NARASIMHA RAO *v.* GOKARAKONDA PAPANNA.
43 Mad. 436 : 11 L. W. 394 : 56 I. C. 519 : 38 M. L. J. 327.

——Art. 44—*Suit for possession—Void sale—Section does not apply.*

Article 44 of the Limitation Act applies only if the sale is enforceable, that is, a sale which if not set aside would give a right to the property. (*Coutts-Trotter and Seshagiri Aiyar, JJ.*) SAMI KOMMU VELIGONDAREDDI *v.* AUDRA NARAIN.
33 I. C. 436.

——Art. 44—*Suit for possession—Alienation by guardian—Suit to set aside—Limitation.*

Art. 44 of the Lim. Act and not Art. 144 is applicable to a suit by a ward who has attained majority for possession of property improperly alienated by his guardian. The sale is not void for mere inadequacy of consideration. (*Ayling and Tyabji, JJ.*) SURYA NARAYAN *v.* NARAYANSWAMY.
28 I. C. 704 : 2 L. W. 365.

——Arts. 44 and 144—*Suit for possession—Limitation.*

Art 44 extends the period provided in Art. 144 to three years after the cessation of disabilities in the case of suits of a particular class by minors. (*Abdur Rahim and Sundara Aiyar, JJ.*) DORAISWAMY SERUMADAN *v.* NANDISWAMY SELUVAN.
10 M. L. T. 418 : (1911) 2 M. W. N. 410 : 12 I. C. 695 : 21 M. L. J. 1041.

——Art. 44—*Suit for possession—Suit by minor after attaining majority for possession of land sold by guardian during minority—Sale within 12 years of suit*

A suit by Hindu minors for possession of lands sold by their mother as guardian during their minority, and brought after 3 years of their attaining majority but within 12 years of the sale, is barred by limitation. (*Stuart, A.J.C.*) SHEO NATH *v.* SHEORAJ SINGH. 23 I. C. 406 : 17 O. C. 52.

Surrender.

——Art. 44—*Surrender—Suit to set aside.*

A suit to set aside an alienation of the properties surrendered by the releasee's guardian is governed by Art. 44 of the Lim. Act. (*Spencer and Krishnan, JJ.*) MUNGARA SATYALAKSHMI *v.* MUNGARA JAGANNADHAM.
6 L. W. 765 : (1917) M. W. N. 854 : 22 M. L. T. 498 : 42 I. C. 939 : 34 M. L. J. 229.

LIMITATION ACT (IX OF 1908), Art. 47.

——Art. 45—*Applicability—Suit for possession.*

Art. 45 of the Act is applicable only to a suit to set aside an award made by the Revenue Authorities and not to one to recover possession. (*Mookerjee and Buckland, JJ.*) MIDNAPURE ZEMINDARY CO. *v* NARESH NARAIN.
33 C. L. J. 497 : 1922 Cal. 345.

——Art. 45—*Order of Collector directing entry in Settlement Record is an award.*

An order of the Collector directing the defendant's name to be entered in the Settlement Record as occupancy right is an award within Art. 45 of the Act. (*Woodroffe and Walmsley, JJ.*) MIDNAPORE ZEMINDARY CO. *v.* NARESH NARAIN RAY. 63 I. C. 161 : 33 C. L. J. 317.

——Art. 46—*Order under S. 41 of Bengal Survey Act—Suit to set aside—Limitation.*

A suit instituted more than three years after the date of an order under S 41 of the Bengal Survey Act is not barred by Art. 46. (*Mookerjee and Panton, JJ.*) MAHARAJA OF COOCH BEHAR *v.* MAHENDRA. 66 I. C. 923 : 34 C. L. J. 465.

——Art. 46—*Award—Collector's decision.*

A decision by a Collector of the title between two raiyats is not an award within the meaning of Art. 46 of the Lim. Act. (*Sharfuddin and Coxe, JJ.*) RAJANI KANT MUKERJEE *v.* RAM DULAL DAS. 17 I. C. 881 : 17 C. W. N. 55.

——Art. 47—*Order under S. 145, Cr. P. Code—Suit for declaration.*

A suit for a declaration of title to property, as regards which an order had been passed against the plaintiff's predecessors under S. 145, Cr. P. Code, is barred unless brought within three years of the order. The plaintiffs cannot escape the bar of Art. 47 by framing the suit as one for declaration after taking forcible possession. (*Ryves and Gokul Prasad, JJ.*) RAM SAHAI *v.* BENODE BEHARI GHOSH. 45 A. 306 ; 21 A. L. J. 102 : L. R. 4 A. 113 : 1923 All. 151.

——Art. 47—*Criminal Procedure Code, S. 145—Mamlatdar's Courts Act, S. 5 (2)—Injunction—Interference by District Deputy Collector.*

Mamlatdar granted an injunction restraining the deft. from interfering with plaintiff's possession. The District Deputy Collector in revision dismissed plaintiff's suit. Plaintiff then applied under S. 145, Criminal Procedure Code, but an order against him was made. He then sued for possession : *Held*, that the District Deputy Collector ought not to have interfered, that the only order against the plaintiff was one under S. 145 and that, under Art. 47, time began to run from the date of Magistrate's order and not from that of District Deputy Collector. (*Macleod C.J. and Shah, J.*) VENKATESH RAVAL *v.* BHIKU VENKATESH. 45 Bom. 1135 : 62 I. C. 224 : 23 Bom. L. R. 478.

LIMITATION ACT (IX OF 1908), Art. 47.

———Art. 47, 142—*Order without Jurisdiction —Suit for possession— Limitation.*

Where a Criminal Court makes an order under S. 145, Criminal Procedure Code, and awards possession of immoveable property, but that order is found to be made without jurisdiction, a suit to recover possession is governed by Art. 142 and by Art, 47. (*Mookerjee, A.C.J. and Fletcher, J.*) BHARAT CHANDRA *v.* RAM SUNDER.

60 I. C. 860.

———Art. 47—*Cr. P. C. S.* 145—*Right of way —Three years' limitation.*

A suit for a declaration of right of way over the land of the deft. need not be instituted within three years of an order under S. 145 of Cr. P. Code made in favour of the deft, as the proceedings under the latter section refer to the possession of land and involve no question of right of way. (*Teunon and Syed Shamsul Huau, JJ.*) KALACHAND MUKHOPADHYA *v.* JOTINDRA NATH CHAKRABARTY. 57 I. C. 852.

———Art. 47—*Cr. P. Code, S.* 145 — *Withdrawal by one party—Evidence of other party not taken—Suit for possession.*

Per Richardson and Chatterjee JJ. :—An order on withdrawal by a party to proceedings under S 145 in favour of the other without recording any evidence is an order deciding the question of possession so as to be covered by Art.47, The omission of the Magistrate to take evidence on behalf of the second party who was in possession at the date of the preliminary order under S. 145, did not make his final order under that section *ultra vires.* The defect was curable under S. 537, Cr. P. C. *Quaere*—Whether a final order under S. 145 of the Cr. P. Code can be made by consent of the parties. (*Chatterjee and Richardson, JJ.*) YAR MOHAMMAD SAHA *v.* HAYAT MOHAMMAD SAH. 42 I. C. 768 : 18 Cr. C, J. 1024: 22 C. W. N. 342.

———Art. 47—*Cr. P. Code*, S. 145—*No order respecting possession.*

Art. 47 of the Lim. Act is inapplicable where there was no order respecting the possession of immoveable property made under Cr. P. Code although the complaint of the plffs. was dismissed as they failed to prove their possession. (*Mookerjee and Holmwood, JJ.*) THAKUN CHAUDHURY *v.* MANRUP MAHTON. 16 I. C. 736.

———Art. 47—*Cr P. Code, S.* 145—*Suit by party bound by order under—Limitation.*

A suit by a person against whom an adverse order has been made under S. 145, Cr P. C, for possession of properties in respect of which the order was made must be brought within 3 years of the order under Art. 47 of the Lim. Act. (*Kensington and Chevis, JJ.*) BHAGWAN DAS *v.* BHANAMAL. 137 P. W. R 1912 : 14 I. C. 566 : 84 P. R. 1912.

———Art. 47—*Cr. P. Code S.* 146—*Appointment of Receiver—Subsequent delivery of the property and its income by the Receiver to one of the parties—Rights of other party.*

In a possession dispute between the 1st deft. and defts. 2 and 3, the Magistrate acting under S. 146, Cr. P. Code appointed a Receiver on 30th January 1909. In March 1913 possession of the property was delivered to 1st deft, by the Receiver together with the income thereof during the period of Receiver's possession. In April 1913 the plff. who was the holder of a money decree against defts. 2 and 3, attached the income of the property handed over by the Receiver to the 1st deft. The 1st deft. put in a claim petition which was allowed. In a suit by the decree-holder for the declaration of his right to attach the income. *Held*, that the suit was barred by limitation as defts. 2 and 3 had no subsisting right in the income on the date of the attachment their interest if any in the suit property having become extinguished by the operation of Art. 47 and S. 28 of the Lim. Act. 38 Mad. 432 Foll. 26 Mad 410 Ref. (*Seshagiri Aiyar and Bakewell, JJ.*) SOLAI AMMAL *v.* JOGI CHETTY.

10 L. W. 687 : 56 I. C. 675 : 27 M. L. T. 53.

———Art. 47—*Cr. P. Code, S.* 145—*Order of Magistrate declaring party entitled to possession —Suit for recovery of possession—Limitation.*

Where a Magistrate in proceeding under S. 145 Cr. P. C. declared the defts, to be entitled to possession in 1903 but they instituted a suit for recovery of possession in 1909, *held* that the suit was barred by art 47. The article applies to suits based on title. (*Sadasiva Aiyar and Tyabji, JJ.*) PALADUGU PARASARAMAYYA *v.* VALLI RAMCHANDRADU. 38 M. 432 : 14 M. L. T 393 : 21 I. C. 564 : (1913) M. W. N. 871.

———Art. 47—*Applicability—Third persons— Bar to a person not a party in a criminal proceeding whether.*

Article 47 does not bar a person who was no party to the Criminal proceedings on which the order was passed. (*Muthuswami Aiyar and Wilkinson, JJ.*) KADAMI SRINIVASACHARLU *v.* DURLABHA SUBBIDDHI.

17 I. C. 589 : 23 M. L. J. 348.

———Art. 47—*Cr. P. Code*, S. 145 (6)—*Acquisition of title on unsuccessful party's failure to establish title within* 3 *years—Lim. Act*, S. 28—*Previous attornment by tenant to defeated party —Suit for rent.*

Where an order is passed by a Magistrate under S. 145, Cr. P. Code. putting one of the parties in possession and the unsuccessful party fails to sue to get rid of the order within three years under Art. 47 of the Lim. Act, the former acquires title to the property under S. 28 of the Act. If the party thus put in possession sues for rent the unsuccessful party in the possession proceedings should not be impleaded as a party deft. If the tenant, had, prior to the institution of the proceedings under S 145, Cr. P. Code, attorned to the latter. (*Abdur Rahim and Sundara Aiyar, JJ.*) DEVASIKHAMANI *v.* MUTHIAN CHETTY.

15 I. C. 24.

———Art. 47—*Possession proceedings initiated under S.* 145, *Cr. P. Code, by younger brother in a joint family—Suit by elder brother—Limitation.*

Where a junior member of a joint Hindu family starts proceedings under S 145, Cr. P. Code which end in an adverse order against him, a suit by his

brother more than 3 years after the order for recovery of the property is not barred under art. 47 of the Lim. Act. There was nothing to show that the person who started the proceedings under S. 145, Cr.P. Code, acted as manager of the joint family and as on his death, the other members got the property by survivorship they could not be said to claim under the person against whom the adverse order was made. 23 C 731 : 29 A. 1 Ref. (*Lyle, A, J. C.*) RAM LAL *v.* TAKUR DIN. **66 I. C. 678 : 8 O. L. J. 410.**

——Art. 47—*Cr. P. Code, S. 145—Suit to set aside and for possession—Starting point—Revision by High Court.*

The period of limitation under Art. 47 runs from the date of the order of the Magistrate under S. 145, Cr. P. C., and not from the date on which the High Court refuses to exercise its powers of superintendence in revision against the order. 12 C. W. N. 840, Foll. (*Roe and Jwala Prasad, JJ.*) LACHMAN SINGH *v.* DILJAN ALI. **43 I. C. 955 : 4 Pat L. W. 136**

——Art. 48—*Railway Company—Loss in transit—Right to claim price and damages when accrues.*

In a case where a railway parcel arrived on a certain day but plaintiff ascertained shortage and loss only on a later day the cause of action to claim price and damages arises only on the later date. (*Kanhaiya Lal, J.*) DEVI DEEN & SONS *v.* ROHILKHAND AND KUMAUN RAILWAY. **1923 All. 342**

——Art. 48—*Breach of trust by executor.*

Where an Executor commits breach of trust in respect of the deposit of minor legatee's money in Bank, the basis of liability of Bank is conversion and therefore the articles 48, and 62 of the Limitation Act would apply. (*Macleod Kt. C. J. and Shah, J.*) THE BANK OF BOMBAY *v.* FAZULBHOY EBRAHIM. **24 Bom. L. R. 513 : 1923 Bom. 155.**

——Arts. 48 and 49—*Suit for compensation for trees wrongfully cut and removed—Limitation.*

Where sale to the plaintiff was a sale of standing trees which were to be cut and converted into timber, there is a sale of moveable property and a suit for recovery of the timber or for compensation. Where the act complained of is said to have been wrongful, it is governed by Art. 48 or Art. 49 of the Lim. Act. (*Le Rossignol, J.*) BIRSEN *v.* RAJARAM. **1924 Lah. 71.**

——Art. 48—*Stolen property—Suit to recover—Limitation.*

A suit to recover stolen property or its value as damages, is governed by Art. 48 and time runs from he date of deft.'s possession of the same to the knowledge of the plff. (*Rattigan, J.*) SOHAN SINGH *v.* MUL SINGH. **148 P. W. R. 1911 : 11 I. C. 446 : 229 P. L. R 1911.**

——Art. 48—*Pledge by a Commission Agent—Jewel given to him for sale—Suit to recover—Starting point for limitation.*

In a suit to recover a jewel or its value from a Commission Agent to whom it was given for sale but which was pledged by the latter with the deft., the limitation runs from the time when the owner came to know of the jewel being in deft.'s possession. (*Sadasiva Aiyar and Moore, JJ.*) SESHAPPIER *v.* SUBRAMANIA CHETTIAR. **40 Mad. 678 : 30 M. L. J. 587 : 34 I. C. 751 : 19 M. L. T. 386.**

——Arts. 48 and 49—*Unlawful conversion—Moveable property originally lawfully obtained but subsequently converted unlawfully—Recovery of—Limitation.*

To a suit for recovery of specific moveable property originally obtained lawfully, but subsequently converted or retained unlawfully Art. 48 would be applicable and not Art. 49. 3 M. L. T. 324, Not applied. (*Seshagiri Aiyar, J.*) SESHAPPIER *v.* SUBRAMANIA CHETTIAR. **38 Mad. 783 : 15 M. L. T. 221 : 23 I. C. 174 : (1914) M. W. N. 319.**

——Art. 48—*Wrongful removal of coal from adjacent mine.*

A suit for value of coal wrongfully extracted and carried away falls within Art. 48. (*Das and Foster, JJ.*) THE LONDA COLLIERY CO., LTD. *v.* BEPIN BEHARI BOSE. **55 I. C. 113 : 1 Pat.L.T. 84.**

——Arts. 48 and 49—*Misappropriation—A suit to recover price of.*

Materials of a house removed and misappropriated by the defts is governed by Art. 48 and time begins to run from the date when the plff. first learnt. (*Das, J.*) TAFAZUL KHAN *v.* MOHAMMAD BAKSHI KHAN. **52 I. C. 361.**

——Art. 49—*Default—Hire purchase system—Suit to recover article sold—Limitation.*

Non-payment of rent for a sewing machine taken on hire-purchase system does not amount to wrongful taking or wrongful detention within Art. 49 of Lim. Act. To constitute wrongful detention there must be some overt act or demand by the hirer and refusal by the purchaser. 12 C. W. N. 1010 ; 10 M. L. T. 572 Ref. ; 28 A. 84 Dist. (*Knox, J.*) SINGER MANUFACTURING CO. *v.* E. FELYUN. **27 I. C. 637 : 13 A. L. J. 81.**

——Art. 49—*Scope of—Deposit—Suit for recovery.*

Where original depository dies, and the deposit passes to his heir's hands, a suit to recover the deposit is even then governed by Art. 145 and not by Art. 49. The fact of possession by the depository after demand being wrongful does not make Art. 49 applicable. (*Ghose, J.*) PROMOTHO NATH MULLICK *v.* PRODYAMNO KUMAR MULLICK. **69 I. C. 900 : 26 C. W. N. 772.**

——Arts. 49 and 146—*Gold entrusted to goldsmith for making ornaments—Suit to recover—Limitation.*

A suit to recover gold or value entrusted to a goldsmith for making ornaments is not governed by Art. 49 but by Art. 145, even though the gold

LIMITATION ACT (IX OF 1908), Art. 49.

is not recoverable in specie. (*Mookerjee and Newbould, JJ.*) GANGAHARI CHAKKRVARTHI *v.* NABIN CHANDRA BANIKYA. 20 C. W. N. 232 : 34 I. C. 959 : 23 C. L. J. 145.

———Arts. 49 and 62—*Suit for recovery of documents.*

In a suit by a plff. claiming recovery of books of accounts, bonds, etc., and money realised by deft. from a business carried on by her deceased husband. *Held* that the claim in regard to the sums realised was barred by time under Art. 62 of the Lim. Act, in regard to the books and mortgage deed under Art. 49. (*Rattigan, C.J. and Martineau, J.*) DURGA DEVI *v.* RAMNATH. 52 I. C. 580 : 85 P. R. 1919.

———Arts. 49, 83 and 115—*Suit for recovery of losses suffered on behalf of defts.—Claim for commission.*

Where plffs. as commission agents entered into transactions with third parties on defts'. behalf and sued the latter for recovery of (1) actual bonus, (2) *Adat*, (3) *Dalali*, (4) *Dharman*, (5) Stamp charges ; (6) carriage hire and labour wages. (7) value of empty bags not returned, (8) redraft paid for deft.: *held* that the claim for (1), (3), (4), (5), (6) and (8) is governed by Art. 49. 26 I. C. 415 ; 39 A. 81 Foll. (*Leslie Jones, J.*) UTTAN SINGH *v.* RAM KANWAR GANESH DAS. 42 I. C. 72 : 149 P. W. R. 1917.

———Arts. 49 and 115—*Suit for damages—Promise to perform on demand—Breach.*

Where according to a contract the deft. was bound on demand after 6 months to return similar tiles lent to him to be approved of by the plff. and the *panchayatdars* and if not approved deft. was to return the identical titles and the demand was made some years after the fixed date, it was held, that Art. 115 and not Art. 49 was applicable to this case. (*Sadasiva Aiyar, J.*) SURAYYA *v.* BAPIRAZU. 18 M. L. T. 459 : 31 I. C. 335 : (1916) 1 M. W. N. 121.

———Art. 49—*Claim by consignor—Non-delivery of goods—Effect of amendment of Art. 31 of Lim. Act of* 1877.

The article applies to a claim by a consignor against a carrier for compensation for non-delivery of goods consigned. The effect of amendment of Art. 31 in the old Act is to make it applicable to a claim against a carrier for compensation for non-delivery of goods irrespective of the question whether the suit was one in contract or tort. (*Wallis, C J., Ayling and Sadasiva Aiyar, JJ.*) JALDU VENKATA SUBBA RAO *v.* ASIATIC STEAM NAVIGATION CO. 39 Mad. 1 : (1915) M. W. N. 644 : 2 L. W. 805 : 18 M. L. T. 236 : 30 I. C. 840 : 29 M.L.J. 342 (F. B.).

———Arts. 49 and 90—*Scope of*—Mundatum—*Deposit.*

A transaction by which moveable property deposited with a person is not to be specifically returned but some work is agreed to be performed in connection therewith is not a deposit in the legal sense but only a *mundatum* governed by Art. 49; if the suit is for recovery of the specific moveables or for compensation for wrongfully detaining it and by Art. 89 or 90 if the suit is one

LIMITATION ACT (IX OF 1908), Art. 52.

for neglect of agent to do an act for his principal. (*Sadasiva Aiyar, J.*) NARAYANSWAMI THEVAR *v.* AIYASAMI IYENGAR. 18 I. C. 921: 24 M. L J. 184.

———Art. 49—*Conversion—Moveable property—By borrower—Suit for recovery.*

In the case of property loaned to be returned when asked for, no action would lie until a return has been demanded and refused. The mere fact, that the borrower has, unknown to the lender, wrongfully converted, the subject of the loan would not affect limitation. Limitation would run from the date of demand and refusal and not from the date when property was converted wrongfully. (1871) 6 C. P. 206, Foll.(*Ismay, Offg. J. C.*) BHAO SINGH *v.* BIHARI LALL. 54 I. C. 159.

———Arts. 49 and 120—*Declaratory suit for moveable property is within art.* 49.

If, in a declaratory suit in respect of a moveable property the main relief claimed is the same as consequential relief, *i. e.*, the possession of the property and not the declaration, whether declaration be necessary or merely ancillary the suit is governed by art. 49 and not 120. 15 I. C. 545 Foll. 21. C. 157 Dist. (*Pratt and Duckworth, JJ.*) PUN AUNG *v.* BRIJLAL. 1 Bur. L. J. 85: 1923 Rang. 11.

———Art. 49—*Compensation for injury to moveable property.*

A suit instituted by a mortgagee for compensation from a third person for injury done to specific moveable property mortgaged to the former is governed by Art. 49. (*Fox, C. J. and Hartnoll, J.*) CHIDAMBARAM CHETTY *v.* U. KHA CYI. 5 Bur. L. T. 156: 17 I. C. 906: 6 L.B.R. 75.

———Arts. 51 and 31—*When goods ought to be delivered.*

The expression "when goods ought to be delivered" used in Art. 31 is identical with those in Art. 51. The time for delivery must be a reasonable time after the goods were made over to the carrier. (*Drake-Brockman, J. C.*) ALI MUHAMMAD *v.* GREAT INDIAN PENINSULA RY. CO. 31 I. C. 474: 11 N L. R. 174.

———Art. 51—*Contribution, realisation—Award to that effect—Suit for.*

A was bound under an award to clear a certain canal and was entitled to recover a part of the expenditure from B at the beginning of the work. The suit by A to recover the amount from B is governed by Art. 61 as the clearance expenses were money paid by A for B. (*Fawcett, J. C. and Kennedy, A. J. C.*) TULSI DAS DUTOMAL *v.* WADERAO ALLAHBUX. 60 I. C. 971 : 14 S. L. R. 219.

———Art. 52—*Suit to recover price of goods sold.*

A suit to recover the price of goods sold, is governed by Art. 52 of Sch. I to the Act, unless any time is agreed upon for credit, and time begins to run from the date of delivery of each item sold. (*Walsh and Ryves, JJ.*) ABDUL AZIZ *v.* MUNNA LAL. 63 I. C. 435 : 19 A. L. J. 555.

———Art. 52—*Suit for price of goods supplied from time to time—Limitation.*

LIMITATION ACT (IX OF 1908), Art. 52.

Where a tradesman has a bill against a party for any amount in which the items are so connected together that it appears that the dealing is not intended to terminate with one contract, but to be continuous one, so that one item, if not paid, shall be united with another and form one continuous demand, the whole together forms but one cause of action and cannot be divided If all the items form but one cause of action, it cannot be contended that a part of it can be barred by limitation and that the rest may not be so barred (*Mulla, J.*) NAJAN AHMED HAJI ALI *v.* SALEMAHOMED PEER-MAHOMED. 24 Bom. L. R. 998: 1923 Bom. 113.

——Arts. 52, 65, 115 and 120—*Suit for recovery of the value of grain advanced—Limitation.*

Art. 52 of the Limitation Act refers to suits for the price of goods sold and delivered, and when grain is advanced on a contract that it should be repaid in kind, it is not a case of goods being sold for the words "goods being sold" refer to a case in which the contract is to pay for the price of the goods in money and not to return them in kind. 49 I. C. 231 Ref.; 2 Lah L. J. 191 foll. To such a case art. 115 of the Limitation Act or art. 65 would apply. (*Chevis and Broadway, JJ.*) MAHOMED DIN *v.* SOHAN SINGH. 4 Lah. L. J. 268: 1922 Lah 271.

——Arts. 52, 56, 115—*Contracts to supply materials.*

Suit for recovery of money due under a contract for supply of materials and construction of flooring without any specific reference to the double nature of the claim is governed by Limitation Act, Art. 115. (*Shadilal, C. J., Chevis and Harrison, JJ.*) MAHOMED GHASITA *v.* SIRAJUDDIN. 2 Lah 376 : 1922 Lah. 198.

——Art. 52—*'Goods' includes fruits on trees not gathered*

A suit for recovery of the price or fruits standing in a garden and sold to the deft. is governed by art. 52 of Lim. Act the word "goods" in that article being wide enough to include fruit even before it has been gathered. (*Chevis, J.*) WASU RAM *v.* RAHIM BAKHSH. 66 I. C. 120.

——Art. 52—*Suit for price of goods sold.*

Art. 52 applies to a suit for a sum of money as representing the price of certain articles sold by him to the deft. (*Rattigan, C. J.*) GANGA RAM *v.* NANDA. 2 Lah. L. J. 191.

——Art. 52—*Price of work done under contract.*

A suit for the recovery of the price of work done and materials supplied on a contract to build a house comes under Art. 120 ; Arts. 52 and 56 do not apply to the case. (*Reid, C. J. and Beadon, J.*) RADHA KISHEN *v.* BASANT LAL. 103 P. R. 1913 : 22 I. C. 576 : 81 P. L. R. 1914.

——Arts. 52 and 115—*Suit for recovery of price of articles—Limitation*

Where the plaintiff is suing for a sum of money as representing the price of certain articles sold by him to the defendant art. 52 and not art. 115 of the Lim. Act applies to the case. (*Rattigan, C. J.*) GANGA RAM *v.* NANDA. 2 L. L. J. 191: 1922 Pat. 30.

LIMITATION ACT (IX OF 1908), Art. 57.

——Art. 56—*Contract—Price of work done.*

A suit for the recovery of the price of work done and materials supplied on a contract to build a house comes under Art. 120 ; Art. 56 does not apply to the case. (*Reid, C. J. and Beadon, J.*) RADHA KISHEN *v.* BASANT LAL. 103 P. R, 1913 : 22 I. C. 576 : 81 P. L. R. 1914.

——Art. 57—*Suit for—Money advanced as price—Questions for decision.*

Where no time is expressly fixed for delivery of the goods in a suit for the money advanced the Court must find whether by reason of trade, custom or other usage, any particular period can be laid down as the date of delivery failing which, some reasonable time should be fixed after the advance of his money for delivery, having regard to all circumstances. (*Piggott, J.*) SHANKAR SINGH *v.* REKHA. 28 I. C. 969 : 13 A. L. J. 394.

——Arts. 57, 69 and 80—*Suit on hundi—Hundi inadmissible—Suit of original consideration—Limitation.*

A suit upon two hundis payable in thirty days from the date of execution was brought more than three years from the date of the hundis, but within three years from the expiry of one month within which the hundis were payable. The hundis not being properly stamped were inadmissible in evidence and plff. claimed a decree on the original consideration. *Held*, that the suit not having been brought within three years from the date of payment of the original transaction, was barred by limitation as the hundis could not be used for extending the time for payment. 7 Cal. 256 approved. (*Chatterjee and Newbould, JJ.*) GOBINDA *v.* RAMCHANDRA. 51 I. C. 945 : 29 C. L. J 508.

——Arts. 57 and 85—*Punjab Loans Limitation Act* (1904)—*Mutual account—Test.*

The plaintiffs sued the defendants on accounts claiming Rs 1 450. The suit was instituted on the 30th of August, 1918. The accounts showed a balance struck of Rs. 361-6-0 in favour of the plaintiffs on the 20th May, 1913. Thereafter the account continued for another year and ended with a total in favour of the plaintiffs of Rs. 832-9. No second balance was struck formally. Interest at 1 *per cent. per mensem* was claimed bringing the amount in suit up to Rs. 1,450. *Held*, that the article applicable was Art. 57 for which the period is six years under the Punjab Loans Limitation Act of 1904, the balance being an acknowledgment starting fresh period of limitation under S 19 of Act IX of 1908. An account is mutual when there are transactions on each side creating independent obligations on the other, and, where the transactions create obligations on one side only, those on the other being merely complete or partial discharges of such obligations, the account is not mutual. 59 I. C. 669 Appl. (*Campbell and Moti Sagar, JJ.*) THAKUR DAS *v.* THE FIRM OF BISHAN DAS MEWA RAM. 1923 Lah. 636.

——Arts 57, 64 and 85—*Suit on balance struck—Subsequent advance—Limitation.*

A suit for the recovery of a lump sum due on a book account consisting of a sum in respect of

LIMITATION ACT (IX OF 1908). Art. 57.

which a balance had been struck and of a further advance in cash is governed by either Art 57 or 64 of the Limitation Act and not by the Art. 85 119 P. R 1908 ; 7 P. L. R. 1917 Ref. (*Broadway and Moti Sagar, JJ.*) NANAK SINGH *v.* MIHAN SINGH. 4 Lah. L. J 69 : 1922 Lah. 204 (1).

——Art. 57—*Advance in kind and cash—Suit to recover—Applicability.*

A suit to recover money on account of advance made in grain and cash is not governed by Art. 57. (*Chevis, J.*) BUDH RAM *v.* KALLI RAM. 37 I. C 300 : 103 P. W. R. 1916.

——Arts. 57, 64 and 85—*Running accounts closed—Money advanced subsequently—Suit to recover—Limitation.*

Where running and open accounts were closed and balance struck and an over-payment was made to the debt, subsequently a suit to recover the latter was held to be one on a closed account and was governed by Art. 57 or 64 and not by Art. 85, 16 P. R. 1916, Dist (*Shadi Lal and Le Rossignol, JJ.*) ISHAR DAS *v* HAR KRISHNA DAS. 148 P. W. R. 1916 : 35 I. C 577 : 7 P. L. R. 1917.

——Art. 57—*Creditor having debtor's funds for payment.*

No question of limitation arises where a creditor has funds belonging to the debtor at his disposal to pay himself out of it. (*Kanhaiya Lal, A.J.C.*) ABDUL HASAN KHAN *v.* JAGWANTA. 32 I. C. 729 : 2 O. L. J. 620.

——Arts. 57 and 60—*Distinction—'On demand'—Meaning* Thavanai *account—Money payable on demand—Limitation.*

Art. 57 applies to ordinary loans where no time is fixed for payment *i.e.*, to suits for money payable "on demand" in the legal sense of the term. Art. 60 applies to cases of money deposited under an agreement that it shall be repayable "on demand" in the popular sense of the terms, *i.e.*, after demand is made when after expiry of *thavanai* contract no fresh contract is entered into, the money held is like a deposit in the banker's hands which is ordinarily payable 'on demand' in the legal sense and therefore Art 60 applies. (*Twomey, C. J. and Robinson, J.*) M. M. K. K. CHETTY *v.* PALANIAPPA CHETTY. 13 Bur. L. T. 21 : 57 I. C. 908 : 10 L.B. R. 161.

——Art. 57—Thavanai *account— Relation of parties to.*

The relationship between the parties to a *Thavanai* account is that of lender and borrower. The money is to be paid at a fixed period after two months and unless the lender demands it, the loan is taken to be extended for next two months. Art. 57 and not Arts. 60 and 115 applies to a suit brought on *Thavanai* account. (*Fox, C. J. and Twomey, J.*) ANNAMALAI CHETTY *v* LUTCHMAN CHETTY. 8 L. B. R. 528: 36 I. C. 497: 10 Bur. L. T. 53.

——Arts 59 and 60—*Loan—Deposit—Suit for recovery—Limitation.*

There is no distinction in the Limitation Act between money lent and money deposited with regard to the agreement to repay. So that it is not the agreement that the money should be payable on demand that distinguishes a deposit from a loan. There must be something further proved, and it is not possible to define exactly what that must be. It has sometimes been suggested that facts must be proved which create a sort of fiduciary relationship between the lender and the borrower, but it cannot be said that it is always necessary. Ordinarily when A hands over money to B on the understanding that it is not a gift, but has to be repaid when demanded, that would be considered in law a loan ; and when the plaintiff seeks to prove that the money so handed over was a deposit the onus would lie upon him to prove that there were additional circumstances which turned the loan into a deposit. 19 B. 775 referred to. (*Macleod, C. J. and Crump, J.*) GOVIND CHINTAMAN *v.* KACHUBHAI. 25 Bom. L. R. 503 : 1924 Bom. 28.

LIMITATION ACT (IX OF 1908). Art. 60.

——Arts. 59 and 60—*Money in deposit for safe custody with liberty to depositee to lend the money to others—Demand.*

Art. 60 is not limited to claims against bankers only. Plaintiff deposited money with defendant for safe custody with liberty to the defendants to lend the same to others, in which case they were to pay a certain rate of interest to the depositors, the money was payable on demand : *Held*, that Art. 60 applied and that a demand was necessary before time begins to run. (*Richardson and Huda JJ.*) JOGENDRA *v.* DINKAR. 66 I. C. 752 : 25 C. W. N. 981.

——Arts. 59, 61 and 120—*Suit for reimbursement under S. 70 of the Contract Act—Limitation Act, Art. 120 applicable.*

Suit for reimbursement under S. 70 of the Contract Act is governed by Art. 120 of Lim. Act. (*Odgers and Devadoss, JJ.*) T. M. SUNDARA AIYAR *v.* T. M. ANANTHAPADMANABHA AIYAR. 31 M. L. T. 164 : 16 L. W. 231 : (1922) M. W. N. 608 : 43 M. L. J. 271.

——Art. 60—*Banker—Fixed deposit—Due date—Demand and refusal—Limitation.*

Before the expiry of the date shown in a fixed deposit receipt given by bank, the money does not remain in the bank "under an agreement that it would be payable on demand." Once the date is fixed as the due date expires, the amount becomes recoverable and the period of limitation is 3 years from when a demand is made. (*Kanhaiya Lal and Sulaiman, JJ.*) THE OUDH COMMRCIAL BANK, LTD. *v.* RAI BAHADUR B. GANGA PRASAD. L. R. 3 A. 507.

——Arts. 60 and 145—*Suit for delivery of gold mohurs or value—Recovery of pictures.*

The petitioner bailed some gold mohurs and deposited a few pictures with one C. On demand being made delivery was refused. *Held*, that so far as the mohurs were concerned the suit was one for money deposited and Art. 60 governed the suit. (*Walsh and Stuart. JJ.*) KALYAN MAL *v.* KISCHEN CHAND. 41 All. 643 : 17 A.L.J. 888. 55 I. C. 45 : 1 U. P. L. R. (A) 95.

——Arts. 60—*Deposit with banker—Suit for recovery—Limitation.*

Where the deposit is in the nature of a banking deposit the depositee stands in a fiduciary

relation to the depositor, and a suit to recover it, comes under Art. 60. (*Rafique and Lindsay, JJ.*) LAKSHMI RAM *v.* HARI RAM DUBE. 52 I. C. 25: 1 U. P. L. R. (H. C.) 13.

———Arts. 60 and 59—*Distinction between deposit—Money lent.*

Where money was deposited with a bank on condition that interest would be payable and the banker would pay the money on demand, Art. 60 of the Lim. Act applied and not Art. 59. Art. 59 deals with the case of money *lent* under an agreement that it shall be payable on demand. Art. 60 refers to the case of money *deposited* under an agreement that it shall be payable on demand. (*Tudball and Rafique, JJ.*) JAGI LAL *v.* KISHEN LAL. 28 I. C. 949: 37 All. 292 : 13 A. L. J. 402.

———Arts. 60 and 145—*Deposit—Returnable on demand.*

A suit to recover money left by plff. with deft. to be repaid on demand and to be kept in deposit till then, is governed by Art. 60. S. 10 or Art. 145 of the Lim. Act. do not apply. Art. 145 cannot be applied to a deposit of money except in the case of coins which are ear-marked and where it is the intention of the parties that the identical coins should be returned to the depositor. (*Rattigan. C. J.*) DALIPA *v.* LABHU RAM. 65 P. L. R 1918 : 4 P. R. 1919 : 47 I. C. 592 : 166 P. W. R. 1918.

———Arts. 60, 89 and 106—*Money advanced for joint purchase—Suit to recover—Applicability.*

A suit to recover money paid to deft. to be used in a joint purchase of property, is governed by Art. 89 and not 60 or 106, as the deft. was acting only as the agent of the plff. (*Shadi Lal and Le Rossignoll, JJ.*) JETHA RAM *v.* MEHNGA RAM. 33 I. C. 438.

———Arts. 60 and 63—*Deposit with trustee*—Thavanai—*Suit for recovery of principal and interest.*

A suit to recover a deposit with a Nattukottai Chetty on *Thavanai* terms, is governed by Art. 60, both as regards principal and interest. The next reversioner of a Hindu can successfully bring a suit against the trustee to recover a certain sum with interest deposited with him for the deceased widow's maintenance, by the family members of the deceased ; even if the widow did not claim any more. Because the widow's silence amounts to acquiescence in the interest being treated as part of her husband's estate. This suit is governed by Art. 60 of Lim. Act, as the interest is an increment to the deposit according to the agreement of the parties. (*Wallis, C. J. and Krishnan, J.*) NARAYANAN CHETTY *v.* SUPIAH CHETTY. 43 Mad. 629 : 11 L. W. 418 : (1920) M. W. N. 254 : 58 I. C. 639 : 38 M. L. J. 437.

———Art. 60—*Deposit*—Thavanai — *Limitation.*

In the absence of evidence as to the terms of the loan, deposits made with *Nattukottai Chettiers* who are Indian Bankers on *thavanai* are deposits payable on demand and suits for their recovery are governed by Art. 60 of the Lim. Act. On the facts of the case held that the money was payable

at the end of the *thavanai* period and was not a deposit payable on demand. (*Abdur Rahim and Spencer, JJ.*) ANNAMALAI *v.* ANNAMALAI. 52 I. C. 456 : 10 L. W. 67.

———Art. 60—*Deposit repayable on demand—Money deposited on the understanding that it was to be paid on demand after a certain time.*

Money deposited on the understanding that it was to be paid on demand after a certain period does not cease to be a deposit within Art. 60 of the Lim. Act. Where money is deposited with a firm in the name of a *maral* B, the *maral* man B: is neither the trustee in respect of the money nor has he any right to operate on it. The firm remains and is liable to A. alone. (*Wallis, C.J. and Seshagiri Aiyar, J.*) CHELLAPPA CHETTY *v.* SUBRAMANIAN CHETTY. 24 M. L. T. 264 : 8 L. W. 221 : 47 I. C. 948 : (1918) M. W. N. 564.

———Arts. 60 and 115—*Deposit*—Thavanai—*Suit for recovery of money—Nattukottai Chettiers.*

The article applicable to *thavanai* transactions, if they really mean that the deposit amount is to be repaid whenever demanded, is Article 60. But if the money is to be repaid at the end of the *thavanai* period which is current when the demand is made, they are governed by the residuary Art, 115. (*Wallis, C.J. and Kumaraswamy Sastri, J.*) MUTHIAH CHETTIAR *v.* RAMANATHAM CHETTIAR. 7 L. W. 330 : 43 I. C. 972 : (1918) M. W. N. 242.

———Arts. 60 and 115—*Deposit*—Thavanai.

A certain amount was deposited at two months *thavanai* interest. The terms of the deposit showed that interest was to be calculated at *Thavanai* interest at two months rest. It was repayable either on demand or after the current *Thavanai* year. In the former case Art 60, Lim. Act applied. In the latter Art. 115 applied. (*Wallis, C. J. and Kumaraswami Sastri, J.*) VELLAYAPPA CHETTIAR *v.* UNNAMALAI ACHI. 6 L. W. 687 : 42 I.C. 573 : (1917) M. W. N. 858.

———Art. 60—*Deposit—Third persons.*

Where money has been given to the defendant by a third person on behalf of the plaintiff, a suit to recover the money from the defendant is governed by Art 60 as it amounts to a deposit. 23 I. C. 951, Dist. ; 19 B. 352 and 28 I. C. 688. Followed. (*Abdur Rahim and Seshagiri Aiyar, JJ.*) NARAYANAN CHETTYAR *v.* VELLAYAPPA CHETTIAR. 19 M. L. T. 237 : 34 I. C. 347 : (1916) 1 M. W. N. 206.

———Arts. 60 and 59—*Deposit, meaning of—Non-banker trader—Nature of relationship.*

Money in the hands of a trader, who is not a banker, will be a deposit within Art. 60 if the circumstances point to the conclusion. (*Ayling and Napier, JJ.*) SUBRAMANIAN CHETTIAR *v.* KADIRESAN CHETTIAR. 39 Mad. 1081 : 19 M. L T. 129 : (1916) 1 M. W. N. 186 : 3 L. W. 168 : 32 I. C. 965 : 30 M. L. J. 245.

———Art. 60—*Deposit for investment—Limitation.*

A person entrusted his nephew who was carrying a money lending business with some money for investment and the latter accordingly first

LIMITATION ACT (IX OF 1908), Art. 60.

deposited the amount with the third party but subsequently withdrew it and invested it in his own firm. There was no evidence as to the exact terms on which the money was handed over. *Held*, the presumption in the circumstances was that the money was payable on demand and hence Art. 60 of the Lim. Act applies. (*Sankaran Nair and Oldfield, JJ.*) RAMANATHAM CHETTY *v.* SUBRAMANYAM CHETTY. 17 M. L. T. 266 : 28 I. C. 688 : 28 M. L. J. 372.

——Arts. 60, 66, 115 and 120—*Money deposited payable on happening of an event—Period of limitation for suit to recover—Applicability of Arts.* 60, 66 *and* 115.

A suit for the recovery of money deposited with another and repayable on the happening of a future event, and brought after the happening of the event, is a suit for "compensation for the breach of any contract not in writing registered" within Art. 115 and is barred if not instituted within 3 years from the date on which the event happened. Neither article 60, nor 66 nor 120 governs such a suit. (*White, C. J. and Oldfield, J.*) BALKRISHNUDU *v.* NARAYANASWAMY CHETTY. 22 I. C. 60 : (1914) M. W. N. 264.

——Art. 60—*Deposit—Meaning of—Demand.*

Deposit is not confined to dealings with bankers and has no technical meaning. Limitation for recovery of a deposit of money with a private money lender runs from the date of demand. Absence of express words for payment on demand, is insufficient to take a case out of Art. 60. (*Benson and Sundara Aiyar, JJ.*) THANGASWAMY THEVAN *v.* RAJARAM NAIDU. 19 I. C. 3 : (1913) M. W. N. 218.

——Arts. 60, 115 and 57—*Deposit*—Thavanai *account—Meaning of—Limitation.*

The relationship between the parties to a *Thavanai* account is that of lender and borrower. The money is to be paid at a fixed period after two months and unless the lender demands it, the loan is taken to be extended for next two months. It was held that Art. 57 and not Arts. 60 and 115 applied to a suit brought on *Thavanai* account (*Fox, C. J. and Twomey, J.*) ANNAMALAI CHETTY *v.* LUTCHMAN CHETTY. 8 L. B. R 526 : 36 I. C. 497 : 10 Bur. L. T. 53.

——Art. 61—*Purchase—Part consideration—Sum to be paid to a third person—Failure to pay.*

Part of the consideration in a case of purchase of a property was a sum of money to be paid by the vendee to the creditor of the vendor. The vendee failed to pay. On being sued by the creditor for the debt the vendor had to pay double the amount, principal and interest included. In a suit by the vendor for compensation, *Held*, the plaintiff's cause of action accrued to him on the date he was obliged to pay to his creditor the sum of money which the defendant was himself under an obligation to pay. (*Lindsay, J.*) BRIKANT PANDE *v.* PANDIT JAMNA DHAR DUBE. 1922 All. 409.

LIMITATION ACT (IX OF 1908), Art. 61.

——Art. 61—*Suit by puisne motrtgagee against mortgagor for reimbursement for having paid off prior mortgagee is within article.*

A suit by a puisne mortgagee against the mortgagor personally for reimbursement of money which he had paid to discharge a prior mortgage decree, is governed by Art. 61 of the Act (*Banerji and Gokul Prasad, JJ.*) SHIB LAL *v.* MUNNI LAL. 3 U. P. L. R. (A) 193 : 63 I. C. 604 : 19 A. L. J. 840.

——Art. 61—*Part of consideration left with mortgagee to pay the creditors.*

Where the mortgagor leaves a sum with the mortgagee to make payments to some creditors and the latter fails to pay and the former has to make the payment himself to save his property, he can sue the mortgagee for damages. In absence of proof of special damage he can sue only for the amount paid by him, and the limitation runs from the date of payment and not the date of mortgage. (*Banerji and Gokul Prasad, JJ.*) SARJU MISRA *v.* GHULAM HUSAIN. 63 I. C. 87.

——Art. 61—*Landlord and tenant—Suit by plff. for recovery of revenue paid by him in respect of property of which he has been dispossessed.*

Art. 61 governs a suit to recover revenue paid by plff. while he was in possession of immoveable property, but of which he later on relinquished possession. Starting point is the date on which the last payment was made. (*Banerjee and Wallace, JJ.*) ALAYAR KHAN *v.* MUSAMMAT BIBI KUNWAR. 42 All. 61 : 17 A. L. J. 1025 : 52 I. C. 632 : 1 U. P. L. R. (H. C.) 194.

——Art. 61—*Husband and wife—Divorced wife—Arrears of maintenance.*

A claim by a divorced Mahomedan wife to recover arrears of maintenance for the child is governed by Art 61. (*Scott, C. J. and Hayward, JJ.*) ALI MAHOMED EID *v.* FATIMA MAHOMED EBRAHIM. 51 I. C. 968 : 21 Bom. L. R. 713.

——Arts. 61 and 115—*Suit for contribution—Share of costs and money due in redemption—Commencement of time.*

In the absence of a finding of a contract to pay at the conclusion of a litigation, defendant's liability to pay cannot be postponed till the conclusion of the litigation. The suit for the recovery of a share of costs and money due for the redemption is barred under Art. 61 or 115 i brought more than three years after payment. 3 C.L.J. 93 distinguished. (*Newbould and Panton, JJ.*) SHAIK JAMAL *v.* SHAIK CHAND. 1922 Cal. 79.

——Arts. 61, 99 and 120—*Contribution—Co-sharer—Right to be reimbursed in respect of money realised by creditor by coercive process.*

The plaintiff and the defendants were owners of five different jotes. In execution of one of the decrees obtained by the landlord in respect of the jotes one of them was put up to sale and purchased by the plaintiff. The landlord took out the amount of his dues in respect of that *jote* out of the sale proceeds and in respect of the

other jotes he attached the balance and ultimately withdrew it. The sale of the first jote was set aside, but the plaintiff failed to obtain restitution of the sale proceeds. The plaintiff thereupon sued the defendants for contribution. *Held*, that the joint liability of the plaintiff and the defendants having been discharged by the money of the former there was no doubt that the defendants obtained the benefit of the same. Though under S. 174 of the Bengal Tenancy Act, the plaintiff being one of the judgment-debtors could not purchase at the sale, the plaintiff and the defendant having bid for the jote and the plaintiff's bid having been accepted, the purchase by the plaintiff was valid but only voidable. In any case after the sale was set aside the money deposited became the money of the plaintiff alone and should be treated as having been lawfully paid or appropriated in payment of the decree for rent. So far as the right of contribution against co-sharers is concerned it does not matter whether the money is actully handed over by the party seeking contribution or is realised from him by coercive process by the creditor. In either case the right to contribution arises from the fact that one of the co-sharers has paid in excess of his share and the joint liability of all the co-sharers has been discharged. The suit was not barred under Arts. 61 or 99 of the Limitation Act, having been brought within three years of the setting aside of the sale or under Art 120, having been brought within six years of the date of payment. (*Chatterjee and Panton, JJ.*) GOPENATH MOONSHI *v.* CHANDRANATH MOONSHI.
26 C. W. N. 340.

———Art. 61—*Payment—Meaning—Payment into Court—Explained.*

Under Art. 61 payment means payment to the person to whom it is to be made or into Court on behalf of such a person and in such case limitation runs from the date when the amount is accepted by the Court and not on which it is deposited in Court. A suit by tenant depositing the amount of a rent decree against the co-tenants and preventing the sale of tenancy, against the co-tenants, for contribution joining the landlord as a deft, in the suit with a prayer that a decree may be made against him for the refund of the amount which he might have received from the co-tenants as rent payable by them is governed, in so far as the landlord is concerned, not by Art. 61, but by Art. 120. (*N. R. Chatterjee and Sheepshanks, JJ.*) ANNADA MOHAN ROY CHOUDHURY *v.* MANIRUDDIN MAHOMED.
36 I. C. 392.

———Arts. 61, 99—*Joint decree—Payment by third party against plff. and deft.—Suit for contribution.*

A payment, under Art. 61 must be made by the plff. and not by a third party. Where a third party pays off a joint decree against the plff. and the deft. and afterwards realises the whole amount from the plff. by sale of his properties in execution of the decree obtained against him, the limitation for a suit for contribution against the deft commences on the date of the realisation of the third party's decree against the plff. by sale

of his properties. 21 C. 157 (P. C.) Ref. (*Chatterjee and Walmsley, JJ.*) JANKI KOER *v.* DOMI LAL.
20 I. C. 24 : 18 C. W. N. 480.

———Art. 61—*Partnership—Debt paid by one partner—Contribution—Limitation.*

Art. 61 of the Lim. Act applies to a suit for contribution by a partner of a firm who has paid the whole or more than his share of the amount due from all the partners (*Abdul Raoof and Abdul Qadir, JJ.*) WALAITI RAM *v.* RAM KISHEN.
5 Lah. L. J. 310 : 1924 Lah. 112.

———Arts. 61 and 81—*Suit by surety against principal debtor—Limitation.*

A suit by the sureties against the principal debtor for recovery of the moneys paid by the former on behalf of the latter is governed by Art. 81 and not by Art. 61 of the Lim. Act. (*Le Rossignol and Campbell, JJ.*) KUNJ LAL *v.* GULAB RAM.
67 I. C. 365 : 55 P. L. R. 1922.

———Art. 61—*Guardian and ward—Suit for recovery of money spent for ward's marriage.*

For a suit by guardian for recovery of money from ward spent on his marriage, time runs from the date of marriage and not from termination of guardianship. (*Scott-Smith, J.*) MALAK UNNISSA *v.* PIARI.
50 I. C. 306.

———Arts. 61 and 120—*Cause of action—Taking over liability.*

Quaere—Where A takes over the liability of a debt due to C by B, does the period of limitation for a suit by A for the recovery of the money from B commence from the date of payment of the debt by A to C or from the date of A's taking over the liability? (*Chevis, J.*) JALU *v.* SAMAND.
204 P. L. R. 1911 : 11 I. C. 60 : 231 P. W. R. 1911.

———Arts. 61 and 120—*Payment by landlord—Suit to recover from tenant—Madras Local Boards Act*, S. 73.

Under S. 73 of the Local Boards Act, the tenant is liable to the landlord only for the amount of cess actually paid by the landlord to the Government. The tenant is not himself liable to the Government for the cess. Suit by landlord paying the cess to Government against the tenant for recovery of the amount so paid is governed by Art. 120 of the Lim. Act and not by Art. 61. (*Oldfield and Sadasiva Aiyar, JJ.*) MUTHURAMALINGA SETHUPATHI *v.* MAHALINGA RAJU.
9 L. W. 287 : 52 I. C. 468 : (1919) M. W. N. 365.

———Art. 61—*Principal and agent—Unauthorised borrowing by agent—Payment of principal's creditors—Suit to recover amount.*

Where an agent borrows moneys without the principal's authority and pays the same to the principal's creditors the transaction falls within Art. 61 and a suit for the recovery of the amount paid is barred, if brought more than three years after the date of payment. (*Ayling and Krishnan, JJ.*) KANDANA VENKATA VARADARAJA SOBANADHRI *v.* ACHANTA VENKATA.
52 I. C. 414 : 10 L. W. 33.

LIMITATION ACT (IX OF 1908), Art. 61.

——Art. 61—*Joint liability—Excess payment by plff.—Suit for contribution.*

Where, of two persons under a joint liability to pay a sum of money to a third, one of them paid more than what was legally due for his share and brought a suit for contribution in respect of the excess payment, the suit is governed by Art. 61. Limitation began to run from the date of the last payment made by the plff. and any later payment made by the deft. towards the joint liability would not enure for the benefit of the plff. or save limitation. 26 M. 686, Rel. (*Seshagiri Aiyar, J.*) MARUDAI MUTHIRIAN v. CHINNAKANNU MUTHIRIAN. 25 M. L. T. 295 : 9 L. W. 82 : 52 I. C. 243 : (1919) M. W. N. 429.

——Arts 61 and 120—*Payment by third person—Suit for compensation under S. 70 of the Contract Act—Article applicable*

Art. 61 may be applied to cases under S. 70 of the Contract Act where the payments made by the plff produced an immediate benefit to the deft. as in cases of Govt. revenue or of decree amounts, but the article will not apply when the benefit will only arise at a subsequent stage and plff.'s cause of action will not be complete till the subsequent stage is reached. To such cases Art. 120 applies. (*Abdur Rahim and Oldfield JJ.*) ISWANDHA VIJIA KUMARA BANGAROO v. R G ORR. 45 I. C. 786.

——Art. 61—*Landlord and tenant—Suit to recover cess paid by landlord from tenant—Statutory liability.*

A suit by a landlord to recover from the tenant a moiety of the road cess paid by him under the Local Boards Act, is governed by Art. 61. The Lim. Act does not make any difference between common law and statutory liability. 3 M. 124 ; 16 M. 361 ; 23 M. L. J. 487 Dist.; 20 C. 51, Rel. (*Seshagiri Aiyar, J.*) RAJESWARA MUTHURAMALINGA SETHUPATHI v. MAHALINGA RAJU. 6 L. W 227 : 23 M. L. T. 146 : 42 I. C. 502 : (1917) M. W. N. 710 : 33 M. L. J. 369

——Art. 61—*Decree-holder and judgment-debtor—Suit to recover loss sustained by Judgment debtor Decree-holder's failing to certify payment.*

Where a Decree holder failed to certify to Court the payment made towards the decree out of Court and the Judgment-debtor was compelled to pay the amount to a third party, *held* that the Judgment-debtor has cause of action for damages within 3 years from the date of payment. (*White, C. J., and Munro, J.*) MARUPPA CHETTY v. SHUNMUGAPPA CHETTY. 10 I. C. 462 : 21 M. L. J 518.

——Art. 61—*Limitation—Starting point—Deposit—Appropriation.*

Limitation under Art. 61 for contribution begins from the date of appropriation by the Court and not from the date of deposit of costs agreed to be borne equally between the plff. and deft. in a litigation. (*Lindsay, J. C.*) IQBAL NARAIN v. SURAJ NARAIN. 48 I. C. 336.

——Art. 62.

Co-sharers.
Damages.
Declaration of title.

LIMITATION ACT (IX OF 1908), Art. 62—Co-sharers.

Money had and received.
Overpayment.
Plaintiff's use.
Principal and agent.
Refund.
Specific performance.
Wrong payment.
Miscellaneous.

Co-sharers.

——Arts. 62 and 120—*Co-sharers—Debt received by one of the heirs—Suit by other heirs to recover share.*

A suit by an heir of a deceased person to recover his share or the debt due to the deceased which had been realised by another heir holding Succession Certificate is governed by Art. 62 and not by Art. 110. (*Chamier and Piggott, JJ.*) ABDUL GAFFAR v. NUR JAHAN BEGAM. 37 All. 434 : 29 I. C. 347 : 13 A. L. J. 686.

——Art. 62—*Co-sharers—Decree in favour of some heirs—Property purchased by them under the decree—Right of other heirs to realise their shares.*

On the death of a certain Mahomedan leaving his wife and some others as his heirs, the heirs excepting his widow sued on a mortgage debt due to the deceased, making his widow a deft. to the suit. They obtained a decree and in execution purchased the properties themselves, a subsequent suit by the widow against his other heirs to recover her share of the debts was held to be governed by Art. 62. (*Tudball and Rafique, JJ.*) AMINA BIBI v NAJMUNNISSA BIBI. 37 All. 233 : 27 I. C. 712 : 13 A. L. J 255.

——Art. 62—*Co-sharers—Profits.*

In a suit for an account of the profits of joint property managed by one co-sharer where the sum due to the plffs. can only be ascertained after taking account not only of the rent received but of the expenses incurred in the management, there is no particular sum "had and received" on plff.'s behalf by the manager within the meaning of Art 62. (*Beaman and Hayward, JJ.*) MAHOMED BHAI v. ISMAILJI HAJI. 12 I. C. 586 : 13 Bom. L. R. 1014.

——Arts. 62, 120 and 123—*Co-sharers—Realisation of assets by some—Suit against them by others—Limitation.*

Where one of the heirs has collected the debts due to the deceased on the strength of a succession certificate taken out by him, a suit by the other heirs for their shares of the assets is governed by Art. 62 and not by Art. 120 or 123 of the Limitation Act. (*Ghose and Panton, JJ.*) ABEDUNNISSA BIBE v. ISUF ALI KHAN. 50 Cal. 610 : 27 C. W. N. 941 : 1924 Cal. 142.

——Arts. 62 and 120—*Co-sharers—Land Acquisition—Suit for recovery of compensation money.*

A suit for a share of a compensation money for the house acquired by the Government within 3 years of the date of final award is within limitation period. (*Broadway, J.*) ABDUL HAMID v. MAHOMED SHARIF. 2 Lah. L. J. 353.

LIMITATION ACT (IX OF 1908), Art. 62—Co-sharers.

———**Arts. 62 and 120**—*Co-sharer—Suit by one co-sharer landlord against another for share of rent collected.*

Art. 120 and not Arts. 62 and 109, Sch. I of the Limitation Act is applicable to a suit by a co-sharer landlord against another for a share of the rent collected in the supposed right by the latter, the rent being due in respect of land held by the co-sharers not separately but jointly. (*Sanderson, C. J. and Richardson J.*) BHUBANESWAR *v.* DWARAKESWAR. **66 I. C. 876 : 34 C. L. J. 508.**

———**Art. 62**—*Co-sharers.*

Art. 62 of the Lim. Act is notapplicable to a claim for a share of the cash forming part of the estate to be divided between co-heirs. 21 C. 157 P. C. Fol. (*Scott-Smith and Shadi Lal, JJ.*) MUHAMMAD HAMID ULLAH KHAN *v.* MUHAMMAD MAJID ULLAH KHAN. **40 I. C. 374 : 92 P.R. 1917.**

———**Art. 62, 89, 109, 120 and 127**—*Co-sharers—Joint family—Partition—Collection of debts and profits of immoveable property by one member—Suit by another for account of the same and for his share—Limitation.*

Three brothers had been members of an undivided Hindu joint family. In 1905 they separated and appointed arbitrators to divide the ancestral properties. Before division was complete disputes arose and the properties remaining undivided were left in the hands of different members of the family as tenants in common until in 1917 the suit was brought for partition and for account moneys were received from debtors in respect of debts which were owned in common and rents and profits partly in money and partly in kind were received in respect of lands thus held in common. The defendants set up limitation in the suit for account and for payment of the shares of the plaintiff. *Held* by the Full Bench that Art. 62 of the Limitation Act does not apply to such a suit in respect of the moneys collected by the defendant. A suit for money had and received does not lie by one tenant in common against another who has received more than his share. The only appropriate action would be one for an account in which the tenant in common who collected the money would be entitled to all just expenses such as the expense incurred by him for the collection. If the tenant in common who collected did so under an express or implied agency for all tenants in common, the proper article applicable would be article 89 of the Limitation Act. The cause of action does not come into being until there has been something done which shows that the person who got the money into his possession is holding it adversely to the plaintiff. Art. 109 of the Limitation Act does not apply in respect of the profits of the immoveable properties in the case because receipt of profits by one of several tenants in common is not wrongful. Art. 127 of the Limitation Act does not apply to the case as regards the money and the profits received. That article applies only to a suit for share of the property which is the property of a joint family at the date of suit and is in terms inapplicable to property which by reason of a division prior to suit has ceased to be the property of a joint family and is held by the members of the family as tenants in common. The case law on the point discussed. (*Schwabe, C.J., Ayling, Coutts Trotter, Kumaraswami Sastri and Devadoss, JJ.*) YERUKOLA *v.* YERUKOLA. **42 M. L. J. 507 : 45 Mad. 648 : (1922) M. W. N. 215 : 30 M. L.T. 279 : 15 L. W. 595 : 1922 Mad. 150 (F. B.)**

LIMITATION ACT (IX OF 1908), Art 62—Co-sharers.

———**Art. 62 and S. 18**—*Co-sharers—One member of divided Hindu family collecting debts due to family—Suit by another for his share.*

Where one member of divided Hindu family collects a debt due to the family, the cause of action for another member to sue for his share in such money accrues on the date on which the collection was made. S.18 does not apply to a case under Art. 62 where there was no fraud when the payment was made. (*Spencer and Ramesam, JJ.*) RAMALAGU SERVAI *v.* SOLAI. **(1921) M. W. N. 539 : 69 I. C. 274 : 41 M. L. J. 274.**

———**Arts. 62 and 120**—*Co-sharers—Jagir income.*

Where a co-sharer in a *jagir* has been appointed by Govt. as manager thereof to collect rent, a suit by another co-sharer for accounts is governed by Art. 120 and not by Art. 62. (*Abdur Rahim and Srinivas Aiyangar, JJ.*) SUBBA RAO *v.* RAMARAO. **40 M. 291 : 19 M. L. T. 134 : (1916) 1 M. W. N. 188 : 3 L. W. 192 : 32 I. C. 899 : 30 M. L. J. 341.**

———**Art. 62**—*Co-sharers—Applicability to suit—Suit for money realised by co sharer.*

Art. 62 applies to all cases where the claim is made against the deft. for money received by him which *ex aigno et bono* he has to refund to plff. Where one of two brothers realised a joint debt without the knowledge of the other, Art. 62 applies to a suit by the other for his share. (*Sadasiva Aiyar and Tyabji, JJ.*) AVANCHA LAKSHMINARASAMMA *v.* AVANCHA LAKSHAMMA. **14 M. L. T. 325 : (1913) M. W. N. 836 : 21 I. C. 394 : 25 M. L. J. 531.**

———**Arts. 62, 49 and 120**—*Co-sharers—Suit by* Karnavan *against junior member for money realised by latter.*

For a suit by a *karnavan* of a *Malabar Tarwad* against a junior member thereof for money due to the *tarwad* which had been received by the latter, Art. 62 will apply. Art. 49 will not apply, as money cannot be said to be specific moveable property and Art. 120 will apply only if no other article is applicable. 32 C. 527, : 26 C. 564. Ref. (*Benson and Sadasiva Aiyar, JJ.*) SANKUNNI MENON *v.* GOVINDA MENON. **37 Mad. 381 : 11 M. L. T. 325 : (1912) M. W. N. 516 : 14 I. C. 254 : 2 M. L. J. 485.**

———**Art 62**—*Co-sharers—Debts realised by one member.*

If a member receives all debts of the family after partition, a suit by another member for his share in the debts is governed by Art. 62 (1877). (*Abdur Rahim and Spencer, JJ.*) SEGU CHIDAMBARAMMA *v.* SEGU BALLAYA. **12 I. C. 704 : (1911) 2 M. W. N. 467.**

LIMITATION ACT (IX OF 1908), Art. 62—Co-sharers.

———Art. 62—*Co-sharers—Suit by lessor against co-lessor.*

Where one lease is executed in favour of two persons reserving separate rents for their separate fields and one of the lessors, recovers rent due, a suit by the other lessor for the recovery of his share against the co-lessor is governed by Art. 62 as the rent received by the lessor was received to the use of the plff. (*Hallifax, A. J. C.*) GOPAL RAO *v.* AMBABAI. 59 I. C. 455 : 16 N. L. R. 182.

———Arts. 62 and 127—*Co-sharers—Suits for recovery of a share of moneys—Realised of joint debtors after separation—Applicability of.*

A claim to recover the share of one member of the family of a joint debt already realised by another member of the family is governed by Art. 62 and not Art. 127 when the family was not joint at the date of the realization of the joint debt. (*Kanhaiya Lal, A. J. C.*) GAJRAJ SINGH *v.* SADHA SINGH. 16 I. C. 882 : 15 O. C. 397.

Damages.

———Arts. 62 and 97—*Damages*—Patni *sale—Sale set aside by suit—Affirmance on appeal—Suit for compensation by purchaser.*

A *patni* taluk was sold for arrears of rent due to the Zemindar and purchased by plff. who paid the purchase-money into Court for payment to the Zemindar and others entitled. In a suit by *darpatnidars*, the sale was set aside on 24-8-1905, and the decree was affirmed on appeal on 3-8-1906. The plff. who had been a party to the suit was not indemnified as provided by S. 14 of Beng. Regn. VIII of 1819. On 28-8-1906 plff. surrendered possession to the *darpatnidars*. On 14-9-1908 plff. sued for recovery of so much of the purchase-money as had been paid to the Zemindar. *Held*, that the proper Article applicable to the suit was Art. 62 ; that even if Art. 97 applied as the Lower Courts thought, limitation began to run against plff. from 24-8-1905, the date of the decision in the First Court ; that the affirmance of the decree on appeal did not give a cause of action ; and that the suit was therefore barred by limitation. (*Sir Jenkins, J.*) HUKUM CHAND BOID *v.* PIRTHI CHAND LAL CHOUDHURY. 46 Cal. 670 : 17 A. L. J. 514 : 23 C. W. N. 721 : 21 Bom. L. R. 632 : (1919) M. W. N. 258 : 30 C. L. J. 71 : 26 M. L. T. 131 : 10 L. W. 416 : 50 I. C. 444 : 36 M. L. J. 557 (P. C.)

———Arts. 62, 97, 116—*Damages—Covenant for title, breach of—T. P. Act*, S. 55 (2).

A breach of a covenant for title under S. 55 (2) of the T. P. Act is a breach of 'a contract in writing registered' within Art. 116 of the Limitation Act. A suit for compensation for such breach is governed by Art. 116 and not by Arts. 62 or 97. 25 M. 587 ; 16 M. L. J. 396 ; 11 I. C. 337 ; 21 M. 8 ; 21 M. 242; 23 I. C. 570 Foll. 35 M. 39 ; 19 C. 128 (P. C.) ; 11 B. 475 : 1 L. W. 110 Dist. (*Sadasiva Aiyar and Napier, JJ.*) ARUNACHALLA IYER *v.* RAMASWAMI IYER. 38 Mad. 1171 : 1 L. W. 849 : 16 M. L. T. 397 : 25 I. C. 618 : 27 M. L. J. 517.

———Arts. 62 and 115—*Damages—Suit for, against representative of deceased agent—Limitation.*

LIMITATION ACT (IX OF 1908), Art. 62—Money had and received.

Where a principal brings a suit against the representatives of a deceased agent for damages caused by reason of breach of duty on the part of the deceased agent the suit is governed by Art. 115 of the Limitation Act and the starting point of Limitation is the date of the alleged breach. (*Miller, C. J. and Foster, J.*) RAMESHWAR SINGH *v.* NARENDRANATH DAS. 1923 Pat. 259.

Declaration of title.

———Arts. 62, 97 and 116— *Declaration of title—Possession not obtained by vendee—Failure of consideration—Cause of action.*

Plffs., purchasers of certain property from recorded owners, had mutation of names effected in 1906. In 1907 certain persons in possession brought a suit for setting aside the sale-deed and a declaration of their rights. The suit was decreed. *Held*, that the consideration failed either in the very beginning when the plffs. could not get the possession of the property or very soon afterwards, and a suit brought more than three years after that date was barred either by Art. 62 or 97 of the Lim. Act. *Held* also that Art. 116 of the Lim. Act did not apply. (*Chamier and Piggott, JJ.*) JANAK SINGH *v.* WALIDAD KHAN. 30 I. C. 410 : 13 A. L. J. 669.

Money had and received.

———Art. 62—*Money had and received—Suit for recovery of money collected by heir.*

Where a person was appointed to sell the stock-in-trade of a deceased, to realise debts due to him, and pay debts due to others by the deceased and he accordingly realized certain assets and paid certain debts, in a suit by the plff., a sister of the deceased to recover her share of the inheritance. *Held*, that the plff. was only entitled to recover the money as money had and received by the deft. for her use and as the suit was instituted more than three years after the last item was received, it was barred by Art. 62 of the Lim. Act. (*Richards, C. J. and Banerjee, J.*) MASIH-UD-DIN *v.* IMTIAZUNNISSA BIBI. 37 All. 40 : 27 I. C. 533 : 12 A. L. J. 1256.

———Art. 62—*Money had and received—Suit for, when lies—Evidence Act*, S. 91.

If money is paid for consideration which wholly fails, the person paying the amount can recover it as money had and received. If money is advanced under a document inadmissible in evidence a suit for money had and received may be maintained. In such a case, there is no distinction between cases when the document is taken for an antecedent debt and when it is taken for money paid at the time. (*Karamat Hussain and Tudball, JJ.*) BAIJ NATH DAS *v.* SALIG RAM. 16 I. C. 33.

———Art. 62—*Money had and received—Executor using legatees money*

Where an executor commits breach of trust in respect of the deposit of minor legatee's money in bank, liability of bank for money had and received will be determined by Arts. 48 and 62 of the Limitation Act. (*Macleod, C. J. and Shah, J.*) BANK OF BOMBAY *v.* FAZULBHOY EBRAHIM. 24 Bom. L. R. 513 : 1923 Bom. 155.

LIMITATION ACT (IX OF 1908), Art. 62—Money had and received.

——Art. 62—*Money had and received—Mortgage void.*

The mortgage of an unrecognised sub-division of a *Bhagdari* holding is void, the consideration fails *ab initio* and the money advanced by the plff. was money received by the deft. for plff.'s use under Art. 62. The cause of action for the suit for recovery of the money arises on the date of mortgage. (*Scott, C. J. and Batchelor, J.*) JAVERBHAI JORABHAI *v.* GORDHAN NAISI.

39 Bom. 358 : 28 I. C. 442 : 17 Bom. L. R. 259

——Art. 62—*Money had and received—Suit for—Limitation.*

Art 62 of the Lim. Act is applicable where the defendant has received money which in justice and equity, belongs to the plaintiff under such circumstances as in law render the receipt of it a receipt by the defendant to the plff.'s use. The article most nearly approaches the formula of money had and received, by the defendant for the plaintiff's use, if read as description and apart from the technical qualifications imported in English law and procedure. 32 C. 527; 2 C. 393; 46 C. 670 P. C. Ref. (*Mookerjee, Walmsley and Pearson, JJ.*) BIMAN CHANDRA DUTTA *v.* PRAMATHA NATH GHOSE. 49 Cal 886 : 36 C. L. J. 295 : 1922 Cal. 157

——Arts. 62 and 97—*Money had and received—Patni sale set aside—Suit for recovery of money—Limitation—Deduction of time spent in proceedings for assessment of mesne profits.*

The plff. purchased a patni at a sale under the Patni Regulation on the 14th May 1908. The patnidar instituted a suit for cancellation of the sale, which was decreed on the 28th May 1910. The zemindar deft. thereupon preferred an appeal which was ultimately dismissed on the 2nd May, 1912 In the interval, on the 14th October 1910, the plff paid rent to the deft. to prevent further sale under the Regulation. *Held*, that a suit for recovery of money paid by the plff to the deft brought on the 14th February 1916 was barred by limitation under article 62 of the Limitation Act Even if article 97 be applicable, the suit was barred Article 62 of the Limitation Act applies to cases which in English Law are described as "suits for money had and received." The fact that there was a failure of consideration at the time the payment was made on the 14th October 1910, attracted the operation of the bar imposed by article 62 Article 97 was not applicable as there was a failure of consideration. (*Mookerjee, A C. J. and Fletcher J.*) ANAKI NATH SINHA ROY *v.* BEJOY CHAND MAHATAB BAHADUR.

64 I. C. 315 : 3 3 C. L J. 366.

——Art. 62—*Money had and received for plff.'s use.*

The article applies to a suit for money payable by the deft. to plff. for money received by deft. for plff.'s use though with no promise at the time to repay, as it is repayable to the latter in justice, equity and good conscience. (*Mookerjee and Beachcroft, JJ.*) BINODE LAL *v.* PREO NATH.

40 I. C 173.

LIMITATION ACT (IX OF 1908), Art. 62—Over payment.

——Art. 62—*Money had and received—Meaning of.*

Oldfield, J.—The action for money had and received is still to be regarded, as it was originally based on an implied or fictional promise. But such promise could not be deduced from the *aequum et bonum*, as it may appeal to the sympathy of the Court in the particular case, or from circumstances, in which the deft, having no privity with the plaintiff when the money was received need not be supposed to have given and had no duty to give any such promise. *Per Sadasiva Aiyar, J.*:—The scope of the action for money had and received ought not to be extended. While privity of contract between the parties is not necessary to sustain such an action, there must be what might be called some privity of a legally recognizable nature such as some knowledge of particular facts in one man who received the money and some mistake of ignorance of fact on the part of the man who paid the money or some relation, trust and confidence between the person who received the money and person claiming the money or a portion thereof on which the Court could fasten as creating the relation of principal and agent though by fiction between the plff and the deft. (*Oldfield and Sadasiva Aiyar, JJ.*) RAMASWAMI NAIDU *v.* MUTHUSAMIA PILLAI. 41 Mad. 923 : 48 I. C. 756 : (1918) M. W N. 796 : 35 M L. J. 581.

——Art. 62—*Money had and received—Meaning of.*

A sum due for rent by mortgagee to the mortgagor is not money had and received. (*Wallis, C. J., Bakewell and Kumaraswami Sastri, JJ.*) MANNATH VEETIL ITTI PANKU MENON *v.* DARAM ACHAN. 41 Mad 488 : 92 M. L. T. 543. (1918) M. W. N. 98 : 43 I. C. 625 : 8 L. W. 118 : 34 M. L. J. 193.

——Art. 62—*Money had and received—Implied trust.*

The article applies to cases where money is received or retained under circumstances which create an implied trust in favour of another. (*Benson and Sundara Aiyar, JJ.*) THANGASWAMY THEVAN *v.* RAJARAM NAIDU.

19 I. C. 3 : (1913) M. W. N. 218.

Over payment.

——Art. 62—*Over payments—Suit for recovery of over payments to contractor—Nature.*

Under Article 62 a suit for the recovery of over payments, made to a building contractor is a suit for moneys payable by the deft. to the plff. for moneys received by the deft. for plff.'s use. (*Rattigan and Beadon, JJ.*) ROMAN CATHOLIC MISSION, RAWALPINDI *v.* SUNDAR SINGH.

88 P. L. R. 1914 : 22 I. C. 592 · 67 P. W. R. 1914.

——Arts. 62 and 116—*Over payment.*

Where mortgagee bound to pay prior incumbrance fails and the mortgagor being compelled pays it off and sues the mortgagee for reimbursement the suit is governed by Art. 62. Time would begin to run from the date on which the plff. paid

LIMITATION ACT (IX OF 1908), Art. 62—Plaintiff's use

off the prior encumbrance. (*Stuart and Kanhaiya Lal. A. J. Cs.*) PRAG *v.* MOHAN LAL.
47 I. C. 161 : 5 O. L. J. 263.

Plaintiff's use.

——Art 62—*Plff.'s use, money received for—Right to sue—Quasi contract—Money deposited in Court and withdrawn illegally.*

Money deposited in Court *in usum-jushabentis* and withdrawn by a person having no right to it may properly be held to be received for the use of the plaintiff. (*Stanley, C. J. and Griffin, J.*) MAHDI HUSSAIN *v.* SUKH CHAND.
33 All. 450 : 10 I. C. 730 : 8 A. L. J. 230

——Art. 62—*Plff.'s use.*

Art. 62 applies to every case where deft. at the time of receipt in fact or by presumption or fiction of law, receives money to plff.'s use and is not confined to cases where deft. intended to receive the money for such use (*Rattigan, C. J and Martineau, J.*) MUSAMMAT DURGA DEVI *v.* RAMANATH. 52 I C. 580 : 85 P. R. 1919

——Art 62—*Plff.'s use, money received for.*

Art. 62 applies whenever a person actually or constructively receives money for another person (*Reid, C. J. and Rattigan, J.*) CHAND MAL *v.* SANKAR CHAND. 16 P L. R. 1913 : 17 I. C. 311 : 36 P. R. 1913

——Arts. 62 and 120—*Plff.'s use—Applicability—Starting point.*

Article 120, and not 62 or 59, applies to a suit for contribution for expenses incurred by plaintiff for his co plaintiff and limitation begins from the time when co plaintiff got his share of the decretal amount. 45 I. C. 786 ; 25 C. W. N. 813 ; 34 I C. 54 Foll. (*Odgers and Devadoss, JJ.*) T. M SUNDARA AIYAR *v.* T. M. ANANTHAPADMANABHA. (1922) M W. N. 608 : 16 L. W. 231 : 31 M L. T. 164 : 43 M. L. J. 271 : 1923 Mad. 64.

——Art. 62—*Plff.'s use—Railways Act. S. 56—Sale held under.*

Art 62 governs a suit to recover the surplus proceeds of sale held by the Railway Company under S 56 of the Railways Act as the proceeds are received for plaintiff's use. 41 Mad 871 Dist. (*Oldfield and Ramesam, JJ.*) TARACHAND *v.* MADRAS AND SOUTHERN MAHRATTA RY. CO, LTD. 44 Mad. 823 : 13 L. W 693 : 62 I C. 742 : (1921) M. W. N. 422 : 41 M. L. J. 205.

——Arts 62 and 115—*Plff.'s use, money got for*—Benamidar—*Suit for moneys realised by—Limitation.*

Plff. alleged that a mortgage was executed benami in the name of the deft. on the understanding that the latter should have nothing to do with it and that the plff should conduct all necessary proceedings in the name of the deft. and that after the amount is collected and got into the hands of the deft. he should hold it at the plff 's disposal. *Held*, that Art. 115 of the Lim. Act did not apply to a suit for the money. The deft. was not entrusted with the money for any specific purpose and that there was an express trust ; and the suit was not against the agent. Art. 62 of the Lim. Act applied to the case. (*Sankaran Nair and Oldfield, JJ.*) NARAYANAN *v* RANGASWAMI CHETTI. 28 I. C. 495 : (1915) M W. N. 215.

LIMITATION ACT (IX OF 1908), Art. 62—Principal and agent.

——Art. 62—*Plff.'s use—"Received for use of"—Explained.*

The test of what is "receiving for use of" is not the intention of the deft. to receive it as such or otherwise. If money to which another is entitled is received without any valuable consideration, that is receiving for the use of that other. A suit to recover money paid to a deft. under S. 73 of the C.P.C. is a suit for money paid to him for plff.'s use and must be brought within three years from the date of payment and not within six years under Art. 120 37 M. 381 Foll. Case-law discussed (*Ayling and Hannay, JJ.*) BAIZNATH LALA *v.* RAMADOSS. 39 Mad 62 : 16 M. L. T. 509 : 27 M. L. J. 640 : 26 I. C. 219 : 1 L. W. 952.

——Art. 62—*Plff.'s use, money received for.*

Only when the money realised by the deft. has been actually or constructively received by them for plff.'s use the case comes under Art. 62, Art. 120 and not Art. 62 applies where plff. was legally barred from collecting the money due on a decree assigned to him, and the assignors decree-holders received the amount and entered satisfaction ; as the money received by them was not received for the plff.'s use. (*Munro and Sankaran Nair, JJ.*) RAMASWAMI CHETTIAR *v.* HARI KRISHNA CHETTIAR.
(1911) 1 M. W N. 220 : 9 M L. T. 465 : 10 I. C. 658 : 21 M. L. J. 705.

——Art. 62—*Plff.'s use—Limitation for recovery of money paid.*

A payment of money made to a person with a view to its reaching the party entitled to it, is a payment for the use of the latter, and limitation for a suit to recover the money is three years from the date of payment. 17 I. C. 351 Foll. (*Roe and Jwala Prasad, JJ.*) HARIHAR MISSIR *v.* SYED MAHOMED.
20 C. W. N. 983 : 1 P. L. J. 374 : 37 I. C. 30 : 2 P. L. W. 401.

Principal and agent.

——Arts. 62 and 90—*Principal and agent—Agent carrying on business as principal.*

Account of profits when an agent started a similar business in consequence of which his services were dispensed with and a suit was brought for the profits received by the agent, *held*, that the deft. having carried on the same business as that of his principal was bound to account for all the profits to the principals but the suit having been brought more than three years after the transaction was barred by limitation (*Walsh and Stuart, JJ.*) PURAN MAL *v.* FORD AND MACDONALD & CO., LTD. 41 All. 635 : 52 I. C. 373 : 17 A. L. J. 805.

——Art. 62—*Principal and agent—Termination of agency—Suit to recover money from agent collected by him subsequently.*

A suit to recover money received by an agent after the termination of his agency must be brought within three years from the time of the receipt as money had and received under Art. 62. (*Richards, C. J. and Banerjee, J.*) HA SRAJ *v.* RATNI. 29 I. C. 986 : 18 A. L. J. 494.

LIMITATION ACT (IX OF 1908), Art. 62—Principal and agent.

——Art. 62—*Principal and agent—Suit for money drawn by pleader.*

A suit for money received by the pleader of the plaintiffs for their use is governed by Art, 62 of the Lim. Act. (*Greaves, J.*) RAMHARI KAPALI *v.* ROHINI KANTA CHAKRAVARTY.
35 C. L. J. 330 : 1922 Cal. 499.

——Arts. 62, 89 and 120—*Principal and agent—Misappropriation by agent—Suit by principal—Cause of action against the agent and his legal representatives, if same.*

A suit to recover money alleged to have been misappropriated by deft. 's father while acting as plff.'s agent is barred if brought more than three years after the termination of the agency. The cause of action against the legal representative is the same as against the deceased agent, if the suit would be barred against the agent, it is also barred against the representatives. Art. 120 is not applicable to a suit brought against the representatives of a deceased agent. Art. 89 applies to a suit against an agent for acts committed during the continuance of his agency. The article applicable in respect of money payable by an agent after the termination of his agency would be Art. 62. (*Sankaran Nair and Spencer, JJ.*) ARUNACHELLAM CHETTY *v.* RAMAN CHETTY. 16 M. L. T. 614 : 27 I. C. 807 : (1915 M. W. N. 23.

Refund.

——Art. 62—*Refund—Consideration—Void mortgage.*

Where a mortgage is *ab initio void* as affecting the unrecognised sub-division of a *bhag*, a claim for the refund of the money arises on the date of the mortgage and must be brought within 3 years of the mortgage as money had and received. (*Scott, C. J. and Heaton, J.*) BAI DIWALI *v.* UMEDBHAI.
40 Bom. 614 : 36 I. C. 564 : 18 Bom. L. R 773.

——Arts. 62 and 97— *Refund—Purchase-money—Purchaser deprived of possession by paramount title—Suit for.*

Where a purchasor, who was put in possession of the property purchased, is subsequently dispossessed by a person with paramount title, a suit by the former for refund of the purchase-money is governed by Art. 97 and not Art. 62 of the Act. 19 C, 123, P. C., Dist. (*Beaman and Roe, JJ.*) NARSING SHIVBAKAS *v.* PACHU RAMBAKAS.
37 Bom. 538 : 20 I. C. 254 : 15 Bom. L. R. 559.

——Arts. 62 and 97—*Refund—Rent.*

A suit instituted by a purchaser to recover the rent paid to the landlord after the sale is set aside, after 3 years from the day of last payment of rent is barred by limitation under Art. 62 or 97. The suit in the case to recover rent paid or purchase-money, did not lie against the landlord. (*Richardson and Huda, JJ.*) BEJOY CHAND MAHATAB *v.* TINKARI BANERJI. 58 I. C. 741 : 24 C. W. N. 617.

——Arts. 62 and 97—*Refund—Premium—Suit for recovery of premium—Lessee not put in possession of portion of the premises by lessor.*

A suit by a lessee for a refund of a part of the premium paid for a lease, proportionate to the portion of the land of which possession could not be obtained by him, is governed by Art. 62. 25 Bom. 593 and 19 C. 123 (P. C.) Rel. (*Newbould and Panton, JJ.*) MAHAMED AYUB CHOWDHURI *v.* ELAHI BAKSH MANDAL. 49 I. C. 258.

LIMITATION ACT (IX OF 1908), Art. 62—Refund

——Arts. 62 and 97— *Refund—Purchase-money—Vendor and purchaser—Deprivation of possession—Suit by vendee—Limitation.*

Where a vendee sues to recover the purchase-money paid by him on being deprived of the possession of the land sold to him by the vendor, limitation begins to run from the date on which the vendee is dispossessed from the land and the suit is governed by Art. 97 and not by Art. 62. (*Greaves and Huda, JJ.*) PARSURAM MAHAJAN *v.* BHALCHANDRA SHAH. 44 I. C. 719.

——Arts. 62,97 and 120—*Refund of purchase-money — Execution sale—Deposit by auction-purchaser—Application by judgment-debtor to set aside surplus sale—Proceeds taken away by another decree-holder—Subsequent reversal of sale.*

A suit brought by an auction-purchaser to recover money from deft. who had after the sale and the deposit of the money in Court and before the sale was set aside on appeal, attached that sum in execution of his decree against the judgment-debtor as representing the surplus sale proceeds belonging to the original judgment-debtor after satisfaction of the decree obtained against the debtor by the decree-holder, is governed by Art. 120 (*i.e.*) six years from the date when the sale was set aside by the Appellate Court. Arts. 62 and 97 contemplate a suit brought by one of the contracting parties against the other to recover the money which has been paid at the sale which owing to default on part of the vendor has become infructuous. 19 C. 123; 37 C. 61 Dist. 16 M. 361, Foll. (*Brett and Chapman, JJ.*) AMRITA LAL *v.* JOGENDRA LAL CHOWDHURY.
15 I. C. 707 : 40 Cal. 187.

——Arts. 62 and 97—*Refund — Purchase money where sale void* ab initio.

If a contract of sale between two parties is void *ab initio* and is not merely voidable, then a suit brought by the vendee against the vendor for refund of the purchase-money is governed by Art. 62 and not Art. 97. (*Shah Din, C. J.*) BUTA RAM *v.* GURDAS. 44 P. R 1918 : 46 I. C. 26 : 126 P. L. R. 1918.

——Arts. 62 and 97—*Refund—Earnest money—Sale of land.*

Where the plff. failed to enforce specific performance of a contract to sell land, a suit for the recovery of advance paid by him is governed by Art. 97 and not by Art. 62. (*Ayling and Napier, JJ.*) BOMMANABOYINA KOTTINAGULU *v.* RAMARAJU ANKAYYA. 6 L. W. 44 : 40 I. C. 893 : (1917) M. W. N. 447.

——Arts. 62 and 97 —*Refund—Purchase-money—Sale voidable at the instance of third parties—Suit to recover consideration moneys—Cause of action, when arises.*

Where under a sale, voidable only at the instance of third parties, possession is taken, the cause of action for a suit to recover consideration

LIMITATION ACT (IX OF 1908), Art. 62—Refund.

money, arises only when the possession is disturbed. 25 Bom. 593 ; 26 Bom. 519 ; 40 Cal. 187, Dist. (*Seshagiri Aiyar, J.*) SUBBARAYA REDDIAR *v.* RAJAGOPALA REDDIAR. 38 Mad. 887 : 15 M. L. T. 240 : 23 I. C. 570 : (1914) M. W. N. 376.

———Arts. 62 and 120—*Refund—Prohibitory order—Damages.*

Neither attachment of a debt nor voluntary payment of it into Court constitutes seizure of moveable property under legal process. A prohibitory order under O. 21, R. 46 does not amount to seizure within Art. 29 of the Lim. Act. (*White, C. J., Sankaran Nair and Oldfield, JJ.*) YELLAMMAL *v.* AIYAPPA NAICK. 38 Mad. 972 : 26 M. L. J. 166 : 1 L. W. 162 : 22 I. C. 870 : (1914) M. W. N. 348 (F. B.).

———Arts. 62 and 97—*Refund — Purchase money—Suit by dispossessed vendee.*

A suit by a dispossessed vendee for return of the purchase money is governed by Art. 97 and not by Art. 62. When the money received by the deft. is not in fact or law received for the plff.'s use. Art. 62 would not apply nor would the fact that subsequent events had the effect of making the money received for plff.'s use, render that article applicable. (*Prideaux, A. J. C.*) PREMSUKHDAS *v.* NAMDEO. 55 I. C. 93.

———Arts. 62, 97 and 116—*Refund—Sale void* ab initio—*Suit for refund.*

Where vendee has actually obtained and held possession of the property, Art. 97 may be applied even if the sale turns out to be void *ab initio*, for otherwise, the claim for refund might be barred although the vendee had been given no occasion to sue. The same article is applicable where there is a subsequent failure of consideration. Where the vendor has no title to convey, the article applicable to a suit for refund of the purchase-money is Art. 116, and time begins to run from the date of the execution of fraud. (*Drake-Brockman, J. C.*) DHARAMCHAND *v.* GORELAL. 47 I. C. 886.

———Arts. 62 and 120—*Refund—Mortgage money—Land acquisition—Substitution of proceeds—Suit for by mortgagee.*

Where mortgaged property is acquired compulsorily and the mortgagee sues to recover the compensation allowed for the mortgagor the suit is governed by Art. 120 and not by Art. 62. (*Stuart, J. C.*) LADLI PRASAD *v.* NIZAM-UD-DIN KHAN. 22 O. C. 342 : 54 I. C. 535 : 2 U. P. L. R. (J. C.) 25.

———Art. 62—*Refund—Money paid under void agreement—Suit for, recovery of.*

A suit for recovery of money advanced under a void agreement is governed by Art. 62 of the Lim. Act and must be instituted within two years from the date of the execution of the agreement. (*Lindsay, J. C. and Stuart, A. J. C.*) HARA NATH KUAR *v.* INDRA BAHADUR SINGH. 47 I. C. 214 : 5 O. L. J. 277.

———Arts. 62 and 97—*Refund — Purchase money.*

LIMITATION ACT (IX OF 1908), Art 62—Wrong payment.

Either Art. 62 or Art. 97 governs a suit for recovery of the price paid at an execution sale for property to which the Judgment debtor has no title. (*Chamier, J.*) JOT SINGH *v.* ASMAT ALI KHAN. 10 I. C. 716 : 14 O. C. 74.

Specific performance.

———Arts. 62 and 97—*Specific performance—Contract to sell—Suit for specific performance of contract.*

A contract to sell a village was made on the 27th of April, 1908, and part of the consideration was paid as earnest money at once and the balance was paid on the 18th of June 1908. The sale was not completed. The plff. sued for specific performance and in the alternative for the return of the purchase-money in April, 1913, *Held*, that the suit was time-barred. (*Richards, C. J. and Rafique, J.*) FATMATUS SUGHRA BEGAM *v.* MARIAMUNNISSA. 32 I. C. 49.

Wrong payment.

———Art. 62—*Wrong payment—Mortgage—Suit to recover rents due to the mortgagee but collected and wrongly appropriated by mortgagor.*

A suit to recover rents due to the mortgagee but collected and appropriated by the mortgagor is governed by Art. 62 and is not barred, though rents for more than six years had accrued. (*Walsh, J.*) HARPAL *v.* RAM SARUP. 34 I. C. 173.

———Art. 62—*Wrong payment—Right under an invalid mortgage—Suit for money had and received.*

A suit for money had and received under a supposed right of mortgage, ultimately found to be invalid, is governed by Art. 62 and should be brought within three years from the date of the mortgage deed. (*Scott and Heaton, JJ.*) BAI DIWALI *v.* UMEDBHAI BALA BHAI. 40 B. 614 : 36 I. C. 564 : 18 Bom. L. R. 773.

———Art. 62—*Wrong payment—Payment without consideration.*

Art. 62 applies to a suit to recover money paid as *patni* rent at the time when there was no consideration for the payment. (*Mukerji, A. C. J. and Fletcher, J.*) JANKINATH SINGHA ROY *v.* BEJOY CHAND MAHATAP. 60 I. C. 698 : 33 C. L. J. 366.

———Art. 62—*Wrong payment—Money had and received for plff.'s use.*

Where the mortgagee in execution of a mortgage decree had purchased a portion of an entire estate and subsequently the entire estate is sold for arrears of Govt. revenue, a suit by him to recover the money representing the portion purchased by him from the mortgagor to whom the entire surplus has been paid is governed by Art. 62. (*Chatterjee and Richardson, JJ.*) LACHMI NARAIN *v.* DHANURDHARI PRASAD SINGH. 17 I. C. 351.

———Art. 62—*Wrong payment — Arrears of* Jagir *income—Suit to recover—Wrongfully recovered by defts.—Limitation.*

A suit to recover from the defts. six years' arrears of *jagir* income, wrongfully received and appropriated by them, is governed by Art. 62,

LIMITATION ACT (IX OF 1908), Art. 62—Wrong payment.

so that only the income for the 3 years immediately preceding could be recovered. (*Johnstone and Shah Din, JJ.*) KRIPA RAM *v.* JAI CHAND.
46 P. W. R. 1914 : 23 I. C. 445 : 140 P. L. R. 1914.

———Art. 62—*Wrong payment.*

Where, after assignment of certain G. P. notes, the creditors of the assignor attached those G. P. notes and in consequence the assignee instituted a suit to establish his rights, and obtained a decree in his favour in 1904 which was confirmed on appeal and which he had executed and where he obtained possession of the G. P. notes in 1905 and where the notes contained endorsement of payment of interest up to 1905 to the person in whose name the notes stood to C ; a suit to recover the interest from C. is governed by Art 62 and time is not extended by the fact of the pendency of appeal since the litigation was not really between the assignee and C, though C might have been a party thereto. (*Reid, C. J. and Rattigan, J.*) CHAND MAL *v.* SANKAR CHAND.
16 P. L. R. 1913 : 17 I. C. 311 : 36 P. R, 1913.

——— ———Art. 62—*Wrong payment—Money in the hands of judgment-debtor attached—Insolvency of judgment-debtor—Money paid over to judgment creditor—Right of Official Receiver.*

Where after the attachment of the money of a judgment-debtor the latter was adjudicated as an insolvent, and subsequent thereto the money was paid over to the decree-holder, the Official Receiver can recover the same by suit from the creditor within 3 years from the date of payment. (*Sadasiva Aiyar and Spencer, JJ.*) BALAKRSHNA MENON *v.* RANGAN PATTER 14 L. W. 334 : 41 M. L. J. 334: (1921) M.W. N. 775 : 30 M. L. T 77.: 45 Mad. 70 : 1922 Mad. 189.

———Art. 62—*Wrong payment.*

Where a suit is brought for recovery of purchase money by an auction-purchaser owing to the non-existence of the property, the suit is governed by Art. 62. (*Chamier, J.*) JOT SINGH *v.* ASMATH ALI KHAN.
10 I. C. 716 : 14 O. C. 74.

Miscellaneous.

———Arts. 62 and S. 18—*Fraud—Effect of.*

Art. 62 applies to a suit for the recovery of money payable by the deft. to the plff. for money received for his use. When knowledge of the plff.'s right to sue has been kept from him by the fraud of the deft. limitation will, under S. 18, run only from the date when the plff. first became aware of the fraud. (*Richards, C. J. and Piggott, J.*) LAKHAPAT PANDEY *v.* JANG BAHADUR PANDEY. 40 I. C. 37.

———Arts. 62 and 97—*Sale set aside—Money paid for discharging incumbrance — Suit for—Limitation.*

A suit for possession of properties under a sale deed was decreed by the first Court, but dismissed in appeal. Certain sums of money had been paid by the purchaser to discharge incumbrances on the property and in a suit brought to recover these sums from the vendors more than 3 years after the paying and the decree dismissing the prior suit for possession, *Held*, whether Art. 97 or 62 applied the suit was barred (*Spencer and Devadoss, JJ.*) GOPALA AIYANGAR *v.* MUMMACHI REDDIAR.
17 L. W. 254 : 1923 Mad. 392.

LIMITATION ACT (IX OF 1908), Art. 64.

———Arts. 62 48 and 49—*Suit for value of goods delivered—Limitation.*

An action for the value of goods delivered is one in detinue or conversion and is governed by Art. 48 or 49 and not by Art. 62. (*Coutts-Trotter and Seshagiri Aiyar, JJ.*) CHAMI *v* ANA PATTAR.
33 I. C. 661.

——— ———Arts. 63 and 60—Thavanai *deposit—Suit for recovery of—Limitation.*

Art. 63 of the Lim. Act is applicable only when interest is payable in cash and the starting point under that article is when the interest becomes due and payable. In cases of deposits on *thavanai* where the agreement is that the interest is not to be paid until demanded but should be added to the principal as an increment, the whole amount being treated as a fresh deposit at the end of each *Thavanai* the proper article applicable to a suit for the recovery of the same is Art, 60 and not Art. 63 (*Wallis, C. J. and Krishnan, J.*) NARAYAN CHETTI *v.* SUBBIAH CHETTY.
43 Mad, 629 : (1920) M W N. 248 : 11 L.W. 418 : 58 I. C. 639 : 38 M. L. J. 437.

———Art 63—*Limitation—Interest—Suit for*

Where the agreement was to pay interest yearly a suit for interest beyond 3 years is barred (*Lindsay, J. C.*) AMIR HAIDAR KHAN *v.* RAM DAT 40 I. C. 229 : 20 O. C. 152.

———Art. 64—*Statement of account— Mere acknowledgment.*

A mere acknowledgment is not a statement of account. An endorsement expressed as follows: —" Will pay early next August " is not an agreement in writing as contemplated by Art. 64. It is nothing more then a proposal, (*Stuart, J. C.*) VAKIL KHAN *v* ANAND BEHARI LAL.
52 I. C. 262 : 1 U. P. L. R. (J. C.) 13.

———Art, 64—*Suit on several* khatas.

Where there are several *khatas* between parties they should be treated as one transaction and the period of limitation would run only from the date of the last of such *khatas*. (*Macleod, C.J. and Shah, J.*) NARAYAN *v.* CHAPSI.
23 Bom. L, R. 1186 : 1922 Bom. 168.

———Art. 64—*Money paid by cheque—Limitation—When time begins to run.*

Limitation to recover money paid by cheque runs from the date of the receipt of the money by the payee and not from the date of delivery of the cheque. (*Scott, C.J. and Batchelor, J.*) SECRETARY OF STATE *v.* MAJOR J F. HUGHES.
38 Bom. 293 : 23 I. C. 779 : 16 Bom. L. R. 121.

———Art, 64—*Reciprocity of demands—How far necessary.*

In every case to which Art. 64 applies, it is not necessary that there must always be a reciprocity of demands. (*Ghose and Panton, JJ.*) SARIFUN MANDALIN *v.* FERADOUL KHATUN.
1923 Cal. 578.

LIMITATION ACT (IX OF 1908), Art. 64.

———Art. 64—*Entry of balance—Contract Act, S. 25—Promise to pay.*

An entry of balance not containing a promise to pay within S. 25 of the Contract Act cannot be relied upon to recover a time-barred debt entered therein. (*Coxe and Chatterjee, JJ.*) DEBI PRASAD *v.* RAM GHULAM SAHU.

25 I. C. 89 : 9 C. L. J. 263.

———Art. 64—*Account in terms of grain—Applicability.*

Even if it were conceded that in order to bring a suit within the purview of Art. 64, it is not necessary to show that there have been cross or reciprocal demands between the parties, the article can only apply where the money found to be due is a definite sum entered in the account books. (*Harrison and Zafar Ali, JJ.*) RAM *v* GAMAN RAM. 1993 Lah. 645.

———Arts. 64, 106 and 115—*Suit on a balance of account—Account stated—Limitation - Novation.*

Having regard to the fact that the parties were partners and there must have been debit and credit entries between them and the transaction sued on represented a balance struck between them in supersession of the detailed debit and credit entries in the earlier account, the entry in question in the case was treated as an account stated and the suit thereon was held to be governed by Art. 64 and not by Art. 106 of the Lim. Act. (*Le Rossignol and Martineau, JJ.*) NAND LAL *v.* PARTAB SINGH. 3 Lah. 326 : 1922 Lah. 425.

———Arts. 64 and 85—*Settled account—Open and current account.*

Where there was a current account and a mutual one, and the plaintiffs had claims against the defendants for money advanced *plus* interest and the defendants could set against those claims their share of any profits made in the transaction in which the parties had a common interest, but the account was not open and current at the time of the suit and the account had been closed and had been settled by the striking of a balance. *Held*, the article applicable is Art. 64 which applied to a suit for money payable for money found to be due on accounts stated. (*Le Rossignol and Abdul Qadir, JJ.*) THE FIRM OF GURUDAS RAMKOTURAM *v.* BHAGWAN DAS. 1922 Lah. 182.

———Arts. 64 and 85—*'Stated account'—Mere striking of balance in accounts not signed by deft.—"Settlement of accounts" whether always a "stated account"—Account not running up to date of suit—Applicability of Art. 85.*

Mere striking of the balance due on a certain date in the unsigned account-books will not furnish a cause of action on an account stated under Art. 64. 10 M. 199, Foll. 21 M. 365 : 3 L. W. 338, Dist. Settlement of a mutual, open and current account is possible within Art. 85 without there being a stated account. 15 C.W.N. 882, Ref. Art. 85 applies though on the date of the suit there was no running account; 10 M. 199, Ref. (*Abdur Rahim, Offg. C. J. and Seshagiri Aiyar, J.*) MURUGAPPA CHETTY *v* VYAPURI CHETTY.

5 L. W. 864 : 38 I. C. 227 : 32 M. L. J. 536.

LIMITATION ACT (IX OF 1908), Art. 65.

———Art. 64—*Act if deals with causes of action—"Account stated"—Limitation.*

Limitation Act does not purport to deal with causes of action and an 'account stated' does not extinguish the original debts on which the account is based. It is open to the creditor to base his suit either on 'the accounts stated' or on the original debt and if on the former Art 64 applies. (*Jwala Prasad, C.J. and Das J.*) BHATU *v.* BIBI. 63 I. C. 280.

———Art. 64—*"Account stated"—Meaning of—Limitation.*

A mere statement of the balance which is due on a particular date does not amount to an account stated within Art 64. An account stated is one where several cross items are set off, one against the other and the balance is struck off in favour of one of the parties, the law implying a new promise by the other party to pay the balance in consideration not merely of past debts, but also of the extinguishment of the old debts on each side and hence it is not required that it should be made within the period of limitation. 9 Bom. H.C. R. 449 ; 23 All. 502 ; 9 Bom. 516 ; 22 Bom. 513 ; 19 C. L. J 203, Ref. (*Jwala Prasad, J.*) SURAJ PRASAD PANDEY *v.* W. W. BOUCKE.

5 P. L. J. 34 : 1 P. L. T. 190.

———Arts. 65 and 115—*Letter of guarantee—Article applicable.*

Art. 115 governs a suit by a creditor against a surety on a letter of guarantee executed by the latter in respect of a debt payable on demand on a promissory note and not Art 65, and limitation runs from date of execution of the guarantee notwithstanding a stipulation in the guarantee that the creditor may look for repayment to the surety if the principal debtor makes default. Art. 115 also applies to a case of liability on a simple debt due and is not limited to cases of damages for breach of contract. (*Petheram, C. J., Princep and Piggott, JJ.*) SREE NATH ROY *v.* PEARY MOHAN.

21 C. W. N. 479 : 39 I. C. 205 : 25 C. L. J. 91.

———Arts. 65 and 116—*Sale—Compensation for less area.*

Where the compensation, to be paid, if vendee got less area than agreed upon, would be payable, if by the order of the Revenue Officer, subject to any modification on appeal, the vendors on partition were allotted a less area than that sold by them, limitation begins from the date when the order becomes final, *i.e.*, from the date when a co-sharer has a right to recover his share. (*Martineau and Brasher, JJ.*) RUKAN DIN *v.* HASSAN DIN. 1923 Lah. 23.

———Arts. 65 and 115—*Loan in kind—Suit for value of.*

When grain is advanced on condition that it should be repaid in kind and on breach of the contract a suit for recovery of the cash value of the advance is instituted, in that case, Limitation Act, Art 65 or 115 is applicable. (*Chevis and Broadway, JJ.*) MUHAMAD DIN *v.* SOHAN SINGH. 1923 Lah. 271.

———Arts. 65 and 115—*Suit for recovery of debt payable in kind with claim for money—Limitation.*

LIMITATION ACT (IX OF 1908), Art. 65.

The period of limitation for a suit for recovery of a debt in kind payable in kind is three years and such a debt cannot be combined with one repayable in money so as to make the longer period of limitation applicable to both. 41 P. R. 1914, Foll. (*Broadway and Harrison, JJ.*) LABH SINGH *v.* THE FIRM OF RUPCHAND TULSI RAM.
4 Lah. L. J. 64 : 1922 Lah. 122 (2).

——— Arts. 65 and 115—*Suit for recovery of grain*

A suit for the recovery of grain advanced with interest in kind or its value is governed by Art. 65 or 115 and not by Art. 52 or 57 of the Act. (*Kensington, C. J.*) MENGHA RAM *v.* HASSU.
49 I. C. 231 : 41 P. R. 1918.

———Art. 65—*Surety — When time runs against.*

Time runs against the surety from the date of the loan ; Art. 65 applies and the suit is barred under that article. (*Krishnaswami Aiyar and Ayling, JJ.*) DWARAKADAS *v.* CHIVAKALA KRISHNAYYA. (1911) 1 M. W. N. 41 :
9 M. L. T. 215 : 9 I. C. 204 : 21 M. L. J. 457.

———Art. 65—*Breach of promise—Suit for compensation.*

Where defendant agreed to give half of the land to plaintiff who was to help him in recovering it, *held* that limitation ran from the refusal of defendant, after recovery. (*Prideaux, A.J.C.*) SHRIRAM *v.* BABAJI. 1923 Nag. 47.

———Art. 65—*Subsequent deed executed in favour of mortgagee.*

Where a subsequent deed is executed by the mortgagor in favour of the mortgagee agreeing that he would pay the amount under subsequent deed when the mortgage was redeemed, the subsequent deed was held to be a simple deed and not a deed of further charge and that the mortgagee would be entitled to a simple money decree in respect of it and the cause of action arose under Art. 65 on the date when the mortgage was redeemed in whole or in part. (*Stuart, J.C.*) LAL BEHARI *v.* SATGUR PRASAD.
38 I. C. 480 : 3 O. L. J. 714.

———Arts. 65, 66 and 68—*Mutual relation.*

These articles of Lim. Act are not separate, arbitrary rules but concrete examples of two general rules, *viz.*, (1) a plff. can file a suit to recover simple debt within three years only ; (2) the date on which he has the right and is in a position to file a suit is the starting point of limitation. (*Pratt, J. C. and Crouch, A. J. C.*) VISHNU DAS WADURAM *v.* HOTOMAL DITOMAL.
31 I. C. 479 : 9 S. L. R. 90.

———Arts. 66, 68 and 75—*Mortgage—Provision for payment of interest annually—Default—Option to claim whole amount.*

Under a mortgage the mortgagor agreed to pay the interest annually and in case of default the mortgagee had the option to add the interest of the principal or charge the interest thereon or at once to sue for the principal and interest on the default. Further it was stated that in case of non-payment within the stipulated period the creditor would have the power to recover the money in principal and interest. Default took place but the mortgagor did not sue for 12 years after first default. It was held that the claim for sale on the basis of mortgage deed was barred under Art. 132, Limitation Act, as money became due on happening of first default. (*Mears, C. J., Piggott, Walsh, Ryves and Sulaiman, JJ.*) SAHIB DAYAL *v.* MEHARBAN. 20 A. L. J. 819 :
45 All. 27 : 1923 All. 1. (F. B.).

LIMITATION ACT (IX OF 1908), Art. 66.

———Arts. 66, 80 and 116—*Mortgage bond—Money repayable within fixed period—Payment of interest in instalments—Whole amount realisable on default.*

A mortgage bond provided that money was to be repaid in five years, that interest was to be paid every six months that in case of non-payment of interest for four six monthly periods, the creditor would have power to realise the whole amount in a lump sum within the fixed period. On such default taking place a suit instituted within six years of the expiry of the period fixed for repayment but beyond six years of the non-payment of two years' interest, was not time barred. 15 A. L. J. 313 ; 17 A. L. J. 647, Referred to. (*Banerjee and Tudball, JJ.*) SHIAM LAL *v.* TEHARIYA LAKHMI. 2 U. P. L. R. (All.) 102 : 58 I. C. 278 :
18 All. L. J. 476.

———Art. 66—*Personal decree — Mortgage bond.*

A personal decree for the balance of mortgage money not realised by the sale of the hypothecation can be allowed within six years from the expiry of the term provided for payment in the mortgage bond. (*Rafique and Piggott, JJ.*) MARKAND SINGH *v.* KALLU SINGH.
50 I. C. 640 : 17 A. L. J. 647.

———Art. 66—*Bond—Payable within three years and interest payable monthly—Default—Article applicable.*

Where a bond provided that the money was of interest, creditor would have option payable within three years from date of bond and that the interest was payable monthly but on the default of payment to sue forthwith or await the stipulated period, *held*, that a suit to recover principal and interest brought within three years of the stipulated date for clearing the bond, was not barred by limitation and Art. 66 applied to such a case the creditor being presumed to have exercised the option given in the bond. (*Richards, C. J. and Barerjee, J.*) GAYA PRASAD *v.* SHER ALI. 39 I. C. 574 : 15 A. L. J. 813.

———Arts. 66 and 116—*Mortgage bond, money due under—In substance a suit for compensation for breach of contract.*

A suit in the form of a suit for money due under an invalid mortgage bond is in substance a suit for compensation for breach of contract and if the bond is registered, Art. 116 applies, giving six years' limitation. (*Heaton and Shah, JJ.*) DINKAR HARI KULKARAN *v.* CHAGAN LAL NARASI DAS. 38 Bom. 177 : 23 I. C. 353 :
16 Bom. L. R. 20.

LIMITATION ACT (IX OF 1908), Art. 66.

——Arts. 66, 115 and 120 — *Deposit of money—Repayable at fixed date.*

Where money is deposited with a person for certain expenses and the balance is repayable with interest at a fixed date; it is a loan repayable at a fixed date, and is governed by Art. 66 and if not, by Art. 115, and not by Art. 120. (*Wallis, J.*) BALAKRISHNADU *v.* NARAYANASWAMI CHETTY.
24 I. C. 852 : 37 Mad. 175.

——Arts. 66 and 115—*Contract in writing registered.*

A suit for the recovery of money deposited with another and repayable on the happening of a future event, and brought after the happening of the event, for "compensation for the breach of any contract not in writing registered" within the meaning of Art. 115, is barred if not instituted within three years from the date on which the event happened. Neither Art. 60 nor 66 or 120 applies to such a suit. (*White, C. J. and Oldfield, J.*) BALAKRISHNADU *v.* NARAYANASWAMY CHETTY. 22 I.C. 60 : (1914) M. W. N. 264

——Art. 66—*Applicability of—"Single bond"—Meaning of.*

A bond merely for the payment of a certain sum of money, without any condition in or annexed to it is called a simple or single bond. The term "single bond" is sometimes used to signify a bond given by one obligor as distinguished from one given by two or more. Where under a bond power is given to the creditor to demand the whole of the money due under the bond whenever default is made in payment of the interest for any two years consecutively it is impossible to predicate of the bond that there is any certain "day specified for payment" within art. 66 of the Lim. Act. (*Wazir Hasan, A. J. C.*) HORI LAL *v* THAMMAN LAL. 9 O. L. J. 416 : 4 U. P. L. R. (O. C.) 103 : 26 O. C. 121 : 1923 Oudh 19.

——Art. 67—*Book entry—Suit for recovery of money due on.*

A book entry containing a promise to pay at a certain rate of interest and attested by witnesses is a bond and a suit for recovery of the money due thereon, comes under Art. 67. (*Wilberforce, J.*) HARI SINGH *v.* FAZAL. 56 I. C. 117.

——Arts. 67 and 66—*Starting of limitation on a condition of happening.*

When a condition is made in the bond that payment is to be made on the happening of certain future event, time begins to run from that date. Neither Art. 66 nor 67 applies to such a bond. (*Shah Din, J.*) KIRPA RAM *v.* CHURN. 32 I. C. 575 : 30 P. W. R. 1916.

——Art. 68—*Agreement for the performance of specified act—Damages.*

An agreement for the performance of a specified act and in the event of non-performance to pay a sum of money by way of damages does not amount to a bond and does not come within Art. 68. (*Leslie Jones, J.*) SHERKHAN *v.* GOKAL CHAND. 171 P. L. R. 1915 ; 30 I. C. 420 : 107 P. W. R. 1915.

LIMITATION ACT (IX OF 1908), Art. 68.

——Art. 68—*Guardianship—Surety bond—Suit by assignee.*

In the case of bonds by sureties under the Guardians and Wards Act, the proper procedure is to get an order to pay against the guardian and if he fails to comply with the order, to sue the sureties in respect of the breach. The suit will be governed by Art. 68 except where immoveable property is charged. (*Wallis, C. J. and Seshagiri Aiyar, J.*) KRISHNA CHETTIAR *v.* VENKATACHELA CHETTIAR. 42 Mad. 302 : 25 M L. T. 229 : (1919) M. W. N. 468 . 9 L. W. 278 : 49 I. C. 587 : 36 M. L. J. 114.

——Art. 68—*Suit to recover money on a bond.*

The suit to recover money on a bond having been brought after three years from the date of breach of its condition is barred by limitation. (*Srinivasa Iyengar, J.*) SORAI IYENGAR *v.* SUBBARAYAR. 40 I.C. 235 : 5 L. W. 706.

——Art. 68—*Suit by assignee of administration bond—Limitation.*

A suit by the assignees of an administration bond executed by a Hindu widow in connection with a grant to her of the Letters of Administration to the estate of her deceased husband, for an account of the administration is governed by Art. 68 and therefore is barred if brought more than 3 years after the conditions of the bond were broken. If the bond contains successive covenants, each breach gives a cause of action but the date of the last breach is the starting point. (*Kumaraswami Sastri, J.*) RAMANATHAM CHETTY *v.* RAGAMMAL. 27 I. C. 849 : 17 M. L. T. 61.

——Art. 68—*Administration bond—Breach of condition—Suit on.*

An administration bond is a bond subject to a condition within the meaning of Art. 68, Lim. Act and where a suit is brought for breach of one of the conditions contained therein, the period of limitation is 3 years. The breach of each condition gives rise to a separate cause of action and time begins to run from the date of the particular breach giving rise to the suit. (*Robinson, C. J. and May Oung, J.*) MAUNG SAN U *v.* MAUNG KYAN MYE. 1 Rang. 463 : 1924 Rang. 68.

——Art. 68—*Suit on administration bond—Limitation—Starting point.*

Art. 68 does not apply to a suit on administration surety bond as the bond is not a bond subject to a condition, *i.e.*, a bond which becomes enforceable only when the specified condition is broken. The right to sue on administration surety bond accrues when the administrator either does not comply with any of the conditions of the bond or puts it out of his power to comply with them. (*Twomey, C. J., and Ormond, J.*) KO PU *v.* MA THEIN YIN. 56 I. C. 968 : 12 Bur. L. T. 225

——Art. 68—*Probate and Administration Act (V of 1881), S. 78—Surety's liability.*

A suit to enforce a surety's liability under an administration bond is barred under Art. 68 of the Lim. Act if not brought within three years of the breach of a condition mentioned in the bond. (*Charles, C. J. and Hartnoll, J.*) AHMED MULLA DAWOOD *v.* FATIMA BEE BEE. 8 Bur. L. T. 59 : 36 I. C. 505 : 8 L. B. R. 99.

LIMITATION ACT (IX OF 1908), Art. 69.

———Arts. 69 and 80—*Promissory note payable on demand—Contemporaneous agreement postponing date of payment.*

In a suit upon a promissory note executed by the deft. in favour of the plff. bank, it appeared that the bank used to fix a period for payment and that the defendant in his application for the loan in a printed form added 'six months' period and the officer of the Bank accepted the application *Held*, that the application form, and endorsement thereon, were admissible for fixing the date of payment and that the suit was governed by Art. 69 or 80 the starting point of the limitation being sixth months after the date of the note. (*Seshagiri Aiyar and Moore JJ.*) PONNUSWAMI CHETTY *v.* THE VELLORE COMMERCIAL BANK, LTD.

27 M. L. T. 81 : (1920) M. W. N. 75 : 11 L. W. 28 : 56 I. C. 384 : 33 M. L. J. 70.

———Art. 74—*Instalment bond—Failure to pay instalment—Limitation*

Where an instalment bond provides for 10 monthly payments and provides that the whole shall be payable on demand on default of any one instalment, limitation runs as regards each payment on the date it is payable under Art 74, Lim. Act. A suit brought just within 3 years of the last date for payment will not lie except with respect to the last payment. (*Devadoss, J.*) PERIANAN CHETTY *v.* MARIAPPAN ASARI.

(1923) M. W. N. 699 : 1924 Mad. 310

———Art. 74—*Instalment bond—Full amount due on default—Waiver—Effect.*

An instalment bond provided that on default of payment of any instalment, the whole claim could be enforced unless the creditor liked to waive such right. There was no payment at all made ; some of the instalments were recovered by suit and for the rest a suit was filed more than 3 days from the first default, but within 3 years of the time at which the earliest of the instalments claimed fell due. *Held*, that he waived his rights to claim the full amount by filing the prior suit and the cause of action for the second suit arose only when the earliest of the instalments claimed fell due. (*Hallifax, A. J. C.*) KESHEO RAO *v.* SUKLIA.

19 N. L. R. 170 : 1924 Nag. 61.

———Art. 74—*Two starting points.*

Where a simple money bond gave the plff. an option in express terms to wait till the expiry of the term originally fixed for repayment or to sue earlier if the interest for the first six months was not paid, the plff.'s claim cannot be barred because he chose to stick to the longer term. 11 I. C. 526, Dist. (*Kanhaiya Lal, A. J. C.*) DURGA *v.* TOTA RAM. 19 I. C. 738 : 16 O. C. 45.

———Arts. 74 and 75—*Starting point—Instalment bond.*

The starting of limitation is tested by the question "has the payee or obligee a right to file a suit forthwith for the principal remaining due, if he so chooses ?" In the case of bonds and pro-notes payable by instalments providing that whole becomes due if default is made in payment of one instalment, limitation runs from the time the default is made unless a waiver on the creditor's part is made out expressly or impliedly when it will run after fresh default. If there has been a waiver of right to immediate payment, limitation cannot run at once. (*Pratt, J, C. and Crouch, A.J.C.*) VISHINDAS VADHURRAM *v.* HOTOMAL DITTOMAL. 31 I. C. 479 : 9 S. L. R. 90.

LIMITATION ACT (IX OF 1908), Art. 75—Default.

———Art. 75—
Applicability.
Default.
Limitation.
Starting point.
Waiver.
Miscellaneous.

Applicability.

———Art. 75—*Applicability—Instalment bond—Default.*

Art. 75 of the Limitation Act is applicable to every suit on a bond payable by instalments containing a default clause. It is immaterial whether the payment of the whole of the amount springs from a single default or from more than one default. 47 P. R. 1903, 38 Mad. 374, ref. (*Shadi Lal, C. J. and Abdul Kadir, J.*) SIBA SINGH *v.* SUNDAR SINGH. 3 Lah. L. J. 522.

———Art. 75—*Applicability—Default for three consecutive instalments.*

Art. 75 applies to a simple money bond providing for the repayment of money in instalments and also providing that in default of payment of principal for three consecutive instalments or interest for three consecutive months the promisee could recover the entire amount. (*Kumaraswami Sastri, J.*) NICHOLSON BANK *v.* RAJAGOPAL AIYAR.

38 I. C. 302 : 5 L. W. 514.

———Art. 75—*Applicability—Instalment bond—Whole debt payable in lump sum in default of payment.*

In a suit for recovery of the amount due on the bond, *held* (1) that the suit was governed by art, 75 of the Limitation Act ; (2) that the express mention in the bond of the creditor's option did not give anything more than what was contemplated under Art. 75. (*Batten, A. J. C.*) GOPAL *v.* DHONDYA. 14 I. C. 685 : 8 N. L. R. 44.

———Art. 75—*Applicability—Instalment bond—Mortgage bond—Waiver.*

Where the terms of a mortgage deed provided for payment of the mortgage money by instalments with a condition superseded that non-payment of three instalments on the due dates should empower the mortgagee to recover the whole money due at certain interest. *Held*, that time and amount being the essence of the contract, non-payment of or deficiency in the payment of three instalments would, in the absence of proof of waiver on his part, enable the mortgagee to enforce the covenant. (*Stuart and Kanhaiya Lal, A. J. Cs.*) MANOHAR LAL *v.* SAKINA BEGAM.

37 I. C. 442 : 3 O. L. J. 623.

Default.

———Art. 75—*Default—Waiver—Right to sue for whole amount.*

An instalment bond provided for the money to be paid by five instalments and on default in payment of any of the instalments, the creditor would have the power to recover the entire amount in a

LIMITATION ACT (IX OF 1908), Art. 75—Default.

lump sum. The bond was executed in 1909 and there was default in the first instalment. Plff. waited till the term provided in the bond had fully expired, and sued for all the instalments except the first two, which had become barred. *Held*, that under the terms of the bond, the plff. had an option to waive his right to bring the suit at once on the happening of the first default, and that therefore, his suit with regard to the last three instalments was not barred. (*Abdul Raoof, J.*) MOHAN LAL *v.* TIKA RAM. 41 All. 104 : 47 I. C. 926 : 16 A. L. J. 929.

———Art. 75—*Default — Suit for recovery of money.*

Where the money due under an instalment bond is payable in three annual instalments and on default of payment of one of them the whole of the money due was to be immediately payable, a suit by the creditor for recovery of the money more than three years after the date of the first default is barred by limitation under Art. 75 of the Lim. Act. 13 C.W.N. 1010 ; 36 Cal. 394 foll. (*Pearson, J.*) SYAMA CHARAN BARMAN *v.* NARATTAM BORMAN. 65 I. C. 257

———Art. 75—*Default—Meaning.*

Where a deft. has expressed his willingness to pay, there is no "default." (*White, C.J and Oldfield, J.*) SITARAMA CHETTY *v.* CHOTA KRISHNASWAMI CHETTY. 24 I. C. 507.

———Art. 75—*Default—Cause of action.*

When the whole money is to be paid on the non-payment of two or three instalments, the cause of action arises on the default of two instalments. Acceptance of payment of first instalment beyond the time fixed, though amounting to a waiver, does not affect the cause of action arising by subsequent non-payment of two instalments. (*Prideaux, A. J. C.*) WACHHI *v.* MAROTI. 1922 Nag. 184.

Limitation.

———Arts. 75 and 132—*Limitation—Starting point—Mortgage—Instalment bond—Payment of whole in default.*

A mortgage bond provided that interest shall be paid every six months and the principal on a fixed date and that on default, both the interest and principal shall immediately become due. *Held* that this created a right in the mortgagee to recover the whole amount at his option in case of default and since there was nothing to show that he exercised any such option, time begins to run only when the date fixed for payment of the principal amount. 24 Cal. 281 not foll. The words "whenever you require" in a mortgage bond are not equivalent to forthwith. 20 Mad. 245, Dist. (*Spencer and Krishnan, JJ.*) RAMADH BIBI AMMAL *v.* KANDASWAMI PILLAI. 25 M. L. T. 154 : (1919) M. W. N. 82 : 51 I. C. 724 : 9 L. W. 479.

———Arts. 75 and 120—*Limitation—Starting point—Recovery of instalments—Period of limitation.*

The period of limitation for the recovery of the instalments begins from the date on which each instalments becomes due, even where it is provided that on failure to pay three instalments

LIMITATION ACT (IX OF 1908), Art. 75—Starting point.

the whole shall become payable. Art. 74 applies to such a case. (*White, C. J. and Oldfield, J.*) SITARAMA CHETTY *v.* CHOTA KRISHNASWAMI CHETTY. 24 I. C. 507.

———Arts. 75 and 116—*Limitation—Starting point—Bond—Interest to be paid every year—Money to be paid within a fixed period.*

Where a bond provided payment of money with interest within a fixed period and further provided that in case interest was not fixed, the creditor could recover the entire principal and interest from the debtor. Limitation would not run from the date when default was made in the payment of interest if the creditor waived such default. Where a contract gives party an express option to sue on one occasion or another he cannot be compelled to sue on the first occasion. (*Kanhaiya Lal, A. J. C.*) BABU RAM *v.* ABDOHOOT SINGH. 41 I. C. 423 : 4 O. L. J. 402.

———Art. 75—*Limitation— Starting point—Time runs from default.*

Where a bond provided that the creditor was at liberty to sue immediately for the whole amount on default of payment of monthly interest, *Held*, that limitation began to run from the date of such default. Case-law discussed. (*Pratt, J.C. and Crouch, A. J. C.*) VISHINDAS *v.* HOTOMAL. 31 I. C. 479 : 9 S. L. R. 90.

Starting Point.

———Arts. 75 and 132—*Starting point—Mortgage—Instalments—Whole amount to become due on default of payment of single instalment—Limitation.*

Under a mortgage executed in 1902 the principal sum borrowed was Rs. 1,200 and the sum was made payable in annual instalments of 100 rupees each. On default of payment of every one instalment the whole of the balance was to be paid at once. In the years 1903 and 1904 the mortgagors paid Rs. 44 only. In 1923 the mortgagees filed a suit to recover the amount of the first two instalments and obtained a decree. In 1917 the mortgagees filed a suit for recovery of the remaining instalments with interest. *Held*, that the suit was barred by limitation. (*Macleod, C. J. and Crump, J.*) SHRINIVAS *v.* CHANBASAPPA GOWDA. 25 Bom. L. R. 203 : 1923 Bom. 201 (2).

———Art. 75—*Starting point—Chit—Subscription—Default—Instalment bond—Cause of action.*

A claim for the whole amount due for subscriptions payable to a *chit* fund on default of any instalment, can be based only on the bond and not on the original cause of action. The expression 'on demand' is not merely a technical one, meaning payable at once but denotes a condition precedent to the right to claim the whole amount. 20 M 245 ; 21 M. 139 ; 22 M. 20 ; 36 M. 66 Rel. (*Seshagiri Aiyar, J.*) SRETHARAMAYYAR *v.* MUNUSWAMI MUDALIAR. (1919) M. W. N. 185 : 37 M. L. J. 613 : 50 I. C 87 : 9 L. W. 427.

———Art. 75—*Starting point—Provision for periodical payments of interest and for suit for recovery of entire amount on default—Alternative provision fixing dates for payment of whole amount.*

LIMITATION ACT (IX OF 1908), Art. 75—Waiver.

When there are alternative contracts provided for in a mortgage bond, it is open to the mortgagee to forego one and sue to enforce the other. This option cannot be taken away by statute unless the grant of such an option is illegal or opposed to law. The option is for the benefit of the mortgagee and if he waives it, limitation will not run against him in spite of that waiver (*Kanhaiya Lal, A. J C.*) RAM PRASAD BABU *v.* QADRO. **20 O. C 132 : 40 I. C. 232 : 4 O. L. J. 341.**

Waiver.

——Art. 75—*Waiver—Instalment bond—Suit for recovery of money due—Default.*

Where in a suit on an instalment bond the question arises whether the suit is barred on account of default in payment of a prior instalment, the point to consider is whether the plff. had an option to waive his right to bring a suit at once on the happening of the default and whether, as a matter of fact he did exercise his right of waiver. The test of waiver may be found in the prayer in each suit did he claim the whole amount. if so there was no waiver, or only the amount due on unpaid instalments not time-barred. 11 A. L. J. 89 ; 35 A. 455 ; 16 A. L. J. 929 ; 30 A. 123 Ref. (*Ryves, J.*) JIWAN MAL *v.* JAGESHAR KASONDHAN. **L. R. 3 A. 237 : 1922 All. 113.**

——Art. 75—*Waiver—Meaning.*

Where an instalment bond provided that on default of payment of any instalment the whole amount was immediately payable and a creditor brought a suit for the recovery of the whole amount more than 6 years after the date of the first default, and alleged in the plaint that the cause of action arose on the date of that default, *held*, that the suit was barred by time. 30 A. 123 Dist. (*Tudball and Rafique, JJ.*) AMOLAKCHAND *v.* BAIJ NATH. **35 All. 455 : 20 I. C. 933: 11 A. L. J. 664.**

——Art. 75—*Waiver—Forbearance to sue.*

A mere forbearance to sue for the whole amount of a bond payable by instalments. is not a waiver within Art. 75. (*Chitty and Walmsley, JJ.*) HARA KUMAR SAHA *v.* RAMCHANDRA. **47 I. C. 913.**

——Arts. 75 and 132—*Waiver — Meaning—Instalment bond*

In instalment mortgage bond where on default of any two consecutive instalments the whole debt was payable, limitation would commence running in respect of the whole from the time of two defaults. Acceptance of part of overdue instalment is not waiver. (*Chatterjee and Richardson, JJ.*) REYAZADDIN *v.* ASHRAF ALI PAL. **38 I. C. 606**

——Art. 75—*Waiver—What is—Instalment bond—Consent not to sue if waiver*

Waiver is consent to dispense with or forego something to which a person is entitled. When the plff. consented not to sue for the whole amount as he was entitled to do under the bond for default on the first two occasions but refused to consent on the third, *Held*, that this amounted to a waiver of the payment of the two earlier instalments. 21 C. 542 ; 5 C. 97 ; 31 C. 297 ; 7 W. R. 21 F. B. ; 36 C. 394, Ref. (*Choudhury, J.*) RAMACHANDRA BANKA *v.* RAWAT MULL. **31 I. C. 672 : 19 C. W. N. 1172.**

——Art. 75—*Waiver—Meaning — Omission to sue.*

A mere omission to sue does not constitute waiver within Art. 75 of the Act but where the money is paid in, only a few days later and a large sum was paid and accepted in the following year, it is sufficient to establish waiver. (*Coxe and Roy, JJ.*) BHULAM MOHAN SIKDAR *v.* DHANARAJ OSWAL. **20 I. C. 329.**

——Art. 75—*Waiver—Meaning—Acceptance of overdue instalments.*

Where an instalment bond provides that the whole amount of the bond would be payable in case of default of any instalment, the acceptance of a portion of an overdue instalment does not constitute waiver and limitation runs from the date of default of the first instalment. (*Richardson and Newbould, JJ.*) SRINIVASA PRASAD *v.* SHEO GOBIND DOBEY. **20 I.C. 156.**

——Art. 75—*Waiver— Suit on instalment bond—Entire debt payable on demand — Acceptance of overdue instalment.*

A bond was payable by instalments in default, all to be payable at once. Plff. alleged that the first two instalments were paid but not subsequent instalments and he sued for the rest of the money. *Held*, that Art. 75 of the Lim. Act applies and limitation runs from date of default or where the payee has waived the provision as to a default incurring liability to pay the whole at once, then from the time of the next default. Although the first two instalments were paid a little after due time, their acceptance should be held to constitute waiver. (*Chevis, C. J.*) RAMJAWAYA SHAH *v.* RAMSING. **2 Lah. L. J. 314.**

——Art. 75—"*Waiver*" — *Reason of the provision as to.*

The provision as to waiver in Art. 75 of the Act is enacted only in favour of the promisee and it is open to him to waive its benefit. (*White, C.J. and Oldfield, J.*) SITARAMA CHETTY *v.* CHOTA KRISHNASWAMI CHETTY. **24 I. C. 507.**

——Art 75—*Waiver—Default.*

Art. 75 applies to a case of default in which a provision as to waiver may be material. If the plff. does not receive the offered payment, there is no default. Where there is no default there can be no waiver. (*White, C. J. and Oldfield, J.*) SITARAMA CHETTY *v.* CHOTA KRISHNASWAMI CHETTY. **38 Mad 374 : (1913) M. W. N. 676 : 21 I. C. 24 : 25 M L. J. 264.**

——Arts. 75—*Waiver—Award—Payment in instalments—Deduction of time.*

Under an award in a business dispute, the deft. passed an instalment bond in plff.'s favour. The bond, besides providing for monthly instalments, provided for the recovery of principal and interest, on default of three instalments. The deft. paid the instalments till May. The instalments for May and June were returned by the plff. In August he sued to set aside the award which was upheld on

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26th February 1908 and by the Appellate Court by 19th January 1910. During the appeal, the plff.'s Vakil applied for the decree of the unpaid instalments, but it was rejected. After the appeal the plff. sued for the recovery of instalments due. Deft. pleaded Art. 75 as bar. *Held* there was no default on the part of the defts. that there was waiver on the part of the plff. and that the plff could not deduct under S 14 the period of previous litigation and also that the defts. could not plead the bar of limitation and that the plffs. were entitled to interest on the instalments due as there was no true legal tender of those instalments (*Wallis, J.*) CHOTA KRISHNASWAMI CHETTY *v.* SITARAMA CHETTY. (1912) M. W. N. 967 : 17 I. C. 513 : 23 M L. J. 835.

——Art. 75—*Waiver—Acceptance of over due instalment.*

If the creditor does not enforce the stipulation for payment of the entire amount on default of any instalment he must be taken to have waived the benefit of it and time will run only from the date of each fresh default under Art. 75. Waiver is a question of fact the proof of which cannot be defined to any particular mode of proof and when a man does not take advantage of a stipulation in his favour, that is very strong evidence of waiver. It is not necessary to a waiver under Art. 75 that there must be an acceptance of an overdue payment of instalment. (*Abdur Rahim and Ayling, JJ.*) KARUNAKARAN NAIR *v.* KRISHNA MENON. 10 M. L. T. 258 : 12 I. C. 57 : 36 Mad. 66.

——Art. 75—*Waiver—Acceptance of overdue payments.*

Where an instalment decree provided for payment of yearly instalments on the 15th February of every year beginning from 15th Feb. 1912, and the plaintiff accepted payments made later than the due dates, *held* that from the moment of his acceptance the plff. was barred from enforcing the right which was his by reason of the defendant's default and that the defendant became barred from pleading and that limitation ran from 15th Feb. 1912. (*Kincaid, A. J. C.*) BAHADUR *v.* GELOMAL.

59 I. C. 607 : 14 S. L. R. 128.

——Art. 75—*Waiver — Instalment bond — Default.*

Where an instalment bond provides that the total amount would become due on default and a default is made, *Held*, that it is governed by Art. 75 unless the creditor waived his right to enforce the default provision. Failure to sue is not a waiver so as to affect limitation. (*Hayward, J. C. and Boyd, A. J. C.*) KINATRAI KASHIRAM *v.* WADERO SHER MAHOMED KHAN.

25 I. C. 938: 8 S. L. R. 63.

Miscellaneous.

——Arts. 75 and 132—*Instalment bond—Money due on default—Limitation.*

A mortgage of the year 1890 was payable by yearly instalments of Rs. 625 in 10 years. Interest was payable monthly. In case of default of payment of interest or principal the mortgagor was to be at liberty to recover the whole amount. There was a further provision that if the mortgagee did not realise the whole amount, interest would go on running, up to the date of realisation. *Held* (*Richards, C. J. and Tudball, J.*), that as soon as default was made in payment of any instalment the money became due within Art. 132 of the Lim. Act and the suit having been brought more than twelve years after that date was barred by limitation. 30 M. 426; (1891) 2 Q. B. D 509; 24 C. 281, Foll.; 29 A. 231; 30 A. 123 Dist. *Held*, (per *Banerjee, J.*) Having regard to the terms of the bond that in case no money was paid, interest was to run to the date of payment and the money secured by the bond did not become due until the expiration of ten years from the date of the bond. Where a creditor is authorised to wait for the full period stipulated for the repayment the money does not become due, within Art. 132 of the Lim. Act until that period expires. (*Richards, C.J., Banerjee and Tudball, JJ.*) GAYADIN *v.* JUMMAN LAL. 37 All. 400; 28 I. C. 910: 13 A L. J. 510 (F. B.).

——Art. 75—*Instalment bond.*

Where an instalment bond contained a condition that in default of payments on due dates the whole amount with interest shall be payable, the creditor is not compelled to sue for whole amount in default of any one instalment but can sue for any instalment due within 3 years. (*Knox, J.*) BOCHRA RAM *v.* LAL KHAN. 23 I. C. 830.

——Arts. 75 and 115—*Instalment bond—Default—Waiver.*

Where a suit for the recovery of the amount on a registered instalment bond is brought after 6 years from the date of the first default without any allegation of waiver of the first default in the plaint, the suit is time barred and must be dismissed. (*Tudball, J.*) BABU RAM *v.* JODHA SINGH. 18 I. C. 690: 11 A L. J. 89.

——Art. 75—*Instalment bond— Default—Waiver—Limitation.*

An instalment bond contained a stipulation to the effect that in case of default in payment of any instalment the whole amount of the bond was to be paid at once. None of the instalments were paid from the date of the creditor brought a suit after more than three years from the date of the first default to recover some of the instalments. *Held*, that in the absence of the waiver, the suit was barred by limitation. 30 A. 123 Dist. 30 A. 38; 31 Cal. 297, Rel (*Chamier, J.*) CHANDAN SINGH *v.* BIDHYA DHAR. 15 I. C 858.

——Art. 75—*Instalment bond— Default—Whole amount payable—Demand.*

The provision for demand in instalment bonds is to anticipate the due date and to enable the creditor to call in all the instalments without reference to the dates fixed for their receipt. When the instalments had ceased to run, there could be no question or demand or of exercising a right of option. When all the instalments have ceased to run, a suit brought more than three years after the last instalment but within three years from demand made afterwards is barred. (1918) M. W. N 586, Foll. (*Oldfield and Seshagiri Aiyar, JJ.*) KALIYAPPA NADAR *v.* GIRGORI PILLAI.

10 L. W. 64: 50 I. C. 916: (1919) M. W. N 660

LIMITATION ACT (IX OF 1908), Art. 75—Miscellaneous.

——— **Arts. 75 and 132**—*Hypothecation--Instalments—Option to creditor to sue for whole with enhanced interest on default—Limitation*

A hypothecation bond provided for payment by instalments and also contained default clause which gave the creditor an option requiring payment of the whole amount of the mortgage money at an enhanced rate of interest upon the failure of the debtor to pay any one of the instalments and the option was not exercised by the creditor: *held*, that the suit was governed by Art. 132 and not by Art. 75, that the contract for payment by instalments would subsist and that no enhanced rate of interest will be allowed if no demand was made. (*Bakewell and Phillips, JJ.*) LACHAKKAMMAL *v.* SOKKAYYA NAIK. **48 I. C. 191: (1918) M. W N. 586.**

——— **Art. 75**—*Instalment bond—Default in payment of instalment—Limitation.*

The period of limitation for a suit for recovery of overdue instalments upon a simple money bond providing for recovery of all the instalments on default of any one or all instalments, is in the absence of a waiver, three years from the date of the first instalment. (*Chamier, J. C. and Evans, A. J. C.*) SHEO NARAIN *v.* RAM DIN. **11 I. C. 526: 14 O. C. 129.**

——— **Art. 78**—*Payment by cheque or* hundi—*Dishonour—Limitation—Acknowledgment.*

In a suit for recovery of money due on accounts, deft. sent to plff. a *hundi* and cheque which were dishonoured on presentation, *Held*, that Art. 78 of the Limitation Act did not apply to the case. (*Mookerjee and Beachcroft, JJ.*) PADMA LOCHAN *v.* GIRIS CHANDRA. **46 C. 168: 45 I. C. 241: 27 C. L. J. 392.**

——— **Arts. 80 and 116**—*Bond payable in twelve years—Provision for periodical payment of interest—Default—Effect of.*

Under a mortgage the period fixed for redemption was 12 years but the mortgagor was to pay interest annually. In case of default it was open to the mortgagee either to add the interest due to the principal and charge compound interest or to sue for the principal at once. *Held*, that the bond fell under Art. 80 read with art. 116 of the Lim. Act and time began to run against the mortgagee from the date of the first default in payment of interest consequently a suit for sale on the mortgage or for a simple money decree against the mortgagor brought beyond the first date of first default, would be barred by limitation. (*Mears, C. J., Piggot, Walsh, Ryves and Sulaiman, JJ.*) SHIB DAYAL *v.* MEHARBAN. **20 A. L. J. 819 : 45 A. 27 : 1923 All. 1 (F.B.).**

——— **Art 80**—*Promissory note— Period of payment—Postponed—Limitation.*

The executant of a pro-note on 13-6-1913 to a Bank, wrote a letter asking the Bank that the period of payment be postponed for one year. *Held*, that the promissory note became payable on the 13th June 1914 and a suit within three years of this date was not barred by limitation. 39 M. 129 (F. B.) Rel. (*Banerjee and Walsh, JJ.*) JWALA PRASAD *v.* SHAMA CHARAN. **42 All. 55: 17 A. L. J. 950: 52 I. C. 235: 1 U. P. L. R. (H. C.) 132.**

LIMITATION ACT (IX OF 1908), Art. 81.

——— **Arts. 80, 66, and 67**—*Bond providing for repayment on happening of certain contingency—Starting point.*

Where a bond provided that the money due upon it would be paid at the time of payment of a certain sum of money due on two mortgage-deeds executed previously, the starting point of limitation is the date of such payment and Art. 80 of the Lim. Act governs the case. (*Shah Din, J.*) KIRPA RAN *v.* CHURU. **32 I. C. 575: 30 P. W R. 1916.**

——— **Art. 80**—*Writing fixing time for payment of money on a promissory note.*

A promissory note payable on demand was accompanied by a writing fixing a period for payment, *held*, that the suit by the payee was governed by Art. 80 and time began to run on the expiry of the time fixed. (*Wallis, C.J., Abdur Rahim and Seshagiri Aiyar, JJ.*) ANNAMALAI CHETTY *v.* VELAYUDHA NADHAR. **39 Mad, 129: 19 M. L. T. 62: (1916) 1 M. W. N. 93: 32 I. C. 669: 3 L. W. 38 : 30 M. L. J. 51 (F. B.)**

——— **Arts. 80 and 66**—*Bond—Money to be repaid with interest after fixed period—Default in payment of interest entitling creditor to call for whole amount—Suit to enforce bond—Limitation.*

Under the terms of a bond, the principal sum Rs. 500, interest was agreed to be paid at the rate of 6 p. c. per annum every year and in default of payment of interest for any year compound interest was to be paid. The whole amount of principal and compound interest was agreed to be paid within a period of 7 years. The bond further provided that the lender would have the liberty to demand the repayment of the entire sum due under the bond on the happening of default in payment of the interest due for any two consecutive years. There was a default in payment of interest for 2 consecutive years. In a suit on the bond it was contended that it was barred by limitation. *Held* that the suit was governed by art. 80 and not by art 66 of the Lim. Act. The creditor under the terms of the bond acquired merely an option to recall the whole of the money due thereunder on the happening of default in payment of the interest for 2 consecutive years and the breach of the original promise for the repayment of money within 7 years gave another remedy to him to enforce at the end of that period. (*Wazir Hasan, A. J. C.*) HARI LAL *v.* THAMMAN LAL. **26 O. C. 121 : 9 O. L. J. 416 : 4 U. P. L. R. (O.C) 103 : 1923 Oudh 19.**

——— **Art. 81**—*Suit against principal debtor.*

For a suit by surety against principal debtor the limitation is three years from the date of payment. (*Le Rossignol and Campbell, JJ.*) KUNJ LAL *v.* GULAB RAM. **67 I. C. 365 : 55 P. L. R. 1922.**

——— **Art. 81**—*Payment—Meaning of.*

The word "pays" in Art. 81 has the same meaning as in the Contract Act, S. 145, and means payment in money or its equivalent and not the incurring of a fresh obligation. *e. g.*, by executing a pro-note or bond, etc. (*Mitra, A. J. C.*) ANWARKHAN *v.* GHULAM KASAM. **50 I. C. 611 : 15 N. L. R. 78.**

LIMITATION ACT (IX OF 1908), Art. 81.

———Art. 81—*Payment by surety—What constitutes—Starting point of limitation.*

Under Art. 81 of the Lim. Act time begins to run from the time when the surety pays the creditor and the principal debtor remains liable to be sued for three years only after this payment has been made. Payment may be made in more ways than one and if moneys in court deposit are placed to the credit of the decree-holder, limitation against the principal debtor starts from that date and not from the date when the creditor actually draws out the money. (*Swinhoe, A. J. C.*) YINKE SUPAYA v. MAUNG KIN. 60 I. C. 23.

———Art. 83—*Contract of indemnity.*

Purchaser of equity of redemption subject to a prior mortgage, paying only for the equity, impliedly covenants to indemnify the vendor against the mortgage debt. Art. 83 applies to such an implied contract. (*Jenkins, C. J., and N. Chatterjee, J.*) RAM BORAI SINGH v. MOHENDRA PRASAD SINGH. 16 I. C. 73 : 16 C. W. N. 1040.

———Art. 83—*Suit by agent against principal for recovery of loss—Contract Act, S. 222.*

Where a commission agent buys goods for a principal but through the latter's default in paying for the same they are resold by the agent at a loss a suit by the agent to recover the amount of the said loss with interest and other incidental expenses must be brought within the period of limitation prescribed by Article 83, Limitation Act, in such a case operates to run from the date of the payment made on behalf of the principal and not from the date of the sale. (*Scott Smith and Fforde, JJ.*) FIRM OF DEVI SAHAI RANJI DAS v. TIRATH RAM. 1923 Lah. 473.

———Art. 83—*Suit by agent against principal for recovery of loss—Contract of indemnity—Date of payment—Starting point.*

Plffs. were commission agents at the request of the defendants they purchased two kothas of gram for them and paid the price out of their own pocket. Subsequently they sold them at a loss and instituted the present suit for the recovery of the loss together with interest and certain incidental expenses. *Held*, the suit was governed by article 83 of the Limitation Act and it was barred by limitation, having been instituted more than three years after the payment. 23 P R. 1915 : 34 M. 157 foll. (*Abdul Raoof and Martineau, JJ.*) KADARI PRASHAD v. HAR BHAGWAN.

66 I. C. 900 : 3 Lah. L. J. 65.

———Arts. 83 and 116—*Vendor and purchaser—Indemnity—Breach of contract—Limitation.*

A suit to recover compensation for the breach of a contract to indemnify the vendee against the claims of a mortgagee is governed by Art. 83 to the Limitation Act or if the contract is registered by Art. 116 of the Act. The starting point is the date when the purchaser was compelled to pay off the mortgage. (*Broadway and Abdul Kadir, JJ.*) ABDUL AZIZ KHAN v. MUHAMMAD BAKSH.

2 Lah. 316 : 64 I. C. 481 : 3 Lah. L. J. 542.

———Art. 83—*Suit for value of goods supplied by commission agent—Limitation.*

A suit for the recovery of the money due on account of the value of goods supplied by the plff. as commission agent to the deft. is governed by Art. 83. (*Ratligan, C. J.*) SARAB DIAL ISHAR DAS v. DEVI DITTAMAL GHORDHAN DAS.

139 P. W. R. 1918 : 46 I. C. 541 : 59 P. L. R. 1918.

LIMITATION ACT (IX OF 1908), Art. 84.

———Art. 83—*Right to be recouped—Loss by an agent.*

A suit by an agent to enforce his right to be recouped by his principal in respect of losses sustained during the agency is governed by Art. 83 of the Act, the right being the direct consequence of the agency contract. (*Ratligan and Le Rossignol, JJ.*) MANGHI RAM v. RAM SARAN DAS MAMAN CHAND. 35 P. W. R. 1915 : 23 P. R. 1915 : 26 I. C. 415 : 100 P. L. R. 1915.

———Art. 83—*Indemnity—Breach—Cause of action.*

Where there is a covenant in the nature of an indemnity (*i.e.*) to discharge debts on property the covenantor becomes liable only when the plff. actually suffers damages. *e. g.* by loss of possession, etc., and a suit brought within 3 years of that date is in time. (*Seshagiri Aiyar and Moore, JJ.*) SEETAMMA v. NARAYANMURTHI.

57 I. C. 982 : 38 M. L. J. 470.

———Arts. 83 and 116—*Indemnity bond—Breach—Suit.*

Claim on a registered indemnity bond is governed by Art. 116 and not by Art. 83. (*Krishnan, J.*) VENKATACHELLAM PILLAI v. KRISHNASWAMY PATTAN. 50 I. C. 673.

———Arts. 83 and 116—*Contract of indemnity—Vendee to discharge debts of vendor.*

The question whether a promise by the vendee to pay off the debt due from the vendor is a contract of indemnity within Art. 83 purely depends on the wording of the document in each case. 31 A. 583 Ref. Where the property was worth more than the debt and the discharge of the debt was the only consideration for the transfer, the contract to pay the debt is a contract to indemnity. Where, however, the vendor leaves part of the consideration in the vendee's hand to pay on the debts of the vendor, the vendor may sue the vendee if he fails to pay the debts after they become due and the words of such a covenant would not amount to a contract of indemnity proper. 30 M. 348 Dist. A contract of indemnity may be one of a sale or a gift. (*Abdur Rahim and Srinivasa Aiyangar, JJ.*) KALIYAMMAL v. KOLANDAVELA GOUNDER. 38 I. C. 188 : 6 L. W. 228.

———Art. 83—*Contract to pay rent, if assessed.*

Where a vendor of land held free of rent makes a covenant in a sale deed to pay rent if assessed and decreed against the vendee, a suit by the vendee to recover money paid as rent is a claim on a contract to indemnity and is governed by Art. 83 of the Act. (*Evans, J. C.*) TAJAMMUL HUSSAIN v. RAUNAK. 13 I. C. 979 : 16 C. C. 85.

———Art. 84—*Application by Attorney for realisation of costs—Summary inquiry—Calcutta High Court Rules—Limitation for suit.*

When an application by an attorney for realisation of costs under the High Court Original

LIMITATION ACT (IX OF 1908), Art. 84.

Side Rules Chap. XXXVIII, R. 67 involves enquiry, it would be dealt with in a summary manner, 52 Bom. 1; 24 Cal. 70 and 1 Bom, 25 Ref. Art. 84 of the Lim. Act applies to a suit for the purpose. (*Chaudhuri, J.*) LAKIMANI DASI *v.* DWIJENDRANATH MOOKERJEE.

46 Cal. 249 : 51 I. C. 941 : 23 C. W. N. 473.

——Art. 84—*Costs—Suit for fees by legal practitioner—Limitation.*

A suit by legal practitioner for remuneration for work done is governed by Art. 84. The word "costs" in Art. 84 is not confined to out of pocket expenses of the practitioner. (*Wallis, C. J. and Tyabji, J.*) MAHARAJA OF VIZIANAGARAM *v.* NARASINGA RAO. **29 I. C. 763.**

—— Art. 85—*Mutual, open and current account—Limitation.*

Plffs. and defts. agreed that the former should purchase grain for the latter and store it in their godown, that defts. should pay interest on the outlay, make a deposit to cover losses and that defts. should be entitled to any profits made upon the resale of the grain by plffs. *Held*, that the transaction was a mutual, open and current account and limitation began to run at the close of the year in which the last item was entered in the account. (*Richards, C. J. and Tudball, J.*) SHEO PARTAB SINGH *v.* BRIJ KISHORE. **15 I. C. 336.**

——Art. 85—*Essentials—Mutual open and current account.*

Under Art. 85 of the Lim Act the Court has to consider whether the account between the parties was mutual, open and current indicating reciprocal demands between the parties. It is not essential that the balance should in fact have been in favour of one party at some stage. It is enough if the dealings are such that the balance might have been in favour of either party. 23 Bom. L.R. 540 Ref. (*Shah, A.C.J. and Crump, J.*) SATAPPA JAKAPPA *v.* AUNAPPA.

24 Bom. L. R. 1284 : 47 B. 128 : 1923 Bom. 82.

——Art. 85—*Mutual account—What is—Suit. limitation*—Terminus a quo.

The test for determining if the dealings between the parties are mutual is to see whether the dealings are entered in an account consisting of mutual items of debit and credit and not whether they might give rise to independent obligations or reciprocal demands or whether the balance will shift from one side to the other. The limitation in the case of mutual dealings starts from the time in which the last item was entered in the account. (*Macleod, C. J. and Shah, J.*) MADHAV MOTI RAM *v.* JAIRAM SAKHARAM. **63 I.C. 950 : 23 Bom. L R. 540.**

——Art. 85—*Mutual account—Test of Punjab Loans Limitation Act* (1904).

The plaintiffs sued the defendants on accounts claiming Rs. 1,450. The suit was instituted on the 13th of August 1918. The accounts showed a balance struck of Rs. 361-6 0 in favour of the plaintiffs on the 20th May 1913. Thereafter the accounts continued for another year and ended with a total in favour of the plaintiffs of Rs. 832-9-0. No second balance was struck formerly, Interest at 1 per cent. per mensem was claimed, bringing the amount in suit up to Rs. 1,450. *Held* that the applicable article was 57 for which the period of six years under the Punjab Loans Limitation Act of 1904. The balance being an acknowledgment of starting fresh period of limitation under S. 19 of Act IX of 1908. An account is mutual, when there are transactions on each side creating independent obligation on the other and where the transactions create obligations on one side only, though on the other being merely complete or partial discharges of such obligations the account is not mutual. 59 I.C. 669 Appl. (*Campbell and Moti Sagar, JJ.*) THAKUR DAS *v.* THE FIRM BISHAN DAS.

1923 Lah. 636.

LIMITATION ACT (IX OF 1908), Art. 85.

——Art. 85—*Mutual, open and current account—Meaning of.*

It is well settled that an open account is one which is continuous or current, uninterrupted or unclosed by settlement or otherwise consisting of a series of transactions. A current account has been held to be an open or running account between two or more parties, or an account which contains items between the parties from which the balance due to one of them is or can be ascertained. Mutual accounts are accounts which show reciprocity of dealings between the parties and do not embrace those having item on one side only though made up of debits and credits. (*Scott-Smith and Moti Sagar, JJ.*) THE FIRM RUP CHAND-JIVAN SINGH *v.* THE FIRM POHO MAL-NATHU MAL. **1923 Lah 347.**

——Art. 85—*Mutual open and current accounts—Test of.*

The test of applying Art. 85 is mutuality and reciprocity; therefore where there are entries on one side showing cash advances, price of cloth sold, payment made to third person on behalf of the defendants for things supplied and commission charged, for purchases made by plaintiff for defendants and on the other side there are entries showing that the plaintiff firm received various kinds of grains from the defendant and having sold them in the market credited the proceeds to the defendants, the suit comes under Art. 85 of the Limitation Act. Nature of mutual, open and current accounts fully considered. (*Abdul Raoof and Harrison, JJ.*) ABDUL HAQ *v.* THE FIRM SHIVJI RAM-KHEM CHAND. **1922 Lah. 338.**

——Arts. 85 and 64—*Mutual, open and current account—Striking of balance—Suit for recovery of money—Limitation.*

Where there were mutual dealings between the parties, though balances were struck from time to time, they were merely acknowledgments and not agreements to pay. The case is one not of a stated account but of a mutual, open and current account where there have been reciprocal demands between the parties and a suit for recovery of money due on such account would be governed by art. 85 and not by art. 64. 16 P. R. 1916; 32 A. 11; 22 B. 606 Foll. (*Chevis and Harrison, JJ.*) JAWALA DAS *v.* HUKAM CHAND. **1922 Lah. 316.**

——Art. 85—*Current account—Striking balance—Novation of contract.*

Where defts used to send grain to plaintiff to be stored and sold by the latter and used to

LIMITATION ACT (IX OF 1908), Art. 85.

borrow money too and the latter sued to recover the balance struck by the defendants, *held* that the suit was governed by Art. 85, as the dealing disclosed a mutual, open and current account, and the mere striking of the balance was no evidence of a new contract. (*Abdul Raoof and Martineau, JJ.*) RATAN CHAND JWALA DAS *v.* ASA SINGH BOGHA SINGH. 62 I. C. 898.

——Art. 85 — *Mutual, open and current account—What constitutes—Mutual demands.*

Although the account between the parties is a current and open one yet in order that Art. 85 may apply it is also necessary that each party must have a demand against the other. Where however it has not been shown that the defendants-respondents could have made any such demand during the currency of the account the requirements of Art. 85 have not been fulfilled. 6 C. L. J. 158 ; 17 M. 293 ; 34 M. 513 ; 27 I. C. 879 ; 22 B. 606 ; 21 I. C. 773 ; 32 A. 11 and 17 I. C. 69 Ref. (*Shadi Lal and Broadway, JJ.*) THE SHOP HARDILAL RAM *v.* POKHAR DAS. 3 Lah. L. J. 362.

——Art. 85—*Mutual account, what is—Shifting balance necessity.*

For a mutual account there are obligations on each side creating independent obligations on the other. Where the obligation is on one side only those on the other being merely complete or partial discharges of such obligations, the account is not mutual. The absence of a shifting balance however is not conclusive against the mutuality. Where plff. used to advance money to defts. who used to send grain to plff. who used to sell it and credit it to the defendant after deducting his commission, *held*, that the account was a mutual one. (*Scott-Smith, J.*) RATAN CHAND JWALA DAS *v.* ASA SINGH BOGHA SINGH,

3 U. P. L. R. (Lah.) 3 : 59 I. C. 669 : 26 P. W. R. 1921.

——Art. 85—*Balance due on current account—Last item within time but advanced more than 3 years of preceding item.*

Where the last item in a mutual, open and current account was advanced to defts. within 3 years but that item was advanced more than 3 years after the close of the year in which the last preceding item was entered, the suit is barred by limitation in respect of the previous account. (*Scott-Smith and Martineau, JJ.*) GOBIND RAM *v.* JWALA RAM,

1 Lah. 12 : 64 P. L. R. 1920 : 55 I. C. 872 : 35 P. W. R. 1920.

——Art. 85—*Mutual, open and current account*—Bahi — *Balance struck and carried forward—Reciprocal demands.*

Plff. sued for money due on a *bahi* account. Plff. had supplied defts. with money and with various articles the values of which were given in the account and debited against defts. There were mutual demands between the parties on balances struck up to a certain date. The account was not closed even on that date but the balance was carried forward. *Held*, the accounts between the parties were mutual, open and current and the

LIMITATION ACT (IX OF 1908), Art. 85.

suit was governed by Art. 85 of the Lim. Act. 75 P. R. 1910, Dist. (*Rattigan, J.*) DOGAR MAL *v.* MULA.

17 P. W. R. 1920 : 54 I. C. 453 : 9 P. L. R. 1920.

——Art. 85—*Scope of.*

In the case of the plff. alone being the banker, advancing and receiving part-payments, without mutual accounts or demands but with a balance in his favour, Art. 85 of Sch. I. of the Lim. Act is not applicable. (*Chevis, J.*) BUDH RAM *v.* RALLI RAM.

37 I. C. 300 : 103 P. W. R. 1916

——Art. 85— *Mutual, current and open accounts—Test of.*

In order that accounts might be mutual within the meaning of Art. 85 of the Limitation Act there must be transactions on each side, creating independent obligations on the other, and not merely transactions which create obligations on the one side, those on the other being merely complete or partial discharges of such obligation. If there may be a balance in favour of either party it follows that there must be mutual liabilities of both parties to each other ; if however the balance is always in favour of one party in the very nature of the transactions, then there is no case of separate mutual dealings and Art. 85 will not apply. 6 C. L. J. 158 foll. (*Schwabe, C. J. and Wallace, J.*) THURUTHEELAKATH T. P. KUNHIKUTTI ALI *v.* KUNHAMMAD.

44 M. L. J. 184 : 17 L. W. 243 : (1923) M.W. N. 81 : 1923 Mad. 278.

——Art. 85—"*Open, mutual and current account.*"

Where *A* sends goods to *B* for sale on commission, receives advances thereof from time to time and settles the sum due by him at periodical settlement of accounts, *Held*, that a suit for accounts by *A* against *B* after the dealings had stopped is not a suit on an "Open, mutual and current account" within Art. 85 of the Act. (*Abdur Rahim and Srinivasa Aiyangar, JJ.*) KUPPUSAWMY AIYAR *v.* VEERAPPA CHETTIAR.

37 I. C. 875 : 5 L. W. 375.

——Arts. 85 and 88—*Applicability—Mutual, open and current account.*

Where in the dealings between the parties something outside the mere entrusing of goods for sale is found such as for example advances from time to time by the plff. to the deft. and credit for the goods sold on deft.'s behalf, these elements are quite sufficient to bring the case under Art. 85 for the balance due on a mutual, open and current account and Art. 88 has no application. Where plff. advanced different sums at different times to the deft. which advances were treated under an agreement as a consolidated debt commencing from the date of agreement and a pro-note was executed by the deft. the same day about the consolidated items, *held* that a suit on the basis of the dealings fell under Art. 85 and not under Art. 88. (*Sadasiva Aiyar, Bakewell and Napier, JJ.*) BAPU SAHIB YOUSUFF SAHIB *v.* ISAC ISMAIL & Co. 29 I. C. 462 : (1915) M. W. N. 519.

LIMITATION ACT (IX OF 1908), Art. 85.

——Art. 85 — *"Mutual, current and open account", what is.*

To constitute a "mutual, current and open account" the account must not only be mutual, current and open but there should also be reciprocal demands between the parties. 34 M. 513, Dist.; 6 T. R 189, Foll. Per *White, C. J. and Oldfield, J. dissenting.*—An advance by one person to another for carrying on business with him does not cease to be an item of debit against the other in the mutual, open and current account by the fact of execution of a promissory-note for the advance received. (*White, C. J. and Oldfield, J.*) SOWCAR BAPU SAHIB Co. *v.* ISOC ISMAIL & Co.
24 I. C. 128.

——Art. 85—*Advance of money—Consigning goods on commission—Obligation, nature of.*

Where the plff. advanced money to the deft, and the latter consigned goods for sale on commission there were independent obligations and mutual account within Art. 85 of the Lim. Act. (*Wallis, J.*) NUMBERUMAL CHETTY *v.* KOTTAYYA.
21 I. C. 773 : 14 M. L. T. 498.

——Art. 85 — *Mutual, open and current accounts—Test.*

The test to find out a mutual, open and current account is whether there were mutual demands and not merely payments by one party to the other on account of a debt due by the former to the latter. Mere shifting of balances sometimes in favour of one party sometimes in favour of another affords no real test of mutuality though it is an important consideration. 34 M. 513 ; 21 M. L. J. 391 ; 17 M. 293, Ref. (*Sundara Aiyar and Sadasiva Aiyar, JJ.*) THUPPATI VEERI CHETTI *v.* MOLUGUVAM RANGANAYAKULU AIYAR. 17 I. C. 48 : 23 M. L. J. 516.

——Art. 85—*Balance always in favour of one party.*

Per *Abdur Rahim, J.*—It is not sufficient that the acccount is open and current or that the entries show debit and credit ; there must be reciprocal demands. Accounts are not open and current when the opposite party is not allowed to show that they were not kept in the ordinary course of business. (Per *Phillips, J.*) It makes no difference that the expenditure and receipts are kept in separate books, nor that the balance is always found to be in favour of one party. (*Abdur Rahim and Phillips, JJ.*) SUBBA NAIDU *v.* ETHIRAJAMMAL. 10 M L. T. 409 : (1911) 2 M. W. N. 440 : 12 I. C. 673 : 22 M. L. J. 14.

——Art. 85 — *Mutual, open and current account—Test of.*

The fact that the balance of an account was always in favour of the same party does not prevent the account from being mutual. The test is the intention of the parties. (*Hallifax, A. C. J.*) PANDURANG *v.* KALLUDAS. 1923 Nag. 108.

——Art. 85 — *Mutual, open and current account—Nature of.*

Where in respect of transactions between the parties no balance was struck and payments were made by one party not in respect of any particular transaction, but in respect of the account generally and hundis were drawn from time to time by one party at a time when the balance was decidedly in the other party's favour. *Held*, that the transactions constituted a case of mutual, open and current account with reciprocal demands within the meaning of Art. 85 of the Limitation Act. (*Daniels, A. J. C.*) BANKE LAL *v.* KANHAIYA LAL. 1922 Oudh 124.

——Art. 85—*Mutual account—Test—Shifting balance if necessary.*

Mutual accounts are such as consist in reciprocity of dealings between the parties and do not embrace those having items on one side only though made up of debits or credits. Where the account in this case shows dealings between the parties which amounted to mutual debits and credits on both sides so that sometimes the balance was in favour of one party and sometimes of the other, the case comes within art. 85 of the Lim. Act. It is not necessary that there must have been a shifting balance, but it must be shown that was a possible and likely incident of the mutual transactions with regard to which the account was kept. (*Kulwant Sahay and Foster, JJ.*) FYZABAD BANK, LTD. *v.* RAM DAYAL.
4 P. L. T. 571 : 1924 P. 107.

——Art. 85 — *Mutual, open and current account—Test of.*

It cannot be said that an account is a mutual account simply because there may have been occasionally a balance in the defendant's favour. There must have been reciprocal demand between the parties. 17 M. 293 ; 6 C. L. J. 158 followed. (*Ross, J.*) RAM SUNDAR *v.* AMRIT PAJIYAR.
4 P. L. T. 424 : 1 P. L. R. 288 : 1923 P. 242 (1).

——Arts. 85 and 115—*Mutual, open and current account—Test of mutuality— Adjustment when effective to save limitation.*

Unless the account is a mutual, open and current account an adjustment in the presence of the parties does not furnish a fresh starting point of limitation. An account current is an open or running account between two or more parties or an account which contains items between the parties from which the balance due to one of them is or can be ascertained. From this it follows that such an account comes under the terms of open account in so far as it is running unsettled or unclosed. The test of mutuality is that the dealings between the parties should be such that the balance is sometimes in favour of one party and sometimes in favour of the other. Where account does not indicate transactions creating independent obligations on both sides, it is not mutual account. 42 C. 1043 ; 15 C. W. N. 882 ; 6 C. L. J. 158 ; 17 M. 293 ; 5 C. 759 Rel. (*Coutts and Ross, JJ.*) GOPAL RAI *v.* HARCHAND RAM ANANT RAM. 3 P. L. T. 492 : 1922 P. 364.

——Art. 85—*Mutual account.*

The agent for both the parties, lent money on behalf of one firm to himself as agent for the other firm. Each of these loans gave rise to a right of set off or claim against the borrower, and as both plaintiff and defendant were on occasions the lenders, these transactions gave

LIMITATION ACT (IX OF 1908), Art. 85.

raise to reciprocal demand from time to time. The accounts were never settled. *Held*, the fact that the agent for his own convenience totalled up the position and made entries of the result in each firm's books did not close the account. It was continuous and was, therefore, an open and current account, and having regard to the mutual loans, it was also a mutual account. 8 L. B. R. 149, Dist. (*Robinson, C. J. and Macgregor, J.*) R. M. A. R. R. M. CHETTY FIRM *v.* V. E. R. M. N. SOMASUNDARAM CHETTY.

11 L. B. R. 369 : 1 Bur. L. J. 240 : 1923 Rang. 18.

——Art. 85—"*Mutual and current account.*"

To show that an account was mutual, it is necessary to prove not only that one of the parties has received money and paid on account of the other, but also that each of the two parties has received and paid on the other's account. Each party should be able to say against the other "I have an account against you". 5 Cal. 759; 6 C. L. J. 158, Foll. (*Fox and Hartnoll, JJ.*) EBRAHIM AHMED MEHTER *v.* S. ABDUL HUQ.

8 Bur. L. T. 116 : 27 I. C. 879 : 8 L. B. R. 149.

——Art. 89.

Administrator.
Applicability.
Death of Agent.
Death of Principal.
Demand and Refusal.
Moveable Property.
Termination of Agency.

Administrator.

——Art. 89—*Administrator—Limit for account against.*

In a suit for accounts against the administrator, the limitation runs from the date when the plff. is entitled to put an end to the administration on attaining majority and not from the date on which he does in fact put an end to it. (*Sharfuddin and Roe, JJ.*) JANARDHAN PRASAD *v.* JANAKIBATI THAKURAIN.

2 P. L. J. 642 : 4 P. L. W. 337 : 40 I. C. 860 : 1918 Pat. 170.

Applicability.

——Arts. 89 and 62—*Applicability—Co-owner suing for account of property.*

Where two divided families have joint dealings managed by the eldest member, a suit for account against the manager is governed by Art. 89 and not by 62. (*Lord Phillimore.*) MERLA VENKANNA *v.* MERLA AGASTHIAN.

27 C. W. N. 725 : 32 M. L. T. (P.C.) 86 : 1923 P. C. 31 (P.C.).

——Arts. 89 and 11—*Applicability—Suit for—Money left with vendee for payment to creditors.*

A suit by vendor to recover from the vendee the money left in his hands to be paid to creditors which he has failed to pay must be regarded as a suit for account in spite of the plaintiff's asking for a decree for a definite sum. (*Chamier, J.*) ABADI BIBI *v.* ILAHI BAKHSH.

18 I. C. 336 : 11 A. L. J. 152.

——Arts. 89 and 62—*Applicability—Co-sharers—Joint family—Partition—Portion left joint—Suit for account.*

LIMITATION ACT (IX OF 1908), Art. 89—Applicability.

Where at a partition of a joint family a portion of the property is left joint in the hands of one member it belongs to all members as tenants-in-common and the member in whose possession it is left holds it as an agent of the other members. Therefore a suit by the other members for an account of such property and for recovery of their shares is governed by Art. 89 and not Art. 62 of the Act. (*Macleod, C. J. and Fawcett, J.*) GABU NAROBA *v.* ZIPRU RAMSING.

45 Bom. 313 : 59 I. C. 357 : 22 Bom. L. R. 1289.

——Arts. 89, 115 and 64—*Applicability—Adjusted account—Suit for money due on.*

Where the accounts of an agent have been taken and adjusted and a specific sum is found due from agent to principal, the principal can sue forthwith under Art. 64 or 115 of the Limitation Act and not under Art. 89 by which are contemplated suits in which accounts have to be taken. (*Mookerjee and Richardson, JJ.*) KESHO PRASAD SINGH *v.* SARWAN LAL.

25 C. L. J. 335 : 40 I. C. 359 : 21 C. W. N. 591.

——Arts. 89 and 132—*Applicability.*

Where an agent executed a kabuliat hypothecating certain immoveable property and the agent was dismissed later on but was re-appointed, *held*, that agent's position at the year of re-appointment was not governed by the kabuliat but the ordinary rules applicable to principal and agent and art. 89 of the Limitation Act applied to the suit. (*D. Chatterjee and Richardson, JJ.*) BEHARI LAL RAI *v.* HARA KUMAR DUTTA.

29 I. C. 748 : 21 C. L. J. 458.

——Arts. 89 and 36—*Applicability—Suit for money misappropriated.*

A suit for money received and misappropriated by a servant is governed by Art. 89 and not by Art. 36. It is immaterial in a civil action whether the misappropriation charged is criminal or not. If there is no misappropriation but money is payable by the deft. to the plff. for money received by the deft. and not accounted for, Art. 89 still applies. (*Holmwood and Mullick, JJ.*) SEOSARAN LAL *v.* HARIHAR PRASAD SINGH.

28 I. C. 452.

——Arts. 89—*Applicability—Suit for money paid to make a joint purchase.*

A suit to recover money paid to deft. to be used in a joint purchase of property, is governed by Art. 89 and not Art. 60 or 106, as the deft. was acting only as the agent of the plff. (*Shadi Lal and Le Rossignol, JJ.*) JETHA RAM *v.* MEHNGA RAM.

33 I. C. 438.

——Arts. 89, 109 and 120—*Applicability—Co-sharers—Collection of outstandings by one member—Suit by other members for recovery of their share—Limitation.*

Art. 89 would apply if the defendant acted as plaintiff's agent implied or express. If there is no agency, Art. 120 would apply. (*Devadoss, J.*) YERN KOLA *v.* YERN KOLA.

42 M. L. J. 507 : (1922) M. W. N. 215 : 45 M. 648 : 15 L. W. 595 : 30 M. L. T. 279 : 1922 Mad. 150.

LIMITATION ACT (IX OF 1908), Art. 89—Applicability.

——Arts. 89 and 115 — *Applicability—Suit against agent for account.*

A suit by a principal against his agent for money received and not accounted for, is governed by Art. 89 and is barred after three years of the date of termination of the agency. An agent's contract to account, is specially provided for in Art. 89 and cannot be included in Art. 115 of the Act. 12 A. 541: 26 C. 715, diss.: 14 C. 147: 5 I. C. 59: 24 A. 27, foll. (*Wallis, C. J. and Seshagiri Aiyar, J.*) VENKATACHELLA CHETTY *v.* NARAYANA CHETTY.

39 Mad. 376: 26 I. C. 740: 28 M. L. J. 140.

Death of Agent.

——Art. 89—*Death of agent—Suit against heirs of agent—Onus.*

The burden will lie upon the plff. to establish with regard to each specific sum that he is entitled to recover it. Art. 89 is not applicable to a suit brought, not against the agent, but his representatives. 96 P. R. 1886: 7 C. 627 Ref. Nor does this article show even by implication that a suit can be maintained against the representatives of a deceased agent. The intention of the law of limitation is not to give a right where there is not one, but to debar, after a certain period a suit to enforce an existing right. 33 A. 356; Rel. (*Mookerjee and Holmwood, JJ.*) KUMUDA CHARAN BALAL *v.* ASUTOSH CHATTOPADHYA.

17 C. W. N. 5: 16 I. C. 742: 16 C. L. J. 282.

——Arts. 89 and 115—*Death of agent—Suit for accounts against heirs of agent—Limitation.*

A suit by a principal against his agent falls within Art. 89; but if after the termination of agency by the death of the agent, an action for accounts is brought against his heirs it is governed by Art. 115. If there is a contract in writing registered, Art. 116 applies. The plff. is entitled to accounts for only such period as falls within three years of the institution of the suit, if Art. 115 applies. 35 C 298: 24 A. 27: 14 C. W. N. 121: 11 C. L. J. 43 ref. (*Sharfuddin and Coxe, JJ.*) JHAPAJHANESSA BIBEE *v.* BAMA SUNDARI CHAUDHURANI.

16 I. C. 414: 16 C. W. N. 1042: 16 C. L. J. 288.

——Arts. 89 and 120—*Death of agent—Suit for rendition of accounts against heirs of an agent.*

A suit for rendition of accounts against the heirs of an agent in respect of rents and profits received during the agent's life-time and for realisation of the amount due from his estate, is governed by Art. 120 and not by Arts. 62 or 89, and time runs from the date of agent's death. 96 P. R. 1886: 10 C. 860: 31 A. 429, Foll. (*Johnstone and Shah Din, JJ.*) FATNA *v.* IMTIAZIJAN.

1 P. R. 1912: 59 P. L. R. 1912: 13 I. C. 930: 33 P. W. R. 1912.

Death of Principal.

——Art. 89—*Death of principal—Suit for—Accounts by heirs of deceased principal.*

The period of limitation for a principal to sue his agent is, under Art. 89, three years from the date the accounts were demanded or from the conclusion of the agency. The heirs of a deceased principal are entitled to demand an account for a period of three years, whether the principal has demanded or not. (*Lord Parmoor.*) NOBIN CHANDRA BARUA *v.* CHANDRA MODHAB BARUA.

44 Cal. 1: 20 M. L. T. 430: 21 C. W. N. 97: 14 A. L. J. 1199: 18 Bom. L. R. 1022: 31 M. L. J. 836: 24 C.L.J. 509: (1916) 2 M.W.N. 565: 36 I.C. 1: 5 L. W. 452 (P. C.).

LIMITATION ACT (IX OF 1908), Art. 89—Demand and Refusal.

——Arts. 89 and 120—*Death of principal—Suit against agent after death of principal—Position of agent—Trustee—Limitation.*

Where a person acted as *gomastha* of J until J's death in July 1912, and then he acted as agent under J's widow, in a suit more than three years after her husband's death, against the agent for accounts from 1894 to 1915. *Held*, that Art. 89 of the Lim Act applied to the case and the claim for accounts for the period up to the death of J. was barred by limitation as the agency was terminated on J's death and as the suit was brought more than three years after J's death. 43 Cal 248: 44 Cal. 1 foll. As the agent was not sued for any act done by him after the death of his late principal, which he might have done as a trustee, neither S. 209 of the Contract Act nor Art. 120 of the Limitation Act applied to the case. (*Chatterjee and Panton, JJ.*) SM. SARSHIBALA DASI *v.* CHUNI LAL GHOSH.

26 C. W. N. 320: 1922 Cal. 53.

——Art. 89—*Death of principal—Co-sharer—Management by one on behalf of another—Suit by heirs of principal.*

A co-sharer managing a property on behalf of his co-sharer also is an agent of the latter after which if the property continues to be managed, the manager would be the agent of the representatives of the deceased co-shares. A suit for account against the manager by the representatives is governed by Art. 89. The commencement of the limitation will be the termination of the agency where there is no demand for any account or where demands have been going on, as long as the management continued. But if a demand was made which met with no attention, limitation will run from the date of demand. (*Stephen and Richardson, JJ.*) CHANDRA MADHAB BARUA *v.* NABINCHANDRA BARUA.

40 Cal. 108: 18 I. C. 735: 17 C. L. J. 103.

Demand and Refusal.

——Arts. 89 and 115—*Demand and refusal—Omission to render accounts if refusal.*

A suit for accounts by a principal against his agent, is governed by Art. 89, Lim. Act, even if there is an agreement by the agent to render account every year. The mere failure of the agent to render accounts on demand does not amount to refusal within Art. 89 of the Act. The question whether the failure of the agent to render accounts amounts to refusal depends upon the circumstances of each case. (*Panton and Chatterjee, JJ.*) BHABATARAM DEBI CHOWDURANI *v.* SHEIKH BAHADUR SARKAR.

53 I. C. 675: 30 C. L. J. 90.

——Art. 89—*Demand and refusal—Refusal by implication.*

If there has been a demand for accounts and the agent has not responded to the call, there is

LIMITATION ACT (IX OF 1908), Art. 89—Demand and Refusal.

an implied refusal within Art. 89. So also where the agent has submitted accounts but has failed to respond to the principal's demand to explain them. (*Mookerjee and Roe, JJ.*) MADHUSUDAN SEN *v.* RAKHAL CHANDRA DASS BASAK.

43 Cal. 248 : 19 C. W. N. 1070 : 30 I. C. 697 : 22 C. L. J. 552.

——Art. 89—*Demand and refusal—Suit for accounts—Agent, Manager of properties—No demand—Right of principal.*

An agent was appointed on 24-5-1896 for the management of lands and in 1897 the principal transferred the property to his wife and 2 years later, the wife transferred it to the husband. The agent continued to manage it as if no transfer had been effected and the agency was finally terminated in 1910. The present suit was instituted on 22-3-1911, in respect of accounts. *Held*, that Art. 89 applied and in the absence of any demand and refusal during the continuance of the agency, the plaintiff was entitled to the accounts claimed. 32 C. 719; 35 C. 298 Ref.: 5 I. C. 59 Dist. (*Mookerjee and Richardson, JJ.*) SURES KANTA BANERJEE *v.* NAWAB ALI SIKDAR.

20 C. W. N. 356 : 29 I. C. 848 : 21 C. L. J. 462.

——Arts. 89 and 120—*Demand and refusal—Suit for accounts.*

Art. 120 is a residuary article applicable only where no other article covers the suit. Express demand and refusal are necessary to start limitation under art. 89. (*Robertson and Shah Din, JJ.*) SHAM LAL *v.* BANIKA MAL.

14 I. C. 19 : 208 P. W. R. 1912.

——Art. 89—*Demand and refusal—Refusal—Meaning of.*

The refusal of an agent to render accounts mentioned in Art. 89 must be an express refusal on a definite date and not a mere refusal to be inferred from the omission on his part to fulfil a promise which he has made to render accounts in answer to a demand made by the principal. 3 C. L. R. 446 diss.: 11 C. L. J. 43 dist. (*Johnstone and Shah Din, JJ.*) FATNA *v.* IMTIAZAJAN.

1 P. R. 1912 : 33 P. W. R. 1912 : 13 I. C. 930 : 59 P. L. R. 1912.

——Art. 89—*Demand and refusal—Co-principals—Demand by one does not start limitation.*

In a suit by co-principals for accounts against an agent in the absence of a joint demand, limitation under Art. 89 runs from the termination of the agency. A demand by one only does not start limitation as against him. (*Das and Kulwant Sahay, JJ.*) JAGDIP PRASAD SAHAI *v.* MT. RAJO KUER.

2 P. 585 : 4 P. L. T 531 : 1923 Pat. 177 : 1923 P. 464.

——Arts. 89 and 90—*Demand and refusal—Suit by principal against agent for recovery of money not accounted for—Suit against representatives of agent.*

Where a principal sues his agent for recovery of money received by the agent on his behalf and not accounted for, the suit is governed by Art. 89 of the Limitation Act and where the agency is continuous, the period of limitation starts from the date when the agent refuses to account for the moneys. A suit by the principal against his agent for damages caused by the agent's breach of duty or negligence is governed by Art. 90 of the Limitation Act, and the starting point of limitation is the date when the breach of duty or negligence comes to the knowledge of the principal. Arts. 89 and 90 of the Limitation Act which relate to suits by principal against his agent have no application to a suit by the principal against the representatives of his deceased agent. (*Miller, C.J and Foster, J.*) RAMESWAR SINGH BAHADUR *v.* NARENDRANATH DAS. 1923 P. 259.

LIMITATION ACT (IX OF 1908), Art. 89—Termination of Agency.

——Art. 89—*Demand and refusal—Refusal to render accounts—Postponement—Limitation.*

The refusal contemplated in Art. 89 is a definite refusal and there must be definite evidence that a definite demand was made upon a definite date and refused. It is insufficient to say that demands were made from time to time and the plffs. were "Put off" by the defts. "Put off" means postponement and the postponement is by no means tantamount to refusal. (*Roe and Imam, JJ.*) NAWAB CHOUDHURY *v.* LOK NATH SINGA.

43 I. C. 570.

Moveable Property.

——Arts. 89, 115 and 116—*Moveable property—Suit for accounts against a rent collector—Limitation.*

A suit for accounts against a rent collector, is governed by Art. 89 of the Act, as the term "moveable property" includes money and excludes the operation of Arts. 115 and 116, time running from the date of refusal to render an account. (*Mookerjee and Buckland, JJ.*) PRAM RAM *v.* MOHARAJ, 26 C. W. N. 61 : 49 Cal. 250 : 35 C. L. J. 111 : 1922 Cal. 355.

——Art. 89—*Moveable property—Money.*

The expression 'moveable property' in Art. 89 extends to money. (*Mookerjee and Richardson, JJ.*) KESHO PRASAD SINGH *v.* SARWAN LAL.

25 C. L. J. 335 : 40 I. C. 359 : 21 C. W. N. 591.

——Art. 89—*Moveable property—Money.*

Money is moveable property within Art. 89 of the Act. (*Wallis, C. J. and Seshagiri Aiyar, J.*) VENKATACHELLAM CHETTY *v.* NARAYAN CHETTY.

39 Mad. 376 : 26 I. C. 740 : 28 M. L. J. 140.

Termination of Agency.

——Art. 89—*Termination of agency—Question of fact.*

The question when an agency terminates, is a question of fact. (*Wallis, C. J. and Seshagiri Aiyar, J.*) MUTHIAH CHETTY *v.* ALAGAPPA CHETTY. 45 I. C. 430 : 41 Mad. 1

——Art. 89—*Termination of agency.*

The facts of a case should determine the question of the termination of an agency. *Quaere.*—Whether an agency continues for purposes of the agent's accounting to the principal even after the cessation of all dealings between them. 39 M. 376 appr: 12 A. 541: 26 C. 176 Dis appr. (*Abdur Rahim and Srinivasa Aiyangar, JJ.*) KUPPUSWAMY AIYAR *v.* VEERAPPA CHETTIAR.

37 I. C. 875 : 5 L. W. 375.

LIMITATION ACT (IX OF 1908), Art. 89—Termination of Agency.

——— Art. 89—*Termination of agency—Agency—Termination—Salary chit.*

The question where an agency terminates within Art. 89 is one of fact. It cannot be treated as a question of law and disposed of without evidence. It is not a matter of law that on the expiry of the term mentioned in the salary chit the agency comes to end *ipso facto*. A salary chit means only that the agency shall not terminate before the expiry of the term fixed by it or that agency shall last for the term fixed after which it may be continued. It does not mean that after the expiry of the period there is a new agency but only that the original agency continues. (*Ayling and Srinivasa Aiyangar, JJ.*) RAMANATHAN CHETTY *v.* KASI.

(1916) 2 M. W. N. 360 : 36 I. C. 804 : 4 L. W. 452 : 31 M. L. J. 685.

———Art. 89—*Termination of agency—Subsequent resumption of work—Suit—Limitation.*

Where an agent throws up the agency and leaves the place of business the agency is terminated within Art. 89, Lim. Act. The mere fact that he subsequently goes back to the place, and does some business, cannot prevent the running of time as regards the first agency. (*Wallis, C.J. and Srinivasa Aiyangar, J.*) PALANIAPPA CHETTY *v.* ALAGAPPA CHETTY.

30 I. C. 691.

[See also 26 I. C. 740 : 28 M. L. J. 140]

———Art. 89—*Termination of agency—Winnings of a lottery—Limitation.*

In a suit for money received by defendant as agent for plaintiff on account of plaintiff's winnings in a lottery, the agency continues so long as the money is held by the defendant for the plaintiff, and the right to sue arises under Art. 89 when the money is demanded and payment is refused. (*Rigg, J.*) HORMASJI *v.* POHMYIN.

51 I. C. 530 : 12 Bur. L. T. 9.

———Art. 90—*Suit against agent for neglect of duty—Starting point for limitation.*

Under Art. 90 the period of limitation for a suit against an agent for neglect of duties commences on the date on which the principal comes to know of the neglect and not when he realises that he has a sufficient cause for a good case against the agent. (*Chatterjee and Walmsley, JJ.*) JANKI KOER *v.* MAHABIR PRASAD.

25 I. C. 706.

———Art 90—*Agent failing to pay money to third person— Suit by third person against principal.*

A suit against a person for default to pay money to plff.'s creditor by reason whereof the creditor has obtained a decree against the plff. is governed by Art. 90, Limitation Act. (*Krishnaswamy Aiyar, J.*) RANGASWAMI AIYANGAR *v.* SRINIVASA AIYANGAR.

9 M. L. T. 268 : 9 I. C. 54 : 21 M. L. J. 453.

———Art. 90—*Principal and agent—Suit for neglect or misconduct—When becomes known.*

A suit for recovery of unauthorised payments made by the agent on account of the principal is governed by Art. 90. Time runs not from the date on which agency terminated or the accounts were made over to the principal, but when the neglect or misconduct by the agent comes to the knowledge of the principal, a reasonable time being allowed for examination of the accounts. (*Fox, C. J. and Twomey, J.*) ARDIKAPPA CHETTY *v.* KADAPPA.

36 I.C. 418 : 9 Bur. L. T. 130.

LIMITATION ACT (IX OF 1908), Art. 91—Alienation by third Party.

———Art. 90—*Suit against agent for misconduct.*

Limitation under Art. 90 for the principal's suit against the agent for his misconduct will run from the day the account books are got from the agent, as it is then that the principal will come to know of the agent's misconduct. (*Ormond and Parlett, JJ.*) P. R. N. PALANIAPPA CHETTY *v.* P. M. R. M. FIRM.

25 I. C. 136 : 7 Bur. L T. 199.

———Art. 91

Alienation by Co-parcener.
Alienation by Guardian.
Alienation by third Party.
Effect of Bar under.
Fraudulent Alienation
Starting point of Limitation.
Void Document.
Miscellaneous.

Alienatien by Co-parcener.

———Art. 91—*Alienation by Co-parcener—Declaration.*

Art. 91 does not apply to a suit by one member of a joint family for a declaration that a mortgage by others without the plff.'s consent is invalid and not binding on the family property. (*Lindsay, A. J. C.*) BUNDAPRASAD *v.* GAYA PRASAD SINGH.

13 I. C. 547.

Alienation by Guardian.

———Art. 91—*Alienation by guardian.*

A suit to set aside alienation by Hindu father during son's minority without any benefit is not governed by Art. 44 or 91 but by Art. 144. (*Scott, C. J. and Rae, J.*) ANANDAPPA *v.* TOTAPPA.

33 I. C. 441 : 17 Bom. L. R. 1137 (Note).

———Art. 91—*Alienation by guardian.*

Alienation by an unauthorised guardian is void and need not be set aside. (*Shadi Lal and Jones, JJ.*) SAJJAD ALI *v.* MUHAMMAD ZULFIKAR ALI KHAN.

83 P. R. 1916 : 33 I. C. 943 : 125 P. W. R. 1916.

———Art. 91—*Alienation by guardian.*

An alienation by *defacto* guardian not for necessary purposes, need not be set aside. (*Sadasiva Aiyar and Tyabji, JJ.*) THAYAMMAL *v.* KUPPANNA KOUNDAN.

38 Mad. 1125 : 26 I. C. 179 : 27 M. L. J. 285.

———Art. 91—*Alienation by guardian.*

Art. 91 does not apply when the sale by a *de facto* guardian is void. (*Hallifax, A. J. C.*) HUSAIN *v.* RAJARAM.

26 I. C. 813 : 10 N. L. R. 133.

Alienation by third Party.

———Arts. 91 and 144—*Alienation by third party—Suit for possession and cancellation of document—Limitation.*

LIMITATION ACT (IX OF 1908), Art. 91—Alienation by third Party.

Suit for possession of a property basing title under a grant executed in plff.'s favour, with prayer for cancellation of a document executed by his grantor in favour of the deft., subsequent to his own is not one for the cancellation and is governed by Art. 144 and not by Art. 91. (*Walsh, J.*) BAGESHRA *v.* SHEO NATH.
32 I. C. 930 : 14 A. L. J. 464.

———Art. 91—*Alienation by third party.*

A suit by a person denying the genuineness or the validity of the will is not governed by Art. 91. (*Reid, C. J. and Johnstone, J.*) MURAD BIBI *v.* KHADIM HUSSAIN. 12 I. C. 49 : 114 P. W. R. 1911.

———Arts. 91 and 144—*Alienation by a third party—Suit by co-sharer for setting aside lease by lambardar—Limitation.*

Where a co sharer sues for a declaration that a lease granted by a *lambardar* is invalid against him the suit in time so long as the co-sharer's right to the property subsists Art. 91 of the Limitation Act applies only where the plaintiff or his predecessor-in-title was a party to the instrument sought to be set aside. 1 N. L. R. 129 : 83 P. R. 1916 Ref. (*Drake Brockman, J. C.*) KUNJILAL *v.* CHANDRA SINGH. 64 I. C. 775 : 17 N. L. R. 169.

———Art. 91—*Alienation by third party—Suit to eject a tenant—If a mortgage by tenant to be declared void.*

A landlord need not have a mortgage created by a tenant declared null and void within the period fixed by Art. 91, before he can sue to eject a tenant. 34 C. 329 (P. C.) ref. to. (*Drake Brockman, J. C.*) BAPU *v.* TEMSA.
13 I. C. 982 : 8 N. L. R. 29.

———Art. 91—*Alienation by third party—Applicability.*

Article 91 can only be applied when the plaintiff has been himself or through his predecessor-in-interest a party to the instrument assailed. (*Pratt and Duckworth, JJ.*) MI SAN MA KHAING *v.* SHWE BA.
1 Bur. L. J. 106 : 1923 Rang. 82 (2).

Effect of bar under.

———Art. 91—*Effect of bar under—Suit for possession.*

A suit for possession of property is not barred merely because the period for the cancellation of the instrument has run out. (*Reid, C. J. and Kensington, J.*) MUHAMMAD UMAR ATI *v.* AMAN ALI. 170 P. W. R. 1911 : 12 I. C. 140 : 251 P. L. R. 1911.

———Art. 91—*Effect of bar under—Suit for possession—Avoidance of instrument—Cause of action.*

Though a person suing for possession of immoveable property whose right to possession is blocked by an instrument must set it aside under Art. 91 of the Limitation Act time does not begin to run, until the necessity to sue for possession accrues. A person who has had no occasion to sue for possession of property cannot have his right to property extinguished by the lapse of three years under Art. 91. (*Batten, A. J. C.*) SHESHRAO *v.* MAROTI. 55 I. C. 407.

LIMITATION ACT (IX OF 1908), Art. 91—Starting point of limitation.

Fraudulent Alienation.

———Arts. 91 and 120—*Fraudulent—Cancellation of a document—Limitation.*

A suit for declaration that a mortgage deed executed by the plaintiff was without valid consideration and ineffectual being intended only to defraud his creditor at the time and that the defendant has no right under it, is governed by Art. 91 or 120 and limitation runs from the date of the execution of that document. (*Richards, C. J. and Piggott, J.*) MIRZA QASIM BEG *v.* MUHAMMADZIA BEG. 37 All. 640 : 29 I. C. 968 : 13 A. L. J. 913.

———Art. 91—*Fraudulent alienation—Fraudulent decree—Suit to set aside.*

A sale in execution of a fraudulent decree is not void, but voidable such a sale cannot be set aside without setting aside the decree. (*Mookerjee and Richardson, JJ.*) RAJKUMAR SARKEL *v.* RAJKUMAR MALI. 33 I. C. 767 : 20 C. W. N. 659.

———Art. 91—*Fraudulent alienation—Setting aside of.*

A plff. can sue to set aside a sale-deed on the ground of fraud, if an interest *in praesenti* is not conferred thereby within 3 years from the time of deft.'s attempt to take possession unlawfully. (*Seshagiri Aiyar and Napier, JJ.*) SUKRAMMA PILLAI *v.* KUPPAMMAL. 31 I. C. 106.

Starting point of Limitation.

———Art. 91—*Starting point of limitation—Suit to set aside gift for undue influence.*

A suit to set aside a gift deed for undue influence is governed by Art. 91. Time runs from the time when the facts entitling him to set aside the instrument become known to him. The cessation of undue influence has no relevancy on the question of limitation unless it can be brought under S. 18 of the Act. 31 M. L. J. 362, Expl. "Plaintiff" in 3rd column of Art. 91 includes predecessor and the onus of proving that the plff.'s knowledge arose more than three years before suit is not on the defendants. (*Sadasiva Aiyar and Spencer, JJ.*) RAJARAJESWARA SETUPATHI *v.* KUPPUSAMI AIYAR. (1921) M. W. N. 722 : 68 I. C. 358 : 41 M. L. J. 474.

———Art. 91—*Starting point of limitation—Cancellation of a document—Suit for.*

The word "entitled" in Art. 91 of the Lim. Act means entitled by law, *i.e.*, under S. 39 of the Sp. Rel. Act. In a suit for cancellation of a document time will begin to run from the time when the plff. becomes aware of facts which create in him a reasonable apprehension that he will suffer injury if the document be left outstanding. (*Phillips and Krishnan, JJ.*) BALA SUNDRA PANDIAN PILLAI *v.* AUTHIMULAM CHETTIAR. 47 I. C. 505.

———Art. 91—*Starting point of limitation—Contract under undue influence—Cause of action—Suit by beneficiary.*

Where a person is induced to execute certain transfers by undue influence the cause of action

LIMITATION ACT (IX OF 1908), Art. 91—Starting point of limitation.

to set aside those transfers under Art. 91 arises only where the undue influence ceases and plff. has full knowledge of all the matters. (*Wallis, C. J. and Seshagiri Aiyar, J.*) RAJA RAJESWARA *v.* RAJAGOPALA AIYAR. (1917) M. W. N. 906 : 43 I. C. 164 : 7 L. W. 28.

———Art. 91—*Starting point of limitation.*

The suits to set aside instruments on the ground of undue influence are governed by the article. The cessation of undue influence is not the starting point. Rescission of a contract cannot be made by a unilateral repudiation ; it must be made by a decree of competent court declaring a contract or transaction void. (*Miller and Sadasiva Aiyar, JJ.*) RAJA RAJESWARA DORAI *v.* ARUNACHELLAM CHETTIAR. 38 Mad. 321 : 13 M. L. T. 469 : (1913) M. W. N. 453 : 19 I. C. 596 : 24 M. L. J. 592.

———Art. 91—*Starting point of limitation—Suit to cancel a registered instrument under S. 39, Sp. Rel. Act.*

Where an instrument cannot take effect until it is registered, to cancel such an instrument under S. 39, Sp. Rel. Act, the limitation commences to run under Art. 91 from the date of its registration and not from the date of its execution. (3 A. 494—6 A. 207. 1 O. C. 178 : 28 M. 349, R.) (*Stuart, J. C.*) ALI MIRZA BEG *v.* HASAN RAZA KHAN. 39 I. C. 456 : 4 O. L. J. 108.

Void document.

———Art. 91—*Void document—Minor, document by.*

Art. 91 of the Limitation Act does not apply to a suit for possession, where the plff. alleges and proves that a sale deed is void because it was executed by him while minor but does not claim impressly to have it cancelled or set aside. (*Batchelor, A C.J., Shah and Kemp, JJ.*) NARSAGWALU PATIL *v.* PATIL. 42 Bom. 638 : 47 I C. 581 : 20 Bom. L. R. 802 (F. B.).

———Art. 91—*Void document—Suit for cancellation of deed of exchange.*

A person suing for recovery of property which he has transferred to another under a deed of exchange which is not binding on him need not have the deed cancelled. (*Scott, C. J. and Rao, J.*) ANANDAPPA *v.* TOTAPPA. 33 I. C. 441 : 17 Bom. L. R. 1137 Note.

———Art. 91—*Void document—Alienation by Hindu widow—Sham—Suit to recover possession—Limitation.*

A suit by a reversioner to recover possession of property alienated by a Hindu widow is not governed by Art. 91 of the Lim. Act when the impeached alienation is found to be *sham*. The only object of Art. 91 is to compel a plff. to clear out of his way some real existing obstacle but where there is no real obstacle, the article has no scope for operation. (*Batchelor and Hayward, JJ.*) MANCHHARAM *v.* PANU BHAI. 40 Bom. 51 : 30 I. C. 909 : 17 Bom. L. R. 698.

———Art. 91—*Void document—Suit for partition and possession after declaring that deed is void.*

LIMITATION ACT (IX OF 1908), Art. 91—Void document.

Art. 91 does not apply where a suit is brought for possession and partition upon a declaration that a document under which the deft. claims is void. (*Mookerjee and Panton, JJ.*) NIBARAM *v.* NIRUPAMA. 34 C. L. J. 563 : 69 I. C. 476 : 26 C. W. N. 570.

———Arts. 91, 95 and 120—*Void document—Deed void ab initio—Suit to set aside—Limitation—Arts, 91 and 95 not applicable.*

Where a deed is void *ab initio* neither Art. 91 nor Art. 95 are applicable to a suit to set aside the deed. The proper article is 120. (*Sanderson, C. J and Richardson, J.*) SARATCHANDRA GUPTA *v.* KANAI LAL CHAKRAVARTY. 26 C. W. N. 479.

———Art. 91—*Void document.*

Art. 91 has no application where the deed is *ab initio void*. 33 Cal. 257 : 28 Bom. 420 and 30 Cal. 433 ref. (*Newbould and Panton, JJ.*) SANNI BIBI *v.* SIDDIK HUSAIN. 23 C. W. N. 93 : 49 I. C. 76 : 29 C. L. J. 55.

———Art. 91—*Void document—Alienation of debutter property of.*

When properties belong to idols the conveyance of those properties by the Court of Wards on behalf of a disqualified proprietor is void and Art. 91 is not applicable. (*Fletcher and Teunon, JJ.*) KAURMANI SINGHA *v.* WARIP ALI MUZA. 28 I. C. 818 : 19 C. W. N. 1193.

———Art. 91—*Void document—Fictitious deed.*

Art. 91 of the Lim. Act is applicable only where the transaction is not void *ab initio* but voidable. When the sale deed is fictitious having been executed under undue influence it should be ignored altogether even if it has been acted upon, and a part of the consideration has nominally passed and so Art. 91 does not apply. (*Shah Din, J.*) TARO *v* SARBDIAL. 34 P. W. R. 1916.

———Art. 91—*Void document—Lease not binding on plff.*

Lessee in possession whether could be ejected without setting aside the lease. If the lease is not binding on plff, he is entitled to recover the property without setting aside the lease. 1 C. W. N. 433 ; 33 C. 257 ; 34 C. 329 Fol. (P. C.) (*Wallis, C. J. and Seshagiri Aiyar, J.*) SECRETARY OF STATE *v.* SUBRAYA KARANTHA. 18 M. L. T. 504 : 2 L. W. 1175 : 31 I. C. 590 : (1915) M. W. N. 962.

———Arts. 91 and 124—*Void document.*

A void transfer does not require to be set aside. Sales void *ab initio* do not become valid under the Act if not set aside within the limitation period therefor by suit. A suit to recover a temple from 2 persons who were appointed by agreement of the existing trustees to manage the temple till the disputes between themselves were settled, is governed by Art. 124 and not by Art. 91. The document vesting the management on those two persons need not be set aside within 3 years under Art. 91. (*Wallis, C. J. and Coutts-Trotter, J.*) NARAYANAN *v.* LAKSHMANAN. 39 Mad. 456 : 29 I. C. 1 : 28 M. L. J. 571.

———Art. 91—*Void document—Avoidance of—Declaration.*

LIMITATION ACT (IX OF 1908), Art. 91—Void document.

If the instrument is voidable and not void *ab initio* and is executed by the plaintiff or by his predecessor, the plaintiff cannot elude the operation of Art. 91 by suing as for a declaration ; but in determining whether the plaintiff is attempting to elude the operation of Art. 91, it is necessary to consider the plaintiff's case as to the instruments where according to the plaintiffs an instrument is not voidable but void *ab initio* and they make the definite case that the instruments were nominal and were not acted upon during the lifetime of the executant: *Held*, it is impossible to hold that Art. 91 applies to the facts of the case. (*Das and Adami, JJ.*) MT. BIBI KANIZ BAINAB *v.* SYED MOBARAK HOSSAIN.
1924 P. 284.

——Art. 91—*Void document —Suit to set aside—Limitation.*

Art. 91 of the Limitation Act is not applicable to a suit to avoid a document which is *ab initio* void and invalid. (*Bucknill, J.*) ABDUL RAHMAN *v.* WALI MAHOMED. 65 I. C. 224.

——Art. 91—*Void document—Bogus deed.*

When a document is of a bogus character, Art. 91 of the Act is inapplicable. (*Jwala Prasad, J.*) RAM BIRCHSING *v.* SOUJHARI. 58 I. C. 380 : 2 U. P. L. R. (Pat,) 225.

Miscellaneous.

——Arts. 91, 118 and 120—*Registered document admitting adoption—Suit to set aside and for declaration.*

Where a person executes a registered document declaring he had adopted another, a suit for a declaration of its invalidity would fall under Art 91. If it is for declaring that it never took place, Art 118 would apply.

Quaere—Whether Art. 120 would apply at all in the circumstances. (*Rafique and Piggott, JJ.*) KUMAR UDIT NARAYAN SINGH *v.* DIWAN RANDHIR SINGH. 20 A. L. J. 945 : L. R. 3 A. 642 ; 45 All. 169; 1923 A. 58.

——Art. 91—*Sale in execution—Non-joinder of proper heir—Fresh suit by the proper heir at a late period.*

The son who was the real heir was not joined as the representative of his father in a suit, and a decree was passed against the father's estate, the uncle being made the representative deft. The son brought a suit after a very-long period. *Held*, the suit was barred. 25 B. 337 P. C. Fol (*Bannerjee, J.*) JAIMANGA SONAR *v.* BHAGAN PANDE, 10. I. C. 344.

——Arts. 91 and 41—*Possession of widow—Belief by adopted son and widow that it was mere life estate—Intention to acquire absolute estate wanting.*

It both the adopted son and the widow believed that the estate in possession of the widow was a mere life-estate, and the adopted son took no steps to disturb her, her possession is not adverse to the son. (*Beamonand Macleod, JJ.*) PIRSAB KASINSAB ISTAGI *v.* GURAPPA BASAPPA KADGIR.
38 B. 227 : 24 I. C. 716 : 16 Bom. L. R. 111.

——Art. 91 — *Document— When to be set aside.*

LIMITATION ACT (IX OF 1908), Art 91—Miscellaneous.

Where there exists a document which if valid and binding on a party, would defeat his right in recovering possession of any property he must sue under Art. 91 for the cancellation of the document within three years. (*Beaman, J.*) JAN MAHOMED *v.* DATU JAFFAR.
38 Bom. 449 : 22 I. C. 195 : 15 Bom. L. R. 1044.

——Art. 91—*Execution of deed under mistake —Cancellation.*

Where the plff, sues for possession and for cancellation of a deed of sale alleging that they executed the sale believing they were executing a totally different document, is governed not by Art. 91 but by 144. (*Newbould and Panton, JJ.*) SANNI BIBIA *v.* SIDDIK HOSSAIN.
23 C. W. N. 93 : 49 I. C. 76 : 29 C. L. J. 55.

——Arts. 91 and 120—*Suit by manager—Suit to have Karnavan's alienation declared invalid.*

A suit for a declaration that a Karnavan's alienation is invalid if brought 10 years after the cause of action arose, is barred, whether Art. 91 or Art 120 applies. (*Sadasiva Aiyar and Napier, JJ.*) PARAMESWARAN NAMBUDRI PAD *v.* SANKARAN NAMBUDRI PAD.
16 M. L. T. 241 : 25 I. C. 755 : (1914) M. W. N. 689.

——Arts. 91 and 144—*Alienation by manager —Alienation by ejaman of aliasantana family—Suit for recovery of possession.*

A suit for recovery of possession of properties alienated by the *ejaman* of an *aliasantana* family is not a suit to " set aside an instrument " within Art. 91 of the Act, and is governed by Art. 144 of the Act. 14 M. 206 ; 14 M. 101 Foll. 22 M. L. J. 404 ; 30 M. 18 ; 28 M. 349 dist. (*White, C. J. and Seshagiri Aiyar, J.*) KUHAMMA SHETTY *v.* TIMMAGU. 4 I. C. 246 : 27 M. L. J. 60.

——Art. 91—*Suit by a landlord against a transferee of tenant—Transfer voidable by landlord—C. P. Tenancy Act of* 1883, S. 43.

To a suit by a landlord against a transferee of a tenant in C. P. who has taken possession of a holding in execution of a decree on a mortgage voidable at the instance of landlord, Art. 91 of Limitation Act (1908) 1st schedule, is inapplicable. There is nothing for the court either to set aside or cancel as a condition precedent to the right of action. 34 Cal 329, P. C. referred to. (*Mitra, A, J. C.*) SETH SAGUNCHAND *v.* LALA CHHABILERAM. 1922 Nag. 60.

——Arts. 91 and 120—*Suit to set aside sale-deed — Limitation—Money decree-holder — No attachment made—Suit if lies.*

Art. 91 of the Lim. Act can only be applied to cases where the person who wants to set aside the sale deed is himself or through his predecessors in title a party to the instrument. Where the suit by mortgagee is in effect one for a declaration that a sale by his mortgagor to a third party is null and void, Art. 120 applies to the case. Where on account of the invalidity of the mortgage deed, the mortgagee obtained only a money decree and without attaching the property he sued for a declaration that the sale of the property to

LIMITATION ACT (IX OF 1908), Art. 91—Miscellaneous.

another was invalid. *Held*, the proper relief in the case would be to attach the property and wait till the attachment had been removed and then sue to have his right to attach declared. (*Pratt and Duckworth, JJ.*) MI SAN KHAING *v.* SHWE BA.
1923 Rang. 82 (2).

——Art. 91—*Suit for redemption—Mortgage by misrepresentation.*

Where in a suit for redemption of a mortgage, the mortgagee pleaded that the property had been sold but the plff. contended that it was only a mortgage and that his signature was obtained on that representation. *Held*, that for such a suit Art. 148 applied and not Art. 91 or 142 and that plff. was entitled to prove the fraud played upon him. (*McColl, A. J. C.*) NGA PAW. *v.* NGA LEW GALC. 13 I. C. 375 : 4 Bur. L T. 265.

——Art. 91—*Award—Setting aside of.*

A party to a submission and award may sue on the original cause of action, provided first of all he manages to have the award set aside ; if the award is not a void but is only voidable at the instance of the party, the suit to set aside the award must be brought within the period of three years under Art. 91 of the Lim. Act 33 C. 257, 265 ref, *Reos* v. *Walters*, 16 M and W. 263, 4 D, and L. 567 ref. (*Pratt, J. C. and Fawcett, A. J. C.*) KHANCHAND *v.* KODUMAL.
15 I. C. 819 : 5 S. L. R. 240.

——Art. 93—*Suit to declare the forgery of instrument attempted to be enforced against the plff.—Attempt to have a lease recorded under Record of Rights Act (Bom. Act IV of 1903).*

Deft applied in 1908, to the Mamlatdar to record under the Record of Rights Act, a lease under which he claimed to be entitled to a rent of 400 cocoanuts from the plff. Plff. having complained that the lease was a forgery, the Collector, ordered that lease should be recorded. On the strength of that record the deft. sued in the Mamalatdar's Court to enforce the terms of the lease and recovered cocoanuts due under it. The plff. sued, within three years of the recovery of the cocoanuts, to recover back the value of the cocoanuts, on the ground that the alleged lease was a forgery. *Held*, that the suit was not barred under Art. 93 of the Lim. Act, for the words "attempt to enforce" would in their ordinary and natural meaning, be applicable to an attempt to recover rent under the lease. The attempt to have the lease recorded under the Record of Rights Act, in 1908, could not be put higher than an unsuccessful attempt to have a document registered in the case in which registration was necessary and that such an attempt was not an attempt to enforce the lease. (*Scott, C J. and Shah, J.*) ACHYUT *v.* GOPAL.
40 Bom. 22 : 30 I. C, 399 : 17 Bom. L. R. 635.

——Arts. 93, 95, 120—*Suit to declare that kat kobala document is not binding on reversion.*

A suit for declaration that a *kat kobala* document shall not bind reversion is not within Arts. 93 and 95 of the Act, Art 120 applies and if the plaintiff is in possession, limitation begins only when some act is done in the document sought to be not binding. (*Fletcher and Shamsul Huda, JJ.*) HARA NARAIN BERA *v.* SRIDHAR PANDE.
47 I. C. 2.

LIMITATION ACT (IX OF 1908), Art. 95.

——Art. 93—*Attempt to enforce a forged document—What is.*

The expression means the institution of proceedings in which the genuineness of the instrument is directly put in issue and to which the person against whom it is sought to be enforced is a necessary party. But the institution need not be by the person relying on the instrument only as plff. Mere mention of the existence of a Will in the written statement filed in the previous suit, without producing the will or doing anything to obtain a decision on its genuineness, is not an 'attempt' to enforce the Will within Art. 93 (*Abdur Rahim and Oldfield, JJ.*) ACHANNA PANTULU *v.* SEETHAMMA.
62 I. C. 531 : 40 M. L. J. 348.

——Arts. 93, 120, 126—*C. P. Code, O. II, Rr. 1 and 2—Forged document, if should be set aside.*

A party challenging a document as a forgery is not bound to set it aside by suit. 25 B. 337 P. C, : 35 C. 551 P. C. Ref, to. (*Ayling and Srinivasa Aiyangar, JJ.*) VENKAMMA *v.* NARASIMHAM.
4 L. W. 441 : 37 I. C. 642 : (1916) 2 M. W. N. 325.

——Art 93—*Attempt to enforce a forged instrument—Meaning of—Application by a widow for succession certificate as heir to her deceased husband if an attempt.*

"Attempt to enforce a forged instrument against the plff." within Art 93 is done only when a person institutes proceedings in which the genuineness of the document is directly put in issue and to which the person against whom it is sought to be enforced is a necessary party. An attempt to register a document is not an attempt to enforce it against other person's rights, 17 Bom. L. R. 635 Foll. A widow as such applied for a succession certificate to collect the debts due to her deceased husband and only incidentally mentioned a will of her deceased husband, but did not base her right as a legatee. In a suit by the reversioners of the husband to declare the will forged. *Held*, that the mention of the will in the petition was not an attempt within Art. 93. (*Coutts Trotter and Srinivasa Aiyangar, JJ.*) VUDHATHA KAMALANATHAN *v* V. SATTIRAZU. 32 I. C. 99.

——Art. 95—*Collusive decree in compromise—Suit for possession.*

A suit for redemption brought by a reversioner after compromise decree had been passed in a suit by the widow on the ground that the compromise was collusive and fraudulent, is not barred by Art. 95 of Limitation Act as it was not necessary to sue for the cancellation of the compromise decree. (*Rafique, J.*) MUHAMMAD FAIYOUZ ALI KHAN *v.* BIKHAMBAR DAS.
21 I. C. 605 : 11 A. L. J. 574.

——Art. 95—*No fraud—If article applicable.*

The article has no application when on the face of the plaint no equitable relief is claimed on the ground of fraud. (*Scott, C. J. and Chandavarkar, J.*) JAMSETJI NASSARVANJI *v* HIRJI BHAI NOVRAJI. 15 Bom. L. R. 192 : 19 I. C. 406 : 37 Bom. 158.

LIMITATION ACT (IX OF 1908), Art. 95.

——Art. 95—*Suit to set aside compromise.*

A suit to set aside a compromise entered into between the plff. and the transferors of the defendants, is governed by Art. 95 of the Act. (*Woodroffe and Smither, JJ.*) MOHENDRA NATH *v.* GOUR CHANDRA.

46 I. C. 867 : 22 C. W. N. 860.

——Art. 95—*Fraudulent decree—Sale under —Setting aside of.*

A sale in execution of a fraudulent decree is not void, but voidable. Such a sale cannot be set aside without setting aside the decree (*Mookerjee and Richardson, JJ.*) RAJKUMAR SARKEL *v* RAJKUMAR MALI, 33 I. C. 767 : 20 C. W. N. 659.

——Art. 95—*Suit to set aside decree and for possession.*

A suit for declaration of plff. *raiyats* right and for possession after setting aside an *ex parte* decree is governed by Art. 95, Sch. I of the Limitation Act and not by Sch. III, Art. 3, B.T. Act as the setting aside of the *ex parte* decree is the essential feature of the case. (*Stephen and Mullick, JJ.*) MEHER ABZUL *v.* RAHMAN ALI.

19 I. C. 980

——Arts. 95, 96 and 116—*Mortgage with possession—Suit for refund of money advanced by mortgagee.*

The plff. sued for recovery of money from the deft. together with damages, alleging that the registered mortgage-deed executed in his favour by the deft. cannot be enforced, as the land was found to be already mortgaged with possession to another person. He also alleged that the deft. had practised fraud. *Held*, that the suit came under Art. 116 and neither Art. 95, nor Art. 96 governed the suit. The plff's allegation as to fraud does not bar the applicability of Art. 116. (*Ratligan, J.*) BISHEN SINGH *v.* DADNA SINGH.

106 P L. R. 1916 : 36 I. C. 262 : 130 P. W. R. 1916.

——Art. 95—*Sale—Fraud—Limitation.*

Where one is induced to purchase property from another having no title thereto, the period of limitation is 3 years from the discovery of fraud by the plaintiff. (*Robertson, J.*) SEHAN-SINGH *v.* LAKHUMAL 96 P W. R. 1918 : 19 I. C. 5 : 135 P. L. R 1918.

——Art. 95—*Fraudulent mortgage—Suit for money advanced under.*

Where a mortgage under a usufructuary mortgage dated 1907, came to know in 1912 that the mortgagor had no power to mortgage the property and had fraudulently concealed the fact from the mortgagee and thereupon in 1914 he brought a suit for recovery of the money due to him with interest by way of damages. *Held*, that the suit fell under Art. 95 and was not barred. (*Kanhaiya Lal, A. J. C.*) LACHMAN PRASAD *v.* RAMPHAL. 37 I. C. 351 : 3 O. L. J. 593.

——Art. 95 and 144—*Fraudulent decree—Suit for possession—Limitation.*

Where the ground of action is that the decree by which the deft. dispossessed the plaintiff was fraudulent, such a suit to obtain the possession of

LIMITATION ACT (IX OF 1908), Art. 96.

immoveable property comes under Art. 95 and not under Art. 144 of the Lim. Act. (*Jwala Prasad, J.*) JUGDEO SINGH *v.* AJODYA SINGH.

49 I. C. 953.

——Art. 95—*Fraudulent compromise decree —Limitation for suit to set aside.*

Under Art. 95 of the Lim. Act, the period of limitation for a suit for setting aside a fraudulent compromise decree, is three years from the date of knowledge of such decree. (*Jwala Prasad, J.*) MUHAMMAD JAN *v.* COMMISSIONER, PATNA,

37 I. C. 797.

——Art. 95—*Suit to set aside decree—Fraud.*

Where a decree is passed, it is binding on both the parties whether obtained by fraud or otherwise Decrees obtained by fraud are not nullity nor are they transactions between parties, they must be set aside before relief is asked for, in another suit. Art. 95 of the Lim. Act applies and is conclusive. (*Sundara Aiyar and Sadasiva Aiyar, JJ.*) KUMARASWAMI CHETTY *v.* KAMAKSHI AMMAL. 12 M.L.T. 186 : (1911) M.W.N. 805 : 16 I. C. 843 : 23 M. L. J. 187.

——Arts. 95 and 97—*Fraud by decree-holder.*

A purchaser of immoveable property at a court auction can recover the whole or part of his purchase money, by a suit, on the ground of fraud committed by the decree-holder in concealing from him the existence of an incumbrance at the time of the sale. Such suits are governed by Art. 95 of the Act and not by Art. 97 as they cannot be treated as one for the recovery of the whole or portion of the purchase money on the ground of failure of consideration money. (*Benson and Ayling, JJ.*) BALASUBRAMANIA CHETTY *v.* MARNTHAMATAI GOUNDAN. 16 I. C. 215.

——Arts. 96, 97—*Mistake of fact—Pre-emption—Mutation—Failure of consideration.*

The plaintiff impleaded in a pre-emption suit one of the vendees, who realised the entire pre-emption money under a mistake of fact that he alone was the vendee. The pre-emptor's claim for mutation after formal possession was resisted by the other vendees on the ground that they were not impleaded in the pre-emption suit. In a suit by the pre-emptor for the possession of the property released in favour of the vendees not impleaded in the pre-emption suit or, in the alternative, for the proportionate refund of the consideration, *held*, the cause of action arose when the pre-emptor's claim for mutation was resisted *i. e.* when the consideration failed or when the mistake of fact was discovered. 24 M. 27 Ref. (*Kanhaiya Lal, J.*) RAM BALI SINGH *v.* SHIAM SUNDER MISIR. 1923 All. 475.

——Art. 96—*Partition—Mistake —Relief—Limitation.*

A suit for relief on the ground that there had been a mistake in a partition, is governed by Art. 96 of Sch. I to the Limitation Act and time begins to run from the date when the mistake was first discovered. (*Macleod, C. J. and Fawcett, J.*) MARTAND MAHADEV *v.* DHONDO MORESHWAR.

45 Bom. 582 ; 61 I. C. 34 : 23 Bom. L. R. 69

LIMITATION ACT (IX OF 1908), Art. 96.

——Art. 96—*Mistake in lease—Suit for rectification—Limitation.*

A suit for amendment or rectification of a mistake in a lease by both the parties must be brought within three years from the date of his knowledge of the mistake. (*Fletcher and Walmsley, JJ.*) BIJOY CHAND *v.* SECRETARY OF STATE. **48 I. C. 972.**

——Art. 96—*Scope of.*

Art 96 is intended to apply to these cases in which the courts are asked to relieve parties from the consequences of mistakes committed by them in the course of contractual transactions. (*Shadi Lal, C. J. and Abdul Qadir, J.*) SHER *v.* PIARA RAM. **1924 Lah. 324.**

——Art. 96—*Family settlement.*

Art. 96 is inapplicable where the party seeking relief by a mistake accepted less than what he was entitled to, at a family settlement. An unequal division of an estate if accepted by the claimants of the deceased through mistake cannot be upheld and can be relieved against within the period prescribed by Art. 141. (*Prideaux, A. J. C.*) WASUDEO *v.* VITHAL. **55 I. C. 422.**

——Art. 96—*Mistake in decree—Rectification—Applicability.*

Article 96 applies only to suits for relief on the ground of mistake other than that made in a decree but not to a suit to set aside a decree on the ground of mistake. (*Lindsay, A. J. C.*) RAMZAN KHAN *v.* MUHAMMAD YAKUB KHAN. **11 I. C. 537.**

——Art. 97—*Sale of property by Hindu Reversioner—Transfer unenforceable—Suit for recovery of purchase money—Starting point.*

A Hindu reversioner purported to sell the estate to which he had a reversionary right agreeing to give proprietary possession of the same on the death of the widow of the last male owner. On the death of the widow the vendee sued for possession or, in the alternative, for recovery of the purchase money with interest. *Held*, that the transfer was inoperative, that the vendee was entitled to recover the purchase money paid with interest and that the cause of action for the suit arose from the date when he discovered that the transfer was void, that is to say, on the death of the widow of the last male owner. (*Sir Lawrence Jenkins.*) HARNATH KUAR *v.* INDAR BAHADUR SINGH. **45 A. 179 : 50 I. A. 69 : 9 O. L. J. 659 : 27 C. W. N. 949 : 26 O. C. 223 : 9 O. L. J. 652 : 18 M. L. W. 383 : 37 C. L. J. 346 : 44 M. L. J. 489 : 1922 P. C. 403 (P. C.).**

——Art. 97—*Dispossession—Patni sale—Setting aside—Suit by dispossessed purchaser for recovery of money—Limitation.*

The purchaser at a patni sale paid the money into Court, and the decree-holder drew it out of Court. The sale was subsequently set aside in a suit and the decree was affirmed on appeal. On the consequent dispossession of the purchaser, the purchaser sued for recovery of the money from the decree-holder; *held*, that the suit was governed by the Art. 62 rather than the Art. 97 and the starting point of the limitation was the decree of the

LIMITATION ACT (IX OF 1908), Art. 97.

first court. (*Sir Lawrence Jenkins.*) HUKUMCHAND BOND *v.* PRITHICHAND LAL CHAUDHURI. **17 A. L. J. 514 : 46 C 670 : 23 C. W. N. 721 : 21 Bom. L. R 632 : (1919) M. W. N. 258 : 30 C. L. J. 71 : 26 M. L. T. 131 : 10 L. W. 416 : 50 I. C. 444 : 36 M. L. J. 557 (P. C.)**

——Art. 97—*Suit for specific performance—Dismissal of—Subsequent suit for recovery of earnest money—Limitation.*

Plaintiff's suit for specific performance of a contract for the sale of land in his favour was dismissed by the Appellate Court. Subsequently he brought a suit for recovery of earnest money which he had deposited with the defendant. On a question arising as to the period of limitation applicable for the suit, *held*, that it was governed by Art. 97 of the Limitation Act. 25 A. 618 ; 31 A. 68 referred to. (*Lindsay, J.*) MUNNI BABU *v.* KOER KAMTA SINGH. **45 A. 378 : 21 A. L. J. 265 : L. R. 4 A. 176 : 9 O. & A. L. R. 429 : 1923 All. 321.**

——Art. 97—*Consideration—When fails.*

After a preliminary decree on a mortgage a Mahomedan mortgagee died. The judgment-debtor agreed with one of his co-heirs and paying a certain sum of money obtained a discharge. The other heirs got a final decree and it was held that out of the sum paid, the amount representing the payee's share, should be considered as having been paid towards the satisfaction of the decree. In execution money was paid. After five years the judgment-debtor applied for refund of the amount paid in excess of the decretal amount. *Held*, that the application was barred, as time began to run from the date of decree, the cause of action being to recover the sum paid in excess as on failure of consideration. (*Piggott and Walsh, JJ.*) RUBABANU *v.* NAJABAT KHAN. **38 I. C. 601 : 15 A. L. J. 57.**

——Art. 97—*Suit to recover money paid on consideration which fails.*

An agreement was entered into between the plaintiff and the defendant No. 1. The agreement stated that the plaintiff had paid the defendant the money which he now seeks to recover in consideration of the defendant procuring for the plaintiff a re-conveyance of certain property which had been sold under a Court decree. Defendant No. 2 conveyed that property to a third person. Plaintiff sued defendant No. 1 to recover the sum paid by him. *Held*, that adopting the view that the suit is governed by Art. 97, the suit is time-barred. (*Beaman and Heaton, JJ.*) GULABCHAND BALARAM MARWADI *v.* NARAYAN RAMA. **18 Bom. L. R. 806 : 36 I. C. 613 : 41 B. 31.**

——Art. 97—*Dispossession—Lease—When time begins to run.*

A lessee was successfully sued and evicted by a third party The lessee brought a suit for return of premium for failure of consideration. *Held*, that the period of limitation ran against him from the time of the actual eviction. 5 A. L. J. 484; 30 A. 402; 5 A. L. J. 480 : 26 A. 519 Fol. (*Mookerjee and Caspersz, JJ.*) SUKMOY SARKAR *v.* SHASHI BHUSAN. **10 I. C. 486.**

LIMITATION ACT (IX OF 1908), Art. 97.

——Art. 97—*Suit for refund of money paid to creditor of insolvent.*

A creditor of an insolvent attached and realised a debt due by plff. to the insolvent under a decree. The Receiver of the insolvent's estate sued the plaintiff and again recovered the debt amount from him. Now the plaintiff sues the creditor for refund. *Held*, that the suit is maintainable and is governed by Art 120 or 97. (*Broadway and Wilberforce, JJ.*) BAL KISHAN DAS DHAN PAT RAI *v.* DEVI SARAN. 62 I. C. 929.

——Arts 97 and 116—*Defect in title—Mortgagee unable to obtain possession—Suit for money.*

A suit by a mortgagee who could not obtain possession of the mortgaged property by reason of a defect in the mortgagor's title is governed by Arts. 97 and 116 of the Lim. Act, (*Rattigan, C. J.*) RAM NATH *v.* SUNDAR DAS. 55 I. C. 413.

——Arts. 97, 115 and 120—*Applicability—Suit for declaration that decree has been adjusted—Limitation—Cause of action.*

Where a decree has been adjusted out of court a suit for declaring that the decree has been satisfied and not capable of execution is maintainable, the cause of action arising from the date of adjustment or payment and the suit is governed by Arts. 97, 115, and 120 of the Lim. Act. (*Kensington, J.*) MUSAMMAT JAMMA AND SHIBBA MAL *v.* BELI RAM. 190 P. W. R. 1913 : 21 I. C. 557 : 330 P. L. R. 1913.

——Art. 97—*Disposition—Starting point—Failure of consideration.*

Consideration for a sale fails from the moment the vendee with defective title is disposed by a true owner. (*Robertson, J.*) SOHAN SINGH *v.* LAKHUMAL. 135 P. L. R. 1913 : 19 I. C. 5 : 96 P. W. R. 1913.

——Arts. 97 and 115—*Contract—Construction of a well—Breach.*

Defendents entered into a contract for the construction of a well and received an advance of Rs. 1,000. The well was completed but the Revenue authorities however disapproved of the well. Plaintiff sued for refund of the advance, *Held*, on the facts it was a suit for compensation for breach of contract and not on failure of consideration. So Art. 115 and not Art. 97 should be applied. (*Johnstone, J.*) NIZAM DIN *v.* NATHU RAM. 66 P. L. R. 1911 : 9 I. C. 237 : 202 P. W. R. 1911.

——Art. 97—*Failure of consideration—Suit for amounts paid.*

Where one person pays off a debt which another has to pay, the relief that is given is a personal decree as S. 69 of the Contract Act does not provide any higher remedy. If that remedy is barred owing to delay, the period of limitation cannot be extended. (*Spencer and Devadoss, JJ.*) GOPALA AIYANGAR *v.* MUMACHI REDDIAR. 17 L. W. 254 : 1923 Mad. 392.

——Art. 97—*Vendee dispossessed by third party—Suit by vendee for purchase money—Starting point is date of dispossession.*

LIMITATION ACT (IX OF 1908), Art. 97.

Where a vendee under a deed of sale had been given possession and was subsequently dispossessed under a decree of court obtained by a third person, a suit for damages by the vendee against the vendor is governed by Art. 97 of the Lim. Act. The starting point of limitation is not the date of the decree of the court but the date of actual dispossession of the vendee. 46 C. 670 distinguished. 54 M. L. T. 524 : 30 M. L. J. 449 : 18 M. 887 : 32 I. C. 176, Relied on. (*Ayling and Odgers, JJ.*) HARI HARAMANGALATH SANKARA VARIYAR *v.* KALATHIL UMMAR. 46 M. 40 : (1922) M. W. N. 634 : 16 L. W. 684 : 32 M. L. T. (H. C.) 3 : 43 M. L. J. 721 : 1923 Mad. 46.

——Arts. 97 and 120—*Suit for damages—Breach of covenant for title—Limitation—Starting point.*

Where an execution sale is declared a nullity for want of any saleable interest in the judgment-debtor, a suit by the purchaser for recovery of the purchase money is governed either by Art. 97 or by Art. 120 of the Lim. Act and in either case the starting point is the date of the decree of the first court declaring the sale to be invalid and not of the appellate court confirming that decree. (*Phillips and Ramesam, JJ.*) NADU KANDEELA KATH PAKURAN *v.* KUVATTIL KANDAN KUTTY. 16 L. W. 285 : 31 M. L. T. 169 (H. C.) : (1922) M. W. N. 561 : 1923 Mad. 23.

——Art. 97—*Suit for damages for breach of covenant—Limitation—Vendor and vendee.*

Where owing to the defective title of the vendor the vendee is dispossessed under a decree, the limitation for a suit for damages for breach of covenant begins from the date of the decree, although there is appeal and second appeal from the decree. (*Abdur Rahim, O. C. J. and Phillips, J.*) MUHAMMAD ALI SHERIF *v.* BUDHARAJU VENKATAPATI RAJU. 11 L. W. 537 : 60 I. C. 235 : 27 M. L. T. 304 : 39 M. L. J. 449.

——Art. 97—*Defect in title—Sale of land—Suit for recovery of purchase money—Limitation.*

Where the plaintiff vendee compromises an adverse claim to the property sold by payment of money, the cause of action for refund of the purchase money, as on failure of consideration, arises on the date of payment. 38 M. 887 Foll. (*Wallis, C. J. and Ayling, J.*) ARAVAMUDA CHARIAR *v.* ARAMANA KRISHNA. 50 I. C. 815.

——Art. 97—*Defect in title—Misrepresentation—Registered sale.*

A claim for damages based on misrepresentation by a vendor that he had a title to convey must be brought within three years from the time when the want of title was established by a decree of Court. (*Krishnan, J.*) VENKATACHALLAM PILLAI *v.* KRISHNASWAMI PATTAR. 50 I. C. 673.

——Art. 97—*Applicability.*

Art. 97 properly applies to a case for recovery of money paid under an existing consideration

LIMITATION ACT (IX OF 1908), Art. 97.

which has subsequently failed. (*Spencer, J.*) GOVINDASWAMI PILLAI *v.* MUNICIPAL COUNCIL, KUMBAKONAM. (1917) M. W. N. 585 : 6 L. W. 401 : 42 I. C. 519 : 33 M. L. J. 577.

———Art. 97—*Agent collecting money—Release of property for money received—Pres. Towns Ins. Act, S. 56.*

Where under a power of attorney the agent managed his two principals' affairs and all their properties for recovering moneys due to them and executed three years before he being adjudged insolvent a release of his rights in certain properties in satisfaction of the debts he had collected on his principals' behalf. *Held*, that under Art. 97 three years ought to be calculated from the date when the release deed became inoperative under S. 56 Pres. Towns. Ins, Act. (*Abdur Rahim, Offg. C.J. and Seshagiri Aiyar, J*). ROKHIA BI *v.* THE OFFICIAL ASSIGNEE OF MADRAS. (1916) 2 M. W. N. 254 : 37 I. C. 505: 4 L. W. 364.

———Art. 97—*Dispossession of vendee—Suit to recover purchase money.*

Where under a contract of sale the vendee was given possession of the property sold and on being subsequently dispossessed sued to recover damages for the loss sustained by dispossession. *Held*, that as possession had been given und . the contract of sale, the sale was not void *a initio* and the plff. could recover his purchase money in a suit under Art. 97 31 M. 452 : 14 M. L. T. 524 : 38 M. 887 ; 24 M. 27; 26 A. 519 ; 31 A. 68, foll. (*Phillips, J.*) MEENAKSHI *v.* KRISHNA ROYAR. 32 I. C. 176 : 19 M. L. T 163.

———Arts. 97 and 62—*Suit for recovery of purchase money—Limitation.*

A vendee's possession under purchase is an existing consideration so long as such possession lasts and limitation commences only from the time when he is dispossessed, Art. 97 and not 62 applies for recovery of the purchase money. (*Prideaux, A. J. C.*) PREMSUKHDAS *v.* NAMDEO. 55 I. C. 93.

———Art. 97—*Starting point—Suit on consideration that fails.*

Where a person is entitled to sue for specific performance of a contract for sale of land he can also sue for refund of the purchase-money whether it has been paid in cash or has been set off against debts due by the vendor. In either case the starting point of limitation under Art. 97 of the Lim. Act is three years from the date of the payment or set-off, 9 A. 47, 57 Ref. (*Maung Kin, J.*) MAUNG AUNG BA *v.* MAUNG AUNG PO. 1 Bur. L. J. 198: 11 L. B. R. 437: 1923 Rang. 87.

———Art. 99—*Suit to enforce a charge under S. 82, T. P. Act—Limitation—Personal decree.*

Art. 99 of the Limitation Act applies only to a suit for a personal decree under a charge created by S. 82 of the Transfer of Property Act, but not to a suit to enforce the charge itself. (*Richards, C.J. Bannerjee and Chamier, JJ.*) BHAGWAN DAS *v.* KARAM HUSSAIN. 33 All. 708: 11 I. C. 145: 8 A. L. J. 854.

LIMITATION ACT (IX OF 1908), Art. 103.

———Arts. 99 and 120—*Co-sharers — Money realised by coercive process from one—Suit for reimbursement—Limitation.*

Limitation of suit for reimbursement of money realised by coercive process from one is governed by Articles 99 and 120. (*Chatterjee and Panton, JJ.*) GOPENATH MOONSHI *v.* CHADRANATH MOONSHI. 26 C. W. N. 340.

———Art. 99—*Contribution— Nature of the right.*

Whether the party seeking contribution has voluntarily made payment or is compelled to pay by coercive process, *e. g.* execution of decree, a right to contribution arises when the person has paid in excess of his share for the joint liability of all. (*Chaterjee and Panton, JJ.*) GOPI NATH MUNSHI *v.* CHANDRA NATH MUNSHI. 57 I. C. 884.

———Art. 99—*Redemption by co-mortgagor—Contribution.*

A co-mortgagor redeeming a mortgage becomes assignee of the original security and therefore the limitation for his suit for contribution is the same as that for a suit by a mortgagee on his mortgage. (*Chatterjee and Panton, JJ.*) RAJ KAMINI DEBI *v.* MUKUNDA LAL BANDHAPADHYA. 57 I. C 868: 25 C. W. N. 283.

———Arts. 102 and 115—*Broker—Commission—Suit for—Wages, meaning of.*

A suit for commission by a broker against the principal is one for money under a contract and is governed by Art, 115 and not by Art. 102 'Wages' in Art. 102 is in general, used for remuneration for mechanical or muscular labour, specially to that which is ordinarily paid at short intervals. (*Walsh and Sundar Lal, JJ.*) SUSHIL CHANDRA DAS *v.* GAURI SHANKAR. 39 All. 81: 36 I. C. 371: 14 A. L. J. 873.

———Art. 102—*Suit for wages by* bisardar.

A suit by a *bisardar* for wages is governed by Art 102, Lim, Act. (*Dalal, J. C.*) GHASI RAM *v.* UMA DATT. 26 O. C. 327: 10 O. L. J. 348: 9 O. & A. L. R. 554.

———Arts. 103, 104 and 116—*Dower debt—Suit by heirs of wife—Limitation.*

Where there is a registered deed of dower, Art 104 of the Lim, Act applies to a suit of dower by the heirs of the wife. In the absence of such deed Arts 103 and 104 would apply. 44 C. 759 Relied on. 36 C. L. J. 379 foll. (*Mookerjee and Rankin, JJ.*) MAHOMED MAZAHARAL AHAD *v.* MAHOMED AZIMUDDIN. 27 C. W. N. 210: 37 C. L. J. 108 : 1923 Cal. 507.

———Arts. 103, 104 and 116—*Suit for dower debt—Registered agreement.*

Where dower is payable under a registered instrument executed by the husband in favour of the wife, a suit for dower whether it is brought by the wife during her life time or whether it is brought by her heirs after her death, is a suit for compensation for breach of contract in writing registered within the meaning of Art. 116 of the Lim. Act, The distinction between prompt and

LIMITATION ACT (IX OF 1908), Art. 104.

deferred dower seems immaterial in this connection. The wife may sue the husband for her prompt dower at any time even duriug the continuance of the marriage. The wife may also sue the husband for her deferred dower in the event of the marriage being dissolved by divorce. Where the suit for dower is brought by the heirs of the wife after her death it is still a suit on the contract, the contract being one which the heirs are entitled to enforce. (*Richardson and Suhrawardy, JJ.*) ASIATULLA *v.* DANES MAHOMED. **50 Cal. 253: 36 C. L. J. 379: 1923 Cal. 152.**

——— Art. 104—*Possession in lieu of dower—Dispossession more than 3 years after husband's death—Suit for dower.*

The husband dying in 1895, in 1906 she was forcibly dispossessed whereupon she brought a suit in 1907 for the recovery of the balance of her dower debt, it being contended that the suit was barred by Art. 104, Sch. II of the Lim. Act. 1877. *Held*, that the limitation ran fromdispossession and not from death of the husband. (*Stanley, C., J. and Bannerjee, J.*) HAMIDULLAH KHAN *v.* NAJJO. **8 A. L. J. 578 : 10 I. C. 282 : 33 All. 568.**

——— Art. 105—*Redemption suit—Applicability of article.*

Art. 105, Sch. II of the Limitation Act of 1877 has no application to a redemption suit, The Lim. Act, 1871, provided 3 years as the period for recovering surplus profits and it ceased to have any effect on 1st Oct.1877 as the Lim. A. of 1877 came into operation on 1st October 1877. (*Karamat Hussain and Chamier, JJ.*) SUDHERSHAN *v.* RAM PRASAD. **10 I. C. 402.**

——— Arts. 105 and 148—*Usufructuary mortgagee—Suit for surplus profits not by mortgagee.*

Art. 105 of the Act applies only to cases where the mortgagor has not to bring a suit for redemption but has to sue only for recovery of the surplus collections. Where the mortgagor in a suit for redemption asks for recovery of surplus profits from the mortgagee the latter relief forms part of the suit for redemption under O. 34, Rr. 7 and 9 for which the limitation is provided by Art. 148 of the Act. (*Chatterjee and Newbould, JJ.*) PROSONNA KUMAR *v.* NILAMBAR. **26 C. W. N. 123: 1922 C. 189.**

——— Art. 105—*Suit by mortgagor for loss.*

A mortgagor can, under Art. 105, sue the mortgagee for loss occasioned to the trees on the mortgaged property, within three years from redemption by deposit in Court or otherwise, (*Kanhaiya Lal, A.J. C.*) RAM SUKA *v.* INDAR KUNWAR. **50 I. C. 158: 6 O. L. J. 53.**

——— Art. 105—*Suit for balance of collections by mortgage.*

A usufructuary mortgage provided that after deducting interest from the collections the balance should be paid to mortgagor annually. After redemption without intervention of Court on payment of the principal money, a suit was brought for the recovery of the balance of collections, after deducting interest. *Held*, that the Art. applicable is Art. 105 (*Kendall and Daniels, A. J. C.*) BEKRAMJIT SINGH *v.* RAJ RAGHUBAR SINGH. **38 I. C. 610: 20 O. C. 25.**

LIMITATION ACT (IX OF 1908), Art. 106.

——— Art. 105—*Mesne profits and interest on the mortgaged property.*

The limitation applicable for the recovery of mesne profits and interest is governed by Art. 105. (*Kanhaiya Lal, A. J. C.*) ABDUL HASAN KHAN *v.* JOGWAMTA. **32 I. C. 729 : 2 O. L. J. 620.**

——— Art. 106—*Suit for partnership account—Presumption of dissolution of partnership—Cessation of annual accounts—Rendering of final account showing division of capital and revenue.*

In a suit brought in 1902 for partnership account and to recover the plaintiff's share in the properties of a business carried on by them and the defendants. *Held*, (affirming the decision of the High Court) that, when annual accounts of the partnership business which had been rendered year by year from 1868 to 1891, ceased in the latter year and, on 12th April 1891, a final account showing the division of both capital and revenue was made out, the defendants afterwards carrying on the business without any interference from the plaintiffs, the presumption was in favour of the dissolution of the partnership as at the definite date of the year when the account was thus closed. And their Lordships were of opinion that these facts taken with the other acts and conduct of the other parties, and the whole circumstances of the case which greatly strengthened the presumption, made the inference in favour of the dissolution having occurred at the above date substantially conclusive. The suit, therefore, not having been brought within three years from the date, was barred by Article 106. (*Lord Shaw.*) JOOPOODY SARAYYA *v.* PALAVARATH LAKSHMANASWAMI. **36 Mad. 185 : 11 A. L. J. 556: 18 C. L. J. 13 : 15 Bom. L. R. 634: 14 M. L. T. 7 : 17 C. W. N. 1006: (1913) M. W. N. 571 : 19 I. C. 513: 25 M L J. 128 (P. C).**

——— Art. 106—*Divided members of Hindu family running business—Dissolution of business—Suit for profits.*

Where after the partition in a Hindu family the co-parceners run a business, they are partners within S. 239 of the Contract Act, and if one of them puts an end to the partnership, S. 253 (8) of the said Act applies and the relief which such member is entitled to as against the other members is a suit for the share and profits of a dissolved partnership and such suit will be governed by Art, 106 of the Limitation Act. (*Tudball and Sulaiman, JJ.*) BHAGWATI PERSHAD *v.* BABU LAL. **63 I. C. 548 : 19 A. L. J. 525.**

——— Art. 106—*Dissolution of partnership—Suit for division of immoveable property forming partnership asset—Limitation.*

A suit for division of immoveable property forming part of partnership, assets, after the dissolution of the partership is barred by Article 106 of the Limitation Act. (*Richards, C. J. and Bannerjee, J.*) GOBARDHAN *v.* GANESHI LAL. **11 I. C. 288.**

——— Arts 106 and 120—*Firm not dissolved.*

Where a firm is not dissolved Art. 106 does not apply but only Art. 120. (*Mookerjee and Walmsley, JJ.*) HARAMOHAN PODDAR *v.* SUDARSON. **66 I. C. 811 : 25 C. W. N. 847.**

LIMITATION ACT (IX OF 1908), Art, 106.

——Art. 106—*Dissolution—Suit declaration and for account and share of profits.*

A suit for declaration that plff. retired from a partnership on a certain date that the partnership was dissolved at the time so far as be was concerned, and for accounts and share of profits found due to him on such accounts being taken, is governed by Art.106 and not by Art. 120. (*Sanderson, C.J. and Mookerjee, J.*) KALIDAS CHOUDHURI *v.* SRI DANPADI SUNDARI DASI.

22 C. W. N. 104 : 43 I. C. 893 : 27 C, L. J. 403.

——Arts. 106 and 120—*Suit for an account—Starting point of time.*

In a suit for account of a partnership, time begins to run from the date of dissolution of the partnership and where there has been a previous settlement, then from date of the last settlement. (*Mookerjee and Teunon, JJ.*) GOKUL KRISHNA DAS *v.* SHASHI MUKHIDASI.

16 C. W. N. 299 : 13 I. C. 23 : 15 C. L. J. 204.

——Art. 106—*Effect of contract to continue partnership on death of a partner.*

Where the parties to a contract agree expressly or by necessary implication to continue the partnership as if no dissolution had taken place upon the death of one of them, the suit for accounts would not be barred under Art.106 of the Limitation Act. (*Abdul Raoof and Qadir, JJ.*) HARI CHAND *v.* JUGAL KISHORE. 1922 L. 349.

——Art. 106—*Dissolution of—Partnership—Time of.*

Where a partnership was entered into for doing certain specified work and "such other work" as the parties might undertake and the specified work came to an end at a particular time. *Held*, that the partnership was not dissolved when the specified work came to an end but continued up to date of suit. (*Shah Din, C. J.*) MANI SINGH *v.* DIAL SINGH. 42 I. C. 459 : 162 P. W. R. 1917.

——Art. 106—*Money paid for joint purchase—Suit to recover.*

A suit to recover money paid to deft. to be used in a joint purchase of property, is governed by Art 89 and not 60 or 106 as the deft. was acting only as the agent of the plff. (*Shadi Lal and Le Rossignol, JJ.*) JETHA RAM *v.* MEHNGA RAM.

33 I. C. 438.

——Art. 106—*Joint business by brothers—Suit for accounts by heirs of one.*

A suit by the heirs of one of two brothers who carried on joint business is one for an account and a share of the profits of a dissolved partnership and is governed by Art. 106 of the Lim. Act. (*Bakewell, J.*) MOHIDEEN BEE *v.* SYED MEER SAHIB. 32 I. C. 1002 : 38 Mad. 1099.

——Art. 106—*Dissolution—Time of.*

The business of a firm began to fail in 1906 and finally closed in 1908, the only work done subsequently consisted of realising assets, paying debts to the creditors and recovering rents from tenants. *Held*, that the partnership came to an end in 1908 and that the suit for dissolution and the prayer for accounts brought more than three years thereafter, was barred under Art. 106. (*Shadilal, J.*) AMIRCHAND *v.* JAWAHIR MAL.

32 I. C. 853 : 49 P. W. R. 1916.

LIMITATION ACT (IX OF 1908), Art. 109.

——Art. 106—*Dissolution of—Partnership—Taking of accounts—Limitation.*

When a partnership is determined by death of a partner and the surviving partners continue to carry on the business, the statue of limitation is no bar to taking the accounts of the new partnership by going into the accounts of the old partnership, which have been carried on into the new partnership without interruption or settlement. 25 M. 26 at 31 and 32, R (*Johnstone and Ratligan, JJ.*) MAHARAJ KISHEN *v.* HAR GOBIND.

101 P. R. 1914 : 27 I. C. 69 : 218 P. L. R. 1915.

——Art.106—*Suit for price of article delivered to a partner.*

Suit for price of articles delivered to a partner during the course of partnership and for the partnership-business, is governed by Art. 106 and time begins to run from the stopping of business (*Kensington and Johnstone, JJ.*) BERAGI RAM *v.* RAJA RAM. 163 P. L. R. 1911 : 10 I. C. 250 : 214 P. W. R. 1911.

——Art. 108—*Applicability—Trees cut down by lessee.*

Art. 108 of the Act applies only to suits by a landlord for recovery of the value of trees cut down by the lessee. (*Sadasiva Aiyar and Napier, JJ.*) PUMPALIA VENGALIA *v.* KANHAMINA.

25 I. C. 704.

——Arts. 109 and 62—*Suit for mesne profits usufructuary mortgagee against mortgagor in wrongful possession—Limitation.*

Art. 109 governs a suit by a usufructuary mortgagee for mesne profits against his mortgagor who is in wrongful possession of the mortgaged property. (*Richards, C.J. and Bannerjee, J.*) RAM SARUP *v.* HERPAL.

15 A L. J. 33 : 39 I. C. 663 : 39 All. 200.

——Arts. 109 and 120—'*Wrongfully received*'—*Suit on mortgage—Profits received by transferee* pendente lite—*Suit by purchaser at mortgage sale to recover the same.*

The words 'wrongfully received' in Art. 109 of the Limitation Act include receipts of profits that cannot be legally substantiated. It was held in a suit between the purchaser at a mortgage sale and the holder of a usufructuary mortgage granted by the mortgagor after the passing of the mortgage decree that the usufructuary mortgage was void as against the purchaser owing to the application of the doctrine of *lis pendens*. The purchaser having sued the usufructuary mortgage to recover rents realised by the latter from certain tenants of the property before the plaintiff obtained possession under the purchase : *Held*, that Art. 109 of the Limitation Act applied to the case. (*Chatterjee and Panton, JJ.*) NAGENDRA NATH PAL *v.* SARAT KAMINI DASI.

26 C. W. N. 386 : 1922 Cal. 235.

——Art. 109—*Suit for mesne profits—Patni taluk sold under Reg. VIII of* 1819—*Sale set aside.*

Art. 109 of the Lim. Act (XV of 1877) is applicable to a suit for mesne profits where the possession of the property in suit, *viz.*, a *patni taluk*, was obtained by the deft. under a sale held under

LIMITATION ACT (IX OF 1908), Art. 109.

Reg. VIII of 1819, which was subsequently set aside. The mesne profits can only be claimed for 3 years prior to suit. (*Sanderson, C J., Teunon and Walmsley, JJ.*) SARAJ RANJAN CHOUDHURY v. PREMCHANO CHOUDHURY. 22 C. W. N. 263 : 43 I. C. 781 (1) : 27 C. L. J. 257.

——Art. 109—*Mesne profits—Period for which allowed.*

A court cannot award mesne profits for more than three years as provided in Article 109 of the Act. (*Holmwood and Richardson, JJ.*) DINO NATH DAS v. JOGENDRA NATH.
26 I. C. 890 : 19 C. W N. 1167.

——Arts. 109 and 120—*Wrongfully received—Meaning of—Possession obtained under decree—Reversal in appeal—Suit for possession and mesne profits—Restitution.*

A suit for the recovery of profits of immoveable property by a person who was dispossessed in execution of a decree which was reversed in appeal and who was subsequently restored to possession, is governed by Art. 109. The words "wrongfully received" in the article include receipt of profits under a claim or title that cannot be legally substantiated. An appeal is only a continuation of the original proceedings and the appellate judgment dates back to and stands in the place of the original judgment for all legal purposes. Possession taken by a person pending an appeal is subject to the result of the appeal and must be deemed to have been without legal title if the original decree or order is reversed and is in this sense wrongful as against the person dispossessed. (*Ayling and Kumaraswami Sastri, JJ.*) RANGASWAMI v. ALAGAYAMMAL.
17 M. L. T. 168 : 28 I. C. 85 : 2 L. W. 169.

——Arts. 109 and 127—*Profits—Suit for—Applicability to Mahomedans.*

Art. 127 is not applicable to Mahomedans and profits can only be recovered under Art. 109 for three years. (*Benson and Sundara Aiyar, JJ.*) CHERIA IMBICHI BEEBEE v. SYED ALI.
13 I. C. 791 : (1912) M. W. N. 45.

——Art. 109—*Starting point—Receipt of profits.*

Under the present law, it is the actual receipt of the profits that gives the starting point for limitation, for a suit for mesne profits. (*Hallifax, A. J. C.*) GANPAT RAO v. JANGIA.
24 I. C. 866 (2) : 10 N. L. R. 76.

——Art. 109—*Starting point.*

Under Art. 109, Sch. I, mesne profits can be allowed for only three years prior to the date of the suit. The date of the plaint and not the date of the application for ascertainment of mesne profits furnishes the time from which three years has to be reckoned back. The application for mesne profits is not a suit but only a proceeding in the suit. (*Das and Ross, JJ.*) SURAJ PRASAD PANDAY v. SOMRA MAHTON.
68 I. C. 903 : 2 P. L. T. 648.

——Art. 109—*Mesne profits—Suit for.*

The period of limitation for a suit for mesne profits is that provided by Art. 109 of the Limitation Act. (*Twomey, J.*) SUBRAMANIAM CHETTY v. MG PO THET. 14 I. C. 801 : 5 Bur. L. T. 33.

LIMITATION ACT (IX OF 1908), Art. 110.

——Arts. 110 and 116—*Suit for rent—Registered lease.*

Suit for rent on a registered lease comes under Art. 110 and not Art. 116. (*Griffin and Chamier, JJ.*) JUGGI LAL v. SRI RAM.
34 A 464 : 16 I. C. 146 : 10 A. L. J. 1.

——Arts. 110 and 116—*Suit for arrears of rent—Registered lease.*

Art. 116 of the Lim. Act, and not Art. 110 applies to a suit for arrears of rent due on a registered lease. 6 I. C. 94 : 3 M. 76 : 3 A. 600 : 6 B. 75 Ref. (*Scott, C. J. and Beaman, J.*) LALCHAND NANCHAND GUJAR v. NARAYAN HARI.
37 Bom. 656 : 21 I. C. 315 : 15 Bom. L. R. 836.

——Arts. 110 and 116—*Arrears of Royalty and Commission.*

A suit to recover arrears of royalty and commission is not one for rent within Art. 110 and is governed by Art. 116 (*Mookerjee and Beachcroft, JJ.*) PEARY LAL DAW v. MADHOJA JIBAN.
19 I. C 865 : 17 C. L. J. 372.

——Arts. 110 and 116—*Suit for rent dismissed as barred—Registered lease brought to notice of Court later.*

Where a suit for arrears of rent is dismissed as barred, and it is later found that the suit was based upon a registered lease the same can be let in evidence for purposes of saving limitation. (*Holmwood and Teunon, JJ.*) AHMED BUKSH v. BIPIN BEHARI SINGH.
11 I. C. 6.

——Art. 110—*Suit for recovery of Jodi—Limitation.*

A suit for the recovery of Jodi payable by an inamdar to a Zemindar is governed by Art. 110 of the Lim. Act. for Jodi is only favourable rent. 21 M. 243 ; 22 M. 11 Ref. (*Krishnan, J.*) RAJA SAMBASADASIVA CHINNA RAYALVARU v. BANNAR MADDULAPPA.
(1923) M. W. N. 524 : 1924 Mad. 73.

——Art. 110—*Right of landlord vested in different person subsequently—Suit for arrears of rent in such cases—Limitation—Starting point.*

Usually arrears of rent become due, within the meaning of Art. 110 of the Limitation Act, at the end of each fasli year. But a different time may in certain circumstances be the time from which limitation begins to run. In a case in which there was no one to whom the arrears were payable and who was capable of enforcing the obligation by suit, *held*, that there was no cause of action in existence and the arrears became due, within the meaning of the article, only as soon as there was some one to whom they were payable. In a case in which a Devasthanam was the melvaramdar, and a Mutt the Kudiwaramdar, *held*, that there was no cause of action in existence for a suit to recover arrears of rent from the Mutt, so long as the trusteeship of the temple and of the Mutt was vested in the same person, and that for a suit for such arrears, time began to run only from the date on which a different person was appointed trustee

LIMITATION ACT (IX OF 1908), Art. 110.

of the temple. (*Phillips and Devadoss, JJ.*) SRIMATH DEIVASIKHAMONY NATARAJA DESIKAR *v.* M. R. GOVINDA RAO.

44 M. L. J. 318 : 46 Mad. 579 : 17 L.W. 344 : 32 M L T. (H C.) 174 : (1923) M. W. N. 252 : 1923 Mad. 461.

——— **Arts. 110 and 116**—*Expiry of Kanom—Limitation for rent.*

The limitation for a suit for rent after the expiration of a *kanom* is according to Art. 116 and not Art. 110. (*Oldfield and Sadasiva Aiyar, JJ.*) AMMOETI *v.* SANKARAN ADIODI.

37 I. C. 83 : (1916) 2 M. W. N. 117.

——— **Art. 110**—*Co-sharer occupying property—Suit for rent.*

Suit for rent by a co-owner against his co-sharer who occupied the property after the term fixed for such period, is governed by Art. 120 and not by 110 or 115. (*Ayling and Hannay, JJ.*) MADAR SAHIB *v.* KADER MOIDEEN SAHIB.

33 I. C. 705 : 39 Mad. 54.

——— **Arts. 110, and 132.**

Plff. got on 8-4-1896 usufructuary mortgage of some properties and leased them to the mortgagors on the same day. On 1-9-1903 he again got usufructuary mortgage of the same properties and simple mortgage of some other properties. In 1912 plff. sued on both mortgages for sale of the properties. *Held*, that the document of 1903 made the properties liable for the interest that the suit was governed by Art 132 and not Art. 110 and that he was entitled to interest. (*Wallis, C. J. and Tyabji, JJ.*) VASUDEVAN ATISATRIPADA *v.* GOVINDA MENON.

30 I. C. 818 (2) : 2 I. W. 853

——— **Art. 110**—*Suit for rent—Limitation, if runs from end of fasli.*

In a suit by the landlord for rent, time for purposes of limitation runs not from the end of the fasli but from the date the rent becomes due under the terms of the tenancy. 27 M. 143 dist. 29 M. 556, Ref. (*Sundara Aiyar and Sadasiva Aiyar, JJ.*) KANTHIMATHINATHA PILLAI *v.* MUTHUSWAMI PILLAI.

37 Mad. 540 : 12 M. L. T. 437 : 16 I. C. 934 : (1912) M. W. N. 960.

——— **Art. 110**—*Rent suit—Limitation, if runs from issue of patta.*

The right to each instalment of rent accrues on the date fixed for the payment of the instalment according to the contract between the parties, or according to the usage and not when a patta is tendered. Limitation would run from that date. (*Sundara Aiyar and Spencer, JJ.*) SATRUCHERLA VEERABADHRA RAJU *v.* GANTA KUMARI NAIDU.

22 M. L. J. 451 : 11 M. L. T. 212 : 15 I C. 393 : (1912) M. W. N. 441,

——— **Art. 110**—*Arrears of Jama—Ascertainment of Jama—C. P. Land Revenue Act* (1881), S. 65-*A* (4) (*d*).

Where the amount of *Theka jama* has to be fixed by Deputy Commissioner under S. 65-A (4) (*d*) no arrears of *jama* become due within Art. 110, Lim. Act, until the amount is finally ascertained by concluding the dispute regarding the *jama*, when the landlord has proceeded to have the proper rate of rent ascertained, time runs from the date on which the rent is finally determined and not from the close of the year for which the rent is payable. (*Drake Brockman, J.C.*) RAGHUNATH *v.* SARVA.

12 I. C. 804 : 7 N. L. R. 169.

——— **Art. 110**—*Suit by an assignee for arrears of rent.*

A suit by an assignee for arrears of rent is governed by Art. 110 of the Act. (*Das and Adami, JJ.*) HAYAT MAJID *v.* HAZARI LAL.

63 I. C. 424.

——— **Arts. 110 and 116**—*Suit for recovery of rent by assignee of landlord—B. T. Act, Sch. III, Part 1 (2).*

A suit by an assignee from the landlord for arrears of rent comes under Art. 110 and not Cl. 2 of Part I of the Sch. III of the B. T. Act. Though the tenant holds under a registered lease, a suit for recovery of the rent recovered by the lease does not fall under Art. 116 of the Lim. Act. A registered patni lease provided that the rent should be paid in four instalments on four specified days in the year ; *held*, that the period of limitation runs from the date on which each instalment fell due and not from the last day of the agricultural year. 15 C. 221, Dist. 26 A 138; 17 C. 469 ref. (*Roe and Jwala Prasad, JJ.*) GAJADHUR PRASAD *v.* THAKUR PRASAD SINGH.

1 P. L. J. 506 : 38 I. C. 102 : 3 P. L. W. 179.

——— **Art. 113.**

Agreement.
Notice of refusal.
Starting point of limitation.
Suit of enforce award
Miscellaneous.

Agreement.

——— **Art. 113**—*Agreement—Specific performance—Suit by one alleging himself to be beneficially entitled.*

The terms of Art. 113 of the Lim. Act relate to the performance of any contract. A suit by the plff. to enforce specific performance of a contract for conveyance of immoveable property is governed by Art. 113 even though the defendant was prior to the execution of the contract for conveyance, bound to hold the property for the benefit of the plaintiff or his predecessor in title. The contract for conveyance having treated defendant as the legal owner, the plaintiff was bound to sue for enforcement of the contract within the time limited by Art. 113. (*Lord Carson.*) SUBBARAYA PILLAI *v.* RAJAKUMARA VENKATA PERUMAL RAJA BAHADUR.

16 L. W. 169 : 45 Mad. 645 : 49 I. A. 335 : 13 M. L. T. 146 : 1922 P. C. 345 (P. C.).

——— **Art. 113**—*Agreement.*

The deft.'s predecessor entered into an agreement to grant a permanent lease "hereafter" of certain property to plffs. and he also issued a notice on the day on which the agreement was executed to his tenants to pay their rents to the plffs. stating therein that he had "let out the property in *ijara*" to the plffs. Some time later he

LIMITATION ACT (IX OF 1908), Art. 113—Agreement.

asked the plffs. to agree to the postponement of the grant of the lease till he had paid off his debts. The plffs did not object as they had confidence in his acting up to his words. But deft.'s predecessor did not grant the lease and plffs. sued deft. for specific performance *Held* that plff.'s right to claim specific performance of the contract to grant a permanent lease was not barred by limitation under Limitation Act, Sch. I, Art. 113. (*Fletcher and Chatterjee, JJ.*) KALIDAS BHANGA *v.* GIRIBALA DASI. 23 I. C. 360.

——Arts. 113 and 114—*Agreement—Deed—Construction—Exchange—Suit for possession of property received in exchange.*

Under a compromise an exchange of properties was to take place on a future date, that is to say on the 1st of Maghar Sambat 1966, after the wood work of the houses had been removed. The other party sued for recovery of possession of the property. *Held*, that the suit was for specific performance of a contract to hand over the ownership rights in the property in suit on a certain date and not for possession of property in which the ownership rights had passed completely by the deed of compromise. Art. 113 governed the suit. (*Campbell, J.*) KHUSHI MAHOMED *v.* HAYAT. 1923 Lah. 672.

——Art. 113—*Agreement to sell on the success of litigation—Limitation—Commencement.*

Where there was an agreement to sell a property in the event of success in a litigation, Art. 112 of the Lim. Act applies to a claim based on it and limitation begins to run from the date of success in the suit. (*Daniels and Lyle, A. J. Cs.*) BISHESHAR DAYAL *v.* MT. HAR RAJ KUBR. 66 I. C. 622.

——Art. 113—*Agreement to lease.*

Where a person who has agreed to execute a lease fails to do so and the promisee does not demand execution within three years from the completion of the agreement, a suit for specific performance is barred. (*Mullick and Jwala Prasad, JJ.*) SATYA KINKAR SAHANA *v.* RAJA SRI SRI SHIBA PRASAD SINGH. 4 P. L. J. 447 : 52 I. C. 452 : 1920 Pat. 17.

——Arts. 113, 131 and 144—*Agreement to lease—Interest in immoveable property.*

The agreement to grant or renew a lease is not immoveable property and a suit for specific performance is governed by Art. 131 and not Art. 144 of the Act. (*Ormond and Chevis, JJ.*) SECRETARY OF STATE FOR INDIA *v.* MA DWE. 7 Bur. L. T. 268 : 24 I. C. 911 : 8 L. B. R. 64.

Notice of refusal.

——Art. 113—*Notice of refusal.*

Time for specific performance of a contract of sale begins to run from the date when plff. comes to know of the refusal to execute the document. (*Maung Kin, J.*) MAUNG NE DUN *v.* MA LE. 32 I. C. 573 : 9 Bur. L. T. 818.

——Art. 113—*Notice of refusal—Specific performance of unregistered sale.*

The limitation for a suit for specific performance of a contract to sell (the sale deed being unregistered) is three years from the time when the vendee knows that vendor refuses to sell. (*Fox, C.J.*) MA SHWE ON *v.* MAUNG KYET. 32 I. C. 536 : 9 Bur. L. T. 45.

LIMITATION ACT (IX OF 1908), Art. 113—Starting point of limitation.

Starting point of limitation.

——Art. 113—*Starting point of limitation.*

A suit for specific performance of a contract is to be brought within 3 years from the date when the performance is refused. (*Mookerjee and Chatterjee, JJ.*) MATHURA MOHAN SAHA *v.* RAMKUMAR SAHA. 43 Cal. 790 : 23 C. L. J. 26 : 35 I. C. 305 : 20 C. W. N. 370.

——Arts 113, 62 and 97—*Starting point—Sale—Indemnity clause—Suit to enforce.*

In 1907, deft. sold to plff. some land of his own together with some land of his minor nephew with a condition that if the minor would object on attaining majority, deft. would give an equal area from his own property. Mutation as regards the minor's share was refused in 1907 on objection being raised by the minor's mother. In 1910 plff. sued for a declaration of his ownership of the whole land but his suit was dismissed as to the minor's share. In 1917 the minor attained majority, mortgaged his share to A who dispossessed the plff. from the property. Plff. therefore sued the deft. to enforce the indemnity clause or Rs. 1,000 as the value of the minor's share. *Held*, that the first part was a suit for specific performance and was governed by Art. 113 and time ran from 1907 or 1911, and the suit was barred; that as regards recovery of purchase-money the suit was governed by Art. 62 or Art. 97; if by Art. 62, it was barred as time began to run from the date of sale and if by Art. 97, it was barred as time began to run when the plff.'s rights was denied, *i. e.*, 1907 or at least in 1911. (*Martineau, J.*) (TAPASI MAL *v.* JHANDOO. 62 I. C. 953.

——Art. 113—*Starting point of limitation: Contract for sale of immoveable property—No time fixed—Purchase of property in execution sale with notice—Suit for specific performance—Limitation.*

In a suit for specific performance of a contract of a sale in which no time was fixed for execution of the conveyance, the plff. impleaded as additional deft. an execution purchaser of the property with notice of the contract. The auction-purchaser was added at a time more than 3 years from the date of the refusal by the vendor to perform his contract. It was not alleged or proved that the auction-purchaser had refused performance of the contract more than three years before he was impleaded. *Held*, that the suit was instituted within time under Art. 113 of the Lim. Act. (*Abdur Rahim, O. C. J. and Odgers, J.*) DUNDIGALLA KESAVALU *v.* KALAVAGUNTLA RAJARAM. 38 M. L. J. 29 : 11 L. W. 35 : 55 I. C. 533 : (1920) M. W. N. 132.

——Art. 113—*Starting point of limitation—Right to claim specific performance vesting in third party.*

In cases when the right to sue for specific performance vests in a third party to whom the ascertainment of the date on which performance

LIMITATION ACT (IX OF 1908). Ar 113—Starting point of limitation.

becomes due need not necessarily be known, the doctrine *certum est quod atem reddi potest* will not apply and time begins to run from the date of refusal of performance. (*Ayling and Napier, JJ.*) SATHERLA VENKANNA *v.* NAMADHARI VENKAT KRISHNAYYA. **41 Mad. 18 : 33 M. L. J. 35 : 41 I. C. 807 : 6 L. W. 192.**

——— —Art. 113—*Starting point of limitation.*

When there is no date fixed for performance of a contract time begins to run from the date when the performance is demanded by one party and refused by the other. (*Sundara Aiyar and Sadasiva Aiyar, JJ.*) ABDUL KHADIR *v.* NAGASARUPU. **17 I. C 399 : (1912) M. W. N. 1004.**

———Art. 113—*Starting point of limitation.*

The time for limitation in a suit for specific performance begins to run from the date the cause of action arises, that is, from the date fixed for the performance of the contract and not from the date of payment of consideration or taking possession. (*Imam, J.*) MUSAMMAT BATULAN *v.* NIRMAL DAS. **44 I. C. 244 : 4 P. L. W. 192.**

———Art. 113—*Starting point.*

Where a date is not fixed for specific performance time does not commence to run till specific performance has been demanded and refused. (*Duckworth, J.*) MA MA GYI *v.* MA NYO PO. ANOTHER. **1 Bur. L. J. 171 : 1923 Rang. 44 (1).**

———Art. 113—*Starting point of limitations—Transfer of Property Act, S 54.*

A vendee who has paid up the purchase money can bring a suit to have a registered deed executed for completing his title under S. 54 of the T. P. Act unless it is barred by Art. 113 of the Limitation Act. Where the date for the performance is not fixed, time under Art. 113 runs from date of refusal. (*Maung Kin, J.*) MYA BWIN *v.* MAUNG KYA ZAN. **33 I. C. 761.**

———Art. 113—*Starting point of limitation—Suit for specific performance—No time fixed for performance.*

In suits for specific performance where no time is fixed for performance, limitation commences from the time where performance was asked for and refused. (*Crouch and Hayward, A. J, Cs.*) VISRAM *v.* BIBISULTAN. **11 I. C. 25.**

Suit to enforce award.

——— —Arts 113 and 132—*Suit to enforce award—Article does not apply.*

A suit to redeem a charge declared by an award is not a suit to enforce specific performance of a contract and is not governed by Art. 113 of the Lim. Act. (*Lindsay and Kanhaiya Lal, JJ.*) SURAT SINGH *v.* UMRAO SINGH **L. R. 3 A. 383 : 20 A. L. J. 611 : 1922 All. 410.**

———Arts 113, 116 and 120—*Suit to enforce award—Suit to recover money under an award—Nature.*

On a reference, the arbitrator gave an award on Jan. 12th, 1904, providing that the deft. should pay Rs. 350 to the plff. by June 27th and in case of default the plff. should recover the same with interest. The deft. made default and the plff. sued in 1909 to recover the sum with interest, *Held*, that the suit was not one for specific performance of a contract and was not governed by Art. 113, but Art. 116 or 120 and was within time. 5 A. 263 16 A. 3 . 23 A 285 ; 23 M 593 : Ref. (*Tudball and Piggott JJ*) KULDIP DUBE *v* MAHANT DUBE. **34 All. 43 : 11 I. C. 705 : 8 A. L. J. 1138.**

LIMITATION ACT (IX OF 1908), Art. 113—Miscellaneous.

———Art. 113—*Suit to enforce award—Limitation.*

The word "Contract" in Art. 113 of the Lim. Act does not apply to an "award". (*Teunon and Richardson, JJ.*) T. C. TWEEDE *v.* JOGESH CHANDRA ROY. **51 I. C. 999.**

———Art. 113—*Suit to enforce award—Suit for balance under award is not one for specific performance.*

Suit to recover balance of money due under an award is not one for specific performance of contract within art. 113. The court while ordering payment of balance only directs payment of compensation for non-compliance with the terms of the award. (*Reid, C. J. and Ratligan, J.*) HARDHAJAN SINGH *v.* DELHI CLOTH AND GENERAL MILLS CO., LTD. **265 P. W. R. 1912 : 259 P. L. R. 1912 : 16 I. C. 804 : 32 P. R. 1913.**

———Arts. 113, 115 and 144—*Suit to enforce award—Limitation.*

An award does not embody a contract and a suit to enforce it is not governed by Art. 113, 115, and 116 of the Limitation Act. The limitation applicable to the enforcement of the relief given by the award being dependent upon the nature of the relief. A suit for possession of immoveable property in the basis of an award is governed by Art. 144. (*Kanhaiya Lal, A. J. C.*) SHUBRALI *v.* HAFIZAN. **42 I. C. 116 : 4 O. L. J. 487.**

———Arts. 113, 148 and 178—*Suit to enforce award.*

Limitation for a suit to enforce an award depends on the nature of the relief sought, if the award is to the effect that the defendants shall hold the land as usufructuary mortgagee for a definite sum, and the plaintiffs sue for redemption, the article of the Schedule applicable is Art. 148. (*Brown, A. J. C.*) MAUNG NE DUN *v.* MAUNG CHO. **4 U. B. R. 124 : 1923 Rang. 108.**

Miscellaneous.

———Arts. 113 and 144—*Contract, meaning of—Suit for possession—Chaukidar's lands transferred to Zemindar—Patnidar's suit to enforce his rights — Limitation — Bengal Act (VI of 1870), S. 51.*

"Contract" primarily means a transaction which creates personal obligations but it may, though less exactly, refer to transactions creating real rights. It is in this latter sense that the term is used in Bengal Act VI of 1870, S. 51. A suit by a *patnidar* for settlement and possession of *chaukidari chakran* lands transferred to the *Zemindar* is governed by Art. 144 and not by Art. 113. (*Lord Buckmaster.*) RAJIT SINGH *v.* MAHARAJ BAHADUR SINGH. **46 Cal. 173: 16 A. L. J. 964 : 25 M. L. T. 8 : 29 C. L. J. 193 : 45 I. A. 162 : 1 U. P. L. R. (P. C.) 23 : 21 Bom L. R. 506 : 10 L. W. 83 : 48 I. C. 262 : 23 C. W. N. 198 : 35 M. L. J. 528 (P.C.).**

LIMITATION ACT (IX OF 1908), Art. 113—Miscellaneous.

———Arts. 113 and 144—*Suit by heir for possession.*

Suit by one heir for possession of his share by partition of the property, in joint possession of all the heirs, under an agreement entered into 5 years before suit, is governed by Art. 144 and time runs from the time the agreement is impeached by one heir. 26 A. 497 Dist. (*Shah Din and Scott Smith, JJ.*) BASHESHAR NATH *v.* DEVI PERSHAD. 20 P. R. 1913: 101 P. W. R 1913: 19 I. C. 411: 185 P. L. R. 1913.

———Art. 113—*Mortgage by conditional sale—Agreement as to foreclosure—Suit for possession in terms of agreement—Limitation.*

Where certain occupancy tenants mortgaged their holding to one of the village proprietors who on a general partition of the estate agreed that on foreclosure of the mortgage he should give up the land and receive a proportionate amount in respect of his share, a suit to recover one's share under the above agreement, though possession of immoveable property was involved in it, is one for specific performance of the agreement governed for purposes of limitation by Article 113 of the Limitation Act. (*Rattigan J.*) FAZAL DIN *v.* AMIRUDDIN. 138 P. W. R. 1911: 11 I C. 299: 217 P. L. R. 1911.

———Arts 113 and 143—*Contract to re-exchange—Suit on.*

A covenant which provides that in event of obstructions to one party to the exchange deed in this enjoyment of the property exchanged, both should re-exchange those properties in a condition subsequent. A suit based on the covenant is governed by the Art 143 and not by Art. 113 of the Limitation Act deft. in such a suit cannot set a plea of *bona fide* purchase from one of the parties to the exchange as the transferee cannot get a large estate than the tranaferor. (*Bakewell and Phillips, JJ.*) R. V. SRINIVASA AIYANGAR *v.* KOTTAPPAKKI. 51 I.C. 939: 42 M. 690.

———Art. 113—*Contract to resell.*

A suit for specific performance of a contract to resell is governed by Art. 113 and limitation runs from the date of refusal. (*Coutts Trotter and Kumaraswami Sastri, JJ.*) KALAPPA KAMTHI *v.* KACHOR SAKHARAMA RAO. 29 I. C. 898.

———Art. 113—*Specific performance.*

A suit for specific performance is governed by Art. 113 (*Lindsay, A. J. C.*) GAJADHAR SINGH *v.* KANDHYA BUKSH. 9 I. C. 243.

———Art. 113—*Absence of demand—Effect—Suit premature as limitation not commenced—Effect.*

Where a suit is premature because no demand was made prior to institution, the plaint cannot be returned. The Court will have to consider whether costs should be dissallowed. (*Crouch and Hayward, A. J. Cs.*) VISRAM *v.* BIBISULTAN. 11 I. C. 25.

———S. 115.

Continuing breach.
Demand and refusal.
Express contract.
Implied contract.
Successive breaches.
Thavanai contract.
Miscellaneous.

LIMITATION ACT (IX OF 1908), Art. 115—Demand and refusal.

Continuing breach.

———Arts. 115 and 116—*Continuing breach—Continuing covenant—Breach of cause of action—Indemnity clauses.*

A clause in a deed of sale was as follows: "should disputes of any kind arise at any time touching the said land on the part of anybody we will clear them all with your own funds, and allow the sale to continue to you uninterruptedly without any kind of loss to you." *Held*, that this was an indemnity clause and should be construed as a continuing covenant. A suit for indemnification will be in time if brought within 6 years of the date on which it is held by a Court of law that neither the purchaser nor his vendor had the rights given to him by the sale-deed. (*Ayling and Seshagiri Aiyar, JJ.*) VENKATARAMIAH *v.* RAMABRAHMAN. 35 M. L. J. 124: 24 M L. T. 104: 47 I. C. 924: 8 L. W. 142.

———Arts. 115 and 116—*Continuing breach—Test—Nature of remedy available to a tenant for a breach.*

The nature of the remedy available to a tenant under a covenant or contract for quiet enjoyment depends upon the nature of the breach and the test as to whether a breach is continuous or not is: If the plff. can sue only for the damage actually occurred to him up to the date of suit the breach is continuing and if he can sue for the whole of the damage occurred and prospective the breach is single and final, *e. g.*, a breach of a covenant for title. (*Coutts Trotter and Srinivasa Aiyangar, JJ.*) SECRETARY OF STATE *v.* PEMMARAJU VENKAYYA GARU. 40 M. 910 19 M. L. T. 318: 3 L. W. 443: (1916) 1 M. W. N. 342: 35 I. C. 254: 30 M. L. J. 575.

———Arts. 115, 116 and 120—*Continuing breach—Covenant for title limitation—Suit for damages.*

Where in 1896, by a sale, a person got possession of the property but was evicted in 1905 by the *Jenmi* on which he sued the vendor in 1909 for damages and refund of purchase money. *Held*, that the implied covenant of title was broken at the sale in 1896 and since the covenant did not admit of continuing breach, the claim based on that covenant for title was time barred. The claim based on failure of consideration was within time since the contract of sale was not void and the consideration failed on the date of dispossession. (*Miller and Bakewell, JJ.*) RAMNATHA AIYAR *v.* OZHALOOR PATHIRISERRI RAMAN NAMBUDRIPAD. 14 M. L. J. 524: (1913) M. W. N. 1029: 21 I C. 740: 1 L. W. 110.

Demand and Refusal.

———Art. 115, 65 and 120—*Demand and refusal—Suit upon letter of guarantee—Limitations as against surety, commencement of.*

Art. 115 governs a suit, by a creditor against a surety on a letter of guarantee executed by latter in respect of a debt payable on demand on a promissory note and not Art. 65 and limitation runs from date of execution of the guarantee notwithstanding a stipulation in the guarantee that the creditor may look for repayment to the surety if

LIMITATION ACT (IX OF 1908) Art. 115—Demand and refusal

the principal debtor makes default. Art. 115 also applies to a case of liability on a simple debt due and is not limited to cases of damages for breach of contract. (*Pethcram, C. J. and Princey and Piggott, JJ.*) SHREE NATH ROY *v.* PEARY MOHAN.
25 C. L J. 91: 39 I. C. 205: 21 C. W. N. 479.

———Arts. 115, 145 and 49—*Demand and refusal.*

When the plaintiff made over to a goldsmith gold ornaments to be melted and made into new ornaments without fixing the time within which the work was to be finished and failed to get the ornaments on repeated demands, limitation for suit to recover them begins to run from the date on which the goldsmith wrongfully refused to do the work, whatever may be the particular article of the Limitation Act is applicable to the case *viz*,, Art 49 or 115 or 145. (*Mookerjee and Newbould, JJ.*) GANGA HARI *v.* NALIM CHANDRA.
20 C. W. N. 232: 34 I. C. 959: 23 C. L. J. 145.

——— Arts. 115 and 120—*Demand and refusal —Suit for return of goods delivered with interest.*

In a suit to recover a quantity of wheat, plff. alleged that deft. had signed a balance in plaintiff's favour of 8 *Manis* of wheat with interest payable in kind at the rate of 50 per cent. per annum, in his favour. *Held* that Art. 115 applied in which case limitation began to run when payment was demanded and refused or Article 20 would apply and in either case the suit was not barred. 49 Ind. Cas. 231 ; not Foll. (*Wilberforce, J.*) SOHAN SINGH *v.* MUHAMMAD DIN.
56 I. C. 162.

———Art. 115—*Demand and refusal—Lease—Non-delivery of portion of demised land—Cause of action—Limitation.*

An action by a lease for damages caused by the lessor's failure to deliver to him a portion of the demised premises should be brought within 6 years or 3 years as the case may be either from the time of the lease or from the date when possession was demanded and denied and it is governed by Arts. 116 and 115 of the Limitation Act. (*CoutlsTrotter and Srinivasa Aiyangar, JJ.*) SECRETARY OF STATE *v.* PERUMARRAJU VENKAYYA GARU.
40 Mad. 910: 19 M. L. T. 318: 3 L W. 443: (1916) 1 M. W. N. 342: 35 I. C. 254: 30 M. L. J. 575.

Express contract.

———Art. 115—*Express contract—Hatchilta —Suit on—Limitation.*

A suit on a *hatchit a* containing an unqualified promise to pay the amounts found due on an adjustment of accounts is governed by Art. 115 of the Lim. Act. (*Ghose and Panton, JJ*) SARIFUN MANDALIN *v* FERADOUL KHATUN. 1923 Cal. 578.

———Arts. 115 and 63—*Express contract—Agreement to deliver produce of land or a sum of money on default—Suit for money.*

The defendant agreed in consideration of a sum of money received by him to deliver the plaintiff half the produce of certain land and on default, a sum of money annually. Plaintiff sued for the recovery of the money, the defendant having defaulted to deliver the produce. *Held*, that the suit was governed by art. 115 and not by Art. 53 of the Lim. Act. (*Scott-Smith and Brasher, JJ.*) WALLI *v.* KHUDA BAKSH.
5 Lah. L. J. 366 : 1924 Lah. 149.

LIMITATION ACT (IX OF 1908), Art. 115—Express contract.

———Arts. 115, 116 and 120—*Express contract—Acceptance of award—Suit for money due under award.*

Suits for recovery of a balance of money due under the terms of an award would be governed by Art. 115 or Art. 116 of the Lim. Act according to the nature of the document only if the parties sign the arbitrator's award in token of acceptance and merge the award into a contract between themselves. Where reliance is placed on the arbitrator's award alone, the article that would govern is Art. 120 of the Lim. Act. (*Sir Arthur Reid, C. J. and Ratligan, J.*) HARDHIAN SINGH *v.* DELHI CLOTH AND GENERAL MILLS CO., LTD.
265 P. W. R. 1912: 259 P. L. R 1912: 16 I. C. 804: 32 P. R. 1913.

———Arts. 115 and 68—*Express contract.*

A obtained a sum of Rs. 200 as advance from B contracting to supply camels to B. In default A was to return the amount of the advance as well as Rs. 200 more as penalty, B sued A for recovery of advance. penalty, and interest, more than 3 years after the default but within six years therefrom. *Held*, that the suit for the recovery of Rs. 200 advanced was governed not by Art. 115 of the Lim. Act 1877 but by Art. 68. Consequently the suit for this sum was within time under the Punjab Loans Lim Act. 1904. The suit was barred under Art, 115 for the penalty of Rs. 200 for the breach of the contract. (*Kensington, J.*) DHARAM SINGH *v.* ALI MARD-KHAN 6 P. L R. 1912: 12 I. C. 616: 219 P.W. R. 1911.

———Arts. 115 and 31—*Express contract—Suit for non-delivery against Ry.—Railways Act, S. 72* (2).

A suit against a Ry. Co for compensation for non-delivery of goods is governed by Art. 31 not by Art. 115. 26 B. 562: 108 P. R. 106: 13 C. W. N. 851: 33 A. 544, Foll. Art. 31 applies notwithstanding that the responsibility of the Ry. Co. is limited by an agreement contemplated by S. 72 (2) of the Railways Act. (*Drake Brockman, J. C.*) ALI MAHOMED *v.* THE GREAT INDIA RAILWAYS COMPANY. 31 I. C. 474 : 11 N. L R. 174.

———Art. 115—*Express contract—Dispute as to mineral rights—Compromise fixing royalty—Suit on.*

Where under a compromise in writing between a lessor and lessee regarding mineral rights, a certain sum was made payable as royalty and in pursuance of the written agreement a decree was passed, and suit was subsequently filed for royalty. *Held*, it fell under art. 115, Lim. Act. (*Miller, C. J. and Foster, J.*) SMITH *v.* KENNEY.
2 Pat. 749 : 1924 P. 231.

———Arts. 115 and 116—*Express contract —Mortgagee suing for money—Contract.*

Where a mortgagee's right to sue for money is a right arising from a contract betweenthe parties, Arts. 115 and 116 will apply, but when it is an equitable right Art. 120 will apply. (*Saunders, J. C.*) NGA TOK *v.* NGA E. GYAU.
20 I. C. 360 : I, U. B. R. (1913) 164.

LIMITATION ACT (IX OF 1908), Art. 115—Implied contract.

Implied Contract.

———Art. 115—*Implied contract.*

Per *D. Chatterji, J.*:—Arts. 115 and 30 or 31 applies to a suit by consignor against Ry. Company for compensation and value of goods consigned but neither delivered to the consignee nor returned to the consignor and denied by the Ry. to have received. Art. 31 seems to contemplate a suit by consignee. Per *Beachcroft, J.*—If art 31 applies the suit is not barred in the absence of evidence as to when the goods should have been delivered. (*D. Chatterjee and Beachcroft, JJ.*) RADHA SHAM *v.* SECY. OF STATE. 44 C. 16 : 34 I. C. 130 : 23 C. L. J. 547.

———Art. 115—*Implied contract—Loan in kind—Suit for value.*

When grain is advanced on condition that it should be paid in kind a suit for recovery of the cash value is governed by Ss. 65 and 115 of the Limitation Act. 4 L. L. J. 268 : 1922 Lah. 271.

———Arts. 115 and 120—*Implied contract—Uncertified payment—Execution—Damages—Cause of action*

A decree-holder, who receives payment of money out of Court from the judgment debtor and fails to certify and applies for execution, commits a breach of the implied promise to certify. Every application for execution or realisation of money by the decree-holder, gives a fresh cause of action and the suit for damages is governed by Art. 115 and not by Art. 120. (*Krishnan and Phillips, JJ.*) GOPALSWAMI NAICK *v.* NAMMALWAR NAICK. (1919) M. W. N. 3 : 48 I. C. 810 : 36 M. L. J. 175.

———Art. 115—*Implied contract — Holding over—Suit for rent.*

Suit for rent by a co-owner against his co-sharer who occupied the property after the term fixed for such period is governed by Art. 120 and not by Art. 110 or 115. (*Ayling and Hannay, JJ.*) MADAR SAHIB *v.* KADER MOIDEEN SAHIB. 33 I. C. 705 : 39 Mad. 54.

———Art. 115—*Implied contract—Suit against agent not authorised to represent.*

"Implied Contract" in Art. 115 is used in the sense in which it is understood in English Law and not as used in the Contract Act. When a person untruly represents himself to be authorised agent and deals with the plaintiff, a suit for damages against the agent is governed by Art. 115. (*Benson and Sundara Aiyar, JJ.*) VAIRAVAN CHETTIAR *v.* AVICHA CHETTIAR. 38 Mad. 275 : 14 M. L. T. 360 : (1913) M. W. N. 884 : 21 I. C. 65 : 25 M. L. J. 256.

———Arts. 115 and 120—*Implied contract—Lambardar—Obligation to account.*

A suit by the proprietors of a village for an account of the profits of the village management against the *lambardar* is governed by Art. 115 and not by Art. 120. A *lambardar* who collects rents and manages the village on behalf of the proprietors is an agent, and as such, bound by an implied contract to render an account at the end of each agricultural year. (*Chapman and Roe, JJ.*) ANANTARAM BOHIDAR *v.* GANESHRAM BOHIDAR. 51 I. C. 733 : 4 P. L. J. 304.

LIMITATION ACT (IX OF 1908), Art. 115—Miscellaneous.

———Art. 115—*Implied contract—Suit for profits.*

A suit by some co-sharers in a ferry against other co-sharers for profits is not governed by Art. 36 or 115 but by Art. 120. (*Mullick, J.*) KISHUN DAYAL SINGH *v.* KISHUN DEO JHA. 35 I. C. 430 : 1 P. L. J. 69.

Successive breaches.

———Art. 115—*Successive breaches—Detention of money.*

The limitation applicable to a claim for damages for non-payment of *malikana* is that provided by Art 115 of the Lim. Act and the plffs. are entitled to damages upon each annual sum in arrear only for three years antecedent to the suit. 10 A. 85; 13 A. 330 ; 19 C. 19 : 24 Cal. 699 Rel. (*Mookerjee and Carnduff, JJ.*) MOHAMAYA PROSAD *v.* RAM KELAWAN. 15 I. C. 911 : 15 C. L. J. 684.

———Art. 115—*Successive breaches—Limitation—Cause of action.*

Where a bond contains successive covenants, each breach gives a separate cause of action, but the date of the last breach is the starting point of limitation in a suit on the bond when the bond is conditioned on the performance of several acts and the obligation to pay is enforceable till the last of the conditions is fulfilled. (*Kumaraswami Sastri, J.*) RAMANATHAN *v.* RAGAMMAL. 27 I. C. 849 : 17 M. L. T. 61.

Thavanai contract.

———Arts. 115 and 60—*Thavanai contract—Applicability of section.*

A certain amount was deposited at two months *thavanai* interest, (1) the terms of the deposit showed that interest was to be calculated at *thavanai* interest at two months' rests. (2) It was repayable either on demand or after the current *thavanai* year. *Held*, that in the former case Art. 60, Lim. Act applied and that in the latter Art. 115 applied. (*Wallis, C. J. and Kumaraswami Sastri, J.*) VELLAYAPPA CHETTIAR *v.* UNNAMALAI ACHI. 6 L. W. 687 42 I.C. 573: (1917) M.W.N. 858.

———Art. 115—*Thavanai contract—Incidents of.*

The relationship between the parties to a *Thavanai* account is that of lender and borrower. The money is to be paid at a fixed period after two months and unless the lender demands it, the loan is taken to be extended for next two months. It was held that Art. 57 and not Arts. 60 and 115 applies to a suit brought on *Thavanai* account. (*Fox, C. J. and Twomey, J.*) ANNAMALAI CHETTY *v.* LUTCHMAN CHETTY. 8 L. B. R. 526 : 36 I. C. 497 : 10 Bur. L. T. 53

Miscellaneous.

———Arts. 115, 128 and 131—*Application of the article and Art.* 131.

In a suit by a widow of one who was adopted by the Deft's step-mother simultaneously with adoption of the deft. by the step-mother's co-wife for maintenance by virtue of a decree passed on compromise, it was held :—(1) that as simultaneous adoptions are void, the plff. did not belong to the family of the original owner and that she could not plead limitation allowed by Art. 128. 23 C. 645 Foll. (2) That her case was governed by Art. 115 because she had a compromise decree.

LIMITATION ACT (IX OF 1908), Art. 115—Miscellaneous.

(3) That she can proceed by way of execution of the compromise decree, (4) that art. 131 does not apply. (*Holmwood and Chapman, JJ.*) NARENDRA CHANDRA LAHIRI *v.* NALINI SUNDARI DEBI.
26 I. C. 939.

——Arts. 115, 52 and 56—*Materials supplied and work done by contractor—Suit for money due on contract—Compensation, meaning of.*

Where plff. agreed to supply marble for a flooring and also to construct the flooring in consideration of his being paid a certain sum of money for every square foot of the flooring done, which rate included the price of materials supplied as well as the work done, a suit for balance of the money due to him on the basis of the contract is governed by Art. 112 of the Lim. Act and not by Art. 120. The plaintiff's claim as laid was an indivisible one and could not be split up into two portions. Therefore neither Art. 52 nor Art. 56 of the Lim. Act was applicable to the case, Art) 115 of the Lim. Act is a general provision applying to all actions *ex contractu* not specially provided for otherwise; and the present claim certainly arose out of a contract entered into between the parties. The word "Compensation" in Art. 115 as well as in Art. 116 has the same meaning it has in S. 73 of the Contract Act and denotes a sum of money payable to a person on account of the loss or damage caused to him by the breach of a contract. 6 C. 94; 3 A. 600 foll. (*Shadi Lal, C. J., Chevis and Harrison, JJ.*) MAHOMED GHASITA *v.* SIRAJ-UD DIN.
2 Lah. 376 : 1922 Lah. 198.

——Art. 115—*Breach of contract—Onus Contract of betrothal.*

The onus of proving that the betrothal contract was broken within three years of bringing the suit is on the plaintiff in a suit for damages. (*Scott-Smith, J.*) MEWA SINGH *v.* NARAIN SINGH.
50 I. C. 735.

——Art. 115—*Mis-delivery.*

The case of mis-delivery falls within Art, 115. (*Rattigan, J.*) FAKIR CHAND *v.* SECRETARY OF STATE. 170 P. L. R 1913 : 19 I. C. 477 : 122 P. W. R. 1913.

——Art. 115—*Sale of family properties by manager—Subsequent sale by junior member of his share—Obstruction by prior purchaser—Suit by latter for recovery of price and expenses of litigation.*

A purchaser from a junior member of a joint Hindu family of his share in family properties attempted to take possession thereof, but was resisted by a prior purchaser of these properties from the manager. He then instituted a suit for the recovery of the share purchased by him and the litigation was unsuccessfully carried up to the High Court. A petition filed by him for review was also dismissed. The purchaser then instituted a suit for the recovery of the sale price and of the costs incurred in the litigation, *Held*, the suit was not barred, that cause of action arose on the date of the High Court's decision and that plff. was entitled to costs except costs of review. (*Seshagiri Aiyar and Phillips, JJ.*) 42 M. 507 : 25 M.L.T. 291: 9 L.W. 379 : (1919) M. W. N. 432 : 49 I. C. 729 : 36 M.L. J. 157.

LIMITATION ACT (IX OF 1908), Art. 116—Breach of contract.

——Art. 115—*Deposit—Suit to recover.*

A suit to recover deposit money payable by lessees on execution of the lease is governed by Art. 115 Lim. Act (*Wallis C. J. and Seshagiri Aiyar, JJ.*) SRINIVASA AIYANGAR *v.* RANGASWAMI AIYANGAR. 25 I.C. 812 : 1 L. W. 858.

——S. 116.

Breach of contract.
Covenant for title.
Mortgage of loan of paddy.
Starting point of limitation.
Suit on bond.
Suit for rent.
Miscellaneous.

Breach of Contract.

——Art. 116—*Breach of contract—Mortgagee to pay off prior mortgage—Failure—Suit for damages.*

Where the second mortgagee covenanted to pay off prior mortgage at his pleasure, and on his failure to pay it off, the mortgagor paid off the principal and interest, the limitation for a suit for damages by the mortgagor begins to run from the date when he is damnified and not from the date of mortgage. (*Tudball and Rafique, JJ.*) ISHRI PERSHAD *v.* MUHAMAD SAURI.
60 I. C. 829 : 19 A. L. J. 81.

——Art. 116—*Breach of contract— Sale—Covenant to make good loss—Breach—Limitation.*

Held, in a suit by a vendee for damages that the suit was not barred by Limitation inasmuch as the plffs. were not suing upon a mere covenant of title, but upon a covenant of indemnity as set forth in the sale-deed, and the cause of action arose on the date on which they suffered actual loss by reason of their being compelled to pay off the prior mortgage charge. (*Piggott and Walsh, JJ.*) RAM DULARI *v.* HARDWARI LAL.
40 All 605 : 48 I. C.18 : 16 A. L. J. 706.

——Art. 116—*Breach of contract—Suit for accounts.*

A suit against the heirs of an agent who undertook to render accounts every six months is governed by Art. 116 which provides for a suit for compensation for breach of a contract registered, 16 I. C. 414 F. (*Tudball and Rafique, JJ.*) MATHURA NATH *v.* CHEDDU. 39 All. 355 : 39 I. C. 626 : 15 A. L. J. 265.

——Arts, 116 and 109—*Breach of contract—Usufructuary mortgage—Possession not delivered—Suit for profits and possession.*

The claim for profits owing to non-delivery of possession agreed to be delivered to plff, a usufructuary mortgagee, is in substance one for compensation for breach of a contract in writing registered and is governed by Art. 116 and not by Art. 109 : 30 All 400 ref. (*Piggott, J.*) NIRBHAI SINHA *v.* TULASI RAM. 31 I. C. 804.

——Art. 116—*Brech of contract—Vendee to pay mortgagee of vendor—Accrual of cause of action.*

A suit by a vendor against vendee for breach of covenant by the latter to pay a mortgagee of the vendor out of the sale price, the cause of action arises on the date of sale and a suit brought more than six years after that, is barred by limitation, though the vendor was sued against subsequently

LIMITATION ACT (IX OF 1908), Art. 116—Breach of contract.

by the mortgagee. 10 A 85 rel on. 26 C, 241 not appr. (*Karamat Hussain and Tudball, JJ.*) RAGHUMBAR ROY *v.* JAJI RAI. 34 All. 429 : 14 I. C. 244 : 9 A. L. J. 534.

——Art. 116—*Breach of contract—Limitation.*

Where a contract is in writing and registered, a suit for breach of all covenants whether expressed or implied therein, will be covered by Art. 116, Lim. Act. (*Sanderson, C. J. and Richardson, J.*) INJAD ALI *v.* MOHINI CHANDRA ADHIKARI. 27 C. W. N 1025 : 1924 Cal. 148.

——Art. 116—*Breach of contract—Time when begins to run.*

A statement made in a previous suit by a party that he reserved the right of bringing another suit for damages, cannot avoid the operation of the rule of limitation or of O. 2, R. 2, C. P. C. Where a lease-hold which had been mortgaged for a term by the plaintiff to the defendant was sold in execution of a decree for non-payment of rent to the superior landlord which the defendant had contracted to pay, limitation for the plff.'s suit, if any, for compensation for breach of contract, begins to run from the time of the breach, which should be taken as the date of the execution sale and not from the date of the expiry of the term of the mortgage. (*Chatterjee and Richardson, JJ.*) TARAN KRISHNA *v.* SAMIRUDDIN. 34 I. C. 51.

——Art. 116—*Breach of contract.*

In order that the creditor may bring an action of indemnity against a purchaser from his debtor on the ground that he has undertaken to pay off the debt from the purchase money, the cause of action must have arisen within 3 years of the suit. (*Coxe, J.*) DEB NARAIN *v.* RAM SADHAN. 9 I. C. 986.

——Art. 116—*Breach of contract—Covenant for quiet enjoyment—Suit for damages.*

Per *Spencer, J* :—In the case where the vendor of property has no title to convey and the vendee never gets possession, a suit for damages for breach of the covenant for quiet enjoyment will lie if brought within 6 years of the sale ; if he got possession and lost it, then within 6 years of the loss of possession. But to come under this category the suit must be for damages or return of purchase money and there must be privity of contract between the plaintiff and defendant. (*Spencer and Devadoss, JJ.*) GOPALA AIYANGAR *v.* NUMMACHI REDDIAR. 17 L. W. 254 : 1923 Mad. 392.

——Art. 116—*Breach of contract—Suit by share-holder against registered company for dividend—Registered—Meaning of—Gen. Clauses Act, S. 3 (45)*

A suit by a share-holder against a registered company to recover dividends is governed by Art. 116 of the Lim. Act. 'Registered' in Art. 116 of the Lim. Act must be read as defined in the General Clauses Act of 1897, S.3, Cl. 45, and includes documents registered under any special law such as the Company's Act or the Copyright Act as well as the Indian Registration Act. (*Wallis, C.J. and Seshagiri Aiyer, JJ.*) RIPON PRESS AND SUGAR MILL CO., LTD *v.* VENKATARAMA CHETTY. 42 Mad. 33 : 24 M. L. T. 246 : 8 L. W. 354 : 48 I. C. 903 : 35 M. L. J. 256.

LIMITATION ACT (IX OF 1908), Art. 116—Covenant for title.

——Art. 116—*Breach of contract—Suit for possession under a contract of lease—Claim of mesne profits.*

A suit for possession under a contract of lease and for mesne profits being substantially one for damages for breach of contract, is governed by Art. 116 (*Ayling and Tyabji, JJ.*) KODIALBE-AILRYMOND *v.* KODIABAIL DEVU CHETTY. 32 I. C. 245.

——Art. 116—*Breach of contract by a purchaser-failure to give possession to vendee.*

A suit by a purchaser for damages for having failed to give possession of part of the land sold to him, is governed by Art. 116 of the Limitation Act, if the sale-deed is registered. (*Benson and Sundara Aiyar, JJ.*) TAVALA NAGESWARA ROW *v.* SARIPALLI SAMBASIVA ROW. 11 I. C. 337 : (1911) I. M. W. N. 361.

——Art. 116—*Breach of contract.*

Where a usufructuary mortgagee agreed to pay a fixed amount after deducting interest from income of the property, the payments which were to be made were not of the nature of rent payable by a tenant to landlord under the Bengal Tenancy Act a suit for the recovery of which will not be barred by the special provision of the B.T. Act. Such payments would be regarded as being due under a registered agreement under Art. 116. (*Chapman and Atkinson, JJ.*) BARHAM DEO *v.* RAMANAND. 1 P. L. W. 795 : 40 I. C. 594 : 1918 Pat. 24.

——Art. 116—*Breach of contract—Contract—meaning.*

The word "contract in Art. 116 does not include an award. (*Pratt, J. C.*) SOMJI MAL *v.* TOLO MAL. 19 I. C. 876 : 6 S. L. R. 148.

Covenant for title.

——Art. 116—*Covenant of title—Suit for breach of.*

A suit for damages for breach of a covenant of title under a registered sale is governed by Art. 116 of the Act and time begins to run from the date of the breach of the covenant. (*Macleod, C. J. and Fawcett, J.*) MULTANMAL JAYARAM *v.* BUDHUMAL KEVALCHAND. 45 Bom 955 : 61 I. C. 70 : 23 Bom. L. R. 325.

——Art. 116—*Covenant for title—Breach—Damages—Limitation.*

There is an implied covenant for title and possession in all registered conveyances under S. 552 of the T. P. Act and a breach of that covenant comes within Art. 116 of the Lim. Act. (*Chowdhury, J.*) KANOK DASI *v.* SRIHARI GOSWAMI. 52 I. C. 269.

——Art. 116—*Covenant for title—Registered sale—Suit for damages.*

A registered deed of sale executed in 1905 by two persons, after reciting the receipt of consideration therefor, stated "If there is any dispute in respect of the property by relations and others, etc, we shall settle them at our own expense and we shall be bound to carry out this sale without obstruction". The son of one of the vendors sued to set aside the sale as regards the share of

LIMITATION ACT (IX OF 1908), Art. 116—Covenant for title.

his father and obtained a decree in 1913 for possession of that share. In a suit by the vendee in 1917 within 3 years from the date of dispossession in pursuance of the decree of 1913, for the recovery of the part of the purchase money corresponding to the share of the property recovered from him. *Held* that, assuming that the clause in the sale-deed set out above did not amount to a covenant for quiet enjoyment, there was clearly a covenant for title and on breach of that covenant that the vendee had 6 years to sue under Art. 116 of the Lim. Act from the date when the covenant was broken and that the suit was not barred. (*Kumaraswami Sastri and Devadoss, JJ.*) SISTLA SUBBAYYA *v.* PATA PICHANNA.
(1922) M. W. N. 420 : 43 M. L. J. 64 : 1923 Mad. 28.

——Art. 116—*Covenant for title—Sale.*

A suit for damages for breach of an implied covenant for the title in a registered sale is governed by Art. 116. (*Krishnan, J.*) VENKATACHELLAM PILLAI *v.* KRISHNASWAMI PATHAN. 50 I. C. 673.

——Art. 116—*Covenant for title—Breach of —Starting point.*

Obiter :—The cause of action for a suit for damages for breach of covenant for title arises on the execution of the conveyance. (*Srinivasa Iyengar, J.*) SAMU PATHAN *v.* CHIDAMBARA ODAYAN. 29 M. L. J. 454 : 2 L. W. 918 : 31 I. C. 179 : (1916) M. W. N. 7.

——Art. 116—*Covenant for title—Deficiency in extent of land sold—Limitation.*

A suit for damages for breach of covenant for title in regard to a small portion of the land sold is governed by Article 116 of Schedule II of the Limitation Act; and the plff. in such a suit has simply to shew that he was not put in possession of it. (*Ralph Benson and Sundara Aiyar, JJ.*) TAVALA NAGESWARA ROW *v.* SARIPALLI SAMBASIVA ROW.
11 I. C. 337 : (1911) 1 M. W. N. 361.

——Art. 116—*Covenant for title—Breach of damages—Starting point.*

A suit for damages for breach of covenant for title in a registered deed is governed by Art. 116. Such a breach is entire and complete at the time of the execution of the sale and limitation begins to run from that date. (*Batten, A. J. C.*) PIRBHU *v.* WAZIRBI. 31 I. C. 877: 11 N. L. R. 186.

——Art. 116 and 95—*Covenant for title—Mortgage—Holding not saleable—Simple money decree claimed—Fraud—Effect.*

A suit for sale being brought on a mortgage of a cultivatory holding, the defendant pleaded it was not saleable, whereupon the plaintiff claimed a simple money decree, also alleging that there was a fraudulent misrepresentation about the alienability of the holding : *Held* if fraud is established, the suit will be governed by Art. 95 ; if not, by Art. 116. (*Dalal, A. J. C.*) THAMMAN SINGH *v.* DALCHAND.
9 O. L. J. 171 : 4 U. P. L. R. (J. C.) 40 : 1922 Oudh 113.

——Art. 116—*Covenant for title—Non—transferable interest—Sale of—Damages—Limitation.*

LIMITATION ACT (IX OF 1908), Art. 116—Starting point of limitation.

The plaintiff entered into possession of the *jaimanka brit* sold to him and remained in possession until he was dispossessed on the 30th August 1918 by his vendor's son. In a suit for damages, *held* that time would begin to run either from that date on which the sale was held or from the date of dispossession. There was a distinct stipulation in the conveyance that if there was any defect in title, the vendee would be competent to realise the considerationnumoney with damages. This was a registered instrument and as there was a breach, both of the covenant for title and of the implied covenant for quiet enjoyment, the plaintiff was entitled to bring his suit within six years of the breach. (*Ross, J.*) JHINGUR OJHA *v.* MEGHNATH PANDEY. 1924 P. 321

Mortgage on loan of paddy.

——Arts. 116, 120 and 132—*Mortgage on loan of paddy—Limitation.*

A suit on a mortgage executed for a loan not of money but of paddy is governed by Art. 116 or Art. 120 and not by Art 132, of the Lim. Act. (*Richardson and Walmsley, JJ.*) KANDARPA NARAIN MANDAL *v.* SRIDHAR ROY. 44 I. C. 518.

——Arts. 116, 120 and 132—*Mortgage on loan of paddy.*

A mortgage having been made to secure a loan of paddy repayable with interest as paddy, a suit to enforce the said mortgage falls under the provisions of Art. 116 or 120 and not under those of Art. 132, which applies only to payment of money charged on immoveable property. (*Jenkins, C. J. and Holmwood, J.*) RASH BEHARI DAS *v.* KUNJABIHARI PATRA. 37 I. C. 805 : 24 C. L. J. 348.

Starting point of Limitation.

——Art. 116—*Starting point of limitation —Registered document.*

The question whether the limitation for the recovery of money under Art. 116 begins to run from the date of the registration of deed is very doubtful. (*Richards, C J. and Rafique, J.*) MOHAN LAL *v.* LEKHRAJ SINGH. 33 I. C. 111.

——Arts. 116 and 83—*Starting point of limitation—Vendor and purchaser—Indemnity—Breach of contract—Limitation.*

A suit to recover compensation for the breach of a contract to indemnify the vendee against the claims of a mortgage is governed by Art. 83 to the Limitation Act or if the contract is registered, by art 116 of the Act. The starting point is the date when the purchaser was compelled to pay of the mortgagee. (*Broadway and Abdul Qadir, JJ.*) ABDUL AZIZ KHAN *v.* MUHAMMAD BAKSH. 2 L. 316 : 64 I. C. 431 : 3 L. L. J. 542.

——Art. 116—*Starting point of limitation—Mortgage declared void—Limitation for simple money suit—Hindu Law.*

Since a mortgage is absolutely void and ineffectual from its inception, if not made for purposes laid down in Hindu Law creates no charge against a joint family property and even against the interests of the actual mortgagor, the article of the Limitation Act applicable to the relief of a personal decree against a mortgagor is Art. 116 and not Art. 97 and the cause of action for a relief by way of a money decree against the

LIMITATION ACT (IX OF 1908), Art. 116—Starting point of limitation.

executant arises immediately after he breaks his promise which he made for the repayment of the loan i. e, from the day money under the agreement becomes due. 8 O L. J 81, 1 P. L. T. 6 foll. (*Wazir Hasan, A. J.C.*) RAM NARAYAN *v.* NANDA KUMAR. 25 O.C. 164: 10 O.L.J. 180 : 1922 O. 257.

———Art. 116—*Starting point—Hindu Law—Mortgage by anager—Suit to enforce— Limitation.*

A mortgage by the manager of a joint Hindu family, not for necessity or antecedent debt is void and a suit brought to enforce such a mortgage after the death of the mortgagor must be brought within the period of limitation prescribed under Art. 116 of Sch. I to the Limitation Act. (*Daniels and Wazir Hasan, A. J. Cs.*) GAJADAR BAKSH *v.* GAURI SHANKAR. 61 I. C. 205 : 8 O. L. J. 81.

Suit on bond.

———Art. 116—*Suit on bond—Bond signed by debtor only.*

Art. 116 of the Limitation Act is applicable to cases of suits for recovery of money on contract not signed by both parties. (*Mookerjee and Chatterjee, JJ.*) CHALLAPHROO *v.* BENGA BEHARI SEN. 22 C. L. J. 311 : 31 I. C. 394 : 20 C. W. N. 408.

———Art. 116—*Suit on bond.*

A suit for recovery of money due on a registered bond is governed by Art. 116 as it is more or less a suit for compensation for breach of a contract in writing registered and time begins to run from the date when the contract is broken or where there are successive breaches from the date of breach in respect of which the suit is instituted, or where it is a continuing breach from the date when it ceases. 6 C. 94; 3 A 600 rel on. (*Mookerjee and Carnduff, JJ.*) RAM NARAIN SINGH *v.* ODINDRA NATH MOOKERJEE. 15 C. L. J. 17 : 13 I. C. 440 : 17 C.W.N. 369.

———Art. 116—*Suit on bond—Unregistered and registered bonds.*

Where a money bond was executed and subsequently on the same day a registered deed was executed which provided for payment of the debt in a particular manner and default was made, *held*, that the two documents formed part of one and the same transaction and that a suit to recover the amount after default was governed by Art. 116 of the Lim. Act. (*Ayling and Seshagiri Iyer, JJ.*) VISWANATHA *v.* S. I. BANK.
(1917) M.W. N. 879 : 42 I. C. 609 : 6 L. W. 718.

Suit for rent.

———Arts. 116 and 110—*Suit for rent—Registered lease.*

Art. 116 and not Art. 110 is applicable to a suit for arrears of rent on a registered lease. (*Lord Sumner.*) TRICOMDAS COOVARJE BHEJA *v.* GOPI NATH JIN THAKUR. 44 Cal. 759 : 1 Pat. L. J. 262 : 15 A. L. J. 217 : 25 C.L.J. 279 : 21 M. L. T. 262 : 21 C. W. N. 577 : 39 I.C. 156 : (1917) M. W. N. 363 : 5 L. W. 654 : 19 Bom. L. R. 450 : 44 I. A. 65 : 32 M. L. J. 357 (P.C.).

LIMITATION ACT (IX OF 1908), Art. 116—Suit for rent.

———Art, 116—*Suit for rent—registered document.*

A suit for rent under a registered document is governed by Art. 116 of the Lim. Act. (*Scott Smith and Harrison, JJ.*) ABDUS SAMAD *v.* THE MUNICIPAL COMMITTEE, DELHI. 67 I. C. 939.

———Art. 116—*Suit for rent—Registered kanom deed.*

A suit to recover arrears of rent under a registered *kanom* deed is governed by art, 116. (*Spencer and Krishnan, JJ.*) KANNAN NARAYANAN *v.* MUTHALPUREDATH RAMUNNI. 56 I. C. 241 : 11 L. W. 328.

———Art. 116—*Suit for rent—Rent payable in instalments every* fasli—*Starting point.*

Where rent for a particular *fasli* is payable in instalments the cause of action for rent due for that *fasli* accrues only from the date on which the last instalment becomes due. (*Sadasiva Iyer and Burn, JJ.*) PENUMETSA BAPIRAJU *v.* GOPPISETTI NARAYANASWAMY NAIDU. 40 I. C. 590.

———Art. 116—*Suit for rent by jenmi against Kanomdar's assignee.*

Art. 116 does not apply to a suit for rent by a *jenmi* against the *Kanomdar's* assignee. (*Miller, J.*) NADUVIL EDOM KELU ACHAU *v.* VARADARAJA IYER. 24 I. C. 481 : 26 M. L. J. 283.

———Art. 116—*Suit for rent—Document registered.*

A suit for rent under a registered document comes under Art. 116. (*Seshagiri Iyer, J.*) RAMANADHAN PATTAR *v.* ACHUTHA VARIAR.
23 I. C. 763 : (1914) M. W. N. 323.

———Art. 116—*Suit for rent*—Kanom—*No interest in the mortgage deed—Execution of separate unregistered document—Rent if a charge.*

Deft. executed a *kanom* to plff. which did not make any provision for payment of interest. Another document stipulated for payment of a two years rent. After the lapse of two years, deft. held over the land with plft's consent, *Held*, that rent was not chargeable on the property. Plff. was not entitled to a decree on the footing that it was interest due on the mortgage. Deft.'s obligation to pay rent after the lapse of 2 years not being under a registered instrument, Art. 116 of the Lim. Act did not apply. Plff's right to rent was barred after three years, 11 M. L. J. 186, Ref. (*Sundara Iyer and Sadasiva Aiyar, JJ.*) MAMAMBATH PETTIYETH *v.* CHERIA UTHAIAMMA. 16 I.C 560.

———Art. 116—*Suit for rent—Zaripeshgi ijara—Registered document.*

A suit to recover the rent payable to the plff. under a registered *zuripeshgi lease* is governed by Art. 116 of the Lim. Act and the period is not 3 years as provided in the B. T. Act. (*Miller, C.J. and Mullick, J.*) SHEIK MUHAMMAD HANIF *v.* MOORAT MAHTON. 44 I. C. 153 : 4 Pat. L. W 146.

———Arts. 116 and 110—*Suit for rent.*

A suit to recover "rent" reserved in a registered *kabuliyat* is governed by Art.116 and not Art. 110 of the Limitation Act.19 C. 489 relied on. (*Mullick and Roe, JJ.*) MACKENZIE *v.* RAMESHWAR SINGH.
1 P. L. J. 37 : 34 I.C. 754 : 2 P. L.W. 446.

LIMITATION ACT (IX OF 1908), Art. 116—Miscellaneous.

Miscellaneous.

———Art. 116 and 61—*Repairs to a common well—Suit for contribution—Limitation.*

The plaintiff spent a sum of money for the repairs of a well he owned jointly with a defendant under a registered deed which provided that the necessary repairs were to be made by both the owners. Five years after the repairs he sued to recover from the defendant his contribution to the repairs:—*Held* that the suit was barred, since it was governed by Art, 61 and not by Art. 116. (*Macleod, C. J. and Heaton, J.*) SURAJ PRASAD DWARAKDAS *v.* KARMALI ABDULMIYA. **44 Bom. 591 : 57 I. C. 532 : 22 Bom. L. R. 777.**

———Art. 116—*Dower—Registered deed.*

Art, 116 applies to suits for recovery of dower debt when there is a registered dower deed. Although arts. 103 and 104 would apply when there is no such registered instruments and time runs from the date of death of the lady. 44 C. 759 P. C. : 36 C. L. J. 379 foll. (*Mukerjee and Rankin, JJ.*) MAHAMAD MOZAHARAL *v*, MAHAMAD AZIMUDDIN BHUINYA. **27 C. W. N 210 : 37 C L J 108 : 1923 Cal. 507.**

———Art. 116—*Suit for dower—Suit by heirs of Mahomedan lady—Registered agreement—Suit governed by art. 116 of the Lim, Act and not by art. 103 and 104.*

A suit brought by the heirs of a Muhamadan lady for dower is not a suit which rests on contract but is one for recovery of the goods of the deceased in the hands of the defendants. It is governed by art. 116 of the Lim. Act and not by 103 and 104. (*Chatterjee and Panton, JJ.*) ISOF ALI *v.* KASIM ALI. **26 C. W. N. 532 : 50 C. 253 : 36 C. L. J. 379 : 1923 Cal. 152.**

———Art. 116—*Joint agents—Death of one—Suit for accounts against survivor.*

The death of one of two joint agents does not terminate the agency so far as the other is concerned because the presumption is that the agency is joint and several. A suit for accounts against the survivor on foot of a registered *kabuliyat* executed by the agents is governed by Art. 116 of the Lim. Act (*Mookerjee and Beachcroft, JJ.*) BHAGIR NATH SAMANTA *v* PREM CHAND PAL. **16 I C. 852 : 17 C. L. J. 201.**

———Art. 116—*Applicability—Leases for building purposes.*

The provisions of Art. 116 of the Limitation Act as to registered contracts, apply to leases for building purposes and for establishing godowns not being leases for agricultural or horticultural purposes. 19 C. 489 Rel. (*Holmwood and Teunon, JJ.*) AHMED BUKSH *v.* BIPIN BEHARI SINGHA. **11 I. C. 6.**

———Arts. 116 and 62—*Overpayment—Money paid by mortgagor on default of mortgagee.*

Where a mortgagee bound to pay off a prior incumbrance, fails and the mortgagor being compelled, pays it off and sues the mortgagee for reimbursement, the suit is governed by art 62, Time would begin to run from the date on which the plff. paid off the prior encumbrance. (*Stuart and Kanhaiya Lal, A. J. Cs.*) PRAG *v.* MOHAN LAL. **47 I. C. 161 : 5 O. L. J. 263.**

LIMITATION ACT (IX OF 1908), Art. 118.

———Art. 118—*Adoption invalid—Suit for recovery of possession on death of limited owner—Suit for declaration if necessary.*

The omission to bring, within the period prescribed by Art. 118 of the Lim. Act, a suit for a declaration that an alleged adoption is invalid is no bar to a suit by the reversioner for possession of the property on the death of the limited owner. 28 All. 727 ; 33 I. A. 156 Foll. (*Sir John Edge*) MUHAMMAD UMAR KHAN *v* MUHAMAD NIAZUDDIN KHAN. **39 Cal 418 : 6 P. W. R. 1912 : (1912) M. W. N. 77 : 11 M. L. T. 76 . 9 A. L. J. 137 : 15 C. L. J. 172 : 12 P. L. R. 1912 : 14 Bom. L. R. 182 : 16 C. W. N. 458 : 126 P R. 1912 : 39 I. A 19 : 13 I. C. 344 : 22 M. L. J. 240 (P. C.).**

———Art. 118—*Suit for declaration without further relief of possession—Adoption alleged to be void.*

A suit for declaration that an adoption under a registered deed was null and invalid and for a further declaration that the plaintiff was a reversioner is governed by Art. 118, even when the adoption is alleged to be void *ab initio*. Had the plaintiff been suing for possession on the ground that he was the reversioner and had be further alleged that the adoption was invalid under the Hindu Law, Art. 118 would not have been applicable and the plaintiff would have had twelve years within which to sue. Under Art. 118, time begins to run from the date of knowledge of the alleged adoption. (*Rafique and Lindsay, JJ.*) RAM LAL RAI *v.* MT. MURTA KUER. **1923 All. 361 (1)**

———Art. 118—*Suit for possession of property—Article if applicable.*

Art. 118 does not bar a suit for possession of immoveable property on the ground that an adoption is invalid. The article applies to a suit for a declaration that an adoption is invalid. (*Stuart and Sulaiman, JJ.*) RADHA DULAIYA *v.* RASHIK LAL. **45 A. 1 : 20 A L. J. 814 : 1923 All. 25.**

———Art. 118—*Suit for declaration and possession—Suit for declaration barred—Claim to possession—Whether can succeed.*

A claim to possession when defending on a declaration that an adoption is invalid cannot succeed if a suit for the latter is barred by time. (*Knox and Karamat Husain, JJ.*) CHUNNI LAL *v.* SITA RAM. **34 All. 8 : 11 I. C. 476 ; 8 A, L. J. 1101.**

———Art. 118—*Suit for possession of property which involves displacing an alleged adoption—Article does not apply.*

Held, by the Full Bench *Macleod, C. J. and Fawcett, J, Shah, J.* (dissenting) that Article 118 of the Indian Limitation Act does not govern suits for possession where the plaintiffs cannot succeed except by displacing an alleged adoption.

LIMITATION ACT (IX OF 1908), Art 118,

The decision in 24 Bom. 260 is overruled by the Privy Council decision in L. R. 33 I. A. 156. (*Macleod, C.J., Shah and Fawcett, JJ.*) DODDAWA PURSHYA *v.* YELLAWA MALLAPPA BENI.
24 Bom. L. R. 158 : 1922 Bom. 223 (F. B.)

———Art. 118—*Death of adopted son leaving widow—Adopting mother making a second adoption during widow's life time—Suit by reversioner of the first adopted son.*

In 1895 the first adopted son died, a minor, leaving behind him a widow who died in 1903. In 1899 M. the adopting mother got the vatan lands entered in her name in the revenue records; and in 1901 she adopted C. as son to her husband and placed him in possession of the whole estate. The plff. claiming as the nearest reversionary heir to the first adopted son filed a suit in 1912 to recover possession of the property from C. *Held* (1) that the suit was barred under Art. 118 of the Limitation Act (2) that even though C.'s adoption was invalid under Hindu Law and M.'s power of adoption already exhausted, the law of limitation would effectively defeat the plff.'s claim, 3 W. R P. C. 15 : 20 C. 483 Foll. The effect of not challenging in time, the adoption was that C became validly adopted so far as plff. was concerned. (*Scott C. J. and Heaton, J.*) CHANBA. SAPPA *v.* KALIANADAPPA. 41 Bom. 728 : 41 I. C. 845 : 19 Bom. L. R. 724.

———Art. 118—*Adoption invalid--Reversioner, suit for possession by—Limitation.*

A suit for possession by a reversioner more than six years after the date of his knowledge of an adoption by the widow is barred under Art 118 of the Act. 28 A 727 P. C; 39 C. 418 P. C Dist; 24 B. 260 foll; 24 B 260 (F.B.) is still good law after 28 A. 727 and 39 C. 418 (P. C.) (*Scott, C. J. and Chandavarkar, J.*) SHRINIWAS *v.* BALWANT VENKATESH. 37 Bom. 513 : 20 I. C. 162: 15 Bom. L. R. 533.

———Art. 118—*Knowledge of plaintiff, date of —Onus of proof.*

Where, in a suit for declaration that a certain alleged adoption never took place, the plff. gives *prima facie* evidence of his want of knowledge of the fact of adoption, the defendant must show clearly, that the plff. got knowledge of the fact at a particular date when limitation began to run. (*Leslie Jones and Wilberforce, JJ.*) SUJAN DEVI *v.* JAGIRI MAL. 1 Lah. 608 : 59 I. C. 124 : 8 P. W. R. 1921.

———Art. 118—*Adoption—Invalid adoption—Gift of ancestral property to adopted son—Suit for declaration of validity—Limitation.*

Where the reversioners of a deceased Hindu allow a suit for declaration against the adoption of a daughter's son to become barred by time under art 118, they are not entitled to sue for a declaration that a subsequent gift to the adopted son is not binding upon them because that gift does not give them a fresh cause of action, in that it does not involve any further denial of the rights of reversioners than was involved in setting up the adoption in the first place. (*Leslie Jones and Abdul Raoof, JJ.*) KHUSHAL SINGH *v.* KANDA. 2 U. P. L. R (L.) 110 : 56 I. C 931 : 5 Lah L. J. 83.

LIMITATION ACT (IX OF 1908), Art. 118.

———Arts. 118, 119 and 144—*Adoption denied —Suit for possession.*

Where in a suit by an alleged adopted son, the adoption is denied the suit is governed by Art. 144 and not Art 119 of the Limitation Act. (71 P. R. 1901: 20 P.R. 1902; 68 PR. 1903; 3 P R 1904 ; 1 P. R 1907 overruled 39 C. 418 P. C ; 30 M. 308 ; 28 A. 727 P. C. Foll.) (13 C. 308 P. C.; 20 C. 487 P.C.; 22 C. 609: 20 M. 40 : 24 B. 260 F.B.; 37 B. 573 ; 26 M.291 diss from. (*Johnstone, Rattigan and Shah Din, JJ.*) ARJUN SINGH *v.* LACHMAN SINGH. 104 P. W. R 1914 : 203 P. L. R. 1914 : 25 I. C. 429 : 81 P. R. 1914.

———Art. 118—*Adoption not recognized—Suit for possession after 6 years.*

Where adoption is not recognised by the personal law of the alleged adopter a suit for possession after 6 years of the illegal adoption is not barred. (*Rattigan and Chevis, JJ.*) ABDUL RAHMAN *v.* BURE KHAN. 173 P. W. R. 1911 : 11 I. C. 96 : 196 P. L. R. 1911.

——— Arts. 118 and 144—*Suit for possession by reversion against person claiming by adoption—Applicability.*

A suit for possession by a reversioner against a person in possession by virtue of his alleged adoption by the deceased holder is governed by Art. 144 and not by Art. 118 of the Limitation Act of 1877 or 1908 (*Arthur Reid C.J. and Johnstone J.*) NATHU *v.* RAHMAN. 44 P. R, 1911 : 198 P.L.R. 1911 : 11 I.C. 11: 85 P. W. R. 1911.

———Arts. 118 and 144—*Suit for declaration of invalidity of adoption and possession.*

A suit for possession of immoveable property and for a declaration of the invalidity of an adoption applies Art. 144 and not Art. 118. of the Lim. Act. (*Shah Din and Chevis, JJ.*) NIAMAL *v.* NURA.
95 P. W. R. 1911 : 10 I. C. 338 : 169 P.L.R. 1911.

———Art. 118—*Setting aside adoption—Time for—Starting point.*

The nearest reversioner can impeach the invalidity of an adoption on behalf of the whole body of reversion and time runs from the time the adoption comes to the knowledge of the next reversioner and no fraud or inaction on his part would stop time running against them. 41 Mad. 659 (F. B.) Foll. (*John Wallis, C. J. and Seshagiri Aiyar, J.*) POLEPEDDI VENKATTA SIVAYYA *v.* POLEPEDDI ADENNA.
12 L. W. 499 : (1920) M. W. N. 783 : 44 M. 318 : 60 I. C. 98 : 29 M. L. T. 43 : 39 M. L. J. 621.

———Arts. 118, 120 and 125—*Suit by reversioner to declare alienation invalid—Declaration for invalidity of adoption being barred.*

Per Wallis, C. J.—

A reversioner who has allowed his right to question the validity of an adoption by the widow to be barred, cannot sue for a declaration of the invalidity of an alienation made by the widow and adopted son. Per. *Coutts Trotter, J. Contra* (*Wallis, C. J. and Coutts Trotter, J.*) BAPAYYA *v.* AKAMMA. 36 I. C. 255.

———Art. 118—*Suit for declaration—Knowledge—Proof of.*

LIMITATION ACT (IX OF 1908), Art. 118.

Where both the plaintiff and his mother live together in the same house, his mother's knowledge as to the date of a certain adoption is also his knowledge, for a suit under Art. 118 of the Lim. Act. (*Wallis, C. J. and Coutts Trotter, J.*) VEMOORU AUDI NARAYANIAH *v.* PANCHAGNULA SRIRAMULU. **29 I. C. 785.**

——— Art. 118—*Adoption—Suit to set aside—Knowledge—Suit by remote reversioner.*

A suit to set aside an adoption by a remote reversioner is barred if it is brought more than six years after the knowledge of the same by the nearest reversioner. 24 M. 405 : 29 M. 390. Foll. *Quaere*—If the same rule applies when the nearest reversioner is guilty of fraud? (*Wallis and Coutts Trotter, JJ.*) CHIT REDDI SUBANNA *v.* CHIT REDDI VAZADI REDDI. **28 I. C. 632 : 2 L. W. 377.**

———Arts. 118 and 144—*Suit for partition—Failure to sue to set aside adoption.*

A suit for partition and possession of the plaintiff's share of the family properties is not barred simply because the plaintiff failed to sue for declaration that alleged adoption oi one of the family members was invalid or never took place. The plaintiff is entitled to show that it never took place or was invalid. 28 A. 727 ; 30 M. 308 ; 39 C. 418 Ref, (*Miller and Abdur Rahim, JJ.*) KOLANDAIVELU PILLAI *v.* ARUMUGATHA PILLAI. **18 I. C. 493.**

———Art. 118—*Adoption—Suit to set aside—Limitation—Knowledge—Proof.*

If in a suit by a Hindu reversioner to set aside an adoption by the widow the plff. has to show when he became aware of the adoption, it is discharged if the plff swears as to when he became aware of the adoption in the absence of evidence to the contrary. 22 C. 609 ; 31 M. 230 ; 17 B. 341 Ref. (*Krishnaswami Aiyar and Ayling, JJ.*) VENKUBAYAMMA *v.* NARASIMHA ROW. **9 M. L. T. 303 : 9 I. C. 163 : (1911) 1 M. W. N. 192.**

———Art. 118—*Applicability of—Suit for possession.*

A suit for possession of property where the plff. objects as to the validity of an adoption is not governed by Art, 118. (*Prideaux and Macnair A. J. Cs,*) SONIBAI *v.* DHANRAJ. **56 I. C. 620.**

———Arts 119 and 144—*Interference—Proof.*

Under Art. 119 of the Lim. Act, to establish interference with the rights of the adopted son, something incompatible with the recognition of the adoption must be proved. A son was adopted in the life-time of a natural son. On the former's death, the latter succeeded to his estate allowing a maintenance to the former's widow, who brought a suit to recover it. The succession by the natural son was not an interference so as to attract the operation of Art. 119. The erroneous belief shared by the adopted son's widow, of the right of the natural son to succeed to her late husband does not rise to an estoppel and hence the suit is not barred by limitation or estoppel. (*Macleod, C.J. and Heaton, J.*) GIRIJABAI SHAMBHU DIXIT *v.* SADASIVA VISHWANATH, **58 I. C. 394 : 22 Bom. L. R. 974.**

LIMITATION ACT (IX OF 1908), Art. 120.

———Art. 119—*Suit to establish adoption—Limitation.*

Under Art. 119 of the Limitation Act an adopted son whose adoption is challenged and rights interfered with, must institute a suit for having his adoption declared valid within six years from the date of interference. Where an adoption was challenged in 1901 and a decree was passed against the adopted son who sued in 1913 for a declaration that he was not bound by the decree of 1901, *held* that as the suit was instituted after more than six years from the date of interference it was barred by limitation. (*Beaman and Heaton, JJ.*) BHANNA SHIDAPPA BHARE *v.* BALARAM SAKHARAM GUJAR, **20 Bom. L. R. 836 : 47 I. C 639 (2) : 43 B. 63.**

——— Art. 119—*Gift to adopted son—Challenge by reversioner.*

Where an adoption remains unchallenged, and the right to impeach it becomes time-barred, a gift made subsequently in favour of the adopted son does not give the reversioners a fresh cause of action for it does not involve any further denial of their rights than was involved in the adoption itself. (*Leslie Jones and Abdul Raoof, JJ.*) KHUSHAL SINGH *v.* KANDA. **56 I. C 931 : 2 U. P. L. R. (Lah.) 110.**

———Art. 119—*Suit for possession—Omission to sue for declaration—Lim. Act (IX of 1871), Art. 129—Difference in law.*

Under the Limitation Act of 1871 it was imperative that a suit for the recovery of immoveable property which involved the displacement of an adoption should be filed within 12 years from the date of the adoption or at the option of the plaintiff from the death of the adopted father. Where therefore a widow did not bring such a suit within the period of limitation, a reversioner or any other member interested to dispute the validity of the adoption cannot file a suit. A right of suit once barred cannot be revived by the passing of a new Act. 13 C. 308 : 20 C. 487 ; 26 M. 291 ; 12 M. 26 Ref. (*Sankaran Nair and Spencer, JJ.*) VENKOBA RAO *v.* THUNIA NATARAJA CHETTIAR, **27 I. C. 109 : (1914) M W. N. 903.**

——— Art. 119—*Suit to declare adoption valid—Limitation.*

Where an adoption is challenged and the rights of the adopted son are interfered with, the latter is bound to bring his suit to establish his adoption within 6 years under Art. 119. 24 B. 260;37 B 513:39 C. 418 P. C.; 28 A. 727 P.C. Ref, (*Beaman and Heaton, JJ.*) BHARMA *v.* BALARAM. **47 I. C. 639 : 5 O. L. J. 414.**

———Art. 119—*Interference—What is.*

The interference contemplated by Art. 119 must amount to an absolute denial of the status of adoption and an unconditional exclusion from the enjoyment of rights in virtue of that status. (*Pratt,, J.*) MAUNG GYI *v.* MAUNG ON GAING. **1 Rang. 186 : 1924 Rang. 34.**

———Art. 120

Applicability.

Assessment of rent,

Avoidance of document.

LIMITATION ACT (IX OF 1908), Art. 120—Applicability.

Claim to Office.
Debts of father.
Declaration of title.
Ejectment.
Redemption suit.
Removal of trees.
Rent suit.
Return of deposit.
Suit for accounts.
Suit for injunction.
Suit for moveables.
Suit for pre-emption.
Suit for profits.
Suit for refund.
Suit for removal.
Suit for share.
Suit on award.
Turn of worship.
Miscellaneous.

Applicability.

———Art. 120—*Applicability — Wording of plaint to escape Art.* 91.

Litigants should not be encouraged to claim the benefit of the general Art. 120 by going out of their way to word their plaint so as to escape the application of Art. 91. (*Richard, C. J. and Piggott, J.*) MIRZA QASIM BEG *v.* MUHAMMAD ZIA BEG. 37 All. 640 : 29 I. C, 968 : 13 A. L. J. 913.

———Art, 120—*Applicability—Relief as to title auxiliary.*

Art. 120 is not applicable to a suit for a declaration : the claim is merely auxiliary to the claim for some other relief and where the declaration is necessary in order to give the plff. suitable and adequate relief upon his main claim, such suit will be governed as regards limitation, merely by the article of the Limitation Act applicable in respect of the main relief claimed. 20 A. 35; 4 M. L. T. 444 ; 34 A. 91 : 1 I. C. 55 Dist. (*Piggott, J.*) DHANUK SINGH *v.* TULSI RAM. 15 I. C. 545.

———Art. 120—*Applicability—Suit for charge—Mortgage in favour of lender—Mortgage invalid for want of due attestation.*

Where *A* lent some money to *B* to pay off a mortgage on *B*'s property and *B* executed a mortgage in *A*'s favour but the deed was invalid for want of due attestation, *held* that *A* can sue for a declaration, that he has a charge on the property to the extent of the money advanced, that the suit is governed by Art. 120 and time runs from the date the money was advanced. (*Macleod, C. J. and Fawcett, J.*) CHHOTALAL KARSANDAS *v.* VISHNA GANESH. 45 Bom. 597 : 60 I. C. 903 : 23 Bom. L. R. 84.

———Art. 120—*Applicability—Suit for construction Will—Limitation when commences.*

A suit for construction of a Will is governed by Art. 120 of the Lim. Act, but the right to sue does not accrue from the death of the testator or the date of the probate of the Will. So long at least as the estate is in the hands of the executor and the administration has not been completed, the right to obtain construction of the Will is a continuing right. (*Mookerjee and Cholmer, JJ.*) RAMKAMAL BANIK SAHA *v.* SYAM SUNDAR BANIK SAHA. 37 C. L. J. 482 : 1924 Cal. 411.

LIMITATION ACT (IX OF 1908), Art. 120—Applicability.

———Art. 120—*Applicability—Suit for a declaration of public right of way.*

Art 144 and not art 120 governs a suit for a declaration of public right of way. (*Panton, J.*) HARISH CHANDRA SAHA *v.* PRAN NATH CHAKRABARTHY. 26 C. W. N. 587.

———Art. 120—*Applicability—Compromise by guardian voidable—Suit for property—Surrendered under.*

A compromise entered into by guardian *ad. litem* on the minor's behalf, without the Court's sanction is only voidable and a suit to recoves property surrendered under the compromisr falls under Art. 120 and not by Art. 144 or 142e (*Abdul Raoof and Martineau, JJ.*) JITA SINGH. *v.* MAN SINGH. 62 I. C. 794 : 2 Lah. 164.

———Art. 120—*Applicability.*

Art, 120 applies only when no other article is applicable to a suit.(*Shadi Lal and Rossignol, JJ.*) HARNAM SINGH *v.* KISHEN SINGH. 50 I. C. 6.

———Art. 120—*Applicability—Claim suit.*

Cases of claim orders in cases attachments before judgment are not governed by Art. 11 of the Act but fall under Art. 120. (*Wallis, C.J., Olafield, Spencer, Kumaraswami Sastri and Ramesam, JJ.*) ARUNACHALAM CHETTI *v.* PERIASAMI SERVAI. 44 Mad. 902 : (1921) M. W. N. 569 : 70 I. C. 439 : 14 L. W. 645 : 41 M. L. J. 252 (F. B.)

———Arts. 120 and 125—*Applicability—Claims by remote reversioner.*

Art. 120 applies to claims by remote reversioners whose rights to the property do not arise immediately on the death of the widow, *i. e.*, when there are intervening reversioners, Art 125 does not apply. (*Abdur Rahm, Offg. C. J. and Seshagiri Aiyar, J.*) VENKATA ROW *v* TULJARAM ROW. (1917) M. W. N. 30 : 38 I. C. 270 : 5 L. W. 482.

———Art, 120—*Applicability,*

Art. 120 of the Act will apply only where no other article is applicable. (*Benson and Sadasiva Aiyar, JJ.*) SANKUNNI MENON *v.* GOVINDA MENON. 37 Mad, 381: 11 M. L. T. 325 : (1912) M. W. N. 516 : 14 I. C. 264 : 22 M. L. J. 485.

———Art 120—*Applicability—Suit for declaration of partnership right—Limitation.*

Where more than six years before the date of a declaratory suit regarding a partnership the defendant had to the knowledge of the plaintiff set up that he was a partner, the suit is barred. (*Simpson, A. J. C.*) KHALIL *v.* MAHOMED ISMAIL. 1923 Oudh 101.

———Art. 120—*Applicability—Religious Endowment—Alienation of Waqf property—Suit for declaration that alienation is void—Limitation.*

A suit by a worshipper at a mosque or by the mutwalli that an alienation made by the mutwalli is invalid and not binding on the trust, will be governed by Art, 120 if brought during the lifetime of the alienor. The starting point of

LIMITATION ACT (IX OF 1908), Art. 120—Applicability.

limitation is the date of alienation. 8 I. C. 357 Foll. (*Mullick and Ross, JJ.*) MAULVI MAHOMED FATIMUL HUQ *v.* JAGAT BALLAV GHOSH.
2 Pat. 391 : 4 P. L. T. 675 : 1923 P. 475.

——Art. 120—*Applicability.*

Art 120 is a residuary provision which can only be applied where there is no other article specially applicable to the case. (*Fox and Twomey, JJ.*) ARDIKAPPA CHETTY *v.* KADAPPA.
36 I. C. 418 : 9 Bur. L. T. 130.

Assessment of rent.

——Art. 120—*Assessment of rent—Starting point of limitation.*

An entry in the Record of Rights that a land is liable to assessment confers no title and cannot be the starting point of limitation for a suit for assessment of rent. (*Richardson and Beachcroft, JJ.*) DHANANJOY MANJHI *v.* UPENDRANATH DEB, 46 I. C. 428 : 22 C. W. N. 685.

——Art. 120—*Assessment of rent—Decree of Revenue Court—Cause of action.*

A suit for assessment of fair rent brought within six years of the decree of a Revenue Court, in a proceeding under S. 106 of the Tenancy Act, declaring that the land is liable to pay rent, is not barred by limitation under Art. 120 of the Limitation Act. (*Richardson and Newbould, JJ.*) BARHAMDAT MISSIR *v.* KRISHNA SAHAY.
20 I. C. 910 : 18 C. W. N. 466.

Avoidance of documents.

——Arts. 120, 93 and 95—*Avoidance of document—Suit for declaration that document executed by the last owner is not binding on the reversioner—Limitation,*

A suit by a revisioner for a declaration that a *kot kabala* executed by the last owner and a compromise decree passed on it are not binding on the inheritance is governed not by Art 93 or 95 but by Art 120. Where plff. is in possession, limitation starts only when some act is done on the document sought to be declared not binding on inheritance. (*Banerji and Wallach, JJ.*) IMAM BANDI *v.* PURAN PRASAD. 52 I. C. 648 : 17 A. L. J. 973.

——Art. 120—*Avoidance of document—Suit for declaration—Adoption.*

A suit for declaration by a Hindu Reversioner of the nullity of an adoption by the widow and entry in revenue papers and in respect of a mortgage by the widow and mutation of names is governed by Art. 120 of the Act. (*Rafique and Lindsay, JJ.*) BALBHANDER PRASAD *v.* PRAG DATT. 41 All. 492 : 50 I. C. 938 : 17 A. L. J. 765.

——Art. 120—*Avoidance of document—Alienation by widow—Contest by remote reversioner.*

A suit for a declaration that an alienation by a Hindu widow is not binding upon the plff. by a remote reversioner, is governed by Art. 120 and the cause of action for the suit accrues on the date of the alienation. 6 C. 764 P.C. ref. to. (*Chamier and Piggott, JJ.*) KUNWAR BAHADUR *v.* BINDRABAN. 37 All. 195 : 26 I. C. 737 : 13 A. L. J. 196.

LIMITATION ACT (IX OF 1908), Art. 120—Avoidance of document.

——Art. 120—*Avoidance of document—Deed void* ab initio *suit to set aside.*

Art. 120 is applicable to a suit to set aside a deed void *ab initio.* (*Sanderson, C. J. and Richardson, J.*) SARAT CHANDRA GUPTA *v.* KANAI LAL CHAKRAVARTI. 26 C. W. N. 479.

——Arts 120, 93 and 95—*Avoidance af document—Suit by reversioner—Limitation,*

A suit by a reversioner for a declaration that a *kot kabala* executed by the last owner and a compromise decree passed on it are not binding on the inheritance is governed not by Art. 93 or 95 but by Art 120 Where the plff. is in possession, limitation starts only when some act is done on the document sought to be declared not binding on inheritance. (*Fletcher and Huda, JJ.*) HARA NARAIN BERA *v.* SRIDHAR PANDE. 47 I. C. 2.

——Arts. 120 and 125—*Avoidance of document—Mortgage by Hindu widow — Suit for declaration by remote reversioner.*

Where a Hindu widow having a daughter creates a mortgage on the estate and her nearest male reversioner sues for a declaration that the mortgage is not binding on the estate, the suit is governed by Art. 120 and not by Art. 125 of the Lim. Act and the starting point of limitation is the date of the mortgage. 41 Mad. 659 Ref. "Land" in Art, 125 includes a house and its site. 5 I. C 842 ; 32 P. L R. 1904 ; 108 P. R. 1912 Ref. ; 70 P. R. 1914 Dist: (*Bevan-Pelman, J.*) SOMAN SINGH *v.* UTTAM CHAND 1 Lah. 69 : 55 I. C. 924: 91 P. L. R. 1920.

——Art. 120—*Avoidance of document—Declaration as to binding nature of sale of ancestral land.*

Art. 120 of the Lim. Act, 1877, applies to a suit by a Hindu for declaration that a sale of ancestral land by his father does not bind him if both the alienation and the alienor's death have occurred before the passing of the Punjab Limitation Act I of 1900. (*Rattigan and Shadi Lal, JJ.*) MANGAL SINGH *v.* MANGAL SINGH.
34 I. C. 253 : 15 P. W. R. 1916.

——Arts. 120 and 125—*Avoidance of document—Alienation by widow nearer and remote reversioners.*

Art. 125 of Schedule I applies to an action brought by an immediate reversioner for a declaration in respect of a widow's alienation. A similar suit by a remote reversioner is governed by Art. 120. (*Chevis and Shadi Lal, JJ.*) THAKARI *v.* GANESHI. 15 P. R. 1916 : 33 I. C. 161 : 198 P. W. R. 1915.

——Arts. 120, 125—*Avoidance of document—Occupancy rights created by widow.*

Art. 125 and not Art. 120 applies to a suit for a declaration that a creation of occupancy rights by a widow is invalid as against reversionary rights of the plaintiff, and limitation commences from the time when the occupancy rights are created. A subsequent and belated objection in partition proceedings as to the partition of the occupancy holding does not give a fresh period of limitation. (*Rattigan, J.*) HERRA *v.* MUSAMMAT GHATU.
115 P. L. R. 1915 : 29 I. C. 789 : 230 P. W. R. 1915.

LIMITATION ACT (IX OF 1908), Art. 120—Avoidance of document.

———Art. 120—*Avoidance of document—Suit to set aside will—Limitation—Punjab Limitation Act (I of 1900).*

A declaratory suit for setting aside a will, is governed by Art. 120 of the Limitation Act. The Punjab Limitation (Ancestral Land Alienation) Act I of 1900 does not apply to such suits. (*Shah Din and Scott Smith, JJ.*) NUR KHAN *v.* BAKHTAWAR. 30 P. L. R. 1915 : 27 I. C. 574 : 200 P. W. R 1915.

———Art. 120—*Avoidance of document.*

A suit for a declaration of invalidity of an alienation of the equity of redemption is governed by Art. 120. (*Shah Din and Beadon, JJ.*) MT. RALLI *v.* SUNDAR SINGH. 29 P. L. R. 1913 : 17 I. C. 864 : 108 P. R. 1912.

———Art. 120—*Avoidance of document — Fraudulent transfer—Starting point.*

A suit by a creditor to avoid an alienation by his debtor as being fraudulent comes within Art. 120 of the Lim. Act. The cause of action for such a suit does not arise on the date of alienation but on the date the creditor, seeking to set aside the alienation, knows that he has been defrauded, defeated or delayed. S. 58 of the T. P. Act does not expressly give a right to sue but only an option to sue and the cause of action arises when the option is exercised. 17 Bom. 341 Foll. (*Ayling and Phillips, JJ.*) VENKATESWARA AIYAR *v.* SOMASUNDARAM CHETTIAR. 7 L. W. 280 : 44 I. C. 551 : (1918) M. W. N. 244.

———Arts. 120 and 134—*Avoidance of document— Suit for possession of mutt property alienated by head of mutt.*

A suit for possession of mutt properties alienated by its head is governed by Art. 134 or 144 according as the head is a trustee or a life tenant and time runs from the date of the alienation or when possession begins to be adverse. Possession adverse to the institution is equally adverse to the plffs. suing on its behalf. (*Wallis, C. J. and Seshagiri Aiyar, J.*) CHIDAMBARANATHAM THAMBIRAN *v.* NALLASIVA MUDALIAR. 41 Mad. 1124 : 22 M. L. T. 218 : 6 L. W. 666 : 42 I. C. 366 : 33 M. L. J. 357.

———Art. 120—*Avoidance of document—Accrual of right to sue.*

The right to sue for a declaration that an alienation of property is invalid falls under Art. 120 and time runs from the completion of the document and not when the plaintiff comes to know the transfer. (*Tyabji and Spencer, JJ.*) PRASANNA VENKATACHELLA *v.* COLLECTOR OF TRICHINOPOLY. 38 I. C. 45 : 38 Mad. 1064.

———Arts. 120, 91 and 95—*Avoidance of document—Fraudulent transfer.*

A suit by a creditor to set aside a fraudulent transfer is governed by article 120 and not by Art. 91 or 95. (*Sadasiva Aiyar and Napier, JJ.*) AUTHIKESAVALOO NAICKER *v.* SHAH ABDULLA. 2 L. W. 479 : 29 I. C. 62 : (1915) M. W. N. 337.

———Arts 120 and 134—*Avoidance of document—Declaratory suit that sale by a trustee is invalid.*

LIMITATION ACT (IX OF 1908), Art. 120—Claim to office.

If Art. 120 or Art 134 applies, a suit for declaration that a sale by a trustee is invalid is governed by Art 120, as it is not a suit for recovery of possession. (*Tyabji and Spencer, JJ.*) CHETTIKULAM PRASANNA VENKATACHALA REDDIAR *v.* COLLECTOR OF TRICHINOPOLY. (1914) M. W. N. 581 : 24 I. C. 369 : 26 M. L. J. 537.

———Arts. 120 and 125—*Avoidance of document —Suit by adopted son to set aside alienations by maternal grandmother—Cause of action.*

A suit by adopted son to set aside alienations by his maternal grandmother is governed by Art. 120 of the Act and the cause of action for the suit arises from the date of the plff's. adoption. (*Sankaran Nair and Sadasiva Aiyar, JJ.*) NARAYAN AIYAR *v.* RAMA AIYAR. 38 Mad. 396 : (1913) M. W. N. 588 : 14 M. L. T. 89 : 20 I. C. 625. Cf. 46 I. C. 202 : 42 Mad. 659 : 25 M. L. J. 219. (F. B.)

———Arts. 120 and 125—*Avoidance of document —Hindu widow — Alienation — Suit by remote reversioner—Cause of action.*

A suit by remote reversioner for declaration that an alienation by a Hindu widow is not binding on him after her life time, is governed by article 120 and an allegation of collusion of the nearest reversioner will not bring it under Art. 125, 10 M. L. J. 229 Foll. The cause of action for such a suit arises on the date of alienation and the fact that the plaintiffs came to know of the collusion of the nearest reversioner subsequent to the alienation is not a ground for exemption from limitation till date of knowledge. (*Ayling and Napier, JJ.*) GUNTUPALLI RAMANNA *v.* GUNTUPALLI AUNAMMA. 18 I. C. 710 : 46 I. C. 202 (F. B.) : Cf. 41 Mad. 659 : 24 M. L. J. 183.

———Art. 120—*Civil P.C., O. 21, R. 63—Avoidance of document.*

A suit by a decree-holder under R. 63, O. 21 for a declaration that a sale by the judgment debtor is not maintainable until an attachment is first made and removed. (*Pratt and Duckworth, JJ.*) MI SAN MA KHAING AND ANOTHER *v.* SHWE BA. 1 Bur. L. J. 106 : 1923 Rang. 82 (2).

———Arts. 120 and 144—*Avoidance of document —Suit by heir—Sale of property by administrator.*

A sale by the administrator of the estate of the deceased, of such estate without leave of the Court is void and can be impeached by the heirs within 12 years from the date of the sale. (*Twomey, C. J. and Ormond, J.*) MAMYI MA *v.* AUNG MYAT. 9 L. B. R. 186 : 50 I. C. 324 : 12 Bur. L. T. 27.

Claim to office.

———Arts. 120 and 124—*Claim to office—Office, if hereditary—Article applicable.*

A claim to an office and property attached to it is governed by Art. 124 if the office is hereditary and by Art. 120 if the office is not hereditary. (*Asutosh Mukerjee, A. C.J. and Fletcher, J.*) KASSIM HASSAN *v.* HAZARA BEGUM. 60 I. C. 165 : 32 C. L. J. 151.

LIMITATION ACT (IX OF 1908). Art. 120—Claim to office.

——Arts. 120 and 131—*Claim to office.*

As the right to receive *Yeomiah* allowance is a perpetual right and not a recurring one, a suit by a *mutwalli* in which the plaintiff claims to be perpetually entitled to receive the same, must be governed by Art. 120 and Art. 131 has no application to such suits. (*Ayling and Coutts Trotter, JJ.*) GULAM GHOUSE *v.* JANNIA.

(1920) M. W N. 394 : 12 L. W. 100 : 58 I. C. 788 : 39 M. L. J. 492.

——Art. 120—*Claim for mesne profits—Accrual after death of testator.*

A suit for profits accruing after the death of the deceased ancestor is governed by Art. 120. (*Heald and Lentaigne, JJ.*) MAUNG PO KIN *v.* MAUNG SHWE BYA. 1 Rang. 405 : 1924 Rang. 155.

Debt of father.

——Arts. 120 and 132—*Debt of father—Suit against sons—Limitation.*

A suit upon a mortgage effected by a father governed by the *Mitakshara* law for a debt which is neither antecedent nor for family purposes and not proved to be immoral, brought after the death of the father against the sons, some of whom were adults and some minors, at the time of the mortgage, is governed by Art. 120 of the Limitation Act, and not by article 132, as there is no charge on immoveable property enforceable against the sons. (*Jenkins, C. J. and Woodroffe, Asutosh Mukerji, Holmwood and D. Chatterjee, JJ.*) BIDYA PROSAD SINGH *v.* BHUPNARAIN SINGH.

42 Cal. 1068 : 21 C. L. J 543 : 29 I. C. 629 : 19 C. W. N. 849. (F. B.)

Declaration of title.

——Art. 120—*Declaration of title—Alluvial land—Submersion and re-appearance—Denial of title—Failure to prove possession of disputed land—Effect of.*

Defendants were mortgagees of certain land from defendants. Some land which had emerged from the river was settled with defendants in 1853. The land submerged and re appeared again and again. The plaintiffs claimed the formation as an accretion to t eir village but the revenue authorities decided in favour of the defendants. More than six years after the date of the said decision, the plaintiffs sued for declaration of title; *Held* that the accretion not having been slow and imperceptible the plaintiffs could not acquire a title thereto and that even if they had any right, they lost it by failure to have it declared when the revenue authorities decided against them. 24 A. 521 ; 27 A. 313 ref. (*Banerji and Gokul Prasad, JJ.*) BIJAI SHANKER SELHER *v.* RAM CHARITHRA SINGH. 45 A. 461 : 21 A. L. J. 409 : L. R. 4 A. 206 : 1923 All. 500.

——Art. 120—*Declaration of title—Cause of action—Entry in revenue papers—Date of knowledge—Subsequent knowledge of plaintiff.*

The starting point of limitation for a suit for declaration of title consequent on an adverse entry in the revenue papers is the date when the plff. has knowledge of the entry and not the date when it was made (*Rafique and Lindsay, JJ.*) GOPAL DAS *v.* SRI THAKUR GANGA. 20 A. L. J. 231 : L. R. 3 A. 215 : 1922 All, 115.

LIMITATION ACT (IX OF 1908). Art. 120—Declaration of title.

——Art. 120—*Declaration of title—Cause of action.*

In a suit for declaration that the property mortgaged to deft. is plff's property and the mortgagor had no right to it, the fact of the mortgage having been made did not affect the plff. so long as no effort was made to enforce the mortgage against the property. The cause of action accrued to the plff. on the date on which the deft. attempted to sell the property and the suit instituted within six years of that date was not time-barred. (*Banerji and Wallach, JJ.*) IMAM BANDI *v.* PURAN PRASAD. 52 I. C. 646 : 17 A. L. J. 973.

——Art. 120—*Declaration of title—Partition proceedings—Entry in settlement.*

In 1887 defts were recorded in the Setttlement papers as owners and in 1914 they applied for partition. *Held* that the remaining cosharers had a fresh cause of action in 1914 consequent on the partition, to sue for a declaration of their title and that the entry in the settlement was erroneous. (*Piggott and Walsh, JJ.*) KALI PRASAD MISIR *v.* HARBANS MISIR. 50 I. C 767 : 17 A. L. J. 588.

——Art. 120—*Declaration of title—Plff. in possession—Successive denials of title—Fresh cause of action.*

A person in possession is entitled to pass by an invasion of his right to the property, and is not by the forbearance debarred from a future suit on a fresh assertion on the part of the deft. which amounts to a denial or repudiation of his title and gives him an independent cause of action. (*Walsh, J.*) MAHABIR RAI *v.* SARJU PRASAD RAI. 43 I C. 175.

——Art. 120—*Declaration of title—Suit against pre-emption—Vendor's widow—Cause of action.*

K obtained a pre-emption decree against G. and got possession when the widow's name was substituted for G's, in the village records. The tenants of the land who had obtained mortgage with possession under K sued for and got a declaration of their title as mortgagors but when the plaintiff who claimed through K failed to get a mutation of names, he brought a suit for a declaration of his proprietary right 3 years after the death of G. but more than 6 years after the date of K's obtaining possession. *Held* the suit was not barred by the six years rule of limitation 20 A. 37 ref. to. 24 I. C. 535 foll. (*Piggott, J.*) RAMNANDI *v.* CHHAJJU SINGH. 35 I. C. 241.

——Art. 120—*Declaration of title—Fresh cause of action—Entry in village paper.*

Where a person was wrongfully entered as owner six years before suit but transferred the property as such owner within 6 years a declaratory suit by the rightful owner is not barred by limitation, as the transfer within six years previously gave a fresh cause of action to the suit. (*Piggott, J.*) RAHMATULLAH *v.* SHAMSUDDIN. 21 I. C. 609 : 11 A. L. J. 877.

LIMITATION ACT (IX OF 1908) Art. 120—Declaration of title.

——Art. 120—*Declaration of title—Wrong entry in Rev. Record—Cause of action.*

A tenant mortgaged his occupancy holding with possession in 1877. In 1880 his name was expunged from the Revenue papers and that of the mortgagee was recorded. In 1907 he applied to the Settlement Officer for correction but the application was dismissed ; the tenant brought a suit for a declaration that he was the mortgagor. The suit was barred by time as the cause of action accrued in 1880. (*Lyle, J.*) TARA CHAND v. BOTI RAM. 19 I. C. 751.

——Art. 120—*Declaration of title—Cause of action—Wrong entry at settlement.*

A suit for declaration of title must be brought within 6 years of the date when the plaintiff has first notice of a wrong-entry made at a settlement. (*Chamier, J.*) LACHMI BAI v. BANKEY LAL. 18 I. C. 463.

—— Art. 120—*Declaration of title—Fresh cause of action.*

In 1909 the Commissioner directed in appeal the correction of the record made at the settlement in 1901. The order gave the plff. a fresh cause of action for declaration of their right. The suit being within 6 years, was within time. (*Chamier, J.*) SHEOPHER SINGH v. DEO NARAIN SING. 17 I. C. 675 : 10 A. L. J. 413.

—— Art. 120—*Declaration of title—Record of rights—Publication — Suit for rectification — Cause of action, B. T. Act.* S. 111 *A.*

Where plaintiffs are in possession of the property a suit for a declaration that the record of rights did not correctly describe their status as tenants is governed by Art. 120 of the Lim Act and the suit can be brought within 6 years of the final publication of the Record of Rights. (*Newbould and Panton, JJ.*) BADARUDDIN MUNSHI v. SARAPADDIN BEPARI. 1923 Cal. 307.

——Art. 120 and 142—*Declaration of title—Proceedings under S.* 145—*Attachment by Magistrate—Effect of.*

Where in proceedings under S. 145, Cr.P. Code a magistrate attaches the property in dispute, a suit for possession of the property is in truth and in substance one for declaration of title to the properties and is governed by art. 120 of the Limitation Act and not by Art. 142; 20 A. 120: 26 M. 410 : 20 C. W N. 481 : 17 Cal. 814 Referred. The position of the Magistrate was that of a stake holder and during the continuance of the attachment the property was in legal custody which must be held to be for the benefit of the party who is eventually declared to be the true owner. 32 C. 856 : 5 All. 1 : 30 M. 12 : 29 C. 518 : referred to (*Chatterjee and Cuming, JJ.*) PANNA LAL BISWAS v. PANCHU RUIDAS. 49 Cal. 544 : 26 C. W. N. 432 : 1922 Cal. 419.

——Art. 120—*Declaration of title—Limitation.*

Art. 120 of the Act is applicable to suits for declaration of title to immoveable property and time begins from the date when the right to sue accrues. (*Mookerjee and Buckland, JJ.*) JOYNARAIN v. SUCHITRA DEBYA. 33 C. L. J. 592 : 1922 Cal. 8.

LIMITATION ACT (IX OF 1908) Art. 120—Declaration of title.

——Art. 120—*Declaration of title and confirmation of possession—Limitation.*

A suit for declaration of title and confirmation of possession and not for a correction of an entry in the Record of Rights is governed by Art. 120 of the Act and limitation runs from the date when defendant attempted to disturb the plaintiff's possession. (*Chatterjee and Suhrawardy, JJ.*) SARAJ KUMAR ACHARJI v. UMED ALI. 25 C. W. N. 1022 : 63 I. C. 954 : 35 C. L. J. 19.

—— Art. 120—*Declaration of title—Surplus sale proceeds—Assignee under the Bengal Land Revenue sales Act—Starting point.*

If S. 120 applied in such suits, time would begin to run when his right to surplus sale proceeds is denied. (*Mookerjee and Panton, JJ.*) BEJOYLAL SEAL v. NAYAN MUNJARI DASI. 24 C. W. N. 294 : 55 I. C. 639 : 47 C. 331 : 31 C. L. J. 372.

——Art. 120—*Declaration of title—Omission of plff.'s name from Settlement records—Limitation.*

Where the plffs. brought a suit for a declaration of title, their names having been omitted from the Settlement records, *Held*, that limitation commenced to run against the plffs, not from the date of the omission of their names from the records, but from the date when their title was challenged by the defts. (*Teunon and Richardson, JJ.*) HASAN MEA v. NAUN MEA. 46 I. C. 796.

——Arts. 120 and 144—*Declaration of title—Suit for confirmation of possession.*

A suit even though framed for confirmation of possession, may be treated as one for recovery of possession if plff.'s title to recover possession has not been barred by limitation but where the plff. in such a suit makes a case that he is in possession, but fails to prove his possession, the Court will not give him possession even though he proves his title and the suit has been instituted within the limitation prescribed for suits for recovery of possession. (*Richardson and Beachcroft, JJ.*) MAHAMAD JALIS v. THE SECRETARY OF STATE FOR INDIA. 44 I. C. 996.

——Art. 120—*Declaration of title.*

A declaratory suit in respect of title to immoveable property comes under this article. (*N. R. Chatterjee and Richardson, JJ.*) TARAK NATH v. SYAMA CHARAN. 36 I. C. 292.

——Art. 120—*Declaration of title—Consequential relief.*

Art. 120 applies to suits for declaratory relief but not to suits for declaration of title in which consequential reliefs are also joined. Where the land is in the possession of the plaintiff, time does not begin to run against him under Art. 120 of the Lim. Act. when an adverse entry is made against him in the Record of Rights but only when an actual claim is made by the defendant upon the strength of the defendant. (*Mookerjee and Chatterjee, JJ.*) DINANATH DAS v. RAMA NATH DAS. 34 I. C. 702 : 23 C. L. J. 561

LIMITATION ACT (IX OF 1908), Art. 120—Declaration of title.

——Art. 120—*Declaration of title—Suit for—Dispossession—What amounts to.*

A proprietor who is prevented from collecting a rent on account of a rival proprietor invoking the aid of a court of justice is as effectually dispossessed as if driven by force and Art. 120 of the Limitation Act has no application to such a case. *Mullick, J.)* ASIAT ULLAH v. SADAT ULLAH
26 I. C. 368.

——Art. 120—*Declaration of title—Entry in record of rights—Limitation—Starting point.*

A suit for declaration of title and for a declaration that the entry in the Record of Rights is wrong is governed by Art. 120, the starting point being the date of publication of the record of rights. (*Richardson and Newbould, JJ.*) JAGAT NARAIN SINGH v. UDIT NARAIN SINGH.
20 I. C. 262.

——Art. 120, 142 and 144—*Declaration of title and possession — Attachment of property under S. 146 Cr. P. Code—Delivery of Symbolical possession to deft.*

Property was attached under S. 146, Cr. P. Code on 7-3 1899. It remained under attachment till 26-2-1903, when the deft. No. 18 applied to the Magistrate to be put in possession as purchaser in execution of a decree against the deft. No. 1 the opponent of the plff. in the possession proceedings. Thereupon the Magistrate put him in possession. The plff. brought a suit for possession and for declaration of title on 28-2-1906; *Held* that Art. 120 of the Lim. Act. 1877, did not apply to the suit and it was not barred although brought more than six years after the date of attachment. It was governed by Art 142 or 144 of the Lim. Act. 20 A. 120 rel. (*Brett and Chapman, JJ.*) NASIR ALI SHEIKH v. ADELUDDI SHANA. 16 I. C. 620 : 16 C. W. N. 1073.

——Art. 120—*Declaration of title—Cause of action—Starting point of limitation.*

In a suit by the plff, in 1919 for declaration of their title as *adna maliks* of certain land forming part of the shamilat, it was found that the defts. denied their title in 1912, that the Assistant Collector refused mutation of their names in 1912, that on appeal the Collector reversed the order of the Assistant Collector and ordered mutation of the plff.'s names in 1913 and that the order of the Collector was reversed by the Commissioner in 1913, *Held*, that though the denial of the plff.'s title in 1912 gave them a cause of action, the order of the Commissioner in 1913 gave a fresh cause of action and that the suit was within time. 10 A. L. J. 413 foll. 36 A. 493 ref. (*Scott-Smith, J.*) LORIND CHAND v. ALLAH BAKHSH.
33 P. L. R. 1922: 6 P. W. R. 1922: 1922 Lah. 125.

——Art. 120—*Declaration of title—Limitation when begins—Successive invasions.*

A man is not bound to bring a declaratory suit on any and every possible invasion of his title, and such suits are not encouraged by courts unless thy are clearly necessary. Where plaintiff's share in a *shamilat* was dis puted in 1895, but his joint possession was not disturbed, and in 1914 in another partition proceeding his rights were again disputed: *Held*, a suit for declaration of title within 6 years of the latter event, is in time. (*Scott-Smith and Harrison, JJ.*) MUHAMMAD HANIF v. RATAN CHAND.
3 Lah. 43 : 1922 Lah. 94.

LIMITATION ACT (IX OF 1908), Art. 120—Declaration of Title.

——Art. 120—*Declaration of title—Cause of action—Interference with graveyard—Cultivation of portions of graveyard—Interference with repairs.*

In a suit for declaration that certain lands were a grave yard it was found that portions of the land were, from time to time cultivated, that in the settlement of 1904—1905 no part of the land was shown as a graveyard, a portion being entered as cultivated and the rest as waste. In 1915 there was an active interference when certain masons who entered upon the land in order to repair the old tombs were obstructed. *Held*, that the suit was in time, being brought within 6 years after 1915. The plffs. might very well have disregarded the fact that parts of the land were cultivated so long as their rights were not actively interfered with. The obstruction of repairs to the tomb was an overt act which interfered with the plaintiff's right of user. Therefore time did not begin to run against the plaintiffs until 1915. (*Scott-Smith, J.*) JAI GOPAL v. MAHOMED BAKHSH. 65 I. C. 647.

——Art. 120—*Declaration of title—New cause of action—Limitation.*

A suit for declaration of title to lands by a proprietor in possession is not barred if brought within 6 years of an attempted dispossession although the plff. had a right to sue the defendant who had been recorded as owner in the revenue record more than six years before suit. 36 All. 492; 140 P. R. 1907 and 7 I. C. 528 Ref. 31 All. 9 Dist. (*Scott-Smith and Wilberforce, JJ.*) JAHANA v. WALI. 53 I. C. 595 : 98 P. W. R. 1919.

——Art. 120—*Declaration of title—Adverse entry in revenue records—Cause of action.*

A declaratory suit by a plff. in possession of the property is not barred simply because an adverse entry in the revenue records had been made more than six years of the date of suit to the knowledge of the plff. (*Shadi Lal, J.*) GOKAL CHANDA v. HUKAM CHANDA.
73 P. W. R. 1918 : 44 I. C. 912 : 72 P. L. R. 1918.

——Art. 120—*Declaration of title—Cause of action—Invasion of a right.*

Every fresh invasion of a person's right to his property, not being a mere reiteration of a former denial of title, gives him a fresh cause of action. (*Chevis and Leslie Jones, JJ.*) GHULAM HUSSAIN v. SAIFULLAH KHAN. 79 P. R. 1917 : 42 I. C. 346 : 140 P. W. R. 1917.

——Art. 120—*Declaration of title—Plff. in possession — Cause of action—Adverse entry—Revenue papers.*

Although a right to sue the deft. who had been recorded as sole owner of the property in the Revenue papers for a declaration had already

LIMITATION ACT (IX OF 1908), Art. 120—Declaration of title.

accrued and become barred a suit lies for a declaration of title to immoveable property by persons in possession as proprietors if brought within six years from the time when the deft. last attempted to oust them from the land. 31 All. 9 Foll. 20 All. 35, Dist. (*Barton, J. C.*) CHIMNAI *v.* ADAL SHAR. 83 P. L. R. 1916.

——— Art. 120—*Declaration of title—Partition—Cause of action.*

When a co-sharer in a land shown in Revenue records as being joint for many years past, applied for partition and the plaintiff claiming the land as his sole property was referred to a Civil Court for declaration of his title, the suit is not time-barred as the cause of action arose only when the defendant applied for partition. (*Shah Din and Chevis, JJ.*) NATHA SINGH *v.* ISHAR SINGH. 163 P L. R. 1914 : 23 I. C. 458 : 99 P. W. R. 1914.

———Art. 120—*Declaration of title—Cause of action—Refusal to enter name of applicant—Revenue register successive orders—Starting point of limitation.*

Where the cause of action for a suit for declaration of title is the refusal of Revenue authorities to enter the plaintiff's name in the revenue register, the starting point of limitation under Art. 120 of the Limitation Act is the date of the order of refusal by the Revenue authority. A subsequent application for the same relief and a subsequent order of refusal by the Revenue authority does not give a fresh cause of action for the suit. 11 C. W. N. 186 rel : 31 All 9 ; 22 C. L J. 283 ; 36 All. 492 ; 36 Mad. 383 and 41 Cal. 244 dist (*Kumaraswamy Sastri and Devadoss, JJ.*) ANGATI PARAMBATH *v.* NEELAKANDHAN. 15 L. W. 478 : (1922) M. W. N. 260 : 30 M. L. T. 266 : 42 M. L. J. 457 (H. C.) . 1922 Mad. 194

———Art. 120—*Declaration of title—Knowledge of some of the members of a community.*

The cause of action for a declaratory suit based on a denial of title arises only on the knowledge of such denial. 1 L. W. 134 foll. The knowledge of some only of the community does not affect the right of the others. (*Ayling and Tyabji, JJ.*) MURUGA CHETTY *v.* RAJASWAMY. 18 M. L. T. 327 : (1915) M. W. N. 701 : 2 L. W. 813 : 30 I. C. 669 : 29 M. L. J. 574.

———Art. 120—*Declaration of title—And restitution, suit for—Wrong attachment and sale—Time—When begins to run.*

A suit by a person whose property, had been wrongfully attached and sold, for a declaration that the attachment is illegal and for restitution is governed by Art. 120, time commencing from the date of sale and not from the date of attachment as only the sale passes title to the purchaser and gives a fresh cause of action apart from attachment. 31 A. 10 ; 18 M. L. J. 590 ; rel. on, (*Benson and Spencer, JJ.*) ANANTARAZU GARU *v.* NARAYANARAZU GARU. 38 Mad. 383 : (1911) 2 M. W. N. 531 : 10 M. L. T. 504 : 13 I. C. 96 : 22 M. L. J. 108.

LIMITATION ACT (IX OF 1908), Art. 120—Declaration of title.

———Art. 120—*Declaration of title.*

A suit for declaration that defendant was a sub-tenant and not partner should be brought within 6 years from the time defendant sets up that position. (*Simpson, A. J. C.*) KHALIL *v.* MAHOMED ISMAIL. 9 O. L. J. 540 : 1923 Oudh 101.

———Art. 120—*Declaration of title—Suit for declaration as under-proprietors—Rent suit and ejectment proceedings—Plaintiff in possession.*

Limitation for a suit for a declaration that the plaintiff is an under-proprietor runs from the ejectment order and not from decree in rent suit against him, on the ground that he was a tenant, especially when he is in possession in spite of the decree and order. Compendium of the Oudh Talukdari Law on pages 181 to 183 Ref. (*Wazir Hasan, A. J. C.*) B. MANOHAR LAL *v.* ACHUTANAND. 9 O. L. J. 618 : 1923 Oudh 27.

———Art 120—*Declaration of title—Entry in revenue registers—Cause of action.*

A man is not bound to sue for a declaration of his title merely because some casual denial of his title is made, e. g. by an entry unfavourable to him in the revenue registers, which in no way affects him in the enjoyment of his rights of property. His failure to sue on the cause of action within 6 years of the accrual thereof will not bar a subsequent suit by him on a fresh cause of action. (*Lindsay, J.*) SRI RAJ KUNWAR *v.* GANGA PRASAD. 23 O. C. 46 : 7 O. L. J. 74 : 55 I. C. 893 : 2 U. P. L. R. (J. C.) 91.

———Art. 120—*Declaration of title—Entry in Khewat.*

Where a person continues in possession of his property in spite of a contrary entry appearing in the *khewat* no question of limitation or adverse possession can arise in a suit filed by him for declaration of his title. (*Kanhaiya Lal, J. C.*) BHAGWAN BAKHSH SINGH *v.* SANT PRASAD. 6 O. L. J. 523 : 54 I. C. 317 : 22 O. C. 369.

———Art. 120—*Declaration of title—Cause of action—Assertion of hostile title.*

Where a person is in possession of property he is not bound to file a suit for a declaration of his title unless anything has been done which has the effect of prejudicing the right to continue his possession or doing other injury which cannot be rewarded except by a suit for declaration. The mere fact that a revenue court refused to partition a joint *khewat* till the shares of the contending parties were determined by the Civil Court, does not necessarily vest the opposite party with an adverse title if the possession of the person against whom the order is passed, remains undisturbed. (*Kanhaiya Lal J. C.*) PARMESHWAR DIN *v.* RAM NATH. 55 I. C. 1005.

———Art. 120—*Declaration of title—Decree—Setting aside—Fraud.*

A plff. after bringing a suit for a declaration as to his title within limitation by pleading an assertion of the deft of a conflicting title within six years cannot impeach a decree in favour of the deft, on the ground of fraud which was passed more than six years before the date of filing

LIMITATION ACT (IX OF 1908), Art. 120—Declaration of title.

the declaratory suit. (*Ashworth, A. J. C.*) RAGHUBAR DAYAL *v.* BINDA PRASAD.
22 O. C. 171 ; 6 O. L. J. 646 : 53 I. C. 572 : 1 U. P. L. R. (J.C.) 77.

———Art. 120—*Declaration of title—Cause of action.*

A notice of ejectment issued by the plaintiff against the defendant was cancelled by the Revenue Court. The plaintiff unsuccessfully appealed to the Commissioner and the Board of Revenue. After the order of the Board of Revenue, he filed a declaratory suit. Defendants contended that the suit was barred by limitation alleging that time commenced from the date of the Government order and not from date of order of the Board of Revenue. *Held* that the defendant's plea was not valid and that so long as it is open to a person against whom an adverse order had been passed to get it set aside on appeal, and he is taking the necessary steps towards it, he can not be driven to bring a regular suit for a declaration of his rights. The right to sue accrues only after the adverse order is made final. 7 O. C. 187; 30 M. 316 Ref. (*Kanhaiya Lal, A. J, C*) BANS GOPAL *v.* BASDEO SINGH.
4 O. L. J. 122 : 39 I. C. 428 : 20 O. C. 126.

———Art. 120—*Declaration of title—Cause of action—Suit for declaration that the defts. are not under—proprietors.*

When a Rev. Court held in a suit that the defts are not ordinary tenants and in the next suit between the same parties held they were under-proprietors, it was held that the cause of action for a civil suit to declare that they were not under-proprietors, arose not with previous decision but with the entry of the deft's name as under-proprietors under the subsequent order of the Court. (*Kanhaiya Lal nnd Sabonadire, A. J. C.*) RAM JIYAWAN *v.* MAHOMED ABDUL HASSAN KHAN. 23 I. C. 231.

———Art. 120—*Declaration of title—Limitation.*

A suit for declaration of a right to a property cannot be barred so long as the right is a subsisting one. A suit for a declaration that a lease by a *Lambardar* is invalid against the plff. can be brought within 12 years of the execution thereof. 20 C. 906: 8 O, C. 303 foll. (*Piggott, J,C.*) RAGHUBAR DAYAL *v.* MAHESHAGIR. 20 I. C. 147.

———Art. 120—*Declaration of title—Cause of action.*

In an application to the Revenue court for partition, the deft. alleged the plff. owned only 1-3 share. Plff. contended that he had ½ and he was referred to Civil Court. Immediately he filed a suit for declaration. The cause of action being the order of the Revenue Court, the deft. contended that the suit was barred by limitation as the Revenue Records of such long date as 1872 showed only 1-3 share to his name. The court found that the plff. was in possession of ½ share all along. *Held* that the suit was within time as it was not necessary for the plff. before the Revenue Court's order to bring the declaratory suit. (*Lindsay, A. J. C*) SARJU SINGH *v.* GAYA DIN SINGH. 10 I. C. 11.

LIMITATION ACT (IX OF 1908), Art. 120—Declaration of title.

———Art. 120—*Declaration of title—Suit for declaration of invalidity of sale*

A suit for declaration that a sale held in contravention of S. 158 (*b*) of the B. T. Act is illegal and inoperative is governed by Art. 120 (*Das, J.*) GHANSHYAM *v.* BASDEB. 60 I. C. 529 : 3 U. P. L. R. (P.) 27.

———Art. 120—*Declaration of title—Cause of action—Wrongful interference with mines.*

A fresh cause of action for a declaration that the mineral rights in certain lands are vested in the plff arises whether any particular portion of minerals is removed or not. (*Dawson Miller, C. J. and Coutts J.*) KUMAR PRAMATHA NATPA MALIA *v.* A. J, MEIK. 5 P. L. J. 273 : 1920 P. 146 : 1 P L. T. 760.

———Art. 120—*Declaration of title—Cause of action—Successive wrong entries in record of rights—Fresh invasion of rights.*

Held, on the facts that the scope of the suit being limited to the second record of rignts the limitation under Art. 120 ran from the final publication in 1906. The previous publication of 1888-1889 did not extinguish the right of the plaintiff who continued to be in possession in spite of the adverse entry and the entry of 1906 constituted a fresh invasion of his rights. (*Miller, C. J, and Mullick, J.*) LATAFAT HUSSAIN *v.* KALIKAR NAND SINGH. 4 P. L. W. 303 : 3 P. L. J. 361 : 45 I. C. 432 : 1918 Pat. 225.

———Art. 120—*Declaration of title—Cause of action—Record of rights—Final publication.*

Limitation for a suit for declaration that the disputed land is Zerait land, for Khas possession thereof, and for a declaration that an entry in the record of rights recording the defendants as occupancy Raiyat is incorrect, runs from the date of the final publication of the entry in the record-of rights. (*Atkinson and Jwala Prasad, JJ.*) DILAN SINGH *v.* CHOA SINGH.
42 I. C. 397 : 2 P. L. W. 183.

———Art. 120—*Declaration of title—Entry in Record of rights.*

Suit for a declaration that an entry in the Record of rights is wrong within six years from the date on which plff's title is effectively challenged is within time though more than six years have elapsed since the publication of the Record, provided plaintiff's enjoyment of the property has not been effected. (*Sharfuddin and Roe, JJ*) ALA-UD-DIN *v.* ZAIFAN NISSA.
2 P. L. W. 22 : 41 I. C. 199 : 2 P. L. J. 557.

———Art. 120—*Declaration of title—Steam launch—Suit for declaration of title and possession—Limitation.*

Where there was a prayer in the plaint for declaration of title to a steam launch and for possession of the launch, the suit was in substance one to recover possession of specific moveable property governed by Art. 49 and not by Art. 120 of the Lim Act. The prayer for declaration was unnecessary or at any rate ancillary to the main relief (i. e) possession. In dealing with an entire estate there are no different periods of limitation

LIMITATION ACT (IX OF 1908), Art. 120—Ejectment.

for moveable and immoveable property 15 I. C. 545 foll. 36 M. 383 ; 21 C. 157 dist. (*Pratt and Duckworth, JJ.*) PUN AUNG *v.* BRIJ LAL.
1923 Rang. 11.

Ejectment.

——Art. 120—*Ejectment—Landlord and tenant.*

A suit by a landlord to dispossess a purchaser of occupancy rights in the land in suit is governed by Art 120 and not Art. 144 and may be brought within 6 years from the date of sale 6 I. C. 942 Dist. (*Diack, F. C.*) LABHA *v.* TULSI.
1 P. R. 1916 Rev : 34 I. C. 523
3 P. W. R. 1916 Rev.

——Arts. 120, 142, and 144—*Ejectment—Encroachment on public way—Shamilat.*

A suit to oust the deft from a specific portion of the *shamilat deh* occupied by him adversely to the rest of the proprietors or to remove an obstruction to the enjoyment of the *shamilat* is governed by Art. 120 of the Lim Act 1 C.W.N. 98: 8 P.R. 1899, Foll Art. 32, 142. 144 or 146 (*a*) does not apply to such a suit. 26 C. 564 ; 17 C. 137 Dist. (*Reid, C. J.*) ACHAR SINGH *v.* BADHAWA SINGH.
124 P. R. 1912 : 2 P. L. R. 1913 : 15 I. C. 385 :
132 P. W. R. 1912.

——Art. 120—*Ejectment—Cause of action—Assertion of title by tenant.*

An assertion of title by tenant which would imply that he is not liable to ejectment would not become effective against the landholder until such time as it was put forward as a substantial defence in ejectment proceedings before the Revenue Court. (*Lindsay, J. C, and Stuart, A. J. C.*) RAM AUTAR *v.* ABBU HASAN KHAN.
28 I. C. 307 : 2 O. L. J. 131.

——Arts. 120 and 144—*Ejectment—Plaint mentioning that entry in Record of-rights is incorrect—If would make it suit for correction.*

The mere mention in the plaint that an entry in the Record-of-rights is incorrect would not convert a suit for correction of the Record of-Rights (*Chapman and Atkinson, JJ.*) MOHIT GOPE *v.* MUNDRI.
42 I. C. 471.

Redemption suit.

——Arts. 120 and 148—*Redemption suit.*

Where a mortgagor sued for redemption of the mortgage after sale of the equity of redemption contrary to the provisions of O. 34, R. 14, C P.C. and purchased by the mortgagee decree-holder. *Held Per Sanderson, C. J.*—A suit appropriately framed for that purpose would be governed by Art 120 of the Lim Act. (*Sanderson, C. J, and Woodroffe, Mookerjee Chatterjee and Newbould, JJ.*) UTTAMDAW CHANDRA *v.* RAJA KRISHNA DALAL. 47 Cal. 377 : 24 C.W.N. 229 : 55 I.C. 157 :
31 C. L. J. 98

——Art. 120—*Redemption suit—Agreement for redemption only after payment of principal and interest.*

In a redemption suit based upon a mortgage deed providing for redemption only on payment in full of principal and interest due, the mortgagee can get interest up to the date of redemption and

LIMITATION ACT (IX OF 1908), Art 120—Return of deposit.

Art. 120 does not limit his claim for interest to six years. (*Johnstone and Chevis, JJ.*) JOTIPERSHAD *v.* HAKIM ALI. 73 P. L. R. 1914 : 22 I. C. 528 :
41 P. W. R. 1914.

Removal of trees.

——Arts. 120 and 32—*Removal of trees—Suit for.*

Suit for removal of trees planted on agricultural land is governed by Art. 32 and not by Art. 120. (*Lindsay, J.*) KHUDA BAKSH *v.* GAURI SHANKAR. 7 O. L. J. 301 : 57 I. C. 476 :
23 O. C. 163.

——Art. 120—*Removal of trees—Suit for—Limitation.*

A suit by the landlord for the removal of trees wrongfully planted by a person is governed by Art. 120 of the Lim. Act. The suit must be confined to trees planted within six years immediately preceding its institution. (*Kanhaiya Lal, A. J. C.*) BADAL *v.* NAGESHWAR BAKSH SINGH. 52 I. C. 858 : 6 O. L. J. 329

Rent suit.

——Art. 120—*Rent suit—Suit by co-sharer.*

Suit for rent by a co-owner against his co-sharer who occupied the property after the term fixed for such period is governed by Art. 120 and not by Art. 110 or 115. (*Ayling and Hannay, JJ.*) MADAR SAHIB *v.* KADER MOIDEEN SAHIB.
33 I. C. 705 : 39 Mad. 54.

——Arts. 120, 61 and 99—*Rent suit—Lambardar—Suit against co-sharer—Limitation.*

A Village belonged to three persons in equal shares. The rents payable by tenants, together with the rental assessed on the *sir and Khudkast* held by the *lambardar* and another co-sharer, more than sufficed to cover all the annualexpenses. By an arrangement among co-sharers no contribution used to be demanded from the third co-sharer until the annual accounts were made up by the *lambardar*. The *lambardar* sued for the balance due from the third co-sharer by reason of her failure to pay the rental assessed on the *sir* land and *Khudkast* held by her. *Held*, that the suit was governed by Art. 120 and not by Art. 61 or 99 of the Lim. Act. (*Drake-Brockman J, C.*) DHUNDIRAJ *v.* WARU BAI. 30 I. C. 960 :
11 N. L. R. 156.

Return of deposit.

——Art. 120—*Return of deposit.*

Where an executor depositing minor legatee's money in Bank draws out money and thereby commits breach of trust the bank cannot be held liable if it has acted *bona fide*. (*Macleod, C. J. and Shah, J.*) BANK OF BOMBAY *v.* FAZULBHOY EBRAHIM. 24 Bom. L. R. 513 : 1923 B. 155.

——Art. 120—*Return of deposit.*

A suit for the recovery of money deposited with another and repayable on the happening of a future event, and brought after the happening, of the event, is a suit for "Compensation for the breach of any contract not in writing registered" within the meaning of Art. 115 Sch. II of the Limitation Act, and is barred if not instituted

LIMITATION ACT (IX OF 1908). Art. 120—Return of deposit.

within 3 years from the date on which the event happened. Neither Art. 60, nor Art. 66 or 120 applies to such a suit. (*White, C. J. and Oldfield, J.*) BALAKRISHNUDU *v.* NARAYANASWAMY CHETTY. 22 I. C. 60 : (1914) M. W. N. 264.

———Arts. 120, 36 and 62—*Return of deposit*

Deceased had obtained a lease of premises from the collector for conducting a grog shop and deposited Rs. 250 as security for rent. On his death deft. got the lease, and as a result of the arrangement between him and the Collector, the sum of Rs. 250 was made liable for his loan. The plaintiff, the universal legatee of the deceased brought a suit for the amount. The proper article applicable was 120, being a suit to recover specific sum of money belonging to him and enjoyed by the defendant, the cause of action occurred on defendant's refusal to pay. (*Atkinson, J.*) RAJAKUMAR *v.* FATEH BAHADUR LAL. 38 I. C. 525.

Suit for accounts.

———Art. 120—*Suit for accounts.*

A suit against a *karta* of a joint Hindu family, for an account is governed by Art. 120 of Lim. Act (*Chowdhuri and Newbould, JJ.*) BISWAMBAR HALDER *v.* GIRIBALA DASI. 32 C. L. J. 25 : 58 I. C. 877 : 25 C. W. N. 356.

———Arts. 120 and 89—*Suit for accounts.*

Art. 120 is a residuary article and is applicable where no other article covers the suit. Express demand and refusal are necessary to start limitation under Art. 89. (*Robertson and Shah Din, JJ.*) SHAM LAL *v* BAINKA MAL. 14 I. C. 19 : 208 P. W. R. 1912.

———Art. 120—*Suit for accounts.*

In a transaction for sale, the original purchaser got an unregistered deed executed by the owner in his favour. The purchaser then entered into a contract with a third person on certain conditions evidencing the arrangement by an exchange of letters. The third person got the property from the buyer and the owner by a document reciting the transaction between the purchaser and the owner was dissolved and disregarded the conditions of sharing profits, on the grouud of the buyer's failure to abide by the contract within time. A suit for declaration by the buyer that he was absolute owner was brought, but was profits, on the ground of the buyer's failure to abide by the contract within time. A suit for declaration by the buyer that he was absolute owner was brought, but was dismissed for default of presence. The purchaser applied for restoration and amendment of plaint with an alternative prayer of compelling the third person to execute the document of arrangement. The suit was withdrawn with permission to bring a fresh one upon which a new one was instituted *Held*, (1) the partnership was created without condition or contingent on *kararnama* (2) that that was dissolved as the pleadings in the declaratory suit repudiated the contract. (3) The third and final suit being after more than six years from the date of dissolution of the partnership was barred under Art. 120 of Lim. Act. (4) that the buyer could not bring the present suit claiming relief as partner according to O. 2, R 2, C. P. C. as the cause of action in both the present and the previous suits was based on the contract of partnership, and he had brought the previous one for establishing his right. (*Abdur Rahim and Spencer, JJ.*) AMALUR VENKAYA NAIDU *v.* VISA LAXMINARAYAN SAYA. 58 I. C. 969.

LIMITATION ACT (IX OF 1908). Art. 120—Suit for injunction.

———Art. 120—*Suit for accounts—Declaration of right of supervision.*

A suit for declaration that a Temple committee has a right of supervision is governed by Art. 120 and if it is time-barred, rendering of accounts cannot be asked for. (*Ayling and Napier, JJ.*) CHARAPATTADA SIDDALINGA SWANNELA *v* SONDUR RAMCHANDRA CHARLU. 4 L. W. 186 : 35 I. C. 646 : 31 M. L. J. 857.

———Arts. 120 and 62—*Suit for accounts—Jaghir—Suit by a sharer.*

A suit for account brought by a sharer against co-owner of a *Jaghir* who has been appointed by the Govt. as the manager in which capacity he is entitled to collect the rents and revenue of the laghir and bound to account finally for the collections and disbursements, is governed by Art. 120 and not by Art 62. (*Abdur Rahim and Srinivasa Iyengar, JJ.*) SUBBA RAO *v.* RAMA RAO, 40 Mad. 291 : 32 I. C. 899 : 3 L. W. 192 : 19 M. L. T. 134 : (1916) 1 M. W. N. 188 : 30 M. L. J. 341.

Suit for injunction.

———Art. 120—*Suit for injunction—Removal of beams.*

Where a person puts up beams against the wall of another more than 6 years before suit, a suit for removal of the beams is barred thereafter. (*Gokul Praasd, J.*) MT. KOKLA KUNWAR *v.* KALIAN MAL. 1923 All. 452.

———Art. 120—*Suit for Injunction—Trespass on land—Pillar driven into plff's land—Suit for a mandatory injunction to remove the pillar.*

A suit for a mandatory injunction to remove the stair-case which overhung the land in dispute, and also the pillar on which it rested on that land, is governed by Art. 120. (*Beaman and Heaton, JJ.*) HARIRAM KISNIRAM *v.* SHIVBAKAS RAMCHANDRA. 42 Bom. 333 : 45 I. C. 592 : 20 Bom. L. R. 327.

———Art. 120—*Suit for injunction—Encroachment on the right to enjoy courtyard.*

Plff. sued for perpetual injunction to remove a thatched shed erected by deft. overhanging plff's courtyard. The suit is governed by Art. 120 and not by Art. 144. (*Broadway, J.*) LAL SINGH *v.* HIRA SINGH. 3 Lah. L. J. 228 : 60 I. C. 20 : 3 U. P. L. R. (Lah) 9.

———Art. 120—*Suit for injunction—Cause of action.*

Art. 120 is the residuary article and can be said to provide the limitation for a suit for injunction but the *terminus a quo* is the date when the right to sue accrues. A suit for an injunction to prevent the discharge of water on to the plff's roof

LIMITATION ACT (IX OF 1908), Art. 120—Suit for injunction.

is governed by Art. 120 and the starting point is the date when the water was last discharged on to the plff.'s roof. (*Shadi Lal, C.J.*) NUR MAHOMED *v.* GAURI SHANKAR. 2 U. P. L. R (Lah.) 116 : 56 I. C. 1003 : 2 Lah L. J. 463.

——— Art. 120—*Suit for injunction—Encroachments on reserved land—Burden of proof—Specific Relief Act (I of 1877), S. 54.*

In a suit for perpetual injunction directing the defts. to restore certain encroached lands to its original condition, it is for the plffs. to prove that the encroachments were made within six years from the date when the right to sue accrued. The Court cannot act merely on the surmise that the encroachment are recent. (*Ratligan. J.*) GANDASINGH *v.* NATHU RAM. 77 P. W. R. 1912 : 13 I. C. 661 : 151 P. L. R. 1912.

Suit for moveables.

——— Arts. 120 and 132—*Suit for moveables—Mortgage decree, if moveable property.*

A mortgage decree for sale is moveable property, and a suit to enforce the hypothecation of such a decree is governed by Art. 120 of the Act 23 C 750; 9 A. 108 foll. Where however the decree has been converted into immoveable property, the mortgagee of such decree is entitled to the benefit of not only the new security, but of Art. 132 of the Act. (*Piggott and Lindsay, JJ.*) JAMNADEI *v* LALA RAM.

39 All 74 : 37 I. C. 4 : 14 A. L. J. 1025

——— Art 120—*Suit for moveables—Suit by reversioner for moveable property on death of widow*

A suit by a reversioner to recover moveable property on the death of a Hindu female is governed by Art. 120 of the Act and time runs from the death of the female. (*Mookerjee and Buckland, JJ.*) PRAMATHNATH *v.* BHUBAN.

25 C. W. N. 585 : 33 C. L. J. 421 : 1922 Cal. 321.

——— Art. 120—*Suit for moveables—Share of moveables on death of widow—Contest between two brothers—Limitation.*

A suit between two brothers for recovery of moveables left by the widow of third brother is governed by Art. 120 of the Lim. Act. 21 C. 157 (P. C.) Relied on. (*Reid, C. J.*) JOTE PARSHAD *v.* SANT LAL. 13 P. L. R. 1914 : 24 P. W. R. 1914 : 21 I. C. 919 : 34 P. R. 1914.

——— Art. 120—*Suit for moveables by reversioner—Limitation.*

The article applicable to a suit by a reversioner, to restrain waste of moveables by a Hindu widow is Art. 120 of the Act. (*Wallis, C. J. and Krishnan, J.*) VENKANNA *v.* NARASIMHAM.

44 Mad. 984 : (1921) M. W. N. 590 : 14 L. W. 193 : 65 I. C. 10 : 41 M. L. J. 279.

——— Art. 120—*Suit for moveables—Sale proceeds of immoveable property—Moveable property substituted for—Limitation.*

A claim for the proceeds of what was once immoveable property but has been substituted by

LIMITATION ACT (IX OF 1908), Art. 120—Suit for pre-emption.

moveable property is not a claim for immoveable property or any interest therein or any profits arising out of land and is governed by Art. 120. (*Miller, C. J. and Ali Imam, J.*) RADHA KRISHNA RAI *v.* NAURATAN LAN.

46 I. C. 627 : 3 P. L. J. 522.

——— Art. 120—*Suit for moveables.*

A suit for the recovery of moveable property wrongly sold in execution of a decree is not governed by Art. 120. (*Hartnoll, J.*) MAUNG PO ON *v.* MAUNG TUN U.

9 I. C. 774 : 4 Bur. L. T 46.

Suit for pre-emption.

——— Arts. 120 and 10—*Suit for pre-emption—Lease.*

A suit for pre-emption in respect of a pure and simple lease is governed by Art. 120 and not by Art. 10. (*Tudball and Rafique, JJ.*) MUKHLAL RAI *v.* HIRANAND SING. 19 A. L. J. 442 : 62 I. C. 884 : 3 U. P. L. R. (All.) 81.

——— Art. 120—*Suit for pre-emption.*

The limitation applicable to the case of a second vendee in a pre-emption suit is the one in Art. 120 of the Act. (16 I. C. 70 foll.) (*Johnstone and Shah Din, JJ.*) FAZAL HUSSAIN *v.* MALIK JINDA. 49 P. R. 1914 : 252 P. L. R. 1914 : 25 I. C. 443 : 160 P. W. R. 1914.

——— Arts. 120 and 10—*Suit for pre-emption—Punjab Pre-emption Act (II of 1905), Ss. 25 and 29—Suits by rivals in pre-emption against one another.*

In suits by rival pre emptors against one another in respect of the same sale, the period of limitation is that prescribed by Art. 120 and not Art. 10 nor even that in Section 29 of the Punjab Pre-emption Act because the last contemplates only a suit by a pre-emptor against the original vendee. 7 A. 167 ; 11 P.R. 1893 : 20 P.R. 1908 relied upon. (*Shah Din, J.*) ILAHI BUX *v.* MAHOMED RAB NAWAZ KHAN.

186 P. W. R. 1912 : 14 I. C. 328 : 80 P. R. 1912.

——— Arts. 120 and 10—*Suit for pre-emption—Possession with third persons.*

A sold certain property to *B* with a covenant to pre-empt in case of its sale by *B* to a third person, and himself remained in possession, under an oral agreement, for a certain period. While *A* was thus in possession, *B* sold the property to *C* and after one year of the execution of registered deed of sale between *B* and *C*, *A* sued for pre-emption. *Held*, that the suit was governed by Art. 120 and was not barred, as possession had not been taken by the vendee, *i.e.*, *B*. (*Napier and Krishnan, JJ.*) VELAYUDHAM PILLAI *v.* THINA VELAYUDHAM PILLAI 13 L. W. 288 : 29 M. L. T. 251 : 62 I. C. 37 : (1921) M. W. N. 207 : 40 M. L J. 443.

——— Art. 120—*Suit for pre-emption—Suit by othidar.*

A suit by the othidar for pre-emption is governed by Art. 120 and time runs from the date he comes to know of the sale and its terms and not

LIMITATION ACT (IX OF 1908), Art. 120—Suit for pre-emption.

from the date of sale. (*Abdur Rahim and Sundara Aiyar, JJ.*) P. MAMABI *v.* ACHARATH PARAKET. 38 Mad. 67 : 12 M.L.T. 535 : (1912) M.W.N. 1217: 17 I. C. 337 : 23 M. L. J. 607.

——Art. 120—*Suit for pre-emption—Date of registration or execution—Registration Act*, S. 47.

In a pre-emption suit the limitation runs from the date of registration and not from the date of execution of the deed of sale and the article applicable is 120. S. 47 of the Registration Act does not apply to the case. (*Kotval, A. J. C.*) RAGHO *v.* SAGHARAM. 1922 Nag. 200.

——Art. 120—*Suit for pre-emption—Limitation—Contemplated sale.*

Art. 120 of the Lim. Act applies to suits for pre-emption in respect of a contemplated sale while Art. 10 applies where the sale has actually taken place. (*Hallifax, J. C.*) RAI *v.* SIDAKALLI. 1922 Nag. 14.

Suit for profits.

——Art. 120—*Suit for profits—Incorrect area of land in decree.*

The present deft. got a decree in 1901, in which the deft.'s share in land was mistaken. He got mutation according to the mistaken decree. In 1905, he sued the plff. the lambardar for profits which he got on the basis of the mistaken decree. The plff. in 1909 got the decree corrected and in 1910 get formal possession of the mistaken area but for mutation he was referred to a Civil Court; he however appropriated the profits but did not sue in Civil Court. In 1917 deft. applied for partition on the basis of the incorrect *khewat* entry, the plff. objected and he was again referred to a civil court. Now he sued the deft. but was met with the plea of limitation. *Held*, that his suit was not barred. (*Mears, C.J. and Banerji, J.*) GULZARI LAL *v.* MAQBOOL AHMAD. 62 I. C. 695 : 19 A. L. J. 233.

——Arts. 120 and 62—*Suit for profits—Plff.'s use—Claim for profits received by deft.*

The plaintiffs were the owners of a village named Ghola while the defendant No. 1 and the deft. No. 3 were the owners of a contiguous Mouzah called Kangore. The deft. No 3. owned five sixths of Mouzah Kangore and the deft No. 1. one-sixth of the share. Some time in 1907 there was a dispute between the deft. No 3 and the plff.'s predecessor-in interest with regard to some lands one party alleging that the lands appertained to Ghola. The lands were attached under S. 146 of he Code of Criminal Procedure and remained under attachment up to the year 1916. In consequence several suits were brought by the deft. No. 3 for the establishment of his right to these lands and the dispute between the deft No 3 and the plffs, terminated in a compromise. In the meantime the defendant No. 1 withdrew from the collectorate certain sums of money representing his share of the profits of the lands which had been attached as appertaining to Mouzah Kangore on various dates, *i.e.*, 11th May 1913, 19th June 1913, 7th January 1916 and 18th January 1916. The plff. commenced the suit on 16th March 1917, for among other things recovery of sums withdrawn by the deft. No. 1 on the allegation that the lands which have been attached being in their Mouzah Ghola the money in the collectorate was their money, *held*, Art. 120 and not Art. 62 applied. (*Walmsley and Ghose, JJ.*) ANANTRAM BHATTACHARJEE *v.* HEM CHANDRA KAR. 50 Cal. 475 : 1923 Cal. 379.

LIMITATION ACT (IX OF 1908), Art. 120—Suit for refund.

——Art. 120—*Suit for profits—Punjab Tenancy Act, S. 77 (3) (k).*

A suit by a co-sharer in a holding under S. 77 (3) (k) of the Punjab Tenancy Act for a share of the profits comes under Art 120 of the Lim. Act. 23 Cal. 799; 28 All 161; 37 All. 318 ref. (*Fenton, F. C.*) KHADIM HUSSAIN *v.* MUSSAMMAT MURAD BIBI. 5 P. R. (Rev.) 1915 : 32 I. C. 102 : 7 P.W.R. 1915 (Rev.).

——Art 120—*Suit for profits—Co-sharer—Suit by co-sharer for his share—Limitation.*

Where a suit is in substance one by a person claiming to be a joint owner against the managing proprietor of a village for his share of the village profits is governed by Art. 120 of the Lim. Act. (*Kotval, A. J. C.*) BHAGERATH BAI *v.* KESHO GANPAT RAO. 1923 Nag. 229.

——Art 120—*Suit for profits—Village profits—Burden of proof.*

A suit by a co-sharer to recover his share of the village profits from the managing co-sharer is governed by Art. 120. 10 C P. 98 fol. (*Prideaux, A. J. C.*) BALWANT *v.* DEORAO. 41 I. C. 848 : 13 N. L. R. 127.

——Arts. 120, 36 and 115—*Suit for profits—Action as between co-sharers for profits of ferry.*

A suit by one co-sharer for recovery of the profits of a ferry from another co-sharer is governed by Art. 120, Sch. I of the Act, and not by Arts. 36 or 45 of Sch. I of the said Act. 23 C. 799 Ref. to. (*Mullick, J.*) KISHUN DEYAL SINGH *v.* KISHEN DEO GHA. 35 I. C. 430: 1 P. L. J. 69.

Suit for refund.

——Art. 120—*Suit for refund—Suit by auction-purchaser—Judgment-debtor having no saleable interest.*

A suit by an auction-purchaser to recover the purchase money under S. 315, C.P.C., 1882, on the ground that the judgment-debtor had no saleable interest in the property sold is governed by Art. 120. (*Richards, C. J. and Lyle, J.*) SIDESHWARI PRASAD NARAIN SINGH *v.* MAYANAND GIR. 35 All. 419 : 10 I. C. 986 : 11 A. L. J. 606.

——Art. 120—*Suit for refund—Execution sale void—Suit for purchase money.*

Where after an execution sale, the judgment-debtor is found to have had no saleable interest in the properties and a suit is brought to recover the purchase money Art. 120 will govern the case. (*Mookerjee and Chotzner, JJ.*) MAKAR ALI *v.* SARFADDIN. 36 C. L. J. 132 : 50 C. 115 : 27 C. W. N. 183: 1923 Cal. 85.

LIMITATION ACT (IX OF 1908), Art. 120—Suit for refund.

——Art 120—*Suit for refund—Co-sharers—realised by coercive processes from one co-sharer money—Suit for reimbursement—Limitation.*

Limitation of suit for reimbursement of money realised by coercive proces es from one co-sharer by other co-sharers is governed by Art. 120 and is not barred if brought within 6 years of the payment. (*Chatterjee and Panton, JJ.*) GOPENATH MOONSHI *v.* CHANDRANATH MOONSHI.
26 C. W. N. 340.

——Art. 120—*Suit for refund—Right of assignee of an estate—Sold for arrears of Revenue to surplus sale proceeds.*

No question of limitation arises when after the application to withdraw the surplus sale proceeds has been refused a declaratory suit is brought. (*Mookerjee and Panton, JJ.*) BEJOY LAL SEAL *v.* NAYAN MUNJARI DASSI. 47 Cal. 331 : 24 C. W. N. 294 : 55 I. C. 639 : 31 C. L. J. 372.

——Arts. 120 and 97—*Suit for refund—Suit against creditor of insolvent by insolvent's debtor.*

A creditor of an insolvent attached and realised a debt due by plff. to the insolvent under a decree. The Receiver of the insolvent's estate sued the plff. and again recovered the debt amount from him. Now the plff. sues the creditor for refund, *held* that the suit is maintainable and is governed by Art. 120 or 97. (*Broadway and Wilberforce, JJ.*) BALKISHAN DAS DHANPAT RAI *v.* DEVI SARAN. 62 I. C. 929.

——Arts 120, 150 and 62—*Suit for refund—Hindu joint family — Partnership — Claim against family for moneys advanced—Limitation—Barred debt.*

A suit by a partnership consisting of some of the members of a joint Hindu family against the family for advances made to it out of the partnership funds is governed by Art. 120 if not by Art. 57, 61, 62 or 115 of the Act. The claim cannot be enforced in an action for partition after it has become barred either by way of equitable set off or as an item in the account of dealings between the family and the partnership or by treating the liability of the family as assets. (*Sadasiva Aiyar and Phillips, JJ.*) VELLAYAPPA MOOTHAN *v.* KRISHNA MOOTHAN. 44 I. C 428 : 34 M. L. J. 82.

——Arts. 120 and 132—*Suit for refund—Suit by trustee for re-imbursement for out-of-pocket expenses.*

A trustee of public trust has a first charge on the trust properties for the purpose of reimbursing himself for advances properly made for the trust and Art. 120 and not Art. 132 is the one applicable to a suit for recovery of monies so spent. It is doubtful whether Art. 132 can properly be applied to a case where a man lends money out of his own pocket to himself as trustee of a religious institution on the security of the trust property. 37 Cal 229 (P. C) foll. The right of the ex-trustee to sue for monies advanced by him for the trust during his trusteeship does not accrue before the date on which he is judicially declared to be no longer a lawful trustee or perhaps till he is dispossessed of such trust estate, in pursuance of the judicial declaration. (*Miller and Sadasiva Aiyar, JJ.*) KALIBA MABILINGA *v.* SORAN BIVI SAIBA AMMAL. 38 Mad. 260 : 28 I. C. 290 : 28 M. L. J. 347.

LIMITATION ACT (IX OF 1908), Art 120—Suit for share.

——Arts. 120 and 62—*Suit for refund—Application for rateable distribution dismissed — Suit for refund of money paid to deft.—Limitation.*

When an application for rateable distribution was dismissed and a revision petition thereon to the High Court was also dismissed, a subsequent suit for refund of money paid to another judgment-debtor filed 3 years after such payment but within 3 years of the dismissal of the revision petition is barred under art. 62; art 120 does not apply to such cases. (*Ayling and Hannay, JJ.*) BAIZNATH *v.* RAMADOSS. 38 M. 62 : 16 M. L. T. 509 : 1 L. W. 952 : 26 I. C. 219 : 27 M. L. J. 640.

——Arts. 120 and 62—*Suit for refund by auction-purchaser — Judgment-debtor having no saleable interest.*

Art. 120 applies to a suit by the auction-purchaser for the recovery of the purchase money on the discovery of the absence of interest in the judgment debtor and not Art. 62. 16 M. 361 Con. 35 M. 39 Dist. (*Ayling and Napier, JJ.*) MOHEDEEN IBRAHIM *v.* MAHAMED MEERA LEVVAI. 12 M. L. T. 431 ; 17 I. C. 437 : (1912) M. W. N. 1130 : 23 M. L. J. 487.

——Art. 120—*Suit for refund— Money wrongfully recovered under decree— Suit for recovery of Limitation.*

Where a suit is brought for the recovery of money alleged to have been wrongfully recovered under a decree the period of limitation for such suits is that prescribed by Art. 120 of the Limitation Act. (*Hallifax, A. C. J.*) LAKMAN *v.* BISREN BIRJU. 1923 Nag. 94.

Suit for removal.

——Art. 120—*Suit for removal from office—Starting point.*

A suit to remove a *Pandarasannadhi* from office falls under Art. 120 and time runs from the time he took charge of his office and not from the time of his appointment as *Chinnapatam.* (*Wallis, C. J. and Napier, J.*) KAILASAM PILLAI *v.* NATARAJA TAMBIRAN. 40 I. C. 687 : 32 M. L. J. 271.

Suit for share.

——Arts. 120 and 123—*Suit for share—Suit by Mahomedan for his share of inheritance.*

A suit by one of the heirs of a deceased Mahomedan for his or her share of the moveable and immoveable property of the deceased is governed by Art. 120 and not by art. 123. 21 Cal. 157 foll. (*Mears, C. J.*) MT. BASHIR-UN-NISSA BIBI *v.* ABDUL RAHMAN. 44 A 244 : L. R. 3 A. 108 : 20 A. L. J. 71 : 1922 All. 525.

——Arts. 120 and 62—*Suit for share Property mortgaged by one member—Receipt of money by that member—Hindu family.*

LIMITATION ACT (IX OF 1908), Art. 120—Suit for share.

Three brothers owned specific shares in certain property and did not constitute a joint Hindu family. The management of the affairs of the family was entrusted to one member who received the rents and profits of the immoveable property and invested and otherwise dealt with them. More than three years after the receipt of the invested money, the widow of another brother sued him for actual partition. *Held*, the money having been received by the deft. in his capacity of manager, though not of a Hindu joint family, the claim was governed by Art. 120 of the Lim. Act. *Semble* :—If the suit had been a suit simply to recover this sum of money it ought to have been brought within three years under Art, 62 (*Richards, C. J. and Banerjee, J.*) PARSOTAM RAO TANTIA v. RADHA BAI.
37 All. 318 : 28 I. C. 953 : 13 A. L. J. 407.

———**Art. 120**—*Suit for share—Expenses of filling up a tank held in joint ownership.*

One of two joint owners of a tank undertook to fill it up at the request of the other, as they were asked by the Municipiality to do so owing to sanitary rersons. He paid for the expenses of filling it up and sued the other for a share of the expenses. The other contended the claim was time-barred. *Held*, that the article applicable was 120 and the suit was not barred and that the case fell under S. 70 of the Contract Act. (*Mookerjee, A. C. J. and Fletcher, J.*) UPENDRA KRISHNA v. NABA KRISHNA. **62 I. C. 615 : 25 C. W. N. 813.**

——**Art. 120**—*Suit for share—Suit by co-mortgagee for his share of mortgage money realised by defendants—Limitation.*

A suit by one of the mortgagees for recovery of his share of the mortgage money from another mortgagee who had recovered the entire mortgage money is governed by Art. 120 of the Limitation Act and that as regards the payments made by the mortgagor more than six years before suit the claim was time barred. (*Broadway and Dundas, JJ.*) MAHOMED IBRAHIM v. MAHOMED ISMAIL.
5 Lah. L. J. 111.

———**Arts. 120, 68 and 59**—*Suit for share—Contribution under S. 70, Contract Act—Limitation Act, Art. 120, applicable.*

Suit for contribution under S. 70, Contract Act is governed by Art. 120, Lim. Act. (*Odgers and Devadoss, JJ.*) T. M. SUNDARA AIYAR v. T. M. ANANTHAPADMANABHA.
43 M. L. J. 271 : 31 M. L. T. 164 : 16 L. W. 231 : (1922) M. W. N. 608 : 1923 Mad. 64.

——**Art. 120, 89 and 62**—*Suit for share—Joint Hindu family—Division in status—Collection of outstandings by one member.*

Art. 120 would apply when there is no agency between defendant and plaintiff. (*Schwabe, C. J., Ayling, Coutts Trotter, Kumaraswami Sastri and Devadoss, JJ.*) PENTA JOGULU v. PENTA TATAYYA
42 M. L. J. 507 : (1922) M. W. N. 215 : 45 M. 648 : 15 L. W. 595 : 30 M. L. T. 279 : 1922 Mad. 150.

LIMITATION ACT (IX OF 1908), Art. 120—Suit on award.

——**Arts 120 and 62**—*Suit for share—Mortgage debt collected by co-heirs—Continuing right.*

In a suit for partition by a Mahomedan lady against her co-heir one of the claims was in respect of the amount of the mortgage debt due to the deceased and collected by the defts. more than 6 years before the suit. *Held*, that Art. 120 and not Art. 62 applied to the case, the right to sue accrued from day to day and therefore the action was not barred. (*Sadasiva Aiyer and Napier, JJ.*) ABDULRAHIMAN v PUTHUMAL BIVI.
30 M. L. J. 104 : 32 I. C. 83 : 19 M. L. T. 88.

——**Art. 120 and 144**—*Suit for share—Moveables and immoveables.*

To a suit brought by one of the heirs to recover his share of the estate left by a Mahomedan who died intestate, Art. 144 applies if the property is immoveable, and Article 120 if moveables. 34 M. 514 foll. (*Sankaran Nair and Oldfield, JJ.*) MARIAN BEEVIAMMAL v. KADIR MEERA SAHIB TARAGAN. **29 I. C. 275.**

———**Arts. 120, 49 and 123**—*Suit for share by heirs of deceased—Limitation.*

A suit by a person claiming as heir of a deceased person for a share of his property is governed by Art. 120 of the Act and not by Arts. 49 and 123. (*Fawcett and Raymond, J.Cs.*) RAMDAS v. AJHUDIADAS. **63 I. C. 685 : 14 S. L. R. 137.**

Suit on award.

———**Art. 120**—*Suit on award—Limitation*

A suit to enforce an award is governed by Art. 120 of Sch. I to the Limitation Act. (*Macleod, C. J. and Fawcett, J.*) RAJMAL GIRDAR LAL v. MARUTI SHIVRAM. **45 Bom. 329 : 59 I. C. 755 : 22 Bom. L. R. 1377.**

——**Art. 120**—*Suit on award—Limitation.*

A suit based on an award is governed by Art. 120 and not by Art 113 or 115, whether the award is signed by the parties or not 34 All. 43 Dist: 32 P.R. 1913 ; 23 Mad. 593 ref. (*Chevis and Shadi Lal, JJ.*) HARBAG MAL v. DIWAN CHAND.
102 P. R. 1915 : 32 I. C. 88 : 190 P. W. R. 1915.

——**Art. 120**—*Suit on award—Arbitration.*

(Per *Seshagiri Aiyar, J.*—A suit instituted after the death of the arbitrator in regard to matters referred to and not disposed of by him is governed by the residuary Art. 120. (*Wallis, C. J. and Seshagiri Aiyar, J.*) DORAISWAMI PADAYACHI v. VAITHILINGA PADAYACHI.
41 I. C. 581 : 33 M. L. J. 46.

——**Art. 120**—*Suit on award.*

A suit based on an award cannot be considered to be a suit on a contract and is governed by Art. 120. (*Wallis, C. J. and Seshagiri Aiyar, J.*) SOMASUNDARAM CHETTY v. RANGASWAMI IYENGAR. **31 I. C. 816.**

———**Art. 120**—*Suit on award—Compensation for breach of the award.*

A suit to recover compensation for breach of the award is governed by Art. 120. (*Pratt, J. C.*) SOMJI MAL v. TOLO MAL. **19 I. C. 376 : 6 S. L. R. 148.**

LIMITATION ACT (IX OF 1908), Art. 120—Turn of worship.

Turn of worship.

———Arts. 120 and 132—*Turn of worship.*

A turn of worship at a temple is not immoveable property and so not within Art. 132 but Art. 120. A question of limitation can be raised for the first time in second appeal. (*Chitty and Walmsley, JJ.*) NARSINGHA BANA GOSWAMI *v.* PROLHODMAN TEVARI. 46 Cal. 455 : 47 I. C. 25 : 22 C. W. N. 994.

Miscellaneous.

———Arts. 120 and 132—*Loan in security of moveable property—Suit to enforce payment by sale—Limitation.*

Where a plff. who had lent money on the security of eight buffaloes, sought by his suit to enforce the payment of the money charged on the buffaloes and did not seek to get a personal decree against the debtor, *Held* that the suit was barred by limitation being governed by Art. 120. (*Tudball and Abdul Raoof, JJ.*) DFOKI NANDAN *v.* GAPUA. 40 All. 512 : 46 I. C. 373 : 16 A. L. J. 449.

———Art. 120—*Suit to have Municipal election declared void and contrary to law.*

Where an election which ought to have been held under the rules framed in 1910 under the Act of 1890 was not so held, the special provision as to limitation made in those rules for a declatory suit is inapplicable to a suit for a declaration that the election so held was void. Such a suit is governed by Article 120 of the Limitation Act. (*Griffin and Chamier, JJ.*) RAGHUNANDAN PRASAD *v.* SHEO PRASAD. 35 All. 308 : 20 I. C. 490 : 11 A. L. J. 349.

———Arts. 120 and 91—*Suit for declaration that deft. is benamidar for plaintiff.*

A suit for a declaration that deft.'s name as lessee in the lease is only *benami* for the plaintiff is governed by Art. 120 and not by Art. 91. The cause of action arises when the plaintiff's position as lessee is challenged by the deft. (*Griffin and Chamier, JJ.*) BASANT LAL *v.* CHIDAMMILAL. 35 All. 149: 18 I. C. 698: 11 A. L. J. 106.

———Art. 120—*Starting point—Liability of sureties in an administration bond.*

Where an executor entered into an administration bond with two sureties whereby he undertook to exhibit an inventory in a certain time with the proviso that the obligation was to continue in force till the executor fulfilled the duties of administrator and the executor subsequently died the limitation for a suit to enforce the liability of the sureties runs from the death of the executor and not from the date of breach of obligation to exhibit an inventory. (*Stanley, C. J. and Banerjee, J.*) KANTEE CHANDRA *v.* AL-I-NABI. 33 All. 414 : 9 I. C. 935: 8 A. L. J. 199

———Art. 120—*Entry in record of rights—Suit for declaration—Prayer for confirmation of possession—Limitation.*

To a suit to declare an entry in the record of rights to be incorrect Art. 120 of the Lim. Act applies and time commences from the date of the final publication and not from the signing of the certificate or final publication of record-of-rights. Where in a suit the plff. added a prayer for confirmation of possession without alleging disturbance of possession. *Held*, that the suit was one for declaration of possession and Art. 120 applied to the suit. (*N. R. Chatterjee and Newbould, JJ.*) RAJANI NATH PRAMANIK *v.* MANARAM MANDAL. 53 I. C. 968: 23 C. W. N. 883.

LIMITATION ACT (IX OF 1908), Art. 120—Miscellaneous.

———Art. 120—*Alienation—Father—Setting aside—Limitation.*

Art. 120 of the Lim. Act, 1877, governs a suit by a Hindu for a declaration that a sale of ancestral land by his father does not bind him where both the alienation and the alienor's death occurred before the passing of the Punjab Limitation Act I of 1900. (*Rattigan and Shadi Lal, JJ.*) MANGAL SINGH *v.* MANGAL SINGH. 34 I. C 253: 15 P. W. R. 1916.

———Arts. 120, 52 and 56—*Suit for recovery of money due on contract to supply labour and materials.*

A suit for the recovery of the price of work done and materials supplied on a contract to build a house comes under Art. 120; Arts. 52 and 56 does not apply to the case. (*Reid, C. J. and Beadon, J.*) RADHA KISHEN *v.* BASANT LAL. 103 P. R. 1913. 22 I. C. 576: 81 P. L. R. 1914.

———Art. 120—*Suit for declaration that deft. is not A's son.*

A suit for declaration that deft. is not the son and heir of a deceased, though he claim to be so, is governed by art. 120 of the Lim. Act and the period begins to run from the time when to the knowledge of the plff. the title of son and heir to the deceased is set up. (*Mitra, A. J. C.*) PRATAPSINGH *v.* RAJA DATTAJI RAO. 54 I. C. 300.

———Art. 120—*Suit for dissolution of marriage—Cause of action.*

In a suit for dissolution of marriage or declaration of divorce is essentially different from the cause of action in a suit for the restitution of conjugal rights and as such is governed solely by Art. 120, Schedule I of the Limitation Act. (*Wazir Hasan, A. J. C.*) MUHAMMED HAMIDULLAH KHAN *v.* FAKHRJUHAN BEGAM. 8 O. L. J. 650: 1932 Oudh 109.

———Arts. 120 and 144—*Entry in revenue records—Suit for share.*

Where several persons hold property jointly an objection by one of them to the accuracy of an entry in the revenue papers must be regarded as an objection made on behalf of all. A suit by such co-sharer in a Civil Court to have his share properly determined is not one for the correction of the entry but one for partition of the share which actually belongs to him and of which he is in possession. (*Stuart, J. C.*) BAIJ NATH SINGH *v.* ARJUN SINGH. 7 O. L. J. 237: 55 I. C. 418: 2 U. P. L. R. (J. C.) 74.

———Art. 120—*Landlord and tenant—Limitation—Starting point.*

LIMITATION ACT (IX OF 1908), Art. 121.

The right to file a suit to challenge the decision of the Revenue Court that the tenant is more than an ordinary tenant accrues on the date of the order of the Revenue Court. The subsequent issue of an abortive notice by the landlord does not give a fresh cause of action. (*Kanhaiya Lal, A. J. C.*) JAGDAMBA BAKHSH SINGH *v.* MAHADEO SINGH. 48 I. C. 301.

———Art. 121—*Bengal Tenancy Act, Ss, 161 and 157—Suit by purchaser of* patni *at rent sale to eject defendant as trespasser.*

An incumbrance created by any tenure holder of an inferior grade can be avoided, by a suit by a purchaser of the superior tenure at a rent sale within 12 years from the date of the sale under Art. 121 of the Act, such interest coming into existence after the creation of the *patni*. (*Chatterjee and Greaves, JJ.*) MONMOTHA NATH MITTER *v.* ANATH BUNDHU PAL. 61 I. C. 469: 25 C. W. N. 106.

———Art. 121—*Sale under Bengal Act (XI of 1859)—Suit to avoid under-tenure—Limitation.*

In a suit by an auction-purchaser of an estate at a sale under Bengal Land Revenue Sales Act to avoid an under-tenure, if the defendant raises the plea that the suit is barred under Art. 121 the plaintiff should show when as a matter of fact, the sale became final and conclusive. (*Walmsley and Newbould, JJ.*) MURALI DHAR ADITYA *v.* THAKUR DAS MONDAL. 51 I. C. 50,

———Arts. 121 and 142—*Incumbrance—Adverse possession by trespasser.*

The interest acquired in a property by adverse possession is not an incumbrance within Art. 121. Hence a suit by the auction-purchaser in a revenue sale to recover possession of the land so held in adverse possession comes under Art. 142 and not Art. 121. (*Sanderson, C. J. and Mookerjee, J.*) MOHIN CHANDRA DEB *v.* PYARILAL DAS. 44 Cal. 412: 25 C. L. J. 99: 39 I. C. 213: 21 C. W. N. 537.

———Art. 121—*Encumbrance— Meaning of—Adverse possession for statutory period before sale if incumbrance--Assam Land and Revenue Regn. (I of 1866), S. 70.*

Prescriptive title acquired before sale under S 70 of the Assam Land and Revenue Regulation 1886, is an encumbrance within Art 121 of the Lim. Act. 22 Cal. 244; 25 Cal. 167, foll. 12 C. W. N. 528 ; 13 C. W. N. 407, Dist. (*Richards and Imam, JJ.*) PRASANNA KUMAR DUTT *v.* JNANENDRA KUMAR DUTTA. 31 I. C. 801: 43 Cal. 779.

———Art. 121—*Burden of proof.*

A purchaser of a *Patni Taluk* relying upon Art. 121 of Schedule II of Act XV of 1877 must establish that the incumbrance he seeks to annul is one due to adverse possession commencing after the creation of the patni. 25 C. 167 foll. (*Mookerjee and Beachcroft, JJ.*) KALIKANANDA MUKERJEE *v.* BIPRO DASPAL CHOUDHURI. 19 C. W. N. 18 : 26 I. C. 436: 21 C. L. J. 265.

———Arts. 123 and 144—*Suit to recover share in property left by a Muhammadan.*

LIMITATION ACT (IX OF 1908), Art. 123.

The limitation for a suit by one of several Muhammadan tenants-in-common for a share in the property of a deceased Muhammadan does not run from the date of the death of the ancestor under Art. 123 but from the date when the defendant begins to hold adversely to the plff under Art. 144 (*Macleod, C. J, and Fawcett, J.*) NURDIN NAJBUDIN *v.* UMRAU BU. 45 Bom. 519 : 59 I. C. 780 : 22 Bom. L. R. 1429.

———Arts. 123 and 144—*Suit for share of the property of an intestate—Heirs of Muhammadan holding estate as tenants-in-common.*

Article 123 does not apply to the Mahomedans who continue to own as tenants-in-common the estate of their deceased father. The ordinary law applies to such cases and time begins to run against one tenant-in-common, when the other tenant-in-common does some act the effect of which is either to exclude his co-tenant from the joint property, to deny his rights to share, and Article 144 applies to the case. (*Macleod, C. J. and Heaton, J.*) KALLANGOWDA NANGAN.GOWDA PATIL *v.* BIBI-SHAYYA SHAH MAHOMED KHAN. 22 Bom. L. R. 936: 58 I C. 42: 42 B. 943.

———Art. 123—*Suit for undistributed share on intestacy—Limitation.*

A suit to recover an undistributed share in the estate of an intestate is governed by Art. 123 of the Lim. Act. (*Scott, C. J. and Macleod. J.*) SHIRINBAI *v.* RATANBAI. 43 Bom. 845 : 51 I. C. 209: 21 Bom. L. R. 384.

———Art. 123—*Suit for legacy.*

A suit for the recovery of a legacy falls under Art. 123 of Limitation Act. 1877. (*Beaman and Haward, JJ.*)ABDUL KADER *v.* BAI SAFFIABU. 36 Bom. 111: 12 I. C. 702: 13 Bom. L. R. 1025.

———Art. 123—*Suit by residuary legatee.*

A suit for recovery of the legacy by a residuary legatee comes within Art. 123 of the Lim. Act. (*Jenkins, C. J. and Mookerjee, J.*) KHETRAMANI DASEE *v.* DHIRENDRA NATH ROY, 25 I. C. 370: 41 Cal. 271.

———Art. 123—*Mahomedan Law—Joint property—Limitation for recovery of heir's share.*

Joint family is not an institution of Mahomedans governed by Mahomedan law and there is no joint holding after the death of the proprietor; further it cannot be presumed that the male relations hold as managers of an admittedly joint family. Each sharer becomes entitled on the proprietor's death to a share, and limitation runs against each for the recovery of his share from that day. (*Scott Smith and Fforde, JJ.*) MT. ZAINAB *v.* GHULAM RASUL. 4 Lah. 402 : 1923 Lah. 519.

———Arts. 123 and 144 — *Scope —Co-heirs—Suit for possession.*

Art. 123 does not apply to suit by one heir against co-heirs for possession of a house left by the deceased but Art. 144 does. (*Chevis, J.*) MANGAL SINGH *v.* SHANKARI, 50 I. C. 746.

LIMITATION ACT (IX OF 1908), Art. 123.

———Art. 123 — *Suit for legacy against person in possession.*

A suit for a legacy or for a share of a residue bequeathed by a testator can fall under Art. 123 and applies to suits for legacies against any person rightly or wrongly in possession of the estate. (*Schwabe, C. J., Coutts Trotter and Kumaraswami Sastri, JJ.*) ZEMINDAR OF BHADRACHALAM *v.* SRI RAJAH VENKATADRI APPA RAO.

43 M. L. J. 486 : 16 L. W. 369 : (1922) M. W. N. 532 : 31 M. L. T. 221 : 46 M. 190 (H.C.) : 1922 Mad. 457.

———Art. 123—*Suit for share by one heir against another—Applicability.*

Art. 123 applies only to a suit for a share of an estate which the defendant is legally bound to distribute and not to suits for recovery of possession by one of the heirs against another heirs. (*Lindsay, J. C.*) AZIZ-UL-HAK *v.* MARIYAN BIBI

17 O. C. 157 : 24 I. C. 45 : 1 O. L. J. 225.

———Art. 123—*Co-heirs—Suit for share of inheritance.*

Art. 123, Lim. Act, is applicable to a suit for the distribution of shares of corpus of an estate left intestate. (*Heald and Lentaigne, JJ.*) MAUNG PO KIN *v.* MAUNG SHIV BYA.

1 Rang. 405 : 1924 Rang. 155.

———Art. 123—*Claim for share of inheritance —Burmese Buddhist Law.*

On the death of his father an orosa son is entitled to claim one-fourth of the property. But if he does not exercise that right and his mother does not die till more than twelve years after the death of his father he is not barred by the law of limitation from claiming a share of inheritance on the death of his mother. Similarly the partition on the death of their father does not debar them from claiming an entirely separate right on the death of their step-mother who re-married their father and had also children of her first marriage. (*Brown, A. J. C.*) MAUNG LU GALE *v.* MAUNG LU PO.

1 Bur. L. J. 267 : 4 U. B. R. 140 : 1923 Rang. 110.

———Art. 123 —*Buddhist law— Burmese — Claim as* aurasa *child to one-fourth share.*

The claim of an *aurasa* child to one-fourth share is governed by Art. 123 (*Ormond, O. C. J. and Parlett, J.*) MAUNG PO KA *v.* MA KU.

42 I. C. 809.

———Arts. 123, 142 and 144—*Suit for a distributive share of property—Limitation.*

A suit for the distributive share, brought 18 years after the death of the last owner is barred under Art. 123 as the period of limitation would run from the death of the last owner. If the case fell under Art. 142 the plaintiff would have to show his possession within 12 years before the suit. But if under Art. 144 the burden of proving adverse possession for 12 years before suit lies on the defendant. (*Twomey, J.*) MAUNG TUN U. *v.* MG MYAT THA ZAN.

21 I. C. 335 : 6 Bur. L. T. 188.

LIMITATION ACT (IX OF 1908), Art. 124.

——— Art 124—*Suit by heir of shebait—Suction purchaser of the share of shebait—Incompetency of auction—Purchaser to hold office.*

Where an auction-purchaser of the share of daily surplus income from the offerings of a temple enjoyed the income for about 20 years as against the widow of the *shebait* though he was incompetent to hold the office owing to his caste, and the reversioner sued on the death of the widow for a declaration that he was entitled to the offerings. *Held*, that the suit was not one to recover an hereditary office within Art. 124 of the Lim. Act. and was not barred by limitation. The deft. not having taken possession of the office and being incompetent to hold it, could not by adversely taking and appropriating to his own use a share of the surplus daily income from the offerings, acquire a title to the office or a share of the income. On each occasion on which he received and wrongfully appropriated to his own use a share of the income to which the *shebait* was entitled, the deft. committed a fresh actionable wrong in respect of which a suit could be brought against him by the *shebait* but it did constitute him the shebait or in any way affect title to the office. (*Sir John Edge.*) BHAIAJI THAKUR *v.* JHAMLA DAS.

42 Cal. 244 . 18 C. W. N. 1029 : 41 I. A. 267 : 1 L. W. 549: 16 M. L. T. 210 : (1914) M. W. N. 636 : 12 A. L. J. 1176 : 20 C. L. J. 360 : 24 I. C. 501 : 16 Bom. L. R. 845 : 27 M. L. J. 100 (P. C.).

——— Art. 124—*Suit for office—Suit for possession—Distinction.*

In a suit to recover possession of property and hereditary office from the deft. whose father had been in adverse possession of both for over 12 years, and who continued in possession afterwards, *held* that there is no distinction between the claim for possession of the property and that for the office, for purposes of limitation, and that the suit was barred under S. 28 and Art. 124. 23 M. 271, P. C., Foll. (*Tudball and Walsh, JJ.*) RAM PEARI *v.* NAND LAL.

39 All. 636 : 42 I. C. 77 : 15 A. L. J. 740.

——— Art. 124—*Suit by trustee of choultry for recovery of possession of the building—Limitation.*

A suit by a person alleging himself to be the trustee of a choultry for recovery of possession of the building is governed by Art. 124 of the Lim Act. 14 I C. 168 Ref. (*Spencer and Venkatasubba Rao, JJ.*) SINGARAVELU MUDALIAR *v.* CHOKKA MUDALIAR. 43 M. L. J. 737 (2) : 16 L. W. 544 : (1922) M. W. N. 676 : 31 M. L. T. 298 : 46 M. 525 : 1923 Mad. 88.

——— Art. 124—*Suit for recovery of office of archaka—Defendant in possession for less than 12 years—Possession of predecessors in office—Tacking.*

The word defendant in Art. 124 of the Lim. Act includes his predecessors-in-office where the successive persons in possession of the office claim under the same title, e.g., appointment by a temple trustee. In a suit for the recovery of possession of an hereditary archaka office, it was found that though the deft. got into possession

within twelve years of the suit his predecessors were successively in possession to the exclusion of the hereditary holder for over sixty years under appointment by the temple trustee. *Held* that the suit was barred. The deft. was entitled to tack on the possession of his predecessors in office to his own in establishing a plea of adverse enjoyment. (*Wallis, C. J. and Krishnan, J.*) KRISHNASWAMI THATHACHARIAR *v.* VEERASWAMI MUDALI
49 I. C. 393 : 9 L. W. 11 : 36 M. L. J. 93.

——Art. 124 and S. 2 (8)—*Plaintiff—Suit for possession by stani—Malabar law.*

A suit by a *Malabar stani* for possession of stanom property from a person claiming adversely thereto, is governed by Art. 124. The stani is deemed for this purpose, to be the heir of his predecessor in title and is bound by the deft.'s adverse possession against the previous holder. Each holder of the *stanom* is in the same position as an ordinary heir succeeding on the intestacy, of the previous holder though the holder holds his property only for his life. 23 B. 725 : 28 M. L. J. 669 dist. (*Wallis, C. J. and Seshagiri Aiyar, J.*) RAJAH OF PALGHAT *v.* KANNAN PRANAIR VEETIL.
6 L. W. 195 : (1917) M. W. N. 552 : 42 I. C. 22 : 41 Mad. 4 : 33 M. L. J. 26.

——Art. 124 — *Religious Office — Adverse possession.*

Per *Curiam* :—Mere possession of the properties attached to an office without performing the duties of the office is not adverse possession of the office within the meaning of Art. 124, 20 M. L. J. 781 : Foll. (*Coutts-Trotter and Srinivasa Ivengar, JJ.*) SUPPA BHATTAR *v.* SUPPA SOKKAYA BHATTAR. 29 M. L. J. 558 : 18 M. L. T. 402 : (1915) M. W. N. 829 : 30 I. C. 962 : 2 L. W. 1005.

——Art. 124—*Trusteeship—Adverse possession—Independent trespassers—Derivation title.*

According to Article 124 of the Limitation Act, the right of a hereditary trustee would be barred when the office has been held adversely for a period of more than 12 years by the defendant. Twelve years' continuous possession is necessary under Art. 124 to a right to trusteeship. If the possession has been in the hands of independent trespassers it would not be regarded as continuous possession on the part of the defendant trespassers ; but where the independent trespassers have all derived title from the same source it may be sufficient to justify a court in holding that the possession was continuous. 14 M. 153 : 18 M. 1 Foll.; 15 M. 389, Dist. (*Abdur Rahim and Sundara Iyer, JJ.*) VEERARAGHAVA THATHACHARIAR *v.* SRIRINIVASA THATHACHARIAR.
23 M. L. J. 184 : 16 I. C. 225 : 12 M. L. T. 269.

——Art. 124, Col. 3—*Scope of article—Hereditary office—Suit for possession.*

Art. 124 deals with a suit for possession against the holder of a hereditary office. Where the plaintiff's family is entitled to the lands belonging to a temple limitation begins to run from the time the plaintiff's right to beneficial enjoyment accrues. The explanation to the clause in the

third column of Art. 124 does not modify the words in the first column of the Art. Mere receipt of the emoluments without performance of duties will not entitle the recipient to claim possession of the office if the duties are being performed by another Therefore, by possession of land alone one cannot acquire a right to the office. (*Benson and Krishnaswami Iyer, JJ.*) KAMALATAMMAL *v.* KRISHNA PILLAI. 10 I. C. 573.

——Art. 124—*Adverse possession—Tacking vacant period.*

A person in possession of an Hereditary office cannot tack to his possession the vacant period preceding his possessions. His possession becomes adverse only from his actual possession. (*Benson and Sundara Aiyar, JJ.*) UMAYURUBHUGAM PILLAI *v.* VAITHINATHASWAMI.
10 I. C. 95 : 9 M. L. T. 485.

——Art. 124—*Shebait of temple—Suit for possession of office.*

A suit for possession of the hereditary office of *shebait* from a person enjoying it adversely to the plaintiff is governed by Art. 124 and not by Art. 134 or 144 and time starts when the defendant takes possession adversely to the plaintiff. (*Miller, C. J. and Mullick, J.*) NATHE PUJARI *v.* RADHA BINODE NAIK. 3 Pat. L. J. 327 : 4 Pat. L. W. 283 : 47 I. C. 290 : 1918 Pat. 247.

——Art. 125—*Suit for declaration of invalidity of adoption or alienation—Nature of.*

A suit by a Hindu reversioner to declare an alienation by the widow invalid is a representative suit and the remote reversioner has a right to join as plaintiff along with or in substitution for the presumptive reversioner. (*Mr. Ameer Ali.*) VENKATANARAYANA PILLAI *v.* SUBBAMMAL.
38 Mad. 406 : 17 M. L. T. 435 : 17 Bom. L. R 468 : 19 C. W. N. 641 : 2 L. W. 596 : 21 C. L. J. 515 : 42 I. A. 125 : 29 I. C. 298 : (1915) M. W. N. 555 . 28 M. L. J. 535 (P. C.).

——Art. 125—*Adverse possession—Female heir—Purchasers from—Suit for possession—Limitation.*

The two daughters of a deceased Hindu inherited his estate as joint tenants. Defendants Nos. 1 to 3 purchased the property from one of the daughters on 23-4-1888 and that daughter died in 1889. The other daughters conveyed the same property in favour of the plaintiffs on 4-2-1911, with the concurrence of defendants 4 and 5. The surviving daughter died in 1915. On 12-6-1916 the plaintiffs sued for recovery of possession of land upon establishment of title, *held* that the suit was barred under Art. 125 of the Lim. Act. (*Mookerjee and Cuming, JJ.*) JAGABANDHU SAHA *v.* HARIS CHANDRA SIL. 36 C. L. J. 92 : 76 I. C. 915 : 1922 Cal. 459.

——Arts. 125 and 91—*Suit by reversioner to challenge validity of gift—Starting point.*

A suit by the reversioner for a declaration that the gift made by the widow is not binding on him is not barred, merely because he does not sue

LIMITATION ACT (IX OF 1908), Art. 125.

to have an alleged will declared to be void and the time runs from the date of the gift and not of the will, according to directions in which, it is alleged, the gift is made (*Broadway and Brasher, JJ.*) CHHAJJU MAL *v.* KUNDAN LAL.
1923 Lah. 53.

——Art. 125—*Alienation by widow.*

Suit by the daughter for the declaration that gift by her widowed mother shall not affect her interest is governed by Art 125 of the Act. (*Scott-Smith and Abdul Raoof, JJ.*) AMIR BEGAM *v.* HUSSAIN BIBI. 58 I. C. 333 : 2 Lah. 5.

——Art. 125—*Mortgage by widow—Conversion of mortgage into sale—Reversioner, suit by.*

A suit by the reversioner, for a declaration that a mortgage by the widow of her husband's property, will not affect his reversionary rights is barred under Art. 125 if brought after 12 years from the date of the mortgage. But, if within 12 years of suit, the mortgage had been converted by the widow into a sale for no further consideration, the sale must be declared to be not binding on the reversioner as having been made without consideration. (*Scot.-Smith and Shadi Lal, JJ.*) RAJINDRA SINGH *v.* ABDUL GHANI.
40 I. C. 63 : 25 P. R. 1917.

——Arts. 125 and 120—*Scope of.*

Art. 125 covers suits for land only and by first reversioner only. (*Johnstone and Chevis, JJ.*) DEV RAJ *v.* SHIV RAM. 70 P.R. 1914 : 260 P. L. R. 1914 : 25 I. C. 463 : 165 P. W. R. 1914.

——Art. 125—*Land—If includes equity of redemption.*

In this Article the word "land" does not cover the equity of redemption in immoveable property. (*Shah Din and Beadon, JJ.*) MT. RALLY *v.* SUNDER SINGH. 108 P. R. 1912 : 17 I. C. 864 : 29 P. L. R. 1913.

——Art. 125—*Hindu widow—Alienation—Declaratory suit—Compromise—Fresh starting point.*

In respect of a Hindu widow's alienation there is only one cause of action for a declaratory suit for all reversioners near and remote and when the suit on that cause of action once became barred by the lapse of twelve years under Art. 125, no reversioner (whether in existence or not at the date of the alienation) could afterwards bring such suit. 41 Mad. 659 foll. The compromise of a litigation by a female owner does not amount to a fresh alienation so as to give rise to a fresh cause of action to the reversioners. To see whether a compromise amounts to alienation, the test is to find out whether the property is claimed by the opposite party on a title before the compromise or whether he has first derived his title thereto under and by virtue of the compromise. 33 All. 356 ; 33 Mad. 473 foll. (*Sadasiva Aiyar and Spencer, JJ.*) GADI RAJU SOMARAJU *v.* DADU VENKIAH. 53 I C. 171 : 26 M. L. T. 180.

——Arts. 125 and 120—*Execution of decree against widow—Collusion—Sale—Suit for declaration by reversioner.*

LIMITATION ACT (IX OF 1908), Art. 125.

A court sale to which a Hindu widow is a party may be treated as a private sale by her if the Court sale is the necessary result of some collusive arrangement made by her to use the Court as a medium of transfar or in other words if she intended transfer the properties by means of a court sale and took steps to bring it about. If that is the case a suit by the nearest reversionary heir to declare the alienation void as against him would fall under Art 125 of the Act. If the court sale in question is brought about by her as above it cannot be considered as one "made" by the widow and the suit to declare the validity of the sale will be governed by Art. 120 and not 125. (*Phillips and Krishnan, JJ.*) RANGA ROW *v.* RANGANAYAKI AMMAL. 35 M. L. J. 364 : 8 L. W. 465 : 47 I. C. 578 : (1918) M. W. N. 739.

——Art. 125—*Widow—Alienation—Suit by reversioner not born on date of alienation.*

A suit by a Hindu Reversioner for a declaration that an alienation by the widow is not binding on him is barred under Art. 125 where the plff. was born more than 12 yeare after the date of the alienation. The cause of action for a suit for a declaration that an alienation by a Hindu widow is invalid beyond her life-time, arises on the date of the alienation, jointly and simultaneously for the entire body of the reversioners then in existence as well as those coming into existence after the alienation, and the article applicable is Art. 125. It a reversioner who is competent to challenge an alienation or adoption made by a widow does so unsuccessfully or fails to challenge it within the period of limitation allowed by law, the result is binding on his successors in reversion in the absence of fraud, collusion or other invalidating circumstances. (38 M. 406 P. C ; 39 M. 634 P.C.; 6 C. 764 P. C. ; 1 C. 289 P. C. ; 4 C. 190 P. C. ; 10 C. 324 P. C. : 16 C. 98 P C. ; 24 A. 94 P. C. Ref. to. (*Ayling, Oldfield, Sadasiva Aiyar, Coutts-Trotter and Seshagiri Aiyar, JJ.*) CHALLAGUNDLA NARANMA *v.* MADALA GOPALDASAYYA. 41 Mad. 659 : 24 M. L. T. 115 : 8 L. W. 62 : 46 I C. 202 : (1918) M. W. N. 461 : 35 M. L. J. 57 (F. B.).

——Art. 125—*Scope of.*

The article applies to plffs. who i the female died at the date of instituting the suit would be entitled to possession of the property in dispute. (*Abdur Rahim, Offg. C. J. and Seshagiri Aiyar, J.*) VENKATA *v.* TULJARAM ROW
(1917) M. W. N. 30 : 38 I. C. 270 : 5 L. W. 482.

[*See* Contra 41 M. 659 (F. B.)]

——Art. 125—*Applicability of—Nearer heir a female but absolute owner.*

Art. 125 covers only suits by person who if t be female died at the date of suit would be entitled to possession. 38 M. 406 (P. C.) Foll. Though this principle does not apply if the nearer heir is a female and only a limited owner it does apply where the nearer female heir is an absolute owner. (*Spencer and Phillips, JJ.*) MUTHUSWAMI AIYAR *v.* KALIYANI AMMAL. 40 Mad. 818 : 21 M. L. T 93 : 38 I. C. 223 : 5 L. W. 334.

LIMITATION ACT (IX OF 1908), Art. 125.

——Art 125—*Sale by managing member—When limitation commences.*

Where there is no registered sale deed to evidence a sale by the managing members, limitation begins to run against the members from the date when the purchaser takes possession. 25 M. L. J. 405 ; 6 C.L.J. 383 Foll. (*Wallis, Offg. C. J. and Seshagiri Aiyar, J.*) NACHIYAPPA CHETTI *v.* RAMASWAMI. **26 I. C. 383.**

——Art. 125—*Minor Reversioner—Suit by, to set aside alienation—Son not a person claiming through his father.*

The cause of action for a reversioner to sue to set aside an alienation by a Hindu widow during her life time is distinct from the cause of action for another reversioner to bring a like suit. The fact that one is barred by the law of limitation from bringing a suit cannot be a bar to another reversioner against whom the minority had the effect of extending the time for bringing a like suit. 28 M. 57 ; 22 A. 33 ; 32 C. 62 Foll. 27 M. 588 ; 29 M. 390 ; 22 M. L J. 375 Rel ; 14 B. 512 Diss. : 18 M. L. J. 275 Dist. 25 M. 371 not foll. (*Sundara Aiyar and Sadasiva Aiyar, JJ.*) VEERAYYA *v.* GANAMMA. **36 Mad. 570 : 12 M. L. T. 188 : 16 I. C. 839 : (1912 M. W. N. 912 : 23 M. L. J. 269.**

——Art. 125—*Mortgage—Degree on—Setting aside—Limitation.*

A suit for a declaration that a mortgage and a decree thereon is void is covered by Art. 125 of the Act and as it is only the mortgage and not the decree for sale, that is an alienation within the meaning of the article, time commences to run from the date of the mortgage. (*Kotwal, A. J. C.*) TUKA BAI *v.* LALASAO. **63 I. C. 417.**

——Art. 126—*Alienation by father—Setting aside—Subsequently born son.*

Where at the time of alienation by a Hindu father only one son was in existence, a suit by that and the subsequently born sons to set aside the alienation is maintainable and all the sons are entitled to the relief. (*Sir Samuel Griffith.*) RAMKISHORE KEDARNATH *v.* JAINARAYAR RAMRACHPAL. **40 Cal. 966 : (1913) M. W. N. 661 : 14 M. L. T 163 : 17 C W. N 1189 : 18 C. L. J. 237 : 15 Bom. L. R. 867 : 11 A. L. J. 865 : 10 N. L. R. 1 : 20 I. C. 958 : 40 I. A. 213 : 25 M. L. J. 512 (P. C.).**

——Arts. 126 and 120—*Suit for annulment of sale.*

Where the plff. sued for the setting aside of the sale by his father, Article 126 applies, and the period of limitation is 12 years. The fact that the plaintiff was not given a decree for possession as well as for annulment of the sale does not make Aritiele 126 inapplicable. (*Martineau and Brasher, JJ.*) GOKHA RAM *v.* SHAM LAL. **3 Lah. 426 : 1923 Lah. 268.**

——Art. 126—*'Set aside'—Meaning of.*

" Set aside" in Art. 126 do not include a suit for a declaration that the alienation does not affect the plff.'s rights. 13 C. 308 P. C. Dist. (*Johnstone and Chevis, JJ.*) DEV RAJ *v.* SHIV RAM. **70 P. R. 1914 : 260 P. L. R 1914 : 25 I. C. 463 : 165 P. W. R. 1914.**

LIMITATION ACT (IX OF 1908), Art. 126.

——Art. 126—*Suit for possession by Hindu Son—Starting point.*

Limitation for a suit for possession by a Hindu son, of the family property sold away by his father, runs from the date of the vendee's possession. (*Johnstone and Scott-Smith, JJ.*) BAHADUR CHAND *v.* NAINA MAL. **231 P. L. R. 1914 : 133 P. W. R. 1914 : 25 I. C. 35 : 14 P. R. 1915.**

——Arts. 126, 144 and 148—*Father mortgaging and then selling equity of redemption—Redemption by alienee—Suit by other members for possession.*

A Hindu father and his son mortgaged the family property. The father sold the equity of redemption to the deft. who redeemed the mortgage and continued in possession. The son then sold his share of the equity of redemption to plff. who brought a suit for a moiety of the properties on payment of half the mortgage money. The suit was instituted more than 12 years after the deft. obtained possession on redemption. *Held* that Art. 126 applied to the suit and not Arts. 144 and 148 and that the suit was barred. (*Oldfield and Sadasiva Aiyar, JJ.*) MURAJALLI MUNIA GOUNDAN *v.* RAMASAMI CHETTY. **41 Mad. 650 : 8 L. W. 28 : 24 M. L. T. 22 : 45 I. C. 867 : (1918) M. W. N. 448 : 34 M. L. J. 528.**

——Art. 126—*Suit by—After-born son.*

A suit by an after-born son, assuming he has such a right of suit, to set aside an alienation by his father of the entire family property belonging to himself and his son (grown up), is governed by Art. 126. (*Sadasiva Aiyar and Moore, JJ.*) SOUNDARARAJAN *v.* SARAVANA PILLAI. **34 I. C. 794 : 30 M. L. J. 592.**

——Art. 126—*Suit 12 years after alienee took possession.*

A suit by a Hindu to set aside his father's alienation of family property more than 12 years after the alienee took possession, is barred by Article 126 of the Act. (*Sadasiva Aiyar and Napier, JJ.*) RAMASAWMY AIYAR *v.* VANAMAMALAI AIYAR. **26 I. C. 873.**

——Art. 126—*Alienation by father—Setting aside—Right of sons born and unborn—Cause of action.*

A son born in a joint Hindu family acquires by birth an interest in ancestral property but does not acquire any interest in any right to sue. The cause of action accrues after an alienation when the purchaser takes possession and a new cause of action does not accrue upon the subsequent birth of a son in the family. The after-born son does not acquire a fresh cause of action and a fresh period of limitation does not start from the date of his birth. In the case of an after-born son the time from which the period of limitation is to be reckoned is the date of the transfer and as he was not born on that date and under no disability on that date he cannot obtain the benefit of the provisions of S. 6 of the Lim Act. When he cannot save limitation for himself he can give

LIMITATION ACT (IX OF 1908), Art. 126.

no benefit under S. 7 to his elder brothers. (*Dalal and Wazir Hasan, A. J. C.*) RANODIP SINGH *v.* RAMESHAR PRASAD.
0. L. J. 45 : 66 I. C. 938 : 1923 Oudh 52.

———Art. 126—*Alienation by Hindu father—. Suit by sons to set aside—Cause of action—After-born sons.*

A suit by the sons for setting aside alienation made by their father as not being for legal necessity and therefore not binding on them and asking a decree for possession of the mortgaged property on payment of the binding portion of the debt is governed by Art, 126 of the Lim. Act. The cause of action under Art. 126 of the Lim. Act arises when the alienee takes possession of the property and after-born sons can take advantage of the cause of action which accrued to the sons living but they acquire no fresh cause of action on their birth. (*Daniels and Lyle, A. J. Cs.*) CHOKHEY SINGH *v.* HARDEO SINGH.
24 O. C. 330 : 4 U. P. L. R. (J. C.) 10 : 64 I. C. 757 : 8 O. L. J. 667.

———Art. 127—*Exclusion from joint family—Expulsion from caste—Re-admission.*

In a suit for partition of joint family property, the defence was that plaintiff's father was expelled from the family for some scandalous conduct and that he had received his share of the property. It was in evidence that the plaintiff re-appeared in the village where the family resided, that he took up his abode there and that he was recognized as a member of the family, *Held*, that no case of exclusion from the joiut property could be made out against him till five or six years before suit and that the suit was in time. (*Lord Macnaughten*) JEOLAL MAHTON *v.* LOKE NARAYAN MAHTON.
16 I. C. 184 : 16 C. W. N 266 (P. C.).

———Art. 127—*Applicability of—"Joint family property"—Meaning of.*

By the Full Bench (*Shah, J., dissenting*). The article does not apply to the property of a Muhammadan or any other person not a Hindu unless he has adopted as a custom the Hindu law of the joint family. (1885) P. J. 170 Diss. The expression "joint family" and the article must be read as a compound adjective and the expression "joint family property" must be read as property appertaining to a joint family (Per *Beaman and Heaton, JJ.*) The words "joint family" involve definite legal notions, incidents and consequences and must primarily be referred to Hindu Joint family and only secondarily to such groups of non-Hindus as can prove that they have by custom adopted the Hindu Law of the joint family. (Per *Shah, J.*) *Quaere.*-Whether the Article can apply to persons other than Hindus and Muhammadans who are not proved to have adopted as a custom, the Hindu Law of the joint family. (*Scott, C. J. Batchelor, Beaman, Heaton, Macleod, Shah, and Marten, JJ.*) ISAP AHMAD MOGRAI *v.* ABHRAMYI APMADJI MOGRARIA. 41 Bom. 588 : 41 I. C. 761 : 19 Bom. L. R. 579 (F.B.).

LIMITATION ACT (IX OF 1908), Art. 127.

———Art. 127—*Muhammadans.*

Art. 127 cannot apply to Muhammadans for on the death of a Muhammadan intestate, his estate could not be joint property unless by special family custom it is supposed to be governed by Hindu Law. It is an undistributed estate to be taken in severalty by the heirs, sharers and residuaries. The criterion for the applicability of Art. 127 is that property must be "joint family property" and no such property is known outside the special joint family of the Hindu Law. (*Beaman, J.*) JAN MAHOMED *v.* DATU JAFFAR.
38 Bom. 449 : 22 I. C. 195 : 15 Bom. L. R. 1044.

———Art 127—*Adverse possession between co-parceners.*

Per *Chandavarkar, J*:—Act 127 governs the question of adverse possession between co-parceners *inter se*. (*Chandavarkar and Batchelor, JJ.*) MALKAPPA BOD CHANBASAPAGOWDA *v.* MUDKAPPABISAPPA MUDIGABDAR.
37 Bom. 84 : 17 I. C. 657 : 14 Bom. L. R. 931.

———Art 127—*Exclusion—Limitation.*

Limitation runs against a person from the time he is excluded from enjoyment to his knowledge. (*Chandavarkar and Batchelor, JJ.*) BABAJI AKOBA. *v.* DATTU LAXMAN 37 Bom. 64 : 17 I. C. 642 : 14 Bom. L. R. 923.

———Art. 127—*Suit for setting aside partition—Applicability.*

A suit by a co-parcener, that a previous partition between the members of the family was vitiated by fraud reduces the suit to one for setting aside the partition on the ground of fraud and so Art. 127 does not apply. (*Chandavarkar, A. C. J. and Batchelor, J.*) VITHAPPA DEVAPPA PATIL *v.* BASAGOWDA DEVAPPA PATIL.
17 I. C. 10 : 14 Bom. L. R. 771

———Art. 127—*Muhammedans.*

Art. 127 does not apply to a case where the parties are Muhammadans. 22 C. 954 ; 7 C.W.N. 155 , foll. (*Beachcroft and Walmsley, JJ.*) SHAMIRUDDI MANDAL *v.* ABDUL BARI MANDAL.
38 I. C. 25.

———Arts. 127 and 142—*Conversion to Islam—Suit by convert to recover property of uncle.*

In a suit by a *convert* to Islam to recover possession of property of joint Hindu family left by his uncle, it must be proved (1) that the separation did not take place more than 12 years before suit, as he ceased to be a member of the joint family on account of his conversion, (2) that he was a member of the joint family within 12 years of the date of the suit : (3) that he could get a share in the aneestral property which was his at his conversion. (*Shadi Lal and Jones, JJ.*) GANGA SINGH *v.* BEGAM. 57 P. R. 1916 : 159 P. W. R. 1916 : 35 I. C. 549 : 4 P. L R. 1917.

———Art. 127—*Applicability—Exclusion by third parties.*

Art. 127 does not apply when it is not the original co-sharers who have excluded the plaintiff but third parties. (*Johnstone, J.*) SAHANDAN *v.* AURANG KHAN. 23 P. L. R. 1911 : 9 I. C. 540 : 48 P. W. R. 1911

LIMITATION ACT (IX OF 1908), Art. 127.

——Arts. 127 and 144—*Sale by co-parcener—Suit to recover property—Starting point.*

A joint family property was sold to a stranger by one member and the possession of it was taken. A suit to recover the property is governed by Art. 127 of the Limitation Act and the plaintiff had been excluded from the joint family property to his knowledge. (*Spencer and Ramesam, JJ.*) LINGA MUNISAMI REDDY *v.* PESCOIA KOINDASWAMI NAICKEN. **15 L. W. 294 : 70 I. C. 317 : 42 M. L. J. 364 : 1922 Mad. 369.**

——Art. 127—*Scope of—Starting point.*

Art. 127 provides a period of 12 years for a suit by a person excluded from joint family property to enforce a right to share therein, the period starting from the date when the exclusion becomes known to the plaintiff. (*Schwabe, C.J., Ayling, Trotter, Devadoss and Kumaraswami Sastri, JJ.*) YERUKOLA *v.* YERUKOLA. **15 L. W. 595: 1922 M W. N 215 : 30 M. L. T. 279 : 45 M. 648 : 1922 M 150 (F.B.)**

——Art. 127—*Suit by one tenant in common against another—Partition—Heirs of tenants in common—Limitation.*

A suit for partition by the heir of one tenant in common against the heir of the other tenant-in-common is governed by Art. 144 and not by Art. 127 of the Lim. Act. If on the death of one of the tenants-in-common his heir obtains exclusive possession of the whole property asserting an absolute and exclusive title in the deceased, the possession of the heir is adverse to surviving tenants in common. (*Wallis, C.J. and Sadasiva Aiyar, J.*) RAJA KEESARA VENKATAPPAYA *v.* RAJA NAYANI VENKATA RANGA RAO. **43 Mad. 288 : 59 I. C. 978 : 38 M. L. J 149**

——Art. 127—*Denial of title—Residence and maintenance given to plff.—If prevents time running.*

Where the plaintiff's claim as co-parcener is distinctly denied but the plff. is allowed to remain in the family house as a dependent, the enjoyment of such residence or maintenance is not sufficient to prevent time running against his claim. Under Art. 127 in the case of minors the knowledge of the guardian is quite sufficient.(*Abdur Rahim and Spencer, JJ.*) NARASIMHA DEO GARU *v.* KRISHNA CHENDRA DEO. **(1919) M. W. N. 440 : 10 L. W. 156 : 52 I. C. 725 : 37 M. L. J. 256.**

——Arts. 127 and 44—*Joint family—Exclusion—Exclusion from specific items—Effect of.*

To bar the right of the plff. under Art. 127 of the Lim. Act there must be exclusion from the whole of the joint family property and not merely from specific items of joint family property, 21 Bom. 325 Diss. (*Wallis, C.J. and Seshagiri Aiyar J.*) KUMARAPPA CHETTIAR *v.* SAMINATHA CHETTIAR. **42 Mad. 431 : (1919) M W. N. 328 : 52 I. C. 470 : 36 M. L. J. 612.**

——Art. 127—*Muhammadan Family.*

Under the Muhammadan Law there is no such thing as joint family property. If the members of a Muhammadan family succeed to property on the death of a relation each of them takes a share of each item of the property and a suit by such a member for a share is governed by Art. 123 and not by Art. 127 of the Lim Act. 16 M. 61 Dist. (*Bakewell, J.*) MOHIDEEN BEE *v.* SYED MEER SAHEB. **32 I. C. 1002 : 38 Mad. 1099.**

——Art. 127—*Exclusion—Division in Status—Possession.*

Where the members of a joint Hindu family are divided in status wihout a division by metes and bounds they are tenants in common and the possession of one enures to the benefit of another in the absence of actual ouster. Where no ouster is proved by one co-sharer or a tenant-in-common of another co-sharer, there cannot be said to be an exclusion from joint family property within the meaning of Art. 127. (*Wallis, C.J. and Tyabji, J.*) DEVARASU VENKATACHALA DWARAKA NATHA RAO *v.* DEVARASU VENKATA RAO PANTULU. **29 I. C 183· 17 M. L T. 361.**

——Arts. 127 and 129—*Suit for maintenance—Malabar law.*

A suit by a junior member of a family governed by Alyasanthana law, for maintenance out of the property is governed by the Art. 129 because the latter applies only to suits for maintenance from property belonging to another whereas in families in question the property belongs to the person who claims maintenance. 9 M. 266 ; 24 M. 73 ; 14 M. 101 Ref. (*Sundara Aiyar and Spencer, JJ.*) MARAVADI *v.* PHAMAKAR. **36 M. 203 : 11 M. L. T. 112: (1912) M. W. N. 109: 14 I. C. 383: 22 M. L. J. 309.**

——Art. 127—*Muhammadans.*

Art. 127 is not applicable to Muhammadans. (*Benson and Sundara Aiyar, JJ.*) CHERIA IMBICHI BEEBI *v.* SYED ALI. **13 I. C. 791 : (1912) M. W. N. 45.**

——Art. 127—*Exclusion--What constitutes—Possession of guardian, in adverse—Ouster—Suit for partition—Limitation.*

Co-parceners in a joint Hindu family are entitled to claim partition of property even though they are excluded from possession and partition is one of the modes of enforcing a right to share in joint family property. 3 C. 228 Ref. Under art. 127 of the Lim. Act the defendant has to show when the plaintiff was excluded from enjoyment of the property and when the exclusion became known to him. Exclusion by a co-owner of other co-owners will not become adverse to those other co-owners until they become aware of it but none the less there may be exclusion in fact. Where a guardian takes possession of the property of the ward, the presumption is that his possession is taken on behalf of the ward but the presumption is not irrebutable. 35 B. 79 dist. The word "exclusion" in Art. 127 of the Lim. Act involves a mental as well as a physical element. Not only the physical act but also the intention accompanying the act has to be looked at Where therefore a co-sharer holds the property under an express assertion of his title to hold as sole proprietor and makes gifts to other co sharers as such sole proprietor, there is exclusion of the latter and the gifts do not save limitation. (*Asworth and Simpson, A. J. Cs.*) THAKUR RUDRA PRATAB NARAIN SINGH *v.* THAKUR NIRMAL PRASAD SINGH. **1923 Oudh 61.**

LIMITATION ACT (IX OF 1908), Art. 127.

——Art 127—*Applicability—Suit for money realised by one member.*

A suit for the recovery of money realised by one member of the family to the exclusion of another is not governed after separation or partition by Art. 127. In a case where the realisation had been made while the family was still joint, the suit ought to be brought within three years from the date of separation or partition. (*Kanhaiya Lal, A. J. C.*) JAGAT SINGH *v.* ACHAIBAR SINGH.

26 O. C. 191 : 1922 Oudh 15.

——Art. 127—*Joint Hindu family—Suit for recovery of share of debt realised by one.*

Where after partition, one of its members recovers a debt belonging to the family, a suit by the other members of the family, for the recovery of their shares in the money realised would be governed by Art 62 and not by Art 127, Limitation Act 6 A. 442, 24 C. 309 13 A. 282 Rel, 15 O. C 111, 32 M. 191 Ref. (*Kanhaiya Lal. A. J. C.*) GAJRAJ SINGH *v.* SADHO SINGH.

16 I. C 882 : 15 O. C. 397.

——Art. 127—*'Share'—Property passing to stranger—Applicability of section.*

The word "Share" in Art. 127 is used as a verb and not as a noun. The suit contemplated by Art. 127 is a suit by a member of a joint family against other members of the joint family to be restored to joint enjoyment on the allegation of having been unlawfully excluded from it. The article does not apply to a suit where the alleged joint family property has passed by sale to a stranger. (*Lindsay and Rafique, A. J. Cs.*) BISHESHAR TEWARI *v.* BISHESHAR DAYAL.

15 I. C. 394 : 15 O. C. 111.

——Art. 129—*Denial of right ones.*

Where there is no denial, there is no bar under Art. 129 and proof of denial lies on him who pleads the bar. (*Miller and Tyabji, JJ.*) KACHIYAVA RANGAPPA KALAKKA THOLA UDAYAR *v.* KULANDAI AYAL.

(1914) M. W. N. 374 : 23 I. C. 831 : 26 M. L. J. 205.

——Art. 130—*Hindu son's pious obligation, when begins.*

A Hindu son's liability to pay his father's debt arises when the father fails to discharge his obligations and such a claim is governed by Art. 120 of the Lim. Act, (*Karamat Hussain and Chamier, JJ*) CHAMPALAL *v.* SHAMSUNDAR MALI

13 I. C. 630.

——Art. 130 and S. 28—*Suit by Saranjamdar to levy assessment—Limitation.*

A suit by a *Saranjamdar* to levy assessment upon rent-free lands falls within Art. 130 of Sch. I of the Limitation Act, and time runs from the date when the right to assess first accrues and such a suit falls within the terms of S. 28 of the Limitation Act. (*Shah and Crump, JJ.*) SUKHARAJU GOPAL PAGE *v.* TRIMBAK RAO RAMCHANDRA.

45 Bom. 694 : 61 I. C. 40 : 23 Bom. L. R. 314.

——Art. 130—*Suit to recover assessment—Limitation.*

LIMITATION ACT (IX OF 1908), Art. 130.

A suit to recover assessment on land held by the deft. adversely to the plff. from the year 1888 is barred under Art. 130 of the Act. (*Scott, C. J. and Heaton, J.*) MADHARASA *v.* ANUSUYABI.

40 Bom, 606 : 36 I. C. 605 : 18 Bom. L. R, 768.

——Arts. 130 and 131—*Right to levy assessment—Claim that tenancy is rent free.*

Art. 130 of the Limitation Act can have no application unless and until the land is found to be rent free ; the mere non-payment of rent for a period does not bar the landlord's right to have the rent assessed and to recover rent from his rent. Where the suit is not for the resumption or assessment of rent free land, but for the assessment of mal land presumably liable to be assessed, the circumstances that rent has not in fact been paid for more than 12 years before suit is not *per se* sufficient to support a decree of dismissal. The right to have rent assessed must continue so long as the relationship of landlord and tenant continued in respect of land liable to be assessed. The right can only be lost by one or other of the modes recognised by law. The rights to levy assessment upon rent free land is governed by Art. 130 and is consequently extinguished if no suit to enforce the right is instituted within the time allowed. On the other hand under Art. 131, the right to levy assessment, would, as a recurring right accrue when there has been a demand and refusal, only in those cases where the relationship of landlord and tenant or landlord and occupant had ever existed, Once the right is established, then the non-payment of rent or assessment would not be sufficient to enable the tenant to begin to set up a title by adverse possession. There must be some overt act such as refusal to pay the rent or assessment, before time begins to run. Case-law reviewed. (*Mookerjee and Cholzner, JJ.*) AKBAR SARCAR *v.* RAMESH CHANDRA MOITRA.

38 C. L. J. 207 : 1923 Cal. 392.

——Art. 130—*Rent-free tenure.*

Unless and until a tenure is found to be a rent- free tenure. Art. 130 of the Lim. Act can have no application to a suit for assessment of its rent. (*Teunon and Richardson, JJ.*) KAMINI SUNDARI CHAUDHURANI *v.* ABDUL HALIM MOULAVI.

47 I. C. 420 : 28 C.L.J. 254.

——Art. 130—*Land entered in records as liable to assessment—Suit to assessment—Limitation.*

Where, defts. land was, in 1910 been entered in the Record-of Rights as liable to be assessed with rent, and the recorded landlord brought the present suit for rent. *Held*, that the entry in the Record-of-Rights did not give the starting point of limitation as such entry confers no title, (2) the suit was not one for the resumption or assessment of rent free land within Art. 130 of the Lim. Act, but a suit for the assessment of land presumably liable to be assessed. (3) the fact that the rent had not been paid more than twelve years before suit is not *per se* sufficient to support a decree for dismissal of such suit for the right to have the rent assessed must continue so long as

LIMITATION ACT (IX OF 1908), Art. 130.

the relationship of landlord and tenant continued. Such a relationship and liability could be presumed from Record-of-Rights and it is for the deft. to rebut the presumption by evidence. 40 C. 173 Rel. on. (*Richardson and Beachcroft, JJ.*) DHONANJOY MANJHI *v.* UPENDRANATH DEB.
46 I. C. 428 : 22 C. W. N. 685.

——Art. 130—*Adverse possession—Nature of plea.*

The plea of limitation in a suit for possession of lands in a *patni* depends upon the doctrine of adverse possession and not upon pfaintiff's want of possession. 4 C. L. J. 548 Foll. Mere non-payment of rent would not constitute adverse possession. (*Holmwood and Chapman, JJ.*) CHINTAMANI DUTT *v.* JOGESHUR BHATTA CHARYA.
19 I. C. 64.

——Art. 130—*Landlord and tenant--Adverse possession—Effect of.*

Where a tenant claimed land as rent-free to the knowledge of the plff. and no suit for resumption or assessment was brought till 12 years after, the suit is barred by limitation. (*Casperz and Chatterjee, JJ.*) BIRENDRA KISHORE *v.* ROSHAN KHAN.
39 Cal. 453 : 15 C. L. J. 203 : 13 I. C. 518 : 16 C. W. N. 981 Note.

——Art. 130 — *Landlord and tenant — Tenant claiming land as rent-free—Adverse possession.*

In a suit for possession or assessment of rent by a landlord where it is proved that the tenant had claimed the land as rent-free for more than 12 years before suit, *Held*, that there was a clear assertion of adverse title and that the suit was barred by limitation. (*Casperz and Chatterjee, JJ.*) BIRENDRA KISHORE *v.* DILWAR ALI.
13 I. C. 517.

——Art. 130—*Jaghir—Suit for resumption.*

Under Art. 130 of the Limitation Act, a suit for resumption of a life jagir must be brought within 12 years of the death of the grantee. (*Miller, C. J. and Mullick, J.*) GURU MAHADEO ASRAM PRASAD SAHI *v.* JAGATRAJ KUAR.
1924 P. 298.

——Art. 131—*Periodically recurring right—Suit for rent.*

A right to recover rent is a periodically recurring right. A right to establish a periodical right to recover rent is governed by Art. 131 of the Lim Act. 14 M. L. J. 477 ref. (*Bannerjee, J.*) MOHAMMAD HUSSAIN *v.* MOHAMMAD BIBI.
28 I. C. 600 : 13 A. L. J. 333.

——Art. 131—"*To establish a periodically recurring right*"—*Meaning of.*

The words "to establish" in Art. 131 are not confined to a declaration of title but include the recovery of arrears due to the plaintiff in respect of a periodically recurring right. (*Karamat Husain and Chamier, JJ.*) LACHHMI NARAIN *v.* TURAB-UN-NISSA. 9 A. L. J. 297 : 14 I. C. 505 : 34 A. 246.

——Art. 131--*Relation of landlord and tenant not established—Article does not apply.*

LIMITATION ACT (IX OF 1908), Art. 131.

Where the relation of landlord and tenant or superior holder and occupant is not established, the article does not apply. A suit to recover assessment by *Inamdar* against a person who claims to have purchased his rights is not governed by Art 131. (*Macleod, C. J. and Fawcett, J.*) BHIMA BAI *v.* SWAMIRAO. 45 Bom. 638 : 60 I. C. 892 : 23 Bom. L. R. 100.

——Art. 131—*Recurring right—Demand and refusal—Mere omission to exercise right—Effect.*

The payment of *Dhara* or assessment or customary rent is a recurring right within Art. 131 ; such a recurring right can be time-barred ; there must be a definite demand and refusal : mere omission on the part of the person entitled to exercise it, will not start a period of adverse possession. (*Beaman and Heaton, JJ.*) GANESH VINAIK JOSHI *v.* SITABAI NARAIN JOSHI.
41 Bom. 159 : 38 I. C. 54 : 18 Bom. L. R. 950.

——Art. 131—*Suit to recover Dustur—Periodically recurring right--Demand and refusal—Onus.*

The plaintiffs having asserted that there was no demand and consequently no refusal, the burden of proof was on the defendants to establish the demand and refusal. Since the suit was to establish a periodically recurring right in the nature of an inter est in an immoveable property it was governed by Art. 131 of the Limitation Act. (*Mookerjee and Beachcroft, JJ.*) HEM CHANDRA CHOWDHURY *v.* ATUL CHANDRA CHAKRAVARTI. 19 C. L. J. 118 : 21 I. C. 179 : 19 C. W. N. 386.

——Art. 131—*Proof of demand and refusal necessary. Scope of.*

Art. 131 of the Limitation Act would not be applicable to a case unless it is proved that more than 12 years before the institution of the suit, the plaintiff expressly made a demand of the defendants and was refused. (*Johnstone and Shahdin, JJ.*) KIRPARAM *v* JAICHAND. 46 P. W. R. 1914 : 23 I. C. 445 : 140 P. L. R. 1914.

——Arts. 131 and 120—*Perpetual and periodically recurring right—Distinction—Right of mutawalli to yeomiah.*

A claim that the plaintiff is the mutawalli of a mosque and as such is entitled to all *yeomiah* allowance received by a rival claimant is governed by Art. 120 of the Lim. Act. Article 131 does not apply to a perpetual right to receive an annual or a monthly allowance. The mere fact that sums of money are paid periodically does not make the right a periodically recurring right. Where the right is always vested in some person to receive periodical payments, and being vested in one person at one time, passes away at another time to somebody else, such a right is periodically recurring right in the true sense of the term. 4 Cal. 683 foll. (1914) M.W.N. 228 (F.B.) (*Ayling and Coutts Trotter, JJ.*) GULAM GHOUSE KHAN SAHIB *v.* JANNIA. (1920) M. W. N. 394 : 58 I. C. 788 : 12 L. W. 100 : 39 M. L. J. 492.

——Art. 131—*Periodically recurring right—Suit for sums due under—Prayer for declaration.*

LIMITATION ACT (IX OF 1908), Art. 131.

Art. 131 applies to suits to recover monies due under a periodically recurring right, whether or not there is a prayer for declaration that the plff. is entitled to such right. (*White, C. J., Sankaran Nair and Oldfield, JJ.*) MANAVIKRAMA ZAMORIN RAJA AVARGAL OF COLIAN *v.* ACHUTHA MEMAN.
38 Mad. 916 : 23 I. C. 806 : (1914) M. W. N. 228 : 15 M. L. T. 226 : 26 M. L. J. 377.

——Art. 131—*Claim to recover water cess—Illegally levied.*

A claim to recover water cess illegally levied is not a suit to establish periodically recurring right to which Art. 131 is applicable but the cause of action arises on each occasion where the cess is demanded. (*Miller and Sankaran Nair, JJ.*) SECRETARY OF STATE *v.* KANNAPALLI JANAKIRAMAYA.
37 Mad. 322 : 18 I. C. 770 : 13 M. L. T. 235 : (1913) M. W N. 235 : 24 M. L. J. 365.

——Art. 131—*Suit to establish right to offerings of temple—Claim for arrears.*

A suit for a declaration that plff is entitled to a certain share in the offerings of a temple is a suit to establish a periodically recurring right under Art. 131. Where a person claims to share in the offerings made to a temple he can bring a suit at any time within 12 years from the date when he first asserted his right and did not have it recognised even though his right originated at a previous date. The Article has nothing whatever to do with a suit to recover arrears. (*Stuart, J. C.*) JAGDEO *v.* MATHURA PRASAD.
22 O. C. 346 : 6 O. L. J. 677 : 54 I. C. 540 : 2 U. P. L. R. (J.C.) 19.

——Art. 131—*Rent suit.*

If a decree for rent has been passed within 12 years before the subsequent suit for rent has been instituted, the claim is not barred by time. (*Chamier, J. C.*) BALMUKUND *v.* ABDUL BASHID.
12 I. C. 329.

——Art. 131—*Enhancement of rent—Recurring cause of action—Limitation.*

A claim to enhance rent is a recurring cause of action and limitation runs from the date of refusal. Where the right to enhance the rent is based not on a contract but on statute, the article would not apply. (*Bucknill J.*) SHEOPRATAP DUBEY *v.* SHEOGULAM LAL.
1924 P. 193.

——Art. 131—*Suit for arrears of malikana—Starting point.*

A party whose right to *malikana* is denied must sue within 12 years of refusal. The Art. does not apply where in a previous suit plff. has got a declaration of his title. (*Atkinson and Jwala Prasad, JJ.*) SAIYIDUDDIN *v.* AVADH BEHARI SINGH.
40 I. C. 864 : 2 Pat. L. W. 64.

——Arts. 131 and 120—*Suit for enhancement of rent—Wrong entry in Record-of-Rights as rayat—Article applicable.*

Art. 131 and not Art 120 governs a suit for the enhancement of rent if the holding of an occupancy tenant who has been wrongly entered in the Record-of-Rights as raiyat at fixed rates, and

LIMITATION ACT (IX OF 1908), Art. 132—Instalment bond.

time runs from the date of refusal. (*Mullick and Atkinson, JJ.*) BRIJ BIHARI SINGH *v.* SHEO SHANKAR JHA.
2 Pat. L. J. 124 : 1 Pat. L. W. 434 : 39 I. C. 85 : 1917 Pat. 108.

——Art. 132.

Immoveable property.
Instalment bond.
Loan in kind.
Malikana.
Money charged on immoveable property.
Security bond.
Starting point of limitation.
Miscellaneous.

Immoveable property.

——Art. 132—*Immoveable property—Standing trees.*

Standing trees are immoveable property within Art. 132 of the Limitation Act. (1887) A. W. N. 59 foll. (*Karamat Hussain, J.*) MONGAL SAN *v.* NAOLI.
9 I. C. 478.

——Arts. 132 and 120—*Immoveable property—Turn of worship.*

A turn of worship is not an interest in immoveable property and a suit to enforce a mortgage of such a right is governed by Art. 120 of the Lim. Act. and not by Art. 132. (*Chitty and Walmsley, JJ.*) NARASINGH BANAGOSWAMI *v.* THODMAN TEWARI.
46 Cal 455 : 47 I. C. 25 : 22 C. W. N. 994.

Instalment bond.

——Art. 132—*Instalment bond.*

Where a bond provides that the whole amount will become payable on the occurrence of a default in the payment of the instalments, the money becomes due under Art. 132 when a default is made and time runs from the date of default. The test whether money becomes due or not does not depend upon the volition of the creditor but upon the obligation undertaken by the borrower under the bond. (*Walsh and Wallach, JJ.*) NATHI *v.* TURSI.
63 I. C. 886 : 19 A. L. J. 712.

——Art. 132—*Instalment bond—Covenant to pay compound interest.*

Where a mortgage-bond provided for the payment of interest every six months, and in default the interest was to be treated as principal, and in case of two defaults, the creditor had the option to be benefited by the condition as to compound interest or to sue for the principal and interest or the interest only, *held*, that the deed gave three options and if he did not choose to take the option of suing for the whole amount, it cannot be said that time began to run from the date of such abstention. (*Tudball and Rafique, JJ.*) GIRDHARI LAL *v.* GOBIND RAM.
63 I. C. 25 : 19 A. L. J. 486.

——Art. 132—*Instalment bond — Mortgage-Instalment—When money becomes due — Construction.*

A mortgage deed of 1890 provided for repayment of principal in instalments with interest and further provided that in case of default in any one of the instalments the whole of the mortgage money would become due and be payable on demand. *Held*, that money under the bond

LIMITATION ACT (IX OF 1908), Art. 132—Instalment bond.

became due within the meaning of the Article when the first default was made in 1890 and accordingly the suit was barred. Per *Richards, C. J.*—Money under a bond becomes due as soon as it is legally recoverable quite irrespective of when the suit is instituted. Per *Bannerjee, J* :—Upon a true construction of the bond in this case, the money secured by it became due on the expiration of ten years from the date of the bond and the claim was not barred. (*Richards, C. J. and Bannerjee, J.*) GANADIN *v.* JUMAN LAL. **37 All. 400 : 28 I. C. 910: 13 A. L. J. 510.**

———**Art. 132**—*Instalment bond— Waiver — Acceptance of overdue instalments.*

A mortgage bond provided for payment of the debt in twelve instalments the first falling due in Pous 1308 and others in the month of Pous of each of the next 11 years ending with 1319, It was further provided that on the default in payment of any one instalment the creditor would be entitled to recover the entire amount due under the bond with interest thereon at 2 per cent. per mensem though the other instalments are not due. The plaintiff alleged that the first instalment was duly paid and the instalment of 1309 to 1311 together with interest thereon were paid and accepted although the payments were made out of time and the suit was brought for the subsequent instalments. The main defence was that the suit was barred by limitation. *Held* (1) that it is a general rule that where money is payable by instalments with a provision that the whole of the money will become due on default of payment of one of the instalments, the money becomes due when default is made in any of the instalments. (2) An exception has been engrafted upon the general rule in certain cases, viz., that if the right to enforce payment of the whole sum due upon the default being made in payment of an instalment has been waived by subsequent payment of the overdue instalment on the one hand receipt on the other, then the penalty having been waived, the parties are admitted to the same position as they would have been in, if no default had occurred. (3) The payment and acceptance of overdue instalments in the present case constituted a waiver and the plaintiff was entitled to recover the subsequent instalments. (*Chatterjee and Cuming, JJ.*) SURENDRA NATH *v.* RAJA RESHEE CASE LAW. **27 C.W.N. 893 : 1924 Cal. 139.**

———**Art. 132**—*Instalment bond — Cause of action.*

When the mortgage bond contains a stipulation to pay the principal and interest at a particular time and on failure a condition that the mortgagor was to deliver certain produce and on failure to do so, another time was fixed: limitation runs from the second time. 24 C. 281 Dist. (*Teunon and Greaves, JJ.*) BHUTNATH BOSE *v.* KALI PRASAD PATRA. **50 I. C. 71.**

———**Art. 132**—*Instalment bond — Starting point—Option to mortgagee to sue on default of payment interest or after period fixed.*

Where there is an option to the mortgagee to sue for the whole amount on default of payment of interest or to wait until the period fixed, he must sue for the whole amount when the cause of action therefor accrued first. 188 P. R. 1883 (F.B.) foll. 22 M. 20 ; 10 P. R. 1883 : 29 A. 431, Dist. 30 A. 123, disappr. (*Rattigan and Chevis, JJ.*) SHAM SUNDAR *v.* ABDULLA AHAD. **31 I. C. 808 : 153 P. W. R. 1915.**

———**Art. 132**—*Instalment bond—Arrears of interest—Omission to sue, if amounts to waiver.*

A mere omission to sue is not sufficient proof of waiver. A mortgage bond of 11—8—1890 provided that interest was to be payable yearly, the mortgagee being entitled to recover arrears of interest by suit and that after 10 years if the land was not redeemed, he should be entitled to recover principal and interest by suit. Only a small sum having been paid towards the interest in the early years, the mortgagee sued the mortgagor for principal and interest. *Held*, that inasmuch as the plaintiff had the adoption of suing every year, the suit was governed by article 132 of the Limitation Act and plaintiff could not recover interest that had become due 12 years prior to the institution of the suit. (*Chevis and Shadilal, JJ.*) JAHAN KHAN *v.* CHANDI SHAH. **122 P. W. R. 1915 : 141 P. W. R. 1916 : 29 I. C. 854 : 113 P. L. R. 1916.**

———**Art. 132**—*Instalment bond — Condition to whole balance.*

Where the mortgagor covenanted to repay the amount advanced in specified instalments and on failure to pay any one instalment, to pay on demand the whole amount due, the cause of action for a suit to recover the amount due arises when the mortgagee exercises his option to demand payment of the whole amount. 36 Mad. 66 Ref. to. (*Spencer and Ramesam, JJ.*) KALIAPPA NADAR *v.* SAMI AIYAR. **62 I. C. 762 : (1921) M. W. N. 384,**

———**Art. 132**—*Instalment bond—When accrues Right of action.*

A mortgage executed in favour of a widow dated 1st Nov. 1888 provided for the payment of the principal on 1st Nov. 1899 and for the annual payment of interest at 6¼ per cent. per year with a stipulation for the payment of principal and interest at 12 per cent. per annum from the date of default in payment of the interest without raising the plea of future instalment on the liability of the mortgage property. In a suit by the assignee of the widow it having been found that the widow could assign away the interest that remained due on the date of the assignment but not the principal debt, and the interest not having been paid as provided for, it was contended that the suit was barred by limitation. *Held*, (1) that the mortgagee was not bound to take advantage of the default clause and that the right of action did not consequently accrue until the date provided for payment of the principal arrived (2) The suit being governed by Art. 132 of Sch. I of the Lim. Act, it was not time-barred. 28 I. C. 910 Dist. (*Seshagiri Aiyar and Napier, JJ.*) NARNA *v.* AMMANIAMMA. **39 Mad. 981 : 4 L. W. 77 : 20 M. L. T. 174 : 35 I. C. 418 : (1916) 2 M.W.N. 125 : 31 M. L. J. 865.**

LIMITATION ACT (IX OF 1908), Art. 132—Instalment bond.

———Art. 132 — *Instalment bond—Whole amount on default of one instalment—Limitation.* A mortgage-deed provided for payment of the mortgage money by certain instalments and that if any default took place the contract relating to the payment of future instalments was to be deemed rescinded and the mortgagees were to be entitled to sue for the whole amount and interest. *Held*, that a suit brought by the mortgagees on the basis of the above mortgage-deed more than 12 years after the date when the first default in payment was made was time barred under Art. 132. (*Lindsay, J. C.*) LACHIMI NARAIN *v.* DAYA SHANKAR.
47 I. C. 655 : 5 O. L. J. 419.

———Art. 132—*Instalment bond—Mortgage—Default in payment—Right to sue for the whole amount—Waiver, limitation.* A contract which gives the mortgagee one of two options does not bind him to either of them if he chooses to stick to either. It is open to him to waive the benefit of an acceleration if the contract leaves him such an option and that option cannot be taken away by statute unless there is anything to show that the grant of such an option is illegal or forbidden by law. (*Kanhaiya Lal, A. J. C.*) MUBARAK ALI *v.* GOPI NATH.
45 I. C. 613 : 5 O. L. J. 73.

———Art. 132—*Instalment bond—Starting point of limitation for default.* The limitation begins to run from the date of first default though the mortgage-deed gave the mortgagee the option of not enforcing payment on such date. (*Stuart, A. J. C.*) TULSMAM *v.* MUHAMMAD HADI.
32 I. C. 551.

Loan in kind.

———Art. 132—*Loan in kind—Paddy loan—Enforcement.* A suit to recover the value of paddy charged upon immoveable property by sale of the latter is governed by art. 132 of the Limitation Act. 48 C. 625 foll. (*Newbould and Suhrawardy, JJ.*) GNANENDRA NATH GHOSE *v.* PANCHCOURI GARAIN.
64 I. C. 310.

———Art. 132—*Loan in kind—Interest payable in paddy—Suit to enforce security—Limitation* Where there is a loan of a certain quantity of paddy with a provision for payment of an additional quantity of paddy as interest, and both the principal and interest are secured on immovable property a suit to enforce the security is governed by Art. 132 of the Limitation Act 25 C. W. N. 57 (F. B.) foll (*Teunon and Richardson, JJ.*) JOY NARAIN GOLE *v.* MANGOBINDA BERA.
64 I. C. 310.

———Art. 132—*Loan in kind—Loan of paddy.* The mortgagor took a loan of paddy and agreed to repay it together with interest thereon at so many *kathas* per year and further agreed that on default of payment within the time stipulated the mortgagee would be entitled to realize the money and costs by sale of the property mortgaged to secure the loan, and if that was insufficient to satisfy the debt, by attachment and sale of other properties of the mortgagor. *Held*, a suit brought within 12 years from the due date of payment for enforcement was not barred under Article 132. 24 C. L. J. 348 Dist. (*N. R Chatterjea and Panton, JJ.*) DINABANDHU MAITI *v.* BISHNU BEWA.
32 Cal. L. J. 221.

LIMITATION ACT (IX OF 1908), Art. 132—Loan in kind.

———Art. 132—*Loan in kind—Loan of paddy—Security of land—Limitation.* A mortgagee to secure a loan of paddy provided that on default of payment of the paddy the mortgagee would be entitled to attach and sell the mortgaged property and realise the dues, and if that was insufficient, would be entitled to realise them also from other moveable and immoveable property of the mortgagor and from his person. *Held*, the mortgagee was entitled to recover money and not to claim specific paddy; and the mortgagee's suit to enforce the bond was governed by Art. 132. (*Chatterjee and Dural, JJ.*) JOGENDRA NATH SINGH *v.* MOHAN LAL KHAN.
58 I. C. 995 : 23 C. W. N. 951.

———Art. 132—*Loan in kind—Loan of paddy—Charges on land—Limitation.* *A.* borrowed a quantity of paddy from *B.* valued in the bond at Rs. 192 agreeing to repay the paddy with interest at a certain date, failing which *B.* was to be entitled to recover the price of the paddy with interest by sale of the mortgaged land. *Held*, that Art. 132 of the Lim. Act. applied to a suit by *B.* to enforce the bond. 24 C. L. J. 348 Dist. (*N. R. Chatterjee and Duval, JJ.*) INDRA NARAIN SAO *v.* DIJARAR SAMANTA.
47 Cal. 135 : 51 I C. 849 : 23 C. W. N. 949.

———Art. 132—*Loan in kind—Loan of paddy.* Art. 132 of the Lim. Act applies to a suit to enforce a mortgage by which certain immoveable properties are hypothecated as a security for the return of paddy borrowed or of the money value thereof. (*Teunon and Walmsley, JJ.*) MOHESH GROSE *v.* UMESH CHANDRA GHOSE.
51 I. C. 241.

———Arts. 132, 120 and 116—*Loan in kind—Payment of paddy secured on lands—Suit to enforce.* Per *Teunon, J.* (*Walmsley, J, contra.*) A suit to enforce payment of paddy secured by hypothecation of lands is governed by Art. 132 and not by Art. 116 or 120 of the Limitation Act. (*Teunon and Walmsley, JJ.*) SHRIDHAR CHANDRA *v.* RAM GOBIND JANA.
50 I. C. 608 : 29 C. L. J. 368.

———Art. 132—*Loan in kind—Interest in paddy—Nature of mortgage.* A suit on a mortgage for a sum of money on which the interest is payable in paddy is a suit to enforce a charge of money in immoveable property and is not barred by limitation. (*Fletcher and Smither, JJ.*) HRISHIKES SINGH *v.* LAKHI NARAIN SINGH.
46 I. C 384.

———Art. 132—*Loan in kind—Mortgage on loan of rice—Suit on.*

LIMITATION ACT (IX OF 1908), Art. 132—Loan in kind.

Where a mortgage deed on the loan of a certain amount of rice provided that on failure to pay the rice according to the *kist* the mortgagee would be entitled to recover money at Rs. 6 per *map* of the rice, by sale of the mortgaged property, *held* that the suit to enforce the mortgage was a suit to recover money charged on immoveable property and is governed by Art. 132 of the Act. (*Fletcher and Huda, JJ.*) SKIPATI LAL DUTT *v.* SARAT CHANDRA MONDAL.
46 I. C. 78 : 22 C. W. N. 790.

———Arts. 132, 120 and 116—*Loan in kind—Debt, partly cash and partly grain—Suit filed more than six years after the accrual of cause of action—Claim in respect of grain debt if barred.*

Where a bond hypothecates property to secure payment of grain, the suit brought upon that bond is a suit to enforce payment of "money" charged upon immoveable property, and consequently Art. 132 of the Limitation Act would be applicable and a suit brought within 12 years after the accrual of cause of action, would not be barred. Neither Art. 116 nor 120 of the Act applies to such a case. 13 C. W. N. 174; 22 C. W. N. 790; 23 C. W. N. 951; 23 C. W. N. 949: 29 Cal. L. J. 348 Referred to; 24 Cal L J. 348 not foll. (*Dhobley, A. J. C.*) SHAM LAL *v.* DHANWA JHABBOOLAL.
18 N. L. R 111 : 5 N. L. J. 224 : 1922 Nag 23.

Malikana.

———Art. 132—*Malikana.*

Under Expl. to Art. 132 of the Lim. Act a claim to a malikana allowance must be deemed for the purpose of limitation to be a claim for money charged upon immoveable property. 35 All. 185 foll. This principle, however, is subject to the proviso that the plaintiff coming into the court to claim such malikana allowance must claim it as a charge upon the immoveable property concerned. 7 All. 502 (P. C.) ref. (*Piggott and Walsh, JJ.*) NATHU *v.* GHANESHAW SINGH.
41 All. 259 : 49 I. C. 737 : 17 A. L. J. 177.

———Art. 132—*Malikana.*

Suit by plff. to recover Malikana allowance for 11 years and claiming decree against the property on which the allowance is chargeable is governed by Art. 132. 33 C. 998 Dist. (*Griffin and Chamier, JJ.*) SHAIDA ALI *v.* PHULLO.
35 All. 185 : 19 I. C. 63 : 11 A. L. J. 206.

———Art. 132—*Malikana — Right to get Nankar.*

Right to get cash *nankar* is a *had* similar to one falling under the explanation attached to Art 132. (*Kanhaiya Lal, A. J. C.*) DEPUTY COMMISSIONER, FYZABAD *v.* JAGJIVAN BAKSH SINGH.
33 I. C. 461 : 19 O. C. 49

———Art. 132—*Malikana—Suit for share of.*

A suit by some of the malikanadars of a village against the proprietors and the remaining malikanadars, is governed by the twelve years' rule of limitation. (*Das and Adami, JJ.*) RAMESHWAR SINGH *v.* SURAJ NARAIN JHA.
6 P. L. J. 34 : 61 I. C. 130 : 2 P. L. T. 174.

LIMITATION ACT (IX OF 1908), Art. 132—Money charged on immoveable property.

Money charged on immoveable property.

———Arts. 132 and 120—"*Money charged on immoveable property—Suit to enforce puisne mortgage against balance of sale proceeds in the hands of prior mortgage.*"

Certain lands were subject to three mortgages, the first and third in favour of defendant and the second in favour of the plff. In a suit on the first mortgage, the second mortgagee was made a party but the surplus sale proceeds after satisfying the decree were withdrawn by the first mortgagee in execution of a decree obtained by him on the third mortgage without impleading the second mortgagee as a party. The second mortgagee sued on his mortgage, seeking a decree against the deft. for the amount with interest of the surplus sale proceeds withdrawn by the deft. *Held*, that the surplus sale proceeds represented the security which the plff. had under his mortgage and did not cease to represent that security owing to the deft. having wrongfully and in fraud of the plff withdrawn them from the Court and that the suit was governed by Art. 132 of the Lim. Act. *Quaere.*—Whether the said money in the hands of the deft. was *saddled* with a charge in favour of the plff. to the extent of his mortgage? (*Sir John Edge.*) BARHAMDEO PRASAD *v.* TARACHAND.
41 Cal. 654 : 41 I. A. 45 : 15 M. L. T. 62 : 12 A. L. J. 82 : 18 C. W. N. 345 : 19 C L. J. 132 : 16 Bom. L. R. 89 : (1914) M. W. N. 38 : 21 I. C. 961 : 26 M. L. J. 243 (P. C.).

———Art. 132—*Money charged on immoveable property—Subrogation, right by—Suit to enforce—Limitation.*

Where a third mortgagee pays off the first mortgage to which he becomes entitled by subrogation and claims to enforce his priority against the mesne incumbrancer, the claim is barred if brought more than 12 years after the expiry of the term of the first mortgage (*Sir John Edge.*) MAHOMED IBRAHIM HOSSEIN KHAN *v.* AMBIKA PERSHAD SINGH.
39 Cal. 527 : 39 I. A. 68 : 11 M. L. T 265 : (1912) M. W N. 367 : 9 A. L J. 332 : 14 Bom. L. R. 280 : 16 C. W. N. 505 : 15 C. L. J. 411 : 14 I. C. 496 : 22 M. L. J. 468 (P. C.).

———Art. 132—*Money charged on immoveable property—Right to sue for money on default in payment of interest.*

Under a mortgage deed the principal amount was payable within 3 years and interest was to be paid year by year. In default of payment of the annual interest the mortgagee was empowered, without waiting for the due date to sue to realise the principal and interest from the property. *Held*, that the cause of action for the recovery of the principal amount and interest arose on the date of the first default in payment of the interest. The privilege of deferring payment of the principal for 3 years was conditional on the punctual payment of interest annually. (*Lindsay and Stuart, JJ.*) RAMDAS *v.* MAHOMED SAYEED KHAN.
20 A. L. J 346: 1922 All. 524.

LIMITATION ACT (IX OF 1908), Art. 132—Money charged on immoveable property.

———**Arts. 132 and 148**—*Money charged on immoveable property—Co-mortgagors—Redemption by one—Suit by other mortgagors—Limitation.*

Where one of several co-mortgagors redeems a mortgage, the other co-mortgagors can bring a suit for redemption against the redeeming mortgagor within 60 years from the date of the original mortgage. 14 A. L Foll. (*Lindsay and Kanhaiya Lal, JJ.*) SURAT SINGH *v.* UMRAO.

L. R. 3. A. 383 : 20 A. L. J. 611 : 1922 All. 410.

———**Art. 132**—*Money charged on immoveable property—Suit to enforce charge.*

Where a puisne mortgagee discharges the decree on the prior mortgage to avert a sale, he thereby acquires a charge upon the property which he can sue to enforce, within twelve years of the date on which he made the payment. (*Bannerji and Gokul Prosad, JJ.*) SHIB LAL *v.* MUNNI LAL. **63 I. C. 604 : 3 U. P. L. R. (A) 193.**

———**Art. 132**—*Money charged upon immoveable property—Terminus a quo—Security bond—Enforcement.*

B hypothecated in 1901 two items to *A* as security for the due payment of rent. On the rent falling due a decree for arrears was obtained in 1906 for faslis 1311 and 1312. In 1905 *B* sold one item to *C*. In 1908 *A* sued to enforce the lien as against both items and obtained a decree without impleading *C*. Both the items were sold in execution in 1912. *A* sold to *D* in 1916 all the rights he had in the properties and the latter sued *C* in 1912 for recovery of a proportionate share of the arrears. *Held*, that the security bond became enforceable on the decree of 1906 and that the present suit brought within 12 years thereafter was within time. (*Tudhall and Rafique, JJ.*) MAHADEO RAI *v.* BALDEO RAI. **19 A. L. J. 478 : 63 I. C. 504 : 3 U. P. L. R (All) 96.**

———**Art. 132**—*Money charged on immoveable property.*

Where a decree for sale on a Mortghge has been converted into immoveable property the mortgagee of such decree is entitled to the benefit of not only the new security, but also of Art. 132 of the Act. (*Piggott and Lindsay, JJ.*) JAMNADA *v.* LALA RAM. **14 A. L. J. 1025 : 37 I. C 4 : 39 All 74.**

———**Art. 132**—*Money charged on immoveable property—Mortgagee—Right to sue twice.*

A mortgagee can sue the sons of a Hindu father to recover the balance with the interest thereon at rate decreed, not recovered from the father under a mortgage decree, even after 12 years from the cause of action. (*Knox and Rafique, JJ.*) JALESHWAR RAI *v.* AURUT RAI. **35 All 302 : 18 I C. 904 : 11 A. L. J. 402.**

———**Art. 132**—*Money charged upon immoveable property.*

Art. 132 of Limitation Act is applicable only to suits in which the plaintiff claims to recover money charged upon immoveable property to raise it out of that property. (*Karamat Husain and Chamier, JJ.*) LACHMI NARAIN *v.* TURAB UN-NISSA. **9 A. L. J. 297 : 14 I. C. 505 : 34 A. 246.**

LIMITATION ACT (IX OF 1908), Art. 132—Money charged on immoveable property.

———**Arts. 132 and 62**—*Money charged on immoveable property—Charge under T. P. Act, Ss. 82 and 100.*

A suit to enforce a charge under T. P Act Ss, 82 and 100 on property is governed by article 132, but a suit for a personal decree for contribution comes within the purview of Art. 62 of the Limitation Act and time runs from the date of receipt by the owner of the surplus sale proceeds. (*Richards, C. J. Banerjee and Chamier, JJ.*) BHAGWAN DAS *v.* KARAM HUSAIN.

33 All. 708 : 14 I. C. 145 : 8 A. L. J. 854.

———**Art. 132**—*Money charged on immoveable property—Suit to recover value of paddy.*

A suit to recover the value of paddy charged upon immoveable property, is one to enforce payment of money charged upon immoveable property within the meaning of Art. 132 of the Act. (*Mookerjee, C. J. Fletcher, Chatterjee, Teunon and Richardson, JJ.*) RAMCHAND *v.* ISWARCHANDRA. **48 Cal. 625 : 32 C. L. J. 278 : 61 I. C. 539 : 25 C. W. N. 57 (F. B.)**

———**Art. 132**—*Money charged on immoveable property—Suit brought within 12 years.*

A debtor borrowed a quantity of paddy on a mortgage of his property, agreeing to repay with interest within a certain time and entitling the mortgagee to realise the money, incase of default, by sale of the mortgaged property. On a default by the debtor the mortgagee sued within 12 years of the date of payment, for recovery of the money. *Held* the suit was within time. (*N. R. Chatterjee and Panton, JJ.*) DINA BANDHU MAITI *v.* BISHNU BEWA. **60 I. C. 715 : 32 C. L. J. 221.**

———**Art. 132**—*Money charged on immoveable property—Mortgage of ancestral land by father—Suit for sale against sons.*

A suit for sale of ancestral property mortgaged by the father governed by the Mitakshara law, in the hands of the sons and grandsons is a suit to enforce payment of money charged on immoveable property and governed by Art 132 of the Lim. Act (*Coxe and Chatterjee, JJ.*) SHEO NARAIN ROY *v.* MOKSHADA DAS MITRA. **19 I. C. 878 : 17 C. W. N. 1022.**

———**Art. 132**—*Money charged on immoveable property—Purchase by mortgagee—Revenue sale—Surplus sale proceeds, if mortgagee can proceed against—Scope.*

Where a mortgagee in execution of his mortgage decree purchased a portion of the entire estate mortgaged, and subsequently the whole of the estate is sold for arrears of Govt revenue a suit by him to recover the money, representing the portion purchased by him is not governed by Art. 132, as he having already purchased the property could not be said to be seeking to pursue against the surplus sale proceeds the remedy for the recovery of the money charged on the property. (*Chatterjee and Richardson, JJ.*) LACHMI NARAIN *v.* DHANUKDHARI PROSAD SINGH. **17 I. C. 351.**

———**Art. 132**—*Money charged on immoveable property—Compensation to vendee—Charge of property.*

LIMITATION ACT (IX OF 1908), Art. 132—Money charged on immoveable property.

Vendee was to receive compensation from the vendor if on partition less area fell to the share of the vendor. *Held*, Art. 132 is restricted to cases in which payment or compensation is sought to be enforced out of the property on which it is charged and not where the plaintiff is only seeking a personal remedy. (*Martineau and Brasher, JJ.*) RUKAN DIN *v.* HASAN DIN. **1923 Lah. 23.**

———Art 132—*Money charged on immoveable property—Suit on subsequent mortgage—Limitation.*

Art. 132 of the Lim. Act applies to a suit to enforce a second mortgage executed in consideration of a prior mortgage and a fresh advance. (*Scott Smith and Leslie Jones, JJ.*) UDHO RAM *v.* GOBIND LAL. **4 Lah. L. J. 478.**

——Art. 132—*Money charged on immoveable property by a decree—Suit to enforce—Limitation.*

Art. 132 governs a suit to enforce payment of money charged on immoveable property under a decree (*Leslie Jones and Moti Sagar, JJ.*) NARAIN SINGH *v.* NARANJAN. **4 Lah. L. J. 398.**

——Art. 132—*Money charged on immoveable property -Enforcement of—Charge.*

Art. 132 of the Lim. Act is wide enough to apply to all cases where there is an effective and binding charge upon immoveable property whether created under the T. P. Act, or otherwise, (*Scott Smith and Harrison, JJ.*) ABDUL SAMAD *v.* MUNICIPAL COMMITTEE, DELHI. **67 I. C. 939**

——Art. 132—*Money charged on immoveable property—Suit to recover mortgage money wrongfully realised by the defts.—Limitation.*

Plaintiffs, daughters of deceased G, sued eleven years after G's death to recover possession of property and for mortgage money wrongfully received by the defendant. The money realised by the defendants was held to represent the security which plaintiff had under the mortgage and the suit was held to be governed by Art. 132, Sch. I of Limitation Act. (*Scott-Smith and Dundas, JJ.*) ASO *v.* HARNAMI. **1 Lah L. J. 60 : 56 I. C. 944 : 2 U. P. L. R. (Lah). 114.**

——Art. 132—*Money charged on immoveable property—Transfer of Property Act, Ss. 58, 59—Documents creating a charge—Limitation.*

Art 132 of the Limitation Act applies to a suit based on a document creating a charge on immoveable property irrespective of the facts that the document amounts to a contract of indemnity or is a contract in writing and is registered. (*John Wallis, C.J. and Oldfield, J.*) RAMASWAMI IYENGAR *v.* M. V. KUPPUSAMI AIYAR. **14 L. W. 99 : 66 I. C. 554 (2) : (1921) M. W N. 472.**

——Arts. 132 135, and S. 31—*Money charged on immoveable property—Covenant to sell in default of payment.*

A mortgage document of the year 1879 did not in terms purport to sell the mortgaged property but only contained a covenant by the mortgagor to relinquish all rights in the property if it had been sold, in case there was default in payment of the mortgage money within the stipulated period. A suit for foreclosure in respect of such a document falls under Art. 132 read with S. 31 and not under Art. 135 (*Coutts Trotter and Seshagiri Aiyar, JJ.*) BIKKINA RAMAYYA *v.* ADABALA SESHAYYA. **34 I. C. 475 : 30 M L. J. 338.**

LIMITATION ACT (IX OF 1908), Art. 132—Money charged on immoveable property.

——Arts. 132, 36 and 49—*Money charged on immoveable property—Trees cut by third parties—Depreciation in value of the mortgaged property.*

Certain trees grown on the mortgaged properties were cut and carried away by third parties in 1905, and the mortgagees sued in 1909 to enforce their security. *Held* that—(1) It was not a suit to enforce payment of money charged on immoveable property within Art. 132, (2) Plaintiff could only proving that the security sue for damages for depreciation in the security had been rendered insufficient as a matter of fact. (3) Either Art 36 or 49 applied to the case and whichever applied the suit was time-barred being brought after three years from the date of the cutting and appropriation. (*Coutts Trotter and Srinivasa Aiyangar, JJ.*) SURAPUDI MUNIAPPA *v.* NOOKLA SESHAYYA. **32 I. C. 901 : 3 L. W. 341.**

——Arts. 132 and 110—*Money charged on immoveable property—Mortgagor taking lease of mortgaged properties.*

Where mortgagor takes a lease of mortgaged properties from mortgagee by a document of even date, and the mortgage deed specifically makes interest a charge on the property, *held* that the suit even so far as the claim for interest was concerned was governed by art. 132 and not by Art. 110. (*Wallis, C.J. and Tyabji, J.*) VASUDEVAN ATISSERIPAD *v.* GOVIND MENON. **30 I. C. 818 : 2 L. W. 863.**

——Art. 132—*Money charged on immoveable property—Charge for interest.*

Claim for interest being subsidiary or incidental to the claim for the principal, the security annexed to the principal must impliedly be available for the interest also. (*Kotwal, A. J. C.*) KADARMIYA *v.* CHANDMIYA. **1923 Nag. 181.**

——Art. 132—*Money charged on immoveable property—Charge on rents and profits of land.*

Money charged on immoveable property includes money charged on rent and profits of land and the specification of the property on the rental of which (or out of the rents and profits of which) a certain money allowance was to be calculated indicates the stock out of which it was to be paid and was therefore a charge on the property. (*Kanhaiya Lal, A J.C.*) RAM JIWAN *v* JADUNATH. **18 O. C. 380 : 33 I. C. 555 : 3 O. L. J. 20.**

——Art. 132—*Money charged on immoveable property—Claim by subrogation—Payment by purchaser under invalid sale of prior mortgage—Suit to enforce prior mortgage.*

A purchaser of the mortgaged premises, no under a covenant to pay, who pays off incumbrances on the property, is also entitled to the benefit of the securities though the purchase may be afterwards set aside. 22 W. R. 409 ; 21 M. 143 Ref. A subsequent mortgagor paying off a prior mortgage does not acquire a fresh charge.

LIMITATION ACT (IX OF 1908), Art. 132—Money charged on immoveable property.

on the property. He acquires the rights and powers of the prior mortgagee one of which is to enforce the charge already existing subject to the law of limitation. A right to re-imbursement is a different thing from a right to subrogation. The right to re-imbursement arises on a contract express or implied, to reimburse ; and the party who claims the right enforces it in his own right and not in the right of another. Consequently the right does not arise until he has discharged the debt of another. But the right to enforce a security by virtue of subrogation is a right which equity concedes to a person who, not being primarily liable to discharge an obligation, does discharge it and it is a right to demand the performance of the original obligation, and the application thereto of all securities held by the creditor. It is a claim which is enforced in the right of the original creditor and only because the person discharging the obligation becomes clothed with the rights and powers of the original creditor. It may be that the right to enforce the security in his own name arises on the date of the assignment to the person claiming the right of subrogation. But the limitation which has already commenced to run will not cease to operate just because the creditor has assigned the security to another person. An equitable assignee stands on no better footing and can only enforce the security in the right of the creditor and therefore subject to the law of limitation that would affect the creditor. (*Coutts and Das, JJ.*) SIBANAND MISRA *v.* JUGMOHAN LAL.

68 I. C. 707 : 3 Pat. L. T. 533.

———Arts. 132 and 116—*Money charged on immoveable property—Anomalous mortgage—Possession not given—Suit for money Mortgagee—Limitation.*

Where in the case of an anomalous mortgage with possession the mortgagor, personally covenants to pay the mortgage money, in the event of dispossession, a suit brought by the dispossessed mortgagee for the money is not governed by Art. 116, but by Art. 132 of the Act. (*Jwala Prasad and Ross, JJ.*) JAINANDAN *v.* BAIJNATH.

63 I. C. 297 : 2 Pat. L. T. 229.

——Art. 132—*Money charged on immoveable property—Property—Alleged to be undivided ancestral one of plaintiff and mortgagor—Suit for a share of mortgage money—Limitation.*

An undivided co-sharer cannot sue for a share of the mortgage money in respect of a mortgage by the other co-sharer of property belonging to them jointly. Such a suit is not under Article 132 of the Limitation Act, one to enforce payment of money charged on immoveable property. (*McCol, J.C.*) NGA YA BAW *v.* NGA BYA.

22 I. C. 959 : (1913) 1 U. B. R. 178.

Security bond.

———Art. 132—*Security bond—Suit for accounts by shebait against* Tahsildar.

Art. 132 applies to a suit by a *shebait* of a *Thakur* against the *Tahsildar* of the *debutter* properties of the *Thakur*, for accounts based on a security bond executed by the latter in favour of the predecessor of the plaintiff. (*N. R. Chatterjea and Newbould, JJ.*) DASARATHI CHATTERJEE *v.* ASIT MOHAN GHOSH. 59 I. C. 126 : 24 C. W. N. 879.

LIMITATION ACT (IX OF 1908), Art. 132—Starting point of limitation.

———Arts. 132 and 89—*Security bond—Applicability—Principal and agent*—Kabuliyat *by agent—Dismissal and reappointment—Defalcation after reappointment.*

A *Kabuliyat* was executed by the agent hypothecating certain immoveable property to be answerable for any defalcation made by him or any damages suffered by the principal through his negligence. The agent was dismissed the next year but was reappointed the year after. *Held*, that the agent's position at the year of re appointment was not governed by the *Kabuliyat* but by the ordinary rules applicable between the principal and agent and Art. 89 of the Limitation Act applied to the suit. (*D. Chatterji and Richardson, JJ.*) BEHARI LAL *v.* HARAKUMAR DATT.

29 I. C. 748 : 21 C L. J. 458.

———Art. 132—*Security bond — Suit for accounts against Gumastha—Hypothecation of property for due performance of duties—Limitation.*

A suit for accounts against a *Gumastha* who has hypothecated property for due performance of duties is governed by Art. 132. 35 C. 298 ; Foll 5 I. C. 59, Dist. (*Fletcher and Richardson, JJ.*) TROILUKHYANATH MANDAL *v.* ABANISH CHANDRA ROY. 24 I. C. 18 : 21 C. L. J. 459.

Starting point of limitation.

———Art. 132—*Starting point—Mortgage—Suit on—Provision for annual payment of interest—Default—Right to claim whole amount*

Where under the terms of a mortgage, interest is payable on every *Jeth Puramashi*, and on default the mortgagee could at once sue for sale of the property for both principal and interest, *held* limitation ran from the date of first default. (*Rafique and Lindsay, JJ.*) THE COLLECTOR OF JAUNPUR *v.* JAMNA PRASAD.

20 A. L J. 140 : L. R. 3 A. 134 : 4 U. P. L. R. (A) 50 : 1922 All. 37.

———Art. 132—*Starting point—Mortgage — Deprivation of mortgaged property on two occasions of different parts—Suit for money—Limitation.*

A usufructuary mortgage comprised of eleven villages. The mortgagee was deprived of the security of nine villages by a sale under a prior mortgage and was dispossessed. Subsequently he was dispossessed of the two villages also. He brought a suit for refund of the mortgage money. *Held* the period of limitation was twelve years from the date of the later dispossession. (*Mears, C. J. and Banerjee, J.*) MUHAMMAD HANIF *v.* ISRI PRASAD. 64 I. C. 769 : 19 A. L. J. 827.

——Art. 132—*Starting point—Redemption period fixed—Option to sue on default of payment of interest—Limitation.*

Where a mortgage deed, fixes a time for redemption, and provides for payment of the whole if any default in payment of interest

LIMITATION ACT (IX OF 1908), Art. 132—Starting point of limitation.

occurs, the mortgagee is not bound to sue on such default and limitation begins from the expiry of the period fixed for redemption. (*Gokul Prasad and Stuart, JJ.*) MATA TAHAL *v.* BHAGWAN SINGH. **63 I. C. 477 : 19 A. L. J. 406**

——Art. 132—*Starting point—Redemption—Period fixed—Mortgagee to sue on default—Default—Suit.*

Where a mortgage fixes a period for its redemption, and provides that the mortgagee may bring a suit on default of payment of interest, and a default occurs, a suit by the mortgagee to redeem it is governed by art. 132 of the Act and time begins to run from the date of the default. (*Tudball and Sulaiman, JJ.*) PANCHAM *v.* ANSAR HUSAIN. **63 I. C. 441 : 43 All. 596 : 19 A. L. J. 592.**

——Art. 132—*Starting point of limitation—Mortgage payable on demand.*

When a mortgage is payable on demand time begins to run from the date of its execution, otherwise it will be barred by time. This rule applies equally to a transferee of a mortgage right. (*Stuart and Ryves, JJ.*) RANI BARKATUNNISSA *v.* MAHBOOB ALI MIAN. **42 All. 70 : 17 A. L. J. 1068 : 52 I. C. 684 : 1 U. P. L. R. (H C.) 187.**

——Art. 132—*Starting point of limitation—Adverse possession against mortgagor not adverse to mortgagee—Suit for sale.*

A suit for sale on the basis of a mortgage against a person who came into possession of the mortgaged property adversely to the mortgagor subsequent to the date of the mortgage is not barred because it is brought beyond 12 years from the date of the dispossession of the mortgagor, if it is otherwise within limitation as being within 12 years from the time on which the money became due. (*Richards, C. J., Tudball, and Chamier, JJ.*) RAJ NATH *v.* NARAIN DAS. **36 All. 567 : 24 I C. 997 : 12 A. L. J. 982.**

——Art. 132—*Starting point of limitation—Mortgagee undertaking to pay prior and subsequent mortgages together—Cause of action.*

Where, in spite of a condition in a subsequent mortgage that the mortgagor would pay the amount due under that mortgage along with the earlier one, the earlier mortgage only was redeemed the cause of action was held to have accrued on the date the first mortgage was redeemed. (*Stanley, C. J. and Griffin, J.*) MAHABIR PRASAD *v.* DURBIJAI RAI. **9 I. C. 482 : 8 A. L. J. 233**

——Arts. 132 and 144 — *Starting point of limitation—Adverse possession against mortgagee whether adverse to the mortgagor.*

Where a person has mortgaged his property with possession and the mortgagee while in possession is ousted by a trespasser, the trespass cannot be adverse to the mortgagor having a right to redeem only at the end of the mortgage period. C. paid B. the amount due on an usufructuary mortgage executed by A with his consent and A, receiving something more acknowledged the receipt as a sale though unregistered. In a suit brought by A against C 30 years from the date of payment by C to B, for redemption *Held*, the sale-deed not being registered cannot be received in evidence of ownership, that it is evidence of payment of money, that C had a lien for the money paid to B and the sum paid to A not as a mortgagee but as alienor which he might have enforced for 12 years from the date of payment, that after 12 years C was a trespasser and therefore the suit by A against C is barred. (*Chandavakar and Hayward, JJ.*) SAMBU *v.* NAMA. **35 Bom. 438 : 12 I. C. 362 : 13 Bom. L. R. 867.**

——Art. 132—*Starting point of limitation—Postponement—Property subject to prior usufructuary mortgage—Covenent to redeem.*

Where in executing a simple mortgage of certain properties the mortgagor covenants to redeem certain prior usufructuary mortgages on the same properties in order that the lands might be ample security for the simple mortgage, the cause of action for a suit on the simple mortgage is not to be prolonged to the date of redemption by the mortgagors of the prior usufructuary mortgages. (*Sadasiva Aiyar and Spencer, JJ.*) JAGANA SANYASIAH *v.* M. P. ATCHANNA NAIDU. **42 M. L. J. 339 : 70 I. C. 759 : 15 L. W. 289.**

——Art. 132—*Starting point—Suit for recovery of money—Date fixed for redemption.*

Where a deed of further charge entitles the mortgagor to pay the mortgage money within the time fixed for redemption of a prior mortgage, limitation for the recovery of the money due on the further charge runs not from the date of the execution of the deed but from the period fixed for redemption of the prior mortgage. (*Lindsay, J. C.*) MAHADEO TEWARI *v.* SITLA BAKSH SINGH. **8 O. L. J. 660 : 1922 Oudh 102.**

——Art. 132—*Starting point of limitation—"Further charge"—Commencement of limitation—Terms postponing—Validity.*

Where a deed of further charge provided that the mortgagor or should not be at liberty to redeem prior mortgages without first redeeming the deed of further charge and that if in the meantime, the mortgagee wanted money, he should recover it whenever he wanted. *Held*, in a suit by the mortgagee, to recover the amount on the deed of further charge brought 20 years after date of execution, that the money became due from the date of execution of the deed and that the suit was time-barred under Art. 132 of the Limitation Act. (*Lindsay, J. C.*) GAJRAJ SINGH *v.* RAGHUBAR. **20 O L. J. 46 : 27 I. C. 540 : 18 O. C. 86.**

——Art. 132—*Starting point—Suit to enforce security of the prior mortgagee against the mortgagor—Limitation when starts.*

In the case of an assignment for value, it cannot be argued that, though the right to enforce the security in the hands of the creditor may be barred by limitation still an assignee may proceed to enforce it if he brings his suit within 12

LIMITATION ACT (IX OF 1908), Art. 132—Miscellaneous.

years from the date of the assignment. It may be that the right to enforce the security in his own name arises on the date of the assignment; but the limitation has already commenced to run and will not cease to operate just because the creditor has assigned the security to another person. For an action by a subsequent mortgagee to enforce the security of the prior mortgage as against the original mortgagor, limitation starts from the date when the cause of action of the prior mortgagee arises against the mortgagor for the mortgage debt and not from the date when the subsequent mortgagee pays off the prior mortgage. 39 Cal. 527 (P.C.) Fol. 63 I.C. 604 doubted. (*Coutts and Das, JJ.*) SIBANAND MIRSA *v.* BABU JUAGMOHAN LAL. 3 P. L. T. 533 : 1 P. 780 : 1922 Pat. 331 : 1922 P. 499.

Miscellaneous.

——Art. 132—*Applicability—Existing charge necessary.*

The article applies only to a suit brought to enforce an existing charge recognised at the date of suit. (*Macleod, C. J. and Pawcett, J.*) CHHOTALAL KARSANDAS *v.* VISHNU GANESH. 45 Bom. 597 : 60 I. C. 903 : 23 Bom. L. R. 84.

——Art. 132—*Suits governed by—Applicability of* S. 31 *to.*

S.31 does not apply to suits governed by art 132. (*Chamier, J.*) BHAGWATI SINGH *v.* SARUP SINGH. 15 I. C. 851.

——Art. 132—*Dekh Agri. Rel. Act*, S. 48.

The limitation prescribed for a suit or application of the kind referred to in S. 48 of the D. A. R. Act is 12 years. (*Scott, C.J. and Batchelor, J.*) DAYARAM *v.* LAXAMAN. 10 I. C. 91 0 : 13 Bom. L. R. 284

——Art. 132—" *Actual demand not necessary.*"

Actual demand is not necessary under Art 132 of Lim. Act even though money is made payable " on demand," 23 M. 245 ; 21 M. 139 Ref. (*Sadasiva Aiyar, J.*) SURAYYA *v.* BAPIRAZU. 18 M. L. T 459 : 31 I. C. 335 : (1916) 1 M. W. N. 121.

——Art. 132—*C. P. Tenancy Act*, S. 38.

Art. 132 covers a suit by a first mortgagee against a second mortgagee for dues from the mortgagor, where the second mortgagee had foreclosed the mortgage and then sold it to the Malguzar under S. 38, C. P. Ten. Act. (*Drake Brockman, J. C.*) VISHWANATH *v.* SHANKERLAL. 34 I. C. 704 : 12 N. L. R. 90.

——Arts. 132 and 135—*Foreclosure suits—Limitation prior to Act XV of* 1887—*Act IX of* 1871, *Arts* 132 *and* 135.

Foreclosure suits were unknown before the Act XV of 1877 and suits by a mortgagee for possession by foreclosure were treated either as an enforcement of a charge under Art 132 or as suits for possession of the mortgaged property under Art. 135 of Act IX of 1871. (*Kanhaiya Lal, A. J. C.*) RAJA RAM *v.* PARAG NARAIN. 20 I. C. 465 : 16 O. C. 157.

LIMITATION ACT (IX OF 1908), Art. 134—Good faith.

——Art 133—*Breach of trust by executor.*

Where an executor on behalf of a minor legatee has deposited money in Bank if the executor commits breach of trust the bank is not liable. (*Macleod, C. J, and Shah, J.*) THE BANK OF BOMBAY *v.* FAZULBHOY EBRAHIM. 24 Bom. L. R. 513 : 1923 Bom. 155.

——Art. 134.

Assignment of mortgage.
Good faith.
Involuntary transfer.
Mortgage by conditional sale.
Permanent lease.
Possession under transfer.
Scope of.
Sub-mortgage.
Transfer of absolute right.
Transfer by Trustee.
Miscellaneous.

Assignment of mortgage.

——Arts. 134 and 148—*Assignment of mortgage—Suit for redemption of mortgage.*

The plff.'s father mortgaged, in 1882 certain lands with possession. The original mortgagees remortgaged the lands to defendants in 1883. The plff. sued to redeem his mortgage in 1916, when the defts. resisted on the ground that the plff.'s claim against them was barred under Art. 134, Lim. Act. *Held*, that the suit was quite in time, for it was governed by Art. 148. (Per *Macleod, C. J.*) :- A suit to recover possession is not the same thing as a suit to redeem, the period of limitation for which it is sixty years under Art. 148, will not be defeated merely because his mortgagee transfers the mortgage to another person. (*Macleod, C. J. and Heaton, J.*) TAIRAMIYA PIRSAHEB *v.* SHIBELISHED FAKIRSAHEB. 44 Bom. 614: 57 I. C. 568: 22 Bom L. R. 802.

——Art. 134—*Assignment of mortgage—Applicability of article to—Transfer of mortgagee's right.*

The article does not apply where the right of a mortgagee and not full ownership is purchased. (*Kensington and Beadon, JJ.*) FATTEH MUHAMMAD *v.* SULTAN MUHAMMAD. 97 P. W. R. 1913: 19 I. C. 122: 137 P. L. R. 1913.

——Art. 134—*Assignment of mortgage—Applicability for article.*

Where a mortgagee transfers his rights as such Article does not apply but it applies where he purports to transfer proprietary rights. (*Stuart, A. J. C.*) MIRZAYAR ALI BEG *v.* MIR DANISH ALI. 33 I. C. 314: 2 O. L. J. 483.

Good faith.

——Art. 134—*Good faith—Purchase of mortgagee's right with knowledge.*

The omission of the words " in good faith " in the Lim. Act does not enable a person, who purchases with full knowledge that his vendor's title is merely that of mortgagee, to the benefit of Art. 134 of the said Act. (*Richards, C.J. and Banerjee, J.*) DIRGPAL SINGH *v.* KALLU. 37 All. 660: 30 I. C. 956: 13 A. L. J. 945.

LIMITATION ACT (IX OF 1908), Art. 134—Good faith.

———Art. 134—*Good faith—Transferee from mortgagee*—Bona fide *belief as to absolute ownership—Knowledge of limited character of transferor's title.*

Where a person in possession as mortgagee transfers the property as owner and the transferee also obtains possession *bona fide* believing that his transferor was absolute owner a suit for possession by the mortgagor from the transferee is governed by art. 134 of the Lim. Act. The mere fact that within 12 years of the transfer the transferee obtains knowledge of the limited character of his transferor's title does not stop limitation or give rise to a fresh starting point. (*Macleod, C. J. and Coyajee, J.*) KESHAV RAGHUNATH JOSHI *v.* GAFURKHAN DAIMKHAN.
24 Bom L. R. 319: 1922 Bom. 234.

———Art. 134—*Good faith—Notice.*

Under Art. 134 of the Act the transferee without notice and the transferee with notice are on the same footing. The element of hardship in the case of a transferee without notice is minimised by the system of Registration. (*Richardson and Huda, JJ.*) NARAIN DAS *v.* KAJI ABDUR RAHIM.
47 Cal. 866: 58 I. C. 705: 24 C. W. N. 690.

———Art. 134—*Good faith — Alienation of debutter property.*

Alienation of *debutter* property by a *shebait* though in excess of his powers falls under Art. 134 if the transferee was ignorant of the fact that the transferor had exceeded his powers. (*Chatterji, J.*) PURAN CHANDRA CHOWDHURY *v.* KINKAR MANJHI. 9 I. C. 133.

———Art. 134—*Good faith— Transferee from mortgagee—When entitled to claim — Absolute title.*

If it can be shown that the transferee from a mortgagee knew that the title of his transferor was not free from doubt and such transferee took no steps whatever to clear up that doubt he can hardly claim the benefit of Art. 134 of the Limitation Act. *Semble.* To claim the benefit of the article the transferee must show that he neither had knowledge nor reason to believe that his transferor's title in the property transferred was not a full proprietary one. (*Broadway, J.*) SRI RAM *v.* MATWALA RAM.
1923 Lah. 219.

———Art 134—*Good faith — Knowledge of limited interest.*

Knowledge of the limited nature of the transferor's title will not disentitle the transferee from taking advantage of Art. 134; but it will be an important piece of evidence in judging what interest the transferee intended to take, 2 C. L J. 546, Foll. (*Sadasiva Aiyar and Burn, JJ.*) BALUSWAMI AIYAR *v.* VENKATASWAMI NAICKEN.
40 Mad. 745: 40 I. C. 531: 32 M. L. J. 24.

———Art. 134— *Good faith— Purchaser at a court-sale.*

The purchaser need not prove that he purchased "without constructive notice of the limited title of the vendor." (*Spencer and Phillips, JJ.*) KANNUSWAMI THANJIRAYAN *v.* MUTHUSAMI PILLAI. (1917) M. W. N. 5: 38 I. C. 194.
5 L. W. 250

LIMITATION ACT (IX OF 1908), Art. 134—Good faith.

———Art. 134—*Good faith —Applicability of article.*

Art. 134 of the Act applies only when the transferee from the mortgagee obtains the transfer with the belief that the transferor had an absolute title to make the transfer. (*Wallis, Offg C.J. and Hannay, J.*) SINGARAM CHETTIAR *v.* KALYANASUNDARAM PILLAI. 1 L. W. 687: 26 I. C. 1: (1914) M. W. N 735.

———Art. 134—*Good faith— Purchase from mortgagee— Effect — Knowledge — Burden of proof.*

A person who purchases from a mortgagee with full knowledge that the latter has only a mortgagee right cannot claim the benefit of Art. 134 even though the sale may ostensibly be one of full proprietary right. A person who purchases a right which he honestly believes to be full proprietary right and which is so described in the deed of sale can claim the benefit of the title, even though by the exercise of diligence he might have discovered that his transferor was only a mortgagee. Mere constructive notice without actual knowledge is not sufficient to deprive the purchaser of the benefit of the Article. The burden of proof is on the person who asserts that a transaction was something different from what it purports to be to substantiate that assertion. If the plffs. seek to take the case out of the Article by alleging knowledge on the part of the transferees that the vendor's title was that of a mortgagee, they must prove it as a fact. (*Daniels and Lyle, A.J. Cs*) BIJAI PARTAB SINGH *v.* RAGHURAJ SINGH. 9 O. L. J. 178: 4 U. P. L. R. (J. C) 38: 25 O. C. 115: 1922 Oudh 7.

———Art. 134—*Good faith — Knowledge of limited interest.*

If, at the time of purchase the purchaser well knew that he was not acquiring an absolute interest in the property as opposed to the interest of mortgagee he cannot be protected by Art. 134, (*Lindsay, J. C.*) MAHBUB ALI *v.* MOHAMMAD HUSSAIN. 23 O. C. 125 : 57 I. C. 497 ; 7 O. L. J. 319.

———Art. 134—*Good faith—Material question.*

To determine whether art. 134 applies the question of good faith is very material. If he has not acted in good faith and has paid valuable consideration he acquires a title after the lapse of the period under Art. 134. If the transferee takes the property in good faith without notice of the trust and for consideration no occasion for applying that article arises. The transfer by a possessory mortgagee of the mortgaged property as it were his own, stands however, on a different footing. If the transferee has notice that the transferor has no higher interest than that of the mortgagee he cannot acquire a higher right than that which the transferor actually possessed within his knowledge or curtail the period of limitation provided by Art. 148. Where the transferee purchases in good faith and for a valuable consideration without notice that the transferor had no

LIMITATION ACT (IX OF 1908), Art. 134—Involuntary Transfer.

higher interest than that of a mortgagee, Art. 134 protects him. (*Kanhaiya Lal, J. C.*) MUHAMMAD ABBAS *v.* NASIBAN. 53 I. C. 168 : 6 O. L. J. 384.

Involuntary transfer.

———Arts. 134 and 144—*Involuntary transfer—Execution sale of trust property for personal debts of trustee—Limitation for recovery of trust property.*

The purchaser of trust property in execution of a personal decree against the trustee is clearly within the terms of the exception to S. 10 of the Lim. Act and consequently he is not prevented by reason of the fact that the property was to his knowledge trust property after the date of the decree, from relying on the provisions of the statute which limit the time within which suits must be brought for recovery. A suit to recover the trust property is governed by Art. 144 of the Lim. Act as the property has been acquired under an execution sale and possession retained throughout by the purchaser. (*Lord Buckmaster.*) SUBBAIYA PANDARAM *v.* MAHOMED MUSTAPHA MARACAYAR. 44 M. L. J. 588 : 46 Mad. 751 : 25 Bom. L. R. 1275 : 18 L. W. 903 : L. R. 4 P. C. 180 ; 50 I. A. 295 : 21 A. L. J. 730 : 1923 P. C. 175, (P. C.)

———Arts. 134 and 144—*Involuntary transfer—Mortgage-Adverse possession—Suit for redemption—Limitation.*

Where a person mortgaged certain properties and the mortgagee treating it as his own, mortgagee it to a third person, and that person purchases it in Court sale, in execution of his mortgage decree, and passes title to his vendee, and where a person who buys the equity of redemption from the original mortgagor, brings a suit for redemption against the vendee, the suit is governed by Art 134 or Art. 144 of the Limitation Act, and not by Art. 148. (*Tudball, J.*) GURDIAL *v.* MUNNA LAL. 61 I. C. 627 : 2 U. P. L. R. (All.) 410.

———Art. 134—*Involuntary transfer — Mortgage—Possessory—Sale of equity of redemption—Suit for—Mortgagee in possession, executing a simple mortgage—Auction purchaser under decree, sale of, rights of—Adverse possession—Tacking.*

A suit by the purchaser of the equity of redemption of a possessory mortgage, where the land has been mortgaged by the first mortgagee and passed to a vendee of the auction purchaser in a sale in execution of a decree on the later mortgage, is barred by limitation, if it is brought after 12 years after the first mortgage, as the auction-purchasers could tack on the possession of the previous holders from whom he derived title. (*Mears, C. J. and Kanhaiya Lal, J.*) RAM PIARI *v.* BUDHSAIN. 43 All. 184 : 18 A. L. J. 995 : 61 I. C. 546 : 2 U. P. L. R. (All) 332.

———Art. 134—*Involuntary transfer—Purchaser from auction purchaser—Benefit of Art. 134.*

LIMITATION ACT (IX OF 1908), Art. 134—Mortgage by Conditional Sale.

A purchaser by a private treaty from an auction purchaser of the rights of a mortgagee, is entitled to the protection of Art. 134 of the Lim. Act only if he purchased in the *bona fide* belief that he was purchasing an absolute proprietary title. 15 Bom. 583 ; 19 Bom. 140, Ref. (*Chamier, J.*) GHASI RAM *v.* KISHNA. 30 I. C. 564 : 13 A. L. J. 877.

———Art. 134—*Involuntary transfer—Court sale.*

The Article does not apply to a purchaser in court auction. (*Ayling and Srinivasa Aiyangar JJ.*) SUBBAIYA PANDARAM *v.* MOHAMED MUSTAPHA MARAKAYAR. 21 M. L. T. 62 : 40 I. C. 50 : 5 L. W. 690 : 32 M. L. J. 85.

———Arts. 134, 144 and 148—*Involuntary transfer—Alienee from transferee.*

A suit for redemption against a purchaser from the mortgagee by private sale or a purchaser by private agreement from a Court auction-purchaser whereby the entire interest is transferred is governed by Art. 134 and not by Art. 144 or 148. (*Spencer and Phillips, JJ.*) KANNUSWAMY THANJIRAYAN *v.* MUTHUSAMI PILLAI. (1917) M. W. N. 5 : 38 I. C. 194 : 5 L. W. 250.

———Art. 134—*Involuntary transfer—Execution sale—Purchase of mortgage interest.*

A purchaser at an auction sale cannot get the benefit of Art. 134 of the Lim. Act even though the purpose of sale is to transfer not merely the mortgagee's rights which the judgment debtor really possessed, but the entire proprietary rights. (*Daniels, A. J. C.*) MOHAMMAD MOHSIN *v.* MOHAMMAD ABID. 52 I. C. 159 : 22 O. C. 72.

———Art. 134—*Involuntary transfer—Redemption suit by subsequent mortgagee—Sale in execution of rent decree—Subsequent mortgagee not made party—Effect.*

Art. 134 should be construed strictly and it applies only where there has been a purchase from a person who is actually the mortgagee of the property. There must be a subsisting mortgage at the time of transfer and plea of limitation should be specifically alleged. A purchaser in execution of a mortgage decree does not become a mortgagee of the property within Art. 134 A sale of part of a mortgaged property in execution of the rent decree by the first mortgagee without joining the subsequent mortgagee to the suit is altogether void. (*Lindsay, J. C.*) CHOTI BEGAM *v.* RAM PRASAD. 39 I. C. 582: 20 O. C. 164.

Mortgage by conditional sale.

———Art. 134—*Mortgage by conditional sale—Applicability of Article to.*

Art. 134 is applicable to cases where the transferee from the mortgagee professedly takes an absolute title to and interest in the property transferred. The deed of conveyance and other evidence must prove this intention. This article is not applicable to cases of mortgage by conditional sale. (*Seshagiri Aiyar and Bakewell, JJ.*) MUTHAYA SHETTI *v.* KAUTHAPPA SHETTI. 7 L. W. 482 : 23 M.L. T. 291 : 45 I. C. 975 : (1918) M. W. N. 334 : 34 M. L. J. 431.

LIMITATION ACT (IX OF 1908), Art. 134—Mortgage by Conditional Sale.

———Art. 134—*Mortgage by conditional sale—Transfer by mortgagee—Redemption.*

Where plff. knew of the sale by his mortgagee within three years of the suit and where the mortgagee's purchaser had notice of the limited right of his vendor but the vendee from the purchaser had no such notice, *held*, that the p'ff. was entitled to redeem. Art 134 of the Lim. Act 1877, had not been materially altered by the substitution by the Act of 1908 of the words "transferred by" for the words "purchased from." I. L. W. 687 foll. (*Sadasiva Aiyar and Napier, JJ.*) THOLASINGA MUDALI *v.* NAGALINGA CHETTY.

(1916) 1 M. W. N. 28 : 32 I. C. 265 : 3 L. W. 19.

Permanent lease.

———Art. 134 —*Permanent lease —Debutter land—Alienation by* shebait—*Suit by successor —Limitation.*

A suit brought by a *shebait* of some family idols to recover possession of a *mouzah* found on the evidence to be *debutter* and dedicated to the service of the idols, but of which plff.'s predecessor had granted a permanent lease more than 12 years before suit, is not barred by Art. 134 of the Lim. Act. 36 Cal. 1003, P. C. Foll. The Privy Council are adverse from reviewing on an *ex-parte* application, a considered decision in a former case delivered after full argument. (*Lord Macnaughten*). ISWAR SHYAMA CHAND JIU *v.* RAM KANAI GHOSE

38 Cal. 526 : 38 I. A. 76 : 15 C. W. N. 417: 9 M. L. T. 448: 8 A L. J. 528 : 13 Bom. L. R. 421 : 14 C. L. J. 238 : (1911) 2 M. W. N 281 : 10 I. C. 683 : 21 M. L. J. 1145. (P C.)

———Art. 134—*Permanent lease—If a transfer.*

A suit by a *shebait* to recover *debutter* property granted by his predecessor in office on a permanent lease is governed by Art. 134 and must be brought within 12 years of the transfer. *Shebaits* are not successive life-tenants in the management of the endowment but form a continuous representation. Limitation runs against them continuously and not as against each *shebait* as and when he succeeds to the office. (*Richardson and Beachcroft, JJ.*) MONMOTHO NATH LAHA *v.* ANNODA PROSAD ROY.

44 I. C. 567 : 27 C. L. J. 201.

———Art. 134—*Permanent lease—By Shebait.*

Art. 134 of the Limitation Act of 1877 only applies to the purchase of an absolute interest and not to the grant of a permanent lease. In the Act of 1908, the word "transferred" was deliberately inserted for the word "purchased" in view of the decision on the meaning of the word 'purchased' in art 134 of Act, of 1877. The grant of a permanent lease at a considerable annual rent is a transfer for valuable consideration. 36 C. 1003 : 38 C, 526: 37 C. 885, Ref. (*Fletcher and Teunon, JJ.*) RAMESHWAR MALIA *v.* JIU THAKUR.

43 Cal. 34 : 29 I. C. 337 : 19 C. W. N. 1082.

———Art. 134—*Permanent lease—Trust property—Suit for recovery.*

LIMITATION ACT (IX OF 1908), Art. 134—Possession under Transfer.

The word "transfer" in Art. 134 of the Lim. Act is wide enough to include a lease in perpetuity, 43 Cal. 34 and 40 M. 745. Foll Under Art. 134 of the Lim, Act the period is to be reckoned from the date of the alienation. (*Shadi Lal and Le Rossignol, JJ.*) ZAFAR ALI *v.* KISHEN CHAND. 51 I. C. 795 : 99 P. R. 1919.

———Art. 134—*Permanent lease—Transfer by head of mutt—Knowledge.*

A permanent lease at a fixed rent for all time by the head of a *mutt* is not binding on the successor in the absence of legal necessity even if the rent reserved was adequate at the time of the lease. The head of a *mutt* holds the property of the *mutt* as a trustee for the *mutt* though he has large administrative powers. The sole beneficiary is the *mutt* according to the general rule, 43 C. 707, P. C. Foll. The position of the head of the *mutt* enunciated in 27 M. 435 and 33 M. 265 is changed by 43 C. 707 P. C. Case law discussed. (*Sadasiva Aivar and Burn, JJ.*) BALUSWAMI IYER *v.* VENKATASWAMI NAICKEN.

40 Mad. 745 : 40 I. C. 531 : 32 M. L. J. 24.

Possession under transfer.

———Art. 134—*Possession under transfer—Suit by trustee to recover trust property mortgaged by predecessors and foreclosed by mortgagee—Mahomedan Law.*

A suit by a succeeding trustee to recover possession of trust property, mortgaged by his predecessor and foreclosed by the mortgagee is governed by Art. 134 of the Lim. Act and is barred if brought more than 12 years from the date of the mortgage, from which time limitation began to run and not from the date when the defendant obtained possession of the property. *Per Richardson, J* A suit to which Art. 134 applies must be a suit to recover possession. The plaintiff must be out of possession and the defendant in possession. The transfers chiefly contemplated are apparently transfers for value in excess of the limited powers of the trustee or mortgagee. Where the transfer is effected by a registered instrument that date is the date of the instrument. To construe the date of the transfer as the date on which the transfer is followed by possession is to import into the Article words which are not there. Where the possession of the trustee is that of a mere manager under a duly constituted trust it is immaterial whether the transferee takes with or without notice of the trust. Under Art. 134 of the Act the transferee without notice and the transferee with notice are on the same footing. Where the transferor is a mere manager he is not the ostensible owner. Nor has the transferee anything corresponding to the English "legal estate" to set over against the prior equity of the beneficial owner : the legal ownership and the prior equity are generally speaking both in the beneficiary. The element of hardship in the case of a transferee without notice is minimised by the system of registration. (*Richardson and Huda, JJ.*) NARAIN DAS *v.* KAZI ABDUR RAHIM.

47 Cal. 866 : 58 I. C. 705 : 24 C. W. N. 690.

LIMITATION ACT (IX OF 1908), Art. 134—Possession under transfer.

———Art. 134—*Possession under transfer—Limitation—Starting point.*

By the Full Bench (*the Chief Justice and Coutts Trotter, J., dissenting*): Art. 134 of the Limitation Act is inapplicable to a transfer from a trustee or mortgagee under which possession is not taken by the transferee. *The Chief Justice and Coutts Trotter, J.* Art. 134 is applicable to a transfer under which possession is not taken by the transferee at the time of the transfer and the starting point of limitation is the date of the transfer and not the date when possession is taken by the transferee. (*Wallis, C. J., Abdur Rahim, Coutts Trotter, Seshagiri Aiyar and Srinivasa Aiyangar, JJ.*) MULLA VITTIL SETTI *v.* KUNHI PATHUMMA. 40 Mad. 1040 : 22 M. L. T. 236 : (1917) M W N. 609 : 43 I. C. 31 : 6 L. W 464: 33 M. L. J. 320 (F. B.).

Scope of.

———Arts. 134 and 148—*Scope of*

Where the mortgagee sells the property to a stranger and then repurchases it, his possession is not as representative of the purchaser, but only as a mortgagee and is liable to be redeemed within 60 years. (*Macleod, C. J, and Heaton, J.*) KALU DEOBA *v.* RUPCHAND KISHANDAS. 58 I. C. 39 : 22 Bom. L. R. 933

———Art. 134—*Scope of.*

The first portion of Art. 134 of the Limitation Act refers to a case where the transfer by the trustee is accompanied by delivery of possession to the transferee so as to render possible and necessary the institution of a suit for recovery of possession, for instance, in cases of sale, usufructuary mortgage, lease and exchange. It has no application to a case of simple mortgage. The second half of art. 134 of the Limitation Act provides only for a case where the deft.'s vendor purports to transfer full ownership when in fact he has only a mortgage right to transfer; it does not refer to the case of a purchaser from a mortgagee of the interest of the mortgagee as mortgagee. 21 Mad 151 foll. Art. 134 of the Lim Act does not apply to sales in execution of decrees. 25 M. 99 foll. (*Mookerjee and Cuming, JJ.*) CHARU CHANDRA PRAMANICK *v.* NAHUSH CHANDRA KUNDOO. 36 C. L. J. 35 : 50 Cal. 49 : 1923 C. 1.

———Art. 134—*Scope of*—Wakf *property—Invalid mortgage—Right of mortgagee.*

A person in possession of trust property under an invalid mortgage-deed cannot acquire a valid mortgagee's right by prescription as against the trust. 24 M. 831, S. C. 15 L. W. 78 (P. C.) (*Phillips and Devadoss, JJ.*) JAGGA ROW BAHADUR GARU *v.* GONHAR BIBI. 17 L. W. 521: (1923) M. W. N. 847 : 1923 Mad. 545.

———Art. 134—*Scope of.*

The transferee from a trustee or mortgagee can take advantage of Art. 134 so long as the legal title and possession has been transferred to him. (*Ayling and Srinivasa Aiyangar, JJ.*) SUBBAIYA PANDARAM *v.* MOHAMED MUSTAPHA MARACAYAR. 21 M. L. T. 69 : 5 L. W. 690 : 40 I. C. 50 : 32 M. L. J. 86.

LIMITATION ACT (IX OF 1908), Art. 134—Transfer of absolute right.

———Art. 134—*Scope of—Transfers from mortgagees and trustees—Difference—Notice.*

A transfer by a mortgagee does not stand on the same footing as a transfer by a trustee. Where there is valuable consideration, the question of good faith is practically immaterial in the latter case on account of S. 64 of the Trusts Act. But where the transferee from a mortgagee purchases in similar circumstances, without having any notice that the transferor had any higher interest than that of mortgagee, he is protected by Art, 134 from a claim by a mortgagor. (*Kanhaiya Lal, J. C.*) GOMTI MISRA *v.* DEOTA DIN SINGH. 26 O. C. 197 : 1924 Oudh 44.

———Art. 134—*Scope of—Purchaser from mortgagee's vendee protected.*

Article 134 protects a purchaser of the right of the mortgagee's ostensible vendee from a claim by the mortgagor unless the claim is brought within 12 years from the date of the transfer. (*Kanhaiya Lal, J. C.*) SYED MOHAMMAD ABBAS *v.* SYED SHAHAMAT HUSSAIN. 26 O. C. 64 : 9 O. & A. L. R. 1 : 1923 Oudh 246.

———Art. 134—*Scope of—Redemption against donees from mortgagees—If comes under.*

Art. 134 does not apply to a suit for redemption against donees from mortgagees as it applies only to persons who are transferees for valuable consideration. (*Mc Coll, A. J. C.*) NGA PAW *v.* GNA LU GALE. 13 I. C. 375 : 4 Bur. L. T. 265.

Sub-mortgage.

———Art. 134—*Sub-mortgage — Mortgage by mortgagee as absolute owner—Rights of mortgagor—Redemption.*

Where a mortgagee of immoveable property represents himself to be the absolute owner thereof and mortgaged the property the case comes within Art. 134 of the Limitation Act. If the mortgagor wants to redeem after the expiry of 12 years then he will have to redeem both the mortgages before he can get possession. This however can be done in one suit. (*Macleod, C. J. and Coyajee, J.*) THE TALUKDHARI SETTLEMENT OFFICER *v.* AKUJI ABHRAM MUSI. 24 Bom. L. R. 762 : 46 B. 993 : 1922 Bom. 350 :

———Art. 134—*Sub-mortgage.*

Art. 134 protects all transferees for value including mortgagees. A suit was brought to redeem a mortgage of 1854 from a mortgagee of a mortgage from a representative of the mortgagee, who claimed absolute title in himself, the suit being after 12 years from the date of the mortgage by the mortgagee, was barred by Art. 134. (*Scott, C. J. and Batchelor, J.*) BAGAS UMARJI *v.* NAHABHAI. 38 Bom. 146 : 12 I. C. 737 : 13 Bom. L. R. 1057.

Transfer of absolute right.

———Art. 134—*Transfer of absolute right—Mortgage of—Occupancy holding in Zemindari—Transfer by Zamindar—Limitation.*

In a suit for the redemption of the mortgage of an occupancy holding made by the tenant to the *Zemindar* who sold his rights to the deft. *Held*,

LIMITATION ACT (IX OF 1908), Art. 134—Transfer of absolute right.

that the suit was not one to recover possession of a holding from which the plaintiff had been unlawfully dispossessed. Limitation of 12 years from the date of transfer to the deft. applied under Art. 134. (*Tudball, J.*) ABHILAKH DHELPHORA *v.* LILADHAR DHAOPHORE.

45 I. C. 549.

———Arts. 134 and 148—*Transfer of absolute right—Mortgagee selling absolute interest in property—Redemption.*

A mortgagor's right to redeem subsists until it has been extinguished by act of parties or order of a Court. Act of parties means, act of parties to the transaction. No assertion of adverse title by a mortgagee during the currency of a mortgage can count for limitation as against the mortgagor whose right to redeem continues for a period of 60 years. Therefore if a mortgagee sells the mortgaged properties out and out to a stranger, the purchaser's possession is not adverse against the true owner, the mortgagor. A suit for redemption would lie under Art. 148. (*Piggott, J.*) PANNA LAL *v.* RAMESHAR SAHAI. 29 I. C. 403.

———Art. 134—*Transfer of absolute right—Transferee re-conveying property to mortgagee—Redemption.*

Where a mortgagee sells the property absolutely to a stranger who again reconveyed them to the mortgagee, *held*, that the mortgagee could not claim the benefit of Art. 134 but was liable to redemption. (*Macleod, C. J. and Heaton, J.*) KALU DEOBA *v.* KUPCHAND KISHANDAS.

22 Bom. L. R. 933 : 58 I. C 39 : 44 B. 848.

———Art. 134—*Transfer of absolute right—Onus.*

If the deft. in a suit for redemption merely claims that having purchased not the mortgage interest but the property absolutely from the mortgagee to be entitled to the benefit of Art. 134 of the Lim. Act, the burden of proving an absolute purchase is on him and the plff. is not required to prove that the mortgagee did not purport to transfer more than his mortgage interest. (*Wallis and Sankaran, Nair, JJ.*) VEERABADRA TEVAN *v.* VEERAPPA TEVAN. 15 I. C. 609.

Transfer by trustee.

———Arts. 134 and 144—*Transfer by trustee—Alienation by head of the* Mutt.

The head of the *Mutt* is not a trustee with regard to the endowed properties and therefore Art. 134 does not apply to an alienation by the head of a *Mutt*. The same rules apply to the endowments of Muhammadan Religious Endowments and to alienations made by *Sajjadanashin* or *Mutawalli* The head of a *Mutt* cannot create any interest in the *Mutt* property to enure beyond his life-time. A lessee however from the head of the *Mutt* has not adverse possession under Art. 144 and if the lessee's possession is consented to by the succeeding head that consent can be referable to a new tenancy created by him. (*Mr. Ameer Ali.*) VIDYA VARUTHI *v.* BALASAMI IYER. 44 Mad. 831 : (1921) M. W. N. 449 : 48 I. A. 302 : 65 I. C. 161 : 3 U. P. L. R. (P C) 62. 41 M. L J. 346 (P. C.)

LIMITATION ACT (IX OF 1908), Art. 134—Transfer by trustee.

———Art 134—*Transfer by trustee—Mortgage from Trustee—Limitation for suit for recovery of endowed property.*

A suit for possession of an endowed property against a mortgagee in possession of it from the trustees for over 12 years on the ground that the alienation was null and void is barred by limitation. (*Piggott. J.*) AMIR SHAH *v.* TULA PANDE.

29 I. C. 292 : 13 A. L. J. 612.

———Art. 134—*Transfer by trustee.*

A suit to recover property from the transferees for valuable consideration from express trustees is governed by Art. 134 of the Act. (*Batchelor. C. J. and Kemp, J.*) RAMACHARYA VENKATRAMANACHARYA *v.* SHRINIVASACHARYA VENKATRAMANACHARYA. 46 I. C. 19 : 20 Bom. L. R. 441.

———Arts. 134, 144 and 124—*Transfer by trustee—Lease by a* Surguro *of a* Makan—*Limitation for possession.*

An alienation by a *Surguro* of a *Makan* for the time being is valid only during his lifetime and his successor can recover the property alienated within 12 years of his death. In the case of a lease by such a person, time would begin to run not from the commencement of the tenancy of the person claiming to hold as tenant but from the date when the claims of the parties become openly and undoubtedly adverse. 23 M. 271, P. C Dist. 36 C 1003, P. C.; 12 C. 480, P. C.: 34 B. 329 Rel. (*Scott, C.J. and Beaman, J.*) MAHAMAD GUAS DAD SAHEB *v.* RAJBAX ROSHANBAX.

37 Bom. 224 : 19 I. C. 558 : 15 Bom. L. R. 266

———Art. 134—*Transfer by trustee—Delivery of possession—Simple mortgage.*

The first portion of Art. 134 of the Limitation Act refers to a case where the transfer by the trustee is accompanied by delivery of poesession to the transferee so as to render possible and necessary to institution of a suit for recovery of possession, for instance, in cases of sale, usufructuary mortgage, lease and exchange. It has no application to a case of simple mortgage. The second half of Art. 134 of the Limitation Act provides only for a case where the defts'. vendor purports to transfer full ownership when in fact he has only a mortgage right to transfer ; it does not refer to the case of a purchaser from a mortgagee of the interest of the mortgagee as mortgagee 21 Mad. 151 Foll. Art. 134 of the Lim. Act does not apply to sales in execution of decree 25 M. 99 foll. (*Mookerjee and Cuming, JJ.*) CHARU CHANDRA PRAMANICK *v.* NAHUSH CHANDRA KUNDOO. 50 Cal. 49 : 1923 Cal. 1.

———Art. 134—*Transfer by trustee—Suit to set aside—Limitation—Starting point.*

The Art. 134 applies to a suit to recover on behalf of the trust properties alienated by a *mutawalli* and the time runs from the date of alienation. (*Teunon and Newbould, JJ.*) MAHAMAD KASIUDDIN *v.* SABHA KANTON.

60 I. C. 689.

———Art. 134—*Transfer by trustee—Shebait—Alienation—Suit to set aside—Limitation.*

LIMITATION ACT (IX OF 1908), Art. 134—Transfer by trustee.

Each succeeding *Shebait* does not acquire a fresh start for the purpose of limitation to institute a suit to set aside a *patni* granted by a former *shebait* of a *debuttar* property 37 C. 885 Rel. (*Mookerjee and Brachcroft, JJ.*) MADHU SUDHAN MANDAL *v.* RADHIKA PROSAD DAS.
17 C. W. N. 873 : 16 I. C. 927: 16 C. L. J. 349.

———Arts. 134 and 144—*Transfer by trustee—Endowed property—Alienation by mahant--Suit to set aside—Limitation.*

S 10 of the Limitation Act controls Art. 134 of the Act and gives the clue to its meaning. Art. 134 refers to cases of "specific trust". Neither under the Hindu nor under the Mahomedan Law is any property conveyed to a *shebait* or *mutwalli* in the case of a dedication, nor is any property vested in him. Consequently a suit to recover property dedicated to a religious endowment but improperly alienated by him is governed by art. 144 and not by art 134 of the Lim. Act. 44 M. 831 P. C. Rel. 51 I. C. 795 dist. (*Scott-Smith, J.*) DIWAN SINGH *v.* SHAM DAS. 1922 Lah. 271.

———Art. 134—*Transfer by trustee—Sale by mahant of property given to him in trust.*

Where the property was not conveyed to the *Mahant* for his personal use but sold to him for the benefit of the *mutt* the transaction is a conveyance in trust within the meaning of the Art. 134. The head of a mutt is a trustee and not a life tenant or a corporation sole. Where the Mahant of a mutt sued to recover possession of certain lands sold by his predecessor more than twelve years after the sale the suit was barred under Art. 134. (*Sadasiva Aiyar and Spencer, JJ.*) DEIVA SIKAMANI DESIKAR *v.* VALLIAMMAI ACHI. 52 I. C. 514 : 37 M. L. J. 231.

———Arts. 134,144 and 12—*Transfer by trustee—Right of successor of trustee.*

Per *Sadasiva Aiyar, J.*—A Matadhipathi can set aside an alienation made by his predecessor within 12 years of his becoming Matadhipathi. (*Miller and Sadasiva Iyer, JJ.*) MUTHU SAMBAR *v.* SREE SREE METHAMITHI SWAMIAR AVERGAL
38 Mad. 356 : 13 M. L. T. 498 :
(1913) M. W. N. 581 : 19 I. C. 694 :
25 M. L. J. 393.

———Art. 134—*Transfer by trustee--Alienation by mahant—Suit to set aside—Limitation.*

The endowments of a Hindu Mutt are not "conveyed in trust" to the head, save as to any specific property proved to have vested in him for a specific and definite object. Art. 134 does not therefore apply where the head of a Math has alienated the properties not proved to be subject to a specific trust, (*Das and Bucknill, JJ.*) MAHANT RAMRUP *v.* LAL CHAND MARWARI.
1 Pat. 475: 3 Pat.L T. 352 : 1922 P. 248.

Miscellaneous.

———Art. 134—*Applicability*—Wakf.

Art. 134 of the Limitation Act does not apply to a *wakf*. (*Lord Sumner.*) HAJI ABDUR RAHIM *v.* NARAYAN DAS AURORA.
50 Cal. 329 : 17 L. W. 509 : 25 Bom. L. R. 670 :
38 C. L. J. 242 : (1923) M W N. 441 :
28 C. W. N. 121 : 32 M. L. T. 158 :
50 I. A. 84 :
44 M. L. J. 624 : 1923 P. C. 44 (2) : (P. C.)

LIMITATION ACT (IX OF 1908), Art. 134—Miscellaneous.

———Arts. 134 and 144—*Mortgagor of share redeeming whole—If transferee from mortgagee.*

Art. 134 does not apply to a person, who being interested in part of the mortgage redeems the whole, he being only a charge holder and not a mortgagee. 14 All. 1, Dist *Held* in the circumstances of the case that the suit was barred under Art. 144 whether members were joint or separate (*Tudball and Piggott, JJ.*) JAI KISHEN JOSHI *v.* BUDHANAND JOSHI. 38 All. 138 :
34 I. C. 244 : 14 A. L. J. 41.

———Art. 134—*Foreclosure decree—Property purchased by defendant—Puisne mortgagee suing—Limitation.*

A person who had purchased a property in a foreclosure decree obtained by a prior conditional mortgage without the puisne mortgagee being impleaded as a party in that suit cannot in a suit by the latter against him plead Art. 134 as he is not a transferee from a mortgagee. His position is that of a transferee of property which was sold as free of incumbrances. (*Rafique and Piggott, JJ.*) MUNNA LAL *v.* MUNNA LAL.
36 All. 327 : 23 I.C. 559 : 12 A. L. J. 457.

———Art. 134—*Date of transfer—Power of Dt. Judge to appoint Mutawalli.*

Under the Art 134 date of transfer is the date of the transfer of the property or title. If the transfer is by registered instrument, that date is the date of the instrument. A District Judge as a *Kazi*, has the discretion to appoint a *mutawalli*, If after due publication of the call for nomination to the office, he appoints a *mutawalli*, he acts in his jurisdiction even if the person be a stranger to the family of the founder and not in the line of succession designated by him. (*Richardson and Huda, JJ.*) NARAIN DAS *v.* ABDUR RAHIM. 24 C. W. N. 690 :
58 I. C 705 : 47 Cal. 866.

———Arts. 134 and 144—*Suit by trustee against co-trustee for joint possession.*

A suit for joint possession of trust property by a trustee against a co-trustee, and an alienee of the trust property from the latter is governed by art, 134 of the Lim. Act. (*Shadi Lal and Martineau, JJ.*) SHADI *v.* ABDUR RAHMAN.
51 I. C. 755.

———Arts. 134 and 141— *Conflict between which to prevail.*

In case of a conflict between Art. 134 and Art. 141, only Art 134 will be applied. Per *Spencer, J.*—A reversioner's disability to sue for possession while a Hindu female is the owner in possession, is not the same as the disability of a minor, an idiot or an insane person. Per *Ramesam, J.*:—Art. 141 covers only those cases in which the cause of action is simply the death of the female and the only obstacle to the reversioner seeking possession is an act or omission of the female resulting in the loss of possession to a stranger. It does not cover cases where the cause of action includes something more than this, *e.g.*, a mortgage

LIMITATION ACT (IX OF 1908), Art. 134—Miscellaneous.

by the last male owner. (*Spencer and Ramesam, JJ.*) NARAYANASAMY NAYAKER *v.* PERIYASAMY ODAYAR.
44 Mad. 951 : 14 L. W. 116 : (1921) M. W. N. 465 : 68 I. C. 734 : 41 M. L. J. 163

——Art. 134—*Transfer from mortgagee without notice.*

Though under Art. 134 the possession derived under a mortgage could be perfected by twelve years' adverse possession yet if a new right accrued before the 12 years were over to the ownership of the properties, the adverse possession is broken up. (*Seshagiri Iyer and Kumaraswami Sastri, JJ.*) VELAYUTHAM PILLAI *v.* SUBBARAYA PILLAI.
39 Mad. 879 : 18 M. L. T. 424 : (1915) M. W. N. 873 : 31 I. C. 398 : 2 L. W. 989.

——Art. 134—*Suit for declaration.*

A suit for declaration that a sale by a trustee is invalid is governed by Art. 120 as it is not a suit for recovery of possession. (*Tyabji and Spencer, JJ.*) CHETTIKULAM PRASANNA VENKATACHALA *v.* COLLECTOR OF TRICHINOPOLY.
(1914) M. W. N. 581 : 24 I C. 369 : 26 M. L. J. 537.

——Art. 135—*Instalment mortgage bond—Suit more than 12 years after default.*

Where a mortgage bond provided for payment by instalments in default of which the mortgagee was to take possession of the property and the mortgagee sued for possession more than 12 years after the date of the first default, *held*, that the suit was barred under Art. 135 of the Act. (*Abdul Raoof and Harrison, JJ.*) ISHAR DAS *v.* SHAHAB-UD DIN.
63 I. C. 579.

——Arts. 135 and 142—*Suit by mortgagee—Limitation.*

A suit by a mortgagee against the mortgagor or his successors in title is governed by Art. 135. (*Martineau, J.*) CHAMAN MAL *v.* MALA RAM.
50 I. C. 762 : 117 P. R. 1919

——Art. 135—*Puisne Mortgagee—Suit for possession—Cause of action.*

The time for a puisne mortgagee to sue for possession begins to run from the date of redeeming the prior mortgagee who was in possession of the property. He need not file a suit within 12 years from the date of his mortgage. (*Shadi Lal, J.*) BUDHA *v.* MULRAJ.
48 I. C. 916 : 8 P. W. R. 1919

——Arts 135 and 144—*Mortgage by conditional sale—Suit for possession as full owner after expiry of year of grace—Limitation.*

When under the terms of a mortgage deed, the mortgagee is entitled to possession of the mortgaged property without first taking foreclosure proceedings the right to the possession of the mortgagor determines on the date of default but when under the terms of the mortgage deed the mortgagee as such has no right to possession, the right to the possession of the mortgagor does not determine and his possession does not become adverse until foreclosure proceedings have been

LIMITATION ACT (IX OF 1908), Art. 135.

perfected and the year of grace has expired. (*Scott-Smith and Le Rossignol, JJ.*) RATAN DAS *v.* GURAN.
52 P. W. R. 1918 : 25 P. L. R. 1918 : 45 I. C. 563 : 79 P. R. 1918.

——Arts, 135 and 144—*Foreclosure suit—Limitation—Rights of assignee of mortgage.*

If a mortgagee under a mortgage by conditional sale does not sue for foreclosure within 12 years from the date fixed for payment he is barred by limitation from suing for possession as owner. (35 P. R. 1899: 94 P. R. 1912 R.) An assignee of a mortgage can sue the mortgagor for possession though the assignor had erroneously thought that his right of foreclosure is taken away by the Punjab Alienation of Land Act, if it was an incident of the mortgage-transaction. (*Shadi Lal, J.*) BELIRAM *v.* THAKAR.
39 I. C. 242 : 59 P. W. R. 1917.

——Arts. 135 and 144—*Mortgage by conditional sale—Mortgagee not obtaining possession—Foreclosure after 12 years—Suit for possession barred—Regulation XVII of 1806.*

In a mortgage by conditional sale, the mortgagee was entitled to immediate possession but never took possession. He took foreclosure proceedings under Regulation XVII of 1806 after expiry of 12 years from the date fixed in the deed of mortgage for payment of mortgage money. After the expiry of 12 years, he took foreclosure proceedings and then sued for possession as owner. *Held*, the suit was barred by limitation either under Art. 135 or Art. 144 of the Limitation Act. 35 P. R. 1899 foll: 90 P. R. 1895 : 57 P. R. 1908 Dist. (*Shah Din and Scott-Smith, JJ.*) NAND LAL *v.* GOOJAR.
94 P. R. 1912 : 237 P. L. R. 1912 . 15 I. C. 275 : 178 P. W. R. 1912

——Art. 135—*Scope — Suit between mortgagees.*

Art. 135 has no application to a case when the real dispute is as to whether the puisne mortgagee is entitled to redeem and to take possession of the mortgaged property from the prior mortgagee and the mortgagor is merely a *pro forma* deft. as he was not in actual possession of the property. (*Shah Din, J.*) GANDHU LAL *v.* UDHO.
143 P. L. R. 1911 : 10 I. C. 20 : 224 P. W. R. 1911.

——Art. 135—*Default—Suit for possession—Limitation—Option to mortgagee—Effect of.*

A mortgage deed provided that interest would be paid every six months and on default of such payment, the mortgagee was given the option of either to allow the interest to run on treating the unpaid interest as principal or to take a bond from the mortgagor for the amount of interest accrued up to date or to take possession of the mortgaged property or to sue the sale of the mortgaged property in lieu of principal and interest then due or to wait till the expiry of the period fixed for the payment of the entire money. —*Held*, that the mortgagee's right to possession of the property could not be deemed to have determined within Art. 135 of the Lim. Act so long as he had not given intimation of any intention

LIMITATION ACT (IX OF 1908), Art. 135.

to adopt that remedy given by the mortgage. (*Daniels and Lyle, A. J. Cs.*) BASANT SINGH *v.* RAMPAL SINGH. 60 I. J. 248 : 51 I. C. 985 : 1 U. P. L R. (J. C.) 45.

———Art. 135—*Right to possession—Determination of.*

The mortgagor's right to possession determines even when a mortgagee is in possession by his executing a usufructuary mortgage. (*Kanhaiyalal, A. J. C.*) MUSAMMAT HUSAINI *v.* RAMCHARAN. 20. L. J. 488 : 32 I. C. 341 : 18 O. C. 280.

———Arts. 136 and 144—*Alienee from—Tenant-in-common—Suit for possession by.*

An heir of a tenant-in-common sued for mesne profits and got a decree and then sold the property to a stranger who filed a suit for possession, beyond 12 years of the date of the death of the tenant-in-common, the other tenant being in possession since prior to the death, *held*, that Art. 136 would not apply though Art. 144 might apply. (*Macleod, C. J. and Shah, J.*) SHIVALINGAPPA *v.* SATYAVA. 64 I. C. 552 : 23 Bom. L. R. 967.

———Art. 136—"*Out of possession*"—*Meaning of.*

The expression "out of possession" in Art 136 of the Lim. Act implies that some person is in possession adversely to the vendor, some person holding in a character incompatible with the idea that the ownership remained vested in the vendor. The possession in Art. 136 of the Lim. Act applies to such possession as a member of the joint family is presumed to have, in the family property, until excluded therefrom. 9 I. C. 495 : 19 C. 253 ; 20 C. 93 Rel. (*Mookerjee and Beachcroft, JJ.*) CHINTAMANI PRAMANIK *v* HRIDAY NATH KAMALA. 51 I. C. 123 : 29 C. L. J. 241.

———Art. 136—*Transfers by successive vendors out of possession—'Vendor'—Meaning.*

Where there have been transfers by successive vendors, all out of possession, the term 'vendor' includes the first in the series of vendors entitled to sue for possession. (*Mookerjee and Beachcroft, JJ.*) ABBAS DHALI *v.* MASABDI KARIKAR 24 I. C. 216.

———Arts 136 and 137—*Suit by representative in interest of auction purchaser—Possession of Judgment-debtor at date of sale—Burden of proof.*

A suit for recovery of possession by a representative in interest of an auction purchaser must be commenced within 12 years, from the date when the judgment debtor is first entitled to possession, if he is out of possession, and 12 years from the date when the sale becomes absolute if he is in possession, and the burden of proving such possession is on the plaintiff. (*Mookerjee and Beachcroft, JJ.*) NASIRUDDIN *v.* SAYADUR RAHMAN. 23 I. C. 811 : 19 C. L. J. 209.

———Arts. 136 and 144—*Suit for partition—Exclusion for more than 12 years Onus.*

In a joint Hindu family consisting of father and sons, one of the sons agreed in consideration of the assignment of certain immoveable properties by the father for maintenance without powers of alienation, not to demand partition of the family properties but the son enjoyed the properties assigned to him only for one year and thereafter was driven out of the family by the father and was refused maintenance. In a suit for partition that filed more than 12 years afterwards, *Held*, that there was exclusion of the son from the joint family properties, and whether Art. 136 or 144 applied, the plff. must show that he brought the suit within 12 years from date of exclusion. (*Sadasiva Aiyar and Hannay, JJ.*) SINNASAMI GOUNDAN *v.* SUBBANNA GOUNDAN. 26 I. C. 904 : (1915) M. W. N. 29.

LIMITATION ACT (IX OF 1908), Art. 137.

———Art. 136—*Purchaser from member of Hindu family.*

A suit by a purchaser of property from a member of joint Hindu family, who is alleged to have been out of possession at the time of sale comes under Art, 136 and not under Art. 127 11 C. 680 ; 12 M. 292 Ref. (*Abdur Rahim and Ayling, JJ.*) BHOGAVALLI VENKAYYA *v.* BHOGAVALLI RAMA KRISHNAMMA. 9 M L. T. 397 : 9 I. C. 495 : (1911) 2 M. W. N. 175.

———Arts 136, 144 and 148—*Decree—Interpretation.*

A decree directing that *A* should obtain possession on payment of a certain sum to *B* does not create any mortgage or charge and the suit for possession by *C.* (a purchaser of *A*'s interest) is governed by Art. 136 and not by Art, 144 or 148. (*Stuart. A. J. C.*) RAHUNATA PRASAD *v.* MUSAMMAT KETHI. 32 I. C. 353 : 2 O. L. J. 500.

———Art. 137—*Auction purchaser—Symbolical possession—Time when begins to run.*

When an auction purchaser at a Court sale has obtained judicial possession, he or his assigns may sue the judgment-debtor for actual possession within 12 years from the date of obtaining such possession When adverse possession is pleaded in a suit for possession during the limitation period, the question of limitation becomes a question of title and the plff. must first furnish proof of subsisting title at the date of the commencement of his suit before the deft. is required to establish his adverse possession. (*Rafique, J.*) MUSSAMMAT SUNDAR *v.* SARASWATI. 17 I. C. 518.

———Arts. 137 and 144—*Suit for possession against remainderman—Partition—Life estate given to father with remainder to his son—Rights of son.*

In a partition among the members of a joint Hindu family consisting of a father and three sons, the land in dispute was allotted to the father and mother for their life and after their death he land was to be divided among the sons equally. In 1903, the father lost possession of the land under a decree passed against him. In 1908 the father, and after him, the mother died In a suit brought in 1919 by a purchaser of the share of one of the sons in the land, *held*, that the suit was not barred, inasmuch as limitation began to run against the son who was a remainderman

LIMITATION ACT (IX OF 1908), Art. 137.

only after 1908. (*Macleod, C.J. nad Crump, J.*) RAGHUNATH VITHAL BHAT *v.* MADHAV.
25 Bom. L. R. 456 : 1923 Bom. 415.

——Arts. 137. 140 and 144—*Rent decree—Execution Sale—Suit by purchaser—Limitation.*

Plaintiffs were owners of a *miras* tenure and under them was a *darmiras* tenure held by the defendants. This under tenure was sold in execution of a rent decree and purchased by a stranger who never obtained possession. In execution of a rent decree obtained against the stran ger the under-tenure was again sold more than twelve years after and purchased by the plaintiffs who sued for possession. *Held* Per *Walmsley, J.* (*Woodroffe and Suhrawardy JJ, contra.*) Art 137 applied to the case and the suit was barred. Per *Suhrawardy J.* Art. 140 or Art. 144 applied to the case, Per *Woodroffe, J.* None of the articles of the Limitation Act applied to the case but the suit was barred under S. 167 of the Bengal Tenancy Act (*Woodroffe, Walmsley and Suhrawardy. JJ*)) JNANENDRA MOHAN DUTT *v.* UMESH CHANDRA GUPTA.
26 C. W. N. 985 : 1922 Cal. 544.

——Art. 137—*Applicability of—Judgment debtor in possession at the date of sale.*

Art. 137 is not applicable to a suit for possession after confirmation of Court sale where judg ment-debtor is in possession at the date of sale. (*Chatterjee and Panton, JJ*) BROJENDRA KUMAR ROY CHAUDHARY *v.* ASUTOSH ROY.
26 C. W. N. 364.

——Art. 137—*Symbolical possession—Delivery of starting point.*

Delivery of symbolical possession is operative against the judgment-debtor but is wholly in effectual to effect the title or interrupt the actual possession of others. 5 C 684 ; 16 C 536 Ref. (*Mookerjee and Richardson, JJ.*) RAM SUNINUN PROSAD *v.* GINDA LAL RAI.
29 I. C. 841 : 22 C. L. J. 574.

——Arts 137 and 138, 142—*Vacant site—Suit for possession—Limitation.*

Where a property was a bare site, plff.'s symbolical possession is equivalent to actual possession and therefore the suit was *prima facie* governed by Art. 142 of the Lim. Act. and not Art. 137 or 138. Defendants could defeat the claim only by shewing adverse possession for more than twelve years (*Le Rossignol. J.*) KAMAN *v.* UMRA.
106 P. L. R. 1918 : 76 P. R. 1918 : 47 I. C. 411.
156 P. W. R. 1918

——Art 137—*Mortgage decree—Suit by purchaser in Court auction—Art. does not apply*

Art. 137 does not apply to a purchaser at a sale held in execution of mortgage decrees. (*Ayling and Venkatasubba Rao. JJ.*) TANJORE PALACE ESTATE BY ITS RECEIVER SUNDARAM IYER *v.* THIYAGARAJA PILLAI. 1923 Mad. 160 (2).

——Art. 137, 138 and 142—*Scope of—Trespass and adverse possession.*

LIMITATION ACT (IX OF 1908), Art. 138.

Art. 138 of the Lim, Act. applies only to the case of a judgment-debtor or those claiming through him who remain in his possession after purchase at an execution sale and not to a case where the deft, bases his claim to title and possession as a trespasser relying upon adverse possession. Art. 137 has no application to the facts of a case where possession remained with predecessors in-title of the plff., up to the time that symbolical possession was given to the plff. in such a case, Art. 142 only applies. (*Atkinson and Jwala Prasad, JJ.*) BRIKHAD BHUNJAN NARAIN TEWARI *v.* UPENDRANATH ROY.
51 I. C. 801 : 4 Pat. L. J. 463 : 1919 Pat. 298.

——Arts. 137, 136 and 144—*Symbolical possession given—Suit for actual possession.*

A suit for actual possession of property obtained in execution of a decree when symbolical possession was given, falls under Art. 144 and not Arts 136 and 137. They do not apply to a case where Court has already given possession, (*Mullick, J.*) BISVAMBHAR LAL *v.* JHULUM RAM TEWARI. 35 I. C. 87.

——Art. 138—*Application of.*

Art. 138 applies only to suits between the auction-purchaser and the judgment-debtor or his representative-in-interest, 33. A. 224 Ref, (*Sir Henry Richards and Banerji, JJ.*) BHAGWANT SINGH *v.* BHOLA SINGH. 35 All. 432 : 18 I. C. 465 : 11 A. L. J. 642.

——Arts. 138, 142 and 144—*Possession—Suit by auction-purchaser—Limitation.*

A sale was confirmed by the Court on 30th May 1898 and formal delivery of possession given on 15th May 1899, and the suit for possession by the purchaser was brought on 1st June 1910; *Held*, that the suit was brought under Art. 138. Where however plff. alleged that he obtained possession on 15th May, 1899 and lost it in July following Art. 142 applies, and Art. 144 is not applicable in either case. (*Piggot, J.*) BHOLE SINGH *v.* BHAGWANT SINGH.
15 I. C. 10 : 10 A. L. J. 13.

——Art. 138—*C. P. Code Or. 21, Rr. 35, 36, 95 and 96—Juagment-debtor in possession—Formal possession with purchaser—Effect of.*

Formal possession by the Court-auction purchaser at a Court sale cannot prevent limitation running in favour of a judgment-debtor where the latter is in actual possession and the property is not in the possession of a tenant or any other person, entitled to occupy it. Symbolical possession is not equivalent to real possession and though the former kind is specified and recognised in Or. 21, Rr. 35 and 95, it is not prescribed either by O 21, R 36 or 96, 25 B. 275 ; 25 B. 358 overruled. (*Scott, C. J. and Russell, J.*) MAHADEO *v.* JANUNAMJI.
36 Bom. 373 : 14 I. C. 447 : 14 Bom L. R. 115.

——Art. 138—*C. P. C., S 47—Scope and effect of.*

Art. 138 of the Lim. Act, should be read with S. 47, C. P. C. The one does not override the

LIMITATION ACT (IX OF 1908), Art. 138.

other. When the auction-purchaser is also a party to the suit, in which the decree was passed, his claim for delivery of possession of the property purchased by him should be determined by the court in the execution department. But when he is a third party, he can bring a suit for possession and such suit will be governed by Art. 138 of the Limitation Act. Where the execution is barred at the date of suit, the suit cannot be treated as a proceeding in execution. (*Scott, C.J. and Rao, J.*) SADASHIV MAHADU *v.* NARAYAN VITHAL. 35 Bom. 452 : 11 I. C. 987 : 13 Bom. L. R. 661.

——Arts. 138 and 142—*Deft. not deriving title from judgment-debtor—Article does not apply.*

A suit by decree-holder auction-purchaser against a person who has not acquired a title from the judgment-debtor is not governed by Art. 138 of the Lim. Act. (*Richardson and Suhrawardy, JJ.*) JANKI NATH SAHA *v.* BAIKUNTHA NATH GHATTACK. 36 C. L. J. 140 : 27 C. W. N. 259 : 1922 Cal. 176.

——Art. 138—*Scope of—Applicable only to cases where purchaser has not obtained possession.*

Art. 138 is applicable only to cases where purchaser has not obtained possession. (*Chatterjee and Panton, JJ.*) BROJENDRA KUMAR ROY CHOUDHURY *v.* ASUTOSH ROY. 26 C. W. N. 364.

——Art. 138—*Possession of third persons.*

Where the purchaser at an auction sale brought a suit for possession within twelve years from the date of sale against the deft. who was not the judgment-debtor but was in possession of the land from before the date of sale and for more than 12 years under an independent title *held* that Art. 138 did not save plff.'s claim from limitation. (*Chetterjee and Richardson, JJ.*) ABDUL MAJID *v.* BAKSHA ALI. 40 I. C. 662.

——Art. 138—*Applicability.*

The article applies to a suit by the auction-purchaser though the sale took place before the passing of the Act provided the plff. had time enough under that article after the passing of the Act to bring his suit. (*Fletcher and Richardson, JJ.*) BADIAL ALAM *v.* ABDUL HAKIM. 38 I. C. 609.

——Arts. 138 and 180—*Suit for possession by decree-holder purchaser—Limitation.*

The period of limitation prescribed by Art. 180 of the Lim Act has reference to applications made under the C. P. Code (1908). The period for bringing a suit for possession by a decree-holder purchaser is that prescribed by Art. 138 of the Lim. Act. (*Miller, C. J. and Jwala Prasad, J.*) SRIDHAR SIDRAR *v.* JAGESHWAR SINGH MAHAPATRA. 4 P. L. J. 716 : 52 I. C. 711 : 1919 Pat. 354.

——Arts. 138 and 180—*Suit for possession by auction purchaser—Limitation.*

A suit by a purchaser in a court-auction for recovery of possession of the properties, after

LIMITATION ACT (IX OF 1908), Art. 139.

confirmation of the sale is governed by Art. 138 and not by Art. 180. (*Imam, J.*) JAGESHWAR SINGH MAHAPATRA *v.* SRIDHAR SARDAR. 47 I. C. 844.

——Art. 138—*Chota Nagpur Tenancy Act—Bengal Rent Recovery Act, S. 11—Auction-purchaser, right of—Suit for possession.*

If a purchaser under a sale held under Chota Nagpur Tenancy Act fails to obtain possession of the property under S. 11 of Bengal Rent Recovery Act, he can bring a suit in the Civil Court within 12 years of the sale under Art. 138, Sch. I, Lim. Act. (*Jwala Prasad, J.*) MOHAMMAD LATIF KHAN *v.* BAJI KIRI. 37 I. C. 955.

——Art. 139—*Expiry of lease more than 12 years before suit—Suit for possession barred.*

Where in a suit for recovery of possession, it was found that the defendants' ancestor had a lease of the property which expired more than 12 years ago and no fresh agreement was found to have been entered into, *held* that under Art. 139 not only is the suit barred by limitation but the right also is gone and therefore a declaration in favour of plaintiff's title made by a lower Court is invalid. (*Lord Shaw.*) BHAGWAN RAMANUJ *v.* RAMAKRISHNA BOSE. 26 C. W. N. 722 : 1923 (P. C.) 184.

——Art. 139—*Lease of endowed land for a term—Rent not paid for over 12 years after the lease expired—Successor of Mohant—Suit to recover possession.*

The Mohant of a Math granted a lease of land belonging to the math for a term. No rent was ever paid since the expiration of the lease. The succeeding mohant, more than 12 years afterwards sued to recover the land from the successors of the lessee. *Held* the suit was barred under Art. 139 of Sch. II of the Limitation Act of 1877. (*Lord Shaw.*) MOHANT BHAGWAN RAMANUJ *v.* RAMAKRISHNA BOSE. 26 C. W. N. 722 : 1922 (P. C.) 185.

——Art. 139—*Suit by landlord to recover possession.*

While it is true that a tenant who holds over cannot set up an adverse title to the landlord, still the landlord can recover possession only if he sues within 12 years of the expiry of the period of lease. (*Ryves and Stuart, JJ.*) DEBI PRASAD *v.* MUSSAMMAT GUJAR. 20 A. L. J. 696 : 1922 A. 423.

——Art. 139—*Tenant holding over—Non-payment of rent—Suit in ejectment more than 12 years after expiry of lease is barred.*

Deft. was a tenant of plff.'s premises for three years. After the expiration of the period he continued in possession without paying rent and without in any way recognising the plff.'s title as landlord. In a suit by plff. to eject deft, more than 12 years after the expiry of the lease, *Held*, that under art. 139 of the Lim. Act the suit was barred, 24 Bom, 504 foll. 37 A. 557 dist. (*Ryves and Stuart, JJ.*) BISHESHWAR NATH *v.* KUNDAN. 44 A. 583 : L. R. 8 A. 386 : 20 A. L. J. 593 : 1922 All. 318.

LIMITATION ACT (IX OF 1908), Art. 139.

———Arts. 139 and 144—*Lessee not paying rent after expiry of lease—Adverse possession—Mortgagor and mortgagee.*

Where a usufructuary mortgagor gets into possession of the property as a lessee under the mortgagee and continues after the expiration of the tenancy in possession without paying any rent for over 12 years, a suit by the mortgagee for possession will be barred under Art. 139 of the Limitation Act. (*Piggott, J.*) TULSHI RAM *v.* SUNDAR LAL. 18 I. C. 899.

———Arts. 139 and 144—*Landlord and tenant—Denial of title—Non-payment of rent—Limitation.*

In certain settlement proceedings in 1894, the defts alleged to be the tenants of plff., denied plff.'s title as landlord and their liability to pay rent. The settlement officer concluded that rent was not being paid and in the record-of-rights the deft. was recorded as holder of a *Jote* without rent. Plff. sued for possession in 1910 *held* that the suit was barred. (*Fletcher and Richardson, JJ.*) GOUR CHUNDRA CHAKRABURTY *v.* MAHARAJA BIRENDRA KISHORE MANIKYA BAHADUR. 36 I. C. 629.

———Art. 139—*Ejectment—Title.*

The plaintiff, with whose grandfather, the ancestors of the defendants had mortgaged a house sued for ejectment and recovery of rent. The defendants failing to establish title for more than 12 years, the suit was held to be within time. (*Shadi Lal, C. J.*) DES RAJ *v.* JAINNAL SINGH. 57 I. C. 269.

———Art. 139—*Tenancy-at-sufferance.*

A tenancy on sufferance does not fall within Art. 139 and on the expiry of a tenancy on a fixed term, time runs against the landlord unless a novation is proved and the tenancy for a fixed term was shown as succeeded, by a tenancy-at-will. (*Johnstone and Le Rossignol, JJ.*) UMAR BAKSH *v.* BALDEO SINGH. 97 P. R. 1915 : 32 I. C. 35 : 193 P. W. R. 1915.

———Art. 139—*Cause of action.*

Under Art. 139 the cause of action in cases in which the Malabar Tenants Improvement Act applies, does not arise till the value of improvements is paid to the tenant. (*Oldfield and Sadasiva Aiyar, JJ.*) THARAKKAL MARIYATHI EROMO *v.* KARIAMBAT BAMBLASERI 38 I. C. 651 : (1916) 2 M. W. N. 324

———Art. 139—*Holding over—Adverse possession.*

An intention to hold adversely to the landlord need not necessarily follow from a holding over, though the running of time against the landlord will not be stopped in such a case. (*Sadasiva Aiyar and Moore, JJ.*) GOVINDSWAMY PILLAI *v.* RAMASWAMY AIYAR. 3 L. W. 408 : 30 M. L. J. 492 : 34 I. C. 6 : (1916) 2 M. W. N. 79.

———Art. 139—*Holding over—Adverse possession.*

A tenant continuing in possession after expiry of the lease cannot be said to be in adverse possession unless he actually surrenders possession to his landlord. 24 M. L. J. 472 Foll. 31 M. 163, 23 M. 260 Diss. (*Miller and Sadasiva Aiyar, JJ.*) GANAPATHI MUDALI *v.* VENKATALAKSHMINARASAYYA. 25 I. C. 109 : (1914) M. W. N. 728.

LIMITATION ACT (IX OF 1908), Art. 139.

———Art. 139—*Tenant by sufferance—Ejectment.*

A tenant holding land after the lease period without rent and without the permission of the landlord is a tenant by sufferance and the landlord's ejectment suit against him is barred if brought after 12 years from the termination of lease. (*White, C.J. and Wallis, J.*) KANDASAWMI MUDALI *v.* SENGODA MUDALI. 16 I. C. 546.

———Arts. 139, 140, 142 and 144—*Stranger dispossessing tenant.*

The landlord must sue a stranger dispossessing his tenant, from year to year and holding the land absolutely against them both within 12 years from the date of such dispossession, especially when the tenant has quitted his land for more than 12 years before the suit. The cause of action to such a suit does not arise on the day of notice to quit the land by the landlord to the tenant. It is a question whether the time against the owner would begin to run from the date of dispossession by a stranger of the tenant before the expiry of his lease. (*Abdur Rahim and Sundara Aiyar JJ.*) AMBALAVANA CHETTY *v.* SINGARAVELU ODAYAR. 15 I. C. 146 : (1912) M. W. N. 669.

———Art. 139—*Tenancy from year to year.*

In the case of tenancy from year to year, limitation runs in favour of a person asserting permanent right in the property only from the date of the end of the tenancy under Art. 139. 24 M. 246; 23 M. 507, 26 M. 488 Foll. 13 M. 467 ; 26 M. 535 ; 31 M. 163 Con. (*Krishnaswamy Aiyar and Ayling, JJ.*) SULLEE ABHOYEE *v.* KRISHNA RAO. 9 M. L. T. 224 : (1911) 2 M. W. N. 36: 9 I. C. 141 : 21 M. L. J. 166.

———Art. 139—*Tenant holding over—Limitation—T. P. Act, S. 116*

According to Sec. 116, T. P. Act payment of rent by the lessee and acceptance of the same by the lessor, amounts to the renewal of lease every year till the dispute commences and a suit brought within two years of such dispute is not barred under Art. 139. (*Mitra, A.J.C.*) NATHU *v.* GANGADHAR. 58 I. C. 212.

———Art. 139—*Expiry of lease—Holding over—Non-payment of rent—Adverse possession by tenant.*

A suit by a landlord to recover possession from a tenant is governed by Art. 139 of the Limitation Act. A tenancy by sufferance would not of itself make the possession of the holder rightful, so as to prevent limitation from running. But that proposition is subject to one important qualification, namely, that if the landlord does anything to indicate his assent to the continuance of the tenancy that would itself be sufficient to convert the tenancy by sufferance into a tenancy from year to year. The receipt of rent by the landlord is such

an act and would convert the tenancy by sufferance into one from year to year. 37 Cal, 674 followed. The effect of holding over upon payment of rent to the landlord was that the tenants must be regarded as tenants form year to year and the tenancy was terminable only by six months notice expiring with the end of a year of the tenancy. (*Das and Bucknill, JJ.*) RAM LOCHAN BAID *v.* KUMAR KAMAKHYA NARAIN SINGH.

1923 Pat. 54 :
4 Pat. L. T. 123 : 1923 P. 201.

———Arts. 140 and 141—*Reversioner—Right to sue.*

The reversioner's right to sue accrues from the time of the death of the widow and possession for 12 years as a gift from the widow during her lifetime does not bar the suit. (*Gokul Prasad, J.*) RAMJAS *v.* MT. SARTAJI

1922 All. 401.

———Arts 140, 142 and 144—*Suit by reversioner—Limitation.*

A suit by a reversioner for possession after the death of the limited owner, against trespassers against the limited owner is governed by Art. 140 and not by Arts. 142 and 144 of the Act as the estate fell into possession only after the death of the limited owner, and there was no dispossession of the plff. (*Mookerjee and Buckland, JJ.*) SECY. OF STATE *v.* WAZED ALI.

65 I. C. 866 : 34 C. L. J. 141.

———Art. 140—*Suit by persons in the place of remainderman—Limitation.*

Art. 140 of the Act contemplates a suit by a remainderman or reversioner for possession of immoveable property when his estate falls into possession. (*Mitra and Caspersz, JJ.*) PROMOTHA NATH *v.* DINAMANI. 65 I. C 826 : 34 C. L. J. 129.

———Art. 140—*Ejectment—Grant—Usufructuary mortgage by grantee.*

Suit of the grantor of a mokarari for life to evict the usufructuary mortgagee of the grantee, after his death is not governed by Art. 140 (*Sharfudin and Roe, JJ.*) LALJI SHAN *v.* SHAMI LAL.

32 I. C. 827.

———Art. 140—*Sale of land under Ss. 87 and 88, Cr. P. C.—Death of absconder — Starting point of limitation.*

Where lands belonging to an absconder are sold under Ss. 87 and 88, Cr. P. Code, a suit by a person claiming the estate after the death of the absconder is governed by article 140. The starting point of limitation is the date of the death of the absconder and the plff. must prove the date of the death. (*Broadway and Abdul Qadir, JJ.*) HIRA SINGH *v.* LAL SINGH.

4 Lah. L. J. 59 : 1922 Lah. 184.

———Arts. 140 and 141—*Adverse possession—Possession of one trespasser when can be tacked on to that of another.*

The possession of one trespasser can be tacked on to that of another and a continuity of adverse possession may result thereby only when the interests of both are not different and antagonistic. Article 140 applies to the case of a person succeeding to an estate as an heir and not to

cases where having succeeded he creates a life estate in favour of some other person himself and then comes in as a remainderman; Article 141 on the other hand applies only to a case of a person succeeding as a reversioner entitled to succeed on the death of a female heir who has succeeded as such and not in any other capacity. (*Johnstone and Chevis, JJ.*) BALDEO SINGH *v.* MOHAN SINGH. 119 P. L. R. 1914 : 22 I.C. 855 : 72 P. W. R. 1914.

———Arts. 140, 141 and 144—*Alienation by widow—Next heirs not contesting alienation—Suit for possession by remote heirs after death of nearer heirs.*

On the death of N, his widow succeeded to the land in suit and sold it in 1890. On her death H who was entitled to claim the land did not claim it nor did his son D. D's widow too made no claim and died in 1907. Plff. after her death, became entitled to the land and sued for possession. *Held*, that the right to sue accrued to the plff. on the death of D's widow and the suit was not barred. (*Robertson, J.*) SHAMAN *v* ARI JANG.

172 P. W. R. 1912 : 17 I. C. 503 :
208 P. L. R. 1912.

———Arts. 140 and 141—*Punjab agricultural land.*

A remote reversioner suing to recover possession of property improperly alienated can do so within 12 years from the time when the right to possession accrues to him. Arts. 140 and 141 are inapplicable because the reversioners had no right to claim possession when the limited owner died, nor did the estate at that time fall into their possession. 106 P. R. 1905 overruled. (*Reid, C. J. Kensington and Rattigan, JJ.*) SUNDAR *v.* SALIGRAM. 34 P. L. R. 1911 : 33 P W. R. 1911 :
9 I. C. 300 : 26 P. R. 1911.

———Arts. 140, 142, 144 and 139—*Suit by lessor against trespasser.*

Article 140 governs suits against a trespasser by a lessor for the recovery of his leased-out lands, as it does not necessarily postpone limitation till it falls into possession. But the case is different when the trespasser asserts his right of tenancy only. The limitation runs against the landlord from the expiry of the lessee's tenancy if the lessor's right is complete and if no right against tenant is acquired by adverse possession under the statute by the trespasser. Art. 144 is applicable because his possession would be considered adverse against the lessor after the termination of the lease. This Article (140) also governs the suits by remainderman and reversioner against all persons including trespassers and not merely those holding a limited estate on the termination of which the remainder or reversion falls in. This Art. 140 has no application against a tenant as Art. 139 governs suits against him. (*Abdur Rahim and Sundara Aiyar, JJ.*) AMBALAVANA CHETTY *v.* SINGARAVELU ODAYAR.

16 I. C. 146 : (1912) M. W. N. 669.

———Arts. 140 and 144—*Property devised—Suit for possession from devisee—Limitation.*

Art 144 applies when the purchaser of the rights of a devisee sues to obtain possession of

LIMITATION ACT (I X OF 1908), Art. 140.

the property if the devisee or his transferee has once obtained possession and Art. 140 applies if the devisee has not obtained possession. (*Mitra, J. C.*) MUSSAMMAT GAJIBAI *v.* NIL KANTH.
56 I. C. 929.

———Arts. 140 and 141—*Estate—Life estate—English law.*

"The estate" referred to in Art 141 need not be one created in the same way as the particular estate on which the estate in remainder or reversion in Art. 140 leans nor need it be one having the same incidents as the particular estate. Art. 141 applies to suits to recover estates, which were once in expectancy and which have now become vested in the heir of the last male owner after the life-estate of the Hindu or Mah. female. It does not apply to suits by persons claiming through the female, obviously therefore it does not apply when the female holds absolutely. Limited-estates taken by Hindu females are not the same as life estates under English Law but for purposes of Limitation, they are treated on the same principle. (*Lindsay, J. C. and Stuart, A.J.C.*) GHIRA SINGH *v.* GAJRAJ SINGH.
18 O. C. 289 : 33 I. C. 371 : 3 O. L. J. 45.

———Art. 141.
Applicability.
Co-widows.
Date of death.
Limited owner.
Starting point.
Suit by reversioner.
Suit for possession.
Suit for share in inheritance.

Applicability.

———Art. 141—*Applicability—Khewat—Entry as proprietors on redemption under* bona fide *mistake—Right of refund of redemption money.*

Art. 141 applies only when a reversioner is entitled to possession on the death of the female: it does not apply to a suit by him to recover possession from a person who had come into possession thereof by redeeming a mortgage created by the female. The article applicable to such a case is Art. 144 and time will run from the date of such redemption. A mere entry in a *khewat* of a person's name as proprietor, does not amount to his having got possession. (*Rafique, J.*) GANGA SAHAI *v.* KANHAIYA LAL.
18 I. C. 811 : 11 A. L. J. 179.

———Art. 141—*Applicability — Reversioner's suit.*

Art. 141 is extension of Art. 140 and specially refers to reversioners succeeding to the estate after widow's death. (*Scott, C.J. and Shah, J.*) JAIVANT JIWAN RAO *v.* RAMCHANDRA.
40 Bom. 239 : 33 I. C. 484 : 18 Bom. L. R. 14.

———Art. 141—*Applicability of — Adverse possession against widow.*

Art. 141 applies only to cases where it is proved that the last full owner was in possession at the time of his death; if he himself was dispossessed and time began to run against him, the operation

LIMITATION ACT (IX OF 1908), Art. 141—Applicability.

of the law of Limitation would not be averted by the fact that on his death, he was succeeded by the widow, daughter or mother. Under the law as it stood before the passing of the Limitation Act of 1871, adverse possession which extinguished the title of the female heir also extinguished the title of the reversioner. (*Mookerjee and Beachcroft, JJ.*) MOHENDRANATH BISWAS *v.* SHAMSUNNESSA.
21 C. L. J. 157 : 27 I. C. 954 : 19 C. W. N. 1280.

———Art. 141—*Applicability of—Adverse possession—Loss of title.*

Where a Hindu governed by the *Dayabaga* law died leaving him surviving 2 daughters and a widowed daughter-in-law and the daughter-in-law took possession of the estate of the last male owner to the exclusion of the daughters and continued in possession of the estate for more than twelve years, *Held*, that the possession of the daughter-in-law was adverse and that since the survivor of the 2 daughters came in on the death of her sister, not by way of inheritance as reversioner but by way of survivorship, Art. 141 would not apply. (*Jenkins, C. J. and N. R. Chatterjee, J.*) SACHINDRA KISHORE DEY *v.* RAJANIKANTA CHUCKRABUTTY.
27 I. C. 250 : 18 C. W. N. 904.

——Art. 141—*Applicability of— Succession vesting jointly in two female heirs—Suit by one on death of another, nature of.*

Where succession vests jointly in two female heirs between whom no partition of the property is made, a suit by one on death of the other for the property cannot be said to be one for recovery of possession and Art. 141 has no operation. (*Chatterjee, J.*) SACHINDRA KISHORE DEY *v.* RAJANI KANTA CHAKRABARTY. 27 I. C. 83.

———Arts. 141 and 144—*Applicability—Possession of property held by a female as full owner.*

Art. 141 of the Lim. Act lays down a rule of limitation of suits in which it is sought to recover estates which having once been estates in expectancy, have been vested in the heir of the last male owner in determination of a limited estate held by a Hindu or Mahomedam female. It does not apply to cases in which the Hindu or Mahomedan female had been in possession of the full estates. (*Seshagiri Aiyar and Napier, JJ.*) MUNICIPAL COUNCIL OF VIZAGAPATAM *v.* WILLIAM FOSTER. 44 I. C. 308 : 41 Mad 538.

——Arts. 141 and 144—*Applicability--Hindu or Mahomedan female—Possession of absolute estate—Suit for possession on her death.*

Art. 141 of the Lim. Act has no application where a Hindu or Mahomedan female had possession of an absolute estate. Art. 144 of the Lim. Act applies to a suit for possession on the death of such female. (*Kanhaiya Lal, J. C. and Dalal, A.J.C.*) CHAUDHRAIN ZARIF-UN-NISA *v.* CHAUDHRI SHAFIQ-UZ-ZAMAN.
26 O. C. 133 : 1923 Oudh 135.

——Arts. 141 and 140—*Applicability of kinds of estate.*

LIMITATION ACT (IX OF 1908), Art. 141—Co-widow.

Art. 141 does not contemplate the same kind of estate as one under Art. 140 *i. e.* by grant or devise Art. 141 applies to suit for recovery of estates which were once estates in expectancy but which have become vested in the person suing as heir of last male holder on the death of Hindu or a Muhammadan female. The person suing must have an independent title in the same way as remainderman or reversioners under Art. 140 and not a title derived from the female. Art. 141 applies to cases of reversioners or remainderman, who claim the estate under a title independent of the Hindu or Muhammadan female and does not apply at all when such female has absolute estate. (*Lindsay, J. C. and Stuart, A. J. C.*) GHIRA SINGH *v.* GAJRAJ SINGH.

18 O. C. 289 : 33 I. C. 371 : 3 O. L. J. 45.

Co-widows.

——**Arts. 141 and 144**—*Co-widows—Suit by reversioner—Limitation.*

Of two Hindu co-widows, one who had two daughters, alienated her husband's property on 10-3-1897 and died on 11-7-1902. The other widow died on 17-1-1903. One of the daughters gave birth to a son (plff.) in 1905 and died in 1907. The other daughter died in 1911. The plff. having filed the suit on 13-1-1915 to set aside the alienation. *Held* that the suit was not governed by Art. 141 of the Lim. Act inasmuch as the plff. claimed as the heir of his mother and the suit was not one brought by a Hindu entitled to the possession of immoveable property on the death of a Hindu female. The suit was in time, under Art. 144, for the vendee's possession, however, adverse against widows could not be regarded as adverse against the plff. (*Batchelor, A. C. J. and Kemp, J.*) MALRARJUN *v.* AMRITA.

42 Bom. 714 : 47 I. C. 153 : 20 Bom. L. R. 762.

——**Art. 141**—*Co-widows—Surrender of her interest by one in favour by the others—Alienation by surrenderee—Suit by reversioner—Limitation.*

Where one of two co-widows surrendered her interest in her husband's estate in favour of the other and the surrenderee alienated the property, a suit by a reversioner to recover possession of the alienated property within 12 years of the death of the survivor of the widows would be in time. The reversioner is not bound to sue within 12 years of the death of the surrender decree. Under Art. 141 time begins to run only on the death of all the female co-heirs. There can be no acceleration of the right of a reversioner without his knowledge and consent by any agreement between the female co-heirs. (*Sadasiva Aiyar and Napier, JJ.*) MUTAIYALA CHENGAPPA *v.* BURADAGUNTA.

28 M. L. T. 272 : 12 L. W. 656 : 39 M. L. J. 567.

LIMITATION ACT (IX OF 1908), Art. 141—Starting point.

Date of death.

——**Art. 141**—*Date of death—Onus of proof.*

Where plff. brought a suit on the 5th May 1914 and the last female holder died in May 1902 and where the date of death was not known it was held that defts. were bound to prove that the female died before 5th May 1902. (*Scott-Smith and Leslie Jones, JJ.*) TANI *v.* RIKSHI RAM.

1 Lah. 554 : 114 P. L. R. 1920 : 56 I. C. 742 : 2 Lah. L. J. 481.

Limited owner.

——**Art. 141**—*Limited owner—Joint limited owners—Right of reversioner to sue—Starting point.*

The article applies where the reversioner is entitled to the property on the death of more than one limited owner taking jointly, and time runs from the death of the last limited owner. (*Sadasiva Aiyar and Napier, JJ.*) MUTHIYALLU CHENGAPPA *v.* BURADA GUNTA. 43 Mad. 855 : 12 L. W. 656 : 28 M. L. T. 272 : 60 I. C. 135 : (1921) M. W. N. 29 : 39 M. L. J. 567.

——**Art. 141**—*Limited owner—Nature of estate.*

Limited estates taken by Hindu females are not the same as life-estates under English Law but for purpose of limitation, they are treated on the same principle. (*Lindsay, J. C. and Stuart, A. J. C.*) GHIRA SINGH *v.* GAJ RAJ SING.

18 O. C. 289 : 33 I. C. 371 : 3 O. L. J. 45.

Starting point.

——**Art. 141**—*Starting point.*

The starting point is the death of the last surviving widow. Time will not be prevented by the daughter-in-law's possession, from running, unless it is shown that it was permissive, 29 C. 664 Foll. (*Stanley, C.J. and Banerjee, J.*) GAJADHAR PANDE *v.* PARBATI.

33 All. 312 : 9 I. C. 50 : 8 A. L. J. 57.

——**Art. 141**—*Starting point.*

Limitation begins from the death of the widow of a deceased co-sharer for his self-acquired property. (*Johnstone and Chevis, JJ.*) MANSARAM *v.* BEHARI. 6 P. R. 1912 : 218 P. L. R. 1911 : 12 I. C. 453 : 204 P. W. R. 1911.

——**Art. 141**—*Starting point—Hindu widow—Settlement in favour of daughters—Alienation by daughters—Suit by grand-sons as reversioners.*

Under a settlement by a Hindu widow in favour of her two daughters each of them purported to take absolutely a moiety of the estate, they subsequently made various alienations of the property without any justifying necessity. The elder daughter died first in 1905 and the

LIMITATION ACT (IX OF 1908), Art. 141—Starting point.

younger daughter died in 1908. In a suit instituted in 1918 by the grandsons of the last male owner for recovery of the property from the alienees on the ground that the alienations were not supported by legal necessity, *Held*, that under art. 141 of the Lim. Act, the period of limitation began to run only from the date of the death of the surviving daughter and that the suit was not barred. (*Spencer and Devadoss, JJ.*) JOGA YERRAYYA *v.* NAKINA SALLAYYA. 16 L. W. 752 : 1923 Mad. 168.

——Art. 141—*Starting point—Suit for possession by reversioner.*

Once limitation begins to run, it does not stop except in the cases specially provided for by the Lim. Act. In 1894 plaintiff's father sued for a declaration that certain alienation by a Hindu widow were invalid but the suit was dismissed on the ground that there was a nearer reversioner one Balusamy. On the death of the widow in 1897, Balusamy sued for possession but his suit was dismissed in 1916 on the ground that his adoption was invalid and he was not a reversioner. Plaintiff sued for possession in 1919. *Held*, that the suit was barred by limitation. It could not be said that at any time the plaintiff's right was satisfied and that on account of the annulment of that satisfaction a fresh cause of action arose. 12 M.I. A. 244; 45 M. 815; 35 C. 209 : 43 C. 660 Dist. (*Phillips and Ramesam, JJ.*) RANGANATH RAO *v.* RAMA PANDITHER. 16 L. W. 529 : 1923 Mad. 108 : 44 M L. J. 87.

——Arts. 141 and 134—*Starting point—Surrender by widow.*

A suit by a purchaser of the equity of redemption from a mortgagee to whom it has been surrendered is governed by Art. 141 and not by Art. 134 as the former cannot be considered to have "purchased mortgage property" within the meaning of the latter. Art. 134 will apply only when the purchaser acts in the *bona fide* belief that he is purchasing the whole estate and not merely a mortgage interest. (*Wallis, O. C. J. and Hannay, J.*) SINGARAM CHETTIAR *v.* KALYANASUNDARAM PILLAI. 1 L. W. 687 : 26 I. C. 1 : (1914) M. W. N. 735.

——Art. 141—*Starting point—"Time runs from death of limited owner."*

As against reversioner, time runs from the death of female holder after which event the reversion vests in them. (*Stanyon, A. J. C.*) KASHIRAO *v.* UKARDA. 31 I. C 290 : 11 N. L. R. 116.

——Arts. 141 and 143—*Starting point—Remarriage of Hindu widow—Suit by reversioner.*

A suit by the reversioners to set aside an alienation by the widow of her deceased husband's property brought more than twelve years after her remarriage is barred under Arts. 141 and 143. On the remarriage, the widowhood ceases and the property vests in the reversioners. The Civil death (re-marriage) of a Hindu widow has the same legal effect as her natural death would have. (*Stanyon, A. J. C.*) NATHU *v.* NAI BAHU. 29 I. C. 612 : 11 N. L. R. 86.

LIMITATION ACT (IX OF 1908), Art. 141—Suit by reversioner.

Suit by reversioner.

——Art. 141—*Suit by reversioner—Hindu widow—Adverse possession against.*

Possession taken by a trespasser during the life-time of a Hindu widow or a Hindu female with a life interest is not adverse as against the reversioners until after the death of the widow. (*Tudball and Abdul Raoof, JJ.*) GANGA *v.* KANHAIYA LAL. 41 All. 154 : 47 I C. 222 : 17 A. L. J. 44.

——Art. 141—*Suit by reversioner—Starting point—Hindu Law—Suit by daughter.*

Suit by daughter for a share in her father's property on her mother's death, falls under Art. 141, and time runs from the date of mother's death. (*Tudball and Walsh, JJ.*) RAM SINGH *v.* MUSAMAT BHIM. 38 All. 117 : 32 I. C. 127 : 14 A. L. J. 11.

——Art. 141—*Suit by reversioner—Daughter—Limitation.*

A suit by a Hindu daughter for possession of her father's property after her mother's death falls under Art. 141 and not under Art. 127 or Art. 142 of the Act, and time begins to run from her mother's death, no matter who was in possession of the property during the period between her father's and mother's death. (*Griffin and Chamier, JJ.*) TULSABAI *v.* BHAGWAT PRASAD. 20 I. C. 179 : 11 A. L. J. 333.

——Art. 141—*Suit by reversioner—Starting point—Onus of proof.*

Art. 141, Lim. Act, is inapplicable when time has once commenced to run against the last full owner, as in such a case it continues to run and is not suspended or in any way affected by the mere circumstance that the owner is succeeded by a female entitled to a woman's qualified estate. After the statutory period has run out, all persons claiming through the owner are barred. The Article makes it clear, that the reversioner has 12 years after the death of a Hindu or Mahomedan female to establish his right as heir to the last full owner and it lies upon the party in possession to prove that he has got a better title. (*Macleod, C. J. and Crump, J.*) PANDURANG *v.* BASAPPA. 1923 Bom. 364.

——Art. 141—*Suit by reversioner—Hindu widow—Adverse possession.*

Adverse possession which begins in and runs its course before the termination of a widow's life estate cannot be used against the reversioners. The special period provided by Art. 141 overrides the general provision of Art. 144. (*Beaman and Kajiji, JJ.*) SUBBI GANPATIBHATTA NEELMALLE *v.* RAMAKRISHNABHATTA SHANKERBHATTA. 42 Bom. 69 : 43 I. C. 233 : 19 Bom. L. R. 919.

——Art. 141—*Suit by reversioner—Limitation.*

A suit by a reversioner to recover immoveable property, on the death of a Hindu female, is governed by Art. 141 of the Act. (*Mookerjee and Buckland, JJ.*) PRAMATHA NATH *v.* BHUBAN. 25 C. W. N. 585 : 64 I. C. 980 : 33 C. L. J. 421.

LIMITATION ACT (IX OF 1908), Art. 141—Suit by reversioner.

———Arts. 141 and 144—*Suit by reversioner—Alienation by widow—Suit for possession after death of widow.*

A suit by a reversioner for recovery of possession of property alienated by the widow is governed by Art 141 of the Lim. Act and time runs from the date of the death of the widow. If the reversioners rely on art. 144 they must prove that adverse possession started in the life-time of the proprietor and continued for 12 years up to date of suit. (*Chevis, J.*) CHOANAN SINGH *v.* SALIG RAM. **36 P. L. R. 1922 : 1923 Lah. 106.**

———Art. 141—*Suit by reversioner—Limitation whether can be curtailed—Occupancy rights conferred by the widow.*

Limitation does not bar a suit by the reversioners within 12 years of the death of the last surviving widow to set aide an alienation by which the widows were conferred occupancy rights or to challenge the title acquired by adverse possession by any person against the widows. (*Scott-Smith and Dundas, JJ.*) NAND SINGH *v* MUSSAMAT DHAN KAUR.
68 I. C. 299 : 2 Lah. L. J. 573.

———Art. 141—*Suit by reversioner—Gift to daughter's son.*

A suit by reversioners to set aside a gift to the daughter's son in the Punjab is governed by Art 141 of the Indian Limitation Act and not by the Punjab Limitation Act. (*Reid, C. J. and Beadon, J.*) BHAGAT SINGH *v.* SHEB SINGH.
156 P. L. R. 1914 : 24 I. C. 212 : 29 P. R. 1914.

———Art. 141—*Suit by reversioner—Gift by widow.*

A suit by reversioners for possession of property gifted by a widow is governed by Art. 141 of the Act. (*Johnstone and Ratligan, JJ.*) NUR AHMAD *v.* RAHIM BAKHSH.
52 P. R. 1912 : 14 I. C. 71 : 177 P. W. R 1912.

———Art. 141—*Suit by reversioner—Possession—Mortgage by sonless proprietor—Subsequent sale by widow—Limitation.*

A suit for possession by a reversioner against a purchaser from a Hindu is governed by Art. 141 of the Limitation Act (XV of 1877) and the period of limitation is 12 years from the death of the widow. (*Reid, C.J., Robertson and Ratligan, JJ.*) KHIALI RAM *v.* GULAB KHAN.
33 P. R 1911 : 11 I. C. 392 : 100 P. L. R. 1911

———Art. 141—*Suit by reversioner—Gift by widow—Collaterals in Punjab.*

The question of widow's donee's adverse possession does not arise so long as the widow is alive. Such case is clearly governed by Art. 141 Lim. Act and time runs from the time of widow's death. (*Johnstone and Chevis, JJ.*) KAHIRE KHAN *v.* GHULAM GHAUS.
238 P. L. R. 1911 : 46 P. W. R. 1911 : 10 I. C. 387 : 32 P. R. 1911.

———Art. 141—*Suit by reversioner—Widow barred—If reversioner barred—Lim. Act (XIV of 1859), S. 12.*

A decision against a widow who does not establish her right to recover the estate of her husband within 12 years of the death of the latter does not operate as *res judicata* as against the reversioner as his title to possession accrues only on the death of the widow. Though the widow's right of suit was barred, the reversioner's suit would not be barred under Art. 141 of the Lim. Act. (*Abdur Rahim and Srinivasa Aiyangar, JJ.*) RAMACHANDRA REDDI *v.* KAKUTURI AUDEMMA. **42 I. C. 228 : 32 M. L. J. 627.**

LIMITATION ACT (IX OF 1908), Art. 141—Suit for possession.

——Arts. 141 and 144—*Suit by reversioner—Adverse possession against widow not effective against a reversioner—Lim. Acts of 1859 and 1908.*

Art. 141 of the Lim. Act applies to a suit by a Hindu reversioner for possession of properties to which he became entitled after the death of a limited female owner. The reversioner has a fresh cause of action on the date of the death of the limited owner. Under the present Lim. Act, unlike the Act of 1859, adverse possession against the widow does not extinguish the title of the reversioner 23 Bom. 725 (P. C.) : 20 M. 493 ; 23 A. 448 ; 25 A. 435, foll. 22 C. 445 ; 20 C. 942 ; 21 C. 8 ; 29 C. 664, dist. (*Spencer and Kumaraswami Sastri, JJ.*) SRINIVASA RAYA *v.* RAMAPPA HEBBARA. **18 M.L.T. 286 : 30 I. C. 981 : 2 L. W. 751.**

———Art, 141—*Suit by reversioner—Adverse possession against widow.*

A suit by the reversioners on the death of the widow for recovery of possession of property in which she had a life-estate of inheritance and was held adversely to her more than 13 years by a stranger is not barred by limitation as the plff.'s claim as the heirs of the last male owner and not as the widow's heirs. (*Sundara Aiyar and Sadasiva, Aiyar, JJ.*) SOUNYA TIRUMALAI VANDAYA THEWAR *v.* KANDASAMI VANDAYA THEWAR.
17 I. C. 136.

——Art. 141—*Suit by reversioner—Death of a female.*

In a suit by reversioners entitled to property on the death of a particular female which would be governed by Art. 141, the burden of proof is on the plff.s to show that the suit was brought within 12 years of the death of the female. (*Drake Brockman, J.C.*) PARSOO *v.* MUNNALA.
39 I. C. 21 : 13 N. L. R. 16

Suit for possession.

——Arts. 141 and 144—*Suit for possession—Suit for possession on declaration of title by plff. as reversionary heirs on his mother's death against defendants.*

The plff. was a minor when his mother died in 1897. He attained his majority in 1911. He in 1913 as the reversionary heir on the death of his mother brought a suit for possession on the establishment of his title to a share of certain property alleging to be joint family property against defts. The defence was that the suit was time-barred. *Held*, that Art. 141 would apply only if the mother was dispossessed ; in that case only the question whether the suit was brought within three years of his attaining majority

LIMITATION ACT (IX OF 1908), Art. 141—Suit for share in inheritance.

would arise. (*Chatterjee and Duval, JJ.*) GOBINDA CHANDRA BATTACHARJEE *v.* DINANATH.
23 C. W. N. 977 : 30 C. L. J. 512 : 56 I. C. 141 : 47 Cal. 274.

Suit for share in inheritance.

——Art. 141—*Suit for share in inheritance.* A suit for the share in inheritance is barred after lapse of twelve years of the death of the last male owner. (*Shadi Lal and Leslie Jones, JJ.*) MURAD KHATUM *v.* MUHAMMAD BAKHSH.
85 P. W. R. 1916 : 33 I. C. 742 : 84 P. R. 1916.

——Art. 142.

See also (1) ADVERSE POSSESSION.
(2) EJECTMENT.

Alluvion.
Applicability.
Constructive possession.
Co-sharers.
Discontinuance of possession.
Dispossession.
Ejectment suit.
Fishery.
Invalid Alienation.
Permissive possession.
Possession following title.
Possessory title.
Service Tenure.
Submerged land.
Waste land.

Alluvion.

——Art. 142—*Alluvion—Suit for alluvial land—Limitation.*

Where a plea of limitation and denial of plff.'s title is set up in a suit for possession to accretions by alluvion, the onus is on plff. to prove title and possession within limitation. To prove the latter, however, it is sufficient to prove accrual within limitation or that though it had accrued before limitation, it had remained within the limitation period waste land raising a presumption that possession followed title. 15 C. W. N. 887 F. (*Rafique and Piggott, JJ.*) HABIBULLAH KHAN *v.* LALTA PRASAD. 34 All. 612 : 17 I C. 94 : 10 A. L. J. 190.

Applicability.

——Art. 142—*Applicability—Formal possession—Limitation—When begins to run.*

One *R.* left a widow P and two daughters, *J* & *K P* made a gift to the estate of *R* to *K J* sued for her half share and got formal possession. *J*'s legal representatives brought a suit for possession. *Held*, that limitation began against her from the date of her taking formal possession. (*Mears, C. J. and Banerji, J.*) MT. PURNA KUAR *v.* MANGAT RAI. 1922 All. 55 (1).

——Arts. 142 and 144 — *Applicability of—Burden of proof—Possession and dispossession.*

Where the plff. alleges possession of land and it is found that part of the land is *de facto* in the possession of another person, the suit must fall under Art, 142. It is only where the plff. does not allege that he has ever been in possession that the case will fall under Art. 144. In the former class of cases the plff. is bound to show that the dispossession or discontinuance of possession which gives rise to the starting point of limitation was within 12 years of the date of the suit. (*Beaman and Hayward, JJ.*) SUBBAPPA *v.* VENKAPPA, 39 Bom. 335 : 28 I. C, 24 : 17 Bom. L. R. 141:

LIMITATION ACT (IX OF 1908), Art. 142—Applicability.

——Art. 142—*Applicability — Attachment under S.* 146, *Cr. P. C.—Suit for possession.*

Magistrate attached a property as the result of dispute between two men under S. 146 of Cr. P. C. After about 12 years the plaintiff brought a suit for possession. *Held*, that the Magistrate not being a party the suit was governed by art. 120 of Limitation Act. (*Chatterjee and Cuming, JJ.*) PANNALAL *v.* PANCHU RUIDAS.
49 C. 544 : 26 C. W. N. 432 : 1922 Cal. 419.

——Arts. 142 and 144—*Applicability— Suit by reversioner for possession from trespassers against widow.*

Where during the life-time of a Hindu widow the defendants trespassed on the lands and remained in possession for over 12 years and after the widow's death the reversioners sued for possession, *held* that the suit was not barred under Arts. 142 and 144 as the plff. was not dispossessed and as the possession of the defts. did not become adverse to the plffs. until the widow's death. (*Mitra and Caspersz, JJ.*) PROMOTHA NATH *v.* DINAMANI. 65 I.C. 826 : 34 C. L. J. 129.

——Art. 142—*Applicability—Suit to set aside order under S.* 145, *Cr. P. Code.*

A suit brought by a person for declaration of title and for recovery of possession to property which was attached by a Magistrate under S 145, Cr. P. Code after plff.'s attempt to S. 42, Sp. Rel. Act and not governed by the Lim. Act, Art. 142, (*Mookerjee and Beachcroft, JJ.*) BROJENDRA KISHORE ROY *v.* BHARAT CHANDRA. 22 C. L. J. 283 : 31 I. C 242 : 20 C. W. N. 481.

——Art. 142—*Applicability—Onus on plaintiff to prove subsisting title on date of suit.*

In a suit for possession under art. 142 of the Lim. Act, the onus is on the plaintiff to prove not merely his title but also a subsisting title to the property in dispute. 16 C. 437 P.C. Rel. (*Broadway and Abdul Qadir, JJ.*) DUNI *v.* MALERI RAM. 4 Lah. L. J. 382 : 1922 Lah. 432.

——Arts. 142 and 144— *Applicability of—Suit by heir to recover possession from trespasser—Limitation—Tacking of adverse possession.*

When an owner of a property has died in peaceful possession of the estate which is then seized by a trespasser before the lawful heir has entered in possession, a suit by the latter to recover the estate is governed by Art. 144 and not by Art. 142 of the Lim. Act. Distinction between Arts. 142 and 144 pointed out. Though an heir can tack on the possession of the predecessor-in-title to his own, a trespasser cannot be allowed to add

LIMITATION ACT (IX OF 1908), Art. 142—Applicability of.

to his possession the possession of another previous trespasser whom he dispossessed. (*Stanyon, A. J. C.*) GANNO *v.* BENNI. 43 I. C. 943: 14 N. L. R. 82.

———Art. 142—*Applicability—Suit for removal of trees—Possession of land—Limitation.*

Art. 142 of the Lim. Act applies to a suit for the removal of trees planted on lands alleged to belong to the plff. but which is in the possession of the deft. 6 O. L. J. 329; 10 A. 634 dist. (*Daniels, J. C.*) GHAFUR KHAN *v.* LALA PRAG NARAYAN. 9 O. L. J. 17 : 1922 Oudh 47.

———Art. 142—*Applicability—Suit to contest order of Collector under Bengal Survey Act—Limitation.*

When it is sought to reverse or modify the order of the Collector under the Bengal Survey Act, S 41, Art. 142 of Schedule I to the Limitation Act applies and time runs from the date of the order of the Collector, (*Das and Adami, JJ.*) PRABHUCHARAN *v.* SECRETARY OF STATE FOR INDIA. 6 P. L. J. 51 : 61 I. C. 46 : 2 P. L. T. 118.

———Arts. 142 and 144— *Applicability of—Suit for possession of immoveable property.*

In a suit governed by Art. 142 the plaintiff must prove his possession within twelve years from the date of suit and on failure to do so, the suit should be dismissed without going into the question of the defendant's title, but in a suit governed by Art 144 the plaintiff has only to prove his title and the deft. would then have to prove his allegation of adverse possession. (*Twomey, C. J. and Robinson, J.*) MUTHIA CHETTY *v.* SEENA THEVAR. 56 I. C. 951 : 12 Bur. L. T. 234.

———Arts. 142 and 144— *Applicability of—Suit for possession based on title.*

Where a plaintiff who does not allege dispossession sues for possession of immoveable property based on title, Art 144 and not Art. 142 of the Limitation Act applies. (*Twomey, J.*) AUNG HLA *v.* TON GYI. 8 L. B. R. 264 : 35 I. C. 432 : 9 Bur. L. T. 242.

Constructive possession.

———Art. 142—*Constructive possession—Proof of title—Delivery of symbolical possession—Adverse possession—Tacking — Independent trespassers.*

Where it is proved that the true title to land is on the plff. and that the possession of the defendant trespasser commenced within 12 years before suit, the suit is in time under art. 142 of the Lim. Act. Independent trespassers not claiming under one another cannot tack on their possession for the purposes of art. 142 of the Lim. Act When possession passed from the first to the second trespasser there is a constructive restoration even if a momentary restoration of the true title to possession. As against the judgment-debtor, delivery or symbolical possession is enough to interrupt his adverse possession. 5 C. 584 F.B.; 16 Cal. 530 ; 22 C. W. N. 330 Rel. (*Richardson and Suhrawardy, JJ.*) JANAKI NATH SAHA v. BAIKUNTHA NATH GHATTACK. 36 C. L. J. 140 : 27 C. W. N. 359 : 1922 Cal. 176

LIMITATION ACT (IX OF 1908), Art. 142—Discontinuance of possession.

———Art. 142—*Constructive possession—Trespasser—Position of—Adverse possession.*

A right of a trespasser by adverse possession is confined to the land actually in his possession. (*Miller, C. J. and Coutts, J.*) KUMAR PRAMATH NATH *v.* MEIL. 5 Pat. L. J. 273 : 1 Pat. L. T. 760 : 56 I. C. 184 : 1920 Pat. 146.

Co-sharers.

———Art. 142—*Co-sharers—Adverse possession when.*

When one person is in possession of property for himself and his co-sharers, his possession is of a fiduciary character and the mere fact that he mortgages it stating that it was his absolute property by a registered deed does not show that the character of his possession is changed so as to be adverse against the other co-owners. The doctrine of constructive notice by registration does not arise in the case as there is no duty imposed upon the co-sharer by law to search in the Registering Office. (*Scott Smith, J.*) UMRAO SINGH *v.* LACHHMI NARAYAN. 25 P. L. R. 1917 : 39 I. C. 762 : 19 P. W. R. 1917.

Discontinuance of possession.

——— Art. 142—*Discontinuance of possession—What the plff. must prove.*

If the plff. in a suit for possession on a declaration of title, fails to prove that he ever exercised possession within 12 years before suit, and there is nothing to show that the land was not capable of ordinary occupation or cultivation, his suit is barred and the deft. need not prove adverse possion for 12 years. (*Walmsley and Greaves, JJ.*) UDAY MANDAL *v.* RAM DURLABH SARKAR. 62 I. C. 707.

———Arts. 142 and 144—*Discontinuance of possession—Mines.*

The mere fact that a mine has not been worked by the owner does not amount to a discontinuance of possession within Art. 142 of the Act.(*Fletcher and Shamsul Huda, JJ.*)BENGAL COAL COMPANY, LTD. *v.* MONORANJAN BAGCHI. 44 I. C. 297 : 22 C. W. N. 441.

———Art. 142—*Discontinuance of possession—Dispossession—Distinction.*

Dispossession occurs where a person comes in and drives out the others from possession ; discontinuance of possession occurs, where the person in possession goes out and is followed into possession by others. The mere fact that a person being the owner of property ceases to issue bills for its rents will not amount to discontinuance of possession.(*Wallis, C. J. and Spencer, J.*) KUPPUSWAMY CHETTY *v.* KUSALA RAMIAH. (1918) M. W. N. 683 : 8 L. W. 551 : 49 I. C. 89 : 24 M. L. T. 424.

———Art 142—*Discontinuance of possession—Evidence of.*

If the owner leaves his land in the possession of a stranger for over 20 years and lives away cultivating other lands it constitutesabandonment. (*Benson and Sundara Aiyar, JJ.*) THANGASWAMY THEVAN *v.* RAJARAM NAIDU. 19 I. C. 3 : (1913) M.W.N. 218.

LIMITATION ACT (IX OF 1908), Art. 142—Discontinuance of possession.

——Arts 142 and 144—*Discontinuance of possession—Co-sharer—Possession by mutual consent in ignorance of right—Adverse possession.*

Where two persons are in a joint possession of a land by mutual consent for 12 years in ignorance of the fact that one is entitled to the whole, limitation against the latter by discontinuance of possession under Art. 142 or by adverse possession under Art. 144 arises. The mere fact of consent does not prevent the possession from being adverse. 24 M. 387 P. C. ; 28 B. 87 Rel. (*Jenkins, C. J., Holmwood and Chapman, JJ.*) DWARAKANATH CHOWDHURY *v.* SASHTIKINKAR BANERJEE.
18 I. C. 869 : 17 C. W. N. 595.

Dispossession.

——Art. 142—*Dispossession—Proof—Suit for possession.*

Where a plaintiff sues for possession of property alleging a trespass on the part of the deft. the plff. must show that he was in possession within 12 years. Otherwise his suit must fail. (*Daniels, J.*) JHARAP RAI *v.* JAINT RAI.
1923 A. 418.

——Art. 142 — *Dispossession — Symbolical possession.*

Delivery of symbolical possession has not the effect of interrupting adverse possession against persons not bound by the decree. (*Pratt and Kanga, JJ.*) RAGHUNATH WAMAN *v.* KONDIBE BABAJEE. 24 Bom. L. R. 499 : 46 B. 932 : 1922 Bom. 2.

——Art. 142—*Dispossession—Discontinuance of possession — Independent trespassers — No lacking.*

The latter of two trespassers could not be allowed to add to the period of her hostile possession the period of possession of a former trespasser, the auction-purchaser, from whom she did not derive title in any way. (*Macleod, C.J. and Fawcett, J.*) RAMCHANDRA BALWANT ATHALE *v.* BALAJI GANESH KULKARNI.
22 Bom. L. R. 1452 : 45 B. 570.
[Also 49 I. C. 751 (Cal.) ; 59 I. C. 805 ; 40 I. C. 337 : 44 Cal. 858: (P. C.). 2 Pat. L.J. 506 : 41 I. C. 114. 16 I. C. 43 : 37 Mad. 440]

——Art. 142—*Dispossession—Sale under Public Demands Recovery Act—Nullity—Suit for possession.*

When notice has not been served under section 10 of the Public Demands Recovery Act, a sale under the Act must be deemed to be a nullity, a sale wholly without authority. (*Mookerjee, J.*) LALIT MOHAN SEN *v.* MANORANJAN GHOSH CHAUDHURI. 36 C. L. J. 208 : 1923 Cal. 18.

——Art. 142—*Dispossession—Meaning of—Discontinuance.*

Art. 142 of the Lim. Act refers to dispossession or discontinuance of possession. Dispossession implies the coming in of a person and his driving out another from possession. Discontinuance of possession implies the going out of the person in possession and his being followed into possession by another. (*Mookerjee and Cuming, JJ.*) CHARU CHANDRA PRAMANICK *v.* NAHUSH CHANDRA KUNDOO. 36 C. L. J. 35 : 50 C. 49 : 1923 Cal. 1.

LIMITATION ACT (IX OF 1908), Art. 142—Dispossession.

——Art. 142—*Dispossession—What is—Acts done on portions of property—Effect of.*

There is no dispossession within the meaning of Art. 142 of the Lim. Act unless there is termination of the possession of the rightful owner followed by the actual possession of another. As long as reliable evidence of acts of ownership is forthcoming there is no difference between the proof of possession on the case of jungle or uncultivated lands and that in the case of cultivated lands. 5 C. L. R. 481 ; 1 C. W. N. 277 Ref. (*N. R. Chatterjee and Pearson, JJ.*) BEHARI LAL NANDI *v.* NRITYANANDA.
1922 Cal. 224.

——Art. 142—*Dispossession—Order under S. 145, Cr. P. Code.*

Where a Criminal Court makes an order under S. 145, Criminal Procedure Code, and awards possession of immoveable property but that order is found to be made without jurisdiction, a suit to recover possession is governed by Art. 142 and not by Art. 47. (*Mookerjee, A. C. J. and Fletcher, J.*) BHARAT CHANDRA *v.* RAM SUNDAR
60 I. C. 860.

——Art. 142—*Dispossession— True owner obtaining possession by force—Limitation.*

Possession of the true owner however obtained, counts in his favour for the purpose of art. 142 of the Lim. Act, in a suit brought by him for the recovery of possession on establishment of title. (*Richardson and Beachcroft, JJ.*) HARI DAS *v.* DEBENDRA RAM BANERJEE. 45 I. C. 548.

——Art. 142—*Dispossession—Meaning of.*

If the legal possession remains with the true owner even though property is attached under S. 146, Cr. P. Code, the attachment does not amount to dispossession of the owner or discontinuance of his possession. Dispossession implies the coming in of a person and the driving out of another in possession. Discontinuance of possession takes place when the person in possession goes out and is followed by another who takes possession of the land. Attachment under S. 146, Cr. P. C. is not dispossession or discontinuance within the meaning of Art. 142, Limitation Act, (*Mookerjee and Beachcroft, JJ.*) BROJENDRA KISHORE ROY *v.* BHARAT CHANDRA ROY.
22 C. L. J. 283 : 20 C. W. N 481 : 31 I. C. 242.

——Art. 142—*Dispossession—Landlord and tenant—Rent-free title—Suit for rent.*

Where in a suit for rent, the plaintiff treats the defendants as trespassers and the defendants are found to have been in adverse possession as rent-free holders, for over a century, the suit is barred by limitation. (*Mookerjee and Beachcroft, JJ.*) JAFAR AHMED *v.* BIRENDRA KISHORE.
24 I. C. 319: 22 C. L. J. 126.

——Art. 142—*Dispossession — Trespass—Isolated act of.*

An isolated act of trespass does not constitute dispossession. (*Mookerjee and Beachcroft, JJ.*) PURNA CHANDRA *v.* ANANTA KEOT. 20 I. C. 79.

LIMITATION ACT (IX OF 1908), Art. 142—Dispossession.

——Art. 142—*Dispossession—Landlord and tenant—Suit by occupancy tenant against landlord for possession of holding of which he was dispossessed.*

The period of limitation for a suit by an occupancy tenant for possession of an occupancy holding from which he was dispossessed by the landlord is twelve years from the date of dispossession under Art. 142 of the Second Schedule to the Lim. Act. (*Ratligan and Shah-Din, JJ.*) GHULAM RASUL *v.* UMAR, 133 P. L. R. 1911 : 11 I. C. 521 : 243 P. W. R. 1911.

——Art. 142—*Dispossession — Successive trespasser in continuous possession for 12 years in all.*

Where a number of independent trespassers are continuously and successively in possession of immoveable property for over twelve years, the rightful owner is thereafter barred from suing to recover the property although not even one of the trespassers has been in adverse possession of the property for over twelve years. (*Kumaraswami Sastri and Devadoss, JJ.*) VENNAM RAMAYYA *v.* KOSURU KOTAMMA.
45 Mad. 370 : (1922) M. W. N. 132 : 30 M. L. T. 143 : 42 M. L. J. 319 : 1922 Mad. 59.

——Art. 142—*Dispossession — Successive trespassers—Title by whom acquired.*

Of successive independent trespassers who have been continuously in possession for the statutory period, the first trespasser gets the title and not the last, who is in possession at the time when the title of the real owner is extinguished. 2 A. 51 P. C. Rel. (*Ayling and Srinivasa Aiyangar, JJ.*) SUBBAIYA PANDARAM *v.* MAHAMMAD MUSTAPHA MARACAYAR.
21 M. L. T. 62 : 5 L. W. 690 : 40 I. C. 50 : 32 M. L. J. 85.

——Arts. 142 and 144—*Dispossession—Usufructuary mortgagee put in possession and subsequently ousted.*

Where a usufructuary mortgagee was put in possession but has subsequently lost it, a suit by the mortgagee to recover possession is governed by art. 142 or 144 as the case may be. (*Ballen, A.J.C.*) ANJUMAN ISLAMIA *v.* HISAMAL.
9 N. L. R. 178 : 22 I. C. 65.

——Art. 142—*Dispossession—Proof of possession within 12 years.*

The plaintiffs are bound to prove possession within 12 years in a suit for recovery of possession governed by Art. 142 of the Limitation Act. (*Ross, J.*) GAYANI SAHU *v.* BALCHAND SAHU.
1924 P. 341.

——Art. 142—*Dispossession—S. 41, Bengal Survey Act—Decision under—If amounts to dispossession.*

An adverse decision under S. 41 of the Bengal Survey Act amounts to dispossession within the meaning of Art. 142 of Sch. I to the Limitation Act, and time runs from the date of the decision. (*Das and Adami, JJ.*) ALIKHAN *v.* SECRETARY OF STATE FOR INDIA.
61 I. C. 78 : 2 P. L. T. 133.

LIMITATION ACT (IX OF 1908), Art. 142—Ejectment suit.

——Art. 142 — *Dispossession—Discontinuance of possession—What constitutes.*

Under Art. 142, the Court should find the starting point of dispossession or discontinuance of possession. Dispossession implies an ouster from possession followed by the possession of another person. Therefore a finding that the deft. was not in possession for twelve years before suit implies that plaintiff brought his suit within twelve years of his dispossession. 29 Cal. 518 (P.C.) foll. (*Coutts and Dass, JJ.*) MADAN MOHAN SINGH *v.* BRIJ BEHARI LAL 1 Pat. L. T. 505 : 5 Pat. L. J. 592 : 1921 Pat. 29.

——Art. 142—*Dispossession—Proof of within 12 years.*

When a plff. sues for possession on the allegation that while in possession he was dispossessed by the deft. he must show the time of dispossession and he must bring the suit within 12 years from that date. (*Das, J.*) BHIKHAN QASSAB *v.* MARDAN ALI.
56 I. C. 40.

——Arts. 142 and 144—*Dispossession—Co-sharer—Adverse possession.*

The presumption is that the possession of one tenant-in-common is the possession of the other. And though allegations of dispossession and discontinuance of possession bring the suit under Art. 142, Lim. Act, yet in the case of a suit for possession by a tenant in-common, the onus lies on the deft. tenant in-common to prove when the joint possession ceased. (*Pratt, J. C. and Hayward, A. J. C.*) ASUDOMAI *v.* ALI.
10 I. C. 554 : 5 S. L. R. 49.

Ejectment Suit.

——Art. 142—*Ejectment — Title of plff.—Strict proof essential.*

The plaintiff in an ejectment action must, in order to succeed, strictly prove his own title. (*Mr. Ameer Ali.*) RAMCHANDRA MARTAND MAIKAR *v.* VINAYAK VENKATESH KOTHEKAR. 42 Cal. 384 : 41 I. A. 290 : 18 C. W. N. 1154 : 1 L. W. 931 : 10 N. L. R. 112 : 16 M. L. T. 447 : (1914) M. W. N. 835 : 16 Bom. L. R. 863 : 12 A. L. J. 1281 : 25 I. C. 290 : 20 C. L. J. 573 : 27 M. L. J. 333 (P. C.)

——Art. 142—*Ejectment—Title—Possession within 12 years—Onus.*

In a suit for ejectment, the onus is on the plaintiff to prove not only his title to possession but the fact of his dispossession or discontinuance of possession within 12 years. (*Sir John Edge.*) DHARANI KANTA LAHIRI *v.* GABAR ALI.
(1913) M. W. N. 157 : 17 C. W. N. 389 : 18 M. L. T. 185 : 17 C. L. J. 277 : 15 Bom. L. R. 445 : 18 I. C. 17 : 25 M. L. J. 95 (P. C.)

LIMITATION ACT (IX OF 1908), Art. 142—Ejectment suit.

——Art. 142—*Ejectment suit—Title—Onus of proof—Prescriptive title.*

The onus of establising title to property by reason of possession for the prescriptive period lies on the person asserting such possession. In a suit under Art. 142 it is on the plaintiff to prove possession within 12 years. 20 A. 182 not foll, 39 M. 617 (P.C.) 16 C. 473; 37 I. C. 794, Foll. (*Walsh and Ryves, JJ.*) JAI CHAND *v.* GIRWAR SINGH.

41 All. 669 : 52 I. C. 366 : 17 A. L. J. 814.

——Art. 142—*Ejectment suit—Title and possession to be proved.*

A plff. in a suit for possession must show title and where it is alleged that he is out of possession he must show affirmatively that he has been in possession within twelve years of the suit. (*Walsh and Stuart, JJ.*) CHAMPA LAL *v.* MANGAL CHAND.

40 I. C. 420.

——Art. 142—*Ejectment. suit—Proof of—Plaintiff's title.*

In an ejectment suit, the defendant cannot be put to the defence of his title at all unless the plaintiff claims from the Court the relief to which he is entitled within the time prescribed by law. (*Piggott, J.*) BHOLE SINGH *v.* BHAGWANT SINGH.

15 I. C. 10 : 10 A. L. J. 13.

——Art. 142—*Ejectment suit—Plea of adverse possession—Onus.*

Where in a suit for possession the plff.'s title is denied by the deft, who sets up adverse possession, the plaintiff must prove both ownership and possession within the statutory period. (*Karamat Hussain, J.*) BRIJLAL SAHU *v.* RAMSHAR SAHU.

9 I. C. 812.

——Art. 142—*Ejectment suit—Title and possession within 12 years to be proved.*

In a suit in ejectment plff. must prove a valid title and possession within 12 years. Mere possession without title will not avail unless it is proved to have existed for 12 years. (*Beaman and Heaton, JJ.*) BAPIJI NARAYAN CHITNIS *v.* BHAGVANT BALWANT CHITNIS. **42 Bom. 357 : 45 I. C. 550 : 20 Bom. L. R. 346.**

——Art. 142—*Ejectment suit—Declaration of title—Plea of separate title on partition—Burden of proof.*

The burden of proof in a suit for *khas* possession lies upon plff. to prove his title where he pleads joint purchase with deft. notwithstanding the plea of defts. that the land was originally joint and on partition fall to their share. (*Chatterjee and Richardson, JJ.*) OLI SHA *v.* FARID SARDAR.

41 I. C. 690.

——Art. 142—*Ejectment suit — Burden of proof.*

In an ejectment suit, plff. should prove his possession within the statutory period but if plff. is mentioned in the Record-of-Rights as the person in possession, then the burden is shifted on the deft. and he must prove that plff. had been out of possession for more than the statutory period. A Court in dismissing a suit as barred by limitation must state clearly under what law it is barred and whether the facts necessary for applying that law have been established. (*Sharfuddin and Mullick, JJ.*) BARKAT ALI *v.* BASANT NUNIA.

39 I. C. 356 : 21 C. W. N. 175.

——Art. 142—*Ejectment suit—Title is to be proved.*

Title must be strictly proved to entitle plff. to ejectment. (*Sanderson, C. J., Woodroffe and Mookerjee, JJ.*) RAMCHANDRA SIL *v.* RAMANMAMI DASI.

36 I. C. 890 : 20 C. W. N. 773.

——Arts. 142 and 144—*Ejectment suit—Landlord and tenant—Rent decree obtained by plff.'s predecessors.*

In a suit for possession of land held by raiyats, a rent decree obtained by plff.'s predecessors within 12 years before suit saves limitation. (*Coxe and Chatterjee, JJ.*) DEO NANDA PRASAD *v.* UDIT NARAYAN SINGH. **23 I. C. 298 : 18 C. W. N. 940.**

——Art. 142—*Ejectment suit—Suit for possession—Proof of possession within 12 years of suit is necessary.*

In a suit for possession consequent on a dispossession, plff. must prove that the dispossession occurred within 12 years of suit. (*Jenkins, C. J and Mookerji, J.*) BISHAMBAR SATBHAYA *v.* NADIAR CHAND MANDAL.

22 I. C. 64 : 18 C. L. J. 601.

——Art. 142—*Ejectment — Landlord and tenant—No evidence as to character of tenancy—Limitation applicable—Special or general.*

In a suit for possession by a tenant where nothing is known about the origin and the character of the tenancy the burden is upon the deft. to prove special circumstances abridging the ordinary period of limitation applicable to the case. (*Mookerjee and Caspersz, JJ.*) TARA NATH *v.* ISWAR CHANDRA DAS. **14 C. L. J. 598 : 11 I. C. 164 : 16 C. W. N. 398.**

——Arts. 142 and 131—*Ejectment Suit—Suit for possession of temple—Limitation.*

The period of limitation applicable to a suit for possession of a temple is that contained in Art. 142 of the Lim. Act, and not Art. 131 Limitation Act. 4 Cal 683 dist. (*Ayling and Seshagiri Aiyar, JJ.*) SANKARALINGA MUDALIAR *v.* KUTHALINGA MUDALIAR.

52 I. C. 637.

——Arts. 142 and 144—*Ejectment suit—Possession within 12 years—Onus of proof.*

In a suit for possession, the plaintiff must prove not only that he is entitled to the property but also (if and in so far it is contested) that he has not been out of possession during the whole of the 12 years preceding his suit. The fact that defendants are not able to establish affirmatively that they have been continually in possession for the

LIMITATION ACT (IX OF 1908), Art. 142—Ejectment suit.

said period of 12 years under Art. 144 does not necessarily entitle the plaintiff to succeed unless the requirements of Art. 142 are also satisfied. (*Ayling and Tyabji, JJ.*) KALIAPERUMAL KEERUDAYAN *v.* CHIDAMBARAM THANJIRAN.
29 I. C. 10.

———Art. 142—*Ejectment suit—Form of issue.*
In a suit for possession falling under Art. 142 of the Lim. Act, the issue should properly be "whether the plaintiff was in possession within 12 years prior to the suit." (*Sundara Aiyar, J.*) RANGACHARIAR, *In re.*
15 I. C. 190 : (1912) M. W. N. 175.

———Art. 142—*Ejectment suit—Dispossession—Onus.*
A suit for possession based on a dispossession of the plff. by the deft. is governed by Art. 142 and not by Art. 144 of the Act. The onus is on the plff. to establish that his possession continued within 12 years before suit. (*White, C. J. and Sadasiva Aiyar, J.*) PRAKKATERI *v.* KORAM.
14 I. C. 295 : (1912) M. W. N. 532.

———Art. 142—*Ejectment suit—Dispossession within 12 years—Proof of.*
Where the plaintiff sues for recovery of possession of property alleging a dispossession within 12 years it is for him to prove his possession and dispossession within that period. Payment of revenue may or may not be evidence of possession but relation of rents from tenants is evidence of such possession. (*Kotwal, A. J. C.*) RAGHURAJ *v.* BALLABHDAS.
1923 Nag. 95.

———Art. 142—*Ejectment suit—Landlord and tenant.*
Art. 142 is not applicable if the possession by the deft. of a limited interest in land is not adverse to the plff. landlord. (*Batten, A. J. C.*) KANHAIYA LAL *v.* DULAB SINGH.
17 I. C. 606 : 8 N. L. R. 163.

———Art. 142—*Ejectment suit—Possession within 12 years—Onus.*
Where in a suit for possession after dispossession of the plff. his possession within limitation is denied, it is for plff. to prove such possession. (*Lindsay, J. C.*) RATIPAL *v.* BIPIN CHANDRA CHATTERJEE.
41 I. C. 80 : 40 L. J. 354.

———Art. 142—*Ejectment suit—Suit for possession of land free of the house and trees.*
Art. 142 of the Lim. Act is applicable to a suit claiming possession of land free of the house and trees which have been built and planted wrongfully and without any consent, and that such a claim is not similar to one merely for the removal of the trees. (*Kanhaiya Lal, A. J. C.*) JAGMOHAN SINGH *v.* TULA RAM DAS.
25 I. C. 701 : 17 O. C. 252.

———Art. 142—*Ejectment suit—Title and dispossession—Proof.*
In an ejectment suit a plaintiff must prove his title and dispossession by the defendant within 12 years before the date of the institution of the suit. Possession is different from user ; and if the land is unfit for use in the usual mode,

LIMITATION ACT (IX OF 1908), Art. 142—Ejectment suit.

plaintiff's possession is presumed till contrary is proved, which presumption being one of fact, is not conclusive and depends in every case upon the particular circumstances. (*Miller, C. J. and Mullick, J.*) INDER LAL *v.* RAM SURAT KUER.
5 Pat. L. J. 724 : 2 P. L. T. 55 : 58 I. C. 773 : 1921 Pat. 118.

———Arts. 142 and 144—*Ejectment suit—Entry of deft.'s name in Record of Rights—Onus.*
In a suit for possession where the entry in the Record-of-Rights is in favour of defts. plff must prove his possession within 12 years of suit. (*Adami, J.*) KISHEN PRASAD SINGH *v.* SURAJ NARAIN PRASAD SAHI.
54 I. C. 960.

———Art. 142—*Ejectment suit—Possession—Onus—Character of land—Proof of proprietary title 12 years before suit—Presumption—Onus.*
The onus that lies on plff. in a suit under Art. 142 of Lim. Act of giving affirmative evidence of possession within twelve years prior to the date of suit is not affected by the character of the land in question. Where in a suit to which Art. 142 applies plff. proves his proprietary title at a period prior to twelve years before the institution of suit, the presumption is that his possession continued till within twelve years of the suit. In such a case the plff. must succeed unless the deft. rebuts the presumption of plff's possession and proves that the plff's title was extinguished by adverse possession. (*Mullick and Atkinson, JJ.*) MIDNAPUR ZAMINDARY CO., LTD. *v.* PANDEY SIRDAR.
2 Pat. L. W. 143 : 41 I. C. 114 : 2 Pat. L. J. 506.

———Art. 142—*Ejectment suit—Landlord and tenant—Bengal Tenancy Act, Sch. III, Art. 3.*
A suit by tenant for possession of his holding on his being dispossessed by a co-sharer landlord, not in his capacity as landlord but as having acquired a *Jote* interest in the holding, independently of his interest as landlord comes under Art. 142 and not under Art. 3, Sch. III, Bengal Tenancy Act. (*Atkinson, J.*) GAWHER ALI *v.* EMAYAT ALI.
38 I. C. 777.

———Arts. 142 and 144—*Ejectment—Suit for possession—Burden of proof.*
In a suit for possession or dispossession or discontinuance of possession, limitation runs from dispossession or discontinuance of possession and the plff. has to show that he or his predecessor-in-title had been in possession within 12 years of date of suit. Article 142 applies to such a case. (*Maung Kin, J.*) APPAN CHARAN *v.* KYANUSE MA.
41 I. C. 722 : 11 Bur. L. T. 150.

———Art. 142—*Ejectment—Possession within 12 years.*
Where the defendant alleged he was in possession of waste land for 40 years prior to the suit, having cleared the jungle, the suit is governed by Art. 142 and the plaintiffs have to prove that they were the true owners and were in possession within 12 years prior to suit. (*Mc Coll, A, J. C.*) NGA PO *v.* NGASOPE.
37 I. C. 981 : 7 Bur. L. T. 255.

LIMITATION ACT (IX OF 1908), Art. 142—Fishery.

Fishery.

——Art. 142—*Fishery—Suit for rents.*

Art. 142 of the Limitation Act applies to a suit for recovery of possession of a *Jalkar* or declaration of plff's title thereto, where the question is whether the *Jalker* belongs to the plff. or deft. as persons claiming to receive rent in respect thereof and which of them is entitled to collect the rent, there having been no grant or completed easement, etc., in either party's favour. (*Woodroffe and Chaudhuri, JJ.*) MADHAB CHANDRA MANDAL *v.* NAGENDRA NATH SEN.

34 I. C. 841.

——Arts. 142 and 144—*Fishery— Right to possession of dobas in the bed of the old channel —New channel in communication with the fishery—River shifting course leaving—Grantee of fishery right, continuing to fish in new channel —Limitation.*

Where a river shifts its course, leaving *dobas* in its old bed, and the grantee of a fishery right in it has been fishing in the new channel within the period of limitation, there is no bar to a suit for possession of the *dobas*. (*Carnduff and Richardson, JJ.*) HEM CHANDRA *v.* SECRETARY OF STATE. 23 I. C. 136.

——Arts. 142 and 144—*Fishery—Ouster from right to catch fish—Limitation.*

If a person is completely ousted from his right to catch fish in water on his own land by a definite act of aggression by another party, such act amounts to a dispossession from immoveable property within Arts. 142 and 144 and a suit to obtain possession of such benefit must be brought within 12 years of such dispossession. (*Chapman and Roe, JJ.*) BAKER HUSSAIN *v.* RANJIT KOER.

2 Pat. L. J. 289 : 39 I. C. 777 : 1 Pat. L. W. 687.

Invalid alienation.

——Art. 142—*Invalid alienation— Revenue sale—Suit for possession by proprietor.*

In a suit for possession by proprietor against a purchaser of his estate, in a revenue sale by the Collector under Bengal Rev. Sales Act. (1859) if the arrears are not due, the sale is void and no suit to set aside is necessary. The proprietor can sue within 12 years of the alienation and dispossession. (*Jenkins, C. J. Mookerjee and Richardson, JJ.*) KRISHEN LOYAL GIR *v.* IRSHAD ALI KHAN. 31 I. C. 965 : 22 C. L. J. 525.

——Art. 142—*Invalid alienation—Dispossession—Suit for possesssion—Palayam—Successive holders—Fresh cause of action.*

Assuming that the estate of a *poligar* is one for life, the *poligar*, for the time being ordinarily represents the estate. If therefore the *poligar* for the time being is dispossessed and he fails to sue for possession within 12 years of the dispossession, the person in possession gets an absolute title to the estate. The successor of *poligar* has not got a fresh starting point from the date of his succession unless he shows that his predecessor had effectually debarred himself from suing and there was no one else who would have sued successfully for possession. (*Wallis, C. J. and Spencer, J.*) THE MIDNAPORE ZAMINDARI CO. LTD. *v.* MALAYANDI APPASWAMY NAYAKER.

41 Mad. 749 : 24 M. L. T. 1 : 8 L. W. 382 : 47 I. C. 733 : 34 M. L. J. 563.

LIMITATION ACT (IX OF 1908), Art. 142—Permissive possession.

——Arts. 142 and 144—*Invalid alienation—Possession under.*

A village was leased in 1881 for 10 years. In 1885 the lessor mortgaged the village. In 1887 the mortgagee sued on his mortgage, brought the properties to sale and purchased and obtained possession of the same in 1890. In 1903 a successor of the lessor sued the auction-purchaser for recovery of possession on the ground that the properties belonged to a trust and as such the auction sale was void. *Held* that whether art. 142 or 144 applied, the suit was barred inasmuch as the purchaser remained in possession adversely to the trust from 1890. Very strong evidence is required to show that the auction-purchaser was not in possession. (*Miller and Tyabji, JJ.*) GOVINDA DOSS *v.* RAJAH VENKATA PERUMAL.

26 I. C. 537 : 27 M. L. J. 195.

——Arts. 142 and 123—*Invalid alienation—Joint share—Suit to set aside.*

A suit to set aside an invalid sale to the extent of the plff.'s joint share and for possession thereof is governed by Art. 142 and not 123. (*Maung Kin, J.*) HLA GYAW *v.* AUMG PYA.

42 I. C. 121 : 11 Bur. L. T. 119.

Permissive possession.

——Arts. 142 and 144—*Permissive possession —Suit for possession—Conveyance of property in satisfaction of mohar—Adverse possession.*

In 1898, the plff.'s husband sold to her two houses by a registered document in satisfaction of her mohur (dower). In one of the houses the plff.'s husband continued to reside as before till his death in 1911. On his death the defts, having forcibly taken possession of the house, the plff. sued for possession. The Lower Courts rejected the claim first, on the ground that the document was without consideration, and secondly, that the claim was barred by time. *Held*, that the document being a document of advancement, no consideration was necessary. The suit was in time, for the residence by the husband from 1898 to 1911 was permissive and on behalf of the plff. and not adverse. (*Beaman and Heaton, JJ.*) IBRAHIM BHURA JAMNU *v.* ISA RASUL JAMNU. 41 Bom. 5 ; 36 I. C. 715 : 18 Bom. L. R. 810.

——Art. 142—*Permissive possession—Onus of proof.*

Where plff. alleging that deft.'s possession was permissive and that he constructed his *amla* on the land in suit sued for possession and for a perpetual injunction to remove his *amla*. *Held*, that Art. 142 applies only when there is dispossession or discontinuance of possession the plff. must undoubtedly prove that deft's. possession was permissive. (*Broadway and Dundass, JJ.*) MIR MAHFUZ ALI *v.* MUSSAMMAT MAHOMED ZAMANI BEGAM. 2 Lah. L. J. 511.

LIMITATION ACT (IX OF 1908), Art. 142—Permissive possession.

———Art. 142—*Permissive possession—Meaning of.*

Where defendant got possession of joint property under a mortgage decree against some of the co-parceners on a mortgage executed by them and where the co-parceners were *pro forma* defendants to a suit by the other co-parceners, the possession of the decree-holder is not necessarily permissive, simply because the co sharers were *pro forma* defendants. (*Coutts and Ross, JJ.*) NEKHARI BALL *v.* LAKSHIMI KANT. **1922 P. 33.**

———Arts 142 — *Permissive possession—Adverse possession by mortgagee—Mere assertion of title if amounts to.*

A mere assertion of title by a mortgagee in possession does not give a starting point for limitation for a suit by a mortgagor for redemption. Nor does the fact that the mortgagee's name appear in the Revenue registers as owner, is a sufficient evidence of adverse possession against the mortgagor. (*Moore, J.*) MAUNG SHWE PAUNG *v.* MAUNG ON. **11 I C. 853 : 4 Bur. L. T. 185.**

Possession following title.

——Arts. 142 and 144—*Possession following title—Dispossession within 12 years — Vacant land.*

Where the plaintiff establishes his title to the property he could rely upon the presumption that possession goes with the title. If there is no satisfactory evidence in rebuttal the presumption must be given effect to. No doubt if the suit comes under Art. 142 of the Lim. Act time begins to run from the date of the dispossession. But if the plff. alleges he is dispossessed within 12 years of the suit, then the question must arise, according to the circumstances of each case, how far the plff. has correctly fixed the date of dispossession, and how far the onus lies on the deft. to show that that date was wrong 43 I. A, 192 ; 48 I. A, 395 Rel. It is for the plaintiff, in a suit for ejectment to prove possession prior to the dispossession which he alleges. At the same time on the question of evidence the initial fact of plaintiff's title comes to his aid, with greater or less force according to the circumstances established in evidence. Where plff. purchased two open spaces of land in a court sale and was placed in possession of them and more than 12 years after the delivery of possession, sued to eject the deft, a person claiming to be a subsequent purchaser from the judgment debtor. *Held* that the plaintiff having established his title to the property could rely on the presumption that possession follows title in the absence of strong and clear evidence to rebut it. Possession of open sites goes naturally with the possession of the property which they adjoin. (*Macleod, C. J. and Coyajee, J.*) MAHAMAD SAHIB IBRAHIM SAHIB *v.* TILOKCHAND. **24 Bom. L. R 373 : 1922 Bom. 243.**

——Art. 142—*Possession following title—Proof of possession within 12 years of suit.*

Where a plaintiff sues for possession, he must prove not only his title but also possession within 12 years if the case falls under art. 142 of the Lim. Act. Where there is evidence adduced as regards possession and the land is capable of possession, the plaintiff must succeed on the strength of the evidence and not on the mere presumption that possession follows title. (*Chatterjee and Panton, JJ.*) RAM RATAN MANDAL *v.* NILMONI CHOWDHURY. **1923 Cal. 286.**

LIMITATION ACT (IX OF 1908), Art 142—Possessory title.

———Art. 142 and 144—*Possession following title—Vacant land — Presumption — Vendee's rights.*

Where land is admittedly vacant possession may be presumed to go with title, and in the case of the sale of such land the presumption is that posssession is with the vendee. Where the non-proprietor of land sells the same and afterwards the proprietors sues the vendee in ejectment, he has to prove his possession and not merely call in aid the presumption of law in cases of vacant lands. (*Chevis, J.*) SAMPAT RAM *v.* GANGA DATT.

1924 Lah. 276.

———Arts, 142 and 144—*Possession following title—Evidence on both sides valueless.*

Per *Curiem* (*Jwala Prasad, J. dissenting*) Where in an ejectment suit, the evidence as to possession on both sides is valueless, the plff. is deemed to have failed to satisfy the burden of proving his possession within that period by merely proving his title and possession at some antecedent period. (*Miller, C. J., Jwala Prasad, Das, Adami and Bucknill, JJ.*) SHIVA PRASAD SINGH *v.* HIRA SINGH.

2 Pat. L. T. 687 : 6 Pat. L. J. 478 : 3 U. P. L. R. (Pat.) 81 : 62 I. C. 1 : 1921 Pat. 305 (F. B.)

———Art. 142—*Possession following title—Presumption.*

In a case with evidence equally strong on both sides the presumption of possession arises on title, but when there is no evidence on either side presumption from title will save limitation under Art. 142, in the case of arable lands. (*Mullick, J.*) FAKIRALAL SAHU *v.* RAMCHARAN LAL.

35 I. C. 554 : 1 Pat. L. J. 146.

Possessory title.

———Art. 142 — *Possessory title — Adverse possession—Onus of proof.*

In a case where the suit is resisted on the ground of acquisition of title by prescription it is not for the plaintiff to prove his title within 12 years. It is for the defendant to prove his adverse proprietary title. 39 Mad. 670; 17 A. L. J. 84, Foll. (*Gokul Prasad, J.*) RAGHA MAL *v.* ABDUS SATTAR. **1923 All. 565.**

———Art. 142—*Possessory title.*

In 1915 when a survey party came to measure the fields it was found that the defendants were in actual possession of more than half of the land and in excess of the moiety shown under the paper title. *Held* that there being no evidence at all to show at what period the discrepancy in area between the title deeds and the actual occupation crept in, plaintiff must prove that the discrepancy arose within the last 12 years. (*Marten, J.*) KASHINATH GYANOBA *v.* GANESH SITARAM. **1923 Bom. 361.**

LIMITATION ACT (IX OF 1908), Art. 142—Possessory title.

——Art. 142—*Possessory title—Ouster—Plff. shown to be in actual cultivating possession.*

Where the plff. is shown to be in actual cultivating possession in the settlement record of 1910—11 and this entry has not been rebutted, it is correct and plff. was in possession within 12 years. The mere entry by the *patwari* in the mutation register that the exchange took place on a certain date is not the proof of the date of the exchange. (*Scott Smith, J.*) SHER SINGH *v.* KHEM SINGH. **2 Lah. L. J. 230.**

——Art. 142—*Possessory title— Possession under an illegal order— Effect.*

Possession under an illegal order or decree of a Court is not possession that can avail plaintiff under this article. (*Ayling and Tyabji, JJ.*) KALIAPERUMAL KEERUDAYAN *v.* CHIDAMBARAM THANJIRAN. **29 I. C. 10.**

——Arts. 142 and 144—*Possessory title—Purchaser from trespasser entitled to tack his possession to that of the trespasser.*

A trespasser cannot tack his own possession to possession of the previous trespasser for purposes of limitation. But where a trespasser sells his claim to possession to a purchaser, that purchaser is entitled to tack the previous possession to his own possession for purposes of limitation and each subsequent purchaser of the claim or right to possession would have the similar right to tack the previous periods of his predecessors in-title. (*Lentaigne, J.*) MA MI *v.* HAJJI MAHOMED. **1 Rang. 176 : 1923 Rang. 261.**

Service tenure.

——Art. 142—*Service tenure—Chowkidari Chakran Lands—Resumption—Suit for possession.*

A *patnidar's* possession of *Chowkidari Chakran* lands through receipt of the services performed by the *Chowkidars*, is discontinued on resumption of the lands inasmuch as the services cease to be performed. So that a suit by a *Patnidar* for possession of resumed lands is governed by Art. 142 of the Act and must be brought within 12 years of the date of resumption. (*Fletcher and Huda, JJ.*) MOHENDRA NATH SOW *v.* RAJANI KANTA SOW. **46 I. C. 895.**

Submerged land.

——Arts. 142 and 144—*Submerged land—Dispossession—Diluviated lands—Periodical submersion—Adverse possession—Lim. Act, S. 2 (4)—Independent trespassers.*

The term "dispossession" though not defined in the Lim. Act is well understood. A man may cease to use his land because he cannot use it, as when it is under water. He does not thereby discontinue his possession; constructively, it continues until he is dispossessed and upon the cessation of the dispossession before the lapse of the statutory period, constructively it revives. There can be no continuance of adverse possession, when the land is not capable of use and enjoyment, so long as such adverse possession must rest on *de facto* use and occupation. *Leigh v. Jack*, 5 Ex. D. 264; 274; 29 I. A. 104 Rel. The annual cultivation of parts of diluviated lands when they emerge during a portion of the year is not a dispossession of the owner of the lands within Art. 142 for during their next submersion the true owner's possession revives. There may be circumstances to link together various portions of ground so as to make the possession of a part as it emerged, amount constructively to a possession of the whole 24 C. 256; 259, Ref. Where land is diluviated during a part of every year, there cannot be continuous adverse possession of the same under Art. 144 of the Lim. Act, as during each submersion the true owner gets into constructive possession of the land. 29 I. A. 104 applied. In order to make out a case of adverse possession for the statutory period, the defendants in the case could not tack on their possession to that of the Government who had released the reformed lands to the defts. on the grounnd they were the persons entitled to them. In such circumstances, the defendants do not derive their liability to be sued from or through the Government within S. 2 (4) of the Lim. Act. (*Lord Sumner.*) BASANTA KUMAR ROY *v.* SECRETARY OF STATE. **44 Cal. 858 : 1 Pat. L. W. 593. 21 C. W. N. 642 : 15 A. L. J. 398 : 25 C. L. J. 437 : 19 Bom. L. R. 480 : (1917) M. W. N. 482 : 6 L. W. 117 : 22 M. L. T. 310 : 40 I. C. 337 : 44 I A. 104: 32 M. L. J. 505 (P. C.)**

LIMITATION ACT (IX OF 1908), Art. 142—Submerged land.

——Arts. 142 and 144—*Submerged land—Discontinuance of possession — Rights of true owner and trespasser.*

Where land becomes submerged it is constructively in the possession of its lawful owner. Consequently where a trespasser has been in possession of lands which at intervals of 4 or 5 years become submerged, there is an interruption of the possession of the trespasser and a revival of the possession of the true owner during the period of submersion. Consequently the trespasser's possession is not continuous and he cannot acquire a title by advere possession. (*Gokul Prasad and Sulaiman, JJ.*) RAM NAIN MISIR *v.* DEOKI MISIR, **20 A. L. J. 756 : 4 U. P. L. R. (A). 129 : L. R. 3 A. 552 : 1923 All. 75.**

——Art. 142—*Submerged land.*

Where land is subject to inundation partially or wholly by a river, the plff. must be deemed to be in possession of the submerged portion during the period of submergence. It is immaterial as to who was in possession at the date of sub-mergence. 16 C. 518 Ref. (*Mookerji and Holmwood, JJ.*) KHEDON LAL *v.* RAJENDRA NARAIN SINGH. **51 I. C. 70 : 29 C. L. J. 259.**

——Art. 142—*Submerged land—Dispossession—Alluvions.*

Art. 142 applies to a suit for declaration and possession of *char* lands which had diluviated more than 12 years before suit where the plaintiffs have proved possession and title up to the time of diluviation, and allege that the dispuled lands had reformed within 12 years before suit. 7 C. 225 foll. (*Jenkins, C. J. and Chatterjee, J.*) BILASH CHANDRA *v.* AMJUD ALI. **9 I. C. 554**

LIMITATION ACT (IX OF 1908), Art. 142—Submerged land.

——Art 142—*Submerged land—Trespasser—Derelict land—Abandonment—Submersion of land temporarily by floods*

The presumption of ownership which would exist in favour of the holder of a perfect title during the period the land remained derelict cannot be made for the benefit of a holder of an imperfect title. Thus a trespasser whose title is not perfected by adverse possession cannot tack on to his period of possession the period during which the land remained derelict. The requisite factor for the application of this principle is the factor of abandonment and the question is whether the land did or did not remain derelict. Such a principle cannot be applied where there has been no actual submersion of the land in the proper sense of the term and no abandonment but which has only been flooded in parts by temporary floods which interfered for short periods with the use to which it could be put. 29 Cal. 518 (P. C.) and 18 O. C. 43 Expl. and Dist. (*Stuart and Kanhaiya Lal, A. J. Cs.*) HEARSEY *v.* SARDAR KARAM SINGH. 19 O. C. 374 : 37 I. C. 715 : 3 O. L. J. 595.

——Arts. 142 and 144—*Submerged land—Suit for possession—Limitation.*

In a suit for possession on dispossession the onus is on the plff. to prove possession in him within twelve years of the suit and he cannot shift the onus on to the deft. by showing his own possession at any period prior to twelve years before suit. But if plff. shows that his possession continued up to the time when the land was submerged his possession is presumed to continue throughout the period of submersion when the land was reformed within 12 years of the suit unless deft. too proves the contrary, 8 Cal. 744 foll. (*Das and Adami, JJ.*) GAJADHAR PRASAD *v* DULHIN GULAB KUER. 57 I. C. 744 : 5 Pat. L. J. 682.

——Art. 142—*Submerged land—Suit for possession—Limitation.*

It lies on the plffs. to prove possession and dispossession within 12 years suit but possession is not the same thing as actual user. The true rule is that where land has been shown to have been in a condition unfitting it for actual enjoyment in the usual modes at that such a time and under such a circumstance that state naturally would and probably did continue within 12 years before the suit, it may properly be presumed that it did so continue and that the plff.'s possession continued also, until the contrary is shown. 9 Cal. 744 foll. (*Das and Adami, JJ.*) BARU BRAHMANAND SINGH *v.* DAUD BAHAUST SINGH. 2 U. P. L. R. (Pat.) 111 : 1 Pat. L. T. 229 : 56 I. C. 344 : 1920 Pat. 245

Waste Land.

——Art. 142—*Waste lands—Onus of proof in suits for possession—Case of jungle lands and diluviated lands—Principles applicable to.*

In a case where plaintiff sues for possession, alleging dispossession by the defendant the onus is on him to prove his possession and the factum of dispossession within twelve years of suit. Even

LIMITATION ACT (IX OF 1908), Art. 142—Waste land.

if he proves title there is no onus on the defendant to show that plaintiff has lost his title by adverse possession. Case-law fully considered. Possession is not necessarily the same thing as user. The nature of possession to be looked for and the evidence of its continuance must depend on the character and condition of the land in dispute. Where the land is incapable of actual enjoyment, as in the case of diluvion by a river, if the plaintiff shows his possession down to the time of the diluvion, his possession is presumed to continue so long as the lands continue to be submerged. In cases where the land is not incapable of enjoyment, but may produce some profit, though trifling in amount and only of occasional occurrence as is often the case with jungle land, it would be unreasonable to look for the same evidence of possession as in the case of a house or cultivated field. All that can be required is that pltf. should show such acts of ownership as are natural under the existing conditions of the land and in such cases his possession is presumed to continue so long as the state of the land remains unchanged unless he is shown to have been dispossessed. In waste and jungle lands possession may be exercised by grazing of cattle, putting up boundary marks, fences, etc. They form no exception to the general rule that plaintiff must prove possession and dispossession within 12 years. In such a case, where plff. proves title, there is a presumption in his favour where having regard to the nature of the land, possession cannot be expected to be proved by actual acts of user and enjoyment. But in such a case where plff. comes to court alleging an exercise by him of acts of ownership which he fails to prove, he cannot be allowed to turn round and rely on a presumption arising from title. For that would apply only to cases where from the nature of the land no definite acts of possession are possible. (*Chatterjee and Panton, JJ.*) RAKHAL CHANDRA GHOSE *v* DURGADAS SAMANTA. 26 C. W. N. 724 : 1922 Cal. 557.

——Arts. 142 and 144—*Waste land—Abadi in Agricultural Mahal—Onus.*

The burden of proving a plea of adverse possession by an occupier of the *Abadi* in an agricultural *Mahal* lies very heavily on him and is not discharged by saying that the *Zamindar* has not proved his possession within twelve years of the date of suit. 29 A. 153, Expl. (*Knox, A. C.J.*) SHAMBU NATH *v.* HARI RAM. 40 I. C. 97.

——Art. 142—*Waste land—Suit for possession of—Limitation.*

A suit for possession of waste land is governed by Art. 142 of the Act. (*Wilberforce, J.*) MAHMUD *v.* UDEE BHAN. 59 I. C. 891 : 3 Lah. L. J. 72.

——Arts. 142 and 144—*Waste land—Adverse possession*—Prima facie *title.*

Proof of *prima facie* title to waste land is sufficient to throw the onus on the defendants to prove adverse possession for twelve years. Storing dung cakes and tying sheep on site is not

LIMITATION ACT (IX OF 1908), Art. 142—Waste land.

sufficient to give a title by adverse possession. (*Scott Smith, J.*) FATEH KHAN *v.* BISAKHI RAM.
117 P. L. R. 1917 · 42 I. C. 412 :
161 P. W. R. 1917.

———**Arts. 142 and 144** —*Waste land—Presumption.*

As regards waste and unoccupied lands the presumption is that possession follows title. When a deft. has obtained possession only a short time before suit, he must prove some other form of adverse title. The burden of proving adverse possession is not shifted to the defendant by the mere fact that plaintiff can show title to land which was once waste, at however remote a period. (*Leslie Jones, J.*) MOOLCHAND *v.* AMERNATH.
79 P. W. R. 1917 :
39 I. C. 971 : 140 P. L. R. 1917.

———**Arts. 142 and 144**—*Waste land—Discontinuance of possession.*

Whether a transaction carries with it a share of the Shamilat area is a question of intention to be gathered from the terms of the deed and the surrounding circumstances, and the subsequent conduct of the parties, and ordinarily a finding on a matter of this type is one of fact. 57 P. R. 1915, foll. The plff.'s predecessor in interest sold his entire holding to deft.'s ancestor in 1873 ; the deed of sale did not specify the proportionate share in the Shamilat. In a suit to recover possession of the Shamilat lands, *Held*, considering that the plff. never asserted their title at the settlement and at the time of partition of village Shamilat and that the defts. have all along been treated as the persons having a share in the *Shamilat*, the suit for possession was barred by time. (*Shadi Lal and Broadway, JJ.*) GULLU *v.* KAUDA BAKSH KHAN. 38 I. C. 120.

——**Art. 142**—*Waste land—Adverse possession—Possession and title—Site vacant.*

A non-proprietor by merely living outside the actual village *abadi* cannot be deemed to have abandoned the site inside the *abadi* on which he once had his house which had fallen down and not rebuilt for many years. Possession in the case of vacant site goes with the title and its mere use by a neighbour for tethering his cattle thereon cannot be regarded as adverse possession and consequently Art. 142 does not apply. (*Chevis, J.*) LUCHMAN DAS *v.* NARASING DAS.
101 P. L. R. 1916 . 36 I. C. 207 :
108 P W. R. 1916.

——**Arts. 142 and 144**—*Waste land—Adverse possession.*

In respect of waste land allowed to remain so there cannot be a discontinuance of possession and the onus is on the deft. to prove when his possession became adverse. 49 P. R. 1881 : 105 P R. 1901, Foll. (*Scott-Smith, J.*) NARAIN DEVI *v.* BALLA.
106 P. W. R. 1914 :
25 I. C. 82 : 204 P. W. R. 1914.

——**Art. 143**—*Breach of covenant—Lease—Suit for possession.*

Under a lease the lessee was to enjoy the land from generation to generation for purposes of residence without power of alienation and in the event of such alienation the lessor would be entitled to *khas* possession. The lessee sold the land and the lessor sued to recover possession. *Held*, that Art. 143 was applicable and the period of limitation was 12 years and began to run from the date of alienation and not from the date when the lessee surrendered possession to the transferee. (*Mookerjee, C. J and Fletcher, J.*) MOTI LAL PAL CHOWDHURY *v.* CHANDRA KUMAR SEN.
60 I. C, 312 : 24 C. W N. 1064.

LIMITATION ACT (IX OF 1908), Art. 144.

——**Arts. 143 and 144**—*Landlord and tenant—Suit for rent—Dismissal of—Ejectment suit.*

Where a suit for rent is dismissed on the ground of the non-existence of the relationship of landlord and tenant and a suit for possession is brought after 12 years, Art. 144 applies and the suit is barred Art. 143 does not apply to the case as there is no relationship of landlord and tenant. (*Jenkins, C. J. and Mookerjee, J.*) BHAIRAB-CHANDRA NASKAR *v.* KADAM BEWA.
22 I. C. 28 : 18 C. L. J. 553.

———**Art. 143**—*Permanent tenancy—Denial of landlord's title—Forfeiture—Start or posssession*

A person holding under a permanent tenancy holds adversely from the day he denies his landlord's title and a suit for possession on the ground of forfeiture by the tenant falls under Art. 143. *Quaere*:—Whether time runs against the landlord from the time he exercises his option of determining the tenancy. (*Leslie Jones, J.*) LOCHA RAM *v.* JINDWADDA KHAN.
57 P. W R. 1916 : 36 I. C 565 :
76 P. L. R. 1917.

———**Art. 143**— *Forfeiture — Waiver—Fresh act.*

A landlord can condone the forfeiture of his tenant's right caused by the latter's denial of his proprietary title and afterwards bring a suit for possession with 12 years from the time when a separate and entirely distinct Act occasioning forfeiture occurred. (*Leslie Jones, J.*) LOCHA RAM *v.* JINDWADDA KHAN
56 P. W. R. 1916 : 35 I. C. 285 :
141 P. L. R 1916.

———**Art. 143**—*Starting point—Knowledge of lessor, not essential.*

Under Art. 143 of the Limitation Act, the starting point of limitation is the forfeiture itself ; there is nothing in the article about the knowledge of the lessor. (*Ayling and Krishnan, JJ.*) ZAMORIN OF CALICUT *v.* UNIKAT KARNAVAN SAMU NAIR. 38 M. L. J. 276 : 15 L. W. 164 :
27 M. L. T. 111 : 1922 Mad. 29.

———**Art. 144.**

Acquisition of title.

Applicability.

Co-heir.

LIMITATION ACT (IX OF 1908), Art. 144—Acquisition of title.

Constructive possession.
Co-owner.
Debutter property.
Declaration of title.
Immoveable property.
Invalid alienation.
Landlord and Tenant.
Mortgagor and Mortgagee.
Office and emoluments
Partition suit.
Possession pending suit.
Possessory title.
Proof of title.
Reversioner.
Starting point.
Suit on title.
Trusteeship.
Vendor and Vendee.

Acquisition of title.

——Arts. 144 and 149—*Acquisition of title—Prescription—Proof of—Onus—Possession for less than prescriptive period—Onus not shifted.*

Islands formed on the bed of the sea within the territorial waters of the Indian Empire vest in the Crown If islands so formed are constituted a reserved forest by the Government those who claim them are in the position of plffs. claiming a declaration of their title. They must positively prove that they or their predecessors in title have been in possession adversely to the Crown for sixty years under Art. 149. Proof of possession on the part of the claimants for less than the statutory period does not shift the onus on the Crown to show that the claimant's possession commenced or became adverse within sixty years. 9 Mad. 175 Dist.: 7 C.L.R. 364 ref. (*Lord Shaw.*) SECRETARY OF STATE *v.* CHELIKANI RAMA RAO.
39 Mad. 617 : 31 M. L. J. 324 : 20 C. W. N. 1311 : (1916) 2 M. W. N. 224 : 14 A. L. J. 1114 : 20 M. L. .435 : 4 L. W. 486 : 18 Bom L. R. 1007 : 25 C. L. J. 69 : 43 I. A. 192 : 35 I. C. 902 (P.C.).
[On appeal from 33 Mad. 1 : 20 M. L. J. 66.]

——Art. 144—*Acquisition of title—Plea of adverse possession in suit on title.*

The onus is on the defendant to plead and prove adverse possession for the statutory period in a suit for declaration of title based on the defendant's alleged repudiation of it. 39 M. 617 Fol. (*Walsh, J.*) MUHAMED KAMIL *v* HABIBULLAH.
37 I. C. 794.

——Art. 144—*Acquisition of title—License—Ejectment—When long possession amounts to adverse possession.*

Long possession of a plot gives rise to no presumption of a license for building purposes even where the deft. has constructed structures thereon (*Richardson, C. J. and Rafique, J.*) ANAND SARUP *v.* CHAWWA. 34 I. C. 952 : 14 A. L. J. 115.

——Art. 144—*Acquisition of title—Adverse possession—What extinguishes right of the real owner—Continuous possession.*

In order to extinguish the right of the real owner the adverse possession must be continuous. Acts of possession exercised at intervals over different portions of land in different years cannot amount to adverse possession. (*Chatterjee and Panton, JJ.*) PYARI DEYEE DEBI *v.* SAKIR MANDAL. 57 I. C. 716.

——Art. 144—*Acquisition of title—Limited interest—Rent free tenure—Adverse possession.*

Where in a suit for assessment of rent the plaint proceeds on the assumption that there was no relationship of landlord and tenant between the parties and the evidence also shows that the defts were in possession not as tenants but wrongfully and without any right, and the defts. have been in possession for more than 12 years on their own account to the knowledge of the plff. though they claim no more than a rent-free title, the suit is barred by limitation (*Jenkins, C. J., Mookerjee and Beachcroft, JJ.*) MAHARAJA BIRENDRA KISHORE MANIKYA BAHADUR *v.* RAMCHANDRA DEY. 30 I. C. 948 : 22 C. L. J. 153.

——Art. 144—*Acquisition of title—Statutory period—Presumption.*

Where 11 years and 5 months before a suit for possession of a tract of jungle, the final record of rights was published showing the defendants to be in possession at the time, having regard to the well-known practice of the settlement department, the defendant must have been found to be in possession at least 7 months before that record was published. (*Holmwood and Mullick, JJ.*) SAROJINI DEBI *v.* KIRTIBHASH DAS. 27 I. C. 803.

—— Art. 144 and S. 3—*Acquisition of title—Limited interest.*

The words "possession of the deft." do not by reference to the definition in S. 3 include the possession of a co deft. still in possession under a different title. The adverse possession of a deft. must be of the same nature as that sought by the plff. Thus possession as permanent lessee is not adverse as against proprietor in a suit by proprietor. (*Holmwood and Chapman, JJ.*) LAHURIBIBI *v.* BIJOY CHANDRA MAHTAP.
19 I. C. 367 : 17 C. W. N. 748.

——Art. 144—*Acquisition of title—Limited interest—Adverse possession—Interest in immoveable proprety.*

There may be adverse possession of immoveable property as well as of any interest in it under Art. 144. Though a tenant is bound to treat an encroachment as land held under a tenancy the landlord is not bound to do so. The tenant however may acquire by adverse possession a limited interest so as to bar the landlord's claim for possession. (*Jenkins, C. J. and Chatterjee, J.*) GOPAL KRISHNA *v.* LAKHIRAM SARDAR.
14 I. C. 218 : 16 C. W. N. 634.

——Art. 144—*Acquisition of title—User—Whether adverse possession.*

According to the general presumption the land being waste land the owner would be presumed to be in possession as possession follows title. Where defendant and his tenants used to gather their cattle and to store fodder and straw, and they used to graze their cattle on the land, *held*, the user of the sort established in this case is

LIMITATION ACT (IX OF 1908), Art. 144—Acquisition of title.

common in this country and excites no particular attention. It is neither intended to denote, nor understood as denoting on the one side or the other a claim to the ownership of the land, and, where this, and no more, is the case, it would be wrong to hold that a claim by adverse possession has been made out. 16 Bom. 338 Foll. (*Abdul Raoof, J.*) MAMSA *v.* KHUSHALI RAM.
4 Lah. L. J. 467 : 58 P. L. R. 1922 : 1923 Lah. 25.

——Art. 144—*Acquisition of title—Absentee owners—Suit for recovery of possession by.*

It is the duty of persons possessing rights to keep an eye over their rights. Any overt act of adverse possession by the person in possession of property starts adverse possession as against the absentee owner thereof. (*Johnstone, J.*) KHUDA BAKHSH *v.* KARMUN. **49 P. L. R. 1915 : 27 I. C. 610 : 240 P. W. R. 1915.**

——Art. 144—*Acqusition of title—Adverse possession—Knowledge— Principal affected by agent's knowledge.*

Where a person who claimed ownership was classed as non-occupancy tenant by the collector and no appeal was preferred and also where in a subsequent settlement and partition proceedings the area was called and recorded as *shamilat kasba*, estoppel arises and as 12 years have elapsed the suit will be barred by time, even though in the partition proceedings it was only the agent who appeared. Knowledge of the agent must be imported to his principal, (*Robertson and Rattigan, JJ.*) DEWAT RAM *v.* MUHAMMAD RUSTAM ALI KHAN. **151 P. W. R 1912 : 16 I. C. 891: 163 P. L. R. 1912.**

——Art. 144—*Acquisition of title—Limited interest— Possession of mortgagee for over 12 years—Sale to mortgagee.*

The whole property was mortgaged with possession by two out of the three co-sharers. Subsequently the land was sold by one of them with the other's consent, to the mortgagee. In a suit by the remaining co-sharer for possession it was held that as the mortgagee had possession as mortgagee for more than 12 years, the mortgage could not be ignored but as the suit was brought within 12 years of the sale his suit so far as the equity of redemption was concerned was not barred. (*Johnstone, J.*) SOHANDAN *v.* AURANG.
23 P. L. R. 1911 : 9 I. C. 540 : 48 P. W. R. 1911.

——Art. 144—*Acquisition of title—Adverse possession—Suit for possession—Death of plaintiff—Successor's right.*

A Meikkavalgar was in possession of Manibham lands since his dismissal, *i. e.* 5th September 1895 till 1912 when a suit for the recovery of the land was instituted by the subsequent office holder. *Held*, that the suit was time barred. When on the death of the plaintiff his successor continued the suit, *held* his right was also extinguished by adverse possession. (*Ayling, O C. J and Odgers, J.*) MADURA DEVASTHANAM *v.* SAMIA PILLAI.
15 L. W. 33 : 42 M. L. J. 1 : (1921) M. W. N. 870 : 1922 Mad. 406.

LIMITATION ACT (IX OF 1908), Art. 144—Applicability.

——Arts. 144, 139, 140 and 142—*Acquisition of title—Prescription.*

A person's possession even in cases governed by Art. 144 is held to be in his own right unless there is any evidence to the contrary or there is a relationship between the parties, or the circumstances throwing the burden of proving his own right are present. (*Abdur Rahim and Sundara Aiyar, JJ.*) AMBALAVANA CHETTY *v.* SINGARAVELU ODAYAR. **15 I.C. 146 : (1912) M. W. N. 669.**

——Art. 144—*Acquisition of title—Limited interest—Presumption.*

Where a person is in possession of land in the open assertion of a definite and specific right as mortgagee, it is not open whether the mortgage really existed or not, to the owner of the land to question his right after the expiry of more than 12 years from the date when such assertion was made within his or his predecessors-in-title's knowledge. (*Kanhaiya Lal, A. J. C.*) BEHARI *v.* ADYA NATH. **41 I. C. 862 : 20 O. C. 208.**

Applicability.

——Art 144—*Applicability—Suit by inamdar for assessment—Limitation.*

Art. 131 which is applicable only where the relation of landlord and tenant exists between the two parties, has no application in the present case which in a suit by assessment to recover assessment against an alleged purchase of his rights.

It must be granted by Art. 144 and therefore term begins to run from the first default in paying assessment. (*Macleod, C. J. and Fawcett, J.*) BHIMABAI PADAPPA *v.* SWAMRAO SRINIVAS.
45 Bom. 638 : 60 I. C. 892 : 23 Bom. L. R. 100.

——Art. 144—*Applicability—Suit by heirs to recover property—Limitation—Trespassers if can tack possession.*

A suit by the heir of a deceased person to recover property from a person who also claims as heir, is governed by Art 144 of the Act. A trespasser cannot be allowed to tack on his possession to that of a former trespasser from whom he does not derive title. (*Macleod, C. J. and Fawcett, J.*) RAMCHANDRA BALWANT *v.* BALAJI GANESH.
45 Bom. 570 : 59 I. C. 805 : 22 Bom. L. R. 1452.

——Art. 144—*Applicability—Deduction of period under S. 16 not allowable.*

Where Art. 144 applies no deduction of period under S. 16 allowed. (*Chatterjee and Panton, JJ.*) BROJENDRA KUMAR ROY CHOWDHURY *v.* ASUTOSH ROY. **26 C. W. N. 364.**

——Art. 144—*Applicability—Execution proceedings against manners—No proper guardian appointed—Suit to declare sale a nullity—Limitation.*

In an execution proceedings against a minor, if the application for the appointment of a guardian is not accompanied by affidavit and the guardian does not act and appear for the minor at all. Minor is not represented by the proceeding and a suit to declare sale null and void can be brought at any time within 12 years. (*Harrison J.*) ALAM DIN *v.* ALLAHDIN. **1922 L. 447.**

LIMITATION ACT (IX OF 1908), Art. 144—Applicability.

———Arts. 144 and 44—*Applicability—Minor—Alienation of property—Suit to recover after attaining majority—Limitation.*

Where the property of a minor member of a Hindu family is alienated during his minority by a person who is not his guardian, either in fact or law, a suit by him to recover possession after attaining majority would be governed by Art. 144 and not Art. 44 of the Lim Act. (*Abdul Raoof and Abdul Qadir, JJ.*) SUNDER *v.* SHIAMAN.

1922 Lah. 386.

———Art. 144—*Applicability—Customary Law of Punjab—Common ancestor.*

A collateral governed by the Customary Law of the Punjab does not derive his right to sue from or through his father but from or through the common ancestor who owned the land Hence the plaintiff's suit is not barred under Art. 144 of the Limitation Act. (*Shadilal and Le-Rossignoll, JJ.*) ARURSINGH *v.* SOLAKHAN SINGH.

37 I. C. 412 : 174 P. W. R. 1916.

———Arts. 144 and 141—*Applicability—Suit for possession of taluka—Oudh—Evidence Act, S. 116—Oudh Estates Act* (1809), S. 22 *Succession.*

At the time of annexation of Oudh a Thakur held a Taluka on whom it was settled at the first summary settlement. He died issueless in 1857 and his widow who belonged to Ammithia Thakur family, took possession and continued it till the Lord Canning's Proclamation in 1858. Second summary settlement was made with her wherein she was described as the widow of the Thakur. Subsequently she declared that she had no intention to give possession to Ammithia Thakurs. In 1859, the letter of the Governor-General was published by which she got a sanad of primogeniture and her name was entered in lists one and two. After her death in 1893 a collateral of her deceased husband took possession of the Taluka. But her brother's grandson, one R, sued the collateral for possession of the Taluka and got a decree in 1900 and in 1911 brought a suit in ejectment against the present plff. who was in possession of one of the villages and who set up under proprietary title on the ground that his predecessors were in adverse possession for many years on payment of revenue and cesses. The plff. was proved to be not an under-proprietor and thus R got the decree. The plff, in 1913 sued R. claiming to be the nearest male heir of the Thakur and thus entitled to possession in preference to R. R based his title under S. 22 (6), Oudh Estate's Act, pleaded limitation and also *res judicata Held*, under S. 22, Oudh Estate's Act, R was the righful heir of the widow and that the case was governed by Art 144 and not Art. 141 of the Lim. Act, but as the plff. was entitled to succeed not as the heir of the widow but of her husband, Art 141 applied and the suit was barred. (*Lindsay, J. C. and Stuart, A. J. C.*) BISHESHAR BAKSH SINGH *v.* RAMESHAR BAKSH SINGH.

4 O. L. J. 648 : 44 I. C. 368 : 21 O. C. 1.

———Art. 144—*Applicability—Burmese Buddhist Law Monastery.*

After the right has been extinguished by the operation of the law of Limitation it cannot come into life again where for example the trespasser dies without dedicating the monastery to anybody. There is no doubt that the provisions of the Limitation Act apply to suits for possession of Buddhist monasteries. (*Maung Kin, J.*) U. WISEIKTA *v.* U. PARAMA.

1 Bur. L. J. 108 : 1923 Rang. 40.

LIMITATION ACT (IX OF 1908), Art. 144—Constructive possession.

———Art. 144—*Applicability of Adverse possession—Onus.*

Where Art. 144 applies it is for the plff. to prove his title and then the onus of adverse possession lies on the deft. (*Twomey, J.*) MA NYEIN ME *v.* MA MAY. 32 I. C. 568 : 9 Bur. L. T. 84.

———Art. 144—*Applicability of—Claim on title.*

For the applicability of Art. 144 the claim must be based on title and not on contract only. (*Ormond and Twomey, JJ.*) SECRETARY OF STATE *v.* MA DWE. 7 Bur. L. T. 268 : 24 I. C. 911 : 8 L. B. R. 64.

Co-heir.

———Art. 144—*Co-heirs—Suit for possession by one heir against another—Whether Art. 123 or 144 applies,*

A suit for recovery of possession by one heir against another is governed by Art. 144 and not by Art. 123 34 M. 511 : 19 A 169 Foll : 15 M. 60 Diss. (*Lindsay, J. C.*) AZIT-UL HAK *v.* MARIYAM BIBI. 17 O C. 157 : 24 I. C. 45 : 1 O. L. J. 225.

Constructive Possession.

———Art. 144—*Constructive possession—Submerged land.*

Where lands are subject to periodical submersion their possession is with the owner during submersion. The constructive possession is with the true owner. Continuous adverse possession is not possible in the case of lands subject to seasonal submersion. (*Lord Sumner.*) BASANTA KUMAR ROY *v.* SECRETARY OF STATE.

44 Cal. 858 : 1 Pat. L. W. 593 : 21 C. W. N. 642 : 15 A. L. J. 398 : 25 C. L. J. 487 : 19 Bom. L. R. 480 : (1917) M. W. N. 482 : 6 L. W. 117 : 22 M. L. T. 310 : 44 I. A. 104 : 40 I. C. 337 : 32 M. L. J. 505 (P. C.).

[On appeal from 14 C. W. N. 317 : 3 I. C 15 : 11 C. L. J. 373.]

———Art. 144—*Constructive possession—Lands submerged by floods.*

When a certain land is submerged for a certain period of time every year it cannot be said in the favour of a trespasser that is possible for him to claim the land onthe ground of adverse possession for 12 years. The important point being that he is during the period of submergence disposed of the land by the act of God and that dispossession brings in or resumes the possession of the time barred or who has title. (*Tudball and Rafique, JJ.*) BALDEO THAKURAI *v.* UGRA NATH MISRA.

29 I. C. 278.

———Art. 144—*Constructive possession—Submerged land—Cause of action.*

During the period of diluvion, the rightful owners must be deemed in law to have been in

LIMITATION ACT (IX OF 1908), Art. 144—Constructive possession.

possession of the submerged lands. The point for investigation in such cases is the time when the lands re-appeared and became fit for cultivation. Where the possession of the defendants, after the reformation of the disputed lands has not extended over the statutory period, there is no limitation as regards the plaintiffs' claim to lands which lie within the *Thak* boundaries of the *Churs*. The theory of constructive possession is applied only in favour of the rightful owner and does not apply in favour of a wrong doer whose possession is treated as confined to land which he is actually in possession. (*Mookerjee and Walmsley, JJ.*) AMRITA SUNDARI *v.* SHERAJUDDIN AHAMED. 29 I. C 156 : 19 C. W. N. 565.

———Art. 144— *Constructive possession — Trespasser—Actual possession necessary—Land under water.*

As against the rightful owner the claim of adverse possession is available only when there is actual possession of the disputed land or overt or physical act of ownership done upon it. Therefore a mere assertion of hostile title by a trespasser when the land is under water and cannot be actually occupied, cannot affect the possession of the true owner. 7 C. L. J. 414 at 423. Rel. on. 29 C. 518, Rel. on. (*Mookerjee and Beachcroft, JJ.*) BUDHU KUMAR *v.* HAFIZ HUSSAIN.
20 I. C. 821 : 18 C. L. J. 274.

———Art 144—*Constructive possession—Trespasser, position of.*

A right of a trespasser by adverse possession is confined to land actually in his possession. (*Miller, C. J. and Coutts, J.*) KUMAR PREMANATH *v.* MEIK. 1920 Pat. 146 : 5 P. L. J. 273 : 56 I. C. 184 : 1 P. L. T. 760.

——— Art. 144 — *Constructive possession — Abandonment by trespasser.*

If a person enters upon the land of another and holds possession for a time and then without having acquired title under the statute, abandons possession the rightful owner, on the abandonment is in the same position in all respects as he was before the intrusion took place. 13. A. C. 793 at 798 Foll. (*Pratt, J.*) P. KALI MUTHU ASARI *v.* MEERA HUSSEIN. 1 Bur. L J. 251 : 11 L. B. R. 381 : 1923 Rang. 23 (2).

Co-owners.

———Art 144—*Co-owners—Ouster—Subsequent acquisition of joint ownership—No interruption.*

Where a person has begun to hold possession of land adversely to two co-sharers, each being the owner of a moiety, and before the expiration of the statutory period of limitation succeeds to one moiety upon the death of its owner, his possession continues to be adverse to the owner of the other moiety, although he has become jointly interested with the other. (*Viscount Cave*) VARADA PILLAI *v* JEEVARATHNAMMAL. 18 A. L J. 274 : 24 C. W. N. 346 : (1919) M W. N. 724 : 53 I. C 901 : 10 L. W. 679 : 38 M. L. J. 313 (P.C.).

[Affirming 19 M. L. T 52 : 3 L. W. 1. 32 I. C. 111 : (1916) 1 M. W. N. 17.]

LIMITATION ACT (IX OF 1908), Art. 144—Co-owners.

———Art. 144 —*Co-owner — Co-tenants—Suit for possession by one tenant against another—Limitation—Starting point.*

In the absence of proof of ouster, possession of one joint tenant is not adverse to other joint tenants. An assertion of exclusive title in mutation proceedings may be evidence of ouster but not the institution of a suit by one joint tenant in his or her own name. (*Stuart, J.*) JAGRANI MISRANI *v.* NUST. SHEO DULARI SHUK-LAIN. 64 I. C. 462.

———Art. 144—*Co-owners—Partition Suit—Claim to chak in a partition proceeding—Adverse possession.*

Where in a certain partition proceeding in 1887, B set up a claim to a certain *Chak* in the estate which was being divided and A, who had just then come to the possession of the property, resisted the claim but later on withdrew his objections, and subsequently A was allotted a portion of the land in dispute in 1903 and he sued B for possession of the same B cannot claim it by adverse possession before 1903 as A's right dates only from 1903. (*Knox, J.*) RAM LAL *v.* SRI MAKARJI KISHORI RAVAN MAHARAJ. 22 I. C. 574 : 12 A. L J. 102.

———Art. 144—*Co-owners — Purchaser from one—Right to sue for joint possession.*

If a purchaser from a co-owner takes a lease from his vendor, and after the expiry of the lease, sues for joint possession, the suit is governed by Art. 144 and not by Art. 139. (*Macleod, C. J. and Fawcett, J.*) ICHA LAL JAGMOHAN DAS *v.* NAGO SIN PATINI. 60 I C. 589 : 23 Bom L. R. 60.

———Art. 144—*Co-owners—Stranger.*

Art. 144 applies where the question is between a co-parcener in a joint Hindu family and a stranger. (*Chandavarkar and Batchelor, JJ.*) MALKAPPA BOD CHANBASAPPA GOWDA *v.* MUDKAPPA BISHAPPA MUDIGAHDAR. 37 Bom. 84 : 17 I. C. 657 : 14 Bom. L. R. 931.

———Art. 144—*Co-owner — Common way — Obstruction by one—Suit by the other—Limitation.*

A suit by one co-owner against another for the removal of the actual existing obstructions constructed by the other on land which by long usage and by agreement between the parties is reserved for use as common passage is governed by art. 144, 6 Cal. 394 P.C. ref. (*Richardson and Suhrawardy, JJ.*) DWARKA NATH SEN *v.* TARA PRASANNA SEN. 1923 Cal. 356.

———Art. 144—*Co-owners—Adverse possession—Partition—Shamilat.*

Possession adverse to the plaintiffs for 15 years of the Shamilat land ripens into ownership in the deft. (*Shadilal and Martineau, JJ.*) LAKHERA *v.* MAHJI. 60 , C. 660.

——— Art. 144—*Co-owners—Adverse possession—Denial of title of person claiming to be co-sharer.*

Where certain persons entitled to certain shares in land clearly denied the title of a person

LIMITATION ACT (IX OF 1908), Art. 144—Co-owners.

to a share in the land more than 12 years before the suit and remained exclusively in possession for that period *held* that they acquired title by adverse possession for the whole land. (*Robertson and Kensington, JJ.*) MAN SINGH *v.* RASUL.
239 P. W. R. 1912 : 18 I. C. 750 : 75 P. L. R. 1913.

——Art. 144 —*Co-owners—Partition—Lands allotted — Dispossession by stranger — Punjab Land Revenue Act (XVII of 1887), S 122.*

Where a land allotted to a certain person on partition, remains in the possession of another, the former must apply under S. 122 of the Land Revenue Act within 3 years of the partition or must sue in the Civil Court, for possession within 9 following years but he cannot bring a suit more than 12 years after partition because the other will claim the land by adverse possession. (*Johnstone, J.*) FATEHDIN *v.* NIKKA.
81 P. R. 1911 : 105 P. L. R. 1912 : 13 I. C. 790 : 261 P. W. R. 1911.

——Art. 144—*Co-owners—Partition—Suit by transferee for possession.*

A suit by a transferee to recover possession of land allotted to his transferor in partition proceedings but possession of which had not been delivered to him is governed by Art 144. (*Rattigan, J.*) NAWAZ *v.* MUHAMMAD AHSAN.
234 P. L. R. 1911 : 12 I. C. 431 : 183 P. W. R. 1911.

——Art. 144—*Co-owners—Ouster—Entry in Government records.*

Adverse possession begins from the date of application by a co sharer in possession for the removal of the absentee sharers from the Government record even though it was thought by the Revenue Authorities they had no power to alter the Government records and no suit had been brought for the correction of the records. (*Johnstone, J.*) NATHU *v.* KOMESAR.
38 P. L. R. 1911 : 9 I. C 957 : 184 P. W. R. 1911.

——Art. 144—*Co-owners— Co-mortgagors—Redemption by one.*

Where a co-mortgagor redeems the mortgage and obtains possession of the property and the other co-mortgagors allow him to retain the possession for 12 years under an openly avowed claim that he is holding in his own right their right to the property becomes extinguished. Where a usufructuary mortgage is satisfied out of the usufruct and a co-mortgagor who is only entitled to claim from the mortgagee, possession of his individual share, gets possession of the whole property, his possession is adverse to that of the other co-mortgagors. 16 A 254 Foll (*Lindsay, A. J. C.*) MAHAMMAD TAQ *v.* MAHAMMAD BAQAR. 20 I. C. 560 : 16 O. C. 163.

——Arts. 144 and 142—*Co-owners—Suit for declaration of right to channel—Adverse possession.*

A suit by one co-owner of a water channel for a declaration that he was in possession jointly with the defts. interested with him is not a suit for possession or dispossession and therefore article applicable is not 142 but

LIMITATION ACT (IX OF 1908), Art. 144—Declaration of title

144. If the deft. claims to hold the water of the channel on the ground of adverse possession, the onus is upon him to prove that his possession has been adverse for 12 years before the institution of the suit. 14 M. 96 : 21 M. 153 ; 31 C. 970 ; 31 C. 960, Rel. (*Sultan Ahmed, J.*) RADHA KANTA LAL *v.* BHAGWAT PRASAD.
55 I. C. 247 : 1 P. L. T. 192.

——Art. 144—*Co-owners—Adverse possession —Overt Act—Ouster.*

The entry on and possession of land under the common title of one co owner will not be presumed to be adverse to the others, but will ordinarily be held to be for the benefit of all the co-owners, for the reason that the possession of one co-owner is rightful in itself and does not imply hostility as would the possession of a mere stranger. A co-owner might, however, establish a plea of adverse possession, if it is clearly shown that he repudiated the title of his co-owners by an overt claim to exclusive ownership more than twelve years before the institution of the suit. (*Twomey, C. J. and Ormond, J.*) HARI PRU *v.* MIAUNG KRAW ZAN. 10 L. B. R. 45 : 52 I. C. 629 : 12 Bur. L T. 129.

Debutter Property.

——Art. 144—*Debutter property.*

Adverse possession will destroy title in lands attached to an idol. (*Beaman and Hayward, JJ.*) PANDURANGA BALAGI *v.* DNYAMNU.
36 Bom. 135 : 12 I. C. 926 : 13 Bom. L. R. 1169.

——Art. 144—*Debutter property—Alienation by mahant—Suit to set aside.*

A suit to set aside an alienation by a mahant of endowed property is governed by Art. 134 of the Indian Limitation Act. (*Scott-Smith, J.*) DIWAN SINGH *v.* SHANDAS. 1922 Lah. 271.

——Art. 144—*Debutter property — Adverse possession—Succeeding trustees.*

Where a person trespasses upon endowed property and holds adversely, limitation against the trust begins to run from the date of the trespasser entering into possession. Each succeeding manager of the endowed property cannot get a fresh start of limitation for ejecting the trespasser. Though a succeeding manager does not derive his title from the previous manager yet they form a continuing representation of the endowed property. 23 C. 536 ref. (*Lindsay, C. J.*) MAULVI ABDUL RASHID *v.* JANKI DAS. 8 O. L. J. 2 : 4 U. P. L. R. (O. C.) 61 : 1922 Oudh 24.

Declaration of Title.

——Arts. 144 and 120—*Declaration of title—Suit for declaration of public right of way—Continuing wrong—Limitations.*

Art. 144 and not Art. 120 applies to a suit for a declaration that a certain pathway is a public one and that none can obstruct it. To such a case S. 23 will apply. (*Panton, J.*) HARISH CHANDRA SAHA *v.* PRAN NATH CHAKRABARTY.
69 I. C. 910 : 26 C. W. N. 587.

——Art. 144—*Declaration of title—Suit for possession— Entry in the Record of Rights—Declaration.*

LIMITATION ACT (IX OF 1908), Art. 144—Immoveable property.

A suit for possession and mesne profits with the declaration that an entry in the Record of Rights is correct is governed by the 12 years' limitation. (*Das, J.*) TAFAZUL KHAN *v.* MOHAMMAD BAKSHI KHAN. **52 I. C. 361.**

Immoveable Property.

———**Art. 144**—*Immoveable property—Right to cess.*

The uninterrupted enjoyment of right to levy summary cess for more than twelve years renders the right unimpeachable. After that period, any claim to resist the levy of summary cess as illegal both in its origin and its continuance, is incontrovertibly time-barred. The right to levy a cess is immoveable property within the Act. (*Beaman and Hayward, JJ.*) MAHASHANKAR *v.* MAHASHANKAR. **36 Bom. 174 : 12 I. C. 716 : 13 Bom. L. R. 1047.**

———**Art. 144**—*Immoveable property—Suit for assessment of rent.*

The article does not apply to suits for assessment of fair and equitable rent. (*Fletcher, J.*) JOTIRMOY MOULIK *v.* KHUDIRAM SADHU KHAN. **50 I. C. 908.**

———**Art. 144**—*Immoveable property—Malikana, Nature of—Right to recover.*

Where a *malikana* right was not enjoyed for 12 years, the right to sue for the money due on account of it, is barred. (*Chatterjee and Walmsley, JJ.*) MOHESRI PRASAD SINGH *v.* BRIJNATH HAZARI. **21 I. C. 779 : 19 C. W. N. 410.**

———**Art. 144**—*Immoveable property—Fishery.*

Fishery right in another's waters is not immoveable property but an interest in immoveable property under Art. 144 of the Lim. Act (*Mookerjee and Carnduff, JJ.*) LOKENATH *v.* JAHANIA. **12 I. C. 305 : 14 C. L. J. 572.**

———**Art. 144**—*Immoveable property—Interest in* parjot, charai *and* charsai *dues.*

The rights to *parjot, charai* and *charsai* dues should, for purposes of limitation, be deemed to be an interest in immoveable property. (*Lindsay, J. C.*) SHEORAJ SINGH *v.* DEBI BAKHSH SINGH. **46 I. C. 439 : 22 O. C. 119.**

———**Art. 144**—*Immoveable property—Right of fishery—Nature of—Acquisition—Limitation.*

A right of fishery of whatever nature is not strictly an easement. It is either an interest in immoveable property or a *profit a prendre* which may be either in gross or appurtenant to a dominant tenement. The question of acquisition of such rights must be determined by reference to the nature of the right claimed and proved to have been exercised. If it is a mere right to fish not excluding the lawful owner it would appear to be an easement within the description of the word in the Limitation Act and can be acquired by 20 years' uninterrupted enjoyment. If it is an exclusive right of fishery it is an interest in immoveable property and can be acquired by 12 years' adverse possession involving an ouster of the rightful owner. Such a right contains all the essential elements of property and even if it may properly be described as a *profit a prendre*, it has also the distinctive features of an interest in immoveable property. Even if S. 26 of the Limitation Act applies, it would not bar the operation of Art. 144 and S. 28 if the right came under both descriptions. (*Miller, C. J. and Mullick, J.*) MESSRS. HENRY HILL AND CO. *v.* SHEORAI RAI. **3 Pat. L. T. 477 : 4 U. P. L. R. (Pat.) 38 : 1922 Pat. 195 : 1923 P. 58.**

LIMITATION ACT (IX OF 1908), Art. 144—Invalid alienation.

———**Art. 144**—*Immoveable property—Standing trees.*

Standing trees are immoveable property for the purpose of this Act. (*Ormond and Twomey, JJ.*) SECRETARY OF STATE *v.* MA DEVE. **7 Bur. L. T. 268 : 24 I. C. 911 : 8 L. B. R. 64.**

Invalid Alienation.

———**Art. 144**—*Invalid alienation—Joint Hindu family—Suit to set aside sale—Limitation.*

A suit by a junior member to set aside a sale-deed by one member of the joint Hindu family and for possession of his property is governed by Art. 144 and not by Art. 44 or 91. 9 I. C. 377, Ref. (*Chamier, J.*) KALYAN SINGH *v.* PITAMBAR SINGH. **27 I. C. 687 : 13 A. L. J. 94.**

———**Art. 144**—*Invalid alienation—Suit for possession.*

Where a transfer is inoperative and a mere paper transaction a suit to recover possession ignoring the transaction is governed by art. 144, Lim. Act (*Shah, A.C.J. and Crump, J.*) SANGAWA GURUBASAPPA *v.* HUCHANGOWDA GOWDAR. **25 Bom. L. R. 1207 : 48 Bom. 156 : 1924 Bom. 174.**

———**Art. 144**—*Invalid alienation—Hindu father—Setting aside.*

A suit to set aside an alienation by a Hindu father during his son's minority without any benefit or necessity is not governed by Art 44 or 91 but by Art. 144. Plff. must sue for cancellation if the burden of proving invalidity lies on him. (*Scott, C J. and Rao, J.*) ANANDAPPA *v.* TOTAPPA. **33 I. C. 441 : 17 Bom. L. R. 1137 (Note).**

———**Art. 144**—*Invalid alienation—Alienation of debutter property.*

Alienation of *debutter* property by a *shebait* in excess of his power falls under Art. 144, if the transferee knows that the alienation is beyond the transferor's powers. (*Chatterjee, J.*) PURANCHANDRA *v.* KINKAR. **9 I. C. 133.**

———**Arts. 144 and 44**—*Invalid alienation—Minor's property—Alienation by an authorised person—Suit to set aside—Limitation.*

A suit for possession of immoveable property of a minor, alienated by one who is not a guardian either by law or by appointment is governed by Art 44 and not Art. 44. 23 P. R. 1904 Dis. (*Shadi Lal and Leslie Jones, JJ.*) SAJJAD ALI *v.* MUHAMMAD ZULFIKAR ALI. **125 P. W. R. 1916 : 33 I. C. 943 : 83 P. R. 1916.**

———**Art. 144**—*Invalid alienation—Occupancy right—Alienation of—Suit to set aside.*

A suit by the reversioners of a deceased sonless proprietor for cancellation of an alienation of

LIMITATION ACT (IX OF 1908), Art. 144—Invalid alienation.

occupancy rights in favour of another, on the ground that he had no right to do so, is triable by a civil court and is governed by Art. 144 of the Limitation Act and not by the Punjab Limitation Act. (*Shahdin and Scott-Smith, JJ.*) BADHAWA *v.* JALLU. 112 P. W. R. 1914 : 25 I. C. 871 : 228 P. L. R. 1914

———Art. 144—*Invalid alienation—Lunatic—Adverse possession against—Right of widow as legal representative—Reversioners if barred by inaction of widow.*

The wife of a Hindu lunatic as such is not competent to execute a sale-deed of her husband's lands and a suit by a reversioner after the death of both the husband and the wife to set aside the alienation is governed not by Art. 125 but Art. 144, Schedule. (*Kumaraswami Sastri and Devadoss, JJ.*) KALIDINDI *v.* SUHARAJU. 42 M. L. J. 262 : 45 M. 361 : (1922) M. W. N. 136 : 30 M. L. T. 128 : 15 L. W. 382 : 1922 Mad. 12.

———Art. 144—*Invalid alienation—Suit for possession—Alienation by guardian—Suit to set aside—Limitation.*

Art. 44 of the Lim. Act, and not Art. 144 applies to a suit by a ward who has attained majority, for possession of properties improperly alienated by his guardian. The sale is not void for an inadequate consideration. 30 M. 393 ; 22 M. L. J. 404, Foll. (*Ayling and Tyabji, JJ.*) SURYANARAYANA *v.* NARAYANASWAMI. 28 I. C. 704 : 2 L. W. 365.

———Art. 144—*Invalid alienation—Suit to set aside lease by Lambardar.*

A suit brought by a co-sharer for possession of his share of the family property on the ground that it was alienated by the Manager of the joint family without legal necessity is not governed by Art. 44 or Art. 91, 1st Schedule to the Indian Limitation Act, 1908, but by the appropriate article allowing the ordinary period of 12 years. Similarly, if a Lambardar exceeds his authority in granting a lease, his co-sharer can sue to avoid it within 12 years of the date on which the execution of the lease became known to him. A suit for declaration of a right cannot be held to be barred so long as the right to the property in respect of which declaration is sought, is a subsisting right (*Drake-Brockman, J. C.*) KUNJILAL *v.* CHANDARSING. 64 I. C. 775 : 17 N. L. R. 169.

———Art. 144—*Invalid alienation—Suit to recover* inam *lands—Adverse possession—Plea—Onus.*

Where in a suit by an *inam* certificate-holder to recover possession of lands alienated by his predecessor, the defendant admits the predecessor's title but sets up adverse possession, Art. 144 is applicable and the onus is on the deft. to show when his possession became adverse. (*Hallifax, A J. C.*) MD SIRAJ-UD-DIN *v.* FAYAZ-UD-DIN. 59 I C. 473.

———Art. 144—*Invalid alienation—Possession—Adverse.*

The possession of a purchaser under a void sale is adverse to the real owner. (*Lindsay, J. C.*) MIRZA *v.* NANHI. 47 I. C. 684.

LIMITATION ACT (IX OF 1908), Art. 144—Landlord and tenant.

Landlord and Tenant,

———Art. 144—*Landlord and tenant—Trespass by stranger.*

The article governs a suit by lessor for possession against a trespasser who has wrongfully dispossessed the lessee who was holding over and the plaintiff can succeed unless the adverse possession has ripened by prescription. (*Mookerjee, A. J. C and Fletcher, J.*) BAIKUNTHA NATH SARMA *v.* CHAITANYA CHARAN CHOUDHARI. 57 I. C. 994.

———Art. 144—*Landlord and tenant—Adverse possession.*

In a suit by a landlord to eject the deft. his tenant, the court must consider the length of the deft's possession and the title claimed by him. If the tenant had been claiming occupancy rights for over 12 years the right of the landlord is to sue for assessment of rent. (*Mookerjee and Carnduff, JJ.*) AZMAT *v.* BISHAN PRAKAS. 52 I. C. 650 : 29 C. L. J. 607.

———Art. 144—*Landlord and tenant—Suit for enhancement of rent.*

Art. 144 of the Lim. Act has no application to a landlord's assertion and the tenant's denial of the right to enhance the rent of the holding. (*Sanderson, C. J., Mookerjee and Teunon, JJ.*) BIRENDRA KISHORE MANIKYA BAHADUR *v.* MAHOMAD DOULAT. 43 I. C. 59 : 22 C. W. N. 856.

———Art. 144—*Landlord and tenant—Claim for assessment of rent—Trespasser.*

Where plff. who was out of possession for more than 12 years based his claim on the ground that the defts. were trespassers and did not elect to treat them as tenants, the claim for assessment of rent in respect of the disputed land is barred by limitation. (*Harrington and Mookerjee, JJ.*) MAHARAJA BIRENDRA KISHORE MANIKYA BAHADUR *v.* ANAND PRIYA BAISH NABI. 30 I. C. 946 : 22 C. L. J. 151.

———Art. 144—*Landlord and tenant—Rent free title—Encroachment—Presumption—Assessment of rent.*

A tank was excavated on a waste land within the plff's *Zamindari* by the predecessor of the defts, many years ago and plff. neither claimed nor received any rent for it. *Held*, the plff.'s right to assess with rent was barred by lapse of more than 12 years' time before institution of suit from the date the deft.'s set up their rent-free title. Where more than 12 years before suit, there was a direct assertion of title negativing the theory of encroachment which would have conferred upon the tank the character of an addition to the original holding a suit for assessment of rent is barred by limitation. (*Jenkins, C. J., Mookerjee and Beachcroft, JJ.*) MAHARAJA BIRENDRA KISHORE MANIKYA BAHADUR *v.* RAMCHARAN DAS. 30 I. C. 942 : 22 C. L. J. 147.

———Art. 144—*Landlord and tenant—Tenancy—Proof of.*

When the plff. alleges that the defts. had not attorned to him, the possession of the latter could not be said to be for the benefit of the former. If

LIMITATION ACT (IX OF 1908), Art. 144—Landlord and tenant.

the plff. has failed to prove that the land was *Mal* or that he had ever been in possession thereof by actual occupation or by receipt of rent for more than 12 years, his claim for possession is barred by limitation. 17 C. L. J. 277 (P. C.), Ref. (*Mookerjee and Beachcroft, JJ.*) SOBHAN BAKSH *v.* MAHARAJA BIRENDRA KISHORE MANIKYA BAHADUR. **30 I. C. 939 : 22 C. L. J. 144.**

——Art. 144—*Landlord and tenant—Suit for assessment of rent—Limitation—Tenancy.*

If a person squats upon the land of another and if the latter accepts him as his tenant either by express declaration or by implication, the squatter acquires, the status of a tenant. But it is open tothe proprietor to repudiatethe tenancy, and to evict the person who has come upon the land without his consent. If a person occupies the land of another, it is not open to the proprietor, any length of time afterwards, to treat the occupier as tenant, in the absence of any indication that he intended to hold as tenant, 22 C. L. J. 132; 17 C. L. J. 167, Rel. Where it is not the case of any party that the tenancy ever existed and the plff. seeks for assessment of rent for the future, the suit is essentially for recovery of possession and the rule of limitation applicable to suits for recovery of possession is applicable. 10 M. I. A. 214; 5 C. 949, Refer. (*Mookerjee and Beachcroft, JJ.*) GAGAN CHANDRA CHAKRAVARTHY *v.* MAHARAJA BIRENDRA KISHORE MANIKYA BAHADUR. **30 I. C. 931 : 22 C. L. J. 135.**

——Art. 144—*Landlord and tenant—Suit for assessment of rent and mesne profits, claim for—Maintainability.*

If the relation of the landlord and tenant subsists, a claim for assessment of rent and for mesne profits does not fail on the ground of adverse possession. (*Mookerjee and Beachcroft, JJ.*) MAHARAJA BIRENDRA KISHORE MANIKYA BAHADUR *v.* NAJIR MAHOMED, **30 I. C. 917 : 22 C. L. J. 122.**

——Art. 144—*Landlord and tenant—Adverse possession.*

Plff.'s case was that the deft. unlawfully took possession of a certain tank but deft. averred that more than 12 years before the commencement of the suit, in the course of the settlement proceedings, she set up a rent-free grant and disclaimed all liability to pay the rent to the plff, in respect of the disputed tank and the deft's averment was proved. *Held*, that a suit for a declaration that the plff. was entitled to have rent assessed on the tank was barred under Art. 144 of the Lim. Act. (*Mookerjee and Beachcroft, JJ.*) MAHARAJA BIRANDENDRA KISHORE MANIKYA BAHALUR *v.* GAGAN CHANDRA CHAKRABARTHY. **30 I. C. 902 : 22 C. L. J. 132.**

——Art. 144—*Landlord and tenant—Adverse possession.*

Where deft. to the knowledge of plff. claiming a limited interest in encroached land, *viz.*, a right to realise rent, asserted a hostile title more than 12 years before the commencement of suit, *Held*, that the plff (landlord) had no enforceable title under Art. 144 of the Lim. Act. 2 C. L. J. 125 ; 8 C. L. J. 557 ; 2 C. L. R. 569, ref. (*Mookerjee and Beachcroft, JJ.*) MAHARAJA BIRENDRA KISHORE MANIKYA BAHADUR *v.* LAKSHMI. **30 I. C. 896 : 22 C. L. J. 129.**

LIMITATION ACT (IX OF 1908), Art. 144—Landlord and tenant.

——Art. 144—*Landlord and tenant—Non-transferable holding.*

A landlord suing in ejectment a purchaser of non-transferable holding cannot succeed unless he makes out a case under S: 18 of the Lim. Act, where the purchase took place more than 12 years before the suit. (*Mookerjee and Beachcroft, JJ.*) PANCHKARI CHATTAPADHYA *v.* MAHARAJ BAHADUR SINGH. **28 I. C. 708 : 19 C. W. N. 136.**

——Art. 144—*Landlord and tenant—Suit by Zamindar—Title and possession—Assessment of rent—Record of rights—Starting point.*

On the claim of the deft. before the Settlement Officer but without actual decision, the Record of Rights was finally published to the effect that the deft. was a settled *Raiyat*, and that no rent had been assessed in respect of those lands A suit within 12 years from the date of the publication of the Record of Rights, by the *Zamindar* for declaration of title and for possession or in the alternative for assessment of rent is not barred, as on the publication of the Record of Rights, it is open to the plff. to rely upon the entries therein as a tacit recognition of his right to have rent assessed at any rate within 12 years of this date. 39 C. 453 Dist. (*Stephen and Richardson, JJ.*) AMAN GAZI *v.* BIRENDRA KISHORE MANIKYA BAHADUR. **15 I. C. 64 : 16 C. W. N. 929.**

——Art. 144—*Landlord and tenant—Suit for possession by landlord—Gift of occupancy holding by widow of deceased tenant.*

The possession of a donee of a right of occupancy from the widow of a deceased occupancy tenant becomes adverse to the landlord not from the date of his (donee's) obtaining possession in pursuance of the gift, but from the date of the widow's death ; consequently a suit brought by the landlord for possession of the holding within 12 years from her death is within time and is governed by Art. 144 of the Lim. Act. The landlord is not bound to sue the transferee during her life-time. (*Shadi Lal and Broadway, JJ.*) THAKUR SINGH. *v.* BIHARI LAL. **44 P. R. 1917 : 51 P. L. R. 1917 : 39 I. C. 163 : 1 P. W. R. 1917.**

——Art. 144—*Landlord and tenant—Interruption.*

A tenant asserted that he was a *mulgeni* tenant in 1894 and in a suit brought by a *Moklesor* of a temple to eject him in 1903 the *moklesor* got into possession, the tenant having been held to be a *chalgeni* tenant though that decree was reversed by the High Court for insufficiency of notice. In a subsequent suit brought in 1909 by the same plaintiff to eject the tenant. *Held*, (1) that the defendant's plea was not barred by *res judicata* as the decision as to the insufficiency of notice did not necessarily involve the finding that the tenant was a *chalgeni* tenant. 13 C. 17 and 18 C. 647 Foll. (2) that in consequence of the disturbance of possession brought about by a

LIMITATION ACT (IX OF 1908), Art. 144—Mortgagor and mortgagee.

decree in the former suit the continuous possession which the defendant was bound to have proved under Art. 144, Sch. I of the Lim. Act, was broken and therefore the defendant did not acquire a prescriptive title and could be ejected. (*Seshagiri Aiyar and Phillips, JJ.*) LAXMIPATTAYA *v.* RAMACHANDRA.
(1916) 2 M. W. N. 133 : 35 I. C. 421 : 20 M. L.T. 228 : 31 M. L. J. 311.

Mortgagor and mortgagee.

——— **Arts. 144 and 148**—*Mortgagor and mortgagee—Denial of title of mortgagor—Effect.*

It is not open to a mortgagee by denying the existence of a mortgage to curtail the period of limitation provided for a suit for redemption. Once a mortgage comes into existence it continues to subsist as a mortgage until the period for its redemption expires despite any attempt made by the mortgagee to deny the existence of that mortgage or set up an adverse title in himself. Art. 144 of the Limitation Act IX of 1908 is only a residuary Article and does not apply so long as article 148 of that Act is applicable. (*Kanhaiya Lal, J.*) RAGHUNATH SINGH *v.* JETTO SINGH.
1923 A. 613 (1).

——— **Art. 144**—*Mortgagor and mortgagee—Adverse possession.*

Where the relationship of mortgagor and mortgagee comes to an end by the satisfaction of the mortgage, the possession of the mortgagee will be adverse from that date against the mortgagor, within Art. 144, Limitation Act. 24 A. 44, F. B. Foll (*Piggott, J.*) MUSSAMAT ZAIBUNNISSA *v.* PARICHHAT. 25 I. C. 611.

——— **Art. 144**—*Mortgagor and mortgagee—Usufructuary mortgage—Subsequent sale of equity of redemption to A—Another sale of same to B after sale to A—Recovery of property by B. after redemption—Suit by A for possession—Limitation—Cause of action.*

A person had mortgaged certain property of his with possession and then sold the equity of redemption therein to A and again purported to sell the same to B, who paid off the mortgage and recovered possession of the property, *Held*, in a suit by A against B for recovery of possession that limitation began to run against A only from the date on which B recovered possession, and that the suit instituted within 12 years of that date was not barred. (*Rattigan, J.*) MOHAN LAL *v.* BHAGU SHAH. 14 I. C. 513 : 252 P. W. R. 1912.

——— **Art. 144**—*Mortgagor and mortgagee—Mortgagee obtaining mutation as owner—If can set up adverse possession.*

A mortgagee who obtains possession cannot set up adverse possession by mere mutation of names unless he proves that he purchased also the equity of redemption. 17 B. 755, Fol. (*Johnstone, J.*) LEHNA SINGH *v.* SANTA SINGH.
9 P W. R. 1912 : 13 I. C. 852 : 135 P. L. R. 1912.

——— **Arts. 144 and 148**—*Mortgagor and mortgagee—Redemption by one of several co-mortgagors—Suit by another for possession—Limitation.*

LIMITATION ACT (IX OF 1908), Art. 144—Mortgagor and mortgagee.

Where one of several mortgagors, redeems the whole mortgage and obtains possession, a suit against him by another co-mortgagor to recover his share on payment of his share of the money, is not one for redemption but one to recover possession of property on payment of a charge. Therefore it is governed by Art. 144 and not by Art. 148 of the Act. (*Krishnan and Odgers, JJ.*) SINNANAN CHETTY *v.* SIVAKAMI AMMAL.
69 I. C. 1004 : 41 M L. J. 501.

——— **Art. 144**—*Mortgagor and mortgagee.*

Where a usufructuary mortgagee, to whom property has been sold without a registered instrument and who holds possession for over 12 years ; from the date of sale, got title by adverse possession though the sale fails. 32 Cal. 296. (P.C.); 37 Mad. 423 Expl. ; 73 Mad. 545, Ref, (*Napier and Krishnan, JJ.*) MUSIGADU *v.* MANEAM GOPALU REDDY. 13 L. W. 400 : 63 I. C. 215 : (1921) M. W. N. 251.

——— **Arts. 144 and 184**—*Mortgagor and mortgagee—Purchase by mortgagee—Co-mortgagor.*

From the date one of the mortgagors sells the mortgaged property to the mortgagee his possession becomes adverse to the co-mortgagor. (*Daniels and Dalal, JJ.*) JANKI SHAH *v.* S. MAHOMED ABBAS. 25. O. C. 245: 1923 Oudh 50 (2).

——— **Art. 144**—*Mortgagor and mortgagee—Co-mortgagors—Redemption by one—Suit by co-mortgagor for possession.*

Where one of several co-mortgagors redeems and obtains possession of the mortgaged property, Art. 144 of the Lim. Act applies to suits by the other mortgagors for recovery of possession of their shares from him. 14 All. 1 and 40 All. 634, doubted. (*Kanhaiya Lal, J. C.*) THAKUR SHEO GANGA BAKASH SINGH *v.* RANJIT SINGH.
52 I. C. 875 : 6 O. L. J. 364.

——— **Arts. 144 and 148**—*Mortgagor and mortgagee—Adverse possession—Mortgage—Redemption.*

Under Article 144 of the Limitation Act, the possession of the mortgagor, who redeems the mortgage, does not become adverse when he recovers possession of the property on redemption. It must be established that he has been in possession for 12 years on an assertion of a hostile title to the knowledge of his co-mortgagor. (*Jwala Prasad, C. J. and Das, J.*) RAM NARAYAN RAI *v.* RAM DENI RAI. 1922 Pat. 129 : 1923 P. 98.

——— **Arts. 144 and 148**—*Mortgagor and mortgagee—Redemption by one co-mortgagor—Suit by another to recover share—Limitation.*

A suit by one co-mortgagor against another, who has redeemed the property, for his share on payment of the proportionate money, is one for possession and not for redemption and therefore it is governed by Art. 144 and not Art. 148. (*Jwala Prasad, C. J. and Das, J.*) RAM NARAYAN *v.* RAM DEVI. 63 I. C. 282.

——— **Arts. 144 and 148**—*Mortgagor and mortgagee—Adverse possession—Redemption.*

Where a mortgagor sues for redemption the suit would be barred if the trespasser did not

LIMITATION ACT (IX OF 1908), Art. 144—Office and emoluments.

derive possession from the mortgagee but held adversely for over twelve years to both the mortgagor and mortgagee. (*Twomey, J.*) MAUNG SHWE PE *v.* MA YU MA. 6 Bur. L. T. 196. 21 I. C. 348 : 7 L. B. R. 97.

Office and emoluments.

——Art. 144—*Office and emoluments—Adverse possession against office holder—Effect on title of successors.*

Where Khaji inams land are held adversely to the office holder for the time being for over 12 years. Art. 144 of Limitation Act bars a suit regarding the title of the office holder and his successors to the land. (*Odgers and Hughes, JJ.*) KHAJI MIR MAJAVATH ALI *v.* KHAJI MIR MUJAFAR ALI. 45 M. L. J. 791 : 18 L. W. 887 : 33 M. L. T. (H.C.) 175 : 1924 Mad 201.

——Art. 144—*Office and emoluments—Land held for—Neglect to do service.*

A person holding land as emolument to do service cannot be allowed to treat the land as his own, by merely denying his liability to do service or neglecting to do so. He must surrender possession to the master and then hold adversely to him for 12 years, to enable himself to acquire possession by adverse possession. (*Sadasiva Aiyar and Napier, JJ.*) TAMIRSI VENCATASAMI *v.* YIVOOALA AMMANA. 62 I. C. 771 : (1921) M. W. N. 378

——Art. 144 — *Office and emoluments—Lands attached to office of karnam—Adverse possession.*

A person in adverse possession of lands annexed to the office of *Karnam* for over 12 years acquires a prescriptive title to the lands as against the holder of the office and his successors. 42 Cal. 244, (F. C.) Dist. (*Abdur Rahim and Ayling, JJ.*) IDARAPALLI DHANUSHKOTIRAYUDU *v.* VENKATARATNAM. 11 L. W. 453 : 59 I C. 65 : 38 M. L. J. 320.

Partition suit.

——Art. 144—*Partition suit — Mahomedan heirs.*

Suit by an heir for his share in a Mahamedan's property is governed by Art. 144 and time runs from the time when the attempt to exclude or deny his right is made. (*Macleod, C. J. and Heaton, J.*) KALLAN GOWDA NANJAN GOWDA PATIL *v.* BAISHYA SHB. MOHAMED KHAN. 22 Bom. L. R. 936 : 58 I C. 42 : 44 B. 943.

——Art. 144—*Partition suit—Co-heirs—Suit for possession of joint property.*

Where a Mahomedan brings a suit for recovery of his share of certain immoveable property alleged to have descended upon him and defendant jointly as co-heirs 50 years ago and it is proved that the lands were joint ever since, the suit is not barred by limitation. 34 Mad. 511 ; 97 P. R. 1890; 89 P. R. 1898, Ref. (*Broadway, J.*) HASHAM ALI. *v.* UMAR HAYAT. 4 Lah. L.J. 57 : 1922 Lah. 193.

——Art, 144—*Partition Suit—Adverse possession.*

LIMITATION ACT (IX OF 1908), Art. 144—Possessory title.

The rule that possession of one co-owner is the possession of all does not apply where there is nothing to show that the property possessed was ever the common property of them all. *Held*, that plaintiff had failed to show that he continued to be a co-sharer at the date of suit. (*Robertson, J.*) NARINJAN SINGH *v.* NATHA SINGH. 116 P. L. R 1913 : 18 I. C. 868 : 78 P. W. R. 1913.

——Art. 144—*Partition suit—Suit for joint possession.*

The cause of action to get a share in the property left by a deceased member of a joint Hindu family arises on his death and must be enforced within 12 years of the exclusion. (*Robertson and Beadon, JJ.*) THAKAR SINGH *v.* UJAGAR SINGH. 8 P. W. R. 1913 : 18 I. C. 583 : 26 P. L. R. 1913.

——Arts 144—*Partition suit— Zamindari Estate—Adverse possession—Art. 127 does not apply.*

The possession of the Zamindari Estate by the daughter from the date of her succession, is exclusive and adverse to the claims of the other branches, within the meaning of Art. 144 of the Act and consequently a suit for partition of the estate is governed by Art. 144. Art. 127 has no application to such a case. (*Wallis, C. J. and Sadasiva Aiyar, J.*) KEESARA VENKATAPPAIYYA *v.* NAYANI VENKATARANGA RAO. 43 Mad. 288 : 59 I. C. 978 : 38 M. L. J. 149.

——Art. 144—*Partition suit — Tenants-in common.*

Art. 144 applies to a suit for partition between tenants-in-common although a tenant has acquired his rights by a purchase at court auction. In such a suit, there can be no question of adverse possession because the possession of one co-tenant is the possession of all persons entitled as tenants-in-common. (*Wallis, C. J. and Seshagiri Aiyar, J.*) HASSAN AMMAL BIBI *v.* ISMAIL MOIDEEN (1915) M. W. N. 414 : 29 I. C. 976 : 28 M. L. J. 642.

Possession pending suit.

——Art. 144—*Possession pending suit—Not adverse.*

Possession after institution of suit is not adverse. (*Sadasiva Aiyar and Napier, JJ.*) RATNA BAI *v.* OFFICIAL ASSIGNEE. 29 I. C. 168 : 17 M. L. T. 347.

Possessory title.

——Art. 144—*Possessory title—High way, possession of—Government—Onus.*

Possession of Government land for over 12 years throws the onus on the Government of proving possession or title within 60 years. But this rule does not apply to a public pathway even if possession is proved for over 40 years. 30 M. 245; 33 M. 173; 33 M. 362 : 23 M. L. J. 162, Dist. (*Seshagiri Aiyar and Kumaraswamy Sastri, JJ.*) SAMBASIVA MUDALIAR *v.* SECRETARY OF STATE. 1 L. W. 758 : 25 I. C. 608 : (1914) M. W. N. 711 : 27 M. L. J. 299.

LIMITATION ACT (IX OF 1908), Art. 144—Proof of title.

Proof of title.

——Art. 144—*Proof of title—Adverse possession — Plaintiff proving title — Both parties having uncertain possession.*

Adverse possession in order to bar by limitation a suit for the possession of land must be adequate in continuity, in publicity and extent so as to show that it is possession adverse to the competitor. When a person establishes his title to land and proves that he has been exercising during the currency of his title various acts, of possession, then the quality of those acts even though they might have failed to constitute adverse possession against another, may be abundantly sufficient to destroy that adequacy and interrupt that exclusiveness and continuity which is required from any person challenging by possession the rightful title. (*Lord Shaw.*) KUTHALI MOOTHVAR *v.* KUNHARAN KUTTY. 41 M. L. J. 650 : 44 Mad. 883: 48 I. A. 395 : 14 L. W. 721 : (1921) M. W. N. 847 : 1922 P. C. 181 (P.C.).

——Art. 144—*Proof of title—Onus on defl. to prove adverse possession.*

In cases coming within Art. 144 of the Lim. Act, if the plaintiff has succeeded in proving a clear title, the burden lies on the defendant to prove adverse possession for the statutory period, and possession to be adverse must have all the qualities of adequacy, continuity and exclusiveness. 41 A. 669 ; 6 Pat. L. J, 478 Ref. (*Mookerjee and Cholzner, JJ.*) JOBEDA KHATUN *v.* TULSI CHARAN DAS. 36 C. L. J. 472 : 1923 Cal. 82.

——Art. 144—*Proof of title—Adverse possession.*

Proof of identity together with the absence of evidence by the defendant does not establish a title to property, when the plff. claiming it was absent for 40 years. He must let in strong and cogent evidence to satisfy the court as to his title. (*Fletcher and Cuming, JJ.*) ABDUL SOVAN *v.* LAKSHMI PRASAD AGARWALA. 50 I. C. 870.

——Art. 144—*Proof of title—Onus—Suit for possession.*

In cases under Art. 144 of the Lim. Act it is not incumbent on the plff. to establish possession within 12 years of suit. He has to prove title and it then rests on the defendants to show that he and those under whom he claims have been in possession for over 12 years before suit. (*Prideaux, A.J. C.*) SAKHARAM *v.* DEOBA 1923 Nag. 2.

——Art. 144—*Proof of title—Evidence on both sides valueless.*

Per *Curiam* (*Jwala Prasad, J.* dissenting) :—Where in an ejectment suit, the possession as to evidence on both sides is valueless, the plff. is deemed to have failed to satisfy the burden of proving his possession within that period by merely proving his title and possession at some antecedent period. (*Miller, C. J., Jwala Prasad, Das, Adami and Bucknill, JJ.*) SHIVA PRASAD SINGH *v.* HIRA SINGH. 2 P. L. T. 687 : 6 P. L. J. 478 : 3 U P. L. R. (P.) 81 : 62 I. C. 1 : 1921 Pat. 305 (F. B.).

LIMITATION ACT (IX OF 1908), Art 144—Reversioner.

——Art. 144—*Proof of title—Onus.*

In a suit for possession without dispossession, the burden of proof is on plff. to prove title and that defts.' possession is not adverse, is shifted by a *prima facie* case but not by a mere entry of his name in the revenue record. (*Maung Kin, J.*) MAUNG GYI *v.* SHWE G YOK. 42 I. C. 890.

Reversioner.

——Art. 144—*Reversioner— Possession adverse to nearest reversioner—Effect on remote reversioner.*

As a remote reversioner's right is not derived from or through the nearer reversioner, possession adverse to the latter will not be adverse to the former, and adverse possession will begin as against him only when his right to possession accrued, *i. e*, the date of the death of the nearer reversioner. (*Scott-Smith, J.*) HASTI *v.* HIRA. 4 Lah. L. J. 201 : 1922 Lah. 97.

——Art. 144—*Reversioner—Suit for possession—Failure of direct line of donee—Trespasser.*

Where on failure of the donee's line of descendants the gifted property is taken possession of by a trespasser, his possession is adverse within Art. 144 of the Lim. Act to the nearest reversioner entitled to immediate possession and to the remote one who is not entitled to claim possession at once. (*Ratligan, C. J.*) HARNAM *v.* DASONTHEI. 1 Lah. 210 : 56 I. C. 733 : 112 P. L. R. 1920.

——Art. 144—*Reversioner—Adverse possession—Person claiming title as heir*

The possession of a trespasser claiming as heir is adverse to the collaterals. (*Le Rossignal and Wilberforce, JJ.*) MAHNU *v.* SHIHAN SINGH. 52 I. C. 857 : 76 P. R. 1919.

——Art. 144—*Reversioner—Suit for possession—Commencement of cause of action.*

Where on the death of a certain person, his wife and mother jointly inherited his estate in 1894 and the wife was found to have led a life of unchastity which by the local custom would debar her from enjoying her husband's estate but the mother died in 1903. *Held*, in a suit by the plaintiff a collateral in 1913 for recovery of the property that the suit was not barred by limitation since the cause of action commenced only from the date of death of the mother who could have inherited the wife's share by survivorship. (*Shadilal and Le Rossignol, JJ.*)GHULAM. SARWAR *v.* KARAM ILATU & Co. 39 I. C. 204 : 58 P. W. R. 1917.

——Art. 144—*Reversioner—Suit by—Possession of trespasser.*

A suit by reversioners within 12 years from the death of a widow, in whose life-time, the estate was in the possession of trespassers is barred by Art. 144 as their possession was *ab initio* adverse. (*Chevis, J.*) KAHLA SINGH *v.* DIALA. 118 P. R. 1916 : 38 I. C. 64 : 175 P. W. R. 1916.

——Art. 144—*Reversioner—Suit for possession—Punjab Limitation Act (I of 1900).*

LIMITATION ACT (IX OF 1908), Art. 144—Starting point.

Where a person alienated properties in 1887 and died in 1894 but mutation was effected on the 23rd February, 1897 and the heirs of the alienor brought a suit for possession of the alienated properties on the 20th February 1909. *Held*: that the suit was barred because the reversioner must sue within 12 years of the alienor's death not from the date of mutation especially if the alienor died before Act I of 1900 came into force. 90 P. R. 1904; 11 P R. 1909; 145 P. R. 1907, Rel. on. (*Johnstone, J.*) TULSI *v.* MADHO RAM.

30 P. R. 1912 : 133 P. W. R. 1912 : 13 I. C. 343 : 72 P. L. R. 1912.

Starting point.

——Art. 144—*Starting point — Settlement proceedings—Adverse decision—Starting of adverse possession, though prior relation was fiduciary.*

An adverse decision in settlement proceeding was held to mark the starting of adverse possession despite the existence of fiduciary relationship between the parties before the event. (*Mr. Ameer Ali.*) MUHAMMAD BAKAR *v.* MUHAMMAD BAKAR ALI KHAN.

33 All 125 : 38 I. A. 23 : 13 C. L. J. 63 : 8 A. L. J. 132 : 15 C W. N. 273 : 9 M. L. T. 200 : (1911) 1 M. W. N. 127 : 13 Bom. L. R. 75 : 14 O. C. 95 : 9 I. C. 391 : 21 M. L. J. 109 (P.C.).

——Art. 144—*Starting point— Symbolical delivery— Decree-holder — Suit for possession against judgment-debtor—Limitation.*

Where the decree-holder in execution of a decree for possession is given formal possession the judgment-debtor remaining in actual possession, the possession of the decree holder is deemed actual legal possession in the eye of law and he can bring a fresh suit for possession within 12 years The suit is not therefore barred by limitation. 19 A. 499, Appl. (*Tudball, J.*) RAHIM BAKSH *v.* MUHAMMAD HAFIZ.

10 I. C. 319.

——Arts. 144 and 149—*Starting point—Purchaser from Government—Adverse possession.*

In a suit in ejectment by a purchaser from the Government, the defendant pleaded adverse possession for more than 12 years against the Government. *Held*, plaintiff cannot claim to be in the position of the Government as against which under Art 149, a title would be acquired by only 60 years' adverse possession. In such a case the period began to run from the date when defendant's possession become adverse to the Government, as the latter also is plaintiff under S. 2 (8), Lim Act. (*Walmsley and Buckland, JJ.*) ANNADA MOHAN ROY CHOWDHURY *v.* KINA DAS.

28 C. W. N. 66 : 1924 Cal. 394.

——Art. 144—*Starting point—Delivery of symbolical possession -Adverse possession—Onus.*

On the failure of an owner to pay the Government assessment, his estate or interest in the land is forfeited or rather determined, and under a sale for arrears of revenue what is sold is not the interest of the defaulting owner but the interest of the Crown, subject to the payment of the Government assessment, and therefore the time limited by the Limitation Act only commences to run from the date of the sale. Delivery of symbolical possession does not in any way affect the possession of, or give start to a fresh period of limitation against persons who are not parties to a suit or execution proceedings. This rule is applicable to the case of purchasers at sales for arrears of revenue. (*Mookerjee and Chotzner, JJ.*) JOBEDA KHATUN *v.* TULSI CHARAN DAS.

36 C. L. J. 472 : 1923 Cal. 82.

——Art. 144—*Starting point—Landlord and tenant—Chowkidhari Act (VI of 1870), Ss. 50 and 51—Suit by Patnidar for possession of Chowkidhari chakran lands—Limitation.*

Art. 144 of the Limitation Act applies to the suit of a *patnidar* brought against the *Zamindar* for the recovery of possession of *chowkidhari chakran* lands transferred to the latter under the Act. To ascertain when the *Zamindar's* possession became adverse, the court must find when the lands were settled by the *Zamindar* with tenants and when those tenants took possession of the lands and whether such possession was to the knowledge of the *patnidar*. (*Woodroffe and Cuming, JJ.*) MANINDRA CHANDRA NANDI *v.* RANGALAL.

41 I. C. 728.

——Art. 144—*Starting point—Allotment at partition lands.*

The cause of action in a suit for possession of lands allotted to a person at partition, commences from the time of allotment of the lands. (*Stephen and Holmwood, JJ.*) BEPIN BEHARI CHAKLADAR *v.* JAGAT KISHORI ACHARJI.

22 I. C. 575.

——Art. 144—*Starting point—Symbolical possession—Effect of.*

Symbolical possession is effective against judgment-debtor though not so against a stranger to the suit. (*Mookerjee and Carnduff, JJ.*) GIRINARAYAN CHATTERJI *v.* MADHU SUDAN MUKERJI.

18 I. C. 751 : 17 C. W. N. 324.

——Art. 144—*Starting point--Revenue sale--Bengal Revenue Sale Law (Act XI of 1859)—Purchaser if claims through defaulter—Adverse possession against defaulter if adverse against purchaser.*

A purchaser under the Revenue Sale Law purchases the share and not the right title and interest of the defaulter. He does not claim under or through the defaulter and hence in a suit for possession by a purchaser who has not been in possession since his purchase, the Deft. must show adverse possession for more than 12 years against the plff. as the adverse possession against the defaulter cannot be tacked on to adverse possession against plff. (*Stephen and Chatterjee, JJ.*) BILAS CHANDRA *v.* AKSHRAJ KUMAR DAS.

16 C. L. J. 486 : 14 I. C 219 : 16 C. W. N. 587.

——Art. 144—*Starting point—Terminus a quo.*

The *terminus a quo* under Art. 144 of the Lim. Act is the date when the possession of the defendants became adverse to the plaintiff and not to

LIMITATION ACT (IX OF 1908), Art.144—Starting point.

any other person from or through whom he does not derive his right. (*Scott-Smith and Fforde, JJ.*) SARUP SINGH *v.* PAL SINGH.
1923 Lah. 642.

——Art. 144—*Starting point—Distant Collaterals—Adverse possession—Cause of action.*

Possession cannot be adverse to a person until he can sue for possession. (*Ratligan, C. J.*) HARNAMAN *v.* OASONDHI. 1 Lah. 210 : 56 I. C. 733 : 112 P. L. R. 1920.

——Art. 144—*Starting point—Collaterals—Suit for possession.*

The right of suit of collaterals under Punjab Customary Law is derived from the common ancestor who owned the land and therefore time under Art. 144 does not run against him till the right to sue accrues to him. (*Shadi Lal and Le Rossignol, JJ.*) ARUR SINGH *v.* SOLA SINGH.
37 I. C. 418 : 174 P. W. R. 1916.

——Art. 144—*Starting point—Wakf Property—Permanent alienation.*

A *mutwalli* can challenge the permanent alienation of the *Wakf* property by his predecessor within 12 years from his appointment. (*Chevis and Leslie Jones, JJ.*) FAZI ILAHI *v.* ZAFAR ALI.
32 I. C. 508 : 36 P. W. R. 1916.

——Arts. 144 and 127—*Starting point—Sale of joint family properties—Stranger purchaser taking possession — Suit to recover property—Knowledge.*

The plaintiff's undivided uncle and another uncle's son sold in 1898 certain properties of the joint family to the first defendant. Some of the properties sold were leased to the vendors, but in 1901 they relinquished the same. In 1902 some of the lands sold were in the cultivation of the vendors. After 1902 the properties were always in the possession of the purchaser, the first defendant. In a suit by the plaintiff to recover possession of the properties from the first defendant, *held*, that the suit was governed by Art, 144 of the Lim. Act and not by Art. 127 and adverse possession commenced to run at least from the year 1902, when the vendors ceased to cultivate the properties they had alienated. Under Art. 144 it is not necessary for the defendants to prove the exact date, when the plaintiff became aware that he had been excluded from a right to share in the joint family properties. 23 B. 137, 37 B. 84 foll; 25 I. C 573 doubted. (*Spencer and Ramesam, JJ.*) LINGA MUNISAMI REDDI *v.* P. S. GOVINDASWAMI NAICKER.
42 M. L. J. 304 : 15 L. W. 294 : 1922 Mad. 369.

——Art. 144—*Starting point—Symbolical delivery of possession against Govt.—Ryotwari Tenants—Continuance of possession —Prescription.*

Where possession of *inam* lands wrongly classed as *Ryotwari* by the Govt. and for which *pattas* were issued to the *ryots* is decreed to the *inamdar* and symbolical delivery is made in execution of the decree a suit brought to oust the *ryotwari* tenants within 12 years of the delivery of possession which was acquiesced in by the tenants is not barred by limitation. (Per *Spencer, J.*)—

LIMITATION ACT (IX OF 1908) Art.144—Starting point.

The *Ryotwari* tenants, when they attorned to Govt. could not simultaneously prescribe for any title which could enure after the title of the Govt. was negatived in the suit of a third party, and so long as they were tenants of the plff. or her predecessors-in-interest, their possession was not adverse to that of the landlord. A *Ryotwari Pattadar* does not acquire any rights against the Govt. greater than what he gets at the initial grant of *Patta*, Per *Phillips, J.*—The original possession of the Ryotwari tenants having been terminated by delivery in execution any fresh title could be acquired by actual possession only after the expiry of 12 years after the symbolical delivery. (*Sadasiva Aiyar and Spencer, JJ.*) NARAYANI AMMAL *v.* SECRETARY OF STATE.
41 I. C. 167.

——Art. 144—*Starting point.*

Limitation under Art. 144 does not begin to run until possession becomes adverse. (*Batten, A. J. C.*) KANHAIYALAL *v.* DULAR SINGH.
17 I. C. 606 : 8 N. L. R. 163.

——Art. 144—*Starting point — Symbolical possession—Adverse possession.*

The possession of a transferee from the mortgagor is adverse to the mortgagee decree-holder from the date on which the court sale in the latter's favour was confirmed and not from the date on which he got symbolical possession of the property. 21 A. 269, approved. (*Stuart, A. J. C.*) CHUNNK *v.* ASHRAFAN. 42 I. C. 192 : 4 O. L. J. 481.

——Art. 144—*Starting point—Gift—Possession by donor appointing himself as mutwalli—Suit by donor's heirs for possession—Limitation.*

The possession of the donor appointing himself as *mutwalli* becomes that of the manager and a suit for poesession by his heirs 12 years after the date of the gift is barred. 36 C. 1003 (P. C.) Ref. (*Stuart and Kanhaiya Lal, A. J. Cs.*) SITARAMJI *v.* JADHUNATH SINGH. 24 I. C. 72 : 1 O. L. J. 204.

——Art. 144—*Starting point—Adverse possession—Alienation by Mahant—Position as regards properties vested in idol and Mahant—Distinction.*

Where property is in a juridical person and such property is transferred by a person who is only representative and manager of that juridical person then there is adverse possession to the right to the juridical person from the date of the alienation. The act of alienation in such a case is a direct challenge upon the title of the idol. But where the title is in the Mahant or shebait the act of alienation is not a challenge upon the title of the idol, though the property may be endowed property in the sense that its income has to be appropriated to the purposes of the endowment, and there is no adverse possession so long as the person making the alienation is alive, and possession becomes adverse only when a new title has come into existence capable of maintaining the suit and which has not approved of or acquiesced in the alienation. (*Das and Bucknill, JJ.*) MAHANT RAMRUP *v.* LAL CHAND MARWARI,
1 Pat. 475 : 3 Pat. L. T. 362 : 1922 P. 243.

LIMITATION ACT (IX OF 1908), Art. 144—Suit on title.

——— Art. 144—*Suit on title—Adverse possession—Prescription.*

Where the title to a plot of land rests in the plaintiff the burden is upon the defendant to show that that title has been extinguished by adverse possession on his part for over 12 years. (*Gokul Prasad, J.*) LAKHU *v.* SARDAR LAL SINGH.
1923 All. 399.

——— Art. 144—*Suit on title—Planting of trees on another person's land—Active trespass—Adverse possession.*

The planting of trees on another person's land is an active trespass and the owner is certainly entitled to treat it as such if he so wishes. The period for bringing a suit for possession is twelve years. 10 A. 34 doubted. (*Walsh, J.*) MD. SHAFI *v.* BINDESHARI SINGH
20 A. L. J. 208 : 1922 All. 50.

——— Art 144—*Suit on title—Suit by patnidar to recover possession of chaukidari chakran lands from zemindar.*

The patnidar's right under the patni grant to the chaukidari chakran lands are not disturbed, on resumption of chaukidari chakran lands by the Government and settlement of the same with the Zemindar. A suit by the patnidar for the recovery of possession of these lands against the zemindar is not barred by limitation, unless for more than 12 years prior to the date of the institution of the suit, the possession of the zemindar had become adverse to the plaintiff. The possession of the zemindar may become adverse to the patnidar in a variety of ways, e. g., when the lands are settled by the zemindar with tenants or when the patnidar after being invited to give and take the land does nothing and the zemindar thereafter makes other arrangements either for holding the lands in khas or for settling the same with ijardars or the like. In each case, the facts have got to be investigated having regard to the language of Art. 144 of the Limitation Act. (*Ghose and Panton, JJ.*) NAGENDRABALA CHAUDHRANI *v.* BEJOY CHAND MAHATAP.
50 Cal. 577 : 28 C. W N. 114 :
1923 Cal. 734.

——— Art. 144—*Suit on title—Suit by adopted son.*

Art. 144 applies to a suit by an adopted son for the recovery of immoveable property within 12 years from the date of adoption. (26 M. 143 : 19 B. 809 : 2 Bom. L. R. 411 : 9 C. W. N. 705 : 23 B. 725 P.C. Fol. : 23 W.R. 214, P.C. ref.) (*Wallis, C. J. and Seshagiri Aiyar, J.*) KANCHARLA VENKATA RATNAM *v.* KOGANTI VENKATRAMIAH.
27 M. L. J. 569 : 25 I. C. 692 :
16 M. L. T. 485.

Trusteeship.

——— Art 144—*Trusteeship—Suit for recovery of property from person claiming to be trustee himself—Limitation.*

The person concerned can sue for obtaining control or management of a religious institution within 12 years under Art. 144 when misapplication is not proved and the defendant does not deny the fact of his being a trustee. 6 A. I; 10 I. A. 90.

LIMITATION ACT (IX OF 1908), Art. 145.

Foll. (*Lord Shaw.*) ARUNACHELLAM CHETTY *v.* VENKATACHALAPATHI GURUSWAMIGAL.
43 M. 253 : 46 I. A. 204 :
(1919) M. W. N. 850 : 17 A. L. J. 1097 :
10 L. W. 642 : 27 M. L. T. 479 :
53 I. C. 288: 24 C. W. N. 249 : 37 M. L. J. 460.
[On appeal from 33 I. C. 216: (1915) M W. N. 650.

Vendor and Vendee.

——— Art. 144—*Vendor and Vendee—Suit for possession—Failure to give possession by vendor.*

When the vendor fails to deliver possession of part of the property sold the vendee's remedy is not a suit for specific performance but a suit for recovery of possession and Art. 144 applies. (*Reid, C. J.*) BHANJANRAM *v.* SAHAURA.
18 P R. 1911 : 45 P. W. R. 1911 :
9 I. C. 238 : 92 P. L. R. 1911.

——— Arts. 145 and 49—*Suit for recovery of pictures and manuscripts.*

A suit to recover pictures and manuscripts is ordinarily governed by Art. 145 but when they are not returned on demand Art. 49 would govern the suit and time runs from date of refusal. (*Walsh and Stuart, JJ.*) KALYAN MAL *v.* KISHANCHAND. 41 All. 643 :
17 A. L. J. 883 : 55 I. C. 45 :
1 U. P, L. R. (All.) 95.

——— Arts. 145 and 49—*Deposit—Suit for recovery—Limitation—Death of depositary.*

Art. 145 is a special article applicable where the depositor seeks to recover from the depositary moveable property deposited and time runs from the date of the deposit. Art. 49 is on the other hand a general article for the recovery of specific moveable property or for compensation for wrongly detaining the same and time runs from the date when the property is wrongfully taken or when the detainer's possession becomes unlawful. All actions for the recovery of a deposit of moveable property are comprised within Art. 145 and no exception is made where demand and refusal make the continuance of possession unlawful. The fact of possession by the depositor, after demand being wrongful does not make art 49 applicable. Where the original depositor dies and the subject matter of the deposit goes into the hands of his heir, the latter remains an involuntary bailee thereof and a suit for recovery of the deposit would still be governed by art. 145 of the Lim. Act. 33 M. 56, 60 foll. : 14 A. C. 273 Ref. (*Ghose, J.*) PROMOTHO NATH MULLICK *v.* PRODYNEHO KUMAR MULLICK. 69 I. C. 900 :
26 C. W.N. 772.

——— Art. 145—*Money deposited as security for appointment—Limitation.*

Art. 145 of the Lim. Act applies to a suit to recover money deposited by the plaintiff as a security for his appointment as Tahsildar under the Court of Wards. (*Walmsley, J.*) NANDA LAL BOSE *v.* ASHUTOSH GHOSE. 55 I. C. 515.

——— Art. 145—*Suit for value of moveable—Deposit.*

The rule of limitation applicable to a suit against a depositor to recover moveable property even when the property is not recoverable in

specie, is that contained in Art. 145 of the Lim· Act. 7 C. W. N. 476 : 31 C. 519, foll. (*Mookerjee and Newbould, JJ.*) GANGAHARI *v.* NABID CHANDRA. 20 C. W. N. 232 : 34 I. C. 959 : 23 C. L. J. 145.

——Arts. 145 and 49—*Meaning of deposit.*

The word 'deposit' extends to all cases where one man's property is handed by that man to another. (*Schwabe, J.*) KISHTAPPA CHETTY *v.* LAKSHMI AMMAL 44 M.L.J. 431 : 17 L. W. 467 : 32 M. L. T. 217 : (1923) M.W.N. 284 : 1923 M. 578.

——Art. 145—*Deposit of goods.*

A suit to recover deposited goods is governed by Art. 145 (*Spencer, J.*) GOVINDASAMI PILLAI *v.* MUNICIPAL COUNCIL, KUMBAKONAM.

(1917) M. W. N. 585 : 6 L. W. 401 : 33 M. L. J. 577.

[On appeal 41 Mad. 620: 42 I.C. 519: 34 M.L.J. 399.

——Art 145—*Deposit—Loan.*

(Per *Seshagiri Aiyar, J.*) There is only a thin difference between a loan and a deposit ; where the arrangement is that the money handed over is to be paid to a third party on demand or on the happening of a specified event the transaction is a deposit and not a loan. (*Abdur Rahim and Seshagiri Aiyar, JJ.*) NARAYANAN CHETTIAR *v.* VELLAYAPPA CHETTIAR

(1916) 1 M.W.N. 206 : 34 I. C. 347 : 19 M. L. T. 237.

——Art. 145—"*Deposit*" *meaning—Previous Limitation Acts.*

"Deposit" in the Limitation Act, 1908 has the same meaning as in the previous Limitation Acts and means a *deposit* of goods to be returned in specie (depositum of Roman Law) (*Wallis, J.*) BALKRISHNADU *v.* NARAYANASWAMI CHETTY.

24 I. C. 852 : 37 Mad. 175.

——Arts 145 and 49—*Entrustment of jewel for raising loan—Loan repaid but jewel not returned—Suit for recovery of same—Limitation.*

A suit for the recovery of a jewel entrusted to a third person for raising a loan thereon, after such loan has been obtained and repaid and return of the same refused is governed by Art. 49 and not by Art 145, and the period of limitation is three years from the date of refusal to return the same ; mere silence after notice demanding return is not refusal for purposes of limitation. (*Benson and Sundara Aiyar, JJ.*) GOPALSAMI AIYAR *v.* SUBRAMANIA SASTRI.

35 Mad. 636 : (1911) 2 M. W. N. 190 : 10 M. L. T. 572 : 12 I. C. 207 : 22 M. L. J. 152.

——Art. 146—*Mortgage of oil-well—Further advance.*

A mortgage of an oil-well was executed in 1875, while in 1879 the mortgagor received a further advance and executed a document to evidence the same. The nature of the second transaction was in dispute, the mortgagor contending that it was a further charge and the mortgagee that it was a sale. A suit for redemption of the mortgage was brought in 1908. *Held*

that if the transaction amounted to a sale, the vendee was in adverse possession for over twelve years and that if it was a mortgage the right to redeem accrued more than 30 years before suit and that in either case, the suit was barred. (*Lord Moulton.*) NGA LU GALE *v.* NGA PO THAN.

24 I. C. 310 : 1 L. W. 695 (P. C.).

——Art 147—*Applicability.*

Art. 147 applies not to foreclosure proceedings under the Regulation but to such suits for foreclosure as under the law then in force could be brought. (*Banerjee, J.*) SHYAM CHANDRA SINGH *v.* BALDEO.

17 I. C. 467 : 10 A. L. J. 529.

——Art. 148—*Mortgage by conditional sale—Redemption—Starting point of limitation—Agreement of parties—Statements in plaint.*

In the absence of a special provision entitling the mortgagor to redeem during the term for which the mortgage is created, the right of redemption can only arise on the expiration of the specified period. But the parties may agree that the mortgagor might discharge the debt within the period and take back the property, in which case the period of limitation for redemption commences as soon as the debt is discharged and not from the expiry of the term provided for in the deed. (*Ameer Ali.*) BAKHTAWAR BEGAM *v.* HUSAINI KHANAM.

36 All. 195 : 41 I.A 84 : 18 C. W. N. 586 : 12 A. L. J. 473 : 19 C. L. J. 477 : (1914) M. W. N. 411 : 15 M. L. T. 389 : 16 Bom. L. R. 344 : 1 L. W. 513 : 23 I. C. 355 : 26 M.L J. 474 (P.C.).

[On appeal from 29 All. 471 : (1907) A. W. N. 133 : 4 A. L. J. 375.]

——Arts. 148 and 132—*Suit by a mortgagor against co-mortgagor for possession—Article applies.*

Where one of several mortgagors redeems a mortgage, the other co-mortgagors can bring a suit for redemption against the redeeming mortgagor Limitation Art. 148 and not Art. 132 is applicable. (*Lindsay and Kanhaiya Lal, JJ.*) SURAT SINGH *v.* UMRAO SINGH.

20 A. L. J. 611 : 1922 A. 410.

——Art. 148—*Mortgagor getting a redemption decree but not executing it—Mortgage by the mortgagee as owner—Sale in execution thereof—Effect on the mortgagor.*

In 1861 the mortgagor usufructuarily mortgaged the property to the mortgagee and sued for redemption which was decreed upon payment of a certain amount but the mortgagee remained in possession as the property was not actually redeemed. In 1889 the mortgagee mortgaged it describing himself as absolute owner and the property was sold in execution of a decree on the latter mortgage and purchased by the decree-holder who sold it to the deft in 1904. In 1915 the heirs of the original mortgagor sued for redemption of the mortgage of 1861, *held*, that Art. 144 and not Art. 148 or Art. 134 was applicable. Art. 148 is intended to protect the interest of the mortgagor against the mortgagee in possession

or the person who holds the interest as a mortgagee including the heirs or assigns as such. It applies only for redemption suits instituted against mortgagees or persons claiming under them and does not apply to suits against strangers. (*Mears, C. J. and Kanhaiya Lal, J.*) RAM PIARI *v.* BUDH SEN. 18 A. L. J. 995.

——Art. 148—*Purchaser of equity of redemption in part—Suit for redemption of another purchaser—Limitation.*

A purchase of the equity of redemption in a part of the mortgaged property within sixty years of the date of the mortgage from another person who having purchased another portion of the mortgaged property has redeemed the entire mortgage and is in entire possession of the property is liable to be redeemed by the owner of the other moiety within the period prescribed by Art. 148. (*Banerjee and Ryves, JJ.*) WAZIR ALI *v.* ALI ISLAM.
40 All. 633 : 47 I. C. 833 : 16 A. L. J. 740.

——Art. 148—*Mortgage— Redemption—Suit by one co-mortgagor against another.*

A suit for redemption by a co-mortgagor against other co-mortgagor who has redeemed the entire mortgage is governed by Art. 148. (*Piggott and Lindsay, JJ.*) KHIALI RAM *v.* TAIK RAM.
38 All. 540 : 36 I. C. 452 : 14 A. L. J. 834.

——Arts. 148 and 105—*Suit for surplus profits from usufructuary mortgage—C. P. Code, O. 34, Rr. 7 and 9.*

A claim of a mortgagor for recovery of overpayment or the surplus profits received by the mortgagee is a relief included in a suit for redemption governed by Art. 148 of the Lim. Act. But such a suit would be governed by Art. 105 of the Act where mortgagee gave up possession after the mortgage debt had been satisfied and the mortgagor entered into possession otherwise than by means of a suit for redemption. (*Chatterjee and Newbould, JJ.*) PROSONNA KUMAR MONDAL *v.* NILAMBAR MANDAL.
26 C. W. N. 123 : 1922 C. 189.

——Art 148—*Applicability of—Suit to redeem a charge under S. 95, T. P. Act.*

Art. 148 of the Limitation Act is inapplicable to a suit for redemption of a charge in favour of a co-mortgagor who has redeemed the whole mortgage and has thus obtained a charge under S 95, T. P. Act, on the share of other co-mortgagors. Such a suit brought more than 12 years after the creation of the charge is barred by time, under Art. 144 of the Lim. Act. (*Richardson and Walmsley, JJ.*) PURNA CHANDRA PAL *v.* BARADA PRASUNNA BHATTACHARJEE. 46 Cal. 111 : 45 I. C. 783 : 22 C. W. N. 637.

——Arts. 148 and 144—*Co-mortgagors—Redemption by one—Suit for possession by the others—Limitation.*

A co-mortgagor redeeming the whole mortgage does not become a mortgagee of the portion redeemed belonging to other co-owners, but becomes merely a charge holder, and art. 148 of the Lim. Act refers only to a suit against a mortgagee and has no application to a suit against a charge holder. The rule that ordinarily one co-sharer cannot hold adversely against another co-sharer proceeds upon a rebuttable presumption that the co-sharer in exclusive possession is holding on behalf of the other co-sharers. This presumption is rebutted when it is shown that the co-sharer in possession denies the right of the other co-sharers to enter into joint possession until they have paid to him their share of a charge upon the property which he has detrayed. (*Campbell, J.*) WAZIR *v.* GIRDHARI. 1923 Lah. 311.

——Art. 148—*Starting point—Lakha Mukhi—Usufructuary mortgage.*

The starting point for limitation in respect of a suit for redemption of a *lakha mukhi* mortgage is the same as in the case of an ordinary usufructuary mortgage and the suit is governed by Art. 148 of the Lim. Act. (*Petman, J.*) KHANDU LAL *v.* FAZAL. 51 I. C. 956 : 1 Lah. 21.

——Arts. 148 and 144—*Accessions to mortgaged property—Suit for.*

Upon redemption a mortgagor is entitled to take over the accessions to the mortgaged property on payment of the cost of the acquisition and a suit for possession of the accession is not one for redemption governed by Art. 148, but is one governed by Art. 144. (*Chevis, J.*) KHUDADAD KHAN *v.* GIRDHARI RAM.
42 I. C. 468 : 163 P. W. R. 1917.

——Art. 148—*Mortgage—Period of redemption—Applicability to trespasser.*

The period of 60 years fixed for redemption applies only to cases for the recovery of possession from a mortgagee but not from a person coming into possession of the mortgaged property as a trespasser. (*Johnstone and Chevis, JJ.*) JIVA KHAN *v.* LAKHMI CHAND. 146 P. W. R. 1911 : 11 I. C. 429 : 232 P. L. R. 1911.

——Arts. 148 and 144—*Mortgage—Redemption by alienee from co-mortgagor—Suit by others—Limitation.*

A co-owner redeeming the whole of the mortgage is not a mortgagee but a mere charge-holder and a suit by the other co-owners for possession on payment of a proportionate part of the mortgage-money is governed by Art. 144 and not by Art. 148. (*Oldfield and Sadasiva Aiyar, JJ.*) MURAJALLI MUNIA GOUNDAN *v.* RAMASAMY CHETTI. 41 Mad. 650 : 34 M. L. J. 528 : 8 L. W. 38 : 24 M. L. T. 22 : 45 I. C. 867 : (1918) M. W. N. 448.

——Arts. 148 and 144— *Mortgage—Redemption.*

Art. 144 of the Lim. Act could not be invoked by the mortgagee, if the mortgagor was not barred by Art. 148 from redeeming and recovering possession of the mortgaged property. 14 M. 38 : 15 M. 166 : 14 C. 279 : 32 C. 296, Ref. (*Miller and Sadasiva Aiyar, JJ.*) ARIYA PUTHIRA PADAYACHI *v.* MUTHUKUMARASWAMY PADAYACHI.
37 Mad. 423 : 23 M. L. J. 339 : 12 M. L. T. 425 : 15 I. C. 343 : (1912) M. W. N. 854.

LIMITATION ACT (IX OF 1908), Art. 148.

——Art. 148— *Usufructuary mortgage—Redemption.*

Art. 148 is applicable to redemption of usufructuary mortgage and recovery of possession despite part of the consideration having become void. 32 C. 296 : 29 A. 640 : 1 A. 655 : 13 M. 39: 14 M. 38 Ref. (*Krishnaswamy Aivar and Ayling, JJ.*) TIRUMAL RAJU *v.* PANDLA MUTHIAH NAIDU.
35 Mad 114 : 9 M. L. T. 286 : 21 M. L. J. 169 : 9 I. C. 289 : (1911) 1 M. W. N. 113.

——Arts. 148 and 134—*Transfer by mortgagee—Reconveyance—Redemption.*

Where a mortgagee transfers the property as proprietor and subsequently gets possession of the property before his transferee acquired a title by 12 years, the mortgage is subject to redemption within the period given by Art. 148. (*Daniels, A.J.C.*) MOHAMMAD MOHSIN *v.* MOHAMMAD ABID. 52 I. C. 159 : 22 O. C. 72.

——Art. 148—*Redemption suit—Limitation—Onus.*

The burden of proof in redemption suits, is on the plff primarily to show that he has on the date of suit, a subsisting right of redemption. The burden is not discharged by showing that the mortgage subsisted upto within 12 years before suit. (*Kanhaiya Lal, A. J. C.*) DIDAR HUSAIN *v.* GAYAPRASAD. 42 I. C. 119 : 4 O. L. J. 494.

——Art. 148—*Mortgage—Redemption.*

A transfer made in the year 1830-1831 was interpreted to be a mortgage with possession in 1858 1859 and in 1868 the parties got themselves recorded in the Revenue papers as mortgagor and mortgagee according to their desire. *Held*, a suit for redemption in 1914 was barred. (*Stuart, J. C.*) MAHABIR SINGH *v.* SHEORATAN.
38 I. C. 626 : 3 O. L. J. 696.

——Arts. 148 and 144—*Scope — Suit by one mortgagor against co-mortgagor for possession—Article does not apply—Record of rights—Evidentiary value.*

Art. 148 provides for a suit against a mortgagee to redeem or to recover possession of immoveable property mortgaged. But a suit by a mortgagor against a co-mortgagor to recover possession of his share of the mortgaged property is not a suit for redemption nor a suit for possession of immoveable property mortgaged. This suit must be governed by Art. 144 and not by Art. 148. The possession of the defendants co-mortgagors, as alienors does not, in any way, contradict the ulterior proprietary right of the plaintiffs mortgagors. It must be established that the defendants have been in possession for twelve years on an assertion of a hostile title to the knowledge of the plaintiffs. The entry in record of rights would not operate to the prejudice of the plaintiffs even if it has recorded the exclusive title of the defendants, unless it has been established that the plaintiffs had knowledge of the entry more than twelve years before suit. (*Jwala Prasad, C. J. and Das, J.*) RAM NARAYAN RAI *v.* RAM DENI RAI.
1923 P. 98 : 1922 Pat. 129.

LIMITATION ACT (IX OF 1908), Art. 149.

——Arts. 148, 91 and 142 — *Mortgage—Fraud—Evidence Act, S. 92.*

Where in a suit for redemption of a mortgage, the mortgagee pleaded that the property had been sold, but the plff. contended that it was only a mortgage and that his signature was obtained on that representation. *Held*, that for such a suit Art. 148 applied and not Articles 91 or 142 and that the plff. was entitled to prove the fraud played upon him. (*McColl, A. J. C.*) NGA PAW *v.* NGA LEV GALE. 13 I. C. 375 : 4 Bur. L. T. 265.

——Art. 149—*Plff. must prove possession for full 60 years.*

Where land belonged to the Crown when it emerged out of the sea, and plff. claims adverse possession against govt., he has to prove possession for the full period of 60 years. Proof of less period does not shift the onus on to the govt. to show that plff.'s possession began within 60 years. (*Lord Shaw.*) SECY. OF STATE *v.* CHALIKANI RAMA RAO. 39 M. 617 : 31 M. L. J. 324: 20 C. W. N. 1311 : (1916) 2 M. W. N. 224 : 14 A. L. J. 1114 : 30 M. L. T. 435 : 4 L. W. 486 : 18 Bom. L. R. 1007: 25 C. L. J. 69 : 35 I. C. 902 (P. C.): 43 I. A. 192.
[On appeal from 33 M. 1 : 20 M. L. J. 66: 7 M. L. T. 128.]

——Art. 149—*Unoccupied village site—Adverse possession.*

All unoccupied sites are Government property unless an individual can establish in his own right a title to such unoccupied property either by proving that he got a title better than the title of the Government or that he has obtained a title by adverse possession, that is to say, by possession for 60 years. (*Macleod, C. J. and Fawcett, J.*) VASTA BALWANT *v.* SECRETARY OF STATE.
45 Bom. 789 : 61 I. C. 440 : 23 Bom. L. R. 238.

——Art. 149—*Suit by Govt. against Municipal Servant—Bom. Dt Municipalities Act, S. 42.*

Suit by Govt. against Municipal Councillors for embezzlements of Municipal money by Municipal servants is governed by Art. 149. (*Batchelor and Hayward, JJ.*) MANILAL GANGA DAS *v.* SECRETARY OF STATE. 40 Bom 166 : 33 I. C. 428 : 17 Bom. L. R. 1115.

——Art. 149—*Benefit of—Adverse possession against Government—Purchaser from Government—Position of.*

Benefit of adverse possession against Govt. is to the purchaser from Govt. (*Walmsley and Buckland, JJ.*) ANNADA MOHAN ROY CHOUDHURY *v.* KINA DAS.
28 C. W. N. 66 : 1924 C. 394.

——Art. 149—*Plff.'s possession proved for 30 years—Onus on Govt. to prove absence of possession within 60 years.*

In a suit against Government, if plff. proves his possession for 30 years, the onus is shifted on to the Government to prove that plff. had no possession within 60 years. (*Benson and Sundara Aiyar, JJ.*) ALAGASINGA *v.* TALUK BOARD, RAJAMAHENDRY. 16 I. C. 626 : 12 M. L. T. 159.
[This is no longer correct *See* 39 M. 617 : 43 I. A. 192 (P.C.).]

LIMITATION ACT (IX OF 1908), Art. 149.

———Arts. 149 and 144—*Adverse possession—Municipality—Transfer of right by Govt.*

The possession by a Municipality of waste lands transferred to them by a Govt. Resolution, is not that of an agent or trustee on behalf of Govt., but in their own right as beneficial owners thereof, subject only to the right of Govt. to repossess themselves of any portion thereof if and when required for public purposes. The beneficial interest so transferred is lost by adverse possession for 12 years under Art 144. (*Pratt, J.C. and Fawcett, A.J.C.*) THE KARACHI MUNICIPALITY *v.* SHAMOO LADHA. 30 I. C. 13 : 9 S. L. R. 1.

———Art. 151—*Date of decree—Meaning of.*

The expression " date of decree " in the third column means the date the decree is directed to bear (*i.e*) the date when the judgment is delivered and not when the decree is actually prepared or signed. (*Jenkins, C.J. and Mullick, J.*) BHAJAN BEHARI *v.* GIRISH CHANDRA. 19 I. C. 410: 17 C. W. N. 959.
[Also 25 I. C. 67 and 25 M. L. J. 560.]

———Art. 152—*Agra Ten. Act—Appeal to Dt. Judge.*

The period of limitation for an appeal to the Dt. Judge is thirty days under Agra Tenancy Act, 1901. (*Griffin, J.*) RAM LAL *v.* AMAR CHAND. 17 I. C. 653 : 10 A L. J. 535.

——— Art. 152—*C. P. Code, O. 20, R. 7.*

Art. 152, Lim. Act, read with C. P. C., O 20, R. 7, is conclusive on the point that the "date of the decrees " for the purpose of calculating appeal time must be taken to be the date on which the judgments were pronounced. (*Heaton and Shah, JJ.*) SATYBHAMABAI *v.* GOVIND JANAKU BADE. 16 Bom. L. R. 441 : 25 I. C. 66 : 38 Bom. 653.

———Arts. 152 and 156—*Date of decree—Decree against several defts, at different times—Whether a consolidated decree—Limitation.*

A money decree against different defts, at different times is not a consolidated decree against all for purposes of the Limitation Act and limitation in respect of each decree runs from the date on which it was passed. (*Benson and Sundara Aiyar, JJ.*) SAMBASIVA AIYAR *v.* MUHAMMAD HUSSAIN. 31 I. C. 917

———Art. 152—*Date of decree—Decree drawn up after judgment.*

For purposes of calculating limitation for an appeal the date of the decree is the date when the judgment was pronounced even though the decree is drawn up subsequently. This is entailed by the provisions of O. 20, R. 7, C.P. Code. (*Kotval, A.J.C.*) NARAIN *v.* RAMDULARE. 1922 Nag. 113.

———Art. 154—*Appeal—Cr. P. Code, S. 195 (6).*

Art. 154 does not apply to proceedings under S. 195 (6), Cr. P. Code. (*Holmwood and Carnduff, JJ.*) POCHAY MITAY *v.* EMPEROR. 40 Cal. 239 : 18 Cr. L. J. 599 : 16 I. C. 167 : 17 C. W. N. 91.

———Art. 154—*Application under S. 195 (6), Cr. P. Code—Nature of.*

LIMITATION ACT (IX OF 1908), Art. 156.

An application to a higher Court under S. 195 (6) of the Cr. P. Code though akin to an appeal and though treated as an appeal is not an appeal for the purposes of Limitation Act and an application to the Appellate Court cannot be time-barred under the Limitation Act (*Wilberforce, J.*) PUNNA LAL *v.* JAMITU MAL. 1 Lah 602 : 22 Cr L. J. 177 : 60 I. C. 33.

———Arts. 154 and 178—*Appeal—Sanction under S. 195, Cr. P. Code—Superior Court—Application to.*

An application to a superior court for revoking a sanction granted by an inferior court is not an appeal within Art. 154 of the Limitation Act and such applications are not governed by the Limitation Act. (*White, C.J., Sankaran Nair, Abdur Rahim, Ayling and Sadasiva Aiyar, JJ.*) BAPU *v.* BAPU. 39 Mad. 750: 11 M. L. T. 367 : (1912) M. W. N. 499 : 13 Cr. L. J. 209 : 14 I. C. 305 : 22 M L. J. 419 (F.B.).

———Art. 156—*Appellate order not appealed against in time.*

A subsequent amendment of decree relating to a clerical error as regards interest does not extend limitation for filing the second appeal where the question of interest was not attacked in the second appeal. (*Stuart, J.*) SHIMBHU PRASAD *v* RAMJAS. L. R. 3 All. 27.

———Art. 156—*Appeal—Land Acquisition Act, S. 54—Limitation.*

Art. 156 of the Lim. Act applies to appeals to the High Court under S. 54 of the Land Acqn. Act. The expression "an appeal under the C. P. Code" in the first column is not restricted to appeals the right to prefer which, is conferred by the C. P. Code but covers appeals, the procedure with respect to which is governed by the C. P. Code. (*Abdur Rahim and Oldfield, JJ.*) RAMASWAMI PILLAI *v.* TAHSILDAR OF MADURA. 43 Mad. 51 : 26 M. L T. 136 : 10 L. W. 226 : (1919) M. W. N. 565: 53 I. C. 405 : 37 M. L. J. 110.

———Art. 156—*Memo. without copy of judgment would not save time.*

It being required by rules of Patna High Court that where several appellants appeal from the same judgment, each memo. of appeal must be accompanied by a copy of the judgment appealed from, the mere presentation of memo. of appeal does not save time though one of the memos. is accompanied by a copy of judgment and there is a request that in other cases the copy of judgment be dispensed with. (*Miller, C.J. and Coutts J.*) RIJAN THAKUR *v.* CHARITER THAKUR. 1 P. 670 : 1922 P. 580.

———Art. 156—*Date of decree—Dismissal of Appeal—Review—Rehearing - Dismissal on other grounds—Starting point for limitation.*

Where on an application for review of a dismissal of an appeal, the application is admitted, the appeal reheard and a fresh decree dismissing the appeal is passed on different grounds, a fresh period of limitation for the appeal begins to run from the date of the new decree. (*Twomey, J.*) MAUNG KYAW *v.* MAGAUK. 27 I. C. 732 : 8 Bur. L. T. 101.

LIMITATION ACT (IX OF 1908), Art. 156.

——Art. 156—*Date of decree—Appeal.*

Where judgment is pronounced on one day and the decree was to be passed on a latter date on plffs. complying with a certain condition time begins to run for purposes of appeal from the date of the decree as the decree is in substance as well as in form, the mouth-piece of the suit in its immediate result and without it the dispute between the parties would not be intelligible (*Pratt, J. C. and Boyd, A.J.C.*) KHUDADAD *v.* MORIOKHAN. 34 I. C. 867 : 9 S. L. R. 193.

——Art. 158—*Starting point—Notice of filing award.*

Limitation under Art. 158 of Sch. I to the Act, for objections to an award begins from the date of notice of filing of the award and not from the date of filing of the award. (*Tudball, J.*) SHEO BAKSH *v.* SRI RAM. 63 I. C. 399 : 19 A. L. J. 404.

——Art. 158—"*Court*", *Meaning of—Calcutta High Court Rules.*

The word "Court" in Art 158 of the Lim. Act means the court and not its chief ministerial officer *e.g.*, the Registrar in the case of a High Court. "Submission" means submission to the court and not to the Registrar, Rule 1 of Ch. 23 of Hechle's Rules is not in conformity with sch. II, para. 10, C.P.C. (*Sanderson, C.J. and Woodroffe, J.*) SOVA CHAND BHUTORIA *v.* HURRY BUX DEORA. 46 Cal. 721 : 63 I. C. 46 : 23 C. W. N. 280.

——Art. 158—"*Submission of the award to the Court*"—*What is not.*

The presenting of an award without the knowledge of the parties before the date fixed for its filing is not submission of the award to the Court for the ten days-time allowed for filing objection to begin to run. 28 I. C. 427. (*Johnstone, C. J.*) JAWAHIR SINGH *v.* MEHR SINGH. 34 I. C. 250 : 14 P. W. R. 1916.

——Art. 158—*Objection ten days after award—Notice.*

Under Art. 158 of the Lim. Act the period of ten days is to be counted from the date when the award has been submitted to Court, even though no notice has been given thereto. 124 P. R. 1880, Diss. (*Shah Din, J.*) SAHIB RAI *v.* CHAIT RAM. 96 P. L. R. 1915 : 28 I. C. 427 : 30 P. W. R. 1915.

——Art. 158—*Award—Objections—Time.*

It is not necessary to allow ten days for objections, where an award has been accepted by the parties. (*Scott-Smith, J.*) SOHAMARI BAI *v.* CHATTARAM. 27 P. W. R. 1914 : 23 I. C. 591 : 69 P. L. R 1914.

——Art. 158—*Decree not to be passed before 10 days—Award—Decree passed on—No time for objections—Effect of.*

A court has no jurisdiction to pass a decree in terms of the award within the 10 days allowed by Art. 158 of the Limitation Act for filing objections to the award. 9 M. L. T. 391 and (1912) M. W. N. 32 foll. The mere fact that the parties agree to be bound by the award and not to object thereto does not prevent them from impeaching the award on the ground of fraud and collusion, (*Odgers, J.*) T. L. RUNGIAH CHETTY *v.* T. GOVINDASAMI CHETTY. 15 L. W. 160 : 1921 M. W. N. 793 : 45 M. 466 : 1922 Mad 179.

LIMITATION ACT (IX OF 1908), Art. 158.

——Art. 158—*Application to set aside award.*

There is no limitation for making an application to remit an award for re-consideration of the arbitrators owing to an illegality apparent on the face of it. The period of ten days is not applicable to proceedings under para. 12 or 14 of Sch. II of the C. P. Code. (*Spencer, J.*) MAMIDDI APAYA *v.* YEDAN VENKATASWAMI. 24 M. L. T. 102 : (1918) M. W. N. 477 : 47 I. C. 597 : 8 L. W. 171.

——Art. 158—*Time how reckoned—Notice of submission of award.*

The period of 10 days is to be computed from the day in which the parties receive notice of the submission of the award and not from the day on which it is actually received. (*Prideaux, O. A. J. C.*) SITARAM *v.* RUPRAM. 42 I. C. 266 : 13 N. L. R. 172.

——Art. 158—*Objections to award—Amendment.*

A court has discretion to allow an additional ground of objection to the award beyond time, by way of amendment of the objections filed within time or to entertain it of its own motion if the objection would render the award invalid. (*Lindsay and Kanhaiya Lal, A. J. Cs.*) BHAGWAN DIN SINGH *v.* FAKIR SINGH. 20 I. C. 773 : 16 O. C. 233.

——Art. 158—*Application to make the award a rule of Court—Written statement by deft.*

Art. 158 cannot possibly apply to a written statement by the deft. in an application to have an award made a rule of Court. (*Lindsay and Rafique, A. J. Cs.*) BADRUDDIN HASAN *v.* AMIR BEGAM 13 I. C. 520 : 14 O. C. 308.

——Art. 158—*Limitation—When commences.*

An application to set aside an award must be made within 10 days of the filing of the award and notice of such filing given to the parties. (*Po. Han, J.*) SHEIKH ABDULLA *v.* M. V. R. S. FIRM. 2 Bur. L. J. 229 : 1924 R. 153.

——Art. 158—*Application to set aside award—Limitation—Starting point.*

The limitation prescribed by Art. 158 for an application to set aside an award commences to run from the date of submission of the award to the Court and not from date of service of the notice. (*Crouch and Boyd, A. J. Cs.*) KALIANBARTHI *v.* ROCHANBAI. 27 I. C. 371 : 8 S. L. R. 190.

——Art. 158—*Setting aside award—Time when begins to run.*

For an application to set aside an award, time begins to run from the date when the award is submitted to the Court, not from the date when notice is given to the party of the submission of award. (1897) Sindh S. C. R. 1 Overruled : 29 C. 167, foll. (*Fawcett, A. J. C.*) MANSOOR *v.* MINSAHEBDIN. 13 I. C. 234 : 5 S. L. R. 125.

LIMITATION ACT (IX OF 1908), Art. 160.

——Art. 160—*Review Petition—Illness, if sufficient ground.*

Where the absence of all the applicants or their counsel is not explained satisfactorily, though one applicant may be ill, no sufficient cause is made out for restoration of a dismissed application for review. (*Rattigan, J.*) KALU *v.* SOWARIA. 16 P. W. R. 1915 : 27 I. C. 703 : 68 P. L. R. 1915.

——Art. 161—*Small Cause Court—Review—Deposit.*

An application for review of judgment of a Small Cause Court was made on the last day of the period prescribed for limitation but without deposit of the amount of the costs or security for the same as required by S. 17. On the following day the Court allowed the applicant time for making the deposit which was eventually made and the application for review was granted. *Held*, that the application failed to comply with S. 17 and was barred under Art. 161, Lim. Act. It was doubtful whether S 5, Lim. Act applied to the case at all as the application was made within time. (*Saunderson, C. J. and Walmsley, J.*) ABDUL SHEIK *v.* MAHOMED AYUB. 24 C. W. N. 380 : 56 I. C. 551 : 31 C. L. J 197.

——Arts. 162, 164, 168 and 169—Ex parte—*Application to set aside—Limitation.*

If a plaintiff or appellant seeks to set aside an *Ex-parte* order, limitation runs only from date of the order but if a defendant or respondent seeks such relief he can, in cases where he has not had due notice, count limitation from the date of his knowledge of the order. The benefit which the law allows only to a defendant or respondent cannot be allowed to an appellant. (*Chevis, C.J. and Le Rossignol, J.*) BISSA MAL *v.* KESAR SINGH. 1 Lah. 363: 58 I C. 789 : 2 Lah. L. J. 249.

——Art. 162—*Application—Limitation—Starting point.*

Where notice has not been served on the applicant limitation for an application for rehearing the appeal dates from the time when applicant has knowledge of the decree. (*Chevis, J.*) DAULAT RAI *v.* JAGAT RAM. 47 I. C. 962 : 96 P. R. 1918.

——Art. 163—*Provision mandatory.*

Art. 163, Lim. Act is intended to be strictly followed and the Court has no discretion to enlarge the period of 30 days therein prescribed. (*Broadway, J.*) BANO MAL *v.* BANO MAL. 27 P. W. R. 1920 : 55 I. C. 55 : 116 P. L. R. 1920.

——Arts. 163, 181 and 182—*Execution by Collector—Application to send papers back.*

An application to send the papers back to the collector when returned by him for some reason is governed by Art 181 or 182 of the Act according as it may be for the continuance of the previous application or for taking a step-in-aid of execution, and not by Art. 163. (*Kanhaiya Lal A. J. C.*) LAL BASANT SINGH *v.* LAL, SRIPAT SINGH. 55 I. C. 485 : 18 A. L. J. 235.

LIMITATION ACT (IX OF 1908), Art. 164.

——Art. 163—*Dismissal for default—Application by representative of deceased plff.—Limitation.*

An application for restoration of a suit dismissed for default, by the representative of the deceased plff. more than 30 days after the dismissal is time-barred. (*Lindsay and Rafique, A. J. Cs.*) HABIB SHAB *v.* DEBI BAX SINGH. 14 I. C 221.

——Art. 164—*Application to set aside* ex parte *decree passed when Act of* 1877 *in force—Law applicable.*

A decree was passed when the Lim. Act of 1877 was in force, but a process for execution was issued for the first time under the Act of 1908. On an application by the judgment-debtor to have the decree set aside. *Held*, that the limitation to be applied was that under the law existing at the time when the application was made. 12 Bom. L. R. 730 Ref. (*Chamier and Piggott, JJ.*) JIA BIBI *v.* ILAHI BAKSH. 37 All. 597 . 30 I. C. 573 : 13 A. L. J. 837.

——Art. 164—*Knowledge of decree—What constitutes.*

The words of Art. 164 of the Lim. Act mean something more than mere knowledge that a decree had been passed in some suit, in some court against the applicant. The applicant must have knowledge not merely that a decree has been passed by some court against him, but that a particular decree has been passed against him in a particular court in favour of a particular person for a particular sum. (*Shah, A. C. J. and Crump, J.*) BAPU RAO SAKHARAM *v.* SADHU BHIVA. 47 Bom. 485 : 25 Bom. L. R. 74 : 1923 Bom. 193.

——Art. 164—*Applicability.*

The limitations laid down in Art. 164 applies to the case of a defendant only. (*Imam and Chapman, JJ.*) ABHOY CHARAN BASAK *v.* SAROJA SUNDARI BASAK. 24 I. C. 27 : 41 Cal. 819.

——Art. 164—Ex parte *decree—Application to set aside.*

If the right of a deft. to make an application to set aside an *ex parte* decree was lost under Art. 164, Lim. Act (1877) before the passing of the Act of 1908, the provisions of Art 164 of the Lim. Act of 1908 cannot revive the right having regard to S. 6 of the General Clauses Act, 1897. (*Brett and Carnduff, JJ.*) NEHAL CHANDRA ROY CHOWDHURY *v.* NERODA SUNDARI GHOSE. 15 I. C 551 : 39 Cal. 506.

——Art. 164—'*Knowledge*', *Meaning of.*

'*Knowledge*' in Art. 164 means certain and clear conception of a fact, *i. e.* of the decree in the particular case and not of a decree. 11 Bom. L.R. 1296, Foll. So we cannot attribute the knowledge of the petitioner's brothers to him when he lives far away from them. (*Mookerjee and Teunon, JJ.*) KUMUD NATH *v.* JATINDRA NATH. 38 Cal. 394 : 13 C. L. J. 221 : 9 I. C. 189 : 15 C. W. N. 399.

LIMITATION ACT (IX OF 1908), Art. 164.

——Art. 164—*Extensions.*

Time cannot be extended under S. 151, C. P. C. or Lim. Act, S. 5. (*Chevis, J.*) KHAIRATI *v.* UMAR DIN. 1922 Lah. 266.

——Art. 164—*Summons not duly served.*

Where summons is once served, absence of notice of adjourned hearing will not attract the application of Art. 164. (*Chevis, J.*) LAL DEVI *v.* AMAR NATH. 57 I. C. 15 : 2 U. P. L. R. (L) 128.

——Art. 164—*Starting point—Knowledge of decree.*

Where a person falsely took out substituted service upon allegations which were false, and based on that an *ex parte* decree was passed, an application to set the latter aside made within 30 days of the defendant's knowledge of the decree was within time. Notice in such a case could not be said to be "duly served." (*Chevis, J.*) RAM KISHEN *v.* MULA. 1924 L. 191.

——Art. 164—Ex parte *decree—Application to set aside—Subsequent application—Continuation.*

The mere fact that the original application to set aside an *Ex parte* decree which was made in time was consigned to the record room did not in any way necessitate a fresh application. A subsequent application must be considered as merely in continuance of the suspended original application. Consequently no question of limitation arose in the case. (*Shadi Lal and Wilberforce, JJ.*) BARKAT ULLAH *v.* FAZAL MAULA. 55 I. C. 824.

——Art. 164—Ex parte *order—Order for payment under S. 150 of the Companies Act.*

The limitation applicable for setting aside an *ex parte* decree under Sec. 150 of the Companies Act of 1882 is that provided by Article 164. (*Scott Smith and Wilberforce, JJ.*) HINDUSTAN BANK, LTD. *v.* MIHARAJ DIN. 1 Lah. 187 : 55 I. C. 820 : 2 Lah. L. J. 291.

——Art. 164—*Knowledge*—Ex parte *decree—Application to set aside—Onus of proof*

In an application to set aside an *ex parte* decree the burden of proving want of knowledge of the decree within thirty days of the application is on the applicant. (*Wilberforce, J.*) SUGHRU MAL HARCHARAN DAS *v.* SHAM LAL GOKAL CHAND. 46 I. C. 777 : 146 P. W. R. 1918.

——Art. 164—Ex parte *decree—Setting aside—Commencement of period.*

An application to set aside an *ex parte* decree made within thirty days from the time the defts. were informed of its passing, is not barred though it was made more than thirty days from the passing of the decree. (*Scott-Smith, J.*) RAGHBIR *v.* DAULAT RAM. 111 P. L. R. 1916 : 36 I. C. 32 : 137 P. W. R. 1916.

——Art. 164 and S. 3— Ex parte *decree—Application to set aside—Limitation.*

Art. 164 applies to an application to set aside an *ex parte* decree made, after that Act came into force, the decree being passed before the Act came into force ; S. 3 clearly lays down a rule to that effect. (*Johnstone, J.*) ZAIBUL NISSA *v.* GHULAM FATIMA. 70 P. L. R. 1911 : 10 I. C. 823 : 265 P. W. R. 1911.

——Art. 164—Ex parte *order—Order in execution.*

Art. 164 applies not only to decrees but to orders in execution which are decrees in C. P. C. (*Ayling and Sadasiva Aiyar, JJ.*) SUBBIAH NAICKER *v.* RAMANATHAN CHETTIAR. 37 Mad. 462 : 26 M. L. J. 189 : (1914) M. W. N. 205 : 22 I. C. 899 : 1 L. W. 251.

——Art. 164—*Setting aside* ex parte *decree—Executor of deceased defendant not brought on record—Limitation.*

An application on 30th September 1912 for setting aside an *ex parte* decree passed on 28th August 1912 by the executor of a deceased defendant is barred by Art. 164. The word "defendant" is wide enough to include the executor of the original defendant (since deceased) though not on record. (*Waite, C. J. and Oldfield, J.*) S. VENCATASUBBIER *v.* KRISHNAMURTHI. 38 Mad. 442 : 14 M. L. T. 396 : 21 I. C. 568 : (1913) M. W. N. 899.

——Art. 164 — *Knowledge — Defl. alleging service of summons but no knowledge decree.*

Art. 164 applies only when the defl. has knowledge of the decree where summons was not duly served but not to a case where the defl. alleges service of summons but that he had no knowledge of any of the proceedings. (*Benson, J.*) SANKARA AIYAR *v.* SUBBIAH AIYAR. 13 I. C. 642 : (1912) M. W. N. 361.

——Art. 164—*C. P. Code, O. 9, R. 13—Substituted service.*

The matter of the time at which defendant first had knowledge of the decree only becomes relevant after he has proved that substituted service ought not to have been ordered or was not duly carried. Unless he can do one of these things his application is barred by time. The notice of the application for final decree being as effectual as if it had been served on him personally, the limitation for his application to set aside the *ex-parte* decree runs from the date of the decree. (*Batten, J. C. and Hallifax, A. J. C.*) PANJAB RAO *v.* BALLIRAM. 1923 Nag. 13.

——Art. 164—Ex parte *decree—Notice—Executing a process of enforcing judgment.*

Attachment of money belonging to the judgment-debtor in the hands of the decree holder is an execution of a process for enforcing judgment (*Stuart, J. C.*) RAGAB ALI SHAH *v.* UPPER INDIA COPPER (PAPER) MILLS CO., LTD. 17 I. C. 420 : 15 O. C. 289.

——Art. 164—*Application to set aside* ex-parte *decree.*

No appeal lies against refusal of an application to set aside an *ex parte* decree. No inherent power to extend time prescribed by art 164 is granted to a court. (*Coutts and Ross, JJ.*) AJODHYA MAHTON *v.* MT. PHUL KUER. 1 P. 277 : 1923 Pat. 61 : 1923 P. 479.

LIMITATION ACT (IX OF 1908), Art. 164.

——Art. 164—"*Duly Served*"—*Meaning of*—*C. P. Code, O 5, R. 19.*

The words 'duly served "in Art. 164 of the Lim. Act are used in the same sense as in O. 5, R. 19 of the C P Code and means "served" in such a manner as to give the deft. information of the proceedings taken against him. (*Pratt, J, C. and Hayward, A. J C.*) KESARCHAND KESHEWJI *v.* LAKHAMSI RAISI, **42 I. C. 611 : 11 S. L. R. 71.**

——Art. 164—Ex parte *decree—Application to set aside—Summons not served.*

A defendant who has been duly served cannot get an *ex parte* decree set aside unless he can show that he was prevented unavoidably from appearing at the hearing and Art. 164 is a bar if he does not seek to set it aside within 30 days after the decree. Duly 'served' in Art. 164 cannot be construed to exclude a case where a summons was not served in sufficient time. (*Crouch, A. J. C.*) KASARCHAND KESHAVJI *v.* LAKSHAMSI RAISI. **27 I. C. 351 : 8 S. L. R. 163.**

——Arts. 165 and 181—*Excessive execution—Restoration.*

An application by the judgment-debtor for restoration of property seized in excess of his decree by the decree-holder can be made within 3 years of the date of seizure as Art. 181 of the Lim. Act, governs the case. Art. 165 which prescribes 30 days is not applicable, (*Piggott and Walsh, JJ.*) ABDUL KARIM v. ISLAMUNNISSA BIBI. **38 All. 339 : 34 I. C. 231 : 14 A. L. J 401.**

——Arts. 165 and 181—*Execution of decree.*

An application by judgment-debtor for redelivery of property not covered by decree alleged to have been delivered is governed by Limitation Act Art 181 and not Art. 165. (*Macleod and Shah, JJ.*) RASUL MALIK *v.* AMINA HANIF. **24 Bom, L. R. 771 : 46 B. 1031 : 1922 B, 271.**

——Art. 165—*Scope of.*

Art. 165 of the Limitation Act applies only to proceedings under O. 21, R 100, C. P. Code. (*Greaves and Ghose, JJ.*) BAHIN DAS PAL *v.* GIRISH CHANDRA PAL. **1923 Cal. 287.**

——Arts. 165 and 181—*Application for restoration of possession.*

Art. 165 was not intended to apply to an application by judgment-debtor. Art. 181 applies to an application for restoration of possession 38 A 339, Foll 21 M. 494 and 25 A. 343, dissented from. (*Shadi Lal and Dundas, JJ.*) SHARFU *v.* MIR KHAN, **1 Lah. L. J. 230.**

——Arts. 165 and 166—*Excessive execution—Restoration.*

Application to set aside sale of plots not specified in mortgage-deed, and the decree for sale and for recovery of possession comes under Art. 165 and not under Art. 166. (*Lindsay, J.C.*) RAJA RAM *v.* ITRAJ KUNWAR. **24 I. C. 137 : 17 O. C. 94.**

——Art. 166—*Execution sale—Irregularity—Purchase without leave.*

Purchase by decree-holder without obtaining leave to bid is irregular and not void and an application to set aside is governed by Art. 166. (*Scott, C. J. and Heaton, J.*) GANESH NARAIN KHARE *v* GOPAL VISHNU APTE. **41 Bom. 357 : 39 I. C. 3 : 19 Bom. L. R. 75.**

LIMITATION ACT (IX OF 1908), Art. 166.

——Arts. 166 and 181—*Execution sale—Application to set aside—Property—Not liable to sale—Limitation.*

Art. 166 is not limited to applications under O. 21, Rr 89 to 91 of the C. P. Code. It is perfectly general and refers to an application under the Code to set aside a sale in execution of a decree. An application to set aside a sale in execution of a decree passed against the father, on the ground that the property sold belongs to the applicant and not to his father is governed by Art. 166. (*Chitty and Walmsley, JJ.*) SATISH CHANDRA KANUNGE *v.* NISHI CHANDRA DUTTA. **54 I. C. 431 : 46 Cal. 975.**

——Art. 166—*Provision—Mandatory—Application to set aside sale.*

The court cannot extend limitation in case of application to set aside sale. (*Shadilal, C. J.*) GENDA MAL *v.* MUNSHI RAM. **57 I. C. 224.**

——Art 166 — *Execution sale—Fraud—Limitation.*

An application to set aside an execution on the ground of fraud must be made within the time prescribed by Art. 166 of the Lim. Act. To avail himself of S. 18 of the Act the applicant must show that he was by fraud kept from the knowledge of his right to apply for the sale to be set aside. (*Broadway, J.*) BASHI RAM *v.* HASSAN MAHOMED. **51 I. C. 447.**

——Arts. 166 and 181—*Sale by Insolvency Court—Fraud—Limitation.*

An application either of an insolvent or of his creditor for cancelling, on the ground of fraud, a sale of immoveable property by the Insolvency Court in realising the assets of the insolvent is governed by Art. 181 and not Art. 166. A Court has inherent power to try such an application. (*Scott-Smith, J.*) AFZAL ALI *v.* AMAR ALI. **36 P. W. R. 1914 : 23 I. C. 397 : 107 P. L R. 1914.**

——Arts. 166 and 181—*Application to set aside an execution sale, on the ground of illegality—Application governed by Art. 166.*

An application to set aside an execution sale on the ground of illegality though falling under S. 47 of the Code of Civil Procedure and not under O. 21, R. 90, is governed by Art. 166 of the Limitation Act not by Art. 181 and should be made within thirty days from the date of the sale. Where an application is made after 30 days of the sale to set aside an execution sale on the ground that the proclamation of sale was not made in the village where the property was situate Art. 166 of the Limitation Act bars the application. The case law on the subject considered and discussed. (*Spencer and Devadoss, JJ.*) T. K P. PARAMASIVA THEVAR *v.* PULUKARUPPA THEVAR AND OTHERS. **18 L. W. 780 : 33 M L. T (H. C.) 137 : (1924) M.W.N. 27: 45 M. L. J. 829 1924 Mad 137.**

LIMITATION ACT (IX OF 1908), Art. 166.

———Art. 166—*Execution sale—Application to set aside under* S. 47, *C. P. Code—Limitation.*

An application to set aside an execution sale whatever its nature and whether falling under S. 47, C P. Code, or O, 21, R 90, C. P. Code, is governed by Art. 166 and not by Art, 181 of the Lim. Act. (*Oldfield and Venkatasubba Rao, JJ.*) GANAPATHI MUDALIAR *v.* KRISHNAMACHARI.
16 L. W. 178 : 31 M. L. T. 135 (H. C.) : (1922) M, W. N. 514 : 43 M L. J. 184 : 1922 Mad. 417.

———Arts. 166 and 181—*Execution sale—Setting aside—Application under* S. 47, *C. P. C.—Limitation.*

Art. 166 and not Art. 181 applies to an application to set aside an execution sale on the ground of illegality or irregularity under S. 47, C. P Code. (*Spencer and Krishnan, JJ.*) KONIDEVA KANNAYYA *v.* RAMAMMA. (1922) M. W. N. 176 : 16 L W. 934 : 1922 Mad. 95.

———Arts. 166 and 181—*Application by exonerated defendant—Sale in execution of his properties.*

An application by a defendant who is exempted by the decree from liability, to set aside a sale, in execution, of his property by the plaintiff, is governed by Art. 181 and not by Art. 166. If an execution sale is a nullity, *i. e.*, made without jurisdiction, or is void *ab initio*, Art. 181 governs an application to set it aside, and not Art. 166. (*Seshagiri Aiyar and Moore, JJ.*) SESHAGIRI RAO. *v.* SREENIVASA RAO. 43 Mad. 313 : (1920) M. W. N. 127 : 56 I. C. 260 : 38 M. L. J. 62

———Arts. 166 and 181—*Execution sale—Notice of sale proclamation not given to judgment-debtor.*

A sale held without notice of sale proclamation to a judgment-debtor is not a nullity and an application to set it aside is governed by Art. 166 of Lim. Act. (*Oldfield and Seshagiri Aiyar, JJ.*) THAKKADATH NERLU NEITHIAR *v.* SUBRAMANIA MOOTHAN. (1919) M. W. N. 897 : 53 I. C 809 : 11 L. W. 69.

———Art. 166—*Execution sale — Nullity — Limitation.*

Where a sale in execution of a decree is a nullity. Art. 166 does not apply. (*Sankaran Nair and Ayling, JJ.*) SAMBANDAN *v.* AKETH MAYAN. 23 I. C. 251 : 26 M. L J. 267.

———Art. 166—*Setting aside sale in execution—Limitation when begins to run.*

For an application to set aside a sale in execution, limitation begins to run from the date of the sale and not the date of confirmation or date of deposit of 25 per cent. (*Prideaux, A. J. C.*) SITA RAM *v.* ASARAM.
19 N. L. R. 162.

———Art. 166—*Starting point.*

Under Art. 166 time runs from the date of sale and not from the date of confirmation of sale. (*Stanyon, A. J. C.*) WASUDEO *v.* HIRALAL.
17 I. C. 884 : 8 N. L. R 77.

———Arts. 166 and 181—*Starting point—Execution sale—Fraud and collusion—Setting aside.*

LIMITATION ACT (IX OF 1908), Art. 166.

Where an execution sale is alleged to be fraudulent and collusive, the period of taking proceedings to set aside the sale, in the case of fraud would be three years from the time when the sale took place or when the plaintiffs knew of the fraud. (*Miller, C. J. and Adami, J.*) BALDEO SINGH *v.* MEGHU SINGH.
74 I. C. 202 : 1919 Pat. 386.

———Arts. 166 and 181—*Execution sale—Application to set aside—Fraud—Limitation.*

It does not make any difference whether an application to set aside an execution sale was made under O. 28, R. 90, or S. 47, C. P. Code, so far as limitation is concerned. Art. 181 of Lim. Act applies only to applications for which no period of limitation is prescribed elsewhere in the schedule but all applications for setting aside a sale in execution of a decree are governed by Art. 166 of the Lim. Act even though the ground for setting aside the sale should be fraud or any other reason. All applications to set aside a sale in one sense come within S. 47, C.P. Code, as that section provides that all questions arising between the parties and relating to the execution of the decree shall be determined by the executing court. The effect of Art. 166 of the Lim. Act cannot be evaded merely by stating on the application itself that it is brought under S. 47, C. P. Code as well as under O. 21, R. 90, C. P. Code. An application beyond period prescribed by Art. 166 would be time barred unless, it can be shown that the applicant's right to set aside the sale was concealed from him by the fraud of the respondent. In such a case under S. 18 of the Lim Act time would only begin to run when the respondent first became aware of the fraud. (*Miller, C. J. and Mullick, J.*) RAMDHARI CHAUDHURY *v.* DEONANDAN PRASAD SINGH. 3 P. L T. 501: 4 U. P. L. R. (P.) 71 : 2 P. 65: 1 P. L. R. 18 : 1922 Pat. 269 : 1922 P. 507.

———Art. 166—*Not restricted to applications under O. 21, R. 100, C. P. C.*

Art. 166 of the Act applies to all applications on whatever grounds to have an execution sale set aside, and is not restricted to applications under O. 21, R. 90 of the C. P Code. (*Jwala Prasad and Adami, JJ.*) BABUDAS NARAYAN SINGH *v.* MUHAMMAD YUSUF *alias* BHEKHO.
2 P L. T 401 : 3 U. P. L. R. (P.) 33: 61 I C. 823. 1921 Pat. 181.

———Art. 166—*Execution sale—Fraud—Setting aside—O. 21, R. 90, C. P. C.—Limitation.*

Art. 166 governs an application to set aside a sale under O. 21, R. 90 of the C. P. Code (*Sultan Ahmed, J.*) JAGDHAR MISSRA *v.* DORAI KHATWA.
57 I. C. 404.

———Art. 166—*Execution sale—Absence of attachment—Application to set aside the sale—Limitation.*

An application to set aside an execution sale on the ground that there was no attachment prior to the sale or that there had been a defective attachment falls within Art. 166 of the Limitation Act. (*Lentaigne, J.*) MA PWA *v.* MAHOMED TAMBI. 1 R. 583 : 1924 Rang. 124.

LIMITATION ACT (IX OF 1908), Art. 167.

——Art. 167—*Acquiescence to previous obstruction—Effect.*

Acquiescence in the obstruction to a previous attempt to obtain delivery of possession is no bar to a second application for removal of obstruction though made more than 30 days after the acquiescence in the earlier obstruction. (*Oldfield and Ramesam, JJ.*) MEYYAPPA CHETTY *v.* MEYYAPPAN. 66 I. C. 722 : (1921) M W. N. 698.

——Art. 167—*C. P. C., O. 21, Rr. 95 and 97—Failure to complain of obstruction within 30 days—Fresh application for possession—If barred.*

The failure of the decree-holder to complain of obstruction under O, 21, R. 97, C. P. C., within 30 days prescribed by Art 167 is no bar to a fresh application for delivery of possession under O. 21, R. 95, 13 M 504, Foll. (*Wallis and Ayling, JJ.*) ABDUL KARIM SAHIB *v.* TIMMARAYA CHETTY. 24 I, C. 512.

——Art 168—*Dismissal for default—Restoration—O. 41, R. 10 (2) of C. P. C.*

Even if Art 168 of the Limitation Act does not apply to an application for the restoration of an appeal dismissed under R. 10, O. 41, C. P. C., such an application ought to be made within a reasonable time and by analogy should be made within 30 days. (*Richardson and Walmsley, JJ.*) GOLJAN BIBI *v.* NAFAR ALI. 40 I. C. 234: 28 C. L. J. 163.

—— Art. 168—*Dismissal of appeal for default—Notice of hearing of the appeal not fixed—Dismissal*—Ultra vires—*Application to set aside—Not applicable Art.* 168.

Where no date is fixed for the hearing of an appeal and no notice is given to the parties of any date for which the hearing has been fixed, an order dismissing the appeal for default is without jurisdiction. The limitation of 30 days prescribed by Art 168 of Sch I to the Limitation Act for an application for restoration of an appeal dismissed in default does not apply to a case where the order of dismissal is *ultra vires* and is not communicated to the parties. (*Scott Smith, J*) ATA MAHOMED *v.* SHANKAR DAS. 1924 Lah. 279.

——Art. 168—*Extension of time—C. P. Code (V of 1908), S. 151.*

The limitation allowed to a party seeking to set aside an *ex parte* order dismissing his appeal in default, runs from the date of the order and not from the date of the knowledge. The inherent power of the Court to break through the provisions of S. 3 of Lim. Act cannot be invoked to enable it. (*Chevis, A. C J. and Rossignol, J.*) BISSA MAL *v.* KESAR SINGH. 1 Lah. 369: 58 I. C. 789: 2 Lah. L. J. 249.

——Art. 168—*Application to restore appeal—Dismissed for default is governed by Art.* 168—*Restoration—Powers of court.*

LIMITATION ACT (IX OF 1908), Art. 174.

Where an appeal is dismissed for non-appearance of the appellant under O. 41, R. 17, C. P. Code, the only course open to the appellant is to have it restored under O. 41, R. 19 within the period of 30 days prescribed by Art. 168, Lim. Act. As the matter is specifically provided for in O. 41, R. 19, the court cannot exercise its inherent powers. (*Sohwabe, C. J. and Waller, J.*) KRISHNASAMI NAIDU *v.* CHENGALROYA NAIDU. 18 L. W. 870: 33 M. L. T. 207: 47 Mad. 171 : 45 M. L. J. 813 : 1924 Mad. 114.

——Art. 170—*Unstamped memorandum of appeal and Pauper application presented together—Pauper petition dismissed.*

A memorandum of appeal unstamped and presented along with a pauper petition cannot, if it is stamped subsequently after the period of limitation, and after the pauper petition is dismissed, be treated as an appeal filed on the day on which the memorandum was filed and is therefore barred. 22 B. 849, Diss. 2 A. 241 Dist. (*Hartnoll, O. J. C. and Young, J.*) AMUMALLY *v.* O. M M. R. M. CHETTY FIRM. 22 I. C. 884: 7 L. B. R. 90.

——Art. 171—*Legal representatives—One only brought on record in time.*

Where one legal representative of a deceased party is brought on record in time, there is no bar by time if others are brought in subsequently. 3 A. 517 ; 12 B. 48 foll. (*Benson and Abdur Rahim, JJ.*) ADUSAPATHI VENKATA ROW *v.* MARIKUTTY AMMAL. 11 M L. T. 19: (1912) M. W. N. 9: 13 I. C. 313: 22 M. L. J. 169.

——Art. 173—*High Court decree—Review—Delay to be accounted for.*

An application for a review of a decree of the High Court must be presented within 90 days of the decree, and every day's delay over that period must be duly accounted for. (*Abdur Rahim, J.*) RAMASWAMI *v.* RAJA VENKATA NARASIMHA NAIDU GARU. (1916) 1 M. W. N. 277: 32 I. C. 1000: 3 L. W. 244.

——Art. 174—*Applies only to Application by judgment-debtor.*

Article 174 of the Limitation Act is applicable only to a case under O. 21, R. 2 (2) that is, where the judgment-debtor seeks to inform the court of a payment alleged to have been made by him out of court to the decree-holder. In such a case, the period of limitation is 90 days. This period does not apply to an application by the decree-holder himself. (*Mookerjee and Panton, JJ.*) BAHY MAHOMED SAHAI *v.* AIJANMAI. 26 C. W. N. 529: 35 C L. J. 71.

——Art. 174—*Fraud—C. P. C. (Act V of 1908), S. 47 and O. 21, R. 2.*

In cases where fraud is alleged, the judgment-debtor must so inform the court and protect himself, but he cannot be allowed to evade the provisions of Art. 174 of the Act and obtain a decision not properly coming under S. 47. The judgment-debtor has his remedy by a suit properly

LIMITATION ACT (IX OF 1908). Art. 174.

framed. (*Caspersz and Chatterjee, JJ.*) KUTUBULLAH SARKAR *v.* DURGA CHARAN RUDRA.
13 I. C. 424: 16 C. W. N. 396.

———Art. 174—*Mortgage decree—Adjustment.*

A mortgagor can claim an account of receipts and disbursements of income of the mortgaged property during the time the mortgagee was in possession under the decree. (*Abdur Rahim and Spencer, JJ.*) GAJJALA YELLA REEDI *v.* MAHAMMAD ALI. 38 I. C. 675 : 39 Mad. 1026.

———Art. 174—*Decree against several defts. at different times—Consolidated decree.*

An application by a judgment-debtor to record satisfaction of decree made by him more than three years from the date of the decree against him is barred even though it may be within three months from the date of the revised decree as against other defts. 33 A. 264 P. C. dist. (*Benson and Sundara Aiyar, JJ.*) SAMBASIVA IYER *v.* MAHAMAD HUSSAIN ROWTHAR, 31 I. C. 917.

———Art. 175—*Agreement contrary to decree—Starting point.*

The date of a decree is not a *terminus aquo* of an execution application if there is an agreement between the parties altering the date. (*Shadi Lal, C. J. and Fforde, J.*) BANARSI DAS *v.* RAMZAN. 1923 Lah. 381.

———Art. 175—*Adjustment—Saving of limitation—Bar under S. 48, C. P. C.*

A decree was passed on 23-3-06 which was sought to be executed by an application filed on 21-5-1918. An adjustment had been effected between the parties on 27-7-1912, by which the balance was made payable in instalments and this had been recognised by an order in a previous execution proceeding. *Held*, S. 48, C. P. Code, barred the application in spite of the adjustment. Even if the order was one under O. 20, R. 11, the application was clearly barred under Art. 175, Limitation Act (*Coutts and Adami, JJ.*) GOBARDHAN PRASAD *v.* BISHUNATH PRASAD. 2 P. L. T. 80 : 58 I. C. 393 : 1920 Pat. 229.

——— Art 176—*Death of sole plff. before hearing—Dismissal of suit for default—Legal representative—Right of, to be made to a party.*

Where on the death of a sole plff. before trial the Court dismisses the suit for default of appearance, the order is unsustainable and it is open to the legal representative of the deceased plff. to apply within the time prescribed by Art. 176 to be made a party. (*Lord Shaw.*) DEBI BAKHSH SINGH *v.* HABIB SHAH. 35 All. 331 : 16 C. C. 194 : 40 I. A. 150 : 17 C. W. N. 829 : 11 A. L. J. 625 : 18 C. L. J. 9 : 15 Bom. L. R. 640 : 14 M. L. T. 33 : (1913) M. W. N. 566 : 19 I. C. 526 : 25 M. L. J. 148 (P. C.).

———Art. 176—*Amending Act XXVI of 1920—Not retrospective.*

The appellant died on 19-11-1920 and the Limitation (Amending) Act XXVI of 1920 reducing the period for bringing on record the legal representative to 3 months came into force on 1-1-1921. *Held* the period for an application for bringing

LIMITATION ACT (IX OF 1908), Art. 177.

on record the legal representative was 6 months under Art. 176 of the Lim. Act as it stood before the amendment. (*Mookerjee and Cholzner, JJ.*) ADIT SINGH *v.* BHAGABATI CHARAN MUKERJEE. 36 C. L. J. 263 : 1922 Cal. 491.

———Art. 176—*Legal representative.*

An application under O. 22, R. 3 to bring on record the legal representative of a deceased appellant is governed by Art. 176 and S. 6 of the Limitation Act, 1877, does not apply to such an application. (*Parlett, J.*) MA MIN THIN *v.* MAUNG PO WIN. 35 I. C. 438 : 10 Bur. L. T 27.

———Art. 177—*Limitation under—Amending Act XXVI of 1920.*

The period of limitation under Art. 177 is now 90 days and does not continue to be six months. (*Macleod, C. J. and Crump, J.*) HUSENUDDIN NURUDDIN *v.* DULAKSHIDAS KESHAVLAL. 1923 Bom. 289 (1).

———Art. 177—*Amending Act (XXVI of 1920), S. 2—Death of defendant—Time for bringing on record the legal representatives—Limitation.*

Under Art. 177 of the Limitation Act, as amended by S. 2 of Act (XXVI of 1920), the period of Limitation for bringing on record the legal representative of a deceased defendant is ninety days. (*Page, J.*) SHEODAYAL KHEMKA *v.* JOHAEMULL MANMULL. 50 C. 549 : 1924 Cal. 74 : (But see 1923 Lah. 211.

———Art. 177—*Applicability—Legal Representative's applications.*

Person who is not a party at the time of death cannot be brought on record where an application to bring on record his legal representative is not made within time prescribed by law, limitation of Art. 181 applies. (*Campbell, J.*) WAHID BAKHSH *v.* LALTA PERSHAD. 1924 Lah. 316.

———Art. 177—*Period under not reduced by Act XXVI of 1920*

The new Amending Act XXVI of 1920 passed by Governor-General does not reduce the period of limitation as prescribed by Act IX of 1908, as no mention of Art. 177 is made in the body of the new Act XXVI of 1920 although there may be mention of this in the statement of objects and reasons. (*Harrison, J.*) RUP KISHORE *v.* BHAGAT GOBIND DAS. 1922 Lah. 211: (But see 50 Cal. 549).

———Art. 177—*Amending Act, XXVI of 1920, S. 2—Death of defendant or respondent—Time for bringing on record the legal representatives.*

According to Art, 177 of the Limitation Act, as amended by S. 2 of Act 26 of 1920 limitation for bringing on record the legal representative of deceased defendant or respondent is still six months. The text of an Act of the Governor-General in Council, as published in the Gazette of the Government of India must be taken to be the authorized text of the Act. (*Shadi Lal, C. J. and Martineau, J.*) GOBIND DAS *v.* RUP KISHORE. 4 Lah. 367 : 6 L. L. J. 25 : 1924 Lah. 65.

———Art. 177—*Execution proceedings.*

Art. 177 has no application to execution proceedings. (*Chevis, J.*) AMOLAK RAM *v.* SHANU RAM. 99 P. W. R. 1911 : 10 I. C. 405 : 174 P. L. R. 1911.

LIMITATION ACT (IX OF 1908), Art. 177.

———Art. 177—*Death of judgment-debtor—Limitation to bring his legal representative on record is 6 months.*

After the death of a judgment-debtor, the decree-holder should apply within six months of his death to bring his legal representative on record, on the analogy of C. P. Code, O. 22, R. 4 and Lim. Act Art, 177. (*Bucknill, J.*) RAMESHWAR SINGH *v.* MATHU MISSIR. 62 I. C. 52.

——— Art. 178 and Ss. 5, 12—*Application beyond time.*

An application to file an award beyond 6 months after date of its being given, is barred under Art. 178 and in the circumstances of the case, Ss. 5 and 12 did not save limitation. (*Tudball and Piggott, JJ.*) RAM UGRAH PANDE *v.* ACHEAJ NATH PANDE. 38 All. 85 : 31 I. C. 899 : 13 A. L. J. 1115.

——— Art. 178—*Application to file an award—Limitation.*

The time for an application to file the award begins on the date the award is delivered to the parties and not the date of signatures by the arbitrators. (*Miller, C. J. and Mullick, J.*) KUNJILAL *v.* BANWARI LAL. 48 I. C. 711.

——— Art. 179—*Time for copies can be deducted.*

In cases of application for leave to appeal to His Majesty in Council, the time for obaining copies can be deducted for purposes of limitation. (*Miller and Ross, JJ.*) MAHABIR PRASAD *v.* JAMANA SINGH 1 P. 429 : 3 P. L. T. 289 : 1922 Pat. 193 : 1922 P. 255.

———Art. 180—*Delivery of possession—Application for after passing of Act.*

Where an auction sale was confirmed before the Limitation Act of 1908, but the application for possession was made after the coming into force of the Act, the application was governed by Article 180 and is barred, if not made within three years from the date when the sale became absolute. (*Coxe and Chatterjee, JJ.*) HUSSEIN BUX *v.* BECHA. 27 I. C. 420.

———Art. 180—*Execution of decree—Confirmation of sale—Application for delivery of possession—Limitation.*

Where an execution sale was confirmed and the judgment-debtor appealed against the confirmation and the same was compromised on terms that the decree amount was to be paid by instalments and on default of payment the sale should stand confirmed, and where default was made and an application was made by the decree-holder for possession of the property, limitation counts from the date of the default of payment of the instalment and not from the date of the first confirmation of the sale. (*Coxe and Chatterjee, JJ.*) JANAK PROSAD *v.* NET RAM. 22 I. C. 497

———Art. 180—*Application under O. 21, Rr. 90 and 92—After statutory period—Sale partially set aside—Application by purchaser for possession—Limitation—Suspension of.*

LIMITATION ACT (IX OF 1908), Art. 180.

Per *F. B.* (*Oldfield, J. Diss.*) :—An application to set aside Court sale made after the statutory period after the confirmation of the sale, was admitted and partly disallowed. *Held*, in an application by an auction-purchaser to be put in possession, time is to be computed from the date when the application under O. 21, R. 90 was disallowed and not from the date of the confirmation in the first instance. (*Abdur Rahim, Offg. C. J., Oldfield, Sadasiva Aiyar and Seshagiri Aiyar, JJ.*) MATHU KORAKKI CHETTY *v.* MAHAMMAD MADAR AMMAL 43 Mad. 185 : 26 M. L. T. 459 : 11 L. W. 487 : 54 I. C. 66 : 38 M. L. J. 1 (F. B.).

———Arts. 180 and 181—*Execution Sale—Application by purchaser for possession of property—Further application to carry out order for delivery—Limitation—Dismissal or striking off execution application—Conduct of decree-holder.*

The sale of properties to the decree-holder auction-purchaser was confirmed on 16th Jan. 1911. On 9th Nov. 1912 and 4th Dec. 1912 he made applications for delivery of possession but they were both dismissed by an order dated 4th Dec. 1912, on the ground that he was unable to identify the land. A third application was made on 4th July, 1913 but on 30th July 1913 the Court ordered on it, "No one to take delivery. Petition dismissed". Finally on the 16th April 1915, the purchaser again applied for delivery of possession but was met with a plea of limitation. *Held per Abdur Rahim, J.* (*Oldfield, J.*, contra) that there being no evidence to show that the order of dismissal on 30th July 1913 was made after hearing the purchaser, it must be deemed a dismissal only for statistical purposes; and (2) that the application of 1915 might be treated as one for execution of the general order for delivery made on 4th July 1913 and being in that view merely a continuation of the prior proceedings was not barred by Art. 180. (*Abdur Rahim and Oldfield, JJ.*) NANDUR SUBBAYA *v.* RAJA VENKATRAMAYYA APPARAO. 7 L. W. 16 : 43 I. C. 155 ; (1918) M. W. N. 214.

———Art. 180—*Execution sale—Decree holder purchaser—Delivery application—Six years after sale made absolute.*

An application by a decree-holder purchaser for delivery of possession of the properties purchased by him in Court-auction is not an application to execute the decree and is governed by Art. 180, 32 M. 136 Foll. (*Sadasiva Aiyar and Moore, JJ.*) RAMASWAMI IYER *v.* ABDUL AZIZ SAIB. 19 M. L. T. 164 : 32 I. C. 993 : 3 L. W. 191.

———Art. 180—*Starting point—Application for delivery of property.*

An application for delivery of property sold in Court action should be made within 3 years from the date when the sale becomes absolute. (*Benson, O. C. J. and Napier, J.*) ARUNAGIRI MUDALIAR *v.* UTHANDAMUDALI. 12 M. L. T. 311 : 17 I. C. 242 : (1912) M. W. N. 1136.

LIMITATION ACT (IX OF 1908), Art 181—Applicability.

——Art. 181.
Applicability.
Dismissal for default.
Execution sale.
Insolvency proceedings.
Mesne profits.
Mortgage decree.
Probate proceedings.
Restitution.
Revival of execution.
Revival of suit.

Applicability.

——Art. 181—*Application for order absolute in mortgage suit—Starting point.*

Art. 181 of Lim. Act, 1877, governs an application for an order absolute under S. 89, T. P. Act and limitation commences on the date of the appellate decree, and no fresh starting point is furnished by the Privy Council dismissing an appeal for want of prosecution, 36 A. 350 ; 36 A. 284 Ref. (*Lord Atkinson.*) SACHINDRA NATH ROY *v.* MAHARAJ BAHADUR SINGH.
L. R. 3 P. C. 174 (P. C.).

——Art. 181—*Applicability—Consent decree in a mortgage suit.*

It is quite clear that an application for making a conditional decree passed by consent absolute, would be governed by the general Art. 181 which applies to all applications for which no period of limitation is provided elsewhere in the Limitation Act or by S 48, C. P. C. Even where there is a condition in the decree that until one judgment-debtor's share is found to be insufficient no steps are to be taken against the other judgment-debtor, the right to apply against b th accrues at the same time. The right to apply for order absolute is one thing and the determination of the question as to which property should be sold first is another. (*Stuart and Sulaiman, JJ.*) BALDEO DAS *v.* PITAMBAR.
1923 All. 89.

——Art. 181—*Applicability—Leave to appeal to His Majesty in Council—Criminal appeal decided by High Court.*

Quaere : Whether Art. 181 of the Limitation Act is applicable to applications for leave to appeal to His Majesty in Council from the decision of the High Court in a criminal appeal. (*Mookerjee and Chatterjee, JJ.*) PHILLIP E BILLINGHURST *v* EMPEROR.
38 C. L. J. 406 : 1924 Cal. 338.

——Art. 181—*Applicability of—Application for recording part payment and for execution as regards balance.*

Art 181 of the Limitation Act is applicable to an application, which is a combined one embodying a two-fold prayer, namely, first, that the alleged payment be recorded, and, secondly, that the decree be executed for the balance of the judgment-debt, by a decree-holder, who has received payment from the judgment-debtor out of court, to record the payment The right of the decree-holder to apply is acquired as soon as he receives payment and he had to apply to the execution court within three years from that date to record the payment. 45 Cal. 620 ; 23 C. W. N. 320 Rel. (*Mookerjee and Panton, JJ.*) BALEY MAHAMMAD SAHI *v.* AIJANMAI
26 C. W. N. 529 : 35 C. L. J. 71 : 1922 Cal. 30.

LIMITATION ACT (IX OF 1908), Art. 181—Applicability.

——Art. 181—*Applicability — Execution—Terminus a quo.*

Where an order granting with costs a petition to set aside an *ex parte* decree was passed on 27-2-1915 and a "rubkari" specifying the costs was drawn up on 8-3-1915 and execution for the costs was applied for on 6-3-1918, *held* that the "rubkari" was not a decree within S. 2 (2) of the C. P. Code but was only an order within S. 2 (14) of the Code which completed and rendered the order of the 27th February 1915 capable of execution and that limitation commenced to run from 8-3-1915 and therefore the application was in time (*Teunon and Beachcroft, JJ.*) NOOKUR CHANDRA MULLICK *v.* RAJANI KANTA GHOSE.
59 I. C. 51 (2).

——Arts. 181 and 84—*Applicability of—Taxation of costs—Suit—Application—Calcutta High Court—Original side.*

An application under Ch. 38, R. 67 of the Rules of the Original Side of the Calcutta High Court is not governed by Art 84. An application can be ordered summarily only when there is no contest or doubt ; otherwise a suit is the proper remedy. (*Chaudhari, J.*) LAKHIMONI DASSI *v.* DWIGENDRA NATH.
46 Cal. 249 : 51 I. C. 941 : 28 C. W. N. 473.

——Art. 181—*Applicability — Injunction—Application to enforce—Limitation.*

Quaere :—Whether Art. 181 of the Lim. Act applies to an application to enforce an injunction under O. 21, R. 32, C.P.C., or whether there is no limitation for it ? (*Richardson and Beachcroft, JJ.*) SACHI PRASAD *v.* AMAR NATH RAI
46 Cal. 103 : 45 I. C. 864 : 27 C. L. J. 506.

——Art. 181—*Applicability—Pending suit—Application for substitution—Assignee of preliminary decree.*

Where the assignee of a preliminary decree for possession and mesne profits applied for being substituted in the suit, within 3 years from the date of assignment but amended the application after 3 years, *held* that the application must be treated as having been made on the date on which it was originally presented and even if it is deemed to have been made on the date of assignment it is not barred as the right of the assignee to apply for substitution in a pending suit was a right which accrued from day to day. (*Chatterjee and Walmsley, JJ.*) PRASANNA KUMAR PANJA *v* ASUTOSH ROY.
20 I. C. 685 : 18 C. W. N. 450.

——Arts. 181 and 177—*Applicability—Person not party at time of death—Petition to bring on record legal representative.*

Where a person is not a party to suit or appeal, but on his death his legal representative is sought to be impleaded, art. 181 applies and not art 177. (*Campbell, J.*) WAHID BAKSH *v.* LALTA PERSHAD.
1924 L. 316.

LIMITATION ACT (IX OF 1908), Art. 181—Applicability.

——— Art. 181 — *Applicability — Application under C. P. Code.*

Art. 181 of the Limitation Act applies to all applications for making of which the Civil Procedure Code gives authority and to no others. (*Scott Smith and Wilberforce, JJ.*) HINDUSTAN BANK, LTD v. MEHRAJ DIN.

1 Lah 187 : 55 I. C. 820 : 2 L. L. J. 291.

———— Art. 181—*Applicability*—" *Right to apply*"—*Construction of.*

The expression " Right to apply" in Art. 181 of the Lim. Act should not be rigidly construed. (*Drake Brockman, J.C.*) NANHELAL *v.* GULSHANRAI. 18 N. L. R. 58 : 1922 Nag. 217.

———— Art. 181—*Applicability—Decree for redemption—Right of mortgagor to deposit money at any time.*

The position of a mortgagor who has obtained a decree is very different from that of a mortgagor who still has to bring a suit. In the latter case all sorts of defences may be pleaded and it may be found that his right is barred by limitation or by renunciation or that the claimant is not in fact the legal representative of the original mortgagors or that the integrity of the mortgage has been broken. In fact until a decree has been passed there is no certainty whether or under what conditions he may be entitled to recover the property but once he has got a decree in his favour his right is definite, ascertained and final, subject only to his depositing the money. The manner in which a redemption decree is to be enforced is not a mere matter of procedure but a question of right. The right of a mortgagor to deposit the money under a decree *nisi* is a continuing right which may be exercised at any time until an order absolute is passed and an application to deposit the money is not governed by Art 181 of the Limitation Act. (*Daniels, A. J C*) RAM RUP *v.* GHANI AHMED. 9 O. L J. 624 : 9 O. & A. L. R. 62 : 1923 Oudh 156.

———— Art. 181—*Applicability—Partition proceedings—Preliminary decree—Application to prepare final decree.*

As a preliminary decree in a partition suit, is not capable of execution, an application to effect partition and to prepare a final decree is not one for execution coming under Art. 181. Such an application is one in the suit to which the law of limitation does not apply. (*Lindsay, J. C.*) TAJA MUL *v.* BUNDE RAJA.

7 O. L. J. 538 : 60 I. C. 433 : 23 O. C. 281.

Dismissal for default.

———— Art. 181—*Dismissal for default—Execution application.*

An application to restore an application for execution dismissed for default is governed by Art. 181. (*Martineau, J.*) MAULA BAKHSH *v* RAMDAS. 56 I. C. 25 : 2 Lah. L. J. 627.

———— Art. 181 and S. 6—*Dismissal for default—Application for revival—Art. 181 applies and S. 6 extends starting point in case of minor.*

An application for the continuance or revival of previous execution proceeding struck off or suspended for no act or default of the decree-holder is governed by Art 181. Such an application is substantially an application for the execution of a decree within the meaning of S. 6 of that Act, which protects the minors, so long as the disability continues and postpones the commencement of the period of limitation till the date on which such disability ceases. (*Kanhaiya Lal, J.C.*) AKHTAR HUSAIN *v.* QUDRAT ALI. 26 O. C. 208 : 1924 Oudh 31.

LIMITATION ACT (IX OF 1908), Art. 181.—Execution sale.

Execution Sale.

———— Arts. 181 and 182 (7)—*Execution sale—Execution against estate—Wrong legal representative on record—Effect.*

Where execution is to issue, unless the decree is paid within 6 months of the decree, an application in execution is governed by Art 181 and the period is 3 years from the time when the right to apply accrues. Even if Art. 182 (7) applied, time begins to run only from after the expiry of the period of 6 months provided for payment in the decree. Where execution is sought against the estate of the judgment-debtor, the fact that a wrong legal representative's name was originally entered in the application, will not vitiate the proceedings. (*Kanhaiya Lal, J.*) SURAJMAN CHAUBE *v.* ANJORE SHUKAL.

21 A. L J. 861 : L. R. 4 A. 591 : 9 O. & A. L. R. 989 : 46 All. 73 : 1924 All. 263.

———— Art. 181—*Execution sale—Application to set aside* — Ex parte *decree* — *Subsequently set aside.*

Where properties are sold in execution of an *ex parte* decree, and the *ex parte* decree is subsequently set aside, an application to set aside the execution sale is governed by art. 181 and limitation starts from the date when the *ex parte* decree was set aside. (*Heaton and Hayward, JJ.*) SHIVBAI BABYA SWAMI *v.* YESU CHEOO NAYAKIN. 43 Bom. 235 : 48 I. C. 130 : 20 Bom. L. R. 925.

———— Art. 181—*Execution sale—Application to set aside—Suppression of sale process.*

An application to set aside an execution sale on the ground of fraudulent suppression of sale process is governed by S. 47, C. P. C., and the limitation applicable therefor is that provided by Art. 181 of the Limitation Act. (*Mookerjee and Walmsley, JJ.*) RAM KINKAR TRWARI *v.* SITHITI RAM PANJA. 46 I. C. 221 : 27 C. L. J. 528.

———— Art. 181—*Execution sale—Order setting aside rent sale itself set aside — Confirmation later on—Application under S. 173 (3), Bengal Tenancy Act—Limitation.*

Where an order setting aside a rent sale was itself set aside in 1908 and this order was confirmed in 1909, an application under S. 173 (3) of the B. T. Act to set aside the sale on the ground that the purchaser was a *benamidar* for the judgment-debtor, beyond 3 years from the order of 1908 but within 3 years of the confirmation thereof in 1909 is barred under Art. 181 of the Lim. Act (*Stephen and Mullick, JJ.*) NARAYAN SINGH *v.* MUHAMMAD SIDDIO. 24 I. C. 366.

LIMITATION ACT (IX OF 1908), Art. 181—Execution sale.

———Arts. 181 and 165 — *Execution sale—Application for—Restoration of possession of property excessively taken in execution.*

Art. 181 and not Art. 165 applies in case of an application by a judgment-debtor for restoration of immoveable property delivered in execution proceedings in excess of what has been decreed by the Court. (*Wallis, C.J., Ayling and Sadasiva Aiyar, JJ.*) THATTANT VILA v. KOMBI ALIASSAN.
42 Mad. 753 : 37 M. L J. 340 : (1919) M. W. N. 732 : 26 M L T 297 : 53 I. C. 437 : 10 L. W. 410 (F. B.)

———Art. 181—*Execution sale—Sale set aside—Fresh application—Pendency of appeal—Effect.*

After a sale in execution of a decree is set aside the decree-holder can within three years from the date of the order setting aside the sale, again apply for execution. Though the order forms the subject of an appeal, an application for execution during the pendency of the appeal within the aforesaid period of three years is not barred. (*Das, J.*) SYED AMJAD HUSSAIN *v.* SHYAM LAL.
56 I. C. 1004.

———Art. 181 —*Execution sale set aside—Fresh application.*

The limitation for a fresh execution begins on the date when a previous execution sale is set aside on account of fraud as between the judgment-debtor and auction-purchaser. (*Jwala Prasad and Coutts, JJ.*) KESHAWESARINDRA SAHI *v.* DEBENDRA BALA DASSI.
4 P. L. J. 213 : 48 I. C. 245 : 1919 Pat. 121.

———Arts. 181 and 182—*Execution sale set aside at instance of judgment-debtor—Fresh application—Limitation.*

Where an application for execution of decree was made in July 1909 in pursuance of which the property attached was sold and the sale was set aside at the instance of the judgment-debtor on 12th February 1910 and a fresh execution petition was filed on 10th December 1912 to bring to sale the very same property. *Held*, that the last application was a continuation of the previous application and was therefore within time It would also be treated as an application under Art. 181 and was within time because it was made within 3 years of the date on which the sale was set aside. (*Chamier, C. J. and Jwala Prasad, J.*) KANIZ ZOHRA *v.* SYAM KISAN.
1 P. L. W. 73 : 2 P. L. J. 115 : 38 I. C. 89 : 1917 P. 133.

———Art. 181—*Execution sale—B. T. Act, S. 173—Application to set aside on ground of judgment-debtor purchasing Benami.*

An application to set aside an auction sale under S. 173, B. T. Act on the ground that the judgment-debtor was a benamidar for a third person is governed by Art. 181, Lim. Act. (*Mullick and Atkinson, JJ.*) CHANDRAMA RAI *v.* MAHARAJA OF DUMRAON.
38 I. C. 209.

Insolvency Proceedings.

———Art. 181—*Insolvency proceedings.*

An Official Receiver can make an application requesting the court to take an action under S. 37 of the Provincial Insolvency Act, 1907. at any time during the pendency of the insolvency proceedings. Assuming that Art. 181 of Limitation Act applies to such an application, the right to move in the matters accrues to the receiver from day to day as long as the proceedings continue. (*Le Rossignol and Abdul Quadir, JJ.*) PRITHI NATH *v.* BARHEWAR NATH.
1924 L. 331.

LIMITATION ACT (IX OF 1908), Art. 181—Mortgage decree.

———Art. 181 — *Insolvency proceedings — Application under S. 37, Prov. Ins. Act—Limitation.*

An application under S. 37 of the Prov. Ins. Act, would be governed by the three years limitation commencing from the date of the adjudication. (*Beavan Petman, J.*) NIKKA MAL *v.* MARWAR BANK, LTD.
52 I. C. 188 : 151 P. R. 1919.

———Art. 181 — *Insolvency proceedings — Application by Official Receiver under S. 36 of the Prov. Ins. Act.*

An application under S. 36 of the Prov. Ins. Act by the Official Receiver for having a transfer made by the insolvency avoided is not governed by Art. 181 of the Lim. Act. That article applies only to applications made under C, P. Code. (*Ayling and Krishnan, JJ.*) DURAIYA SOLAGAN *v.* VENKATARAMA NAYAKER.
60 I. C, 123 : 12 L. W. 535.

———Art. 181—*Insolvency proceedings—Application.*

The Limitation Act provides periods with reference to suits, appeals and applications, the last being matters arising out of suit. It has no application to proceedings in Insolvency. (*Sadasiva Aiyar and Napier, JJ.*) RATNA BAI *v.* OFFICIAL ASSIGNEE.
29 I. C. 168 : 17 M. L. T. 347.

Mesne profits.

———Art. 181—*Mesne profits—Application for ascertainment of.*

The limitation for an application for the determination of mesne profits, if there is any limitation applicable, is to be computed from the date of the final decree by which the award of mesne profits was confirmed. 36 A. 350; 39 A. 641 Rel. (*Kanhaiya Lal, J.C.*) KUBER SINGH *v.* MUSSAMMAT KAJA KUNWAR.
25 O C. 132 : 1922 Oudh 197.

———Art. 181 —*Mesne profits—Application for ascertainment of.*

An application for ascertainment of mesne profits under Order 20, R. 12, C. P. C. is not one for execution, and Art 181 applies to it. (*Benson and Sundara Aiyar, JJ.*) REBALA RAMANA REDDI *v.* REBALA BABU REDDI.
37 Mad 186 : 13 M. L. T. 79 : (1913) M. W. N. 114 : 18 I. C. 586 : 24 M L. J. 96.

Mortgage Decree.

———Art. 181—*Mortgage decree—Date of decree.*

Where a decree *nisi* for sale is made in a mortgage suit the period of limitation mentioned in the Act of 1877 is not 3 years plus the 6 months given by the decree for redemption but only

LIMITATION ACT (IX OF 1908), Art. 181— Mortgage decree.

3 years. (*Lord Atkinson.*) SACHINDRA NATH ROY *v.* MEHRAJ BAHADUR SINGH.
4 U. P. L. R. (P. C.) 57 : 30 M. L. T. 96 : 24 Bom. L. R. 659 : (1922) M. W. N. 338: 26 C. W. N. 858 : 49 C. 203 : 48 I. A. 335 : 1922 P. C. 187.

——— Art. 181—*Mortgage decree--Appeal from preliminary decree—Application for final decree.*

Where a preliminary mortgage decree for sale was taken up in appeal to the High Court, the period of limitation for an application for final decree runs from the date of the High Court decree. (*Ryves and Daniels, JJ.*) MAHABIR PRASAD *v.* KANHAIYA LAL.
L. R. 4 A. 278 : 21 A. L. J. 526 : 1924 A. 99.

——— Art. 181—*Mortgage decree—Right to apply for personal decree—Sale of property—Execution of sale-deed.*

In execution of a mortgage decree, the court appointed a receiver and under the direction of the court he sold the property to the decree-holders but the price was not sufficient to meet the decree. On an application put in by the latter for a decree under O. 34, R. 6 for the unrealised portion of the debt within 3 years of the execution of the sale-deed; *held* the application was within time as the conveyance of the mortgaged property was not complete until the sale deeds had been executed. (*Piggott and Walsh, JJ.*) RAJ NARAIN MAL *v.* SANTI LAL.
21 A.L.J. 37 : L. R. 4 A. 78 : 4 L. R. All (Civ.) 78 : 1923 A. 203.

——— Art. 181—*Mortgage decree—Right to apply for a final decree—Limitation--Starting point—Amenament of decree.*

A preliminary decree for sale by a mortgagee was passed on 25—1—1917. Time was given to the mortgagees up to 22—3—1917 to pay up the decree amount. On 28—4—1917 a clerical mistake in the decree was corrected and the sum of Rs. 2,486 was substituted instead of Rs. 2,350 as being the decree amount. On 27—4—1920 plff. applied for the passing of a final decree. *Held*, that the right to apply accrued on 22—3—1917 and that inasmuch as the application was made more than 3 years after that date it was time-barred. There was no alteration in the decree and it cannot be said that the decree as amended on 28—4—1917 was a new decree. The mere fact that by a clerical error a wrong sum had been entered does not affect the case. (*Ryves and Stuart, JJ.*) RAM CHANDRA *v.* JAI MAL.
20 A. L. J. 640 : 9 O. & A. L. R. 130 : L. R. 3 A. 483 : 1923 A. 22.

——— Art. 181—*Mortgagee decree—Application for final decree—Continuation of existing application—No bar.*

Within three years of the passing of the preliminary decree in a mortgage suit an application was made for the final decree but the application was returned for a correct statement of the amount due to the mortgagee and for a proper description of the mortgaged property No time was fixed for the amendment and the decree-holder presented his application after the expiry of three years from the date of the preliminary decree. *Held* that the subsequent application must be regarded as one for the continuation or revival of the previous one and that it was not barred by the limitation. (*Lindsay and Kanhaiya Lal, JJ.*) KALLU MAL *v.* KASHI NATH.
20 A. L. J. 580: L. R. 3 A. 496: 4 U. P. L. R. (A) 190 : 1922 All. 446.

——— Art. 181—*Mortgage decree—Limitation—Starting point.*

Art. 181 provides for the limitation for an application for a final decree in a mortgage suit and time runs from the date the preliminary decree becomes conclusive between the parties. Where a decree is passed against several sets of defts. for separate amounts and some of them appeal, the decree against non-appealing defts. becomes conclusive on expiry of the time provided for an appeal, or on the date fixed for payment if that be a later date. An application for final decree in the case of such non-appealing defts. made more than three years after the preliminary decree is barred. (*Banerji and Gokul Prasad, JJ.*) GAYAN SINGH *v* ATTA HUSSAIN.
43 All. 320 : 60 I. C. 817 : 19 A. L. J. 83.

——— Art. 181—*Mortgage decree — Application for decree under O. 34, R. 6, C.P.C.*

An application under O. 34, R. 6 of the C. P. Code is an application in the original suit for a new decree and is governed by Art. 181 (*Richards, C.J. and Banerji, J.*) MAHOMED ILTIFAT HUSSAIN *v.* ALIMUN NISSA. 40 All. 553 : 47 I. C. 561 : 16 A. L. J. 438.

——— Art. 181—*Mortgage decree—Final decree—Limitation—Appeal from preliminary decree.*

An application for a decree absolute under O. 34 R. 4 of the C. P. Code is beyond time when it is made more than 3 years after the date of the decree in appeal passed by the High Court. (*Richards, C. J. and Banerjee, J.*) NIZAMUDDIN SHAH *v.* BAHRA BHIM SEN. 40 All. 203 : 43 I. C. 870 : 16 A. L. J. 85.

——— Art. 181—*Mortgage decree— Application for final decree—Limitation.*

The period of limitation for an application for a final decree in a mortgage suit is three years under Art. 181 of the Lim. Act from the expiration of the time allowed by the decree for the payment of the mortgage money. (*Richards, C. J. and Banerjee, J.*) AHMAD KHAN *v.* GAURA.
43 I. C. 518 : 16 A. L. J. 143.

——— Art. 181—*Mortgage decree—Application under O. 34, R. 5, C.P.C.*

An application under O 34, R. 5, C. P. C., is governed by Art, 181 of the Limitation Act. (*Piggott, Banerji and Tudball, JJ.*) GAJADHAR SINGH *v.* MUSHER JIWAN LAL. 39 All. 641 : 42 I. C. 93 : 15 A. L. J. 734.

——— Art. 181—*Mortgage decree—Application for order absolute—Limitation—Starting point—C. P. Code, O. 34, Rr. 4 and 5.*

An application for an order absolute under O. 34, R. 5, C. P Code, is governed by Art. 181 of the Limitation Act. The period of limitation should

LIMITATION ACT (IX OF 1908), Art. 181—Mortgage decree.

be computed from the time when the right to apply first accrued, *i. e*, the expiration of the period fixed for payment of the mortgage-money. An appeal and a second appeal from the preliminary decree do not give rise to a fresh right, unless the decree of the Court of First Instance was in any respect varied by the Appellate Courts (*Banerjee and Rafique, JJ.*) MADHO RAM *v.* NIHAL SINGH. 38 All. 21 : 30 I C 494 : 13 A. L. J. 985.

——Art. 181—*Mortgage decree—Final decree—Application—Limitation.*

An application for an order absolute in a mortgage suit where an instalment decree *nisi* has been passed, is governed by Art. 181 and time will run from the date of default ; but acceptance of overdue instalments may have the effect of remitting the parties to those rights, which they would have had, had there been no default. (*Griffin and Chamier, JJ.*) BADRI NARAYAN *v.* KUNJ BEHARI LAL. 35 A. 178 : 18 I. C 731 : 11 A. L. J. 224.

——Art. 181—*Mortgage decree—C. P. C., O 34, R. 6—Application for personal decree—Limitation.*

An application for a money decree under O. 34, R. 6 of C. P. C. is governed by Art. 181 and time begins to run when the right to apply accrues. (*Chamier, J.*) BEHARY LAL *v.* BISESAR DAYAL. 14 I. C. 591 : 9 A. L. J 569.

——Art. 181—*Mortgage decree—Preliminary decree—Application for final decree—Limitation.*

An application to make a preliminary decree final in a mortgage suit is governed by Art. 181 of the Limitation Act. (*Macleod, C. J. and Crump, J.*) HARJIVAN DEORAJ *v.* GAJANAN. 25 Bom. L R. 459 : 1923 Bom. 420.

——Arts. 181 and 182—*Mortgage decree Decree for redemption—Application for extension of time to pay up the mortgage money and to recover possession.*

An application to extend the time for the payment of mortgage debt, is governed by Art. 181 of the Lim. Act. *Held*, by Shah, J., that even if the application be treated as one not merely for the extension of time for the payment of the mortgage debt but for the recovery of possession of the property as in terms it purported to be, it was an application for the execution of the decree and as such governed by Art. 182 of the Act. (*Shah, Heaton and Pratt, JJ.*) VASUDEV *v.* GOPAL. 43 Bom. 689 : 51 I.C. 924 : 21 Bom. L.R. 687

——Art. 181—*Mortgage decree—Decree before new Code—Application for order absolute under new Code—Right to apply when accrues.*

Where the preliminary decree was passed before C.P.C. of 1908 and the application for order absolute was made after the new Code, *held* that though O. 34, R. 4 rendered an application necessary to make the decree absolute for sale, Art. 181 of the Lim. Act did not govern the case, the right so to apply not having accrued to plaintiff till the new C.P.C conferred it on him. (*Batchelor, A.C.J. and Kemp, J.*) NARASINGARAO *v.* BANDU KRISHNA. 42 Bom. 309 : 46 I. C. 107 : 20 Bom L. R. 481.

LIMITATION ACT (IX OF 1908), Art. 181—Mortgage decree.

——Art. 181—*Mortgage decree—Application for decree absolute—Limitation.*

An application for a decree absolute for sale in a mortgage suit under a consent decree fixing instalments, if made after expiry of 3 years from the due date of the last instalment is barred by Art. 181. (*Scott, C.J. and Heaton, J.*) DATTO ATMARAM HASABNIS *v.* SHANKAR DATTATRAYA. 38 Bom 32 : 21 I. C. 318 : 15 Bom. L. R. 841.

——Art 181—*Mortgage decree—Time for applying for final decree—Preliminary decree affirmed on Appeal.*

Where a preliminary decree in a mortgage suit has been affirmed on appeal, an application made within three years of the date of the affirmance with a view to make a final decree is within the period prescribed under art. 181. 39 All. 641 ; 40 All. 203 ; 40 Mad. 714 fol. (*Mukerjee and Holzner, JJ.*) UMA CHARAN CHAKRAVARTHY *v.* NIBARAN CHANDRA CHAKRAVARTHY. 37 C.L J. 452 : 1923 Cal. 389.

——Arts. 181 and 182—*Mortgage decree—Application for final decree for foreclosure after consent decree.*

Arts 181. and 182 of the Act apply to an application for a final decree for foreclosure after a consent decree, which is a preliminary decree in the suit for foreclosure. (*Fletcher and Richardson, JJ.*) SHASHI BUSAN DAS *v.* PRATUS CHANDRA ROY. 37 I. C. 802,

——Art. 181—*Mortgage decree—C. P. Code, O 34, Rr. 3 and 6.*

Art. 181 of the Limitation Act does not apply to applications either under R. 6 or R. 3 of Order 34, C. P. Code. (*Holmwood and Chapman, JJ.*) BISHWAMBHAR SAHA *v* RAM SUNDAR KAIBARTA DAS. 30 I. C. 719 : 42 Cal. 294.

——Art. 181—*Mortgage decree—Order absolute—Action to be taken by Court—No period of limitation.*

Where it is the duty of Court to take action without any application by the party, no question of limitation can arise. In a pending suit, the party need not make applications from time to time asking the Court to proceed to judgment The procedure is prescribed by the Code which the Court has to follow. An order for decree absolute in a mortgage suit cannot be made without application. (*Sharfuddin and Coxe, JJ.*) BENI SINGH *v* BERHAMDEO SINGH. 19 C. W N 473 : 28 I C. 211 : 22 C L. J. 66.

——Art. 181—*Mortgage decree—Application for final decree.*

Applications for final decree are applications in the suit itself and not execution applications and Art. 181 of Limitation Act applies to them. (*Krishnan and Ramesam, JJ.*) MUMMADI VENKATIAH *v.* NATHAM VENKATA SUBBIAH. 42 M.L.J, 61 : 1922 M. W. N. 11 : 16 L. W. 198 : 30 M. L. T. 228 : 1922 Mad. 65.

——Arts. 181 and 182—*Mortgage decree—Decree under S. 88 of the T. P. Act—Application for order absolute—Limitation.*

Three years after a mortgage-decree was passed in December 1908, the decree-holder applied

LIMITATION ACT (IX OF 1908), Art. 181—Mortgage decree.

for an order absolute for sale. The application was dismissed for default and the decree-holder after three more years again applied for an order absolute. *Held*, that the first application of the decree-holder for an order absolute was not barred either by Art. 182 or by S. 48, C.P. C. (*Sadasiva Aiyar and Spencer, JJ.*) GANAPATHIA PILLAI *v.* GOPALA IYER. 56 I. C. 563.

———Arts. 181 and 182—*Mortgage decree—Preliminary decree for sale under T. P. Act—Expiry of the time fixed for payment—Application for order absolute -Limitation.*

A preliminary decree for sale was passed under the T.P Act. Before the expiry of the time fixed by the decree for the payment of the mortgage money, the new C. P. Code came into force. *Held*, that a final executable decree was passed under the T. P. Act notwithstanding that the direction in the decree for sale of the property was made conditional on default of payment of the amount due by a certain date. The remedy of the mortgagee was to apply for an order absolute. The enactment of the C. P. Code did not give the mortgagee a right to apply for a final decree. The period of limitation for the mortgagee's application was that fixed by Art. 182 and not by Art. 181 of the Lim. Act. 32 M. L. J. 455 not foll. (*Sadasiva Aiyar and Spencer, JJ.*) RAMASAMI REDDY *v.* SOKKAPPA REDDI.
48 I. C. 732 : 35 M. L. J. 194.

———Art. 181—*Mortgage decree—Application for personal decree.*

Art. 181 of the Limitation Act, applies to an application for a personal decree under O. 34 R. 6 (2), C. P. C. (*Spencer and Krishnan, JJ.*) SUBBALAKSHMI AMMAL *v.* RAMALINGA CHETTY.
42 Mad. 52 : (1918) M W. N. 792 : 8 L W. 526 : 24 M. L. T. 486 : 48 I. C. 298 : 35 M. L. J. 552.

——— Art. 181—*Mortgage decree—Application for final decree for sale—Limitation—Confirmation of preliminary decree on appeal.*

An application for a final decree for sale under O. 34, R. 5 (2), C.P. Code, is governed by Art. 181 of the Limitation Act and time runs from expiry of the period fixed for redemption by the preliminary decree. If there has been an appeal from the preliminary decree, time begins to run from the date of the decree on appeal even though appellate decree merely confirms the decree of the first Court. (*Abdur Rahim and Oldfield, JJ.*) SUBBARAYALU NAYUDU *v.* SUNDARARAJA NAYUDU
48 I. C. 185 : 35 M. L. J. 507.

———Art. 181—*Mortgage decree—Preliminary decree after the new C. P. Code—Application for final decree—Limitation.*

Art. 181 applies to an application under O. 34, R. 5 (2) of the C. P. C for a final decree in which the preliminary decree was passed after the passing of the present Code. (*Oldfield and Krishnan, JJ.*) PATTABHIRAMA *v.* SUBRAMANIA CHETTI.
45 I. C. 76 : 7 L. W. 438

———Arts. 181 and 182—*Mortgage decree—T. P. Act, Ss. 88 and 89*

Execution of decree passed before the new C. P. Code came into force is valid without a final decree and therefore such cases are governed by Art. 182 and not Art. 181. An application for execution made within 12 years from the date of decree and within three years from the date of the last application is not, therefore, barred by limitation. (*Abdur Rahim and Spencer, JJ.*) BALAJI RAO SAHIB *v.* HARIRAMA CHETTY.
32 I. C. 39.

———Art. 181—*Mortgage decree—Application for order absolute—Limitation.*

An application for order absolute under O. 34, R. 5, is governed by Art. 181 of the Lim. Act. (*Benson and Napier, JJ.*), THATHARA NANNABHA CHETTY *v.* KUPPAL KRISHNAMMAL.
16 I. C. 799 : 14 M. L. T. 194.

———Art. 181—*Mortgage decree—Execution—Application — Limitation — Decree absolute — Starting point.*

The date of the order absolute is to be considered as the date of the decree for the purpose of calculating the period of Limitation in the case of an application for execution of mortgage decree. 33 A. 264 Foll. (*Miller and Sadasiva Aiyar, JJ.*) YEMANI CHINNA SESHAIYYA *v.* VARNASI PAPAYA. 15 I. C. 732.

———Arts 181 and 182—*Mortgage decree—Amendment of preliminary decree—Final decree—Mortgagee's right on basis of amended decree.*

On the amendment of the preliminary decree in a mortgage suit by the mortgagee, the decree-holder's right to obtain a final decree which is barred by limitation is not revived and the decree-holder does not become entitled to a final decree on the basis of the amended decree. (*Drake Brockman, J. C.*) NANHELAL *v.* GULSHANKAI.
18 N. L. R. 58 : 1922 Nag. 217.

———Art. 181—*Mortgage decree—Preliminary decree—Application for final decree—Limitation—Starting point.*

Where a preliminary decree in a mortgage suit is affirmed on appeal, the right to present an application to make the decree final accrues on the day the appellate decree is passed. The Lower Court's decree merges in the appellate decree. (*Batten, A.J.C.*) NILKANTH *v.* MADHO RAO. 54 I. C. 323.

———Art. 181—*Mortgage decree—Application under C. P. C., O. 34, R. 6.*

Art. 181 prescribed the period of limitation for an application under O. 34, R. 6, C. P. Code. (*Prideaux and Mitra, A.J.Cs.*) CHUNNI LAL *v.* TIKAMDAS. 39 I. C. 854 : 13 N. L. R 76.

———Arts. 181 and 182—*Mortgage-decree.*

An application to deposit money due under O. 34, R 5 is governed by Art. 181 of the Act. (*Dalal, A. J. C.*) BANKE BIHARI LAL *v.* GHANI AHMAD. 9 O. L. J. 14 : 1922 Oudh 33.

———Art. 181—*Mortgage decree—Application for final decree—Limitation.*

The period of limitation for an application for a final decree for sale under O. 34, R. 5 of the C. P. Code should be computed from the date of the decree of the Court of final appeal (*Kanhaiya Lal and Daniels, A.J.Cs.*) LALLU RAM *v.* JOT SINGH. 47 I. C. 208 : 21 O. C. 176.

LIMITATION ACT (IX OF 1908), Art. 181—Mortgage decree.

——Art. 181—*Mortgage decree—Appeal from preliminary decree—Application for final decree—Right when accrues—Analogy of Arts. 179 and 182.*

When a mortgage suit, an appeal has been preferred against the preliminary decree, the right to apply for the final decree accrues on the date of the appellate order. Analogy of Arts. 179 and 182 considered. (*Das and Adami, JJ.*) SAIYID JAWAD HUSSAIN *v.* GENDAN SINGH. 1 Pat. 444 : 1922 Pat. 164 : 3 Pat. L. T. 329 : 1922 P. 205.

——Art. 181—*Mortgage decree—Application for final decree—Starting point—Dismissal of appeal for non-prosecution—Effect of.*

Art. 181 of the Limitation Act governs an application for the passing of a final decree in a mortgage suit. Where an appeal has been preferred from the preliminary decree, but the appeal is dismissed for non-prosecution, the dismissal of the appeal by the appellate court does not give rise to a fresh starting point for an application for a final decree. 37 C. 790 dist. 1 Pat. L. J. 364 foll. 36 A. 350 P. C. applied. (*Das and Adami, JJ.*) CHHOTEY NARAIN SINGH *v.* KEDAR NATH SINGH. 3 P. L. T. 560 : 1 Pat. 435 : 1922 Pat. 342: 1922 P. 201.

——Art. 181—*Mortgage decree—Final decree—Application for.*

The right to apply for decree absolute in a mortgage suit accrues at the end of the period of grace allowed in the preliminary decree and the period is governed by Art. 181. (*Roe and Coutts, Trotter, JJ.*) RAS BEHARI SINGH *v.* JUMAN LAL. 1919 Pat. 272 : 50 I. C. 544 : 4 P. L. J. 523.

——Art. 181—*Mortgage decree — Final decree.*

Application for a final decree for a foreclosure or sale, is an application under C. P. Code and thus an application made after the passing of the C. P. Code and Limitation Act 1908, is governed by Art. 181. (*Chamier, C.J. and Sharfuddin, J.*) BALA RAM NAIK *v.* KANHAI BHARAN. 1 Pat. L. J. 364 : 38 I. C. 386 : 3 P. L. W. 74.

——Arts. 181 and 182 (Expln. I)— *Mortgage decree—Personal decree against mortgagor and his surety—Application for — Limitation.*

An application for a personal decree against the mortgagor or his surety after exhausting the hypothecated properties is governed by art. 181. Even if art. 182 applies any application for execution against the mortgagor would save limitation against the surety under Art. 182 Explanation I. (*Swinhoe, A. J. C.*) YINKE SUPAYA *v.* MAUNG KIN. 60 I. C. 28.

Probate proceedings.

——Art. 181—*Probate proceedings—Limitation.*

The provisions of article 181 Sch. I of the Lim. Act have no application to petitions under the Probate and Administration Act and consequently an application may be made even 4 years after death of the testator. (*Rattigan, J.*) INDER NARAIN *v.* ONKAR LAL. 1 L. R. 1911 : 20 P. R. 1912 : 10 I. C. 130 : 233 P. W. R. 1911.

LIMITATION ACT (IX OF 1908), Art. 181—Restitution.

Restitution.

——Arts. 181 and 165—*Restitution — Execution—Delivery of property in excess—Application for restoration*

Where a judgment-debtor who has been dispossessed of property not covered by the decree in execution thereof, applies for recovery of possession, the application is governed by Art. 181 and not by art. 165 of the Lim. Act. 42 M. 753 ; 38 A. 339 foll. (*Macleod, C. J. and Shah, J.*) RASUL MALIK PINGAR *v.* AMINA HANIF. 24 Bom. L. R. 771 : 46 B. 1031 : 1922 Bom. 271.

——Art. 181 — *Restitution — Limitation — Starting point—Preliminary decree.*

Time begins to run against the party claiming restitution from the date when the final pronouncement is made in the proceedings instituted to test the propriety of the preliminary decree or order of the lower Court. (*Mookerjee and Beachcroft, JJ.*) ATUL CHANDRA SINGH *v.* KUNJA BEHARI SINGHA. 43 I. C. 775 : 27 C. L. J. 451.

——Art. 181—*Restitution—Application for.*

Art. 181 is applicable to an application for restitution. Time will run against judgment-debtor only from the date of supersession of the erroneous decree. (*Mookerjee and Cuming, JJ.*) ASUTOSH GOSWAMY *v.* UPENDRA PROSAD MITRA. 24 C. L. J. 467 : 38 I. C. 17 : 21 C. W. N. 564.

——Art. 181—*Restitution—Application.*

An application for refund of the amount levied in execution of a decree, subsequently set aside, comes under Art. 181 of the Lim Act. (*Sharfuddin and Coxe, JJ.*) MASIRUNISSA KHATUN *v.* JOY CHAND. 16 I. C. 238.

——Arts. 181 and 182—*Restitution — Application for.*

An application for restitution under the C. P. C. being the enforcement of an obligation arising from the appellate decree itself, is an application for execution governed by Art. 182. 19 M. L. J 224, Dist. 24 C.L.J. 467, Expl. (*Abdur Rahim and Kumaraswami Sastry, JJ.*) UNNAMALAI AMMAL *v.* MATHAN. 6 L. W. 359 : (1917) M. W. N. 643 : 22 M. L. T. 353 : 42 I. C. 530 : 33 M. L. J. 413.

——Arts. 181 and 109—*Restitution — Possession—Temporary injunction.*

Possession under a temporary injunction is not wrongful within Art 109 of the Lim. Act. The article is confined to suits and is inapplicable to an application for restitution which is governed by Art. 181. (*Drake-Brockman, A. J. C.*) RADHA *v.* SAKHU. 54 I. C. 664.

——Art. 181—*Restitution—Mesne profits — Period for which claimable.*

Art. 181 merely fixes the date from which limitation for an application for restitution starts, but does not limit the right of the applicant to recover mesne profits to a term of three years. The applicant can recover mesne profits for the whole period for which he was out of possession *pendente lite*. (*Mullick and Atkinson, JJ.*) KRUPANSINDHU ROY *v.* BALBHADRA DAS 47 I. C. 47 : 3 P. L. J. 367.

LIMITATION ACT (IX OF 1908), Art. 181—Restitution.

——— Art. 181—*Restitution — Application for compensation three years after restoration of possession.*

Where in execution of a decree the shares of the judgment-debtors were purchased by A in an execution sale which the judgment-debtors got set aside, their application for compensation for the period during which they were out of possession made three years after restoration of possession to them is barred by the provisions of Art 181, Art. 181 applies only to applications made under the Code of the Civil Procedure. (*Chapman and Roe, JJ.*) JAGDIP NARAYAN SINGH *v* HALLOWAY.

2 P. L. J. 206 : 3 P. L. W. 423 : 39 I. C 653 : 1919 Pat. 282.

———Art. 181 — *Restitution—Application by judgment-debtor to recover possession of immoveable property of which he has been wrongfully dispossessed.*

An application by a judgment-debtor to recover possession of immoveable property of which he has been dispossessed by the decree-holder in excess of the decree falls under Art. 181, and not under Art 165 38 A. 339, Appr. 25 A 343; 21 M. 491, Dist. (*Saunders, J. C.*) MAUNG THA *v.* MA PAU.

46 I. C 323 : (1918) 3 U. B. R. 79

———Art. 181—*Restitution—Application for.*

An application for restitution under S 144, C. P. C., not being an application for execution, Art. 181 of the Limitation Act applies. (*Young, J.*) ASHA BIBI v. NURUDDIN.

8 Bur. L. T. 165 : 30 I. C. 680 : 8 L. B. R. 262.

Revival of execution.

———Art. 181—*Revival of execution—Execution application.*

An execution application in order to save limitation need not be directed to the same property which is applied for in the subsequent application or even indeed the same person. (*Daniels, J.*) GOPAL NATH SHUKUL *v* SAT NARAIN SHUKUL.

1923 All. 384.

———Art. 181—*Revival of execution.*

Where a decree holder is prevented by an injunction from executing his decree he must apply for execution within three years from termination of the injunction period, to save his decree from being barred. (*Tudball and Sulaiman, JJ.*) BALWANT SINGH *v.* BUDH SINGH.

42 All. 564 : 56 I. C. 1006 : 18 A. L. J. 642.

———Art. 181—*Revival of execution—Mortgage decree—Application for final decree—Continuation of prior application.*

On 30-6-14, an application for final decree by the surviving decree-holders in their capacity also as legal representative of deceased plffs. was put and on 19-8-14 a final decree was passed On 8-1-15 the judgment-debtor objected that the widow was the legal representative which was decreed in favour of judgment-debtor. On 7-12-15, an application was made by the widow to be made a legal representative. This application was held to be in time and Art. 181, Lim. Act did not apply and it should be dealt with under O 22, R. 9, C. P. C., and should be considered as one in continuation of the surviving decree-holders' application for a final decree. (*Tennon and Newbould, JJ.*) MUKUND LAL *v* PRIYA NATH MITTER.

45 I. C. 657.

LIMITATION ACT (IX OF 1908), Art. 181—Revival of execution.

———Arts. 181 and 182—*Revival of execution—Continuity of proceedings of last application—Execution interrupted by appeals of judgment-debtor.*

The last application for execution was made on 3-7-02. On the objection of the judgment-debtor, which was overruled by the first court, the High Court remanded the case, and it was ascertained by Commissioner that the judgment-debtor was entitled to a certain deduction, and so on 29-6-1907, the objection of the judgment-debtor was allowed in part. On the same day, the Court passed the following order "Case put an end to after decision of the objection." The judgment-debtor again appealed to the High Court, but his appeal was dismissed on 4-3-10. On 6-12-10 the decree-holders applied for execution. *Held*, that the present application was one to continue further, the execution proceedings which had been interrupted by the two appeals of the judgment-debtor to the High Court, that there was nothing in law to compel the decree-holder to proceed with execution during the appeal, more especially when the amount for which execution should be levied depended on the decision of the Appellate Court, that Art. 181 applied, and that the application was not barred. 27 A 334 (P. C.) ; 37 Cal. 796 ; 23 Cal. 457 ; 24 Cal 397, rel. (*Caspersz and Sharfuddin, JJ.*) SHIEK MAHOMED *v.* WILLIAM ALFRED THOMAS

11 I C. 972.

———Arts. 181 and 183—*Revival of execution—C. P. C., O. 21, Rr. 58 and 63—Claim allowed but suit decreed against claimant—Fresh attachment application—Limitation.*

Where a claimant objects to an attachment and succeeds but in the suit brought by the decree-holder his claim was found against *held*, that if the decision of the suit operates to revive the original application for attachment no question of limitation arises, but it does not and the decree-holder has to make a fresh application, the fresh application is governed by Art. 181 of the Limitation Act. (*Wilberforce, J.*) SHIB DAS *v.* RAMNATH.

61 I. C. 817.

———Arts. 181 and 182—*Revival of execution—Attachment before judgment—Decree—Claim petition allowed—Suit to set aside—Application to execute.*

Following an attachment before judgment, a decree was passed, but in execution a claim petition was put in and allowed. The decree-holder filed a suit to set aside the order on the claim petition and got a decree in his favour, by which time the original decree was more than 3 years old. *Held*, an application for execution put in at that stage is in effect one to revive the former application and Art. 181 of Limitation Act applies

LIMITATION ACT (IX OF 1908), Art. 181—Revival of execution.

to it and not Art. 182. (*Krishnan and Odgers, JJ.*) MANYAM SURAYYA *v.* SURKAVALLI VENCATARATNAM. 19 L. W. 20 : 45 M. L. J. 822 : 1924 Mad. 210.

———Arts. 181 and 182—*Revival of execution—Dismissal for statistical purposes—Fresh application.*

An execution application, which has not been judicially disposed of, but simply removed from the court's file for statistical purposes does not require to be revived. The Court had only to be apprised of, in some recognised manner, and a subsequent application presented to the High Court requesting it to deal with the prior pending application, is not one to which either Art. 181 or 182 of the Act applies. 31 Mad. 71 ; 36 Mad. 533, foll. (*Oldfield and Seshagiri Aiyar, JJ.*) SUBRAHMANIA PATHER *v.* APPU MUDALIAR. 55 I. C. 526 : 11 L. W. 42.

———Arts. 181 and 182—*Revival of execution—Limitation.*

Art 182 does not apply to the cases of an application to revive and carry through a pending execution ; and such an application is not barred if brought more than 3 years after proceedings had ceased to be pending. 28 M. 50, F. B. (*Benson, O. C. J. and Abdur Rahim, J.*) SUBBA CHARIAR *v.* MUTHURAVEARAM PILLAI. 36 Mad 553 : 14 I. C. 264 : 24 M. L. J. 545.

———Art. 181—*Revival of execution—Application for continuance of—Limitation.*

Where an application for execution by sale of the mortgaged property had been transmitted to the Collector under Sch. III, C. P. Code, but owing to the death of the decree-holder thereafter no steps were taken and the Collector returned the papers to the Civil Court a subsequent application by the representatives of the decree-holder could be treated as one for the continuance of the proceedings from the stage at which they were stopped by the death of the decree-holder The application will be in time if made within 3 years of the closure of the previous proceedings. (*Dhobley, A. J. C.*) BHAURAO *v.* LAHANU. 64 I. C. 855.

———Arts. 181 and 182—*Revival of execution.*

An application to send the papers back to the Collector is governed by Art. 181 or 182 of Schedule I to the Limitation Act according as it may be for the continuance of the previous execution proceedings or for taking a step-in-aid. Art 163 would not apply. (*Kanhaiya Lal, A. J. C.*) LAL BASANT SINGH *v* LAL SRIPAT SINGH. 55 I. C. 485 : 7 O. L. J. 11.

———Arts. 181 and 182—*Revival of execution—Dismissal of execution application—Decree-holder not at fault—Limitation.*

The dismissal of an application for execution for no fault of the decree-holder is a mere direction to the Officers of the Court to remove the application from the pending list. The decree-holder's right to apply for its revival accrues from day to day and will be barred if no application is made for the purpose before three years have elapsed from the date when such proceedings were closed in fact or struck off. (*Kanhaiya Lal, A. J. C.*) KALKA SINGH *v.* GURSARAN LAL. 54 I. C. 426 : 6 O. L. J. 656.

LIMITATION ACT (IX OF 1908), Art. 182—Applicability.

———Art. 181—*Revival of execution—Application—Injunction.*

Where owing to an order staying a sale in execution of a decree the decree-holder is prevented from taking further steps in the execution proceedings a subsequent application for execution must be treated as an application to continue the previous proceedings or to revive or carry through a pending execution which was suspended by no act or default of the decree-holder. (*Kanhaiya Lal and Daniels, A. J. Cs.*) GULZARI LAL *v.* RAM BHAJAN. 52 I. C. 116 : 22 O. C. 75.

———Art. 181—*Revival of execution—Application to continue stayed proceeding—Limitation.*

The starting point for limitation for an application to continue a stayed proceeding in execution is the date on which the order for stay is withdrawn or became inoperative even though the execution proceeding may have been struck off by the order of stay. 27 A. 334 P C ref to, (*Kanhaiya Lal, A. J. C.*) GIRDHARI LAL *v.* DAMODAR DAS. 25 I. C 160 : 17 O. C. 169.

Revival of Suit.

———Art. 181—*Revival of suit—Application for restitution—Time when begins to run*

An application for restitution falls within the purview of Art. 181, Limitation Act, begins to run from the date when the decree was reversed. Confirmation of time in second appeal does not affect the question of limitation. (*Martineau, J.*) CHANDA SINGH *v.* BISHEN SINGH. 5 Lah L. J. 389 : 1924 Lah. 166.

———Art. 181—*Revival of suit—Hindu Reversioner.*

An application by a Hindu reversioner to continue a suit instituted by a nearer reversioner since deceased is governed by Art. 181 ; if the suit had been treated as abated the application must be made within three years of the order. (1912) M. W. N. 105 doubted. (*Sadasiva Aiyar and Spencer, JJ.*) KRISHNASWAMI IYER *v.* SEETHALAKSHMI AMMAL. 25 M. L T. 116 : (1918) M. W. N. 888 : 49 I. C. 268 : 9 L. W. 166.

———Art. 181—*Revival of suit—Inherent power*

An application to the Court to restore a suit in the exercise of its inherent power is governed by Art. 181 of the Lim. Act. (*Lindsay, J. C.*) RAMESHWAR DAYAL *v.* GUR SAHI 47 I. C. 137 : 5 O. L. J. 259.

———Art. 182.

Applicability.
Construction.
Continuation of proceedings.
Execution proceedings:
Res judicata.

Applicability.

———Art. 182—*Applicability— Execution of decree—Limitation.*

LIMITATION ACT (IX OF 1908), Art. 182—Applicability.

To make the provision of the Act apply to the execution of a decree, the decree must be such as to be capable of being enforced. Where a decree is passed against the estate of a deceased person in the hands of the judgment-debtors, limitation for execution runs from the date on which some part of the estate comes into the judgment debtor's bands (*Lord Phillimore.*) RAMESHWAR SINGH *v.* HOMESHWAR SINGH.

1 Pat. L. T. 731 : 19 A. L. J. 26 : (1921) M. W. N. 21 : 33 C. L. J. 109 : 25 C. W. N. 337 : 6 Pat. L. J. 132 : 13 L. W. 546 : 23 Bom. L. R. 721 : 59 I. C. 636 : 48 I. A. 17 : 40 M. L. J. 1 (P. C). [On appeal from 42 I. C. 666].

——Art. 182—*Applicability—Mortgage—Preliminary decree against joint mortgagors*—Ex-parte *decree against one deft. set aside on application—Fresh decree—Application for order absolute—Limitation—Order on prior application—When* res judicata.

A mortgagee obtained a decree against his mortgagors of whom S. was *ex-parte* on 25-8-1900 and it was made absolute on 21-12-1901. S. applied and got the *ex-parte* decree as against her set aside, but on 15-8-1902 a decree was also made against her which was confirmed on appeal on 16-11-1914. The decree-holder applied for an order absolute for an order for sale on 15-12-1905. but his application was granted only as against S. The decree-holder again applied on 21-12-1905 for execution by way of sale against all the defts. *Held*. that the execution was not barred. The earlier decree of 1900 having been treated by the Court and the parties as a mere step towards granting the relief, the later decree of 1904 which completed it, gave for the first time to the respondent decree-holder a right to joint execution. Under Art 179 of the Lim. Act, 1877, time began to run from 27-11-1905 when the order absolute was made on the decree of 1904 The dismissal of the prior application of 15-2 1905 did not operate as *res judicata* to the application of 21-12-1905, the latter being based on an order absolute which was different from and later than the prior order. It might have been more in accordance with strict procedure if the Court had set aside the whole judgment on the application of S. and had proceeded to retry the case against all the defts. The irregularity however had worked no wrong and was of no consequence. (*Lord Mersey.*) ASHFAQ HUSAIN *v.* GAURI SAHAI.

33 All. 264 : 15 C. W. N. 370 : 8 A. L. J. 332 : 13 C. L. J. 351 : 9 M. L. T. 380 : 13 Bom. L. R. 367 : 4 Bur. L. T. 121 : 21 M. L. J. 1140 : (1911) 2 M. W. N. 177 : 9 I. C. 975 : 38 I. A. 37 (P. C). [On appeal from 29 All. 623 : 4 A. L. J. 552 : 27 A. W. N. 204.]

——Art. 182—*C. P. C., S. 144—Applicability—Application for restitution.*

Where in an appeal to the Privy Council the parties are directed to bear their own costs and application by the appellant to recover the costs paid by him in pursuance of the decree of the

LIMITATION ACT (IX OF 1908), Art. 182—Applicability.

High Court is an application to enforce an order of His Majesty in Council although it falls under S. 144, C. P. Code, and is governed by S. 182 of the Act. (*Stuart, J.*) MADHUSUDAN DAS *v.* BIRJ LAL 61 I. C. 806.

——Art. 182—*Applicability—Application to ascertain—Mesne profits.*

An application for the ascertainment of mesne profits awarded by a decree but left to be ascertained in execution according to the Code of 1882 when it was in force is an application for execution and comes under Art. 182 of the Act. (*Macleod, C. J. and Shah, J.*) GANGADHAR MANIKA *v.* BALKRISHNA.

45 Bom. 819 : 61 I. C. 448 : 23 Bom. L. R 263.

——Art. 182—*Applicability of—Restitution—Application for.*

An application for restitution under S. 144 of the C. P. Code is an application for execution of a decree within the meaning of Art. 182 of the Act. (*Rattigan, C. J. and Le Rossignol, J.*) RAM SINGH *v.* SHAM PARSHAD.

36 P. W. R. 1918 : 15 P. L. R. 1918 : 44 I. C. 301 : 67 P. R. 1918.

——Art. 182—*Applicability of—Declaratory decree.*

A lien or judicial hypothic created by a declaratory decree does not cease to exist because an application for execution of the decree has not been made in accordance with Art. 179. (*Shah Din and Scott-Smith, JJ.*) FATEHCHAND *v.* MUSSAMMAT MANGHI BAI.

103 P. W. R. 1913 : 181 P. L. R. 1913 : 19 I. C. 481 : 109 P. R. 1913.

——Art. 182—*Applicability of—Decree for redemption—No time for payment fixed—Limitation—C. P. C., O. 34, Rr. 7 and 8.*

The limitation for execution of a decree for redemption which does not provide any period for payment of the mortgage amount is governed by Art. 182, Limitation Act. (*Shah Din and Chevis, JJ.*) NARAIN DAS *v.* UDHAM SINGH.

44 P. L. R. 1913 : 53 P. W. R. 1913 : 18 I. C. 48 : 68 P. R. 1913.

——Art. 182—*Applicability of—Restitution—Application.*

An application for restitution under S. 144, C.P.Code, is governed by Art. 182 and not Art. 184. 32 M. 136, Dist.; 20 M. 448; 40 M. 780 ; 22 M.L.J. 146. (*Abdur Rahim and Kumaraswami Sastri, JJ.*) UNNAMALAI AMMAL *v.* MATHAN.

6 L. W. 359 : (1917) M. W. N. 643 : 42 I. C. 530 : 22 M. L. T. 333: 33 M. L. J. 413.

——Art. 182—*Applicability of—Mortgage decree—Preliminary decree—Order absolute—Execution.*

The powers by which a preliminary decree under S. 88 of the T. P. Act is to be made absolute is by way of execution. The preliminary decree passed under S.88, T.P. Act, is executable. To obtain an order absolute under S. 89, T.P. Act, steps have to be taken in execution. Art. 182 of

LIMITATION ACT (IX OF 1908), Art. 182—Applicability.

the Limitation Act(1908) governs such applications There is a fresh starting point given to the decree-holder after the preliminary decree ripens into a final decree. Case law considered. (*Seshagiri Aiyar and Kumaraswami Sastri, JJ.*) MAHOMED HUSAIN *v.* ABDUL KAREEM. 39 Mad. 544 : 29 I. C. 237 ; 17 M. L. T. 424.

———Art. 182 — *Applicability of — Mortgage decree—Execution—Limitation.*

For an application for execution of a decree for a sale in a mortgage suit, limitation runs from the date of the order absolute. (*Sundara Aiyar, J.*) RAMASWAMI IYANGAR *v.* CHINNATHAMBI. 18 I. C. 10.

———Art. 182—*Applicability — Mesne profits for particular year—Limitation.*

An execution application, otherwise in time, will not be barred, merely because the claim under the decree for mesne profits for a particular year is more than three years from the date of the application ; the starting point for limitation is the date of the decree. (*Ayling and Sundara Aiyar, JJ.*) MALLADI RAM SOMAYAJULU *v.* BRUNDAVANAM PRAMAYYA. 12 I. C. 272 : (1911) 2 M. W. N. 258.

———Art. 182—*Applicability of—Transfer of decree—C. P. Code, S.* 48.

Although a decree is transferred by the Court which passed it to another for execution, the control of the execution is still in several respects in the hands of the former Court. So when a decree of the Pres Small Cause Court is transferred to the City Civil Court for execution Art. 182 of the Lim. Act and not S. 48, C.P.Code, governs the case for purposes of limitation.

Obiter—Limitation is a law of procedure for some purposes, *e g.*, when questions of private international law have to be decided and a Court has to settle the law of which state should be applied in case of conflict (*Sunaara Aiyar and Ayling, JJ.*) SREE KRISHNA DOSS *v.* ALAMBU AMMAL. 36 Mad. 108 : 10 M.L.T. 70 : (1911) 2 M. W. N. 565 : 11 I C. 635 : 21 M. L. J. 777

———Art. 182—*Applicability— Restitution—Article applicable—Proceedings in execution.*

An application for restitution is in substance an application for execution though the rules of O. 21, C. P. Code, may not apply. Consequently Art. 182 of the Lim. Act applies to such applications. (*Miller C.J. and Jwala Prasad, J.*) BASANTA KUMARI DASI *v.* BALMAKUND MARWARI. 2 Pat 277 : 1 Pat. L. R, 338 : 1923 Pat. 1 : 1923 P. 371.

Construction.

———Art. 182—*Construction of—Attachment of decree—Application for execution of attached decree—Decree* 1907—*Application* 1909.

It is the Limitation Act that is in force on the date of an application that will govern it.(*Piggott J.*) MAHARAJA OF JAIPUR *v.* LALJI SAHAI. 25 I. C. 738 : 12 A. L. J. 1006.

———Art. 182—*Construction of—C. P. Code, S.* 48.

LIMITATION ACT (IX OF 1908), Art. 182—Continuation of proceedings.

The fresh periods obtainable under Art. 182 are controlled by S. 48, C. P. Code. *N.* got a compromise decree in 1884 by which the amount was payable in instalments and on default *N* was to get possession of a share of a property *P.* Default was made in 1892, application for possession was made in 1898 and the judgment-debtor died in 1902 and his minor sons, through next friend, applied to be brought on record but their application as well as that of *N* to execute the decree were struck off. In 1909 one of the sons attained majority and a fresh application was made. *Held*, the application was barred by S 48, C. P. Code. (*Scott, C. J. and Hayward, J.*) BALARAM VITHALCHAND *v.* MARUTI DEVJI. 39 Bom. 256: 28 I C. 748 : 17 Bom. L. R. 178.

Continuation of proceedings.

———Art. 182—*Continuation of proceedings—Suspension of execution proceedings.*

Where execution proceedings are suspended at the instance of a stranger having filed a suit in respect of the property, which is the subject-matter of the execution proceedings, an application made just after the close of that suit is not time barred though it is filed more than three years after the date of suspension. The application is in effect one to revive the old one and not a new application at all 27 All. 337 (P.C.) Foll. (*Walsh and Kanhaiya Lal, JJ.*) MAHOMED HADI *v.* DEBI PRASAD. 1923 All. 600.

———Art. 182—*Continuation of proceedings—Suspension of execution.*

Where the proceedings in pursuance of an application for execution are suspended by the executing Court through no act or default of the decree-holder an application to receive and carry on the execution will not be barred even though made after three years after the suspension of the execution. 27 A. 334, foll. (*Lindsay, J.*) AMJAD ALI KHAN *v.* MOHAMMAD USMAN. 1923 All. 471.

———Art. 182—*Continuation of proceedings—Former execution application consigned to record room.*

Where without any fault or delay on the part of the decree-holder and without notice to him, the court consigns an application for execution to the record room, a further application for execution will be treated as one for continuation of the old application. 37 A. 518 foll. (*Walsh and Ryves, JJ.*) RAM LAKHAN SINGH *v.* MEWA LAL. 3 U.P L R. (A.) 13 : 1923 All 433.

———Art. 182—*Continuation of proceedings—Test of Application—Struck off for omitting to bring legal representatives of deceased decree-holder—Subsequent application by decree-holder's son*

A decree-holder applied for execution within three years of decree but died pending disposal. His major son applied to execute the decree after recognising him as the legal representative of the deceased decree-holder. Pending this the application preferred by the decree-holder was struck off on the report of the decree-holder's vakil that he had no instructions. *Held*,

LIMITATION ACT (IX OF 1908), Art. 182—Continuation of proceedings.

that the original application for execution was validly disposed of when it was struck off; that the minor son's application was a fresh application for execution and having been presented more than 3 years after the disposal of the prior application was barred. (*Piggott and Walsh, JJ.*) RATI RAM *v.* NADAR. 41 All 435 49 I. C. 990 : 17 A. L. J. 649.

———Art. 182—*Continuation of proceedings—Execution application—Decree satisfied by attachment and execution of another decree set-aside eventually— Fresh application for execution—Limitation.*

Where appellant in execution of a decree for costs against a respondent, attached and executed a decree obtained by the latter, but the latter decree having been set aside on appeal, the appellant made a fresh application for the execution of his decree more than three years after his last application *Held* that the application being in form and substance one for execution of a decree was barred under Art. 182 of the Lim. Act. (*Tudball, J.*) SUNDER LAL *v* BANARSI DAS. 45 I. C. 531.

———Art. 182—*Continuation of proceedings—Fresh application or revival.*

The question whether an application for execution of a decree is a new application or a revival or continuation of an old one is a simple question of substance and not of form. (*Piggott and Walsh, JJ.*) SANT LAL *v.* SRI NEWAS DAS. 32 I. C. 1005.

———Art. 182—*Continuation of proceedings—Application consigned to record room—Decree holder not at fault—Second application—Revival.*

An application for execution by sale was made on 1st. Dec. 1908. The Collector, to whom the proceedings had been transferred, discovered that part of the property belonged to persons other than the judgment-debtor and sent the case back. The Subordinate Judge called upon the pleader for the decree-holders to make a statement and on his failure to do so consigned the case to the record room. More than three years after, the present application for execution was made. *Held*, that the present application was an application to revive the execution proceedings which had been suspended owing to no default of the decree-holders and that the execution was not barred by limitation. (*Chamier and Piggott, JJ.*) YAKUB ALI *v.* DURGA PRASAD. 37 All. 518 : 30 I. C. 877 : 13 A.L.J. 760.

———Art. 182—*Continuation of proceedings—Power to retransmit the record to Collector—Jurisdiction—No fresh application necessary.*

Where a decree transmitted to the Collector for execution, has been returned by him to the Civil Court after some time, but without putting an end to the execution petition, the Civil Court has jurisdiction to go on with the execution and to transmit it to the collector so long as the execution proceedings are pending, and the decree-holder need not put in a fresh application for execution and start proceedings *de novo*. (*Tudball and Rafique, JJ.*) SAHIB DYAL SINGH *v.* AULIYAI BIBI. 18 I. C. 1004.

LIMITATION ACT (IX OF 1908), Art. 182—Continuation of proceedings.

———Art. 182—*Continuation of proceedings—Execution—Revival—Bar by lapse of time.*

A judgment-debtor died and execution against his minor heir was brought. The execution was set aside on the ground that she was not properly represented at the execution proceedings. *Held* a second application to revive the first application is barred by limitation if more than 3 years later (*Knox and Griffin, JJ.*) MOHAMED ISMAIL KHAN *v.* RASHID-UN-NISSA. 12 I. C. 628 : 8 A. L. J. 1277.

———Art. 182—*Continuation of proceedings.*

An application for execution may be deemed to be one to revive and carry through a pending proceeding, when the latter was arrested by reason of circumstances over which the decree-holder had no control. (*Mookerjee and Panton, JJ.*) RAJANI BANDHU CHATTERJI *v.* KALI PRASANNA CHATTERJI. 1924 Cal. 419.

———Art. 182—*Continuation of proceedings—Revival of prior application—Circumstances justifying inference.*

A consent decree was made on the 26th June 1915. On the first application for execution made on the 24th June 1916 the court directed a writ of attachment to be issued. The writ being returned unserved, the court on the 4th August 1916, directed a fresh attachment to issue. The decree-holder was ordered to file process and process-fees within five days. This order was carried out. But on the 5th August, 1916, the judgment-debtor filed a petition under O. 21, R. 2 of the Code of Civil Procedure to the effect that the decree had been satisfied out of court and consequently no execution could issue on the basis thereof. The objection was numbered as a separate case. The two cases were adjourned from time to time and on the 9th December 1916, the objection case as well as the execution case came up for consideration. The objection case was dismissed for default. Afterwards the following order was made in the execution case: "The pleader for the decree-holder has no objection to his case being dismissed provided he gets his costs. The execution case is dismissed for default. The decree-holder will get his costs." Subsequently on the 27th November, 1919, the present application was made: *Held* that the execution proceedings which had been initiated on the 24th June, 1916, had been suspended by reason of the objection taken by the judgment-debtor. As soon as the objection was abandoned on the 9th December 1916, it became the duty of the court to proceed with the application for execution. The order for dismissal made on the 9th December, 1916, should be treated as equivalent to an order for striking off the case or removing it from the file for the convenience of the Court. 23 All. 114 Ref. An application for execution of a decree may be treated as one in continuation or revival of a previous application, similar in scope and character, the consideration of which has been interrupted by the intervention of objections and claims subsequently proved to be groundless or has been suspended by reason of an injunction or like obstruction. 37 Cal. 796

LIMITATION ACT (IX OF 1908), Art. 182—Continuation of proceedings.

foll. (*Mookerjee and Panton, JJ.*) CHOWDHURY AJODHYA NATH PAHARY *v.* CHOWDHURY SRINATH CHANDRA PAHARY. 26 C. W. N. 838 : 68 I. C. 207 : 35 C. L. J 84.

——Art. 182—*Continuation of proceedings—Execution application.*

Where execution sale is set aside at the instance of judgment debtor his subsequent application for execution is treated as one for continuation of earlier application (*Mookerjee and Panton, JJ.*) JIRA BIBI *v.* MAJIRUDDIN CHOWDHURY. 64 I. C. 849 : 35 C. L. J, 135.

——Art. 182—*Continuation of proceedings Fresh application—Filing of supplemental list of properties to be attached not mentioned in application—Continuation.*

Where on an application for execution of a decree is made in accordance with law, execution cannot be successfully taken against the specified properties in the application by reason of causes beyond the control of the decree-holder he should not be confined to the properties first specified. It is open to him to ask the Court to proceed against other properties specified in his further supplementary list. (*Teunon and Cuming JJ.*) MOHINI MOHAN SARKAR *v.* NAVADWIP CHANDRA BISWAS. 47 I. C. 911

——Art, 182—*Continuation of proceedings application dismissed for default—Continuation of ot s.*

Where an execution application has been dismissed for default of decree-holder a subsequent application cannot be construed for purposes of limitation as one in continuation of the previous application (*Richardson and Walmsley, JJ.*) MIDNAPORE ZEMINDARI COMPANY, LIMITED *v.* DINA NATH SAHU, 45 I. C. 712 : 22 C. W. N. 766.

——Art 182—*Continuation of proceedings—Execution—Decree Exparte satisfied by one Judgment debtor—Decree set aside by latter—Application for execution against other judgment-debtor—Limitation.*

Where an exparte decree which had been executed against one of the judgment-debtors is set aside in a suit by that judgment debtor a further application on that date by the decree-holder to execute the decree against the other judgment-debtor must be treated as a continuation of the original application which was made within time. (*Fletcher and Richardson, JJ.*) KERAMAT ALI *v* NAGENDRA KISHORE ROY. 40 I. C. 78 : 21 C. W. N. 671.

——Art. 182—*Continuation of proceedings—Effect of sale in execution being set aside.*

The decree-holder can execute the balance of the decree though time barred if the sale partly satisfying the decree is set aside. 17 C. 286. Dist. (*Chapman and Mullick, JJ.*) KRISHNA PRASAD SINGH *v.* MALI CHAND. 32 I. C. 699.

——Art. 182—*Continuation of proceedings—Pending application— Execution suspended by injunction—Second application after dissolution of injunction—Continuance of first application.*

LIMITATION ACT (IX OF 1908), Art. 182—Continuation of proceedings.

Where the execution of a decree is suspended by an injunction obtained by the judgment debtor, and a fresh application for execution is put in for the same relief as in the first application the fresh application must, for the purpose of limitation, be deemed to be a continuation of the first application, The intervention of an application in execution for an additional relief, between the first and the second application, will not make any difference 27 A. 334, P.C. Foll. 6 C. W. N. 735, Dist. (*Mookerjee and Beachcroft, JJ.*) TILAK DHARI LAL *v.* BIKRAN SINGH 20 I. C. 244 : 18 C. W. N. 539.

——Art. 182—*Continuation of proceedings—Bar to execution—Bengal Tenancy Act (VIII of 1885) Sch. III, Art. 6, Cl. (3).*

Where a decree-holder's application for execution is delayed by a bar imposed at the instance of the judgment-debtor, a second application by the former must be deemed to be a continuation of the first application if the second is presented after the removal of the bar. 27 A. 334; 7 I. C. 886; 11 I. C. 48 Rel. This principle is applicable to cases of applications for execution of rent decree. (*Mookerjee and Carnduff, JJ.*) RAMESHWAR SINGH *v.* TIRPIT SINGH. 18 I. C. 140.

——Art. 182—*Continuation of proceedings—Claim by judgment-debtor—Failure—Application for execution if a continuation of the former—Effect where claim is successful.*

Where in the execution of a decree a claim petition is first successful but ultimately ends in failure, the decree-holder is entitled to treat a subsequent execution application as one in continuation of the earlier; but it is not so where such a claim is successfully proved ultimately. (*Mookerjee and Casperz, JJ.*) KEDAR NATH *v* PRODYOT KUMAR. 11 I. C. 48 : 14 C. L. J. 610.

——Art. 182—*Continuation of proceedings—Surety for judgment-debtor—Application against judgment-debtor—Effect on surety.*

A judgment-debtor preferred an appeal against the decree and gave a surety for the decretal amount. The appeal was dismissed and decree-holder applied for execution against judgment-debtor's property. More than three years after this application he applied for execution against surety. *Held*, the application is barred. The application against Judgment-debtor did not save limitation against the surety. (*Chevis, J.*) WAZIR BAKSH *v.* HIRA RAM. 60 I. C. 265 : 3 U. P. L. R. (Lah.) 62.

——Art. 182—*Continuation of proceedings—Application for final decree—Injunction—Dismissal of application for final decree—Effect.*

An application for final decree in a redemption suit was stayed by means of an injunction in a pre-emption suit, and though the money was deposited in court, the application was dismissed the money throughout remaining in court. *Held* the dismissal is one purely for statistical purposes and it only operates as a suspension of proceed-

LIMITATION ACT (IX OF 1908), Art. 182—Continuation of proceedings.

ings until some obstacle is removed and till then it is to be treated as pending. (*Oldfield and Devadoss, JJ.*) AYISSA UMMA *v.* ABDULLA.
(1923) M. W. N. 670 : 1924 Mad. 178.

——Art. 182—*Continuation of proceedings—Dismissal, first application—Third party—Pending the execution of.*

Where the first application was dismissed for non-payment of *batta* the plaintiff applied again. In the mean time the properties were attached in pursuance of the first application, a third party claimed the right to the property ; but the plaintiff on appeal (got the decree reversed on his side): *Held*, that the dismissal of the first application had nothing to do with the claim or suit brought by the third party, and so execution under his first application cannot be treated as pending during the time he was litigating to remove the obstacles placed in his way by the third party. (*Spencer and Krishnan, JJ.*) YELLAMPALLE VENKATAPPA *v.* MATAM NANJAPPA.
4 L. W. 112 : 35 I. C. 594 : (1917) M. W. N. 139.

——Art. 182—*Continuation of proceedings—C. P. C. O. 21, Rr 10 and 64—Execution—Order for attachment—Application for execution not disposed of—Subsequent application sale, if barred.*

An application for sale of property attached on a previous execution application which was not disposed of, is not a new application but one to enforce the old ; and the decree holder is not guilty of laches in prosecuting the original application. (*Seshagiri Aiyar and Kumaraswami Sastri, JJ.*) BOMMARAJU VENKATA *v.* SUBRAMANIA NAYANI VARU. 31 I. C. 87.

——Art. 182—*Continuation of proceedings—No limitation.*

An execution petition which does not appear to have been dismissed, struck off or otherwise disposed of, is still subsisting and a second application merely revives the old proceeding and S. 48 of the C. P. C. has no application. (*Sadasiva Aiyar and Napier, JJ.*) VENKATAMMA *v.* MANIKKAM NAYANI VARU. 26 I. C. 244 : 16 M. L. T. 399

——Art. 182—*Continuation of proceedings—Execution of Decree—Claim petition—Stay of execution—Later application.*

Where in a pending execution application, proceedings are stayed till the disposal of a claim and granting time to the execution creditor to file certain papers, the period of limitation runs against the execution creditor from the date of the disposal of the claim. If he later on files a fresh execution application, it should be construed as an application to revive and carry through a pending execution petition. 27 A. 334 ; 28 M. 50, Rel. (*Benson, O C. J. and Napier, J.*) KRISHNA DOSS *v.* MAHOMED MIAN KOWTHEN.
16 I. C. 484 : (1912) M. W. N. 860.

——Art. 182—*Continuation of proceedings—Execution application—Order attaching immoveables, but otherwise petition dismissed—Subsequent application—Lapse of time.*

LIMITATION ACT (IX OF 1908), Art. 182—Continuation of proceedings.

Where an order was made on an execution application to the effect that the immoveable property should be attached but otherwise the petition was dismissed. *Held* that a subsequent application made after the lapse of 7 or 8 years was barred because it could not be considered as a continuation of the previous proceedings. 31 M. 71, 37 C. 796, 27 A. 334 Dis. (*Benson and Abdur Rahim, JJ.*) PARRY & CO. *v.* VADIVELU PILLAI.
13 I. C. 160.

——Art. 182—*Continuation of proceedings—Continuation of a prior execution application—Modes of execution prayed for different—No continuation.*

An application can only be considered as a continuation of the previous application, when it is similar in scope and character to the former application. Where the former application asked the court, in form and in substance, to sell the properties of the Judgment-debtor, other than those which were comprised in the mortgage bond, and the next application in form and in substance asked the court to realise the money from the Judgment-debtor by his arrest and detention in prison, *Held*, that it is quite impossible to regard the second application as a continuation of the previous application. The fact that the decree obtained was a mortgage decree makes no difference. 2 P. L. T. 22 foll. (*Das and Adami, JJ.*) RAMESHIVENDRA NARAYAN OJHA *v.* AWADH BEHARI SARAN.
4 P. L. T. 398 : 1923 P. 488.

——Art 182—*Continuation of proceedings—Dismissal of execution application.*

If an execution application is dismissed for no fault or laches on the part of the decree-holder, a subsequent application, in all respects similar to the former is a continuation of that application. But if it is dismissed on account of the default of the decree-holder in not taking steps to proceed with it a subsequent application cannot be treated as a continuation or revival of the previous application. (*Jwala Prasad and Adami, JJ.*) KESHEO PRASAD SINGH BAHADUR *v.* HARBANS LAL.
53 I. C. 85 : 1920 P. 109.

——Art. 182—*Continuation of proceedings—Fresh application.*

An application for execution of a decree can be treated as a continuation of a previous application even when the property asked to be sold is entirely different. (*Jwala Prasad and Coutts, JJ.*) KEHWESA RINDIA SAHI *v.* DEBENDRA BALA DASS. 4 Pat. L. J. 213 : 48 I. C 245 : 1919 P. 121.

——Art. 182—*Continuation of proceedings—Sale set aside owing to fraud of judgment-debtor—Continuation of prior application.*

Where an execution sale is set aside on the ground of the fraud of the judgment creditor the application in consequence of which the sale was ordered may be deemed to be pending and a subsequent application for execution may be con-

LIMITATION ACT (IX OF 1908), Art. 182—Continuation of proceedings.

sidered as a continuation of that application. (*Maung Kin, J.*) ARUNACHALLAM CHETTY v. MAUTHA. 10 L. B. R. 84 : 55 I. C. 707 : 12 Bur. L. T. 245.

——— Art. 182—*Continuation of proceedings—C. P. C (Act XIV of 1882), Ss. 235. 237 and 238—Application for execution struck off at creditor's request—Subsequent application more than three years after the decree—Limitation.*

Where an execution application is struck off at the request of the decree-holder and a subsequent application is filed more than 3 years after the date of decree but within 3 years of the last one, it is not barred under Art. 182 (5) of the Limitation Act as it cannot be regarded as a revival of the earlier application. 27 A. 334 P. C. Dist. (*Pratt, J. C. and Crouch, A. J. C.*) JANUL v. HARUMAL. 11 I. C. 77 : 5 S. L. R. 68.

Date of decree.

See LIMITATION ACT, ART. 182 (1).

Execution proceedings.

———Art. 182—*Execution proceedings—Application for ascertainment of mesne profits—Liability of surety.*

An application for the ascertainment of mesne profits awarded by a decree prior as well as subsequent to its date, is not a proceeding in the suit but a proceeding in execution and comes within Art. 182 of the Lim. Act. Though sureties may not be necessary parties to an application by a decree-holder for ascertaining the mesne profits, still an application for ascertainment of mesne profits against the judgment-debtors does not keep alive the decree against the sureties (*Macleod, C. J. and Crump, J.*) USUF ALLI MEJAWAR ALLI v. AMIN CHANDSAHEB. 25 Bom L R 810 : 1923 Bom. 366.

———Art. 182—*Execution proceedings—Restitution, C. P. Code, S. 144.*

An application for restitution under S. 144, C. P. Code, is one for execution of decree of the Appellate Court and is thus governed by Art. 182. (*Macleod, J C. and Shah, J.*) HAMIDALLI KADAMALLI v. AHMEDALLI MHIBUBALLI. 45 Bom. 1137 : 62 I. C. 233 . 23 Bom. L. R. 480.

——— Art. 182—*Execution proceedings—Partial decree—Appeal—Dismissal—Starting point for application for execution.*

A sued B and C on a hand note. The suit was decreed against B but dismissed against C. A, then appealed against the order of dismissal without joining B. The appeal was dismissed. He then applied for execution within three years of the appellate decree. *Held*, the application was not barred. (*Teunon and Beachcroft, JJ.*) SATISH CHANDRA v. GIRISH CHANDRA. 60 I. C. 915 : 47 Cal. 813.

———Art. 182—*Execution proceedings—Execution of decree—Barred—Revival.*

Where an application for the execution of a decree is barred by limitation it cannot be revived by a subsequent application for amendment. (*N. R. Chatterjee and Panton, JJ.*) RABIUDDIN v. RAM KANAI SEN. 59 I. C. 186.

——— Art. 182—*Execution proceedings—Application—Prior applicant.*

LIMITATION ACT (IX OF 1908), Art. 182—Res-judicata.

An application for execution of a decree which is presented more than three years after a prior application by a person not entitled to execute the decree and claiming hostility to the petitioner, is barred by Art. 182 of the Limitation Act The prior applicant cannot be treated as the representative of the petitioner to the prejudice of the judgment debtor. (*Oldfield and Sadasiva Aiyar, JJ.*) SAMINATH ASARI v. G. GOPALAKRISHNA AIYANGAR. 37 I. C. 750 : 4 L. W. 291.

———Art. 182 — *Execution proceedings—Application under C. P. C., O 34, R. 6.*

An application for an order under O. 34, R. 6, C. P. Code, must be treated as an application in execution proceedings to which Art. 182 of the Lim. Act would apply. (*Evans, A. J. C.*) AMIR CHAND v. NARSINGH NARAIN. 10 I. C. 21.

———Art. 182—*Execution proceedings—Prior application barred—Execution allowed to proceed—Default of judgment-debtor—If can raise question again.*

Where an execution application is allowed, without the judgment debtor contending it is barred, and the same is not challenged in appeal he cannot in subsequent proceedings in execution re-agitate the question that the prior application was barred. (*Dawson Miller, C. J. and Kulwant Sahay, J.*) JAGO MAHTON v. KHIRODHAR RAM. 2 Pat. 759 : 1924 Pat. 122.

Res judicata.

———Art. 182—Res judicata — *Step in aid—Proper court—Application for execution no made to proper court—Effect in saving limitation.*

A suit was filed in the court of a munsif having jurisdiction and a decree was passed by the appellate court in 1910. Petition for execution was filed before the munsif who had succeeded the munsif that tried the case. He had no jurisdiction to try cases of the suit amount. This was in April 1913 On 14th July a second application was made to a munsif having only ordinary powers The District Judge held that a munsif having ordinary powers had no jurisdiction to entertain this execution application but in a subsequent decision he held that the petition of 14th July 1915 was not time-barred because the munsif had powers to receive the application even though he had no power to pass proceedings on it. *Held*, that the finding that the munsif had no jurisdiction to execute the decree had become *res judicata* between the parties in as much as it was not taken into appeal and that the application of 3rd February did not operate to save limitation under S. 14 of the Lim. Act as was held by the District Judge. (*Fletcher and Newbould, JJ.*) DHUKI RAM DHOK v. MATABI BIBI. 39 I. C. 795.

———Art. 182—Res judicata —Ex parte *order without notice to judgment debtor that execution application is not time-barred.*

An *Ex parte* order passed without giving notice to the judgment-debtor that an execution application is not barred will not estop the judgment-debtor from raising the plea of limitation in a subsequent execution application. (*Fletcher and Richardson, JJ.*) JUGOL KISHORE MARWARI v. CHITRAMONI ROY. 24 I. C. 80 : 20 C. L. J. 15.

LIMITATION ACT (IX OF 1908), Art. 182—Res judicata.

Step in aid.

See LIMITATION ACT, ART. 182 (5).

———Art. 182—*Step-in-aid—Application in accordance with law—Meaning of.*

If the applying complies with the forms and the procedure prescribed in that behalf, the applying was in accordance with law, and not the less so because, on the merits of the application, whether for one reason or another, the application had to be refused. The words in accordance with law have no reference to the likelihood of the application succeeding or to the competency of the Court to grant any particular relief prayed for (*Chandavarkar and Batchelor, JJ.*) BANDO KRISHNA KAMBARGI *v.* NARASIMHA KOUTHER DESPANDE. 37 Bom. 42 : 17 I. C. 210: 14 Bom. L. R. 861.

———Art. 182 (1)—*Date of decree.*

Under this article the period of three years of limitation runs from the date of the decree and not from the date of the order to dismiss the appeal for want of prosecution. (*Lord Atkinson.*) SACHINDRA NATH ROY *v.* MEHRAJA BAHADUR SINGH. 4 U. P. L. R. (P. C.) 57 : 30 M. L T. 96 : 24 Bom. L. R 659 : (1922) M. W. N. 338 : 26 C. W. N. 858 : 49 C. 203 : 48 I. A. 335 : 1922 P. C. 187.

———Art. 182 (1)—*Date of decree or order—Meaning of—Executable decree.*

Art. 182 (1) contemplates only a decree or order made in such a form as to render it capable of being enforced in execution; if a further application is necessary to make the decree executable then Art. 181 applies for such further application. (*Lord Phillimore.*) RAMESHWAR SINGH *v.* HOMESHWAR SINGH. 40 M. L. J. 1 : 48 I A. 17 : 19 A. L. J 26 : 1 Pat. L. T. 731 : 59 I C. 636 : 23 Bom. L R. 721 : (1921) M.W N. 21 : 33 C. L J. 109 : 25 C. W. N. 337 : 6 P L J. 132 : 13 L. W. 546 (P.C.).

[Reversing on appeal 2 Pat. L W. 199 : 42 I. C. 666 : 1917 Pat. 253.]

———Art. 182, *Expl. I—Date of decree—Limitation—Starting point.*

A mortgage decree was passed against several defendants but *ex parte* against one deft. on whose application the decree was set aside as against him and a fresh decree was subsequently passed *Held*, an application for order absolute against all defts. was governed by Art. 182 but the starting point of limitation was the date of the later decree. (*Lord Mersey*) ASHFAQ HUSSAIN *v.* GAURI SAHAI. 33 All. 264 : 38 I. A. 37 : 15 C. W N. 370 :, 8 A. L. J. 332 : 13 C. L. J. 351 : 9 M. L. T. 380 : 13 Bom L. R. 367 : 4 Bur. L T. 121 : 9 I. C. 975 : (1911) 2 M. W. N. 177 : 21 M L. J. 1140 : (P. C.)

[On appeal from 29 All. 623 : 4 A. L. J. 552 : 27 A. W. N. 204.]

———Art. 182 (1)—*Date of decree—Indefinite decree—Execution—Starting point.*

LIMITATION ACT (IX OF 1908), Art. 182 (1).

A decree passed in 1894, directed that plaintiffs would be entitled to get possession on payment of Rs. 750, in Jeth of any year. *Held*, that the right to apply for execution would accrue only when the payment is made and in this case it having been made in 1915, the present application was not barred by limitation. (*Banerji and Ranque, JJ.*) RUKMINA KUAR *v.* SHEO DAT RAI. 1 U. P. L. R. (H. C.) 118 : 51 I. C. 576 : 17 A. L. J. 841.

———Art. 182 (1)—*Date of decree—Instalment decree—Default—Waiver—Limitation.*

Plff. obtained a decree in February 1916 for a large sum of money payable in monthly instalments of Rs. 50 each, the whole amount to be realised by sale of the hypotheca on default in payment of any six instalments. There was default in payment of the first six instalments up to August 1916. In April 1917 the defts. paid Rs 5,500 and in January 1918 Rs. 400 towards the decretal amount to the plaintiffs. In September 1919 plaintiffs applied to recover the balance of the decretal amount by sale of the mortgaged properties. On a question arising as to whether the payments of 1917 and 1918 constituted waiver *Held* that there was no evidence of waiver and that the application was barred by limitation. (*Macleod, C. J. and Crump, J.*) HANSRAJ GOKULDHAJI *v.* BAPU. 25 Bom. L. R. 153 : 1923 Bom. 207 :

———Art. 182 (1)—*Date of decree—Partition suit—Final decree—Execution—Limitation.*

In a partition suit, the final decree, though erroneously obtained, is the decree to be executed and limitation for execution would begin to run from the date of that decree. (*Macleod, C. J. and Fawcett, J.*) DAYABHAI CHUNILAL *v.* BAI UJAM. 45 Bom. 952 : 61 I. C. 159 : 23 Bom. L. R. 308.

———Art. 182 (1) and (7)—*Instalment decree—Default—Limitation.*

Under a decree passed in 1909, an amount of Rs 860 was payable by annual instalments and in case of failure to pay any one instalment within the period fixed or until the period of next instalment, the plff. was to recover the whole amount due at that time. The first instalment became due on 6-6-1910 but that the succeeding instalments were not paid. The decree-holder applied on 6-9-1915 to execute the whole decree. *Held*, that the execution was barred by limitation, the decreeholder not having applied to execute the decree within three years of the first default. (*Beaman and Heaton, JJ.*) RAICHAND MOTICHAND GUJAR *v.* DHONDU LAXUMAN BHURE. 42 Bom. 728 : 47 I. C. 313 : 20 Bom. L R. 773.

———Art. 182 (1)—*Date of decree—Partition decree—Decree not drawn up owing to delay in furnishing stamp papers—Time for execution.*

Under the Stamp Act a decree for partition is chargeable with duty to the amount prescribed by Art. 45 of Schedule I of the Act and the expense of providing the proper stamp is to be borne by the parties to the decree in such proportions as the Court directs. The result is, that a decree for partition is not formally drawn up until paper

LIMITATION ACT (IX OF 1908), Art. 182 (1).

bearing the proper stamp is supplied to the Court. The decree is then engrossed on the stamp paper and signed by the Judge. A decree for partition was signed by the Judge on the 2nd January 1920, no stamped paper having been furnished till on or shortly before that date. The judgment was pronounced on 25-3-1914. The delay in signing the decree was due not to any fault of the Court or to any cause beyond the control of the parties but solely to the delay of the parties in supplying the requisite stamped paper. *Held*, that the circumstances disclose no ground for saying that limitation did not run from the date of the decree as provided in Art. 182 of the Limitation Act. (*Sanderson, C. J. and Richardson, J.*) KISHORI MOHAN PAL v. PROVASH CHANDRA MANDAL. 1924 Cal. 351.

——— Art. 182 (1)—*Date of decree*—Ex parte *decree set aside against some defendants.*

Where an *ex parte* decree having been passed against three defendants it was set aside and another decree passed in favour of one of those, limitation for execution against the other two defendants runs from the date of the first decree. (*Teunon and Newbould, JJ.*) UMESH CHANDRA ROY v. AKRUR CHANDRA SIKDAR.
50 I. C. 15 : 46 Cal. 25.

———Arts. 182 (1) and (4—*Date of decree*——*Decree incapable of execution*—*Limitation*

Limitation for an application for execution of a decree can apply only where there is a decree capable of execution and consequently a decree incapable of execution cannot be time barred If the decree is amended time runs from the date of amendment. (*N. R. Chatterjee and Walmsley, JJ.*) MAHAMAYA PRASAD SINGH v. ABDUL HAMID.
21 I. C 615 : 18 C. W. N. 266.

———Art. 182, cl. (1)—*Date of decree—Step-in-aid—Payment of Court fee to complete decree*

The date of the decree for purposes of Article 182 must be taken to be the date of the judgment whatever the date on which a decree may be stamped. The payment of the Court-fee for the decree is not a step-in-aid of execution. (*Jenkins, C.J. and Mullick, J.*) BHAJAN BEHARI v. GIRISH CHANDRA. 19 I C. 410 : 17 C. W. N. 959.

———Art 182 (1)—*Date of decree—Decree for perpetual injunction—Breach — Limitation for execution.*

When a perpetual injunction has been granted on each successive breach of it the decree may be enforced by an application made within three years of such breach. 29 M. 314 ; 28 A 300 ; 23 A. 465. Ref. Cultivation of land is an infringement of the right of grazing and evey successive season in which the land has been cultivated is the occasion of a fresh breach of the injunction. (*Chevis, J.*) UDMI v. SOHAN LAL 66 I. C. 166

———Art. 182 (1)—*Date of decree*—Ex parte *decree—Setting aside.*

A decree passed *ex parte* was subsequently set aside and another passed on its merits Several applications for execution were made but no proper application was made within three years from the date of the new decree. *Held*, the subsequent application was held to be time barred and that all previous applications under the *ex parte* decree were null and void (*Ralligan, J.*) NATHUMAL v. PALA MAL. 78 P. W R. 1916 : 103 P. R. 1916 : 35 I. C. 110 : 133 P. L R. 1916.

——— Art. 182, Explⁿ. 1—*Date of decree—Step-in-aid—Who must apply—Decree for partition—Execution application by defendant—Fresh starting point in favour of plaintiff*

A partition decree, which awards to the plaintiff an aliquot part, specified as one quarter of certain family lands and the profits therefrom and also his costs, the ascertainment of the particular lands and the amount recoverable as profits being reserved for execution, is a decree passed jointly in favour of all the sharers within the meaning of Explⁿ 1 of Art. 182 of the Lim. Act. And an application by the plaintiff for execution of such a decree filed within 3 years of an application for execution filed by the second defendant, another sharer, is not barred, though plaintiff's own prior application was filed more than 3 years before. (*Oldfield and Venkatasubba Rao, JJ.*) VASUDEVA MUTHU SHASTRY v. VITTAL SHASTRY. 43 M. L. J. 379 : 1922 M W. N. 518 : 31 M. L. T. 311 (H. C.) : 16 L W. 292 : 1922 Mad 456.

——— Art. 182. cls (1) and (5)—*Step-in-aid—Who must apply—Decree in favour of one person—Transfer to different persons—Application for execution by one—If a step-in-aid of execution.*

The provisions of cl. (5) of Art, 182 of the Act is not restricted in its application by cl. (1) of the same article. Where a decree is passed in favour of one person and is transferred, to two persons in parts an execution application by one of such transferees enures to the benefit of the other transferee and saves limitation for his portion. (*Sadasiva Aiyar and Spencer, JJ.*) VENKATA REDDAYYA v. YARAKAYYA.
41 M L. J. 312 : 30 M. L. T. 69 : 15 L. W. 157 : 45 M. 35 : 1922 M. 129.

——— Art. 182 (1)—*Date of decree—Mortgage decree.*

Period of limitation for execution of a decree for sale in suit on a mortgage begins from the date of which decree *nisi* for sale is made absolute. (*Benson and Sundara Aiyar, JJ.*) VENKATA PERUMAL RAJU v. AUDIKESAVALU REDDI.
12 M. L. T. 669 : 17 I. C 759 : 23 M. L. J. 675.

———Art. 182 (1) — "*Date of the decree*"—*Portion of amount left unspecified and left to be determined—Cause of action, when arises.*

Where a portion only of the amount decreed is left to be ascertained in future, limitation for the execution of the whole decree runs from the date of ascertainment The policy of the Lim. Act is to treat a decree as a whole, although only a part may be the subject of an appeal, or review or amendment. Different starting points for portions of a decree against the same deft, seem to be contemplated only in the case where the decree directs payment on different dates. (*Benson and Sundara Aiyar, JJ.*) VYDINATHA AIYAH v. SUBRAMANIA PATTAR
36 Mad 104 : 10 M. L. T. 69 : (1911) 2 M. W. N. 93 : 10 I. C 552 : 21 M. L. J. 546.

LIMITATION ACT (IX OF 1908), Art. 182 (1).

———Art. 182 (1)—*Date of decree*—Ex parte *decree—Application for execution—Time taken to set aside* ex parte *decree*,

An application for execution of an *ex parte* decree against which no appeal is preferred is governed by Art. 182, cl (1) and the time taken by the defendant in prosecuting his application for setting aside the *ex parte* decree cannot be deducted nor does the limitation begin from the date of the dismissal of the application. (*Prideaux*, A, *J. C.*) JALARKHAN *v.* RAHIM KHAN.

18 N. L. R. 190 : 1922 Nag, 197.

———Art. 182 (1)—*Date of decree—Starting point.*

When no time is mentioned for making a payment and delivery of possession in a decree the application should be made within three years of the decree. (*Chamier*, *J. C.*) AJUDHYA SINGH *v.* DRIGHPAL SINGH.

10 I. C. 187 : 14 O. C. 100.

———Art. 182 (1)—*Date of decree—Date of appellate decree—Party not affected by appeal—Execution of decree—Limitation.*

By the plaintiff decree was obtained against some of the defendants in lower Courts and in High Court against all. He wanted to execute original decree against defendants. Application being within 3 years appeal was not barred. (*Das and Kulwant Sahai*, *JJ.*) PANCHU BANIA *v.* ANAND THAKUR.

2 P. 712 : 1 P. L. R. 356 : 1924 Pat. 160.

———Art. 182 (1)—*Date of decree—Meaning of.*

The date of decree in Art. 182 (1) of the Limitation Act means the date when the judgment was pronounced and not the date when the decree is actually signed by the presiding Officer of the Court. The time between the date of delivery of judgment and the signing of the decree cannot be deducted in computing the period. (*Coutts and Adami*, *JJ.*) HIRA LAL SAHU *v.* JAMUNA PRASAD SINGH.

5 Pat. L J. 490 : 57 I. C. 581 : 1 Pat. L. T. 394.

———Art. 182 (1)—*Date of decree—Ascertainment of decree amount.*

Where a decree for redemption was passed on a certain date, but the Judge actually signed the decree more than 6 months after, after the exact sum to be paid in redemption had been ascertained by a commissioner specially appointed for that purpose in the interval, limitation to execute that part of the decree which awards the costs of the defendant payable by the plaintiff runs from the former date and not the latter date. (*Roe and Jwala Prasad*, *JJ.*) SURAJ DEO NARAYAN SINGH *v.* MUSA HROO RAUT.

20 C. W. N 950 : 1 Pat. L. J. 359 : 34 I. C. 504 : 3 Pat. L. W. 102.

———Art. 182 (2) and 183—*Dismissal of appeal for want of prosecution—Decree of lower court capable of execution—Barred rights cannot be revived—Mortgage—Preliminary decree—Order absolute.*

LIMITATION ACT (IX OF 1908), Art. 182 (2).

An order dismissing an appeal for default does not deal judicially with the suit and is not an order adopting or confirming the decision appealed from. The appellant is in the same position as if he had not appealed at all.

Where an appeal pending before the Privy Council is dismissed for want of prosecution the decree of the lower court is not constructively turned into a decree of His Majesty in Council. The only decree which is in existence is that of the lower court. The period of limitation for executing such a decree is three years under Art. 182 and not 12 years under Art 183 of the Limitation Act. Where a mortgage decree was passed before C. P. Code, 1908, the subsequent application for order absolute is one in execution. A right to enforce a decree which had become barred before the C. P. Code of 1908 came into force cannot be revived. (*Lord Moulton.*) ABDUL MAJID *v.* JAWAHIR LAL.

36 All. 350 : 1 L. W. 483 . 12 A. L. J. 624 : 16 Bom. L. R. 395 : 18 C. W. N. 963 : 19 C. L. J. 626 : (19 4) M. W. N. 485 : 16 M. L. T 44 : 23 I. C 649 : 27 M. L. J. 17. (P. C.)

[On appeal from 33 All. 15 4 : 7 A. L. J. 1001 : 7 I. C. 926.]

———Art. 182 (2)—*Lim. Act (XV of 1877), Art. 172—Final order of appellate court—Dismissal of appeal to Privy Council for want of prosecution—Execution application—Limitation.*

Where an appeal to the Privy Council from a decree of the High Court is automatically dismissed for non-prosecution under rule 5 of the Standing Order in Council, the time for execution of the decree under Art. 179 of the Lim. Act, 1877, runs from the date of the High Court's decree as there was no final order or decree of the Privy Council dismissing the appeal and none was necessary under the rules. (*Sir John Edge.*) BATUK NATH *v.* NUNNY DEI.

36 All. 284 : 1 L. W 729 . 41 I. A 104 : 18 C. W N 740 : 12 A. L. J. 596 : 19 C. L. J 574 : 16 Bom L R. 360 : 16 M L. T, 1 : (1914) M. W. N. 437 : 23 I. C. 644 : 27 M L. J. 1. (P. C.)

[On appeal from 7 I. C. 36.]

———Art. 182 (2)—*Starting point*—Ex parte *decree—Fresh decree on appeal.*

Where a decree was passed against several defendants of whom one was *ex parte* and subsequently the *ex parte* decree was set aside and a fresh decree was passed and confirmed on appeal the starting point of limitation for execution is from the date of the appellate decree. (*Lord Mersey*) ASHFAQ HUSSAIN *v.* GAURI SAHAI.

33 All. 264 : 38 I. A. 37 : 15 C. W N. 370 : 8 A. L. J. 332 : 13 C. L. J. 351 : 9 M. L. T. 380 : 13 Bom. L. R. 367 : 4 Bur. L. T. 121 : (1911) 2 M. W. N. 177 : 9 I. C 975 : 21 M. L. J. 1 40. (P. C).

[On appeal from 29 All. 628 : 4 A. L. J. 552 : 27 M W. N. 204.]

———Art. 182 (2)—*Appeal—Application for execution against surety—Limitation.*

LIMITATION ACT (IX OF 1908), Art. 182 (2).

An execution application against sureties made within three years of the appellate decree was resisted by the sureties as being barred on the ground that it was not made within three years from the date of the trial Court's decree which alone they had undertaken to satisfy, *Held*, negativing the contention, that the application was within time, and the appellants were liable to be proceeded against in execution under cl. 2 Art. 182 of the Lim. Act. (*Shah and Hayward, JJ.*) CHOLLAPPA *v.* RAMCHANDRA.

44 Bom. 34 : 58 I. C. 187 : 21 Bom L. R. 861.

———Art. 182 (2)—*Appeal—If should be bona fide—Dismissal for non-payment of Court fee.*

The words "appeal" in Art. 182 (2) Lim. Act does not mean *bona fide* appeal. Even when an appeal is dismissed for non-payment of court fees, limitation runs for purposes of execution only from the date of the order of dismissal. (*Walmsley and B. B. Ghose, JJ.*) BASANTA KUMAR ROY *v.* MANJURI DASSI

1924 Cal 349.

———Art. 182 (2)—*Revision—Modification of decree in revision—Limitation.*

Where the decree of a Court of first instance is modified in revision by the High Court, limitation for the execution of the decree runs from the date of the order passed by the High Court in revision. (*D. Chatterjee and Chapman, JJ.*) GURUPADA HALDAR *v.* TARIAT BHUSAN ROY CHOWDHURY.

44 I. C. 141 : 22 C. W. N. 158.

———Art. 182 (2)—*Appeal—Consent decree.*

Where a person sued two persons A and B. and got a decree by consent against A but after contest against B then if it did not specify the portion of the property of each of the defendants it is an entire decree and so B appealing from the decree against him is doing so against the whole decree and the consent decree is imperilled thereby under Clause (2) of Art. 182 and so time runs against A under the consent decree from the date of the final appellate decree in the appeal preferred by each even though the consent decree of A is not appealable (*Mookerjee and Chatterji, JJ.*) LOKENATH SINGH *v.* GAJA NATH SINGH.

22 C. L. J. 333: 31 I. C. 426: 20 C. W. N. 176.

———Art. 182, Cl. (2)—*Appeal—Effect of filing of.*

The meaning of the words "Where there has been an appeal" in Art. 182 (2) is where there has been an appeal against the decree or order for the execution of which an application is made. Therefore where in a suit against several defendants a decree is given against some and the suit is dismissed with costs against others and the former set alone appeal, and the decree for costs in favour of the other defendants is not appealed against, Art. 182 (2) does not apply and the application is barred if filed after three years of the date of the original decree when an appeal does not imperil the whole decree. The appeal by one delt. will not prevent limitation for an application for execution running against others. (*Coxe and Chatterjee, JJ.*) MRS. CHRISTIANA BENSHAWN *v.* BANARSI PROSAD.

22 I. C. 685 : 19 C. W. N. 287.

———Art. 182 (2)—*Appeal—Decree affirmed—Starting.*

Even when the decree of the appellate Court affirms the decree against which the appeal is preferred it is the final decree in the case and as such the only decree capable of enforcement in execution after it is once pronounced. 10 W. R. 1 foll. (*Mookerjee and Beachcroft, JJ.*) SHAMNAND DAS CHOWDHURY *v.* RAM KANT DAS. **16 I. C. 945.**

——— Art. 182 (2)—*Appellate decree—Execution of decree of primary Court—Limitation.*

In determining a question of limitation the Court should confine itself as strictly as possible to the terms of the law, 16 C. 598, Rel. Art. 182. Cl. (2) of the Lim. Act, ought to be construed liberally and its application should not be limited to the detriment of the decree-holder, nor should the clause be confined to cases where the application for execution is made in respect of the final decree of an Appellate Court : it should be applied to a case where the application is made for execution of the decree of the primary Court but the period of limitation should be computed from the date of the final decree of the Appellate Court (*Mookerjee and Beachcroft, JJ.*) BALARAM DAS *v.* MUKANDA DEB. **16 I. C. 370.**

———Art. 182 (2)—*Appeal—Revision—Execution of decree—Revision, if gives fresh starting point.*

The date of rejection of a revision petition does not give a fresh starting point of limitation for the execution of the decree sought to be revised. 27 A. 234, P. C., Dist. (*Rattigan, J.*) FUSA *v.* SURJAN. **153 P. W. R. 1913 : 20 I. C. 563 : 298 P. L. R. 1913.**

———Art. 182 (2)—*Construction—Final order meaning*

An order directing the return of the memo. of appeal for presenting to the proper Court is not a 'final order' nor is the Court an 'Appellate Court' within Art. 182 (2) and the time for executing the decree does not run from the date of such order. (*Oldfield and Seshagiri Aiyar, JJ.*) MAHO ABDUL KADIR *v.* SAMI PANDIA

43 Mad. 835 : 12 L. W. 304 : (1920) M. W. N. 587 : 60 I. C. 267 : 39 M. L. J. 431.

———Art. 182 (2)— *Appeal—Joint decree—Appeal by some defts—Limitation.*

Where a single decree is passed against two defendants and is affirmed on appeal preferred by one of them, time runs even as against the non-appealing defendant from the date of the decree of the appellate Court. 20 M. 91 : 31 I. C. 426, Ref. to. It is doubtful whether when the decree of the first court consists of two definitely independent decrees an appeal against one of them would prevent time from running against the other. (*Sadasiva Aiyar and Moore, JJ.*) ARICHETTY *v.* THEERTHAMALA CHETTY.

34 I. C. 791 : 3 L. W. 521.

LIMITATION ACT (IX OF 1908), Art. 182 (2).

——— Art. 182 (2) — *Appeal — Compromise striking of appeal—Withdrawal.*

Where a compromise petition to the appellate court prayed to strike of the appeal and the court dismissed the appeal by a separate order, separate from the order recording the petition, the original decree cannot be held to be superseded by a fresh decree or set aside by the compromise petition. (*Sadasiva Aiyar and Spencer, JJ.*) KELU NAYAR *v.* MINAKSHI.
21 I. C. 639 : 14 M. L. T. 574 : 25 M. L. J. 586.

———— Art. 182 (2)—*Revisional jurisdiction—High Court's order.*

An order of the High Court in the exercise of its revisional jurisdiction under S. 115 of C. P. Code is an order on an appeal within Art, 182, Cl. (2) so as to create a fresh starting point for limitation. 22 M 68 : 15 C. W. N. 858 : 15 C. W. N. 879; 11 I.C. 65 Foll. If a revision petition is simply dismissed, no fresh starting point of limitation arises. (*Ayling and Spencer, JJ.*) SUBRAMANIA PILLAI *v.* SEETHAL AMMAL.
36 Mad. 135 : 10 M. L. T. 260 : 12 I. C, 38 : (1911) 2 M. W. N. 198 : 24 M L J. 457

———— Art. 182 (2)—*Construction.*

The words "Where there has been an appeal" in cl. (2) of the article contemplate and mean an appeal from the decree or order sought to be executed and do not include an appeal from an order dismissing an application to set aside an *ex parte* decree. (*Prideaux A. J. C.*) JABARKHAN *v.* RAHIM KHAN, 18 N. L. R. 190 : 1922 Nag. 197.

———— Art. 182 (2)—*Execution—Appeal, dismissal of.*

Any order of the Appellate Court, dismissing or putting an end to an appeal, properly presented and within time, is either a decree or order within Art, 182 (2) of the Act, and limitation begins to run from the date of decree or order of the Appellate Court. (*Miller, C. J. and Ross, J.*) RAGHO PRASAD SINGH *v.* JADUNANDAN PRASAD SINGH. 6 Pat. L. J. 27 ; 2 P. L T 28 : 59 I. C. 896 : 1921 Pat. 34.

———— Art. 182 (2)—*Applicability of — Abatement of appeal Limitation—Starting point.*

A mortgagor brought an appeal against a decree obtained by the widow of the mortgagee but he impleaded along with the widow another representative and heir of the mortgagee who had obtained a decree and was declared successor to the mortgagee's estate. But the declared successors died during the pendency of the appeal. As none of his representatives was brought on record the appeal against him abated Afterwards the widow and the mortgagor compromised and the Appellate Court passed a decree in accordance therewith. In an application for executing the original decree by the successor's representatives it was contended that limitation began to run against the applicant from the date of abatement, *Held*, the successor's representative could not apply as the successor was not party either in the original or appellate decree and the original decree was merged into appellate one The order of abatement is not a final decree or order within the meaning of Art. 182 (2) of the Act and hence incapable to give a fresh start of limitation. (*Coutts and Sultan Ahmad, JJ.*) THEKAIT KRISHNA PRASAD SINGH *v.* VAZIR NARAYAN SINGH 2 U. P. L. R. (Pat.) 237 : 2 Pat. L. T. 49 : 5 Pat L. J. 731 : 58 I. C. 977 : 1920 Pat. 342.

LIMITATION ACT IX OF 1908), Art. 182 (4).

———— Art. 182 (2) — *Starting point— Appeal against order on application to set aside the decree—Limitation.*

The words "where there has been an appeal" in clause 2 of Art 182 of the Lim. Act mean where there has been an appeal against a decree in the suit and cannot be held to include an appeal against an order made on application to set aside that decree. (*Chamier, C. J. and Sharfuddin, J.*) RAI BRIJRAJ *v* NAURATANLAL
44 I. C. 575 : 3 Pat. L. J. 119.

———— Art. 182 (2)—*Appeal — Limitation for execution when entire decree is appealed against.*

Art. 182 of the Act makes the limitation for execution run only from the date of the final decree of the appellate court in cases where the entire decree is appealed against. (*Chapman and Roe, JJ.*) JAGAT MOHINI DASI *v.* MAHMAD IBRAHIM HUSSAIN. 37 I. C 883 : 1 Pat. L. W. 309.

———— Art. 182 (3)—*Continuation of proceedings —Incompetent appeal does not suspend limitation.*

The decree under execution was sought to be reviewed and on the petition being dismissed, an appeal was preferred, *Held*, such an appeal being incompetent in law, the running of limitation for purposes of execution was not suspended by reason of the pendency of the appeal. (*Greaves, and Ghose, JJ.*) RAM RATAN CHOWDURI UPENDRA CHANDRA DAS.
1923 Cal. 288.

———— Art. 182 (3)—*Review — Application for re-hearing or review dismissed.*

The intention of the Legislature was to allow further time to a holder of a decree or order for costs where there has been an application for review which had been heard and a fresh decision has been pronounced not to allow further time where an application for rehearing or review has been put forward on untenable grounds and has consequently been rejected or dismissed. *Quaere* : Whether the words "review of judgment" in clause 3 of Art. 182 of the Lim. Act cover an application for rehearing of a suit dismissed for default? (*Chamier, C. J. and Sharjuddin, J.*) RAI BHIJRAJ *v.* NAURTAN LAL.
44 I C. 575 · 3 Pat. L. J. 119.

———— Art. 182 (4) — *Decree incapable of execution—Rectification—Starting point.*

Where the original decree is incapable of execution, time runs from the date where a property capable of execution has been drawn up. 17 All. 39 foll. (*Mookerjee and Panton, JJ.*) SANADAN SANT *v.* DINABANDHU GIRI. 64 I. C 622 : 34 C. L. J. 397.

LIMITATION ACT (IX OF 1908), Art. 182 (4).

——— Art. 182 (4)—*Amendment of decree.*

Amendment of decree after the execution is barred by limitation and gives no fresh start of limitation for execution from that time. (*Shorfud din and Teunon, JJ.*) ANANDRAN *v.* NITYANAND BARLIAM.

32. I. C. 744.

——— Art. 182 (4)—*Arbitration — Execution petition referred to arbitration—New instalment decree on terms of award—New decree, if can be execution where old is barred.*

Where in execution of a decree the matter is referred to an arbitrator and on the basis of his award a new decree results, the new decree is capable of execution though the old one is barred. (*Coxe, Teunon and D. Chatterjee, JJ.*) NAGENDRA CHANDRA *v.* HARENDRA NATH.

11 I. C. 457 : 16 C. W. N. 34

———— Art. 182 (4) - *Execution proceedings—Decree barred—Amendment Effect of.*

Where a decree capable of execution becomes barred, its amendment cannot entitle the decree-holder to a fresh period of limitation under Art 182 (4), because after it is dead, it cannot be revived by a subsequent application for amendment (*Abdul Raoof and Moti Sagar, JJ.*) JHAMMAN LAL *v.* DAULAT RAM. 5 Lah. L. J. 398 : 1924 Lah. 329.

——— Art. 182 (4)—*Scope of.*

An amendment of a rent decree where it is merely a correction of the rate, the amount decreed remaining the same, made after the right to execute the decree had expired, does not give the decree-holder a fresh starting point of limitation (*Chapman and Roe, JJ.*) KALANAND SINGH *v* RAJKUMAR SINGH. 2 Pat. L. J. 236 : 39 I. C. 624. 3 Pat. L. W. 435.

———— Art. 182 (4)—*Amended decree—Execution—Limitation when begins.*

The date of amendment of a decree is the date of passing the order of amendment and not the date of actual amendment. Therefore an application for the execution of a decreee three years after the date of the order amending the decree, but less than three years after the actual amendment is barred (*Roe and Jwala Prasad, JJ.*) NIRIT LAL JHA *v.* KALANAND SINGH. 36 I. C 593: 3 Pat. L. W. 447.

———— Art. 182 (5)—Step-in-aid

Affidavit to prove service.
Amendment of Application.
Application
Arrest of debtor.
Arrest of surety.
Attachment of decree.
Compromise —postponing execution.
Continuation proceedings.
Defective Application.
Defending Appeal.
Deposit in Court.
Filing of.
Identification of Judgment-debtor.
Infructuous Application.
Limitation.
Oral Application
Payment of Process fee.
Pre-emption decree.

LIMITATION ACT (IX OF 1908), Art. 182 (5)—Step-in-aid—Application.

Proper Court.
Scope of.
Starting point.
Test of.
What is.
Who must apply.

Step-in-aid—Affidavit to Prove Service.

——— Art. 182 (5) — *Step-in-aid—Affidavit to prove service.*

The filing of the affidavit to prove service of summons in the Court which receive it for service from the executing court is not a step in-aid of execution of the decree. (*Newbould and Cuming, JJ.*) KRISHNA PRASAD MAITRA *v.* DHIRENDRA NATH CHAKRAVARTI. 24 C. W. N. 55: 54 I. C. 1: 30 C. L. J. 518.

———— Art. 182 (5)—*Step-in-aid— Affidavit to prove service of process of attachment.*

An affidavit sworn and filed on behalf of the decree-holder as evidence of service of attachment process is a step-in-aid of execution. (*Atkinson and Dass, JJ.*) THAKUR SINGH *v.* SHEO BHANJAN SINGH. 49 I. C. 892: 4 Pat. L. J. 521.

Step-in-aid—Amendment of Application.

———— Art. 182 (5)—*Step-in-aid — Amendment of application—Amendment.*

If a decree-holder files a defective application and is ordered to amend it, he cannot get profit from the amendment as being a step in-aid of execution, without application for attachment. Original application is no step-in-aid, (*Adami, J.*) SOBRAN MAHTON *v* SIBILAS KUER. 54 I. C. 933

Step-in-aid—Application.

——— Art. 182 (5)—*Step-in-aid—Application in accordance with law—Decree transferred for execution — Subsequent application—Forum—C. P. Code, S. 29.*

Where under S. 223 of the C. P. Code, 1882 (S. 39 of the C. P. Code of 1908) a District Court has transferred its decree for execution to the District Munsif's Court within whose jurisdiction the properties of the judgment-debtor lay, and District Munsiff's court continues to have seisin even of the execution proceedings, the proper court in which to apply for execution or take some step-in-aid of execution of the decree is the Court of the Munsif. An application, under the above circumstances, made to the District Court will not save time under Art. 182 of the Lim. Ac. (*Sir John Edge.*) MAHARAJAH OF BOBBILI *v.* NAKASARAJA PEDA BALARIA.

38 M. 640 : 18 Bom. L. R. 969 : 18 A. L. J. 1129 : 20 M. L. T. 472 : 24 C. L. J. 478 : 4 L. W. 558 : 21 C. W. N. 1o2 : 1 Pat. L. W. 26 : 43 I. A. 238 : 36 I. C. 682 : (1916) 1 M. W. N 541 (P. C.): 31 M. L. J. 300 : [On appeal from 37 M. 231.]

———— Art. 182 (5)—*Step-in-aid—Application for arrest of judgment-debtor—Subsequent application for arrest of surety—Limitation—Saving of.*

Certain persons had become sureties for the satisfaction of the entire decree on default of payment by the judgment-debtor and an application

LIMITATION ACT (IX OF 1908), Art. 182 (5)—Step-in-aid—Application.

for execution was put in for the arrest of the judgment-debtors. Subsequently within 3 years of that application a fresh execution application was made for recovery of the decree amount by arrest of the judgment-debtor and the surety. *Held*, that the first application was a step-in-aid and that the second application was not barred by limitation. (*Piggott and Sulaiman, JJ.*) SHAIKH BADRUDDIN KHAN *v.* MAHAMMAD HAFIZ.
L. R. 3 All. 523.

———Art. 182 (5)—*'Step-in-aid'—Application to summon witness in claim proceedings.*

In claim proceedings on an attachment in execution of a decree, the decree-holder made an application to summon witnesses for disputing the claim *held*, this application was a 'step-in-aid of execution' within the meaning of Art. 182 of the Act. (*Banerji and Gokul Prasad, JJ.*) MUHAMMAD SADIQ *v.* MISRI LAL.
64 I. C. 524 (2) : 19 A. L. J. 843.

———Art. 182 (5)—*Step-in-aid—Application to reject objection to execution.*

An application that certain objections to the execution of the decree be rejected is a step-in-aid of execution within Art. 182 (5) of the Act. (*Walsh and Kanhaiya Lal, JJ.*) ISHRI BAI *v.* RAGHPAT NARAIN.
19 A. L. J. 641 : 63 I. C. 907 : 3 U. P. L.R. (All) 111.

———Art. 182 (5)—*Step-in-aid—Application for time.*

Application by decree-holder, during execution proceedings for time to ascertain the address of judgment-debtor is a step in-aid of execution. (*Richards, C. J. and Banerjee, J.*) SHEO SHANKAR LAL *v.* RADHE SHIAM.
50 I. C. 278.

———Art. 182 (5)—*Step-in-aid—Application for delivery of possession—C. P. C., O. 21, R. 95.*

Application by decree-holder under O. 21, R. 95, C. P. Code, is step-in-aid of execution and saves limitation for subsequent applications to execute the decree. (*Piggott and Walsh, JJ.*) BABU RAM *v.* PEAREY LAL.
41 All. 479 : 50 I. C. 143 : 17 A. L. J. 496.

———Art. 182 (5)—*Step-in-aid—Application to reject objections to the execution of decree.*

An application to the Court executing a decree asking that certain objections to the execution of the decree be dismissed so as to enable the execution to proceed is a step-in-aid of execution and saves the bar of limitation. (*Tudball and Abdul Raoof, JJ.*) TAMIZ-UN-NISSA BIBI *v.* NAJJU.
40 All. 668 : 48 I. C. 38 : 16 A. L. J. 704.

———Art. 182 (5)—*Step-in-aid—Application in accordance with law—Time given for filing a decree—Non-compliance—Subsequent application.*

An application for execution complying with all the requirements of O. 21, R. 11 of the C. P. C. but not accompanied by a copy of the decree which is filed subsequently is an application in accordance with law and saves limitation. (*Richards, C. J. and Banerjee, J.*) RAGHUNANDA LAL *v.* BADAN SINGH.
40 All. 209 : 43 I. C. 914 : 16 A. L. J. 87.

LIMITATION ACT (IX OF 1908), Art. 182 (5)—Step-in-aid—Application.

———Art. 182 (5)—*Step-in-aid—Application in accordance with law—Application without describing judgment-debtor as guardian of minor.*

An application for execution of the decree in which all the defendants were named but the minor and his guardian were not described as such is one in accordance with law. (*Richards, C. J. and Banerjee, J.*) RAM LAKHAN DAS *v.* SHANKER SINGH.
43 I. C. 519.

———Art. 182 (5)—*Step-in-aid—Application not made to proper Court does not save limitation.*

First application of execution on 3-2-13 after final decree on 27-4-1910 to improper Court was infructuous. On 14-7-1915 another application was made to a Court having no jurisdiction. That Court gave a finding that it had no jurisdiction. This finding not being appealed against was held to operate as *res judicata* between parties. Therefore the application of 3-2-1913 did not operate to save limitation. (*Knox and Tudball, JJ.*) RAMJAS *v.* RAM NARAYAN.
39 I. C. 796 : 15 A. L. J. 415.

———Art. 182 (5)—*Step-in-aid—Application for time.*

A *bona fide* application by decree-holder, praying for extension of time for ascertaining the whereabouts of his judgment-debtor, is a step-in-aid and saves limitation. (*Piggott and Walsh, JJ.*) BHAIRON PRASAD *v* AMINA BEGAM.
38 All. 690 : 35 I. C. 693 : 14 A. L. J. 890.

———Art 182 (5)—*Step-in-aid—Application for transfer of decree.*

Application for transfer of a decree for execution is a step-in-aid. (*Rafique, J.*) LAROTI *v.* HAZARI LAL.
33 I. C. 523 : 14 A. L. J. 415.

———Art. 182 (5)—*Step-in-aid—Application for substituted service.*

An application praying for substituted service of notice of execution is a step-in-aid of execution and saves limitation. 29 A. 301, Foll. (*Rafique and Piggott, JJ.*) AMINA BILIR *v.* BANARSI PRASAD.
36 All. 439 : 24 I. C. 200 : 12 A. L. J. 785.

———Art. 182 (5)—*Step-in-aid—Application for transfer of decree.*

An application to transfer the decree to another court for execution is a step-in-aid of execution for purposes of limitation. (*Banerjee and Ryves, JJ.*) TODUL MAL *v.* PHOOLA KHAR.
35 All. 389 : 19 I. C. 664 : 11 A. L. J. 533.

———Art. 182 (5)—*Step-in-aid—Application to certify payment—Application under O. 21, R. 2.*

An application under O. 21, R. 2 is a step-in-aid within Art. 179 of the old Lim. Act. 12 A. 309, Foll. (*Knox, C. J. and Karamat Hussain, J.*) LECKY *v.* BANK OF UPPER INDIA, LTD.
33 All. 529 : 9 I. C. 1023 : 8 A. L. J. 487.

LIMITATION ACT (IX OF 1908), Art. 182 (5)—Step in-aid—Application.

———Art. 182 (5)—*Step-in-aid—Application in accordance with law—Succession certificate.*

An application for execution made by the heir of a deceased decree-holder without obtaining a succession certificate is one in accordance with law. 16 A. 26, Ref. (*Tudball, J.*) PAYNE & Co *v.* BRAHMDEO. 9 I. C 800.

———Art. 182 (5)—*Step-in-aid—Application for sale proclamation.*

Application for the issue of a fresh proclamation is a step-in-aid of execution. (*Stanley, C. J. and Banerjee, J.*) RAJ KISHORE UPADHYA *v.* GURCHARAN LAL. 9 I. C. 634 :

———Art. 182 (5)—*Step-in-aid—Application—Discharged insolvent—Application against.*

An application for execution taken out against one insolvent judgment-debtor who is discharged is not one in accordance with law and as such is not a step-in-aid of execution. (*Shah, A. C. J. and Coyajee, J.*) GHANSHAMDAS BALAKRISHNADAS *v.* MOTICHAND HORAKCHAND.
25 Bom. L. R. 1237 : 1924 Bom. 180.

———Art. 182 (5)—*Step in-aid—Application—Surety for payment of mesne profits—Application for ascertainment of amount—If keeps decree alive.*

During an appeal against a decree for possession and mesne profits, sureties were given and execution stayed. The decree was confirmed and application was put in to recover the arrears of mesne profits More than 3 years after the passing of the appellate decree, the surety was sought to be made liable. *Held*, the application against him was time barred as the application for assessing mesne profits did not keep the decree alive against him. (*Macleod, C. J. and Crump, J.*) SAYAD YUSUF ALI *v.* SAYAD AMIN.
47 Bom. 778 :
25 Bom. L. R. 810 : 1923 Bom. 366.

———Art. 182 (5)—*Step-in-aid—Application—Stay order.*

Marten, J.—Quaere.—Whether a stay of proceedings granted at the instance of the plaintiff can be said to be a step-in-aid-of execution. A mere adjournment has been held not to be such a step-in-aid of execution, although an application for adjournment in order to obtain further evidence has been held to be a step-in-aid. 27 Cal. 285 ref. *Pratt, J.*—The application for stay is not a step-in-aid of execution. (*Marten and Pratt, JJ.*) PANDY WALAD DAGDU MAHAR *v.* JAMNADAS.
1923 Bom. 213.

———Art. 182 (5)—*Step in-aid—Application—Instalment decree—Relief under para. 2 of S. 15 (b) of Deccan Agriculturists Relief Act* (1879)—*Application for recovery of several instalments due.*

A darkhast asking for the assistance of the court on failure to pay some instalments due on a mortgage decree is a step-in-aid of execution in respect of all instalments then due. (*Macleod, C. J. and Shah, J.*) SITABAI ZUKAPA *v.* KESHARAO PARVATROO KATE. 24 Bom. L. R. 284 :
46 B. 719 : 1922 Bom. 194.

LIMITATION ACT (IX OF 1908), Art. 182 (5)—Step-in-aid—Application.

———Art. 182 (5)—*Step-in-aid—Application for execution accepted by Court, if starts fresh period—Application to obtain order directed by Court to be obtained.*

An application for execution which is accepted by the Court, though out of time starts a fresh period of limitation. An application by a decree-holder to obtain an order which he has been directed by the executing Court to obtain is an application to take a step in-aid of execution. Where the holder of a decree under S. 88 of the T. P. Act made an application for execution, and it was dismissed after the new C. P. C. came into effect on the ground that he must obtain a final decree and thereupon the decree-holder, acting upon the wrong order applied for a final decree, *held*, that the application was a step-in-aid of execution though made in pursuance of a wrong order. (*Macleod, C. J. and Shah, J.*) GULAPPA RUDRAPPA *v.* ERAVA BASANGOWDA.
63 I. C. 844 : 23 Bom. L. R. 1013.

———Art. 182 (5)—*Step-in-aid—Application—Ascertainment of share.*

An application by the decree-holder to ascertain the share of the judgment-debtor in the property attached is a step in-aid. (*Shah J.*) VISHWANATH PARSHRAM *v.* NARSU TULSI DAS.
60 I. C. 916 : 23 Bom. L. R. 107.

———Art. 182 (5)—*Step-in-aid— Application in accordance with law—Certificate.*

An application for execution of a decree against the defendants-talukdars unaccompanied by a certificate of the managing officer though rejected, was within time even on representation. The plaintiff was allowed to exclude the period from the date of decree to the date of the submission of the claim. Per *Shah, J.* (*Marten, J. Contra.*) An application even if unaccompanied by the certificate is in accordance with law which refers only to form and procedure unless there is other prohibition. Sec. 29 E of the Gujrat Talukdar's Act does not lay down any such prohibition. (*Shah and Marten, JJ.*) HARGOBIND FULCHAND *v.* NAJA SURA. 43 Bom. 44 : 47 I. C. 726 :
20 Bom. L. R. 872.

———Art. 182 (5)—*Step-in-aid—Application for transfer—Execution by the court of Native State—Existence of reciprocity.*

An application made to a British Indian Court to transfer its decree to the court of a Native State between whom and the British Govt. there exists an agreement to execute each other's decrees is a step-in-aid of execution within Art. 182. (*Beaman and Heaton, JJ.*) JANARDAN GOVIND *v.* NARAYAN KRISHNAJI.
42 Bom. 420 : 46 I. C. 56 :
20 Bom. L. R. 421.

———Art. 182 (5)—*Step-in-aid—Application to certify payment.*

Having regard to the form and purpose of an application by the mortgagor in 1905 for certifying payments made and the fact that the defendant (mortgagee) signed it, an application for foreclosure in 1907 was in time, the former

LIMITATION ACT (IX OF 1908), Art. 182 (5)—Step in-aid—Application.

application of 1905, operating as a step-in-aid. (*Heaton and Shah, JJ.*) SACHARAJ *v.* BABAJI TUKARAM. 38 B. 47 : 21 I. C 407 : 15 Bom. L. R. 930.

——— Art. 182 (5)—*Step-in-aid—Application for succession certificate.*

An application by the successor of a judgment-creditor, for a succession certificate is not a step-in-aid of execution under Art. 182, cl. 5 of the Act. A step-in-aid of execution is to be taken by the Court and not by the applicant, Art. 182, cl. 5, means an application in accordance with law made to the proper court asking it either to execute or to take some step-in-aid of execution. (*Batchelor and Heaton, JJ.*) MURGAPPA MADDIWALLAPPA *v.* BASAWANT RAO. 37 Bom. 559 : 20 I. C. 252 : 15 Bom. L. R. 567.

——— Art. 182 (5)—*Step-in-aid—Application for time.*

An application made by a decree-holder praying for an extension of time within which he was to produce an extract from the Collector's record to be filed with a pending darkhast for execution amounts to step-in aid of execution. (*Batchelor and Rao, JJ.*) SHESHDASACHARYA *v.* BHIMACHARYA. 37 Bom. 317 : 17 I. C. 969 : 14 Bom. L. R. 1204.

——— Art. 182 (5)—*Step-in-aid—Application in accordance with law.*

An application for execution would not be bad even if it seeks relief not strictly claimable. If a person other than the one entitled to apply applies or if the person entitled applies for execution in a mode and for a relief outside the decree the application is not in accordance with law because the decree execution of which is sought is not the decree to which the application purports to relate but some other decree not existing. An application for execution seeking some or all of the reliefs given by a decree though the Court after consideration comes to the conclusion that the particular relief cannot be granted is still an application in accordance with law if it meets in substance the requirements of the C. P. C. or any other law relating to execution. An application asking for relief given till the happening of a certain event is still an application in accordance with law even though it does not ask for that relief to which he is entitled in a certain event. Omission to file inventories with the *darkhasts* cannot affect the question whether the *darkhasts* are substantially in accordance with law. The words "In accordance with" have no reference to the likelihood of the application succeeding or to the competency of the Court to grant any particular relief prayed for. If the application complies with the forms and procedure the application is in accordance with law. (*Chandavarkar and Batchelor, JJ.*) BANDO KRISHNA KAMBARGI *v.* NARASINHA KOUHER DESHPANDE. 37 Bom. 42 : 17 I. C. 210 : 14 Bom. L. R. 861.

——— Art. 182 (5)—*Step-in-aid — Application for time—Copies of judgment.*

A petition for time made by a decree-holder after presenting a petition for execution for procuring copies of the decree and judgment is a step-in-aid of execution (*Chanavarkar, A. J. C and Batchelor, J.*) HARIDAS NANABHAI *v.* VITHAL DAS KISANDAS. 36 Bom. 638 : 17 I, C. 30 : 14 Bom. L. R. 765.

LIMITATION ACT (IX OF 1908), Art. 182 (5)—step-in-aid—Application.

——— Art. 182 (5)—*Step-in-aid—Application for delivery of possession—Payment out.*

An application by a decree-holder for payment to him of money which has been paid into court on his account in execution of his decree and an application to be put in possession of the property purchased by him in execution of his decree are both steps-in-aid of execution. 22 Bom. 340 ; 27 C. 709 ; 24 M. 185 ; 19 A. 477, Rel. on. (*Scott, C. J. and Rao, J.*) SADASHET MAHADU *v.* NARAYAN VITHAL. 35 Bom 452 : 11 I. C. 987 ; 13 Bom. L. R. 661.

——— Art. 182 (5) — *Step in-aid — Application for adjournment—Application eventually dismissed—Effect of.*

The question whether an application is or is not a step-in-aid of execution, must depend upon the circumstances of the case. Objections under S. 47, C. P. Code, were filed on 17—4—1917 and on 28—4—1917 the decree-holder applied for time for obtaining copies of the objections and citing witnesses. The case was adjourned to 26th May and then to 23rd June and again to 25th June. No written statement was necessary to be filed and no witness was as a matter of fact cited. On the 25th June, the decree-holder's pleader stated that he would not prosecute the case any further and the execution case was accordingly dismissed for non-prosecution. It became unnecessary therefore to proceed with the objection of cases which were disposed of on the next day. A subsequent application for execution was filed on the 26th April 1920 and objection was taken that it was barred by limitation. *Held*, that under the circumstances of the case, the application for time filed by the decree-holder on 28th April 1917, did not constitute a step-in aid of execution. Nor could the subsequent application be considered as one in continuation of the prior application as it asked for different reliefs from the previous one. (*Chatterjee and Cuming, JJ.*) RAJENDRA LAL SAHA *v.* ABDUL KARIM. 27 C. W. N. 605 : 37 C. L. J. 292 1923 Cal. 572.

——— Art. 182 (5)—*Step in-aid—Application for—Revival of prior proceedings.*

An application for the revival of previous proceedings for execution is a step in-aid of execution. 27 C. 285 Rel. (*Richardson and Beachcroft, J.*) CHANDRA KUMAR DHAR *v.* RAMDIN DHAR. 64 I. C 727.

——— Art, 182 (5)—*Step-in aid—Application.*

Where a court transfers a decree for execution to another court and issues the certificate, no application will lie to the former Court for issuing notice to the judgment-debtor to show cause ggainst execution Such anapplication is not one 'in accordance with law' or to take a step-in aid within Art. 182 (5). Lim. Act. (*N. R. Chatterjee and Newbould, JJ.*) HAZARI LAL *v.* BAIDYANATH SAHA. 63 I. C. 116 : 26 C. W. N. 292.

LIMITATION ACT (IX OF 1908), Art. 182 (5)—Step-in-aid—Application.

——Art. 182 (5)—*Application in accordance with law—Subsequent default—C. P. Code, O. 21, R. 22.*

A valid application in accordance with law cannot be invalidated by any subsequent act or default of the decree-holder, such as the non-payment of process fees. An application to put the legal representatives of judgment-deotor on the record may be dismissed for non-payment of process fees. (*Chatterjee and Panton, JJ.*) APTAPUDDIN AHMED *v.* JOGENDRA NARAIN TEWARI.
55 I. C. 231 : 31 C. L. J. 389.

——Art. 182 (5)—*Step-in-aid—Application for delivery of possession.*

Per *Newbould, J.*—(*Cuming, J., Contra.*) An application by a decree-holder to be put in possession of the property purchased by him is a step-in-aid. Per *Cuming, J.*—All steps in execution of a decree which can save limitation must be taken by the decree holder as decree holder and not as auction-purchaser. (*Newbould and Cuming, JJ.*) ANANDA PROSONNA SEN *v.* SOMORUDDI MIRDHA.
23 C. W. N. 926 : 54 I.C. 839 : 30 C. L. J. 135.

——Art. 182 (5)—*Step-in-aid — Application for issue of notice.*

Where an application *prima facie* one for execution prays for the assistance of the Court "by the issue of a notice to the defendant to show cause, if any, why the decree should not be executed against him," it is a step in-aid sufficient to save limitation. (*Chitty and Walmsley, JJ.*) ABDUL AJIJ ABDULLA *v.* YAKUB ABDUL GANI.
54 I. C. 433.

——Art. 182 (5)—*Step-in-aid—Application to take evidence.*

An application during the pendency of a substantial application for execution by the decree-holder for summoning witnesses for the purpose of determining the standard of measurement without which he could not, in the opinion of the Court, obtain execution is a step-in-aid of execution. (*Chatterjee and Newbould, JJ.*) KEDAR NATH DAY ROY *v.* LAKHI KANTA DEY.
21 C. W. N. 868 : 40 I. C. 1005 : 26 C. L. J. 115.

——Art. 182 (5)—*Step-in-aid — Application for leave to bid.*

An application was made by a decree-holder for leave to bid at an auction sale. The application which was granted by the Court, stated that when the properties would be put up for sale the decree-holder will have to purchase for the decretal amount, if no other purchaser offered any bid, and prayed for permission in that behalf, *Held*, that application was not an application to the proper court to take a step-in-aid of execution of decree. 13 A. 211 ; 22 A. 399; 21 B. 331, dis. 9 C. 730; 23 C. 690 foll. (*Mookerjee and Beachcroft, JJ.*) JOGENDRA PROSAD MITRA *v.* ASUTOSH GOSWAMI. 37 I. C. 738 : 24 C. L. J. 462.

——Art. 182 (5)—*Step-in-aid—Application to certify payment—C. P. Code, O. 2, R. 2.*

An application of a decree-holder certifying payment of a portion of the decretal amount out of court is a step-in aid of execution, if the payment was actually made, even though the decree-holder prayed that the execution case might be struck off. 12 C. 608; 12 A. 309; 20 C. 696; 3 I. C. 351, Foll. (*Chatterjee and Roe, JJ.*) GOPAL PRASAD *v.* RAJENDRA LAL PANJA. 34 I. C. 625 : 20 C. W. N. 615.

——Art. 182 (5)—*Step-in-aid—Application by decree-holder for permission to bid at auction-sale.*

An application by a decree-holder for permission to bid for property at an auction-sale in execution of his decree when made after the auction has been postponed on account of no purchaser having come forward is a step-in-aid of execution of the decree within the meaning of Art. 179 (4) of Act XV of 1877. (*Reid, C.J.*) SALIG RAM *v.* RAI CHAND. 35 P. W. R. 1912 : 62 P. L. R. 1912 : 14 I. C. 468 : 60 P. R. 1912.

——Arts. 182 (5)—*Step-in-aid—Application to draw money from court.*

An application by the decree-holder to withdraw money deposited in court is not a step-in-aid of execution if the decree-holder is not opposed by the judgment-debtor, though the original application for execution has not been disposed of. 143 P. W. R. 1908 ; 207 P. L. R. 1908 foll. (*Rattigan, J.*) RAM DAS *v.* KANSHE RAM.
80 P. W. R. 1912 : 14 I. C. 335 : 105 P. L. R. 1912.

——Art. 182 (5)—*Step-in-aid — Application by mortgagor in redemption suit to extend time for deposit money.*

An application by a mortgagor who had obtained a decree for redemption for an extension of time for depositing the redemption money is a step-in-aid of execution. An application to take a step-in-aid of execution is not necessarily an application in execution. (*Spencer and Ramesam, JJ.*) SANKARA NARAYANA PILLAI *v.* PUTHIA VEETIL THANGAMNA. 21 M. L. J. 374 : (1921) M. W. N. 391: 30 M. L. T. 252 . 45 M. 202 : 1922 Mad. 247.

——Art. 182 (5) — *Step-in-aid—Application for copy of decree.*

An application for a copy of the decree to be executed is not an application to the Court, to take some step-in-aid of execution and time will not be computed from the date of such an application. (*Ayling and Krishnan, JJ.*) PUTHIA VEETIL MOIDU *v.* IRAKKAT KARNAVAN RAMAN NAYAR.
(1920) M. W. N. 700 : 12 L. W. 534 : 60 I. C. 117 : 39 M. L. J. 572.

——Art. 182 (5)—*Step-in-aid— Application for transfer—Subsequent filing of necessary copies —Oral application.*

Where, after an application for the transmission of a decree or order thereon, the decree-holder who has not filed the necessary copies under O. 21, R. 6, C. P. C., filed to them into Court and orally applied again for the transmission of the decree. *Held*, that the oral application was not one to take a step-in-aid of execution and did not give a fresh starting point under Art. 182, Cl. (5). (*Oldfield and Seshagiri Aiyar, JJ.*) RANGACHARIAR *v.* P. R. SUBRAMANIYA CHETTY.
58 I. C. 536 : 12 L. W. 9.

LIMITATION ACT (IX OF 1908), Art. 182 (5)—Step-in-aid—Application.

———Art. 182 (5)—*Step-in-aid—Application in accordance with law—Meaning of.*

Where there is no prohibition in the decree against realising money in its execution an application for its execution by the person who on the face of it is the decree-holder is a step-in-aid though some other person was eventually found to be interested in the decree and not the applicant. (*Spencer and Seshagiri Aiyar, JJ.*) HARI KRISHNAMURTI *v.* AKELLA SURYANARAYANA.
43 Mad. 424 : (1920) M. W. N. 395 : 57 I. C. 753 : 38 M. L. J. 271.

———Art. 182, (5)—*Step in-aid—Application for payment out of deposit.*

An application for payment out of money in court in execution is an application for a step-in-aid of execution within cl. 5 of Art. 182 of Limitation Art. *A fortiori* it is so where the deposit was made only as security and an order of the Court is necessary to make it available for payment towards the decree amount. (*Spencer and Krishnan, JJ.*) THANGI SHETTITHI *v.* DUJA SHETTITHI. 24 M. L. T. 483 : 8 L. W. 519 : (1918) M. W. N. 748 : 48 I. C. 226 : 35 M. L. J. 575.

———Art. 182 (5) and (6)—*Step-in-aid—Application in accordance with law.*

Application for execution of a decree which asks for relief not granted by the decree, is not an application in accordance with law and cannot be treated as a "setp in-aid" so as to save the bar of limitation. Where no personal decree is passed in a mortgage suit an application in execution praying for the attachment of non-mortgaged properties is not covered by clauses (5) and (6) of the article. (*Seshagiri Aiyar and Bakewell, JJ.*) RAMAKRISHNA KADIRVELUSAMI *v.* EASTERN DEVELOPMENT CORPORATION, LTD. 43 I. C. 537.

———Art. 182 (5)—*Step-in-aid — Application for sale.*

A memo. praying the Court to hold a sale in connection with a pending execution petition is a step-in-aid of execution within Art. 182. (*Oldfield and Phillips, JJ.*) GHULAM KAVUSHA *v.* BHUVARAHA AIYENGAR. 38 I. C. 152.

———Art. 182 (5)—*Step-in-aid — Application for wrong relief.*

An application for execution asking a relief not allowed by decree is a step-in-aid saving limitation, as a mistake in an execution application does not make it void. (*Spencer and Krishnan, JJ.*) RAMACHANDRA NAIDU *v.* TIRUPATHI NAIDU.
35 I. C. 614 : (1916) 2 M. W. N. 128.

———Art. 182 (5)—*Step-in-aid— Application for time.*

Application for adjournment for obtaining an incumbrance certificate and filing a draft proclamation is a step-in-aid of execution. (*Sadasiva Aiyar and Moore, JJ.*) RAVUR MUNISAMI NAIDU *v.* PANDALA MUTHIAL NAIDU. 33 I. C. 79.

———Art. 182 (5)—*Step in-aid—Application in accordance with law—Applications by some legal representatives on their own behalf whether saves limitation.*

LIMITATION ACT (IX OF 1908), Art. 182 (5)—Step-in-aid—Application.

An application though not purporting to be on behalf of the other legal representatives saves limitation for execution by some of the decree-holder's legal representatives. (*Kumaraswami Sastri, J.*) MAHAPATRO *v.* NARAYANA PANIGRAHI.
18 M. L. T. 517: 31 I. C. 853 : (1916) 1 M. W. N. 112.

———Art. 182 (5) and (6)—*Step-in-aid—Application in accordance with law—Issue of notice.*

Art. 182 (5) and (6) are independent and exclusive of each other and the provisions contained in one clause cannot be imported into the other. (*Sadasiva Aiyar and Napier, JJ.*) VARADARAJA MUDALI *v.* MURUGESAN PILLAI. 39 Mad. 923 : 18 M. L. T. 313 : (1915) M. W. N. 769 : 39 I. C. 707 : 30 M. L. J. 460.

———Art. 182 (5)—*Step-in-aid— Application for continuation of sale.*

An application for the continuance of a sale is a step-in aid of execution. 30 C. 761, foll. (*Oldfield and Napier, JJ.*) DESIREDDI YELLAMANDAR *v.* SEKHAKOLLI CHINNA PITCHIAH.
25 I. C. 58 : 1 L. W. 573.

———Art. 182 (5)—*Step in-aid—Application—Execution proceedings—Application for adjournment—Encumbrance certificate, production of.*

An application for adjournment to enable a decree-holder to produce an encumbrance certificate in respect of the attached property is in aid of further proceedings in execution, and amounts to a step-in aid of execution under Art. 179 of the Limitation Act. (*Sadasiva Aiyar and Spencer, JJ.*) ABDUL KADIR ROWTHER *v.* KRISHNA MALAMAL NAIR KARNAVAN. 1 L. W. 271 : (1914) M. W. N. 563: 38 M. 695 : 23 I. C. 833: 15 M. L. T. 305 : 26 M. L. J. 433

———Art. 182 (5)—*Step-in aid—Application to bring on record legal representative.*

A petition for execution praying for the legal representative of the judgment-debtor to be brought on the record is sufficient to give a fresh starting point for limitation even if it contains errors in the matter of relief. (*Sadasiva Aiyar and Spencer, JJ.*) VARADISH *v.* KUMARA VENKATA PERUMAL. 14 M. L. T. 530 : (1914) M. W. N. 157: 21 I. C. 782 : 26 M.L.J. 83.

———Art. 182 (5)—*Step-in-aid—Application for transfer of decree—Transmission application sent to special assistant agent direct instead of through the Agent—Order set aside by Governor in Council under rules — Subsequent execution—Limitation.*

Where an application for transmission of a decree for execution was wrongly sent by the original court to the special Assistant Agent, Godavari direct, instead of through the Agent as required and the order is set aside by the Governor in Council, the applicant is entitled to deduct the time taken in prosecuting the same for purpose of limitation for a subsequent application. (*Krishnaswami Aiyar and Ayling, JJ.*) KAKAMANI RAYAPPA *v.* KOTTA VENKANNA OF RAJAHMUNDRY.
11 I. C. 338: (1911) 1 M. W. N. 362.

LIMITATION ACT (IX OF 1908), Art. 182 (5)—Step-in-aid—Application.

———Art. 182 (5)—*Step-in-aid— Application by assignee of decree to be recognised—If a step-in aid—Failure to give notice—Effect.*

An application by the assignee of a decree to have his name substituted is a step-in-aid of execution. Where such an application was accepted by the Court, even though without notice to the judgment-debtors, the applicant can suppose his application is good in law and the defect which was not discovered then, will not prevent its being a step-in-aid of execution (*Simpson, A. J. C.*) MT. MARIAM BEGAM *v.* MAHOMED MEHDI. 90 & A. L. R. 635 : 1924 Oudh 172.

———Art. 182 (5)—*Step-in-aid—Application to withdraw deposit.*

An application by a decree-holder to realize money deposited in the court is a step-in-aid of execution and an application for execution with in 3 years thereof is not barred. (*Kanhaiya Lal, A. J. C.*) DHARAM RAJ KUAR *v.* LACHHMAN BHUJ. 33 I. C. 557: 18 O. C. 359

———Art. 182 (5)— *Step-in-aid —Application for arrest—Asking for warrant.*

A decree-holder's appearance on the date of hearing of an execution application and his presenting his application for issuing a warrant to the judgment-debtor is not a step-in-aid of the execution and time does not run for a fresh application from that date under Art. 182. (*Chamier, J. C.*) JUGGI LAL *v.* GANGA PRASAD. 10 I. C. 182 : 14 O. C. 124.

———Art. 182 (5)—*Step-in-aid—Application returned for payment of additional fees.*

Where it was contended that an application for execution was not in accordance with law, because no Court-fee was paid for the additional amount of interest claimed between the date of plaint and the date of application, *held*, that the failure to this fee would at the most entitle the Court to hold its hand and refuse to allow execution to proceed or dismiss the application if the fee should not be paid within the time ordered, but its non-payment cannot invalidate an application for execution properly stamped in accordance with the requirements of the Court Fees Act and containing the particulars required by the provisions of O. 21, Rr. 11 to 14. (*Miller, C. J. and Kulwant Sahay, J.*) BHAGWAT PRASAD SINGH *v.* DWARKA PRASAD SINGH. 2 Pat. 809 : 4 Pat. L. T. 513 : 1 Pat. L. R. 453 : 1923 Pat. 229 : 1924 P. 23

———Art. 182 (5)—*Step-in-aid — Application to Court from which decree has been transferred—Not a step-in-aid.*

Where a decree has been transferred for execution to another Court an application made to the Court from which the decree has been transferred is not a step-in-aid. 39 M. 640, Followed. (*Adami and Das, JJ.*) JNANENDRA NATH GHOSH *v.* KUMAR JOGINDRA NARAIN SINHA. 2 Pat. 247: 74 I. C. 608: 1923 P. 384

———Art. 182 (5)—*Step-in-aid—Application for confirmation — Application for delivery of possession —If a step.*

LIMITATION ACT (IX OF 1908), Art. 182 (5)—Step-in-aid—Application.

An application for confirmation of sale is not an application to take some step-in-aid of execution. An application by a decree-holder to be put in possession of the property is not an application to take some step-in-aid of execution. (*Das and Adami, JJ.*) TRILOKE NATH JHA *v.* BANSMAN JHA. 1923 Pat. 300 : 1 Pat. L. R. 6 : 2 Pat. 249 : 1923 P. 22.

———Arts. 182 (5)—*Step-in-aid — Application for transfer—S. 39 and O. 21, Rr. 5 and 10, C. P. Code—Transfer of decree from one Sub-Court to another—Sub Court in another district—Forum.*

The decree-holder having applied for transfer of decree under S. 39, C. P. Code, for execution by the Sub-Judge of D the former Court of H, also a Sub-Court transferred the decree direct to the latter Court situate in another district and the High Court quashed the proceedings directing its transmission through the District Judge of Santhal Parganahs, *Held*, that the application for transfer of the decree for execution made by the decree-holder was an application "in accordance with law" under Art. 182 (5), Limitation Act, the decree-holder not being responsible for the mistake committed by the Sub-Judge of H. (*Coutts and Adami, JJ.*) KUNJBEHARI SINGH *v.* TARAPADA MITTER. 58 I. C. 220: 1 Pat. L. T. 386.

———Art. 182 (5)— *Step-in-aid— Application to withdraw.*

An application to withdraw a previous application for execution is a mere redundance and not at step-in-aid of execution. Hence it cannot save limitation. (*Roe and Coutts, JJ.*) RAFAKAT HUSSAIN *v.* MEHATA HUSSAIN. 50 I. C. 444: 1919 Pat. 80.

———Art. 182 (5)—*Step-in-aid— Application in accordance with law — Minor — Execution against—Saving of limitation.*

An application for execution of a decree made against a minor judgment-debtor represented by his mother without applying for her appointment as guardian *ad-litem* is in accordance with law and saves limitation. (*Roe and Coutts, JJ.*) KESHAWA SURENDRA SAHI *v.* MALUKRANI KUER. 48 I. C. 415: 4 Pat. L. J. 35.

———Art. 182 (5)—*Step-in-aid—Application in accordance with law—Test of.*

An execution application can only be vitiated by material defects and a mistake in entering the date of the decree is not a material defect. (*Jwala Prasad and Coutts, JJ.*) KESHAWESARINDRA SAHI *v.* RANI DEBENDRA BALA DASI. 1919 Pat. 121: 48 I. C. 845: 4 Pat. L. J. 213.

———Art. 182 (5)— *Step-in-aid— Application in accordance with law — Non-compliance with O. 21, R. 11, C. P. Code*

The failure to state the amount of costs is not a serious defect, and the application would be in accordance with law at the time it was made and sufficient to save limitation. Failure to produce the certified copy of the decree did not render the application not in accordance with law. The question whether an application for execution is

LIMITATION ACT (IX OF 1908), Art. 182 (5)—Step in-aid—Application.

in accordance with law or not must be determined with regard to what the law requires to be done at the time when the application is made and in order to ascertain whether the application is in accordance with the law, it is not permissible to consider what the law requires to be done after the application has been made The intention of sub rule (2) Rule 17 is to relax the law in favour of the decree-holder. (*Chapman and Roe, JJ.*) ARJUN NAIK *v.* LAKHAN.
47 I. C. 993: 5 Pat. L. W. 205.

——Art. 182 (5)—*Step-in-aid — Application in accordance with law—Proper Court—Vakalat.*

A vakalatnama enures up to the end of the execution proceedings. Where a receiver was appointed in execution proceedings and when the decree-holder applied to the Court that the Receiver should pay money to him, his application must be taken to have been made to the Court which was executing the decree and was according to law. (*Chamier, C. J. and Iwala Prasad, J.*) RAGHUNANDAN SINGH *v.* JAGAL KISHORE TRIGUNAIT. 42 I. C. 802: 1917 Pat. 100.

——Art. 182 (5)—*Step-in-aid — Application for arrest—Application under O. 21, R. 32, C. P. Code—Injunction.*

An application to a Court to exercise its power under O. 21, R. 32 of the C. P. Code being an application for the execution of a decree is governed as regards limitation by Art. 182 of the Lim. Act. (*Fox, C. J. and Hartnoll, J.*) HAJI AHMED MOOLA DAWOOD *v.* POKER MULL.
5 Bur L. T. 116: 15 I. C. 945: 6 L. B. R. 85.

Step-in-aid—Arrest of debtor.

——Art. 182, (5) and (6) — *Step-in-aid—Arrest of debtor.*

Merely accompanying the serving peon to identify the judgment-debtor is not step-in-aid of execution. (*Fletcher and Richardson, JJ.*) JUGAL KISHORE MARWARI *v.* CHINTAMANI ROY.
24 I. C. 80: 20 C. L. J. 15.

Step-in-aid—Arrest of Surety.

——Art. 182 (5)—*Step-in aid—Arrest of surety—Surety for satisfaction for decree—Application for arrest of surety.*

An application for the arrest of the person of the surety who made himself liable for the satisfaction of the decree after it was passed is a step-in-aid as against the original judgment-debtor. (*Piggott and Gokul Prasad, JJ.*) MAHOMED HAFIZ *v.* MAHOMED IBRAHIM. 18 A. L. J. 988
58 I. C. 794: 2 U. P. L. R. (A.) 376
43 All. 152.

Step-in-aid—Attachment of decree.

——Art. 182 (5)—*Step-in-aid—Attachment of decree.*

The assignee obtained a decree against the minors and in execution applied for attachment of the decree assigned in his favour, and relied upon his application to save limitation. *Held*, that an application for assignment was invalid and not a step-in-aid of executionin order to save limitation. (*Oldfield and Bakewell, JJ.*) KAILASA PANDARAM *v.* RAMANUJA NAIDU.
39 I. C, 950: 6 L. W 19.

LIMITATION ACT (IX OF 1908), Art. 182 (5)—Step in aid—Defective application.

Step-in-aid—Compromise postponing execution.

——Art, 182 (5)—*Step-in-aid—Compromise postponing execution.*

Where both the parties apply to the Court to postpone the hearing of a pending execution with a view to arrive at a compromise, the application so made cannot be considered a step-in-aid of execution. It was intended as a step which, if successful, would avoid the necessity for execution. 38 M. 695 Rel. (*Macleod, C. J.*) VISHNU NAGAPPA *v.* NARASIMHA PANDURANG.
25 Bom. L. R. 490 :
1923 Bom. 461.

Step-in-aid—Continuation Proceedings.

——Art 182 (5)—*Step-in-aid— Continuation proceedings—Execution application.*

An appl cation for execution cannot be held to be one in continuation of an application for transfer of a decree. (*Karamat Hussain and Tudball, JJ.*) MAKUND RAM *v.* GIRDHARI LAL.
14 I. C. 277.

——Art. 182 (5)—*Step-in-aid— Continuation proceedings—Decree against managing member—Execution against junior members.*

Where a decree was obtained against the eldest brother of a joint Hindu family carrying on a business and several applications for execution were ordered against him and after his death against his legal representatives, the previous applications for execution save limitation for an execution application against the other members of the family. (*Chevis, J.*) KEDAR NATH *v.* RADHA KISHEN. 67 I. C. 56.

Step-in-aid—Defective Application.

——Art. 182 (5) — *Step-in-aid — Defective application—Mere mistake in calculation.*

A mere mistake in the calculation of interest in an application for execution, does not make the application one not in accordance with law under Art. 182, cl. 5 of Sch. I to the Act. (*Walsh and Ryves, JJ.*) JAMULLI NISSA BIBI *v.* MATHURA PARSHAD.
43 All. 550 : 63 I. C. 362 : 19 A. L. J. 509.

——Art. 182 (5) — *Step-in-aid — Defective application—Inventory of property not annexed—C. P. C., O. 21, R. 12.*

Where a decree-holder omits to annex to the application for execution of his decree an inventory of the property to be attached with a reasonably accurate description of the same as required by O. 21, R. 12, the application is not in accordance with law within Art. 182 and cannot save limitation when it is dismissed for non-compliance with an order for amendment. A. W. N. (1892) 3, A. W. N. (1892) 270, Ref : (*Chamier and Piggott, JJ.*) ABDUL RAFI KHAN *v.* MOULA BAKHSH.
37 All. 527 : 29 I. C. 479 : 13 A. L. J. 706.

——Art. 182 (5) and (6)— *Step in-aid—Defective application—Notice under S. 248, C. P. Code (1882)—Dek. Agri. Rel. Act, S. 47—Application without certificate of conciliator.*

LIMITATION ACT (IX OF 1908), Art. 182 (5)—Step in-aid—Defective Application.

An application to execute a decree was filed without the conciliator's certificate required by S. 47 of the Dek. Agri. Rel. Act. The Court accepted the application and ordered notice under S. 248, C. P. Code (1882). The notice was not served upon the judgment-debtor and the execution proceedings came to an end. *Held*, that the previous application for execution was in accordance with law within Art. 182 of the Limitation Act, though not accompanied by conciliator's certificate. 12 Bom. L.R. 801, Foll. The applicant was entitled to take advantage of the issue of the notice under S. 248 of the C. P. Code (1882) even though the application might be defective owing to the absence of the conciliator's certificate. (*Heaton and Shah, JJ.*) SADASHIV *v.* NARASING RAO. 28 I. C. 493 : 17 Bom. L. R. 203.

———Art. 182 (5) — *Step-in-aid — Defective application—Non-compliance with requirements of O. 21, Rr. 11 and 17 (2), C. P. Code—Formal defects.*

An application for execution rejected under O. 21, R. 17 (2), of the C. P. Code on the ground that it did not specify correctly the particulars required to be specified therein by R. 11 of that order, is not an application in accordance with law or a step-in-aid of execution. (*Richardson and Beachcroft, JJ.*) ISHAN CHANDRA SANNU *v.* DULAL CHANDRA DE. 44 I. C. 220

———Art. 182 (5) — *Step-in-aid — Defective application—C. P. Code, O 21, R 17—Rejection.*

Limitation under Art 182 of the Limitation Act is not saved by an application for execution of the decree when the application for execution of the decree is rejected under O. 21, R 17, Sub-rule (1). (*Fletcher and Richardson, JJ.*) JOYANUDDIN KHAN *v.* JAMIRUDDIN SARKAR.
37 I. C. 916 : 21 C. W. N 835.

———Art. 182 (5)— *Step-in-aid — Defective application—In accordance with law—Omission to mention uncertified payment in execution application—Effect of.*

An execution application which does not mention an uncertified payment out of Court towards the decree is none the less an application "in accordance with law" within Art. 182 of the Limitation Act. (*Oldfield and Seshagiri Aiyar, JJ.*) MARIMUTHU NAICKEN *v.* RAMASWAMI PADAYACHI.
51 I. C. 114 : 10 L. W. 66

———Art. 182 (5)—*Step-in-aid—Defective application.*

An execution application containing formal defects is not the less a step-in-aid of execution within the meaning of Art. 182 (*Ayling and Seshagiri Aiyar, JJ.*) NATESA PILLAI *v.* GANAPATHIA PILLAI.
40 Mad. 949 : 21 M. L. T. 257 : 5 L. W. 648 : 38 I. C. 136 : 32 M. L. J. 621.

———Art. 182 (5)—*Step-in-aid—Defective execution application.*

An execution petition returned for amendment not re-presented saves limitation. (*Spencer and Krishnan, JJ.*) KAMATCHI AMMAL *v.* PICHU IYER.
4 L. W. 103 : (1916) 2 M. W. N. 152 : 35 I. C. 876 : 31 M. L. J. 561.

LIMITATION ACT (IX OF 1908), Art. 182 (5)—Step in-aid—Defective Application.

———Art. 182 (5)—*Step-in-aid—Defective application—Return for amendment—No representation.*

An execution petition, which has been returned by a Court for amendment but not represented, is a step-in-aid. 6 Mad 250 ; 32 I. C. 691, Foll. (*Phillips, J.*) GOPISETTI NARAYANASWAMI *v.* MUTHALAYA VENKATARATNAM.
32 I C. 816 : 2 L. W. 1207.

———Art. 182 (5)—*Step in-aid—Defective application—Not represented.*

Application for execution returned for amendment but not represented is a step in-aid to save limitation. (*Srinivasa Aiyangar, J.*) NARAYANASWAMY NAIDU GARU *v.* COVIDI GANTAYYA.
32 I. C. 691 : (1915) M. W. N. 865.

———Art. 182 (5)—*Step-in-aid—Defective application—Failure to represent an application returned for amendment—Step-in-aid.*

Art. 182 only requires that there should be an application. The fact that the application was returned for amendment and it was not represented would not affect limitation. (*Seshagiri Aiyar and Napier, JJ.*) GURRALA SESHAYYA *v.* YEDIDA VENKATASUBBIAH.
2 L. W. 540 : 29 I. C. 16 : 28 M. L. J. 494.

———Art. 182 (5)—*Step-in aid—Defective application—Non-presentation of application for execution after return as defective.*

An application for execution of a mortgage decree for sale, wrongly returned for want of a certificate under S. 238, C.P.C (1882), although not represented, is a step-in-aid of execution in accordance with law. (*Oldfield and Napier, JJ.*) MOOTHA *v.* KANDAN VITTIL SANKUNNI NAYAR.
27 I. C. 811.

——— Art. 182 (5)—*Step-in-aid—Defective application—Not represented.*

An execution application returned for correction of defects not essential to its validity, though not represented after correction is a step-in-aid of execution and is valid for purposes of S. 48. 26 Mad. 101 : 23 Cal 217 : 31 Mad. 68 : 6 Mad. 250, Foll. (*Oldfield and Tyabji, JJ.*) VADIVELU PILLAI *v.* MARUDU PILLAI.
26 I. C. 413.

———Art. 182 (5)—*Step-in-aid—Defective application—Application for execution against two judgment-debtors one of whom dead at the time—Saving of limitation.*

An application for execution against two judgment-debtors one of whom was dead at the time saves limitation against the living judgment-debtor and the legal representatives of the deceased judgment-debtor. (*Prideaux, A. J. C.*) HASHAMALI *v.* BHAGVANT ATMARAM.
1922 Nag. 112.

———Art. 182 (5)—*Step-in-aid—Defective application—In accordance with law.*

The presentation of an application which is rejected by the Court as incorrect is not "applying in accordance with law" within Art. 182 of the Act. (*Hallifax, A. J. C.*) MEGHRAJ RAMKARAN *v.* ABDUL MAJID KHAN
63 I. C. 971 : 17 N. L. R. 179.

LIMITATION ACT (IX OF 1908), Art. 182 (5)—Step-in-aid—Defective Application.

———Art. 182 (5)—*Step-in-aid—Defective application—Application for execution — Minor—Guardian dead—Effect of.*

An application for execution in which owing to *bona fide* mistake, the minor judgment-debtor was described under the guardianship of a dead person, constitutes a step-in-aid of execution under cl. (5) of Art. 182 of the Limitation Act. 17 Mad. 76 and 35 Cal. 1047, Foll. 31 All. 572 (P. C.), Dist. (*Mullick and Kulwant Sahay, J.C.*) PURAN MALL *v.* MT. DIL WA.

4 Pat. L. T. 54 : 1924 P. 333.

———Art. 182 (5)—*Step-in aid—Defective application—Application in accordance with law—Return for amendment—Amendment not complied with.*

Where an order requiring amendment of an execution application was not complied with it cannot be said that the application was never properly presented in accordance with law. It is not true that once the application is returned for amendment of any kind, even though the defects had not vitiated the application, it could not be regarded subsequently as made in accordance with law unless the defects had been cured within the time allowed. (*Miller, C.J. and Kulwant Sahay, J.*) BHAGWAT PRASAD SINGH *v.* DWARKA PRASAD SINGH.

2 Pat. 809 : 1923 Pat. 229 : 4 Pat. L. T. 513 : 1 Pat. L. R. 453 : 1924 P. 23.

———Art. 182 (5)—*Step in-aid—Defective application—C. P. Code, O. 21, Rr. 15 and 22.*

An application under R. 15 (1), O. 21, C. P. Code, though defective saves limitation. A notice under R. 22, O. 21 issued on a defective application saves limitation. (*Coutts and Das, JJ.*) GOBECHAND DAS *v.* SATIS CHANDRA RAI

1 P. 609 : 4 P. L. T. 262 : 1922 P. 597.

———Art. 182 (5)—*Step-in-aid—Defective application—Omission to state amount of decree and costs.*

An execution application which does not contain particulars as to the amount of the decree and costs awarded is not in accordance with law an is not a step-in-aid of execution. 23 C. 217: 18 C. L. J. 538, Foll. (*Adami, J.*) GURU MAHADEVA ASHRAM PROSAD SAHIB BAHADUR *v.* MAHABIR SUKUL.

65 I. C. 120.

———Art. 182 (5)—*Step-in-aid—Defective application—C. P. Code, O. 21, R. 11 (b)—Omission to mention correct decree amount or prior application for execution.*

An application for execution failed to mention costs and the previous application and the Court returned it for amendment. The amended application was not signed and verified and it was filed. *Held* the omission to mention the amount of costs is a defect of immaterial character but the omission to mention as required by O. 21, R. 11 (*b*) the previous application was such a material defect as to render the application not in accordance with law as it did not show whether the application was within the period of limitation. "In accordance with law" is a phrase adjectival not only to the words "the proper Court for execution" but also to the words "to take some step in execution." If a fresh application is not made, after such an irregular application within three years of the application before the irregular one it is barred (1906) 33 Cal. 867 : (1896) 22 Bom. 83 foll. (*Kennedy, J. C. and Raymond, A. J. C.*) SAHIJRAM TAHILRAM *v.* TOWER, SON OF GUL.

15 S. L. R. 156 : 1922 Sind 29.

LIMITATION ACT (IX OF 1908), Art. 182 (5)—Step-in-aid—Filing of.

———Art. 182 (5)—*Step-in-aid — Defective application—In accordance with law.*

An order deciding that an application for execution, by one of two or more plffs. is not competent, amounts to holding that the application is not 'in accordance with law' within Art. 182 (5). (*Fawcett, J. C. and Raymond, A. J. C.*) IBRAHIM *v.* GHULAM HUSSAIN.

62 I. C. 507 : 15 S. L. R. 11.

Step-in-aid—Defending appeal.

———Art. 182 (5)—*Step-in-aid—Defending appeal.*

It cannot be a step-in-aid of execution within the meaning of Art. 182 if the plaintiff defends an appeal preferred by the judgment-debtor in an execution proceeding. (*Miller, C. J. and Mullick, J.*) BRIJ NATH SAHAI SINGH *v.* HARI CHARAN RAY.

48 I. C. 187.

Step-in-aid—Deposit in Court.

———Art. 182 (5)—*Step-in-aid—Deposit in Court.*

A obtained a decree against B that B should pay Rs. 267 to A and that A should remove certain bags of salt. The decree was passed in 1905. On the 25th Nov. 1905, B deposited Rs. 267 in Court for payment to A provided the latter is allowed to remove the bags of salt. On the 14th Dec. 1906, A applied for taking out Rs. 267 deposited in Court for him. This application was disallowed. After that, A took no steps until 14th July 1909, when he applied for the attachment of money. The application of 14th December 1906, was not an application to take some step-in-aid of execution of the decree; and consequently, the application of 14th July 1909, was time-barred. (*Knox, J.*) BEHARI LAL *v.* RAGUNANDAN.

12 I. C. 734 : 8 A. L. J. 1151.

———Art. 182 (5)—*Step-in-aid—Deposit in Court—Notice.*

Application by a mortgagor plaintiff depositing money and praying that notice might be sent to defendant requiring him to withdraw the money is a step-in-aid of execution. (*Chamier, J. C. and Evans, A. J. C.*) JAGESHAR SINGH *v.* BHUGWAN BAKHSH SINGH.

9 I. C. 337 : 14 O. C. 10.

Step-in-aid—Filing of.

———Art. 182 (5)—*Step-in-aid—Filing of execution of decree—Decree comprising two reliefs—Application to execute first portion.*

Where a mortgage decree was passed against all the members of a joint family for a portion of the money against the joint family property and

LIMITATION ACT (IX OF 1908), Art. 182 (5)—Step-in-aid—Filing of.

for the other portion personally against the mortgagors, (being only two of the members of the family), *held*, the decree was really one decree for the whole of the mortgage money and an application for execution for the first part kept alive for 3 further years, the time for the execution of the second part of the decree. (*Rymes and Gokul Prasad, JJ.*) RAM BUICH RAI *v.* DEOO ZEWARI.
65 I. C. 358 : 19 A. L. J. 962.

———Art. 182 (5)—*Step-in aid — Filing of appeal.*

An appeal by the decree-holder against an order declaring a judgment-debtor insolvent, is an application to take a step-in-aid of execution. (*Beaman and Heaton, JJ.*) LAXMIRAM LALLUBHAI JOSHI *v.* BALASHANKAR VENISAM MEHTA.
39 Bom. 20 : 26 I. C. 262 : 16 Bom. L. R. 612.

———Art. 182 (5)—*Step-in-aid—Filing list of witnesses.*

The filing of a list of witnesses in an execution application where the Court directed both parties to adduce evidence is a step-in-aid of execution and saves limitation. (*Teunon and Newbould, JJ.*) BROJENDRA KISHORE ROY CHOUDHURY *v.* DIL MUHUMED SARKAR.
44 I. C. 604 : 22 C. W. N. 1027.

———Art. 182 (5)—*Step-in-aid—Filing of affidavit of service.*

The filing of an affidavit to prove service on the judgment-debtor of notice issued under O. 21, R. 22, C. P. Code, is an application to take a step-in-aid of execution. (*Woodroffe and Walmsley, JJ.*) PRAN KRISHNA DAS *v.* PRATAB CHANDRA DALAI. 38 I. C. 536 : 21 C. W. N. 423.

Step-in-aid—Identification of judgment-debtor.

———Art. 182 (5) and (6)—*Step-in-aid—Identification of judgment-debtor.*

The fact that one of the decree-holders accompanied the serving peon to identify the judgment-debtors is not in itself a step-in-aid of execution within cl. (5) or cl. (6) of Art. 182. (*Fletcher and Richardson, JJ.*) JUGOL KISHORE *v.* CHINTA MONEY. 27 I.C. 225 : 18 C. W. N. 1288.

Step-in-aid—Infructuous application.

———Art. 182 (5)—*Step-in-aid— Infructuous application—Application to the executing Court.*

Where under O. 21, R. 6, C. P. Code, a certificate is issued by the Court passing the decree, transferring it to another district for execution, notice to execute the decree can only be issued by the latter Court, and an application to the former Court, for issuing notice to the judgment-debtor to show cause against execution, is not one 'in accordance with law' or to take a step-in-aid within Art. 182 (5), Lim. Act. (*N. R. Chatterjee and Newbould, JJ.*) HAZARI LAL *v.* BAIDYANATH SAHA. 63 I. C. 116 : 26 C. W. N. 292.

———Art. 182 (5)—*Step-in-aid—Infructuous application.*

An informal application, though ineffective to carry on the proceedings in execution, may still keep the decree alive. (*Seshagiri Aiyar, J.*) SRINIVASA *v.* TIRUMALAI. (1914) M. W. N. 372 : 23 I. C. 99 : 15 M. L. T. 337.

LIMITATION ACT (IX OF 1908), Art. 82 (5)—Step-in-aid—Limitation.

Step-in-aid—Limitation.

———Art. 182 (5)—*Step-in-aid—Limitation—Virtual stay of execution—Enlargement of time.*

A mortgage decree was put in execution in July 1916 but in view of a suit instituted on 11th August, 1916 by certain persons for a declaration that they had a prior charge over the properties, the executing Court directed the decree-holder to produce a copy of the judgment by a certain date, and on default dismissed the execution petition. The suit for declaration was decided in July 1917 in favour of the plaintiffs therein but was reversed in appeal. The next application for execution of the mortgage decree was presented on 13-9 19, *held* that the order of the Court refusing to execute the decree until the judgment is produced amounted virtually to a stay of execution and the period between August 1916 and July 1917 must be excluded in computing the period of limitation for execution. *Held also* that the filing of the appeal referred to above is a step-in aid of execution. (*Gokul Prasad and Lindsay, JJ.*) BALDEO SINGH *v.* RAM SARUP.
64 I. C. 598 : 19 A. L. J. 905.

———Art. 182 (5)—*Step-in-aid—Limitation—Starting point.*

Limitation begins to run from the date on which application is made to Court to take a step-in-aid of execution and not from the date on which the Court actually takes the step. (*Tudball and Rafique, JJ.*) IBRAHIMJI *v.* HASAMUDIN KHAN. 28 I. C. 381 : 13 A. L. J. 305.

———Art. 182 (5)—*Step-in-aid—Limitation—Starting point.*

Time runs from the date of the presentation of an application to take a step-in-aid for execution not from the date of final disposal. 3 I. C. 336, Rel. on. (*Mookerjee and Carnduff, JJ.*) MADAN MOHAN RAY *v.* GANGACHARAN RAY.
13 I. C. 189 : 17 C. L. J. 422.

———Art. 182 (5)—*Step in-aid—Limitation—Starting point*

Limitation runs from the date of execution of application to take a step-in-aid of execution and not from the date of disposal of such application by the Court. 10 C. L. J. 479, Rel. (*Mookerjee and Carnduff, JJ.*) MOCHAI MONDAL *v.* MESARUDDIN. 9 I. C. 213 : 13 C L J. 26.

———Art. 182 (5)—*Step-in aid—Limitation—Starting point.*

Art. 182 prescribes the period of limitation for execution from the date of applying for it or taking some step-in-aid and so the fact that an application has been pending would not entitle the decree-holder to computation of time from any later date. 1 Bom. 59 : 1 All. 580, Ref. (*Rattigan, J.*) RAM DAS *v.* KANSHI RAM. 14 I.C. 335 : 80 P. W. R. 1912 : 155 P. L. R. 1912.

———Art. 182 (5)—*Step-in-aid—Limitation—Application in accordance with law—Plaint filed in suit to set aside fraudulent transfer—Decree—Limitation—Saving of.*

A obtained a decree for money against *B* on 22—7—1918. *B* transferred all his properties to a relation of his, *C*. by a sale dated 20—8—1918.

LIMITATION ACT (IX OF 1908), Art. 182 (5)—Step-in aid—Oral application.

Thereupon *A* instituted a suit on 26—11—1918 in the court which passed the decree, for a declaration that the transfer was fraudulent and void and that the properties were liable to attachment and sale in execution of his decree impleading *B* and *C* as parties to the suit. The suit was decreed on 23—8—1921. *A* applied to execute his decree by sale of the properties of *B* and *B* pleaded that the application was barred under Art. 182 (1) of the Lim. Act. *Held*, that the plaint in the suit filed by *A* against *B* and *C* in the Court which passed the decree and was bound to execute it, constituted a step-in-aid and that the present application was not barred. 22 A. 358: 25 B. 639: 30 A. 179 : 5 B. 452 : 32 M 425 : 19 A. L. J. 905, Ref. 37 B. 559, dist. (*Wazir Hasan, A. J. C.*) SHEO RAM *v.* RAM BHAROSEY.

9 O. L. J. 444 : 4 U. P. L. R (Oudh) 97 : 26 O. C. 71 : 1923 Oudh 9.

Step-in-aid—Oral Application.

——Art. 182 (5)—*Step-in-aid—Oral application.*

There must be a definite application to take some step but such application can be made orally and can also be inferred from the proceedings and other circumstances. A mere action by the Court *suo motu* will not keep the decree alive. (*Robertson, J.*) WALI RAM *v.* BHAGAVAN DAS. **20 P. W. R. 1913 : 18 I. C. 236 : 18 P. L. R. 1912 (Sup.)**

——Art. 182 (5)—*Step-in aid—Oral application—Payment of batta for arrest of judgment-debtor.*

An application to the court to receive railway charges for taking the judgment-debtor to the civil prison and subsistence money for his maintenance while in prison is a step-in-aid of execution, within Art. 182 (5) of the Limitation Act. In order to save limitation, the application put in need not be a 'necessary application' and these words cannot be read into the article.

Such an application may even be oral. (*Krishnan, J.*) SEKHARIPURAM GRAMOM KRISHNA AIYAR *v.* NAMIASSAN VEETIL MAYANKUTTI. **15 L. W. 14 : 1922 Mad. 30.**

——Art. 182 (5)—*Step-in-aid—Oral application.*

An oral application to be effective as a step-in-aid must be one which it is necessary to make in order to get the main reliefs prayed for in the petition. It must be of such a nature that if it were not made no further proceedings in execution could be taken either by reason of the specific prayer not being contained in the application or by reason of the Code, or the rules requiring further acts to be done before the main reliefs prayed for in the execution application could be granted. (*Ayling and Kumaraswami Sastri, JJ.*) MASILAMANI MUDALIAR *v.* SETHUSWAMI AIYAR. **41 I. C 701 : 41 Mad 251 : (1917) M. W. N 502: 22 M. L. T. 115 : 33 M. L. J. 219.**

——Art. 182 (5)—*Step-in-aid—Oral application—Application to record payment.*

An oral application by the decree-holder to record a payment made to him out of court is a step-in-aid (*Hallifax, A. J. C.*) NARAYAN RAO *v.* BALKRISHNA. **1923 Nag. 11 (1).**

LIMITATION ACT (IX OF 1908), Art. 182 (5)—Step-in-aid—Payment of process fee.

——Art. 182 (5)—*Step-in-aid—Oral application—To proceed with sale.*

An oral application made to the Court to proceed with the sale is one in aid of execution and saves limitation. (*Kanhaiya Lal and Daniels, A. J. Cs.*) GULZARI LAL *v.* RAM BHAJAN. **52 I. C. 116 : 22 O. C. 75.**

——Art. 182 (5)—*Step-in-aid—Oral application.*

A *bona fide* oral application by a decree holder to have the form of the sale proclamation corrected, to have a date fixed for the settlement of the terms of the proclamation under O. 21, R. 66 and for issue of notice for a specified date is a step-in-aid of execution to save limitation. Oral application may amount to a step-in-aid of execution. (*Atkinson and Jwala Prasad, JJ.*) SURAJMAL *v.* SARJOO PRASAD **38 I. C. 540 : 2 P. L. J. 5 : 1917 Pat. 54 : 3 P. L. W. 208.**

——Art. 182 (5)—*Step-in-aid—Oral application—Presumption.*

An oral application to the Court to enter partial satisfaction of a decree is a step-in-aid. Even where there is no actual application on the record such an application may be presumed, in cases where the order made in execution is of such a nature that the Court would not have made it except upon an application for that purpose. (*Ormond and Pratt, JJ.*) ADIMUTHU PILLAI *v.* ADIAPPA, **52 I. C. 656 : 10 L. B. R. 34 : 12 Bur. L. T. 113.**

Step-in-aid—Payment of process fee.

——Art. 182 (5)—*Step-in-aid—Payment of process fee—Summoning witnesses*

In execution of a simple money decree, certain property was attached. An objection was preferred and the decree holder put in his application to summon witnesses in reply to the objection, *held* this application for summoning witnesses was a step-in-aid, 19 A. L. J. 843, Foll. (*Gokul Prasad, J.*) ABDUL QUDDUS *v* SAYED AHMAD HUSAIN. **1923 All. 415.**

——Art. 182 (5)—*Step-in-aid— Payment of process fee—Cross-examination of objector—Not a step-in-aid—Order to pay batta.*

The cross-examination of a person who objects to the execution of a decree does not amount to a step-in-aid of execution so as to give a fresh start of limitation. An order to pay fees for the issue of a notice does not furnish a fresh starting point for limitation if the fee is not paid and notice is not issued. (*Chitty and Newbould, JJ.*) AMRITLAL MOOKERJEE *v.* HIRALAL MOOKERJEE. **54 I. C. 643.**

——Art. 182 (5)—*Step-in-aid—Payment of process fee—Filing of sale proclamation.*

The payment of process fees and the filing of a notice of sale are steps-in aid of execution within the meaning of Art. 182. (*Brett and Richardson, JJ.*) BHUPENDRA NARAYAN DUTT *v.* RAJENDRA NATH DUTT. **18 I. C. 455.**

——Art. 182 (5)—*Step-in-aid—Payment of batta—Deposit of Nazir's travelling allowance.*

Mere payment of Nazir's travelling allowance will not amount to a step-in-aid of execution so as

LIMITATION ACT (IX OF 1908), Art. 182 (5)—Step-in-aid—Payment of process fee.

to save limitation under Art. 182 (5). 9 Cal. 644: 28 Mad. 399, Not foll. 22 All. 358, 30 All.179, Foll. (*Mookerjee and Carnduff, JJ.*) MADAN MOHAN DAY *v.* GANGA CHANDRA RAY
13 I. C. 189 : 17 C. L. J. 422

——Art. 182 (5)—*Step-in-aid— Payment of process fee—Batta memorandum, if step-in-aid.*

A *Batta* memorandum which mentions that it is paid for notice to issue under S. 248 of the C. P. Code (1882) is a step-in-aid of execution and saves limitation. (*Sadasiva Aiyar and Napier, JJ.*) ALAGAMUTHU PILLAI *v.* DEVASAGAYA FERNANDEZ 19 M. L. T 146 : 3 L. W. 34 : 32 I. C. 489 : (1916) 1 M W. N. 78.

——Art. 182 (5)—*Step-in-aid—Payment of process fee.*

The payment of talbanna is compliance with an order of court and not an application to take a step in-aid of execution which could extend the period of limitation. (*Kanhaiya Lal, J. C.*) SHEIKH MAHOMED ALAM *v.* BACHCHU.
73 I. C. 211 (1) : 9 O. & A. L. R. 68.

——Art. 182 (5)—*Step-in-aid— Payment of money due—Pre-emption decree—Limitation.*

An application for the execution of a decree for pre-emption can be made within three years from the date when the money due under it is tendered. The payment of money under a decree for pre-emption is a necessary step-in-aid of execution. An application tendering the money in order that the decree-holder might be able to apply for possession forms a fresh starting point for limitation whether Art. 181 or 182 of the Limitation Act applied to the case. (*Kanhaiya Lal, J. C.*) CHANDIKA PRASAD SINGH *v.* KALU.
1 U. P. L. R. (J. C.) 41 : 52 I. C. 156 : 22 O. C. 82.

——Art. 182 (5)—*Step-in-aid—Payment of process fee.*

The payment of process fee by a decree-holder is only supplementary to an application for execution and is not an application to the Court to take some step-in-aid of execution (*Lindsay, J. C.*) MANNA LAL *v.* SARDAR SINGH.
43 I. C. 342 : 20 O. C. 332.

Step-in-aid—Proper Court.

——Art 182 (5)—*Step-in-aid—Proper Court—Application for transfer of a decree already transferred.*

Where a decree has been transferred by the Court which passed the decree to another Court for execution a subsequent application for transfer made to the Court which passed the decree is not a step-in aid within S. 182 (5). (*Macleod, C. J. and Shah, J.*) RANGASWAMI SHETTI *v.* SHESHAPPA. 24 Bom. L. R 798 : 1922 Bom. 359.

——Art. 182 (5)—*Step-in-aid—Proper Court—Execution against talukdar—Certificate, absence of.*

Per *Marten, J.*—(*Shah, J. dissenting*). An application for execution against a talukdar without a certificate under S. 29 (*e*) of the Gujarat Talukdars' Act, is not made to the proper Court as defined in Explanation II to Art. 182 of the Limitation Act as at its date it was the duty of no Court to execute the decree or order there having been no certificate from the managing officer. (*Shah and Marten, JJ.*) HARGOVIND *v.* NAJA SURA. 43 Bom. 44 : 47 I.C. 726 : 20 Bom. L R. 872.

LIMITATION ACT (IX OF 1908), Art. 182 (5)—Step-in-aid—Proper Court.

——Art. 182 (5)—*Step-in-aid—Proper Court—Application to foreign Court—Execution in British Indian Court—Law applicable.*

An application to the court of a Native State to transmit its decree to a British India court for execution is a step-in-aid within Art. 182 (5) of the Lim. Act. 40 M. 1069 dist. Art. 182 (5) of the Lim. Act must be read to mean "to take some step which according to the law of the place where the application therein referred to has to be made is a step in-aid of execution." 40 M.1069 dist (*Sir Walter Schwabe, C.J. and Wallace, J.*) SRINIVASA AIYANGAR *v.* NARAYANA RAO.
43 M.L.J. 700: (1922) M W N. 647 : 16 L. W. 735 : 45 M. 1014 : 1923 Mad. 72.

——Art. 182 (5)—*Step-in-aid—Proper Court—Execution application—Cessation of territorial jurisdiction.*

A Court which passes a mortgage decree is the proper Court for execution even though the property over which it had jurisdiction at the time of the decree is taken away from its jurisdiction and assigned to another Court at the time of the presentation of the application for execution. 37 Mad. 462, overruled. (*Wallis, C.J., Ayling and Sadasiva Aivar, JJ.*) SEENI NADAN *v.* MUTHUSWAMY PILLAI '42 Mad. 821 : 26 M. L. T. 223 : 11 L W. 63 . (1919) M. W. N. 640 : 53 I C 213 : 37 M. L. J. 284 (F. B.).

——Art. 182 (5)—*Step-in-aid—Proper Court—Application to Court which passed the decree—Transfer of jurisdiction—Whether application in accordance with law—Petition returned and not represented—Whether pending petition.*

Application for execution lies to the Court within whose jurisdiction the property is situated against which the decree is to be executed and not the former Court within whose jurisdiction the properties originally were and which had passed the decree 37 Mad. 462: 31 M. L J. 90: 27 I. C. 88 26 I. C 413, Ref. A petition for execution which has been returned and not represented cannot be deemed to be a pending application for purposes of limitation (*Abdur Rahim and Oldfield, JJ.*) DOORVAS SESHADRI AIYAR *v* ANANTAYEE. 6 L. W. 775 : 42 I. C. 671 : (1917) M. W. N. 788.

——Art. 182 (5) and (6)—*Step-in-aid—Proper Court—Application to British Court for execution of a decree in an Indian State.*

An application to a foreign Court to execute the decree of a British Court under powers conferred upon it by the legislative authority of its own State is not an application "in accordance with law to the proper Court for execution" within Art. 182 of the Limitation Act Similarly an application to a British Court to take a step-in-aid of the execution by a foreign Court of a decree of a Court in British India is not an

LIMITATION ACT (IX OF 1908), Art. 182 (5)—Step-in-aid—Proper Court.

application to take a step-in-aid of execution. (*Wallis, C. J., Oldfield and Kumaraswami Sastri, JJ.*) PEIRCE LESLIE & CO., LTD. *v.* PERUMAL.
40 Mad. 1069 : 6 L. W. 203 : (1917) M. W. N. 712 : 22 M. L. T. 139 : 42 I. C. 294 : 33 M L. J. 130 (F. B.).

——Art. 182 (5)—*Step-in-aid—Proper Court.*

Where the Court which passed a decree has ceased to have jurisdiction to execute it the only Court which can execute the decree is the Court which, at the time of filing the execution application would have jurisdiction to try the suit in which the decree sought to be executed was passed. 22 I. C 899 : 27 I. C. 88, Foll. (*Sadasiva Aiyar and Moore, JJ.*) PENUGONDA RATTAM *v.* KORASIKA THATHA. 20 M L. T 327 : 35 I. C. 237 : 31 M. L. J. 90.

——Art. 182 (5)—*Step-in-aid—Proper Court—Application in accordance with law—Meaning of—Application to transfer decree for execution—Court having no pecuniary jurisdiction—If a step-in-aid of execution.*

An application to transfer a decree for execution is a step-in-aid of execution, if it is in accordance with law. The terms "applying in accordance with law" mean applying to the court to do something in execution which by law that court is competent to do. It does not mean applying to the court to do something which either to the decree-holder's direct knowledge in fact or from his presumed knowledge of the law he must have known the court was incompetent to do. Hence an application to transfer a decree for execution to a court which was pecuniarily incompetent in jurisdiction, is not a step-in-aid of execution. (*Jwala Prasad and Bucknill, JJ.*) AMRIT LAL *v.* MURLIDHAR. 3 Pat. L. T. 422 : 1922 Pat. 229 : 1922 Pat. 188.

Step-in-aid—Scope of.

——Art. 182 (5)—*Step-in aid—Scope of—Joint decree against principal debtor and surety—Execution against principal debtor—If saves limitation against surety.*

Where a decree is passed jointly against several persons notwithstanding the fact that it is to be executed against some of them only in case the decree-holder failed to realise it from the principal judgment-debtors, an application for execution against the latter saves limitation for an application for execution against the former. (*Martineau, J.*) HONDA RAM *v.* FIRM OF SETH KUNWAR BHANSUK NAND.
4 U. P. L. R. 70 (Lah.) : 1922 Lah. 457.

——Art. 182 (5)—*Step-in-aid—Scope of—Nature of application—Pendency of application necessary—Objection to enter up satisfaction—Plaint in a suit under S. 53, T. P. Act—If a step-in-aid.*

Art. 182 (5) in so far as it relates to a "step-in-aid of execution" contemplates an application which is not an initial application for execution but is an application to take some step to advance an execution proceeding which is already pending, *e. g.*, an application to bring to sale properties

LIMITATION ACT (IX OF 1908), Art. 182 (5)—Step-in-aid—Starting point.

already under attachment. 16 Cal. 757 ; 17 Cal. 268 ; 23 Cal. 690, Foll.; observations of Ramesam, J. in 41 M.L J. 374 dissented from. A "counter-statement" filed by the decree-holder in answer to an application by the judgment debtor to enter up satisfaction of the decree is not a "step-in-aid" when there was no petition for execution pending at the time. Nor could the time, during which the application to enter satisfaction was pending, be deducted in counting the period of limitation against the decree-holder as the pendency of that application in no way prevented the execution of the decree. 43 Mad. 185 and 43 Cal. 660 distd. The plaint in a suit by the decree-holder under S. 53, T. P. Act, to set aside a deed of settlement by the judgment-debtor does not operate as a "step-in-aid of execution" especially where the properties sought to be attached in execution are different from those which formed the subject-matter of the suit. (*Ayling and Venkatasubba Rao, JJ.*) KUPPUSWAMI CHETTIAR *v.* RAJAGOPALA AIYAR. 42 M L.J. 303 : 45 Mad. 466 : (1922) M. W. N. 113 : 15 L. W. 348 : 32 M. L. T. 26 : 1922 Mad. 79.

——Art. 182 (5) and (6)—*Scope of—Step-in-aid—Cls. (5) and (6) of Art. 182 of the Limitation Act are not mutually exclusive.*

Where an application to take a step-in-aid of execution has been made after issue of notice under cl. (6), the starting point for computing the period of limitation is the date of the application to take a step-in-aid of execution and not the date of issue of notice. (*Pratt, J.*) ISAHUT *v.* MI HLA MO WE. 52 I. C. 937 : 12 Bur. L. T. 74.

Step-in aid—Starting point.

——Art. 182 (5)—*Step-in-aid—Starting point—Second appeal to High Court.*

An execution petition having been dismissed in the first Court as well as an appeal, a second appeal was preferred to the High Court, where too it was dismissed. *Held*, the presentation of a second appeal within 3 years of a subsequent application for execution would not be a step-in-aid. (*Mookerjee and Panton, JJ.*) RAJANI BANDHU CHATTERJI *v.* KALI PRAMIA CHATTERJI.
1924 Cal. 419.

——Art. 182 (5)—*Step-in-aid — Starting point.*

Where a notice actually left the court of execution on a particular day, the fact that in the court of service it was made over to the peon on a later date cannot extend the period of limitation. Time runs from the date of the presentation of the application and not from the date on which the application is disposed of by a court. (*Newbould and Cuming, JJ.*) KRISHNA PRASAD MAITRA *v.* DHIRENDRA NATH CHAKRAVARTI.
24 C. W. N. 55 : 54 I. C. 1 : 30 C. L. J. 518.

——Art. 182 (5)—*Step-in-aid—Starting point—Execution—Arrest warrant returned unexecuted—Order for fresh steps.*

On 3rd May 1917, a warrant of arrest, issued at the instance of the decree-holder had been returned, the judgment-debtor not having been found. The Court passed an order on the following terms :—"Fresh steps, if any, by 10th May, 1917".

LIMITATION ACT (IX OF 1908), Art. 182 (5)—Step-in-aid—Starting point.

This order or the application which must presumably have been made in connection with it was relied on as a step-in-aid of execution. *Held*, that the order itself was clearly not a step taken by the petitioner (decree-holder). It was impossible to say whether it was based on any application made or what the nature of that application was. Even on the assumption that there was an application for further time that would not be a step-in-aid. (*Oldfield, J.*) PARTHASARATHY CHETTY *v.* ABDUL RAHIM SAHIB. **18 L. W. 109 : (1923) M. W. N. 871 : 1923 Mad. 686.**

——Art. 182 (5)—*Step-in-aid—Starting point—Limitation—Application for execution—Order allowing amendment.*

Where an execution application is returned for amendment and subsequently represented with the necessary amendments, the starting point for a subsequent application for execution is the date of the original presentation of the prior application and not the date on which it was presented after amendment. An endorsement by the Court granting time to enable an applicant to put his petition in the form prescribed by law and the amendment made in pursuance thereto are not steps in-aid of execution within Art. 182 (5) of the Limitation Act 38 Mad. 695, Dist. (*Oldfield and Seshagiri Aiyar, JJ.*) VALASUBRAMANIA PILLAI *v.* T. A. B. CHIT CO., LTD.

52 I. C. 765 : 10 L. W. 222.

——Art. 182 (5)—*Step-in-aid—Starting point—Decree—Consisting of mortgage decree and simple money decree—Execution of the former application for execution of the latter—Limitation.*

Where in a suit on a mortgage executed by the adult members of a joint family, only a portion of the mortgage money was found to have been required for the family necessity and a decree was passed for the same portion against all members of the family, directing that in case the money was not paid, the decree was to be satisfied by sale of a sufficient portion of the joint property and along with this a simple money decree for the balance was passed against the adult members. *Held*, that there was only one decree for the whole mortgage and execution of the mortgage decree was no bar to the execution of the money decree for which the decree-holders could apply within three years of the date of the application to execute the mortgage decree. (*Ryves and Gokul Prasad, JJ.*) RAM BAICHH RAI *v.* DEVO DEWARI.

35 A. C. 366 ; 3 P. L. T. 314.

Step-in-aid—Test of.

——Art. 182 (5)—*Step-in-aid—Test of—Application to record payment by court—Effect of.*

It is not what the decree-holder does that is to be a step-in-aid of execution but what he asks the court to do, and the date from which the period of limitation starts is the date on which he asks for that step to be taken, not that on which it is taken. An application to the court to record a part payment of the decree, certified to it, is a step-in-aid. *Quaere*: Whether the result would be the same if execution of the decree had been barred? 12 C. 608 : 20 C. 696 : 32 A. 257, Ref. (*Hallifax, A. J. C.*) LACHMAN *v.* GAHRESHWAR.

18 N. L. R. 62 : 1922 Nag. 166.

LIMITATION ACT (IX OF 1908), Art. 182 (5)—Step-in-aid—What is

——Art. 182 (5)—*Step-in-aid—Test of.*

An application in furtherance of an execution to be taken by the Court saves limitation though an execution proceeding is not then pending. 10 C. W. N. 306 : 1 I. C. 677, Rel. on. Where a compromise decree in a mortgage suit provided payment by instalments (on default of payment of one instalment, the whole amount becoming due) and on such default being made, the decree-holder applied for leave to execute the decree or in the alternative for an absolute order directing the sale of the mortgaged property. *Held*, that this application amounted to a step-in-aid. (*Atkinson, J.*) PHUL KOERI *v.* BAJRENG RAM

39 I. C. 101.

Step-in-aid—What is.

——Art. 182 (5)—*Step-in-aid—What is—Appeal from order made in the course of execution proceedings—When a step-in-aid.*

An appeal to the High Court against an order in an execution is not an application for execution in accordance with law to the proper court or a step-in-aid of execution within the meaning of Art. 182 of the Lim. Act. (*Macleod, C. J and Crump, J.*) GOVINDDAS RAJA RAMDAS *v.* GANPATDAS. **47 Bom. 783 : 25 Bom. L. R. 518 : 1923 Bom. 431.**

——Art. 182 (5)—*Step-in-aid—What is—Mortgage—Instalment decree under Dekkan Agriculturists Relief Act—Failure to pay instalments—Execution application—Effect—Step-in-aid of execution of all instalments.*

A decree was passed on a mortgage and the amount directed to be paid in instalments under the Dekkan Agriculturists Relief Act. As some of the instalments were not paid, darkhast on execution application for some of those instalments was taken out. When darkhast was taken later for default in payment of some other instalments, a point of limitation was raised. *Held*, the prior Darkhast was a step-in-aid of execution in respect of all the instalments then due. (*Macleod, C. J. and Shah, J.*) SITABAI ZUKAPPA MHETRE *v.* KESHAVRAO KATE. **46 Bom. 719 : 24 Bom. L. R. 284 : 1922 Bom. 194.**

——Art. 182 (5)—*Step-in-aid—What is.*

In the case of a decree *nisi* under Dekkan Agriculturists Relief Act there is no necessity to apply to the Court for decree absolute. Application for same should be treated as a step-in-aid of execution. (*Macleod, C. J. and Shah, J.*) HIRACHAND KHEMCHAND *v.* ABA LALA PATIL.

24 Bom. L. R. 269 : 46 B. 761 : 1922 B. 95.

——Art. 182 (5)—*Step-in-aid—What is—Decree passed by Native Court transferred to British Court—Proceedings taken in Native Court—Whether a step-in-aid of execution—Application barred by time—Objection not taken—Effect of.*

Where proceedings are taken in a Native Court under a decree passed by the Native Court but transferred to the British Court, such a proceeding is a step-in-aid of execution and are

LIMITATION ACT (IX OF 1908), Art. 182 (5)—Step-in-aid—What is.

taken in a 'Proper Court' under Art. 182 (5) of Sch. I to the Limitation Act and operates to save limitation. (*Macleod, C. J. and Fawcett, J.*) PRABHULINGAPPA KHANGONDA v. GURUNATH BALAJI
45 Bom. 453 : 59 I. C 747 : 22 Bom. L. R. 1389.

——— Art. 182 (5)—*Step-in-aid—What is—Relief granted by decree—Prayer for.*

To constitute a step-in-aid, an execution application must pray for some relief which can be granted by the court. An application to bring on record the legal representatives of a deceased judgment-debtor and for issue of notice under O. 21, R. 22, C. P. Code, is a step in-aid even though it did not state the date of the prior application for execution, the amount of costs, or the way in which the court's assistance was required (*Mookerjee and Panton, JJ.*) SADAY CHANDRA JANA *v.* PORESH NATH GHOSE.
35 C. L. J. 82 : 1922 Cal. 44.

——— Art. 182 (5)—*Step-in-aid—What is—Order for attachment.*

Where on an execution petition being put in, notice was ordered and on the absence of the judgment-debtors on the day fixed, the Court passed an order directing attachment, this does not mean to be a step-in-aid of execution. (*Oldfield and Devadoss, JJ.*) DATTADA LAKSHMI NARASA RAJU *v.* GANGANNA. 45 M. L. J 680 : (1923) M. W. N. 660 : 1924 Mad. 186.

——— Art. 182 (5)—*Step-in-aid—What is.*

The payment of maintenance charge of a judgment-debtor who is in jail is not a step-in-aid of execution. (*Krishnan, J.*) RAMUDU CHETTY *v.* VARADARAJA CHARIAR. 62 I. C. 480 : 13 L W 289.

——— Art. 182 (5)—*Step-in-aid—What is—Summoning Patwari.*

An application to summon a *patwari* for ascertaining the area is a step-in-aid of execution (*Dalal, A. J. C.*) MATHURA SINGH *v.* KANDHAI PATHAK. 9 O. & A. L. R. 465 : 1924 Oudh 177.

——— Art. 182 (5)—*Step-in-aid—What is—Transfer of decree to another Court for execution—Certificate.*

Where a decree-holder seeking to execute his decree in a Court other than that which passed it, applies for a certificate of transfer, the application is a step-in-aid. (*Miller, C.J. and Jwala Prasad, J.*) RAMCHANDRA MARWARI *v* KRISHNA LAL MARWARI. 3 Pat. L. T. 298 1 Pat 328 : 1922 P. 301.

Step-in-aid—Who must apply.

——— Art. 182 (5)—*Step-in-aid—Who must apply—Joint decree—Decree for partition—Execution—Limitation.*

A decree for partition dividing the properties into six shares awarded one share to the plaintiff and to each of the defendants, first the allotment and delivery was made to the plaintiff and then to the 4th deft. on his application The 3rd then applied for delivery of his share in execution. *Held*, that the decree is a joint one and that the application by 3rd deft. is not barred by limitation, if it is within three years of the one by 4th defendant. (*Oldfield and Ramesam, JJ.*) RAMASAMI AIYANGAR *v.* NARAYANA AIYANGAR.
65 I. C. 990 : 14 L. W. 498.

LIMITATION ACT (IX OF 1908), Art. 182 (5)—Step-in-aid—Who must apply.

——— Art. 182 (5)—*Step-in-aid—Who must apply—Transferee of decree—Legal representatives.*

Transferee from a decree-holder applied for execution within time. In the meantime the heirs of the decree-holder sued the transferee and got the decree changed in their name The transferee again applied for execution within 3 years of his last application but it was dismissed. The heirs of the decree holder applied for execution after three years from the decree but within 3 years from the transferees' application. *Held*, that the transferees' applications were "in accordance with law" and therfore the application by the heirs was not barred. (*Spencer and Seshagiri Aiyar, JJ.*) HARI KRISHNAMURTHI *v.* AKELLA SURYANARAYANAMURTHI.
43 Mad. 424 : (1920) M. W. N. 395 : 57 I. C. 753 : 38 M. L. J. 271.

——— Art. 182 (5)—*Step-in-aid—Who must apply—Application by oral assignee.*

An application of an oral assignee of a decree is not an application to take a step in-aid of execution in accordance with law. (*Sundara Aiyar and Sadasiva Aiyar, JJ.*) RAMANATHAN CHETTIAR *v.* RAGHAVENDRA RAO. 16 I. C. 807.

——— Art. 182 (5)—*Step-in-aid—Who must apply—Oral assignee of decree—Application for execution—Dismissal of—It can enlarge time.*

Dismissal of an application for execution of a decree by an oral assignee cannot have the effect of extending time even if the assignment is obtained in writing after the expiry of time (*Abdur Rahim, J.*) RAMANATHAN CHETTIAR *v.* SOKKANATHA GOUNDAN. (1911) 2 M. W. N. 559 : 13 I. C. 78 : 10 M. L. T. 532.

——— Art. 182 (5) (d)—*Step-in-aid—Who must apply—Application for execution by a decree-holder after assignment of decree—C. P. Code, O. 21, R. 16.*

An application by a decree-holder for execution after assignment of his decree is an application made in accordance with law within Art. 182, cl. 5 and is sufficient to save a fresh application by the assignee after three years from the date of the decree. (*Piggott, J. C.*) EJAZ HUSSAIN *v.* SHAH ZAMAN MIRZA. 18 I. C. 97 : 16 O. C. 70.

——— Arts 182 (5) and 181—*Step-in-aid Who must apply—Execution—Application by decree-holder auction-purchaser.*

Where an application has been made against one of several judgment-debtors and has been dismissed for this reason, a subsequent application made against the whole of the judgment-debtors cannot be treated as an application in continuation of the previous application. If the first application for execution is *ab initio* a bad application, the subsequent application cannot be an application made in continuation, Where the question is whether an application by a decree-

LIMITATION ACT (IX OF 1908), Art. 182 (6).

holder auction purchaser for delivery of possession is a step-in-aid of execution the answer must be in the negative. O 21, R. 95 applies to an application made by the purchaser and an application made by the purchaser cannot possibly be read as an application by a decree-holder to take some step-in-aid of execution, whether the purchaser be the decree-holder or an outsider. (*Coutts and Das, JJ.*) KAMAL NAIN SINGH *v.* MAHARAJA BAHADUR KESHO PRASAD SINGH.

1 Pat. 701 : 1922 Pat. 310.

———Art. 182 (6)—"*Date of issue of notice*" —*Meaning of.*

"Date of issue of notice" in Art. 182 (6) of the Act mean the date of the order of the Court directing that notice should go and not the date on which the notice is signed or actually leaves the Court. *Richards, C. J. Knox and Bannerjee, JJ.*) KALIKA BAKSH SINGH *v.* RAMCHARAN.

16 A. L. J. 633 : 46 I. C. 584 : 40 All. 630 (F. B)

[Contra. 45 I. C. 203 : 3 Pat. L. J. 285.]

———Art. 182 (6)—*Time runs from actual issue of notice.*

Under Art. 182 (6) time runs from the date on which the notice was issued and not the date on which the order issuing notice was passed. (*Beaman and Heaton, JJ.*) NILKANTH LAXMAN JOSHI *v.* RAGHO MAHADU PAVALE.

42 Bom. 553 : 45 I. C. 559 : 20 Bom. L. R. 351.

———Art. 182 (6)— *Notice to decree-holder issued by executing court forwarded to another court for service—Date from which limitation commenced to run—Filing of affidavit of identifier, if step-in-aid.*

If notice for the execution of a decree is forwarded to another Court within whose jurisdiction the judgment debtor resides, limitation under Art. 182 (6 runs from the date when the notice actually left the Court of execution. The fact that in the course of service it was made over to the peon on a later date cannot extend the period. 10 C. W. N 303, Ref. The date on which an application for execution of a decree is made not the date of its disposal is the date from which limitation runs The mere filing by the decree-holder's identifier of an affidavit of service unaccompanied by any application, oral or written, does not give a fresh start. 21 C. W. N 423, Foll. (*Newbould and Cuming, JJ.*) KRISHNA PRASAD *v.* NIRENDRA NATH CHAKRAVARTY.

24 C W. N. 55 : 54 I. C. 1 : 30 C. L. J. 518.

———Art. 182 (6)—*Notice to judgment-debtor —Limitation.*

The date when notice was directed to be issued to the judgment-debtor is the date from which period of limitation commences to run. (*Fletcher and Richardson, JJ.*) JUGOL KISHORE MARWARI *v.* CHINTAMONI ROY. 24 I. C. 80 : 20 C. L. J. 15.

———Art. 182 (6)—*Issue of notice—C. P. Code (XIV of 1882), S 248.*

The issue of a notice under S. 248 of the C. P. Code of 1882 is sufficient to save a decree from the bar of Limitation Act, Art. 179, even though it is issued upon an application which is not in accordance with law. (*Mookerjee and Casperse, JJ.*) DEO NARAIN SINGH *v.* BHAGWAT NAIK.

10 I. C. 411.

LIMITATION ACT (IX OF 1908), Art. 182 (7).

———Art. 182 (6) — *Execution application — Issue of notice—Fresh starting point.*

Art, 182 of the Limitation Act should receive a fair and liberal and not a too technical construction so as to deprive the decree-holder of the fruits of his decree. Under Art. 182 (6) of the Lim. Act, the mere issue of notice whether the execution application with respect to which it is made is in accordance with law or not, gives a fresh starting point of limitation. 18 M. L. J. 14 ; 28 Mad. 557 foll. An application to a Court having no jurisdiction is no application at all. An application once barred cannot be revived. (*Sadasiva Aiyar and Napier, JJ.*) VARADARAJA MUDALI *v.* MURUGESAN PILLAI.

18 M. L. T. 313 : (1915) M. W. N. 769 : 30 I. C. 707 : 39 M. 923 : 30 M. L. J. 460.

———Art. 182 (6)—*Date of issue of notice — Meaning of.*

The date of issue of the notice in Art. 182, cl. 6 means the date on which the notice actually issued from the office of the Court, *i.e.*, the date for which it is signed by the *Sheristadar* in the name of the court. (1917) Pat. 52 Ref. (*Roe and Imam, JJ.*) KHODAR BUKHSH *v.* BAHADUR ALI.

1918 P. 130 : 3 Pat. L. J. 285 : 45 I. C. 203 : 4 Pat. L. W. 324.

———Art. 182 (6) — *Execution proceedings — Limitation date from which runs.*

Limitation begins to run from the date of the order of the Court which issues notice to the judgment-debtor. (*Roe and Kingsford, JJ.*) RAM KUMAR LAL *v.* KESHO PRASAD SINGH.

36 I. C. 999 : 1917 Pat. 52.

——Art. 182 (7)—*Mesne profits—Ascertainment of—Starting point.*

In a suit for redemption of a mortgage where the decree directs the mesne profits due to the mortgagor to be ascertained in execution time begins to run when the profits are so ascertained 25 All. 385, Foll. (*Richards, C. J. and Banerjea, J.*) NARSINGH DAS *v.* DEBI PRASAD.

40 All. 211 : 43 I. C. 932 : 16 A. L. J. 88.

——Art. 182 (7)—*Instalment decree—Execution.*

A decree provided for payment of amount in three instalments on 4th June 1909, 4th June 1910 and 4th June 1911. In default of payment in any one instalment the decree holder could recover the whole amount without waiting for succeeding instalments. On 8th April 1913, an application for execution was made for the amounts of the second and third instalments. In the application it was stated that a part of the amount of the first instalment had been received but no claim for the balance of that instalment was made. The application was within time, having been made within three years from 4th June 1910. (*Richards. C J. and Banerjee, J.*) LACHMI NARAIN *v* SARJU PRASAD.

39 All. 230 : 38 I. C. 634 : 15 A. L. J. 102.

——Art. 182 (7)—*Instalment decree — Payment not certified.*

Where payments towards decree amount are not certified to the executing Court limitation

runs against the decree-holder from the day upon which the first instalment is due. 20 C. L. J. 131, Diss. (*Richards, C. J. and Rafique, J.*) CHATTER SINGH *v* AMER SINGH.

38 All. 204 : 32 I. C. 590 : 14 A. L. J. 132

——Art. 182 (7)—*Decree payable in instalment—Default—Limitation.*

If a decree provides for payment in instalments and in case of default in payment of any of the instalments, the whole amount becomes payable at once, and an application for execution should be made within 3 years of the first default. (*Chamier, J.*) AMIR SINGH *v.* CHATTAR SINGH.

29 I. C. 274 : 13 A. L. J. 666.

——Art. 182 (7)—*Expln. I.—Execution application against missing person: if saves limitation*

An execution application against a judgment-debtor whose whereabouts are not known is not invalid and saves limitation (*Tudball and Piggott, JJ.*) MAHOMED HUSSAIN *v.* ENAYAT HUSSAIN.

36 All. 482 : 24 I. C. 473 : 12 A. L. J. 830.

——Art. 182 (7 — *Execution of decree — Decree conditional on redemption of prior mortgage—Limitation.*

Where a decree on a mortgage was passed in 1885 an application for execution thereof was not made till 1897 in which year a prior mortgagee got a decree to the effect that the decree-holder of 1885 cannot execute it until the redemption of the prior mortgage and the latter was redeemed in 1910 after which the decree of 1885 was put in execution. *Held*, that the application was time-barred and the redemption of the prior mortgage was entirely in the hands of the decree-holder. (*Richards and Banerjee, JJ.*) HIRA PRASAD PANDE *v.* KASHI PRASAD. **18 I. C. 897.**

——Art. 182 (7)—*Instalment decree — No option to decree-holder in the case of the whole amount becoming due under an instalment decree on default of payment of one instalment.*

In the case of whole amount under an instalment decree becoming due on failure to pay one instalment no option is allowed to the decree holder between compelling immediate payment of the whole amount and recovering money according to instalments 13 C. L. J. 243, not Foll. (*Fletcher and Richardson, JJ.*) JOYNUDDIN KHAN *v.* JAMIRUDDIN SARKAR.

37 I. C. 916 : 21 C. W. N. 835.

——Art. 182 (7) *Expln.* 1—*Suit for arrears of rent—Separate tenancies—Separate decrees—Application for execution for one decree—Effect.*

In a suit for arrears of rent in respect of three tenancies held by the defts. a decree was made specifying the sums due in respect of and to be charged on each of the tenancies *Held*, that the decree though passed in one suit set out in one sheet of paper was precisely the same as if passed in three distinct suits against the defts. one in respect of each tenancy. Consequently the rule of limitation would apply separately to each sum decreed against each tenancy, so that an application for execution of the decree in respect of the sum leviable from one of the tenancies would not under Art. 182, Cls. (5) and (6), protect from the bar of limitation the decree in respect of the sums leviable from the other tenancies 10 B.L.R. 258, (F.B.) 6 W. R. Misc. Rulings 18 10 W. R. 310. Ref. (*Mookerjee and Cuming, JJ.*) DHIRENDRA NATH SARKAR *v.* NISCHINTAPORE.

26 C. L. J. 118 : 36 I. C. 398 : 22 C. W. N. 192.

——Art. 182 (7)—*Conditional decree—Direction in a decree that mortgaged properties be sold and if proceeds be insufficient, balance to be realised from other properties—Not a direction to pay money at a certain date.*

A direction in the decree that the mortgaged properties be sold and if the proceeds be insufficient the balance should be realised from sale of other properties of the judgment-debtor is not a direction to pay money at a certain date within the meaning of Cl. 7, Art. 182. (*Coxe and Ray, JJ.*) JANENDRA NATH BOSE *v.* KHULNA LOAN CO. LTD. **24 I. C. 35 : 18 C. W. N. 492.**

——Art. 182 (7)—*Instalment decree—Default in payment of—Limitation for execution.*

Where a decree is made payable by instalments and on default being made in the payment of instalments the decree holder is allowed to execute the decree in a certain manner, he must use his right once only. If he fails to exercise the option according to the terms of the decree on the first default being made, he cannot enforce the default clause at a later stage. (*Shah Din, J.*) KIRPA VERI *v.* DASAUNDHI RAM. **36 I. C. 978 : 8 P. R. 1917.**

——Art. 182 (7)—*Instalment decree—Default in payment—Limitation for execution.*

Where a decree directed payment by instalments and contained also a proviso that on default of any instalment the decree-holder should be entitled to recover the whole of the balance alone, the decree-holder on default has got the option to execute his decree for any of the instalment not barred for the whole of the balance within 3 years from the date of default. The decree should be considered as far as possible in favour of the judgment-creditor, *i. e.* giving him an option, whereever this could fairly be done. (*Reid, C.J.*) KRISHEN CHAND *v.* GOPAL SINGH.

172 P. L. R. 1912 : 271 P. W. R. 1912 : 16 I. C. 842 : 6 P. R 1913.

——Art. 182 (7)—*Instalment decree—Default in payment—Execution—Limitation.*

Except where an instalment decree leaves no option to the decree-holder but to execute the decree for the whole amount on default of payment of an instalment the decree-holder may execute it on the happening of the first, second or any subsequent default. Limitation will run in respect of each instalment separately from the date on which it became due and payable. (*Atkinson and Manuk, JJ.*) MANINDRANATH ROY *v.* KANAI RAM MARWARI, **1919 Pat. 46 : 48 I. C. 728 : 4 Pat. L. J. 365.**

——Art. 182 (7)—*Date of decree—Decree incapable of execution, meaning of—Decree ordered to be executed by sale of property of deceased person in the hands of the judgment debtor—Property came into the hands of the judgment-debtor after period of limitation—Whether application barred.*

LIMITATION ACT (IX OF 1908), Art. 182 (7).

An application for execution is barred by limitation if made after proper time even if judgment-debtor did not get possession of property within limitation against which only the decree was to be executed. The expression "incapable of execution" means that there must be some inherent defect in the decree itself which makes it incapable of execution and if there is no such defect the decree cannot be held to be incapable of execution. (*Sharfuddin and Roe, JJ.*) EKRADESWAR SINGH *v.* MAHARAJAH SIR RAMESHWAR SINGH
1917 Pat. 253 : 42 I. C. 666 : 2 Pat L. W. 199.
[Reversed on Appeal. *See* 48 I. A. 17 : 19 A. L. J 26: 13 L. W, 546 : (1921) M. W. N. 21 : 1 Pat. L. T. 731 : 59 I. C. 636 : 40 M. L. J. 1 (P.C.).

——Art. 182 (7) Expln. II—*Proper Court—Pecuniary jurisdiction.*

Where a decree for over Rs. 1,000 was passed by a munsiff having jurisdiction up to Rs. 2,000 and an application for its execution was presented to his successor who had jurisdiction to try suits up to Rs. 1,000 value only, the District Judge was wrong in holding that there was not an application made to the proper Court and that the second application was barred by limitation. 6 Cal. 513 ; 15 Cal. 687; Rel. (*Chamier, C.J. and Jwala Prasad, J.*) ISWARI PRASAD SINGH *v.* PARKWAT HUSSAIN, 2 Pat. L. J. 113 : 1 Pat. L. W. 689 : 39 I. C. 63 : 1917 Pat. 116.

——Art. 182 (7)—*Instalment decree—Payment and acceptance of—Overdue instalments—Limitation.*

Whether the payment and acceptance of an overdue instalment is to be treated as a payment regularly made in the satisfaction of the instalments due so as to extend the period of limitation for execution of the decree is a question of fact. Mere acceptance of overdue instalments is not sufficient proof of waiver. (*Pratt, J.C. and Hayward, A.J.C.*) FIRM OF BHAWANDAS FEROOMAL *v.* MEGHRAJ. 45 I. C. 324 : 11 S. L. R. 120.

——Art. 183 and 181—'*To enforce a Judgment or decree*'—*Mortgage—Preliminary decree—Order absolute for sale—Limitation—T.P. Act, Ss. 88 and 89.*

A decree under S. 89 of the T. P. Act having been made by the original side of the High Court on 16—12—'86 the mortgagee applied for an order absolute for sale on 3—7—'09. The High Court held that the application being one " to enforce a judgment or decree " within Art. 183 was barred by limitation and that the application was equally barred if viewed as an application for a further decree under Art. 181. The Judicial Committee saw no reason to interfere with the decision of the High Court. (*Lord Shaw*) MUNNA LAL *v.* SARAT CHUNDER. 42 Cal. 776 : 42 I. A. 88 : 17 M. L. T. 120 : 21 C. L. J 118 : 2 L. W. 282 : 19 C. W. N 561 : 27 I. C. 683 : 17 Bom. L. R. 408 : 28 M. L. J. 470 (P.C.)
[Affirming 38 Cal. 913 : 11 I. C. 948 : 16 C. W. N. 49.]

——Art. 183—*Application for restitution in pursuance of Privy Council decree—Limitation applicable—'To enforce' meaning of.*

LIMITATION ACT (IX OF 1908), Art. 183.

An application for restitution in pursuance of a Privy Council decree is in substance one to enforce a decree of the Privy Council and is governed by Art. 183. The words "to enforce" in Art 183 are wider than the words "to execute" in Art. 182 and should be interpreted as equivalent to "give full effect to". (*Walsh and Ryves, JJ.*) BRIJ LAL *v.* DAMODAR DAS. 20 A. L. J 456 : 44 All. 555 : 4 U. P. L. R (A) 74 : 1922 All. 238.

——Art. 183—*Mortgage suit—Order absolute for sale—Application to enforce—Limitation.*

An application to enforce an order absolute made by the High Court in a suit to enforce the mortgage security, must be made within 12 years from the date when the order absolute for sale was made. (*Mookerjee and Fletcher, JJ.*) APURBA KRISHNA SETH *v.* RASH BEHARI DUTT.
60 I. C. 880 : 47 Cal. 746.

——Art. 183—*Decree of Privy Council—Execution—Revivor.*

An application to enforce a decree of the Privy Council must be made within 12 years of the accrual of right to enforce, or the date of revivor. Where on an application for execution notice is issued under O. 21, R. 22 and the Court has decided that the decree is still capable of execution, there is a revivor within the meaning of Art. 183. Where an order in Council is sent to a Subordinate Court for execution without any notice to the judgment-debtors it is not a revivor of the order. (*Chamier, C. J. and Jwala Prasad, J.*) TRIBIKARAM DEO NARAYAN SINGH *v.* BADRI MISSIR. 1 Pat. L. J. 385 : 20 C. W. N. 1051 : 36 I. C. 633 : 2 P. L. W. 361.

——Art. 183—*Revivor of decree—Transfer of decree—Issue of notice under O. 21, R. 22, C. P. Code—Leave of Court.*

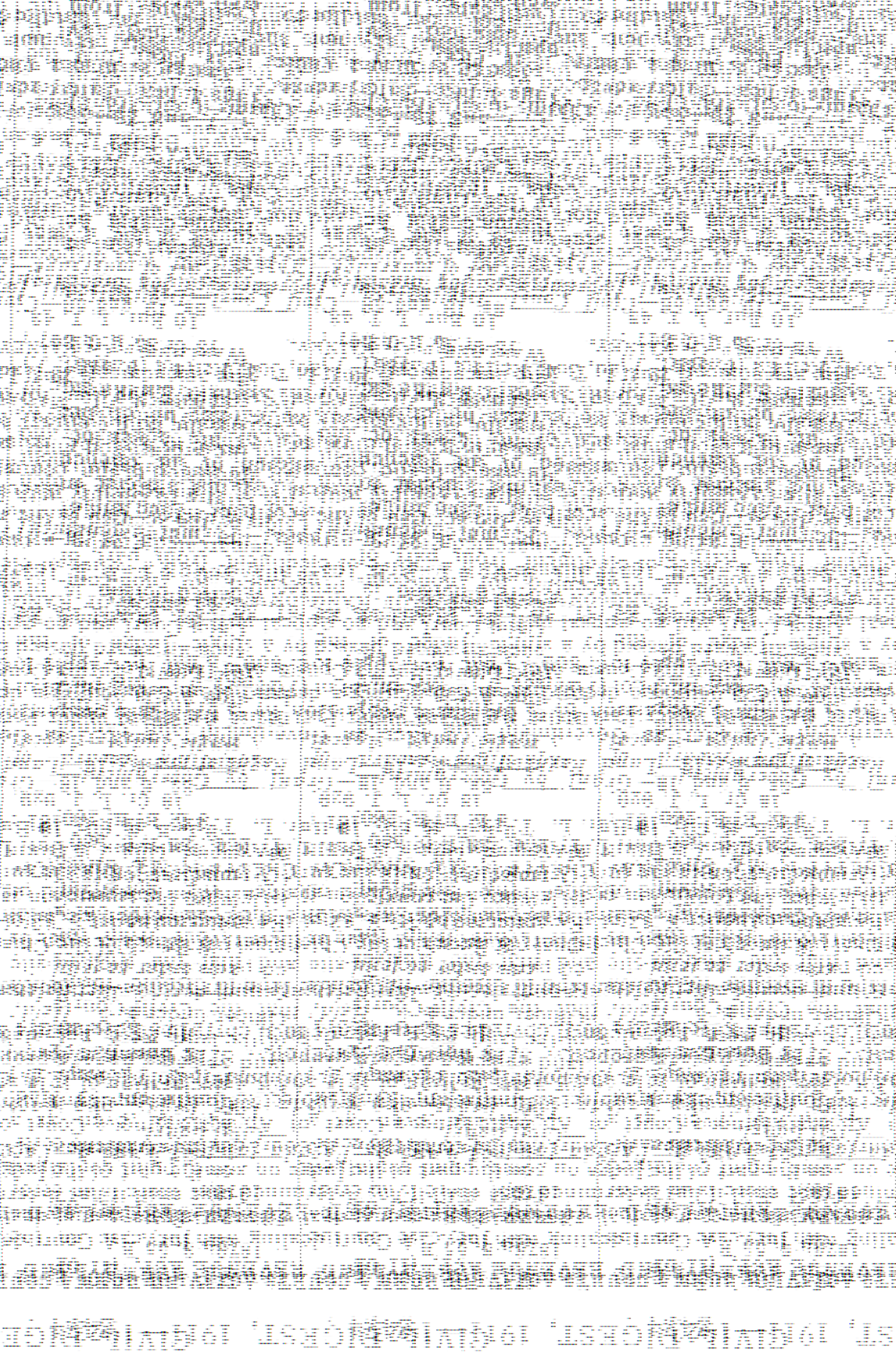
An application for the transfer of a decree does not amount to a revivor of it nor does the issue of a notice under O. 21, R. 22, C.P.C. amount to any such revivor. But where execution cannot proceed without leave of the Court the granting of that leave is a revivor of the decree. The period of limitation for execution of a decree of the High Court commences from the date of the decree. It is for the executing Court to deal with the questions of limitation and the mere fact that the High Court as transmitted its decree for execution does not mean that it was not in its opinion barred. (*Coxe and Teunon, JJ.*) CHATTERPUT SINGH *v.* DAYA CHAND. 11 I. C. 216 : 23 C. L. J. 641.

——Arts. 183 and 182—*Original side decree—Revivor—C.P.C.* (1882) *S. 248 and C.P. C.* (1908) *O. 21, R. 22.*

Both on principle and analogy of the provisions of C. P. Code which apply to doctrine of revivor to India regarding revival of original side decrees notice must go to the parties against whom the decree is sought to be revived. Expl. I in 3rd column of art. 182 does not apply to the revivor of original side decrees. (*Smith and Broadway, JJ.*) BISEN SINGH *v.* FIROZCHAND. 97 P. R. 1917 : 93 P.W R. 1917 : 40 I. C. 618 : 113 P. L. R. 1917.

——Art. 183—*Revivor—Notice of.*

Parties against whom a decree is sought to be revived must be given notice on the analogy of



LOWER BURMA LAND REVENUE ACT (II OF 1876), S. 55.

———Ss. 55 and 56—*Standing crops inquiry into ownership of—Use or enjoyment of land—Civil Court's jurisdiction.*

A Civil Court enquiring as to possession of land incidentally and only for deciding the title to the crop on the land, does not exercise any jurisdiction as to the use or enjoyment of the land within S. 56 of the Act (*Twomey, J.*) HLA DUN *v.* M. L. R. CHETTY FIRM. 26 I. C. 584: 7 L. B. R. 294.

———S. 56 (a)—*Civil Court—Jurisdiction—Sale of land for arrears of revenue—Fraud—Rights of co-owners.*

Where one co-owner of a plot of land with the object of defeating the other co-owners makes default in the payment of land revenue and thus causing the property to be sold buys it at a low price in the name of his son, the other co-owners can maintain a suit in the civil court for a declaration that their rights are not affected. S. 56 (a) of the Land and Revenue Act only ousts the jurisdiction of civil courts as to a determination of the validity of sales under S. 47. The sale, in such a case, though it has the appearance of a sale for arrears of revenue, is in essence, a private alienation. (*Pratt, J.*) MA ZA *v.* MA MI. 11 L. B. R. 313 : 1923 Rang. 17.

——— ———R. 20 (3)—*Grant of land—Sanction of Deputy Commissioner—Contract Act, S. 23.*

A transfer or grant of land without the sanction of the Deputy Commissioner in contravention of the conditions of the grant renders the grant liable to resumption, and the grantee to certain penalties and risk of loss of rights but it is not a transfer forbidden by law within S. 23 of the Contract Act. (*Pratt, J.*) PO MAUNG *v.* R. M. C. R. M. CHETTY. 54 I. C. 42 : 12 Bur. L. T. 156.

———Rr, 51 and 52—*If applicable to demarcated grazing lands.*

Rules 51 and 52 do not apply to demarcated grazing lands. (*Twomey, J.*) MADAR SAHIB *v.* EMPEROR. 4 Bur. L. T. 259 : 13 I. C. 388 : 13 Cr. L. J. 52.

LOWER BURMA TOWNS AND VILLAGES LANDS ACT, (IV OF 1898.)

———Ss. 15 (2) and 41 (A)—*Lands at the disposal of Government—Suit for—Jurisdiction of Civil Court.*

Ss. 41 (A) and 15 (2) of the Act do not debar a Civil Court from adjudicating the rights of two persons litigating over land at the disposal of Government. (*Hartnoll, O.C J. and Ormond, J.*) NALLAN CHETTY *v.* MUTHUSAWMY PILLAI. 23 I. C. 961.

———Ss. 24, 25 and 26—"*Tax rate or assessment*" *meaning of—Burma Land and Revenue Act.*

Under English Law, ground rent does not come within any of the terms "taxes, rates and assessments" but under Ss. 24, 25 and 26 of the Burma (Lower) Town and Village Lands Act, ground rent is payable to Government as a tax or assessment (*Fox, C. J. and Parlett, J.*) SWAN TEE *v.* MA MGWE. 32 I. C. 630 : 9 Bur. L. T. 69.

LUNACY ACT (XXXV OF 1858), S. 7.

LOWER BURMA VILLAGE ACT (III OF 1889.)

———Ss. 10 and 28—*Abuse of powers.*

For an act to constitute an abuse of powers within S. 10 of the Act it must be shown that it was done in the avowed exercise of some power under the Act and that it was in excess of his powers or must have been exercised in an improper manner or under circumstances when it was not properly exercisable. (*Parlett, J.*) EMPEROR *v.* NGA THA, 6 Bur. L.T. 92 : 20 I. C. 237 : 14 Cr. L. J. 413.

LUNACY.

See HINDU LAW—SUCCESSION.

LUNACY (District Courts) ACT XXXV OF 1858.

———*Object of the Act.*

The law does not contemplate that a person alleged to be a lunatic should be exposed to the publicity and harassment of a trial unless there is some foundation for apprehension that he is incapable to manage his affairs. (*Knox and Karamat Hussain, JJ.*) LACHMINIA KUAR *v.* RUDER DEO NARAIN SINGH. 9 I. C. 207 : 8 A. L. J. 179.

———*Applicability—Joint family.*

Act XXXV of 1858 has no application to a Hindu co-parcener who has no separate property. (*Sundara Aiyar and Sadasiva Aiyar, JJ.*) GOVINDAN NAIR *v.* NARAYANAN NAIR. 23 M. L. J. 706 : 12 M. L. T. 585 : 17 I. C. 473 : (1913) M. W. N, 79.

———S. 3—*Suit between private persons.*

Where private persons litigate concerning claims to land not held under grant or lease from Government or under a license from the Revenue Officer, but which is at the disposal of Government, the jurisdiction of the Civil Court is not barred by S. 41 (a) of the Lower Burma Towns and Village Lands Act. The eviction of a squatter by another squatter, or of a sub-lessee by a lessee is a matter cognizable by the Civil Courts in cases where no rights as against the Government, are involved. (*Hartnoll and Ormond, JJ.*) SIT YIN *v.* MA SHIN. 29 I C 872 : 8 L. B. R. 71.

———S. 3 (5)—*Lunatic—Definition.*

A man is not a lunatic simply because he had delusions on one or two points and is incapable of managing his own affairs. Examination by the Court and by a Civil Surgeon combined with the evidence of a doctor treating him is sufficient for the purpose of determination. Examination by the pleader is not necessary. (*Knox and Karamat Hussain, JJ.*) LACHMINIA KUAR *v.* RUDER DEO NARAYAN SINGH 9 I. C. 207 : 8 A. L. J. 179.

———S. 7—*Scope of—Enquiry into lunacy.*

The Lunacy Act contemplates the question of lunacy or sanity at the time of the enquiry. There is no provision in it that the enquiry shall extend to the ascertainment of the period at which the alleged lunatic first became of unsound mind. (*Jenkins, C. J. and N. R. Chatterjea, J.*) KASIM MAMOOJI *v.* K. B. DUTT. 27 I. C. 459 : 19 C. W. N. 45.

LUNACY ACT (XXXV OF 1858.) S. 9.

——S. 9—*Lunatic's estate—Appointment of manager—Court of Wards—Superintendence of an estate of lunatic—Guardian of property.*

A person with landed estate, was declared by the District Judge as of unsound mind. *Held*, it was not necessary for the Judge under the provisions of the Lunacy Act to inquire from the Court of Wards whether it would assume the management of estate before appointing a manager. An appointment of manager of the lunatic's property is valid, until the Court of Wards avails itself of assuming the management of the estate. 1 All. 476, Foll. (*Lindsay, J C. and Rafique, A. J. C.*) JAI RAJ KUNWAR *v.* DWARKA PRASAD.

15 I. C. 265.

——Ss. 9 and 20—*Lunatic—Appointment of manager—Estate subject to jurisdiction of Court of Wards—Jurisdiction of Civil Court.*

A Civil Court has no power to appoint a manager of the estate of a lunatic when the Court of Wards can assume superintendence of the lunatic's property. After making an order adjudging a person to be of unsound mind, the Civil Court is *functus officio* in cases which are within the jurisdiction of the Court of wards. It is only in cases where the Court of Wards has no jurisdiction, or it does not elect to exercise that jurisdiction, that the Civil Court can order appointment of a manager. (*Pratt, J.C. and Hayward, A J. C.*) DAYARAM *v* KHEMIBAI.

16 I. C. 678 : 6 S. L. R. 65.

——S. 12— *Natural guardian appointed guardian under the Act—Power to mortgage without leave of Court.*

A natural guardian appointed guardian under S. 12 of the Lunacy Act cannot mortgage the estate of the lunatic without leave of Court, even though it be for the lunatic's benefit. (*Sankaran Nair and Tyabji, JJ.*) MARIMUTHU UDAYAN *v.* RAMIENGAR.

(1913) M W. N. 969 : 21 I. C. 879 : 14 M. L. T. 489.

——S. 14—*Lease granted for more than five years by guardian of lunatic—No permission of Court—Voidable.*

A lease granted by a guardian of a lunatic for more than 5 years without the Court's permission under S 14 of the Act is voidable only and not void. (*Stephen and D. Chatterjee, JJ.*) TARANI KUT *v.* BHOBANI NATH.

14 I. C. 218 : 16 C. W. N. 762.

——S. 14—*Sale by manager without order of Court—Void.*

A sale of a lunatic's property by the manager without the order or knowledge of the Court is void and could not be ratified. (*Abdul Raoof and Beaman-Pelman, JJ*) MASIHUDDIN *v.* MATU RAM.

1 Lah. 109 : 55 I. C. 865 : 96 P. L. R. 1920.

——S. 14—*Adjudication of lunacy—Right of manager to sue—C. P. Code, O. 32, R. 15.*

Where a manager is appointed to manage the property of the adjudged lunatic and the estate has given him, the right to sue on behalf of the lunatic subsists in the manager, until the adjudication of lunacy is cancelled or the managership ends by the death of the lunatic. Where there is no appointment by the Court, the guardianship

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of the lunatic will cease on the lunatic ceasing to be of unsound mind. (*Kanhaiya Lal, A. J. C.*) DEBI CHARAN *v.* RAGHUBER DAYAL,

16 I. C. 885.

——S. 22—*Lunatic—Appointment of guardian—Evidence.*

A person should not be adjudged as of unsound mind unless he is clearly proved to be unsound. In such cases he should be placed under medical observation of a qualified practitioner and his statement should be recorded by the Court itself. No proper inquiry was made in this case and he was declared lunatic on insufficient grounds (*Scott-Smith, J.*) BHAGWAN SINGH *v.* MOHAN BAI.

96 P. L. R. 1916 : 36 I. C. 219 : 178 P. W. R. 1916.

——S, 22—*Appeal.*

An order appointing a guardian of the property of a lunatic is appealable. 94 P. R. 1906, Ref (*Johnstone, J.*) ALEM KHATUN *v.* MUBARAK KHAN.

28 P. L. R. 1911 : 9 I. C. 548 : 131 P. W. R. 1911.

——S. 65—*Inquisition proceedings—Petitioner whether entitled to have inquiry conducted so long as he has witnesses—Discretion of Court.*

A Judge has got discretion under this Act to stop proceedings in an inquisition for proper grounds ; a petitioner is not entitled to have the inquiry conducted so long as he is able to tender witnesses for examination. (*Sadasiva Aiyar and Moore, JJ.*) RAHEMA BIBI *v.* HAMIDA BIBI.

33 I. C. 857 : 3 L. W. 402.

——S. 65 (2)—*Declared lunatic—Presumption.*

Where a person has been found to be a lunatic under the Act, the presumption is that he continues to be of unsound mind until the contrary is shown. (*Wallis, C. J. and Srinivasa Aiyangar, J.*) AMANCHI SESHAMMA *v.* AMANCHI PADMANABHA RAO.

3 L. W. 290 : 33 I. C. 578 : 19 M. L. T. 243.

——S. 71—*Adoption by lunatic—Validity.*

A lunatic can adopt during the continuance of an order appointing a manager to the properties of a lunatic under the Act. (*Wallis, C. J. and Srinivasa Aiyangar, J.*) AMANCHI SESHAMMA *v.* AMANCHI PADMANABHA RAO.

3 L. W. 290 : 33 I. C. 578 : 19 M. L. T. 243.

——S. 71 (1)— *Declaration of lunacy and appointment of manager—Tarward property.*

No application can lie for declaration of the lunancy of *Karnavan* and for the appointment of a manager with respect to his separate property. (*Sundara Aiyar and Sadasiva Aiyar, JJ*) GOVINDAN NAIR *v.* NARAYANA NAIR.

12 M. L T. 585 : 17 I. C. 473 : (1913) M. W. N. 79 : 23 M. L. J. 706.

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——*Guardianship proceedings—Court cannot delegate its powers.*

Per *Walsh, J* :—A Court on being applied to appoint a guardian for the estate of an alleged lunatic cannot delegate its functions of determining whether the persons alleged to be lunatic is of

unsound mind and incapable of managing his property. (*Walsh and Ryves, JJ.*) MURLIDHAR PANDE *v.* LACHMI PANDE. 43 All. 459 : 19 A. L. J. 334 : 62 I. C. 480 : 3 U. P. L. R. (All.) 15.

———*Lunatic's estate—Test.*

The beneficial interest of the lunatic in joint property belonging to him and other, *e. g.* brothers and sisters connot be wholly ignored while deciding what the estate of the lunatic is. (*Sadasiva Aiyar and Moore, JJ.*) SULTAN AHMED ALI *v.* ARAKKAN ADI. 33 I. C. 106.

———Ss. 3 (11), 62 and 63—*Relative meaning of—Wife's brother—Application for inquisition under S.* 62.

The brother of the wife is related by marriage to the husband of his sister and is therefore a "relative" within S. 3 (II) of the Lunacy Act and he is competent to make an application for inquisition under S. 62 of the Act A narrow construction should not be placed upon the term "relative" as defined in. S. 3 (II) of the Lunacy Act. (*Mookerjee and Beachcroft, JJ.*) MONI LAL SEAL *v.* NEPAL CHANDRA PAL.
22 C. W. N. 547 : 43 I. C. 511 : 27 C. L J. 205.

———S. 14—*Proviso 2—Orders of District Magistrate—Power of High Court to revise.*

The orders of a District Magistrate under part 2 of the Indian Lunacy Act with respect to the reception, care and treatment of lunatics are executive and not judicial in their nature and are not open to revision by the High Court. Where however a person considers himself aggrieved by such an order he may apply under Part 3 for a regular inquisition conducted by a Judicial Officer. The result of such inquisition is conclusive and over-rides any order which may have been passed summarily by the executive authority. (*Abdul Raoof and Harrison, JJ.*) DONALD *v.* EMPEROR. 4 Lah. 1 : 24 Cr. L. J. 664 : 1924 Lah. 55.

———S. 24 (Act X of 1914)—*Lunatic—Court's power to direct reception of criminal lunatic into asylum—Warrant.*

Under the Lunacy Act IV of 1912 and X of 1914 the Magistrates or Courts are themselves competent to direct the reception of a criminal lunatic into any asylum prescribed for the purpose without reporting the case for orders of the Local Government under S 471 (1) Cr. P. Code. (*Parlett, J.*) EMPEROR *v.* NGA E. MOUNG. 8 Bur. L. T. 286 : 8 L. B. R. 290 : 30 I. C. 654 : 16 Cr. L. J. 670.

———Ss. 37, 38 and 62—"*Residence,*" *meaning of—Inquisition—Jurisdiction.*

Where D had two places of residence one in Patna and the other in Calcutta and his wife instituted proceedings for his inquisition in Patna, *held*, that as resident in Calcutta D was subject to the jurisdiction of the High Court and that therefore the District Court of Patna had no

jurisdiction to entertain the proceedings. (*Mookerjee, A.C.J. Fletcher and Richardson, JJ.*) ANILABALA CHOWDRANI *v.* DHIRENDRA. 48 Cal. 577 : 65 I. C. 57 : 25 C. W. N. 178. (Confirming on Letters Patent Appeal 57 I. C. 768—Ed.)

———S. 37—*Courts mentioned in S.* 37.

Per *Teunon, J.* Temporary removal of a lunatic to the mofussil does not oust the jurisdiction of the High Court over the lunatic and an application under S. 62 in relation to such lunatic must be made on the Original Side of the High Court. *Per Beachcroft, J.)* A Temporary removal to mofussil vests jurisdiction over the lunatic in the district court in whose jurisdiction he is removed unless th lunatic is at the same time subject to the jurisdiction of the High Court. It is not necessary that the property of the lunatic must be within the jurisdiction of the District Judge. (*Teunon and Beachcroft, JJ.*) ANILLALA CHOWDHURANI *v.* DHIRENDRA NATH SAHA. 57 I. C. 768 : 32 C. L. J. 314.

———S. 47—*Lunatic—Property of—Sale by manager without permission—Effect.*

Where the certified guardian of a lunatic sells the property of the lunatic without the permission of the Court the sale is not binding on the shares of the sons of the lunatic. (*Lindsay, J.C.*) MAHAGHULAM *v.* RAJPAT SINGH. 34 I. C. 422 : 3 O. L. J. 173.

———S. 56—*District Judge's order directing payment to lunatic's guardian binding on Land Acquisition Judge.*

A Land Acquisition Judge, with whom a sum of money is disposited to a lunatic's credit, cannot refuse compliance with an order of a District Judge in his lunacy jurisdiction, directing payment of the money to the lunatics natural guardian, the order being in accordance with S. 56 of the above Act. (*Holmwood and Imam, JJ.*) SATYENDRA NATH DEY *v* SECRETARY OF STATE. 37 I. C. 110 : 20 C. W. N, 97.

———S. 61—*Applicability — Cases outside Presidency Towns.*

S. 61 of the Lunacy Act and the rules framed thereunder are applicable only to cases in Presidency Towns and in the absence of rules applicable to cases outside the Presidency Towns those rules may be made applicable to such cases also. (*Mookerjee and Beachcroft, JJ.*) MONI LAL SEAL *v.* NEPAL CHANDRA PAL. 22 C. W. N. 547 : 43 I. C. 511 : 27 C. L. J 205.

———S. 62—*Lunacy—Inquisition for ascertaining—Procedure—Preliminaries.*

An inquisition under S. 62 of the Lunacy Act once started must be prosecuted to the very end. Before such an inquisition is ordered or started, there ought to be a careful and thorough preliminary enquiry and the Judge ought to satisfy himself that there is a real ground for an inquisition. An application for an inquisition should ordinarily be supported by affidavit or by examination on oath of the applicant and by a medical certificate of some doctor as to the condition of the alleged lunatic. It would also be desirable in many cases that the Judge should seek

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rsonal interview with the alleged lunatic with a iew to satisfy himself that there is a real ground or supposing the existence of an abnormal mental condition which might bring the person within the Lunacy Act. (*Piggott and Walsh, JJ.*) MAHOMED YAKUB *v.* NAZIR AHMAD.

42 All. 504 : 58 I. C 617 : 18 A. L. J. 577.

——S. 62—*Courts mentioned in S. 37.*

(Per *Teunon, J.*)—Temporary removal of a lunatic to the mofussil does not oust the jurisdiction of the High Court over the lunatic and an application under S. 62 in relation to such lunatic must be made on the original side of the High Court. (Per *Beachcroft, J.*)—A temporary removal to mofussil vests jurisdiction over the lunatic in in the District Court in whose jurisdiction he is removed unless the lunactic is at the same time subject to the jurisdicti on of the High Court. It is not necessary that the property of the lunatic must be within the jurisdiction of the District Judge (*Teunon and Beachcroft, JJ.*) ANILLALA CHOWDHURANI *v.* DHIRENDA NATH SAHA.

32 C. L. J. 314 : 57 I. C. 768

——Ss. 71 and 72—*Guardianship—Wife as first guardian.*

Even under S. 72, heir of lunatic may be his guardian. Courts should consider well, before appointing an heir as guardian, who is entitled immediately to inherit the lunatic after his death. Even in India wife has the first claim to the guardianship of a lunatic (*Walsh and Stuart, JJ.*) AMIR KAZIM *v.* MUSI IMRAM.

39 All. 158 : 36 I. C. 983 : 15 A. L. J. 10.

——S. 71—*Lunatic's estate—Test.*

The beneficial interest of the lunatic in joint property belonging to him along with other owners, *e. g.*, brothers and sisters of his, cannot be wholly excluded in deciding what the estate of the lunatic is. (*Sadasiva Aiyar and Moore, JJ.*) SULTAN AHMED ALI *v.* ARAKKAN ADL. 33 I.C. 106.

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——S. 80—*Sale of Lunatic's property*

Where a manager of the lunatic's estate has been appointed and has not been removed under S. 80 of the Act, the District Court has no power to alienate any portion of the lunatic's property. (*Marlineau, J.*) BISHAMBAR NATH *v.* MUSSAMMAT PARBATI. 52 I. C. 609 : 88 P. R. 1919.

——S. 82—*Functions of District Judge—Relative of lunatic, position of*—Amicus curiae.

The District Judge under Act is partially judicial and partly administrative authority. The inquiry into the state of a mind of a person affected, is to satisfy his own mind, the relatives to whom notices are issued, being merely *amicus curiae* and not parties to the proceedings. They are allowed to be heard but have no right to be heard. (*Stuart, J. C.*) JADUNATH SINGH *v.* PIRTHIPAL SINGH.

3 O. L. J. 393 : 36 I. C. 705 : 19 O. C. 353.

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See also CONTRACT ACT, S. 12.

——*Adverse possession against—Limitation—Widow's right of suit—Reversioners bound by action or inaction of widow.*

Limitation would begin to run from the date when he took possession though the lunatic or minor would be entitled to file a suit within 3 years from the date when his disability ceases. (*Kumarswami Sastri and Devadoss, JJ.*) KALIDINDI SEETARAMARAJU *v.* SUHARAJU.

42 M. L. J. 282 : 45 M. 361 : (1922) M. W. N. 136 : 30 M. L. T. 128 : 15 L.W. 382 : 1922 Mad. 12.

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